

ORDINANCE NO. 17-24

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING CHAPTER 118, ARTICLE XI OF THE CITY 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 City of Winter Garden 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 City of Winter Garden has a population (approximately 38,000) 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 City’s control over the zoning and permitting of medical marijuana dispensaries, thereby substantially restricting the City’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 City to

exercise its authority under Section 381.986(11), Florida Statutes to ban dispensing facilities within the boundaries of the City; and

WHEREAS, the City finds that this Ordinance is in the interests of the public health, safety, and welfare.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, 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 City Code. Chapter 118, Article XI of the City of Winter Garden Code is hereby amended to add the following new provisions:

Article XI. ~~Reserved.~~ Medical Marijuana.

Sec. 118-1600. – 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 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.

(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 city as authorized by F.S. § 381.986(11).

SECTION 3. Codification. This Ordinance shall be incorporated into the Winter Garden City 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 City 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 city’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 City limits in order to give the City time to evaluate changes in the applicable law, 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 early through resolution or ordinance of the City Commission.

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 City Commission of the City of Winter Garden, Florida.

FIRST READING AND PUBLIC HEARING: ___July 13_____, 2017

SECOND READING AND PUBLIC HEARING: ___July 27_____, 2017

ADOPTED this _27th_ day of ___July_____, 2017, by the City Commission of the City of Winter Garden, Florida.

CITY COMMISSION
CITY OF WINTER GARDEN

_____/S/_____
John Rees, Mayor/Commissioner

ATTEST:

_____/S/_____
Kathy Golden, City Clerk