



RETURN TO:  
CITY OF ST. CLOUD  
DEPT OF PLANNING AND ZONING  
1300 9<sup>th</sup> Street  
ST. CLOUD, FL 34769

## **ORDINANCE 2016-58**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ST. CLOUD, FLORIDA AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF ST. CLOUD, FLORIDA BY AMENDING ARTICLE II, "DEFINITIONS", SECTION 2.1.1 "GENERAL" TO ADD A DEFINITION OF APPLICANT, MARIJUANA AND MEDICAL MARIJUANA DISPENSARIES; AMENDING ARTICLE III, "ZONING REGULATIONS", DIVISION 6, "A-AGRICULTURAL DISTRICT", TO CREATE SECTION 3.6.5 "MEDICAL MARIJUANA CULTIVATION AND PROCESSING PROHIBITED" AND DIVISION 17, "INDUSTRIAL DISTRICTS 1, 2 & 3" TO CREATE NEW SECTION 3.17.14, "MEDICAL MARIJUANA DISPENSARIES"; PROVIDING THAT SUCH USES SHALL ONLY BE PERMITTED BY CONDITIONAL USE PERMIT; PROVIDING FOR SPECIFIC MINIMUM CONDITIONS; AMENDING TABLE III-7 TO INCLUDE MEDICAL MARIJUANA DISPENSARIES AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII, Section 2 of the Florida Constitution provides that municipalities shall have governmental, corporate and proprietary powers to enable municipalities to conduct municipal government, perform municipal functions and render municipal services;

**WHEREAS**, pursuant to the referenced provision of the Florida Constitution, a city may exercise any power for municipal purposes except as otherwise provided by law;

**WHEREAS**, Chapter 166, Florida Statutes, the "Municipal Home Rule Powers Act," reinforces the authority granted under the Florida Constitution and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by law and to enact ordinances in furtherance thereof;

**WHEREAS**, within the above-referenced grant of powers, the City of St. Cloud (the "City") has the authority to regulate land development and the use of property within the City for the protection of the public health, safety and welfare;

**WHEREAS**, regardless of the approval of an Amendment to the Florida Constitution the laws of the United States of America will still deem any cultivation, use, sale and distribution of marijuana to the unlawful for any purpose;

**WHEREAS**, the City Council has determined that given the potential impact on the surrounding areas, that Medical Marijuana Dispensaries, if allowed by law, should be a conditional use permitted in limited areas of the City;

**WHEREAS**, the City Council has determined that it is in the public interest to set certain distance and other standards and restrictions regarding the operation of Medical Marijuana Dispensaries,

**WHEREAS**, the City Council has found that a high proportion of sales in such facilities are cash sales, necessitating additional security procedures and precautions; and

**WHEREAS**, consistent with the findings stated above, the City Council has determined that adoption of this ordinance is in the best interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF ST. CLOUD, FLORIDA, as follows:

**SECTION 1:** Article II, "Definitions", Section 2.1.1, "General" of the City of St. Cloud Land Development Code, is hereby amended to add the following: (underline depicts added language and strikethrough depicts removed)

Applicant shall mean any person or entity that has submitted an application for a permit or approval of any kind pursuant to this Land Development Code. If the Applicant is an entity and not a natural person, Applicant shall include all persons who are the managers, officers, directors, contractual agents, partners, and licensors of such entity, as well as all members, shareholders, or Investors holding an ownership interest of 10% or more of such entity.

Marijuana. The meaning given cannabis in Section 893.02(3), Florida Statutes, and shall include all forms of medical cannabis or low-THC Cannabis. The term cannabis and marijuana shall be interchangeable for purposes of this Ordinance.

Medical Marijuana Dispensary. Any treatment center, entity, establishment, or portion thereof, which is lawfully licensed by Osceola County to dispense or administer marijuana, products containing marijuana, products derived from marijuana, related supplies, or educational materials, but shall not include growing, cultivating or processing cannabis or derivative products or making deliveries of cannabis or derivative products to the residence or business of an authorized individual, or to a health care facility, as permitted by other relevant ordinances and state law. A pharmacy as defined in Section 465.003, Florida Statutes which employs a Florida Licensed pharmacist onsite shall not be considered a Medical Marijuana Dispensary. To the extent that any facility defined herein may also meet the definition of Pain Management Clinic as set forth in Chapter 12 of the St. Cloud City Code, the facility shall be subject to the zoning regulations established herein. The following shall apply to the terms of this definition:

Cultivation or cultivate shall mean the process by which a person grows a cannabis plant.

Derivative Products shall mean products derived from cannabis, including but not limited to cannabis oil or consumable products containing or derived from cannabis.

Dispensing shall mean the distribution of cannabis or derivative products as a Medical Marijuana Dispensary, but does not include making deliveries of cannabis or derivative products to the residence or business of an authorized individual, or to a health care facility, as permitted by other relevant ordinances and state law.

Process or Processing when referring to cannabis shall mean, to take the cannabis plant and transform same into a form for medical use, whether cannabis or derivative product.

**SECTION 2.** Article III, “Zoning Regulations”, Division 6 “A-Agricultural District”, of the City of St. Cloud Land Development Code, is hereby amended to add the following: (underline depicts added language and strikethrough depicts removed)

**3.6.5 – Medical Marijuana Cultivation and Processing Prohibited.**

Medical marijuana cultivation as defined in 2.1.1 of this Land Development Code is permitted as a conditional use in the Agricultural District. Medical marijuana processing as defined in 2.1.1 of this Land Development Code is a prohibited use in the Agricultural District.

**SECTION 3.** Article III, “Zoning Regulations”, Division 17 “Industrial Districts 1, 2 and 3”, of the City of St. Cloud Land Development Code, is hereby amended to add the following: (underline depicts added language and strikethrough depicts removed)

**3.17.14 – Medical Marijuana Dispensary I-1, I-2, and I-3.**

Medical Marijuana Dispensaries shall be allowable in Industrial Districts 1, 2 and 3 only and with an approved conditional use permit provided the conditions set forth below are met, and any other conditions that the city council may deem appropriate, shall be made a part of the conditional use permit, if approved:

- A. The Medical Marijuana Dispensary shall provide adequate seating for its patients and business invitees. The Medical Marijuana Dispensary shall not permit any patient or business invitee 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, for any period of time longer than that reasonably required to arrive and depart.
- B. Security. The owners shall have a review of the site with the City Police Department prior to opening and annually. It shall be the responsibility of the owner to schedule the reviews with the Department.
- C. No Drive through Service. No Medical Marijuana Dispensary shall have a drive

through or drive in service. All dispensing, payment for and receipt of medical marijuana shall occur from inside the Medical Marijuana Dispensary.

- D. Alcoholic Beverages or Marijuana. No sale of alcoholic beverages or consumption or use of alcoholic beverages or marijuana shall be allowed on the premises, including in the parking areas.
- E. Separation Distances. A Medical Marijuana Dispensary shall not operate within fifteen hundred (1,500) feet of another approved Medical Marijuana Dispensary or within two hundred (200) feet of any residentially zoned or residentially used property, or within seven hundred fifty (750) feet of a public park, child care center or school existing or approved by the City at the time of application. All distance requirements shall be measured by drawing a straight line from the nearest property line of the protected use to the nearest property line of the proposed Medical Marijuana Dispensary.
- F. Operating Hours. Medical Marijuana Dispensaries shall not be allowed to operate between 7:00 p.m. and 7:00 a.m.
- G. Inspection of Approved Premises. During business hours and other times of apparent activity, all approved premises shall be subject to inspection by the Fire Chief, the Building Official, Code Enforcement Officer, Police Chief, or authorized representative of any of them, for the purpose of investigating and determining compliance with provisions of this Ordinance and any other applicable state or local law or regulation. Such inspection may include, but need not be limited to, the inspection of books, records, and inventory. Where any part of the premises consists of a locked area, such area shall be made available for inspection, without delay, upon reasonable request. The frequency of such inspections shall not be unreasonable and shall be conducted in a manner to ensure the operation of the premises is not inhibited.
- H. Requirements related to the premises. Medical Marijuana Dispensaries shall be subject to the following additional requirements:
- a. All cannabis or cannabis derivative products ready for sale shall be in a sealed or locked container or cabinet except when being accessed for distribution.
  - b. Only individuals authorized pursuant to Florida law may dispense cannabis.



- and such cannabis may only be dispensed to persons authorized pursuant to Florida law to receive cannabis.
- c. No cannabis shall be dispensed outside of the hours permitted by Florida law. However, Medical Marijuana Dispensaries may conduct administrative functions as permitted by other relevant ordinances and state law.
  - d. No unaccompanied minor may be dispensed cannabis unless otherwise authorized under state law.
  - e. The Medical Marijuana Dispensary shall employ reasonable measures and means to eliminate odors emanating from dispensing and shall properly dispose of controlled substances in a safe, sanitary and secure manner and in accordance with applicable laws and regulations.
  - f. After issuance of a Conditional Use Permit, the premises subject to the permit shall not be physically changed, altered or modified in any manner not consistent with the permit.
  - f.g. No smoking or vaping on premises or in parking areas.
- I. Suspension of revocation of Conditional Use Permit. The City may revoke a Conditional Use Permit issued hereunder after notice for any of the following reasons:
- a. The owner or lessor of the premises, the applicant, or the operator of the Medical Marijuana Dispensary or his or her agent, manager, or employee, have violated, do not meet, or have failed to comply with, any of the terms, mandatory requirements or other provisions of the Conditional Use Permit or the any applicable state, county or city law or regulation.
  - b. Any applicable provision related to revocation of a certificate of use as set forth in Section 12-137 of the City Code.
  - c. Prior to revocation of the Conditional Use Permit issued hereunder, the City shall provide Notice and an opportunity to request a hearing before the City Council.
  - d. Any Conditional Use Permit issued hereunder shall be automatically revoked if the owner of the premises fails to execute the Conditional Use Permit within thirty (30) days of its approval or the Medical Marijuana Dispensary fails to commence dispensing within twelve (12) months after the Conditional Use Permit has been issued.
- J. Compliance with Other Laws. All Medical Marijuana Dispensaries shall at all times be in compliance with all federal and state laws and regulations, and the City of St. Cloud Code of Ordinances, as may be amended from time to time.

SECTION 4. Article III, "Zoning Regulations", Table III-5 and Table III-7, of the City of St. Cloud Land Development Code, is hereby amended to add the following: (underline depicts added language and strikethrough depicts removed)

	<u>A R-E R-1 R-1A R-1B R-2 R-2A R-3 R-4 MH-A MH-2</u>
<u>Medical Marijuana Cultivation</u>	<u>C</u>
	<u>P NB HB BC CBD-1 CBD-2 I-1 I-2 I-2A</u>
<u>Medical Marijuana Dispensary</u>	<u>C C C</u>

SECTION 5. SEVERABILITY. It is declared to be the intent of the City Council that, if any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 6. CONFLICT. This action supersedes all codes and ordinances of the City or parts of, in conflict with this ordinance, to the extent of the conflict.

SECTION 7. CODIFICATION. Sections 1, 2 and 3 of this Ordinance shall be codified in the Land Development Code for the City of St. Cloud, Florida, separate and apart from the Code of St. Cloud. The codifier is authorized to make editorial changes not affecting the substance of this ordinance in the substitution of "article" for "ordinance", "section" for "paragraph", or otherwise take such editorial license.

SECTION 8. EFFECTIVE DATE. This ordinance shall be published as provided by law and shall take effect immediately upon its Second Reading and Final Passage.

First Reading on the 17<sup>th</sup> day of November 2016

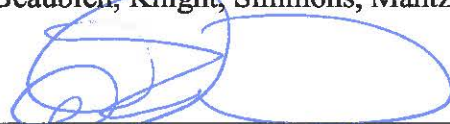
Second Reading on the 8<sup>th</sup> day of December 2016

  
Nathan Blackwell, Mayor

ATTEST:

  
Linda P. Jaworski, City Clerk

LEGAL IN FORM AND VALID IF ADOPTED:  
DeBeaubien, Knight, Simmons, Mantzaris & Neal

  
Daniel F. Mantzaris, City Attorney

Pursuant to Section 695.26 (3) (f), this instrument exempt from Chapter 695, F.S.