

ORDINANCE C-433

AN ORDINANCE OF THE TOWN OF MEDLEY, FLORIDA, AMENDING CHAPTER 62 “ZONING” BY AMENDING ARTICLE I “IN GENERAL”, SECTION 62-1 “DEFINITIONS,” TO PROVIDE DEFINITIONS RELATED TO MARIJUANA USES; AND BY AMENDING ARTICLE III “DISTRICT REGULATIONS”, SECTION 62-86 “RESTRICTIONS IN GENERAL”, TO PROHIBIT MARIJUANA DISPENSARIES IN ALL ZONING DISTRICTS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Medley, Florida (“Town Council”) finds it periodically necessary to amend its Code of Ordinances (“Code”) in order to update regulations and procedures to implement municipal goals and objectives; and

WHEREAS, Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida Statutes, provide municipalities with the authority to exercise any power for municipal purposes, except where prohibited by law, and to adopt ordinances in furtherance thereof; and

WHEREAS, the 2014 Florida Legislature approved Senate Bill 1030 providing for the growing, processing, and distributing of specific forms of low-THC (non-euphoric) cannabis to qualified patients and their caregivers for the treatment of listed medical conditions, which became effective on June 16, 2014 as Chapter 2014-157, Laws of Florida, and is codified at Section 381.986, Florida Statutes (“Senate Bill 1030”) (Amended in 2016); and

WHEREAS, on November 8, 2016, Florida voters approved a ballot initiative amending the Florida Constitution to allow for broader sale and use of marijuana for medical purposes within the State of Florida; and

WHEREAS, despite the adoption of Senate Bill 1030 and approval of the amendment to the Florida Constitution, the activities they condone remain illegal under federal law; and

WHEREAS, to implement the 2016 Constitutional provisions for medical marijuana, the State legislature adopted Senate Bill 8A during its 2017 Special Session which provides a framework for local government regulation of the dispensing of medical marijuana, allowing a local government to either ban medical marijuana retail centers or to regulate them similar to pharmacies; and

WHEREAS, Marijuana (Cannabis) is a Schedule I drug under the federal Controlled Substances Act, 21 U.S.C. §811; and

WHEREAS, according to the Controlled Substances Act, Marijuana has a high potential for abuse and has no currently accepted medical use for treatment in the United States; and

WHEREAS, significant safety and security issues exist for any establishment involved in the cultivation, processing or distribution of marijuana, because they maintain large drug inventories and are forced to deal in cash because their activities have not yet been sanctioned by federal law; and

WHEREAS, in *Gonzales v. Raich*, the U.S. Supreme Court held in 2005 that the Federal Government has the authority under the Commerce Clause to prohibit marijuana for all purposes pursuant to the Controlled Substances Act, and that the Supremacy Clause of the U.S. Constitution “unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail.” *Gonzales v. Raich*, 545 U.S. 1, 29; and

WHEREAS, the Florida Statutes and the 2016 amendment to the Florida Constitution are in conflict with and in violation of Federal law; and

WHEREAS, in compliance with Federal law and consistent with Florida Statutes, Section 381.986(11)(b), the Town Council desires to prohibit Medical Marijuana Dispensaries; and

WHEREAS, it is the intent of the Town Council to amend Section 62-86 of the Code to prohibit all marijuana dispensing activities and medical marijuana dispensaries in all zoning districts throughout the Town; and

WHEREAS, the Town Council, sitting as the Town's Local Planning Agency, has reviewed this proposed Ordinance and recommended its approval; and

WHEREAS, pursuant to law, notice has been given by publication in a paper of general circulation in the Town, notifying the public of this proposed ordinance and of the public hearings; and

WHEREAS, two (2) public hearings before the Town Council were held pursuant to the published notice described above; and

WHEREAS, the Town Council finds that the Ordinance is in the best interests of the Town, its residents and property owners.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MEDLEY, FLORIDA, HEREBY ORDAINS AS FOLLOWS:¹

Section 1. **Recitals Adopted.** Each of the above recitals is hereby confirmed and adopted.

Section 2. That Article I “In General” of Chapter 62 “Zoning” of the Town of Medley Code of Ordinances is hereby amended to read as follows:

Chapter 62 – ZONING

ARTICLE I. IN GENERAL.

Sec. 62-1. - Definitions.

* * *

Marijuana means any strain of cannabis or Marijuana, in any form, that is authorized by State law to be dispensed or sold in the State of Florida. Includes all forms of “Medical Marijuana” as defined by the State of Florida.

Marijuana dispensary means a retail establishment, licensed by the Florida Department of Health as a “Medical Marijuana Treatment Facility,” “Medical Marijuana Treatment Center,” “dispensing organization,” “dispensing organization facility” or similar use, that sells and dispenses Medical Marijuana.

* * *

Section 3. That Article III “District Regulations” of Chapter 62 “Zoning” of the Town of Medley Code of Ordinances is hereby amended to read as follows:

Chapter 62 – ZONING

* * *

ARTICLE III. DISTRICT REGULATIONS.

* * *

Sec. 62-86. – Restrictions in general.

Except as hereinafter provided:

* * *

(8) In accordance with Section 381.986, Florida Statutes, the use of any property for a marijuana dispensary or the dispensing of marijuana in any form, by any person or business, is prohibited in all zoning districts. Further, all uses, products, or acts prohibited under any state or federal law are prohibited throughout the Town.

* * *

Section 4. Repealer. All ordinances or parts of ordinances, resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED BY VOTE OF THE TOWN COUNCIL, on first reading this 3rd day of December, 2018.

PASSED AND ADOPTED BY VOTE OF THE TOWN COUNCIL on second reading this 4th day of February, 2019.

ROBERTO MARTELL, MAYOR

HERLINA TABOADA, TOWN CLERK

APPROVED AS TO FORM AND LEGALITY:

WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L.,
TOWN ATTORNEY

SUMMARY OF VOTE – FIRST READING

The motion to PASS the foregoing Ordinance on FIRST READING was made by _____ and seconded by _____ and on roll call, the following vote was had:

Mayor Roberto Martell _____

Vice-Mayor Edgar Ayala _____

Councilperson Griselia Digiacomo _____

Councilperson Ivan Pacheco _____

Councilperson Lily Stefano _____

SUMMARY OF VOTE –SECOND READING

The motion to PASS the foregoing Ordinance on SECOND READING BY TITLE ONLY was made by _____ and seconded by _____ and on roll call, the following vote was had:

Mayor Roberto Martell _____

Vice-Mayor Edgar Ayala _____

Councilperson Ivan Pacheco _____

Councilperson Griselia Digiacomio _____

Councilperson Lily Stefano _____