

ORDINANCE NO. 2017-_____

**CITY OF POMPANO BEACH
Broward County, Florida**

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, DECLARING ZONING IN PROGRESS AND PROVIDING FOR IMPOSITION OF A SIX MONTH MORATORIUM ON THE ISSUANCE OF DEVELOPMENT ORDERS, PERMITS, AND BUSINESS TAX RECEIPTS RELATED TO THE PROCESSING OF APPLICATIONS INVOLVING MEDICAL CANNABIS ZONING USES; PROVIDING FOR EARLY TERMINATION UPON PASSAGE OF ORDINANCES REGULATING MEDICAL CANNABIS USES IN THE CITY PRIOR TO EXPIRATION OF THE MORATORIUM; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission and the city's Planning and Zoning Board/Local Planning Agency have previously undertaken the necessary studies and adopted a Comprehensive Plan to guide and control growth in the city; and

WHEREAS, the goals, objectives and policies contained within the city's adopted Comprehensive Plan require that the city periodically review and update new regulations and procedures as a result of amendments and additions to federal, state and county laws and regulations to ensure that all land uses within the city are consistent with the city's character and Future Land Use Plan, encourage the adoption of innovative land development regulations, and protect the health, welfare and safety of the city's residents; and

WHEREAS, in 2014, the Florida Legislature enacted the Compassionate Medical Cannabis Act, creating Section 381.986, Florida Statutes, which authorized dispensing organizations authorized by the Department of Health to manufacture, possess, sell, and dispense low-THC cannabis for patients suffering from specified medical conditions; and

WHEREAS, in the recently concluded 2016 session, the Florida House of Representatives passed HB307 and HB 133 on March 3, 2016, which passed the Florida Senate on March 7, 2016, and which was approved by the Governor on March 25, 2016, and became effective on that date. Said Bill amended numerous provisions of Section 381.986, Florida Statutes and provided additional regulation of the Department of Health with regard to medical cannabis; and

WHEREAS, Chapter 64-4, “Compassionate Use,” of the Florida Administrative Code, has been enacted to regulate the Department of Health with regard to requirements for dispensing organizations, including procedures for application, review, approval, inspection and authorization of dispensing organizations, and the Department of Health has commenced its application and review process, including approval of these organizations; and

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 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, the City Commission has determined that it is in the best interests of the citizenry and general public to allow the city's Development Services staff and City Attorney's Office time to review the recently enacted legislation and to research the legal issues related to the processing, dispensing, and testing of medical cannabis as well as issues related to the possible conflicts in the new legislation passed, the CSA and the City's current ordinance in order to effectively and properly enact zoning and any other necessary ordinances to fairly regulate or ban the distribution and other related uses to medical cannabis in the city in order to ensure compliance with the city's Comprehensive Plan and a moratorium would serve to provide the necessary time; 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. Moratorium Imposed; Applicability.

During the time this moratorium shall be in effect as specified herein, there shall be a moratorium upon the acceptance of applications and the issuance of zoning use certificates, business tax receipts and of all development orders and permits, as defined in Section 163.3164, Florida Statutes, (collectively Development Orders) approving any and all uses related to medical cannabis in the city.

SECTION 2. Term.

The moratorium imposed by this ordinance is temporary and, unless dissolved earlier by the city, shall automatically dissolve in one hundred eighty (180) days from the effective date of this ordinance unless extended in accordance with applicable law. This moratorium may be reasonably extended, if necessary, by ordinance of the City Commission.

SECTION 3. Early Termination.

The moratorium imposed by this ordinance may terminate prior to its one hundred eighty (180) day period upon the passage of ordinances regulating uses related to medical cannabis in the city, provided:

1. specific language terminating the moratorium is contained within said enacted ordinance; or by
2. passage of another ordinance providing for termination by the City Commission.

SECTION 4. All ordinances or parts of ordinances in conflict herewith be and the same are hereby revoked.

SECTION 5 If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any 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

MEB/cls:jrm
7/12/2017
l:ord/2017-285