

ORDINANCE NO. 2022-08

AN ORDINANCE OF POLK CITY, FLORIDA; CREATING SUBSECTION 2.02.14 , POLK CITY LAND DEVELOPMENT CODE, PROHIBITING MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES WITHIN CITY BOUNDARIES; PROVIDING LEGISLATIVE FINDINGS; PROVIDING MORATORIUM CONTINGENCY, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF POLK CITY, FLORIDA:

SECTION 1. FINDINGS AND INTENT. In adopting this Ordinance, the City Commission of Polk City, Florida hereby makes the following legislative findings and intent:

(1) Polk City has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida; Chapters 163 and 166, *Florida Statutes*; and Section 381.986, *Florida Statutes*.

(2) Potential adverse impacts on the health, safety, and welfare of residents and business from secondary effects associated with the sale and distribution of marijuana exist, potentially including: offensive odors, trespassing, theft, fire hazards, increased crime in and about the medical marijuana dispensing facility business, robberies, negative impacts on nearby businesses, nuisance problems.

(3) Certain of the above potential adverse impacts are accentuated by the current difficulties experienced by medical marijuana dispensing facility business in obtaining banking services necessitating such businesses to operate on a cash basis.

(4) There exists the potential for misappropriation and diversion of medical marijuana to non-medical uses.

(5) The Marijuana Policy Group has published a memorandum called "Municipal Dispensary Allocation: Florida," which evaluated the market need for medical marijuana dispensing facilities and the harmful consequences and secondary effects of over-saturation of medical marijuana dispensing facilities within the market place.

(6) The Marijuana Policy Group determined that Florida should have no more than one dispensing facility for each fifty-thousand residents and the optimal ratio is one dispensing facility per 67,222 residents, and Polk City has a population of approximately 2,902 residents, well below such ratios.

(7) Section 381.986(11), *Florida Statutes*, authorizes a county or municipality to "ban medical marijuana treatment center dispensing facilities from being located within the boundaries of that county or municipality."

(8) Section 381.986(11) further provides that “[a] county or municipality that does not ban dispensing facilities under this subparagraph may not place specific limits, by ordinance, on the number of dispensing facilities that may locate within that county or municipality,” and that “[e]xcept as provided in paragraph (c), a county or municipality may not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465.”

(9) Given the secondary effects of medical marijuana dispensing facilities, The Marijuana Policy Group’s analysis of optimal population ratios, and the statutory restrictions on local government authority to regulate the number and location of dispensing facilities if not banned, there is a rational basis for Polk City to exercise its authority under Section 381.986(11), Florida Statutes, to ban dispensing facilities within the boundaries of Polk City.

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

(11) Given the rapidly evolving landscape of medical marijuana within the State of Florida and that the State legislative action was the result of an amendment to the State Constitution, the City Commission believes there is a high likelihood of future State legislation regarding medical marijuana and potential for legal challenges to the State legislation already adopted.

(12) The City Commission desires to ensure that, in the event of any change, whether legislative, judicial, or administrative, to the City’s authority to prohibit medical marijuana treatment center dispensaries within its jurisdictional boundaries, the City has sufficient time to consider and adopt any standards or regulations 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 Polk City.

(13) Accordingly, the City Commission has found it necessary to include in this Ordinance a moratorium on the acceptance, processing and approval of medical marijuana treatment center dispensaries (including by way of acceptance, processing and approval of applications for development orders and permits) within the City limits that would last one year from the effective date of any legislative change or final court order striking or otherwise altering the Polk City’s ability to ban or prohibit medical marijuana treatment center dispensaries within the City limits.

(14) In accordance with the procedures required by Sections 166.041 (3)(c)2, Florida Statutes, and other applicable law, the regulations contained within this ordinance were considered by the City's Planning and Zoning Commission, sitting as the Local Planning Agency (LPA) as designated by the City, at a duly advertised public meeting, at which time interested parties and citizens had the opportunity to be heard and such regulations were recommended to the City Commission for adoption.

(15) The City Commission, after taking into consideration the recommendations of the Planning and Zoning Board and the City Staff, and the comments received during the public hearing process, finds that the proposed revisions and amendments are appropriate, desirable, and in the best interests of the City.

(16) The City Commission has determined that it is in the best interest of the public health, safety, environment and general welfare to adopt this Ordinance.

SECTION 2. AMENDMENT OF CITY LAND DEVELOPMENT CODE. Section 2.02.00 of the Polk City Land Development Code is hereby amended to add the following new provision:

"Section 2.02.14 Medical Marijuana Treatment Center Dispensing Facilities.

(a) Prohibition. Medical Marijuana Treatment Center Dispensing Facilities are prohibited and shall not be located within the boundaries of the City. The City shall not accept, process or approve any request or application for a development order, building permit or other approval associated with a proposed Medical Marijuana Treatment Center Dispensing Facility.

(b) Definition. For purposes of this section, the term "Medical Marijuana Treatment Center Dispensing Facility" means any facility where medical marijuana, or any product derived therefrom, is dispensed."

SECTION 3. MORATORIUM CONTINGENCY. In the event Section 381.986, Florida Statutes, is amended or interpreted by a court of competent jurisdiction in a way as to eliminate or prevent Polk City's ability to ban or prohibit Medical Marijuana Treatment Center Dispensing Facilities within the City limits (or such statute or this Ordinance is interpreted in a manner to prevent the enforcement of Section 2.02.00 of the Land Development Code adopted by this Ordinance), upon the effective date of such legislative or administrative amendment or applicable final court order, an automatic one-year moratorium shall go into place on the acceptance, processing and approval of Medical Marijuana Treatment Center Dispensing Facilities (including by way of acceptance, processing and approval of applications for development orders and permits) within the City limits in order to give the City time to evaluate changes in the applicable law and the City's ability to regulate such uses and activities and potentially enact local legislation regarding the same. Such one-year moratorium may be terminated prior to one year through resolution or ordinance of the City Commission.

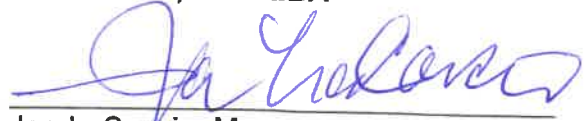
SECTION 4. CONFLICTS. All ordinances in conflict herewith are hereby repealed to the extent necessary to give this Ordinance full force and effect, provided however, that nothing herein shall be interpreted so as to repeal any existing ordinance or resolution relating to means of securing compliance with the City's Land Development Code (LDC), unless such repeal is explicitly set forth herein.

SECTION 5. SEVERABILITY. If any section, sentence, clause, or other provision of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such section, sentence, clause, or provision shall be deemed severable, and such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, sentences, clauses, or provisions of this Ordinance.

SECTION 6. EFFECTIVE DATE. This ordinance shall be effective immediately upon final passage by the City Commission.

INTRODUCED AND PASSED on FIRST READING, this 19th day of September, 2022.

POLK CITY, FLORIDA



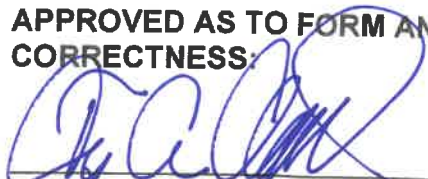
Joe LaCascia, Mayor

ATTEST:




Patricia Jackson, City Manager/Clerk

APPROVED AS TO FORM AND
CORRECTNESS:



Thomas A. Cloud, City Attorney

PASSED AND DULY ADOPTED ON SECOND READING, with a quorum present and voting by the City Commission of Polk City, Florida meeting in Regular Session this 18th day of October, 2022.



Joe LaCascia, Mayor

ATTEST:



Patricia Jackson, City Manager/City Clerk