

ORDINANCE 15-08

AN ORDINANCE OF THE CITY OF ALACHUA, FLORIDA, PROVIDING AN EXTENSION OF ORDINANCE 15-02, EXTENDING FOR SIX (6) MONTHS THE TEMPORARY MORATORIUM ON ALL APPLICATIONS FOR DEVELOPMENT APPROVAL FOR "DISPENSING ORGANIZATIONS" AS DEFINED BY CHAPTER 2014-157, LAWS OF FLORIDA, AND AS FURTHER DEFINED IN CHAPTER 64-4.001, FLORIDA ADMINISTRATIVE CODE, AND PROVIDING FOR A SIX (6) MONTH MORATORIUM ON ALL APPLICATIONS FOR DEVELOPMENT APPROVAL FOR "DISPENSING ORGANIZATION FACILITIES" AS DEFINED IN CHAPTER 64-4.001, FLORIDA ADMINISTRATIVE CODE; PROVIDING FOR EXEMPTIONS; PROVIDING FOR AN ADMINISTRATIVE REMEDY; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

RECITALS

WHEREAS, The State of Florida has passed The Compassionate Medical Cannabis Act of 2014 ("Act") which allows for a certain number of operators to grow, process, and dispense low-THC cannabis,

WHEREAS, The Act requires the Florida Department of Health to promulgate rules for the implementation of this Act,

WHEREAS, on November 14, 2014, thirteen (13) of the rules proposed for the implementation of the Act were declared to be invalid exercises of delegated authority in Case No.: 14-4296RP, State of Florida, Division of Administrative Hearings,

WHEREAS, some of the rules that were stricken address the requirements for determining the allocation of operators, growers, processors, and the disbursement of the low-THC Cannabis,

WHEREAS, on May 27, 2015, a 65 page Final Order was rendered regarding the rule making process ("Order"),

WHEREAS, there appear to be conflicts between state and federal laws regarding the terms of the Act.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ALACHUA, FLORIDA:

SECTION 1: AUTHORITY.

The authority for the enactment of this Ordinance is Chapter 163, Florida Statutes; Section 166.021(1), Florida Statutes; and municipal home rule.

SECTION 2: FINDINGS OF FACT.

The above recitals are true and correct and are incorporated herein by reference.

SECTION 3: MORATORIUM.

The City of Alachua hereby adopts a six (6) month temporary moratorium on all applications for development approval for "Dispensing Organizations" as defined by Chapter 2014-157, Laws of Florida, also known as the "Compassionate Medical Cannabis Act of 2014", and as further defined in Chapter 64-4.001, Florida Administrative Code, and on all applications for development approval for "Dispensing Organization Facilities" as defined in Chapter 64.4-001, Florida Administrative Code, pending further rule making by the Florida Department of Health and clarification and further information regarding the position of the federal government and the enforcement of federal laws regarding the Act. During this timeframe, Staff will review the Order and Ordinances passed by other cities in order to provide further information to the City Commission.

SECTION 4: ADMINISTRATIVE REMEDY.

1. Any property owner who contends that the application of this Ordinance to his or her property constitutes a temporary regulatory taking or illegally interferes with a vested right shall submit an application, within forty-five (45) days of the Effective Date of this Ordinance, to the City Manager, or her designee, for administrative relief. The application shall contain all evidence known to the property owner that supports the property owner's contention that the imposition of this Ordinance to his or her property constitutes a temporary regulatory taking or illegally interferes with a vested right.
2. An application which contains an allegation of a temporary regulatory taking shall be evaluated pursuant to the criteria described in *Reahard v. Lee County*, 968 F.2d 1131 (nth Cir. 1992), which include:
 - a. Whether the property owner will be denied substantially all beneficial use of the property;
 - b. Consideration of economic impact of the temporary moratorium; and
 - c. The extent to which the temporary moratorium has interfered with the property owner's investment-backed expectations.

The following is a non-exclusive list of the factors to be analyzed under these criteria:

- a. The history of the property;
- b. The history of the development; The history of the property's Future Land Use Map classification;
- c. The history of the property's zoning;
- d. Any change in development when ownership changed;
- e. The present nature and extent of the property;
- f. The reasonable expectations of the property owner and the neighboring property owners; and

- g. Any diminution of the property owner's investment-backed expectations.
- 3. The City Manager, or her designee, shall make a determination within thirty (30) days of receipt of a complete application whether to grant or deny such an application. Determinations made by the City Manager pursuant to this Section may be appealed to the City Commission by filing a written request with the City Manager within ten (10) days of the City Manager's determination. Failure to file such an appeal shall constitute a waiver of the property owner's right to challenge the City Manager's determination.

SECTION 5: SEVERABILITY.

If any section, phrase, sentence, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 6: EFFECTIVE CLAUSE.

This Ordinance shall take effect immediately upon its adoption by the City Commission and the signature of the Mayor.

PASSED on first reading on the 22nd day of June, 2015.

PASSED and ADOPTED, in regular session, with a quorum present and voting, by the City Commission, upon second and final reading this 13th day of July, 2015.

CITY COMMISSION OF THE
CITY OF ALACHUA, FLORIDA

Gib Coerper, Mayor

SEAL

ATTEST:

APPROVED AS TO FORM

Traci L. Cain, City Manager/Clerk

Marian B. Rush, City Attorney