

ORDINANCE NO. 01-2017

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEMINOLE, FLORIDA, REGARDING MEDICAL CANNABIS; IMPOSING A TEMPORARY MORATORIUM ON THE SALE OF MEDICAL CANNABIS AND ON THE ESTABLISHMENT AND OPERATION OF MEDICAL CANNABIS DISPENSING ORGANIZATIONS WITHIN THE CITY OF SEMINOLE, FLORIDA FOR A PERIOD ENDING ON JULY 3, 2017; 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, 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 cannabis, and the statutory amendment has been codified and has become effective in the State of Florida; and

WHEREAS, on November 8, 2016, Florida voters approved a constitutional amendment (Use of Marijuana for Debilitating Medical Conditions - Amendment 2) to allow for broader medical use of any kind of marijuana (including euphoric strains) within the State; and

WHEREAS, despite the approval of Amendment 2, the activities it permits remain illegal under Federal law; and

WHEREAS, Amendment 2 allows the medical use of marijuana for individuals with debilitating medical conditions as determined by a licensed Florida physician, allows caregivers to assist patients’ medical use of marijuana, and directs the Department of Health to register and regulate centers that produce, distribute and dispense marijuana for medical purposes by promulgating regulations and issuing identification cards to patients and caregivers; and

WHEREAS, Amendment 2 goes into effect on January 3, 2017, and the Florida Legislature has until July 3, 2017, to pass legislation and to create regulations governing the implementation of Amendment 2; 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, dispensing of cannabis remains illegal under federal law, and the U.S. Department of Justice has discussed federal enforcement of such laws with respect to state regulated cannabis operations in the 2013 “Cole memorandum”; and

WHEREAS, the potential for adverse secondary effects associated with Medical Cannabis Dispensary Organizations exist within the City of Seminole; and

WHEREAS, Section 166, Florida Statutes, authorizes the City Council of Seminole, Florida (the “City Council”), to prepare and enforce comprehensive plans for the development of the City, and to establish, coordinate, and enforce zoning regulations for the protection of the public; and

WHEREAS, Section 163.3167, Florida Statutes, authorizes the City 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 City 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, the City has adopted a Comprehensive plan in Ordinance 11-89, which has been subsequently amended; and

WHEREAS, the City has adopted a Land Development Code in Ordinance 05-1991, which has been subsequently amended; and

WHEREAS, City staff has recommended that the Comprehensive Plan, Land Development Code and City’s Code of Ordinances be reviewed and revised as necessary since there are no current regulations governing the use of real property for purposes of selling cannabis or related activities, and such uses are neither lawfully existing or permissible with the City; and

WHEREAS, with the approval of Amendment 2, the City Council believes it is in the best interests of the citizens of Seminole to have in place land development regulations regarding the cultivation, distribution and dispensing of medical marijuana (hereafter also referred to as “cannabis”); and

WHEREAS, significant safety and security issues exist for establishments involved in the dispensing of medical cannabis because these operations maintain large cannabis inventories and are compelled to conduct their business in cash because their activities have not been permitted under Federal law; and

WHEREAS, such businesses are inherently attractive targets for criminals and organized criminal organizations, and therefore it is essential that the City limit and control the permissible scope of such facilities and operations by regulating them to attempt to address their potential incompatibilities with surrounding businesses, communitywide facilities, and the community at large, and to protect and advance the public health, safety and welfare; and

WHEREAS, other attributes of land uses dealing with medical cannabis such as noise, traffic, and odors, must be regulated to minimize their impact on surrounding properties and uses and to attempt to prevent the creation of attractive nuisances; and

WHEREAS, in 1996, California became the first state to legalize the use of medical marijuana, and several other states subsequently enacted laws legalizing medical marijuana in various circumstances; and

WHEREAS, the California Police Chiefs Association developed a Task Force on Medical Marijuana Dispensaries, which prepared the “White Paper on Marijuana Dispensaries” (“White Paper”), published in 2009; and

WHEREAS, the White Paper examined the direct and indirect adverse impacts of marijuana dispensaries in local communities and indicated that marijuana dispensaries may attract or cause ancillary crimes, and may cause adverse effects, such as marijuana smoking in public, the sale of other illegal drugs at dispensaries, loitering and other nuisances, and increased traffic near dispensaries; and

WHEREAS, the White Paper further indicates that marijuana dispensing businesses in a community may contribute to the existence of a secondary market for illegal, street-level distribution of marijuana; and

WHEREAS, the White Paper outlines the following typical complaints received from individuals regarding certain marijuana dispensary areas: high levels of traffic going to and from the dispensaries, people loitering in the parking lot of the dispensaries, people smoking marijuana in the parking lot of the dispensaries, vandalism near dispensaries, threats made by dispensary employees to employees of other businesses, and citizens worried that they may become crime victims due to their proximity to dispensaries; and

WHEREAS, the White Paper found that many medical marijuana dispensary owners had histories of drug and violence-related arrests, that records or lack of records showed that some owners were not properly reporting income generated from the sales of marijuana, that some medical marijuana businesses were selling to individuals without serious medical conditions, and that the California law had no guidelines on the marijuana which could be sold to an individual; and

WHEREAS, the White Paper ultimately concludes there are many adverse secondary effects created by medical marijuana dispensaries in communities; and

WHEREAS, based on draft amendments to Florida Statue Chapter 318.986, it is assumed that local governments would be precluded from regulating Cannabis Growing and Distribution Facilities; however, local governments could be permitted to regulate Retail Medical Cannabis Dispensing Facilities located within the local government jurisdiction; and

WHEREAS, the City Council has determined that given the potential impacts from the dispensing of medical cannabis, as identified in the White Paper, said facilities and uses should be regulated within the City of Seminole to ensure the health, welfare and safety of businesses, properties, the community, as well as citizens and visitors to the City; and

WHEREAS, in order to promote effective land use planning if a Retail Medical Cannabis Dispensing Facility should seek to operate in the City, the City Council wishes to preserve the status quo while researching, studying and analyzing the potential impact of Medical Cannabis Dispensing Facilities upon nearby properties; and

WHEREAS, the City Council finds that a temporary moratorium on the operation of Retail Medical Cannabis Dispensing Facilities would allow City staff sufficient time to investigate the impacts of cannabis dispensing 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 City Council finds that a temporary moratorium on the processing and issuance of development permits, development orders or any other official action of the City of Seminole permitting or having the effect of permitting new Retail Medical Cannabis Dispensing Facilities or approving or permitting the sale of medical cannabis will allow time to review, study, hold public hearings and prepare and adopt amendments to the Code of Ordinances; and

WHEREAS, on January 10, 2017, the City Council directed the adoption of a temporary moratorium as specified herein, and further authorized publication of notices and scheduling of a public hearing to consider the proposed temporary moratorium ordinance.

NOW THEREFORE BE IT ORDAINED, by the City Council of the City of Seminole, 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 166, 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 City Council for the adoption of this ordinance.

SECTION 3. Temporary Moratorium. A temporary moratorium is hereby imposed on the establishment and operation of Medical Cannabis Dispensary Facilities (as referenced in Section 381.986, Florida Statutes and Constitutional Amendment 2 respectively) including the sale of medical cannabis within the City limits of the City of Seminole, Florida. While the moratorium is in effect, the City shall not accept, process or approve, any application relating to the establishment or operation of a Medical Cannabis Dispensing Facility or any application which seeks authorization for a Facility to sell medical cannabis. Nothing in this temporary moratorium shall be construed to prohibit the permitted use of medical cannabis 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 definition applies as the term is used in this Ordinance:

Retail Medical Cannabis Dispensary: A site, operated by an entity authorized by State law, registered with the Florida Department of health, and holding all necessary licenses and permits from the State of Florida, and acting in accordance with State law and local regulations that possesses or dispenses cannabis, products containing cannabis or low-THC containing derivatives, related supplies, or educational materials to qualifying patients or their personal caregivers for medical use. This definition excludes any cultivation or processing (including development of related products such as food, tinctures, aerosols, oils, or ointments) or distribution of medical cannabis.

SECTION 5. The City Council hereby directs the City Manager to initiate a zoning review of Retail Medical Cannabis Dispensing Facilities and to prepare a report containing recommendations as to appropriate amendments to the Comprehensive Plan, if necessary, and the Land Development Code and other City Code of Ordinances to address regulating Retail Medical Cannabis Dispensing Facilities consistent with applicable law.

SECTION 6. Severability. If any section, clause, sentence or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portion of this Ordinance.

SECTION 7. Duration. The moratorium shall terminate on July 3, 2107, unless the City Council rescinds or extends the moratorium by subsequent ordinance.

SECTION 8. Effective Date. This ordinance shall become effective immediately upon its adoption at second reading.

APPROVED ON FIRST READING: January 10, 2017

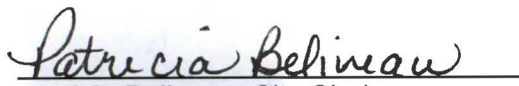
PUBLISHED: January 6, 2017 & January 13, 2017

PASSED AND ADOPTED ON
SECOND AND FINAL READING AT PUBLIC HEARING: January 24, 2017


LESLIE WATERS, MAYOR

I, Patricia Beliveau, City Clerk of the City of Seminole, Florida, County of Pinellas, State of Florida, a municipal corporation do hereby certify the foregoing and hereto attached is a true and correct copy of Ordinance No. 01-2017 which is on file in the City Clerk's Office:

IN WITNESS WHEREOF, I hereunto set my hand and affixed the seal of the City of Seminole, Pinellas County, Florida, this 30 day of Jan, 2017.


Patricia Beliveau, City Clerk

