

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, RESCINDING ORDINANCE NO. 2017-42; AMENDING CHAPTER 115, “MISCELLANEOUS BUSINESSES,” BY CREATING SECTION 115.28, “MEDICAL MARIJUANA,” TO BAN MEDICAL MARIJUANA USES WITHIN THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Pompano Beach on April 25, 2017, passed Ordinance No. 2017-42 establishing locations, uses and standards in various sections of the City’s Code of Ordinances for Medical Marijuana Establishments; and

WHEREAS, subsequently, on June 19, 2017, the Florida Legislature approved Senate Bill 8A, and forwarded same to the Governor who signed the legislation on June 23, 2017; and

WHEREAS, the aforementioned legislation, signed into law by the Governor, contains provisions that are in conflict with the Ordinance previously passed by the City Commission, including certain preemptive language limiting the City’s ability to control locations of medical marijuana treatment centers; and

WHEREAS, the City of Pompano Beach is a family oriented community and the City Commission of the City of Pompano Beach desires to do all that it can to ensure that the family nature and the family values of the City are protected and maintained; and

WHEREAS, the City Commission has determined that combating the proliferation of illegal drug usage and the concept of accepting such use is of prime importance to the City of Pompano Beach and its citizens; and

WHEREAS, the State of Florida has legalized the dispensing of marijuana for medical purposes and is in the process of developing regulations; and

WHEREAS, Senate Bill 8A provides for the authority of cities to ban medical marijuana treatment center dispensing facilities; and

WHEREAS, the City Commission has reviewed data and information regarding the impacts of medical marijuana dispensaries to the surrounding area; and

WHEREAS, the City Commission has determined that it is in the best interests of the citizenry and general public to prohibit medical marijuana dispensaries; and

WHEREAS, the City Commission has the responsibility and authority to determine what uses are best suited within the City and to prohibit unlawful conduct and nuisances within the City; and

WHEREAS, the City Commission has determined that given the potential impact on the City, that medical marijuana treatment dispensaries should be prohibited in the City; and

WHEREAS, in the case of *Gonzales v. Raich* (previously *Ashcroft v. Raich*), 545 U.S. 1 (2005), the United States Supreme Court ruled that under the Commerce Clause of the *United States Constitution*, the United States Congress may criminalize the production and use of home-grown cannabis even where states approve its use for medicinal purposes; and

WHEREAS, the Federal government regulates drugs through the *Controlled Substances Act* (CSA) (Title, *United States Code*, Section 811), which does not recognize the difference between medical and recreational use of marijuana and, under Federal law, marijuana is treated like every other controlled substance, such as cocaine and heroin, and the Federal government places every controlled substance in a schedule, in principal according to its relative potential for abuse and medicinal value; and

WHEREAS, under the CSA, marijuana is classified as a Schedule I drug, which means that the Federal government views marijuana as highly addictive and having no medical value under Federal law and physicians may not lawfully “prescribe” marijuana for medical use; and

WHEREAS, Article VI, Section 2, of the *Constitution of the United State of Florida*, is known as the Supremacy Clause because it provides that the “Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land.” It means that the Federal Government in exercising any of the powers enumerated in the *Constitution* must prevail over any conflicting or inconsistent state exercise of power. It is the view of the City of Pompano Beach that any contrary State or local laws are preempted – that is, rendered void and unenforceable – because of the Federal Controlled Substances Act’s continued prohibition of marijuana. Moreover, because the U. S. Supreme Court in *Gonzales v. Raich*, 545 U.S. 1 (2005) deemed the Federal marijuana prohibition to be a valid exercise of Congress’s commerce power. That is, the United States Supreme Court held that Congress’ Commerce Clause authority includes the power to prohibit the local cultivation and use of marijuana which would have been in compliance with California law; and

WHEREAS, Article VIII, Section 2, *Constitution of the United State of Florida*, authorizes the City of Pompano Beach to exercise any power for municipal purposes except as otherwise provided by law with Federal law being the controlling and supreme law; and

WHEREAS, pursuant to its home rule power, the City of Pompano Beach may exercise any power and perform any function relating to its government and affairs including the power to regulate for the protection of the public health, safety, morals and welfare such as the prohibition of nuisances and the protection of children; and

WHEREAS, the City Commission of the City of Pompano Beach herein finds that the enactment of this Ordinance is in the best interest of the public health, safety, morals and welfare,

and that local regulation of the matters set forth in this Ordinance is necessary to complement State and Federal laws regulating the subjects of this Ordinance; and

WHEREAS, in accordance with Florida Statutes, Section 166.041(3)(c)2, advertisements in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano Beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be, and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That all of the foregoing “WHEREAS” clauses are adopted and incorporated herein.

SECTION 2. That Ordinance No. 2017-42 is hereby rescinded in part related to dispensaries (retail) uses, in accordance with Exhibit “A.”

SECTION 3. That Chapter 115, “Miscellaneous Businesses,” of the Pompano Beach Code of Ordinances is hereby amended to create Section 115.28 to read as follows:

§ 115.28 MEDICAL MARIJUANA.

Medical Marijuana dispensing (retail) establishments are banned from the City of Pompano Beach as defined and regulated under Florida Statutes.

SECTION 4. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 5. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2017.

PASSED SECOND READING this _____ day of _____, 2017.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

MEB/jrm
7/14/17
L:ord/ch115/2017-259

EXHIBIT "A"
AMENDMENT TO ADOPTED MEDICAL MARIJUANA ORDINANCE

ORDINANCE NO. 2017-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING ARTICLE 4, "USE STANDARDS," BY AMENDING PART 7, "MEDICAL MARIJUANA ESTABLISHMENTS," TO DELETE THE USE STANDARDS AND REQUIREMENTS FOR MEDICAL MARIJUANA RETAIL ESTABLISHMENTS; BY AMENDING THE DEFINITION AND STANDARDS OF MEDICAL MARIJUANA HEALTH CARE ESTABLISHMENT AND BY AMENDING THE STANDARDS FOR MEDICAL MARIJUANA INDUSTRIAL ESTABLISHMENT; BY AMENDING SECTION 155.5102., "OFF-STREET PARKING AND LOADING," BY DELETING REFERENCE TO MEDICAL MARIJUANA RETAIL ESTABLISHMENT; BY AMENDING PART 5, "TERMS AND USES DEFINED," BY AMENDING DEFINITIONS AND DELETING REFERENCE TO MEDICAL MARIJUANA RETAIL ESTABLISHMENT; BY AMENDING APPENDIX A: "CONSOLIDATED USE TABLE," TO DELETE REFERENCE TO MEDICAL MARIJUANA RETAIL ESTABLISHMENT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with Florida Statutes, Section 166.041(3)(c)2, advertisements in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano Beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be, and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Article 4, Use Standards, of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

ARTICLE 4: USE STANDARDS

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PART 7	MEDICAL MARIJUANA ESTABLISHMENTS
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~~§ 155.4703. MEDICAL MARIJUANA ESTABLISHMENTS~~

~~A. MEDICAL MARIJUANA RETAIL ESTABLISHMENT~~

~~1. Districts Where Permitted~~

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4	S
M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPU-D	PCD	PD-TO	LAC	PD-I
		S		S									P			

~~2. Definition~~

~~A medical marijuana retail establishment is an establishment dispensing medical marijuana at retail.~~

~~3. Standards~~

~~A Medical marijuana retail establishment shall comply with the following standards:~~

~~a. Separation for other and similar uses~~

~~i. **1,000 Foot Separation:** A Medical marijuana retail establishment shall be separated by 1,000 feet from the following uses: Residential Zoning Districts, Schools, Public Parks, Sexually Oriented Business, Liquor Store, Beer or Wine Store, a Medical Marijuana Health Care Establishment, and a Medical Marijuana Industrial Establishment.~~

~~ii. **One Mile Separation:** A Medical marijuana retail establishment shall be separated by one mile from another Medical marijuana retail establishment.~~

~~b. Prohibited locations~~

~~Medical Marijuana Retail Establishments are prohibited within the NW CRA.~~

~~e. Accessible Roadway Required Classification~~

~~Medical Marijuana Retail Establishments shall be located on a site that has direct access to and from an arterial roadway.~~

~~d. Hours of Operations~~

~~The establishment shall not operate between the hours of 7:00 p.m. and 7:00 a.m.~~

~~e. Multiple Uses Prohibited~~

~~i. If located in a freestanding building the Medical marijuana retail establishment shall be the only use permitted for the free standing building.~~

~~ii. If located in a bay or multi-bay space within a multi-tenant structure, the Medical marijuana retail establishment shall be the only use permitted within the bay or multi-bay space it occupies.~~

~~f. Indoor Waiting Area Required~~

~~i. Adequate indoor seating for clients, customers, and other visitors shall be provided.~~

~~ii. Queuing or loitering outside of the Medical marijuana retail establishment shall be considered outdoor activity and is prohibited.~~

~~g. Drive Through Service Prohibited~~

~~i. Drive Through service is prohibited.~~

~~ii. If a Medical marijuana retail establishment locates at a facility with an existing drive through service, the drive through service must be demolished prior to the approval of the Zoning Use Certificate.~~

A B. MEDICAL MARIJUANA HEALTH CARE ESTABLISHMENT

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4
														S	S

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPU-D	PCD	PD-TO	LAC	PD-I
		S		S									P			

2. Definition

A medical marijuana health care establishment is a physician’s office where the primary medical services offered is the processing of physician certifications, ~~treatment of qualified patients with medical cannabis~~ patient care, and ordering of medical marijuana for qualified patients. Exterior advertising or signage or documentation from the Florida Department of Health may be used in determining if a physician’s office will be classified as a Medical Marijuana Health Care Establishment.

3. Standards

A Medical marijuana health care establishment shall comply with the following standards:

- a. A medical marijuana health care establishment shall comply with all of the use specific standards for a Specialty Medical Facility listed in §155.4209.B.3
- ~~b. **Separation.** A Medical Marijuana Health Care Establishment shall be separated by 1,000 feet from a Medical marijuana retail establishment~~
- e b.** On-Site dispensing of medical marijuana is prohibited.

€ B. MEDICAL MARIJUANA INDUSTRIAL ESTABLISHMENT

1. Districts Where Permitted

RS-1	RS-2	RS-3	RS-4	RS-L	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4

M-1	CR	I-1	I-IX	OIP	M-2	TO	PR	CF	PU	T	BP	RPU D	PCD	PD-TO	LAC	PD-I
		S	S	S									P			

2. Definition

A medical marijuana industrial establishment is an establishment engaged in industrial uses involving medical marijuana including: the planting, growing, harvesting, drying, cleaning, curing, packaging and extraction of active ingredients to create cannabis related products and concentrate within a fully enclosed structure; analytical and testing services for medical marijuana dispensing organizations, including laboratory functions to ensure the products are safe for use/consumption and the labeled potency is accurate; or the storage and/or wholesale distribution of medical marijuana products.

3. Standards

A medical marijuana industrial establishment shall comply with the following standards:

- a. No retail sales (dispensing) shall be permitted
- b. ~~Separation.~~ A medical marijuana industrial establishment shall be separated by 1,000 feet from a medical marijuana retail establishment
- e b. No outdoor uses, including but not limited to outdoor growing or outdoor storage, shall be permitted.

SECTION 2. That Article 5, Development Standards, of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

ARTICLE 5: DEVELOPMENT STANDARDS

§ 155.5102. OFF-STREET PARKING AND LOADING

...

D. OFF-STREET PARKING SPACE REQUIREMENTS

1. Minimum Number of Off-Street Parking Spaces

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TABLE 155.5102.D.1: MINIMUM NUMBER OF OFF-STREET PARKING		
Use	Use Type	Minimum Number of
MEDICAL MARIJUANA ESTABLISHMENTS		
Medical Marijuana Retail Establishment		1 per 150 square feet of floor area
Medical Marijuana Health Care Establishment		1 per 200 sq ft floor area for treatment patient care + 1 per 300 sq ft for remaining areas
Medical Marijuana Industrial Establishment		1 per 400 sq ft of floor area used for offices + 1 per 1,000 sq ft for remaining areas

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SECTION 3. That Article 9, Definitions and Interpretation, of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

ARTICLE 9: DEFINITIONS AND INTERPRETATION

PART 5 TERMS AND USES DEFINED

The following words, terms, and phrases, when used in this Code, shall have the meaning ascribed to them in this section.

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MEDICAL OR DENTAL LAB

Consists of facilities and offices providing diagnostic analysis of medical tests (such as blood test urinalysis, CT Scan, X-ray or other medical tests related to diagnostic treatment); collecting or withdrawing human blood, organs, skin, or other human tissue; or producing such items as dentures, caps, bridges and optical prescriptions.

MEDICAL MARIJUANA ESTABLISHMENT

An establishment legally engaged in ~~retail~~, health care, or industrial uses involving medical cannabis or marijuana for medical purposes.

MEDICAL MARIJUANA HEALTH CARE ESTABLISHMENT

A physician’s office where the primary medical services offered is the processing of physician certifications, ~~treatment of qualified patients with medical cannabis~~ patient care, and ordering of medical marijuana for qualified patients. Exterior advertising or signage or documentation from the Florida Department of Health may be used in determining if a physician’s office will be classified as a Medical Marijuana Health Care Establishment.

MEDICAL MARIJUANA INDUSTRIAL ESTABLISHMENT

An establishment engaged in industrial uses involving medical marijuana including: the planting, growing, harvesting, drying, cleaning, curing, packaging and extraction of active ingredients to create cannabis related products and concentrate within a fully enclosed structure; analytical and testing services for medical marijuana dispensing organizations, including laboratory functions to ensure the products are safe for use/consumption and the labeled potency is accurate; or the storage and/or wholesale distribution of medical marijuana products.

~~**MEDICAL MARIJUANA RETAIL ESTABLISHMENT**~~

~~An establishment dispensing medical marijuana at retail.~~

...

SECTION 4. That Appendix A, "Consolidated Use Table," of Chapter 155, "Zoning Code," of

the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

...

SECTION 5. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 6. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2017.

PASSED SECOND READING this _____ day of _____, 2017.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

:jrm
7/14/17
L:ord/ch155/2017-292