

**CITY OF MARGATE
INTER-OFFICE CORRESPONDENCE**

MEMORANDUM NO. 2017-002

TO: Mayor Arlene Schwartz
Members of the City Commission

CC: Samuel May, City Manager
Adam Reichbach, Assistant City Manager
Joseph J. Kavanagh, City Clerk

FROM: James A. Cherof, Interim City Attorney *JAC*
Brian J. Sherman, Assistant Interim City Attorney *BJS*

DATE: December 7, 2017

RE: City of Margate ("City") / 2017 Medical Marijuana Legislation

The Interim City Attorney's Office has been asked to summarize the provisions of Chapter 2017-232, Laws of Florida, previously known as Senate Bill 8A, as it relates to municipal regulation of medical marijuana treatment center dispensaries.

Art. X, § 29, Fla. Const., defines a Medical Marijuana Treatment Center (MMTC) to mean an entity, registered with the Department of Health that acquires, cultivates, possesses, processes, transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, or related supplies to qualifying patients or their caregivers. Accordingly, MMTCs may open and operate dispensing facilities, which are separate and apart from the cultivation, processing, and delivery operations. The Department of Health has recently expanded the list of approved MMTCs to thirteen (13).

A. Background

On November 8, 2016, Florida voters approved Amendment 2 to the Florida Constitution, entitled "Use of Marijuana for Debilitating Medical Conditions. Amendment 2, "Allows medical use of marijuana for individuals with debilitating medical conditions as determined by a licensed Florida physician," and "it allows caregivers to assist patients' medical use of marijuana." Amendment 2 also requires that "the Department of Health shall register and regulate centers that produce and distribute marijuana for medical purposes and shall issue identification cards to patients and caregivers."

On June 9, 2017, during a Special Session, the Florida Legislature passed Senate Bill 8-A, relating to the Medical Use of Marijuana (codified as "Chapter 2017-232") which became effective on June 23, 2017. Chapter 2017-232 implements the provisions of Art. X, § 29, Fla. Const., entitled, "Medical Marijuana production, possession and use," as passed by the electors of Florida in November 2016 (a/k/a Amendment 2). Chapter 2017-232 provides regulations for implementing Amendment 2, and establishes the definition of medical marijuana treatment centers and parameters for municipal action.

Chapter 2017-232, among other things, preempts to the State the regulation of cultivation, processing, and delivery of marijuana by Marijuana Treatment Centers (“MMTC”). “Medical Marijuana Treatment Center” (MMTC), as defined in Art. X, S 29, Fla. Const., means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Department (of Health).

B. Municipal Restrictions

- Chapter 2017-232, Laws of Florida, **expressly preempts** the regulation of cultivation, processing, and delivery of marijuana by MMTCs to the state.
- **Municipalities have the option to prohibit dispensing facilities within their jurisdictions.**
- Municipalities, by ordinance, **may** determine the criteria for the location of, and other permitting requirements, of dispensaries, **provided those regulations do not conflict with state law or Department of Health rule.**
- A municipality that permits dispensing facilities:
 - May not place specific limits, by ordinance, on the number of dispensing facilities located within the municipality; and
 - **May not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies.**
- A municipality may not charge a MMTC a license or permit fee in an amount greater than the fee charged by such municipality to pharmacies.
- A MMTC may not engage in advertising that is visible to members of the public from any street, sidewalk, park, or other public place, except:
 - The dispensing location of a MMTC may have a sign that is affixed to the outside or hanging in the window of the premises which identifies the dispensary by the licensee’s business name, a department-approved trade name, or a department-approved logo.
- Department of Health approved Internet advertising is permitted.
- Prices for medical marijuana and marijuana delivery devices must be on the MMTC dispensary website.
- The Department of Health may issue and deliver a notice to cease and desist to any unregistered or unlicensed person or entity if it has probable cause to believe that they have violated state statute or any Department of Health rule.

- The State Attorneys' Office or the Department of Health may bring an action for an injunction to restrain such unlicensed activity or to enjoin the future operation or maintenance of the unlicensed activity or the performance of any service in violation of this state law or department rule.
- Unlicensed activity will be referred to local law enforcement for a criminal violation determination.

C. Dispensing Facility Regulations.

- A dispensing facility may not be located within five hundred (500) feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the municipality approves the location through a formal proceeding open to the public at which the municipality determines that the location promotes the public health, safety, and general welfare of the community.
- Dispensing facilities must still comply with the Florida Building Code, the Florida Fire Prevention Code, or any local amendments to the Florida Building Code or the Florida Fire Prevention Code.
- To ensure the security of dispensing facilities, MMTCs must, in addition to other requirements:
 - Maintain a fully operational security alarm system that secures all entry points and perimeter windows and is equipped with motion detectors; pressure switches; and duress, panic, and hold-up alarms;
 - Maintain a video surveillance system that records continuously 24 hours a day in controlled areas and all entrances and exits to the premises. Surveillance must be retained for forty-five days or longer upon the request of law enforcement;
 - Ensure that the dispensing facilities have sufficient outdoor lighting from dusk until dawn;
 - Not display products or dispense marijuana or marijuana delivery devices in the waiting area;
 - **Not dispense from its premises, marijuana or marijuana delivery devices between the hours of 9 p.m. and 7 a.m.,** but may perform all other operations and deliver marijuana to qualified patients 24 hours a day;
 - Report to local law enforcement within 24 hours after the medical marijuana treatment center is notified or becomes aware of the theft, diversion, or loss of marijuana.
- A MMTC may not establish or operate more than twenty-five (25) dispensing facilities state wide. However, when the medical marijuana use registry reaches a total of 100,000, and for each additional 100,000, active registered qualified patients, the maximum number of dispensing facilities permitted for each MMTC will increase by five (5).
- The number of dispensing facilities in each region of the state will be determined by population.
- MMTCs may sell unused dispensing facility allocations to other MMTCs.

D. Rules on Physicians, Patients, Caregivers.

- Physicians must complete a two (2) hour course and pass a subsequent examination, which may not cost more than five hundred (\$500.00) dollars, as a prerequisite to ordering medical marijuana for qualified patients.
- Medical marijuana patients must be a resident or seasonal resident of the State of Florida as determined by the Department of Health.
- Patients may obtain a seventy (70) day supply of medical marijuana upon being added to the Medical Marijuana Use Registry which includes providing residency documentation and obtaining a Registry Identification Card.
- Caregivers must be Florida residents and register as a caregiver with the Medical Marijuana Use Registry, which includes successful completion of a caregiver certification course and background screening.

Please feel free to contact our office anytime if you have any questions or if we can provide any additional assistance.

JAC:BJS