

**CITY OF BONITA SPRINGS
ORDINANCE NO. 16-18**

AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA; RELATING TO SMOKING OF CANNABIS AND MARIJUANA IN OPEN AND PUBLIC PLACES; PROVIDING FOR DEFINITIONS; PROVIDING THAT SMOKING OF MEDICAL MARIJUANA USE IS PROHIBITED IN CERTAIN OPEN AND PUBLIC AREAS; ALLOWING LIMITED EXCEPTIONS BY SPECIAL EVENT PERMITS; PROVIDING FOR PENALTIES, CONFLICTS OF LAW; PROVIDING FOR SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Use of Marijuana for Debilitating Medical Conditions, Amendment 2 is on the November 8, 2016 ballot in the state of Florida as an initiated constitutional amendment, that upon voter approval, would legalize medical marijuana; and

WHEREAS, the ballot measure does not require any accommodation of any on-site medical use of marijuana in any place of education or employment, or of smoking medical marijuana in any public place; and

WHEREAS, Florida Statutes §381.496(4)(a) already authorizes low-THC Cannabis for medical purposes, where physicians may prescribe pursuant to Florida Statutes §381.496 (4) (a) low-THC cannabis to be used through "the appropriate delivery mechanisms" which may or may not include smoking; and

WHEREAS, the City Council of the City of Bonita Springs has determined that it is advisable and in the public interest to limit the locations where medical marijuana can be used so as to protect other patrons in these open and public and semi-public areas; and

WHEREAS, it is the intent of Bonita Springs City Council to be cautious in issuing special event permits to allow smoking of medical marijuana at public parks, thus requiring a supermajority vote; and

WHEREAS, the City Council of the City of Bonita Springs finds that this ordinance promotes the public health, safety and welfare.

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

Section One: Definitions

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Marijuana” has the meaning given to cannabis in Florida Statutes §893.02, Florida Statutes.

“Open and Public” means a place open to the general public which includes a place to which the public or a substantial number of the public has access without restriction including but not limited to streets, highways, public sidewalks, transportation facilities including rest areas, places of amusement, parks, playgrounds, City owned open space, bicycle and pedestrian trails, common open space owned by owners' associations, common areas of public buildings and facilities that are generally open or accessible to members of the public without restriction, parking lots and areas, and shopping centers or shopping areas. A person who smokes marijuana in a residential dwelling unit or anywhere on the real property upon which such dwelling unit is located shall not be considered to be smoking marijuana in an “open and public” manner, unless such person repeatedly disturbs or annoys another person outside of the perimeter of the subject property because of the second hand smoke generated from the smoking of marijuana.

“Park” means any park, wayside park, parkways, preserves, and open spaces, playgrounds, recreation facilities and fields, buildings, lakes, streams, canals, lagoons, waterways, pools, causeways, bridges, roadways, marinas, piers, and abutting lands and adjacent littoral waters, which are used for recreational purposes, or as parks, and the pertinent rights-of-way presently under or hereinafter acquired and placed under the jurisdiction, control and administration of the city, county or state in the city.

“Public beach” means any beach within the territorial boundaries of the city which:

- (a) Is below the mean high water lines;
- (b) Is owned by the city, county or state;
- (c) Has arisen upon it a right of customary use by the public;
- (d) Has arisen upon it a public easement, prescriptive or otherwise; or
- (e) Is the foreshore of tidal navigable waters that is the land between the high and low water marks, and is owned by the state.

“Semi-public parking lot” includes any area where motor vehicles are parked by the public in conjunction with any business, enterprise, commercial establishment, office building, or apartment building.

Section Two: Smoking of Medical Marijuana in any open and public areas including semi-public parking lots, open and public areas, parking lots, parks and beaches. Special Event Permits.

It shall be unlawful and punishable as provided herein to smoke medical marijuana in any open and public areas, including semi-public parking lots, open and public areas, parking lots, parks and beaches located in the City of Bonita Springs.

City of Bonita Springs will not issue any Special Event permit to allow smoking of medical marijuana at any of its facilities or other public facilities when a Special Event permit is required, unless there is a supermajority vote of 5 of 7 of City Council to authorize the event.

Section Three: Penalty

Any person convicted of violation of any of the provisions of this ordinance shall be punishable by a fine not to exceed \$500.00 or by imprisonment in the county jail for a period not to exceed 60 days, or both such fine and imprisonment for each such offense.

Section Four: 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 Five: 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 Six: Codification, Inclusion in Code and Scrivener's Errors

It is the intention of the City Council for the City of Bonita Springs that the provisions of this ordinance shall become and be made a part of the Bonita Springs City Code; and that sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, 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 Seven: Effective Date

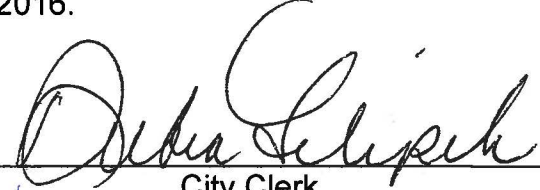
The effective date of this ordinance shall be thirty (30) days from its adoption date.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs,
Lee County, Florida, this 16th day of November, 2016.

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: 11/17/16