

**PROPOSED**

ORDINANCE NO. 2018-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO MEDICAL MARIJUANA TREATMENT CENTERS; AMENDING VARIOUS SECTIONS OF CHAPTER 39 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"); PROVIDING FOR DEFINITIONS; PROVIDING PUBLIC HEARING PROCEDURES AND REQUIREMENTS FOR THE LOCATION AND ESTABLISHMENT OF MEDICAL MARIJUANA TREATMENT CENTERS; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, Amendment 2 to the Florida Constitution was approved on November 8, 2016, expanding the types of medical conditions for which licensed physicians may order medical marijuana as a treatment; and

WHEREAS, in 2014, the Florida Legislature had enacted Section 381.986, Florida Statutes, entitled the "Compassionate Medical Cannabis Act of 2014" (the "Act"); and

WHEREAS, the Act authorized licensed physicians to order low-THC *Cannabis* for medicinal purposes ("Low-THC Cannabis") to qualified patients under specific conditions, primarily those suffering from cancer or severe or persistent seizures and muscle spasms; and

WHEREAS, the Act was amended by Chapter 2016-123, Laws of Florida, to include medical Cannabis, and by Chapter 2017-232, Laws of Florida, to implement Amendment 2; and

WHEREAS, the Act, as amended, designates the Florida Department of Health as the regulatory body to manage and implement the cultivation, processing,

1 transportation, and dispensing of Low-THC Cannabis and medical Cannabis among  
2 authorized organizations and facilities; and

3 WHEREAS, the Florida Department of Health promulgated and adopted  
4 Chapter 64-4, Florida Administrative Code, to implement Section 381.986, Florida  
5 Statutes; and

6 WHEREAS, with few exceptions, Chapter 2017-232, Laws of Florida, preempts  
7 to the State the regulation of cultivation, processing, and delivery of marijuana by  
8 medical marijuana treatment centers; and

9 WHEREAS, Chapter 2017-232, Laws of Florida, allows local governments to ban  
10 medical marijuana treatment center dispensing facilities; and

11 WHEREAS, alternatively, local governments may determine, by ordinance, the  
12 criteria for the location of and other permitting requirements that do not conflict with  
13 State law or Department rule for medical marijuana treatment center dispensing  
14 facilities, and that are no more restrictive than its ordinances permitting or determining  
15 the locations for pharmacies; and

16 WHEREAS, the Broward County Board of County Commissioners deems it in the  
17 best interests of the residents of Broward County to enact an Ordinance regulating  
18 medical marijuana treatment center dispensing facilities and their impacts on the  
19 community; and

20 WHEREAS, the Broward County Board of County Commissioners has authority  
21 to regulate zoning only within the unincorporated area of Broward County; and

22 WHEREAS, it is not the intent of this Ordinance to interfere with the legal  
23 prescription, dispensing, or use of controlled substances, NOW, THEREFORE,  
24

1 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF  
2 BROWARD COUNTY, FLORIDA:

3  
4 Section 1. The foregoing "Whereas" clauses are hereby ratified and confirmed  
5 as being true and correct and incorporated herein by reference.

6  
7 Section 2. Section 39-4 of the Broward County Code of Ordinances is hereby  
8 amended to read as follows:

9 **Sec. 39-4. Terms defined.**

10 . . .

11 *Completely ~~E~~nclosed ~~B~~uilding:* A building separated on all sides from adjacent  
12 open space, or from other buildings or structures, by a permanent roof and by exterior  
13 walls or party walls, pierced only by windows and normal entrance or exit doors.

14 Conditional use: A use that is allowed in a particular zoning district, provided  
15 certain conditions are met.

16 . . .

17 *Dinner ~~T~~heater:* A full service restaurant within which live theatrical  
18 performances are provided on a stage to persons seated at tables and consuming food  
19 and beverages during the performances.

20 Director: The Director of the Planning and Development Management Division,  
21 or successor agency.

22 . . .

23 *Division:* The Planning and ~~Red~~Development Management Division, or  
24 successor agency.

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in  
underscored type are additions.

1 . . .

2 *Farm:* The land, buildings, support facilities, machinery, and other  
3 appurtenances used in the production of farm and aquaculture products when such land  
4 is classified as agricultural pursuant to Section 193.461, Florida Statutes, or has been  
5 determined to be a farm pursuant to a determination by the Environmental Protection  
6 and Growth Management Department, or successor agency, or a final order of a  
7 hearing officer in accordance with Section 5-45 of the Broward County Code of  
8 Ordinances. For purposes of this Code, a Medical Marijuana Treatment Center shall  
9 not be deemed a farm.

10 . . .

11 *Massage establishment:* Any shop, parlor, establishment, or place of business  
12 wherein all or any one (1) or more of the following named subjects and methods of  
13 treatments are administered or practiced:

14 . . .

15 *Medical Marijuana Treatment Center ("MMTC"):* A facility, including its  
16 contractual agents, that meets the requirements of Section 381.986, Florida Statutes,  
17 and Chapter 64-4, Florida Administrative Code, and that has applied to and been  
18 authorized by the Florida Department of Health to cultivate, process, transport, and  
19 dispense marijuana. There are three (3) types of MMTCs:

20 (1) *Cultivation Facility:* An indoor area designated in the MMTC's place of  
21 business to be used for cultivation of marijuana.

22 (2) *Processing Facility:* An indoor area designated in the MMTC's place of  
23 business to be used for processing of marijuana.

24

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1 denial by the Board of County Commissioners. This time limit may  
2 be waived by the Board of County Commissioners by an affirmative  
3 vote of four (4) Commissioners, when the Board deems such action  
4 necessary due to changed circumstances or to prevent an injustice.

5 ...

6 (c) Medical Marijuana Treatment Centers. The Board of County  
7 Commissioners shall hold a quasi-judicial public hearing on any application that  
8 proposes to locate a Medical Marijuana Treatment Center-Dispensing Facility within  
9 five hundred (500) feet of the real property that comprises a public or private elementary  
10 school, middle school, or secondary school. Such hearing shall conform to the  
11 procedures in Chapter 1, Article XVII, Quasi-Judicial Proceedings, of the Broward  
12 County Code of Ordinances.

13 (1) Orders of the Board of County Commissioners. At the conclusion of the  
14 public hearing, the Board of County Commissioners shall render an order  
15 making a determination as to whether the proposed location of the  
16 Medical Marijuana Treatment Center-Dispensing Facility promotes the  
17 public health, safety, and general welfare of the community.

18 (2) Denials and resubmission. A determination by the Board of County  
19 Commissioners that the location of a Medical Marijuana Treatment  
20 Center-Dispensing Facility within five hundred (500) feet of the real  
21 property that comprises a public or private elementary school, middle  
22 school, or secondary school does not promote the public health, safety,  
23 and general welfare of the community is a denial of the application with  
24 prejudice. If the application is denied, no application for the location of a

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1 Medical Marijuana Treatment Center-Dispensing Facility shall be heard by  
2 the Board of County Commissioners for a period of twelve (12) months  
3 from the date of rendition of the order by the Board of County  
4 Commissioners. This time limit may be waived by the Board of County  
5 Commissioners by an affirmative vote of four (4) Commissioners, when  
6 the Board deems such action necessary due to changed circumstances or  
7 to prevent an injustice.

8 (d) In the event an applicant requests to defer any matter stated hereinabove,  
9 to a subsequent public hearing date on a date uncertain, the applicant must pay all  
10 related costs associated with the deferral.

11 ~~(d)~~ (e) *Notices.* All notices of public hearings by the Board of County  
12 Commissioners shall be in accordance with ~~s~~State law and with ~~s~~Section 39-27 of this  
13 article.

14  
15 Section 4. Section 39-32 of the Broward County Code of Ordinances is hereby  
16 amended to read as follows:

17 **Sec. 39-32. Appeals.**

18 Appeal of a decision of the Board of County Commissioners concerning any  
19 rezoning, ~~or~~ development of regional impact, or application for location of a Medical  
20 Marijuana Treatment Center-Dispensing Facility subject to this article shall be by  
21 petition for writ of certiorari to the circuit court pursuant to the Florida Rules of Civil  
22 Procedure, within thirty (30) days ~~of~~ after rendition of any ordinance or order regarding  
23 the rezoning property or approving a, development of regional impact, or application for  
24 location of a Medical Marijuana Treatment Center-Dispensing Facility.

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underscored type are additions.

Section 5. Section 39-228 of the Broward County Code of Ordinances is hereby amended to read as follows:

**Sec. 39-228. Amount Number of off-street ~~offstreet~~ parking spaces.**

...

(b) The following minimum ~~amounts of off-street~~ number of offstreet parking spaces shall be supplied for all business and commercial buildings and uses:

<u>Types of Buildings and Uses</u>	<u>Min. Number of Parking Spaces Required per Indicated Unit</u>	<u>Unit of Measure</u>
...		
<u>(43) Pharmacy, Medical Marijuana Treatment Center-Dispensing Facility</u>	<u>1.0</u>	<u>Per 300 square feet of gross floor area</u>
...		

Section 6. Section 39-295 of the Broward County Code of Ordinances is hereby amended to read as follows:

**Sec. 39-295. Permitted uses.**

...

Master Business List

*P = Permitted*

*C = Conditional*

*A = Accessory use only*

<i>Use</i>	<i>B-1</i>	<i>B-2</i>	<i>B-3</i>	<i>B-4</i>	<i>C-1</i>	<i>CR</i>	<i>OP</i>
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1	...							
2	Marina [see Subsection 39-300(r)]			P		P	P	
3	<u>Medical Marijuana Treatment Center-</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>			
4	<u>Dispensing Facility*</u>							
5	...							

6 \*May not be located within five hundred (500) feet of the real property that comprises a  
7 public or private elementary school, middle school, or secondary school, unless  
8 approved by the Board of County Commissioners after a quasi-judicial public hearing,  
9 pursuant to Section 39-30 of the Broward County Code of Ordinances, at which the  
10 Board determines that the location promotes the public health, safety, and general  
11 welfare of the community.

12  
13 Section 7. SEVERABILITY.

14 If any portion of this Ordinance is determined by any Court to be invalid, the  
15 invalid portion shall be stricken, and such striking shall not affect the validity of the  
16 remainder of this Ordinance. If any Court determines that this Ordinance, or any portion  
17 hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies),  
18 or circumstance(s), such determination shall not affect the applicability hereof to any  
19 other individual, group, entity, property, or circumstance.

20  
21 Section 8. INCLUSION IN CODE.

22 It is the intention of the Board of County Commissioners that the provisions of  
23 this Ordinance shall become and be made a part of the Broward County Code; and that  
24 the sections of this Ordinance may be renumbered or relettered and the word

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1 "ordinance" may be changed to "section," "article," or such other appropriate word or  
2 phrase in order to accomplish such intentions.

3  
4 Section 9. EFFECTIVE DATE.

5 This Ordinance shall become effective as provided by law.  
6

7 ENACTED

8 FILED WITH THE DEPARTMENT OF STATE

9 EFFECTIVE

**PROPOSED**

10  
11 Approved as to form and legal sufficiency:  
12 Andrew J. Meyers, County Attorney

13  
14 By /s/ Maite Azcoitia 12/01/17  
15 Maite Azcoitia (date)  
16 Deputy County Attorney

17  
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20  
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22  
23 MA/gmb  
12/01/17  
24 Medical Marijuana Treatment Center Ordinance  
#16-421

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