

**ORDINANCE 2017-05**

**AN ORDINANCE OF THE TOWN OF HILLIARD CONSIDERING A TEMPORARY MORATORIUM ON THE OPERATION OF MEDICAL MARIJUANA TREATMENT CENTERS AND MEDICAL MARIJUANA DISPENSING ORGANIZATIONS WITHIN THE TOWN FOR A PERIOD OF ONE (1) YEAR; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on March 25, 2016, the Florida Legislature amended numerous provisions of Section 381.986, Florida Statutes, to make various revisions including a revision to the definition of “dispensing organization” to allow dispensing organizations to transport “medical cannabis,” and to include medical cannabis to eligible patients with terminal conditions and to provide additional regulation of the Department of Health with regard to medical cannabis; and

**WHEREAS**, Chapter 64-4 “Compassionate Use” of the Florida Administrative Code has been enacted to regulate the Department of Health with regard to the requirements for dispensing organizations, including procedures for application, review, approval, inspection and authorization of dispensing organizations, and the Department of Health has commenced its application and review process; and

**WHEREAS**, on November 8, 2016, Florida voters approved an amendment to the Florida Constitution (“Amendment 2”) entitled, “Use of Marijuana for Debilitating Medical Conditions”; and

**WHEREAS**, Amendment 2 legalizes the use of medical cannabis in the State of Florida and authorizes the cultivation, processing, distribution, and sale of marijuana and related activities by licensed “Medical Marijuana Treatment Centers”; and

**WHEREAS**, various state and national entities have begun addressing the direct and secondary impacts relating to the legalization of cannabis, which entities include the American Planning Association, Denver Fire Department, Rocky Mountain High Intensity Drug Trafficking Area, U.S. Department of Justice, Florida cities and counties, Florida for Care Blue Ribbon Commission, and the Florida League of Cities-Florida Association of Counties-Florida Police Chiefs Association-Florida Sheriffs Association Medical Marijuana Workgroup; and

**WHEREAS**, the comprehensive State licensing and regulatory framework directs that 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 medical cannabis businesses may be determined by local ordinance; and

**WHEREAS**, due to the historical prohibition of marijuana, the Town of Hilliard does not currently have any land development regulations governing the use of real property for the purposes of cultivating, processing, distributing, or selling marijuana or related activities, and such uses are not permissible with the Town; and

**WHEREAS**, Amendment 2 legalizes the medical use of medical cannabis throughout the State of Florida for individuals with debilitating medical conditions as determined by a licensed Florida physician and authorize the registration and regulation of centers that cultivate, process, distribute, and sell medical cannabis products for medical purposes; and

**WHEREAS**, in order to promote effective land use planning, the Town Council wishes to preserve the status quo while researching, studying and analyzing the potential impacts of Medical Marijuana Treatment Centers and dispensing organizations on traffic, congestion, surrounding property values, demand for Town services, and other aspects of the general welfare; and

**WHEREAS**, the dispensing of medical cannabis is currently illegal under federal law and the United States Drug Enforcement Agency recently has confirmed that cannabis remains a Schedule I drug under federal law, but the United States Department of Justice has discussed federal enforcement of such laws with respect to state regulated cannabis operations in the 2012 “Cole Memorandum”; and

**WHEREAS**, the potential adverse impacts on the health, safety, and welfare of residents and businesses from secondary effects associated with the distribution of medical cannabis exist, potentially including offensive odors, trespassing, theft, fire hazards, increased crime in and about the dispensary, robberies, negative impacts on nearby businesses, nuisance problems, and increased DUI incidents; and

**WHEREAS**, certain of the above potential adverse impacts are accentuated by the current difficulties experienced by medical cannabis businesses in obtaining banking services necessitating such businesses to operate on a cash basis; and

**WHEREAS**, there exists the potential for misappropriation of medical cannabis to non-medical uses; and

**WHEREAS**, an overabundance of dispensing facilities can affect the viability of

such facilities, result in compliance issues, lead to improper diversion of products, and accentuate threats to the public health, safety, and welfare; and

**WHEREAS**, the Town Council finds that a temporary moratorium on the operation of Medical Marijuana Treatment Centers and dispensing organizations will allow the Town a sufficient period of time to determine what uses are best suited to particular zoning categories and how best to formulate land development regulations that appropriately govern the use of real property for purposes of cultivating, processing, distributing or selling medical cannabis or related activities; and

**WHEREAS**, it is not the purpose or intent of this Ordinance to restrict or deny access to medical cannabis products as permitted by Florida law, but instead to enact reasonable restrictions intended to protect the public health, safety and welfare, and to learn what any potential enacting State legislation or regulations will provide, and when such enacting legislation and regulations will be effective.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILLIARD, FLORIDA, AS FOLLOWS:**

**Section 1.** The above recitals are true and correct and by this reference are hereby incorporated herein and made an integral part hereof as though fully set forth herein.

**Section 2.** A temporary moratorium is imposed on the operation of Medical Marijuana Treatment Centers and dispensing organizations within the town limits of the Town of Hilliard. While the temporary moratorium is in effect, the Town shall not accept, process or approve any application relating to the operation of a Medical Marijuana Treatment Center or dispensing organization. Nothing in this temporary moratorium shall be construed to prohibit the medical use of medical cannabis by a qualifying patient, as determined by a licensed Florida physician, pursuant to Amendment 2, or Section 381.986, Florida Statutes, or other Florida law.

**Section 3.** For purposes of the temporary moratorium, a “Medical Marijuana Treatment Center” means 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 medical cannabis, product containing medical cannabis, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Florida Department of Health. “Dispensing Organization” means an organization approved by the Florida Department of Health to cultivate, process, transport, and dispense medical cannabis pursuant to Section 381.986, Florida Statutes.

**Section 4.** The Town Clerk or her designee is hereby directed to study land development regulations for medical cannabis dispensing businesses and Medical Marijuana Treatment Centers and the impacts of such regulations in other jurisdictions.

**Section 5.** During the moratorium, it is unlawful and a violation of this Ordinance for any person or entity to open or cause to be opened any medical cannabis dispensing business or Medical Marijuana Treatment Center within the Town. It is also unlawful and a violation of this ordinance for any person or entity to relocate or cause to be relocated any medical cannabis dispensing business or Medical Marijuana Treatment Center within the Town or to be extended into the Town.

**Section 6.** This Ordinance shall become effective upon its adoption by the Town Council. The temporary moratorium shall terminate one (1) year from the effective date of this Ordinance, unless the Town Council rescinds or extends the moratorium by a subsequent ordinance.

**Section 7.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereto.

**Section 8.** Any and all ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

**Section 9.** The Town's code enforcement officer, the Nassau County Sheriff's Office, or any other person authorized to enforce ordinances in the Town may enforce the provisions of this Ordinance. Any enforcement action or legal remedy available under controlling state law, including but not limited to, prosecution as a misdemeanor with a fine not exceeding Five Hundred Dollars (\$500) or by imprisonment for a term not exceeding sixty (60) days, or both fine and imprisonment, may be imposed as a penalty. Nothing contained herein shall prevent the Town from taking such other lawful action in law and equity as may be necessary to remedy any violation of, or refusal to comply with, any part of this Ordinance, including but not limited to:

- (A) Code enforcement action pursuant to Town of Hilliard ordinances;
- (B) Pursuit of injunctive and/or declaratory relief in a court of competent jurisdiction;
- (C) Initiating an action to recover any and all damages that may result from a violation of, or refusal to comply with, any part of this Ordinance; or

(D) Utilizing any other action or enforcement method allowable by law.

**Section 10.** The effective date of this Ordinance shall be February 2, 2017, the day the Council first took action towards adoption of the moratorium, in accordance with Smith v. Clearwater, 383 So.2d 681 (Fla. 2d DCA 1980). This Ordinance shall not be codified.

**ADOPTED THIS 2<sup>nd</sup> DAY OF March, 2017.**

**IN WITNESS OF THE FOREGOING**, the parties have set their hands and seal the 2<sup>nd</sup> day of March, 2017.

Signed, sealed and delivered in the presence of:

**TOWN OF HILLIARD, FL**

By:

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John P. Beasley  
Council President

Attest:

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Lisa Purvis  
Town Clerk

Approved:

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Cris W. McConnell  
Mayor

Approved as to legal form:

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Sherri L. Renner  
Town Attorney

Date of Town Council First Reading: February 2, 2017  
Dates of Town Council Publications: February 16, 2017  
Dates of Town Council Public Hearings: March 2, 2017  
Date of Town Council Second Reading: March 2, 2017  
Date of Town Council Final Passage: March 2, 2017