

**ORDINANCE NO. 2388**

**AN ORDINANCE OF THE CITY OF APOPKA, FLORIDA, AFFECTING THE USE OF LAND IN THE CITY OF APOPKA, AMENDING ARTICLE III OF THE LAND DEVELOPMENT CODE TO INCLUDE A NEW SECTION 3.05 TITLED "DESIGNATED GROW AREA OVERLAY DISTRICT", PROVIDING THAT CANNABIS CULTIVATION AND PROCESSING AND MARIJUANA DISPENSARIES/MEDICAL TREATMENT CENTERS ARE SPECIAL EXCEPTION USES WITHIN A "DESIGNATED GROW AREA OVERLAY DISTRICT" AND PROHIBITING SUCH USES WITHIN ANY OTHER ZONING DISTRICTS OR LOCATIONS WITHIN THE JURISDICTION OF APOPKA; PROVIDING ADDITIONAL STANDARDS AND CONSIDERATION FOR APPROVAL OF A SPECIAL EXCEPTION FOR CANNABIS CULTIVATION OR PROCESSING OR MARIJUANA DISPENSARY/MEDICAL MARIJUANA TREATMENT CENTER; PROVIDING DEFINITIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, CONDITIONS; AND SETTING AN EFFECTIVE DATE.**

**WHEREAS**, the State of Florida is considering legalizing the cultivation and processing of cannabis and the dispensing of marijuana; and

**WHEREAS**, the purpose and intent of this Ordinance is to regulate the cultivation and processing of cannabis and the dispensing of non-medical\medical marijuana in order to promote the health, safety, and general welfare of the residents and businesses within the City.

**WHEREAS**, the City Council has determined that it is in the best interest of the citizenry and general public to regulate the location of cannabis cultivation and processing and marijuana dispensaries/medical marijuana treatment centers in the event the State of Florida legalizes said dispensaries, whether for medical use or non-medical use; and

**WHEREAS**, the City Council has the responsibility and authority to determine what uses are best suited to particular zoning categories as well as land use categories within the City; and

**WHEREAS**, the City Council has determined that given the potential impact on the surrounding area, cannabis cultivation and processing and marijuana dispensaries/medical marijuana treatment centers should only be permitted within a limited areas of the municipal limits, and non-medical marijuana sales should be prohibited within the municipal limits;

**WHEREAS**, the City Council has determined that it is advisable and in the public interest to set certain distance and other siting standards in regard to the location and operation of cannabis cultivation or processing or marijuana dispensaries/medical marijuana treatment centers; and

**WHEREAS**, the City Council of the City of Apopka finds that this ordinance promotes the general welfare and is consistent with the Comprehensive Plan.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF APOPKA, FLORIDA, as follows:**

**SECTION 1. DEFINITIONS:**

- a. Agriculture: means the science and art of production of plant(s) and animals useful to humans, including to a variable extent the preparation of these products for human use and their disposal by marketing or otherwise, and includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production, including hay or grass harvesting and bailing operation. For the purposes of marketing and promotional activities, seafood shall also be included in this definition.
- b. Cannabis: Any plant(s) or part of a plant(s) of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant(s); and every compound, manufacture, salt, derivative, mixture, or preparation of the plant(s) or its seeds or resin.
- c. Cannabis Cultivation: the planting, tending, improving, farming, drying or harvesting of cannabis plants from seed, juvenile stock, or grafting.
- d. Cannabis Processing: the preparation of the cannabis plant intended for use as medicine or medical purposes as prescribed by a licensed Florida physician.
- e. Designated Grow Area (DGA) Overlay District. The following areas are defined as a "Designated Grow Area" Overlay District:
  - 1) Keene\Clarcona DGA: All Agriculture or Industrial zoned property in the general area west of the S.R. 414 bridge at E. Keene Road, east of McQueen Road, and south of S.R. 414, as depicted in Map A: Keene\Clarcona Road DGA as delineated in Map A: Keene\Clarcona DGA.
  - 2) Hermit Smith\Hogshead DGA: All Agriculture or Industrial zoned property within the area west of S.R. 429, south of U.S. 441, and north of Lust Road, as delineated in Map B: Hermit Smith\Hogshead DGA.
- f. Fully enclosed and secure structure: A space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors.
- g. Horticulture Nursery: an agriculture operation limited to the cultivation of fruits, vegetables, nuts, seeds, herbs, sprouts, mushrooms, algae, flowers, seaweeds and non-food crops such as grass and ornamental trees and plants.
- h. Legacy Grow Site: Property actively operated as a registered nursery within a Designated Grow Area for at least five continuous years preceding and measured from the effective date of this ordinance.
- i. Marijuana Dispensary: A facility that is operated by an organization or business holding all necessary licenses and permits from which marijuana, cannabis, cannabis-based products, or cannabis plant(s) are delivered, purchased, possessed, or dispensed for medical purposes and operated in accordance with all local and state laws.

- j. **Marijuana Treatment Center:** A medical marijuana dispensary where qualifying patients are administered medical marijuana by medical professional licensed by the State of Florida to patients in accordance with all local and state laws.
- k. **Medical Use:** The prescriptive use of any form of cannabis to treat a qualifying medical condition and the symptoms associated with that condition or to alleviate the side effects of a qualifying medical treatment, as identified by a physician licensed by the State of Florida.
- l. **Non-Medical Marijuana Sales.** The purchase, sale, transfer or delivery of marijuana, cannabis, cannabis-based products or cannabis plant(s) when such sale, transfer or delivery is not associated with any medical purpose or use, whether or not such purchase, sale, transfer or delivery is lawful under state law.

## **SECTION 2. CANNABIS CULTIVATION AND PROCESSING PROHIBITED.**

Cultivation or processing of cannabis for non-medical marijuana purposes is prohibited within the City of Apopka. Excepting the Designated Grow Areas described in Sec. 3a., cultivation or processing of cannabis for medical use is prohibited in all other areas of the City of Apopka. It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel in the City of Apopka to cause or allow such parcel to be used for the cultivation or processing of cannabis plants within a fully enclosed and secure structure on the parcel, except as outlined below in Section 3.

## **SECTION 3. CANNABIS CULTIVATION AND PROCESSING.**

- a. Cultivation or processing of cannabis for medical marijuana is allowed as a Special Exception use approved by the Planning Commission within an Agriculture or Industrial I-1 district located within a DGA or Legacy Grow Site located within a DGA as delineated in Maps "A" and "B". If a parcel, lot, or legal lot-of-record straddles the DGA boundary, no cultivation or processing can occur outside the DGA boundary.
- b. Horticulture Nursery Special Exception Prohibition. Cultivation or processing of cannabis for medical or non-medical use is prohibited as a special exception use for horticulture nursery operations. Any Special Exception approved by the City prior to the effective date of this ordinance is not allowed to cultivate or process cannabis.
- c. Enclosed Cultivation. Any cultivation of cannabis shall occur within a fully enclosed and secure structure. Outdoor cultivation is prohibited
- d. Enclosed Processing. All cannabis processing, laboratories, research activities and associated equipment occur within a fully enclosed and secured building that has been issued a building permit by the City of Apopka or Orange County.
- e. License. A valid license must be obtained from the State of Florida and remain in effect during the operation of the cannabis business. All cultivation and processing activities shall cease if a license has expired. At least seventy-two (72) hours before a cannabis cultivation or processing business terminates operation, the owner must notify the Police Chief of the City of Apopka.
- f. **Additional Special Exception Criteria:**
  - 1). Street Access. All cannabis cultivation and processing sites within the Keene\Clarcona DGA must directly access Keene Road or Clarcona Road. All cannabis cultivation and

processing sites within the Hermit Smith\Hogshead DGA must directly access Hermit Smith Road, Hogshead Road, Peterson Street, or Binion Road.

A stabilized surface acceptable to the city engineer shall be provided from the public street to any onsite processing buildings.

- 2) Utilities. All cannabis processing sites shall connect to a central water and sewer system unless otherwise temporarily waived by the City Administrator until a development agreement addresses a schedule for connecting the site to such services. Onsite wells and septic tanks may be allowed on a temporary basis through a development agreement that ensures connection to a central water and sewer systems within five years.
- 3) Employee Parking. All employee vehicle parking areas shall occur within a paved, lighted parking lot.
- 4) Distance Separation. Cultivation or processing buildings or structures shall be separated from other uses according to the following separation minimum standard:

Location of Cultivation or Processing Buildings or Structure	Affected Property (feet)			
	Vacant Parcel Assigned a Residential Zoning District	Church or Place of Worship, School, Hospital, County or Municipal Park, Day Care (F.S. 402.302)	Platted Residential Subdivision; Residential Parcel less than 5 acres	Occupied Residential Parcel Greater than 5 acres
Designated Grow Area	100	500	250	200

Distances shall be measured by drawing a straight line between the closest point of the cannabis cultivation or processing building or nursery structure to the closest property line or edge of leased space (whichever is closer) of the affected property.

- 5) Minimum Parcel Size. A minimum parcel size necessary for cultivation, processing, or combined operations within a DGA is two (2) compact and contiguous acres.
- 6) Parcel. Cannabis cultivation or processing shall occur on a separate parcel, lot, or legal lot-of-record than that on which a medical marijuana dispensaries/medical marijuana treatment centers is located.
- 7) Signage. No business identification sign (i.e., wall, monument, pole, directional) shall include the words "marijuana", "cannabis", or any similar related word, nor shall any graphic or illustration associated with such words appear in such signs for any business cultivation, processing or dispensing business. An electronic reader board or changeable copy sign is not allowed on any property where cannabis is cultivated, processed, sold, or dispensed.

- 8) Security and Safety Plan. A security and safety plan will be reviewed and approved by the chief of police or designee. The security and safety plan shall at minimum address but not be limited to, locking options, alarm systems, and video surveillance, and as otherwise determined necessary by the Police Chief. Any such documents or information for review shall be transmitted directly to the police chief's office for review and not attached to the permit as may be required by the Community Development Department. The police chief or designee will respond to the development review committee approval or denial of said plan. Any information, records, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems or other sensitive information gathered will be exempt from public records in accordance with FSS 119.071, "General exemptions from inspection or copying of public records."

#### **SECTION 4. MARIJUANA DISPENSARIES/MEDICAL MARIJUANA TREATMENT CENTERS.**

- a. *Applicable Zoning District*. Marijuana dispensaries/medical marijuana treatment centers for marijuana medical use are allowed as a Special Exception within a Commercial C-1, Industrial I-1 or Agriculture District located within a Designated Grow Area subject to compliance with the standards set forth below. No more than five (5) medical marijuana dispensary/medical marijuana treatment center establishments shall locate within each of the Designated Grow Areas.
- b. *Prohibited Locations*. Non-medical marijuana dispensaries/medical treatment centers or sales are prohibited within the jurisdictional area of the City of Apopka. Medical Marijuana dispensaries/medical marijuana treatment centers are prohibited in the City of Apopka except as allowed in Section 4.a. Zoning Districts where medical marijuana dispensaries/medical marijuana treatment centers are prohibited also include: the Downtown Development Overlay District, Community Redevelopment Area (CRA), Planned Unit Development, Mixed-EC, and Mixed-CC zoning categories.
- c. No other business shall be permitted to be conducted from the same address where the marijuana dispensary/medical marijuana treatment center is located. This requirement does not apply to licensed nursery businesses that were operating prior to the effective date of this ordinance.
- d. Any parking demand created by marijuana dispensary/medical marijuana treatment center shall not exceed the parking spaces located or allocated on site, as required by the city's parking regulations.
- e. *Controlled Substances*. The onsite sale, provision, or dispensing of marijuana is prohibited except as specifically authorized by state law.
- f. *Loitering*. A marijuana dispensary/medical marijuana treatment center shall provide adequate seating for its patients and business invitees. The marijuana dispensary/medical marijuana treatment center shall not direct or encourage any patient or business to stand, sit (including in a parked car), or gather or loiter outside of the building where the dispensary/center operates, including in any parking areas, sidewalks, rights-of-way, or neighboring properties for any period of time longer than reasonably required for patients to conduct their official business and depart. The marijuana dispensary/medical marijuana treatment center shall post conspicuous signs on at least three (3) sides of the building stating that no loitering is allowed on the property.

- g. *Queuing of Vehicles.* The marijuana dispensary/medical marijuana treatment center shall ensure that there is no queuing of vehicles in the rights-of-way. The marijuana dispensary/medical marijuana treatment center shall take all necessary and immediate steps to ensure compliance with this paragraph.
- h. *No Drive-Through Service.* No marijuana dispensary/medical marijuana treatment center shall have a drive-through or drive-in service aisle. All onsite dispensing, payment for and receipt of said marijuana shall occur from within or inside the marijuana dispensary/medical marijuana treatment center.
- i. *On-Site Consumption of Marijuana and/or Alcoholic Beverages.* No consumption of marijuana or alcoholic beverages shall be allowed on the premises, including in the parking areas, sidewalks or rights-of-way except for medical marijuana treatment centers. The marijuana dispensary/medical marijuana treatment center shall take all necessary and immediate steps to ensure compliance with this paragraph.
- j. *Signage.* No business identification sign (i.e., wall, monument, pole, directional, human) shall include the words “marijuana”, “cannabis”, or any similar related word, nor shall any graphic or illustration associated with such words appear in such signs or on any building or structure used a marijuana dispensing/marijuana treatment center. An electronic reader board or changeable copy sign is not allowed on any property where cannabis is cultivated, processed, sold, or dispensed
- k. *Hours of Operation.* Marijuana dispensaries/medical marijuana treatment centers shall only dispense or treat patrons between 7:00 A.M. and 8:00 P.M.
- l. *Customer Waiting Area.* All customer waiting areas shall occur within in an enclosed building. No customer waiting areas shall occur outdoors or within a porch area, whether covered or not.
- m. *Building Orientation and Design.* All customer building entrances shall be oriented to and visible from a public street. Color of any wall or roof of any marijuana dispensaries/medical marijuana treatment centers shall comply with the City’s Development Design Guidelines.
- n. *Distance Separation.* No marijuana dispensary/medical marijuana treatment center shall be located within five hundred (500) feet of any school or church, or within two hundred (200) feet of any residentially zoned property, as further defined by these regulations. Distances shall be measured by drawing a straight line between the closest point of the marijuana dispensary/medical marijuana treatment center structure (be it a building or leased space in a building) to the closest property line or edge of leased space (whichever is closer) of the school, church or residentially zoned property.
- o. *Compliance with Other Laws.* All marijuana dispensaries/medical marijuana treatment centers shall at all times be in compliance with all state regulations and the Apopka City Code of Ordinances and Land Development Code, as may be applicable and amended from time to time.
- p. *Security and Safety Plan.* Compliance with Section 3.f.8. of this ordinance is required.
- q. *Special Exception Standards.* When considering an application for marijuana dispensaries/ medical marijuana treatment centers, the Planning Commission must consider the special exception criteria listed in paragraph d below, in addition to that criteria listed in subsection 2.02.B.5. The Planning Commission may deny the request, approve the request, or approve the request with conditions, based upon a review of these considerations. The Planning Commission may assign additional conditions and safeguards as deemed necessary:

- 1) Whether the request will cause damage, hazard, nuisance or other detriment to persons or property.
  - 2) No other business, aside or separate from the dispensing of marijuana shall be permitted to be conducted from the same address where the marijuana dispensary/medical marijuana treatment center is located.
  - 3) The parcel, lot, or lot-of-record shall access a collector or arterial road.
  - 4) Additional Hours of Operation Restrictions. Hours of operation can be further restricted based on proximity of residential development or to protect the character and environment of developed surrounding areas.
- r. Exemptions. Hospitals and pharmacies licensed by the State of Florida are exempt from Section 4.

**SECTION 5. GENERAL USE. PROHIBITION ON STREETS, SIDEWALKS, ALLEYS, ETC.**

- 1) Regulations applicable to the consumption of medical marijuana. No person shall smoke, ingest, or otherwise consume medical marijuana in the City of Apopka unless such smoking, ingesting or consumption occurs entirely within a private residence, or within a clinic, health care facility, residential care facility, or residential hospice licensed pursuant to applicable provisions of Florida Statutes.
- 2) It is unlawful for any person to purchase, use, smoke, ingest, offer for sale, possess, consume, or carry any non-medical\medical marijuana in any public park or governmental property or on the public right -of -way, inclusive of streets, sidewalks or alleys, within the Municipal Corporate Limits of the City of Apopka Florida.
- 3) It is unlawful for any person to purchase, use, smoke, ingest, offer for sale, possess, consume or carry non-medical\medical marijuana or carry in or upon any parking area open to public use or in or upon any private property without the consent of the owner, tenant or other person lawfully in possession of said property.
- 4) It is unlawful for any person to smoke, ingest, or otherwise consume or carry or use non-medical\medical marijuana while such person is in or on any vehicle which is located in or upon any parking area open to public use, or in or upon any private property without consent of the owner or in any public park or governmental property or on the public right -of -way, inclusive of streets, sidewalks or alley.
- 5) It is unlawful for any person to smoke, ingest or otherwise consume or use any non-medical\medical marijuana on the streets, sidewalks or alleys within the city, while such person is an operator or passenger in or on any vehicle, whether moving or stopped, and such consumption is open to public view.

**SECTION 6.** Notwithstanding any other provision, it is unlawful for any person to utilize medical marijuana in any public park or governmental property or on the public right-of-way, inclusive of streets, sidewalks or alleys, within the city; in or upon any parking area open to public use, or in or upon any private property without the consent of the owner, tenant or other person lawfully in possession of said property; or when such person is in or on any vehicle which is located in or upon any parking area open to public use, or

in or upon any private property or in any public park or governmental property or on the public right-of-way, inclusive of streets, sidewalks or alleys.

**SECTION 7.** It is unlawful for any vendor, or for any agent, servant or employee of such vendor, to permit the use of medical marijuana in or upon any parking or other area outside of the vendor's building or room if such parking or other area is adjacent to the building or premises in which the business licensed is operated, when such parking or other area is owned, rented, leased, regulated, controlled or provided, directly or indirectly, by such licensed vendor or any agent, servant or employee of such licensed vendor. A licensed vendor may post and maintain a legible painted or printed sign in at least two separate prominent places on such parking or other area, with sufficient light directed thereon to be visible during the hours of darkness while such place of business is open, in letters not less than three inches in height, stating the following: "WARNING: Utilization of medical marijuana on this Lot Prohibited—\$500.00 Fine and/or 60 days in Jail—City Ordinance." Posting of such signs shall constitute prima facie evidence that such vendor is not operating in violation of subsection (a) of this section. If any licensed vendor mentioned in this section is a corporation, then the officers of such corporation shall be regarded as the owners thereof for the purposes of enforcement of this section.

**SECTION 8. PENALTIES.** Any person violating any of the provisions of this article shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the State of Florida in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and, upon conviction, shall be punished by a fine not to exceed \$500.00 or by imprisonment in the county jail not to exceed 60 days or by both fine and imprisonment as provided in F.S. § 162.22, (1997). Each incident or separate occurrence of any act that violates this article shall be deemed a separate offense. In addition to the penalties provided under this section, violators of this article shall be subject to any other appropriate civil or criminal action provided by law in a court of competent jurisdiction, including, but not limited to, injunctive relief.

**SECTION 9. CONFLICTS.** Any ordinance, resolution, or part thereof, in conflict with this Ordinance, or any part hereof, is hereby repealed to the extent of such conflict.

**SECTION 10. SEVERABILITY.** If any portion of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holding shall not affect the remaining portions of this Ordinance. If this Ordinance or any provision thereof shall be held to be inapplicable to any person, property or circumstances, such holding shall not affect its applicability to any other person, property or circumstances.

**SECTION 11. EFFECTIVE DATE.** This Ordinance shall take effect immediately upon passage and adoption by the City Council as to the acceptable siting locations for marijuana dispensaries/medical marijuana treatment centers, however the designation of a marijuana dispensary/medical marijuana treatment center and the selling of marijuana products as defined by the Florida Constitution or Florida Law shall occur only upon and after the official date in which the sale and distribution of marijuana has been deemed legal by the State of Florida.

**SECTION 12. REPEALER.** Any and all ordinances and regulations in conflict herewith are hereby repealed to the extent of any conflict. This ordinance specifically repeals and replaces the following ordinance(s) and regulation(s): Land Development Code, Chapter III, Article 3, Section 3-11, Subsection E, Paragraph 15 titles "Pain Management Clinics."



**SECTION 13. INCLUSION INTO THE LAND DEVELOPMENT CODE.** It is the intent of the City Council that the provisions of this ordinance shall become and be made a part of the City of Apopka Land Development Code, re-arranged to meet existing codification, and that the sections of this ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

Passed on the first reading on the 6<sup>th</sup> day of May, 2015.

FIRST READING: April 1, 2015

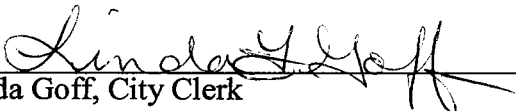
SECOND READING: April 15, 2015

THIRD READING  
AND ADOPTION: May 6, 2015

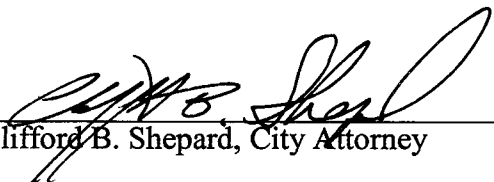
  
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Joseph E. Kilsheimer, Mayor

Attorney signature recommended for this ordinance.

ATTEST:

  
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Linda Goff, City Clerk

APPROVED AS TO FORM:

  
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Clifford B. Shepard, City Attorney

DULY ADVERTISED FOR PUBLIC HEARING: March 13, 2015  
April 3, 2015  
April 24, 2015



