

AGENDA ITEM 2

PLANNING COMMISSION

AGENDA REQUEST

TO: HONORABLE CHAIRMAN & MEMBERS OF THE PLANNING COMMISSION

THROUGH: Elliot Kampert, Director

FROM: Planning & Development Review Staff

SUBJECT: Moratorium on medical marijuana dispensing facilities

DATE: January 12, 2017

BCC DISTRICT: All

PLANNING COMMISSION DISTRICT: All

ISSUE: Consideration of an ordinance declaring zoning in progress and imposing a moratorium on the acceptance and processing of medical marijuana dispensing facilities for a period of 180 days.

BACHGROUND:

- Medical marijuana dispensing facilities are a new and unique use which is not currently addressed by the Land Development Code or Code of Ordinances.
- Section 381.986(8)(b), Fla. Stat., permits counties to “determine by ordinance the criteria for the number, location, and other permitting requirements that do not conflict with state law or department rule for all dispensing facilities of dispensing organizations located within the unincorporated areas of that county.”
- The purpose of the proposed ordinance is to preserve the status quo and enable sufficient time for the County to review, study, hold public hearings, prepare and adopt provisions to the Land Development Code and/or Code of Ordinances, relating to the appropriate locations for medical marijuana dispensing facilities, if any.
- For a period of 180 days from the effective date of the ordinance, the County shall not accept, process or take any action on any application for a development permit, development order or take any other official action which would have the effect of allowing or permitting the development of medical marijuana dispensing facilities, except as provided in this ordinance.
- The proposed ordinance will not restrict, prohibit or otherwise prevent a property owner from the reasonable use of their land or from developing their land in accordance with the Comprehensive Plan.
- The limited duration of the proposed moratorium has been established to accomplish the appropriate study, planning and analysis for future development through the Okaloosa County Comprehensive Plan amendment process as described in Chapter 163, Part II, Florida Statutes, and the Comprehensive Plan.
- This moratorium shall not affect a Medical Marijuana Dispensing Facility of a Dispensing Organization which has received dispensing authorization from the Florida

Department of Health in accordance with section 381.986, Florida Statutes, and Chapter 64-4.001, F.A.C., for which the County zoning official has issued a zoning verification letter which confirms the permissibility of the zoning status of the proposed location for use as a Medical Marijuana Dispensing Facility, and for which development permits have been obtained in reliance on the zoning verification letter prior to the effective date of the ordinance.

- During the moratorium period, a Medical Marijuana Dispensing Facility for which a zoning verification letter and development permits have been issued shall not be permitted to expand its square footage operation.
- Nothing in the proposed ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development where the property owner demonstrates each of the following:
 1. A government act of development approval was obtained prior to the effective date of this Ordinance; and
 2. The property owner has detrimentally relied, in good faith, on the governmental approval by making a substantial change in position or incurring extensive obligations and expenses; and
 3. It would be highly inequitable to deny the property owner the right to complete the development.

Any property owner claiming to have vested rights must seek a determination from the Planning Official pursuant to the procedures in the Land Development Code thirty (30) days after the effective date of the ordinance.

PUBLIC COMMENT/OPPOSITION:

STAFF POSITION: Staff supports the proposed ordinance.

RECOMMENDATION: It is recommended that the Board consider the facts presented herein, as well as any facts that may be presented at the public hearing, and then make a recommendation to the Board of County Commissioners.

BOARD OF COUNTY COMMISSIONERS: Scheduled for January 17, 2017 at 9:00 AM in the County Administration Building, Commission Meeting Room, Shalimar.

ATTACHMENT:

A – Proposed Ordinance

ORDINANCE NO. 17- _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF OKALOOSA COUNTY, FLORIDA, DECLARING ZONING IN PROGRESS AND IMPOSING A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF NEW APPLICATIONS FOR THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSING FACILITIES FOR A PERIOD OF 180 DAYS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII of the Florida Constitution and section 125.66, Florida Statutes, Okaloosa County possesses the police powers to enact ordinances to protect the health, safety, and welfare of its citizens; and

WHEREAS, the Okaloosa County Board of County Commissioners determines that it is in the best interest of its residents, businesses and visitors to enact sufficient zoning regulations to ensure their health, safety and welfare; and

WHEREAS, medical marijuana dispensing facilities are a new and unique use which is not currently addressed by the Land Development Code or Code of Ordinances; and

WHEREAS, section 381.986(8)(b), Fla. Stat., permits counties to “determine by ordinance the criteria for the number, location, and other permitting requirements that do not conflict with state law or department rule for all dispensing facilities of dispensing organizations located within the unincorporated areas of that county”; and

WHEREAS, a temporary moratorium on the acceptance of applications for, the processing of, and the issuance of development permits, development orders or any other official action of Okaloosa County permitting or having the effect of permitting new medical marijuana dispensing facilities will allow time to review, study, hold public hearings, prepare and adopt provisions to the Land Development Code and Code of Ordinances to address this new and unique use; and

31 **WHEREAS**, adoption of this ordinance will further the health, safety and welfare of the
32 citizens of Okaloosa County.

33 **NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY**
34 **COMMISSIONERS OF OKALOOSA COUNTY, FLORIDA:**

35 **SECTION 1:** The above recitals are true and are hereby adopted and confirmed.

36 **SECTION 2:** **Purpose.** The purpose of this ordinance is to preserve the status
37 quo and enable sufficient time for the County to review, study, hold public hearings, prepare and
38 adopt provisions to the Land Development Code and/or Code of Ordinances, relating to the
39 appropriate locations for medical marijuana dispensing facilities, if any.

40 **SECTION 3:** **Moratorium.**

41 A. For a period of 180 days from the effective date of this Ordinance, the County
42 shall not accept, process or take any action on any application for a development permit,
43 development order or take any other official action which would have the effect of allowing or
44 permitting the development of medical marijuana dispensing facilities, except as provided in this
45 ordinance.

46 B. This Ordinance shall not restrict, prohibit or otherwise prevent a property owner
47 from the reasonable use of their land or from developing their land in accordance with the
48 Comprehensive Plan.

49 C. The adoption of this Ordinance is undertaken by the County in good faith and is
50 intended to further the goals of the Okaloosa County Comprehensive Plan and Chapter 163,
51 Florida Statutes.

52 D. The limited duration of this moratorium has been established to accomplish the
53 appropriate study, planning and analysis for future development through the Okaloosa County
54 Comprehensive Plan amendment process as described in Chapter 163, Part II, Florida Statutes,
55 and the Comprehensive Plan.

56 **SECTION 4:** **Definition.** The following definition applies to the term used in
57 this ordinance:

58 A. “Marijuana” has the meaning given cannabis in section 893.02 (3), Florida
59 Statutes (2014), and in addition, “low-THC cannabis” as defined in section 381.986 (1)(b),
60 Florida Statutes (2014).

61 B. “Medical Marijuana Dispensing Facility” means any establishment where low-
62 THC, medical cannabis or Marijuana is permitted to be dispensed by an approved dispensing
63 organization pursuant to section 381.986, Florida Statutes and Florida Department of Health
64 Rules or such subsequently enacted rules and at Medical Marijuana Treatment Centers.

65 **SECTION 5: Existing Authorized Medical Marijuana Dispensing Facilities.**

66 A. This moratorium shall not affect a Medical Marijuana Dispensing Facility of a
67 Dispensing Organization which has received dispensing authorization from the Florida
68 Department of Health in accordance with section 381.986, Florida Statutes, and Chapter 64-
69 4.001, F.A.C., for which the County zoning official has issued a zoning verification letter which
70 confirms the permissibility of the zoning status of the proposed location for use as a Medical
71 Marijuana Dispensing Facility, and for which development permits have been obtained in
72 reliance on the zoning verification letter prior to the effective date of this Ordinance.

73 B. During the moratorium period, a Medical Marijuana Dispensing Facility for
74 which a zoning verification letter and development permits have been issued shall not be
75 permitted to expand its square footage operation.

76 **SECTION 6: Vested Rights.**

77 A. Nothing in this Ordinance shall be construed or applied to abrogate the vested
78 right of a property owner to complete development where the property owner demonstrates each
79 of the following:

80 1. A government act of development approval was obtained prior to the
81 effective date of this Ordinance; and

82 2. The property owner has detrimentally relied, in good faith, on the
83 governmental approval by making a substantial change in position or incurring extensive
84 obligations and expenses; and

85 3. It would be highly inequitable to deny the property owner the right to
86 complete the development.

87 B. Any property owner claiming to have vested rights under this Section 6 must seek
88 a determination from the Planning Official pursuant to the procedures in the Land Development
89 Code thirty (30) days after the effective date of his Ordinance.

90 **SECTION 7: Applicability.** This ordinance shall be applicable in the
91 unincorporated areas of Okaloosa County.

