

Meeting Date
02/21/2017



AGENDA	
Section	New Business
Item No.	VI A 2

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	BOARD APPROVAL RE: LEGISLATIVE INTENT AND PERMISSION TO ADVERTISE AN ORDINANCE ESTABLISHING STANDARDS FOR DISPENSING FACILITIES OF MEDICAL MARIJUANA TREATMENT CENTERS (MMTCs)
DEPT/OFFICE:	PLANNING AND DEVELOPMENT DEPARTMENT

Requested Action:

It is requested that the Board consider issuing legislative intent and permission to advertise an ordinance establishing standards for the location and operation of dispensing facilities of medical marijuana treatment centers (MMTCs).

Summary Explanation & Background:

On November 3, 2016, the Board of County Commissioners directed staff to prepare an ordinance regulating dispensing facilities of medical marijuana treatment centers (MMTCs).

Staff has conceptually drafted zoning requirements including locational and operational considerations. The specific language in the ordinance, however, will be crafted with the assistance of the County Attorney's Office to ensure consistency with terminology in Amendment 2 and future rulemaking by the Florida Department of Health.

The proposed ordinance would regulate where and how medical marijuana can be sold to patients. Staff anticipates creation of a new Conditional Use Permit (CUP) for dispensing facilities of medical marijuana treatment centers (MMTCs) within the Zoning Regulations. The conditional use could be considered in the BU-1, BU-2, and industrial zoning classifications.

This ordinance would also create operational requirements (such as hours of operation), and location standards (such as minimum distances between dispensing facilities and from other sensitive land uses), site design requirements (such as prohibition upon drive through service), prohibited activities (such as on site consumption), and permitting requirements for the conditional use per direction of the Board.

Upon approval of legislative intent and permission to advertise, staff will schedule the ordinance for consideration before the advisory bodies (the BCAC and LPA). The ordinance will then be advertised for public hearing before the BCC.

Clerk to the Board instruction:

Exhibits Attached: Staff Report

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager Stockton Whitten	Department Director / Extension Robin M. DiFabio, AICP
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February 22, 2017

MEMORANDUM

TO: Robin DiFabio, Planning and Development Director Attn: Tad Calkins

RE: Item VI.A.2., Legislative Intent and Permission to Advertise for an Ordinance
Establishing Standards for Dispensing Facilities of Medical Marijuana Treatment Centers
(MMTC)

The Board of County Commissioners, in regular session on February 21, 2017, approved legislative intent and granted permission to advertise an ordinance establishing standards for dispensing facilities of Medical Marijuana Treatment Centers (MMTC).

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/kp

cc: County Manager

**PLANNING & DEVELOPMENT DEPARTMENT STAFF REPORT
DRAFT OPERATIONAL/LOCATIONAL REQUIREMENTS
MEDICAL MARIJUANA**

Proposed operational/locational requirements for dispensing facilities of Medical Marijuana Treatment Centers (MMTCs) are summarized below. Please note that actual terminology and lexicon must be reviewed by the County Attorney's Office for consistency with Amendment 2 and further rulemaking by the Florida Department of Health.

a) Operations

- 1) No consumption of marijuana, pain management drugs, or alcoholic beverages shall be allowed on the premises, including in the parking areas, sidewalks or rights-of-way. No other business, aside or separate from the dispensing of marijuana shall be permitted to be conducted from the same premises where the dispensing facility of MMTCs is located.
- 2) Dispensing facility of MMTCs 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 5:00 p.m. on Saturday.
- 3) A dispensing facility of MMTCs shall not direct or encourage any patient or business to stand, sit (including in a parked car), or gather or loiter outside of the building where the dispensary/center operates, 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.
- 4) The dispensing facility of MMTCs shall post conspicuous signs on at least three (3) sides of the building stating that no loitering is allowed on the property.
- 5) There shall be no outdoor seating areas, queues, or customer waiting areas. All activities of the dispensing facility of MMTCs, including sales, display, preparations and storage, shall be conducted entirely within an enclosed building.
- 6) A dispensing facility of MMTCs shall not be permitted as a home occupation.
- 7) The on-site sale, provision, or dispensing of medical marijuana is prohibited except as specifically authorized by applicable federal or state law.

b) Location

- 1) There shall a distance of no less than one mile between each dispensing facility of MMTCs.
- 2) No dispensing facility of MMTCs shall be located within two hundred (200) feet of any residentially zoned or residentially developed property.
- 3) No dispensing facility of MMTCs shall be located within 1,000 feet of any child care facility, school, playground, public park or place of worship.
- 4) Distances between dispensing facility of MMTCs shall be measured by drawing a

straight between the front doors of the respective dispensaries. The distance from a child care facility, preschool, kindergarten, elementary school, middle school, junior high school, high school, religious facility, or residential property shall be measured by following a straight line from the nearest point of the respective structure to the front door of the proposed dispensing facility of MMTCs.

- 5) The applicant shall furnish a certified survey from a registered engineer or surveyor, indicating the distance between the proposed dispensing facility of MMTCs and any existing medical marijuana dispensary, child care facility, preschool, kindergarten, elementary school, middle school, junior high school, high school, religious facility, or residential property within the applicable radius.

c) Parking, Traffic and Site Design

- 1) Any parking demand created by a dispensing facility of MMTCs shall not exceed the parking spaces located or allocated on site, as required by the county's parking regulations. An applicant shall be required to demonstrate that on-site traffic and parking attributable to the dispensing facility of MMTCs will be sufficient to accommodate traffic and parking demands it generates, based upon a current traffic and parking study prepared by a certified professional.
- 2) The dispensing facility of MMTCs shall ensure that there is no queuing of vehicles in the rights-of-way.
- 3) No dispensing facility of MMTCs shall have a drive-through or drive-in service aisle.
- 4) All dispensing, payment for and receipt of said marijuana shall occur from within or inside the dispensing facility of MMTCs.

d) Prohibited activities

Each of following activities shall be prohibited and shall constitute a violation of this section:

- 1) Consumption of marijuana at a dispensing facility of MMTCs.
- 2) Dispensing of, payment for, and receipt of medical marijuana is prohibited anywhere outside of the dispensing facility of MMTCs, including, but not limited to, on sidewalks, in parking areas, or in the rights-of-way surrounding the dispensary; provided, however, this provision shall not be construed to prohibit delivery of medical marijuana to an eligible patient, as permitted by state law or rule.
- 3) Consumption of medical marijuana or alcoholic beverages is prohibited onsite at the dispensing facility of MMTCs including, but not limited to, in the parking areas, sidewalks, or rights-of-way surrounding the dispensary; provided, however, this provision shall not be construed to prohibit consumption associated with an employee of a dispensing facility of MMTCs, trained by a medical professional such as a doctor, nurse, pharmacist, or medical or physician's assistant, instructing an eligible patient on the mechanism of consumption of medical marijuana, as permitted by state law or rule.
- 4) The onsite dispensing of controlled substances at a dispensing facility of MMTCs is prohibited, unless specifically authorized by applicable law.

- 5) The possession, use, ingestion, consumption or smoking of medical marijuana or non-medical marijuana on any public property or property open to the public is prohibited. The term "public property or property open to the public" means, but is not limited to, any property owned , or controlled by any governmental body, including streets, right-of-ways, easements, parks, recreation area, beaches; any quasi-public area including stores, parking lots, malls, business establishments, shopping centers, private recreation area, common property of any community association; and any other area which is visible from any public property or property open to the public, except a private residence .

e) Permitting

- 1) A dispensing facility of MMTCs shall be permitted as a conditional use permit in the BU-1, BU-2, and Industrial Use zoning classifications only.
- 2) Dispensing facility of MMTCs 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 application for the medical marijuana dispensary.
- 3) Upon approval of the conditional use permit, the applicant shall have 180 days to apply for a development order or certificate of occupancy.
- 4) Any application for a business tax receipt as a dispensing facility of MMTCs shall be accompanied by an executed affidavit certifying registration with the State of Florida and the county as a as a medical marijuana dispensary, as applicable. The failure of an applicant to identify the business in the application for a business tax receipt as a medical marijuana dispensary will result in the immediate expiration of the business tax receipt and immediate ceasing of all activity conducted in the dispensing facility of MMTCs.
- 5) Imposition of additional operational requirements. When deemed appropriate, as based upon circumstances revealed through the general and specific standards of review set forth in this division, the Board shall have the option of imposing operational requirements upon an establishment approved for a conditional use for a dispensing facility of MMTCs. Requirements may include, but are not limited to, the following: hours of operation; limitations upon outdoor seating and service; additional buffering requirements; additional parking requirements; internal floor plan arrangement; or other specific restrictions based upon special neighborhood considerations.
- 6) Expansion of conditional use permit. The square footage area or location of premises designated for a conditional use permit for a dispensing facility of MMTCs shall not be expanded beyond that approved by the conditional use permit without filing a new application for a conditional use permit in accordance with the requirements contained in this section and section 62-1901 and having same approved by the board of county commissioners. "Expansion," as used herein, shall include the enlargement of space for such use and uses incidental thereto. The new application must cover both the existing approved designated area as well as the proposed expanded area. All areas approved shall be regulated under the same business license and shall be subject to uniform rules and regulations.

- 7) Any conditional use permit issued by the Board of County Commissioners for a dispensing facility of MMTCs is subject to revocation of permit pursuant to Section 62-1901(d).