

ORDINANCE NO. 2019-19

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO MEDICAL MARIJUANA DISPENSARIES; CREATING SECTION 30-60.32; ADDRESSING MEDICAL CANNABIS DISPENSARIES, MEDICAL MARIJUANA TREATMENT FACILITIES, AND INDEPENDENT TESTING LABORATORIES WITHIN THE MUNICIPAL BOUNDARIES OF THE VILLAGE OF PALMETTO BAY; ALLOWING AND REGULATING MEDICAL MARIJUANA DISPENSARIES ONLY ON THE BUSINESS DISTRICT LIMITED (B-1) ZONE ALONG US1 AND NO LESS THAN 1,000 FEET FROM A SCHOOL, PLACE OF WORSHIP OR PARK, AND NO LESS THAN 1 MILE FROM ANOTHER DISPENSING FACILITY; AND PROVIDING FOR AN EFFECTIVE DATE. *(Sponsored by Mayor Karyn Cunningham and Co-Sponsored by Councilmember David Singer)*

WHEREAS, in 2014, the State of Florida enacted Florida Statute 381.986, a/k/a the Compassionate Medical Cannabis Act, which provided a regulatory framework for the cultivation, transportation, processing and dispensing of low THC cannabis for limited medical use treatment only; and

WHEREAS, in 2015 those same rules were expanded to include full strength medical marijuana for the treatment of individuals diagnosed with a terminal illness and/or are undergoing chemotherapy; and

WHEREAS, on November 8, 2016, the residents of the State of Florida approved by referendum, expanded use for medical marijuana and low TCH cannabis to extend to a greater range of ailments; and

WHEREAS, the Florida Legislature amended Florida Statute 381.986 by adopting bill SB 8-A during a 2017 Special Session which, among other provisions, outlined the conditions under which local municipalities may regulate the location of cannabis dispensaries and medical marijuana treatment centers; and

WHEREAS, Florida Statute 381.986(8)(b) permits “[a] municipality [to] determine by Ordinance the criteria for the location of, and other permitting requirements that do not conflict with state law or department rule for, dispensing facilities of dispensing organizations located within its municipal boundaries;” and

1 **WHEREAS**, the Village Council, now desires to allow and regulate
2 medical marijuana dispensaries located only on the Business District Limited
3 (B-1) zone along the US1 corridor and no less than 1,000 feet from any
4 school.

5
6 **NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND**
7 **VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA,**
8 **AS FOLLOWS:**

9
10 **Section 1.** Nothing in this Ordinance should be construed or applied
11 to abrogate the vested right of a property owner to develop or utilize his/her
12 property in any other way commensurate with zoning and other regulations,
13 including any required renewal of permits for existing legally erected
14 premises.

15
16 **Section 2. SECTION 30-60.32, OF THE CODE OF ORDINANCES OF**
17 **THE VILLAGE OF PALMETTO BAY, ENTITLED LOW-THC *CANNABIS***
18 **AND MEDICAL *CANNABIS* DISPENSERIES, TREATMENT FACILITIES**
19 **AND INDEPENDENT TESTING LABORATORIES, IS HEREBY ADOPTED**
20 **AS FOLLOWS:**

21
22 (a) Intent.

23 Section 381.986, Florida Statutes, and Florida Administrative Code
24 Chapter 64-4 authorize a limited number of dispensing organizations
25 throughout the State of Florida to cultivate, process, and dispense low-
26 tetrahydrocannabinol (low-THC) *cannabis* and medical *cannabis* for use
27 by qualified patients suffering from cancer, terminal conditions, and
28 certain chronic conditions. The dispensing organizations must be
29 approved by the Florida Department of Health and, once approved, are
30 subject to state regulation and oversight. The intent of this article is to
31 establish the criteria for the location and permitting of establishments
32 that dispense low-THC *cannabis* or medical *cannabis* in accordance
33 with Section 381.986, Florida Statutes, and Florida Administrative Code
34 Chapter 64-4.

35
36 (b) Applicability.

37 The provisions of this article shall be applicable to all land and water
38 body areas within the municipal boundaries on the Village of Palmetto
39 Bay. This article shall only be construed to allow the dispensing of low-
40 THC *cannabis* or medical *cannabis* by a state-approved dispensing

1 organization for medical use. The sale of *cannabis* or *marijuana* is
2 prohibited in the Village of Palmetto Bay except in accordance with this
3 article.

4
5 (c) Definitions.

6 Except as provided herein, all terms shall be defined in accordance with
7 this chapter and Section 381.986, Florida Statutes, as may be amended
8 from time to time:

9
10 (1) "Dispensing facility" refers to the building or structure where low-
11 THC *cannabis* or medical *cannabis*, as well as *cannabis* delivery
12 devices are dispensed at retail.

13
14 (2) "Dispensing organization" means an organization approved by the
15 state to cultivate, process, transport, and dispense low-THC
16 *cannabis* or medical *cannabis*.

17
18 (3) "Low-tetrahydrocannabinol *cannabis*" or "low-THC *cannabis*"
19 means a plant of the genus *Cannabis*, the dried flowers of which
20 contain 0.8 percent or less of tetrahydrocannabinol and more than
21 10 percent of cannabidiol weight for weight; the seeds thereof; the
22 resin extracted from any part of such plant; or any compound,
23 manufacture, salt, derivative, mixture, or preparation of such plant
24 or its seeds or resin that is dispensed only from a dispensing
25 organization.

26
27 (4) "Medical *cannabis*" means all parts of any plant of the genus
28 *Cannabis*, whether growing or not; the seeds thereof; the resin
29 extracted from any part of the plant; and every compound,
30 manufacture, sale, derivative, mixture, or preparation of the plant or
31 its seeds or resin that is dispensed only from a dispensing
32 organization for medical use by an eligible patient.

33
34 (5) "Medical use" means administration of the ordered amount of low-
35 THC *cannabis* or medical *cannabis*. The term does not include the:
36 (A) Possession, use, or administration of low-THC *cannabis* or
37 medical *cannabis* by smoking; or
38 (B) Transfer of low-THC *cannabis* or medical *cannabis* to a person
39 other than the qualified patient for whom it was ordered or the

1 qualified patient's legal representative authorized to receive it
2 on the qualified patient's behalf.

3 (C) Use or administration of low-THC *cannabis* or medical
4 *cannabis*:

- 5 i. On any form of public transportation; including publicly
6 available shared vehicles
- 7 ii. In any public place;
- 8 iii. In a qualified patient's place of employment, if restricted by
9 his or her employer;
- 10 iv. In a correctional institution;
- 11 v. On the premises of any child-care facility, preschool, or
12 school;
- 13 vi. On the premises of any religious institution, ministry or their
14 ancillary facilities;
- 15 vii. In any vehicle or motorboat.

16
17 (d) Zoning districts where dispensing allowed.

18 Only in accordance with the requirements of this article and the
19 applicable zoning district, dispensing of low-THC or medical *cannabis*
20 shall be permitted in the B-1 Zoning District.

21
22 (e) Zoning requirements for dispensing facilities.

23 Low-THC and medical *cannabis* dispensing facilities shall comply with
24 the following requirements:

25
26 (1) No low-THC or medical *cannabis* dispensing facility shall be located
27 within:

- 28 (A) 1 mile from any other low-THC or medical *cannabis* dispensing
29 facility;
- 30 (B) 1,000 feet of any child care facility, preschool, kindergarten,
31 elementary school, middle school, junior high school, high
32 school, place of worship, mission, ministry or facilities ancillary
33 to any of these uses;
- 34 (C) 1,000 feet from any public park or recreation area.

35
36 (2) Distances shall be measured as required below:

- 37 (A) Between two low-THC or medical *cannabis* dispensing
38 facilities, distance shall be measured by drawing a straight
39 between the front doors of the respective dispensing facilities.

1 (B) The distance from a child care facility, preschool, kindergarten,
2 elementary school, middle school, junior high school, high
3 school, place of worship, ministry, or facilities ancillary to any
4 of these uses, shall be measured by following a straight line
5 from the nearest point of the respective structure to the front
6 door of the proposed dispensing facility.

7 (C) The applicant shall furnish a certified survey from a registered
8 engineer or surveyor, indicating the distance between the
9 proposed dispensing facility and any existing low-THC or
10 medical *cannabis* dispensing facility, child care facility,
11 preschool, kindergarten, elementary school, middle school,
12 junior high school, high school, place of worship, ministry, or
13 facilities ancillary to any of these uses within the applicable
14 radius. In case of dispute, the measurement scaled by the
15 Planning and Zoning Director shall govern. The Planning and
16 Zoning Director shall verify in writing receipt of the survey from
17 the applicant, which shall serve as a reservation of said location
18 by a state-approved dispensing organization to dispense low-
19 THC or medical *cannabis*. Upon reservation, the applicant shall
20 have 180 days to apply for a permit or certificate of use.

21
22 (3) Dispensing of, payment for, and receipt of low-THC or medical
23 *cannabis* is prohibited anywhere outside of the dispensing facility,
24 including, but not limited to, on sidewalks, in parking areas, or in the
25 rights-of-way surrounding the dispensing facility; provided,
26 however, this provision shall not be construed to prohibit delivery of
27 low-THC or medical *cannabis* to an eligible patient, as permitted by
28 state law or rule.

29
30 (4) Consumption of low-THC or medical *cannabis* or alcoholic
31 beverages is prohibited onsite at the dispensing facility, including,
32 but not limited to, in the parking areas, sidewalks, or rights-of-way
33 surrounding the dispensing facility; provided, however, this
34 provision shall not be construed to prohibit consumption associated
35 with a dispensing facility employee, trained by a medical
36 professional such as a doctor, nurse, pharmacist, or medical or
37 physician's assistant, instructing an eligible patient on the
38 mechanism of consumption of low-THC or medical *cannabis*, as
39 permitted by state law or rule.
40

- 1 (5) Irrespective of any statutory amendment, facilities dispensing low-
2 THC or medical *cannabis* shall only be allowed to operate between
3 the hours of 7:00 a.m. and 9:00 p.m. daily, as provided by Section
4 381.986, Florida Statutes.
5
- 6 (6) A certificate of use shall be obtained for the low-THC or medical
7 *cannabis* dispensing facility each year. The application for the
8 certificate of use shall be made on a form prescribed by the
9 Planning and Zoning Director.
- 10
- 11 (A) The low-THC or medical *cannabis* dispensing facility must be
12 established on the premises by a state-approved dispensing
13 organization within 180 days of the date the certificate of use is
14 issued; after 180 days, unless the time period is extended by
15 the Planning and Zoning Director for good cause shown, the
16 certificate of use shall be null and void and the applicant must
17 re-apply.
- 18 (B) The Village of Palmetto Bay, and any of its officers, shall have
19 the right to periodically inspect the premises of the dispensing
20 facility at any reasonable time to ensure that the facility has a
21 current and valid certificate of use, and to ensure compliance
22 with the terms and conditions under which it was issued.
23 Violators will be subject to all appropriate penalties, including
24 revocation of the certificate of use.
25
- 26 (7) Any use created and established under this article in a legal
27 manner, which may thereafter become legally nonconforming, may
28 continue until there is an abandonment of said use. Once a legally
29 nonconforming use is abandoned, it shall not be re-established
30 unless it conforms to the requirements of this article. Abandonment
31 shall consist of: a change of use or suspension of active business
32 with the public for a period of at least 3 months; or a lesser time if a
33 written declaration of abandonment is provided by the owner of the
34 premises or, if the property is subject to a lease, by the owner and
35 tenant thereof.
36
- 37 (8) No certificate of use, license, or building or other permit shall be
38 issued for a low-THC or medical *cannabis* dispensing facility where
39 the proposed place of business does not conform to the
40 requirements of this subsection.

Section 3. This Ordinance shall take effect immediately upon enactment.

PASSED AND ADOPTED on Second Reading this 23rd day of September 2019.

FIRST READING: July 15, 2019

SECOND READING: September 23, 2019

Attest:

Missy Arocha
Village Clerk

Karyn Cunningham
Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:

Dexter W. Lehtinen
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Patrick Fiore YES

Council Member David Singer YES

Council Member Marsha Matson NO

Vice Mayor John DuBois NO

Mayor Karyn Cunningham YES