**ORDINANCE NO. 2014-016**

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DANIA BEACH, FLORIDA, TO AMEND CHAPTER 28, OF THE “LAND DEVELOPMENT CODE”, OF THE CITY’S CODE OF ORDINANCES BY AMENDING SECTION 725-30, “TERMS DEFINED” CONCERNING DEFINITIONS RELATED TO MEDICAL MARIJUANA USES; AMENDING ARTICLE 115, “INDUSTRIAL DISTRICTS: PERMITTED, PROHIBITED, SPECIAL EXCEPTION USES, AND CONDITIONS OF USE”, CONCERNING MEDICAL MARIJUANA RETAIL CENTER SPECIAL EXCEPTION USES IN THE IROM-AA ZONING DISTRICT, PROHIBITING MEDICAL MARIJUANA TREATMENT CENTERS AND PROVIDING FOR USE REGULATIONS; AMENDING ARTICLE 265, “OFF-STREET PARKING REQUIREMENTS”, CONCERNING OFF-STREET PARKING REQUIREMENTS FOR MEDICAL MARIJUANA RETAIL CENTERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS,** Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida Statutes, provide municipalities the authority to exercise any power for municipal purposes, except where prohibited by law, and to adopt ordinances in furtherance of such authority; and

**WHEREAS,** Objective V of the Future Land Use Element of the City of Dania Beach Comprehensive Plan provides that the City of Dania Beach will maintain land development regulations and zoning regulations to implement the City’s Comprehensive Plan; and

**WHEREAS,** the City Commission of the City of Dania Beach (“City Commission”) finds it periodically necessary to amend its Code of Ordinances and Land Development Code (“Code”) in order to update regulations and procedures to implement municipal goals and objectives; and

**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 caregivers 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 is currently adopting a rule to implement Senate Bill 1030, which rule must be effective by January 1, 2015; and

**WHEREAS**, despite the adoption of Senate Bill 1030, the activities it condones remain illegal under federal law; and

**WHEREAS**, on November 4, 2014, Florida voters will be considering the approval of an amendment to the Florida Constitution to allow for broader medical use of any kind of marijuana (including euphoric strains) within the State (the “Constitutional Amendment”); and

**WHEREAS**, the proposed 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 Constitutional Amendment, if approved, will, permit 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 (including, but not limited to, smoking and food products); and

**WHEREAS**, significant safety and security issues exist for any establishment involved in the cultivation, processing or distribution of marijuana, because they maintain large drug inventories and are forced to deal in cash because their activities have not yet been sanctioned by federal law; and

**WHEREAS**, such businesses are inherently attractive targets for criminals, and it is therefore essential that the City of Dania Beach limit the permissible scope of such uses and regulate them to ensure their compatibility with surrounding businesses and the community, and to protect and advance the public health, safety and welfare; and

**WHEREAS**, other attributes of land uses dealing with marijuana, such as odors, must be regulated to minimize their impact on surrounding properties and uses and prevent the creation of attractive nuisances; and

**WHEREAS**, both Senate Bill 1030 and the Constitutional Amendment are silent on the topic of local government regulation and, consistent with Florida caselaw governing preemption, local governments are therefore not preempted from regulating marijuana uses; and

**WHEREAS**, the City Commission has determined that it is in the best interests of the citizenry and general public to provide appropriate zoning regulations to ensure that the location and development standards applicable to any business involved with marijuana is compatible with surrounding businesses, as well as the safety of the employees, neighbors, customers and area residents, and consistent with the Comprehensive Plan; and

**WHEREAS,** the Planning and Zoning Board, sitting as the City’s Local Planning Agency, has reviewed this Ordinance, and has determined that it is consistent with the City’s Comprehensive Plan; and

**WHEREAS**, pursuant to Section 166.041 (c)(2), Florida Statutes, notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed Ordinance and of the time and dates of the public hearings; and

**WHEREAS,** two (2) public hearings were held before the City Commission pursuant to the published notice described above; and

**WHEREAS,** the City Commission finds that adoption of this Ordinance through its police powers will protect the public health, safety, and welfare of the residents of the City, and furthers the purpose, goals, objectives, and policies of the City’s Comprehensive Plan.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DANIA BEACH, FLORIDA:**

**Section 1**. That the preceding “Whereas” clauses are ratified and incorporated as a record of the legislative intent of this Ordinance.

**Section 2.** That Section 725-30 “Terms Defined” of the City of Dania Beach Land Development Code is amended to read as follows:

\* \* \*

*Marijuana.* Any strain of cannabis or marijuana, 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 Retail Center.* A retail establishment, licensed by the Florida Department of Health as a “medical marijuana treatment facility,” “medical marijuana treatment center,” “dispensing organization,” “dispensing organization facility” or similar use, that sells and dispenses medical marijuana, but does not engage in any other activity related to preparation, wholesale storage, distribution, transfer, cultivation, or processing of any form of Marijuana or Marijuana product, and does not allow on-site consumption of Marijuana.

*Medical Marijuana Treatment Center.* Any facility licensed by the Florida Department of Health to acquire, cultivate, possess, process (including but not limited to development of related products such as food, tinctures, aerosols, oils, or ointments), transfer, transport, sell, distribute, dispense, store, or administer Marijuana, products containing Marijuana, related supplies, or educational materials, as authorized by state law. A Medical Marijuana Treatment Center may include retail sales or dispensing of Marijuana. A facility which provides only retail sales or dispensing of Marijuana shall not be classified as a Medical Marijuana Treatment Center under this Chapter. Also may be referred to as a “Medical Marijuana Treatment Facility” or “dispensing organization” or other similar term recognized by state law.

\* \* \*

*Qualified registered patient/Qualified patient.* A resident of the state of Florida who has been added to the State’s compassionate use registry by a physician licensed under chapter 458 or chapter 459, Florida Statutes to receive marijuana from a dispensing organization or Medical Marijuana Treatment Center as defined in Florida Statutes.

**Section 3.** That Article 115 “Industrial Districts: Permitted, Prohibited and Special Exception Uses, and Conditions of Use” of the City of Dania Beach Land Development Code is amended to read as follows:

**ARTICLE 115. INDUSTRIAL DISTRICTS: PERMITTED, PROHIBITED, SPECIAL EXCEPTION USES, AND CONDITIONS OF USE.**

\* \* \*

**Sec. 115-40. Schedule of permitted uses.**

|  |
| --- |
| ***Legend*** |
| P | - | Permitted |
| A | - | Permitted accessory use only |
| #, # | - | (Ex: 1,2) Permitted subject to the conditions of use numbered 1 and 2 found in section 115-50 |
| SE | - | Permitted special exception use only, pursuant to article 630 |
| SE(#, #) | - | (Ex: 1,2) Permitted as a special exception only, and subject to conditions of use numbers 1 and 2 found in section 115-50. |
| NP-box4.png | - | not permitted |

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **USES** | **IROM** | **IROM-AA** | **IROC** | **IRO** | **IG** | **IR** | **PEDD** | **MA-1** |
| **COMMERCIAL USES** |
| \* \* \*  |  |  |  |  |  |  |  |  |
| Medical Marijuana Retail Center (subject to 115-70) | NP | SE | NP | NP | NP | NP | NP | NP |
| \* \* \* |  |  |  |  |  |  |  |  |
| **MISCELLANEOUS** |
| Crop raising and plant nursery (commercial and noncommercial, excluding marijuana) | NP | P | NP | NP | NP | NP | NP | NP |
| \* \* \* |  |  |  |  |  |  |  |  |
| Medical Marijuana Treatment Center | NP | NP | NP | NP | NP | NP | NP | NP |

 **Section 4.** That Section 115-70, “Medical Marijuana Retail Centers” of the City of Dania Beach Land Development Code is created to read as follows:

**Section 115-70. Medical Marijuana Retail Centers**

(A) It is the intent and purpose of this section to regulate the location, separation and application for Medical Marijuana Retail Center uses. Such uses may be operated, subject to special exception approval, in the Industrial-Research-Office-Marine Airport Approach, IROM-AA, zoning district subject to all of the following requirements in addition to the special exception requirements and review standards identified in Article 630 of the City of Dania Beach Land Development Code:

(1) *Application.* In addition to the standard development approval application requirements and meeting all the requirements for a Special Exception Use under Article 630 of the City of Dania Beach Land Development Code, an application for special exception approval for a Medical Marijuana Retail Center shall:

(a) be a joint application by the property owner and the tenant, if the Medical Marijuana Retail Center and the property are not owned by the same person or entity;

(b) be accompanied by a lease identifying the specific use, if the Medical Marijuana Retail Center and the property are not owned by the same person or entity; and

(c) include a survey sealed by a Professional Surveyor and Mapper who is licensed by the State of Florida. The survey shall indicate the distance between the proposed Medical Marijuana Retail Center and any other Medical Marijuana Retail Center, residentially zoned district, state and federal roadway facilities, doctor’s office, medical facility, house of worship, school, county or municipal park as identified in Section 115.70(2); and

(d) in addition to the notice required by Section 610-20 of this Code,, no later than 10 days prior to each and every public hearing, provide proof of notice of the public hearing to all tenants and property owners within 300 feet of the property on which the Medical Marijuana Retail Center is proposed.

(2) *Location requirements.* A Medical Marijuana Retail Center shall not be established:

(a) within 1,000 feet of another Medical Marijuana Retail Center;

(b) within 1,500 feet of any existing residential use, regardless of zoning or municipal jurisdiction;

(c) within 1,000 feet of an elementary, middle or secondary school, child day care facility, county or municipal park, or place of worship;

(d) within 1,000 feet of a doctor’s office or medical facility;

(e) within 1,500 feet of a state or federal roadway facility;

(f) within the Design District Overlay;

(g) Where a Medical Marijuana Retail Center is located in conformity with the provisions of this Chapter, the subsequent locating of one of the uses listed in (b) through (d) above within the relative prohibited distance of an existing Medical Marijuana Retail Center shall not cause a violation of this Section. Whenever a special exception approval for a Medical Marijuana Retail Center has been lawfully procured and thereafter a residential use, doctor’s office, medical facility, elementary, middle or secondary school, child day care facility, county or municipal park, or place of worship be established within a distance otherwise prohibited by law, the establishment of the such use shall not be cause for the revocation of the special exception approval or related Medical Marijuana Permit or prevent the subsequent renewal of same; and

(h) Distances shall be measured using an airline measurement from the property line of the property on which the Medical Marijuana Retail Center structure is located to the nearest property line of the use identified in 2(a) through 2(e) that existed before the date the Medical Marijuana Retail Center submitted its initial application for approval.

(i) Variances to the location standards of this Section shall not be permitted.

(3) *Other uses.* The Medical Marijuana Retail Center shall be the only use permitted on the property if the Center is located in a freestanding building, or within the Medical Marijuana Retail Center tenant space if the Center is part of a multi-tenant structure.

(4) *Loitering*.

(a) A Medical Marijuana Retail Centers shall provide adequate indoor seating for its customers, clients, patients and business invitees.

(b) Customers, clients, patients or business invitees shall not be directed, encouraged or allowed to stand, sit (including in a parked car for any period of time longer than reasonably required for a person’s passenger to conduct their official business and depart), or gather or loiter outside of the building where the Center is operating, including in any parking areas, sidewalks, rights-of-way, or neighboring properties.

(c) Pedestrian queuing or loitering at any time, including prior to business hours, outside of the Center’s building is prohibited.

(5) *Queuing of vehicles*. The Medical Marijuana Retail Center shall ensure that there is no queuing of vehicles in the adjacent rights-of-way, the drive aisles of the Center’s parking lot, or on any adjacent properties. The Medical Marijuana Retail Center shall take all necessary and immediate steps to ensure compliance with this paragraph.

(6) *No Drive-through service*. No Medical Marijuana Retail Center shall have a Drive-through service aisle. All dispensing and sales of products shall occur inside the building.

(7) *Prohibited activities*. A Medical Marijuana Retail Center shall not engage in any activity other than those activities specifically defined herein as an authorized part of the use. The preparation, wholesale storage, cultivation, or processing of any form of Marijuana or Marijuana product and on-site consumption of any Marijuana or Marijuana product is specifically prohibited. On-site storage of any form of Marijuana or Marijuana product is prohibited, except to the extent reasonably necessary for the conduct of the on-site retail business.

(8) *Special exception duration.* A special exception approval for a Medical Marijuana Retail Center shall be valid for [two years], subject to compliance with the conditions of approval and all state laws, licensing and operational requirements. A new special exception approval must be obtained prior to expiration of the active approval to ensure continued operation.

(9) *Revocation of special exception approval.* Any special exception approval granted under this section shall be immediately terminated if any one or more of the following occur:

(a) The Applicant provides false or misleading information to the City;

(b) Anyone on the premises knowingly dispenses, delivers, or otherwise transfers any Marijuana or Marijuana product to an individual or entity not authorized by state law to receive such substance or product;

(c) An Applicant, Owner or manager is convicted of a felony offense;

(d) Any Applicant, Owner, manager or Employee is convicted of any drug-related crime under Florida Statutes;

(e) The Applicant fails to correct any City Code violation or to otherwise provide an action plan to remedy the violation acceptable to the City Manager within 30 days of citation;

(f) The Applicant fails to correct any State law violation or address any warning in accordance with any corrective action plan required by the State within the timeframes and completion date the Applicant provided to the City;

(g) The Applicant’s State license or approval authorizing the dispensing of Medical Marijuana expires or is revoked; or

(h) The Applicant fails to maintain a Medical Marijuana Permit as required by Chapter 19 of the City Code.

(10) *Transfer of Medical Marijuana Special Exception Approval*.

(a) A special exception approval for a Medical Marijuana Retail Center shall not be transferred to a new Owner, or possession, control, or operation of the establishment surrendered to such other person until a new Medical Marijuana Permit has been obtained by the new Applicant in accordance with Section 12-25 of the City Code.

(b) An application for a special exception approval transfer, meeting the requirements of Section 115.70(A)(1), shall be filed with the City at the same time the new Applicant files its application for a Medical Marijuana Permit.

(c) The Application for a special exception approval transfer shall be accompanied by a special exception approval transfer fee to be set by resolution of the Commission; and

(d) If the new Applicant is granted a Medical Marijuana Permit and the transfer application meets the requirements of this Chapter and the City Code, the City Manager shall approve the special exception approval transfer.

(e) A special exception approval is particular only to the approved location and shall not be transferred to another location.

(f) An attempt to transfer a special exception approval either directly or indirectly in violation of this Section is hereby declared void, and in that event the special exception approval shall be deemed abandoned, and the related Medical Marijuana Permit shall be forfeited.

**Section 5.** That Article 265 “Off-Street Parking Requirements” of the City of Dania Beach Land Development Code is amended to read as follows:

**ARTICLE 265. OFF-STREET PARKING REQUIREMENTS**

\* \* \*

**Sec. 265-50. Off-street parking required; on-street parking credit.**

\* \* \*

 (D) *[Abbreviations.]* Abbreviations used in the off-street parking requirement table.

|  |  |  |
| --- | --- | --- |
| CSA | = | Customer service area |
| Pkg | = | Parking |
| Requ. | = | Requirement, required |
| I/B | = | Inbound |
| O/B | = | Outbound |

SCHEDULE OF MINIMUM OFF-STREET PARKING REQUIREMENTS

|  |
| --- |
| Minimum Off-Street Parking Requirement |
| Use | All Districts | CRA Form-Based Districts |
|  | **\* \* \*** |  |  |
| X | Medical Marijuana Retail Center | One (1) space per 200 square feet of floor area. |  |
|  | **\* \* \*** |  |  |

\* \* \*

 **Section 6.** That if any section, clause, sentence or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

 **Section 7.** That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are repealed to such extent of the conflict.

 **Section 8.** This Ordinance shall be codified in accordance with the foregoing. It is the intention of the City Commission that the provisions of this Ordinance shall become and be made a part of the City of Dania Beach Code of Ordinances; and that the sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be changed to “section”, “article” or such other appropriate word or phrase in order to accomplish such intentions.

 **Section 9.** This Ordinance shall take full effect immediately upon its passage and adoption.

**PASSED** on first reading on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2014.

 **PASSED AND ADOPTED** on second reading on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2014.

ATTEST:

LOUISE STILSON, CMC WALTER B. DUKE, III

CITY CLERK Mayor

APPROVED AS TO FORM AND CORRECTNESS:

Thomas J. Ansbro

City Attorney