

1 **AN ORDINANCE OF THE CITY COUNCIL OF THE**
2 **CITY OF ORLANDO, FLORIDA, RELATING TO**
3 **CANNABIS DISPENSING FACILITIES;**
4 **ADOPTING FINDINGS OF FACT; PROVIDING**
5 **DEFINITIONS; IMPOSING A TEMPORARY**
6 **MORATORIUM ON THE OPENING OF ANY NEW**
7 **CANNABIS DISPENSING FACILITY AND ON THE**
8 **EXPANSION OR RELOCATION OF ANY**
9 **EXISTING CANNABIS DISPENSING FACILITY;**
10 **DIRECTING THE PLANNING OFFICIAL TO**
11 **RECOMMEND LAND DEVELOPMENT**
12 **REGULATIONS FOR CANNABIS DISPENSING**
13 **FACILITIES BY A DATE CERTAIN; PROVIDING**
14 **FOR PENALTIES, SEVERABILITY, REPEAL OF**
15 **CONFLICTING ORDINANCES, CORRECTION OF**
16 **SCRIVENER'S ERRORS, AND AN EFFECTIVE**
17 **DATE.**

18
19 **WHEREAS**, as provided in section 2(b), Article VIII of the Constitution of the
20 State of Florida, and section 166.021(1), Florida Statutes, the City of Orlando, Florida
21 (the "city"), a municipal corporation, enjoys all governmental, corporate, and proprietary
22 powers necessary to conduct municipal government, perform municipal functions, and
23 render municipal services, and may exercise any power for municipal purposes, except
24 as expressly prohibited by law; and

25
26 **WHEREAS**, as provided in section 166.021(3), Florida Statutes, the governing
27 body of each municipality in the state has the power to enact legislation concerning any
28 subject matter upon which the state legislature may act, except when expressly
29 prohibited by law; and

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31 **WHEREAS**, on June 16, 2014, Governor Rick Scott approved CS/CS/SB 1030
32 creating the Compassionate Medical Cannabis Act of 2014 (Chapter 2014-157, Laws of
33 Florida; codified at section 381.986, Florida Statutes; hereinafter referred to as the
34 "Compassionate Use Act"); and

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36 **WHEREAS**, the Compassionate Use Act legalized the cultivation, production,
37 and dispensing of a low-THC derivative product of marijuana for "qualified patients"; and

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39 **WHEREAS**, under the Compassionate Use Act, "qualified patients" are patients
40 suffering from cancer or a physical medical condition that chronically produces
41 symptoms of seizures or severe and persistent muscle spasms (e.g., epilepsy or
42 amyotrophic lateral sclerosis ("ALS")); and

43
44 **WHEREAS**, the low-THC derivative product of marijuana legalized by the
45 Compassionate Use Act is administered to patients as an oil or in capsule form, and is
46 not smoked like traditional marijuana. The low-THC strain of cannabis and the oil

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product are commonly referred to as “Charlotte’s Web” (but is hereinafter referred to as “low-THC product”); and

WHEREAS, the Compassionate Use Act provides that physicians may only order low-THC product for qualified patients if he or she finds that “no other satisfactory alternative treatment option” is available; and

WHEREAS, the Compassionate Use Act is implemented by rule of the Florida Department of Health (the “department”) under Chapter 64-4, Florida Administrative Code (the “compassionate use rules”); and

WHEREAS, the compassionate use rules went into effect on June 17, 2015, and among other things regulate the selection, licensing, and oversight of “dispensing organizations.” A dispensing organization is “a nursery that meets the requirements of section 381.986(5)(b)1., Florida Statutes, including its contractual agents, which has been authorized by the department to cultivate, process and dispense low-THC cannabis” (Rule 64-4.001(10), Florida Administrative Code); and

WHEREAS, to date, the department has authorized 6 dispensing organizations throughout the state of Florida; and

WHEREAS, applications for dispensing organization approval were evaluated in part by the “accessibility of [their proposed] dispensing facilities, e.g., centrally located to several populated areas, located on a main roadway...,” (Rule 64-4.002(2)(c)11.a., Florida Administrative Code). The state regulation also requires that applicants demonstrate “the ability to obtain zoning approval” (Rule 64-4.002(2)(c)3., Florida Administrative Code); and

WHEREAS, this requirement that applicants demonstrate ability to obtain zoning approval has resulted in a number of requests for a determination of how a dispensing organization’s “dispensing facility” is categorized for purposes of the city’s table of allowable [zoning] uses at Part 1B, Chapter 58, Code of the City of Orlando, Florida (the “Orlando City Code”); and

WHEREAS, section 58.200, Orlando City Code, provides, in part, that “[i]n the event of uncertainty or where there is not a particular land use category listed anywhere in [Chapter 58] that corresponds with a use in question, then the use in the Chapter having the most similar characteristics, as determined by the zoning official, to the use in question shall apply”; and

WHEREAS, on June 18, 2015, the zoning official issued official determination LDC2015-00245 concluding that “‘dispensing facilit[ies]’ under the Compassionate Use Act [are] most similar to a ‘Drug Store,’ being defined by Chapter 66, Orlando City Code, as ‘[a] Light Retailing Use where the primary business is the filling of medical

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prescriptions and the sale of drugs, medical devices, medical supplies and nonprescription medicines, but where non-medical convenience items may be sold as well"; and

WHEREAS, since this determination was issued, the Compassionate Use Act has been amended to legalize the cultivation, production, and dispensing of medical cannabis to eligible patients as defined by section 499.0295, Florida Statutes; 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 Orlando City Council hereby finds that the temporary moratorium imposed by this ordinance is being imposed for a reasonable duration intended to give the city 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 Orlando City 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 Orlando City Council hereby finds that this ordinance is in the best interest of the public health, safety, and welfare; and

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF ORLANDO, 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:

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- 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 dispensary* means an establishment where derivative product of the cannabis plant, except for low-THC cannabis, is dispensed at retail.
- c. *Derivative product* means any form of cannabis suitable for routes of administration.
- d. *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 that is dispensed only from a dispensing organization approved by the Florida Department of Health pursuant to section 381.986, Florida Statutes.
- e. *Low-THC cannabis dispensary* means an establishment where low-THC cannabis is dispensed at retail.

SECTION 3. TEMPORARY MORATORIUM. Beginning on the effective date of this ordinance and continuing through December 31, 2016, or sooner if provided pursuant to section 4 of this ordinance, a moratorium is hereby imposed on the opening of new cannabis dispensaries and low-THC cannabis dispensaries and on the expansion or relocation of existing cannabis dispensaries and low-THC cannabis dispensaries.

- a. During the moratorium, it is unlawful and a violation of this ordinance for any person, firm, or corporation to open or cause to be opened any cannabis dispensary or low-THC cannabis dispensary within the City of Orlando, except that low-THC cannabis dispensaries already approved by official determination of the city zoning official may open and conduct business in accordance with the official determination.
- b. During the moratorium, it is unlawful and a violation of this ordinance for any person, firm, or corporation to relocate or cause to be relocated any cannabis dispensary or low-THC cannabis dispensary within the City of Orlando.
- c. During the moratorium, it is unlawful and a violation of this ordinance for any person, firm, or corporation to expand or cause to be expanded

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any cannabis dispensary or low-THC cannabis dispensary within the City of Orlando. For purposes of this subsection, the term “expand” means to “enlarge the physical size of.”

SECTION 4. EXPIRATION OF THE TEMPORARY MORATORIUM. The temporary moratorium imposed by section 3 of this ordinance expires as of the earliest of the following occurrences:

a. January 1, 2017; or

b. A date before January 1, 2017, if provided by ordinance of the Orlando City Council.

SECTION 5. RECOMMENDATIONS FOR LAND DEVELOPMENT REGULATIONS. The planning official is hereby directed to study, develop, and recommend land development regulations for cannabis dispensaries and low-THC cannabis dispensaries in the City of Orlando, with such recommendations being delivered to the Orlando City Council by no later than December 1, 2016.

SECTION 6. PENALTIES. Violations of this ordinance are punishable as provided by section 1.08, Code of the City of Orlando, Florida.

SECTION 7. 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 8. 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.

SECTION 9. SCRIVENER’S ERROR. The city attorney may correct scrivener’s errors found in this ordinance by filing a corrected copy of this ordinance with the city clerk.

SECTION 10. EFFECTIVE DATE. This ordinance takes effect immediately upon adoption.

DONE, THE FIRST READING, by the City Council of the City of Orlando, Florida, at a regular meeting, this _____ day of _____, 2016.

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DONE, THE PUBLIC NOTICE, in a newspaper of general circulation in the City of Orlando, Florida, by the City Clerk of the City of Orlando, Florida, this _____ day of _____, 2016.

DONE, THE SECOND READING, AND HEARING, AND ENACTED ON FINAL PASSAGE, by an affirmative vote of a majority of a quorum present of the City Council of the City of Orlando, Florida, at a regular meeting, this _____ day of _____, 2016.

BY THE MAYOR OF THE CITY OF
ORLANDO, FLORIDA:

Mayor

ATTEST, BY THE CLERK OF THE
CITY COUNCIL OF THE CITY OF
ORLANDO, FLORIDA:

City Clerk

Print Name

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND RELIANCE OF THE
CITY OF ORLANDO, FLORIDA:

City Attorney

Print Name

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