

ORDINANCE NO. 33-22

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF ORDINANCES, BY AMENDING: CHAPTER FOUR, “ZONING REGULATIONS”, ARTICLE 4.3, “SPECIAL REQUIREMENTS FOR SPECIFIC USES”, SECTION 4.3.3(G), “MEDICAL MARIJUANA TREATMENT CENTER”, SECTION 4.4.9 – GENERAL COMMERCIAL DISTRICT, SECTION, 4.4.11 – NEIGHBORHOOD COMMERCIAL DISTRICT, SECTION 4.4.12 – PLANNED COMMERCIAL DISTRICT, TABLE. 4.4.13(A) – ALLOWABLE USES AND STRUCTURES IN THE CBD SUB-DISTRICTS, SECTION 4.4.18 – PLANNED COMMERCE CENTER (PCC), AND SECTION 4.4.29 – MIXED RESIDENTIAL, OFFICE AND COMMERCIAL (MROC) DISTRICT; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AUTHORITY TO CODIFY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Florida Statute 163.3174(4)(c), the Planning and Zoning Board, sitting as the Local Planning Agency (LPA), has determined that the change is consistent with and furthers the goals, objectives, and policies of the Comprehensive Plan; and

WHEREAS, pursuant to LDR Section 1.1.6, the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on November 14, 2022 and voted \_\_\_\_ to \_\_\_\_ to recommend that the changes be approved; and

WHEREAS, the City Commission of the City of Delray Beach adopted the findings in the Planning and Zoning Staff Report; and,

WHEREAS, the City Commission of the City of Delray Beach finds the Ordinance is consistent with the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. That the recitations set forth above are incorporated herein.

Section 2. That Section 4.3.3(G) of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach be and the same shall be amended and created as follows:

**Sec. 4.3.3 Special requirements for specific uses.**

(G) **Medical marijuana treatment center – Dispensing facility.** Medical Marijuana Treatment Centers (MMTC) – Dispensing Facilities as defined in Appendix A are specifically prohibited permitted in all certain commercial zoning districts in the City of Delray Beach.

(1) Every pharmacy or medical marijuana treatment center dispensing facility, as defined in Appendix A, shall be subject to the following requirements and limitations:

(a) Minimum Gross Floor Area: 4,000 square feet, which shall be separate and distinct from any minimum floor area of building requirements set forth in the applicable zoning district. Should the pharmacy or medical marijuana treatment center dispensing facility constitute a portion of the use, the floor area of the entire use shall be included when calculating the gross floor area (provided all requirements of F.S. Sec. 381.986 are satisfied).

(b) No pharmacy or medical marijuana treatment center dispensing facility shall be permitted within 4,000 feet of any other retail pharmacy or medical marijuana treatment center dispensing facility.

a. The minimum distance requirement of 4000’ between pharmacy or medical marijuana treatment center dispensing facility shall be measured by the shortest airline measurement between the nearest points of the parcels on which the pharmacy or medical marijuana treatment center dispensing facility is located.

b. The distance requirement will be established upon the order of receipt of applications for pharmacies or medical marijuana treatment center dispensing facility established after the effective date of this ordinance.

c. A pharmacy or medical marijuana treatment center dispensing facility shall not be located on East Atlantic Avenue.

(c) Any pharmacy or medical marijuana treatment center dispensing facility established after the effective date shall, at a minimum, file for and receive a Business Tax Receipt for the MMTC use.

a. The City shall review the Business Tax Receipt application to ensure it is consistent with 4.3.3(G)(1) before approving Business Tax Receipt.

(d) Any existing pharmacy established prior to the effective date, that desires to operate as a medical marijuana treatment center dispensing facility, shall meet the requirements of (1)(a-b) and submit application for and receive a

new Business Tax Receipt for the medical marijuana treatment center dispensing facility use.

a. The City shall review the Business Tax Receipt application to ensure it is consistent with 4.3.3(G)(1) before approving the Business Tax Receipt.

(e) The provisions of subsection (1) shall not be applicable to any pharmacy or medical marijuana treatment center dispensing facility lawfully established in the City of Delray Beach and existing as of the effective date of this ordinance, provided such use is not abandoned for a period of 6 months or more.

(f) An organization, entity or individual that does not qualify as a medical marijuana treatment center dispensing facility regulated pursuant to this chapter and that is not required to be licensed pursuant to F.S. Sec. 381.986, but is engaged in the sale of products, goods, or services derived from, containing, or related to marijuana, shall be regulated pursuant to this chapter in a manner comparable to similar uses(such as retail, medical, personal services, etc.), based up on the business and operational characteristics of such use, as determined by the city manager or designee. For purposes of this subsection, "marijuana" shall mean all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

a. An organization, entity or individual that seeks to obtain approval for a medical marijuana treatment center dispensing facility in the City of Delray Beach shall provide:

i. Evidence of its state license pursuant to F.S. Sec. 381.986 and other related documents at the time of application.

(g) To the extent there are any uses regulated pursuant to F.S. § 381.986 that are not preempted to the state pursuant to F.S. § 381.986(11), but do not qualify as medical marijuana treatment center dispensing facilities, such uses shall be prohibited in all zoning districts.

(H – LL) (These sections shall remain in full force and effect as adopted)

(LLL) Pharmacies.

(1) (This subsection shall remain in full force and effect as adopted.)

(2) Medical Marijuana Treatment Centers.

- (a) Minimum Gross Floor Area: 4,000 square feet, which shall be separate and distinct from any minimum floor area of building requirements set forth in the applicable zoning district. Should the pharmacy or medical marijuana treatment center dispensing facility constitute a portion of the use, the floor area of the entire use shall be included when calculating the gross floor area (provided all requirements of F.S. Sec. 381.986 are satisfied).
- (b) No pharmacy or medical marijuana treatment center dispensing facility shall be permitted within 4,000 feet of any other retail pharmacy or medical marijuana treatment center dispensing facility.
  - a. The minimum distance requirement of 4000' between pharmacy or medical marijuana treatment center dispensing facility shall be measured by the shortest airline measurement between the nearest points of the parcels on which the pharmacy or medical marijuana treatment center dispensing facility is located.
  - b. The distance requirement will be established upon the order of receipt of applications for pharmacies or medical marijuana treatment center dispensing facility established after the effective date of this ordinance.
  - c. A pharmacy or medical marijuana treatment center dispensing facility shall not be located on East Atlantic Avenue.
- (c) Any pharmacy or medical marijuana treatment center dispensing facility established after the effective date shall, at a minimum, file for and receive a Business Tax Receipt for the MMTC use.
  - a. The City shall review the Business Tax Receipt application to ensure it is consistent with 4.3.3(G)(1) before approving Business Tax Receipt.
- (d) Any existing pharmacy established prior to the effective date, that desires to operate as a medical marijuana treatment center dispensing facility, shall meet the requirements of (1)(a-b) and submit application for and receive a new Business Tax Receipt for the medical marijuana treatment center dispensing facility use.
  - a. The City shall review the Business Tax Receipt application to ensure it is consistent with 4.3.3(G)(1) before approving the Business Tax Receipt.
- (e) The provisions of subsection (1) shall not be applicable to any pharmacy or medical marijuana treatment center dispensing facility lawfully established in the City of Delray Beach and existing as of the effective date of this ordinance, provided such use is not abandoned for a period of 6 months or more.

(LLLL – ZZZZ) (These sections shall remain in full force and effect as adopted)

Section 3. Article 4.4, “Base Zoning District,” Section 4.4.9, “General Commercial District,” of the Land Development Regulations of City of Delray Beach, Florida is hereby amended and created as follows:

(A) (This subsection shall remain in full force and effect as adopted.)

(B) Principal uses and structures permitted. The following are allowed within the GC District as permitted uses, except as modified in the Four Corners Overlay District by (Section 4.4.9(G)(3)(a).

(1) - (10) (These subsections shall remain in full force and effect as adopted.)

(11) Medical Marijuana Treatment Centers, pursuant to restrictions set forth in Section 4.3.3(G).

(C) – (H) (These subsections shall remain in full force and effect as adopted.)

Section 4. That Section 4.4.11 of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach be and the same shall be amended and created as follows:

Sec. 4.4.11 – Neighborhood Commercial District

(A) (This subsection shall remain in full force and effect as adopted.)

(B) Principal uses and structures permitted. The following types of uses are allowed within the NC District subject to the limitations per Subsection (H) as a permitted use:

(1) – (4) (These subsections shall remain in full force and effect as adopted.)

(5) Medical Marijuana Treatment Centers, pursuant to restrictions set forth in Section 4.3.3(G).

(C) – (H) (These subsections shall remain in full force and effect as adopted.)

Section 5. That Section 4.4.12 of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach be and the same shall be amended and created as follows:

(A) (This subsection shall remain in full force and effect as adopted.)

(B) Principal uses and structures permitted. The following types of use are allowed within the PC District, including in the Linton Commons Overlay District, as a permitted use, except within the Four Corners Overlay District which shall be pursuant to Section 4.4.9(G)(3)(a)

(1) – (2) (These subsections shall remain in full force and effect as adopted.)

(3) Medical Marijuana Treatment Centers, pursuant to restrictions set forth in Section 4.3.3(G).

(C) – (H) (These subsections shall remain in full force and effect as adopted.)

Section 6. That Table 4.4.13(A) of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach be and the same shall be amended and created as follows:

<b><u>Table 4.4.13(A)—Allowable Uses and Structures in the CBD Sub-Districts</u></b>					
<b>Uses</b>	<b>Central Core</b>	<b>Railroad Corridor</b>	<b>Beach Area</b>	<b>West Atlantic Neigh.<sup>5</sup></b>	<b>South Pairs Neigh</b>
General retail uses and/or facilities, as in GC district (4.4.9) <sup>1</sup>	P	P	P	P	P
Business, professional, and medical uses, as in GC district (4.4.9)	P	P	P	P	P
Services and facilities, as in GC district (4.4.9) <sup>2</sup> , excluding drive-through facilities	P	P	P	P	P
Multiple-family dwellings <sup>3</sup>	P	P	P	P	P
Astrologist, clairvoyants, fortune tellers, palmists, phrenologists, psychic reads, spiritualists, numerologists and mental healers as in GC district (4.4.9)	-	-	-	-	P
Community residences	See 4.4.13(C)(4)(a)				
Nursing homes, abused spouse residences, continuing care facilities, and assisted living facilities that do not comport with the definition of "community residence"	P	P	P	P	C
Live/work units (see 4.3.3(KKK))	P	P	P	P	P

**Table 4.4.13(A)—Allowable Uses and Structures in the CBD Sub-Districts**

Uses	Central Core	Railroad Corridor	Beach Area	West Atlantic Neigh. <sup>5</sup>	South Pairs Neigh
Hotels, motels, and residential-type inns <sup>3</sup> (see 4.3.3(M) and 4.3.3 (X))	P	P	P	C	C
Bed and breakfast inns (see 4.3.3 (Y))	P	P	P	C	C
Public Parking Garages, as mapped on a Regulating Plan	P,S	P,S	P,S	P,S	P,S
Fabrication and/or Assembly	-	P	-	-	-
Wholesaling, Storage, and Distribution <sup>4</sup>	-	P	-	-	-
Contractor and trade services	-	P	-	-	P
Automobile brokerage, including vehicle display within an enclosed structure	-	P	-	-	-
Tattoo Establishments (see 4.3.3(ZB))	P,A	P,A	P,A	P,A	P,A
CBD Oil Establishments (see 4.3.3 (CC))	P,A	P,A	-	-	-
Family day care homes (see 4.3.3(T))	A	A	A	A	A
Home occupations (see 4.3.3(K))	A	A	A	A	A
Mechanical parking lifts (see 4.6.9(D)(11) and 4.6.9(F)(4))	A,S	A	A,S	A,S	A,S
Parking areas, passenger drop-off, loading/unloading, refuse and service areas	A,S	A	A,S	A,S	A,S
Automated Parking Garages	-	S	-	-	-

**Table 4.4.13(A)—Allowable Uses and Structures in the CBD Sub-Districts**

Uses	Central Core	Railroad Corridor	Beach Area	West Atlantic Neigh. <sup>5</sup>	South Pairs Neigh
Refuse and service areas					
Recreational facilities (for a multiple-family development)	A	A	A	A	A
Services and repair (incidental to the associated principal use)	A,S	A	A,S	A,S	A,S
Single-family dwelling (occupied by owner, proprietor, or employee of the principal use)	A	A	A	A	A
Storage of inventory (not shared or leased independent of the principal use)	A,S	A	A,S	A,S	A,S
Automobile repair, service	-	C	-	-	-
Neighborhood Automotive Rental facility (See 4.3.3(C))	-	-	-	-	C
Child care Facilities (see 4.3.3(E)) and adult day care facilities (see 4.3.3(F))	C	C	C	C	C
Commercial recreational facilities, such as bowling alleys, skating rinks, and amusement game facilities	C	C	C	C	C
Drive-through facilities (serving banks, financial institutions, retail uses, etc.) <sup>2</sup> See 4.4.13(J)(7)(a)	C	C	C	C	C
Food Preparation and/or Processing including bakeries and catering	-	C	-	-	-



**Table 4.4.13(A)—Allowable Uses and Structures in the CBD Sub-Districts**

Uses	Central Core	Railroad Corridor	Beach Area	West Atlantic Neigh. <sup>5</sup>	South Pairs Neigh
Funeral homes, including accessory uses such as a chapel or crematory	C	C	C	C	C
Gasoline stations (See 4.4.13(J)(7)(b) and/or car washes (See 4.4.13(J)(7)(c))	C	C	-	-	C
Large family child care homes (see 4.3.3(TT))	C	C	C	C	C
Dry-cleaning Processing Plants	-	C	-	-	-
Segway tours and Segway sales (see 4.3.3(ZZZZ))	C	C	C	C	C
Theaters, excluding drive-ins	C	C	C	C	C
Pet Services [See 4.3.3(W)]	C	C	C	C	C
Pet Hotels [see 4.3.3(W)]		C			C
Veterinary Clinics [see 4.3.3(W)]	C	C	C	C	C
24-hour or late-night businesses, within 300 feet of residential zoned property [see 4.3.3(VV)]	C	C	C	C	C
Urban Agriculture [4.3.3 (D)] excluding outdoor Urban Farms	P,A	P,A	-	P,A	P,A
Outdoor Urban Farms [4.4.3(D)]	C	C	C	C	C
Clubs and Lodges as in GC (4.4.9)	-	-	-	-	C
Flea Markets, Bazaars as in GC (4.4.9)	-	-	-	-	C

**Table 4.4.13(A)—Allowable Uses and Structures in the CBD Sub-Districts**

Uses	Central Core	Railroad Corridor	Beach Area	West Atlantic Neigh. <sup>5</sup>	South Pairs Neigh
Sales and service of all-terrain vehicles and personal watercraft as in GC (4.4.9)	-	-	-	-	C
Vehicle care (See 4.4.13(C)(4)(f)(5))	-	-	-	-	C
Churches or places of worship (See 4.4.13(C)(4)(c))	-	-	-	C	C
<u>Pharmacies (Sec. 4.3.3 (LLL))</u>	<u>P*</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<u>Medical Marijuana Treatment Center (Sec. 4.4.3(G))</u>	<u>P*</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
<b>LEGEND: P</b> = Principal Use <b>A</b> = Accessory Use <b>C</b> = Conditional Use <b>-</b> = Prohibited Use <b>S</b> = Secondary Street Use * = not located on East Atlantic Avenue.					

Section 7. That Section 4.4.18(B)(5)(a) of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach be and the same shall be amended as follows:

(A) (This subsection shall remain in full force and effect as adopted.)

(B) ***Allowed uses.***

(1) – (4) (These subsections shall remain in full force and effect as adopted.)

(5) ***Retail center.*** A "Retail Center" may be a part of a PCC. It must be designed in such a manner that all access to it is from streets which are internal to the PCC. A "Retail Center" may not occupy more than ten percent of the total land area within a PCC; however, in no event, shall a "Retail Center" exceed 30,000 square feet in total floor area. The character of a "Retail Center" in a PCC should be such that it accommodates the other uses within the PCC. As such a "Retail Center" is restricted to the following uses:

(a) Personal health services e.g. barbershop, beauty shop, salon, pharmacy, medical marijuana treatment facility, physical fitness centers.

(b) – (h) (These subsections shall remain in full force and effect as adopted.)

(6) (This subsection shall remain in full force and effect as adopted.)

(C) – (E) (These subsections shall remain in full force and effect as adopted.)

Section 8. That Section 4.4.29(B)(3)(e) of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach be and the same shall be amended and created as follows:

Sec. 4.4.29 – Mixed Residential, Office And Commercial (MROC) District

(A) (This subsection shall remain in full force and effect as adopted.)

(B) Principal uses and structures permitted. The following types of uses are allowed within the MROC district as permitted uses:

(1) – (2) (These subsections shall remain in full force and effect as adopted.)

(3) General retail uses. Retail uses and/or facilities not to exceed 20 percent of the total building square footage of the development, including, but not limited to:

(a) Restaurants, baked goods, books, cheeses, beer, wine, liquor, confectioneries, cosmetics, meats, pharmacies, medical marijuana treatment centers, flowers and plants, fruits and vegetables, food, gifts, glassware, ice cream, leather goods, luggage, medical and surgical equipment, music and musical instruments, nautical supplies, office furniture equipment and supplies, pets and pet supplies, photographic equipment and supplies, sewing supplies, sporting goods, toys, wearing apparel and accessories, appliances, bicycles, business machines, jewelry.

(b) – (d) (These subsections shall remain in full force and effect as adopted.)

(4) – (9) (These subsections shall remain in full force and effect as adopted.)

(C) – (G) (These subsections shall remain in full force and effect as adopted.)

Section 9. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 10. That should any section or provision of this ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder this Ordinance.

Section 11. Specific authority is hereby given to codify this Ordinance.

Section 12. That this ordinance shall become effective immediately upon its passage on second and final reading.

Section 13. Upon its passage, the City of Delray Beach Zoning Department shall immediately allow for the submission of Business Tax Receipts for medical marijuana treatment center dispensing facilities.

PASSED AND ADOPTED in regular session on second and final reading on this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
MAYOR SHELLY PETROLIA

ATTEST:

\_\_\_\_\_  
CITY CLERK

First Reading \_\_\_\_\_

Second Reading \_\_\_\_\_