

BCC Mtg. Date: November 14, 2017

EFFECTIVE DATE: January 1, 2018

ORDINANCE NO. 2017-21

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:**

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 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-1-1	R-2	R-3	Cluster
<u>Cultivation facility</u>	0721		<u>177P</u>	<u>177P</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
																	* —

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>							* —

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>		<u>179</u> <u>P</u>	<u>179</u> <u>P</u>	<u>179</u> <u>P</u>	<u>179</u> <u>P</u>			<u>179</u> <u>P</u>	<u>179</u> <u>P</u>		* —

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

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

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

* * *

(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. Any cultivation facility not licensed by the State is hereby prohibited within unincorporated Orange County.

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

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. 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.* Any deputy sheriff employed by the Orange County Sheriff's Office may make searches of persons, places, and conveyances of any kind whatsoever associated with the cultivation facility in accordance with all applicable laws. 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 section at any time the cultivation facility is open or occupied. Refusal to provide proof of a valid license and cultivation authority from the state 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. Any processing facility not licensed by the State is hereby prohibited within unincorporated Orange County.

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. Such distance shall be measured in a straight line 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. 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.

e. *Inspections.* Any deputy sheriff employed by the Orange County Sheriff's Office may make searches of persons, places, and conveyances of any kind whatsoever associated with the processing facility in accordance with all applicable laws. 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 section at any time the processing facility is open or occupied. Refusal to provide proof of a valid license and processing authority from the state 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. Any dispensing facility not licensed by the State is hereby prohibited within unincorporated Orange County.

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 of marijuana for other than medical uses (for example, recreational use) 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. 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. Any deputy sheriff employed by the Orange County Sheriff's Office may make searches of persons, places, and conveyances of any kind whatsoever associated with the dispensing facility in accordance with all applicable laws. 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 section at any time the dispensing facility is open or occupied. Refusal to provide proof of a valid license and dispensing authority from the state shall be considered a violation of this code.

l. 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.~~

~~(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 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.~~

Section 7. Effective date. This Ordinance shall become effective on January 1, 2018.

ADOPTED THIS 14th DAY OF NOVEMBER, 2017.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
Orange County Mayor
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ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Craig A. Stopyska*
for Deputy Clerk

