



OFFICE OF THE COUNTY ADMINISTRATOR

M E M O R A N D U M

TO: The Honorable Chairman and
Members of the Board of County Commissioners

FROM: Mark S. Woodard, County Administrator

SUBJECT: Overview of Senate Bill 8A (SB8A) and the County's authority to regulate
medical marijuana retail dispensaries

DATE: June 16, 2017

Following the Board's discussion held on May 23rd, the County Attorney's Office was directed to amend the proposed medical marijuana ordinance and bring it back for consideration at a future meeting (July 18, 2017). The Board requested the following amendments to the ordinance:

- Limit the number of retail dispensaries that could operate in the County;
- Remove the free standing building requirement;
- Add Daycare facilities to the 500 foot separation requirement restriction;
- Leave current zoning categories as is; and
- Remove hours of operations requirement for manufacturing facilities.

Since then, the Florida Legislature has passed a medical marijuana bill (SB8A), which prevents the County from limiting the number of retail dispensaries that can operate in the unincorporated area. Below is an overview of SB8A and several options for the County to consider.

Background: The attached summary from the Florida Association of Counties provides a comprehensive overview of Senate Bill 8A, regulating the production and distribution of medical marijuana. Most aspects of regulation have been pre-empted to the State, with a very narrow portion delegated to local governments. There are four major "uses" associated with medical marijuana: cultivation, manufacturing, delivery, and dispensing. Regulation of the first three is pre-empted to the State. The last use (dispensing) presents local governments with two options:

- 1) The local government may ban retail dispensaries in their entirety.
- 2) The local government may allow retail dispensaries, but may not be more restrictive than its treatment of a pharmacy. The law specifically disallows regulating the number of retail dispensaries.

In addition to the existing 7 licensees, SB 8A requires the State Department of Health ("DOH") to issue licenses to 10 more entities for a total of 17 Medical Marijuana Treatment Centers

(MMTC) authorized by the State. Each treatment center may operate up to 25 Dispensing Facilities statewide (to mean retail dispensing to the public). This would equate to the potential for 425 retail dispensaries statewide. SB 8A also divides the state into 5 regions within which to allocate these retail dispensaries. DOH must determine a MMTC's maximum number of dispensing facilities per region based on a population formula. As the patient registry continues to grow and certain thresholds are reached, additional MMTC's will be added, along with additional retail dispensary allocations.

Zoning overview: The Board may only regulate retail dispensaries in the unincorporated area of the county. Currently, pharmacies are not identified as a specific use in the Pinellas County Land Development Code and are allowed in any zoning district where "retail uses" are permitted as a primary use. Retail uses are identified as a permitted use in the following zoning districts:

- 1) C-1 Neighborhood Commercial
- 2) C-2 General Retail Commercial
- 3) CP Commercial Parkway
- 4) IPD, Industrial Planned Development (Accessory use, 25%)
- 5) M-1 Light Manufacturing (Accessory use, 25%)
- 6) M-2 Heavy Manufacturing (Accessory use, 25%)
- 7) East Sub-District of the Old Palm Harbor Downtown District

Two Options:

- 1) The County may ban retail dispensaries in their entirety in the unincorporated area. This would require an ordinance with 2 Public Hearings and an extension of the current moratorium to allow sufficient time to process the ordinance that bans retail dispensaries.
- 2) The County may allow retail dispensaries and treat them the same as a pharmacy. There are two "sub-options" to consider:
 - a) The County can treat them as pharmacies and allow them in the zoning districts identified above. This requires no action and the current moratorium can be allowed to expire (July 27, 2017).
 - b) The County may amend the Land Development Code to create new specific uses of "pharmacies" and "medical marijuana dispensaries" and add those uses to the specific zoning districts desired. The caution with this approach is to recognize that there may be existing pharmacies that could become non-conforming (and grandfathered) if the available zoning districts become more limited than the list identified above. This option would also require two readings of an ordinance and an extension of the current moratorium.

Enforcement overview: SB8A limits local government's enforcement authority to that of the Florida Building Code (enforced by County staff) and Fire Prevention Code (enforced by local Fire Chiefs). The Pinellas County Sheriff's Office would be responsible for enforcing the criminal provisions resulting from SB8A, and the Department of Health would enforce their administrative rules for operations.

Attachment: Florida Association of Counties (FAC) Bill Summary and Analysis

Florida Association of Counties (FAC) Bill Summary and Analysis

SUMMARY OF SB 8A - IMPLEMENTATION OF MEDICAL MARIJUANA CONSTITUTIONAL AMENDMENT

Qualifying medical conditions under the bill are:

- (a) Cancer
- (b) Epilepsy
- (c) Glaucoma
- (d) HIV
- (e) AIDS
- (f) PTSD
- (g) ALS
- (h) Crohn's disease
- (i) Parkinson's disease
- (j) Multiple sclerosis
- (k) Medical conditions of the same kind or class or comparable to those enumerated above
- (l) Terminal condition
- (m) Chronic nonmalignant pain

Qualified Physicians and Physician "Certifications":

The bill establishes qualifications for physicians and medical directors which includes coursework and examinations administered by the Florida Medical Association or Florida Osteopathic Medical Association.

The bill establishes criteria for qualified physicians to issue 'certifications' to patients which must state that the doctor physically examined the patient, that the patient has one of the enumerated debilitating medical conditions, that the use of medical marijuana would outweigh the health risks for the patient, and the length of time that the physician recommends the medical use of marijuana for the patient.

Qualified physicians may not issue a physician certification for more than three 70-day supply limits of marijuana. DOH will quantify by rule a daily dose amount to be used to determine the amount of a 70-day supply for each allowable for of medical marijuana. Physicians must re-evaluate patients at least every 30-weeks.

Medical Marijuana Use Registry:

The legislation provides for a secure, electronic, and online use registry for physicians, patients, and caregivers. The registry must be available to law enforcement agencies, qualified physicians, and MMTCs to verify authorization of patient or caregiver. The registry must also be accessible to practitioners licensed to prescribe prescription drugs to determine potential negative drug interactions.

Medical Marijuana Treatment Centers: The legislation requires DOH to authorize existing growing, processing, and dispensing facilities as MMTCs which will be able to distribute by July 3, 2017. Future MMTCs must be 'vertically integrated,' cultivating, processing, transporting, and dispensing marijuana for medical use. The bill does allow for an MMTC to transfer ownership to another individual or entity that would otherwise meet the criteria required to possess license under this section.

In addition to the existing seven licensees, the legislation requires DOH to issue licenses to 10 applicants under the following criteria:

- (a) Any applicant whose application was reviewed, evaluated, and scored and denied a dispensing license under s. 381.986 F.S. 20214;

- a. Any applicant which had one or more administrative or judicial challenges pending as of January 1, 2017 or which was within one point of the highest final ranking in its region under the former statute;
 - b. Which meets the requirements of the new section;
 - c. And which provides documentation to DOH that it has the capability to begin cultivation of marijuana within 30 days after registration as an MMTC.
- (b) One applicant that is a member of the Black Farmers and Agriculturalists Association-Florida Chapter and a class member of litigation challenging the previous licensing criteria.
- (c) By October 3 2017, DOH must license 10 applicants that meet this section, including licensees under subsection a and b and for up to 2 of those licensees, DOH must give preference to applicants that own one or more facilities that were used for citrus fruit canning, concentrating, or other processing which shall be converted to processing of marijuana.

An additional 4 MMTCs will be licensed within 6 months of the registry reaching 100,000 patients. Furthermore, an additional 4 MMTCs will be licensed within 6 months of each additional 100,000 patients.

Among other criteria, the bill requires seed-to-sale tracking technology and allows for MMTCs to make wholesale purchases of marijuana from other MMTCs but only if the purchaser submits proof of a harvest failure.

Medical Marijuana Dispensing Facilities:

Licensed MMTCs may not establish or operate more than 25 dispensing facilities unless the registry reaches more than 100,000 patients at which time, and at the time of each additional 100,000 patients, the statewide maximum number of dispensing facilities per MMTC increases by 5.

The legislation divides counties into regions within which to allocate dispensing facilities. DOH must determine a MMTC's maximum number of dispensing facilities per region by calculating the percentage of the total statewide population contained within that region and multiplying that percentage by the MMTC's total number of statewide dispensing facilities. However, if an MMTC establishes a number of dispensaries less than the number that is allowed, it may sell one or more of its dispensing slots to other licensed MMTCs, with certain restrictions that prevent the state-wide number of dispensaries from increasing (the ability to sell slots expires on April 1, 2020).

Packaging, Labeling, and Advertising Requirements:

Packaging must be clearly labeled to indicate name of MMTC from which it originated, batch and harvest number, name of patient, name of certifying physician, product name, dosage, and must be dispensed with a patient package insert developed by DOH which includes warnings and other information for the patient.

Medical marijuana in the edible form must be individually sealed in opaque wrapping marked to indicate that it contains marijuana. When possible, each individual edible shall also be marked to indicate that it contains marijuana. Edibles must contain a list of ingredients and a legible and prominent warning to keep away from children, among other requirements.

The legislation requires that certain information be disclosed on MMTC websites including information on form, strain, and strength of marijuana products, as well as cost of supply, delivery device, and any information on available discounts.

The legislation prohibits advertising visible from a public space except for a sign including the MMTC's trade name and limited other information. However, internet advertising is allowed with restrictions and as approved by DOH.

Location of Facilities

Regulation of cultivation, processing, and delivery of marijuana is preempted to the state except that an MMTC may not be located within 500 feet of the real property of a public or private elementary, middle, or secondary school unless a city or county determines that the location promotes the public health, safety, and general welfare of the community.

A county or a municipality may ban MMTC dispensing facilities from locating within the boundaries of that county or municipality but - absent a complete ban of dispensing facilities- a county or municipality may not otherwise restrict the number of dispensing facilities that may locate within that county or municipality. A county or municipality may determine the criteria for the location of a dispensing facility, so long as location criteria and any fees associated with permitting are the same or less restrictive than those determining the location of or fees required for the permitting and siting of pharmacies. Pharmacy locations approved by a county or municipality pursuant to s. 381.986(8)b) Florida Statutes 2016 are not subject to location requirements under this section.

Local jurisdictions may ensure that MMTC facilities comply with the Florida Building Code, the Florida Fire Prevention Code, or any local amendments thereto.

Protections for Employers

The ability of employers to establish, continue, or enforce a drug-free workplace program or policy is preserved. Employers are not required to accommodate the medical use of marijuana in any workplace nor to permit any employee to work while under the influence of marijuana. The bill states that it does not create a cause of action for wrongful discharge or discrimination and marijuana is not a reimbursable expense under chapter 440 (worker's compensation claims).