

ORDINANCE NO. 2017-_____

**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 centers 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 ruling 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 its entirety.

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 related businesses and establishments are not permitted in the City of Pompano Beach including, but not limited to, medical marijuana treatment centers which lawfully acquire, manufacture, possess, sell, deliver, distribute, dispense and lawfully dispose of marijuana and marijuana delivery devices, all 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
6/26/17
L:ord/ch115/2017-259