

SPONSORED BY:
Mayor Brown



ORDINANCE NO. 2017-02

A BILL TO BE ENTITLED

AN ORDINANCE OF THE CITY OF NEPTUNE BEACH, FLORIDA, AMENDING CHAPTER 27, UNIFIED LAND DEVELOPMENT REGULATIONS; ADDING ARTICLE IV-B, LAND USES AND CANNABIS DISPENSING BUSINESSES, SECTION 27-245 PURPOSE AND INTENT, SECTION 27-246 DEFINITIONS, 27-247 TEMPORARY MORATORIUM, 27-248 STUDY AND RECOMMENDATIONS, 27-249 PENALTIES, 27-250 SEVERABILITY, 27-251 REPEAL, AND 27-252 EFFECTIVE DATE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 2014 the Florida Legislature enacted a law legalizing low-THC medical cannabis in Florida; and

WHEREAS, in 2016 the Florida Legislature expanded the law to legalize medical cannabis in Florida; and

WHEREAS, future constitutional amendments and legislation may further expand the legal use of cannabis in Florida; and

WHEREAS, a comprehensive State licensing and regulatory framework for the cultivation, processing, and dispensing of cannabis now exists; 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, 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, 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 diversion of products, and accentuate threats to the public health, safety, and welfare; and

WHEREAS, in November of this year, Florida voters will decide whether 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 the opening of certain new cannabis dispensing facilities, and on the expansion or relocation of certain existing cannabis dispensing facilities; and

WHEREAS, the City of Neptune Beach hereby finds that the temporary moratorium imposed by this ordinance is intended to give the City of Neptune Beach 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 City of Neptune Beach 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 City of Neptune Beach hereby finds that this ordinance is in the best interest of the public health, safety, and welfare; and

WHEREAS, the City of Neptune Beach has determined it is in the public interest to adopt this Ordinance pursuant to the City's police powers and section 381.986 to protect the health, safety, and welfare of the public;

Now, therefore, be it ordained by the City Council of the City of Neptune Beach, Florida:

Section 1. Chapter 27, Unified Land Development Regulation, Article IV-B, Land Uses and Cannabis Dispensing Businesses is hereby added as follows:

Sec. 27-245. – Purpose and intent.

The purpose of this Ordinance is to provide the City of Neptune Beach with the opportunity to review the impact of recent changes in law and the potential passage of a constitutional amendment, as well as the impact of cannabis dispensing in other jurisdictions, to determine how such dispensing should be permitted or regulated in the City of Neptune Beach.

Sec. 27-246. - Definitions.

(1) The following words and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Ordinance:

- a. **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.
- b. **Cannabis dispensing business** or **business** shall mean a business location offering cannabis for retail sale pursuant to a license to dispense cannabis issued under applicable law.
- c. **Compassionate Use Act** shall mean section 381.986, Florida Statutes, and chapter 2016-123, Laws of Florida, as amended from time to time, and any rules or regulations promulgated thereunder.
- d. **State** shall mean the State of Florida.

(2) In addition to the definitions contained in Subsection (1), other terms used in this Ordinance shall have the meaning ascribed to them in the Compassionate Use Act, and such definitions are incorporated into this Ordinance by this reference.

Sec.27-457. – Temporary Moratorium.

Beginning on the effective date of this Ordinance, a temporary moratorium is hereby imposed on the opening of new cannabis dispensing businesses and on the expansion or relocation of existing cannabis dispensing businesses in the City of Neptune Beach.

This temporary moratorium shall expire on February 6, 2018, unless reduced or further extended by action of the City Council.

- a. 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 dispensing business within the City of Neptune Beach.

- b. During the moratorium, it is unlawful and a violation of this ordinance for any person or entity to relocate or cause to be relocated any cannabis dispensing business within the City of Neptune Beach.

- c. During the moratorium, it is unlawful and a violation of this ordinance for any person or entity to expand or cause to be expanded any cannabis dispensing business within the City of Neptune Beach.

- d. During the moratorium, the City of Neptune Beach shall not accept, process or approve any application for business tax receipts, licenses, building permits, land use permits, or any development permits concerning or related to a cannabis dispensing business.

- e. During the moratorium, the City of Neptune Beach shall not accept, process or approve any business tax receipts, building permits, land use permits, or any development permits concerning or related to a cannabis dispensing business.

- f. During the moratorium, the City of Neptune Beach shall not accept, process or approve any licenses, permits, or approvals for any property, entity, or individual for the sale or dispensation of cannabis so long as this ordinance is in effect.

Nothing in this temporary moratorium shall be construed to prohibit the use of cannabis pursuant to the Compassionate Use Act or other applicable Florida Law, or the delivery of cannabis in compliance with the Compassionate Use Act or other applicable Florida Law.

Sec. 27-248. – Study and Recommendations.

The City of Neptune Beach City Manager or designee is hereby directed to study land development regulations for cannabis dispensaries and the impact of such regulations in other jurisdictions.

Sec. 27-249. – Penalties.

Any person or entity who violates any provision of this Ordinance or who fails to comply therewith, or with any of the requirements thereof, shall be fined in an amount not exceeding five hundred dollars (\$500.00) per violation, per day, or be imprisoned for a period of time not to exceed sixty (60) days.

Sec. 27-250. – 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.

Sec. 27-251. – Repeal.

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

Sec. 27-252. – Effective and Termination Date.

This ordinance takes effect immediately upon adoption and expires on February 6, 2018, unless reduced or further extended by action of the City Council.

Section 2. This ordinance shall take effect upon its adoption.

VOTE RESULTS OF FIRST READING:

Mayor Elaine Brown	Yes
Vice Mayor Scott Wiley	Yes
Councilor Rory Diamond	Yes
Councilor Richard Arthur	Yes
Councilor John Jolly	Yes

Passed on First Reading this 3rd day of January, 2017

VOTE RESULTS OF SECOND AND FINAL READING:

Mayor Elaine Brown	Yes
Vice Mayor Scott Wiley	Yes
Councilor Rory Diamond	Yes
Councilor Richard Arthur	Yes
Councilor John Jolly	Yes

Passed on Second and Final Reading this 07th day of Feb., 2017.

Elaine Brown 3/3/2017
Elaine Brown, Mayor

ATTEST:

Amanda Askew
Amanda Askew, Acting City Clerk

Approved as to form and content:

Patrick P. Krechowski
Patrick Krechowski, City Attorney