



**CITY OF BELLE ISLE, FLORIDA  
CITY COUNCIL AGENDA ITEM COVER SHEET**

**Meeting Date:** July 18, 2017

**To:** Honorable Mayor and City Council Members

**From:** B. Francis, City Manager

**Subject:** Resolution 17-13, 90-day Moratorium on Medical Cannabis

**Background:** In December 2016, the City Council adopted resolution 16-19 placing a 90-day moratorium on temporary building and zoning moratorium on the establishment and operation of dispensing facilities within the corporate limits of the City of Belle Isle until adequate regulations have been developed, considered and adopted is in the best interest of the health, safety and general welfare of the community and the residents of the City. This initial moratorium has expired but the City Council would like to extend the moratorium for another 90-day period. This will allow the Council to take advantage of a symposium on medical marijuana in August conducted by the Florida League of Cities. This symposium will allow Council to review the latest updates and provide better information and guidance on how to proceed with medical marijuana issues.

**Staff Recommendation:** Adopt Resolution 17-13

**Suggested Motion:** I move we Adopt Resolution 17-13 providing for a 90-day moratorium on medical Cannabis.

**Alternatives:** Do not adopt the resolution and allow the public to apply for establishing and operating dispensing facilities in Belle Isle

**Fiscal Impact:** Unknown at this time how much revenue could be generated.

**Attachments:** Resolution 17-13

## RESOLUTION NO.17-13

**A RESOLUTION OF THE CITY OF BELLE ISLE, FLORIDA, PERTAINING TO ESTABLISHING A TEMPORARY MORATORIUM FOR A PERIOD OF 90 DAYS FROM THE EFFECTIVE DATE OF THIS RESOLUTION ON THE ACCEPTANCE, REVIEW, APPROVAL OR ISSUANCE OF ANY LAND DEVELOPMENT PERMITS AS THE TERM IS DEFINED IN FLORIDA STATUTES SECTION 163.3164(16), BUSINESS TAX RECEIPTS OR ANY OTHER LICENSE OR PERMIT FOR THE ESTABLISHMENT OR OPERATION OF DISPENSING FACILITIES WITHIN THE CITY ENGAGED IN THE ON-SITE DISTRIBUTION, SALE, DELIVERY OR RETAIL OF LOW-THC CANNABIS, MEDICAL CANNABIS OR CANNABIS DELIVERY DEVICES PURSUANT TO SECTIONS 381.986 AND 499.0295 OF THE FLORIDA STATUTES, IN ORDER TO PROVIDE THE CITY WITH AN OPPORTUNITY TO REVIEW AND ENACT REGULATIONS GOVERNING THE ESTABLISHMENT AND OPERATION OF DISPENSING FACILITIES; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND, PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to the Compassionate Medical Cannabis Act of 2014, the Florida Legislature authorized a very limited number of large nurseries to cultivate, process, and dispense non-euphoric, low THC cannabis and operate dispensing organizations, as of January 1, 2015; and

**WHEREAS**, in 2016, the Florida Legislature amended Section 381.986 of the Florida Statutes to include medical cannabis, revise the requirements for physicians ordering low-THC cannabis, medical cannabis, or cannabis delivery devices, amend the requirements for the cultivation, processing, transportation, and dispensing of low-THC cannabis or medical cannabis, revise the Florida Department of Health's authority and responsibility and provide for penalties; and

**WHEREAS**, pursuant to Section 381.986(8) of the Florida Statutes, a municipality may determine by ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with state law for dispensing facilities of dispensing organizations located within its municipal boundaries; and

**WHEREAS**, due to the historical prohibition of cannabis, the City of Belle Isle does not currently have any land development regulations governing the use of real property for the purpose of on-site distribution, sale, delivery or retail of low-THC cannabis, medical cannabis or cannabis delivery devices as provided by Florida Statutes Sections 381.986 and 499.0295; and

**WHEREAS**, in order to promote the effective regulation of such activities, the City Council wishes to preserve the status quo while researching, studying, and analyzing the potential impact of dispensing facilities within the City's boundaries upon adjacent uses and the surrounding areas, including its effect on traffic, congestion, surrounding property values, demand for City services including inspections and increase police monitoring, and other aspects of the operation of dispensing facilities impacting the general welfare of the community; and

**WHEREAS**, the City Council finds that a ninety (90) days temporary moratorium on the issuance of business tax receipts and the acceptance, processing and approval of any building or zoning permits for the establishment and operation of dispensing facilities within the corporate limits of the City of Belle Isle is a reasonable period of time; and

**WHEREAS**, the City Council finds that a ninety (90) days temporary moratorium will allow the City sufficient time to determine what zoning districts are best-suited for this particular use, and how best to formulate land development and licensing regulations that will appropriately govern

the use of real property for the purpose of on-site distribution, sale, delivery or retail of low-THC cannabis, medical cannabis or cannabis delivery devices; and

**WHEREAS**, the City Council finds it is in the best interest of the citizens of the City to minimize and control the adverse effects of dispensing facilities by adopting appropriate land development and licensing regulations; and

**WHEREAS**, a court should not set aside the determination of public officers in land use matters unless it is clear that their action has no foundation in reason, and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, the public safety of the public welfare in its proper sense. *Id.*; and *Smithfield Concerned Citizens for Fair Zoning v. Town of Smithfield*, 907 F.2d 239, 243 (1st Cir. 1990); and

**WHEREAS**, the first step in ensuring a proper moratorium, is to ensure that the City's legislative has a rational basis and legitimate governmental purpose for the imposition of a moratorium; and

**WHEREAS**, the second step is for the Mayor and City Council to establish a record that the moratorium would further the governmental purpose of creating, finalizing, and adopting regulations relating to medical cannabis; and

**WHEREAS**, it is well-settled that permissible bases for land use restrictions include concern about the effect of the proposed use on traffic, on congestion, on surrounding property values, on demand for City services, and on other aspects of the general welfare. *WCI Communities, Inc.*, 885 So.2d at 915 and *Corn v. City of Lauderdale Lakes*, 997 F.2d 1369, 1375 (11th Cir. 1993); and

**WHEREAS**, the City is not interfering with a vested right obtained as a result of a final order from the City Planning and Zoning Board, or permit already obtained under the Florida Building Code; and

**WHEREAS**, the City Council finds that imposing a temporary moratorium until adequate regulations have been developed, considered and adopted is in the best interest of the health, safety and general welfare of the community and the residents of the City; and

**WHEREAS**, the Mayor and City Council desire to adopt a 90-day moratorium.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLE ISLE, FLORIDA:**

**SECTION 1. Recitals.** The foregoing recitals are incorporated by this reference as if fully set forth in the text of this Resolution. The recitals evidence the concern, motivations and reasons for imposition of this Resolution.

**SECTION 2. Moratorium Imposed.** The City of Belle Isle, Florida hereby declares a temporary building and zoning moratorium on the establishment and operation of dispensing facilities within the corporate limits of the City of Belle Isle. The City shall not accept, process or approve any application for business tax receipts, building permits, land use changes, zoning variances or permits, or any other development permits for any property, entity, or individual concerning or related to dispensing facilities engaged in permitted uses under Florida law, specifically Florida Statutes Sections 381.986 and 499.0295, whether as a principal or accessory use, so long as this resolution is in effect. No person, corporation, partnership or other entity shall establish or operate a dispensing

facility engaged in permitted uses under Florida law, specifically Florida Statutes Sections 381.986 and 499.0295.

**SECTION 3: Duration Of Moratorium.** The temporary moratorium shall take effect immediately upon adoption of this resolution and shall terminate ninety (90) days from the adoption of this resolution, unless the City Council rescinds or extends the moratorium by a subsequent ordinance.

**SECTION 4. Severability.** That if any clause, section or other part of this Resolution shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Resolution shall not be affected thereby, but shall remain in full force and effect.

**SECTION 5. Effective Date.** This Resolution shall take effect upon execution.

**PASSED and ADOPTED** this 18<sup>th</sup> day of July, 2017.

CITY OF BELLE ISLE:

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Lydia Pisano, Mayor

ATTEST:

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Yolanda Quiceno, City Clerk

(CITY SEAL)

Approved as to correctness and form:

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City Attorney