

**ORDINANCE 18-\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 3 LAND DEVELOPMENT REGULATIONS, OF THE CODE OF ORDINANCES BY AMENDING SECTION 3-58 NC, NEIGHBORHOOD CENTER DISTRICT, SECTION 3-59 TRC, TRANSIT CORRIDOR DISTRICT, AND SECTION 3-60 TC, TOWN CENTER DISTRICT TO CHANGE THE LIST OF PERMITTED CONDITIONAL AND PROHIBITED USES TO ADDRESS PHARMACIES AND MEDICAL MARIJUANA DISPENSARIES AND TO PROVIDE CERTAIN REGULATIONS FOR SUCH USES; AND BY AMENDING SECTION 3-261, DEFINITIONS, TO PROVIDE NEW DEFINITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Cutler Bay (the “Town”) has adopted land development regulations to facilitate safe and orderly growth which forms an integral part of the community; and

**WHEREAS**, Marijuana (Cannabis) is a Schedule I drug under the federal Controlled Substances Act, 21 U.S.C. §811; and

**WHEREAS**, according to the Controlled Substances Act, Marijuana has a high potential for abuse and has no currently accepted medical use for treatment in the United States; and

**WHEREAS**, notwithstanding federal law, the 2014 Florida Legislature approved and later amended legislation providing for the growing, processing, and distributing of specific forms of low-THC (non-euphoric) Cannabis to be supplied to qualified patients and their caregivers for the treatment of listed medical conditions; and

**WHEREAS**, in November 2016 the Florida voters approved a ballot initiative amending the Florida Constitution to allow for broader sale and use of marijuana for medical purposes within the State of Florida; and

**WHEREAS**, to implement the Constitutional provisions for medical marijuana the state legislature adopted Senate Bill 8A during its 2017 Special Session which provides a framework for local government regulation of the dispensing of medical marijuana, allowing a local government to either ban medical marijuana retail centers or to regulate them similar to pharmacies; and

**WHEREAS**, Senate Bill 8A was signed by the Governor on June 23, 2017; and

**WHEREAS**, the Town Council desires to amend the Neighborhood Center and the Transit Corridor Districts and the Town Center, Center Sub-District to specifically permit pharmacies and medical marijuana dispensaries with a distance separation of 275 feet; and

**WHEREAS**, City staff recommends approval of the proposed changes; and

**WHEREAS**, the Town Council, sitting as the Local Planning Agency, has reviewed the ordinance and recommended approval; and

**WHEREAS**, the Town Council finds that this Ordinance is in the best interest and welfare of the residents of the Town.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:**

**Section 1.** **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

**Section 2.** **Section 3-58 Amended.** The Town Council hereby amends Section 3-58 of the Town Code of Ordinances as follows:

Sec. 3-58. - NC, Neighborhood Center District.

The neighborhood center district provides for the location of pedestrian scaled shops, restaurants, services, small workplaces, and residential buildings central to a neighborhood (or grouping of neighborhoods) and within walking distance of dwellings. The neighborhood center district shall be developed on an interconnected pattern of streets and typically limited to approximately one-fourth mile in radius. Uses in the district will have a primary market area of three miles and are intended to service the daily needs of the residents of the surrounding neighborhoods. The pedestrian is expected to be able to walk from one end of the district to the other in ten to 15 minutes.

(1) *Permitted uses.*

- a. Commercial and retail (not exceeding 25,000 square feet as a single use).
- b. Office (requiring less than 50 parking spaces).
- c. Restaurant.
- d. Multifamily (within a vertical mixed use development).
- e. Civic (excluding educational facility/school).
- f. Medical.
- g. Civic.
- h. Park and open space.

- i. Place of public assembly (with a minimum distance of 1,000 feet between another place of public assembly).
- j. Outdoor dining (see supplemental standards for further regulations).
- k. Pharmacy (not exceeding 25,000 square feet as a single use; with a minimum distance of 275 feet from a medical marijuana dispensary or another pharmacy, measured nearest property line to nearest property line).
- l. Medical marijuana dispensary (not exceeding 25,000 square feet as a single use; with a minimum distance of 275 feet from a pharmacy or another medical marijuana dispensary, measured nearest property line to nearest property line).

\* \* \*

(3) *Conditional uses.*

- a. Conservatory, health and fitness, martial arts or dance studio.
- b. Educational facility/school.
- c. Office (with 50 or more parking spaces).
- d. Commercial and retail (exceeding 25,000 square feet but less than 55,000 square feet as a single use).
- e. Veterinarian office (including grooming and indoor boarding).
- f. Neighborhood convenience store.
- g. Bar and nightclub.
- h. Drive-thru.
- i. Pharmacy (exceeding 25,000 square feet but less than 55,000 square feet as a single use; with a minimum distance of 275 feet from a medical marijuana dispensary or another pharmacy, measured nearest property line to nearest property line).
- j. Medical marijuana dispensary (exceeding 25,000 square feet but less than 55,000 square feet as a single use; with a minimum distance of 275 feet from a pharmacy or another medical marijuana dispensary, measured nearest property line to nearest property line).

\* \* \*

**Section 3.**     **Section 3-59 Amended.** The Town Council hereby amends Section 3-59 of the Town Code of Ordinances as follows:

Sec. 3-59. - TRC, Transit Corridor District.

The transit corridor district provides for the location of transit-oriented uses and uses having a market area extending beyond the scale of the corridor and surrounding neighborhoods. The intent of the district is to facilitate convenient access, minimize traffic congestion, and reduce visual clutter to create a development pattern which improves the aesthetic quality and character of the US 1 corridor within the town. Buildings are required to relate to the street with a pedestrian scale, rather than to parking lots. Site design criteria is required to facilitate ease of pedestrian access along the corridor and the bus way.

(1) *Permitted uses.*

- a. Commercial and retail (not exceeding 55,000 square feet as a single use; 60,000 square feet for projects meeting green building program designation per article V of this chapter. Development bonuses shall not exceed the maximum permitted by the growth management plan).
- b. Multifamily (within a vertical mixed use development).
- c. Civic (excluding educational facility/school).
- d. Personal service.
- e. Office and institutional (excluding educational facility/school).
- f. Restaurant.
- g. Hotel.
- h. Motel.
- i. Theater.
- j. Adult entertainment.
- k. Medical.
- l. Pharmacy (not exceeding 55,000 square feet as a single use; 60,000 square feet for projects meeting green building program designation per article V of this chapter. Development bonuses shall not exceed the maximum permitted by the growth management plan. Must be located a minimum of 275 feet from a medical marijuana dispensary or another pharmacy, measured nearest property line to nearest property line).
- m. Medical marijuana dispensary (not exceeding 55,000 square feet as a single use; 60,000 square feet for projects meeting green building program designation per article V of this chapter. Development bonuses shall not exceed the maximum permitted by the growth management plan. Must be located a minimum of 275 feet from a pharmacy or another medical marijuana dispensary, measured nearest property line to nearest property line).

\* \* \*

**Section 4.**     **Section 3-60 Amended.** The Town Council hereby amends Section 3-60 of the Town Code of Ordinances as follows:

Sec. 3-60. - TC, Town Center District.

The town center district is coded to accommodate the higher overall intensity of development required to support the town. It is expected that the district may be expanded over time to meet the growth in demand for downtown facilities and services. The town center district

is provided to encourage the expansion and redevelopment of Southland Mall and adjoining areas zoned town center. A broad array of uses is expected in a pattern which integrates shops, restaurants, services, work places, civic, educational, and public assembly uses, and higher density housing in a compact, pedestrian-oriented environment. The town center district anchors the surrounding residential neighborhoods while also serving the broader community.

(1) Permitted uses.

- a. Mixed use.
- b. Commercial and retail.
- c. Multifamily (within a mixed use development).
- d. Civic (excluding educational facility/school).
- e. Office.
- f. Hotel.
- g. Family entertainment center.
- h. Bar or nightclub.
- i. Medical marijuana dispensary (TC Center Sub-District only, minimum 275 feet from a pharmacy or another medical marijuana dispensary, measured nearest property line to nearest property line).
- j. Park.
- k. Pharmacy (TC Center Sub-District only, minimum 275 feet from a medical marijuana dispensary or another pharmacy, measured nearest property line to nearest property line).
- ~~l.~~ Professional service.
- ~~m.~~ Place of public assembly (minimum 1,000 feet between another place of public assembly).
- ~~n.~~ Recreational facility.
- ~~o.~~ Restaurant.
- ~~p.~~ Outdoor dining.
- ~~q.~~ Medical Office (TC Center Sub-District only).

\* \* \*

**Section 5.**      **Section 3-261 Amended.** The Town Council hereby amends Section 3-261 of the Town Code of Ordinances by adding the following definitions:

\* \* \*

Marijuana means any strain of cannabis or Marijuana, in any form, that is authorized

by State law to be dispensed or sold in the State of Florida for use by qualified users as defined by Florida Statutes. Also referred to as “Medical Marijuana.”

\* \* \*

*Medical marijuana dispensary means* a retail establishment, licensed by the Florida Department of Health as a “Medical Marijuana Treatment facility,” “Medical Marijuana Treatment Center,” “dispensing organization,” “dispensing organization facility” or similar use, that sells and dispenses Medical Marijuana.

\* \* \*

*Pharmacy means* any place, licensed under Chapter 465, Florida Statutes, where drugs and medicines are prepared, dispensed or compounded.

\* \* \*

**Section 6.**     **Severability.** That the provisions of this Ordinance are declared to be severable, and, if any section, sentence, clause and/or phrase of this Ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, which shall remain in effect, it being the legislative intent that this Ordinance shall stand despite the invalidity of any part.

**Section 7.**     **Conflicts.** All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 8.**     **Codification.** That it is the intention of the Town Council, and hereby ordained, that the provisions of the Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be re-numbered and/or re- lettered to accomplish such intentions; and that the word, “Ordinance,” shall be changed to “Section” or such other appropriate word.

**Section 9.**     **Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this \_\_\_\_ day of February, 2018.

PASSED AND ADOPTED on second reading this \_\_\_\_ day of March, 2018.

Attest:

\_\_\_\_\_  
PEGGY R. BELL  
Mayor

\_\_\_\_\_  
Debra E. Eastman, MMC  
Town Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY FOR THE  
SOLE USE OF THE TOWN OF  
CUTLER BAY:

\_\_\_\_\_  
WEISS SEROTA  
HELFMAN COLE &  
BIERMAN, P.L.  
Town Attorney

Moved By: \_\_\_\_\_  
Seconded By: \_\_\_\_\_

FINAL VOTE AT ADOPTION:

Mayor Peggy R. Bell	_____
Vice Mayor Sue Ellen Loyzelle	_____
Council Member Mary Ann Mixon	_____
Council Member Michael P. Callahan	_____
Council Member Roger Coriat	_____