

ORDINANCE NO. 2017-023

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA EXTENDING THE TEMPORARY MORATORIUM UNDER ORDINANCE NO. 2016-60 WITH A TERMINATION DATE OF APRIL 4TH 2017 FOR AN ADDITIONAL PERIOD OF ONE HUNDRED AND EIGHTY (180) DAYS FROM APRIL 4TH ON THE ACCEPTANCE, REVIEW, APPROVAL OR ISSUANCE OF ANY LAND DEVELOPMENT PERMITS AS THE TERM IS DEFINED IN FLORIDA STATUTES SECTION 163.3164(16), BUSINESS TAX RECEIPTS, OR ANY OTHER LICENSE OR PERMIT FOR THE ESTABLISHMENT OR OPERATION OF DISPENSING FACILITIES WITHIN THE CITY OF HIALEAH ENGAGED IN THE ON-SITE DISTRIBUTION, SALE, DELIVERY OR RETAIL OF LOW-THC CANNABIS, MEDICAL CANNABIS OR CANNABIS DELIVERY DEVICES PURSUANT TO SECTIONS 381.986 AND 499.0295 OF THE FLORIDA STATUTES, TO INCLUDE A MORATORIUM ON USES UNDER AMENDMENT 2 NOW ARTICLE X § 29 OF THE FLORIDA CONSTITUTION ENTITLED "MEDICAL MARIJUANA PRODUCTION, POSSESSION AND USE" TO RUN CONCURRENTLY WITH THE EXTENSION OF THE MORATORIUM UNDER ORDINANCE NO. 2016-60 IN ORDER TO PROVIDE THE CITY WITH AN OPPORTUNITY TO REVIEW AND ENACT REGULATIONS GOVERNING THE ESTABLISHMENT AND OPERATION OF DISPENSING FACILITIES OR ORGANIZATIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to the Compassionate Medical Cannabis Act of 2014, the Florida Legislature authorized a very limited number of large nurseries to cultivate, process, and dispense non-euphoric, low-THC cannabis and operate dispensing organizations, as of January 1, 2015; and

WHEREAS, in 2016, the Florida Legislature amended Section 381.986 of the Florida Statutes to include medical cannabis, revised the requirements for physicians ordering low-THC cannabis, medical cannabis, or cannabis delivery devices, amended the requirements for the cultivation, processing, transportation, and dispensing of low-THC cannabis or medical cannabis, and revised the Florida Department of Health's authority and responsibility and provided for penalties; and

WHEREAS, pursuant to Section 381.986(8) of the Florida Statutes, 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 for dispensing facilities of dispensing organizations located within its municipal boundaries; and

WHEREAS, due to the historical prohibition of cannabis, the City does not currently have any land development regulations governing the use of real property for the purpose of on-site distribution, sale, delivery or retail of low-THC cannabis, medical cannabis or cannabis delivery devices as provided by Florida Statutes Sections 381.986 and 499.0295; and

WHEREAS, Amendment 2 went into effect on January 3, 2017, and was added to the Florida Constitution under Article X § 29, "Medical marijuana production, possession and use" and the Department of Health has six months to set regulations thereon; and

WHEREAS, in order to promote the effective regulation of such activities, the City Council wishes to preserve the status quo while researching, studying, and analyzing the potential impact of dispensing facilities within the City's boundaries upon adjacent uses and the surrounding areas, including its effect on traffic, congestion, surrounding property values, demand for City services including inspections and increase police monitoring, and other aspects of the operation of dispensing facilities impacting the general welfare of the community; and

WHEREAS, the City Council finds that extending the moratorium under Ordinance No. 2016-60 for one hundred and eighty (180) days from its termination date of April 4th 2017, and issuing a temporary moratorium for uses under Amendment 2 now Article X § 29 of the Florida

Constitution pertaining to the production, possession and use of medical marijuana to run concurrently with the extension of the moratorium under Ordinance No. 2016-60 on the issuance of business tax receipts and the acceptance, processing and approval of any building or zoning permits for the establishment and operation of dispensing facilities within the corporate limits of the City of Hialeah is a reasonable period of time; and

WHEREAS, the City Council finds that this temporary moratorium will allow the City sufficient time to determine the zoning districts that are best-suited for this particular use, and how best to formulate land development and licensing regulations that will appropriately govern the use of real property for the purpose of on-site distribution, sale, delivery or retail of low-THC cannabis, medical cannabis or cannabis delivery devices; and

WHEREAS, the City Council finds it is in the best interest of the citizens of the City to minimize and control the adverse effects of dispensing facilities by adopting appropriate land development and licensing regulations; and

WHEREAS, the City Council finds that imposing a temporary moratorium until adequate regulations have been developed, considered and adopted is in the best interest of the health, safety and general welfare of the community and the residents of the City of Hialeah; and

WHEREAS, the Planning and Zoning Board at its meeting of March 22, 2017 recommended approval of this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated herein by reference as if fully set forth herein.

Section 2: Moratorium Imposed.

The City of Hialeah, Florida hereby declares a temporary building and zoning moratorium on the establishment and operation of dispensing facilities within the corporate limits of the City of Hialeah for one hundred and eighty (180) days from the termination date of April 4th 2017 of the moratorium under Ordinance No. 2016-60 and on uses under Amendment 2 now Article X § 29 of the Florida Constitution pertaining to the production,

possession and use of medical marijuana to run concurrently with the extension of the moratorium under Ordinance No. 2016-60. The City shall not accept, process or approve any application for business tax receipts, building permits, land use changes, zoning variances or permits, or any other development permits for any property, entity, or individual concerning or related to dispensing facilities engaged in permitted uses under Florida law, specifically Florida Statutes Sections 381.986 and 499.0295, whether as a principal or accessory use, so long as this ordinance is in effect, and on uses under Amendment 2 now Article X § 29 of the Florida Constitution. No person, corporation, partnership or other entity shall establish or operate a dispensing facility engaged in permitted uses under Florida law, specifically Florida Statutes Sections 381.986, 499.0295 and on uses under Amendment 2 now Article X § 29 of the Florida Constitution.

Section 3: Duration of Moratorium.

The temporary moratorium shall take effect immediately upon adoption of this ordinance and shall terminate one hundred and eighty (180) days from April 4th 2017, unless the City Council rescinds or extends the moratorium by a subsequent ordinance.

Section 4: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate

offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 6: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 7: Effective Date.

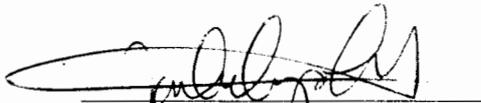
This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

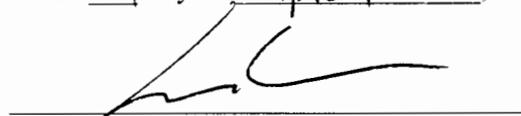
PASSED AND ADOPTED this 11 day of April, 2017.


Katharine E. Cue-Fuente
Council Vice President

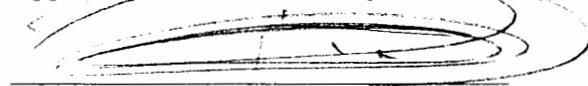
Attest:

Approved on this 24 day of April, 2017.


Marbelys Fatjo, City Clerk


Mayor Carlos Hernandez

Approved as to form and legal sufficiency:


Lorena E. Bravo, City Attorney

Ordinance was adopted by a (6-0-1) vote with Councilmembers, Caragol, Lozano, Hernandez, Cue-Fuente, Garcia-Martinez and Casals-Muñoz voting "Yes". Council President Gonzalez absent