

ORDINANCE NO. 237

AN ORDINANCE OF THE TOWN OF CINCO BAYOU, FLORIDA PROVIDING FOR THE REGULATION OF MEDICAL MARIJUANA DISPENSING FACILITIES AND TREATMENT CENTERS; AMENDING THE TOWN OF CINCO BAYOU LAND DEVELOPMENT CODE, ORDINANCE NO. 230, AS AMENDED; PROVIDING FOR LEGISLATIVE FINDINGS OF FACT; PROVIDING FOR AUTHORITY; PROVIDING FOR INTENT AND PURPOSE; PROVIDING FOR NEW TERMS TO BE ADDED TO CHAPTER 2, DEFINITIONS, OF THE CINCO BAYOU LAND DEVELOPMENT CODE; AMENDING SECTION 7.06.05; PROVIDING FOR A NEW SECTION 7.10.13 INCLUDING PROVISIONS FOR SEPARATION REQUIREMENTS BETWEEN MEDICAL MARIJUANA FACILITIES AND PUBLIC AND PRIVATE SCHOOLS, PROHIBITION OF DRIVE THROUGH AND MOBILE VENDING; PROVIDING FOR THE REPEAL OF TOWN OF CINCO BAYOU ORDINANCE NO. 236; PROVIDING FOR AREA EMBRACED; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE TOWN OF CINCO BAYOU CODE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, as provided in section 2(b), Article VIII of the Constitution of the State of Florida, and section 166.021(1), Florida Statutes, the Town of Cinco Bayou, Florida (the "Town"), a municipal corporation, enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, as provided in section 166.021(3), Florida Statutes, the governing body of each municipality in the state has the power to enact legislation concerning any subject matter upon which the state legislature may act, except when expressly prohibited by law; and

WHEREAS, medical marijuana dispensing facilities and treatment centers are new and unique uses which are not currently addressed by the Town of Cinco Bayou Code of Ordinances; and

WHEREAS, the Town Council of Cinco Bayou determines that it is in the best interest of its residents, businesses, and visitors to enact sufficient zoning regulations to ensure their health, safety and welfare relating to the cultivation, possession, processing, transfer, transport, selling, distribution, and dispensing of medical marijuana; and

WHEREAS, regarding medical marijuana dispensing facilities, section 381.986, Florida Statutes, permits municipalities to "determine by ordinance the criteria for the location of, and other permitting requirements that do not conflict with state law or department rule for medical marijuana treatment center dispensing facilities located within the boundaries of that municipality"; and

WHEREAS, a moratorium on the acceptance of applications for, the processing of, and the issuance of development permits, development orders or any other official action of the Town permitting or having the effect of permitting new medical marijuana dispensing or treatment center facilities was adopted in Ordinance No. 236 by the Town Council of Cinco Bayou on January 31, 2017, to allow time to review, study, hold public hearings, and prepare and adopt an amendment or amendments to the Town of Cinco Bayou Code of Ordinances to address this new and unique use; and

WHEREAS, the moratorium has provided an opportunity to consider appropriate regulatory standards for the location, zoning of medical marijuana dispensing facilities and treatment centers within the corporate boundaries of the Town; and

WHEREAS, the regulation of the location and other permitting requirements of medical marijuana dispensing facilities and treatment centers within the corporate boundaries of the Town requires the consideration of special issues related to the operation of such facilities; and

WHEREAS, adoption of this Ordinance will further the health, safety, and welfare of the citizens of the Town of Cinco Bayou.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CINCO BAYOU, FLORIDA:

Section 1. Findings of Fact. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

Section 2. Authority. This Ordinance is enacted pursuant to section 166.021(3), Florida Statutes, and under the home rule powers of the Town in the interest of the health, peace, safety and general welfare of the people of the Town of Cinco Bayou.

Section 3. Intent and Purpose. The Town Council of the Town finds and declares that it is in the best interest of the general public and there exists a need to enact an ordinance addressing the criteria for the number, location, and other permitting requirements that do not conflict with state law or department rule for all dispensing facilities of dispensing organizations located within the corporate boundaries of the Town of Cinco Bayou.

Section 4. Amendment of Chapter 2 of the Town of Cinco Bayou Land Development Code. Chapter 2 of the Town of Cinco Bayou Land Development Code is hereby amended to add the following definitions:

Dispensing organization means an organization approved by the State Department of Health to cultivate, process, transport, and dispense low-THC cannabis or medical cannabis pursuant to Section 381.986, Florida Statutes.

Freestanding building means an unattached building, standing alone, containing one business, rather than a row of stores or businesses with common roof and sidewalls.

Low-THC means a plant of the genus Cannabis, the dried flowers 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 seeds or resin that is dispensed from medical marijuana treatment center.

Marijuana 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, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.

Medical Cannabis 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.

Medical Cannabis Activities means, without limitation, the growing, cultivation, processing, manufacturing, dispensing, distribution, and wholesale and retail sale of Medical Cannabis, Low-THC Cannabis, and Derivative Products, or any subset of such activities, or any related activities.

Medical Marijuana Dispensing Facility means a facility that is operated by a dispensing organization approved by the Florida Department of Health.

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

marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Florida Department of Health, pursuant to Article X, Section 29 of the Florida Constitution.

Mobile vending means the restriction of the selling of goods or the providing of personal services from mobile vendors within the Town of Cinco Bayou; whether on private property, public property or rights-of-way. Mobile vending is also encompasses vehicle, daily, and seasonal vendors, as further defined below:

- (1) Vehicle vendor is an individual or group selling products from a self-contained truck, trailer, or self-propelled conveyance, independent with respect to water, sewer and power utilities, capable of moving or being moved, used for the preparation and/or sale of products.
- (2) Daily vendors is an individual or group which operate from a fixed location but vacate the location daily.
- (3) Seasonal vendors is an individual or group which operate from a fixed location, and do not vacate the premises completely on a daily basis, rather vacate during a portion of the year.

All other vendors of goods and services to the general public, whether mobile or not, which do not meet the definition of a mobile vending, shall be considered permanent business uses and shall fully comply with the requirements of the Town of Cinco Bayou Code of Ordinances, set forth herein.

Section 5. Amendment of Section 7.06.05 of the Town of Cinco Bayou Land Development Code. Section 7.06.05, permitted uses within the C-2 General Commercial District Zone, of the Town of Cinco Bayou Land Development Code is hereby amended to include the following language:

14. Medical Marijuana Dispensaries subject to the provisions of section 7.10.13.

Section 6. Section 7.10.13 Created. A new section 7.10.13 is added to the Town of Cinco Bayou Land Development Code, as follows:

7.10.13 Medical Marijuana Dispensaries:

The operation of medical marijuana dispensing facilities or treatment centers shall comply with the following performance standards:

- (1) Dispensing. Dispensing by payment for and receipt of medical marijuana shall only be allowed within the facility of a properly registered

medical marijuana dispensing facility or treatment center, except that this provision shall not be construed to prohibit delivery to a qualifying patient or caregiver registered with the State of Florida.

(2) *No drive through service or mobile vending.* No medical marijuana dispensing facility or treatment center shall have a drive through or drive in service aisle. Medical marijuana shall not be dispensed, paid for and received via the method of mobile vending. All dispensing, payment for and receipt of products shall occur from inside the medical marijuana dispensing facility or treatment center; provided however, this provision shall not be construed to prohibit delivery of medical marijuana to a qualified patient, as permitted by state law or rule.

(3) *On-site consumption of medical marijuana.* The consumption of medical marijuana is prohibited within a medical marijuana dispensing facility or treatment center, or anywhere on the premises outside of the facility, including, but not limited to the parking areas, sidewalks, or rights-of-way surrounding the facility or center.

(4) *Sole use.* The sole use permitted on the premises of any medical marijuana dispensing facility or treatment center shall be limited to those uses permitted by Florida law and Town regulations. No other goods or services shall be provided or sold, and no additional activities shall be conducted on the site which are not authorized by this section. As used in this part, "premises" may include an individual stall in a multi-tenant commercial building (e.g., a stall in a strip mall).

(5) *Separation distances.* No medical marijuana dispensing facility or treatment center shall operate within five hundred feet (500') feet of any pre-existing public or private elementary, middle, or secondary school, located in the corporate boundaries of the Town of Cinco Bayou. For purposes of this section, distance shall be determined by measuring a radius from the closest improved part of the property (excluding storm water treatment facilities and landscape buffers) supporting the marijuana dispensing facility or treatment center to the nearest parcel of land on which the school is located. If any portion of a parcel of land containing a pre-existing school lies within the radius, then the dispensing facility or treatment center shall be deemed to be within such distance.

(6) *Prohibited Activities.* Any other activity related to preparation, wholesale storage, distribution, transfer, cultivation, or processing of any form of marijuana or marijuana product not specifically authorized by the license issued

by the Florida Department of Health to the dispensing organization for the subject facility or center.

(7) Business Tax Receipt Requirement: Owners or ownership entities of medical marijuana dispensing facilities or treatment centers licensed by the Florida Department of Health, must obtain a Business Tax Receipt from the Town of Cinco Bayou Town Clerk for such use.

(8) Compliance with other laws. Medical marijuana dispensing facilities or treatment centers shall at all times be in compliance with all applicable state and local laws and regulations. In the event of a conflict between the provisions of state law and this Ordinance, then the provisions of state law shall control.

(9) Enforcement. The provisions of Section 7.10.13 may be enforced by the Code Enforcement Officer of the Town or by the Okaloosa County Sheriff's Office. Nothing herein shall preclude or limit the ability of the Okaloosa County Sheriff's Office or any other law enforcement entity from pursuing any action authorized by law.

Section 7. Repeal of Ordinance No. 236. Upon the effective date of this Ordinance, Town of Cinco Bayou Ordinance No. 236 is hereby repealed, and the moratorium adopted is hereby terminated.

Section 8. Severability. If any section, subsection, sentence, clause, phrase, or provision of this Ordinance or its application to any person or circumstance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional, and to this end provisions of this Ordinance are severable.

Section 9. Area Embraced. The provisions of this Ordinance shall be in effect in the corporate limits of the Town of Cinco Bayou, Florida.

Section 10. Inclusion in the Code of Ordinances of the Town of Cinco Bayou, Florida. The provisions of this Ordinance shall be included and incorporated in the Code of Ordinances of the Town of Cinco Bayou, Florida (Cinco Bayou Code) and may be appropriately renumbered to conform to the uniform numbering system of the Cinco Bayou Code.

Section 11. Repeal. All ordinances, resolutions, official determinations or parts thereof previously adopted or entered by the Town or any of its officials and in conflict with this Ordinance are hereby repealed to the extent inconsistent herewith.

Section 12. Scrivener's Error. The Town Attorney may correct scrivener's errors found in this ordinance by filing a corrected copy of this Ordinance with the Town Clerk.

Section 13. Effective Date. This Ordinance shall become effective upon the signing by the Mayor.

PASSED, APPROVED AND ADOPTED, by the Town Council of the Town of Cinco Bayou, Florida at a regular meeting, this 10 day of AUGUST, 2017.

THE TOWN OF CINCO BAYOU, FLORIDA
By: Jean M. Hood
Jean Hood, Mayor

ATTEST:

By: Keith Williams
Keith Williams, Town Manager/Clerk

First Reading: JULY 27, 2017
Second Reading: AUGUST 10, 2017

The form and legal sufficiency of the foregoing has been reviewed and approved by the Town Attorney.

By: C. Jeffrey McInnis
C. Jeffrey McInnis, Town Attorney

