

Meeting Date
October 10, 2017



AGENDA	
Section	PUBLIC HEARING
Item No.	IV.C

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Public Hearing, RE: Ordinance Establishing a Temporary Moratorium Prohibiting Any and All Medical Marijuana Dispensing Activities (First Reading) FISCAL IMPACT: NONE
DEPT/OFFICE:	Planning & Development

Requested Action:

Conduct the first public hearing for an Ordinance establishing a temporary moratorium prohibiting any and all medical marijuana dispensing activities within the unincorporated areas of Brevard County.

Summary Explanation & Background:

The proposed ordinance establishes a temporary moratorium for Medical Marijuana Treatment Centers (MMTC) within the unincorporated areas of Brevard County. Senate Bill 8-A provides restriction relating to operation of MMTC's and establishes the State as the primary regulatory authority. While the Senate Bill preempts the County from regulating most aspects of MMTC's, it does allow the County the ability to ban MMTC's altogether or treat them the same as pharmacies.

This ordinance is the result of the August 22, 2017, Board of County Commissioners meeting at which staff was directed to prepare a moratorium with a sunset of July 1, 2018, and to come back to the Board with recommendations for a separate zoning classification.

Contact: Tad Calkins, Director

(321)-633-2070 ext. 56363

Clerk to the Board instruction:

Exhibits Attached:

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

County Manager

Interim Assistant County Manager
 Jim Liesenfelt

Department Director / Extension
 Tad Calkins
 Planning & Development Dept. Ext. 56363

Frank Abbate

Assistant County Manager
 John Denninghoff



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

October 11, 2017

MEMORANDUM

TO: Tad Calkins, Planning and Development Director

RE: Item IV.C., Public Hearing to Consider Ordinance Establishing a Temporary Moratorium Prohibiting Any and All Medical Marijuana Dispensing Activities

The Board of County Commissioners, in regular session on October 10, 2017, amended the proposed ordinance to modify the moratorium sunset date to after the legislative session ends; directed staff to research plans from other counties; and continued the public hearing for ordinance establishing a temporary moratorium prohibiting any and all medical marijuana dispensing activities to the second reading to the October 24, 2017, Board meeting.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

Tammy Rowe

From: Jones, Jennifer <jennifer.jones@brevardfl.gov>
Sent: Wednesday, October 11, 2017 11:10 AM
To: Tammy Rowe
Subject: FW: Medical Marijuana Dispensing Moratorium

From: Soss, Matthew
Sent: Wednesday, October 11, 2017 10:40 AM
To: Jones, Jennifer
Cc: Yuan, Diana
Subject: FW: Medical Marijuana Dispensing Moratorium

Jennifer:

The moratorium will need to have the second hearing on the 24th. Once I have changed the duration of the moratorium, I'll forward the revised version.

From: Soss, Matthew
Sent: Wednesday, September 06, 2017 3:24 PM
To: Jones, Jennifer
Cc: Yuan, Diana
Subject: RE: Medical Marijuana Dispensing Moratorium

Please follow the procedure we used for the previous MMTC ordinance. This should be treated in the same manner as a zoning code change.

-Matt

From: Jones, Jennifer
Sent: Wednesday, September 06, 2017 3:18 PM
To: Soss, Matthew
Subject: RE: Medical Marijuana Dispensing Moratorium

The BCC ad for the August 22nd MMTC ordinance had to be a display ad.

From: Soss, Matthew
Sent: Wednesday, September 06, 2017 3:15 PM
To: Jones, Jennifer
Subject: RE: Medical Marijuana Dispensing Moratorium

What do you mean?

From: Jones, Jennifer
Sent: Wednesday, September 06, 2017 3:15 PM
To: Soss, Matthew
Subject: RE: Medical Marijuana Dispensing Moratorium

Thank you. And just to be sure, when it goes to BCC it is **not** a display ad?

ORDINANCE NO. 2017-_____

AN ORDINANCE ESTABLISHING A TEMPORARY MORATORIUM WITHIN THE UNINCORPORATED AREAS OF BREVARD COUNTY; PROHIBITING ANY AND ALL MEDICAL MARIJUANA DISPENSING ACTIVITIES DURING THE MORATORIUM PERIOD FOR ANY PROPERTY WITHIN ANY UNINCORPORATED AREAS OF BREVARD COUNTY; ADOPTING FINDINGS OF FACT; PROVIDING DEFINITIONS; PROVIDING FOR SUNSET OF MORATORIUM; PROVIDING FOR STAFF RECOMMENDATIONS; PROVIDING FOR AREA ENCOMPASSED; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN CODE.

WHEREAS, in 2014, the Florida Legislature passed the Compassionate Medical Cannabis Act, codified at Section 381.986, Florida Statutes (the "Compassionate Use Act"), which legalized the cultivation, processing, and dispensing of "Low-THC Cannabis, " as defined in Section 381.986, Florida Statutes, by a licensed dispensing organization; and

WHEREAS, in 2017, the Florida Legislature, in special session, amended the Compassionate Use Act, to prohibit local governments from placing specific limits, by ordinance, on the number of dispensing facilities that may locate within their respective jurisdictions and to further preempt local governance by prohibiting enactment of ordinances imposing permitting or locational requirements for medical marijuana dispensing facilities which are more restrictive than the local government's ordinances permitting or determining the locations for pharmacies; and

WHEREAS, Florida laws relating to the dispensing of Low-THC cannabis, Medical Cannabis, and their respective derivative products are rapidly changing, raising substantial questions about whether marijuana-related land uses may have deleterious and negative secondary effects on surrounding land uses and communities; and

WHEREAS, the purpose of this ordinance is to place a temporary moratorium on Medical Marijuana Dispensing Activities, as defined herein, for a period of time reasonably necessary for the County to determine the best way to regulate Medical Marijuana Dispensing Activities for the benefit of the public health, safety, and welfare and to promulgate reasonable regulations relating to such activities if deemed advisable by the County; and

WHEREAS, the Board of County Commissioners hereby finds that this ordinance advances an important government purpose by reducing the likelihood of the unregulated negative secondary effects of Medical Marijuana Dispensing Activities; and

WHEREAS, the Board of County Commissioners hereby finds that this ordinance is in the best interest of the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Brevard County, Florida. That:

SECTION 1. FINDINGS OF FACT.

The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this ordinance.

SECTION 2. DEFINITIONS.

(a) Low-THC Cannabis means a plant of the genus Cannabis, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seed or resin.

(b) "Medical Marijuana" means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every

compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified or eligible patient.

(c) Medical Marijuana Dispensing Activities include both the legal wholesale and retail sale of:

1. Medical Marijuana,
2. Low-THC Cannabis, and
3. derivative products,

or any subset of such activities, or any related activities. This term shall not include the processing, cultivation, or delivery of Medical Marijuana, when such processing, cultivation, or delivery is done in accordance with state law.

SECTION 3. RECOMMENDATIONS FOR LAND DEVELOPMENT REGULATIONS.

(a) County Staff is hereby directed to study Medical Marijuana Dispensing Activities and their impact on the health, safety, and welfare of residents and businesses located within unincorporated Brevard County, and to develop and recommend land development regulations for Medical Marijuana Dispensing Activities and any other relevant and appropriate regulations and recommendations, with such recommendations and proposed regulations being delivered to the Board of County Commissioners within a reasonable time before the expiration of this moratorium.

The ultimate purpose of such review and study by the staff is to propose amendments to Brevard County Code of Ordinances as it relates to land development regulations of pharmacies and Medical Marijuana Dispensing Activities within the unincorporated area of Brevard County.

SECTION 4. TEMPORARY MORATORIUM.

Beginning on the effective date of this ordinance and continuing until July 1, 2018, unless earlier terminated by an ordinance of the Board of County Commissioners, a moratorium is hereby imposed upon all Medical Marijuana Dispensing Activities, unless preempted by state law. During the moratorium, Brevard County will not accept, process, or consider applications for development orders, development permits, building permits or other permits required for, or relating to any proposed Medical Marijuana Dispensing Activities.

SECTION 5. SUNSET PROVISION.

This ordinance will sunset and be effectively repealed upon the sooner of (1) July 1, 2018; or (2) the Board of County Commissioner's enactment of an ordinance regulating Medical Marijuana Dispensing Activities.

SECTION 6. SEVERABILITY.

If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalid or unconstitutional portion shall not affect the validity of other portions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

SECTION 7. CONFLICTING PROVISIONS.

In the case of a direct conflict between any provisions of this Ordinance and a portion or provision of any other appropriate federal, state, or county law, rule, code or regulation, the more restrictive shall apply.

SECTION 8. AREA ENCOMPASSED.

This Ordinance shall apply to the unincorporated areas of Brevard County, Florida.