

ORDINANCE NO. 1413

AN ORDINANCE OF THE CITY OF PANAMA CITY BEACH, FLORIDA AMENDING THE CITY'S LAND DEVELOPMENT CODE REGARDING THE REGULATION OF CANNABIS DISPENSARY FACILITIES; PROVIDING THAT CANNABIS DISPENSARY FACILITIES SHALL BE GENERALLY PERMITTED IN CH DISTRICTS SUBJECT TO CONDITIONAL USE APPROVAL; ESTABLISHING LOCATION, LICENSURE AND DESIGN CRITERIA FOR CONDITIONAL USE APPROVAL; LIMITING THE NUMBER OF FACILITIES WHICH SHALL BE ESTABLISHED IN THE CITY; EXPRESSLY PROHIBITING SUCH FACILITIES IN THE FRONT BEACH ROAD OVERLAY DISTRICT; AMENDING DEFINITIONS; REPEALING THE TEMPORARY MORATORIUM AND ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

WHEREAS, as provided in section 2(b), Article VIII of the Constitution of the State of Florida, and section 166.021(1), Florida Statutes, the City of Panama City Beach, Florida, (the "city"), a municipal corporation, enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, as provided in section 166.021(3), Florida Statutes, the governing body of each municipality in the state has the power to enact legislation concerning any subject matter upon which the state legislature may act, except when expressly prohibited by law; and

WHEREAS, in 2014 the Florida Legislature enacted the Compassionate Medical Cannabis Act, codified at Section 381.986, Florida Statutes (the "Compassionate Use Act"), which legalized the cultivation, processing, and dispensing of "Low-THC Cannabis," as defined by Section 381.986(1)(e), Florida Statutes, by a licensed dispensing organization for "Qualified Patients," as defined by Section 381.986(1)(h); and

WHEREAS, in 2016 the Florida Legislature amended the Right to Try Act, codified at Section 499.0295, Florida Statutes, which amended the Compassionate Use Act and legalized the cultivation, production, and dispensing of "Medical Cannabis," as defined by Section 381.986(1)(f), Florida Statutes, and derivative products by a licensed dispensing organization to "Eligible Patients," as defined by Section 499.0295, Florida Statutes; and

WHEREAS, cannabis businesses licensed pursuant to the law have begun cultivating cannabis for processing and dispensing; and

WHEREAS, the dispensing of cannabis is currently illegal under federal law and the United States Drug Enforcement Agency has recently confirmed that cannabis remains a Schedule I drug under federal law, but the United States Department of Justice has discussed federal enforcement of such laws with respect to state regulated cannabis operations in the 2012 "Cole Memorandum," and;

WHEREAS, in November of last year, Florida voters decided to amend the Florida Constitution to legalize the cultivation, production, and dispensing of medical cannabis for a broader population of eligible patients; and

WHEREAS, Florida laws relating to the cultivation, production, and dispensing of cannabis products are rapidly changing – raising substantial questions about whether cannabis-related land uses, as a category of commercial use, may have deleterious and negative secondary effects on surrounding land uses and communities; and

WHEREAS, the current State licensing and regulatory framework directs that the criteria for the number and location of, and other permitting requirements that do not conflict with state law or department rule for, dispensing facilities of cannabis businesses may be determined by local ordinance; and

WHEREAS, based on a white paper prepared by the Marijuana Policy Group regarding License allocations in Florida, suggesting the market demands for medicinal marijuana require one dispensary per 50,000 people, the City's population of approximately 14,000 is unlikely to support more than one cannabis dispensary. However, the City finds that limiting the number of dispensaries in the City to one is inconsistent with voter intent to make medicinal marijuana readily obtainable, and that the absence of a cap is equally inconsistent with the promotion of the City as a family-friendly vacation destination; and

WHEREAS, on April 4, 2017, the Board of County Commissioners for Bay County adopted Ord. 17-11 regulating medical marijuana dispensaries, which ordinance did not place a cap on the number of facilities which may be permitted in unincorporated Bay County, which may result in additional dispensary facilities on the "island" that visitors wholly associate with the City of Panama City Beach; and

WHEREAS, the City finds that initially capping the number of dispensaries which may be permitted in the City to 3 reasonably balances the needs of the market against the desires of the community; and

WHEREAS, the City has carefully regulated Off-Premises Signs due to their unique considerations; and

WHEREAS, the City is a family oriented tourism destination, the City puts great efforts into protecting and enhancing that image, and tourism is the City's primary industry; and

WHEREAS, while Florida voters have spoken regarding the benefits of medical marijuana, the City finds that the establishment of an unlimited number of medical marijuana dispensaries, together with off-premises signs commercially marketing marijuana could be detrimental to the City's local economy and inconsistent with the values of the citizens of the City; and

WHEREAS, at least one high court has recently determined that advertising restrictions on medical marijuana, despite the legality of medical marijuana under state law, are analyzed under the test for commercial speech and are not subject to strict scrutiny under the current standards for free speech analysis [*Montana Cannabis Indus. Ass'n v. State*, 368 P.3d 1131, 1148–50, reh'g denied (Apr. 25, 2016), cert. denied, 136 S. Ct. 2523, 195 L. Ed. 2d 844 (2016)]; and

WHEREAS, that court determined that advertising restrictions on medical marijuana do not violate the protection afforded to commercial speech, reasoning that “because federal law governs the analysis of this issue, we conclude that an activity that is not permitted by federal law—even if permitted by state law—is not a “lawful activity” within the meaning of *Central Hudson's* first factor” and “[a]s such, the advertisement of marijuana is not speech that concerns lawful activity” and “[t]here is no First Amendment violation and our analysis under *Central Hudson* therefore ends here [*Id.*]; and

WHEREAS, the City wishes to prohibit Off-Premises Signs which advertise a Cannabis Dispensary Facility; and

WHEREAS, the Panama City Beach Planning Board reviewed the proposed amendment to the City's Land Development Code and recommended approval; and

WHEREAS, the City Council has conducted two properly noticed public hearings to consider the amendment pursuant to Section 166.041(3), Florida Statutes; and

WHEREAS, it is not the purpose or intent of this ordinance to restrict or deny access to cannabis as permitted by state law, but instead to enact reasonable restrictions intended to protect the public health, safety and welfare; and

WHEREAS, the City has determined it is in the public interest to adopt this Ordinance pursuant to the City's police powers, Section 381.986, Florida Statutes and the Florida Constitution, to protect the health, safety and welfare of the public.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PANAMA CITY BEACH:

SECTION 1. From and after the effective date of this ordinance, Section 2.02.01,

Table 2.03.02 of the Land Development Code of the City of Panama City Beach related to Land Use Allowed in Zoning Districts, is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

B. Land Uses

1. Legend:

- a. P = Permitted, subject to standards for the zoning district.
- b. A = **Accessory**, subject to standards for **Accessory Uses** in section 5.02.00.
- c. C = Conditional, subject to additional standards for the **Use** and additional review and approval procedures. (see section 0 et seq)
- d. S = Supplemental, subject to standards for the zoning district and additional standards for the specific **Use**. The numbers indicate the section of this **LDC** that contains the supplemental standards. (see section 5.04.00 et seq)
- e. **Uses** that are not listed or found to be substantially similar to listed **Uses** are prohibited. All listed **Uses** are prohibited in those districts where no indicator ("P", "A", "C", "S") is provided.

Land Uses	AR	R-1a	R-1b	R-1c	R-1cT	RO	RTH	R-2	R-3	CL	CM	CH	M1	C	R	PF
Adult Uses												S 5.04. 01				
...																
<u>Cannabis Dispensary Facilities</u>												<u>C</u> <u>5.06.</u> <u>07</u>				
Clinics and Medical Offices										P	P	P	P		A	
Public Health Facilities												P	P			P
Retail Sales and Services (not otherwise specified)	S 5.04. 27									S 5.04. 27	S 5.04. 27	S 5.04. 27	A			

Table 2.03.02: Land Uses in Base Zoning Districts

(Ord. #1335, 2/26/15; Ord. #1351, 11/12/15; Ord. #1369, 12/10/15)

SECTION 2. From and after the effective date of this ordinance, Section 5.06.07 of

the Land Development Code of the City of Panama City Beach related to Conditional Uses, is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

5.06.00 CONDITIONAL USES

5.06.01 Generally

Specific **Uses** are identified in Table 2.03.02, as allowable subject to conditional **Use** approval because they have a greater potential detriment than other **Uses**. Conditional **Uses** are not of right; these **Uses** must comply with the standards applicable to the zoning district as well as the standards contained in this section and the specific standards contained in the following sections, as applicable. Because conditional **Uses** may intrude on the right to enjoy adjacent properties, the Planning Board, or City Council when reviewing Conditional Uses located on parcels involving more than three (3) acres, has the discretion to impose conditions it determines to be necessary to satisfy required approval findings. Where there is conflict between a standard applicable to the zoning district and the following conditional **Use** standards, the stricter standard shall be required. A conditional **Use** shall be permitted by the Planning Board, or City Council when reviewing Conditional Uses located on parcels involving more than three (3) acres, provided that the Board or Council finds that, in light of any conditions imposed:

- A. The proposed **Use** is so designed, located and proposed to be operated so that the public health, safety and welfare will be protected.
- B. The proposed **Use** will not have an adverse effect on existing traffic patterns.
- C. The proposed **Use** will not impair an adequate supply of light and air to adjacent properties.
- D. The proposed **Use** will not materially increase congestion in the public **Streets** in the surrounding area.
- E. The proposed **Use** conforms to all applicable **Setback, Building Height, Lot** coverage and all other applicable regulations of the zoning district in which the **Use** is to be located.
- F. **Off-Street** parking and all other General Provisions of the Zoning Ordinance are met.
- G. The proposed **Use** will not impair the established values of the property in the surrounding area.
- H. The hours of **Use** will not be offensive to adjacent property owners, taking into consideration other surrounding **Uses**.
- I. There is adequate shielding to protect adjacent property owners from noise, lights and other obnoxious elements and activities, taking into consideration other surrounding **Uses**.
- J. The existing or proposed improvements and facilities are adequate for the **Use** intended.
- K. There will be no adverse effect on water, sewage and drainage in the surrounding area.
- L. The proposed **Use** satisfies any applicable, specific criteria stipulated for such **Use** as described below.

After written notice of violation and reasonable opportunity to cure has been given to the property owner, the City Manager shall terminate a conditional Use for violation of the restriction or condition imposed that materially negated the related positive finding. This can be done at any point in time after expiration of the time to cure.

(Ord. # 1271, 4-25-13)

...

5.06.07 Reserved. Cannabis Dispensary Facilities.

A. Location.

- 1. Facilities may be allowed in a CH district subject to conditional use approval. Facilities shall not be permitted on Front Beach Road, South Thomas Drive or Thomas Drive, or in a Front Beach Overlay District.**
- 2. The facility shall be located no closer than 500 feet from any Residential zoning district, school, church, State-licensed child care facility, public park or other cannabis dispensary facility. The distance shall be measured from the property boundary of the facility to the property boundary of the residentially zoned parcel, school, church, State-licensed care facility, public park or other dispensary facility. A facility shall not be forced to relocate if it meets the requirements of this paragraph and a Residential zoning district, school, church, State licensed child-care facility, public park or other dispensary facility is subsequently established within 500 feet of the existing cannabis facility.**
- 3. The number of facilities established within the corporate limits of the City shall not exceed three (3).**

B. Design Standards.

- 1. The facility shall be limited to no more than 2,000 square feet of gross floor area.**
- 2. No facility shall have a drive-through or drive-in service window, aisle or similar component. All retail operations related to the dispensing of cannabis shall occur inside the facility.**

C. Licensure.

- 1. Evidence of licensure by the State of Florida, Department of Health, Office of Compassionate Use (or any successor agency of the State of Florida) for the applicant to operate a cannabis dispensary facility pursuant to the Compassionate Use Act or any other applicable law. Failure of an operator of a cannabis dispensary facility to maintain valid state licensure after the City's approval of a conditional use permit shall be grounds for revocation of the conditional use permit by the City.**
- 2. A completed Certification executed by the operator of the cannabis dispensary facility, in a form supplied by the Building and Planning Department, generally indicating previous cannabis retail dispensing experience, and violations of regulations or revocations of licenses arising from**

dispensing activities. Certifications shall be filed with the City every 3 years on the anniversary of the issuance of the Conditional Use Permit. Failure of an operator of a cannabis dispensary facility to file and maintain a current certification with the City, or transfer of the ownership or operation of the cannabis dispensary facility to a third party who has not filed a certification with the City, shall be grounds for revocation of the conditional use permit by the City.

SECTION 3. From and after the effective date of this ordinance, Section 5.07.06 of the Land Development Code of the City of Panama City Beach related to City of Panama City Beach Sign Code, is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

5.07.06 Off-Premises Sign Standards

The following *Off-Premises Signs* may be *Erected* and displayed in *Business District* s pursuant to a *Permit*:

...

I. Notwithstanding section 5.07.06B, the total number of *Off-Premises Signs Permitted* within the *City* shall be increased by the number of *Off-Premises Signs* located upon unincorporated territory annexed into the *City* after the effective date of this section 5.07.06, as revised (September 10, 1998), and each such *Sign* shall be treated as any other *Off-Premises Sign* within the *City* provided that it was in full compliance with all applicable *Bay County* zoning and *Sign* regulations at the time of annexation. Conversely, the total number of *Off-Premises Signs Permitted* within the *City* shall be decreased by the number of *Off-Premises Signs* located upon incorporated territory that is de-annexed into *Bay County, Florida*.

J. **Off-site Signs may not be erected or displayed in the City which advertise a Cannabis Dispensary Facility.**

SECTION 4. From and after the effective date of this ordinance, Section 7.02.03 of the Land Development Code of the City of Panama City Beach related to the Front Beach Road Overlay District, is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

7.02.03 Front Beach Road Overlay Districts

D. Authorized Land Uses

Authorized *Land Uses* within the FBO-1, FBO-2, FBO-3 and FBO-4 districts shall conform with the permitted,

Accessory or conditional **Uses** allowed by the underlying zoning district except as provided in this section.

1. The following **Uses** shall only be permitted via a **Conditional Use** approval in conformance with section 10.02.14 of this **LDC**.

(a) **Drive-in or Drive-Through Facilities** may be authorized subject to the conditions established in section 5.06.14.

(b) Outdoor display and outdoor operations may be authorized subject to the conditions established in section 5.06.15.

2. The following **Uses** are not allowable in the area lying south of a continuation of the centerline of Front Beach Road (Scenic Highway 98) through South Thomas Drive and Thomas Drive, regardless of the zoning district designation and **Land Use** assignment:

(a) Repair shops (light repair, small equipment repair);

(b) Repair shops (large equipment, appliances);

(c) **Service Stations**;

(d) **Vehicle** sales, rental or service; and

(e) **Zoos**.

3. Pursuant to the Comprehensive Plan-Future Land Use Element, the following **Uses** shall not be located within the Coastal High Hazard Overlay District:

(a) Hospitals;

(b) **Nursing Homes** or convalescent homes;

(c) Institutional facilities and **Licensed Facilities** housing persons with limited mobility; and

(d) Permanent **Dwelling Units** in excess of local emergency management capacity.

4. **The following Uses are not allowed along Front Beach Road (Scenic Highway 98) through South Thomas Drive and Thomas Drive or elsewhere within the FBO-1, FBO-2, FBO-3 and FBO-4 districts:**

(a) Cannabis Dispensary Facilities.

SECTION 5. From and after the effective date of this ordinance, Section 1.07.02 of the Land Development Code of the City of Panama City Beach related to Definitions, is amended to read as follows (new text **bold and underlined**, deleted text ~~struck through~~):

1.07.02 Definitions

As used in the **LDC**, the following terms shall have the meanings assigned to them. When one or more defined terms are used together, their meanings shall also be combined as the context shall require or permit. All terms not specifically defined shall carry their usual and customary meanings. Undefined terms indigenous to a trade, industry or profession shall be defined when used in such context in accordance with their usual and customary understanding in the trade, industry or profession to which they apply.

Cannabis Dispensary Facility. Any facility operated by a Dispensing Organization that engages in the retail dispensing of cannabis to qualified individuals pursuant to Florida law, but does not engage in any other activity related to the preparation, wholesale storage, cultivation or processing of any form of marijuana or marijuana product. For purposes of this definition, a Dispensing Organization shall mean an entity approved by the State of Florida to dispense cannabis pursuant to Section 381.986, Florida Statutes.

SECTION 6. Ordinance 1400 establishing a temporary moratorium on the dispensing of cannabis and the establishment or expansion of medical marijuana dispensing facilities is hereby repealed. All other ordinances or parts of ordinances in conflict herewith are also repealed to the extent of such conflict.

SECTION 7. The appropriate officers and agents of the City are authorized and directed to codify, include and publish in electronic format the provisions of this Ordinance within the Panama City Beach Land Development Code, and unless a contrary ordinance is adopted within ninety (90) days following such publication, the codification of this Ordinance shall become the final and official record of the matters herein ordained. Section numbers may be assigned and changed whenever necessary or convenient.

SECTION 8. This Ordinance shall take effect immediately upon passage.

PASSED, APPROVED AND ADOPTED at the regular meeting of the City Council of the City of Panama City Beach, Florida, this 25th day of May, 2017.



MAYOR

ATTEST:

James B. Floyd
CITY CLERK

EXAMINED AND APPROVED by me this 25th day of May, 20-
17.

[Signature]
MAYOR

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