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ORDINANCE NO.: 2014-12

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**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; PROVIDING DEFINITIONS; PROVIDING THAT MEDICAL MARIJUANA DISPENSARIES, NON-MEDICAL MARIJUANA SALES AND CANNABIS FARMS ARE PROHIBITTED USES IN CERTAIN ZONING DISTRICTS; PROVIDING THAT MEDICAL MARIJUANA DISPENSARIES IS A PERMITTED SPECIAL EXCEPTION USE IN THE HIGHWAY COMMERCIAL ZONING DISTRICT; PROVIDING ADDITIONAL STANDARDS AND CONSIDERATIONS FOR APPROVAL OF A SPECIAL EXCEPTION APPLICATION FOR A MEDICAL MARIJUANA DISPENSARY PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the State of Florida is considering legalizing the dispensing of marijuana for medical purposes; and

**WHEREAS**, the City Commission of the City of Flagler Beach has determined that it is in the best interests of the citizenry and general public to regulate the location of medical marijuana dispensaries and related activities in the event the State of Florida legalizes said dispensaries; 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 of the City of Flagler Beach has determined that given the potential impact on the surrounding area, that medical marijuana dispensaries should only be allowed within the Highway Commercial zoning district, as a special exception use; and

**WHEREAS**, the City Commission of the City of Flagler Beach has determined that it is advisable and in the public interest to consider certain distance and other siting standards in regard to the location of operation of medical marijuana dispensaries as a special exception use; and

**WHEREAS**, the City Commission of the City of Flagler Bach has determined that cannabis farms and non-medical marijuana sales would not be suited to any zoning district within the City of Flagler Beach; and

**WHEREAS**, the City Commission of the City of Flagler Beach finds that this ordinance promotes the public health, safety and welfare.

46           **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**  
47 **CITY OF FLAGLER BEACH, FLORIDA THAT:**  
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50           **SECTION 1.** Appendix A, “Land Development Regulations,” Article II, “Zoning,” of  
51 the City of Flagler Beach Code of Ordinances is hereby amended as follows (note: strikethrough  
52 text indicates deletions, underline text indicates additions, ellipses (\*\*\*) identify text that  
53 remains unchanged and that is not reprinted herein):  
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55           \*       \*       \*

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57           **Sec. 2.02.00. – Definitions.**

58           \*       \*       \*

59           *Cannabis.* Any plant or part of a plant of the genus *Cannabis*, whether growing or  
60 not; the seeds thereof; the resin extracted from any part of the plant; and every  
61 compound, manufacture, salt, derivative, mixture, or preparation of the plant or  
62 its seeds or resin  
63

64           *Cannabis Farm.* Any property used in whole or in part for the growing or  
65 cultivation of *Cannabis* plants, whether or not such growing or cultivation is  
66 lawful under federal or state law.  
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68           \*       \*       \*

69           *Medical Marijuana Dispensary.* A facility that is operated by an organization or  
70 business holding all necessary licenses and permits from which marijuana,  
71 cannabis, cannabis-based products, or cannabis plants are delivered, purchased,  
72 possessed, or dispensed for medical purposes and operated in accordance with all  
73 local, federal and state laws. Physicians authorized by State law to order low-  
74 THC cannabis, as defined in Florida Statutes, for patients’ medical use are not  
75 included in the definition of Medical Marijuana Dispensary.  
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78           *Medical Use.* The prescriptive use of any form of cannabis to treat a qualifying  
79 medical condition and the symptoms associated with that condition or to alleviate  
80 the side effects of a qualifying medical treatment.  
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82           \*       \*       \*

83           *Non-Medical Marijuana Sales.* The purchase, sale, transfer or delivery of  
84 marijuana, cannabis, cannabis-based products or cannabis plants when such sale,  
85 transfer or delivery is not associated with any medical purpose or use, whether or  
86 not such purchase, sale, transfer or delivery is lawful under federal or state law.  
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89           \*       \*       \*

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93 **Sec. 2.06.04. – Marijuana and Cannabis.**  
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95 Non-medical Marijuana Sales and Cannabis Farms shall be prohibited uses in all  
96 zoning districts of the City. Medical Marijuana Dispensaries shall be a prohibited use in  
97 all zoning districts of the City except Highway Commercial. Medical Marijuana  
98 Dispensaries shall be allowed as a special exception use within the Highway Commercial  
99 zoning district upon application, hearing and approval as provided in this Code of  
100 Ordinances. An application for special exception use for a Medical Marijuana  
101 Dispensary may be denied, approved or approved with conditions. In addition to all other  
102 requirements and conditions, the applicant shall comply with all the following conditions  
103 contained herein and no special exception for a Medical Marijuana Dispensary shall be  
104 approved unless the applicant has shown by competent substantial evidence its ability to  
105 comply with each of the conditions contained herein.  
106

107 (1) *Loitering.* A Medical Marijuana Dispensary shall provide adequate  
108 seating for its patients and business invitees and shall not allow patients or  
109 business invitee to stand, sit (including in a parked car), or gather or loiter  
110 outside of the building where the dispensary operates, including in any  
111 parking areas, sidewalks, right-of-way, or neighboring properties for any  
112 period of time longer than that reasonably required to arrive and depart.  
113 The Medical Marijuana Dispensary shall post conspicuous signs on at  
114 least three sides of the building that no loitering is allowed on the  
115 property.

116 (2) *No drive through service.* No Medical Marijuana Dispensary  
117 shall have a drive through or drive in service aisle. All dispensing,  
118 payment for and receipt of products shall occur from inside the Medical  
119 Marijuana Dispensary.

120 (3) *Alcoholic Beverages.* No consumption of alcoholic beverages shall  
121 be allowed on the premises on which a Medical Marijuana Dispensary is  
122 located, including the parking areas and sidewalks.

123 (4) *Separation Distances.* No Medical Marijuana Dispensary shall  
124 operate within two thousand five hundred (2,500) feet of any pre-existing  
125 school, church, day care facility, public park or another Medical  
126 Marijuana Dispensary.

127 (5) *Compliance with Other Laws.* All Medical Marijuana Dispensaries  
128 shall at all times be in compliance with all federal, state and local laws and  
129 regulations.  
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131 Each application for a special exception shall be accompanied by a site plan  
132 incorporating the regulations established herein. The site plan shall be drawn to  
133 scale indicating property lines, rights-of-way, and the location of buildings,  
134 parking areas, curb cuts and driveways.  
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**Sec. 2.04.02.8. Zoning Schedule One Land Use Controls.**

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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</p> <p>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.</p> <p>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> <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,</p>	<ol style="list-style-type: none"> <li>1. Automotive retail parts store.</li> <li>2. Automotive service stations without major mechanical repairs.</li> <li>3. Automotive repair centers, tire sales and service without major mechanical repairs.</li> <li>4. Car wash to include self wash and/or drive-thru.</li> <li>5. Bars, Cocktail lounges, taverns and nightclubs within a principal building or as an accessory to hotels and motels.</li> <li>6. Financial institutions without drive-thru windows.</li> <li>7. Health clubs.</li> <li>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.</li> <li>9. Personal services.</li> <li>10. Personal storage facilities conducted within a totally enclosed structure.</li> <li>11. Professional and business services including but not limited to:               <ol style="list-style-type: none"> <li>a. Medical services and facilities without overnight care</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>1. Automobile parking structures.</li> <li>2. Customary uses and structures clearly incidental to one (1) or more permitted uses or structures.</li> <li>3. Monopole communication towers and communication antennas which do not exceed the established height limitations.</li> </ol>	<ol style="list-style-type: none"> <li>1. Commercial recreational facilities (e.g. bowling alley, billiard parlor).</li> <li>2. Hotel, motels and inns.</li> <li>3. Automotive service stations, automotive repair centers, and lube shops if abutting any residential zoning district.</li> <li>4. Bars, cocktail lounges, taverns and the like with outdoor entertainment.</li> <li>5. Restaurants with drive-thru window service.</li> <li>6. Financial institutions with drive-thru windows.</li> <li>7. Private, social, recreational or fraternal clubs or organizations.</li> <li>8. Churches, synagogues or other houses of worship.</li> <li>9. <u>Medical Marijuana</u></li> </ol>

<p>and Bulk Regulations, shall hereby be deemed conforming uses (Ord. No. 2006-13, § 2, 4-3-06)</p>	<p>of patients.</p>		<p><u>Dispensaries</u> NOTE: All Special Exception uses are subject to <u>Section 2.03.00</u> Establishment of Districts, and <u>Section 2.06.01</u>, 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. <u>16. Sexually oriented businesses as defined in Chapter 4, Article II; City Code subject to the following:</u> 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. 3. Preexisting residence. 4. Preexisting religious institution. 5. Preexisting park. 6. Preexisting education facility. b. The distance from a</p>		

	<p>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.</p> <p>17. Adult Arcades, as permitted in Chapter 4 of the Code of Ordinances. (Ord. No. 2007-30, § 2, 9-27-07; Ord. No. 2007-33, § 2, 10-25-07)</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.

**PASSED AND ORDAINED** this \_\_\_ day of \_\_\_\_\_ 2014, by the City Commission of the City of Flagler Beach, Florida.

PASSED ON FIRST READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2014.

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CITY OF FLAGLER BEACH, FLORIDA  
CITY COMMISSION

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Linda Provencher, Mayor

ATTEST:

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Penny Overstreet, City Clerk

**THE NEWS-JOURNAL**

Published Daily and Sunday  
Daytona Beach, Volusia County, Florida

State of Florida,  
County of Volusia

Before the undersigned authority personally appeared

**Cynthia Anderson**

who, on oath says that she is .....

**LEGAL COORDINATOR**

of The News-Journal, a daily and Sunday newspaper,  
published at Daytona Beach in Volusia County, Florida; the  
attached copy of advertisement, being a

**PUBLIC NOTICE**

**L 2071851**

in the Court,  
was published in said newspaper in the issues.....

**MAY 2, 12, 2014**

Affiant further says that The News-Journal is a newspaper  
published at Daytona Beach, in said Volusia County, Florida,  
and that the said newspaper has heretofore been continuously  
published in said Volusia County, Florida, each day and  
Sunday and has been entered as second-class mail matter at  
the post office in Daytona Beach, in said Volusia County,  
Florida, for a period of one year next preceding the first  
publication of the attached copy of advertisement; and affiant  
further says that he has neither paid nor promised any person,  
firm or corporation any discount, rebate, commission or  
refund for the purpose of securing this advertisement for  
publication in the said newspaper

*Cynthia Anderson*

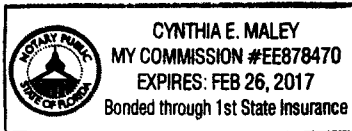
Sworn to and subscribed before me

This **12TH** of **MAY**

A.D. 2014

*Cynthia E. Maley*

49D



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

**ORDINANCE NO.: 2014-12**

AN ORDINANCE OF THE CITY OF FLAGLER BEACH, FLORIDA RELATING TO MEDICAL MARIJUANA, AMENDING THE CODE OF ORDINANCES, APPENDIX A, LAND DEVELOPMENT REGULATIONS, ARTICLE I, "ZONING, PROVIDING DEFINITIONS, PROVIDING THAT MEDICAL MARIJUANA DISPENSARIES AND NON-MEDICAL MARIJUANA DISPENSARIES AND CANNABIS FARMS ARE PROHIBITED USES IN CERTAIN ZONING DISTRICTS; PROVIDING THAT MEDICAL MARIJUANA DISPENSARIES IS A PERMITTED SPECIAL EXCEPTION WITHIN THE HIGHWAY COMMERCIAL ZONING DISTRICT; PROVIDING ADDITIONAL STANDARDS AND CONSIDERATIONS FOR A FINAL OF A SPECIAL EXCEPTION APPLICATION FOR A MEDICAL MARIJUANA DISPENSARY PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

PUBLIC HEARING'S AND FIRST READING WILL BE HELD ON THURSDAY MAY 8, 2014 AT 6:30 P.M. OR AS SOON THERE AFTER AS POSSIBLE, SECOND AND FINAL READING WILL BE HELD ON THURSDAY MAY 22, 2014 AT 6:30 P.M OR SOON THERE AFTER AS POSSIBLE IN THE CITY COMMISSION CHAMBERS, 105 S. 2ND ST., FLAGLER BEACH, FL. THESE PUBLIC HEARINGS MAY BE CONTINUED TO A FUTURE DATE OR DATE. THE TIME AND DATE OF ANY CONTINUANCES OF A PUBLIC HEARING SHALL BE ANNOUNCED DURING THE PUBLIC HEARING WITHOUT ANY FURTHER PUBLISHED NOTICE. THE ORDINANCE MAY BE VIEWED AT THE ABOVE LOCATION. INTERESTED PARTIES MAY APPEAR AT THE MEETING AND BE HEARD WITH RESPECT TO THE PROPOSED ORDINANCE.

CITY OF FLAGLER BEACH  
P.O. BOX 70, 105 S. 2ND ST.  
FLAGLER BEACH, FLORIDA 32115  
PHONE (386) 517-2000 FAX (386) 517-2008