

ORDINANCE NO. 17-11

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, FLORIDA, APPROVING AMENDMENTS TO THE MARION COUNTY LAND DEVELOPMENT CODE, ARTICLES 1 (ADMINISTRATION), 2 (APPLICATION TYPES AND STANDARD REQUIREMENTS), AND 4 (ZONING); ESTABLISHING STANDARDS FOR MEDICAL MARIJUANA FACILITIES IN MARION COUNTY; PROVIDING FOR APPLICABILITY, SEVERABILITY, AND CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature enacted the ‘Compassionate Medical Cannabis Act of 2014,’ codified at Section 381.986, Florida Statutes; and

WHEREAS, in 2016, the voters of Florida approved Amendment 1 to the Florida Constitution, which has been codified as Florida Constitution, Article X, Section 29, Medical marijuana production, possession, and use; and

WHEREAS, the foregoing provisions of the Florida Constitution and general law establish a State of Florida legal framework whereby “medical cannabis” and “Low-THC cannabis” may be made available to qualifying patients and their caregivers, for the medical use of those patients in accordance with the terms and requirements of those provisions; and

WHEREAS, paragraph (8)(a) of Section 381.986, Florida Statutes, expressly provides that “[a]ll matters regarding the regulation of the cultivation and processing of medical marijuana by dispensing organizations are preempted to the state; and

WHEREAS, paragraph (8)(b) of Section 381.986, Florida Statutes, provides in relevant part, “[a] county may determine by ordinance the criteria for the **number, location, and other permitting requirements that do not conflict with state law or department rule for all dispensing facilities or dispensing organizations** located within the unincorporated areas of that county”; and

WHEREAS, because of the unique status of cannabis / marijuana as an illegal schedule 1 controlled substance under federal law, and the fact that the cultivation, processing, possession, distribution and sale of marijuana /cannabis continues to be illegal under Florida law, except as

expressly authorized by the above referenced provisions of the Florida Constitution and general law, and the fact that there continues to be a significant problem in the illegal cultivation, possession, distribution and sale of marijuana in the State of Florida, the Board of County Commissioners finds that these facts justify the establishment of special code provisions to regulate medical marijuana facilities and treatment centers within the unincorporated area of Marion County, in order to protect the health, safety, and welfare of the residents of Marion County.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Marion County, Florida:

Section 1. Section 2.22.5 of the Marion County Land Development Code, Other Applications, is hereby amended to add paragraph J:

J. Medical Marijuana Treatment Center Dispensaries

Section 2.

Article 4, Division 1 of the Marion County Land Development Code, Administration, is hereby amended to add Section 4.3.28 Medical Marijuana Treatment Center dispensaries to the table of contents.

Section 3. Article 4, Division 3 of the Marion County Land Development Code, Special Requirements, is hereby amended to add Section 4.3.28:

Section 4.3.28 Medical Marijuana Treatment Center Dispensaries

A. Purpose and Intent

- (1) Section 381.986, Florida Statutes, and Florida Administrative Code Chapter 64-4 authorize a limited number of dispensing organizations throughout the state of Florida to cultivate, process and dispense medical marijuana for use by qualified patients, who are added to the compassionate use registry. The dispensing organizations must be approved by the Florida Department of Health and are subject to state regulation and oversight.
- (2) The intent of this ordinance is to establish the allowed locations and permitting process of medical marijuana treatment center dispensary establishments in accordance with Section 381.986, Florida Statutes, and Florida Administrative Code Chapter 64-4.

B. Applications to locate a medical marijuana treatment center anywhere in the unincorporated area of Marion County shall be obtained from the Marion County Growth Services Department. Application will be limited to one complete conforming application per dispensary organization. Complete and conforming applications will be accepted on a first come first serve basis and limited to a total of 5 countywide. The cap on MMTCs, as well as the County's overall experience with the effectiveness of this ordinance, shall be re-evaluated by June of 2018 to determine if additional dispensary locations, or any revisions to the ordinance are warranted.

- (1) Upon receiving notification by Growth Services of an approval of a dispensary application, the approved dispensary organization will have 120 days to obtain a building permit for

construction of the MMTC. If after 120 days a permit has not been obtained the application approval will expire.

Upon issuance of a building permit for construction of the MMTC the applicant then has 180 days to complete their final inspection and occupy the MMTC. If after 180 days work has commenced in good faith and substantial progress has been made to complete the construction of the MMTC, but the work has not been completed within that time period, the applicant may request an extension of such time period by the Board, upon a showing of good cause by the applicant.

C. Application requirements for medical marijuana treatment center dispensary

- (1) Any Dispensing Organization licensed by the State of Florida may apply to locate a medical marijuana treatment center dispensary on property that meets the requirements of this Ordinance.
- (2) In support of the application submittal the applicant shall include the following:
 - (a) Proof of all licenses and approvals from the State of Florida as a dispensary organization.
 - (b) Business plan that includes:
 1. Summary of application to the State of Florida. Experience and volume of medical marijuana product sales in Florida
 2. Name and credentials of medical staff
 3. Number of employees
 4. Disclosure of any pending legal action or challenge related to the applicant's operations, security, or products
 - (c) A concept plan that includes the elevations of the building or proposed building.
 - (d) Elevations, dimensions, and content of signs as well as a copy of the proposed signs.
 - (e) Demonstrate that an established banking relationship with a debit like payment system for dispensary transactions has been created.
 - (f) Satisfaction of the security and operational requirements provided herein.

D. Operational

- (1) Low-THC and Medical Cannabis Dispensary applicants must:
 - (a) Prohibit loitering on premises.
 - (b) Possess Low-THC cannabis or medical cannabis Dispensing Organization Approval through the Florida Department of Health.
 - (c) Not dispense from its premises low-THC cannabis, medical cannabis, or a cannabis delivery device between the hours of 9 p.m. and 7 a.m., but may perform all other operations and deliver low-THC cannabis and medical cannabis to qualified patients 24 hours a day.
 - (d) Conduct all operation activities in compliance with F.A.C 64.4 and F.S. 381.986 as may be amended from time to time.
 - (e) Not allow Alcohol on premises.
 - (f) Not allow consumption of low-THC cannabis or medical cannabis on premises.
- (2) To ensure the safety and security of its premises and any off-site storage facilities, and to maintain adequate controls against the diversion, theft, and loss of low-THC cannabis, medical cannabis, or cannabis delivery devices, a dispensing organization shall:
 - (a) Store low-THC cannabis or medical cannabis in a secured, locked room or a vault.

- (b) Require at least two security personnel, either employees or contracted security agents, to be on the premises 24 hours a day.
- (c) Maintain a fully operational monitored security alarm system that secures all entry points and perimeter windows and is equipped with motion detectors; pressure switches; and duress, panic, and hold-up alarms; and
- (d) Maintain a video surveillance system that records continuously 24 hours each day and meets all the following criteria:
 - 1. Cameras are fixed in a place that allows for the clear identification of persons and activities in controlled areas of the premises. Controlled areas include grow rooms, processing rooms, storage rooms, disposal rooms or areas, and point-of-sale rooms;
 - 2. Cameras are fixed in entrances and exits to the premises, which shall record from both indoor and outdoor, or ingress and egress, vantage points;
 - 3. Recorded images must clearly and accurately display the time and date;
 - 4. Retain video surveillance recordings for a minimum of 45 days or longer upon the request of a law enforcement agency.
- (e) Ensure that the organization's outdoor premises have sufficient lighting in order to clearly identify persons and vehicles on premises.
- (f) Maintain safe and secure delivery procedures that include the following criteria:
 - 1. Require at least two persons to be in a vehicle transporting medical cannabis.
 - 2. Require at least one person to remain in the vehicle at all times while the low-THC cannabis or medical cannabis is being delivered.
 - 3. Require body cameras on persons making delivery.
 - 4. All product to be secured in a trunk vault or secured compartment while in transit for delivery.
 - 5. Require a monitored GPS and turn by turn tracking system on all delivery vehicles.
 - 6. Require audio and video recording in all delivery vehicles. All recording needs to capture the entire delivery trip, from the moment the delivery vehicle leaves the dispensary premises until the moment that the delivery vehicle returns to a secured location on premises. These recordings will be required to be kept on file for 45 days.

E. Permitted Zoning Classifications. Medical marijuana treatment center dispensary establishments will be allowed by right in the following zoning classifications; B-2, B-4 and B-5 classifications only.

F. Spacing Requirements

- (1) Medical marijuana treatment center dispensary operations may not be established or continued in zoning classifications listed in subsection E (1) (a) unless all other requirements of this Land Development Code pertaining to such zoning classifications are complied with and the medical marijuana treatment center dispensary is at least:
 - (a) One and a half (1.5) miles from any other medical marijuana treatment center; and
 - (b) One thousand (1,000) feet from any established church, public or private school, playground, park, daycare, or drug rehabilitation center; and
 - (c) Five hundred (500) feet from residentially zoned parcels

- (2) For purposes of distance limitations, the measurement shall be made by extending a straight line from the nearest property line of the dispensing facility to the nearest property line of any use listed in paragraph (a), (b), or (c), above.
- (3) Upon receipt of an application for a MMTC within one thousand feet (1,000') of any neighboring municipality or any other county, Marion County will provide written notice of the application to the planning or permitting official of the applicable neighboring jurisdiction.
- (4) An applicant may request a Special Use Permit for an establishment proposing dispensary operations where the above referenced spacing requirements cannot be met. Notification of all schools, parks, daycares, churches, drug rehab facilities, and residentially zoned parcels within the prescribed spacing distances above is required.

G. Signage

- (1) Notwithstanding any provision of this Land Development Code, the Building Code or any County ordinance or regulation to the contrary, it shall be unlawful for any owner or operator of any medical cannabis dispensary business or any other person to erect, construct, or maintain any sign for the dispensary or any facility where medical cannabis recommendations are provided other than one "primary sign" and one "wall sign," as provided herein:
 - (a) Primary signs shall have no more than two display surfaces. Each such display surface shall:
 1. Not contain any flashing lights, moving parts or be constructed to simulate movement;
 2. Be a flat plane, rectangular in shape;
 3. Not exceed 50 square feet in area; and
 4. Not exceed ten feet in height or ten feet in length.
 - (b) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations of any manner, and may contain only:
 1. The name of the regulated establishment; and
 2. Any official symbol for medical cannabis adopted by the State of Florida.
- (2) Each letter forming a word on a primary sign shall be of a solid color, and each such letter shall be the same print-type, size and color. The background behind such letter on the display surface of a primary sign shall be of a uniform and solid color.
 - (a) Wall signs shall have only one display surface. Such display surface shall:
 1. Be a flat plane, rectangular in shape;
 2. Not exceed 30 square feet in area;
 3. Not exceed eight feet in height or eight feet in width; and
 4. Be affixed or attached to any wall or door of the establishment.
 5. The provisions of Sections 4.3.28 G (1) (a), (b), and G (2) above shall also apply to wall signs.
- (3) On-site directory signs shall adhere to the above regulations in 4.3.28(G) (1) (b) while conforming to the on-site directory sign provisions of the plaza.

Section 4. Article 1, Division 2 of the Marion County Land Development Code, Definitions, is hereby amended to add the following definitions:

- (1) Compassionate Use Registry. The Compassionate Use Registry is the Florida Department of Health's secure, electronic, and online database for the registration of ordering physicians and qualified patients.
- (2) Dispensing Organization. An organization approved by the Florida Department of Health department to cultivate, process, transport, and dispense medical cannabis pursuant to 4.3.28.
- (3) Dispensary. Retail location for dispensing medical cannabis.
- (4) Low-THC Cannabis. A plant of the genus Cannabis, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed only from a dispensing organization.
- (5) Medical cannabis. Also referred to as Medical Marijuana. All parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, sale, derivative, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a dispensing organization for medical use by an eligible patient as defined in CH. 499.0295 FS.
- (6) "Medical Marijuana Treatment Center" (MMTC). Any entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Department.
- (7) Medical Use. Administration of the ordered amount of medical cannabis. The term does not include the:
 - (a) Possession, use, or administration of medical cannabis by smoking.
 - (b) Transfer of medical cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative on behalf of the qualified patient.
 - (c) Use or administration of medical cannabis:
 1. On any form of public transportation.
 2. In any public place.
 3. In a qualified patient's place of employment, if restricted by his or her employer.
 4. In a state correctional institution as defined in CH. 944.02 FS or a correctional institution as defined in CH. 944.241 FS.
 5. On the grounds of a preschool, primary school, or secondary school.
 6. On a school bus or in a vehicle, aircraft, or motorboat.
- (8) Qualified Patient. A resident of this state who has been added to the compassionate use registry by a physician licensed under CH. 458 or CH. 459 FS to receive medical cannabis from a dispensing organization.

Section 5. Applicability

The provisions of this ordinance shall be applicable in the unincorporated areas of Marion County, Florida. This ordinance shall only be construed to allow the dispensing of medical marijuana by a state-approved dispensing organization, for medical use, by Special Use Permit. The sale and use of cannabis or marijuana is prohibited in Marion County except in accordance with state law and Sec. 4.3.28 of the Land Development Code.

Section 6. Severability

If any provision or regulation of this Ordinance or the Marion County Land Development Code is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then it is the intent of the Board that such provision or regulation be declared unenforceable as applied or stricken if unconstitutional, and that all remaining provisions and portions of this ordinance or the Land Development Code shall remain in full force and effect.

Section 7. Codification

The provisions of this Ordinance shall be codified in the Marion County Land Development Code. The sections, sub-sections, and paragraphs of this ordinance may be revised in order to be properly incorporated into the Land Development Code.

Section 8. Effective Date

This Ordinance shall take effect upon receipt of notice that the Ordinance has been received by the Office of the Secretary of State of the State of Florida.

DULY ADOPTED this 16th day of May, 2017

ATTEST:

BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, FLORIDA

DAVID R. ELLSPERMANN, CLERK

CARL ZALAK, III, CHAIRMAN