

ORDINANCE NO. 01-2017

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MALABAR, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON THE SUBMITTAL, PROCESSING, AND ISSUANCE OF LOCAL BUSINESS TAX RECEIPTS OR LAND USE PERMITS, DEVELOPMENT ORDERS, MODIFICATIONS OR APPROVALS FOR MARIJUANA DISPENSING ORGANIZATIONS OR MEDICAL MARIJUANA TREATMENT CENTERS AND RELATED FACILITIES AND ESTABLISHMENTS FOR A PERIOD SPECIFIED; PROVIDING FOR LEGISLATIVE FINDINGS; THE GEOGRAPHIC AREA COVERED; REPEAL OF CONFLICTING ORDINANCES, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Florida Right to Medical Marijuana Initiative was on the November 8, 2016 ballot as Amendment 2 under the title "Use of Marijuana for Certain Medical Conditions," and, it passed and become Section 29 to Article X of the Florida Constitution; and,

WHEREAS, Florida Statute sect. 381.986 as well as passage of Amendment 2 legalized the medical use of marijuana, allows for the creation of medical marijuana treatment centers, and allows for licensed caregivers to dispense medical marijuana; and,

WHEREAS, Amendment 2 directs the Florida Department of Health to promulgate regulations for the registration of medical marijuana treatment centers, and to establish procedures for the issuance of patient and personal caregiver identification cards; and,

WHEREAS, the Town of Malabar regulates the use of land within the Town of Malabar in accordance with the Future Land Use Map designations in the Comprehensive Plan and the Land Development Regulations; and,

WHEREAS, the Town is considering an ordinance to regulate medical marijuana dispensing under its Code; and,

WHEREAS, the Town desires to wait to issue any permits, development orders, modifications or approval for a medical marijuana dispensary or treatment center and until passage of an ordinance regulating these establishments and facilities and until the Florida Department of Health promulgates all appropriate regulations, so that the Town has time to review applicable regulations for the avoidance of regulatory conflict; and

WHEREAS, the Town desires to protect the public health, safety and welfare of the Town by adopting the referenced ordinance and by reviewing the impact of Amendment 2 and all applicable Florida Department of Health regulations prior to issuing any permits, development orders, modifications or approvals.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the Town Council of the Town of Malabar, Florida, as follows:

Section 1. Legislative Findings.

That the above recitals are true and correct and are incorporated herein by reference.

Section 2. Intent and Purpose.

The intent and purpose of this Ordinance is to provide the Town of Malabar with the opportunity to adopt an ordinance regulating, through zoning and land use, medical marijuana dispensing facilities and related establishments and to review the impact of a constitutional amendment legalizing medical marijuana and the impact of Department of Health regulations that have yet to be enacted prior to issuing any permits, development orders, modifications or approvals.

Section 3. Moratorium Imposed.

The Town council hereby prohibits the issuance of any permit, development order, modification or approval for the operation of any medical marijuana dispensary or medical marijuana facility in any area subject to the jurisdiction of the Town and a moratorium is declared effective as follows:

1. The Town of Malabar shall not accept, process or approve any application or other request for business tax receipts, licenses, building permits, land use permits, or any development permits concerning or related to a medical marijuana treatment center, medical marijuana dispensary, personal caregiver or any other marijuana related activity or use within the corporate limits of the Town.

2. The Town of Malabar shall not accept, process or approve any licenses, permits, modifications or approvals for any property, entity, or individual for the sale or dispensation of marijuana, or for the operation of any medical marijuana treatment center or medical marijuana dispensary, or to operate as a personal caregiver so long as this ordinance is in effect. No person, entity or partnership shall establish, operate or engage in the operation of a medical marijuana treatment center or medical marijuana dispensary within the corporate limits of the Town.

Nothing in this temporary moratorium shall be construed to prohibit the medical use of marijuana or low-THC cannabis by a qualifying patient, as determined by a licensed Florida physician, pursuant to Amendment 2, Fla. Stat. § 381.986 or other Florida law.

Section 4. Duration of Moratorium.

The moratorium imposed by this ordinance shall be effective upon adoption of this Ordinance and shall remain in effect until the Town adopts a zoning and land use ordinance concerning medical marijuana treatment centers and/or medical marijuana dispensaries and related facilities and establishments and the final rules have been adopted by the Florida Department of Health for the registration of medical marijuana treatment centers, and to establish procedures for the issuance of patient and personal caregiver identification cards as well as other rules which may be adopted by the Department of Health and for a period of for two hundred eighty (280) days from the final adoption of the rules by the Florida Department of Health, unless rescinded sooner. Prior to the expiration of the moratorium, the town may extend the moratorium for an additional eighty (80) days.

Section 5. Ordinance to Be Liberally Construed.

This ordinance shall be liberally construed to carry out its purposes, which are deemed to be in the best interest of the public health, safety, and welfare of the citizens and residents of the Town of Malabar.

Section 6. Severability.

Should any section, phrase, sentence, provision, or portion of this Ordinance be declared by any court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 7. Effective Date

This Ordinance shall take effect immediately upon its final adoption by the Town council.

Section 8. The foregoing Ordinance was moved for adoption by Council Member Rivet. The motion was seconded by Council Member Kohler and, upon being put to a vote, the vote was as follows:

- Council Member Grant Ball
- Council Member Laura Mahoney
- Council Member Steve Rivet
- Council Member Dick Korn
- Council Member Richard Kohler

Aye
Aye
Aye
Aye
Aye

Passed and adopted by the Town Council, Town of Malabar, Brevard County, Florida this 23 day of Jan, 2017.

TOWN OF MALABAR

By: Patrick T. Reilly
Mayor Patrick T. Reilly, Council Chair

APPROVED AS TO FORM AND CONTENT:

Karl W. Bohne, Jr.
Karl W. Bohne, Jr., Town Attorney

ATTEST:

Debby K. Franklin
Debby K. Franklin, CMC
Town Clerk/Treasurer

(seal)

1st Reading: 1-9-2017 5100
2nd Reading: 1-23-2017