

**CITY OF BONITA SPRINGS
ORDINANCE NO. 17-01**

AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA; ENACTING A TEMPORARY MORATORIUM ON CANNABIS DISPENSING BUSINESSES AS FURTHER DEFINED HEREIN; PROVIDING FOR GEOGRAPHIC AREA COVERED; PROVIDING FOR PENALTIES, CONFLICTS OF LAW; PROVIDING FOR SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 2014 the Florida Legislature enacted a law legalizing low-THC medical cannabis in Florida; and

WHEREAS, in 2016 the Florida Legislature expanded the law to legalize medical cannabis in Florida; and

WHEREAS, on November 8, 2016, constitutional amendment 2 passed, further expanding the legal use of cannabis in Florida, legalizing the cultivation, production, and dispensing of medical cannabis for a broader population of eligible patients; and

WHEREAS, a comprehensive State licensing and regulatory framework for the cultivation, processing, and dispensing of cannabis now exists; and

WHEREAS the comprehensive State licensing and regulatory framework directs that the criteria for the number and location of, and other permitting requirements that do not conflict with state law or department rule for, dispensing facilities of cannabis businesses may be determined by local ordinance; and

WHEREAS, cannabis businesses licensed pursuant to the law have begun cultivating cannabis for processing and dispensing; and

WHEREAS, the dispensing of cannabis is currently illegal under federal law and the United States Drug Enforcement Agency has recently confirmed that cannabis remains a Schedule I drug under federal law (21 U.S.C. §812), but the United States Department of Justice has discussed federal enforcement of such laws with respect to state regulated cannabis operations in the 2012 "Cole Memorandum," and;

WHEREAS, potential adverse impacts on the health, safety, and welfare of residents and business from secondary effects associated with the distribution of cannabis exist, potentially including, offensive odors, trespassing, theft, fire hazards, increased crime in and about the dispensary, robberies, negative impacts on nearby businesses, nuisance problems, and increased DUI incidents; and

WHEREAS, certain of the above potential adverse impacts are accentuated by the current difficulties experienced by cannabis businesses in obtaining banking services necessitating such businesses to operate on a cash basis; and

WHEREAS, there exists the potential for misappropriation of medical cannabis to non-medical uses; and

WHEREAS, an overabundance of dispensing facilities can affect the viability of such facilities, result in compliance issues, lead to the improper diversion of products, and accentuate threats to the public health, safety, and welfare; and

WHEREAS, Florida laws relating to the cultivation, production, and dispensing of cannabis products are rapidly changing – raising substantial questions about whether cannabis-related land uses, as a category of commercial use, may have deleterious and negative secondary effects on surrounding land uses and communities; and

WHEREAS, the purpose of this ordinance is to place a temporary moratorium on the opening of certain new cannabis dispensing facilities, and on the expansion or relocation of certain existing cannabis dispensing facilities; and

WHEREAS, the City hereby finds that the temporary moratorium imposed by this ordinance is intended to give the City the time reasonably necessary to investigate the impacts of cannabis dispensing facilities, and if necessary, to promulgate reasonable regulations relating to such establishments; and

WHEREAS, the City hereby finds that this ordinance advances an important government purpose by reducing the likelihood of the unregulated negative secondary effects of cannabis dispensing facilities; and

WHEREAS, the City hereby finds that this ordinance is in the best interest of the public health, safety, and welfare; and

WHEREAS, the City has determined it is in the public interest to adopt this Ordinance pursuant to the City police powers to protect the health, safety, and welfare of the public;

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

Section One: Purpose and intent, Recitals.

The purpose of this Ordinance is to provide the City with the opportunity to review the impact of recent changes in law including passage of the constitutional amendment, as well as the impact of cannabis dispensing in other jurisdictions, to determine how such dispensing should be permitted or regulated in the City. The recitals set forth above, incorporated herein, are hereby found true and correct.

Section Two: Definitions.

(1) The following words and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Ordinance:

- a. **Cannabis** means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.
- b. **Cannabis dispensing business** or **business** shall mean a business location offering cannabis for retail sale pursuant to a license to dispense cannabis issued under applicable law.
- c. **Compassionate Use Act** shall mean Florida Statutes §381.986, and chapter 2016-123, Laws of Florida, as amended from time to time, and any rules or regulations promulgated thereunder.
- d. **State** shall mean the State of Florida.

(2) In addition to the definitions contained in Subsection (1), other terms used in this Ordinance shall have the meaning ascribed to them in the Compassionate Use Act, and such definitions are incorporated into this Ordinance by this reference.

Section Three: Temporary Moratorium.

Beginning on the effective date of this Ordinance, a moratorium is hereby imposed on the opening of new cannabis dispensing businesses and on the expansion or relocation of existing cannabis dispensing businesses in the City.

- a. The moratorium is for a time period not to exceed six months, beginning February 3, 2017 and will remain in effect through August 3, 2017, unless City Council adopts by Resolution an extension for up to an additional six months. The moratorium will automatically expire upon the effective date of a zoning ordinance addressing cannabis dispensing businesses.
- b. Bonita Springs City Council may extend this moratorium by ordinance if it makes a legislative determination that it is in the best interests of the citizens of Bonita Springs to do so.
- c. During the moratorium, it is unlawful and a violation of this ordinance for any person or entity to open or cause to be opened any cannabis dispensing business within the City.
- d. During the moratorium, it is unlawful and a violation of this ordinance for any person or entity to relocate or cause to be relocated any cannabis dispensing business within the City.
- e. During the moratorium, it is unlawful and a violation of this ordinance for any person or entity to expand or cause to be expanded any cannabis dispensing business within the City.
- f. During the moratorium, the City shall not accept, process or approve any application for business tax receipts, licenses, building permits, land use permits,

or any development permits concerning or related to a cannabis dispensing business.

- g. During the moratorium, the City shall not accept, process or approve any business tax receipts, building permits, land use permits, or any development permits concerning or related to a cannabis dispensing business.
- h. During the moratorium, the City shall not accept, process or approve any licenses, permits, or approvals for any property, entity, or individual for the sale or dispensation of cannabis so long as this ordinance is in effect.

Nothing in this temporary moratorium shall be construed to prohibit the use of cannabis pursuant to the Compassionate Use Act or other applicable Florida Law, or the delivery of cannabis in compliance with the Compassionate Use Act or other applicable Florida Law.

Section Four: Study and Recommendations.

The City Manager or designee is hereby directed to study and expedite proposed land development regulations for cannabis dispensaries and the impact of such regulations in other jurisdictions.

Section Five: Penalties.

Any person or entity who violates any provision of this Ordinance or who fails to comply therewith, or with any of the requirements thereof, shall be fined in an amount not exceeding five hundred dollars (\$500.00) per violation, per day, or be imprisoned for a period of time not to exceed sixty (60) days.

Section Six: Conflicts of Law

Whenever the requirements or provisions of this amending ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements shall apply.

Section Seven: Severability

If any part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reasons, such part, section, subsection, or other portion or the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision or application.

Section Eight: Scrivener's Errors

Sections of this ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the City Manager, or the City Manager's designee, without need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

Section Nine: Effective Date

The effective date of this ordinance shall be thirty (30) days from its adoption date, pursuant to §29(c) of the City Charter, which requires ordinances to have effective dates of thirty days after its adoption or at any later date as specified in the ordinance.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 4th day of January, 2017.

AUTHENTICATION:



Mayor



City Clerk

APPROVED AS TO FORM:



City Attorney

Vote:

DeWitt	Aye	Quaremba	Aye
Forbes	Aye	Simmons	Aye
Gibson	Aye	Slachta	Aye
O'Flinn	Aye		

Date filed with City Clerk:

1/7/15