



Office of  
**INDIAN RIVER COUNTY  
ATTORNEY**

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Dylan Reingold, County Attorney  
William K. DeBral, Deputy County Attorney  
Kate Pingolt Cotner, Assistant County Attorney

**MEMORANDUM**

**TO:** Board of County Commissioners  
**FROM:** Dylan Reingold, County Attorney *DR*  
**DATE:** May 31, 2017  
**SUBJECT:** Ordinance Concerning Medical Cannabis (Continued from June 13, 2017)

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**BACKGROUND.**

On October 18, 2016, the Indian River County Board of County Commissioners (the "Board") enacted land development regulations concerning medical marijuana treatments centers in advance of the vote on Amendment 2. As part of the agenda item, the Community Development Department included a memorandum from the County Attorney's Office, which stated "[a]s section 381.986, Florida Statutes, addresses low-THC and medical cannabis, I recommend that any potential regulations concerning such uses be addressed under a separate discussion item."

Per section 381.986, Florida Statutes, medical cannabis includes all parts of any plant of the genus *Cannabis* that is dispensed for medical use by an eligible patient as defined in section 499.0295, Florida Statutes. Under the statute, an eligible patient is a person who has 1) a terminal condition that is attested to by the patient's physician and confirmed by a second independent evaluation by a board-certified physician in an appropriate specialty for that condition; 2) considered all other treatment options for the terminal condition currently approved by the United States Food and Drug Administration; 3) given written informed consent for the use of an investigational drug, biological product, or device; and documentation from his or her treating physician that the patient meets the requirements for being an eligible patient.

Under section 381.986, Florida Statutes, the State of Florida has preempted local governments from regulating the cultivation and processing of medical cannabis or low-THC cannabis. However, under the statute, a county may adopt an ordinance regulating the number, location, and some permitting requirements for low-THC and medical cannabis dispensing facilities. On January 10, 2017, the Board voted 4-1, with Vice-Chairman O'Bryan dissenting, to direct the County Attorney to: 1) draft an ordinance which will incorporate into the current code, regulations concerning medical cannabis dispensing facilities; and 2) ensure that the details are consistent and compliant with state law.

The County Attorney's Office has drafted the attached proposed ordinance. The proposed ordinance incorporates the medical cannabis into the definition of marijuana and a dispensary under Section 381.986, Florida Statutes into the definition of a Medical Marijuana Treatment Center under Chapter 315

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of the Indian River County Code of Ordinances. The proposed ordinance also incorporates an exclusion of regulations in the event of a preemption under section 381.986, Florida Statutes.

**FUNDING.**

The cost of publication of the required public notice for the public hearing was \$136.67. This cost was funded from the County Attorney's Office budget within the General Fund (account number 00110214-033190).

**RECOMMENDATION.**

The County Attorney's Office recommends that the chair open the public hearing and after taking public comment vote to approve the proposed ordinance.

**ATTACHMENT.**

Proposed Medical Cannabis Ordinance