

**ORDINANCE NO. 2017-06**

AN ORDINANCE OF THE CITY OF LABELLE, FLORIDA; ESTABLISHING A TEMPORARY MORATORIUM OF TWO HUNDRED AND SEVENTY DAYS (270) PROHIBITING THE OPERATION OF ANY MEDICAL MARIJUANA FACILITIES WITHIN THE CITY OF LABELLE; ESTABLISHING A MORATORIUM ON THE ISSUANCE OF OCCUPATIONAL LICENSES, DEVELOPMENT ORDERS OR PERMITS FOR MEDICAL MARIJUANA FACILITIES WITHIN THE CITY LIMITS IN ORDER TO PROVIDE THE CITY AN OPPORTUNITY TO REVIEW AND ENACT REGULATIONS GOVERNING SAID ACTIVITIES; ESTABLISHING A PURPOSE AND INTENT; PROVIDING DEFINITIONS; MAKING CERTAIN FINDINGS; PROVIDING FOR VESTED RIGHTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of LaBelle, Florida, "the City," is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and,

WHEREAS, on November 8, 2016, the State of Florida passed a constitutional amendment to allow medical marijuana; and,

WHEREAS, the constitutional amendment legalized the medical use of marijuana and allows caregivers to assist with the medical use of marijuana, and directs the Florida Department of Health to register and regulate centers in the production and distribution of medical marijuana and to issue identification cards to certain patients and caregivers utilizing medical marijuana; and,

WHEREAS, in 1996 the state of 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 Marijuana Dispensaries that prepared the "White Paper on Marijuana Dispensaries" ("White Paper"), which White Paper was 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 result in adverse effects, such as

marijuana smoking in public, the sale of other illegal drugs at dispensaries, loitering and nuisances, and increased traffic near dispensaries; and,

**WHEREAS**, the White Paper further indicates that the presence of 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 the dispensary employees to employees of other businesses, and citizens worries 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, and that medical marijuana businesses were selling to individuals without serious medical conditions, and that the California law had no guidelines on the amount of marijuana which could be sold an individual; and,

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

**WHEREAS**, the City Commission has heard testimony from the Hendry County Sheriff Department regarding the potential impacts of medical marijuana treatment centers on the surrounding area; and,

**WHEREAS**, the City regulates the use of land through its Comprehensive Plan and Land Development Code; and,

**WHEREAS**, the City does not currently have definitions or regulations within its Land Development Code for medical marijuana treatment centers, medical marijuana dispensaries, medical marijuana facilities, medical marijuana caregivers, or activities pertaining to medical marijuana; and,

**WHEREAS**, the City desires its staff to have sufficient time to review and make recommendations for the enactment of regulations governing said activities; and,

**WHEREAS**, the City believes that by establishing a moratorium for 270 days on the issuance of occupational licenses or land use approvals for medical marijuana treatment centers, medical marijuana dispensaries, and medical marijuana facilities, the City will have the opportunity to research and study various regulatory options; and,

**WHEREAS**, the City Commission finds it is in the best interest of the citizens of the City to minimize and control the adverse effects of medical marijuana treatment centers, medical marijuana dispensaries, and medical marijuana facilities, and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life and preserve property values, by adopting appropriate regulations; and,

**WHEREAS**, the City has authority in accordance with the Florida Constitution, Chapter 163 and 166 of the Florida Statutes to enact regulations in the interest of the public health, safety and welfare of its citizens; and,

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LABELLE, FLORIDA THAT:**

**SECTION 1. PURPOSE AND INTENT.** The foregoing recitals constitute the legislative findings of the City Commission of the City of LaBelle, and are hereby ratified and confirmed as being true and correct and are incorporated herein by reference.

**SECTION 2. DEFINITIONS.** For purposes of this ordinance, the following terms shall be defined as follows:

"Marijuana" has the meaning given cannabis in Section 893.02(3), Florida Statutes.

"Medical Marijuana Dispensary" means a business operation for the distribution of medical marijuana or related supplies, whether a principal use or accessory use, pursuant to the Florida Right to Medical Marijuana Initiative, Amendment 2, constitutional amendment or any other provision of Florida law.

"Medical Marijuana Treatment Center" means any entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, or administers marijuana, products containing marijuana, related supplies, or educational

materials to qualifying patients or their personal caregivers and is registered by the Department of Health.

"Medical Marijuana Facility" means any authorized Medical Marijuana Treatment Center, Medical Marijuana Dispensary, or any other facility that dispenses, processes, cultivates, distributes, sells, or engages in any other activity that involves or is related to medical marijuana pursuant to the Florida Right to Medical Marijuana Initiative, Amendment 2 or any other provision of Florida law.

**SECTION 3. MORATORIUM IMPOSED.** The City hereby prohibits the operation of any medical marijuana facility in the City, and a zoning moratorium is hereby declared and imposed as follows:

- 1) The City shall not accept, process, or approve any application for occupational license, building permits, land use/zoning permits, or any other development permits concerning or related to any and all medical marijuana facilities, including but not limited to marijuana production, processing, storage or distribution facilities within the City's corporate limits.
- 2) The City shall not accept, process, or approve any occupational license, building permits, land use/zoning permits, or any other development permits concerning or related to any and all medical marijuana facilities, including but not limited to marijuana production, processing, storage or distribution facilities within the City's corporate limits.
- 3) The City shall not process or approve any permits, licenses or approvals for any property, entity, or individual for the sale or distribution of medical marijuana, or for the operation of any unauthorized medical marijuana treatment facilities so long as this ordinance is in effect. No person, corporation, partnership or other entity shall establish, operate or engage in any medical marijuana facility, including but not limited to marijuana production, processing, or distribution within the City.

**SECTION 4. DURATION OF MORATORIUM.** The moratorium imposed by this ordinance shall be effective until the expiration of 270 days from the date hereof unless rescinded sooner.

**SECTION 5. VESTED RIGHTS RELIEF PROCEDURE.**

- 1) The owner or owners of real property may request a determination of vested rights by filing a technically complete application with the City.

- 2) The application form shall, at a minimum, contain the following information:
  - a) A legal description, current tax parcel identification number and survey or sketch of the real property which is the subject of the application.
    - b) A site development plan or plat for the real property.
  - c) Identification of any ordinance, resolution or other action of the City or failure to act by the City, upon which the applicant relied and which the applicant believes supports the applicant's position.
    - d) A statement of fact which the applicant intends to prove in support of the application that vested rights exist. The application shall fully articulate the legal basis for being allowed to proceed with development notwithstanding the moratorium.
    - e) Such other relevant information that the City Commission may request or the applicant may desire to have initially considered.
- 3) The application shall provide a sworn statement to be executed by all owners of the real property that all information set forth on the application is true and correct.
- 4) The City Zoning Staff shall screen each application for a vested rights determination to determine whether the application is technically complete. If not technically complete, the application shall be promptly returned to the applicant, and the applicant shall be granted fourteen (14) additional calendar days to complete this application.
- 5) Upon the City Zoning Staff accepting a technically complete application, for which the application fee has been submitted, the City Commission shall review the application and hold a public hearing and make a final determination within twenty-one (21) calendar days as to whether or not it has been clearly and convincingly demonstrated that the real property subject to the application has vested rights. Within seven (7) calendar days after making a final determination of vested rights status, the City Commission shall provide the applicant with written notification of the determination of vested rights status.

- 6) Decisions made by the City Commission pursuant to this Ordinance may be appealed by the real property owners to the Circuit Court in and for Hendry County, Florida.

**SECTION 6. SEVERABILITY.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance, or application hereof, is held or declared to be unconstitutional, inoperative or void, such holding of invalidity shall not affect the remaining portions of this Ordinance and shall be construed to have been the legislative intent to pass this Ordinance without such unconstitutional, invalid or inoperative parts therein, and the remainder of this Ordinance, after the exclusion of such part or parts, shall be deemed to be held valid as if this ordinance had been adopted without such unconstitutional, invalid or inoperative part therein and if this Ordinance or any provision thereof, shall be held inapplicable to any person, group of persons, property, kind of property, circumstances, or set of circumstances, such holding shall not affect the application thereof to any other person, property or circumstances.

**SECTION 7. NON-CODIFICATION.** The provisions of this Ordinance shall not be included and incorporated within the Code of Ordinances of the City.

**SECTION 8. EFFECTIVE DATE.** This ordinance shall become effective immediately.

ATTEST:

CITY OF LABELLE, FLORIDA

By: DAVID A. LYONS, Mayor

THOMAS A. SMITH,  
Clerk-Commissioner

