

ORDINANCE NO. - 17-1659

**AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA; ESTABLISHING A TEMPORARY MORATORIUM ON CANNABIS DISPENSING BUSINESSES AS FURTHER DEFINED HEREIN; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY, A GENERAL REPEALER CLAUSE, AND AN EFFECTIVE DATE.**

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

**WHEREAS**, on November 8, 2016, the voters of the state approved a Constitutional amendment to allow the legal use of medical marijuana (cannabis) in Florida; and

**WHEREAS**, a comprehensive State licensing and regulatory framework for the cultivation, processing, and dispensing of cannabis exists and may be further modified by the Florida Legislature in recognition of the Constitutional amendment; 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**, 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**, 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 Town hereby finds that the temporary moratorium imposed by this ordinance is intended to give the Town 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 Town 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 Town has determined it is in the public interest to adopt this Ordinance pursuant to the Town police powers to protect the health, safety, and welfare of the public; and

**WHEREAS**, the Town Commission held its first public hearing on December 13, 2016 having complied with the notice requirements required by Florida Statutes; and

**WHEREAS**, the Planning and Zoning Board, as the local planning agency for the Town, held its hearing on the proposed amendments on December 15, 2016 with due public notice and input; and

**WHEREAS**, the Town Commission conducted a second duly noticed public hearing on these regulations as required by law on February 16, 2017.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA:**

**Section 1. Purpose and Intent.**

The purpose of this Ordinance is to provide the Town with the opportunity to review the impact of recent changes in law and the recent passage of the 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 Town.

**Section 2. 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.

**Section 3. Temporary Moratorium.**

Beginning on the effective date of this Ordinance, for a period of twelve (12) months from the effective date, a moratorium is hereby imposed on the opening of cannabis dispensing businesses in the Town.

- 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 Town.
- 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 Town.

- 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 Town.
- d. During the moratorium, the Town 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 Town 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 Town 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.

**Section 4. Study and Recommendations.**

The Town Manager is hereby directed to study land development regulations for cannabis dispensaries and the impact of such regulations in other jurisdictions.

**Section 5. 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 6. Repeal.**

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

**Section 7. Effective Date.**

This ordinance shall take effect immediately upon adoption, and shall remain in effect for a period of twelve (12) months from that date.

**PASSED** on first reading this 13<sup>th</sup> day of December, 2016.

**PASSED** and **ADOPTED** on second reading this 16<sup>th</sup> day of February, 2017.



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Daniel Dietch, Mayor


On Final Reading Moved by: Commissioner Karukin

On Final Reading Seconded by: Commissioner Gielchinsky

**FINAL VOTE ON ADOPTION:**

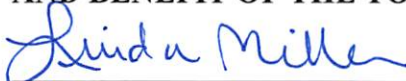
Commissioner Daniel Gielchinsky	<u>yes</u>
Commissioner Michael Karukin	<u>yes</u>
Commissioner Tina Paul	<u>Absent</u>
Vice Mayor Barry Cohen	<u>yes</u>
Mayor Daniel Dietch	<u>yes</u>

**ATTEST:**



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Sandra Novoa, MMC, Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**



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Linda Miller, Town Attorney