

ORDINANCE NO. 2017-__

**AN ORDINANCE AFFECTING THE USE OF LAND
IN ORANGE COUNTY, FLORIDA, RELATING TO
THE CULTIVATING, PROCESSING, AND
DISPENSING OF MARIJUANA FOR MEDICAL
USE; AMENDING SECTION 38-1 (ZONING
DEFINITIONS); AMENDING SECTION 38-77
(ZONING USE TABLE); AMENDING SECTION 38-
79 (CONDITIONS FOR PERMITTED USES AND
SPECIAL EXCEPTIONS); REPEALING SECTION
38-80 (“MORATORIUM REGARDING MEDICAL
CANNABIS ACTIVITIES WITHIN
UNINCORPORATED AREAS OF ORANGE
COUNTY”); AND PROVIDING AN EFFECTIVE
DATE.**

WHEREAS, the Florida legislature has enacted legislation allowing marijuana
for medical uses; and

WHEREAS, the Florida Medical Marijuana Legalization Initiative, also known
as Amendment 2, which legalized the use of medical marijuana for specific medical
conditions, passed with 71% of the vote on November 8, 2016, and became effective on
January 3, 2017; and

WHEREAS, the State, through the Department of Health, has enacted a
comprehensive regulatory framework for the cultivation, processing, transporting, and
dispensing of marijuana; and

WHEREAS, Section 381.986(11), Florida Statutes, states that regulation of
cultivation, processing, and delivery of marijuana by medical marijuana treatment centers
is preempted to the State except as provided for therein; and

WHEREAS, Section 381.986(11)(b), Florida Statutes, states that a county may,
by ordinance, ban medical marijuana treatment center dispensing facilities from being
located within the boundaries of that county, but, a county that does not ban dispensing
facilities may not place specific limits, by ordinance, on the number of dispensing
facilities that may locate within that county; and

WHEREAS, it is the intent of the Board to enact, in accordance with applicable
laws, zoning regulations for medical marijuana treatment centers.

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS
OF ORANGE COUNTY, FLORIDA:**

46 **Section 1. Findings of fact.** The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this ordinance.

48 **Section 2. Amendments; In General.** Chapter 38 of the Orange County Code is amended as set forth in Section 3 through Section 6, with new language being shown by underlines and deleted language being shown by strike-throughs.

50 **Section 3. Amendments to Section 38-1 (“Definitions”).** Section 38-1, Orange County Code, is amended to read as follows:

52 **Sec. 38-1. Definitions**

 * * *

54 Cultivation facility shall mean any area in
56 unincorporated Orange County designated in the MMTC’s
 application to the Florida Department of Health to be used
58 for the cultivation of marijuana.

 * * *

60 Dispensing facility shall mean any area in
62 unincorporated Orange County designated in the MMTC’s
 application to the Florida Department of Health to be used
64 for the dispensing of marijuana.

 * * *

66 Low-THC cannabis has the same meaning provided
68 at Section 381.986(1), Florida Statutes, as may be amended
 from time to time.

70 * * *

72 Marijuana delivery device has the same meaning
 provided at Section 381.986(1), Florida Statutes, as may be
74 amended from time to time.

76 Marijuana has the same meaning given to it by
 Section 381.986(1), Florida Statutes, as may be amended
78 from time to time, and shall include Low-THC cannabis.

Medical Marijuana Treatment Center (MMTC) has the same meaning provided at Rule 1-1.01, Florida Administrative Code, as may be amended from time to time.

Medical use has the same meaning provided at Section 381.986(1), Florida Statutes, as may be amended from time to time.

* * *

Physician certification has the same meaning provided at Section 381.986(1), Florida Statutes, as may be amended from time to time.

* * *

Processing facility shall mean any area in unincorporated Orange County designated in the MMTC's application to the Florida Department of Health to be used for the processing of marijuana.

* * *

Qualifying medical condition has the same meaning provided at Section 381.986(1), Florida Statutes, as may be amended from time to time.

* * *

In all other respects, section 38-1 shall remain unchanged.

Section 4. Amendment to Section 38-77 ("Use Table"). Section 38-77 is amended to read as follows:

Sec. 38-77. Use Table

Uses Per Zoning Code	SIC Group	Land Use	A-1	A-2	A - R	RC E-5	RCE -2	RC E	R-1AAA A	R-1AA A	R-1A A	R-1 A	R -1	R -2	R -3	Cluster
<u>Cultivation facility</u>	0721		<u>177 P</u>	<u>177 P</u>												

RT	RT-1	RT-2	P-O	C-1	C-2	C-3	I-1A	I-1, I-5	I-2, I-3	I-4	U-V (see 29)	R-L-D	UR-3	NC	NAC	NR	Conditions
																	* —

114

Uses Per Zoning Code	SIC Group	Land Use	A-1	A-2	A-R	RC E-5	RCE -2	RC E	R-1AAA A	R-1AA A	R-1A A	R-1 A	R-1 -1	R-2	R-3	Cluster
<u>Processing facility</u>	0723															

RT	RT-1	RT-2	P-O	C-1	C-2	C-3	I-1A	I-1, I-5	I-2, I-3	I-4	U-V (see 29)	R-L-D	UR-3	NC	NAC	NR	Conditions
									<u>178</u> <u>P</u>	<u>178</u> <u>P</u>							* —

116

Uses Per Zoning Code	SIC Group	Land Use	A-1	A-2	A-R	RC E-5	RCE -2	RC E	R-1AAA A	R-1AA A	R-1A A	R-1 A	R-1 -1	R-2	R-3	Cluster
<u>Dispensing facility</u>	5912															

RT	RT-1	RT-2	P-O	C-1	C-2	C-3	I-1A	I-1, I-5	I-2, I-3	I-4	U-V (see 29)	R-L-D	UR-3	NC	NAC	NR	Conditions
				<u>179</u> <u>P</u>	<u>179</u> <u>P</u>	<u>179</u> <u>P</u>											* —

118

In all other respects, section 38-77 shall remain unchanged.

120 **Section 5. Amendment to Section 38-79 (“Conditions for Permitted Uses and Special Exceptions”).** Section 38-79 is amended to read as follows:

122 **Sec. 38-79. Conditions for permitted uses and special exceptions.**

124

* * *

(177) A cultivation facility may be permitted subject to the following:

a. *Valid license.* A valid license for both the MMTC of which the cultivation facility is a part and for cultivation of marijuana shall be obtained from the State of Florida and remain in effect during the operation of the cultivation facility. All cultivation activities shall cease if a license has expired or been revoked by the state. Inspections by the appropriate County or law enforcement officials may be made as necessary to determine compliance with state and local law. At least seventy-two (72) hours before a cultivation facility terminates operation, the owner must notify the Orange County Sheriff's Office.

b. *Building and use permit applications.* Any applicant seeking to establish a cultivation facility shall complete the appropriate building or use permit application(s) and submit the application(s) to the County Division of Building Safety for review and approval prior to issuance of any permits, along with the appropriate fee. Each application shall be accompanied by proof that the MMTC is authorized by the State of Florida to cultivate marijuana. However, the issuance of a building permit pursuant to this section shall not be deemed to create an exception, defense, or immunity for any person in regard to any potential criminal liability the person may have under state or federal law for the acquisition, cultivation, possession, processing, transferring, transportation, selling, distribution, dispensing, or administration of marijuana or products containing marijuana.

c. *Distance separation.* A cultivation facility may not be located within five hundred feet (500') of the real property that comprises a public or private elementary school, middle school, or secondary school, regardless of whether such school lies within unincorporated Orange County or a surrounding municipality. Such distance shall be measured in a straight line between the property line of the subject cultivation facility and the property line of the subject school that are closest to each other.

d. *Security.* To ensure the safety and security of a cultivation facility and to maintain adequate controls against the diversion, theft, and loss of marijuana, each cultivation facility shall maintain security measures in

172 accordance with Section 381.986(8)(f), Florida Statutes, as
174 may be amended from time to time; provided, however,
that any such security measures are subject to the receipt of
176 the appropriate local government permits. The security plan
178 approved by the Florida Department of Health for the
cultivation facility must be filed with the Orange County
Sheriff's Office before the cultivation facility opens and
any changes to the security plan must be filed with the
180 Orange County Sheriff's Office within seven (7) days of
approval by the Florida Department of Health. It is
182 unlawful and a violation of this section to operate, own, or
control a cultivation facility except in compliance with the
184 applicable security plan approved by the Florida
Department of Health.

186
188 e. *Inspections.* With the permission of the
applicable property owner or tenant or with a warrant
obtained in accordance with Chapter 933, Florida Statutes,
190 any law enforcement officer employed by the Orange
County Sheriff's Office, any code enforcement officer, or
192 any other person authorized to enforce county ordinances
may enter the cultivation facility premises and conduct an
194 inspection to determine compliance with this article at any
time the cultivation facility is open or occupied. Refusal to
196 allow entry to the premises shall be considered a violation
of this code.

198
200 (178) A processing facility may be permitted subject to the
202 following:

204 a. *Valid license.* A valid license for both the
MMTC of which the processing facility is a part and for
processing of marijuana shall be obtained from the State of
206 Florida and remain in effect during the operation of the
processing facility. All processing activities shall cease if a
208 license has expired or been revoked by the state.
Inspections by the appropriate County or law enforcement
210 officials may be made as necessary to determine
compliance with state and local laws. At least seventy-two
212 (72) hours before a processing facility terminates operation,
the owner must notify the Orange County Sheriff's Office.

214
216 b. *Building and use permit applications.* Any
applicant seeking to establish a processing facility shall
complete the appropriate building or use permit
218 application(s) and submit the application(s) to the County

220 Division of Building Safety for review and approval prior
221 to issuance of any permits, along with the appropriate fee.
222 Each application shall be accompanied by proof that the
223 MMTC is authorized by the State of Florida to process
224 marijuana. However, the issuance of a building permit
225 pursuant to this section shall not be deemed to create an
226 exception, defense, or immunity for any person in regard to
227 any potential criminal liability the person may have under
228 state or federal law for the acquisition, cultivation,
229 possession, processing, transferring, transportation, selling,
230 distribution, dispensing, or administration of marijuana or
products containing marijuana.

232 c. *Distance separation.* A processing facility
233 may not be located within five hundred feet (500') of the
234 real property that comprises a public or private elementary
235 school, middle school, or secondary school, regardless of
236 whether such school lies within unincorporated Orange
237 County or a surrounding municipality. Such distance shall
238 be measured in a straight line between the property line of
239 the subject processing facility and the property line of the
240 subject school that are closest to each other.

242 d. *Security.* To ensure the safety and security
243 of a processing facility, and to maintain adequate controls
244 against the diversion, theft, and loss of marijuana, each
245 processing facility shall maintain security measures in
246 accordance with Section 381.986(8)(f), Florida Statutes, as
247 may be amended from time to time; provided, however,
248 that any for such security measures are subject to the
249 receipt of the appropriate local government permits. The
250 security plan approved by the Florida Department of Health
251 for the processing facility must be filed with the Orange
252 County Sheriff's Office before the processing facility opens
253 and any changes to the security plan must be filed with the
254 Orange County Sheriff's Office within seven (7) days of
255 approval by the Florida Department of Health. It is
256 unlawful and a violation of this section to operate, own, or
257 control a processing facility except in compliance with the
258 applicable security plan approved by the Florida
259 Department of Health.

260 e. *Inspections.* With the permission of the
261 applicable property owner or tenant or with a warrant
262 obtained in accordance with Chapter 933, Florida Statutes,
263 any law enforcement officer employed by the Orange
264 County Sheriff's Office, any code enforcement officer, or

any other person authorized to enforce county ordinances may enter the processing facility premises and conduct an inspection to determine compliance with this article at any time the processing facility is open or occupied. Refusal to allow entry to the premises shall be considered a violation of this code.

f. *Combined processing and cultivation facilities.* In the event the cultivation and processing of marijuana is combined into one facility, such facility shall comply with the requirements of a processing facility.

(179) A dispensing facility may be permitted subject to the following conditions:

a. *Valid license.* A valid license for both the MMTC of which the dispensing facility is a part and for the dispensing of marijuana shall be obtained from the State of Florida and remain in effect during the operation of the dispensing facility. All dispensing activities shall cease if a license has expired or been revoked by the state. Inspections by the appropriate County or law enforcement officials may be made as necessary to determine compliance with state law. At least seventy-two (72) hours before a dispensing facility terminates operation, the owner must notify the Orange County Sheriff's Office.

b. *Building and use permit applications.* Any applicant seeking to establish a dispensing facility shall complete the appropriate building or use permit application(s) and submit the application(s) to the County Division of Building Safety for review and approval prior to issuance of any permits, along with the appropriate fee. Each application shall be accompanied by proof that the MMTC is authorized by the State of Florida to sell marijuana to persons authorized to purchase it for the treatment of one or more qualifying medical conditions. However, the issuance of a building permit pursuant to this section shall not be deemed to create an exception, defense, or immunity for any person in regard to any potential criminal liability the person may have under state or federal law for the acquisition, cultivation, possession, processing, transferring, transportation, selling, distribution, dispensing, or administration of marijuana or products containing marijuana.

c. Distance separation. A dispensing facility may not be located within five hundred feet (500') of the real property that comprises a public or private elementary school, middle school, or secondary school, regardless of whether such school lies within unincorporated Orange County or a surrounding municipality. Such distance shall be measured in a straight line between the property line of the subject dispensing facility and the property line of the subject school that are closest to each other.

d. Other activities; prohibition. Other than dispensing of marijuana and any authorized marijuana delivery device required for the medical use of marijuana (and which is specified in a physician certification), no dispensing facility shall sell, market, dispense, provide, exchange, or otherwise vend any other type of cannabis, alcohol, drug paraphernalia as defined by federal or state law, or illicit drug-related products, including, but not limited to, pipes, bongs, or wrapping papers. No dispensing facility shall dispense marijuana or marijuana delivery devices in the waiting area of such facility. Any dispensing facility not licensed by the State is hereby prohibited within unincorporated Orange County.

e. Violation of Code.

(1) It shall be a violation of this section for any person or entity to sell, market, dispense, provide, exchange, or otherwise vend marijuana or marijuana delivery devices without the requisite state license and approvals or to sell, market, dispense, provide, exchange, or otherwise vend any form or derivative of non-medical marijuana or marijuana delivery devices.

(2) Each violation of this section shall constitute a separate offense punishable as provided in Section 1-9 of this Code by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail for a term not to exceed sixty (60) days, or by

both such fine and imprisonment.
All law enforcement officials are
hereby authorized to assist in the
enforcement of this section to the
extent that it is within their
respective jurisdictions to do so.

- (3) Nothing herein shall be construed
to prohibit the county from
enforcing this section by
alternate means including, but
not limited to: code enforcement
or code citations pursuant to F.S.
Chapter 162, part I or part II; by
criminal action, by civil action,
including petitions to enjoin
persons violating this section; or
by any other means available by
law.

f. *Parking and queuing.* A dispensing facility
shall be required to meet the off-street parking standards in
Section 38-1476 ("Quantity of off-street parking"), Orange
County Code, and shall be deemed a retail establishment
for parking demand purposes. The owner of the dispensing
facility shall be responsible for ensuring that there is no
queuing of vehicles in the public right-of-way.

g. *Loitering.* A dispensing facility shall provide
adequate seating for qualified patients, caregivers (as
defined in Section 381.986(1), Florida Statutes), and
invitees, and shall not allow qualified patients, caregivers,
or invitees to stand, sit (including in a parked car), gather,
or loiter outside the building where the dispensing facility
operates, including in any parking areas, sidewalks, right-
of-way, or neighboring property for any period of time
longer than that reasonably required to arrive and depart.

h. *Hours of operation.* A dispensing facility
shall only dispense marijuana or marijuana delivery devices
from the premises between the hours of 7:00 a.m. to 9:00
p.m.

i. *Signage, outdoor display.* Dispensing Facility
signage shall be subject to the requirements and
prohibitions in Chapter 31.5, Orange County Code.
Additionally, pursuant to Section 381.986(8)(h), Florida

Statutes, the dispensing facility may only have one sign that is affixed to the outside of or hanging in the window of the premises which identifies the dispensing facility by the licensee's business name, a Florida Department of Health-approved trade name, or a Florida Department of Health-approved logo; such trade name and logo may not contain wording or images commonly associated with marketing targeted toward children or which promote recreational use of marijuana. Indoor display of products, marijuana, or marijuana delivery devices shall be prohibited in the waiting area of the dispensing facility. Outdoor display of products, wares, or merchandise of any sort shall be in accordance with Orange County Code and any applicable development approvals.

j. *Security.* To ensure the safety and security of a dispensing facilities, and to maintain adequate controls against the diversion, theft, and loss of marijuana and marijuana delivery devices, each dispensing facility shall maintain security measures in accordance with Section 381.986(8)(f), Florida Statutes, as may be amended from time to time; provided, however, that any such security measures are subject to the receipt of the appropriate local government permits. The security plan approved by the Florida Department of Health for the dispensing facility must be filed with the Orange County Sheriff's Office before the dispensing facility opens for business and any changes to the security plan must be filed with the Orange County Sheriff's Office within seven (7) days of approval by the Florida Department of Health. It is unlawful and a violation of this section to operate, own, or control a dispensing facility except in compliance with the applicable security plan approved by the Florida Department of Health.

k. *Inspections.* With the permission of the applicable property owner or tenant or with a warrant obtained in accordance with Chapter 933, Florida Statutes, any law enforcement officer employed by the Orange County Sheriff's Office, any code enforcement officer, or any other person authorized to enforce county ordinances may enter the dispensing facility premises and conduct an inspection to determine compliance with this article at any time the dispensing facility is open or occupied. Refusal to allow entry to the premises shall be considered a violation of this code.

1. Compliance with other laws. All dispensing facilities shall at all times be in compliance with all applicable federal, state, and local laws and regulations.

In all other respects, section 38-79 shall remain unchanged.

Section 6. Repeal of Section 38-80 (“Moratorium regarding medical cannabis activities within unincorporated areas of Orange County”). Section 38-80 establishing a moratorium regarding medical cannabis activities within unincorporated areas of Orange County is hereby repealed:

~~Sec. 38-80. – Moratorium regarding medical cannabis activities within unincorporated areas of Orange County.~~

~~(a) Definitions.~~

~~(1) Derivative product means any form of cannabis suitable for administration to or consumption or use by a qualified patient, eligible patient, or any other similarly situated individual.~~

~~(2) Low THC cannabis means a plant of the genus Cannabis, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than ten (10) percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seed or resin.~~

~~(3) Medical cannabis means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.~~

~~(4) Medical cannabis activities means the growing, cultivation, processing, and wholesale and retail sale of medical cannabis, low THC cannabis, and derivative products, or any subset of such activities, or any related activities.~~

~~(b) Study and review; purpose.~~

498 ~~(1) During the moratorium period described in [subsection~~
500 ~~(d)] of this section, the county staff, including the~~
502 ~~zoning division, is hereby directed to study medical~~
504 ~~cannabis activities and their impact on the health,~~
506 ~~safety, and welfare of residents and businesses located~~
508 ~~within the county, and to develop and recommend land~~
510 ~~development regulations for medical cannabis~~
~~activities in the unincorporated areas of the county,~~
~~and any other relevant regulations and~~
~~recommendations, with such recommendations and~~
~~proposed regulations being delivered to the board of~~
~~county commissioners within a reasonable time before~~
~~the expiration of this moratorium.~~

512 ~~(2) The ultimate purpose of such review and study by the~~
514 ~~staff is to propose amendments to chapter 38 of the~~
516 ~~Orange County Code for medical cannabis activities~~
~~within the unincorporated area of Orange County.~~

518 ~~(c) *Moratorium period.* Until the effective date of an~~
520 ~~ordinance establishing new or amended land~~
522 ~~development regulations concerning medical cannabis~~
524 ~~activities within unincorporated Orange County, or~~
526 ~~until November 23, 2017, whichever date is earlier, no~~
528 ~~development permits shall be issued for any medical~~
~~cannabis activities. Furthermore, the review of any~~
~~applications for such medical cannabis activities that~~
~~may be pending on August 23, 2016, the date of~~
~~adoption of [the ordinance from which this section~~
~~derives], shall be abated, and no new applications for~~
~~such permits shall be accepted or processed during the~~
~~moratorium period.~~

532 **Section 7. Effective date.** This Ordinance shall become effective pursuant to
534 general law.

536

ADOPTED THIS 14th DAY OF NOVEMBER, 2017.

538

540

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

542

544

By: _____
Teresa Jacobs
Orange County Mayor

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548

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

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By: _____
Deputy Clerk

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