

**ORDINANCE NO. 236**

**AN ORDINANCE OF THE TOWN OF CINCO BAYOU, FLORIDA, REGARDING CANNABIS RELATED ACTIVITIES; ADOPTING FINDINGS OF FACT; PROVIDING DEFINITIONS; IMPOSING A TEMPORARY MORATORIUM ON GROWING, CULTIVATION, PROCESSING, MANUFACTURING, DISPENSING, DISTRIBUTION, AND WHOLESALE AND RETAIL SALE OF MEDICAL CANNABIS, LOW-THC CANNABIS, AND DERIVATIVE PRODUCTS, OR ANY RELATED ACTIVITIES; IMPOSING A TEMPORARY MORATORIUM, UNTIL AUGUST 1, 2017, ON THE OPENING, RELOCATION, OR EXPANSION OF ANY MEDICAL MARIJUANA DISPENSING FACILITY WITHIN THE TOWN LIMITS; DIRECTING TOWN STAFF TO DEVELOP PROPOSED LAND DEVELOPMENT REGULATIONS AND OTHER RECOMMENDATIONS REGARDING SUCH CANNABIS-RELATED ACTIVITIES; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CORRECTION OF SCRIVENER'S ERRORS; PROVIDING 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**, in 2014 the Florida Legislature enacted the Compassionate Medical Cannabis Act, codified at section 381.986, Florida Statutes (the "Compassionate Use Act"), which legalized the cultivation, processing, and dispensing of "Low-THC Cannabis," as defined by section 381.986(1)(e), Florida Statutes, by a licensed dispensing organization for "Qualified Patients," as defined by section 381.986(1)(h) Florida Statutes; and

**WHEREAS**, in 2016 the Florida Legislature amended the Right to Try Act, codified at section 499.0295, Florida Statutes, which amended the Compassionate Use Act and legalized the cultivation, production, and dispensing of "Medical Cannabis," as defined by section 381.986(1)(f), Florida Statutes, and derivative products by a licensed dispensing organization to "Eligible Patients," as defined by section 499.0295, Florida Statutes; 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 cannabis businesses may be determined by local ordinance; and

**WHEREAS**, cannabis businesses licensed pursuant to the law have begun cultivating cannabis for processing and dispensing; and

**WHEREAS**, the dispensing of cannabis is currently illegal under federal law and the United States Drug Enforcement Agency has recently 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**, potential adverse impacts on the health, safety, and welfare of residents and business from secondary effects associated with the distribution of 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**, in November of 2016, Florida voters decided to amend the Florida Constitution to legalize the cultivation, production, and dispensing of medical cannabis for a broader population of eligible patients; and

**WHEREAS**, Florida laws relating to the cultivation, production, and dispensing of cannabis products are rapidly changing – raising substantial questions about whether cannabis-related land uses, as a category of commercial use, may have deleterious and negative secondary effects on surrounding land uses and communities; and

**WHEREAS**, the purpose of this ordinance is to place a temporary moratorium on Medical Cannabis Activities, as defined herein, for a period of time reasonably necessary for the Town to determine the best way to regulate Medical Cannabis Activities for the benefit of the public health, safety, and welfare and to promulgate reasonable regulations relating to such activities if deemed advisable by the Town; and

**WHEREAS**, the Town Council hereby finds that the temporary moratorium imposed by this ordinance is being imposed for a reasonable duration intended to give the Town the time reasonably necessary to investigate the impacts of cannabis dispensing facilities, and if necessary, to promulgate reasonable regulations relating to such establishments; and

**WHEREAS**, the Town Council hereby finds that this ordinance advances an important government purpose by reducing the likelihood of the unregulated negative secondary effects of cannabis dispensing facilities; and

**WHEREAS**, the Town Council hereby finds that this ordinance is in the best interest of the public health, safety, and welfare.



**NOW, THEREFORE, BE IT ORDAINED THAT 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. DEFINITIONS.** For the purposes of this ordinance, the following words, terms, and phrases, including their respective derivatives, have the following meanings:

- a. *Derivative Product* means any form of cannabis suitable for administration to or consumption or use by a Qualified Patient, Eligible Patient, or any other similarly situated individual.
- b. *Dispensing Facility* means any facility, whether in a fixed location or mobile, where Derivative Product, Low-THC Cannabis or Medical Cannabis, is dispensed.
- c. *Low-THC Cannabis* 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 seed or resin.
- d. *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.
- e. *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.

**SECTION 3. TEMPORARY MORATORIUM.** Beginning on the effective date of this Ordinance and continuing through August 1, 2017, or sooner if provided by an ordinance of the Town Council, a moratorium is hereby imposed on the opening, relocation, or expansion of any Dispensing Facility within the corporate limits of the Town of Cinco Bayou, including but not limited to Dispensing Facilities owned or operated by an approved dispensing organization under section 381.986, Florida Statutes. The Town shall not issue any Business Tax Receipts, or licenses of any kind, permitting any Dispensing Facility to do business in the Town during the period of the moratorium; nor shall the Town accept any applications for any Business Tax Receipts, or licenses of any kind, for any Dispensing Facility to do business in the Town during the period of the moratorium. In addition, the moratorium is hereby imposed upon all Medical Cannabis Activities by any person or entity that is not an approved dispensing organization under section 381.986, Florida Statutes, except where inconsistent with Florida law.

**SECTION 4. RECOMMENDATIONS FOR LAND DEVELOPMNET REGULATIONS.**

During the moratorium period described in Section 3 of this ordinance, Town staff is hereby directed to study Medical Cannabis Activities and their impact on the health, safety, and welfare of residents and businesses located within the Town, and to develop and recommend land development regulations for Medical Cannabis Activities in the Town, and any other relevant regulations and recommendations.

**SECTION 5. PENALTIES.** Any person or entity who violates any provision of this ordinance, or who fails to comply therewith, shall be subject to the penalties as prescribed in Chapter 1.12.00 of the Town's Land Development Code or Chapter 2 of the Town's Code of Ordinances as may be applicable to the violation.

**SECTION 6. SEVERABILITY.** If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

**SECTION 7. 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 8. 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 9. EFFECTIVE DATE.** This ordinance takes effect immediately upon adoption.

**PASSED, APPROVED AND ADOPTED,** by the Town Council of the Town of Cinco Bayou, Florida at a regular meeting, this 31 day of January, 2017.

**THE TOWN OF CINCO BAYOU, FLORIDA**

By: Jean Hood  
Jean Hood, Mayor

ATTEST:

Keith Williams  
Keith Williams, Town Manager/Clerk

First Reading: January 12, 2017

Second Reading: January 31, 2017



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



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C. Jeffrey McInnis, Town Attorney