

ORDINANCE NO. 2017-___

2 AN ORDINANCE AFFECTING THE USE OF LAND
4 IN ORANGE COUNTY, FLORIDA, RELATING TO
6 THE CULTIVATING, PROCESSING, AND
8 DISPENSING OF MARIJUANA FOR MEDICAL
10 USE; AMENDING SECTION 38-1 (ZONING
12 DEFINITIONS); AMENDING SECTION 38-77
14 (ZONING USE TABLE); AMENDING SECTION 38-
16 79 (CONDITIONS FOR PERMITTED USES AND
18 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.

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

22 WHEREAS, the Florida Medical Marijuana Legalization Initiative, also known
24 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
26 January 3, 2017; and

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

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

36 WHEREAS, Section 381.986(11), Florida Statutes, states that a county may, by
ordinance, ban medical marijuana treatment center dispensing facilities from being
38 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
40 facilities that may locate within that county; and

42 WHEREAS, Section 381.986(11), Florida Statutes, further provides that a
county that does not ban dispensing facilities may not enact ordinances for permitting
44 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
46 465; 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
facilities in communities; and

72 **WHEREAS**, The Marijuana Policy Group, a Denver-based economics and
74 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

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

WHEREAS, given the severe restrictions placed on local governments by the Legislature and the fact that local governments may not enact ordinances for permitting 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 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 by imposing a ban on dispensing facilities in accordance with Section 381.986(11), Florida Statutes.

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

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.

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.

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

Sec. 38-1. Definitions

* * *

Cultivation 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 cultivation of marijuana.

* * *

Dispensing 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 dispensing of marijuana.

* * *

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

* * *

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

Marijuana has the same meaning given to it by Section 381.986(1), Florida Statutes, as may be amended 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

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-1 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
																	* —

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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 P</u>	<u>178 P</u>							* —

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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

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

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

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

184

* * *

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

188

190 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.

200

202 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.

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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 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 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.

e. *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 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.

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

322 e. *Inspections.* With the permission of the
324 applicable property owner or tenant or with a warrant
326 obtained in accordance with Chapter 933, Florida Statutes,
328 any law enforcement officer employed by the Orange
330 County Sheriff's Office, any code enforcement officer, or
332 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.

334 f. *Combined processing and cultivation*
336 *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.

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

340 ***Section 6. Repeal of Section 38-80 ("Moratorium Regarding Medical***
342 ***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.*~~

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

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

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

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

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

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

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

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

~~(c) Moratorium period. Until the effective date of an ordinance establishing new or amended land development regulations concerning medical cannabis activities within unincorporated Orange County, or until November 23, 2017, whichever date is earlier, no 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.~~

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

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

ADOPTED THIS 14th DAY OF NOVEMBER, 2017.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Teresa Jacobs
Orange County Mayor

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

By: _____
Deputy Clerk

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