



Office of
**INDIAN RIVER COUNTY
ATTORNEY**

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MEMORANDUM

TO: Board of County Commissioners
FROM: Dylan Reingold, County Attorney *DR*
DATE: June 26, 2017
SUBJECT: Draft Medical Marijuana Ordinance

BACKGROUND.

In 2016, in anticipation of the vote on Amendment 2, the Indian River County Board of County Commissioners (the "Board") adopted regulations concerning medical marijuana treatment centers. These regulations were adopted in both Chapter 315 of the Indian River County Code of Ordinances and the Indian River County land development regulations.

During the 2017 Special Session, the Florida Legislature adopted medical marijuana legislation. Such legislation preempted local governments from regulating the cultivation, processing and delivery of medical marijuana. The legislation did provide local governments with two options with respect to medical marijuana treatment center dispensaries ("Dispensaries"). Local governments are permitted to either ban Dispensaries or may allow Dispensaries, but have the location and permitting of Dispensaries in the same manner as that of a pharmacy. Per state law, if a local government allows Dispensaries, there are state mandated distance requirements from schools. Governor Scott signed the bill into law on Friday, June 23, 2017.

On June 13, 2017, the Board indicated that it was interested in pursuing a ban on Dispensaries, but requested that the County Attorney's Office coordinate with the municipalities and the other counties within the Central Regional, in which Indian River is located. On June 20, 2017, the County Attorney's Office provided an update to the Board. The City of Sebastian indicated that it intends to allow Dispensaries. The City of Vero Beach intends to prohibit Dispensaries, however, grandfather in one already approved location. Town of Indian River Shores and the City of Fellsmere indicated they intend to prohibit Dispensaries. Based on the availability of Dispensaries in Indian River County, the Board directed the County Attorney's Office to draft language for a proposed ordinance banning Dispensaries in the unincorporated areas of Indian River County and present that language to the Board at the July 11th Board meeting.

Per the Board's direction, the County Attorney's Office has prepared the attached draft ordinance. The ordinance prohibits Dispensaries in the unincorporated areas of Indian River County. Additionally, the proposed language indicates that any language in the Indian River County Code of Ordinances contrary to such prohibition are repealed. Finally, the proposed language would remove references to medical marijuana in Chapter 315 of the Indian River County Code of Ordinances.

Please be aware that there are regulations of medical marijuana still remaining in the County's land development regulations, which would be removed through the land development regulation amendment process.

As the Board is considering adopting an ordinance prohibiting Dispensaries in the unincorporated areas of Indian River County, the Board may wish to formally invoke the pending ordinance doctrine in order to avoid applications from potential applicants seeking to circumvent the Board's prohibition. The pending ordinance doctrine is a judicially created principle that allows local governments to deny an application for a use, which even though in accordance with the existing code, violates the law that is pending when the application is made. Such action may be necessary in that there will be over a month between the approval of final language and the adoption of the final ordinance.

FUNDING.

The cost of publication of the required public notice for the public hearing will be approximately \$150.00. This cost will be 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 Board review and make comments on the proposed ordinance language and authorize the County Attorney's Office to set a public hearing on such ordinance for the August 15, 2017 Board meeting. The County Attorney's Office also recommends that the Board authorize the Community Development Department to draft an ordinance amending the land development regulations to remove references to medical marijuana. Finally, the County Attorney's Office recommends the Board invoke the pending ordinance doctrine while the Board is considering the adoption of the proposed language prohibiting Dispensaries in the unincorporated areas of Indian River County.

ATTACHMENT(S).

Draft Medical Marijuana Ordinance