

ORDINANCE 17-15

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE IV, DIVISION 12 OF THE TOWN CODE OF ORDINANCES TO PROHIBIT MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES WITHIN THE BOUNDARIES OF THE CITY AS AUTHORIZED BY SECTION 381.986, FLORIDA STATUTES; PROVIDING LEGISLATIVE FINDINGS; PROVIDING FOR CODIFICATION, MORATORIUM CONTINGENCY; SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, the Town of Fort Myers Beach has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida; Chapters 163 & 166, Florida Statutes; and Section 381.986, Florida Statutes; and

WHEREAS, 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; and

WHEREAS, 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 the Town of Fort Myers Beach has a population (approximately 6,000) well below such ratios; and

WHEREAS, 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;” and

WHEREAS, 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”; and

WHEREAS, Section 381.986, Florida Statutes severely limits, through State preemption, the Town’s control over the zoning and permitting of medical marijuana dispensaries, thereby substantially restricting the Town’s ability to protect surrounding land uses for which dispensaries may not be compatible; and

WHEREAS, given, among other things, the potential negative secondary land use effects of medical marijuana dispensing facilities, The Marijuana Policy Group’s the analysis of optimal population ratios (residents per dispensing facility), and the statutory restrictions on local government authority to regulate number and location of dispensing facilities if not banned, there is a rational basis for the Town to exercise its authority under Section 381.986(11), Florida Statutes to ban dispensing facilities within the boundaries of the Town; and

WHEREAS, the Town finds that this Ordinance is in the interests of the public health, safety, and

welfare.

NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA:

SECTION 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance and adopted as legislative findings.

SECTION 2. Amendment of Town Code. Article IV, Division 12 of the Town of Fort Myers Beach Code is hereby amended to add the following new provisions:

Section 34-1554 Medical Marijuana.

Sec. 34-1554. – Medical Marijuana Treatment Center Dispensing Facilities.

(1) Prohibition. Medical Marijuana Treatment Center Dispensing Facilities are prohibited and shall not be located within the boundaries of the city. The Town 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.

(2) Definition. For the 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 at retail.

(3) Interpretation. This section and the terms used herein shall be interpreted in accordance with F.S. § 381.986 and Ch. 64-4 of the Florida Administrative Code. The intent of this section is to ban medical marijuana treatment center dispensing facilities from being located within the boundaries of the Town as authorized by F.S. § 381.986(11).

SECTION 3. Codification. This Ordinance shall be incorporated into the Town of Fort Myers Beach Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this Ordinance or the Town Code may be freely made.

SECTION 4. 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 the Town’s ability to ban or prohibit Marijuana Treatment Center Dispensing Facilities within the city limits, upon the effective date of such, an automatic one-year moratorium shall go into place on the acceptance, processing and approval of Marijuana Treatment Center Dispensing Facilities (including by way of acceptance, proceeding and approval of applications for development orders and permits) within the Town limits in order to give the Town time to evaluate changes in the applicable law, the Town’s ability to regulate such uses and activities and potentially enact local legislation regarding the same. Such one-year moratorium may be terminated early through resolution or ordinance of the Town Council.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be

deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 6. Conflicts. In the event of a conflict or conflicts between this Ordinance and any other ordinance or provision of law, this Ordinance controls to the extent of the conflict, as allowable under the law.

SECTION 7. Effective date. This Ordinance shall become effective immediately upon adoption by the Town Council of the Town of Fort Myers Beach, Florida.

FIRST READING AND PUBLIC HEARING: October 2, 2017

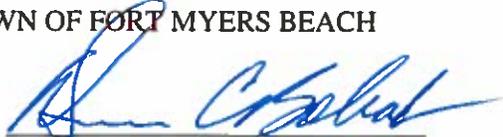
SECOND READING AND PUBLIC HEARING: December 18, 2017

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Shamp and seconded by Council Member Cereceda and upon being put to a roll call vote, the result was as follows:

Dennis Boback, Mayor	aye	Tracey Gore, Vice Mayor	aye
Anita Cereceda, Council Member	aye	Joanne Shamp, Council Member	aye
Bruce Butcher, Council Member	nay		

ADOPTED this 18th day of December, 2017, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

By: 

Dennis C. Boback, Mayor

ATTEST:


Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM:


Peterson Law Group, Town Attorney