

## ORDINANCE 2017-05

**AN ORDINANCE OF THE CITY OF BELLEAIR BLUFFS, FLORIDA, EXERCISING THE OPTION PROVIDED BY SECTION 381.986(11) (b)1. FLORIDA STATUTES TO BAN MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES FROM BEING LOCATED WITHIN THE BOUNDARIES OF THE CITY OF BELLEAIR BLUFFS; AMENDING SECTION 102-43 OF THE LAND DEVELOPMENT CODE OF THE CODE OF ORDINANCES OF THE CITY OF BELLEAIR BLUFFS; BANNING MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES FROM BEING LOCATED WITHIN THE BOUNDARIES OF THE CITY OF BELLEAIR BLUFFS; PROVIDING FOR CONFLICTS; SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, in 2014 the Florida Legislature enacted a medical marijuana law, the "Compassionate Medical Cannabis Act of 2014" (codified at §381.986, Florida Statutes), which authorized a limited number of large nurseries to cultivate, process, and dispense non-euphoric, low THC cannabis and operate as "Licensing Dispensing Organizations" for individuals with certain specified serious ailments; and,

**WHEREAS**, the Florida Legislature in its 2016 session amended the Compassionate Medical Cannabis Act (§381.986) to include the use of "medical marijuana" for eligible patients with terminal conditions; and,

**WHEREAS**, on November 8, 2016, Florida's voters voted and passed an amendment to the Florida constitution, titled "Use of Marijuana for Debilitating Medical Conditions" ("Amendment 2"); and,

**WHEREAS**, Amendment 2 fully legalized the medical use of marijuana throughout the State of Florida for those individuals with specified "debilitating" conditions, and authorized entities that acquire, cultivate, possess, process (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfer, transport, sell, distribute, dispense, or administer marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Florida Department of Health ("Medical Marijuana Treatment Centers"); and,

**WHEREAS**, Amendment 2 further provided that nothing therein would prohibit the Florida Legislature from enacting laws that were consistent with the provisions of Amendment 2; and,

**WHEREAS**, due to the historic and longstanding legal prohibition of marijuana prior to enactment of Florida Statutes, Section 381.986, and approval of Amendment 2, the land development regulations of the City of Belleair Bluffs ("City") do not address the use of real property for purposes of cultivating, processing, distributing, or selling medical marijuana, low-THC cannabis or related activities, and such uses of real property have historically not existed within the City; and,

**WHEREAS**, on June 19, 2017, the City imposed a 180-day moratorium on the operation within the City of any Medical Marijuana dispensing organizations or Medical Marijuana Treatment Centers; and,

**WHEREAS**, the Florida Legislature enacted Senate Bill 8A, amending Section 381.986, Florida Statutes, which was approved by the Governor on June 23, 2017, implementing the provisions of Amendment 2 ("2017 Legislation"); and,

**WHEREAS**, the 2017 Legislation provides that the regulation of the cultivation, processing and delivery of marijuana by Medical Marijuana Treatment Center dispensing facilities, is pre-empted to the State of Florida (with exceptions allowing for enforcement of the Florida Building Code and Florida Fire Prevention Code); and,

**WHEREAS**, the 2017 Legislation provides that counties and municipalities may decide either to (1) ban Medical Marijuana Treatment Center dispensing facilities within their jurisdictions; or, alternatively (2) allow Medical Marijuana Treatment Center dispensing facilities within their jurisdictions; and,

**WHEREAS**, in the event that a local government opts to allow Medical Marijuana Treatment Center dispensing facilities, the 2017 Legislation provides that the City may not enact an ordinance for permitting or determining the location of such Medical Marijuana Treatment Center dispensing facilities containing provisions that were more restrictive than its ordinances for permitting or determining the location of pharmacies; and,

**WHEREAS**, the City Commission supports the proposition that Florida municipalities that decide to permit Medical Marijuana Treatment Center dispensing facilities should be able to prepare, vet, and adopt reasonable, Constitutional and otherwise lawful land use regulations for permitting and determining the location of Medical Marijuana Treatment Center dispensing facilities without a statutory restriction tying such regulations to its regulations applicable to pharmacies. The City Commission finds that Medical Marijuana Treatment Center dispensing facilities and pharmacies are two separate and distinct land uses which could reasonably be subject to differing, overlapping, or identical land use regulations as determined by the municipality in which the Medical Marijuana Treatment Center dispensing facilities are located; and,

**WHEREAS**, the 2017 Legislation has forced the City Commission to make a choice between: (1) allowing Medical Marijuana Treatment Center dispensing facilities in numerous locations throughout the City where the City Commission does not believe that Medical Marijuana Treatment Center dispensing facilities would be appropriate (at least initially); or (2) prohibiting Medical Marijuana Treatment Center dispensing facilities altogether within the boundaries of the City; and,

**WHEREAS**, upon consideration of its options, the City Commission finds that it would be in the public interest to exercise the option to ban Medical Marijuana Treatment Center dispensing facilities within the boundaries of the City at the present time.



**NOW THEREFORE BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BELLEAIR BLUFFS, FLORIDA, IN SESSION DULY AND REGULARLY ASSEMBLED:**

**Section 1.** The City Commission hereby formally exercises the option given to counties and municipalities under Sec. 381.986(11) (b)1. Florida Statutes (2017) to ban Medical Marijuana Treatment Center dispensing facilities from being located within the boundaries of the City of Belleair Bluffs. Medical Marijuana Treatment Center dispensing facilities shall be prohibited within the boundaries of the City of Belleair Bluffs.

**Section 2.** Only the provisions of Section 1 of this Ordinance, which bans Medical Marijuana Treatment Center dispensing facilities from being located within the boundaries of the City of Belleair Bluffs, shall be codified in the *Code of Ordinances, City of Belleair Bluffs, Florida*, at the present time by adding paragraph E. to Section 102-43 of the Land Development Code in the *Code of Ordinances, City of Belleair Bluffs Florida*, as follows:

**Sec. 102-43. - Prohibited uses.**

- A. Drive-in eating establishments. There shall not be allowed within any land use classification within the city limits any drive-in eating or food establishment, temporary or portable food-vending establishments or devices, promotional or advertising food-distribution vehicles or devices or other similar facilities. Drive-through pickup windows are permissible.
- B. Excavation pits and quarries. No excavation pits or quarries shall be allowed within any land use classification within the city.
- C. Landfills. No landfills or sanitary landfills shall be allowed in any land use district within the city, except such landfills as shall be approved by the Planning Board and which shall be for the specific purpose of creating an acceptable finish grade to a lot, parcel or tract when the same is done in conjunction with and as a part of a construction project for the lot, parcel or tract being so filled. All plans submitted to the Planning Board which shall contemplate or require fill areas shall be specific in required details, in accordance with such regulations as may be set forth by the Planning Board and the City Engineering Department.
- D. Arcade amusement centers. There shall not be allowed within any land use classification within the city limits any arcade amusement center. The term "arcade amusement center," as used in this article, shall mean a place of business of which the

primary use is the operation of coin-operated amusement games or machines on the premises as an amusement facility.

- E. Medical Marijuana Treatment Center Dispensing Facilities. There shall not be allowed within any land use classification within the City limits any medical marijuana treatment center dispensing facilities.

**Section 3.** This Ordinance shall take effect immediately upon adoption.

**Section 4.** If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held by any court to be unconstitutional, inoperative, invalid or void, such holding shall not in any manner affect the validity of the remaining portions of this Ordinance.

**PASSED AND ADOPTED BY THE CITY COMMISSION OF THE CITY OF BELLEAIR**

**BLUFFS, FLORIDA, on THIS 12<sup>th</sup> DAY OF February, 2018.**



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Mayor Chris Arbutine

ATTEST:



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Debra S. Sullivan, City Clerk

PASSED ON FIRST READING:	October 16, 2017	AYE: SS, TS, JN	NAY: CA, JB
PASSED BY PLANNING BOARD:	February 12, 2018	AYE: Kuykendell, Fisher, Lawlor, Tami	
PASSED ON SECOND READING:	February 12, 2018	AYE: JN, TS, SS	NAY: CA, JB