

ORDINANCE 16-49

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, REGARDING MEDICAL MARIJUANA; IMPOSING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSING ORGANIZATIONS AND MEDICAL MARIJUANA TREATMENT CENTERS WITHIN THE UNINCORPORATED AREA OF MANATEE COUNTY FOR A PERIOD OF 180 DAYS; PROVIDING FOR APPLICABILITY; PROVIDING FOR DURATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature in 2014 enacted a medical marijuana law, the "Compassionate Medical Cannabis Act of 2014" (codified as Section 381.986, Florida Statutes) which authorized a limited number of large nurseries to cultivate, process, transport, and dispense non-euphoric, low THC cannabis and operate as "Dispensing Organizations" for individuals with certain specified serious ailments; and

WHEREAS, the Florida Legislature in 2016 amended the Compassionate Medical Cannabis Act (Section 381.986, Florida Statutes) to include the use of "medical marijuana" for eligible patients with terminal conditions; and

WHEREAS, the 2016 Amendment to Section 381.986, Florida Statutes, expanded the type of marijuana available to eligible patients beyond low THC cannabis to include all types of marijuana, and the statutory amendment has been codified and has become effective in the State of Florida; and

WHEREAS, on November 8, 2016, Florida's voters will have voted on an amendment to the Florida Constitution, titled "Use of Marijuana for Debilitating Medical Conditions" ("Amendment 2"); and

WHEREAS, Amendment 2 fully legalizes the medical use of marijuana throughout the State of Florida for those individuals with specified "debilitating" conditions, and authorizes the cultivation, processing, distribution and sale of marijuana and related activities by licensed "Medical Marijuana Treatment Centers"; and

WHEREAS, a comprehensive state licensing and regulatory framework for the cultivation, processing and dispensing of cannabis under the Compassionate Medical Cannabis Act of 2014 (the "Act") presently exists; and

WHEREAS, Section 381.986(8)(b), Florida Statutes, provides that the criteria for the number and location of and other permitting requirements that do not conflict with state law or rules of the Florida Department of Health may be established by local ordinance; and

WHEREAS, while the dispensing of cannabis remains illegal under federal law, the U.S. Department of Justice addressed the exercise of federal prosecutorial discretion in states with laws authorizing medical marijuana cultivation and distribution in the 2013 Deputy Attorney General "Cole Memorandum for all United States Attorneys;" and

WHEREAS, the potential for adverse secondary effects associated with Medical Marijuana Treatment Centers and Medical Marijuana Dispensary Organizations exist within Manatee County; and

WHEREAS, Section 125.01, Florida Statutes, authorizes the Board of County Commissioners of Manatee County, Florida (the "Board"), to prepare and enforce comprehensive plans for the development of the County, and to establish, coordinate, and enforce zoning regulations for the protection of the public; and

WHEREAS, Section 163.3167, Florida Statutes, authorizes Manatee County (the "County") to adopt and amend comprehensive plans to guide future development and growth, and to implement adopted or amended comprehensive plans by the adoption of appropriate land development regulations; and

WHEREAS, Section 163.3194, Florida Statutes, requires all land development regulations to be consistent with the adopted comprehensive plan; and

WHEREAS, Section 163.3202, Florida Statutes, requires the County to adopt or amend and enforce land development regulations that are consistent with and implement the adopted comprehensive plan, including, but not limited to, provisions regulating the use of land to ensure the compatibility of adjacent uses among other matters; and

WHEREAS, on May 11, 1989, the Board enacted Ordinance No. 89-01 adopting the Manatee County Comprehensive Plan (the "Comprehensive Plan"), which has been subsequently amended; and

WHEREAS, on June 4, 2015, the Board enacted Ordinance No. 15-17 amending and restating the Manatee County Land Development Code (the "Land Development Code") which has been subsequently amended; and

WHEREAS, County staff has recommended that the Comprehensive Plan, Land Development Code and Manatee County Code of Ordinances be reviewed and revised as necessary since there are no current regulations governing the use of real property for purposes of cultivating, processing, and distributing or selling marijuana or related activities, and such uses are neither lawfully existing or permissible within Manatee County; and

WHEREAS, in order to promote effective land use planning if a Dispensing Organization should seek to operate in Manatee County, the Board wishes to preserve the status quo while researching, studying and analyzing the potential impact of Medical Marijuana Dispensing Organizations and Medical Marijuana Treatment Centers upon nearby properties; and

WHEREAS, the Board finds that a temporary moratorium on the establishment and operation of Medical Marijuana Dispensing Organizations and Medical Marijuana Treatment Centers would allow County staff sufficient time to investigate the impacts of cannabis distribution facilities; to determine what uses are best suited for particular zoning categories and how best to formulate amendments to the Comprehensive Plan, if required and the Land Development Code and to enable the advertising of public hearings to consider adoption of said amendments; and

WHEREAS, the Board finds that a temporary moratorium on the acceptance, processing and issuance of development permits, development orders or any other official action of Manatee County permitting or having the effect of permitting new Medical Marijuana Treatment Facilities and Dispensing Organizations will allow time to review, study, hold public hearings and prepare and adopt amendments to the Code of Ordinances; and

WHEREAS, on October 25, 2016, the Board received comments regarding the regulatory structure regarding medical marijuana and low THC cannabis and directed the preparation of a temporary moratorium as specified herein, and further authorized publication of notices and scheduling of public hearings to consider the proposed temporary moratorium ordinance.

NOW THEREFORE BE IT ORDAINED, by the Board of County Commissioners of Manatee County, Florida:

Section 1. Purpose and Intent. This Ordinance is enacted to carry out the purpose and intent of, and exercise the authority set out in, the Community Planning Act, as codified in the applicable portions of Chapter 163, Part II, Florida Statutes (2016) as amended, and Chapter 125, Florida Statutes, as amended.

Section 2. Findings. The recitals set forth in the “Whereas” clauses above are true and correct and are hereby adopted as findings by the Board for the adoption of this Ordinance.

Section 3. Temporary Moratorium. A temporary moratorium is hereby imposed on the establishment and operation of Medical Marijuana Dispensary Organizations and Medical Marijuana Treatment Centers (as referenced in Section 381.986, Florida Statutes and Constitutional Amendment 2 respectively) within the unincorporated areas of Manatee County. While the moratorium is in effect, the County shall not accept, process or approve, any application relating to the establishment or operation of a Medical Marijuana Dispensing Organization or Medical Marijuana Treatment Center. Nothing in this temporary moratorium shall be construed to prohibit the permitted use of medical marijuana or low THC cannabis by a qualified or eligible patient, as determined by a licensed Florida physician pursuant to Amendment 2, Section 381.986, Florida Statutes or other Florida law as applicable.

Section 4. Definitions. For purposes of this temporary moratorium, the following definitions apply as these terms are used in this Ordinance:

(a) “Medical Marijuana Treatment Center” means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils or ointments), transfers, transports, sells, distributes, dispenses or administers marijuana or products containing marijuana, related supplies, or education materials to qualifying patients or their caregivers and is registered by the Florida Department of Health.

(b) “Dispensing Organization” means an organization approved by the Florida Department of Health to cultivate, process, transport, and dispense low THC cannabis or medical cannabis pursuant to Section 381.986, Florida Statute.

(c) “Establishment” means development orders, development permits and any other official action of Manatee County permitting or having the effect of permitting the operation of Medical Marijuana Treatment Facilities or Medical Marijuana Dispensing Organizations, including without limitation: building permits, zoning compliance permits, administrative permits, certificates of occupancy, special permits, temporary use permits, site plans, subdivisions (preliminary and final plats), rezoning, development agreements, DRI (Development of Regional Impact), Comprehensive Plan Future Land Use Map amendments (site specific) and variances.

Section 5. Effective Date: This Ordinance shall become effective as provided by law. The moratorium shall terminate one hundred eighty (180) days from the effective date of this Ordinance unless the Board rescinds or extends the moratorium by subsequent ordinance.

Section 6. The Board directs the County Administrator to have County staff initiate a zoning review of Medical Marijuana Dispensing Organizations and Medical Marijuana Treatment Centers and to prepare a report containing recommendations as to appropriate amendments to the Comprehensive Plan, if necessary and the Land Development Code to address regulating Medical Marijuana Dispensing Organizations and Medical Marijuana Treatment Centers consistent with applicable law.

The County Administrator is also directed to have County staff perform a review of the County Code of Ordinances and prepare a staff report containing recommendations as to appropriate amendments to the County Code of Ordinances to address regulating Medical Marijuana Dispensing Organizations and Medical Marijuana Treatment Centers consistent with applicable law.

Section 7. Severability. If any section, sentence, clause or any other provision of this Ordinance shall be held invalid or be found unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed so as to render invalid or unconstitutional the remaining sections, sentences, provisions or clauses of this Ordinance.

Section 8. Codification. The publisher of the County’s Land Development Code, the Municipal Code Corporation, is directed to incorporate the amendments contained within Sections 3, 4, and 5 of this Ordinance into the Manatee County Land Development Code as follows:

Chapter 1, General Provisions, as a new Section 109, Medical Marijuana -Temporary Moratorium. The publisher of the County’s Code of Ordinances, the Municipal Code Corporation, is directed to incorporate the amendments contained within Sections 3,4 and 5 of this Ordinance into the County Code of Ordinances as follows: Part III, Code of Ordinances, Chapter 2-25, Planning and Development, as a new Article V, Medical Marijuana-Temporary Moratorium, and a new Section 2-25-45.

DULY ADOPTED with a quorum present and voting, this _____ day of _____, 2016.

**BOARD OF COUNTY COMMISSIONERS
OF MANATEE COUNTY, FLORIDA**

By: _____
Chairperson

ATTEST: ANGELINA COLONNESO
CLERK OF THE CIRCUIT COURT AND COMPTROLLER

By: _____
Deputy Clerk