



In The Weeds: *The Municipality's Response to Medical Marijuana*

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(From FCCMA 2016
Fall Symposium:
"MARIJUANA: What Does
it mean for your
Local Government"

* = Florida City & County
Management Association
** : Oct. 20, 2016 9:00 Am - 3:00 Pm,
Haines City, Florida

National Background

27 States plus Washington, D.C. have legalized or decriminalized medical marijuana

4 States and Washington, D.C. have legalized recreational marijuana (Colorado, Washington, Oregon and Alaska)

Pro-Legalization Trend

5 States have ballot measures to legalize recreational marijuana in November 2016 (California, Maine, Massachusetts, Arizona and Nevada)

Interaction with Federal Law

- A number of federal bills have been introduced this year proposing to change the status of marijuana, address banking issues, and provide more research alternatives. The Obama administration has refrained from heavy-handed enforcement in legalized states.
- But the Federal Controlled Substances Act (CSA) still classifies marijuana and THC as Schedule 1 controlled substances, and prohibits the production, distribution and use of marijuana, for medical or recreational purposes. The Attorney General recently declined to remove marijuana from the list of Schedule 1 drugs.
- Schedule 1 means a legal presumption of no medical benefit.

Interaction with Federal Law

- Federal Government still has regulatory and enforcement standing throughout the Country – regardless of State regulations allowing the use of marijuana
- All State regulations point out that **everyone who uses, produces, or distributes marijuana – whether for medical or recreational use – is subject to federal law**
- Ability to deny a land use or zoning approval based on federal law?

2014 Constitutional Amendment 2

Medical Marijuana

TITLE: Use of Marijuana for Certain Medical Conditions

Ballot Question on the November 4, 2014 Election

Received 58% of the vote – failed to receive the required 60% necessary for a Constitutional Amendment

2016 Constitutional Amendment

- In response to the 2014 Election, a new petition for a Constitutional Amendment was filed for 2016 Election. According to drafters, the 2014 Amendment was rewritten for 2016 in an attempt to answer key issues raised by opposition.
- Much is the same as in 2014, including:
 - Any type of marijuana could be used, including varieties with euphoric "high" effect
 - Any form of consumption, including smoking
 - No provision for local government revenue
 - Similar implementation structure

2016 Constitutional Amendment

- Differences from 2014 include:
 - Broader list of qualifying medical conditions than state law, with narrower catchall phrase
 - More limited immunities for doctors
 - Parental consent for minor patients
- Worthy of thought
 - "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."
 - "Nothing in this section requires the violation of federal law or purports to give immunity under federal law."

2016 Constitutional Amendment

"Debilitating Medical Condition"

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

State Law Authorizes Compassionate Use of Marijuana

2014- SB 1030, modified in 2016 (codified in
§ 381.986 Florida Statutes)

– “Compassionate Use of Low-THC and Medical
Cannabis”

- No smoking
- Limited qualifying illnesses (broadened in 2016) -
cancer or a physical medical condition that
chronically produces symptoms of seizures or severe
and persistent muscle spasms

State Law Authorizes Compassionate Use of Marijuana

- No provision for local government revenue
- Regulation of the cultivation and processing of medical or low-THC cannabis by dispensing organizations are preempted to the state.
- A county or municipality may (by ordinance) adopt 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 boundaries.
- Implemented by the Department of Health (DOH)

2014 State Law Authorizes Compassionate Use of Marijuana

- 6 approved dispensing organizations (additional organizations can be approved upon registration of 250,000 active qualified patients in the compassionate use registry)
- First retail location opened in Tallahassee on July 26, 2016

State Law Authorizes Compassionate Use of Medical Marijuana

- Low THC Cannabis (Non-euphoric)
- Medical Cannabis (Euphoric) for patients, with a terminal condition that "will result in death within 1 year after diagnosis if the condition runs its normal course" (**§ 499.0295 Florida Statutes**)
- Terminal condition must be attested to by patient's physician and confirmed by a second physician specializing in the relevant condition

Local Government Issues with Medical Marijuana

- Local Government as Regulator
 - Zoning/Land Use Regulations—Prohibition or Regulation
 - Business Regulations
- Local Government as Employer

Zoning and Land Use: Prohibit or Regulate?

• Ability to Prohibit

- Cultivation and processing preempted to state under Florida Statutes – cannot prohibit .
- Prohibit under Federal supremacy?
- Caselaw from other jurisdictions is of limited value. Each constitutional amendment or statute is differently worded, and states have different preemption doctrines and home rule doctrines.
- Constitutional amendment focuses on use, and is silent on local regulation of marijuana-related land uses. Fundamental right?

In considering whether to prohibit or regulate, officials should consider the full impacts of prohibiting. For instance, if not prohibited, distribution can be regulated, but if prohibited, does the prohibition create a large unregulated delivery service? Prohibition of the location of grow/dispensing facilities does not prohibit use, consumption or possession, thus area residents will obtain the product somewhere or somehow.

Land Use Requirements

1. Zoning District

Spacing restrictions (Other treatment centers, residential, schools, churches, parks, playgrounds, libraries, day care, child care, arcades open to under 21, Doctor's offices/medical facilities), Parking requirements, Signage, Drive-through limitations

2. Siting - Size of parcel (Maximum or minimum), Attached or freestanding

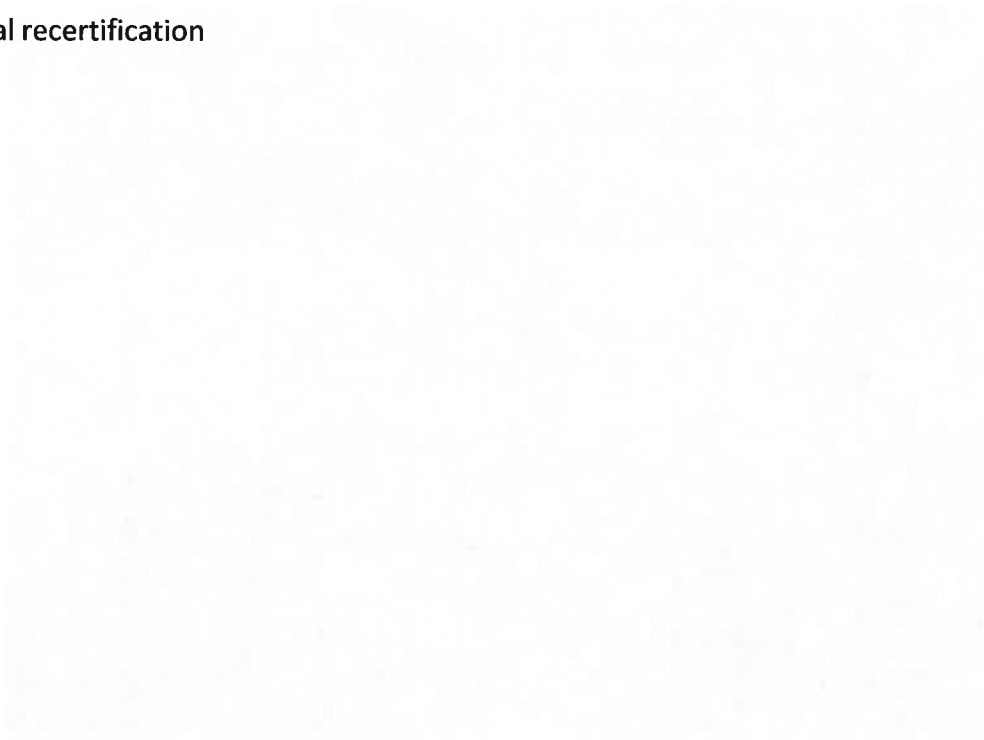
This whole scheme is very similar to how local governments regulate pill mills, or adult uses, or pawn shops and other types of uses which have negative secondary effects on the community. These are not protected 1st amendment uses. But do make sure you have a rational basis for establishing any requirements.

3. Procedures

Conditional Use - Revocable upon (conditional use AND business license?) (Certain types of illegal activity) multiple loitering charges related to property, Loss of state license, Cancellation of lease for any reason, Refusal to permit inspection

Licensing

Annual recertification



Zoning and Land Use: Prohibit or Regulate?

- **Ability to Prohibit**

- Prohibition of retail facilities may be preempted by future state law. Early regulators may—or may not—be grandfathered from future preemption.
- Issues for regulating/prohibiting cultivation facilities
 - Preempted to state
 - Right to Farm Act
 - Section 604.50, Fla. Stat.: "...any nonresidential farm building...located on lands used for bona fide agricultural purposes is exempt from the Florida Building Code and any county or municipal code or fee...."

Zoning and Land Use: Prohibit or Regulate?

• Impacts of Prohibition

- Prohibition of growing, processing and retailing facilities in your city does not affect use. A local effort to prohibit all use would be in conflict with both the state law and the constitutional amendment.
- If use, consumption and possession are legal, your residents will obtain the product somewhere or somehow. Creating a market for a large unregulated delivery service? Easier to control if there is a business premises in your jurisdiction?

Zoning and Land Use Regulatory Options

Land Use and Zoning Requirements

1. Select zoning district(s)
2. Spacing restrictions from protected uses
3. Other development standards

Siting Issues

1. Maximum or minimum size of parcel
2. Attached or freestanding
3. Parking standards
4. Drive through?



Zoning and Land Use Regulatory Options

Procedures

1. Special exception/conditional use
 - Triggers for revocation:
 - Refusal of request for inspection
 - Specified activities – criminal acts, loitering
 - Loss of state approvals
 - Change of location
 - Limited term - Annual or biennial recertification that local and state approvals remain valid
2. Require Business Permit

Options for Business Regulations

Business regulations

- Annual Medical Marijuana Permit requirements, authorizing inspection on demand
- Increased maintenance of the business premises and surrounding areas; clean up bond for grow facilities
- Real property requirements – No leasing? Special owner authorization letter? Require lease to disclose use?
- Hours of operation
- Odor mitigation



Business Regulations – include in licensing requirements

real property requirements

Own land – no leases

provide copy of lease agreement

Lease agreement required to include identification of use

Property inspections by local government staff at any time

hours of operation

security

off-duty police

video surveillance

vault

Background checks

Under age not prohibited in facility/on property

Clean up bond if more than dispensing (grow facility)

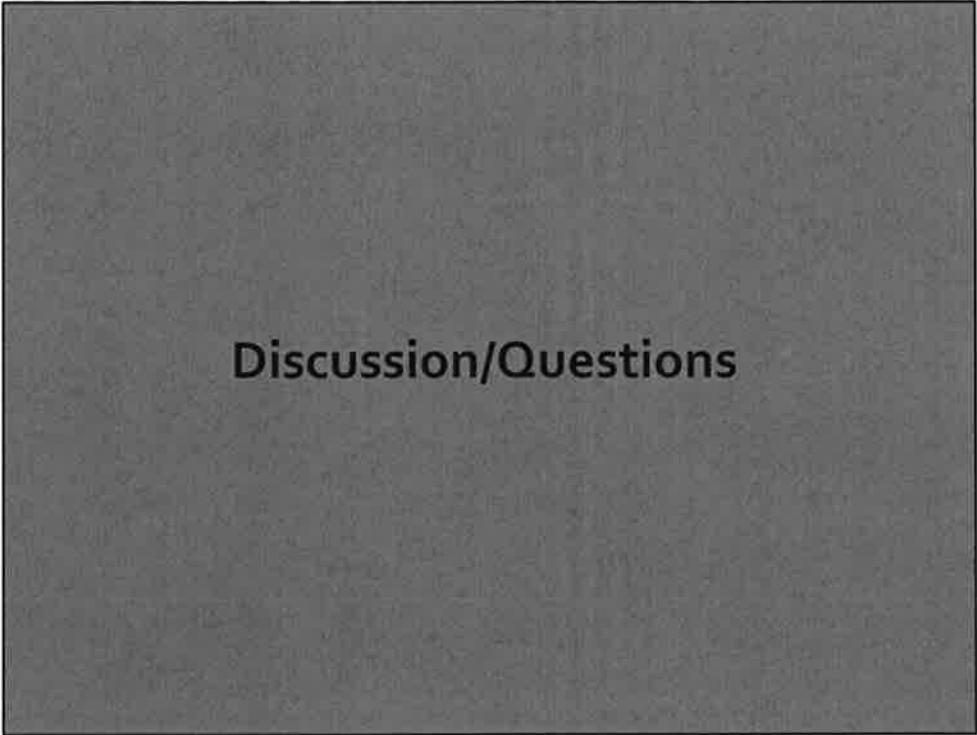
Indoor/outdoor queuing requirements

Options for Business Regulations

- Prohibit minors
- Queuing regulations
- Security
- Fees
 - Application
 - Permitting

Conclusions

- Existing state law authorizes limited medical marijuana use (non-euphoric, limited diseases), and medical marijuana (euphoric) for terminal patients.
- Determining how you want to address marijuana-related land uses, before you are asked, puts you in control.
 - Regulate or prohibit?
 - May or may not be preempted by future state law
 - May or may not be grandfathered
 - Approved dispensing organizations are looking for sites now, so local government action before there are investment-backed expectations keeps the local government in control



Discussion/Questions



Legislative File #160395B
 From Gainesville
 City Attorney's
 Office

Medical Marijuana

Municipality	Provisions	Ord. No.	Date
Cape Canaveral Brevard County	Ordinance being revised by City Attorney; will be presented to P&Z in July and presented to City Council in August.		August 25, 2014
Cocoa Brevard County	Sheriff Wayne Ivey: Presented Florida Constitutional Amendment on Use of Marijuana for Certain Medical Conditions.		June 10, 2014
Cocoa Beach Brevard County	Dispensaries allowed as Special Exception Use in the General Commercial (CG) zoning; 1,000' from any school or church; 200' from residential; prohibited in CRA; no onsite marijuana cultivation; no loitering; no drive-through service; no on-site consumption of marijuana and/or alcohol; 200' from arterial roads; operating hours	1581*	June 19, 2014 (4-1)
Grant-Valkaria Brevard County	Dispensaries as a Conditional Use Permit in Industrial Light (IU) and Industrial Heavy (IU-1) zoning; siting standards and requirements	2014-04	August 13, 2014 2 nd reading
Indian Harbour Beach Brevard County	<i>City Attorney advised Council to begin thinking about an ordinance or a moratorium</i>		April 8, 2014
Indialantic Brevard County	<i>No Action</i>		
Malabar Brevard County	City Attorney recommended council discussion to prepare for referendum passage		April 21, 2014
Melbourne Brevard County	<i>No Action</i>		
Palm Bay Brevard County	<i>No Action</i>		
Palm Shores Brevard County	Dispensaries only with Conditional Use Permit in Light Industrial (M-1); no loitering; no drive through service; no outside display; no alcohol; 2,500' from any school, park, or another dispensary; no delivery; no vending machines; signage; security; permit revocation terms	2014-06	May 27, 2014 (5-0)
Rockledge Brevard County	<i>No Action</i>		
Satellite Beach Brevard County	<i>No Action</i>		
West Melbourne Brevard County	<i>No Action</i>		
Brevard County	Citizen requested Dispensary zoning regulation discussion; Commission requested a staff report		July 8, 2014
Edgewood	Prohibits dispensaries, cannabis farms and non-	2014-04	June 17, 2014

Orange County	medical marijuana sales; Dispensaries only with Conditional Use Permit in Industrial (I) as Special Exception Use; no loitering; no drive through service; no alcohol; 2,500' from any school, day care, public park, or another dispensary; no delivery; no vending machines; signage; security; permit revocation terms		(4-0)
Maitland Orange County	Prohibits dispensaries, cannabis farms and non-medical marijuana sales; Conditional Use Permit in Commercial Dist. 3 (OC-3); no loitering; no drive through service; no alcohol; 2,500' from any school, day care, public park, or another dispensary		<i>August or September</i>
Lady Lake Lake County	Prohibits dispensaries, cannabis farms and non-medical marijuana sales; Dispensaries permitted as a Special Exception Use in the Heavy Commercial (HC) zoning district; no loitering; no drive through service; no alcohol; 2,500' from another dispensary; 1,500' from any school, religious facility, day care, or public park; hours of operation	2014-05	August 4, 2014 (5-0)
Mount Dora Lake County	Prohibits dispensaries, cannabis farms and non-medical marijuana sales; Dispensaries only with Conditional Use Permit in Workplace District (WP-2) as Special Exception Use; no loitering; no drive through service; no alcohol; 2,500' from any school, day care, public park, or another dispensary	2014-05	May 20, 2014 (7-0)
Flagler Beach Volusia County	Prohibits dispensaries, cannabis farms and non-medical marijuana sales; Dispensaries only with Conditional Use Permit in Highway Commercial (HC) as Special Exception Use; no loitering; no drive through service; no alcohol; 2,500' from any school, church, day care, public park, or another dispensary	2014-12	May 22, 2014 (5-0)
Ponce Inlet Volusia County	Prohibits dispensaries, cannabis farms and non-medical marijuana sales; Dispensaries only with Conditional Use Permit in General Retail (B-1) as Special Exception Use; no loitering; no drive through service; no alcohol; 2,500' from any school, church, day care, public park, or another dispensary	2014-05	July 17, 2014 (5-0)

*This ordinance provides comparable zoning and conditional requirements for Medical Marijuana Dispensaries as to the existing regulations for Pain Management Clinics.



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ALACHUA COUNTY
BOARD OF COUNTY COMMISSIONERS

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ORDINANCE 16-
(Unified Land Development Code Amendment)

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

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

27 WHEREAS, the Board of County Commissioners of Alachua County adopted its 2001-
28 2020 Comprehensive Plan, which became effective on May 2, 2005; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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

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7 Exhibit A

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9 **404.45 Medical Marijuana Dispensary**

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

14 (a) **Separation Requirements for Medical Marijuana Dispensaries**

15 1. **Generally**

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

19
20 **Minimum Separation Standards for Medical Marijuana Dispensaries**

<u>Existing Use or District</u>	
School	750 ft

21 2. **Measurement**

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

29 3. **Limitations**

30 a. **School**

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

- 33 1. the school is an educational facility (public) as defined in Chapter
34 410, Article 3 of the Unified Land Development Code; or
35 2. the school has been in operation at the same location for one year
36 or more; or
37 3. the location at which the school is now operating is owned by the
38 organization operating the school.

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2 **Chapter 410 - Article 3 Defined Terms**

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

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

13

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

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Exhibit B

Chapter 404. Use Regulations
Article 2. Use Table

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Use Categories	Specific Uses	Key: P = Permitted Use L = Limited Use SE = Special Exception SU= Special Use A = Accessory Use NA = Not Applicable														Standards										
		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		
Health and Medical Facilities	Hospital																									
	Medical clinic or lab																									
	Medical Marijuana Dispensary	SE	P																							
	Veterinary clinic or hospital																									
	Massage therapist																									

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Cape Canaveral

Sec. 110-489. - Pain management clinic and medical marijuana treatment center regulations.^[15]

Pain management clinics and medical marijuana treatment centers may only be permitted by special exception in the C-1, C-2 and M-1 zoning districts, subject to the general conditions for special exceptions and subject to the following requirements:

- (a) *State registration.* Pain management clinics and medical marijuana treatment centers must be registered with the state if required by Florida law. If registration is required by state law, then proof of registration, application for registration or letter of exemption must be provided with the special exception application for the pain management clinic or medical marijuana treatment center.
- (b) *Pain management clinic licensing.* Each pain management clinic shall be operated by a medical director who is a Florida-licensed physician, board-certified in pain medicine, and who shall be responsible for complying with all requirements related to registration and operation of the clinic. The designated physician must have a full, active, and unencumbered license under F.S. ch. 458 or ch. 459, and shall practice at the clinic location for which the physician has assumed responsibility. Within ten days after termination or absence of the medical director, the clinic must notify the city of the identity of another medical director for the clinic.
- (c) *Separation requirements from similar uses.* There shall be no less than one-half-mile distance between each pain management clinic and/or each medical marijuana treatment center regardless of the municipal boundaries of the city.
- (d) *Separation requirements from schools, churches and daycare facilities.* No pain management clinic or medical marijuana treatment center shall be permitted to locate within 1,000 feet of any public or private school, church, or daycare facility and no public or private school, church, or daycare facility shall be permitted to locate within 1,000 feet of a pain management clinic or medical marijuana treatment center.
- (e) *Hours of operation.* Pain management clinics and medical marijuana treatment centers shall only be permitted to operate between the hours of 9:00 a.m. and 7:00 p.m., Monday through Friday, and 9:00 a.m. to 12:00 p.m. on Saturday.
- (f) *Requirement for indoor operation and prohibition on loitering.* There shall be no outdoor seating areas, queues, or customer waiting areas. All activities of the pain management clinic or medical marijuana treatment center, including sales, display, preparations and storage, shall be conducted entirely within an enclosed building. A pain management clinic or medical marijuana treatment center shall provide adequate seating for its patients and business invitees. The pain management clinic or medical marijuana treatment center shall not direct or encourage any patient or business invitee to stand, sit, gather or loiter outside of the building where the clinic or center operates, including in a parked car, including in any parking areas, sidewalks, rights-of-way, or neighboring properties for any period of time longer than reasonably required for patients to conduct their official business and depart. The pain management clinic or medical marijuana treatment center shall post conspicuous signs on at least three sides of the building stating that no loitering is allowed on the property.
- (g) *Vehicular traffic.* The pain management clinic or medical marijuana treatment center shall ensure that there is no queuing of vehicles in the rights-of-way. No pain management clinic or medical marijuana treatment center shall have a drive-through or drive-in service aisle.
- (h) *Prohibition of on-site consumption of pain management drugs, marijuana or alcohol.* No consumption of a pain management drug, marijuana, or alcoholic beverage shall be allowed on the premises, including in the parking areas, sidewalks, or rights-of-way.
- (i) *Parking.* Any parking demand created by a pain management clinic or medical marijuana treatment center shall not exceed the parking spaces located or allocated on site, as required by the city's parking regulations. An applicant shall be required to demonstrate that on-site

- traffic and parking attributable to the pain management clinic or medical marijuana treatment center will be sufficient to accommodate traffic and parking demands it generates, based upon a current traffic and parking study prepared by a certified professional.
- (j) *Prohibition on cash only businesses.* Limiting payment for goods or services to cash only is prohibited.
 - (k) *Daily reports required.* Pain management clinics and medical marijuana treatment centers shall be required to submit to the Brevard County Sheriffs Office a daily summary containing the following information from the prior business day:
 - (i) The total number of prescriptions written that day;
 - (ii) The total number of doses of drugs sold and/or dispensed by the pain management clinic or medical marijuana treatment center that day (including samples), specifying how many doses were sold or dispensed; the person prescribing or dispensing same; and the manner of payment by each person who was dispensed drugs at the clinic that day; and
 - (iii) The state of residence of each person to whom drugs were prescribed or dispensed that day.
 - (l) *Prohibition on home occupations.* A pain management clinic or medical marijuana treatment center shall not be permitted as a home occupation.
 - (m) No pain management clinic or medical marijuana treatment center shall be wholly or partially owned by, or have any contractual relationship (whether as a principal, partner, officer, member, managing member, employee, independent contractor, or otherwise) with any physician, pharmacist, or any other person who prescribes drugs and who, within five years prior to the receipt of any application for special exception:
 - (i) Has been suspended, had his or her license revoked, or been subject to disciplinary action for prescribing, dispensing, administering, providing, supplying, or selling any controlled substance in violation of any state, federal, or similar law where such person is licensed to practice;
 - (ii) Has been convicted of, pled nolo contendere to, or violated any plea agreement regarding an arrest for, a violation of any state, federal, or similar law related to drugs or alcohol, specifically including but not limited to, prescribing, dispensing, administering, providing, supplying, or selling any controlled substance;
 - (iii) Has been suspended, had his or her license revoked, or been subject to disciplinary action by any state, federal, or other governmental entity where such person is licensed to practice;
 - (iv) Has had any state, federal, or other governmental entity where such person is licensed to practice take any action against such person's license as a result of dependency on drugs or alcohol; or
 - (v) Has been convicted of, pled nolo contendere to, or violated any plea agreement regarding an arrest for, any felony or crime involving moral turpitude.
 - (n) No pain management clinic or medical marijuana treatment center shall be wholly or partially owned by, or have as a principal, partner, officer, member, managing member, or otherwise where the owner is an entity, any person who:
 - (i) Has been convicted of, pled nolo contendere to, or violated any plea agreement regarding an arrest for, a violation of any state, federal, or similar law related to drugs or alcohol; or
 - (ii) Has been convicted of, pled nolo contendere to, or violated any plea agreement regarding an arrest for, any felony or crime involving moral turpitude.
 - (o) No pain management clinic or medical marijuana treatment center shall employ any person, as an independent contractor or otherwise, who:

- (i) Has been convicted of, pled nolo contendere to, or violated any plea agreement regarding an arrest for, a violation of any state, federal, or similar law related to drugs or alcohol, specifically including but not limited to, prescribing, dispensing, administering, providing, supplying or selling any controlled substance; or
 - (ii) Has been convicted of, pled nolo contendere to, or violated any plea agreement regarding an arrest for, any felony or crime involving moral turpitude within the five years preceding the application for special exception.
- (p) *Landlord responsibilities.*
- (i) Any landlord, leasing agent, or owner of property upon which a pain management clinic or medical marijuana treatment center operates, who knows, or in the exercise of reasonable care should know, that a medical marijuana treatment center is operating in violation of city code or applicable Florida law, including the rules and regulations promulgated by the state department of health, must prevent, stop, or take reasonable steps to prevent the continued illegal activity on the leased premises.
 - (ii) Landlords who lease space to a medical marijuana treatment center must expressly incorporate language into the lease or rental agreement stating that failure to comply with city code is a material non-curable breach of the lease and shall constitute grounds for termination of the lease and immediate eviction by the landlord.
- (q) *Additional application information.* An applicant seeking a special exception for a pain management clinic or medical marijuana treatment center shall, in addition to the general application information required for special exceptions, provide the following:
- (i) The pain management clinic's or medical marijuana treatment center's registration number issued by the Florida Department of Health, as required by Florida law.
 - (ii) For pain management clinics, the name of the medical director, as required herein, responsible for complying with all requirements related to operation of the pain management clinic and the medical director's Drug Enforcement Agency number.
 - (iii) A list of all persons associated with the management or operation of the pain management clinic or medical marijuana treatment center, whether paid or unpaid, part-time or full-time, including all contract labor and independent contractors. This list shall include, but not be limited to, all owners, operators, employees and volunteers. For persons listed, the following additional information must be provided:
 - (A) Person's title, current home address, telephone number and date of birth;
 - (B) List of all criminal convictions whether misdemeanor or felony; that are drug related;
 - (C) A copy of a current Florida driver's license or government issued photo identification; and
 - (D) A set of fingerprints.
 - (iv) If the property owner is different from the owner of the pain management clinic or medical marijuana treatment center, the applicant shall provide the name, address, telephone number and a copy of a Florida driver's license or government issued photo identification of the property owner along with the application.
 - (v) An inventory of diagnostic equipment to be located at the clinic;
 - (vi) A natural disaster management plan;
 - (vii) A floor plan showing the location and nature of adequate security measures, including those required by the State of Florida for controlled substances, to safeguard all drugs to be dispensed in the course of its business.
 - (viii) An affidavit of the medical director of the pain management clinic, or owner of the medical marijuana treatment center, signed under oath, attesting:

- (A) That their practice is located at the subject site;
- (B) That no employees of the facility have been convicted of a drug-related felony within the five years preceding the application for special exception;
- (C) That the pain management clinic or medical marijuana treatment center will not knowingly employ any such convicted felons thereafter; and
- (D) For pain management clinics, that the medical director shall be required to inform the city within ten days should the medical director be terminated or otherwise leave the affiliation of the pain management clinic as medical director.

The medical director of the pain management clinic, or owner of the medical marijuana treatment center shall be required to keep all application information updated with the city at all times, even after issuance of a special exception, and said information shall be verified annually by the city in conjunction with the city's local business tax receipt renewal process. The medical director of the pain management clinic, or owner of the medical marijuana treatment center shall notify the city of any change to the information within ten days of any new person becoming associated with the pain management clinic or medical marijuana treatment center or any other change to the application information required herein. Failure to properly maintain updated information with the city shall be grounds for revocation of the special exception.

- (r) *Single special exception application/Single classification of special exception.* Only one special exception may be issued for a location or any single building and only under a single classification for either a pain management clinic or medical marijuana treatment center.
- (s) *Compliance with law.* The pain management clinic or medical marijuana treatment center shall at all times be subject to the requirements of all applicable federal, state, county and local laws and ordinances, as they may be amended from time to time.
- (t) *Suspension or revocation of special exception.* Any special exception granted for a pain management clinic or medical marijuana treatment center may be temporarily suspended or absolutely revoked by majority vote of the board of adjustment at a public hearing, when the board of adjustment has determined by competent substantial evidence that either:
 - (i) The pain management clinic or medical marijuana treatment center has obtained the special exception upon false statements, fraud, deceit, misleading statements, or suppression of material facts;
 - (ii) The pain management clinic or medical marijuana treatment center has committed substantial violations of the terms and conditions on which the special exception was granted;
 - (iii) The pain management clinic or medical marijuana treatment center no longer meets the requirements of this section or other applicable law; or
 - (iv) The medical director or any other employee of the pain management clinic or medical marijuana treatment center knowingly allowed illegal activities to be conducted on the premises.

Prior to any special exception being revoked, the pain management clinic or medical marijuana treatment center shall be provided with minimum due process including notice of the grounds for revocation and hearing date, an opportunity to be heard, the right to present evidence, and the right to cross-examine adverse witnesses.

- (u) *Certification affidavit by applicants for related uses.*
 - (i) Any application for a business tax receipt under chapter 70 of this Code, as a pain management clinic or as a medical marijuana treatment center as such terms are defined in section 110-1 of this Code, shall be accompanied by an executed affidavit certifying registration with the State of Florida and the city as a pain management clinic or as a

medical marijuana treatment center, as applicable. The failure of an applicant to identify the business in the application for a business tax receipt as a pain management clinic or medical marijuana treatment center will result in the immediate expiration of the business tax receipt and immediate ceasing of all activity conducted in the pain management clinic or medical marijuana treatment center.

- (ii) Any applicant's application for a business tax receipt and executed affidavit relating to use as a pain management clinic or as a medical marijuana treatment center, where applicable, shall be provided to the city building division at the time of the proposed use.

(Ord. No. 06-2011, § 2, 10-18-11; Ord. No. 09-2014, § 2, 9-16-14)

Footnotes:

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Editor's note— Section 6 of Ord. No. 09-2014, adopted Sept. 16, 2014, states: This ordinance shall become effective immediately upon passage and adoption by the city council, however, the opening and/or operating of a medical marijuana treatment center as defined by the Florida Constitution or Florida law shall occur only upon and after the effective date upon which medical marijuana treatment centers are deemed legal by the State of Florida.

Lauderdale-by-the-Sea

Sec. 12-25. - Marijuana businesses.

- (a) *Definitions.* The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
- (1) *Applicant.* An individual or business entity desiring to operate a medical marijuana retail center within the Town limits.
 - (2) *Business operating name.* The legal or fictitious name under which a medical marijuana retail center conducts its business with the public.
 - (3) *Employee.* A person authorized to act on behalf of the medical marijuana retail center, whether that person is an employee or a contractor, and regardless of whether that person receives compensation.
 - (4) *Identification tag.* A tamperproof card issued by the Town to the persons involved with a medical marijuana retail center as evidence that they have passed the background checks and other requirements of this article and are authorized to be present on the premises.
 - (5) *Marijuana.* Any strain of marijuana or cannabis, in any form, that is authorized by state law to be dispensed or sold in the State of Florida. Also referred to as "medical marijuana."
 - (6) *Medical marijuana permit.* A permit issued by the Town pursuant to this article authorizing a business to sell marijuana in the Town. Also referred to as "permit."
 - (7) *Medical marijuana retail center.* A retail establishment, licensed by the Florida Department of Health as a "medical marijuana treatment facility," "medical marijuana treatment center," "dispensing organization," "dispensing organization facility" or similar use, that sells and dispenses medical marijuana, but does not engage in any other activity related to preparation, wholesale storage, distribution, transfer, cultivation, or processing of any form of marijuana or marijuana product, and does not allow on-site consumption of marijuana. A medical marijuana treatment center shall not be construed to be a medical marijuana retail center.
 - (8) *Medical marijuana treatment center.* Any facility licensed by the Florida Department of Health to acquire, cultivate, possess, process (including but not limited to development of related products such as food, tinctures, aerosols, oils, or ointments), transfer, transport, sell, distribute, dispense, store, or administer marijuana, products containing marijuana, related supplies, or educational materials, as authorized by state law. A medical marijuana treatment center may include retail sales or dispensing of marijuana. A facility which provides only retail sales or dispensing of marijuana shall not be classified as a medical marijuana treatment center under this chapter. Also may be referred to as a "medical marijuana treatment facility" or "dispensing organization" or other similar term recognized by state law.
 - (9) *Owner.* Any person, including any individual or other legal entity, with a direct or indirect ownership interest of five percent or more in the applicant, which interest includes the possession of stock, equity in capital, or any interest in the profits of the applicant.
 - (10) *Premises.* The building, within which a medical marijuana retail center is permitted to operate by the Town, including the property on which the building is located, all parking areas on the property or that are utilized by the medical marijuana retail center and sidewalks and alleys within 100 feet of the property on which the medical marijuana retail center is located.
 - (11) *Qualified registered patient/qualified patient.* A resident of the State of Florida who has been added to the State's compassionate use registry by a physician licensed under F.S. ch. 458 or ch. 459, to receive medical marijuana from a dispensing organization or medical marijuana treatment center or similar use as defined in Florida Statutes.
- (b) *Permit and identification tag required.*

- (1) It shall be unlawful for any business or person to operate a medical marijuana retail center, or to otherwise offer for sale or in any way participate in the conduct of any activities upon the premises within the Town without first obtaining a medical marijuana permit.
- (2) Each person employed in the conduct of such activity shall be screened and approved pursuant to subsection (d) and required to obtain an identification tag before the center opens for business or, for persons who become involved with the center after it is open, before having any involvement in center's activities.
- (3) No such permit or identification tag shall be transferable; each person must obtain a medical marijuana permit or identification tag directly from the Town.

(c) *Applications for permit; investigation and issuance; term.*

- (1) *Application.* Applications for a medical marijuana permit shall be made by the applicant in person to the Town Clerk during regular business hours upon such forms and with such accompanying information as may be established by the Town. Such application shall be sworn to or affirmed. Every application shall contain at least the following:
 - a. The business operating name and all applicant and owner information. If the applicant or owner is:
 1. An individual, his or her legal name, aliases, home address and business address, date of birth, copy of driver's license or a state or federally issued identification card;
 2. A partnership, the full and complete name of the partners, dates of birth, copy of driver's license or state or federally issued identification card of all partners, and all aliases used by all of the partners, whether the partnership is general or limited, a statement as to whether or not the partnership is authorized to do business in the State of Florida and, if in existence, a copy of the partnership agreement (if the general partner is a corporation, then the applicant shall submit the required information for corporate applicant in addition to the information concerning the partnership); or
 3. A corporation, the exact and complete corporate name, the date of its incorporation, evidence that the corporation is in good standing, the legal names and dates of birth, copy of driver's licenses or state or federally issued identification cards of all officers, and directors, and all aliases used, the capacity of all officers, and directors, and, if applicable, the name of the registered corporate agent, and the address of the registered office for service of process, and a statement as to whether or not each corporation is authorized to do business in the State of Florida.
 4. The addresses required by this section shall be physical locations, and not post office boxes.
 - b. A complete copy of the business' application to the State of Florida and all related exhibits, appendices, and back up materials for approval and licensure as a medical marijuana treatment center.
 - c. A statement as to whether the applicant or any owner or employee has previously received a medical marijuana permit or identification tag from the Town.
 - d. A statement as to whether the applicant or any owner holds other permits or licenses under this Code and, if so, the names and locations of such other permitted or licensed establishments.
 - e. A statement as to whether the applicant or any owner has been a partner in a partnership or an officer or director of a corporation whose permit or license issued under this Code has previously been suspended or revoked, including the name and location of the establishment for which the license was suspended or revoked, as well as the date of the suspension or revocation;

- f. A statement as to whether or not the applicant or any owner has lost any privilege or had any permit or license to do business revoked by any local, state or federal government and, if so, the nature of such privilege, permit or license and the reason for such revocation.
 - g. A statement as to whether or not the applicant or any owner has lost any privilege or had any permit or license to do business suspended by any local, state or federal government and, if so, the nature of such privilege, permit or license and the reason for such suspension.
 - h. A statement as to whether or not the applicant or any owner or employee has been found guilty of or has pleaded guilty or nolo contendere to a felony relating to any business in this state or in any other state or Federal court, regardless of whether a judgment of conviction has been entered by the court having jurisdiction of such cases.
 - i. A statement as to whether or not the applicant or any owner or employee has been found guilty of, or have pleaded guilty or nolo contendere to, a felony relating to a battery or a physical violence on any person in this state or in any other state or Federal court, regardless of whether a judgment of conviction has been entered by the court having jurisdiction of such cases.
 - j. A statement as to whether or not the applicant or any owner has filed a petition to have their respective debts discharged by a bankruptcy court having jurisdiction of such cases.
 - k. Written documentation that the applicant, every owner, and each employee has successfully completed level 2 background screening within the year.
 - l. A passport photograph of the applicant, every owner, and each employee.
 - m. A notarized, signed, and sworn statement that the information within the application is truthful, independently verifiable, and complete and that the photocopies of the attached driver's licenses or state or federally issued identification cards are true and correct copies of the originals.
- (2) *Rejection of application.* In the event the Town determines that the applicant has not satisfied the application requirements for a proposed medical marijuana retail center, the applicant shall be notified of such fact; and the application shall be denied.
- (3) *Fees.* In addition to demonstrating compliance with this article, the applicant shall pay a nonrefundable application fee in an amount established by resolution of the Town Commission for each applicant, each owner, and each employee to cover its administrative costs and expenses incurred in reviewing and administering the permit and identification tag program, irrespective of the issuance or denial of the application. Each applicant shall also pay an annual nonrefundable, nonproratable permit fee in an amount established by resolution of the Town Commission before receiving a medical marijuana permit.
- (4) *Application review.*
- a. *Investigation.* The Town shall refer the application to the Chief of Police, who shall review the application and documentation provided, and conduct a background screening of the applicant, each owner and employee. Upon receipt of the appropriate documentation, the Chief of Police shall forward the information and application to the Town Manager, together with any recommendations and other relevant information from the files regarding the applicant.
 - b. *Town Manager determination.* Upon receipt of such material from the Chief of Police, the Town Manager shall, within 30 days, either:
 - 1. Notify the applicant that the permit has been denied and the reason for such denial; or
 - 2. Issue a permit, with or without conditions.

3. The Town Manager shall provide notice to the Commission following issuance of any medical marijuana permit.
- c. *Duration.* Permits shall be issued for a one-year period for a term commencing October 1 or the date of issuance, and ending the following September 30.
 - d. *Denial.* The Town shall deny an applicant's application for medical marijuana permit if an investigation of the applicant and owner, or the applicant's application, indicates that the applicant, an employee, or any owner:
 1. Has failed to pay required licensing fees;
 2. Has failed to demonstrate compliance with the requirements of this article;
 3. Has been convicted of fraud or felony by any state or Federal court within the past five years;
 4. Has obtained any governmental permit by fraud or deceit; or
 5. Has negligently or intentionally misrepresented or concealed information required by this article in an application for a permit.
- (d) *Background checks, photograph and identification tag.* In connection with the issuance of a medical marijuana permit by the Town, the Chief of Police shall, upon verification of successful level 2 background screening, cause an identification tag to be issued to each approved applicant for a permit as well as for each owner and each employee. On the face of each identification tag, there shall be placed the following:
- (1) A photograph of the applicant/owner/employee;
 - (2) The permit number;
 - (3) The permit holder's name and address;
 - (4) The name and address of the medical marijuana retail center that the applicant/owner/employee represents or is employed by; and
 - (5) The expiration date of the permit.
- (e) *Reapplication.* If a person applies for a medical marijuana permit at a particular location within a period of one year from the date of denial of a previous application for a medical marijuana permit at the location, and there has not been an intervening change in the circumstances material to the decision regarding the former reason(s) for denial, the application shall not be accepted for consideration.
- (f) *Renewal.* Medical marijuana permits shall be entitled to renewal annually subject to the provisions of this article. Before the October 1 expiration date, the annual medical marijuana permit may be renewed by presenting the permit for the previous year, and:
- (1) Paying the appropriate permit fee;
 - (2) Updating the information supplied with the latest application or certifying that the information supplied previously remains unchanged; and
 - (3) Providing proof of continued compliance with all state and Town licenses, operational and zoning requirements.
- (g) *Permit transferability.*
- (1) The medical marijuana permit is specific to the applicant and the location and shall not be transferred.
 - (2) An attempted transfer of a medical marijuana permit either directly or indirectly in violation of this section is hereby declared void, and in that event the medical marijuana permit shall be deemed abandoned, and the medical marijuana permit shall be forfeited.

- (h) *Violation of regulations.* In the event of a Code violation, violation of the conditions of the medical marijuana permit or conditional use approval, or other violation of the laws applicable to the medical marijuana retail center, the Town shall issue a warning notice and the applicant shall, no later than 20 business days after receipt of the notice, provide a copy of a corrective action plan and timeframes and completion date to address the identified issues to the Town.
- (i) *Illegal transfer.* If medical marijuana permit is transferred contrary to this chapter, the Town shall suspend the medical marijuana permit and notify the permittee of the suspension. The suspension shall remain in effect until all of the requirements of this chapter have been satisfied and a new medical marijuana permit has been issued by the Town.
- (j) *Grounds for revocation.* Any medical marijuana permit issued under this article shall be immediately revoked if any one or more of the following occurs:
- (1) The applicant provides false or misleading information to the Town;
 - (2) Anyone on the premises knowingly dispenses, delivers, or otherwise transfers any marijuana or marijuana product to an individual or entity not authorized by state law to receive such substance or product;
 - (3) The applicant, an owner or a manager is convicted of a felony offense;
 - (4) Any applicant, owner, manager or employee is convicted of any drug-related crime under Florida Statutes;
 - (5) The applicant fails to correct any Town Code violation or to otherwise provide an action plan to remedy the violation acceptable to the Town Manager within 30 days of citation;
 - (6) The applicant fails to correct any state law violation or address any warning in accordance with any corrective action plan required by the state within the timeframes and completion date the applicant provided to the Town;
 - (7) The applicant's state license or approval authorizing the dispensing of medical marijuana expires or is revoked; or
 - (8) Any conditional use approval granted by the Town for the use of a medical marijuana retail center at a particular location expires or is revoked.
- (k) *Revocation.* In the event the Town determines there are grounds for revocation as provided in this chapter, the Town shall notify the permittee of the intent to revoke the medical marijuana permit and the grounds upon which such revocation is proposed. The permittee shall have ten business days in which to provide evidence of compliance with this chapter. If the permittee fails to show compliance with this chapter within ten business days, the Town shall schedule a hearing before the Special Magistrate. If the Special Magistrate determines that a permitted medical marijuana retail center is not in compliance with this chapter the Town shall revoke the medical marijuana permit and shall notify the permittee of the revocation. Nothing in this section shall take away other enforcement powers of the special magistrate or any other agency provided by the Code or statute.
- (l) *Effect of revocation.*
- a. If a medical marijuana permit is revoked, the permittee shall not be allowed to obtain another medical marijuana permit for a period of two years.
 - b. The revocation shall take effect 15 days, including Saturdays, Sundays, and holidays, after the date the Town mails the notice of revocation to the permittee or on the date the permittee surrenders his or her medical marijuana permit to the Town, whichever occurs first.
- (m) *General requirements.* Each medical marijuana retail center shall observe the following general requirements:
- (1) Conform to all applicable building statutes, codes, ordinances, and regulations, whether federal, state, or local;

- (2) Conform to all applicable fire statutes, codes, ordinances, and regulations, whether federal, state, or local;
 - (3) Conform to all applicable health statutes, codes, ordinances, and regulations, whether federal, State, or local;
 - (4) Conform to all applicable zoning regulations and land use laws, whether State or local, including but not limited to the Town Land Development Code;
 - (5) Keep the original of the medical marijuana permit posted in a conspicuous place at the premises at all times, which medical marijuana permit shall be available for inspection upon request at all times by the public.
- (n) *Permit operation requirements.* Any business operating under a medical marijuana permit shall comply with the following operational guidelines.
- (1) *Business identification.* The words "bong," "bud," "cannabis," "chronic," "demp," "dope," "ganja," "grass," "green," "hash," "hashish," "hemp," "herb," "hydro," "indo," "joint," "laughing," "marijuana," "mary jane," "medical" "peyote," "pot," "puff," "reefer," "smoke," "wacky tabacky," "weed," or synonyms for such words or similar words or variations of such words shall not be permitted in the business operating name of the medical marijuana retail center.
 - (2) *Hours of operation.*
 - a. Operation is permitted only between the hours of 8:00 a.m. and 6:00 p.m. Monday through Saturday.
 - b. No operation is permitted on Sundays or state or federal holidays.
 - c. If located within 300 feet of a PK-12 school bus stop, the business may not operate within one and one-half hours before the bus picks up or after the bus delivers the school children.
 - (3) *On-site consumption of marijuana.* No medical marijuana retail center shall allow any marijuana to be smoked, ingested or otherwise consumed on the premises. The medical marijuana retail center shall take all necessary and immediate steps to ensure compliance with this paragraph. No person shall smoke, ingest or otherwise consume marijuana on the premises.
 - (4) *Alcohol prohibited.* No medical marijuana retail center shall allow the sale, service, or consumption of any type of alcoholic beverages on the premises including in the surrounding rights-of-way. The medical marijuana retail center shall take all necessary and immediate steps to ensure compliance with this paragraph. No person shall consume an alcoholic beverage on the premises, including the surrounding rights-of-way.
 - (5) *Outdoor activity.* There shall be no outdoor displays, sales, promotions, or activities of any kind permitted on the premises, including the surrounding rights-of-way. All activities and business shall be conducted within the confines of the permanent building containing the medical marijuana retail center.
 - (6) *On-site storage.* There shall be no on-site storage of any form of marijuana or marijuana product, except as reasonably necessary for the conduct of the medical marijuana retail center's on-site business.
 - (7) *Live plant materials.* No living marijuana plants are permitted on the site of a medical marijuana retail center.
 - (8) *Maintenance of premises.* A medical marijuana retail center shall actively remove litter at least twice each day of operation on the premises, from the premises, the area in front of the premises, from any parking lot used by its patrons, and, if necessary, on from public sidewalks or rights-of-way within 100 feet of the outer edge of the premises used by its patrons.
 - (9) *Garbage.* Refuse or waste products incident to the distribution of marijuana shall be destroyed on-site at least once every 24 hours.

- (10) *Security.* With the application, the Applicant shall submit a security plan demonstrating compliance with F.S. § 381.986 and all other applicable statutes and State administrative rules.
- a. In addition to proving compliance with all State requirements, the security plan shall, at a minimum, provide the following:
 1. Fully operational lighting and alarms reasonably designed to ensure the safety of persons and to protect the premises from theft, both in the premises and in the surrounding rights-of-way, including:
 - i. a silent security alarm that notifies the Police Department or a private security agency that a crime is taking place;
 - ii. a vault, drop safe or cash management device that provides minimum access to the cash receipts; and
 - iii. a security camera system capable of recording and retrieving an image which shall be operational at all times during and after business hours. The security cameras shall be located:
 - (i) at every ingress and egress to the dispensary, including doors and windows;
 - (ii) on the interior where any monetary transaction shall occur; and
 - (iii) at the ingress and egress to any area where medical marijuana is stored;
 2. Traffic management and loitering controls;
 3. Cash and inventory controls for all stages of operation on the premises, and during transitions and delivery.
 4. On-site armed security personnel from one hour before the business opens to the public until one hour after the business closes to the public.
 - b. The Chief of Police shall review the applicant's operational and security plan using Crime Prevention Through Environmental Design (CPTED) principles. The Chief may impose site and operational revisions as are deemed reasonably necessary to ensure the safety of the applicant, owner(s), employees, customers, adjacent property owners and residents, which may include items such as methods and security of display and storage of marijuana and cash, limitations on window and glass door signage, illumination standards, revisions to landscaping, and any other requirement designed to enhance the safety and security of the premises.
 - c. Any instance of breaking and entering at a medical marijuana retail center, regardless of whether marijuana or marijuana-based products are stolen, shall constitute a violation of this article if the security alarm shall fail to activate simultaneous with the breaking and entering.
- (11) *Delivery.* All deliveries to the medical marijuana retail center shall be made while on-site security personnel are present.
- (12) *Odor and air quality.* A complete air filtration and odor elimination filter and scrubber system shall be provided ensuring the use will not cause or result in dissemination of dust, smoke, or odors beyond the confines of the building, or in the case of a tenant in a multi-tenant building, beyond the confines of the occupied space. A double door system shall be provided at all entrances to mitigate odor intrusion into the air outside the medical marijuana retail center.
- (13) *Delivery vehicle identification.* For security purposes, no vehicle used in the operation of or for the business purposes of a medical marijuana retail center shall be marked in such a manner as to permit identification with the medical marijuana retail center.
- (14) *Signage.* Notwithstanding other provisions of the Code, signage for a medical marijuana retail center shall be limited as follows:

- a. One wall sign identifying only the name of the business;
- b. Graphics, logos and symbols shall be prohibited;
- c. Neon shall be prohibited;
- d. Signs may be illuminated consistent with the requirements of section 30-506(g) of the Land Development Regulations, only during hours of operation;
- e. A medical marijuana retail center shall post, at each entrance to the medical marijuana retail center the following language:

ONLY INDIVIDUALS WITH LEGALLY RECOGNIZED MARIJUANA OR CANNABIS QUALIFYING PATIENT OR CAREGIVER IDENTIFICATION CARDS OR A QUALIFYING PATIENT'S LEGAL GUARDIAN MAY OBTAIN MARIJUANA FROM A MEDICAL MARIJUANA RETAIL CENTER.

The required text shall be in letters one-half inch in height.

- (15) *On-site community relations contact.* The medical marijuana retail center shall provide the Town Manager, and all property owners and tenants located within 100 feet of the entrance to its building, with the name, phone number, and e-mail or facsimile number of an on-site community relations staff person to whom they can provide notice during business hours and after business hours to report operating problems. The medical marijuana retail center shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any, before any calls or complaints are made to the Police Department or other Town officials.
- (16) *Employment restrictions.* It shall be unlawful for any medical marijuana retail center to employ any person who:
 - a. is not at least 21 years of age; and
 - b. has not passed a level 2 background screening.
- (17) *Persons allowed to enter the premises.*
 - a. *Underage entry.* It shall be unlawful for any medical marijuana retail center to allow any person who is not at least 18 years of age on the premises during hours of operation, unless that person is authorized by state law to purchase medical marijuana, whether as a qualified patient with a valid identification card or primary caregiver or legal guardian of a qualified patient with a valid identification card.
 - b. *Entry by persons authorized by state law.* It shall be unlawful for any medical marijuana retail center to allow any person on the premises during the hours of operation if that person is not authorized by state law to be there. Authorized persons, such as owners, managers, employees and qualified registered patients, their legal guardians, qualified registered caregivers must wear an identification tag, and authorized inspectors and authorized visitors must wear a visitor identifying badge and be escorted and monitored at all times by a person who wears his or her identification tag.
- (18) *Product visibility.* No marijuana or product of any kind may be visible from any window or exterior glass door.
- (19) *Sole business.* No business other than the dispensing of medical marijuana shall be permitted to be conducted from the premises.
- (20) *Compliance with state regulations and licensure requirements.* A medical marijuana retail center must comply with all federal and state laws, licensing and regulatory requirements.
 - a. A medical marijuana retail center shall notify the Town within five business days of receipt of any notice of violation or warning from the state or of any changes to its state licensing approvals.

- b. If a medical marijuana retail center receives a notice of violation or warning from the state, it shall, no later than 20 business days after receipt of the notice, provide a copy of the corrective action plan and timeframes and completion date to address the identified issues to the Town.

(21) *Prohibited activities.* A medical marijuana retail center shall not engage in any activity other than those activities specifically defined herein as an authorized part of the use. The preparation, wholesale storage, cultivation, or processing of any form of marijuana or marijuana product, and on-site consumption of any marijuana or marijuana product is specifically prohibited at a medical marijuana retail center. On-site storage of any form of marijuana or marijuana product is prohibited, except to the extent reasonably necessary for the conduct of the on-site retail business.

- (o) *Public consumption of marijuana.* Nothing in this chapter shall be deemed to permit the public consumption of any form of marijuana. Further, it shall be unlawful for any person to smoke, ingest or consume marijuana, medical marijuana, cannabis, or low-THC cannabis as defined in this chapter, chapter 30 of this Code or Florida Statutes, in any form in any public building, public right-of-way, or public space within the Town.

(Ord. No. 2014-15, § 3, 10-28-14)

Lauderdale-by-the-Sea

Sec. 30-261. - B-1-A district—Business.

(a) *B-1-A uses permitted.*

- (1) *Permitted uses.* No building or premises shall be used and no building with the usual accessories shall be erected or altered other than a building or premises arranged, intended, or designed for any of the following uses, not to exceed 10,000 square feet in gross floor area:
- a. Antiques store,
 - b. Art galleries,
 - c. Arts and crafts supply store,
 - d. Automobile rental or leasing agencies (no outdoor display),
 - e. Bait and tackle shop,
 - f. Bakery,
 - g. Bank,
 - h. Beauty schools, barber shops and hair salons,
 - i. Bicycle rental shop with no outside storage,
 - j. Book store,
 - k. Business and professional employment agency,
 - l. Camera and photographic supply store,
 - m. Card and stationery store,
 - n. Catering businesses,
 - o. Church and place of worship,
 - p. Clothing store,
 - q. Coin-operated dry cleaning and laundry and/or pickup station,
 - r. Community theaters, dinner theaters and cultural centers,
 - s. Computer/software store,
 - t. Consignment store,
 - u. Cooking schools,
 - v. Copy center,
 - w. Courier service,
 - x. Delicatessen,
 - y. Dental laboratory,
 - z. Drug store/pharmacy (no on-site prescription writing for controlled substances identified in Schedule II, III, or IV in F.S. §§ 893.03, 893.035, or 893.0355),
 - aa. Fabric/needlework/yarn shop,
 - bb. Fishing pier,
 - cc. Florist shop,
 - dd. Formal wear sales and rental,

- ee. Fruit and produce store,
- ff. Furniture and home furnishings,
- gg. Gift shop,
- hh. Government administration,
- ii. Grocery/food store/supermarket,
- jj. Hardware store,
- kk. Health and fitness center,
- ll. Household appliances store,
- mm. Ice cream/yogurt store,
- nn. Interior decorator,
- oo. Jewelry store,
- pp. Library branch,
- qq. Linen/bath/bedding store,
- rr. Luggage/handbag/leather goods store,
- ss. Mail/postage/fax service,
- tt. Marine parts and supplies store,
- uu. Market,
- vv. Massage therapist (licensed therapist to be on premises at all times of operation),
- ww. Meat and poultry store,
- xx. Medical supplies sales,
- yy. Motorized scooter sales or moped sales and rentals (indoor only, outdoor sales, storage or display prohibited),
- zz. Museum,
- aaa. Music/musical instrument store,
- bbb. Office building,
- ccc. Optical store,
- ddd. Party supply store,
- eee. Photographic studio,
- fff. Police and fire substation,
- ggg. Retail electronic sales and repair,
- hhh. Restaurant, which may also include the following accessory uses:
 - 1. Sidewalk cafés which would be appurtenant to, and a part of, a restaurant, subject to the requirements of Chapter 17, Article VI, Sidewalk Cafés.
 - 2. Outside seating for restaurants, on private property other than a sidewalk, that is accessory to the principal restaurant use and that is not regulated under Chapter 17, Article VI, and subject to the regulations set forth in subsection (e), below.
 - 3. Walk-up windows for food and/or beverage service,
- iii. Seafood store,

- jjj. Shoe sales and repair,
- kkk. Shop for marking articles sold at retail on the premises,
- lll. Specialty shop,
- mmm. Sporting goods store, including dive shops,
- nnn. Studios for artists, photographers, musicians (including recording studios), and dance,
- ooo. Sundries store,
- ppp. Tailor/dressmaking store, direct to the customer,
- qqq. Tapes/videos/music CD stores,
- rrr. Tool rental (small tools and equipment, indoor display only),
- sss. Toy/game store,
- ttt. Trade/business school,
- uuu. Travel agency,
- vvv. Veterinarian or animal grooming with all activities enclosed within the building with no outside noise,
- www. Watch and jewelry repair, and
- xxx. Uses not listed. Any use not covered by the above list may be authorized in the B-1-A district by the Town Manager or designee only if the proposed use is similar to a listed use; otherwise, an amendment to this chapter is required. The Town Manager or designee shall consult with the Town Commission on any proposal to find that a use is similar, prior to authorizing such use in the B-1-A district.

- (2) *Conditional uses.* The following conditional uses may be permitted upon approval pursuant to the conditional use procedures of this Code:
- a. Bicycle taxi (no outside storage or display).
 - b. Car wash/outdoor hand wash.
 - c. Charter and sightseeing boat.
 - d. Child and adult day-care centers.
 - e. Convenience store, subject to the requirements as set forth in subsection (f), below.
 - f. Drive-through services that are accessory to a primary use, provided that any approval of the drive-through use by the Town Commission shall specifically establish the location and traffic flow pattern of the drive-through.
 - g. Dry cleaner.
 - h. Medical marijuana retail center, subject to all of the following requirements:
 1. *Application.* In addition to the standard development approval application requirements and meeting all the requirements for a conditional use under this chapter, an application for conditional use approval for a medical marijuana retail center shall:
 - i. Be a joint application by the property owner and the tenant, if the medical marijuana treatment center and the property are not owned by the same person or entity;
 - ii. Be accompanied by a lease identifying the specific use, if the medical marijuana treatment center and the property are not owned by the same person or entity;

- iii. Include a survey sealed by a Florida-registered land surveyor who is licensed by the State of Florida. The survey shall indicate the distance between the proposed medical marijuana retail center and any other medical marijuana retail center, elementary, middle or secondary school, child day care facility, county or municipal park, or place of worship as identified in section 30-261(a)(2)h.2; and
 - iv. In addition to the notice to property owners required by section 30-139 of this Code, no later than ten days prior to each and every public hearing, provide proof of notice of the public hearing to all tenants within 300 feet of the property on which the medical marijuana retail center is proposed.
2. *Location requirements.* A medical marijuana retail center shall not be established:
- i. Within 300 feet of another medical marijuana retail center;
 - ii. Within 300 feet of an elementary, middle or secondary school, child day care facility, county or municipal park, or place of worship;
 - iii. Where a medical marijuana retail center is located in conformity with the provisions of this chapter, the subsequent locating of one of the uses listed in ii. above within 300 feet of an existing medical marijuana retail center shall not cause a violation of this section. Whenever a conditional use approval for a medical marijuana retail center has been lawfully procured and thereafter an elementary, middle or secondary school, child day care facility, county or municipal park, or place of worship be established within a distance otherwise prohibited by law, the establishment of the such use shall not be cause for the revocation of the conditional use approval or related medical marijuana permit or prevent the subsequent renewal of same; and
 - iv. Distances shall be measured using an airline measurement from the property line of the property on which the medical marijuana retail center is located to the nearest property line of the use identified in 2.i. through 2.ii. that existed before the date the medical marijuana retail center submitted its initial application for approval.
3. *Other uses.*
- i. If the medical marijuana retail center if the center is located in a freestanding building it shall be the only use permitted on the property,
 - ii. If the medical marijuana retail center is located in a bay or multi-bay space within a multi-tenant structure, the center shall be the only use permitted within the bay or multi-bay space it occupies.
4. *Prohibited activities.* A medical marijuana retail center shall not engage in any activity other than those activities specifically defined herein as an authorized part of the use. The preparation, wholesale storage, cultivation, or processing of any form of marijuana or marijuana product, and on-site consumption of any marijuana or marijuana product is specifically prohibited at a medical marijuana retail center. On-site storage of any form of marijuana or marijuana product is prohibited, except to the extent reasonably necessary for the conduct of the on-site retail business.
5. *Conditional use duration.* A conditional use approval for a medical marijuana retail center shall be valid for two years, subject to compliance with the conditions of approval and all state laws, licensing, permitting and operational requirements. A new conditional use approval must be obtained prior to expiration of the active approval to ensure continued operation.
6. *Revocation of conditional use approval.* Any conditional use approval granted under this section shall be immediately terminated if any one or more of the following occur:
- i. The applicant provides false or misleading information to the Town;

- ii. Anyone on the premises knowingly dispenses, delivers, or otherwise transfers any marijuana or marijuana product to an individual or entity not authorized by state law to receive such substance or product;
 - iii. An applicant, owner or manager is convicted of a felony offense;
 - iv. Any applicant, owner, manager or employee is convicted of any drug-related crime under Florida Statutes;
 - v. The applicant fails to correct any Town Code violation or to otherwise provide an action plan to remedy the violation acceptable to the Town Manager within 30 days of citation;
 - vi. The applicant fails to correct any state law violation or address any warning in accordance with any corrective action plan required by the State within the timeframes and completion date the applicant provided to the Town;
 - vii. The applicant's state license or approval authorizing the dispensing of medical marijuana expires or is revoked; or
 - viii. The applicant fails to maintain a medical marijuana permit as required by section 12-25 of the Town Code.
7. *Transfer of medical marijuana conditional use approval.*
- i. A conditional use approval for a medical marijuana retail center shall not be transferred to a new owner, or possession, control, or operation of the establishment surrendered to such other person until a new medical marijuana permit has been obtained by the new applicant in accordance with section 12-25 of the Town Code.
 - ii. An application for a conditional use approval transfer, meeting the requirements of section 30-261(a)(2)h.1, shall be filed with the Town at the same time the new applicant files its application for a medical marijuana permit.
 - iii. The application for a conditional use approval transfer shall be accompanied by a conditional use approval transfer fee to be set by resolution of the Commission; and
 - iv. If the new applicant is granted a medical marijuana permit and the transfer application meets the requirements of section 30-261(a)(2)h. and Town Code, the Town Manager shall approve the conditional use approval transfer.
 - v. A conditional use approval is particular only to the approved location and shall not be transferred to another location.
 - vi. An attempt to transfer a conditional use approval either directly or indirectly in violation of this section is hereby declared void, and in that event the conditional use shall be deemed abandoned, and the related medical marijuana permit shall be forfeited.
- i. "Paid private parking" on parcels with a primary use, excluding standalone parking lots, in accordance with the following requirements:
 - 1. During business operational hours, only non-required parking spaces may be used as paid private parking.
 - 2. After business hours, required parking may also be used for paid private parking.
 - j. Parking garage.
 - k. Permitted use that exceeds 10,000 square feet in gross floor area.
 - l. Pet store.

- m. Pool supply store.
 - n. Outside storage of propane tank cabinets for the storage, sale or rental of propane tanks.
 - o. Water craft sales and rental (new or used).
 - p. *Conditional uses not listed.* Permission to apply for conditional uses not covered by the above list in the B-1-A district may be granted by the Town Manager or designee only if the proposed conditional use is similar to a listed conditional use; otherwise, an amendment to this chapter is required. The Town Manager or designee shall consult with the Town Commission on any proposal to determine that a conditional use is similar to those listed, prior to authorizing the filing of an application to seek approval of that conditional use in the B-1-A district. Approval of a conditional use shall also be subject to the requirements for conditional use review as set forth in section 30-126 of the Town Code.
- (b) *Height.* No building shall be erected to a height greater than two stories on single 25-foot lots, nor greater than three stories on 50-foot lots.
- (c) *Areas.* No building which is used for residence purposes above the ground floor shall occupy an area greater than 70 percent of the entire lot. The required lot area per apartment or kitchen unit shall be 800 square feet. The required floor area for a kitchen unit shall be not less than 250 square feet minimum and the area for a hotel room with bath shall not be less than 200 square feet. Buildings not used for residential purposes shall not occupy more than 90 percent of the lot area.
- (d) *Design.* Construction shall be limited to one building on B-1-A lots that are 50 feet or less in width. All business buildings constructed in a business district shall be of C.B.S. construction and shall be designed with every practical consideration for appearance, fire protection, health, light, air. All plans and specifications of the building shall be approved by the Town Building Inspector. The Building Inspector need not approve design and use of a building and may ask the Town staff, Planning and Zoning Board or the Board of Adjustment for an official opinion or decision thereon. Open fronts are specifically prohibited in B-1-A districts and there shall be a maximum opening of ten feet by ten feet for doorways in each business building.
- (e) Outside seating for restaurants, on private property other than a sidewalk, that is accessory to the primary restaurant use may be permitted subject to the following regulations:
- (1) *Permit required.* It shall be unlawful for any person to provide outside seating for a restaurant on private property within the Town without first obtaining a permit from the Town. The location of an outside seating area for a restaurant shall be approved by the Town Manager or designee.
 - (2) *Permit fee.* A permit fee shall be established by resolution of the Town Commission.
 - (3) *Permit application.* Application for a permit to provide outside seating for a restaurant shall be made at the office of the Town Clerk. Such application shall include:
 - a. Name, address and telephone number of the applicant.
 - b. Name and address of business.
 - c. A copy of a valid Town of Lauderdale-By-The-Sea business tax receipt to operate a restaurant adjacent to the outside seating area which is the subject of the application.
 - d. An eight and one-half inches × 11 inches drawing at a minimum scale of one inch equals 20 feet showing the following:
 - 1. The store front and all openings (doors, windows);
 - 2. The location and dimensions of the private property area being utilized for the outside seating area, including: structures located thereon; proposed location, dimension and number of tables, chairs, and umbrellas proposed within the outside seating area;
 - 3. Clear delineation of the boundary between private property and the public right-of-way;

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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 es-

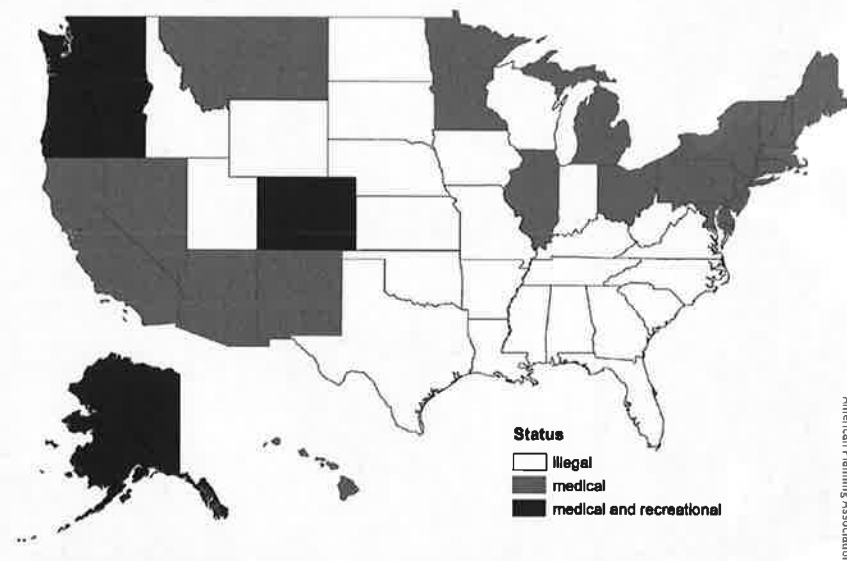
tablished in the newly legalized recreational marijuana states range from localities “opting out” to making a marijuana business a “use by right” in certain districts, with a required permit. Most tactics use both zoning and business licensing regulations, often in combination. For example, a business 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).



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 Marijuana 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

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/y2tyn7gJ.)

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

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 marijuana 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



Johnsland/Pool, Wikimedia (CC BY-SA 3.0)



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 mari-

juana 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.



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 statutes 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.

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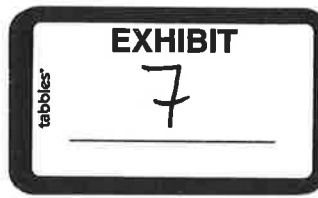
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HOW DOES YOUR COMMUNITY
REGULATE MARIJUANA LAND
USES?

8



(From FCCMA Legislative File #160395B 2016 Fall Supplement)



CITY OF TUCSON FACT SHEET

MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION LOCATIONS (ORD. No. 10850 and 11199)

DISCLAIMER: *This fact sheet is provided to assist persons wishing to engage in the sale or cultivation of Medical Marijuana within the City of Tucson. The following is a summary of relevant provisions of the City of Tucson Land Use Code provisions. This document is a summary or reference guide and is in no way intended to substitute for, change or modify any provision of the Land Use Code, The Arizona Medical Marijuana Act or any applicable health care regulation, including but not limited to regulations promulgated by the Arizona Department of Health Services.*

NOTICE: *The information provided herein is solely related to compliance with the City of Tucson land use regulations. Nothing herein is intended to express any opinion regarding compliance with federal laws.*

GENERAL

A Medical Marijuana Dispensary and Medical Marijuana Cultivation Location may be established on separate properties or combined on a single property subject to compliance with the regulations governing each use.

MEDICAL MARIJUANA DISPENSARY

1. Allowed in the C-2 and C-3 zones.
2. The total maximum floor area of a medical marijuana dispensary shall not exceed 4,000 square feet.
3. The secure storage area for the medical marijuana stored at the medical marijuana dispensary shall not exceed 500 square feet of the total maximum floor area of a medical marijuana dispensary.
4. A medical marijuana dispensary shall be located in a permanent building and shall not be located in a trailer, cargo container, mobile or modular unit, mobile home, recreational vehicle or other motor vehicle. 'Building' shall mean: A structure having a roof supported by columns, posts, or walls and intended for the shelter, housing, or enclosure of any person, entity, animal, process, equipment, goods, or materials of any kind or nature. Tucson Land Use Code, Article 6, Division 2, Section 6.2.2.
5. The permitted hours of operation of a medical marijuana dispensary shall be from 7:00 am to 10:00 pm.
6. A medical marijuana dispensary shall have an interior customer waiting area equal to a minimum of twenty-five (25) percent of the gross floor area.
7. A medical marijuana dispensary shall not have a drive-through service.
8. A medical marijuana dispensary shall not have outdoor seating areas.
9. A medical marijuana dispensary may deliver medical marijuana to qualifying patients and shall comply with all lawful, applicable health regulations, including those promulgated by the Arizona Department of Health Services and any other authorized regulatory agency..
10. A medical marijuana dispensary shall be setback a minimum of 2,000 feet from any other medical marijuana dispensaries measured in a straight and direct horizontal line between the two closest exterior walls of medical marijuana dispensaries.

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11. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a K-12 public, private or charter school (establishments for teaching such things as art, music, karate, mechanics, etc. are not classified as “schools” for the purpose of this ordinance) or a licensed childcare center, measured in a straight and direct horizontal line from the closest exterior wall of the medical marijuana dispensary to the closest property line of a school or childcare center.
12. A medical marijuana dispensary shall be setback a minimum of 1,000 feet from a church, library or public park and a minimum of 2,000 feet from a licensed residential substance abuse diagnostic and treatment facility or other licensed drug or alcohol rehabilitation facility, measured in a straight and direct horizontal line from the closest wall of the medical marijuana dispensary to the closest property line of a church, library, public park, licensed residential substance abuse diagnostic and treatment facility or other licensed drug or alcohol rehabilitation facility. (NOTE: a designated Riverpark or Golf Course is not considered a “park” for the purposes of this ordinance).
13. A medical marijuana dispensary and associated uses such as infusion kitchens, shall comply with all lawful, applicable health regulations, including those promulgated by the Arizona Department of Health Services and any other authorized regulatory agency.

MEDICAL MARIJUANA CULTIVATION LOCATION

1. Allowed in the C-2, C-3, I-1 and I-2 zones.
2. In C-2 and C-3 zones, the total maximum floor area of a medical marijuana cultivation location shall not exceed 3,000 square feet.
3. In I-1 and I-2 zones, there is no size limit.
4. In C-2 and C-3 zones, the secure storage area for the medical marijuana stored at the medical marijuana cultivation location shall not exceed 1,000 square feet of the 3,000 square foot total maximum floor area of a medical marijuana cultivation location.
5. A medical marijuana cultivation location must be located in a permanent building and shall not be located in a trailer, cargo container mobile or modular unit, mobile home, recreational vehicle or other motor vehicle. ‘Building’ shall mean: A structure having a roof supported by columns, posts, or walls and intended for the shelter, housing, or enclosure of any person, entity, animal, process, equipment, goods, or materials of any kind or nature. Tucson Land Use Code, Article 6, Division 2, Section 6.2.2.
6. In C-2 and C-3 zones, A medical marijuana cultivation location shall be setback a minimum of 2,000 feet from any other medical marijuana dispensaries or medical marijuana cultivation locations measured in a straight and direct horizontal line between the two closest exterior walls of medical marijuana cultivation locations.
7. In C-2 and C-3 zones, A medical marijuana cultivation location shall be setback a minimum of 1,000 feet from a K-12 public, private or charter school (establishments for teaching such things as art, music, karate, mechanics, etc. are not classified as “schools” for the purpose of this ordinance) or a licensed childcare center measured in a straight and direct horizontal line from the closet exterior wall of the medical marijuana cultivation location to the nearest property line of a school or childcare center.
8. In C-2 and C-3 zones, A medical marijuana cultivation location shall be setback a minimum of 1,000 feet from a church, library or public park and a minimum of 2,000 feet from a licensed residential substance abuse diagnostic and treatment facility or other licensed drug or alcohol rehabilitation facility measured in a straight and direct horizontal line from the closest wall of the medical marijuana cultivation location to the closest property line of a church, library, public park, licensed residential

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substance abuse diagnostic and treatment facility or other licensed drug or alcohol rehabilitation facility. (NOTE: a designated Riverpark or Golf Course is not considered a “park” for the purposes of this ordinance).

9. In the I-1 and I-2 zones, a medical marijuana cultivation location shall be setback a minimum of 500 feet from a K-12 public, private, or charter school, measured in a straight and direct horizontal line from the closest exterior wall of the medical marijuana off-site cultivation location to the closest property line of a school.
10. A medical marijuana cultivation location and associated uses such as infusion kitchens, shall comply with all lawful, applicable health regulations, including those promulgated by the Arizona Department of Health Services and any other authorized regulatory agency.
11. A medical marijuana cultivation location shall provide only wholesale products to other medical marijuana dispensary and off-site cultivation locations.

MEDICAL MARIJUANA DESIGNATED CAREGIVER CULTIVATION LOCATION

1. A designated caregiver may cultivate at their residence for a single qualifying patient subject to compliance with §A.R.S. 36-2801 et. seq. The Arizona Medical Marijuana Act.
2. A designated caregiver may, subject to compliance with §A.R.S. 36-2801 et. seq. The Arizona Medical Marijuana Act, cultivate for more than one qualifying patient in the C-2; C-3; I-1 or I-2 zones.
3. More than one designated caregiver may co-locate cultivation locations in the C-2; C-3; I-1 or I-2 zones as long as the total cultivation area does not exceed 250 square feet maximum, including storage areas.
4. A designated caregiver shall comply with all lawful, applicable health regulations, including but not limited to those promulgated by the Arizona Department of Health Services and any other authorized regulatory agency.
5. All conditions and restrictions for medical marijuana dispensary offsite cultivation locations apply except that the designated caregiver cultivation location cultivation area is limited to a total 250 square feet maximum, including any storage areas.

MEDICAL MARIJUANA QUALIFYING PATIENT CULTIVATION LOCATION

1. A qualifying patient may cultivate at his/her place of residence only in compliance with *The Arizona Medical Marijuana Act* §A.R.S. 36-2806 et. seq.
2. A qualifying patient, cultivating marijuana, shall comply with all lawful, applicable health regulations, including but not limited to those promulgated by the Arizona Department of Health Services and any other authorized regulatory agency.

DEFINITIONS

Medical Marijuana Dispensary. A Medical Marijuana Dispensary shall have the same meaning as ‘Nonprofit Medical Marijuana Dispensary’ set forth in The Arizona Medical Marijuana Act A.R.S. § 36-2801.11.

Medical Marijuana Cultivation Location. A Medical Marijuana Cultivation Location includes a cultivation location in conjunction with a dispensary or a Medical Marijuana Dispensary Off-site Cultivation Location where marijuana may be cultivated for the use of a Medical Marijuana Dispensary pursuant to The Arizona Medical Marijuana Act A.R.S. § 36-2801 et. seq.

PLANNING AND DEVELOPMENT SERVICES DEPARTMENT

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Medical Marijuana Dispensary Off-site Cultivation Location. A Medical Marijuana Dispensary Off Site Cultivation Location means the additional location, if any, where marijuana may be cultivated for the use of a Medical Marijuana Dispensary as disclosed pursuant to The Arizona Medical Marijuana Act A.R.S. § 36-2804.B.1.b.ii.

Medical Marijuana Designated Caregiver Cultivation Location. A Medical Marijuana Designated Caregiver Cultivation Location or Cultivation by a Designated Caregiver refers to cultivation of Medical Marijuana by a Designated Caregiver and Cardholder whose registration card indicates that the cardholder has been authorized to cultivate marijuana plants for a qualifying patient(s)' medical use pursuant to The Arizona Medical Marijuana Act A.R.S. § 36-2804.A.7.

Medical Marijuana Qualifying Patient Cultivation Location. A Medical Marijuana Qualifying Patient Cultivation Location shall mean cultivation of medical marijuana by a qualifying patient pursuant to The Arizona Medical Marijuana Act A.R.S. § 36-2801.1.a.ii but shall only include a Qualifying Patient who is also a Cardholder, authorized to cultivate marijuana plants pursuant to the provisions of § 36-2804.02.A.3.f.

PROCESS

A proposed site or location of a Medical Marijuana Dispensary or a Medical Marijuana Cultivation Location is reviewed by the Director of Planning and Development Services, or designee, for compliance with applicable Land Use Code regulations.

An application with sufficient information to determine the exact location of the proposed Medical Marijuana site and contact information of the applicant is required.

A site plan, indicating the proposed location of the Medical Marijuana facility, the location of all other land uses identified in this ordinance, within a half (1/2) mile radius of the proposed location and the setbacks to those land uses is required. It is the responsibility of the applicant to research the uses on the surrounding properties and accurately identify the distances and separations as required. Failure to accurately document surrounding uses may result in the revocation of any zoning compliance. The applicant shall provide information explaining what methods were used to identify the surrounding uses and distances.

A signed and notarized letter is required from the applicant indicating that they have read and understand the rules and regulations of the City of Tucson, have physically inspected the site and surrounding properties for specific uses and verifying that the proposed site location meets the requirements of Ordinance No. 10850.

The review process and site verification will take approximately four (4) weeks to complete. A provisional letter of zoning compliance may be issued to the applicant upon verification of compliance with the provisions of this Ordinance, where required by applicable health regulations. Zoning compliance will only be considered final upon proof of compliance with applicable health regulations to include registration, as may be required by the Arizona Department of Health Services. A provisional letter of zoning compliance will be valid for a period of one (1) year from date of issuance.

FEES

A \$495.00 fee is required to be submitted with the application and site plan. Checks are made payable to: The City of Tucson.