

ORDINANCE 2017-28

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE; AMENDING CHAPTER 2 TO REVISE THE DEFINITION OF RETAIL PHARMACY TO INCLUDE MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITY AND REMOVING THE DEFINITIONS FOR MEDICAL MARIJUANA CULTIVATION, MEDICAL MARIJUANA DISPENSARIES, AND MEDICAL MARIJUANA PROCESSING FACILITIES; AMENDING CHAPTER 12 TO REMOVE THE PARKING REQUIREMENTS FOR MEDICAL MARIJUANA RELATED USES; AMENDING CHAPTER 16 TO REMOVE THE MARIJUANA RELATED USES FROM THE LIST OF PROHIBITED HOME OCCUPATIONS, AND TO REMOVE SECTION 13 REGARDING A MORATORIUM ON MEDICAL MARIJUANA RELATED FACILITIES AND ACTIVITIES; AMENDING CHAPTER 17 TO REMOVE MEDICAL MARIJUANA DISPENSARIES AS A SPECIAL EXCEPTION USE IN THE COMMUNITY COMMERCIAL ZONING DISTRICT; AND REMOVE MEDICAL MARIJUANA CULTIVATION AND MEDICAL MARIJUANA PROCESSING FACILITIES AS SPECIAL EXCEPTION USES IN THE COMMERCIAL INDUSTRIAL AND LIGHT INDUSTRIAL ZONING DISTRICTS; AMENDING CHAPTER 18 TO REMOVE THE SPECIAL REQUIREMENTS FOR MEDICAL MARIJUANA RELATED SPECIAL EXCEPTION USES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State has preempted the regulation of medical marijuana related uses with its adoption of SB-8A, leaving an option for cities to either ban medical marijuana dispensaries entirely, or regulate them in the same manner as pharmacies are regulated; and

WHEREAS, the City Council recognizes the vote of the citizens of the State, including the citizens of Port Orange, to permit certain medical uses of marijuana; and

WHEREAS, the City Council has decided to regulate medical marijuana treatment center dispensaries as it does pharmacies; 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 ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

SECTION 1. The City Council of the City of Port Orange, Florida, hereby amends Chapter 2, Section 2 of the City of Port Orange Land Development Code to read as follows:

Chapter 2 - DEFINITIONS AND INTERPRETATIONS
Section 2: - Definitions.

~~*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.~~

Retail pharmacy. A retail establishment primarily offering goods for retail sale and on-site dispensing of prescription drugs, nonprescription drugs or both. A retail pharmacy may also offer accessory services such as photo processing, eyeglass care, and other convenience services. This term shall include a licensed medical marijuana

treatment center dispensing facility operating in accordance with state law. This term shall not include pain management clinic.

Retail sales and services. An establishment engaged in the selling of products and service to the public for personal or household consumption, including, but not limited to, beauty/barber shop, laundry and dry cleaning store, newsstand/bookstore, xerographic printing, clothing stores, home electronic equipment, food/grocery stores, retail pharmacy, and sporting goods. This term shall not include pain management clinic. [Note: *No change – shown for reference only*]

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

Chapter 16 - MISCELLANEOUS REGULATIONS

Section 2: - Home occupations.

(a) – (b) [Reman Unchanged]

(c) Prohibited home occupations.

(1) Motor vehicle and boat repair.

(2) Beauty and barber shops.

(3) Child care center or nursery school (except for those specifically permitted by the State of Florida Department of Health and Rehabilitative Services).

(4) Amplified musical instrument instruction.

(5) Dance and nonamplified musical instrument instruction (except private tutoring of no more than one student per session and limited to no more than four sessions per day).

(6) Photography studio.

(7) Real estate sales and brokerage.

(8) Retail sales (except garage sales).

(9) Painting of vehicles, trailers or boats.

(10) Upholstering.

(11) Welding.

(12) Taxidermy.

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

~~(14)~~ (13) Tattoo establishment.

~~(15)~~ (14) Any use not specifically permitted by chapter 16, section 2(b) above.

(d) [Remains Unchanged]

SECTION 3. The City Council of the City of Port Orange, Florida, hereby amends Chapter 16 of the City of Port Orange Land Development Code to remove Section 13 in its entirety:

~~Section 13: – Moratorium—Medical marijuana related facilities and activities.~~

~~(a) Definitions.~~

~~Medical marijuana related facilities and activities shall include medical marijuana treatment centers, medical marijuana dispensaries, medical marijuana cultivation, medical marijuana manufacturing facilities, and any individual or entity authorized to acquire, cultivate, possess, process (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfer, transport, sell, distribute, dispense, or administer marijuana, products containing marijuana, related supplies, and educational materials to qualified patients or their personal caregivers who are registered by the DOH.~~

~~(b) Moratorium imposed.~~

~~(1) The Land Development Code and Code of Ordinances are hereby amended by placing a moratorium on the issuance of any development orders, building permits, zoning verification letters, or zoning approvals for business tax receipts for the operation of medical marijuana related facilities or activities. For purposes herein, the term "development order" shall have the same meaning as that set forth in F.S. § 163.3164.~~

~~(2) Applications for issuance of development orders, building permits, zoning verification letters, or zoning approvals for business tax receipts for medical marijuana related facilities or activities shall be considered pursuant to the following requirements:~~

~~a. Applications received on or after the effective date of the ordinance from which this section is derived may be received and reviewed. However, no development orders, building permits, zoning verification letters, or zoning approvals for business tax receipts shall be issued in violation of the moratorium on the issuance of development orders, building permits, zoning verification letters, or zoning approvals for business tax receipts for the operation of medical marijuana related facilities or activities. If amendments to the comprehensive plan or the Land Development Code are adopted by the city council on or before the expiration of the moratorium that revise the substantive or procedural legal requirements regarding the operation of medical marijuana related facilities or activities, any application not approved for issuance of a development order, building permit and zoning approval and submitted on or after the date of the ordinance from~~

~~which this section is derived, but before the expiration of the moratorium, shall be required to comply with the new substantive or procedural legal requirements.~~

~~(3) The moratorium imposed by this section shall expire within 365 days of adoption of the ordinance from which this section is derived by the city council, or the adoption of an ordinance amending the comprehensive plan or the Land Development Code regarding the permitting of or otherwise regulating medical marijuana related facilities or activities, whichever event shall first occur. The moratorium shall be deemed to be in effect over all of the geographic area of the city now existing or which may be hereafter annexed during the pendency of the moratorium. This section shall be deemed to be pending on medical marijuana related facilities or activities, within the meaning of the term "pending ordinance" as that term is used in Smith v. City of Clearwater, 403 So.2d 407 (Fla. 1981).~~

~~(4) During the pendency of this moratorium, the city manager and the community development director shall proceed in good faith to undertake a planning study to determine appropriate amendments to development related ordinances, if any.~~

~~(5) The community development director shall make interpretations of this section.~~

SECTION 4. The City Council of the City of Port Orange, Florida, hereby amends Chapter 17, Section 21 of the City of Port Orange 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).~~
 - (7) Mini-warehouses (subsection 10).
 - ~~(8)~~ Motor vehicle and boat storage facilities (subsection 12).
- (d) [Remains Unchanged]

SECTION 5. The City Council of the City of Port Orange, Florida, hereby amends Chapter 17, Section 23 of the City of Port Orange 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) Adult entertainment (subsection 1).
 - (2) Guyed and lattice communication towers.
 - ~~(3) Medical marijuana cultivation (subsection 9.7).~~
 - ~~(4) Medical marijuana processing facility (subsection 9.7).~~
 - (5) Used motor vehicle parts yards (subsection 23).

SECTION 6. The City Council of the City of Port Orange, Florida, hereby amends Chapter 17, Section 24 of the City of Port Orange 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).~~
 - (4) Truck stops (subsection 21).

SECTION 7. The City Council of the City of Port Orange, Florida, hereby amends Chapter 18, Section 3 of the City of Port Orange 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) [Remains Unchanged]
- (b) Special requirements.

(1) – (9.6) [Remain Unchanged]

~~(9.7) Medical marijuana cultivation or medical marijuana processing facility (CI, LI).~~

~~(a) On-premises 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-premises 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-premises 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.~~


(10) – (25) [Remain Unchanged]

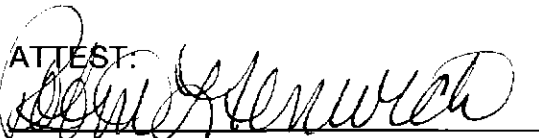
SECTION 8. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 9. 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 10. This ordinance shall become effective immediately upon final passage by the City Council.


MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Passed on first reading on the 5 day of Sept., 2017.

Passed and adopted on second and final reading on the 19 day of Sept., 2017.

Reviewed and Approved: 
Matthew J. Jones, Deputy City Attorney