

ORDINANCE 2017-13

AN ORDINANCE OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA, RELATING TO MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES; PROHIBITING/BANNING SUCH FACILITIES AS A LAWFUL USE WITHIN THE BOUNDARIES OF THE CITY AS AUTHORIZED BY SECTION 381.986, *FLORIDA STATUTES*; AMENDING THE *MUNICIPAL CODE OF ORDINANCES, LAND DEVELOPMENT CODE*, TO PROHIBIT/BAN ALL SUCH USES IN ALL ZONING DISTRICTS OF THE CITY; PROVIDING FOR IMPLEMENTING PROVISIONS AND A DEFINITION; PROVIDING FOR A MORATORIUM CONTINGENCY; PROVIDING FOR ENFORCEMENT; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2, *Constitution of the State of Florida*, authorizes the City of Daytona Beach Shores to exercise any power for municipal purposes except as otherwise provided by law; and

WHEREAS, Section 163.3202, *Florida Statutes*, provides that the City of Daytona Beach Shores shall adopt and enforce land development regulations for the purpose of implementing its *Comprehensive Plan* and protecting the public health, safety, and general welfare; and

WHEREAS, the City of Daytona Beach Shores has the authority to adopt this Ordinance pursuant to Article VIII of the *Constitution of the State of Florida*; Chapters 163 and 166, *Florida Statutes*; and Section 381.986, *Florida Statutes*; and

WHEREAS, potential adverse impacts on the health, safety, and welfare of residents and business from secondary effects associated with the sale and distribution of marijuana exist, potentially including: offensive odors, trespassing, theft, fire hazards, increased crime in and about the medical marijuana dispensing facility business, robberies, negative impacts on nearby businesses, nuisance problems; and

WHEREAS, certain of the above potential adverse impacts are accentuated by the current difficulties experienced by medical marijuana dispensing facility business in obtaining banking services necessitating such businesses to operate on a cash basis; and

WHEREAS, there exists the potential for misappropriation and diversion of medical marijuana to non-medical uses; and

WHEREAS, in 1996, the State of California became the first state to legalize the use of medical marijuana, and several other states subsequently enacted laws legalizing medical marijuana in various circumstances; and

WHEREAS, the California Police Chiefs Association developed a Task Force on Marijuana Dispensing facilities that prepared the "White Paper on Marijuana Dispensing facilities" published in 2009 (hereinafter the "White Paper"); and

WHEREAS, the White Paper examined the direct and indirect adverse impacts of marijuana in local communities and indicated that marijuana dispensing facilities may attract or cause ancillary crimes, and may result in adverse effects, such as marijuana smoking in public, the sale of other illegal drugs at dispensing facilities, loitering and nuisances, and increased traffic near dispensing facilities; and

WHEREAS, the White Paper further indicates that the presence of marijuana dispensing businesses may contribute to the existence of a secondary market for illegal, street drugs; and

WHEREAS, the White Paper outlines the following typical complaints received from individuals regarding certain marijuana dispensing facility study areas: high levels of traffic going to and from the dispensing facilities, people loitering in the parking lot of the dispensing facilities, people smoking marijuana in the parking lot of the dispensing facilities, vandalism near dispensing facilities, and citizens worried that they may become a crime victim due to proximity to dispensing facilities; and

WHEREAS, the White Paper ultimately concludes that adverse secondary effects may be created by the presence of medical marijuana dispensing facilities in communities; and

WHEREAS, the Marijuana Policy Group has published a memorandum called "Municipal Dispensary Allocation: Florida," which evaluated the market need for medical marijuana dispensing facilities and the harmful consequences and secondary effects of over-saturation of medical marijuana dispensing facilities within the market place; and

WHEREAS, the Marijuana Policy Group determined that Florida should have no more than one dispensing facility for each 50,000 residents and that the optimal ratio is one dispensing facility per 67,222 residents, and the City of Daytona Beach Shores has a population (approximately 4,000) well below such ratios; and

WHEREAS, based upon the actions of Volusia County Government and other local governments within Volusia County, medical marijuana will be available within Volusia County in accordance with the vote of the State and County electorate in amending the *Constitution of the State of Florida* to authorize medical marijuana usage under certain circumstances and conditions; and

WHEREAS, Section 381.986(11), *Florida Statutes*, authorizes a county or municipality to "ban medical marijuana treatment center dispensing facilities from being located within the boundaries of that county or municipality"; and

WHEREAS, Section 381.986(1) (j), *Florida Statutes*, provides that, when authorized by a local government, "medical use" of marijuana authorized by a physician certification does not include "[p]ossession, use, or administration of marijuana in a form for smoking. . ."; and.

WHEREAS, Section 381.986(11), *Florida Statutes*, further provides that "[a] county or municipality that does not ban dispensing facilities under this subparagraph may not place specific limits, by ordinance, on the number of dispensing facilities that may locate within that county or municipality," and that "[e]xcept as provided in paragraph (c), a county or municipality may not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465"; and

WHEREAS, given, among other things, the secondary effects of medical marijuana dispensing facilities, the Marijuana Policy Group's the analysis of optimal population ratios (residents per dispensing facility), and the statutory restrictions on local government authority to regulate number and location of dispensing facilities if not banned, there is a rational basis for the City to exercise its authority under Section 381.986(11), *Florida Statutes*, to ban dispensing facilities within the boundaries of the City; and

WHEREAS, the City Council of the City of Daytona Beach Shores finds that it is in the best interests and welfare of the citizens of the City to enact this Ordinance; and

WHEREAS, the City of Daytona Beach Shores has complied with all requirements and procedures of Florida law in processing and advertising this Ordinance; and

WHEREAS, this Ordinance is consistent with the goals, objectives and policies of the *Comprehensive Plan of the City Daytona Beach Shores*; and

WHEREAS, the recitals to this Ordinance (whereas clauses) are adopted as the legislative findings and intent of the City Council of the City of Daytona Beach Shores.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF DAYTONA BEACH SHORES, FLORIDA THAT:

SECTION ONE: PROHIBITION ON MEDICAL MARIJUANA DISPENSING FACILITIES. The *Land Development Code of the City of Daytona Beach Shores* as set

forth in the *Code of Ordinances of the City of Daytona Beach Shores*, is amended to read as follows:

Prohibition on Medical Marijuana Dispensing Facilities.

(a). *Prohibition.* Medical marijuana treatment center dispensing facilities are prohibited and shall not be located within the boundaries of the City. The City shall not accept, process or approve any request or application for a development order, development permit, building permit or other approval associated with a proposed medical marijuana treatment center dispensing facility.

(b). *Definition.* For the purposes of this section, the term "*Medical Marijuana Treatment Center Dispensing Facility*" means any facility where medical marijuana or any product derived therefrom is dispensed at retail.

(c). *Interpretation/Intent.* This section and the terms used herein shall be interpreted in accordance with Section 381.986, *Florida Statutes*, and Chapter 64-4, *Florida Administrative Code*. The intent of this Ordinance is to ban medical marijuana treatment center dispensing facilities from being located within the boundaries of the city as authorized by Section 381.986 (11), *Florida Statutes*.

Moratorium Contingency.

In the event Section 381.986, *Florida Statutes*, is amended or interpreted by a court of competent jurisdiction in a way as to eliminate or prevent the City's ability to ban or prohibit marijuana treatment center dispensing facilities within the City Limits (or such statute or this Ordinance is interpreted in a manner to prevent the enforcement of this Ordinance), upon the effective date of such, an automatic one (1)-year moratorium shall go into place on the acceptance, processing and approval of marijuana treatment center dispensing facilities (including by way of example only and not a limitation, acceptance, proceeding and approval of applications for development orders and permits) within the City Limits in order to give the City time to evaluate changes in the applicable law, the City's ability to regulate such uses and activities and potentially enact local legislation regarding the same. Such one-year moratorium may be terminated early through resolution or ordinance of the City Council.

SECTION TWO: ENFORCEMENT. The City may enforce the provisions of this Ordinance by any lawful means available to the City under the controlling provisions of State law and Section 1.8 of the *Code of Ordinances of the City of Daytona Beach Shores, Florida*.

SECTION THREE: SAVINGS. The prior actions of the City of Daytona Beach Shores relating to the regulation of the matters and uses which are the subject of this Ordinance are hereby ratified and affirmed to include, but not be limited, to the enforcement of all controlling laws relative to the drug of marijuana.

SECTION FOUR: CODIFICATION.

(a). The provisions of this Ordinance, including its recitals, shall become and be made a part of the *Code of Ordinances of the City of Daytona Beach Shores, Florida* and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention and the word "Ordinance", or similar words, may be changed to "Section," "Article", or other appropriate word; provided, however, that Sections Two, Three, Four, Five, Six and Seven shall not be codified.

(b). The legislative intent set forth in the recitals to this Ordinance shall be codified.

(c). Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this Ordinance or the City Code may be freely made. The Code codifier is granted liberal authority to codify the provisions of this Ordinance to include, but not be limited to, the editing of tables, charts and maps to reflect the intent of this Ordinance.

SECTION FIVE: CONFLICTS. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

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

SECTION SEVEN: EFFECTIVE DATE. This Ordinance shall take effect immediately upon enactment.

CITY OF DAYTONA BEACH SHORES, FLORIDA

HARRY JENNINGS, MAYOR

MICHAEL T. BOOKER, CITY MANAGER

CHERI SCHWAB, CITY CLERK

Approved as to form and legality:

LONNIE GROOT, CITY ATTORNEY

Passed on first reading this _____ day of _____, 2017.

Adopted on second reading this _____ day of _____, 2017.