

Meeting Date: January 10, 2017



Agenda Item #: 5A

CITY COUNCIL AGENDA ITEM

Contact Name: _____

Department Director: Becky Mendez *Becky Mendez*

Department/Contact #: 774-5415

City Manager: Dale Arrington *Dale Arrington*

- Type of Item:
- Public Hearing
 - Ordinance First Reading
 - Ordinance Second Reading
 - Workshop
 - Resolution
 - Discussion & Action
 - Consent Agenda
 - Council Approval

Subject: Ordinance No. 568- First reading of a temporary moratorium for any medical cannabis activities.

BACKGROUND:

Governor Rick Scott signed the Compassionate Medical Cannabis Act into law in June 2014, which became effective on January 1, 2015.

In November 2016, voters passed Amendment 2, which expands the patient base, among other things. The constitutional amendment will become effective on January 3, 2017, and the Office of Compassionate Use has until July 2017 to complete rule making.

On November 15, 2016, City Council directed staff to schedule this topic as a discussion item. On December 13, 2016 staff presented three options regarding the regulation of medical marijuana facilities for Council consideration: 1) Moratorium until State completes rule making, 2) Amend the Land Development Code to regulate dispensaries, or 3) Allow as a permitted use in zoning classifications as if a pharmacy. Council adopted Resolution No. 857-16 that recognized legislation in progress and stayed issuance of Business Tax Receipts for 180 days.

This ordinance is necessary to enact a temporary moratorium on any medical cannabis activity for 180 days to allow staff time to draft land development code regulations for Council consideration.

COUNCIL DISTRICT:

NA

RECOMMENDATIONS:

Approve at first reading and schedule second and final reading for January 24, 2017.

ATTACHMENTS:

Draft Ordinance

FINANCIAL IMPACT:

None

ORDINANCE NO. 568

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA ESTABLISHING A TEMPORARY MORATORIUM WITHIN THE JURISDICTIONAL LIMITS OF THE CITY OF ORANGE CITY; ADOPTING FINDINGS OF FACT; PROHIBITING ANY AND ALL MEDICAL CANNABIS ACTIVITIES DURING THE MORATORIUM PERIOD INCLUDING THE GROWING, CULTIVATION, PROCESSING, MANUFACTURE, DISPENSING, DISTRIBUTION, AND SALE OF MEDICAL CANNABIS, LOW-THC CANNABIS, DERIVATIVE PRODUCTS, AND RELATED ACTIVITIES; DIRECTING STAFF TO DEVELOP PROPOSED LAND DEVELOPMENT CODE PROVISIONS AND OTHER RECOMMENDATIONS REGARDING SUCH CANNABIS RELATED ACTIVITIES; PROVIDING FOR PENALTIES, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, the City is granted the authority, under Section 2(b), Art. VIII of the State Constitution, and Section 166.021, Florida Statutes, to exercise any power for municipal purposes, except when 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, to date, 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, on November 8, 2016, Florida voters voted on the Florida Right to Medical Marijuana Initiative, and passed an amendment which would amend 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 recent legalization of Low-THC Cannabis and Medical Cannabis by the Compassionate Use Act and the Right to Try Act, respectively, and 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 Medical Cannabis Activities, as defined herein, upon the public health, safety, and welfare of citizens within the City of Orange City; and

WHEREAS, the City Council adopted Resolution No. 857-16 on December 13, 2016 finding that it was in the best interests of the City to develop regulations of certain activities related to Medical Cannabis Activities and established a 180 day stay on the issuance of a Business Tax Receipt for any establishment or operation relating to medical cannabis; and

WHEREAS, the purpose of this ordinance is to place a temporary moratorium on Medical Cannabis Activities, as defined herein, for a period of time reasonably necessary for the City of Orange City to investigate the impacts of such 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 Orange City City Council finds that this Ordinance advances important government purposes, including but not limited to reducing the likelihood of potentially negative effects of unregulated Medical Cannabis Activities, as defined herein, upon residents and businesses located within the City; and

WHEREAS, the City Council of the City of Orange City, Florida, hereby finds this ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Orange City.

NOW THEREFORE, BE IT ENACTED BY THE CITY OF ORANGE CITY, FLORIDA:

SECTION 1. RECITALS. The foregoing recitals are hereby ratified and fully incorporated herein by reference as legislative findings of the City Council of Orange City.

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. *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 flower 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.

- c. *Medical Cannabis* has the meaning established in Section 381.986(1)(f),
- d. Florida Statutes, and 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.
- 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 180 days, or sooner if provided by an ordinance by the Orange City City Council, a moratorium is hereby imposed upon Medical Cannabis Activities, except for activities that have previously received final approval by the City, and except where City regulation is preempted or is otherwise inconsistent with Florida law. Further, the review of any applications for Medical Cannabis Activities that may be pending on the date of the adoption of this Ordinance, shall be abated, and no new applications for such permits shall be accepted or processed during the moratorium period. In addition, to the extent that a person or entity is authorized to carry out any Medical Cannabis Activities within the City by previous final approval by the City, this moratorium shall prohibit the expansion or relocation of any such authorized activity or facility and the opening of any new facility.

SECTION 4. EXPIRATION OF THE TEMPORARY MORATORIUM. The temporary moratorium imposed by Section 3 of this Ordinance expires 180 days from the effective date of this ordinance, or at an earlier date if provided by ordinance of the Orange City City Council.

SECTION 5. RECOMMENDATIONS FOR LAND DEVELOPMENT CODE. City Staff, at the City Council's direction & City Manager's direction and in consultation with the City Attorney, is hereby directed to study Medical Cannabis Activities 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 code provisions for Medical Cannabis Activities in the City, and any other relevant regulations and recommendations, with such recommendations and proposed regulations being delivered to the Orange City City Council within a reasonable time before the expiration of this moratorium.

SECTION 6. PENALTIES. Violations of this Ordinance are punishable as provided by the City Code of Orange City, Florida, or other applicable Code provisions.

SECTION 7. SEVERABILITY. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

SECTION 8. CONFLICTS. All ordinances or resolutions or parts of ordinances or resolutions in conflict with this Ordinance are hereby repealed.

SECTION 9. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

ROLL CALL VOTE AS FOLLOWS:

First Reading this _____ day of _____, 2017.

| | |
|----------------------------|--------------------------------------|
| Bill O'Connor _____ | Anthony J. Pupello _____ |
| Jeff Allebach _____ | Evelyn Robinson _____ |
| Jim Mahoney _____ | O. William Crippen, Vice Mayor _____ |
| Gary A. Blair, Mayor _____ | |

ROLL CALL VOTE AS FOLLOWS:

Second Reading this _____ day of _____, 2017.

| | |
|----------------------------|--------------------------------------|
| Bill O'Connor _____ | Anthony J. Pupello _____ |
| Jeff Allebach _____ | Evelyn Robinson _____ |
| Jim Mahoney _____ | O. William Crippen, Vice Mayor _____ |
| Gary A. Blair, Mayor _____ | |

PASSED and ADOPTED this _____ day of _____, 2017.

ATTEST:

AUTHENTICATED:

Gloria Thomas, City Clerk

Gary A. Blair, Mayor

Approved as to form and legal sufficiency:

William E. Reischmann, Jr., City Attorney