

**ORDINANCE NO. 17-08**

**AN ORDINANCE OF THE TOWN COUNCIL OF FORT MYERS BEACH, FLORIDA, DECLARING 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 CONFLICTS, SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.**

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

**WHEREAS**, Amendment 2 legalizes the use of medically certified marijuana 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**, 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 cannabis, and to include "medicalcannabis" for 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 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**, various state and national entities have begun addressing the direct and secondary impacts relating to the legalization of marijuana, the American Planning Association, Denver Fire Department, Rocky Mountain High Intensity Drug Trafficking Area, U.S. Department of Justice, Florida Cities and Counties, Florida Care Blue Ribbon Commission, and the Florida League of Cities-Florida Association of Counties- Florida Police Chiefs Association-Florida Sheriff's Association Medical Marijuana Workgroup; and

**WHEREAS**, future constitutional amendments and legislation may further expand the legal use of cannabis in Florida; 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 cannabis, businesses may be determined by local ordinance; and

**WHEREAS**, the Florida Legislature will be considering implementation legislation of "Use of Marijuana for Debilitating Medical Conditions" or Amendment 2 in the 2017 Legislative Session, or later, and such regulations may conflict with local ordinances, and

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

**WHEREAS**, the dispensing of cannabis is currently illegal under federal law, and the United States Drug Enforcement Agency 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**, potential adverse impacts on the health, safety, and welfare of residents and businesses 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**, certain of the above potential adverse impacts are accentuated by the current difficulties experienced by cannabis businesses in obtaining banking services necessitating such businesses to operate on a cash basis; and

**WHEREAS**, local ordinances addressing the aforementioned adverse impacts may be preempted or impacted by a yet to be drafted state legislation adopted by the 2017 Florida Legislature; 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 the improper division 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 Florida Legislature to enact legislation implementing Amendment 2 and allow the Town a sufficient period to analyze state laws and regulations to municipal laws relating to the cultivating, processing, distributing or selling marijuana or related activities; and

**WHEREAS**, it is not the purpose or intent of this ordinance to restrict or deny access to cannabis products as permitted by Florida Law, but instead to ensure the enactment of reasonable restrictions intended to protect the public health, safety, and welfare. It is also unknown at this time what subsequent enacting legislation will provide and when such enacting legislation will become effective.

**IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

**SECTION ONE:**

The purpose of this Ordinance is to provide the Florida Legislature the opportunity to enact legislation implementing Amendment 2 and allow the Town a sufficient period to analyze state laws and regulations to municipal laws relating to the cultivating, processing, distributing or selling marijuana or related activities. The recitals set forth above, incorporated herein, and are hereby found true and correct.

**SECTION TWO.**

A temporary moratorium is imposed on the operation of Medical Marijuana Treatment Centers and Dispensing Organizations within the Town limits of the Town of Fort Myers Beach. 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 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 THREE.

For purposes of the temporary moratorium, a "Medical Marijuana Treatment Center" means an entity that acquires, cultivates, possesses, Process (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 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 low-THC cannabis or medical cannabis pursuant to Fla. Stat. 381.986.

### SECTION FOUR.

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 cannabis treatment or dispensing business within the Town. It is also unlawful and a violation for any person or entity to relocate or cause to be relocated any cannabis treatment or dispensing business within the Town or to be expanded in the Town.

### SECTION FIVE.

That this ordinance shall take effect 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 SIX.

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

### SECTION SEVEN.

**CONFLICTS.** Any and all ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed to the extent of the conflict.

THE FOREGOING ORDINANCE was adopted by the Town Council upon a motion by Council Member Shamp and seconded by Vice Mayor Gore, and upon being put to a roll call vote, the result was as follows:

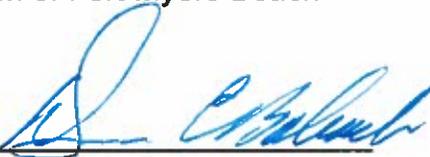
Dennis C. Boback, Mayor	AYE
Tracey Gore, Vice Mayor	AYE
Bruce Butcher, Council Member	AYE
Anita Cereceda, Council Member	Absent
Joanne Shamp, Council Member	AYE

DULY PASSED AND ADOPTED ON THIS 6<sup>th</sup> DAY OF JUNE, 2017.

ATTEST:

Town of Fort Myers Beach

By:   
Michelle D. Mayher, Town Clerk

By:   
Dennis C. Boback, Mayor

Approved as to form by:

  
Peterson Law Group, Town Attorney