CITY OF GAINESVILLE
every path starts with passion
FLORIDA

DEPARTMENT OF DOING
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TO: City Plan Board **Item Number: 5**

FROM: Department of Doing Staff **DATE: January 26, 2017**

SUBJECT: **Petition PB-16-185 TCH. City Plan Board. Amend the definition of Medical marijuana dispensary, delete the definition of Low-THC cannabis, and delete medical marijuana dispensary from the list of permitted uses in certain zoning districts. Add medical marijuana dispensary as a specially regulated use (Article VI), and establish requirements including but not limited to minimum distance requirements between medical marijuana dispensaries and certain other uses.**

Recommendation

Staff recommends approval of Petition PB-16-185 TCH.

Discussion

Petition Summary

Staff is recommending continuing to allow medical marijuana dispensary in the following zoning districts:

- BUS *(General business district)*
- MU-2 *(Mixed use medium intensity district)*
- UMU-1 (*Urban mixed-use district 1)*
- UMU-2 *(Urban mixed-use district 2)*

Staff is recommending adding the following requirements to the medical marijuana dispensary use:

- Minimum distances between medical marijuana dispensaries (1,320 ft.)
- Minimum distances to: places of religious assembly (300 ft.); residential zoning districts (500 ft.); and schools (750 ft.)
- Prohibitions on what can be dispensed or sold (e.g., no alcohol)
- Prohibition of on-site consumption of cannabis or alcohol
- Limitation on hours for on-site dispensing
- Security lighting
- Safety and security systems
- Drop safe or cash management device for restricted access to cash receipts

Background

The Florida legislature in 2014 enacted the "Compassionate Medical Cannabis Act of 2014" (subsequently codified in Section 381.986, F.S.), which authorized licensed physicians to order low-THC cannabis for specified patients. Among other restrictions, the Compassionate Medical Cannabis Act of 2014 provided that a physician could only order low-THC cannabis (marijuana) for a patient suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms, and only if no other satisfactory alternative treatment options exist for that patient.

This 2014 Act granted local governments the authority to allow, or not, and provide zoning regulations for the dispensing cannabis for the medical purposes specified in the 2014 Act. Accordingly, on November 19, 2015, the City Commission adopted Ordinance No. 150395 to amend the Land Development Code to allow "Medical Marijuana Dispensaries" to operate in various zoning districts strictly in accordance with the 2014 Act.

In 2016, the Legislature adopted HB 307 and substantially amended the 2014 Act to (among various other things) expand the forms of cannabis available for medical purposes and expand the kinds of patients that may receive medical marijuana. Among the various changes, the expanded state law (see Exhibit B-1 –Section 381.986, F.S.) provides additional definitions (e.g., Medical cannabis, expanded definitions (e.g., Medical use, which, does not include the use of cannabis on any form of public transportation, in any public space, or on school grounds, among other exclusions), and numerous requirements for dispensing organizations that include but are not limited to alarm systems, video surveillance, and prohibiting on-premises dispensing between 9 p.m. and 7 a.m. See Exhibit B-2– FAQs, for Frequently Asked Questions pertaining to the expanded state law. See Exhibit B-3 for Constitutional Amendment No. 2 (added Section 29 of the Florida Constitution), which pertains to the use of marijuana for debilitating medical conditions, and which was approved by the voters of Florida on November 8. 2016.

The City Commission struck Legistar No. 160221 (Ordinance No. 160221, Petition PB-16-84 TCH, which pertained to updating definitions in the Land Development Code related to medical marijuana) from the agenda on September 15, 2016 and referred the matter to the General Policy Committee. The City Commission expressed interest in making significant changes to the ordinance, including where medical marijuana dispensaries can be located. The General Policy Committee reviewed several options presented by staff at the Committee's meeting on November 10, 2016, and provided guidance to staff for revising the Land Development Code. That guidance is reflected in this new petition (PB-16-185 TCH, Legistar No. is 160395).

Definition Changes

This petition proposes amendment of the City's Land Development Code (LDC) to make it consistent with the expanded 2016 state law (Section 381.986, F.S., which, among other changes, defined Medical cannabis and allowed for its processing and distribution. Our LDC currently limits the allowable type of cannabis to Low-THC cannabis, the definition of which is in F.S. 381.986 (and is no longer needed in Sec. 30-23). The proposed amendment will also clarify that medical marijuana dispensaries (by amending the definition in Sec. 30-23 of the LDC) may dispense cannabis to medical patients for medical purposes pursuant to and in accordance with

Section 381.986, Florida Statutes, as may be amended from time to time. Therefore, the state law could change in the future to allow different types of medical marijuana or different types of medical patients, and the LDC would automatically allow such changes. The proposed amendment will strictly limit the Land Development Code's allowance of such uses to the dispensing of "medical" marijuana, which includes both low-TCH cannabis and medical cannabis as defined in Section 318.986 (1), F.S. Any future state law change that would allow the dispensing of recreational marijuana would subsequently need to be considered by the City Commission before such use could be allowed in the City of Gainesville, unless the City's authority in this area had been preempted by the Florida Legislature.

Zoning Changes

This petition proposes elimination of Medical marijuana dispensary from the list of permitted uses in the MU-1 (note: MU-1 comprises more than 620 acres of land and is often adjacent to single-family or residential low-density districts), OR, OF, MD, CP, and CCD zoning districts. Medical marijuana dispensary is to remain on the list of permitted uses in the BUS, MU-2, UMU-1, and UMU-2 zoning districts. This proposal is in accordance with guidance from the General Policy Committee at its November 10, 2016 meeting, and it would limit the number of medical marijuana dispensaries and minimize the potential proliferation of a use with which the City has no direct experience to date.

No medical marijuana dispensaries have opened in Gainesville although three zoning compliance permits have been issued (ZC-16-00175 was approved on May 24, 2016 for Knox Medical Cannabis (3400 SW 34th Street. ZC-16-00391 was approved on November 18, 2016 for CHT Medical (3669 SW 2nd Avenue). ZC-17-00015 was approved on January 13, 2017 for Trulieve (1527 NW 6th ST)). The City's regulations pertaining to medical marijuana dispensaries can be revisited in the future, if and as warranted, based on the City's experience with regulating medical marijuana dispensaries under the proposed regulations.

Additional Requirements

Staff is recommending that Medical marijuana dispensary be deemed a Specially Regulated Use and therefore added to Article VI of the LDC, and that various requirements for this use be established (see Pages 8-9 of this staff report). The recommended requirements include minimum distance requirements as follows:

- 1,320 ft. (which is 1/4 mile)) between medical marijuana dispensaries;
- 300 ft. to a place of religious assembly (300-ft. is the minimum distance our LDC requires between alcoholic beverage establishments and places of religious assembly);
- 500 ft. to a residential zoning district (residential districts listed in Sec. 30-41 of the LDC);
- 750 ft. to a school (any accredited public or private school offering any grades from kindergarten through 12th grade). Although we could use the same 400-ft. minimum distance from public or private schools that our LDC requires for alcoholic beverage

establishments, we would be consistent with Alachua County by using a 750-ft. minimum distance from schools.

In addition to minimum distance requirements, staff recommends the following requirements (see Pages 8-9 of this staff report for the complete requirements for this proposed Specially Regulated Use):

- General prohibitions on what can be dispensed or sold, including the sale of alcohol;
- Limit the hours of on-site dispensing to 7:00 AM to 9:00 PM, per F.S. 381.986 (6)(d) 4;
- No on-site consumption of cannabis or alcohol;
- Security lighting;
- Safety and security systems;
- Drop safe or cash management device for restricted access to cash receipts.

Limiting the hours of on-site dispensing is in accordance with the current statute (F.S. 381.986. Prohibiting the sale of alcohol and prohibiting on-site consumption of cannabis or alcohol would reduce the nuisance potential and is consistent with the current statute. Requiring security lighting and safety and security systems is in accordance with the current statute. Requiring a drop safe or cash management device is consistent with a suggestion from GPD, and matches a security/safety requirement for convenience stores in Sec. 14.5-171 of the City Code.

Although medical marijuana dispensaries are heavily restricted and regulated by the State of Florida, eliminating the use from the list of permitted uses in various zoning districts, and, establishing minimum distance and other requirements would allow the City to take a moderated approach in allowing such businesses and would give the City as much time as needed, perhaps several years, to evaluate how the businesses are impacting the community, particularly with respect to any adverse impacts. The City could subsequently revise the ordinance as appropriate based on future evaluations.

City of Gainesville Public Works GIS staff has prepared a map (See Exhibit B-9 -Map: Medical Marijuana Dispensary Zoning and Buffers) in order to provide a very general idea of the effect of reducing the number of zoning districts and establishing minimum distance requirements. By limiting the zoning districts where medical marijuana dispensaries are a permitted use to the MU-2, BUS, UMU-1 and UMU-2 zoning districts, and by establishing the proposed minimum distance requirements between medical marijuana dispensaries and between medical marijuana dispensaries and between residential zoning districts, schools and places of religious assembly, the regulations substantially limit the number of locations where medical marijuana dispensaries could potentially be approved. The Map provides a view of general potential locations and is presented with the caveat that the actual number of potentially approvable dispensary locations is further limited by the application of all required minimum distances at any given, proposed dispensary location. (Note: Two of the three medical marijuana dispensaries for which zoning compliance permits (ZCPs) have been issued under the existing regulations do not conform to the proposed amendments to the Land Development Code (LDC). Any of these dispensaries that go beyond the ZCP stage and do open for business under an unexpired ZCP would be subject to the non-conforming use provisions of the LDC.)

The City Commissioners discussed at the November 10, 2016 General Policy Committee the allowance of medical marijuana dispensaries in the CCD but there was no consensus. In order to show the potential impact, if any, of also allowing medical marijuana dispensaries in the CCD district, GIS staff prepared a version of the Map that includes the CCD district. Only one additional potential dispensary would be added by adding the CCD district.

Recommended Changes to the Land Development Code:

Sec. 30-23(c). Definitions.

~~*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 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 seeds or resin that is dispensed only from a medical marijuana dispensary (as defined in this code).~~

Medical marijuana dispensary means a facility that dispenses cannabis to medical patients for medical purposes pursuant to and in accordance with Section 381.986, Florida Statutes, as may be amended from time to time. ~~dispensary organization approved by the Florida Department of Health pursuant to and in accordance with to the regulations of the "Compassionate Medical Cannabis Act of 2014" (codified in Section 381.986, Florida Statutes) to cultivate, process, and dispense low-THC cannabis for medical use to Florida residents who have been added to the state compassionate use registry by a physician licensed under Chapter 458 or Chapter 459, Florida Statutes, because the patient is suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms with no other satisfactory alternative treatment options.~~

The following changes are proposed to the permitted uses provisions pertaining to medical marijuana dispensaries, which follow.

Sec. 30-59. – Office districts (OR and OF).

(c) *Permitted uses, OR district (office residential district).*

SIC	Use	Conditions
	USES BY RIGHT:	
	~~Medical marijuana dispensaries~~	~~Only when accessory to and in the same building as health services or offices of physicians, dentists and other health practitioners~~

(e) *Permitted uses, OF (general office district).*

SIC	Use	Conditions
	USES BY RIGHT:	
	~~Medical marijuana dispensaries~~	~~Only when accessory to and in the same building as health services or offices of physicians, dentists and other health practitioners~~

Sec. 30-61. – General business district (BUS).

(c) *Permitted uses.*

SIC	Uses	Conditions
	USES BY RIGHT:	
	Medical marijuana dispensaries	In accordance with Article VI.

Sec. 30-64. – Mixed use low intensity district (MU-1).

(g) *Permitted uses.*

SIC	Uses	Conditions
	USES BY RIGHT:	
	~~Medical marijuana dispensaries~~	

Sec. 30-65. – Mixed use medium intensity district (MU-2).

(e) *Permitted uses.*

SIC	Uses	Conditions
	USES BY RIGHT:	
	Medical marijuana dispensaries	In accordance with Article VI.

Sec. 30-65.1. – Urban mixed-use district 1 (UMU-1).

(c) *Permitted uses.*

SIC	Uses	Conditions
	Medical marijuana dispensaries	In accordance with Article VI.

Sec. 30-65.2. – Urban mixed-use district 2 (UMU-2).

(c) *Uses.*

(1) Permitted uses by right are as follows:

SIC	Uses	Conditions
	Medical marijuana dispensaries	In accordance with Article VI.

Sec. 30-66. – Central city district (CCD).

(c) *Permitted uses.*

SIC	Uses	Conditions
	USES BY RIGHT:	
	~~Medical marijuana dispensaries~~	

Sec. 30-74. – Medical services district (MD).

(c) *Permitted uses.*

SIC	Uses	Conditions
	USES BY RIGHT:	
	~~Medical marijuana dispensaries~~	

Sec. 30-78. – Corporate park district (CP).

(c) Permitted uses.

(1) *Uses by right:*

SIC	Uses	Conditions
	~~Medical marijuana dispensaries~~	~~Accessory to and in the same building as health services and comprising less than 25 percent of the gross floor area of the building~~

Article VI. Requirements for Specially Regulated Uses.

Sec. 30-126. – Medical marijuana dispensary.

a) *General prohibitions.* May not dispense or sell any other type of cannabis, alcohol, or illicit drug-related product, including pipes, bongs, or wrapping papers, other than a physician-ordered cannabis delivery device required for the medical use of low-THC cannabis or medical cannabis, while dispensing low-THC cannabis or medical cannabis, per F.S. 381.986 (6)(c)4. In addition, the sale of alcohol is prohibited, as is the on-site consumption of alcohol or of any type of cannabis.

b) *Hours of operation.* The hours of on-site dispensing are limited to 7:00 AM to 9:00 PM, but the dispensary may perform all other operations and deliver low-THC cannabis and medical cannabis to qualified patients 24 hours each day, per F.S. 381.986 (6)(d)4. The hours of on-site dispensing shall be posted and clearly visible to the public.

c) *Distance requirements.* The following separation distances shall be required between medical marijuana dispensaries and other uses, and between medical marijuana dispensaries:

TABLE 1. MINIMUM DISTANCE (*) REQUIREMENTS FOR MEDICAL MARIJUANA DISPENSARIES

Residential zoning districts (**)	Places of religious assembly	Schools (***)	Medical marijuana dispensary
500′	300′	750	1,320′

(*) Measured from the nearest property line of the existing facility to the nearest property line of proposed facility.

(**) Residential districts per Sec. 30-41.

(***) Any accredited public or private school offering any grades from kindergarten through 12th grade.

(d) *Lighting.* Security lighting that complies with the lighting standards of the land development code is required. In addition, such lighting shall be provided at a minimum from dusk until dawn.

(e) *Safety and security systems.* To ensure the safety and security of its premises, and to maintain adequate controls against the diversion, theft, and loss of low-THC cannabis, medical cannabis, or cannabis delivery devices, a medical marijuana dispensary shall, as required by F.S. 381.986 (6)d:

1. Maintain a fully operational security alarm system that secures all entry points and perimeter windows and is equipped with motion detectors; pressure switches; and duress, panic, and hold-up alarms; or

2. Maintain a video surveillance system that records continuously 24 hours each day and meets at least one of the following criteria:

   (a) Cameras are fixed in a place that allows for the clear identification of persons and activities in controlled areas of the premises. Controlled areas include grow rooms, processing rooms, storage rooms, disposal rooms or areas, and point-of-sale rooms;

   (b) Cameras are fixed in entrances and exits to the premises, which shall record from both indoor and outdoor, or ingress and egress, vantage points;

   (c) Recorded images must clearly and accurately display the time and date; or

   (d) Retain video surveillance recordings for a minimum of 45 days or longer upon the request of a law enforcement agency.

(f) *Access to cash receipts.* A drop safe or cash management device for restricted access to cash receipts shall be provided.

Respectfully submitted,

Andrew Persons, AICP
Interim Principal Planner

Prepared by:

Dean Mimms, AICP
Lead Planner

List of Appendices

Appendix A Application

Exhibit A-1 Application

Appendix B Supplemental Documents

Exhibit B-1 Section 381.986, F.S.
Exhibit B-2 FAQs
Exhibit B-3 Constitutional Amendment No. 2
Exhibit B-4 Tampa Bay Times 12/2/16 article
Exhibit B-5 FL League of Cities 12/20/26 e-mail
Exhibit B-6 Governing.com 1/12/17 article
Exhibit B-7 Zoning Practice, August 2016: Marijuana Land Use
Exhibit B-8 Alachua County Ordinance
Exhibit B-9 Map: Medical Marijuana Dispensary Zoning and Buffers

CITY OF GAINESVILLE
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EXHIBIT tabbies A-1

RECEIVED DEC - 5 2016 PLANNING DIVISION

APPLICATION—CITY PLAN BOARD—TEXT AMENDMENT

Planning & Development Services

OFFICE USE ONLY

Petition No. PB-16-185 TCH Fee: $ N/A/GOVT
1st Step Mtg Date: _____ EZ Fee: $ _____
Tax Map No. _____ Receipt No. _____
Account No. 001-660-6680-3401 [ ]
Account No. 001-660-6680-1124 (Enterprise Zone) [ ]
Account No. 001-660-6680-1125 (Enterprise Zone Credit [ ]

Name of Applicant/Agent (Please print or type)	
Applicant/Agent Name:	City Plan Board
Applicant/Agent Address:	
City:	
State:	Zip:
Applicant/Agent Phone: (352) 334-5022	Applicant/Agent Fax:

Note: *It is recommended that anyone intending to file a petition for a text amendment to Chapter 30 of the City of Gainesville Code of Ordinances (Land Development Code) or to the Comprehensive Plan, meet with the Department of Community Development prior to filing the petition, in order to discuss the proposed amendment and petition process. The request will be evaluated as applicable to the particular zoning district or land use category on a citywide basis.*

TEXT AMENDMENT

Check applicable request below:

Land Development Code [ ]	**Comprehensive Plan Text [ ]**	**Other [ ]**
Section/Appendix No.: 30-23(c) - Definitions	Element & Goal, Objective or Policy No.:	Specify:
Article VI - Specially Regulated Uses		
Article IV - Use Regulations		

Proposed text language and/or explanation of reason for request (use additional sheets, if necessary):

Amend the definition of medical marijuana dispensary to: Medical marijuana dispensary means a facility that dispenses cannabis to patients for medical purposes pursuant to and in accordance with Sec. 381.986, F.S., as may be amended from time to time.
Delete definition of Low-THC cannabis from Sec. 30-23 of the Land Development Code.
Delete medical marijuana dispensary from the list of permitted uses in the MU-1, OR, OF, ~~Certified Cashiers Receipt:~~ CP, and CCD zoning districts.
Establish minimum distance requirements between medical marijuana dispensaries and other uses (including, but not limited to, places of religious assembly, schools, and residential zoning districts)
Add medical marijuana dispensary as a specially regulated use (in Article VI of the Land Development Code)

Application—Text Amendment

Explanation. In 2016 the FL Legislature amended the "Compassionate Medical Cannabis Act of 2014" (Codified in Sec. 381.986 F.S.) that authorized licensed physicians to order "Low-THC cannabis" for patients suffering from specified medical conditions or cancer that chronically produces symptoms of seizures or severe & persistent muscle spasms, and only if no other alternative treatment options exist for such patients. The 2016 amendments expanded the forms of cannabis available for medical purposes, and expanded the kinds of patients eligible to receive medical marijuana, among other provisions. On November 8, 2016 Amendment No. 2 was approved by the voters of Florida (60% threshold was exceeded) that substantially expanded the allowable use of medical marijuana. The city is currently adopted Land Development Code provisions re: medical marijuana dispensaries need to be amended so that they are consistent with the 2016 legislation and the 2016 Constitutional Amendment (2).

The General Policy Committee (of the Gainesville City Commission) discussed Legislative No. 160395 on November 10, 2016, and provided guidance to City staff re: amending the Land Development Code.

No person submitting an application may rely upon any comment concerning a proposed amendment, or any expression of any nature about the proposal made by any participant at the pre-application conference as a representation or implication that the proposal will be ultimately approved or rejected in any form.

CERTIFICATION

The undersigned has read the above application and is familiar with the information submitted herewith.

Signature of applicant/agent: Dean L. Mimms, AICP, Lead Planner

Date: 12/5/16

TL—djw
8/99

Appendix B Supplemental Exhibits

Exhibit B-1: Section 381.986, F.S.

F.S. 381.986. Compassionate use of low-THC and medical cannabis

(Effective: July 1, 2016)

(West's F.S.A. § 381.986)

(1) Definitions.--As used in this section, the term:

(a) "Cannabis delivery device" means an object used, intended for use, or designed for use in preparing, storing, ingesting, inhaling, or otherwise introducing low-THC cannabis or medical cannabis into the human body.

(b) "Dispensing organization" means an organization approved by the department to cultivate, process, transport, and dispense low-THC cannabis or medical cannabis pursuant to this section.

(c) "Independent testing laboratory" means a laboratory, including the managers, employees, or contractors of the laboratory, which has no direct or indirect interest in a dispensing organization.

(d) "Legal representative" means the qualified patient's parent, legal guardian acting pursuant to a court's authorization as required under s. 744.3215(4), health care surrogate acting pursuant to the qualified patient's written consent or a court's authorization as required under s. 765.113, or an individual who is authorized under a power of attorney to make health care decisions on behalf of the qualified patient.

(e) "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 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 seeds or resin that is dispensed only from a dispensing organization.

(f) "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, sale, derivative, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a dispensing organization for medical use by an eligible patient as defined in s. 499.0295.

(g) "Medical use" means administration of the ordered amount of low-THC cannabis or medical cannabis. The term does not include the:

1. Possession, use, or administration of low-THC cannabis or medical cannabis by smoking.

2. Transfer of low-THC cannabis or medical cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative on behalf of the qualified patient.

3. Use or administration of low-THC cannabis or medical cannabis:

a. On any form of public transportation.

b. In any public place.

c. In a qualified patient's place of employment, if restricted by his or her employer.

d. In a state correctional institution as defined in s. 944.02 or a correctional institution as defined in s. 944.241.

e. On the grounds of a preschool, primary school, or secondary school.

f. On a school bus or in a vehicle, aircraft, or motorboat.

(h) "Qualified patient" means a resident of this state who has been added to the compassionate use registry by a physician licensed under chapter 458 or chapter 459 to receive low-THC cannabis or medical cannabis from a dispensing organization.

(i) "Smoking" means burning or igniting a substance and inhaling the smoke. Smoking does not include the use of a vaporizer.

(2) Physician ordering.-- A physician is authorized to order low-THC cannabis to treat a qualified patient suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms; order low-THC cannabis to alleviate symptoms of such disease, disorder, or condition, if no other satisfactory alternative treatment options exist for the qualified patient; order medical cannabis to treat an eligible patient as defined in s. 499.0295; or order a cannabis delivery device for the medical use of low-THC cannabis or medical cannabis, only if the physician:

(a) Holds an active, unrestricted license as a physician under chapter 458 or an osteopathic physician under chapter 459;

(b) Has treated the patient for at least 3 months immediately preceding the patient's registration in the compassionate use registry;

(c) Has successfully completed the course and examination required under paragraph (4)(a);

(d) Has determined that the risks of treating the patient with low-THC cannabis or medical cannabis are reasonable in light of the potential benefit to the patient. If a patient is younger than 18 years of age, a second physician must concur with this determination, and such determination must be documented in the patient's medical record;

(e) Registers as the orderer of low-THC cannabis or medical cannabis for the named patient on the compassionate use registry maintained by the department and updates the registry to reflect the contents of the order, including the amount of low-THC cannabis or medical cannabis that will provide the patient with not more than a 45-day supply and a cannabis delivery device needed by the patient for the medical use of low-THC cannabis or medical cannabis. The physician must also update the registry within 7 days after any change is made to the original order to reflect the change. The physician shall deactivate the registration of the patient and the patient's legal representative when treatment is discontinued;

(f) Maintains a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient's symptoms and other indicators of tolerance or reaction

to the low-THC cannabis or medical cannabis;

(g) Submits the patient treatment plan quarterly to the University of Florida College of Pharmacy for research on the safety and efficacy of low-THC cannabis and medical cannabis on patients;

(h) Obtains the voluntary written informed consent of the patient or the patient's legal representative to treatment with low-THC cannabis after sufficiently explaining the current state of knowledge in the medical community of the effectiveness of treatment of the patient's condition with low-THC cannabis, the medically acceptable alternatives, and the potential risks and side effects;

(i) Obtains written informed consent as defined in and required under s. 499.0295, if the physician is ordering medical cannabis for an eligible patient pursuant to that section; and

(j) Is not a medical director employed by a dispensing organization.

(3) Penalties.--

(a) A physician commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, if the physician orders low-THC cannabis for a patient without a reasonable belief that the patient is suffering from:

1. Cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms that can be treated with low-THC cannabis; or

2. Symptoms of cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms that can be alleviated with low-THC cannabis.

(b) A physician commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, if the physician orders medical cannabis for a patient without a reasonable belief that the patient has a terminal condition as defined in s. 499.0295.

(c) A person who fraudulently represents that he or she has cancer, a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms, or a terminal condition to a physician for the purpose of being ordered low-THC cannabis, medical cannabis, or a cannabis delivery device by such physician commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) An eligible patient as defined in s. 499.0295 who uses medical cannabis, and such patient's legal representative who administers medical cannabis, in plain view of or in a place open to the general public, on the grounds of a school, or in a school bus, vehicle, aircraft, or motorboat, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(e) A physician who orders low-THC cannabis, medical cannabis, or a cannabis delivery device and receives compensation from a dispensing organization related to the ordering of low-THC cannabis, medical cannabis, or a cannabis delivery device is subject to disciplinary action under the applicable practice act and s. 456.072(1)(n).

(4) Physician education.--

(a) Before ordering low-THC cannabis, medical cannabis, or a cannabis delivery device for medical use by a patient in this state, the appropriate board shall require the ordering physician to successfully complete an 8-hour course and subsequent examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association that encompasses the clinical indications for the appropriate use of low-THC cannabis and medical cannabis, the appropriate cannabis delivery devices, the contraindications for such use, and the relevant state and federal laws governing the ordering, dispensing, and possessing of these substances and devices. The course and examination shall be administered at least annually. Successful completion of the course may be used by a physician to satisfy 8 hours of the continuing medical education requirements required by his or her respective board for licensure renewal. This course may be offered in a distance learning format.

(b) The appropriate board shall require the medical director of each dispensing organization to hold an active, unrestricted license as a physician under chapter 458 or as an osteopathic physician under chapter 459 and successfully complete a 2-hour course and subsequent examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association that encompasses appropriate safety procedures and knowledge of low-THC cannabis, medical cannabis, and cannabis delivery devices.

(c) Successful completion of the course and examination specified in paragraph (a) is required for every physician who orders low-THC cannabis, medical cannabis, or a cannabis delivery device each time such physician renews his or her license. In addition, successful completion of the course and examination specified in paragraph (b) is required for the medical director of each dispensing organization each time such physician renews his or her license.

(d) A physician who fails to comply with this subsection and who orders low-THC cannabis, medical cannabis, or a cannabis delivery device may be subject to disciplinary action under the applicable practice act and under s. 456.072(1)(k).

(5) Duties of the department.-- The department shall:

(a) Create and maintain a secure, electronic, and online compassionate use registry for the registration of physicians, patients, and the legal representatives of patients as provided under this section. The registry must be accessible to law enforcement agencies and to a dispensing organization to verify the authorization of a patient or a patient's legal representative to possess low-THC cannabis, medical cannabis, or a cannabis delivery device and record the low-THC cannabis, medical cannabis, or cannabis delivery device dispensed. The registry must prevent an active registration of a patient by multiple physicians.

(b) Authorize the establishment of five dispensing organizations to ensure reasonable statewide accessibility and availability as necessary for patients registered in the compassionate use registry and who are ordered low-THC cannabis, medical cannabis, or a cannabis delivery device under this section, one in each of the following regions: northwest Florida, northeast Florida, central Florida, southeast Florida, and southwest Florida. The department shall develop an application form and impose an initial application and biennial renewal fee that is sufficient to cover the costs of administering this section. An applicant for approval as a dispensing organization must be able to demonstrate:

1. The technical and technological ability to cultivate and produce low-THC cannabis. The applicant must possess a valid certificate of registration issued by the Department of Agriculture and Consumer Services pursuant to s. 581.131 that is issued for the cultivation of more than 400,000 plants, be operated by a nurseryman as defined in s. 581.011, and have been operated as a registered nursery in this state for at least 30 continuous years.

2. The ability to secure the premises, resources, and personnel necessary to operate as a dispensing organization.

3. The ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances.

4. An infrastructure reasonably located to dispense low-THC cannabis to registered patients statewide or regionally as determined by the department.

5. The financial ability to maintain operations for the duration of the 2-year approval cycle, including the provision of certified financials to the department. Upon approval, the applicant must post a $5 million performance bond. However, upon a dispensing organization's serving at least 1,000 qualified patients, the dispensing organization is only required to maintain a $2 million performance bond.

6. That all owners and managers have been fingerprinted and have successfully passed a level 2 background screening pursuant to s. 435.04.

7. The employment of a medical director to supervise the activities of the dispensing organization.

(c) Upon the registration of 250,000 active qualified patients in the compassionate use registry, approve three dispensing organizations, including, but not limited to, an applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the Black Farmers and Agriculturalists Association, which must meet the requirements of subparagraphs (b)2.-7. and demonstrate the technical and technological ability to cultivate and produce low-THC cannabis.

(d) Allow a dispensing organization to make a wholesale purchase of low-THC cannabis or medical cannabis from, or a distribution of low-THC cannabis or medical cannabis to, another dispensing organization.

(e) Monitor physician registration and ordering of low-THC cannabis, medical cannabis, or a cannabis delivery device for ordering practices that could facilitate unlawful diversion or misuse of low-THC cannabis, medical cannabis, or a cannabis delivery device and take disciplinary action as indicated.

(6) Dispensing organization.--An approved dispensing organization must, at all times, maintain compliance with the criteria demonstrated for selection and approval as a dispensing organization under subsection (5) and the criteria required in this subsection.

(a) When growing low-THC cannabis or medical cannabis, a dispensing organization:

1. May use pesticides determined by the department, after consultation with the Department of

Agriculture and Consumer Services, to be safely applied to plants intended for human consumption, but may not use pesticides designated as restricted-use pesticides pursuant to s. 487.042.

2. Must grow low-THC cannabis or medical cannabis within an enclosed structure and in a room separate from any other plant.

3. Must inspect seeds and growing plants for plant pests that endanger or threaten the horticultural and agricultural interests of the state, notify the Department of Agriculture and Consumer Services within 10 calendar days after a determination that a plant is infested or infected by such plant pest, and implement and maintain phytosanitary policies and procedures.

4. Must perform fumigation or treatment of plants, or the removal and destruction of infested or infected plants, in accordance with chapter 581 and any rules adopted thereunder.

(b) When processing low-THC cannabis or medical cannabis, a dispensing organization must:

1. Process the low-THC cannabis or medical cannabis within an enclosed structure and in a room separate from other plants or products.

2. Test the processed low-THC cannabis and medical cannabis before they are dispensed. Results must be verified and signed by two dispensing organization employees. Before dispensing low-THC cannabis, the dispensing organization must determine that the test results indicate that the low-THC cannabis meets the definition of low-THC cannabis and, for medical cannabis and low-THC cannabis, that all medical cannabis and low-THC cannabis is safe for human consumption and free from contaminants that are unsafe for human consumption. The dispensing organization must retain records of all testing and samples of each homogenous batch of cannabis and low-THC cannabis for at least 9 months. The dispensing organization must contract with an independent testing laboratory to perform audits on the dispensing organization's standard operating procedures, testing records, and samples and provide the results to the department to confirm that the low-THC cannabis or medical cannabis meets the requirements of this section and that the medical cannabis and low-THC cannabis is safe for human consumption.
3. Package the low-THC cannabis or medical cannabis in compliance with the United States Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471 et seq.

4. Package the low-THC cannabis or medical cannabis in a receptacle that has a firmly affixed and legible label stating the following information:

a. A statement that the low-THC cannabis or medical cannabis meets the requirements of subparagraph 2.;

b. The name of the dispensing organization from which the medical cannabis or low-THC cannabis originates; and

c. The batch number and harvest number from which the medical cannabis or low-THC cannabis originates.

5. Reserve two processed samples from each batch and retain such samples for at least 9 months for the purpose of testing pursuant to the audit required under subparagraph 2.

(c) When dispensing low-THC cannabis, medical cannabis, or a cannabis delivery device, a dispensing organization:

1. May not dispense more than a 45-day supply of low-THC cannabis or medical cannabis to a patient or the patient's legal representative.

2. Must have the dispensing organization's employee who dispenses the low-THC cannabis, medical cannabis, or a cannabis delivery device enter into the compassionate use registry his or her name or unique employee identifier.

3. Must verify in the compassionate use registry that a physician has ordered the low-THC cannabis, medical cannabis, or a specific type of a cannabis delivery device for the patient.

4. May not dispense or sell any other type of cannabis, alcohol, or illicit drug-related product, including pipes, bongs, or wrapping papers, other than a physician-ordered cannabis delivery device required for the medical use of low-THC cannabis or medical cannabis, while dispensing low-THC cannabis or medical cannabis.

5. Must verify that the patient has an active registration in the compassionate use registry, the patient or patient's legal representative holds a valid and active registration card, the order presented matches the order contents as recorded in the registry, and the order has not already been filled.

6. Must, upon dispensing the low-THC cannabis, medical cannabis, or cannabis delivery device, record in the registry the date, time, quantity, and form of low-THC cannabis or medical cannabis dispensed and the type of cannabis delivery device dispensed.

(d) To ensure the safety and security of its premises and any off-site storage facilities, and to maintain adequate controls against the diversion, theft, and loss of low-THC cannabis, medical cannabis, or cannabis delivery devices, a dispensing organization shall:

1. a. Maintain a fully operational security alarm system that secures all entry points and perimeter windows and is equipped with motion detectors; pressure switches; and duress, panic, and hold-up alarms; or

b. Maintain a video surveillance system that records continuously 24 hours each day and meets at least one of the following criteria:

(I) Cameras are fixed in a place that allows for the clear identification of persons and activities in controlled areas of the premises. Controlled areas include grow rooms, processing rooms, storage rooms, disposal rooms or areas, and point-of-sale rooms;

(II) Cameras are fixed in entrances and exits to the premises, which shall record from both indoor and outdoor, or ingress and egress, vantage points;

(III) Recorded images must clearly and accurately display the time and date; or

(IV) Retain video surveillance recordings for a minimum of 45 days or longer upon the request of a law enforcement agency.

2. Ensure that the organization's outdoor premises have sufficient lighting from dusk until dawn.

3. Establish and maintain a tracking system approved by the department that traces the low-THC cannabis or medical cannabis from seed to sale. The tracking system shall include notification of key events as determined by the department, including when cannabis seeds are planted, when cannabis plants are harvested and destroyed, and when low-THC cannabis or medical cannabis is transported, sold, stolen, diverted, or lost.

4. Not dispense from its premises low-THC cannabis, medical cannabis, or a cannabis delivery device between the hours of 9 p.m. and 7 a.m., but may perform all other operations and deliver low-THC cannabis and medical cannabis to qualified patients 24 hours each day.

5. Store low-THC cannabis or medical cannabis in a secured, locked room or a vault.

6. Require at least two of its employees, or two employees of a security agency with whom it contracts, to be on the premises at all times.

7. Require each employee to wear a photo identification badge at all times while on the premises.

8. Require each visitor to wear a visitor's pass at all times while on the premises.

9. Implement an alcohol and drug-free workplace policy.

10. Report to local law enforcement within 24 hours after it is notified or becomes aware of the theft, diversion, or loss of low-THC cannabis or medical cannabis.

(e) To ensure the safe transport of low-THC cannabis or medical cannabis to dispensing organization facilities, independent testing laboratories, or patients, the dispensing organization must:

1. Maintain a transportation manifest, which must be retained for at least 1 year.

2. Ensure only vehicles in good working order are used to transport low-THC cannabis or medical cannabis.

3. Lock low-THC cannabis or medical cannabis in a separate compartment or container within the vehicle.

4. Require at least two persons to be in a vehicle transporting low-THC cannabis or medical cannabis, and require at least one person to remain in the vehicle while the low-THC cannabis or medical cannabis is being delivered.

5. Provide specific safety and security training to employees transporting or delivering low-THC cannabis or medical cannabis.

(7) Department authority and responsibilities.--

(a) The department may conduct announced or unannounced inspections of dispensing organizations to determine compliance with this section or rules adopted pursuant to this section.

(b) The department shall inspect a dispensing organization upon complaint or notice provided to

the department that the dispensing organization has dispensed low-THC cannabis or medical cannabis containing any mold, bacteria, or other contaminant that may cause or has caused an adverse effect to human health or the environment.

(c) The department shall conduct at least a biennial inspection of each dispensing organization to evaluate the dispensing organization's records, personnel, equipment, processes, security measures, sanitation practices, and quality assurance practices.

(d) The department may enter into interagency agreements with the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, the Department of Transportation, the Department of Highway Safety and Motor Vehicles, and the Agency for Health Care Administration, and such agencies are authorized to enter into an interagency agreement with the department, to conduct inspections or perform other responsibilities assigned to the department under this section.

(e) The department must make a list of all approved dispensing organizations and qualified ordering physicians and medical directors publicly available on its website.

(f) The department may establish a system for issuing and renewing registration cards for patients and their legal representatives, establish the circumstances under which the cards may be revoked by or must be returned to the department, and establish fees to implement such system. The department must require, at a minimum, the registration cards to:

1. Provide the name, address, and date of birth of the patient or legal representative.

2. Have a full-face, passport-type, color photograph of the patient or legal representative taken within the 90 days immediately preceding registration.

3. Identify whether the cardholder is a patient or legal representative.

4. List a unique numeric identifier for the patient or legal representative that is matched to the identifier used for such person in the department's compassionate use registry.

5. Provide the expiration date, which shall be 1 year after the date of the physician's initial order of low-THC cannabis or medical cannabis.

6. For the legal representative, provide the name and unique numeric identifier of the patient that the legal representative is assisting.

7. Be resistant to counterfeiting or tampering.

(g) The department may impose reasonable fines not to exceed $10,000 on a dispensing organization for any of the following violations:

1. Violating this section, s. 499.0295, or department rule.

2. Failing to maintain qualifications for approval.

3. Endangering the health, safety, or security of a qualified patient.

4. Improperly disclosing personal and confidential information of the qualified patient.

5. Attempting to procure dispensing organization approval by bribery, fraudulent misrepresentation, or extortion.

6. Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the business of a dispensing organization.

7. Making or filing a report or record that the dispensing organization knows to be false.

8. Willfully failing to maintain a record required by this section or department rule.

9. Willfully impeding or obstructing an employee or agent of the department in the furtherance of his or her official duties.

10. Engaging in fraud or deceit, negligence, incompetence, or misconduct in the business practices of a dispensing organization.

11. Making misleading, deceptive, or fraudulent representations in or related to the business practices of a dispensing organization.

12. Having a license or the authority to engage in any regulated profession, occupation, or business that is related to the business practices of a dispensing organization suspended, revoked, or otherwise acted against by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law.

13. Violating a lawful order of the department or an agency of the state, or failing to comply with a lawfully issued subpoena of the department or an agency of the state.

(h) The department may suspend, revoke, or refuse to renew a dispensing organization's approval if a dispensing organization commits any of the violations in paragraph (g).

(i) The department shall renew the approval of a dispensing organization biennially if the dispensing organization meets the requirements of this section and pays the biennial renewal fee.

(j) The department may adopt rules necessary to implement this section.

(8) Preemption.--

(a) All matters regarding the regulation of the cultivation and processing of medical cannabis or low-THC cannabis by dispensing organizations are preempted to the state.

(b) A municipality may determine by ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with state law or department rule for, dispensing facilities of dispensing organizations located within its municipal boundaries. A county may determine by ordinance the criteria for the number, location, and other permitting requirements that do not conflict with state law or department rule for all dispensing facilities of dispensing organizations located within the unincorporated areas of that county.

(9) Exceptions to other laws.--

(a) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, a qualified patient and the qualified patient's legal representative may purchase and possess for the patient's medical use up to the amount of low-THC cannabis or medical cannabis ordered for the patient, but not more than a 45-day supply, and a cannabis delivery device ordered for the patient.

(b) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, an approved dispensing organization and its owners, managers, and employees may manufacture, possess, sell, deliver, distribute, dispense, and lawfully dispose of reasonable quantities, as established by department rule, of low-THC cannabis, medical cannabis, or a cannabis delivery device. For purposes of this subsection, the terms "manufacture," "possession," "deliver," "distribute," and "dispense" have the same meanings as provided in s. 893.02.

(c) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, an approved independent testing laboratory may possess, test, transport, and lawfully dispose of low-THC cannabis or medical cannabis as provided by department rule.

(d) An approved dispensing organization and its owners, managers, and employees are not subject to licensure or regulation under chapter 465 or chapter 499 for manufacturing, possessing, selling, delivering, distributing, dispensing, or lawfully disposing of reasonable quantities, as established by department rule, of low-THC cannabis, medical cannabis, or a cannabis delivery device.

(e) An approved dispensing organization that continues to meet the requirements for approval is presumed to be registered with the department and to meet the regulations adopted by the department or its successor agency for the purpose of dispensing medical cannabis or low-THC cannabis under Florida law. Additionally, the authority provided to a dispensing organization in s. 499.0295 does not impair the approval of a dispensing organization.

(f) This subsection does not exempt a person from prosecution for a criminal offense related to impairment or intoxication resulting from the medical use of low-THC cannabis or medical cannabis or relieve a person from any requirement under law to submit to a breath, blood, urine, or other test to detect the presence of a controlled substance.

Credits

Added by Laws 2014, c. 2014-157, § 2, eff. June 16, 2014. Amended by Laws 2016, c. 2016-123, § 1, eff. March 25, 2016; Laws 2016, c. 2016-145, § 24, eff. July 1, 2016.

West's F. S. A. § 381.986, FL ST § 381.986
Current with chapters from the 2016 2nd Regular Session of the 24th Legislature in effect through July 1, 2016

Exhibit B-2 – FAQs

Frequently Asked Questions

(* see City staff note at end of FAQs)

Office of Compassionate Use, FL Department of Health

- **850-245-4657**
- CompassionateUse@flhealth.gov
- **Mailing Address**
  4052 Bald Cypress Way, Bin A-06
  Tallahassee, FL 32399

1) QUESTION: What is the difference between low-THC cannabis and medical cannabis?

ANSWER: 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 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 seeds or resin that is dispensed only from a dispensing organization. Low-THC cannabis contains very low amounts of the psychoactive compound THC, and typically does not result in the "high" often associated with medical cannabis.

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, sale, derivative, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a dispensing organization for medical use by an eligible patient as defined in s. 499.0295. Medical cannabis contains significant levels of the cannabinoid THC, and can result in the euphoric "high" sensation.

2) QUESTION: What is a cannabis delivery device?

ANSWER: A cannabis delivery device is an object intended for use or designed for use in preparing, storing, ingesting, inhaling or otherwise introducing low-THC cannabis or medical cannabis into the body.

3) QUESTION: Who is eligible to receive an order for low-THC cannabis products?

ANSWER: Patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms may be eligible for non-euphoric, low-THC cannabis.

4) QUESTION: Who is eligible to receive an order for medical cannabis products?

ANSWER: A qualified physician may only order medical cannabis for a patient with a terminal condition that is attested to by the patient's physician and confirmed by a second independent evaluation by a board-certified physician in an appropriate specialty for that condition. Patient is defined in section 499.0295, Florida Statutes.

Florida law defines a terminal condition as a "progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible even with the administration of available treatment options currently approved by the United States Food and Drug Administration, and, without the administration of life-sustaining procedures, will result in death within one year after diagnosis if the condition runs its normal course."

5) QUESTION: What are the requirements to become a qualifying patient?

ANSWER: Florida law has several requirements for patients to be eligible to receive low-THC cannabis or medical cannabis.

- A patient must have been diagnosed with a qualifying condition.
- A patient must be a Florida resident.
- If under the age of 18, a patient must have a second physician agree to the use of low-THC cannabis or medical cannabis in order to obtain an order from a qualified physician.
- A patient must have tried other treatments without success.
- An ordering physician must determine the risks of using low-THC cannabis or medical cannabis are reasonable in light of the benefit to the patient.
- A patient must be registered with the Compassionate Use Registry by their ordering physician.

6) QUESTION: How do patients find qualified physicians who can order low-THC cannabis, medical cannabis or cannabis delivery devices?

ANSWER: A list of physicians authorized to order low-THC cannabis, medical cannabis or cannabis delivery devices for patients is located on the Patient's tab on the Office of Compassionate Use website.

7) QUESTION: Are there requirements for a Florida physician to qualify to order low-THC cannabis, medical cannabis or a cannabis delivery device?

ANSWER: Yes. A physician may only order low-THC cannabis or medical cannabis if he or she holds an active, unrestricted license as a physician under Chapter 458, Florida Statutes or an osteopathic physician under Chapter 459, Florida Statutes.

Additionally, a qualifying physician must have successfully completed an 8-hour continuing education course and examination. Renewal of the 8-hour course and subsequent examination is required each time the physician renews his or her medical license. A link to the course and examination is available on the Physician's tab located on the Office of Compassionate Use website.

8) QUESTION: What are the requirements for a Medical Director of a Dispensing Organization?

ANSWER: A medical director must hold an active, unrestricted license as a physician under Chapter 458, Florida Statutes or as an osteopathic physician under Chapter 459, Florida Statutes. They must also complete a 2-hour continuing education course and examination. A link to the

course and examination is available on the For Physician's tab located on the Office of Compassionate Use website.

9) QUESTION: Who can sell low-THC cannabis or medical cannabis?

ANSWER: Florida has six authorized dispensing organizations: CHT Medical (Chestnut Hill Tree Farm), The Green Solution (San Felasco Nurseries), Trulieve (Hackney Nursery), Surterra Therapeutics (Alpha Foliage, Inc.), Modern Health Concepts (Costa Nursery Farms), and Knox Medical (Knox Nursery)

10) QUESTION: How can a patient purchase low-THC cannabis or medical cannabis?

ANSWER: A qualified patient must first seek treatment from a qualified physician **for at least three months** immediately preceding their order for low-THC or medical cannabis. Once the ordering physician inputs the patient's information and the order information into the Compassionate Use Patient Registry, the patient or the patient's legal representative will then be able to contact one of the six licensed dispensing organizations and fill the order.

11) QUESTION: Who can purchase cannabis from a dispensing organization?

ANSWER: Dispensing organizations may only provide low-THC cannabis, medical cannabis or a cannabis delivery device to a qualified patient or a qualified patient's legal representative.

12) QUESTION: Who can be a qualified patient's legal representative?

ANSWER: A legal representative is a qualified patient's parent, legal guardian acting pursuant to a court's authorization as required under section 744.3215(4), Florida Statutes health care surrogate acting pursuant to the qualified patient's written consent or a court's authorization as required under section 765.113, Florida Statutes or an individual who is authorized under a power of attorney to make healthcare decisions on behalf of the qualified patient.

13) QUESTION: Can patients obtain low-THC cannabis or medical cannabis if they do not have one of the qualifying conditions?

ANSWER: No. Physicians may only order low-THC cannabis or medical cannabis for patients diagnosed with one of the qualifying conditions outlined in FAQs 3 and 4.

14) QUESTION: Does the Compassionate Medical Cannabis Act allow qualifying patients to grow their own low-THC cannabis or medical cannabis?

ANSWER: No.

15) QUESTION: How much low-THC cannabis or medical cannabis can a qualifying physician order for a patient?

ANSWER: Qualifying physicians can order no more than a 45-day supply and a cannabis delivery device needed by the patient for the medical use of low-THC cannabis or medical cannabis.

16) QUESTION: Will low-THC cannabis and medical cannabis be inspected and tested?

ANSWER: Yes. Low-THC cannabis and medical cannabis must be processed within an enclosed structure away from other plants and products. Dispensing organizations are required to test the processed low-THC cannabis and medical cannabis before they are dispensed. The results must be verified and signed by two employees of the dispensary. The dispensing organization must reserve two processed samples from each batch and retain them for at least nine months.

Cannabis test results must indicate that low-THC cannabis meets the definition of low-THC cannabis and that all medical and low-THC cannabis is safe for human consumption and free from contaminants.

The dispensing organization must also contract with an independent testing laboratory to perform audits on the dispensing organization's standard operating procedures, testing records and samples.

17) QUESTION: What are the packaging requirements for low-THC cannabis or medical cannabis?

ANSWER: Packaging of low-THC and medical cannabis should be in compliance with the United States Poison Prevention Packaging Act of 1970 (15 U.S.C. ss. 1471 et seq.) They should be packaged in a receptacle that has a firmly affixed and legible label with the following information:

- A statement that the low-THC or medical cannabis has been properly tested
- The name of the dispensing organization from which the product originates
- The batch number and harvest number from which the product originates

Medical marijuana is available in Florida, however, remains illegal under federal law.

(**Source**: http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/frequently-asked-questions/index.html.)

(*** City staff note**: These FAQs were on the FL Department of Health's website January 11. 2017, and have not been updated for consistency with Article X, Section 29 of the Florida Constitution, which was approved on November 8, 2016 by Amendment 2 and took effect on January 3, 2017. According to the website of the Office of Compassionate Use, Amendment 2 and the expanded medical conditions became effective on January 3, 2017. Further, F.S. 381.986 remains in effect, and the FL Department of Health, physicians, dispensing organizations, and patients remain bound by existing law and rule. Following Amendment 2's effective date, the Department of Health is directed to promulgate rules to implement Amendment 2within 6 months, and to implement those regulations within 9 months.)

Proposed Constitutional Amendments to be voted on November 8, 2016

Florida Department of State
Division of Elections

NO. 2
CONSTITUTIONAL AMENDMENT
ARTICLE X, SECTION 29
(INITIATIVE)

Ballot Title:
Use of Marijuana for Debilitating Medical Conditions

Ballot Summary:
Allows medical use of marijuana for individuals with debilitating medical conditions as determined by a licensed Florida physician. Allows caregivers to assist patients' medical use of marijuana. The Department of Health shall register and regulate centers that produce and distribute marijuana for medical purposes and shall issue identification cards to patients and caregivers. Applies only to Florida law. Does not immunize violations of federal law or any non-medical use, possession or production of marijuana.

Financial Impact Statement:
Increased costs from this amendment to state and local governments cannot be determined. There will be additional regulatory costs and enforcement activities associated with the production, sale, use and possession of medical marijuana. Fees may offset some of the regulatory costs. Sales tax will likely apply to most purchases, resulting in a substantial increase in state and local government revenues that cannot be determined precisely. The impact on property tax revenues cannot be determined.

Full Text:

ARTICLE X
Miscellaneous

SECTION 29.– Medical marijuana production, possession and use.

(a) PUBLIC POLICY.
(1) The medical use of marijuana by a qualifying patient or caregiver in compliance with this section is not subject to criminal or civil liability or sanctions under Florida law.
(2) A physician shall not be subject to criminal or civil liability or sanctions under Florida law solely for issuing a physician certification with reasonable care to a person diagnosed with a debilitating medical condition in compliance with this section.
(3) Actions and conduct by a Medical Marijuana Treatment Center registered with the Department, or its agents or employees, and in compliance with this section and Department regulations, shall not be subject to criminal or civil liability or sanctions under Florida law.
(b) DEFINITIONS. For purposes of this section, the following words and terms shall have the following meanings:
(1) "Debilitating Medical Condition" means cancer, epilepsy, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), post-traumatic stress disorder (PTSD), amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis, or other debilitating medical conditions of the same kind or class as or comparable to those enumerated, and for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.
(2) "Department" means the Department of Health or its successor agency.
(3) "Identification card" means a document issued by the Department that identifies a qualifying patient or a caregiver.
(4) "Marijuana" has the meaning given cannabis in Section 893.02(3), Florida Statutes (2014), and, in addition, "Low-THC cannabis" as defined in Section 381.986(1)(b), Florida Statutes (2014), shall also be included in the meaning of the term "marijuana."
(5) "Medical Marijuana Treatment Center" (MMTC) means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments),

transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Department.

(6) "Medical use" means the acquisition, possession, use, delivery, transfer, or administration of an amount of marijuana not in conflict with Department rules, or of related supplies by a qualifying patient or caregiver for use by the caregiver's designated qualifying patient for the treatment of a debilitating medical condition.

(7) "Caregiver" means a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient's medical use of marijuana and has qualified for and obtained a caregiver identification card issued by the Department. The Department may limit the number of qualifying patients a caregiver may assist at one time and the number of caregivers that a qualifying patient may have at one time. Caregivers are prohibited from consuming marijuana obtained for medical use by the qualifying patient.

(8) "Physician" means a person who is licensed to practice medicine in Florida.

(9) "Physician certification" means a written document signed by a physician, stating that in the physician's professional opinion, the patient suffers from a debilitating medical condition, that the medical use of marijuana would likely outweigh the potential health risks for the patient, and for how long the physician recommends the medical use of marijuana for the patient. A physician certification may only be provided after the physician has conducted a physical examination and a full assessment of the medical history of the patient. In order for a physician certification to be issued to a minor, a parent or legal guardian of the minor must consent in writing.

(10) "Qualifying patient" means a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card. If the Department does not begin issuing identification cards within nine (9) months after

the effective date of this section, then a valid physician certification will serve as a patient identification card in order to allow a person to become a "qualifying patient" until the Department begins issuing identification cards.

(c) LIMITATIONS.

(1) Nothing in this section allows for a violation of any law other than for conduct in compliance with the provisions of this section.

(2) Nothing in this section shall affect or repeal laws relating to non-medical use, possession, production, or sale of marijuana.

(3) Nothing in this section authorizes the use of medical marijuana by anyone other than a qualifying patient.

(4) Nothing in this section shall permit the operation of any vehicle, aircraft, train or boat while under the influence of marijuana.

(5) Nothing in this section requires the violation of federal law or purports to give immunity under federal law.

(6) Nothing in this section shall require any accommodation of any on-site medical use of marijuana in any correctional institution or detention facility or place of education or employment, or of smoking medical marijuana in any public place.

(7) Nothing in this section shall require any health insurance provider or any government agency or authority to reimburse any person for expenses related to the medical use of marijuana.

(8) Nothing in this section shall affect or repeal laws relating to negligence or professional malpractice on the part of a qualified patient, caregiver, physician, MMTC, or its agents or employees.

(d) DUTIES OF THE DEPARTMENT. The Department shall issue reasonable regulations necessary for the implementation and enforcement of this section. The purpose of the regulations is to ensure the availability and safe use of medical marijuana by qualifying patients. It is the duty of the Department to promulgate regulations in a timely fashion.

(1) Implementing Regulations. In order to allow the Department sufficient time after passage of this section, the following regulations

shall be promulgated no later than six (6) months after the effective date of this section:

a. Procedures for the issuance and annual renewal of qualifying patient identification cards to people with physician certifications and standards for renewal of such identification cards. Before issuing an identification card to a minor, the Department must receive written consent from the minor's parent or legal guardian, in addition to the physician certification.

b. Procedures establishing qualifications and standards for caregivers, including conducting appropriate background checks, and procedures for the issuance and annual renewal of caregiver identification cards.

c. Procedures for the registration of MMTCs that include procedures for the issuance, renewal, suspension and revocation of registration, and standards to ensure proper security, record keeping, testing, labeling, inspection, and safety.

d. A regulation that defines the amount of marijuana that could reasonably be presumed to be an adequate supply for qualifying patients' medical use, based on the best available evidence. This presumption as to quantity may be overcome with evidence of a particular qualifying patient's appropriate medical use.

(2) Identification cards and registrations. The Department shall begin issuing qualifying patient and caregiver identification cards, and registering MMTCs no later than nine (9) months after the effective date of this section.

(3) If the Department does not issue regulations, or if the Department does not begin issuing identification cards and registering MMTCs within the time limits set in this section, any Florida citizen shall have standing to seek judicial relief to compel compliance with the Department's constitutional duties.

(4) The Department shall protect the confidentiality of all qualifying patients. All records containing the identity of qualifying patients shall be confidential and kept from public disclosure other than for valid medical or law enforcement purposes.

(e) LEGISLATION. Nothing in this section shall limit the legislature from enacting laws consistent with this section.
(f) SEVERABILITY. The provisions of this section are severable and if any clause, sentence, paragraph or section of this measure, or an application thereof, is adjudged invalid by a court of competent jurisdiction other provisions shall continue to be in effect to the fullest extent possible.

Tampa Bay Times
WINNER OF 12 PULITZER PRIZES

Popular with voters, medical marijuana finds few champions in Tallahassee

Michael Auslen, Times/Herald Tallahassee Bureau

Friday, December 2, 2016 10:57am

Associated Press

No legislation to govern medical marijuana has been filed yet, with the amendment passed by voters set to take effect Jan. 3.

TALLAHASSEE — Medical marijuana's implementation is turning out to be a slow burn.

More than 6 million Floridians voted in November to allow patients with conditions like cancer and HIV to use marijuana — nearly 2 million more than President-elect Donald Trump's state total.

But such overwhelming support for the state constitutional amendment has not translated into urgency in the capital.

Setting rules governing a new medical marijuana industry is not a top priority for the newly elected leaders of the Legislature, Senate President Joe Negron and House Speaker Richard Corcoran. Gov. Rick Scott has largely avoided weighing in on the issue.

"All I'd say on that is that we're going to honor the will of the voters, we're going to protect the Constitution, and we're going to protect the people's state of Florida," said Corcoran, R-Land O'Lakes.

This, at least, is a point of agreement between Corcoran and Negron, whose relationship is already marked by sharp divisions over the state budget and rules for lobbyists.

What that means for state policy, however, is uncertain. Despite the amendment's popularity, neither Corcoran nor Negron mentioned medical marijuana at the ceremonial organizational session late last month until reporters pressed them for details.

Corcoran, who opposed medical marijuana on the ballot, is an outspoken supporter of free-market public policy, particularly in health care, but he has not elaborated on the specifics of how that would play into creating a tightly regulated industry for medical marijuana.

Negron, R-Stuart, remained silent on Amendment 2 through the campaign.

A trusted ally, Sen. Jeff Brandes, R-St. Petersburg, was an early supporter of medical marijuana and plans to file a medical marijuana bill in the Senate. Brandes' proposal would open the market to competition among a large number of growers and sellers.

Negron echoes Corcoran, saying he wants to implement the amendment "verbatim" and that he plans to follow the voters' wishes "fully both in letter and in spirit."

No marijuana legislation has been filed yet, but few bills of any kind have. The annual legislative session does not begin until March 7.

Already, moneyed interests are hiring lobbyists to influence the outcome.

Growers licensed under a small medical cannabis program already in state law have registered to lobby the House. They have limited customers under the current program, which allows certain patients, like children with severe epilepsy, to use a strain of marijuana that doesn't cause a euphoric high. It also allows the terminally ill to use full-strength pot.

Other companies that may apply for future licenses to grow have hired advocates, too.

Florida for Care, the group behind Amendment 2, this week hired lobbyists of its own.

"We want to be very reasonable . . . and to do everything in our power to not let the perfect be the enemy of the good," said Ben Pollara, campaign manager for the group.

Florida for Care argues that voters intended to allow marijuana as treatment for more conditions, including cancer and HIV, and to expand the industry to include more competition from more growers. But the group's No. 1 goal next year will be passing a law that avoids a court battle, Pollara said.

The Florida Department of Health, which is charged with overseeing medical marijuana, plans to begin writing regulations Jan. 3, when Amendment 2 goes into effect. It's the same agency that took more than two years to put into place the limited medical cannabis program passed by lawmakers in 2014.

Health officials have six months from that date to approve rules for the program, but a declaration on its website further complicates matters.

The page says that "the expanded qualifying medical conditions will become effective on January 3, 2017."

Asked for details, health department officials have been unclear about what that means.

Yes, the added list of conditions goes into effect next month, spokeswoman Mara Gambineri said. However, she noted, "the Florida Department of Health, physicians, dispensing organizations, and patients remain bound by existing law and rule."

The laws already on the books limit full-strength marijuana to terminally ill patients and don't include the more wide-ranging set of conditions the voters passed.

Contact Michael Auslen at mauslen@tampabay.com. Follow @MichaelAuslen.

Popular with voters, medical marijuana finds few champions in Tallahassee

12/02/16
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Mimms, Dean L.

From: Thomas, Wendy C
Sent: Friday, December 23, 2016 8:18 AM
To: Mimms, Dean L.; Persons, Andrew W.
Subject: Fwd: Medical Marijuana Ordinances

Follow Up Flag: Follow up
Flag Status: Flagged

Sent from my iPhone

Begin forwarded message:

From: "Harris, Helen J." <harrishj@cityofgainesville.org>
Date: December 23, 2016 at 8:15:22 AM EST
To: "Thomas, Wendy C" <ThomasWC@cityofgainesville.org>, "Shalley, Nicolle M." <shalleynm@cityofgainesville.org>
Subject: FW: Medical Marijuana Ordinances

From: Florida League of Cities, Inc. [crussell@flcities.com]
Sent: Tuesday, December 20, 2016 3:33 PM
To: citymgr
Subject: Medical Marijuana Ordinances

View in a browser <http://FLC.informz.net/InformzDataService/OnlineVersion/Individual?mailingInstanceId=5793394&subscriberId=884341026>
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To: Florida City Managers

From: Ryan G. Padgett, Assistant General Counsel

Re: Medical Marijuana Ordinances

Date: December 20, 2016

Many cities have contemplated enacting ordinances related to medical marijuana now that it has been approved by both a constitutional amendment and by statute. There are currently six nurseries which are licensed by the state of Florida to cultivate, process, and dispense medical marijuana. Since some of these businesses are beginning to open dispensaries on a larger scale, it is incumbent upon cities to address this issue sooner rather than later. We have included some background materials to provide some assistance in the event your city chooses to enact ordinances and/or zoning requirements related to medical marijuana.

Existing state law preempts cities from regulating cultivation and processing facilities. However, cities can regulate locations which dispense the final medical marijuana products, which can include not only marijuana which can be smoked, but also edibles and oils.

Cities are currently addressing the placement of medical marijuana dispensaries in several ways including moratorium, regulation, zoning, and numerical limitations.

Below are two examples of moratoria for your consideration. It should be noted a moratorium is not a permanent solution. The law frowns on moratoria which are exceedingly lengthy as they act as a de facto ban. However, a moratorium can be extended prior to its expiration based on specific circumstances, as demonstrated in the Orlando ordinance below.

Below is an example of an ordinance which focuses on the regulation of medical marijuana dispensaries. This type of regulatory scheme addresses the application process a dispensary must complete before being licensed by the city. As in provided in the example, these types of regulations are often combined with zoning requirements. An example of zoning only requirements is also included.

The numerical approach has been proposed by some in the medical marijuana industry. These ordinances are designed to limit the number of medical marijuana dispensaries in any one city. The below example also requires compliance with zoning requirements and has additional distance requirements for dispensaries.

As this is an evolving area of law, we cannot be sure how courts will treat these types of ordinances or what regulations and restrictions will be placed on medical marijuana by the Legislature and Department of Health. However, we feel it is important to send these examples out for your consideration at this time.

If your city adopts an ordinance or any internal policies relating to medical marijuana, please forward the type of ordinance and/or the adoption of a policy to rpadgett@flcities.com.

Constitutional Amendment Petition Form<http://FLC.informz.net/z/cjUucD9taT01NzkzMzk0JnA9MSZ1PTg4NDM0MTAyNiZsaT0zOTg5OTQ4MQ/index.html>

Cities w/ Ordinances<http://FLC.informz.net/z/cjUucD9taT01NzkzMzk0JnA9MSZ1PTg4NDM0MTAyNiZsaT0zOTg5OTQ4Mg/index.html>

Moratorium Ordinances - Orange Park & Orlando<http://FLC.informz.net/z/cjUucD9taT01NzkzMzk0JnA9MSZ1PTg4NDM0MTAyNiZsaT0zOTg5OTQ4Mw/index.html>

Regulatory Ordinances w/ Zoning - Altamonte Springs Code<http://FLC.informz.net/z/cjUucD9taT01NzkzMzk0JnA9MSZ1PTg4NDM0MTAyNiZsaT0zOTg5OTQ4NA/index.html>

Zoning Ordinance - Winter Park Code<http://FLC.informz.net/z/cjUucD9taT01NzkzMzk0JnA9MSZ1PTg4NDM0MTAyNiZsaT0zOTg5OTQ4NQ/index.html>

Numeric Ordinance - Osceola County<http://FLC.informz.net/z/cjUucD9taT01NzkzMzk0JnA9MSZ1PTg4NDM0MTAyNiZsaT0zOTg5OTQ4Ng/index.html>

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301 S Bronough St Ste 300
PO Box 1797 (32302-1757)
Tallahassee, FL 32301
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Marijuana Legalized for Fun in 4 More States and Medicine in 4 Others

BY: Mattie Quinn | November 9, 2016

Read all of our coverage on 2016 ballot measures at governing.com/ballotmeasures.

Marijuana legalization is having a moment. What once seemed like an unlikely proposition is now catching serious steam.

In the five states that voted for legalized recreational use, only Arizona rejected the proposition. Maine passed the measure with razor-thin margins. All four states voting on medical marijuana approved their measures.

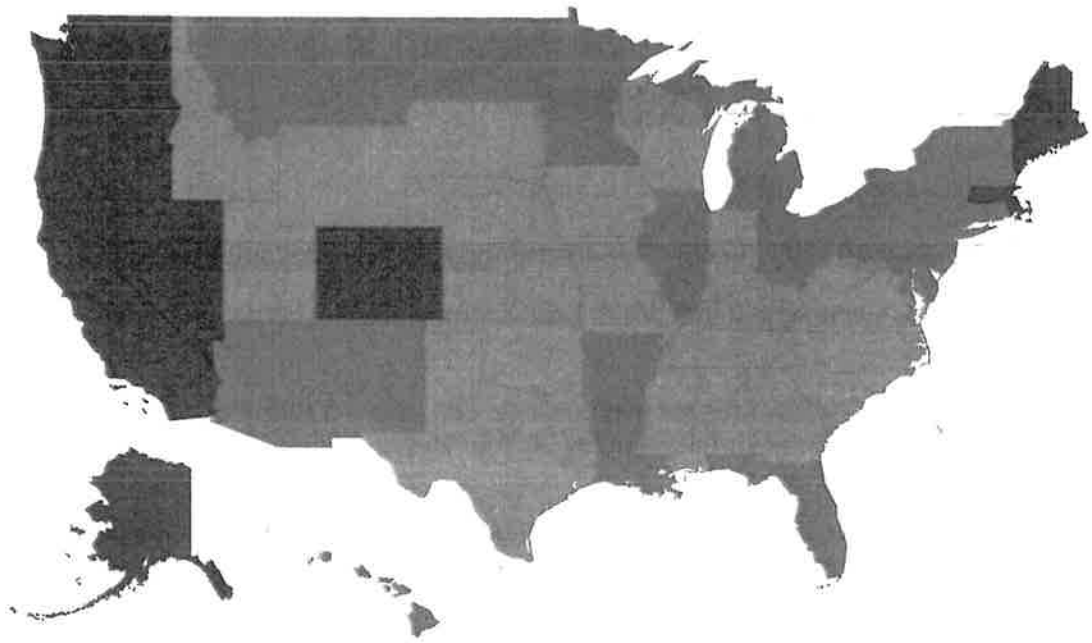
Before Election Day, 26 states and the District of Columbia had legalized medical marijuana, while Alaska, Colorado, Oregon, Washington state and Washington, D.C., had legalized recreational use of the drug.

From a public health standpoint, the effects of legalization are unclear. The American Public Health Association generally supports both medical and recreational legalization but acknowledges it doesn't yet fully understand the impact on one's health and advocates for heavy regulation of the industry.

How the states regulate the exchange, usage and sale of either recreational or medical pot, however, varies in each state.

Here's a map and a breakdown of each state's pot ballot initiative -- and how it fared.

Marijuana State Laws



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focused offices within existing departments -- like public health, revenue and agriculture.

Supporters of the bill outraised opponents 3 to 1. But the Arizona Republican Party came out against recreational marijuana, which was significant in a reliably red state. Voters did, however, legalize medical marijuana in 2010.

In July, opponents of the measure filed a lawsuit, arguing that the ballot language was vague and didn't inform voters as to exactly what they were voting for. A judge, however, dismissed the case earlier this month.

California

Out of the five states with recreational marijuana on the ballot, California was the state always the most likely to pass it.

The state was the first to legalize medical marijuana back in 1996. And this isn't the first time California voters have had pot questions on their ballot: A decriminalization measure appeared on the ballot in 1972 and full legalization in 2010. Both were narrowly defeated.

But it appears that Californians are now ready for recreational pot. The measure was the first one to be called of the 17 ballot measures, with 56 percent in favor, 44 against.

The initiative enacts a 15 percent sales tax along with a cultivation tax of $9.25 per ounce for flowers and $2.75 per ounce for leaves sold in state-regulated retail outlets. It also claims it will "reduce criminal justice costs by tens of millions of dollars annually."

Interestingly, the opposition to legalization in California is largely based on fears of big business overtaking small marijuana farmers -- an issue that the ballot measure addresses by restricting big businesses from obtaining licenses to sell for five years.

Maine

Recreational pot's path to the ballot in Maine was a bumpy one, and the path to legalization was too. After an incredibly tight race, the state called the initiative after 10 a.m. ET Wednesday in favor of the 'yes' vote, with 50.3 percent of residents voting in favor of the measure. Only 9,000 votes separated supporters and opponents.

During the initial review of the more than 99,000 signatures turned in to the state, 31,000 were deemed invalid by Secretary of State Matt Dunlap. That put the number of valid signatures at around 51,000 -- just shy of the 61,123 needed to make the ballot. But a state court demanded Dunlap take another look, and he found 62,848 valid signatures.

Polls showed a tight race, with about 54 percent in favor and 42 percent against the measure. And state leaders from both sides of the aisle -- including Republican Gov. Paul LePage and Democratic Attorney General Janet Mills -- have come out against the measure.

It allows adults to buy and possess 2.5 ounces of marijuana and grow a limited number of plants in their homes. Retailers would be able to sell it with a 10 percent sales tax -- but only with municipal approval, a first for marijuana laws. Revenue generated from the tax would go to school construction.

Maine voters legalized medical marijuana in 1999.

Massachusetts

Massachusetts was undoubtedly the state to watch, and the results were a nailbiter.

There were six different polls conducted over the election season -- four supporting legalization and two rejecting it, but all showed a close race. The average of all six polls showed Massachusetts voters narrowly supporting recreational marijuana 48 percent to 42 percent.

In the end, residents paseed it 53 percent to 47 percent. But it didn't go down without a fight, as it was a divisive issue until the very end.

Gov. Charlie Baker, Boston Mayor Marty Walsh and the Massachusetts Hospital Association opposed legalization. On the other side is former Gov. Bill Weld, Boston City Council President Michelle Wu and the ACLU of Massachusetts.

Residents will now be allowed to grow marijuana and buy it from licensed retail outlets. Only one ounce is allowed in public and up to 10 ounces -- or six plants -- are allowed in homes. Retail marijuana will be subject to the state sales tax in addition to a 3.75 percent excise tax, which will fund the Marijuana Regulation Fund. Colorado is the only other state to add an excise tax to recreational marijuana, at a hefty 15 percent.

Historically, marijuana legalization supporters have had a good track record in Massachusetts. Voters approved a measure to decriminalize possession of small amounts in 2008 and approved a medical marijuana initiative in 2012. Each measure gathered around 63 percent of the vote.

Nevada

The state that's home to Sin City has removed a "sin." Nevada passed the recreational marijuana measure 54 percent to 46 percent.

Supporters massively outraised the opposition -- probably because the opposition didn't raise any money. According to the Nevada Secretary of State's website, the Coalition Against Legalizing Marijuana had no cash on hand.

The state will allow the recreational use of up to one ounce of marijuana from licensed retailers, but prohibit pot shops from opening near schools, houses of worship and child-care facilities -- rules

similar to Alaska, Oregon and Washington's. With a 15 percent excise tax, revenue generated from sales would going to education.

MEDICAL

Arkansas

Arkansas initially had two measures to legalize medical marijuana on the ballot, but the state's Supreme Court struck down one of them less than two weeks before Election Day.

That left Issue 6, which listed far fewer chronic and debilitating conditions that would make someone eligible to use medical pot. The measure also created a Medical Marijuana Commission and put the new tax revenue toward vocational schools, workforce training and the general fund.

But even faced with a more limited ballot measure, Arkansans still voted in favor of medical marijuana, 53 percent to 47 percent.

It could be tough to implement the initiative, though, as it has practically no major support in the state government. The state's surgeon general, Department of Health, governor and U.S. senator all came out in opposition of Issue 6.

Florida

Just two years after voters rejected medical marijuana, Floridians were faced with the question again. This time, they overwhelmingly said yes. Seventy-one percent voted in favor of legalization, 29 percent against. The Florida Constitution requires that ballot measures must gain 60 percent of the popular vote to be enacted, signaling that Floridians felt that legal medical marijuana was overdue for the state.

In 2014, a medical marijuana ballot measure actually won a majority of the vote -- 57 percent -- but was prevented from becoming law because it didn't pass that 60 percent supermajority.

The measure allows patients with conditions like cancer, PTSD, glaucoma and HIV to receive marijuana as treatment. The Florida Department of Health would regulate the production and distribution of patient ID cards.

Montana

Montana has an interesting history with medical marijuana.

The state's voters approved it's use over a decade ago, in 2004, but the legislature repealed it in 2011 after the Drug Enforcement Agency found that medical marijuana businesses were involved in drug trafficking and other crimes.

This year's ballot measure brings that option back and also repeals a former clause that limited the number of medical marijuana patients to three per provider.

It was tough to see how the state would vote on it, but it ultimately passed the measure with 57 percent in favor and 43 percent opposed.

The Democratic candidate for attorney general and the Bozeman city commissioner have both come out in favor of bringing legal medical marijuana back to the state. But Safe Montana -- the opposition campaign -- outraised the supporters $124,000 to $55,000

North Dakota

This is North Dakota's second go-around in attempting to legalize medical marijuana through voters.

In 2012, a measure failed to make the ballot after hundreds of the 13,500 signatures submitted were invalidated. But this year, North Dakotans resoundly voted for a medical marijuana option, with 64 percent voting in favor and 36 percent voting against it.

The new initiative allows medical marijuana to treat debilitating conditions like cancer, AIDS, epilepsy and ALS. Patients would need to obtain ID cards through the Department of Health.

ZONING PRACTICE AUGUST 2016

AMERICAN PLANNING ASSOCIATION

ISSUE NUMBER 8

PRACTICE MARIJUANA LAND USE

Regulating Medical and Recreational Marijuana Land Use

By Lynne A. Williams

Twenty-five states and the District of Columbia allow the cultivation, sale, and use of medical marijuana.

In addition, four states—Colorado, Washington, Oregon, and Alaska—have legalized the cultivation, possession, use, and sale of recreational marijuana, and the District of Columbia has legalized cultivation, possession, and use. In 2016, there will likely be at least five, if not more, states that will vote on the legalization of recreational marijuana, including Arizona, California, Massachusetts, Nevada, and Maine. (For information about individual states and the status of marijuana laws, see norml.org /states.)

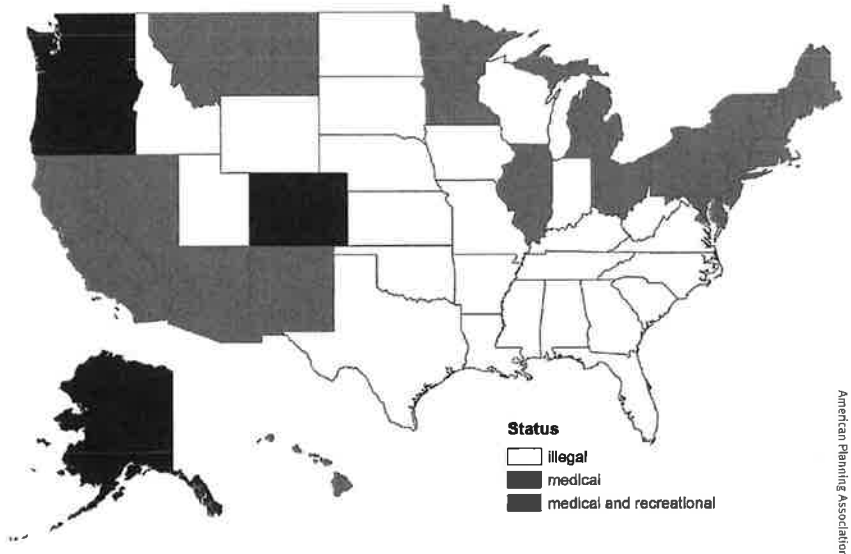
While the legalization of medical marijuana created some land-use issues, for the most part they are simpler and less urgent compared with issues related to the legalization of recreational uses. California failed to even enact a regulatory scheme until late 2015, 19 years after legalizing medical marijuana. During that time, so-called dispensaries proliferated but towns and cities were slow to address potential land-use issues, given the lack of guidance by the state. Maine, which legalized medical marijuana in 1999, did not even allow dispensaries until 2009. So for 10 years Maine's patients got their medicine from a system of individual caregivers, most of whom operated out of their homes or farms and were limited to serving five or fewer patients. However, the legalization of recreational marijuana in a number of states, with more to follow—combined with the possibility of new dispensaries in some states—has spurred towns and cities to begin to discuss land-use issues for marijuana businesses.

Currently, towns, cities, and counties use a wide variety of regulatory tactics to control marijuana businesses and activities, and those tactics break down into two broad groups—business licensing standards and zoning. With respect to medical marijuana uses, most of the focus has been on regulating the siting of dispensaries and cultivation operations through zoning. The types of regulatory schemes established in the newly legalized recreational marijuana states range from localities "opting out" to making a marijuana business a "use by right" in certain districts, with a required permit. Most tactics use both zoning and business licensing regulations, often in combination. For example, a business licensing requirement can be overlaid on a zoning ordinance, so that if a marijuana business use is an allowed use, the business must still obtain a license, and that process would address specific aspects of the business, such as safety issues, noise, odors, parking, traffic, and other impacts.

This article reviews local approaches to regulating medicinal and recreational marijuana. While both medical and recreational marijuana businesses are part of a new economic sector that involves land uses and businesses, heretofore unseen in many communities, there are multiple options that can be implemented. The following sections discuss how these options are being implemented both in jurisdictions that have legalized recreational marijuana as well as in those that have only legalized medical marijuana.

FEDERAL PREEMPTION

Marijuana, whether medical or recreational, continues to be listed on Schedule I of the U.S. Controlled Substances Act (CSA) and is therefore still illegal under federal law. However, the U. S. Department of Justice (DOJ), most recently in 2013, has advised federal prosecutors to refrain from using scarce federal drug enforcement resources to prosecute individuals who are in compliance with state law (Cole 2013).



American Planning Association

As of July 2016, 25 states and the District of Columbia have legalized medical marijuana. Four of those states have also legalized recreational marijuana sale and usage.

This advisory from the DOJ reduced the potential conflict between the federal government and those states that have legalized recreational or medical marijuana. And reducing conflict between the states and the federal government will consequently constrain the ability of a local jurisdiction to successfully ban marijuana businesses based on an argument that such businesses are in violation of the CSA.

Division One of the Arizona Court of Appeals is currently considering a case in which Maricopa County attempted to prevent White Mountain Health Center, a dispensary, from opening (*White Mountain Health Center, Inc. v. Maricopa County et al.*, 1 CA-CV 12-0831). The county argued that denying a dispensary a permit to open is legally permissible since such a business violates the CSA. However, while states can regulate marijuana, they are not required to enforce federal law. In this case, Arizona has legalized medical marijuana and regulates dispensaries, and White Mountain argues that the county's denial of a permit was impermissible in that it conflicted with state law. The *White Mountain* decision will likely be issued soon.

In February 2014, the Michigan Supreme Court declared a city zoning ordinance in Wyoming, Michigan, void because it prohibited uses that were permitted under state law (*Ter Beek v. City of Wyoming,* 846 N.W.2d 531, 495 Mich. 1 (2014)). The plaintiff was a qualifying patient who wished to grow and use marijuana for medical purposes in his home. The town of Wyoming had passed an ordinance prohibiting the activity. The court held that a municipality is precluded from enacting an ordinance if the ordinance directly conflicts with the state's statutory scheme of regulation, in that the ordinance permits what the statute prohibits, or prohibits what the statute permits. In this case, the Michigan Medical Marihuana Act permitted qualified patients to grow their own medicine; therefore, the city could not prohibit such a practice.

MEDICAL MARIJUANA REGULATORY MODELS

The first medical marijuana statute was passed 20 years ago, but in many ways it is only within the last few years that those early statutes have been refined on the local jurisdictional level. Some jurisdictions were required by newly passed state regulations to create local ordinances, such as Humboldt County, California, and the municipalities within the county, while other local jurisdictions, including Detroit, took the initiative following a period of confusion over the definition and regulation of dispensaries.

Humboldt County, California

Earlier this year, California's Humboldt County passed one of the most comprehensive land-use ordinances to date regulating medical marijuana production. The Commercial Medical Marijuana Land Use Ordinance (CMMLUO) passed the Board of Commissioners unanimously, a testament to the many disparate groups coming together to draft the ordinance (Ordinance No. 2544). Much of Humboldt County is unincorporated land, and although there are municipalities in the county, much of the cultivation is done on unincorporated land.

The CMMLUO includes two parts: one regulating the coastal zone and the other regulating inland cultivation. Both zones are regulated according to a list of factors, including whether the applicant is a new or existing grower, the parcel size, the cultivation area size, and whether the proposed grow operation will be outdoors, indoors, or mixed-light, meaning that both natural light and artificial light will be used.

The goal of the CMMLUO is very clear: "to limit and control such cultivation in coordination with the State of California." Although the Compassionate Care Act was passed in 1996—the first medical marijuana law in the country—the state failed to enact medical marijuana regulations until late 2015. Humboldt County was proactive in enacting a countywide ordinance to immediately comply with state law. The ordinance specifically defines exactly what it is regulating. "This section applies to all facilities and activities involved in the Commercial Cultivation, Processing, Manufacture or Distribution of cannabis for medical use, in the County of Humboldt" (CMMLUO §55.4.9). The type of approval necessary for licensing is dependent on the size and current zoning classification of the parcel, as well as the type of state license that the applicant is required to obtain.

The Humboldt municipalities of Arcata and Eureka have also passed ordinances related to cultivation. Arcata essentially permits only small-scale and home cultivation, although those with special needs may request more grow space (Land Use Code §9.42.105). It also enacted a 45 percent tax increase on residences that use more than 600 percent of the energy baseline, with the aim of discouraging indoor growing (Municipal Code §2628.5). Eureka passed a much more restrictive and detailed ordinance, only allowing licensed patients to grow and process medical cannabis within a 50-square-foot area in their residence (§158.010(A)). The ordinance also states that such cultivation will constitute neither a home occupation nor an ancillary use (§158.010(C)). Patient marijuana processing is likewise narrowly regulated (§158.011).

Detroit

Detroit recently passed a medical marijuana ordinance requiring dispensaries, now called

Medical Marijuana Terminology

It is far easier to define recreational marijuana uses by the vocabulary of traditional businesses, such as agricultural, retail, food processing, and the like, than it is to define medical marijuana uses. There is no national consensus on terminology in the medical marijuana arena. In fact, the word "dispensary" has multiple meanings depending on location. In most, but not all, of the medical marijuana states, the term "dispensary" means the entity that distributes medicinal marijuana to qualified patients. This may be a large facility that also cultivates the marijuana (e.g., Maine and Michigan) or a small shop that purchases from independent growers (e.g., California and Arizona). The entity can be a collective, nonprofit, for-profit business, or any other form of entity legal under state law.

In certain states the caregiver system, another form of cultivation and distribution, exists side by side with the dispensary system. Caregivers are state-licensed individuals who grow, process, and distribute medicinal marijuana to a limited number of qualified patients. Caregivers are regulated under state law, but have only recently been subject to land-use regulation. (For a chart detailing the distribution laws under each state that has legalized medicinal marijuana, see tinyurl.com/y2tyn7g.)

Caregiver Centers, to apply to the city for a license (Ordinance 30-15). A subsequent zoning amendment added Caregiver Centers as permissible uses in specific zones and explicitly prohibits them in the Traditional Main Street Overlay and the Gateway Radial Thoroughfare Districts (Ordinance 31-15). Detroit seeks to distribute the Caregiver Centers rather than cluster them in a few areas, since they cannot be less than 1,000 feet from each other nor closer than 1,000 feet from a park, religious institution, or business identified as a controlled use, such as topless clubs and liquor stores. If a business is within 1,000 feet of any of these land uses, the board of zoning appeals allows for a variance process that could still allow the facility to establish or continue to operate. The city's Buildings, Safety, Engineering, and Environmental Department can also approve variances.

If, however, the parcel in question is less than 1,000 feet from the city-defined Drug Free Zones, that option is not available. No variance is allowed for parcels falling into these buffer zones, and there are many such buffers zones. The federal Drug Free School Zone applies just to libraries and K–12 schools. However, the Detroit version includes arcades, child care centers, youth activity centers, public housing, outdoor recreation areas, and all educational institutions, including all of their properties. In the industrial districts, the centers can be less than 1,000 feet from each other to allow for some clustering, and the buffer zone from residential areas is waived.

An individual who cultivates marijuana in a residence in Detroit is required to register as a home-based occupation. The city's licensing standards state: "Except for home occupations . . . no person shall dispense, cultivate or provide medical marijuana under the Act except at a medical marihuana caregiver center" (§24-13-4). That registration process involves inspection and approval by numerous city agencies.

Maine

Maine passed its medical marijuana law in 1999, but it was not until 2009 that dispensaries were allowed there. Up until that time, patients received their medicine from a caregiver, individuals licensed to grow and distribute medicinal marijuana to no more than five patients. That system remains operational, with over 2,000 caregivers, and is greatly favored by many patients in the state. There has been little impact of land-use regulation on caregivers, for a number of reasons. The fact that an individual is a caregiver is kept confidential by the state, so a town doesn't really know who the caregivers are. Until a year or two ago, caregivers mainly grew their plants and serviced their patients out of their homes, and many towns essentially allow home occupations with few, if any, restrictions.

In the last two years, however, there has been an increase in the number of caregivers leasing commercial space, primarily in light industrial zones. Thus the towns where this is occurring will need to decide whether they wish to develop special regulations for buildings housing multiple caregivers in industrial zones. There is no state law prohibiting this practice, even though under state law each caregiver must have his or her own locked space within the building, and that space must be inaccessible to anyone else except their one employee. Some towns maintain that any growing of plants by a caregiver, whether indoors or outdoors, is an agricultural use, thereby preventing multiple caregivers from leasing grow spaces in an industrial space. Conversely, those towns that classify caregiving as a light industrial use will have to contend with outdoor cultivation and grow operations in homes and on farms in residential districts.

Maine towns that have chosen to refine their land-use ordinances to address medical marijuana caregiving share some common goals: updating existing site plan review requirements, if needed; defining the caregiver land-use category; considering a "safe zone" as an overlay zone, thereby requiring greater setback distances than other uses in the zone; instituting fencing and setback requirements on outdoor cultivation; and considering standards for multiple caregiver facilities.

In 2009, the Maine Medical Use of Marijuana Act was amended to allow eight dispensaries in the state, one in each of eight regions. Even though the cap on dispensaries has been reached, some towns with land-use ordinances are struggling to find ways to regulate dispensary locations if the cap is lifted. State law is clear that a town cannot ban dispensaries but can limit the number to one. In general, what a number of towns are attempting to do is bring dispensary siting under site plan review and define what zone or zones are appropriate for a dispensary. Often the dispensaries are relegated to one, or a few, locations, a form of cluster zoning rather than keeping dispensaries and other marijuana businesses a distance away from each other. A few towns are looking at an

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A former fast food restaurant in California was converted into a medical marijuana dispensary.

overlay district, which would impose additional controls and an additional form of review, over dispensary siting.

RECREATIONAL MARIJUANA REGULATORY MODELS

Towns, cities, and counties within states that have legalized recreational marijuana have taken very different regulatory tacks. For example, the state of Washington has practically subsumed the Washington medical marijuana program into the recreational legalization scheme, in a bill passed in April 2015 that will be implemented in 2016. And Oregon, while keeping the medical program separate from the regulation of recreational marijuana businesses, has imposed strict new rules on the medical growers and patients.

A key issue for states that have legalized recreational marijuana is where marijuana may be smoked or vaped. None of the legalization statutes permit smoking marijuana in public, so, particularly in communities with a large number of tourists, the issue of consumption location is a critical one. Although a tourist can purchase marijuana, smoking might not be allowed in a hotel or motel room. To address this issue, some jurisdictions are looking at permitting so-called "social clubs," similar to cigar bars, where visitors could smoke or consume marijuana. None of the four states that have legalized recreational marijuana included social clubs in their statutes. However, a pending rule change in Alaska would allow existing marijuana retail stores to purchase a separate license for a "consumption area." And in November, Denver voters will consider a measure that would allow the consumption of marijuana—but not sales—at private social clubs and during private events if the organizers obtain a permit.

Below is a discussion of local prohibition in Pueblo, Colorado, and use by right in Pueblo County; traditional zoning and business permitting in Seattle; a focus on farmland preservation and opt-in/opt-out in Oregon; and a focus on business licensing, as opposed to zoning-based controls, in Denver.

Pueblo County, Colorado

In 2012, Colorado Amendment 64 gave local governments the power to decide whether and how to permit recreational marijuana within their community. A 2014 annual report stated that as of that time 228 Colorado local jurisdictions had voted to ban medical and retail marijuana operations. The city of Pueblo banned recreational marijuana retail stores within city limits and had formerly placed a moratorium on medical marijuana dispensaries.

However, Pueblo County, which governs all unincorporated land in the county, acted differently, making marijuana businesses a by-right use in commercial and industrial districts, thereby allowing such businesses to avoid lengthy governmental reviews (§§17.120.190–240). In addition, the county also made marijuana cultivation a by-right use, apparently the first Colorado county to do so. The county also passed rules mandating a five-mile distance between hemp growing areas and existing marijuana growing areas so as to avoid cross-contamination (§17.120.280). In addition to land-use regulation, the Pueblo Board of Water Works passed its own resolution to address the fact that the Federal Bureau of Reclamation prohibits the use of federal water for marijuana cultivation (Resolution No. 2014-04). The water board subsequently concluded that they could lease up to 800 acre-feet of water to marijuana cultivators each year (Resolution No. 2014-05).

Seattle

Washington voters approved Initiative 502, legalizing recreational marijuana, in 2012. The year before, Seattle had passed Ordinance 123661, clarifying that all marijuana businesses, including manufacture, processing, possession, transportation, dispensing and the like, must be in compliance with all city laws, as well as applicable state laws. In 2013, the city amended its zoning ordinance to specify where larger-scale marijuana business activities could locate (§23.42.058). The specific activities include processing, selling, delivery, and the creation of marijuana-infused products and usable marijuana. While these activities are prohibited in residential, neighborhood commercial, certain downtown, and several historic preservation and other special-purpose districts, the zoning ordinance does not require a land-use permit to specifically conduct marijuana-related activities in industrial, most commercial, and a few downtown districts.

For example, an applicant who wishes to open a marijuana retail store or an agricultural application is required to get the applicable permit, but is not required to disclose that the use is marijuana related. The ordinance does, however, impose a size limit on indoor agricultural operations in industrial areas, but this applies to all agricultural uses in industrial areas, not just marijuana production (§23.50.012, Table A, Note 14).

Meanwhile, state law further restricts permissible locations for marijuana businesses. The state will not grant a license to any marijuana business within 1,000 feet of an elementary or secondary school, playground, recreation center, child care center, park, public transportation center, library, or game arcade that allows minors to enter.

Oregon

The voters of Oregon passed Measure 91 in 2014, legalizing recreational marijuana and related businesses, and the legislature enacted HB 340 in July 2015, thereby establishing a regulatory framework for such businesses.

Farmland preservation is one of the major objectives of land-use regulation in Oregon. Following the passage of Measure 91, a "local option" was created, whereby a local government in a county where at least 55 percent of the voters opposed Measure 91 could opt out of permitting marijuana businesses. The local government had 180 days from the passage of HB 340 to choose to opt out. Local governments in counties where more than 45 percent of the voters supported Measure 91 could refer an opt-out measure to the local electorate for a vote.

Many local governments have chosen to opt out, including a number of rural towns and larger municipalities such as Grant's Pass and Klamath Falls (Oregon Liquor Control Commission 2016). Medford has banned retail marijuana businesses but permits producers and processors. However, some of the towns and cities still need to hold a general referendum on the issue in November 2016.

Portland has chosen to take a two-pronged approach to the regulation of marijuana businesses. The city's zoning authority has not adopted rules governing the zoning of marijuana businesses, but is applying the city's general development rules to them. Those rules include such standards as setbacks, conditional uses, parking height limitations, lot coverage, and the like that are specific to each zone. Therefore, if a marijuana retail business wishes to locate in a retail district, it would be allowed to do so provided the proposed business complies with the relevant general development rules in that district. However, the city does require that such businesses get a special license, and the licensing provisions stipulate a 1,000-foot buffer between retail marijuana

businesses (Chapter 14B.130). As another example, Bend's development code allows retail marijuana businesses in commercial zones and production and processing in industrial zones with certain restrictions, including visual screening, security, and lighting requirements (Development Code §3.6.300.P).

Oregon state law requires non-opt-out rural counties to treat cultivation businesses as a permitted farm use in the farm use zone, but these counties have discretion about how they treat production in other zones. Clackamas County, for example, treats marijuana cultivation as a farm use in other natural resource zones, including forest zones and mixed farm-forest zones (§12.841).

Denver

Denver licenses four types of retail recreational marijuana-related businesses: retail stores, optional premises cultivation, infused products manufacturing, and marijuana testing facilities (§§6-200–220). The city made a conscious decision not to regulate marijuana businesses as distinct land-use categories, but its licensing standards do cross-reference the zoning code. Denver also grandfathered business locations that existed before the licensing regulations were implemented. This mainly benefitted medical marijuana dispensaries that had been in place before Denver adopted a new zoning code in 2010.

The city regulates medical marijuana establishments under a separate set of provisions in the Health and Sanitation section of its code (§§24-501–515).

Denver currently prohibits medical and recreational retail stores in any residential zone, any "embedded retail" district (small retail district embedded in a residential district), any location prohibiting retail sales, and within 1,000 feet of any school or child care center, any alcohol or drug treatment facility, and any other medical marijuana center or dispensary or retail marijuana store. However, the distance requirements are computed differently for medical marijuana centers versus retail stores. The medical marijuana center regulations use a measurement called a "route of direct pedestrian access," and the retail stores regulations use a computation "by direct measurement in a straight line."

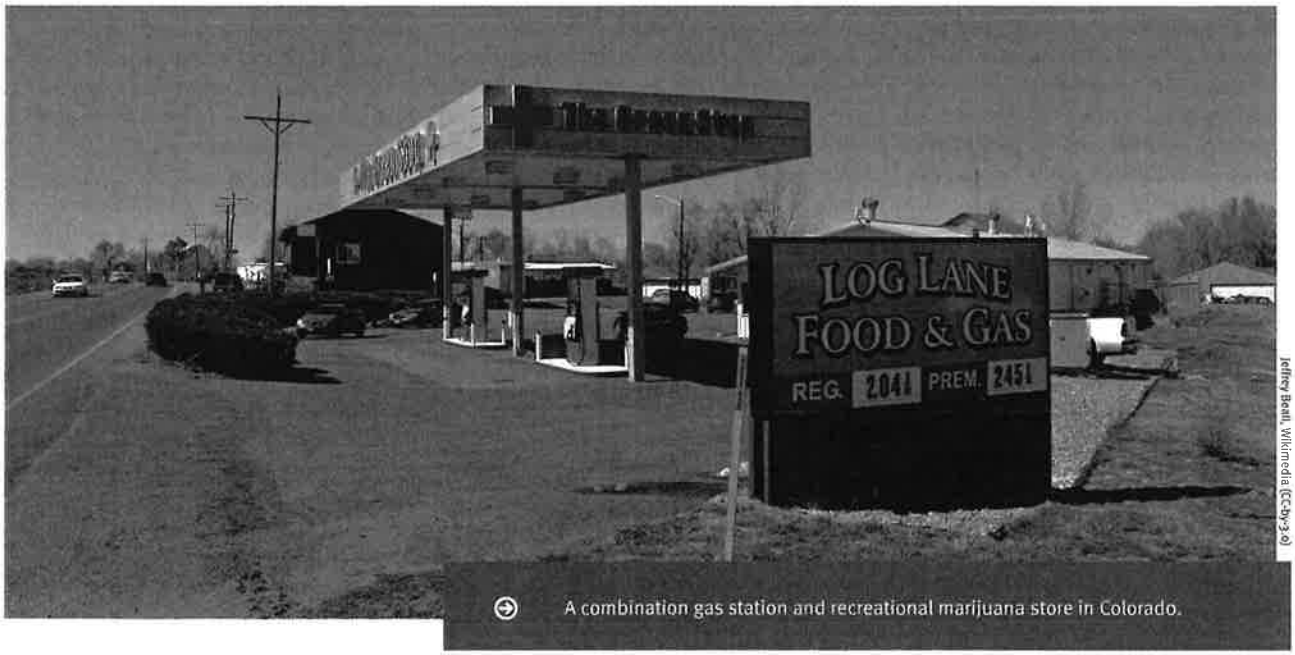
Denver's retail and medical marijuana regulations allow cultivation in any location where plant husbandry is a permitted use, and grandfathering is allowed in these zones. The regulations also allow licensing for marijuana-infused products on a lot in any zone where food preparation and sales or manufacturing, fabrication, and assembly are permitted.

PLANNING TO PLAN

Over my years as an attorney in the land-use arena, I have seen numerous towns and cities start down the path of amending their land-use ordinance without answering certain basic questions. Often this is based on a failure to identify what sorts of as yet unheard-of businesses or other operations might, one day, file for site plan review—or, more troubling, *not* file for site plan review because the use is not covered by the land-use ordinance. However, it is at just this time that the local government must act thoughtfully and not overreact. Rather, the locality should answer certain questions.

First, should marijuana businesses be subject to special regulatory controls? If not, what category of use does a specific marijuana business fall into? Without special regulatory controls it will be governed just as any similar use is governed.

For example, California passed the first medical marijuana law in 1996, but since then there has been a problem defining a medical marijuana business. Is a dispensary retail or light industrial? Is a caregiver agricultural, home occupation, or light industrial? Is an outdoor cultivation operation agricultural and an indoor cultivation operation a home occupation or light industrial? Additionally, will the regulation of marijuana businesses include only land-use controls, only licensing requirements, or a combination of both? There are no clear answers to these questions, but in order to regulate successfully, each town must find its own answers.



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A combination gas station and recreational marijuana store in Colorado.

Additionally, since all operative medical and recreational marijuana laws are based on statewide statutes, a locality must also address whether a proposed ordinance is in compliance with state law. In most, if not all, statewide marijuana laws, there is either a statement, or an unstated inference that the state has occupied the field of marijuana regulation, and that local ordinances cannot conflict with, or frustrate the intent of, state laws.

Many courts throughout the country have expressed the following sentiment: "A municipality may prescribe the business uses which are permitted in particular districts but to prohibit the sale of all intoxicating beverages or other activities where such sale has been licensed by the state is to infringe upon the power of the state" (*Town of Onondaga v. Hubbell,* 8 N.Y.2d 1039 (1960)). Even home rule, in home-rule states, has its limitations.

Even using zoning in combination with business licensing can create problems. A case currently making its way through the Maine court system is a challenge to a local ordinance that requires medical marijuana caregivers to come to a public meeting in order to request a business permit.

The plaintiffs argue that the ordinance is a violation of state law, which clearly states that the identity of all caregivers must remain confidential, and makes disclosure of such information a civil violation with a fine imposed (*John Does 1–10 v. Town of York*, ALFSC-CV-2015-87). However, as caregivers begin to move away from home cultivation into leased industrial space, a town could conceivably require a non-caregiver landlord, who rents to caregivers, to obtain a business permit.

Conversely, under adult recreational statues in those states that have legalized recreational marijuana—as well as under the initiatives to be voted on in November 2016—the identity of the businesses seeking state licensure is not confidential. Municipalities and counties will therefore be able to determine the proposed business use, its suitability in a zone or district, and whether or not a business license is required, thereby moving marijuana land-use away from the often vague regulatory system of medical marijuana to the well-known structure of land-use regulation and business licensure.

Medical marijuana regulatory systems will still exist in most states that have legalized it, but it is likely that the majority of businesses in the marijuana sector will be recreational, rather than medical, and therefore more easily regulated by municipalities and counties.

CONCLUSION

The public is overwhelmingly in support of legalization of recreational marijuana. A recent Associated Press/University of Chicago poll indicated that 63 percent of those polled support legalization, although when broken down into medical and recreational, a smaller number, yet still a majority, supported recreational. That said, however, 89 percent of millennials, now the country's largest generation, support complete legalization (Bentley 2016). As with medical marijuana legalization, as more states legalize, even more states will likely follow suit.

It is, therefore, incumbent on towns, cities, and counties to become educated on their state's statutes and the local regulations that have been passed or will likely be passed in the future, and to draft land-use ordinances that address, in the ways most appropriate to the locality, the proliferation of medical marijuana and recreational marijuana uses.

Since most states have not yet legalized recreational marijuana, now is definitely the time to study and address the land-use issues that legalization may raise.

ABOUT THE AUTHOR

Lynne A. Williams is an attorney based in Bar Harbor, Maine, and she practices throughout the state. Her practice consists of land use, administrative litigation, and cannabis law. She was formerly the chair of the Bar Harbor Planning Board and is currently a member of the Harbor Committee of Bar Harbor.

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HOW DOES YOUR COMMUNITY REGULATE MARIJUANA LAND USES?

8

ALACHUA COUNTY
BOARD OF COUNTY COMMISSIONERS

ORDINANCE 16-
(Unified Land Development Code Amendment)

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY FLORIDA AMENDING THE UNIFIED LAND DEVELOPMENT CODE IN THE ALACHUA COUNTY CODE OF ORDINANCES, PART III, RELATING TO THE REGULATION OF THE USE AND DEVELOPMENT OF LAND IN THE UNINCORPORATED AREA OF ALACHUA COUNTY, FLORIDA; INCLUDING AMENDMENTS TO CHAPTER 404 USE REGULATIONS, ARTICLE 2 USE TABLE, ARTICLE 9 HEALTH AND MEDICAL FACILITIES AND CHAPTER 410 DEFINITIONS ARTICLE 3 DEFINED TERMS FOR MEDICAL MARIJUANA DISPENSARIES; PROVIDING A REPEALING CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE AND CORRECTION OF SCRIVENER'S ERRORS; PROVIDING FOR LIBERAL CONSTRUCTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Alachua County, Florida, is authorized, empowered and directed to adopt land development regulations to implement the Comprehensive Plan and to guide and regulate the growth and development of the County in accordance with the Local Government Comprehensive Planning and Land Development Regulation Act (Section 163.3161 et seq.,) Florida Statutes; and

WHEREAS, the Board of County Commissioners of Alachua County adopted its 2001-2020 Comprehensive Plan, which became effective on May 2, 2005; and

WHEREAS, the Board of County Commissioners of Alachua County adopted its Unified Land Development Code, which became effective on January 30, 2006; and

WHEREAS, the Board of County Commissioners of Alachua County, Florida, wishes to make amendments to the Alachua County Code of Ordinances Part III, Unified Land Development Code, relating to development of land in Alachua County; and

WHEREAS, the Board of County Commissioners, acting as the Land Development Regulation Commission, has determined that the land development regulations that are the subject of this ordinance are consistent with the Alachua County Comprehensive Plan; and,

WHEREAS, the Board of County Commissioners, acting as the Land Development Regulation Commission, has determined that regulations for the location of medical marijuana dispensaries are necessary to aid in the prevention of cannabis distribution to minors; and,

WHEREAS, duly noticed public hearings were conducted on such proposed amendments on July 12, 2016 and August 9, 2016 by the Board of County Commissioners, with the hearings being held after 5:00 o'clock p.m.;

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

Section 1. Legislative Findings of Fact. The Board of County Commissioners of Alachua County, Florida, finds and declares that all the statements set forth in the preamble of this ordinance are true and correct.

Section 2. Unified Land Development Code. The Unified Land Development Code of the Alachua County Code of Ordinances Part III is hereby amended as shown in Exhibits "A" and "B" attached hereto.

Section 3. Repealing Clause. All ordinances or parts of ordinances in conflict herewith are, to the extent of the conflict, hereby repealed.

Section 4. Inclusion in the Code, Scrivener's Error. It is the intention of the Board of County Commissioners of Alachua County, Florida, and it is hereby provided that, at such time as the Development Regulations of Alachua County are codified, the provisions of this ordinance shall become and be made part of the Unified Land Development Code of Alachua County,

Florida; that the sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate designation. The correction of typographical errors that do not affect the intent of the ordinance may be authorized by the County Manager or designee, without public hearing, by filing a corrected or re-codified copy of the same with the Clerk of the Circuit Court.

Section 5. Ordinance to be Liberally Construed. This ordinance shall be liberally construed in order to effectively carry out the purposes hereof which are deemed not to adversely affect public health, safety, or welfare.

Section 6. Severability. If any section, phrase, sentence or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 7. Effective Date. A certified copy of this ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners, and shall take effect upon filing with the Department of State.

DULY ADOPTED in regular session, this 9th day of August, 2016.

BOARD OF COUNTY COMMISSIONERS OF
ALACHUA COUNTY, FLORIDA

ATTEST:

By: _____
Robert Hutchinson, Chair

_____
J. K. Irby, Clerk

APPROVED AS TO FORM

_____
County Attorney

(SEAL)

APPROVED AS TO CONTENT

_____
Steven Lachnicht, Director
Growth Management

Exhibit A

404.45 Medical Marijuana Dispensary

Medical marijuana dispensaries distributing low-THC and medical cannabis for therapeutic purposes are allowed as limited uses in the BR, BR-1, BH, BA, BA-1 and HM districts, subject to the following standards.

(a) Separation Requirements for Medical Marijuana Dispensaries

1. Generally

Medical marijuana dispensaries shall be permitted only in those zoning districts in which a medical marijuana dispensary is listed as a limited use in this Chapter.

Minimum Separation Standards for Medical Marijuana Dispensaries

Existing Use or District	
School	750 ft

2. Measurement

Measurements shall be made from the nearest property line of the use that is not a medical marijuana dispensary to the nearest property line of the medical marijuana dispensary. If the medical marijuana dispensary is located in a multi-tenant building, then the distance shall be measured from the nearest property line of the use that is not a medical marijuana dispensary to the nearest line of the leasehold or other space actually controlled or occupied by the medical marijuana dispensary.

3. Limitations

a. School

The separation requirement from a "school" shall apply only if one or more of the following applies:

1. the school is an educational facility (public) as defined in Chapter 410, Article 3 of the Unified Land Development Code; or
2. the school has been in operation at the same location for one year or more; or
3. the location at which the school is now operating is owned by the organization operating the school.

Chapter 410 - Article 3 Defined Terms

Cannabis (Low-THC) – A plant of the genus , *Cannabis,* the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such a plant; or any compound, manufacture, salt derivative, mixture or preparation of such plant or its seeds that is dispensed only from a dispensing organization

Cannabis (Medical) – A plant of the genus , *Cannabis,* whether growing or not; the resin extracted from any part of such a plant; or any compound, manufacture, salt derivative, mixture or preparation of such plant or its seeds that is dispensed only from a dispensing organization for medical use by an eligible patient as defined in s. 499.0295

Medical Marijuana Dispensary – A dispensary organization approved by the Florida Department of Health pursuant to and in accordance with the regulations set forth in the 'Compassionate Medical Cannabis Act of 2014' (as amended on March 25, 2016 and codified in Section 381.986, Florida Statutes) to dispense low-THC and medical cannabis to Florida residents who have been added to the state compassionate use registry by a physician licensed under Chapter 458 or Chapter 459, Florida Statutes, because the patient is suffering from cancer or a physical condition that chronically produces symptoms of seizures or severe and persistant muscle spams with no other satisfactory alternative treatment options.

Exhibit B

Chapter 404. Use Regulations
Article 2. Use Table

Use Categories	Specific Uses	A	A-RB	C-1	RE, RE-1	R1-aa, R-1a	R-1b	R-1c	R-2, R-2a, R-3	RM	RM-1	RP	AP	HM	BP	BR	BR-1	BH	BA, BA-1	BW	ML	MS, MP	MB	Standards
Key: P = Permitted Use L = Limited Use SE = Special Exception SU= Special Use A = Accessory Use NA = Not Applicable																								
Health and Medical Facilities	Hospital													P										
	Medical clinic or lab	SE	P									P	P	P	P	P	P	P	P	P	P	P	P	
	Medical Marijuana Dispensary													L		L	L	L	L					§404.45
	Veterinary clinic or hospital	SE	L										L		L	L	L	L	L	L		L	L	§404.46
	Massage therapist														L	L	L	L	L	L			L	§404.47

EXHIBIT
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B-9

Medical Marijuana Dispensary Zoning & Buffer Map