

## **ORDINANCE 2017-01**

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CALHOUN COUNTY, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON GROWING, CULTIVATION, PROCESSING, MANUFACTURING, DISPENSING, DISTRIBUTION, AND WHOLESALE AND RETAIL SALE OF MEDICAL CANNABIS, LOW-THC CANNABIS, AND DERIVATIVE PRODUCTS, OR ANY RELATED ACTIVITIES; ESTABLISHING A TEMPORARY MORATORIUM ON THE OPENING, RELOCATION, OR EXPANSION OF ANY MEDICAL MARIJUANA DISPENSING FACILITY WITHIN UNINCORPORATED CALHOUN COUNTY; DIRECTING COUNTY STAFF TO DEVELOP PROPOSED LAND DEVELOPMENT REGULATIONS AND OTHER RECOMMENDATIONS REGARDING SUCH CANNABIS-RELATED ACTIVITIES; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 2014 the Florida Legislature enacted the Compassionate Medical Cannabis Act, codified at Section 381.986, Florida Statutes (the “Compassionate Use Act”), which legalized the cultivation, processing, and dispensing of “Low-THC Cannabis,” as defined by Section 381.986(1)(e), Florida Statutes, by a licensed dispensing organization for “Qualified Patients,” as defined by Section 381.986(1)(h); and

WHEREAS, in 2016 the Florida Legislature amended the Right to Try Act, codified at Section 499.0295, Florida Statutes, which amended the Compassionate Use Act and legalized the cultivation, production, and dispensing of “Medical Cannabis,” as defined by Section 381.986(1)(f), Florida Statutes, and derivative products by a licensed dispensing organization to “Eligible Patients,” as defined by Section 499.0295, Florida Statutes; 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, in November of this year, Florida voters decided 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 Medical Cannabis Activities, as defined herein, for a period of time reasonably necessary for the County to determine the best way to regulate Medical Cannabis Activities for the benefit of the public health, safety, and welfare and to promulgate reasonable regulations relating to such activities if deemed advisable by the County; and

WHEREAS, the Calhoun County Board of County Commissioners hereby finds that the temporary moratorium imposed by this ordinance is intended to give the County 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 County hereby finds that this ordinance advances an important government purpose by reducing the likelihood of the unregulated negative secondary effects of Medical Cannabis Activities; and

WHEREAS, the County has determined it is in the best interest of the public to adopt this ordinance pursuant to the County's police powers and Section 381.986, Florida Statutes, to protect the health, safety, and welfare of the public;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CALHOUN COUNTY, AS FOLLOWS:**

**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.**

- a. **Derivative Product** means any form of cannabis suitable for administration to or consumption or use by a Qualified Patient, Eligible Patient, or any other similarly situated individual.
- b. **Dispensing Facility** means any facility where Derivative Product is dispensed at retail.
- c. **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.

- d. **Medical 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.
- e. **Medical Cannabis Activities** means, without limitation, the growing, cultivation, processing, manufacturing, dispensing, distribution, and wholesale and retail sale of Medical Cannabis, Low-THC Cannabis, and Derivative Products, or any subset of such activities, or any related activities.

### **Section 3. Temporary Moratorium.**

Beginning on the effective date of this Ordinance and continuing for a period of 364 days, or less if provided by an ordinance by the Calhoun County Board of County Commissioners, a moratorium is hereby imposed on the opening, relocation, or expansion of any Dispensing Facility within unincorporated Calhoun County, including but not limited to Dispensing Facilities owned or operated by an approved dispensing organization under Section 381.986, Florida Statutes. In addition, the moratorium is hereby imposed upon all Medical Cannabis Activities by any person or entity that is not an approved dispensing organization under Section 381.986, Florida Statutes, except where inconsistent with Florida law.

### **Section 4. Study and Recommendations.**

During the moratorium period described in Section 3 of this ordinance, the County staff, including Planning & Zoning Department, is hereby directed to study Medical Cannabis Activities and their impact on the health, safety, and welfare of residents and businesses located within the County, and to develop and recommend land development regulations for Medical Cannabis Activities in the unincorporated areas of the County, and any other relevant regulations and recommendations, with such recommendations and proposed regulations being delivered to the Board of County Commissioners within a reasonable time before the expiration of this moratorium.

### **Section 5. Penalties.**

Any person or entity who violates any provision of this ordinance, or who fails to comply therewith, shall be subject to the penalties as prescribed in Calhoun Comprehensive Plan and Land Development Code.

### **Section 6. Severability.**

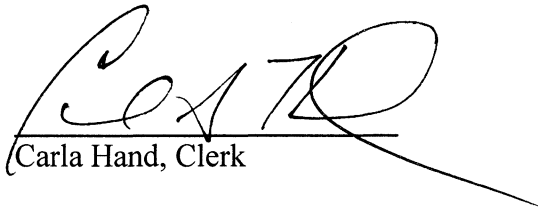
If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance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

**Section 7. Effective Date.**

A certified copy of this ordinance as enacted shall be filed by the Clerk of the Board with the office of the Secretary of State of the State of Florida within ten (10) days after enactment, and this ordinance shall take effect in accordance with Section 125.66, Florida Statutes.

**DULY ADOPTED** on this 2nd day of January, 2017.

**ATTEST:**

  
Carla Hand, Clerk

**BOARD OF COUNTY COMMISSIONERS  
CALHOUN COUNTY FLORIDA**

  
Danny Ray Wise, Chairman

**Approved as to Form:**

  
H. Matthew Fuqua, County Attorney