

**CITY OF FLAGLER BEACH
NOTICE OF PROHIBITION OF MEDICAL MARIJUANA
TREATMENT CENTER DISPENSARIES WITHIN THE
CITY'S JURISDICTIONAL BOUNDARIES**

The City of Flagler Beach proposes to adopt the following ordinance entitled:

ORDINANCE NO. 2017-06

AN ORDINANCE OF THE CITY OF FLAGLER BEACH, FLORIDA RELATING TO MEDICAL MARIJUANA; AMENDING THE CODE OF ORDINANCES, APPENDIX A, "LAND DEVELOPMENT REGULATIONS," ARTICLE II, "ZONING;" AMENDING DEFINITIONS AND TERMS TO CONFORM WITH STATE LEGISLATION; PROVIDING THAT MEDICAL MARIJUANA TREATMENT CENTER DISPENSARIES ARE PROHIBITED WITHIN THE JURISDICTIONAL BOUNDARIES OF THE CITY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

Public Hearings on this ordinance will be conducted as follows:

Planning and Architectural Review Board: at 5:30 p.m. or soon thereafter on July 11, 2017

City Commission: First reading at 6:00 p.m. or soon thereafter on July 13, 2017

City Commission: Second Reading at 6:00 p.m. or soon thereafter on July 27, 2017

The public hearings may be continued to a future date or dates. The times and dates of any continuances of a public hearing shall be announced during the public hearing without any further published notice. The hearings will be conducted in the City Commission Chambers located at 105 South Second Street, Flagler Beach, Florida.

A copy of this notice, the file relating to the proposed ordinance amendment is available for public inspection during regular business hours Monday through Friday from 8:00 a.m. to 5:00 p.m. at 105 South Second Street, Flagler Beach, Florida. The public is encouraged to participate in the processes and procedures of the City and to request copies of the proposed ordinance. For further information about the proposed ordinance, please call the Planning and Building Department at (386) 517-2000 Ext. 230.

Pursuant to Section 166.041(3)(a), F.S. all interested parties may appear and be heard with respect to the proposed ordinance.

Any person wishing to express his/her opinion may submit written comments regarding the proposed amendment to the City through the Planning and Building Department. Comments should be made as early as possible to ensure full consideration.

Pursuant to Sec. 286.0105 F.S. if a person decides to appeal any decision made with respect to any matter considered at the above referenced hearings, he/she will need a record of the proceedings. For such purposes, it may be necessary to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the *Americans with Disabilities Act*, persons needing assistance to participate in any of these proceedings should contact the City Clerk's Office at 386-517-2000 Ext. 233 at least 48 hours prior to the meeting.

Penny Overstreet

From: Penny Overstreet
Sent: Sunday, June 25, 2017 1:03 PM
To: NJ Legal (legals@news-jrnl.com)
Cc: Jeanelle Pagano; Larry Torino
Subject: Legal ad Ordinance 2017-06
Attachments: Ordinance 2017-06 ad.doc

Hello,
Please run the attached ad twice. Once on Saturday, July 1, 2017
and once again on Thursday, July 19, 2017

Ad Minimum Size Requirements: 18 pt Font for the title of the notice
2 columns wide by 10" long

THIS AD CAN NOT RUN IN LEGAL AD SECTION

Penny Overstreet CMC

City Clerk
City of Flagler Beach
105 S. 2nd Street
Flagler Beach, FL 32136
www.cityofflaglerbeach.com
☎ 386-517-2000 ext. 233
☎ 386-517-2008

Florida has a very broad Public Records Law. Virtually all written communications to or from State and Local Offices and employees are public records available to the public and media upon request. The City of Flagler Beach's policy does not differentiate between personal and business emails. This means email messages, including your e-mail address and any attachments and information we receive online might be disclosed to any person or media making a public records request. E-mail sent on the City system will be considered public and will only be withheld from disclosure if deemed confidential or exempt pursuant to State Law. If you are an individual whose identifying information is exempt under 119.071, Florida Statutes, please so indicate in your email or other communication. If you have any questions about the Florida public records law, refer to Chapter 119, Florida Statutes.
Website: www.cityofflaglerbeach.com

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BEACH NOTICE OF
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<input type="checkbox"/> PROOF O.K. BY: _____	<input type="checkbox"/> O.K. WITH CORRECTIONS BY: _____
PLEASE READ CAREFULLY • SUBMIT CORRECTIONS ONLINE	
DF-0002252344-01 (100%)	
ADVERTISER: CITY OF FLAGLER-LEGAL	PROOF CREATED AT: 6/27/2017 4:08:10 AM
SALES PERSON: DF0098	NEXT RUN DATE: 07/01/17
SIZE: 2X10	PROOF DUE: 06/30/17 05:59:55
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**AN ORDINANCE OF THE CITY OF FLAGLER BEACH,
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AMENDING THE CODE OF ORDINANCES, APPENDIX A,
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CONFORM WITH STATE LEGISLATION; PROVIDING
THAT MEDICAL MARIJUANA TREATMENT CENTER
DISPENSARIES ARE PROHIBITED WITHIN THE
JURISDICTIONAL BOUNDARIES OF THE CITY;
PROVIDING FOR CONFLICTS; PROVIDING FOR
SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

WHEREAS, on November 8, 2016, voters approved a ballot initiative to amend the Florida Constitution to allow the use of marijuana for debilitating medical conditions within the State of Florida; and

WHEREAS, the State Legislature has approved and the Governor has signed into law legislation regulating medical marijuana, medical marijuana treatment centers and medical marijuana treatment center dispensaries; and

WHEREAS, the State has preempted to itself the regulation of medical marijuana, medical marijuana treatment centers, and medical marijuana treatment center dispensaries; and

WHEREAS, the State has provided that local jurisdictions may not regulate medical marijuana treatment center dispensaries more stringently than they regulate pharmacies *if such jurisdictions allow medical marijuana treatment center dispensaries within their jurisdictional boundaries*; and

WHEREAS, the State has created a limited exception to its preemption within this field whereby local jurisdictions are authorized by statute to ban medical marijuana treatment center dispensaries within their jurisdictional boundaries; and

WHEREAS, in order to conform to the new legislation, the City Commission of the City of Flagler Beach finds it necessary to amend its existing zoning regulations applicable to medical marijuana and medical marijuana treatment center dispensaries; and

WHEREAS, given the rapidly evolving landscape of medical marijuana in the State of Florida and given that the legislature has allowed local jurisdictions only two options: 1) to allow medical marijuana treatment centers within their jurisdictional boundaries and regulate same no more stringently than they would regulate pharmacies or 2) to ban medical marijuana treatment centers within their jurisdictional boundaries altogether, the City Commission of the City of Flagler Beach finds it to be in the best interest of the health, safety, and welfare of the residents, businesses, and visitors of the City of Flagler Beach to prohibit medical marijuana treatment centers within the jurisdictional boundaries of the City at this time; and

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WHEREAS, prior to the State preemption and the limited options allowed local jurisdictions, the City of Flagler Beach had determined its Industrial zoning district to be an appropriate zoning district for medical marijuana dispensaries to be a special exception use; and

WHEREAS, prior to the State preemption and the limited options allowed local jurisdictions, the City of Flagler Beach adopted criteria and siting standards for the location of medical marijuana dispensaries as special exception uses within the Highway Commercial zoning district; and

WHEREAS, because the State has provided that local jurisdictions may not enforce any siting standards applicable to medical marijuana treatment center dispensaries if they do not outright ban medical marijuana treatment centers within their jurisdictional boundaries, the City Commission of the City of Flagler Beach finds it necessary to provide that medical marijuana treatment center dispensaries are a prohibited use within the Industrial zoning district and, in so doing, delete the standards and siting criteria previously adopted by the City; and

WHEREAS, given the rapidly evolving landscape of medical marijuana within the State of Florida and given that the State legislative action was the result of an amendment to the State Constitution, the City Commission of the City of Flagler Beach believes there is a high likelihood of future State legislation regarding medical marijuana and potential for legal challenges to the State legislation already adopted; and

WHEREAS, the City of Flagler Beach desires to ensure that in the event of any change, whether legislative, judicial, or administrative to the authority of the City of Flagler Beach to prohibit medical marijuana treatment center dispensaries within its jurisdictional boundaries the City has sufficient time to consider and adopt any standards or regulation regarding medical marijuana and medical marijuana treatment center dispensaries that are consistent with Florida law at that time to protect the health, safety, and welfare of the citizens, businesses, and visitors of the City of Flagler Beach; and

WHEREAS, accordingly, the City Commission of the City of Flagler Beach has found it necessary to include in this Ordinance a hold on the processing of any applications for the operation of a medical marijuana treatment center dispensary that would last 90 days from the effective date of any legislative change or final court order that strikes or otherwise alters the statutory authority of local governments to ban medical marijuana treatment centers within their jurisdictional boundaries; and

WHEREAS, the Planning and Zoning Commission, sitting as the local planning agency, has found this ordinance to be consistent with the City’s Comprehensive Development Plan and recommended approval.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH, FLORIDA THAT:

92 SECTION 1. Appendix A, “Land Development Regulations,” Article II, “Zoning,” of
93 the City of Flagler Beach Code of Ordinances is hereby amended as follows (note: strikethrough
94 text indicates deletions, underline text indicates additions, ellipses (***) identify text that
95 remains unchanged and that is not reprinted herein):

96 * * *

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99 **Sec. 2.02.00. – Definitions.**

100 * * *

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103 Marijuana. All parts of any plant of the genus *Cannabis*, whether growing or not;
104 the seeds thereof; the resin extracted from any part of the plant; and every
105 compound, manufacture, salt, derivative, mixture, or preparation of the plant or its
106 seeds or resin, including low-THC cannabis.

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108 Medical Marijuana Treatment Center. A facility licensed by the Florida
109 Department of Health to cultivate, process, transport, or dispense marijuana or
110 marijuana delivery devices.

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112 Medical Marijuana Treatment Center Dispensary. A facility that is operated by
113 an Medical Marijuana Treatment Center or other organization or business holding
114 all necessary licenses and permits from which marijuana, cannabis, cannabis-
115 based products, or cannabis plants are delivered, purchased, possessed, or
116 dispensed for medical purposes and operated in accordance with all local, federal
117 and state laws. Physicians authorized by State law to order low-THC cannabis, as
118 defined in Florida Statutes, for patients’ medical use are not included in the
119 definition of Medical Marijuana Dispensary.

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123 **Sec. 2.06.04. – ~~Marijuana and Cannabis~~ Medical Marijuana Treatment Center**
124 **Dispensaries.**

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126 a) Pursuant to Section 381.986(11)(b), Florida Statutes, which creates a limited
127 exception to the preemptive authority asserted by the State as to Medical Marijuana
128 Treatment Centers and which authorizes local jurisdictions to ban Medical Marijuana
129 Treatment Center Dispensaries within their jurisdictional boundaries, Medical
130 Marijuana Treatment Center Dispensaries are prohibited within the jurisdictional
131 boundaries of the City of Flagler Beach.

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133 b) In the event there is any change by legislation or rule to the exception to the
134 preemptive authority asserted by the State as to Medical Marijuana Treatment Centers
135 or the authority of local jurisdictions to ban Medical Marijuana Treatment Center
136 Dispensaries within their jurisdictional boundaries or in the event a court of
137 competent jurisdiction enters a final order striking or otherwise altering the authority

138 recognized in Section 381.986, Florida Statutes, for local jurisdictions to ban Medical
139 Marijuana Treatment Center Dispensaries within their jurisdictional boundaries, no
140 application for a development order, zoning approval, change of use, or other permit
141 which would authorize a Medical Marijuana Treatment Center Dispensary within the
142 City of Flagler Beach shall be processed for a period of ninety days following the
143 effective date of such legislative change or judicial action.
144

145 ~~Non-medical Marijuana Sales and Cannabis Farms shall be prohibited uses in all~~
146 ~~zoning districts of the City. Medical Marijuana Dispensaries shall be a prohibited use in~~
147 ~~all zoning districts of the City except Highway Commercial. Medical Marijuana~~
148 ~~Dispensaries shall be allowed as a special exception use within the Highway Commercial~~
149 ~~zoning district upon application, hearing and approval as provided in this Code of~~
150 ~~Ordinances. An application for special exception use for a Medical Marijuana~~
151 ~~Dispensary may be denied, approved or approved with conditions. In addition to all other~~
152 ~~requirements and conditions, the applicant shall comply with all the following conditions~~
153 ~~contained herein and no special exception for a Medical Marijuana Dispensary shall be~~
154 ~~approved unless the applicant has shown by competent substantial evidence its ability to~~
155 ~~comply with each of the conditions contained herein.~~
156

157 (1) ~~— *Loitering.* A Medical Marijuana Dispensary shall provide adequate~~
158 ~~seating for its patients and business invitees and shall not allow patients or~~
159 ~~business invitee to stand, sit (including in a parked car), or gather or loiter~~
160 ~~outside of the building where the dispensary operates, including in any~~
161 ~~parking areas, sidewalks, right of way, or neighboring properties for any~~
162 ~~period of time longer than that reasonably required to arrive and depart.~~
163 ~~The Medical Marijuana Dispensary shall post conspicuous signs on at~~
164 ~~least three sides of the building that no loitering is allowed on the~~
165 ~~property.~~

166 (2) ~~— *No drive through service.* No Medical Marijuana Dispensary~~
167 ~~shall have a drive through or drive in service aisle. All dispensing,~~
168 ~~payment for and receipt of products shall occur from inside the Medical~~
169 ~~Marijuana Dispensary.~~

170 (3) ~~— *Alcoholic Beverages.* No consumption of alcoholic beverages shall~~
171 ~~be allowed on the premises on which a Medical Marijuana Dispensary is~~
172 ~~located, including the parking areas and sidewalks.~~

173 (4) ~~— *Separation Distances.* No Medical Marijuana Dispensary shall~~
174 ~~operate within two thousand five hundred (2,500) feet of any pre-existing~~
175 ~~school, church, day care facility, public park or another Medical~~
176 ~~Marijuana Dispensary.~~

177 (5) ~~— *Compliance with Other Laws.* All Medical Marijuana Dispensaries~~
178 ~~shall at all times be in compliance with all federal, state and local laws and~~
179 ~~regulations.~~
180

181 ~~Each application for a special exception shall be accompanied by a site plan~~
182 ~~incorporating the regulations established herein. The site plan shall be drawn to~~

183 ~~scale indicating property lines, rights of way, and the location of buildings,~~
 184 ~~parking areas, curb cuts and driveways.~~

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 188 **Sec. 2.04.02.8. Zoning Schedule One Land Use Controls.**

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 190 * * *

SCHEDULE ONE ZONING SCHEDULE OF USE CONTROLS CITY OF FLAGLER BEACH			
CATEGORY OF USE	USES PERMITTED		
	UNRESTRICTED USES		SPECIAL EXCEPTION USES
	PRINCIPAL	ACCESSORY	
<p>HC - HIGHWAY COMMERCIAL a. The provisions of this district are intended to complement the Commercial designation of the Future Land Use Map by providing a variety of commercial uses indigenous with the category. The activities permitted are oriented to the need of vehicular uses. These include activities that generate traffic volumes and require high demand parking considerations. b. Each parcel shall be developed so that pedestrian and vehicular circulation is coordinated with the circulation patterns of adjacent properties. To minimize vehicular, pedestrian and bicycle conflict, cross access drives and internal oriented ingress, egress to individual parcels shall be employed, where applicable.</p>	<ol style="list-style-type: none"> 1. Automotive retail parts store. 2. Automotive service stations without major mechanical repairs. 3. Automotive repair centers, tire sales and service without major mechanical repairs. 4. Car wash to include self-wash and/or drive-thru. 5. Bars, Cocktail lounges, taverns and nightclubs within a principal building or as an accessory to hotels and motels. 6. Financial institutions without drive-thru windows. 7. Health clubs. 8. Outdoor eating facilities and service associated with, and on the same property of an enclosed restaurant. There shall be no outdoor music or entertainment. 9. Personal services. 10. Personal storage facilities conducted within a totally enclosed structure. 	<ol style="list-style-type: none"> 1. Automobile parking structures. 2. Customary uses and structures clearly incidental to one (1) or more permitted uses or structures. 3. Monopole communication towers and communication antennas which do not exceed the established height limitations. 	<ol style="list-style-type: none"> 1. Commercial recreational facilities (e.g. bowling alley, billiard parlor). 2. Hotel, motels and inns. 3. Automotive service stations, automotive repair centers, and lube shops if abutting any residential zoning district. 4. Bars, cocktail lounges, taverns and the like with outdoor entertainment. 5. Restaurants with drive-thru window service. 6. Financial institutions with drive-thru windows. 7. Private, social, recreational or fraternal clubs or

<p>NOTE: All commercial uses in existence at the time of the adoption date of Ordinance 2006-13, which are not in conformance with Schedule Two, Lot, Yard, and Bulk Regulations, shall hereby be deemed conforming uses (Ord. No. 2006-13, § 2, 4-3-06)</p>	<p>11. Professional and business services including but not limited to: a. Medical services and facilities without overnight care of patients.</p>		<p>organizations. 8. Churches, synagogues or other houses of worship. 9. Medical Marijuana Dispensaries NOTE: All Special Exception uses are subject to Section 2.03.00 Establishment of Districts, and Section 2.06.01, Special Exception uses.</p>
	<p>b. Veterinary offices. There shall be no overnight stays of animals, except for emergency care. c. Veterinary hospitals or clinics wholly within a noise-attenuated structure with no overnight stays of animals, except for emergency care. 12. Retail building supplies. 13. Retail sales and services. 14. Restaurants. 15. Shopping centers providing retail sales of food, hardware and other household items normally required to serve the residents of the community. 16. Sexually oriented businesses as defined in Chapter 4, Article II; City Code subject to the following: a. All such sexually oriented businesses, as defined in Ordinance 2006-15, shall maintain a minimum 200 foot setback from the following: 1. An area zoned within the county, municipality or adjoining municipality for residential use,</p>		
	<p>2. Areas designated as a category that permits residential uses on the Future Land Use Map of the city/, adjoining city or county.</p>		

	<p>3. Preexisting residence. 4. Preexisting religious institution. 5. Preexisting park. 6. Preexisting education facility. b. The distance from a proposed sexually oriented business to the aforementioned residential areas and other uses shall be measured by drawing a straight line between the closest property line of said residential areas or other uses and the closest exterior wall of any building in which the sexually oriented business is licensed to operate. 17. Adult Arcades, as permitted in Chapter 4 of the Code of Ordinances.</p>		
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SECTION 2. CODIFICATION. It is the intent of the City Commission of the City of Flagler Beach that the provisions of this Ordinance shall be codified. The codifier is granted broad and liberal authority in codifying the provision of this Ordinance.

SECTION 3. SEVERABILITY. If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

SECTION 4. CONFLICTS. In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance of this City, the provision which establishes the higher standards for the promotion and protection of the health and safety of the people shall prevail.

SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its passage and adoption.

ADOPTED by the City Commission of the City of Flagler Beach, Florida, this ____ day of _____, 2017.

Linda Provencher, Mayor

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218 *ATTEST:*

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221 Penny Overstreet, City Clerk

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