



THE CITY OF KEY WEST

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EXECUTIVE SUMMARY

To: Chairman and Planning Board Members

From: Thaddeus L. Cohen, Planning Director

Meeting Date: February 23, 2017

Subject: Agenda Item: Recommendation for a Temporary Moratorium relating to Medicinal Cannabis Activities

BACKGROUND/ ACTION ITEM:

The Florida Department of Health and the Legislature have yet to write the final rules governing the voter-approved Amendment 2 which is designed to make medical marijuana more accessible.

The current Land Development Regulation does not provide regulation for the location of growing, cultivation, processing, manufacturing, dispensing, distribution and sale of medical cannabis, derivative products and related activities.

The Planning Department is putting forth for consideration by the Planning Board an ordinance for a moratorium on such activities. A moratorium for 270 days is intended to give the Planning Department, for zoning in progress purposes, time to draft and review land use regulations; hold public hearings for an amendment to the City's Land Development Regulations; to ensure the Department promulgates reasonable regulations relating to such activities.

RECOMMENDATION:

The Planning Department is recommending that the Planning Board recommend approval of the moratorium.

Executive Summary

ORDINANCE No. _____

AN ORDINANCE OF THE CITY OF KEY WEST CITY COMMISSION, RELATING TO MEDICAL CANNABIS ACITIVITIES; ADOPTING FINDINGS OF FACT; PROVIDING DEFINITIONS; ESTABLISHING A TEMPORARY MORATORIUM FOR A PERIOD OF 270 DAYS FROM THE EFFECTIVE DATE OF THIS ORDINANCE ON THE GROWING, CULTIVATION, PROCESSING, MANUFACTURING, DISPENSING, DISTRIBUTION, AND SALE OF MEDICAL CANNABIS, LOW-THC CANNABIS, DERIVATIVE PRODUCTS, AND RELATED ACTIVITIES; DIRECTING CITY STAFF TO DEVELOP PROPOSED LAND DEVELOPMENT REGULATIONS AND OTHER RECOMMENDATIONS REGARDING SUCH CANNABIS-RELATED ACTIVITIES; PROVIDING FOR AN EFFEECTIVE DATE RETROACTIVE TO FEBUARY 23, 2017; FOR ZONING IN PROGRESS PURPOSES, THIS ORDINANCE SHALL BE EFFECTIVE UPON FIRST READING OF THIS ORDINANCE.

WHEREAS, as provided in Section 2(b), Article VIII of the Constitution of the State of Florida, and Section 166.021(1), Florida Statutes, the City of Key West, Florida (the “City”), a municipal corporation, enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, in 2014, the Florida Legislature passed the Compassionate Medical Cannabis Act, codified at Section 381.986, Florida Statutes (the “Compassionate Use Act”), which authorizes a licensed dispensing organization to cultivate, process, transport, and dispense “Low-THC Cannabis,” as defined by Section 381.986(1) (e), Florida Statutes, and derivative products for use by certain “qualified patients,” as defined by Section 381.986(1) (h); and

WHEREAS, in 2015 the Florida Legislature passed the Right to Try Act, codified at Section 499.0295, Florida Statutes, which amended the Compassionate Use Act and authorizes a

licensed dispensing organization to cultivate, process, transport, and dispense “Medical Cannabis,” as defined by Section 381.986(1) (f), Florida Statutes, and derivative products for use by certain “eligible patients,” as defined by Section 499.0295, Florida Statutes; and

WHEREAS, the Florida Department of Health has approved six (6) dispensing organizations throughout the State of Florida, which are authorized to cultivate, process, transport, and dispense Medical Cannabis, Low-THC Cannabis, and derivative products; and

WHEREAS, the Compassionate Use Act, Section 381.986(8), Florida Statutes, addresses preemption of local government regulation by state law and provides, in relevant part, “All matters regarding the regulation of the cultivation and processing of medical cannabis or low-THC cannabis by dispensing organizations are preempted to the state,” and “A municipality may determine by ordinance 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 dispensing organizations located within its municipal boundaries.”

WHEREAS, on November 8, 2016, Florida voters voted on the Florida Right to Medical Marijuana Initiative, passage of which amends the Florida Constitution to authorize “Medical Marijuana Treatment Centers,” defined therein as “ 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, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Department”; and

WHEREAS, the passage of the Florida Right to Medical Marijuana Initiative expands the medical use of cannabis and related products to patients suffering from certain “Debilitating Medical Conditions,” as defined therein, which represents a broader population of patients than

those eligible under the Compassionate Use Act and the Right to Try Act; and

WHEREAS, the legalization of Low-THC Cannabis and Medical Cannabis by the Compassionate Use Act and the Right to Try Act, respectfully, and the changes in the law including but not limited to passage of the Florida Right to Try Medical Marijuana Initiative, raise substantial questions regarding the impact of Dispensing Facilities and Medical Cannabis Activities, as defined herein, upon the public health, safety, and welfare within the City of Key West; and

WHEREAS, the Florida Department of Health has six months from the January 3rd implementation date, to develop rules for putting the law into place and nine months to begin issuing ID cards to patients who qualify under the law. Health officials and the Florida Legislature have to implement a series of guidelines governing whether or not additional businesses can be approved to cultivate and distribute marijuana. The state also has to establish rules for growers and details on where and when dispensaries can operate; and

WHEREAS, the purpose of this ordinance is to place a temporary moratorium of two hundred and seventy (270) days, on Dispensing Facilities and Medical Cannabis Activities, as defined herein, except where regulation of such activities is preempted to the state, for a period of time reasonably necessary for the City to review the Florida Department of Health's regulations, the impacts of Dispensing Facilities and Medical Cannabis Activities upon the public health, safety, and welfare, and to promulgate reasonable regulations relating to such activities if deemed advisable by the City; and

WHEREAS, the Key West City Commission finds that this ordinance advances important government purposes, including but not limited to reducing the likelihood of potentially negative effects of unregulated Dispensing Facilities and Medical Cannabis Activities, as defined herein, upon residents and businesses located within the City, and the Key West City Commission finds

that this ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

SECTION 1: FINDINGS OF FACT. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this ordinance.

SECTION 2. DEFINITIONS. For the purposes of this ordinance, the following words, terms, and phrases, including their respective derivatives, have the following meanings:

- a. *Derivative Product* means any form of cannabis suitable for routes of administration.
- b. *Dispensing Facility* means any facility where Derivative Product is dispensed at retail.
- c. *Low-THC Cannabis* has the meaning established in Section 381.986(1) (e), Florida Statutes, and means a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seed or resin.
- d. *Medical Cannabis* has the meaning established in Section 381.986(1)(f), Florida Statutes, and means all parts of any plant of the genus *Cannabis*, whether growing or not; the seed 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.
- e. *Medical Cannabis Activities* means, without limitation, the growing, cultivation, processing, manufacture, dispensing, distribution, storage, and wholesale and retail sale of Medical Cannabis, Low-THC Cannabis, and Derivative Products, and other related

activities. The term *Medical Cannabis Activities* shall include any single activity or combination of activities described in this definition.

SECTION 3. TEMPORARY MORATORIUM. Beginning on the effective date of this ordinance and continuing for a period of 270 days, or less if provided by an ordinance by the Key West City Commission, a moratorium is hereby imposed upon the acceptance and processing of applications, business tax receipts, licenses and building permits for Dispensing Facilities, Dispensing Facilities owned or operated by an approved dispensing organization under Section 381.986, Florida Statutes. In addition, the moratorium is hereby imposed upon all Medical Cannabis Activities by any person or entity that is not an approved dispensing organization under Section 381.986, Florida Statutes, except where inconsistent with Florida law.

SECTION 4. EXPIRATION OF THE TEMPORARY MORATORIUM. The temporary moratorium imposed by Section 3 of this ordinance expires 270 days from the effective date of this ordinance, or at an earlier date if provided by ordinance of the Key West City Commission.

SECTION 5. RECOMMENDATIONS FOR LAND DEVELOPMENT REGULATIONS. City Staff, at the City Manager's Direction, is hereby directed to review Medical Cannabis Activities and Dispensing Facilities and their impact on the health, safety, and welfare of residents and businesses located within the City, and to develop and recommend, as deemed advisable by the City Manager, land development regulations for Medical Cannabis Activities and/or Dispensing Facilities in the City, and any other relevant and appropriate regulations and recommendations, with such recommendations and proposed regulations being delivered to the Key West City Commission within a reasonable time before the expiration of this

moratorium.

SECTION 7. SEVERABILITY. If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 8. CONTROL. In the event of a conflict or conflicts between this ordinance and other ordinances, this Ordinance controls.

SECTION 9. This resolution shall go into effect immediately upon its passage and adoption and authentication by the signatures of the presiding officer and the Clerk of the Board.

Read and passed on first reading at a regular meeting held this _____ day of _____, 2017.

Read and passed on final reading at a regular meeting held this _____ day of _____, 2017.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2017.

Filed with the Clerk _____, 2017.

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK