



## Legislation Text

---

**File #:** 160685., **Version:** 5

---

### **TEXT CHANGE - AMENDING MEDICAL MARIJUANA DISPENSING FACILITY REGULATIONS AND PERMITTED ZONING DISTRICTS (B)**

Ordinance No. 160685, Petition PB-16-185 TCH

An ordinance of the City of Gainesville, Florida, amending the Land Development Code (Chapter 30 of the City of Gainesville Code of Ordinances) relating to Medical Marijuana Dispensing Facilities by amending Section 30-2.1 to delete and amend definitions; amending Section 30-4.12 to add Medical Marijuana Dispensing Facilities as a use by right in the Urban 6 (U6) and Urban 7 (U7) transect zoning districts; amending Section 30-4.19 to add Medical Marijuana Dispensing Facilities as a use by right in the Automotive-Oriented Business (BA), Tourist-Oriented Business (BT), Business Industrial (BI), and Warehousing and Wholesaling (W) zoning districts and as a use allowable by Special Use Permit in the Corporate Park (CP), Limited Industrial (I-1), and General Industrial (I-2) zoning districts; amending Section 30-4.23 to add Medical Marijuana Dispensing Facilities as a use by right in the Airport Facility (AF) zoning district; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

The City Commission adopt the proposed ordinance.

#### DEPARTMENT OF DOING STAFF REPORT

In 2014, the Florida Legislature enacted the Compassionate Medical Cannabis Act of 2014, codified in Section 381.986, Florida Statutes, which provided for the distribution of low-THC medical cannabis for certain qualified patients and specified the authority of local governments to provide zoning regulations for the associated medical cannabis dispensaries. The Compassionate Medical Cannabis Act of 2014, among other restrictions, provided that a physician could only order low-THC cannabis (marijuana) for a patient suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms, and only if no other satisfactory alternative treatment options exist for that patient. On November 19, 2015, the City Commission adopted Ordinance No. 150395, which amended the Land Development Code to define and allow Medical marijuana dispensaries to dispense low-THC medical marijuana in certain zoning districts.

In 2016, the Legislature adopted HB 307 and substantially amended the 2014 Act to (among various other things) expand the forms of cannabis available for medical purposes and expand the kinds of patients that may receive medical marijuana. Among the many changes, the expanded state law provided additional definitions and numerous requirements for dispensing organizations.

In response to this 2016 amendment to state law, the City Plan Board on January 26, 2017, at the conclusion of a public hearing that included testimony by staff and from four members of the public (two of whom represented one of the dispensing organizations approved by the Florida Department of Health per Section 381.986, Florida Statutes, to cultivate, process, transport, and dispense medical marijuana), voted 4-2 to

recommend that the City update the current definitions in the City's Land Development Code (LDC) for Medical marijuana dispensaries in accordance with then current state law, but recommended against reducing the number of zoning districts where Medical marijuana dispensaries are an allowable use, and recommended against the special regulations proposed by staff, with the exception of minimum separation requirements from schools and other Medical marijuana dispensaries. However, the City Commission on March 2, 2017, held a public hearing and, in rejection of the City Plan Board recommendation, approved the petition and the drafting of an ordinance in accordance with the 2016 state law and staff's recommended implementing regulations.

In June 2017, during the drafting of the ordinance directed by the City Commission in March 2017, the Florida Legislature enacted SB 8-A and implemented Article X, Section 29 of the Florida Constitution approved by Florida voters (Amendment 2) in November 2016. This new state law (reflected in updated Section 381.986, Florida Statutes) essentially: 1) increased the type and kind of medical marijuana available for qualifying patients; 2) increased the class of patients that qualify for medical marijuana in the state; and 3) limited the zoning authority of local governments related to medical marijuana dispensing facilities by mandating that jurisdictions choose between banning such facilities citywide or allowing and regulating them the same as pharmacies.

This LDC amendment will allow Medical marijuana dispensing facilities in the City of Gainesville and will regulate them as if they were pharmacies. This amendment will update the definition of Medical marijuana dispensing facility in accordance with current state law and will add it as an allowable use, either by right or by Special Use Permit, to a number of zoning districts that were chosen because they mirror those that allow general retail uses such as pharmacies (pharmacies are regulated in the LDC as a general retail use). Not included in this LDC amendment are regulations such as certain separation requirements, which were previously directed by the City Commission, because such regulations are not applied to pharmacies within the City and are therefore now improper under state law.

### Definition Changes

This LDC amendment makes it consistent with current state law. The amendment will clarify that Medical marijuana dispensing facilities may dispense cannabis to medical patients for medical purposes pursuant to all current applicable regulations of the State of Florida, as may be amended from time to time. The LDC amendment complies with state law and limits any dispensing of marijuana to medical uses only, and any future state law change that would allow the dispensing of recreational marijuana would subsequently need to be considered by the City Commission before such use could be allowed in the City of Gainesville, unless the City's authority in this area had been preempted by the Florida Legislature.

### Zoning Changes

Medical marijuana dispensing facilities are already allowed by-right in the following zoning districts: U8 (Urban 8); U9 (Urban 9); DT (Downtown); MU-1 (Mixed-Use Low-Intensity); MU-2 (Mixed-Use Medium-Intensity); OR (Office Residential); OF (General Office); CP (Corporate Park); BUS (General Business); and MD (Medical Services).

This LDC amendment adds Medical marijuana dispensing facilities as a use-by-right in the following zoning districts: U6 (Urban 6); U7 (Urban 7); BA (Automotive-Oriented Business); BT (Tourist-Oriented Business); BI (Business Industrial); W (Warehousing and Wholesaling); and AF (Airport Facility). In addition, the use will be allowed by Special Use Permit in the following zoning districts: CP (Corporate Park); I-1 (Limited Industrial); and I-2 (General Industrial).

Of the total area of the City, approximately 28 percent is comprised of zoning districts in which the proposed use would be allowed. This area will be reduced to approximately 15 percent of the total area of the City due to the state-law required 500-foot minimum separation distance from a public or private elementary school, middle school, or secondary school, and due to airport development area limitations pertaining to Gainesville Regional Airport, which is located the AF (Airport Facilities) district.

CITY ATTORNEY MEMORANDUM

This ordinance requires two hearings and shall become effective immediately upon adoption at second reading.