

ORDINANCE NO.: 2981-14

AN ORDINANCE AFFECTING THE USE OF LAND IN THE CITY OF WINTER PARK, FLORIDA RELATING TO MEDICAL MARIJUANA TREATMENT CENTERS, WHETHER FOR MEDICAL OR RECREATIONAL USE; ESTABLISHING REGULATIONS FOR MEDICAL MARIJUANA TREATMENT CENTERS TO BE CODIFIED AS ARTICLE III, OF CHAPTER 54, HEALTH AND SANITATION, OF THE CITY CODE; AMENDING SECTION 58-78, LIMITED INDUSTRIAL AND WAREHOUSE (I-1) DISTRICT, OF CHAPTER 58, LAND DEVELOPMENT CODE, ARTICLE III, ZONING TO ALLOW "MEDICAL MARIJUANA TREATMENT CENTERS" AS A PERMITTED USE BY SETTING FORTH SITING STANDARDS AND REQUIREMENTS FOR MEDICAL MARIJUANA TREATMENT CENTERS; AMENDING SECTION 58-95, DEFINITIONS, OF CHAPTER 58, LAND DEVELOPMENT CODE, ARTICLE III, ZONING; PROVIDING FOR CONFLICTS; CODIFICATION, SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the City is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, a ballot initiative has been scheduled for state wide vote in November 2014 to allow the dispensing and use of marijuana for medical purposes by persons with debilitating diseases; and

WHEREAS, in 1996, the state of California became the first state to legalize the use of medical marijuana, and several other states subsequently enacted laws legalizing medical marijuana in various circumstances; and

WHEREAS, the California Police Chiefs Association developed a Task Force on Marijuana Dispensaries that prepared the "White Paper on Marijuana Dispensaries" ("White Paper"), which white paper was published in 2009; and

WHEREAS, the White Paper on Marijuana Dispensaries examined the direct and indirect adverse impacts of marijuana dispensaries in local communities and indicated that marijuana dispensaries may attract or cause ancillary crimes, and may result in adverse effects, such as marijuana smoking in public, the sale of other illegal drugs at dispensaries, loitering and nuisances, and increased traffic near dispensaries; and

WHEREAS, the White Paper further indicates that the presence of marijuana dispensing businesses may contribute to the existence of a secondary market for illegal, street-level distribution of marijuana; and

WHEREAS, the White Paper outlines the following typical complaints received from individuals regarding certain marijuana dispensary study areas: high levels of traffic going to and from the dispensaries, people loitering in the parking lot of the dispensaries, people smoking marijuana in the parking lot of the dispensaries, vandalism near dispensaries, threats made by dispensary employees

to employees of other businesses, and citizens worried that they may become a crime victim due to their proximity to dispensaries; and

WHEREAS, the White Paper found that many medical marijuana dispensary owners had histories of drug and violence-related arrests, that records or lack of records showed that some owners were not properly reporting income generated from the sales of marijuana, that some medical marijuana businesses were selling to individuals without serious medical conditions, and that the California law had no guidelines on the amount of marijuana which could be sold to an individual; and

WHEREAS, the White Paper ultimately concludes that there are many adverse secondary effects created by the presence of medical marijuana dispensaries in communities; and

WHEREAS, the City Commission of the City of Winter Park has determined that, in the event the State of Florida legalizes medical marijuana, it is in the best interests of the citizenry and general public for the City to regulate the location of medical marijuana treatment centers to minimize the potential adverse secondary effects on the citizens; and

WHEREAS, it has also been determined that if this ordinance is approved by the City of Winter Park City Commission, this ordinance would not permit the opening of any medical marijuana treatment centers until after the State of Florida does in fact legalize the sale of marijuana, whether for medical or recreational uses, and

WHEREAS, the City Commission has the responsibility and authority to determine what uses are best suited to particular zoning categories as well as land use categories within the City; and

WHEREAS, the City Commission has heard testimony from the Winter Park Police Department regarding the potential impacts of medical marijuana treatment centers on the surrounding area; and

WHEREAS, the Planning and Zoning Board has recommended allowing medical marijuana treatment centers as a permitted use in the Limited Industrial and Warehouse (I-1) District zoning category; and

WHEREAS, the City Commission of the City of Winter Park has determined that, given the potential impact on the surrounding area, medical marijuana treatment centers should only be permitted within the Limited Industrial and Warehouse (I-1) District zoning category in the City; and

WHEREAS, the City Commission of the City of Winter Park has determined that it is advisable and in the public interest to set certain distance and other siting standards in regard to the location and operation of medical marijuana treatment centers; and

WHEREAS, the City Commission of the City of Winter Park has determined that it is advisable and in the public interest to promulgate certain requirements, including, but not limited to recordkeeping and reporting requirements, hours of operation, prohibitions of on-site consumption, and lease restrictions, to regulate the operation of medical marijuana treatment centers and to minimize the potential adverse secondary effects of such centers on the surrounding properties and the citizens; and

WHEREAS, the City Commission approves the addition of Article III, to Chapter 54, Health and Sanitation, and the revision of Sections 58-78 and 58-95 of the Land Development Code, to regulate the operation of medical marijuana treatment centers and minimize the negative secondary effects of such centers on the surrounding properties; and

WHEREAS, the City Commission of the City of Winter Park finds that this ordinance promotes the general welfare; and

WHEREAS, words with double underline shall constitute additions to the original text and ~~strike through~~ text shall constitute deletions to the original text, and asterisks (* * *) indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF WINTER PARK, FLORIDA, AS FOLLOWS:

SECTION 1. Recitals. The foregoing recitals are hereby adopted and confirmed.

SECTION 2. Creation of Medical Marijuana Treatment Centers. Chapter 54, Health and Sanitation is hereby amended to add a new Article III, Medical Marijuana Treatment Centers to read as follows:

Sec. 54-30. Definitions.

For purposes of this article, the following terms, whether appearing in the singular or plural form, shall have the following meanings.

Debilitating Medical Condition means cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis or other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

Department means the state Department of Health or its successor agency.

Identification card means a document issued by the Department that identifies a person who has a physician certification or a personal caregiver who is at least twenty-one (21) years old and has agreed to assist with a qualifying patient's medical use of marijuana.

Marijuana has the meaning given cannabis in Section 893.02(3), Florida Statutes (2013).

Medical Marijuana Treatment Center means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to

qualifying patients or their personal caregivers and is registered by the state Department of Health.

Medical use means the acquisition, possession, use, delivery, transfer, or administration of marijuana or related supplies by a qualifying patient or personal caregiver for use by a qualifying patient for the treatment of a debilitating medical condition.

Personal caregiver means a person who is at least twenty-one (21) years old who has agreed to assist with qualifying patient's medical use of marijuana and has a caregiver identification card issued by the Department. A personal caregiver may assist no more than five (5) qualifying patients at one time. An employee of a hospice provider, nursing, or medical facility may serve as a personal caregiver to more than five (5) qualifying patients as permitted by the Department. Personal caregivers are prohibited from consuming marijuana obtained for the personal, medical use by the qualifying patient.

Physician means a physician who is licensed under Chapter 458 or 459, Florida Statutes.

Physician certification means a written document signed by a physician, stating that in the physician's professional opinion, the patient suffers from a debilitating medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient, and for how long the physician recommends the medical use of marijuana for the patient. A physician certification may only be provided after the physician has conducted a physical examination of the patient and a full assessment of the patient's medical history.

Qualifying patient means a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card. If the Department does not begin issuing identification cards within nine (9) months after the effective date of this section, then a valid physician certification will serve as a patient identification card in order to allow a person to become a "qualifying patient" until the Department begins issuing identification cards.

Sec. 54-31. Registration and operational regulations for medical marijuana treatment centers.

(a) Registration required. Upon adoption of this article and annually thereafter, medical marijuana treatment centers shall register with the city by completing and submitting to the city manager, or his/her designee, a registration form that is obtained from that official.

(b) Persons responsible. A physician shall be designated as responsible for complying with all requirements related to registration and operation of the medical

marijuana treatment centers. The designated physician and all other persons operating the medical marijuana treatment center shall ensure compliance with the following regulations. Failure to so comply shall be deemed a violation of this article and shall be punishable as provided in section 54-34.

(c) *Supplemental regulations.* All registered medical marijuana treatment centers shall be subject to the supplemental regulations provided in this subsection.

(d) *Display of state registration.* Any medical marijuana treatment center shall be validly registered with the State of Florida, if required, and with the city, and shall prominently display in a public area near its main entrance copies of all state licenses, city licenses, and local business tax receipt, and the name of the owner and designated physician responsible for compliance with state and city law. A medical marijuana treatment center shall register with the city by completing and submitting to the city manager, or his/her designee, a registration form that is obtained from that official.

(e) *Controlled substances.* The on-site sale, provision, or dispensing of controlled substances (other than those types of marijuana approved for sale by the Department) at a medical marijuana treatment center shall be prohibited except as is specifically set forth in applicable federal or state law.

(f) *On-Site consumption of marijuana and/or alcoholic beverages.* No consumption of marijuana or alcoholic beverages shall be allowed on the premises, including in the parking areas, sidewalks or rights-of-way. The persons responsible for the operation of the medical marijuana treatment center shall take all necessary and immediate steps to ensure compliance with this paragraph.

(g) *Adequate inside waiting area required.* No medical marijuana treatment center shall provide or allow outdoor seating areas, queues, or customer waiting areas. All activities shall be conducted within the building and adequate indoor waiting areas shall be provided for all patients and business invitees. Outdoor sales of medical marijuana, including, but not limited to sales from mobile units or at outdoor markets, are specifically prohibited. The medical marijuana treatment centers shall not permit any patient or business invitee to stand, sit (including in a parked car), gather, or loiter outside of the building where the clinic operates, including in any parking area, sidewalk adjacent, right-of-way, or neighboring property for any period of time longer than that reasonably required to arrive and depart. The medical marijuana treatment centers shall post a conspicuous sign stating that no loitering is allowed on the property. The medical

marijuana treatment center will cooperate with law enforcement at all times to ensure gathering and/or loitering does not occur.

(h) *Queuing of Vehicles.* The persons responsible for the operation of medical marijuana treatment center shall ensure that there is no queuing of vehicles in the rights-of-way. The persons responsible for the operation of the medical marijuana treatment center shall take all necessary and immediate steps to ensure compliance with this paragraph.

(i) *No Drive-Through Service.* No medical marijuana treatment center shall have a drive-through or drive-in service aisle. All dispensing, payment for and receipt of said marijuana shall occur from within or inside the medical marijuana treatment center.

(j) *Operating hours.* A medical marijuana treatment center may operate only Monday through Friday and only during the hours of 7:00 a.m. to 7:00 p.m.

(k) *Monthly business records.* Each business day a medical marijuana treatment center shall record, and shall provide to the city manager or his or her designee on a monthly basis, by the fifth day of each calendar month, a sworn summary of certain limited information from the prior calendar month that is prepared by the medical director and/or the person in charge of prescribing the medical marijuana that month. To the extent such information is not otherwise required to be maintained by any other law, the backup for the required monthly summary shall be maintained by the medical marijuana treatment center for at least 24 months. The monthly summary shall include the following information for the previous calendar month:

- (1) The total number of prescriptions for marijuana filled by the medical marijuana treatment center;
- (2) The state of residence of each person to whom marijuana was dispensed.

(l) *Personnel records.* A medical marijuana treatment center shall maintain personnel records for all owners, operators, employees, workers, and volunteers on site at the medical marijuana treatment center, and make those records available during any inspection. The medical marijuana treatment center shall forward a sworn personnel record containing items (1), (2) and (3), below to the city manager, or his/her designee, on a monthly basis by the fifth day of each calendar month for the previous calendar month. Personnel records shall, at a minimum, contain the following information about each of the above-described persons present for any day in the previous calendar month:

- (1) Name and title;

- (2) Current home address, telephone number, and date of birth;
- (3) A state or federally-issued driver's license or other identification number;
- (4) A copy of a current driver's license or a government issued photo identification; and
- (5) A list of all criminal convictions (if any), whether misdemeanor or felony for all persons hired in the previous calendar month, to be updated annually.

(m) *Inspections.* A medical marijuana treatment center shall permit, law enforcement access to the property to conduct compliance inspections.

(n) *Compliance with other laws.* A medical marijuana treatment center shall at all times be in compliance with all federal and state laws and regulations, the City of Winter Park City Code and the Orange County Code. In the event of a direct conflict between the City and County Codes, the City Code shall apply.

Sec. 54-32. Landlord Responsibility.

(a) Any landlord, leasing agent or owner of property, upon which a medical marijuana treatment center operates, who knows, or in the exercise of reasonable care should know, that a medical marijuana treatment center is operating in violation of the Winter Park City Code, or applicable Florida law, including the rules and regulations promulgated by the state Department of Health, must prevent, stop, or take reasonable steps to prevent the continued illegal activity on the leased premises.

(b) Landlords who lease space to a medical marijuana treatment center must expressly incorporate language into the lease or rental agreement stating that failure to comply with the Winter Park City Code is a material non-curable breach of the lease and shall constitute grounds for termination of the lease and immediate eviction by the landlord.

Sec. 54-33. Certification affidavit by applicants for related uses.

(a) *Certification affidavit by applicants for related uses.* Any application for a business certificate under chapter 54, article III, as a medical marijuana treatment center as defined in section 54-30, shall be accompanied by an executed affidavit certifying registration with the State of Florida, and the City of Winter Park as a medical marijuana treatment center. The failure of an applicant to identify the business in the application for a business certificate as a medical marijuana treatment center, which meets the definition of medical marijuana treatment center as defined in section 54-30, will result in the

immediate expiration of the business certificate and immediate ceasing of all activity conducted in the medical marijuana treatment center.

(b) Any applicant's application for a business certificate and executed affidavit relating to use as a medical marijuana treatment center, where applicable, shall be provided to the city building division at the time of the proposed use.

Sec. 54-34. Penalties.

Any person violating any of the provisions of this article shall be deemed guilty of an offense punishable as provided in section 1-7, Article II Code Enforcement Citations, and also by revocation of a business certificate and code enforcement violations referred to the code enforcement board.

SECTION 3. Section 58-78, Limited Industrial and Warehouse (I-1) District, of Chapter 58, Land Development Code, Article III, Zoning is hereby amended to read as follows:

Sec. 58-78. Limited industrial and warehouse (I-1) district.

* * *

(b) Permitted uses. All uses of land located within this district must not be obnoxious by reason of sound, fumes, repulsive odors and the like whether the same constitutes an actual nuisance or not, and the uses shall not, in any way, detract from the desirability of the city as a residential community. Permitted uses include:

* * *

(14) Medical marijuana treatment center, subject to the following requirements:

a. No medical marijuana treatment center shall be located within one thousand (1,000) feet of any school, daycare, park, playground or religious institution, or within one hundred (100) feet of any residentially zoned property, as further defined by these regulations. No medical treatment center shall operate within one thousand (1,000) feet of any existing medical marijuana treatment center. Distances shall be measured by drawing a straight line between the closest point of the medical marijuana treatment center structure (be it a building or leased space in a building) to the closest property line or edge of leased space (whichever is closer) of the school, church or residentially zoned property.

b. Any parking demand created by a medical marijuana treatment center shall not exceed the parking spaces located or allocated on site, as required by the city's parking regulations. An applicant shall be required to demonstrate that on-site traffic and parking attributable to the medical marijuana treatment center will be sufficient to accommodate traffic and parking demands generated by the medical marijuana treatment center, based upon a current traffic and parking study prepared by a certified professional.

* * *

SECTION 4. Section 58-95, Definitions, of Chapter 58, Land Development Code, Article III, Zoning, is hereby amended to read as follows:

Sec. 58-95. Definitions.

Medical Marijuana Treatment Center means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers and is registered by the state Department of Health and regulated under Article III of Chapter 54 of the City Code of Ordinances.

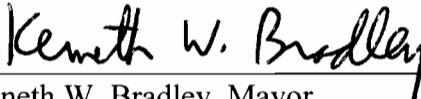
SECTION 5. CONFLICTS. All ordinance or parts of ordinances in conflict with any of the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 6. CODIFICATION. This ordinance shall be incorporated into the Winter Park City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the City Code may be freely made.

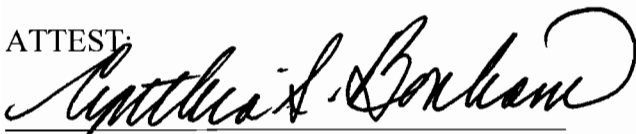
SECTION 7. SEVERABILITY. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 8. EFFECTIVE DATE. This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Park, Florida.

ADOPTED by the City Commission of the City of Winter Park, Florida, in a regular meeting held on the 27th day of October, 2014.


Kenneth W. Bradley, Mayor

ATTEST:


Cynthia S. Bonham, City Clerk