

ORDINANCE NO. 2015-34

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA AMENDING THE LAND DEVELOPMENT CODE; AMENDING CHAPTER 2 TO ADD DEFINITIONS RELATED TO MEDICAL MARIJUANA; AMENDING CHAPTER 12 TO ADD PARKING REQUIREMENTS FOR MEDICAL MARIJUANA RELATED USES; AMENDING CHAPTER 16 TO ADD MARIJUANA RELATED USES TO THE LIST OF PROHIBITED HOME OCCUPATIONS; AMENDING CHAPTER 17 TO ADD MEDICAL MARIJUANA DISPENSARIES AS A SPECIAL EXCEPTION USE IN THE COMMUNITY COMMERCIAL (CC) ZONING DISTRICT; TO ADD MEDICAL MARIJUANA CULTIVATION AND MEDICAL MARIJUANA PROCESSING FACILITIES AS SPECIAL EXCEPTION USES IN THE COMMERCIAL INDUSTRIAL (CI) AND LIGHT INDUSTRIAL (LI) ZONING DISTRICTS; AMENDING CHAPTER 18 TO ADD SPECIAL REQUIREMENTS FOR THESE SPECIAL EXCEPTION USES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, City Council recognizes that the State of Florida has authorized the limited use of medical marijuana for certain medical conditions by its adoption of the Compassionate Medical Cannabis Act of 2014 codified at Section 381.986 of the Florida Statutes; and

WHEREAS, the Florida Right to Medical Marijuana Initiative Amendment, was very nearly adopted by voters in November of 2014 which would have provided for a more broad scale use of medical marijuana; and

WHEREAS, the above mentioned initiative is coming back before the voters for consideration in 2016; and

WHEREAS, in order to establish the land use and zoning framework for medical marijuana, a previously undefined use, certain amendments to the Land Development Code are necessary; and

WHEREAS, staff has reviewed various publications addressing the direct and secondary impacts relating to the legalization of marijuana, including *Planning for Marijuana: The Cannabis Conundrum* (Journal of the American Planning Association, 2014), *The Legalization of Marijuana in Colorado: The Impact* (Rocky Mountain HIDTA, 2013), White Paper on Marijuana Dispensaries (California Police Chiefs Association's Task Force on Marijuana Dispensaries, 2009), and various regulatory ordinances from cities in Florida and throughout the United States; and

WHEREAS, City Council finds it necessary to impose certain special exception requirements to prevent the accumulation of these uses in a concentrated area and limit potential negative impacts to surrounding businesses and residential properties, and to ensure that public health, safety, and general welfare are protected; and

WHEREAS, the Planning Commission has recommended adoption of this Ordinance to amend the Land Development Code; and

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

SECTION 1: The City Council of the City of Port Orange hereby amends Chapter 2, Section 2 of the Land Development Code, to add the following definitions in alphabetic order:

Chapter 2 – DEFINITIONS AND INTERPRETATIONS

Section 2: - Definitions.

Marijuana. Any form or variant or species of the cannabis plant including but not limited to cannabis sativa L., C. ruderalis, C. indica and its constituent cannabinoids, such as tetrahydrocannabinol (THC) and cannabidiol (CBD) commonly referred to as marijuana.

Medical marijuana. Marijuana used or intended to be used for a medical purpose that is currently legal to possess, or may become legal to possess in the State of Florida.

Medical marijuana cultivation. A facility that is operated by an individual, organization or business holding all necessary licenses and permits from which marijuana is produced, propagated, compounded, cultivated, planted, tended, grown, cared for or harvested in any soil or hydroponic medium.

Medical marijuana dispensary. A facility that is operated by an individual, organization or business holding all necessary licenses and permits from which marijuana or marijuana-based products are purchased, possessed, dispensed, or administered for medical purposes as identified by a valid prescription and operated in accordance with all federal, state, and local laws.

Medical marijuana processing facility. A facility that is operated by an individual, organization or business holding all necessary licenses and permits from which marijuana, marijuana-based products, or marijuana plants are prepared, converted or processed, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging of the substance or labeling or relabeling of its container.

SECTION 2: The City Council of the City of Port Orange hereby amends Chapter 12, Section 4 of the Land Development Code, to add the following medical marijuana related parking requirements to the commercial (retail) matrix to subsection 4(b)(6):

Chapter 12 – ROADS AND VEHICULAR USE AREAS

Section 4: - Parking.

(b) Required off-street parking spaces.

(6) Matrix.

Use	Minimum Off-Street Parking Requirement	Ratio of Full Size/ Compact Spaces	Required Bicycle Spaces
Retail:			
	<u>Medical marijuana dispensary</u>	<u>1 space/200 square feet</u>	<u>.05 per required parking space</u>
Industrial			
	<u>Medical marijuana cultivation</u>	<u>1 space/1,000 square feet of area devoted to marijuana is produced, propagated, compounded, cultivated, planted, tended, grown, cared for or harvested</u>	<u>0</u>
	<u>Medical marijuana processing facility</u>	<u>1 space/600 square feet of gross floor area devoted to processing, plus the required parking for square footage devoted to other uses</u>	<u>0</u>

SECTION 3: The City Council hereby amends Chapter 16, Section 2 of the Land Development Code, to read as follows:

Chapter 16 - MISCELLANEOUS REGULATIONS

Section 2: - Home occupations.

(a) – (b) [*Remain Unchanged*]

(c) *Prohibited home occupations.*

(1) – (12) [*Remain Unchanged*]

(13) Cultivation, processing or dispensing of marijuana or marijuana-based products.

~~(13)~~(14) Any use not specifically permitted by chapter 16, section 2(b) above.

(d) [*Remains Unchanged*]

SECTION 4: The City Council hereby amends Chapter 17, Section 21 of the Land Development Code, to read as follows:

Chapter 17 - ZONING DISTRICT REGULATIONS

Section 21: - Community commercial (CC) district.

(a) – (bb) [Remain Unchanged]

- (c) *Special exception uses* (chapter 18, section 3).
 - (1) Bars, lounges, and night clubs (subsection 3).
 - (2) Fortune tellers, astrologers, and palm readers (subsection 6).
 - (3) Game/recreation facilities (subsection 7).
 - (4) Guyed and lattice communication towers.
 - (5) Marina, recreational (subsection 9.6).
 - (6) Medical marijuana dispensary (subsection 9.8).
 - ~~(6)~~ Mini-warehouses (subsection 10).
 - ~~(7)~~ Motor vehicle and boat storage facilities (subsection 12).

(d) [*Remains Unchanged*]

SECTION 5: The City Council hereby amends Chapter 17, Section 23 of the Land Development Code, to read as follows:

Chapter 17 - ZONING DISTRICT REGULATIONS

Section 23: - Commercial industrial (CI) district.

(a) – (c) [Remain Unchanged]

- (d) *Special exception uses* (chapter 18, section 3).
 - (1) Guyed and lattice communication towers.
 - (2) Medical marijuana cultivation (subsection 9.7).
 - (3) Medical marijuana processing facility (subsection 9.7).
 - ~~(24)~~ Used motor vehicle parts yards (subsection 23).

SECTION 6: The City Council hereby amends Chapter 17, Section 24 of the Land Development Code, to read as follows:

Chapter 17 - ZONING DISTRICT REGULATIONS

Section 24: - Light Industrial (LI) district.

(a) – (c) [Remain Unchanged]

- (d) *Special exception uses* (chapter 18, section 3).
 - (1) Marina, commercial/industrial (subsection 9.5).
 - (2) Medical marijuana cultivation (subsection 9.7).
 - (3) Medical marijuana processing facility (subsection 9.7).
 - ~~(24)~~ Truck stops (subsection 21).

SECTION 7: The City Council hereby amends Chapter 18, Section 3 of the Land Development Code, to read as follows:

Chapter 18 - CONDITIONAL USES, SPECIAL EXCEPTIONS AND PERMITTED USES WITH SPECIAL DEVELOPMENT REQUIREMENTS

Section 3: - Special requirements for special exception uses.

- (a) *In general.* For those special exception uses listed below, the following special requirements shall apply in addition to those described in section 2(d) above.
- (b) *Special development requirements.*
- (1) – (9.6) [*Remain Unchanged*]
- (9.7) Medical Marijuana Cultivation or Medical Marijuana Processing Facility (CI, LI).
- (a) *On-premise sales.* Sales, distribution, dispensing, or administration of medical marijuana or marijuana-based products shall be prohibited on the premises. The term "premises" includes the actual building, as well as any accessory structures, parking lot or parking area(s), sidewalks, landscape buffers or other immediate surroundings.
- (b) *On-premise consumption.* No marijuana or marijuana-based products shall be smoked, ingested, or otherwise consumed on the premises. The term "premises" includes the actual building, as well as any accessory structures, parking lot or parking area(s), sidewalks, landscape buffers or other immediate surroundings.
- (c) *Separation distances.* The proposed site shall be at least 1,000 feet from the nearest pre-existing school, house of worship, day care facility, public park, drug treatment facility, half-way house, medical marijuana dispensary, or another medical marijuana cultivation or medical marijuana manufacturing facility, measured lot line to building.
- (d) The proposed business shall not be located in any temporary or portable structure and there shall be no mobile facilities or delivery permitted to patients.
- (e) *Site lighting.* The entire exterior grounds, including the parking lot and landscaped areas, shall be lighted in such a manner that all areas are clearly visible at all times during business hours.
- (f) *Display of state registration.* Any medical marijuana cultivation center or medical marijuana processing facility shall be validly registered with the State of Florida, if required, and shall prominently display in a public area near its main entrance copies of all state licenses, city licenses, and local business tax receipt, and the name of the owner responsible for compliance with state and city law.
- (g) *Compliance with other laws.* All medical marijuana cultivation centers or medical marijuana processing facilities shall at all times be in compliance with all federal, state and local laws and regulations.
- (9.8) Medical Marijuana Dispensary (CC).
- (a) *Loitering.* A medical marijuana dispensary shall provide adequate seating for its patients and business invitees and shall not allow patients or business invitees to stand, sit (including in a parked car), or gather or loiter outside of the building where

the dispensary operates, including in any parking areas, sidewalks, right-of-way, or neighboring properties for any period of time longer than that reasonably required to arrive, transact business and depart. The medical marijuana dispensary shall post conspicuous signs on all exterior sides of the building or tenant space that no loitering is allowed on the property.

- (b) On-premise consumption. No marijuana or marijuana-based products shall be smoked, ingested, or otherwise consumed on the premises, unless administered by a licensed physician. The term "premises" includes the actual building, as well as any accessory structures, parking lot or parking area(s), sidewalks, landscape buffers or other immediate surroundings.
- (c) Alcohol and controlled substances. No alcohol or other controlled substances (other than those types of marijuana approved for sale by the state Department of Health) shall be consumed, made available, sold, offered for sale, given, distributed, traded, or otherwise provided on the premises. The term "premises" includes the actual building, as well as any accessory structures, parking lot or parking area(s), sidewalks, landscape buffers or other immediate surroundings of the medical marijuana dispensary.
- (d) Separation distances. The proposed site shall be at least 1,000 feet from the nearest pre-existing school, house of worship, day care facility, public park, drug treatment facility, half-way house, medical marijuana cultivation center, medical marijuana processing facility, or another medical marijuana dispensary, measured lot line to building.
- (e) Hours of operation. A medical marijuana dispensary may only operate Monday through Friday and only between the hours of 7:00 a.m. and 9:00 p.m.
- (f) The proposed business shall not be located in any temporary or portable structure and there shall be no mobile facilities or delivery permitted to patients.
- (g) Site lighting. The entire exterior grounds, including the parking lot and landscaped areas, shall be lighted in such a manner that all areas are clearly visible at all times during business hours.
- (h) Display of state registration. Any medical marijuana dispensary shall be validly registered with the State of Florida, if required, and shall prominently display in a public area near its main entrance copies of all state licenses, city licenses, and local business tax receipt, and the name of the owner and designated physician responsible for compliance with state and city law.
- (i) Compliance with other laws. All medical marijuana dispensaries shall at all times be in compliance with all federal, state and local laws and regulations.

SECTION 8: CONFLICTING ORDINANCES.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 9: CODIFICATION.

The provisions of this Ordinance shall become and be made a part of the Land Development Code of the City of Port Orange and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 10: SEVERABILITY.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

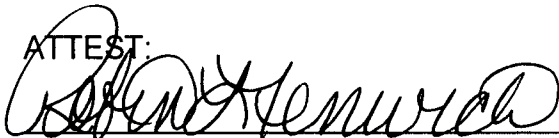
SECTION 11: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon adoption.



MAYOR ALLEN GREEN


ATTEST:



Robin L. Fenwick, CMC, City Clerk

Passed on first reading on the *22* day of *September, 2015*

Passed and adopted on second and final reading on the *6th* day of *October, 2015.*

Reviewed and Approved: 

Assistant City Attorney