

ORDINANCE NO. 3081-17

**AN ORDINANCE OF THE CITY OF WINTER PARK, FLORIDA
REPEALING AND REPLACING ORDINANCE NO. 2981-14
AND THE CODE PROVISIONS ADOPTED THEREIN WITH A
NEW SECTION 58-96 OF ARTICLE III OF CHAPTER 58,
CITY OF WINTER PARK LAND DEVELOPMENT CODE TO
PROHIBIT MEDICAL MARIJUANA TREATMENT CENTER
DISPENSING FACILITIES WITHIN THE BOUNDARIES OF
THE CITY AS AUTHORIZED BY SECTION 381.986,
FLORIDA STATUTES; PROVIDING LEGISLATIVE
FINDINGS; PROVIDING FOR CODIFICATION,
MORATORIUM CONTINGENCY; SEVERABILITY, CONFLICTS,
AND AN EFFECTIVE DATE.**

WHEREAS, the City of Winter Park has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida; Chapters 163 & 166, Florida Statutes; and Section 381.986, Florida Statutes; and

WHEREAS, potential adverse impacts on the health, safety, and welfare of residents and business from secondary effects associated with the sale and distribution of marijuana exist, potentially including: offensive odors, trespassing, theft, fire hazards, increased crime in and about the medical marijuana dispensing facility business, robberies, negative impacts on nearby businesses, nuisance problems; and

WHEREAS, certain of the above potential adverse impacts are accentuated by the current difficulties experienced by medical marijuana dispensing facility business in obtaining banking services necessitating such businesses to operate on a cash basis; and

WHEREAS, there exists the potential for misappropriation and diversion of medical marijuana to non-medical uses; 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

WHEREAS, the California Police Chiefs Association developed a Task Force on Marijuana Dispensing facilities that prepared the "White Paper on Marijuana Dispensing facilities" published in 2009 ("White Paper"); and

WHEREAS, the White Paper examined the direct and indirect adverse impacts of marijuana in local communities and indicated that marijuana dispensing facilities 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 dispensing facilities, loitering and nuisances, and increased traffic near dispensing facilities; 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

WHEREAS, the White Paper outlines the following typical complaints received from individuals regarding certain marijuana dispensing facility study areas: high levels of traffic going to and from the dispensing facilities, people loitering in the parking lot of the dispensing facilities, people smoking marijuana in the parking lot of the dispensing facilities, vandalism near dispensing facilities, and citizens worried that they may become a crime victim due to proximity to dispensing facilities; and

WHEREAS, the White Paper ultimately concludes that there are may be adverse secondary effects created by the presence of medical marijuana dispensing facilities in communities; and

WHEREAS, The Marijuana Policy Group has published a memorandum called "Municipal Dispensary Allocation: Florida," which evaluated the market need for medical marijuana dispensing facilities and the harmful consequences and secondary effects of over-saturation of medical marijuana dispensing facilities within the market place; and

WHEREAS, The Marijuana Policy Group determined that Florida should have no more than one dispensing facility for each fifty-thousand residents and the optimal ratio is one dispensing facility per 67,222 residents, and the City of Winter Park has a population (less than approximately 30,000) well below such ratios; and

WHEREAS, Section 381.986(11), Florida Statutes, authorizes a county or municipality to "ban medical marijuana treatment center dispensing facilities from being located within the boundaries of that county or municipality"; and

WHEREAS, Section 381.986(11) further provides that "[a] county or municipality that does not ban dispensing facilities under this subparagraph may not place specific limits, by ordinance, on the number of dispensing facilities that may locate within that county or municipality," and that "[e]xcept as provided in

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paragraph (c), a county or municipality may not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465"; and

WHEREAS, given, among other things, the secondary effects of medical marijuana dispensing facilities, The Marijuana Policy Group's the analysis of optimal population ratios (residents per dispensing facility), and the statutory restrictions on local government authority to regulate number and location of dispensing facilities if not banned, there is a rational basis for the City to exercise its authority under Section 381.986(11), Florida Statutes to ban dispensing facilities within the boundaries of the City; and

WHEREAS, on October 27, 2014, the City adopted Ordinance 2981-14 to regulate medical marijuana treatment centers, and due to the recent adoption of Section 381.986, Florida Statutes, the City Commission desires to repeal and replace Ordinance 2981-14; and

WHEREAS, the City finds that this Ordinance is in the interests of the public health, safety, and welfare.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA:

SECTION 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance and adopted as legislative findings.

SECTION 2. Repeal/Amendment. City of Winter Park Ordinance No. 2981-14 is hereby repealed in its entirety and Article III of Chapter 54 of the City of Winter Park Code of Ordinance is hereby amended as follows:

ARTICLE III. - RESERVEDMEDICAL MARIJUANA TREATMENT CENTERS

~~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 21 years old and has agreed to assist with a qualifying patient's medical use of *marijuana*.~~

~~Marijuana has the meaning given cannabis in F.S. § 893.02(3).~~

~~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 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 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 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 F.S. ch. 458 or 459.~~

~~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 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 section.~~

~~(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. Amendment of City Land Development Code. Article III (Zoning) of Chapter 58, of the City of Winter Park Land Development Code is hereby amended to add a new Section 58-96 and to amend Section 58-95 and Section 58-78(b) as follows (~~stricken through~~ language are deletions; underlined language are additions; provisions not included are not being amended):

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.~~

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:

(1) Warehouses and wholesale distribution of goods, wares, merchandise, articles, or substances, except those which are combustible, inflammable, explosive or likely to create fire, radiation, or explosive hazards to surrounding property;

(2) Administrative or executive offices of a business or industrial establishment;

(3) Engineering offices;

(4) Assembly of electronic instruments or devices, precision instruments and similar industries;

(5) Blueprinting, photocopying or printing office;

(6) Light and clean manufacturing operations which meet all the requirements of this article and are operated only within completely enclosed building;

(7) Research offices and laboratories;

(8) Storage building or yard which is incidental to a permitted use. Goods and equipment should be stored in fully-enclosed buildings, but if for the conduct of business they must be stored in a yard, then the yard must be fully screened from public view by a densely planted hedge, wall or fence measuring a minimum of six feet in height;

(9) Adult entertainment establishments if otherwise complying with the applicable Winter Park or Orange County adult entertainment code;

(10) All accessory uses which are customarily incidental to such industrial uses;

(11) Churches, nonprofit organizations' halls/lodges and schools (see parking requirements for limitations);

(12) Any use permitted in the C-3 district, except those including residential uses;

(13) Pain management clinics.

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

~~a. No medical marijuana treatment center shall be located within 1,000 feet of any school, day care, park, playground or religious institution, or within 100 feet of any residentially zoned property, as further defined by these regulations. No medical treatment center shall operate within 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.~~

Sec. 58-96.- Prohibition on Medical Marijuana Dispensing Facilities.

(a) Prohibition. Medical Marijuana Treatment Center Dispensing Facilities are prohibited and shall not be located within the boundaries of the city. The city shall not accept, process or approve any request or application for a development order, building permit or other approval associated with a proposed Medical Marijuana Treatment Center Dispensing Facility.

(b) Definition. For the purposes of this section, the term "Medical Marijuana Treatment Center Dispensing Facility" means any facility where medical marijuana or any product derived therefrom is dispensed at retail.

(c) Interpretation/Intent. This section and the terms used herein shall be interpreted in accordance with F.S. § 381.986 and Ch. 64-4 of the Florida Administrative Code. The intent of this section is to ban medical marijuana treatment center dispensing facilities from being located within the boundaries of the city as authorized by F.S. § 381.986(11).

SECTION 4. Codification. This Section 2 and 3 of Ordinance shall be incorporated into the Winter Park City Code and Land Development Code, as applicable. 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 or the City Code may be freely made.

SECTION 5. Moratorium Contingency. In the event Section 381.986, Florida Statutes is amended or interpreted by a court of competent jurisdiction in a way as to eliminate or prevent the city's ability to ban or prohibit Marijuana Treatment Center Dispensing Facilities within the city limits (or such statute or this Ordinance is interpreted in a manner to prevent the enforcement of Section 58-96 of the LDC adopted by this Ordinance), upon the effective date of such an automatic one-year moratorium shall go into place on the acceptance, processing and approval of Marijuana Treatment Center Dispensing Facilities (including by way of acceptance, proceeding and approval of applications for development orders and permits) within the City limits in order to give the City time to evaluate changes in the applicable law, the City's ability to regulate such uses and activities and potentially enact local legislation regarding the same. Such one-year moratorium may be terminated early through resolution or ordinance of the City Commission.

SECTION 6. 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 7 Conflicts. In the event of a conflict or conflicts between this Ordinance and any other ordinance or provision of law, this Ordinance controls to the extent of the conflict, as allowable under the law.

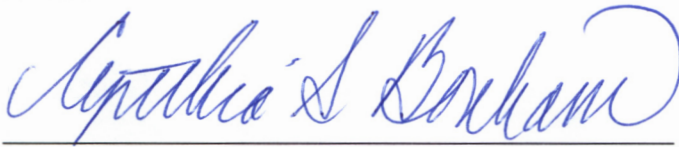
SECTION 8. Effective date. This Ordinance shall become effective immediately upon adoption by the City Commission of the City of Winter Park, Florida.

ADOPTED this 14th day of August, 2017, by the City Commission of the City of Winter Park, Florida.

A handwritten signature in blue ink, appearing to read "Steve Leary", positioned above a horizontal line.

Steve Leary, Mayor

ATTEST:

A handwritten signature in blue ink, appearing to read "Cynthia S. Bonham", positioned above a horizontal line.

Cynthia S. Bonham, City Clerk