

ORDINANCE #2017-2104

AN ORDINANCE OF THE CITY OF NEW PORT RICHEY, FLORIDA, ESTABLISHING A ONE-YEAR MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR THE CULTIVATION, PROCESSING OR DISPENSING OF CANNABIS, AND ON THE ISSUANCE OF PERMITS AND APPROVALS FOR ANY CULTIVATION, PROCESSING OR DISPENSING OF CANNABIS; PROVIDING FOR SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, in 2014, the Florida Legislature enacted Section 381.986, F.S., known as the “Compassionate Medical Cannabis Act of 2014”;

WHEREAS, in 2016, the Florida Legislature enacted the “Right to Try Act”, codified at Section 499.0295, Florida Statutes, which amended the aforesaid Act and legalized the cultivation, production, and dispensing of “Medical Cannabis” and derivative products by a licensed dispensing organization to certain types of patients;

WHEREAS, to date, the Department of Health has authorized six “Dispensing Organizations”, as defined by state law, throughout the State of Florida;

WHEREAS, on November 8, 2016, Florida voters approved the Amendment 2 ballot initiative, amending the Florida Constitution to legalize the cultivation, production, and dispensing of Medical Cannabis for a broader population of eligible patients;

WHEREAS, the aforesaid Amendment requires the Department of Health to issue regulations necessary to implement the Amendment and enforce restrictions in the Amendment “to ensure the availability and safe use of medical marijuana by qualifying patients”, and the Amendment requires the Department to promulgate regulations no later than six months after the effective date of the Amendment;

WHEREAS, it is anticipated that the Florida Legislature will address the issues set forth in Amendment 2 in the upcoming 2017 legislative session;

WHEREAS, the City currently provides restrictions on the location of Cannabis dispensaries and these regulations need to be examined in light of the aforesaid change in Florida law;

WHEREAS, the City Council wishes to determine the need for amendments to the City’s Land Development Code to address the changes in Florida law and the most appropriate locations for the uses authorized by Amendment 2;

WHEREAS, the City Council finds and declares a need to impose a temporary moratorium on the cultivation, processing or dispensing of cannabis within the City as provided in Amendment 2, to allow the Department of Health to promulgate rules to implement said Amendment, and to allow the City time to analyze its current regulations in light of the changes in Florida law on this subject matter;

WHEREAS, pursuant to Section 2(b), Article VIII, of the Florida Constitution, and 166.021, Florida Statutes, the City of New Port Richey, Florida is authorized and required to protect the public health, safety, and welfare, and may exercise any power for a governmental purpose except when expressly prohibited by law, and pursuant to this authority and 163.3202, Florida Statutes, New Port Richey has enacted land development regulations, consistent with its adopted Comprehensive Plan, which protect the quality of life in the City;

WHEREAS, the continual process of growth and change within the City requires the continuing analysis of living and working conditions;

WHEREAS, the health, safety and welfare and morals of the citizens of the City of New Port Richey, Florida are proper and necessary for the consideration of the City Council;

WHEREAS, the continual influx of patterns in the community requires extensive restudy of areas of the community;

WHEREAS, the changing patterns often cause existing zoning districts to become outdated, inequitable, unbalanced and inappropriate as applied;

WHEREAS, it is in the public interest to make a determination as to whether existing zoning uses are appropriate where it appears that changing patterns have cast doubt on their propriety;

WHEREAS, this moratorium is intended to allow sufficient time to study the provision of these uses for the citizens of New Port Richey and to create a long term strategy to ensure adequate access to such services is provided;

WHEREAS, this moratorium is intended to allow sufficient time to study the provision and location of these uses which does not result in an over-concentration of these uses that will result in the blighting or downgrading of the surrounding neighborhood;

WHEREAS, this moratorium is intended to allow sufficient time to study the provision of these uses to ensure that there is a balance between the existing residential uses and the demand for and location of these uses;

WHEREAS, one year is a reasonable period of time to place a moratorium on the issuance of permits for processing or dispensing of cannabis;

WHEREAS, this moratorium is being enacted in good faith, and is of a minimum feasible duration to study the issue; and

WHEREAS, the City Council finds and declares that it is in the public interest to address the recent changes in Florida law and to ensure the orderly revision of City regulations to address a rapidly changing industry in the state.

NOW THEREFORE, THE CITY OF NEW PORT RICHEY, FLORIDA HEREBY ORDAINS:

SECTION 1. This Ordinance is enacted pursuant to Chapter 166, Fla. Stat. (2015), and under the home rule powers of the City in the interest of the health, peace, safety and general welfare of the people of the City of New Port Richey.

SECTION 2. The foregoing recitals and preamble clauses, incorporated herein, are true and correct. The City Council finds and declares that it is in the best interest of the general public and there exists a need to enact an Ordinance regulating specific uses in the City of New Port Richey, and that based on recent changes in Florida law that this Ordinance should be adopted. The Council further finds that in order for City staff to examine and make recommendations to the Council as to the criteria to be considered, if any, it is necessary to place a moratorium on the acceptance of applications, issuance of permits and approvals of such uses beginning on the effective date of this Ordinance. All pending applications, if any, are subject to this Ordinance.

SECTION 3. It is the purpose and intent of this Ordinance to promote the health and general welfare of the residents of the City of New Port Richey through the analysis of any impacts from the cultivation, processing or dispensing of cannabis, and consideration on the criteria for the location of such uses within the City of New Port Richey.

SECTION 4. This moratorium shall remain in effect for 365 days from the effective date of this Ordinance or until such time as repealed by the City, whichever occurs first, and may be extended by resolution of the Council to the extent permitted by law.

SECTION 5. This moratorium may be enforced by any law or code enforcement officer. Any products or equipment found in connection with violation of this Ordinance may be seized and held by the enforcing officer as evidence to be used in any further proceeding.

(a) Methods of enforcement. The requirements of this moratorium may be enforced as follows:

- (1) By citation for civil penalties pursuant to the authority granted by Section 166.0415, Fla. Stat., Chapter 162, Part II, Fla. Stat. and/or Article VIII of the City of New Port Richey Code of Ordinances. Each day of the violation shall constitute a separate offense, punishable by a fine not to exceed \$500.00 per count, or by imprisonment in the county jail not to exceed 60 days, by both such fine and imprisonment to the limits as set forth in Section 166.0415, Fla. Stat., or if enforcement is pursued under Chapter 162, Fla. Stat., the fines shall be as set by the City Council. The City may also seek entry of a court order requiring compliance with this ordinance.
- (2) By an action for injunctive relief, civil penalties, or both, through a court of Competent jurisdiction;
- (3) By revocation or temporary suspension of necessary permits and/or certificates or occupancy and/or licenses; and
- (4) By any other process permitted at law or equity.

Use of one enforcement process or theory does not preclude the City from seeking the same, different, or additional relief through other enforcement methods.

(b) Persons responsible for violation. Persons responsible for violations include:

- (1) any person who owns, operates, or manages the cultivation, processing or dispensing of cannabis;
- (2) the owner of the premises (or lessee, if the premises are leased) where such activities occur;
- (3) any person in physical control of the activities which may occur on the premises;
- (4) if a responsible person is a corporate entity, the officers, directors, members, or other principals of the entity are jointly and severally responsible for violations by the entity; and
- (5) any other person causing or contributing to a violation.

SECTION 6. All ordinances or parts of ordinances in conflict herewith are hereby suspended during the time period set forth in Section 4 above.

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, then such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 8. This Ordinance shall take effect upon its passage and adoption.

The above and foregoing Ordinance was read and approved on first reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida, this _____ day of _____, 2017 and adopted on second reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida, this _____ day of _____, 2017.

ATTEST:

By: _____
Judy Meyers
City Clerk

By: _____
Robert Marlowe
Mayor-Council Member

(Seal)

APPROVED AS TO FORM AND LEGALITY
FOR THE SOLE USE AND RELIANCE OF THE
CITY OF NEW PORT RICHEY, FLORIDA:

City Attorney, Timothy P. Driscoll