

**PALM BEACH COUNTY
PLANNING, ZONING AND BUILDING DEPARTMENT
ZONING DIVISION**

UNIFIED LAND DEVELOPMENT CODE (ULDC) AMENDMENTS

TITLE: MEDICAL MARIJUANA DISPENSING FACILITIES –ADOPTION HEARING

SUMMARY: The proposed ordinance will account for consistency with the Comprehensive Plan, correction of glitches and clarifications, as well as several specific amendments, as follows:

LDRAB/LDRC: Land Development Regulation Advisory Board (LDRAB) Recommendation and Land Development Regulations Commission (LDRC) Determination: Recommended approval of the proposed amendments on July 26, 2017. All proposed ULDC amendments were found to be consistent with the Comprehensive Plan.

BCC Public Hearings: Approved (5-0) on July 27, 2017, Request for Permission to Advertise for First Reading on August 24, 2017. Approved (6-0) on August 24, 2017, First Reading and Advertise for an Adoption Hearing on September 28, 2017.

MOTION: TO ADOPT AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING THE UNIFIED LAND DEVELOPMENT CODE, ORDINANCE 2003-067, AS AMENDED, AS FOLLOWS: **ESTABLISHING REGULATIONS RELATED TO MEDICAL MARIJUANA DISPENSING FACILITIES AND SUNSETTING THE MEDICAL MARIJUANA MORATORIUM, AMENDING ARTICLE 1, GENERAL PROVISIONS; CHAPTER I, DEFINITIONS AND ACRONYMS; ARTICLE 2, DEVELOPMENT REVIEW PROCEDURES; CHAPTER B, PUBLIC HEARING PROCESS; ARTICLE 4, USE REGULATIONS; CHAPTER B, USE CLASSIFICATION; PROVIDING FOR: INTERPRETATION OF CAPTIONS; REPEAL OF LAWS IN CONFLICT; SEVERABILITY; A SAVINGS CLAUSE; INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE; AND, AN EFFECTIVE DATE.**

EXHIBIT A – Medical Marijuana Dispensing Facility

BACKGROUND

In 2014, FS 381.986 (the Compassionate Medical Cannabis Act of 2014) was passed legalizing strains of a low tetrahydrocannabinol (THC) and high cannabidiol (CBD) form of cannabis (low-THC cannabis) for medical use by patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms. The Florida Department of Health (DOH) therefore was responsible for the implementation of the Act and sought to establish rules for Dispensing Organizations. The Dispensing Organizations and their owners, managers, and employees were not subject to licensure and regulation under Chapter 465, FS, relating to pharmacies (Florida Senate Staff Analysis Senate Bill 8-A). Florida Statute 381.986 gave local jurisdictions the authority to regulate the number, location and permitting requirements for dispensaries.

In November 2016, Constitutional Amendment 2 was passed into law and established Article X, section 29 of the State Constitution. This section of the constitution became effective on January 3, 2017 allowing for the use of Medical Marijuana for debilitating conditions.

On December 7, 2016, the Board of County Commissioners (BCC) adopted a Zoning in Progress that would temporarily suspend applications to the Zoning Division for Medical Marijuana Treatment Centers (MMTC) or Dispensing Organizations.

On February 23, 2017, the BCC adopted the Medical Marijuana Moratorium (Ord. 2017-009) that established sun setting provisions upon one-year of effective date or adoption of Code amendments. The one-year moratorium would provide staff the time to research dispensing facilities, how other jurisdictions were regulating, and prepare for implementing language adopted by the state legislature or rule-making procedures prepared by the DOH.

On March 3, 2017 the Florida Legislature began the 2017 Legislative Session. The Florida Legislature sought to enact implementing language and had proposed several house and senate bills. However, legislators could not come into agreement on several issues related to the bills and nothing was passed at the time of adjournment.

On June 6, 2017 a Legislative Special Session was convened to address pending bills which did include the Medical Marijuana topic. An implementing bill was ultimately passed by the Legislature, amending FS 381.986.

RESEARCH/ FINDINGS

Prior to the 2017 Legislative Session, Staff conducted extensive research of both local and Florida jurisdictions proposed or adopted regulations for this use that included but not limited to Hollywood, Indian River County, Miami-Dade County, Palm Springs, Royal Palm Beach, St. Lucie County and West Palm

Beach. Based on staff's initial review of jurisdictions, the following types of regulations were being considered:

- Approval of the use: Public Hearing vs. Administrative
- Location standards
- Limitations on the Number
- Hours of Operation
- Safety Measures

As indicated above, FS 381.986 was amended during the Legislative Special Session. Changes related to local government authority included:

- Authority to jurisdictions to ban dispensaries;
- Prohibits jurisdictions from limiting the number of dispensaries;
- Requires cultivating or processing facilities to be located 500 feet from schools;
- Requires dispensing facilities to be located 500 feet from schools but may be reduced by the BCC;
- Prohibits jurisdictions from treating dispensaries differently than pharmacies; and,
- Dispensaries must meet Building Code and Fire Code requirements.

CONCLUSIONS

The proposed amendments will revise the existing Retail Sales use to allow for medical marijuana dispensaries in Palm Beach County based on new state legislation implementing amended FS 381.986.

Part	Article	Reasons
1.	ULDC Art. 1.1.2.M.30, Medical Marijuana Dispensing Organization	[Zoning/ County Attorney] Delete Medical Marijuana Dispensing Organization definition from Article 1. The definition was added as part of the Medical Marijuana Moratorium (Ordinance 2017-009). The Moratorium language indicated sun setting provisions upon one-year of effective date or adoption of Code amendments. The deletion is a house keeping item to show the change.
2.	ULDC, Art. 2.B.2.G.2, Applicability [Related to Type 2 Waivers]	[Zoning/ County Attorney] Amend Table 2.B.2.G – Summary of Type II Waivers to add Medical Marijuana Dispensing Facility consistent with FS 381.986. Florida statute requires a separation distance of 500 feet from an Elementary or Secondary School but allows jurisdictions to utilize a formal mechanism to consider an alternative separation distance if within the state mandated requirement. The separation distance may be reduced by a Type 2 Waiver.
3	ULDC Art. 4.B.2.C.34, Retail Sales	[Zoning/ County Attorney] Clarify that medical marijuana dispensing facilities fall under the use of Retail Sales similar to pharmacies consistent with FS 381.986. Florida Statute indicates that dispensing facilities cannot be more restrictive than how pharmacies are reviewed and approved. Pharmacies in the ULDC do not have use specific regulations, therefore dispensing facilities would be limited to any state preemption if applicable. [Zoning/ County Attorney] Establish new medical marijuana dispensing facility definition to ensure that a dispensing facility is not confused with other MMTc functions and is following applicable dispensing guidelines consistent with FS and DOH. [Zoning/ County Attorney] Establish location criteria consistent with FS 381.986. Florida statute requires a medical marijuana dispensing facility be separated a distance of 500 feet from an Elementary or Secondary School but allows jurisdictions to utilize a formal mechanism to consider an alternative separation distance if within the state mandated requirement. The separation distance may be reduced by a Type 2 Waiver.
4.	ULDC Art. 4.B.2.D, Medical Marijuana Moratorium,	[Zoning/ County Attorney] Delete Medical Marijuana Moratorium language from Article 4. The Moratorium language indicated sun setting provisions upon one-year of effective date or adoption of Code amendments. The deletion is a house keeping item to show the change.

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AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING THE UNIFIED LAND DEVELOPMENT CODE, ORDINANCE 2003-067, AS AMENDED, AS FOLLOWS: **ESTABLISHING REGULATIONS RELATED TO MEDICAL MARIJUANA DISPENSING FACILITIES AND SUNSETTING THE MEDICAL MARIJUANA MORATORIUM**, AMENDING **ARTICLE 1, GENERAL PROVISIONS**; CHAPTER I, DEFINITIONS AND ACRONYMS; **ARTICLE 2, DEVELOPMENT REVIEW PROCEDURES**: CHAPTER B, PUBLIC HEARING PROCESS; **ARTICLE 4, USE REGULATIONS**: CHAPTER B, USE CLASSIFICATION; PROVIDING FOR: INTERPRETATION OF CAPTIONS; REPEAL OF LAWS IN CONFLICT; SEVERABILITY; A SAVINGS CLAUSE; INCLUSION IN THE UNIFIED LAND DEVELOPMENT CODE; AND, AN EFFECTIVE DATE.

WHEREAS, in 2014, the Florida Legislature enacted a separate but significantly more narrow medical marijuana law, the “Compassionate Medical Cannabis Act of 2014,” codified in Section 381.986, Florida Statutes, which authorizes a limited number of nurseries to cultivate, process, and dispense low-THC cannabis to qualified patients and operate as “dispensing organizations;” and

WHEREAS, on November 8, 2016, Florida voters approved an amendment to the Florida Constitution entitled “Use of Marijuana for Debilitating Medical Conditions” (“Amendment 2”); and

WHEREAS, Amendment 2 legalizes the medically certified use of marijuana throughout the State of Florida and authorizes the cultivation, processing, distribution, and sale of marijuana, and related activities, by licensed “Medical Marijuana Treatment Centers;” and

WHEREAS, on June 23, 2017, the Florida Legislature amended numerous provisions of Section 381.986, Florida Statutes to expand compassionate use of medical marijuana including how local governments regulate Medical Marijuana Treatment Center (MMTC) dispensing facilities; and provided additional regulation of the Department of Health with regard to medical cannabis; and

WHEREAS, Florida Statute, Chapter 2017-232, allows local governments to ban or establish limited regulations for permitting and siting MMTC dispensing facilities; and

WHEREAS, the Board of County Commissioners has determined it is not appropriate to ban MMTC dispensing facilities; and

WHEREAS, Chapter 2017-232 does not permit local governments to place more restrictive regulations on MMTC dispensing facilities than its ordinances for permitting or for determining the locations for pharmacies licensed under Chapter 465, Florida Statutes; and

WHEREAS, Chapter 64-4 “Compassionate Use” of the Florida Administrative Code has been enacted to regulate the Department of Health with regard to the requirements for dispensing organizations, including procedures for application, review, approval, inspection, and authorization of dispensing organizations, and the Department of Health has commenced its application and review process; and

1 **WHEREAS**, due to the historical prohibition of marijuana, Palm Beach County does not
 2 currently have any land development regulations governing the use of real property for the
 3 purposes of cultivating, processing, distributing, or selling marijuana, or related activities, and
 4 such uses are not permissible within the unincorporated area; and

5 **WHEREAS**, Chapter 2017-232 provides that MMTC dispensing facilities may not be
 6 located within 500 feet of a public or private elementary, middle or secondary school unless the
 7 city or county approves the location through a formal proceeding open to the public at which the
 8 city or county makes a finding that the location promotes the public health, safety and general
 9 welfare of the community; and

10 **WHEREAS**, the Land Development Regulation Commission has found these
 11 amendments to the ULDC to be consistent with the Palm Beach County Comprehensive Plan;
 12 and

13 **WHEREAS**, the BCC hereby elects to conduct its public hearings on this Ordinance at
 14 9:30 a.m.; and

15 **WHEREAS**, the BCC has conducted public hearings to consider these amendments to
 16 the ULDC in a manner consistent with the requirements set forth in Section 125.66, Florida
 17 Statutes.

18
 19 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF**
 20 **PALM BEACH COUNTY, FLORIDA, as follows:**

21 **Section 1. Adoption**

22 The amendments set forth in Exhibits listed below, attached hereto and made a part
 23 hereof, are hereby adopted.

24 **Section 2. Interpretation of Captions**

25 All headings of articles, sections, paragraphs, and sub-paragraphs used in this Ordinance
 26 are intended for the convenience of usage only and have no effect on interpretation.
 27
 28

29 **Section 3. Repeal of Laws in Conflict**

30 All local laws and ordinances in conflict with any provisions of this Ordinance are hereby
 31 repealed to the extent of such conflict.
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33 **Section 4. Severability**

34 If any section, paragraph, sentence, clause, phrase, word, map, diagram, or any other
 35 item contained in this Ordinance is for any reason held by the Court to be unconstitutional,

1 inoperative, void, or otherwise invalid, such holding shall not affect the remainder of this
2 Ordinance.

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4 **Section 5. Savings Clause**

5 All development orders, permits, enforcement orders, ongoing enforcement actions, and
6 all other actions of the Board of County Commissioners, the Zoning Commission, the
7 Development Review Officer, Enforcement Boards, all other County decision-making and
8 advisory boards, Special Masters, Hearing Officers, and all other County officials, issued pursuant
9 to the regulations and procedures established prior to the effective date of this Ordinance shall
10 remain in full force and effect.

11

12 **Section 6. Inclusion in the Unified Land Development Code**

13 The provisions of this Ordinance shall be codified in the Unified Land Development Code
14 and may be reorganized, renumbered or re-lettered to effectuate the codification of this
15 Ordinance.

16

17 **Section 7. Providing for an Effective Date**

18 The provisions of this Ordinance shall become effective upon filing with the Department
19 of State.

20

21 **APPROVED and ADOPTED** by the Board of County Commissioners of Palm Beach
22 County, Florida, on this the _____ day of _____, 20____.

23

SHARON R. BOCK, CLERK &
COMPTROLLER

PALM BEACH COUNTY, FLORIDA, BY
ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Paulette Burdick, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
County Attorney

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EFFECTIVE DATE: Filed with the Department of State on the _____ day of
_____, 20____.

EXHIBIT A

MEDICAL MARIJUANA DISPENSING FACILITY SUMMARY OF AMENDMENTS

(Updated 6/20/17)

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2 Part 1. ULDC, Art. 1.1.2.M.30, Medical Marijuana Dispensing Organization [Related to
3 Definitions] (page 69 of 110), is hereby amended as follows:

4 CHAPTER I DEFINITIONS & ACRONYMS

5 Section 2 Definitions

6 M. Terms defined herein or referenced in this Article shall have the following meanings:

7 ~~30. Medical Marijuana Dispensing Organization — means an organization approved by the~~
8 ~~Florida Department of Health to cultivate, process, and dispense low-THC cannabis or medical~~
9 ~~cannabis pursuant to Fla. Stat. § 381.986.~~

10 [Renumber Accordingly]

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13 Part 2. ULDC, Art. 2.B.2.G.2, Applicability [Related to Type 2 Waivers] (page 28 of 88), is hereby
14 amended as follows:

15 CHAPTER B PUBLIC HEARING PROCESS

16 Section 2 Conditional Uses, Development Order Amendments, Unique Structures and Type II
17 Waivers

18 G. Type II Waivers

19

20 2. Applicability

21 Requests for Type II Waivers shall only be permitted where expressly stated within the
22 ULDC. [Ord. 2011-016] [Ord. 2012-027]

23
24 Table 2.B.2.G - Summary of Type II Waivers

Type II Waiver Summary List
....
<u>Art. 4.B.2.C.32.h, Medical Marijuana Dispensing Facility</u>
[Ord. 2012-027] [Ord. 2016-016] [Ord. 2016-020] [Ord. 2017-007]

25 3. Standards

26 When considering a Development Order application for a Type II Waiver, the BCC shall
27 consider the standards indicated below and any other standards applicable to the specific Type
28 II Waiver as contained in this Code. A Type II Waiver, which fails to meet any of the standards,
29 shall be deemed adverse to the public interest and shall not be approved. [Ord. 2011-016]
[Ord. 2012-027]

- 30 a. The Waiver does not create additional conflicts with other requirements of the ULDC, and
31 is consistent with the stated purpose and intent for the Zoning district or Overlay; [Ord.
32 2010-022] [Ord. 2011-016] [Ord. 2012-027]
- 33 b. The Waiver will not cause a detrimental effect on the overall design and development
34 standards of the project, and will be in harmony with the general site layout and design
35 details of the development; and, [Ord. 2010-022] [Ord. 2012-027]
- 36 c. The alternative design option recommended as part of the Waiver approval, if granted, will
37 not adversely impact adjacent properties. [Ord. 2010-022] [Ord. 2012-027]
- 38 d. For the purpose of Medical Marijuana Dispensing Facility in Art. 4.B.2.C.34.h, the BCC
39 shall make the determination that the location of a medical marijuana dispensing facility
40 promotes the health, safety and welfare of the community.

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44 Part 3. ULDC Art. 4.B.2.C.34, Retail Sales, is hereby amended as follows:

45 CHAPTER B SUPPLEMENTAL USE STANDARDS

46 Section 2 Commercial Uses

47 C. Definitions and Supplementary Use Standards

48 34. Retail Sales

49 a. Definition

50 An establishment providing general retail sales or rental of goods, but excluding those uses
51 specifically classified as another use type.

Notes:

Underlined indicates **new** text.

~~Stricken~~ indicates text to be **deleted**. ~~Stricken and italicized~~ means text to be totally or partially relocated.
If being relocated destination is noted in bolded brackets [Relocated to:].

Italicized indicates text to be relocated. Source is noted in bolded brackets [Relocated from:].

.... A series of four bolded ellipses indicates language omitted to save space.

EXHIBIT A

MEDICAL MARIJUANA DISPENSING FACILITY SUMMARY OF AMENDMENTS

(Updated 6/20/17)

1 **b. Typical Uses**

2 Retail Sales may include but are not limited to clothing stores, bookstores, business
3 machine sales, food and grocery stores, window tinting, marine supply sales (excluding
4 boat sales), auto accessories and parts, building supplies and home improvement
5 products, monument sales, printing and copying, ~~and~~ pharmacies and medical marijuana
6 dispensing facilities. Uses shall also include the sale of bulky goods such as household
7 goods, lawn mowers, mopeds.

8
9 **h. Medical Marijuana Dispensing Facility**

10 **1) Definition**

11 A facility, operated by a Medical Marijuana Treatment Center (MMTC) in accordance
12 with the Florida Department of Health as a medical marijuana dispensing facility, that
13 dispenses medical marijuana to qualified patients or caregivers. A medical marijuana
14 dispensing facility does not prepare, transfer, cultivate or process any form of
15 marijuana or marijuana product.

16 **2) Location**

17 Medical marijuana dispensing facility shall not be located within 500 feet of an existing
18 Elementary or Secondary School, unless approved as a Type 2 Waiver.

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21 **Part 4. ULDC Art. 4.B.2.D, Medical Marijuana Moratorium, is hereby deleted as follows:**

22 **CHAPTER B SUPPLEMENTAL USE STANDARDS**

23 **Section 2 Commercial Uses**

24 **~~D. Medical Marijuana Moratorium~~**

- 25 ~~1. The Board of County Commissioners of Palm Beach County does hereby impose a moratorium~~
26 ~~beginning on the effective date of this ordinance, upon the acceptance of zoning applications~~
27 ~~and all applicable requests for zoning approval for Medical Marijuana Treatment Centers and~~
28 ~~Medical Marijuana Dispensing Organizations in unincorporated Palm Beach County. While the~~
29 ~~moratorium is in effect the County shall not accept, process or approve any application relating~~
30 ~~to the zoning approval of a Medical Marijuana Treatment Center or Medical Marijuana~~
31 ~~Dispensing Organization. This moratorium does not prohibit the medical use of marijuana, low~~
32 ~~THC cannabis or medical cannabis by a qualifying patient as determined by a licensed Florida~~
33 ~~physician, pursuant to Amendment 2, Sec. 381.986, Fla. Stat., or other Florida law.~~
34 ~~2. This Ordinance shall expire upon the earlier of the following: one year from the effective date~~
35 ~~of this ordinance or upon the effective date of Unified Land Development Code amendments~~
36 ~~dealing with Medical Marijuana Treatment Centers and Medical Marijuana Dispensing~~
37 ~~Organizations.~~

Notes:

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