ORDINANCE NO. 01-17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEBARY, FLORIDA, RELATING TO MEDICAL CANNABIS ACTIVITIES; ADOPTING FINDINGS OF FACT; PROVIDING DEFINITIONS; IMPOSING A TEMPORARY MORATORIUM ON ALL MEDICAL CANNABIS DISPENSING FACILITIES, AND UPON CERTAIN OTHER MEDICAL CANNABIS ACTIVITIES UNLESS AUTHORIZED AS A DISPENSING ORGANIZATION OR MEDICAL MARIJUANA TREATMENT CENTER UNDER STATE LAW; DIRECTING CITY STAFF TO DEVELOP PROPOSED LAND DEVELOPMENT REGULATIONS AND OTHER RECOMMENDATIONS REGARDING SUCH CANNABIS-RELATED ACTIVITIES; PROVIDING FOR PENALTIES, SEVERABILITY, CONFLICT WITH OTHER ORDINANCES, NONCODIFICATION, CORRECTION OF SCRIVENER’S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, as provided in Section 2(b), Article VIII of the Constitution of the State of Florida, and Section 166.021(1), Florida Statutes, the City of DeBary, Florida (the “City”), a municipal corporation, enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, in 2014, the Florida Legislature passed the Compassionate Medical Cannabis Act, codified at Section 381.986, Florida Statutes (the “Compassionate Use Act”), which authorizes a licensed dispensing organization to cultivate, process, transport, and dispense “Low-THC Cannabis,” as defined by Section 381.986(1)(e), Florida Statutes, and derivative products for use by certain “qualified patients,” as defined by Section 381.986(1)(h); and

WHEREAS, in 2015 the Florida Legislature passed the Right to Try Act, codified at Section 499.0295, Florida Statutes, which amended the Compassionate Use Act and authorizes a licensed dispensing organization to cultivate, process, transport, and dispense “Medical Cannabis,” as defined by Section 381.986(1)(f), Florida Statutes, and derivative products for use by certain “eligible patients,” as defined by Section 499.0295, Florida Statutes; and

WHEREAS, to date, the Florida Department of Health has approved six (6) dispensing organizations throughout the State of Florida, which are authorized to cultivate, process, transport, and dispense Medical Cannabis, Low-THC Cannabis, and derivative products; and

WHEREAS, the Compassionate Use Act, Section 381.986(8), Florida Statutes, addresses preemption of local government regulation by state law and provides, in relevant part, “All matters regarding the regulation of the cultivation and processing of medical cannabis or low-THC cannabis by dispensing organizations are preempted to the state,” and, “A municipality may determine by ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with
WHEREAS, on November 8, 2016, the electors of the State of Florida voted upon and passed the Florida Right to Medical Marijuana Initiative, which amends the Florida Constitution to authorize “Medical Marijuana Treatment Centers,” defined therein as “an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Department”; and

WHEREAS, the amendment to the Florida Constitution effected by the Florida Right to Medical Marijuana Initiative becomes effective upon the first Tuesday after the first Monday in the year of 2017, in accordance with Article XI, Section 5(e) of the Florida Constitution; and

WHEREAS, the passage of the Florida Right to Medical Marijuana Initiative has expanded the medical use of cannabis and related products to patients suffering from certain “Debilitating Medical Conditions,” as defined therein, which represents a broader population of patients than those eligible under the Compassionate Use Act and the Right to Try Act; and

WHEREAS, the recent legalization of Low-THC Cannabis and Medical Cannabis by the Compassionate Use Act and the Right to Try Act, the expansion of such use by the passage of the Florida Right to Medical Marijuana Initiative respectively, and the potential for future changes in the law regarding the use of cannabis, raise substantial questions regarding the impact of Dispensing Facilities and Medical Cannabis Activities, as defined herein, upon the public health, safety, and welfare within the City of DeBary; and

WHEREAS, further, the constitutional amendment authorizes and/or requires the Florida Department of Health to promulgate certain regulations with respect to Medical Marijuana Treatment Centers and implementation of the constitutional amendment, which regulations could impact the authority of local governments to regulate Dispensing Facilities and other types of activities with respect to medical cannabis; and

WHEREAS, the purpose of this ordinance is to place a temporary moratorium on Dispensing Facilities and upon certain Medical Cannabis Activities, as defined herein, except where regulation of such activities is preempted to the state, for a period of time reasonably necessary for the City to investigate the impacts of Dispensing Facilities and Medical Cannabis Activities upon the public health, safety, and welfare, to promulgate reasonable regulations relating to such activities if deemed advisable by the City, and/or to wait and see what types of regulations and legislation may be promulgated by the Florida Department of Health and Legislature, respectively, and to assess their impact upon the City; and

WHEREAS, the DeBary City Council finds that this ordinance advances important government purposes, including but not limited to reducing the likelihood of potentially negative effects of unregulated Dispensing Facilities and Medical Cannabis Activities, as defined herein, upon residents and businesses located within the City, and the DeBary City Council finds that this ordinance is in the best interest of the public health, safety, and welfare.

IT IS HEREBY ORDAINED BY THE CITY OF DEBARY 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. For the purposes of this ordinance, the following words, terms, and phrases, including their respective derivatives, have the following meanings:

a. **Derivative Product** means any form of cannabis suitable for routes of administration.

b. **Dispensing Facility** means any facility where Medical Cannabis, Derivative Product, or Low-THC Cannabis is dispensed at retail, including but not limited to such facilities owned or operated by an approved dispensing organization under Section 381.986, Florida Statutes or by an approved Medical Marijuana Treatment Center under Article X, Section 29 of the Florida Constitution.

c. **Low-THC Cannabis** has the meaning established in Section 381.986(1)(e), Florida Statutes, and 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** has the meaning established in Section 381.986(1)(f), Florida Statutes, and 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, manufacture, dispensing, distribution, storage, and wholesale and retail sale of Medical Cannabis, Low-THC Cannabis, and Derivative Products, and other related activities. The term **Medical Cannabis Activities** shall include any single activity or combination of activities described in this definition.

SECTION 3. TEMPORARY MORATORIUM. Beginning on the effective date of this ordinance and continuing for a period of 270 days, or less if provided by an ordinance by the DeBary City Council, a moratorium is hereby imposed upon all Dispensing Facilities, except where inconsistent with or preempted by state law or regulation. 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 or an approved medical marijuana treatment center under Article X, Section 29 of the Florida Constitution, except where inconsistent with or preempted by state law or regulation. During the moratorium, the City of DeBary will not accept, process, or consider applications for development orders, development permits, or building permits relating to or concerning any proposed Dispensing Facilities or Medical Cannabis Activities. For the purposes of this Ordinance, the terms “development order” and “development permit” mean the same as defined by Section 163.3164, Florida Statutes.

SECTION 4. EXPIRATION OF THE TEMPORARY MORATORIUM. The temporary moratorium imposed by Section 3 of this ordinance expires 270 days from the effective date of this
ordinance. The moratorium may be extended or terminated early by adoption of an ordinance or resolution of the City Council.

SECTION 5. RECOMMENDATIONS FOR LAND DEVELOPMENT REGULATIONS. City Staff, at the City Manager’s Direction, is hereby directed to study Medical Cannabis Activities and Dispensing Facilities and their impact on the health, safety, and welfare of residents and businesses located within the City, and to develop and recommend, as deemed advisable by the City Manager, land development regulations for Medical Cannabis Activities and/or Dispensing Facilities in the City, and any other relevant and appropriate regulations and recommendations, with such recommendations and proposed regulations being delivered to the DeBary City Council within a reasonable time before the expiration of this moratorium.

SECTION 6. PENALTIES. Violations of this ordinance are punishable as provided by Section 1-14 of the City’s Land Development Code, or other applicable provisions of the City’s Land Development Code and Code of Ordinances.

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. CONTROL. In the event of a conflict or conflicts between this Ordinance and other ordinances, this Ordinance controls.

SECTION 9. NONCODIFICATION. This Ordinance shall not be codified.

SECTION 10. SCRIVENER’S ERROR. Scrivener’s errors found in this ordinance may be corrected by the City Manager or by the City Attorney by filing a corrected copy of this ordinance with the City Clerk.

SECTION 11. EFFECTIVE DATE. This ordinance takes effect immediately upon adoption.

FIRST READING this _____ day of____________, 2017.

SECOND READING AND ADOPTION this _____ day of____________, 2017.

CITY OF DEBARY, FLORIDA

Lita Handy-Peters, Interim Mayor

ATTEST:

Warren Graham, City Clerk