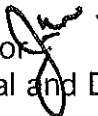




## Interoffice Memorandum

October 20, 2017

TO: Mayor Teresa Jacobs  
-AND-  
County Commissioners

FROM: Jon V. Weiss, P.E., Director   
Community, Environmental and Development Services  
Department

**CONTACT PERSON:** **Carol Knox, Manager, Zoning Division**  
**407-836-5585**  
**Whitney E. Evers, Assistant County Attorney**  
**407-836-7321**

SUBJECT: October 31, 2017 – First Public Hearing  
Medical Marijuana Ordinance (Ban Dispensaries)

On July 18, 2017, staff presented the Board of County Commissioners (Board) with a work session on medical marijuana. At the conclusion of that work session, the Board asked staff to prepare two different ordinances for its consideration: one banning medical marijuana dispensing within unincorporated Orange County and one allowing it. Both ordinances would allow cultivating and processing of marijuana. On October 31, 2017, at 2:00 p.m. the Board will hold the first of two public hearings for each of those ordinances. The Zoning Division is requesting consideration of both ordinances to update the County's land development regulations as it relates to medical marijuana treatment centers and, specifically, whether the Board wants to allow dispensing facilities within unincorporated Orange County. The second set of public hearings is scheduled for November 14, 2017, at 5:01 p.m.

Both of the proposed ordinances would provide a definition section and both would allow cultivating and processing of medical marijuana in A-1 and A-2 zoning districts, and I-2/I-3, and I-4 zoning districts, respectively. Cultivating and processing would be permitted subject to the following requirements:

- Valid state license
- Receipt of appropriate building/use permit
- Meeting a 500 feet distance separation from schools
- Complying with state-approved security measures
- Appropriate inspections to determine compliance

The difference between the two proposed ordinances involves dispensing of medical marijuana. One ordinance would prohibit dispensing facilities entirely within unincorporated Orange County. The other ordinance would allow dispensing facilities within unincorporated Orange County subject to the following requirements:

- Valid state license
- Receipt of appropriate building/use permit
- Meeting a 500 foot distance separation from schools
- Complying with state-approved security measures
- Appropriate inspections to determine compliance
- Prohibition on sale of non-medical marijuana, alcohol, drug paraphernalia, illicit drug-related products, and on the dispensing of medical marijuana in the waiting area of a dispensing facility
- Meeting the appropriate parking requirements
- Adequate seating for patients and invitees so as to avoid loitering
- Only dispense between the hours of 7:00 am to 9:00 pm
- State-approved signage that meets the County's Code requirements as well as any applicable Planned Development requirements

Staff will provide a presentation outlining the significant portions of each ordinance.

On October 19, 2017, the Planning and Zoning Commission/Local Planning Agency (PZC/LPA) held public hearings on each of the ordinances. With regard to the ordinance allowing dispensing facilities within unincorporated Orange County, the PZC / LPA made a finding of inconsistency with the Comprehensive Plan and recommended denial. With regard to the ordinance banning dispensing facilities within unincorporated Orange County, the PZC / LPA made a finding of consistency with the Comprehensive Plan and recommended approval.

Also, the PZC / LPA recommended that Orange County's legislative delegation request that the Florida Legislature provide greater home rule authority to local governments in the statutory language dealing with medical marijuana treatment centers (i.e. Section 381.986, Florida Statutes 2017). Additionally, should the BCC choose to adopt the ordinance banning dispensing facilities within unincorporated Orange County (as the PZC / LPA has recommended), the PZC / LPA recommended that the ban be reconsidered after the next legislative session. Attached is a copy of the draft ordinance dated October 19, 2017 that bans medical marijuana dispensaries.

**ACTION REQUESTED: Board direction on the October 19, 2017, draft ordinances to be heard again at the final adoption public hearings on November 14, 2017, at 5:01 p.m. All Districts**

JVW:WEE/ai

Attachments: Draft ordinance, dated October 19, 2017

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"); REENACTING SECTION 38-80 TO  
PROHIBIT MEDICAL MARIJUANA TREATMENT  
CENTER DISPENSING FACILITIES; 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), 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**, Section 381.986(11), Florida Statutes, further provides that a  
county that does not ban dispensing facilities 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

48           **WHEREAS**, in 1996, the state of California became the first state to legalize the  
50 use of medical marijuana, and several other states subsequently enacted laws legalizing  
medical marijuana in various circumstances; and

52           **WHEREAS**, the California Police Chiefs Association developed a Task  
Force on Marijuana Dispensing facilities that prepared the “White Paper on  
54 Marijuana Dispensing facilities” published in 2009 (“White Paper”); and

56           **WHEREAS**, the White Paper examined the direct and indirect adverse  
impacts of marijuana in local communities and indicated that marijuana dispensing  
58 facilities may attract or cause ancillary crimes, and may result in adverse effects, such  
as marijuana smoking in public, the sale of other illegal drugs at dispensing facilities,  
loitering and nuisances, and increased traffic near dispensing facilities; and

60           **WHEREAS**, the White Paper further indicated that the presence of marijuana  
dispensing businesses may contribute to the existence of a secondary market for  
62 illegal, street-level distribution of marijuana; and

64           **WHEREAS**, the White Paper outlined the following typical complaints received  
from individuals regarding certain marijuana dispensing facility study areas: high levels  
of traffic going to and from the dispensing facilities, people loitering in the parking  
66 lot of the dispensing facilities, people smoking marijuana in the parking lot of the  
dispensing facilities, vandalism near dispensing facilities, and citizens worried that they  
68 may become a crime victim due to proximity to dispensing facilities; and

70           **WHEREAS**, the White Paper ultimately concluded that there may be  
adverse secondary effects created by the presence of medical marijuana dispensing  
72 facilities in communities; and

74           **WHEREAS**, The Marijuana Policy Group, a Denver-based economics and  
policy consulting firm which has served as the lead cannabis economist for the State of  
Colorado since 2014, has published a memorandum called “Municipal Dispensary  
76 Allocation: Florida,” (“MPG Paper”) which evaluated the market need for medical  
marijuana dispensing facilities and the harmful consequences and secondary effects  
78 of over-saturation of medical marijuana dispensing facilities within the market place,  
including the risks of unprofitable dispensaries and inexperienced dispensary operators;  
80 and

82           **WHEREAS**, The MPG Paper opined that Florida should have no more than  
one dispensing facility for each fifty-thousand residents, with the optimal ratio  
84 being one dispensing facility per 67,222 residents;

86           **WHEREAS**, the optimal ratio espoused by the MPG Paper would equate to  
approximately nineteen (19) dispensing facilities in Orange County, but given the  
legislature’s prohibition on counties placing any limitation on the number of dispensing  
88 facilities, that number could be much higher; and

90           **WHEREAS**, based on the White Paper and the MPG Paper, there is a reasonable  
concern that dispensing facilities could have adverse impacts on the health, safety, and

92 welfare of the residents of the county from secondary effects associated with the  
dispensing of medical marijuana; and

94       **WHEREAS**, given the severe restrictions placed on local governments by the  
Legislature and the fact that local governments may not enact ordinances for permitting  
96 or for determining the location of dispensing facilities that are more restrictive than its  
ordinances permitting or determining the locations for pharmacies, the Board hereby  
98 finds that it is in the best interest of the public health, safety, and welfare to mitigate and  
limit the potential negative secondary effects of medical marijuana dispensing facilities  
100 by imposing a ban on dispensing facilities in accordance with Section 381.986(11),  
Florida Statutes.

102

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS**

104 **OF ORANGE COUNTY, FLORIDA:**

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

*Section 2. Amendments; In General.* Chapter 38 of the Orange County Code  
108 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.

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

112               **Sec. 38-1. Definitions**

\* \* \*

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

118

\* \* \*

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

124

\* \* \*

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

130                                   \* \* \*

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

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

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

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

148                                   \* \* \*

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

154                                   \* \* \*

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

160                                   \* \* \*

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

                                      \* \* \*

166                   In all other respects, section 38-1 shall remain unchanged.  
168

**Section 4. Amendment to Section 38-77 ("Use Table").** Section 38-77 is

170 amended to read as follows:

172 **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-1A A	R-1 -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
																	*

174

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-1A 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 P</u>	<u>178 P</u>							*

176

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-1A A	R-1 -1	R -2	R -3	Cluster
<u>Dispensing facility</u>	5912															





218                    c.     Distance separation. A cultivation facility  
220                    may not be located within five hundred feet (500') of the  
222                    real property that comprises a public or private elementary  
224                    school, middle school, or secondary school, regardless of  
226                    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.

228                    d.     Security. To ensure the safety and security  
230                    of a cultivation facility and to maintain adequate controls  
232                    against the diversion, theft, and loss of marijuana, each  
234                    cultivation facility shall maintain security measures in  
236                    accordance with Section 381.986(8)(f), Florida Statutes, as  
238                    may be amended from time to time; provided, however,  
240                    that any such security measures are subject to the receipt of  
242                    the appropriate local government permits. The security plan  
244                    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  
                      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 cultivation facility except in compliance with the  
                      applicable security plan approved by the Florida  
                      Department of Health.

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

260                    (178) A processing facility may be permitted subject to the  
262                    following:

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 Florida and remain in effect during the operation of the processing facility. All processing 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 laws. At least seventy-two (72) hours before a processing 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 processing 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 process 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 processing 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, between the property line of the subject processing 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 processing facility, and to maintain adequate controls against the diversion, theft, and loss of marijuana, each processing 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 for such security measures are subject to the receipt of the appropriate local government permits. The

310 security plan approved by the Florida Department of Health  
312 for the processing facility must be filed with the Orange  
County Sheriff's Office before the processing facility opens  
314 and any changes to the security plan must be filed with the  
Orange County Sheriff's Office within seven (7) days of  
316 approval by the Florida Department of Health. It is  
unlawful and a violation of this section to operate, own, or  
318 control a processing facility except in compliance with the  
applicable security plan approved by the Florida  
320 Department of Health.

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

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

338 In all other respects, section 38-79 shall remain unchanged.  
340

342 *Section 6. Repeal of Section 38-80 ("Moratorium Regarding Medical*  
*Cannabis Activities within Unincorporated Areas of Orange County"); Reenactment of*  
*Section 38-80 ("Dispensing Facilities Prohibited").* Section 38-80 establishing a  
344 moratorium regarding medical cannabis activities in unincorporated areas of Orange  
County is repealed, and is reenacted as a prohibition of dispensing facilities:

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

348 ~~(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.*~~

~~(1) During the moratorium period described in [subsection (d)] of this section, the county staff, including the zoning division, is hereby directed to study medical cannabis activities and their impact on the health, safety, and welfare of residents and businesses located within the county, and to develop and recommend land 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.~~

~~(2) The ultimate purpose of such review and study by the staff is to propose amendments to Chapter 38 of the~~

396                   ~~Orange County Code for medical cannabis activities~~  
                          ~~within the unincorporated area of Orange County.~~

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

412                   **Sec. 38-80. Dispensing facilities prohibited.** Pursuant to  
                          Section 381.986(11)b.1., Florida Statutes, dispensing  
414                   facilities are prohibited within unincorporated Orange  
                          County.

416

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

420

422                   **ADOPTED THIS 14<sup>th</sup> DAY OF NOVEMBER, 2017.**

424

**ORANGE COUNTY, FLORIDA**  
By: Board of County Commissioners

426

428

By: \_\_\_\_\_  
                  Teresa Jacobs  
                  Orange County Mayor

430

432

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

436

438                   By: \_\_\_\_\_  
                          Deputy Clerk

440                   S:\WEvers\Ordinances\_Resolutions\Low THC Marijuana\Med Mar Ordin\MMTC Ban Ord v BCC 10\_31.docx