

ZTA-23-01 (Ord. 2023-10)
 Exhibit "A"
 Date: August 25, 2023

Revised: 09/14/2023
 10/16/2023

	LAND DEVELOPMENT STAFF REPORT AND RECOMMENDATION
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Subject/Agenda Item:

Ordinance 2023-10 – Medical Marijuana Treatment Center – Dispensing Facilities

Hearing before the Planning and Zoning Board of Appeals: A City-initiated text amendment to the Zoning Code to prohibit Medical Marijuana Treatment Center – Dispensing Facilities to the list of Prohibited Uses in all areas of the city.

Recommendation to APPROVE

Recommendation to DENY

Quasi-Judicial

Legislative

Public Hearing

<p>Originating Department:</p> <p>Planning & Engineering</p> <p>Project Manager</p> <p>_____</p> <p>Denise Malone, AICP Development and Neighborhood Services Director</p>	<p>Reviewed By:</p> <p>Director of Planning & Engineering</p> <p>_____</p> <p>Denise Malone, AICP Development and Neighborhood Services Director</p> <p>_____</p> <p>Tanya Earley, Esq. Torcivia, Donlon, Goddeau & Rubin, P.A.</p>
<p>Approved By:</p> <p>City Manager</p> <p>_____</p> <p>Andrea McCue</p>	<p>Public Notice:</p> <p><input checked="" type="checkbox"/> Required <input type="checkbox"/> Not Required</p> <p>Dates: 8/31/2023, 10/05/2023, 10/26/2023</p> <p>Papers: Lake Worth Herald</p> <p>Mailing</p> <p><input type="checkbox"/> Required <input checked="" type="checkbox"/> Not Required</p> <p>Notice Distance: _____</p>

<p>Attachments:</p> <ul style="list-style-type: none"> • Ordinance 2023-10 	<p>City Council Action:</p> <p><input checked="" type="checkbox"/> Approval <input type="checkbox"/> Approve with conditions <input type="checkbox"/> Denial <input type="checkbox"/> Continued to: _____</p>
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I. Executive Summary

A city-initiated request to amend the City's Zoning Code to prohibit Medical Marijuana Treatment Center Distribution Facilities (MMTC-DF) as provided for in Section 381.986(11), et seq., Florida Statutes. Previously, the City Council had banned the use within the City's boundaries. However, the City Counsel subsequently adopted Ordinance No. 20-02, which removed the ban on MMTC-DF. The City Counsel has since directed staff to reinstate the ban on MMTC-DF. The reinstatement of the MMTC-DF ban requires multiple text amendments to the zoning code (Chapter 16). Chapter 9 (Miscellaneous Offenses) is likewise being amended to prohibit the unlawful operation of such a facility.

II. Background

In 2014, the Florida Legislature enacted the Compassionate Medical Cannabis Act, which authorizes dispensing organizations to manufacture, possess, sell, and dispense low-THC cannabis for medical use (§381.986, Florida Statutes).

In 2016, the Legislature amended §381.986, Florida Statutes, to address a multitude of issues including regulatory oversight, additional standards for dispensing organizations, use of independent laboratories, etc. The Florida Department of Health's Office of Compassionate Use (DOH) created the administrative provisions that were adopted on June 17, 2015, as Florida Administrative Code 64-4.

On September 8, 2016, the City Council passed a moratorium on allowing medical marijuana dispensaries in the City for a one (1) year period to allow time to see what regulations the Florida Legislature would put in place to address the management of the industry in Florida.

On June 23, 2017, Governor Rick Scott signed Senate Bill 8-A regarding medical marijuana treatment centers into law, which limited the counties and municipalities from prohibiting Medical Marijuana Treatment Facilities and providing regulations limiting Medical Marijuana Treatment Center – Dispensing Facilities other than those consistent with regulations for pharmacies.

Two additional extension were passed by motion on September 19, 2017 and on December 18, 2017, in order to provide sufficient time to study the provision of uses related to medical cannabis and the impact of these uses on residents, property values, and redevelopment planning efforts. The City also needed to evaluate the projected demand for and location of these uses and the impacts from the City's inability to regulate the number or impacts of dispensaries allowed within City limits based on the legislation passed.

On January 16, 2018, a workshop was held where the Mayor and Council heard presentations from the Palm Beach County Sheriff's Office and City Attorney. The discussion related to possible impacts from medical marijuana dispensaries within the City limits, as well as impacts from the use of medical marijuana by employees as it relates to Drug Free Workplace policies.

At the following City Council meeting on February 5, 2018, the City Council directed staff to change the moratorium extension date to April 15, 2019. The time extension was intended to

give the City time to see what impact dispensaries have on the Palm Beach County municipalities that had not banned the use and to provide for additional time to see if the state legislature passed any future legislation regarding medical marijuana dispensaries.

In 2019, based on the information that a majority of the municipalities in Palm Beach County banned the use, the City Council directed staff to effectuate a ban on MMTC-DF. Ordinance 2019-01, amended Chapter 8, Licenses and Business Regulations to ban medical marijuana treatment center dispensing facilities as a business in the City. Ordinance 2019-02, amended Chapter 16, Zoning Code to add MMTC-DF to the prohibited use section of every non-residential use zoning district, with the exception of Government Use (GU) and Study Area Zone (SAZ).

In 2020, the City Council directed staff to remove the ban. Adopted on September 10, 2020, Ordinance 2020-2 allowed for the operation of a MMTC-DF in the following non-residential zoning districts: Office Professional, and Institutional (OPI); Commercial Neighborhood (CN); General Commercial (CG); Commercial Intensive (CI); and Mixed Development Districts (MXD-R, MXD-C, MXD-O, MXD-OS).

Recently, staff have been directed to reinstate the prohibitions that were removed by the passage of Ordinance 2020-02.

III. Proposed Zoning Code Amendments:

The following Zoning Code regulations are impacted by the proposed Zoning Text Amendments. Text shown in ~~strike through~~ is to be deleted. Text shown in underline is to be added.

Proposed Change #1

The proposed zoning text amendments are as follows:

Chapter 16, Article I:

Sec. 16-1. Definitions

Medical marijuana treatment center-dispensing facility (MMTC-DF) means a retail establishment, licensed by the Florida Department of Health as a "medical marijuana treatment center dispensing facility," established by a licensed "medical marijuana treatment center," "dispensing organization," "dispensing organization facility," or similar use, that sells and dispenses marijuana, products containing marijuana, or related supplies, but does not engage in any other activity related to preparation, wholesale storage, distribution, transfer, cultivation, or processing of any form of marijuana, marijuana products, or related supplies, and does not allow on-site consumption of marijuana or marijuana products. Medical marijuana treatment center-dispensing facilities are prohibited within the City of Greenacres, with the exception that medical marijuana treatment center dispensing facilities that are lawfully operating as of October 2, 2023, shall be considered nonconforming uses.

[Sections 16-2 through 16-28 to remain unchanged and are omitted for brevity]

Chapter 16, Article III, Divisions 8, 9, 10, 11, 14,15, and 16 are hereby amended as follows:

Sec. 16-425. Prohibited uses.

The following are the prohibited uses in the office, professional and institutional (OPI) district:

- (1) Any use or structure not specifically, or by reasonable implication permitted herein or permissible by special exception.
- (2) Medical marijuana treatment center dispensing facilities and any general medical marijuana retailers.
 - a. Medical marijuana treatment center dispensing facilities, including medical marijuana retail centers, are prohibited, as authorized by Section 381.986(11), et seq., Florida Statutes.
 - b. In addition to the prohibition set forth in subsection a., marijuana remains a Schedule 1 drug and is illegal pursuant to federal law; therefore, any facilities related to the cultivation, processing, distribution, storage, sales, or other wholesale or retail transaction of marijuana, whether for compensation or otherwise, including medical marijuana treatment center dispensing facilities, are prohibited.

[Sections 16-426 through 16-449 to remain unchanged and are omitted for brevity]

Sec. 16-450. Prohibited uses.

The following are the prohibited uses in the commercial neighborhood (CN) district:

- (1) Any use, accessory use or component of use, or structure not specifically, or by reasonable implication permitted herein, or permissible by special exception.
- (2) Notwithstanding the foregoing prohibitions, all shopping centers either completely developed or partially developed and having site and development plans that were approved on or before January 1, 1994 shall not be classified as prohibited uses as established herein.
- (3) Medical marijuana treatment center dispensing facilities and any general medical marijuana retailers.
 - a. Medical marijuana treatment center dispensing facilities, including medical marijuana retail centers, are prohibited, as authorized by Section 381.986(11), et seq., Florida Statutes.
 - b. In addition to the prohibition set forth in subsection a., marijuana remains a Schedule 1 drug and is illegal pursuant to federal law; therefore, any facilities related to the cultivation, processing, distribution, storage, sales, or other wholesale or retail transaction of marijuana, whether for compensation or otherwise, including medical marijuana treatment center dispensing facilities, are prohibited.

[Sections 16-451 through 16-474 to remain unchanged and are omitted for brevity]

Sec. 16-475. Prohibited uses.

The following are the prohibited uses in the commercial general (CG) district:

- (1) Any use, accessory use or component of use, or structure not specifically, or by reasonable implication permitted herein, or permissible by special exception.
- (2) Notwithstanding the foregoing prohibitions, all shopping centers either completely developed or partially developed and having site and development plans that were approved on or before January 1, 1994 shall not be classified as prohibited uses as established herein.
- (3) Medical marijuana treatment center dispensing facilities and any general medical marijuana retailers.
 - a. Medical marijuana treatment center dispensing facilities, including medical marijuana retail centers, are prohibited, as authorized by Section 381.986(11), et seq., Florida Statutes.
 - b. In addition to the prohibition set forth in subsection a., marijuana remains a Schedule 1 drug and is illegal pursuant to federal law; therefore, any facilities related to the cultivation, processing, distribution, storage, sales, or other wholesale or retail transaction of marijuana, whether for compensation or otherwise, including medical marijuana treatment center dispensing facilities, are prohibited.

[Sections 16-476 through 16-499 to remain unchanged and are omitted for brevity]

Sec. 16-500. Prohibited uses.

The following are the prohibited uses in the commercial intensive (CI) district:

- (1) Any use or structure not specifically, or by reasonable implication permitted herein or permissible by special exception.
- (2) Notwithstanding the foregoing prohibitions, all shopping centers either completely developed or partially developed and having site and development plans that were approved on or before January 1, 1994 shall not be classified as prohibited uses as established herein.
- (3) Medical marijuana treatment center dispensing facilities and any general medical marijuana retailers.
 - a. Medical marijuana treatment center dispensing facilities, including medical marijuana retail centers, are prohibited, as authorized by Section 381.986(11), et seq., Florida Statutes.
 - b. In addition to the prohibition set forth in subsection a., marijuana remains a Schedule 1 drug and is illegal pursuant to federal law; therefore, any facilities related to the cultivation, processing, distribution, storage, sales, or other wholesale or retail transaction of marijuana, whether for compensation or otherwise, including medical marijuana treatment center

dispensing facilities, are prohibited.

[Sections 16-501 through 16-545 to remain unchanged and are omitted for brevity]

Sec. 16-546. Prohibited uses and structures.

The prohibited uses and structures in the mixed development districts MXD-R and MXD-C are as follows:

- (1) Any use, accessory use or component of use or structure not specifically or by reasonable implication permitted herein or permissible by special exception.
- (2) All outdoor storage and display of commercial materials.
- (3) Mobile homes.
- (4) Shopping centers.
- (5) Adult entertainment establishments.
- (6) Medical marijuana treatment center dispensing facilities and any general medical marijuana retailers.
 - a. Medical marijuana treatment center dispensing facilities, including medical marijuana retail centers, are prohibited, as authorized by Section 381.986(11), et seq., Florida Statutes.
 - b. In addition to the prohibition set forth in subsection a., marijuana remains a Schedule 1 drug and is illegal pursuant to federal law; therefore, any facilities related to the cultivation, processing, distribution, storage, sales, or other wholesale or retail transaction of marijuana, whether for compensation or otherwise, including medical marijuana treatment center dispensing facilities, are prohibited.

[Sections 16-547 through 16-561 to remain unchanged and are omitted for brevity]

Sec. 16-562. Prohibited uses and structures.

The prohibited uses and structures in the MXD-O mixed use development district are as follows:

- (1) Any use, accessory use or component of use or structure not specifically or by reasonable implication permitted herein or permissible by special exception.
- (2) All outdoor storage and display of commercial goods and materials.
- (3) Mobile homes.
- (4) Adult entertainment establishments.
- (5) Medical marijuana treatment center dispensing facilities and any general medical marijuana retailers.
 - a. Medical marijuana treatment center dispensing facilities, including medical marijuana retail centers, are prohibited, as authorized by Section 381.986(11), et seq., Florida Statutes.
 - b. In addition to the prohibition set forth in subsection a., marijuana remains a Schedule 1 drug and is illegal pursuant to federal law; therefore, any facilities related to the cultivation, processing, distribution, storage, sales,

or other wholesale or retail transaction of marijuana, whether for compensation or otherwise, including medical marijuana treatment center dispensing facilities, are prohibited.

[Sections 16-563 through 16-576 to remain unchanged and are omitted for brevity]

Sec. 16-577. Prohibited uses.

The following are the prohibited uses in the mixed use development-original section (MXD-OS) district:

- (1) Any use, accessory use or component of use, or structure not specifically, or by reasonable implication, permitted herein or permissible by special exception.
- (2) All outdoor storage and outdoor display of commercial goods and materials.
- (3) Medical marijuana treatment center dispensing facilities and any general medical marijuana retailers.
 - a. Medical marijuana treatment center dispensing facilities, including medical marijuana retail centers, are prohibited, as authorized by Section 381.986(11), et seq., Florida Statutes.
 - b. In addition to the prohibition set forth in subsection a., marijuana remains a Schedule 1 drug and is illegal pursuant to federal law; therefore, any facilities related to the cultivation, processing, distribution, storage, sales, or other wholesale or retail transaction of marijuana, whether for compensation or otherwise, including medical marijuana treatment center dispensing facilities, are prohibited.

[Sections 16-578 through 16-589 to remain unchanged and are omitted for brevity]

In addition to the foregoing proposed zoning text amendments, it is proposed that Chapter 9, Miscellaneous Offenses, be amended as follows:

Chapter 9, Article I, Division 1:

Sec. 9-10. Marijuana Dispensaries.

- (a) Consistent with Section 381.986(11), Florida Statutes, it shall be unlawful to operate a medical marijuana treatment center dispensing facility within the boundaries of the city.
- (b) It shall be unlawful to operate any facility related to the cultivation, processing, distribution, storage, sales, or other wholesale or retail transaction of marijuana, whether for compensation or otherwise, including medical marijuana treatment center dispensing facilities.
- (c) Medical marijuana treatment center dispensing facilities that are lawfully operating within the city as of October 2, 2023, shall be treated as nonconforming uses.

III. Staff Analysis:

Section 381.986(11), Florida Statutes, specifically authorizes municipalities to “ban” medical marijuana treatment center dispensing facilities from being located within their boundaries. The City initially instituted such a ban, but later removed it as to certain non-residential zoning districts. The passage of Ordinance 2023-10 would reinstate the prior prohibition, and it will apply citywide. However, if a MMTC-DF is lawfully operating as of the effective date of Ordinance 2023-10, it will be treated as a nonconforming use.

Development Review Committee Comments:

The petition was reviewed by the Development Review Committee staff recommended approval with no comments.

IV. Zoning Text Amendment Criteria:

A. *The need and justification for these changes:*

The principal intent of these proposed text amendments to the Zoning Code is to reinstate the prohibition on the MMTC-DF use within the boundaries of the City.

B. *The relationship of the proposed amendments to the purpose and objectives of the City’s Comprehensive Plan, and whether the proposed change will further the purposes of the City’s Zoning Code regulations and other City codes, regulations and actions designed to implement the Comprehensive Plan.*

The proposed amendments are consistent with the City’s Comprehensive Plan and will further the purposes of the City’s Zoning Code regulations and other City codes.

V. Staff Recommendation:

Approval of ZTA-23-01 through the adoption of Ordinance 2023-10.

PLANNING COMMISSION RECOMMENDATION – September 14, 2023

The Planning Commission on a motion made by Commissioner Hayes and seconded by Commissioner Clements, by a vote of five (5) to zero (0) recommended approval of Zoning Text Amendment *ZTA-23-01 (MMTC-DF)* as presented by staff.

CITY COUNCIL ACTION First Reading – October 16, 2023

The City Council on a motion made by Deputy Mayor Tharp and seconded by Council Member Bousquet, by a vote of five (5) to zero (0) recommended approval of Zoning Text Amendment *ZTA-23-01 (MMTC-DF)* as presented by staff.

CITY COUNCIL ACTION Adoption Hearing – November 6, 2023
