

ORDINANCE NO. 34-17

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS AT SECTION 4.3.3, SUBSECTION (G), PROHIBITING MEDICAL MARIJUANA TREATMENT CENTER – DISPENSING FACILITIES IN ALL ZONING DISTRICTS IN THE CITY OF DELRAY BEACH; AND AMENDING APPENDIX A “DEFINITIONS” TO PROVIDE DEFINITIONS FOR “MARIJUANA” AND “MEDICAL MARIJUANA TREATMENT CENTER - DISPENSING FACILITY”; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the 2014 Florida Legislature approved Senate Bill 1030 providing for the growing, processing, and distributing of specific forms of low-THC (non-euphoric) cannabis to qualified patients and their legal representatives for the treatment of listed medical conditions, which became effective on June 16, 2014 as Chapter 2014-157, Laws of Florida, and is codified at Section 381.986, Florida Statutes (“Senate Bill 1030”); and

WHEREAS, the Florida Department of Health adopted Chapter 64-4, Florida Administrative Code, to implement Senate Bill 1030; and

WHEREAS, the 2016 Florida Legislature approved House Bill 307, which among other things, amended Senate Bill 1030, and provided for the growing, processing, and distributing of specific forms of medical (euphoric) cannabis to qualified patients and their legal representatives for the treatment of listed medical conditions, which became effective on March 25, 2016 as Chapter 2016-123, Laws of Florida, and is codified at Sections 381.986 and 499.0295, Florida Statutes (“House Bill 307”); and

WHEREAS, pursuant to House Bill 307, the Florida Department of Health is authorized to adopt additional rules to implement certain sections of House Bill 307; and

WHEREAS, on November 8, 2016, Florida voters approved an amendment to the Florida Constitution to allow for broader medical use of any kind of marijuana (including euphoric strains) within the State (the “2016 Constitutional Amendment”); and

WHEREAS, the 2016 Constitutional Amendment authorizes and defines “Medical Marijuana Treatment Centers” to encompass the entire supply chain (cultivation, processing, storage, distribution etc.), not just retail sales to qualified patients; and

WHEREAS, the 2016 Constitutional Amendment permits the use of additional alternative forms of marijuana (marijuana in all its forms including low-THC cannabis, together referred to as “marijuana”) and

alternative dispensing methods (e.g., food products); and

WHEREAS, in 2014, the Florida Legislature enacted a separate but significantly more narrow medical marijuana law, the “Compassionate Medical Cannabis Act of 2014,” codified in Section 381.986, *Florida Statutes*, which authorizes a limited number of nurseries to cultivate, process, and dispense low-THC cannabis to qualified patients and operate as “dispensing organizations;” and

WHEREAS, on March 25, 2016, the Florida Legislature 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 the 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; and

WHEREAS, the 2017 Florida Legislature approved Senate Bill 8-A during Special Session, which amended among other things, Section 381.986, *Florida Statutes* (“Senate Bill 8-A”); and

WHEREAS, the City of Delray Beach’s Land Development Regulations need to be updated based on the requirements contained in Senate Bill 8-A regarding medical marijuana treatment centers, which was signed into law by Governor Rick Scott on June 23, 2017; and

WHEREAS, due to the historical prohibition of marijuana, the City of Delray Beach does not currently have any land development regulations governing the use of real property for the purposes of cultivating, processing, distributing, or selling marijuana, or related activities, and such uses are not permissible within the City; and

WHEREAS, the City of Delray Beach is updating the Land Development Regulations to more specifically prohibit medical marijuana treatment centers and medical marijuana dispensing facilities; and

WHEREAS, pursuant to LDR Section 1.1.6 and 2.4.5(M), the Planning and Zoning Board reviewed the proposed text amendment at a public hearing held on _____, 2017, and voted ____ to ____ to recommend that the changes be approved; and

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

WHEREAS, the City Commission of the City of Delray Beach adopts 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.

WHEREAS, the City Commission of the City of Delray Beach has determined that the proposed revisions to the land development regulations are in the best interests of the general welfare of the City.

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

Section 1. The above recitals are true and correct and are hereby incorporated into this Ordinance as if fully restated herein.

Section 2. Section 4.3.3(G) of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach, Florida, shall hereby be amended to read as follows:

(G) **Medical Marijuana Treatment Center - Dispensing Facility.** Medical Marijuana Treatment Centers (MMTC) - Dispensing Facilities as defined in Appendix A are specifically prohibited in all zoning districts in the City of Delray Beach. ~~Reserved.~~ [Deleted by Ord. 34-17-20-08 4/15/08]

Section 3. Appendix A, Definitions, of the Land Development Regulations of the Code of Ordinances of the City of Delray Beach, Florida, shall hereby be amended to include the following new definitions of “Marijuana” and “Medical Marijuana Treatment Center (MMTC) and/or MMTC-Dispensing Facility”, which shall be inserted in Appendix A in alphabetical order and shall be defined as follows:

MARIJUANA. 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, sale, derivative, mixture, or preparation of the plant or seed or resin that is dispensed only from a dispensing organization for medical use by an eligible patient as defined in s. 499.0295, F.S., including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient as defined in section 381.986, F.S. Marijuana includes any strain of marijuana or cannabis, in any form, that is authorized by State law to be dispensed or sold in the State of Florida. Also referred to as “medical marijuana.”

MEDICAL MARIJUANA TREATMENT CENTER (MMTC) - DISPENSING FACILITY. A retail establishment, licensed by the Florida Department of Health as a “dispensing organization,” “dispensing organization facility,” or similar use, that sells and dispenses marijuana, products containing marijuana, or related supplies, but does not engage in any other activity related to preparation, wholesale storage, distribution, transfer, cultivation, or processing of any form of marijuana, marijuana products, or related supplies, and does not allow on-site consumption of marijuana or marijuana products.

Section 4. 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 hereof as a whole or part thereof other than the part declared to be invalid.

Section 5. All ordinances or parts of ordinances in conflict herewith be, and the same are hereby repealed.

Section 6. This Ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this the _____ day of _____, 2017.

ATTEST:

M A Y O R

City Clerk

First Reading_____

Second Reading_____

Approved as to form and legal sufficiency:

R. Max Lohman, City Attorney