

ORDINANCE NO. 2023-008

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA AMENDING CHAPTER 28 OF THE TOWN CODE OF ORDINANCES ENTITLED “ZONING,” BY CREATING SECTION 28.94 ENTITLED “MEDICAL MARIJUANA DISPENSING FACILITIES PROHIBITED”; PROVIDING FOR PURPOSE AND FINDINGS; PROHIBITING MEDICAL MARIJUANA DISPENSING FACILITIES WITHIN THE TOWN OF PEMBROKE PARK AND DECLARING EXISTING USES LEGAL NONCONFORMING; AMENDING SECTION 28.187 ENTITLED “PERMITTED USES” TO REMOVE MEDICAL MARIJUANA AS A PERMITTED USE; DELETING SECTION 28.187 ENTITLED “DEFINITIONS RELATED TO MEDICAL MARIJUANA”; AMENDING SECTION 28-189 TO LIST MEDICAL MARIJUANA TREATMENT CENTERS AND DISPENSARIES AS A PROHIBITED USE; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Art. X, § 29, Fla. Const., entitled, “Medical Marijuana production, possession and use,” was as passed by the electors of Florida in November 2016 which amended Florida Constitution to allow the use of marijuana in certain medical applications; and,

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WHEREAS, during the 2017 Special Legislative Session, the Florida Legislature passed Senate Bill 8-A, relating to the Medical Use of Marijuana (“SB-8A”), which implemented the provisions of Art. X, § 29, Fla. Const.; and,

WHEREAS, Art. X, § 29, Fla. Const. defines Medical Marijuana Treatment Centers (“MMTCs”), to mean as 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 caregivers and is registered by the Department (of Health).

WHEREAS, Senate Bill 8-A (2017) amended Section 381.986(11)(b), Florida Statutes, to provide that “a county or municipality may, by ordinance, ban medical marijuana treatment center dispensing facilities from being located within the boundaries of that county or municipality;” and,

WHEREAS, Qualified patients are still able to obtain medical marijuana as MMTCs are permitted to deliver medical marijuana within the Town or patients may visit other medical marijuana dispensaries; and,

WHEREAS, on July 13, 2022, the Town Commission adopted Resolution No. 2022-010, which declared a Zoning in Progress pertaining to Medical Marijuana Dispensaries, Medical Marijuana Retail Centers, and Medical Marijuana Treatment

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Centers within the Town a moratorium on medical marijuana treatment center dispensing facilities; and,

WHEREAS, one medical marijuana treatment center dispensing facility currently exists within the Town and another application for a medical marijuana treatment center dispensing facilities was submitted before the zoning in progress was adopted; and,

WHEREAS, upon passage of this ordinances, these two medical marijuana treatment centers shall become existing nonconforming uses within the Town and shall be subject to §28-342 of the Town Code, as amended; and,

WHEREAS, the Town Commission, pursuant to the authority provided to the Town in §381.986(11), Florida Statutes, desires to enact such a ban which will prohibit MMTCs from establishing dispensaries within the municipal limits of the Town of Pembroke Park.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA, THAT:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance.

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Section 2. Chapter 28 of the Town's Code of Ordinances entitled "Zoning," is amended to create §28.94 entitled "Medical Marijuana Dispensing Facilities Prohibited," as follows:

§ 28.94 Medical Marijuana Dispensing Facilities Prohibited.

- 1) *Purpose.* It is the purpose of this ordinance to prohibit Medical Marijuana Treatment Centers created under Art. X, § 29 of the Florida Constitution from establishing Medical Marijuana Dispensing Facilities within the municipal limits of the Town of Pembroke Park.
- 2) *Findings.* Based on authority granted to municipalities in §381.986(11) Florida Statutes, the Town Commission finds that a ban on the establishment of medical marijuana treatment center dispensaries within the Town of Pembroke Park is in the best interest of the Town:
- 3) *Prohibition.* Medical Marijuana Dispensing Facilities are prohibited within the boundaries of the Town of Pembroke Park.
- 4) Any existing nonconforming uses shall be permitted to operate and shall be subject to §28-342, of the Town code, as amended.

Section 3. Section 28-187 of the Town's Code of Ordinances entitled "Permitted Uses," is amended as follows:

The following uses are permitted in the B-1 Business District:

- (a) The following kinds of retail stores: Antiques, art supply, automobile accessory, automobile new parts, bait and tackle, boat and marine motors in buildings, business machines, camera and photographic supply, confectionery, dairy products, dairy supplies and equipment not including feed or fertilizers, department, dresses, poultry, dry goods, florist, fruit and vegetable, furniture, furrier, garden supply gift, greeting cards, grocery, hardware, hobby supply, home appliances, household furnishings, ice

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cream, jewelry, leather goods and luggage, linens, fabrics and draperies, meat market, ~~medical marijuana treatment centers and dispensaries~~, music and musical instruments, newsstand, notions, office furniture and equipment, optical goods, package liquor, paint, pets and pet supply, pharmacy, seafood, souvenir, sporting goods, stationery and books, sundry, supermarket, television, tobacco, radio and phonograph, toy, wallpaper, wearing apparel, swimming pool supplies and equipment, variety.

Section 4. Section 28-187.3 of the Town's Code of Ordinances entitled

"Definitions related to medical marijuana," is deleted, as follows:

~~Sec. 28-187.3. - Definitions related to medical marijuana.~~

~~*Dispensing organization* means an organization approved by the Florida Department of Health to cultivate, process, and dispense low-THC cannabis pursuant to F.S. § 381.986.~~

~~*Low-THC cannabis (low-THC marijuana)* has the meaning given low-THC cannabis in F.S. § 381.986(1)(b).~~

~~*Low-THC cannabis dispensary* means a business operation for the distribution of low-THC cannabis or related supplies, whether a principal use or accessory use, pursuant to Senate Bill 1030, constitutional amendment or any other provision of Florida law.~~

~~*Low-THC cannabis facility* means any authorized low-THC dispensary, dispensing organization or any other facility that dispenses, processes, grows, cultivates, distributes, sells, or engages in any other activity that involves or is related to low-THC cannabis, pursuant to Florida law.~~

~~*Medical marijuana* means any strain of cannabis, in any form, including low-THC cannabis, which is authorized by state law to be dispensed or sold in the State of Florida for treatment of certain medical conditions.~~

~~*Medical marijuana dispensary* means a business operation for the distribution of medical marijuana or related supplies, whether a principal use or accessory use, pursuant to constitutional amendment or any other provision of Florida law.~~

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~~Medical marijuana facility means any authorized medical marijuana treatment center, medical marijuana dispensary, or any other facility that dispenses, processes, grows, cultivates, distributes, sells, or engages in any other activity that involves or is related to medical marijuana pursuant to Florida law.~~

~~Medical marijuana permit means a business permit issued by the city pursuant to this article authorizing a business to sell medical marijuana in the city. Also referred to as "permit."~~

~~Medical marijuana retail center means a retail establishment, licensed by the Florida Department of Health as a "medical marijuana facility," "medical marijuana treatment facility," "medical marijuana treatment center," "medical marijuana dispensary," "dispensing organization," "dispensing organization facility," "low-THC cannabis dispensary," "low-THC cannabis facility," or similar use, that sells and dispenses medical marijuana for individual use, but does not engage in any other activity related to preparation, wholesale storage, distribution, transfer, cultivation, growing or processing of any form of medical marijuana or medical marijuana product, and does not allow on-site consumption of medical marijuana.~~

~~Medical marijuana treatment center means any entity that acquires, grows, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, or distributes medical marijuana, or that administers medical marijuana, products containing medical marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers and is registered or licensed by the department of health. 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.~~

~~Non-medical/recreational marijuana uses means the production, growing, cultivation, distribution, purchase, sale, transfer, delivery or any other similar or related use of marijuana, cannabis, cannabis-based products or cannabis plants when such production, growing, cultivation, distribution, purchase, sale, transfer, delivery or any other similar or related use is not associated with any medical purpose or use, whether or not such purchase, sale, transfer or delivery is lawful under federal or state law.~~

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~~Owner or owner/operator means any person, including any individual or other legal entity, with a direct or indirect ownership interest of five (5) percent or more in the applicant, which interest includes the possession of stock, equity in capital, or any interest in the profits of the medical marijuana retail center, or any person who operates a medical marijuana retail center, regardless of ownership interest.~~

~~Premises means the building, within which a medical marijuana retail center is permitted to operate by the city, including the property on which the building is located, all parking areas on the property or that are utilized by the medical marijuana retail center and sidewalks, alleys and parkways adjacent to the property on which the medical marijuana retail center is located.~~

~~Qualified patient means a resident of the State of Florida who has been added to the state's compassionate use registry by a physician licensed under F.S. Ch. 458 or Ch. 459, to receive medical marijuana from a dispensing organization or medical marijuana treatment center or similar use as defined in Florida Statutes.~~

Section 5. Section 28-189 of the Town's Code of Ordinances, entitled

"Uses not permitted," is amended as follows:

In the B-1 Business District, the permissible uses enumerated in this division shall not be construed to include, either as a principal or accessory use, any of the following which are listed for emphasis:

- (1) Open air sale or display of machinery, farm implements, construction equipment;
- (2) Manufacturing except as accessory to a permitted use;
- (3) Wholesale, warehouse or storage uses;
- (4) Rooming house or boarding house;
- (5) Any use first permitted in a less restricted district;
- (6) Religious establishments, and/or ancillary educational facilities, except as provided in section 28-187.01;
- (7) Tattoo and/or body piercing parlors;
- (8) Flea markets;
- (9) Psychic/fortune tellers;
- (10) Swinger clubs or similar establishments.
- (11) Medical marijuana treatment centers and dispensaries

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Section 6. It is the intention of the Town Commission of the Town of Pembroke Park that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the Town of Pembroke Park, Florida, and that the Sections of this ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section", "Article" or such other word or phrase in order to accomplish such intention.

Section 7. All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 8. If any clause, section, or other part or application of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not affecting the remaining portions or applications remaining in full force and effect.

Section 9. This Ordinance shall become effective upon passage and adoption.

PASSED AND ADOPTED BY THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA, ON THE FIRST READING, THIS ____ DAY OF _____, 2023.

PASSED ADOPTED BY THE TOWN COMMISSION OF THE TOWN OF PEMBROKE PARK, FLORIDA, ON THE SECOND AND FINAL READING, THIS ____ DAY OF _____, 2023.

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ATTEST:

MAYOR ASHIRA MOHAMMED

MARLEN D. MARTELL
Town Clerk

Approved as to form and legal sufficiency:

JACOB G. HOROWITZ
Interim Town Attorney

VOTE

ASHIRA MOHAMMED	_____
ERIK MORRISSETTE	_____
WILLIAM R. HODGKINS	_____
MUSFIKA KASHEM	_____
GEOFFREY JACOBS	_____

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