

MEMORANDUM

Substitute
Agenda Item No. 5(A)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: July 6, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance pertaining to zoning;
creating Article IXA of Chapter
33 of the Code; amending
sections 33-238, 33-259, 33-279,
and 33-284.83; establishing zoning
regulations for the dispensing of
low-THC cannabis and medical
cannabis

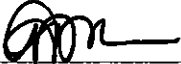
Ordinance No. 16-67


This substitute differs from the original item in that:

1. Areas where dispensing facilities may be located is expanded to include (a) Industrial (IU) Zoning Districts, (b) additional Urban Center areas, and (c) the Agricultural (AU) Zoning District except Horse Country;
2. Educational facilities from which dispensing facilities must be appropriately spaced has been clarified to consist of certain primary and secondary schools;
3. An exception to the prohibition on dispensing outside of a dispensing facility is provided to allow for delivery to eligible patients;
4. An exception to the prohibition on consumption inside a dispensing facility is provided to allow a medical professional to instruct an eligible patient on proper consumption;
5. A time period and process is added for a dispensing organization to reserve a location for a dispensing facility;
6. The timeframe in which a dispensing organization must begin dispensing after receiving a certificate of use is extended from 30 to 180 days, subject to a further extension for good cause shown;
7. A certificate of use for a dispensing facility may not be renewed when (a) an open civil violation notice has been pending for 180 days or more and (b) the delay is attributable to the alleged violator; and
8. A definition of "dispensing organization" is added along with references to such term.

Rule 5.06(i) of the Board's Rules of Procedure provides that where double underlining and double strike-through would not clearly show the differences between an original item and the substitute, comments may instead be provided. Pursuant to this rule, the preceding comprehensive description of the differences between the original item and the substitute is provided in lieu of double underlining and double strike-through.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.



Abigail Price-Williams
County Attorney 


APW/cp

Memorandum



Date: July 6, 2016

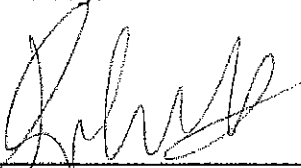
To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez 
Mayor

Subject: Fiscal Impact Statement for Ordinance Establishing Zoning Regulations for the
Dispensing of low-THC Cannabis and Medical Cannabis

The proposed ordinance pertaining to zoning creates Article IXA of the Chapter 33 of the Code of Miami-Dade County establishing zoning regulatory framework for the location and permitting of establishments that dispense low-THC cannabis or medical cannabis, and amends Section 33-238 and 33-284.83 of the Code.

It is anticipated that the implementation of this ordinance will not have a fiscal impact to Miami-Dade County.



Jack Osterholt
Deputy Mayor


Fis07116 161473

Memorandum



Date: July 6, 2016

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez 
Mayor

Subject: Social Equity Impact Statement for Zoning Ordinance Establishing Zoning Regulations
for the Dispensing of low-THC Cannabis and Medical Cannabis

The proposed ordinance amends the existing Code to establish the zoning regulations related to the location and permitting of establishments that dispense low-THC cannabis or medical cannabis. More specifically, the proposed ordinance does the following:

- Sets the minimum distance between any establishment dispensing low-THC and medical cannabis and child care facilities, preschools, schools, or religious facilities (1,000 feet); certain zoning districts designated as residential (500 feet); and other establishments dispensing same (one mile).
- Requires the establishment to obtain an annual certificate of use and includes language that (i) a certificate of use shall not be renewed if there are open enforcement cases or if the establishment has cases pending before the Nuisance Abatement Board, and (ii) a certificate of use shall be revoked if the establishment has been found guilty of three (3) or more violations pertaining to the dispensing use, or has been determined as a nuisance by the Nuisance Abatement Board.
- Sets operating hours (between 7 a.m. and 9 p.m. daily) and also prohibits the dispensing, receipt, payment, and consumption of low-THC and medical cannabis, as well as the consumption of alcohol, outside of the dispensing establishment.

The proposed ordinance intends to ensure that these establishments are at a minimum distance from child care facilities, schools, religious facilities, certain areas designated as residential, and other businesses dispensing the same products. Without this amendment to the Code, any business wishing to dispense these products would be able to establish itself in a BU zoning district regardless of its distance to these aforementioned institutions and residential neighborhoods.

The cost of compliance, such as obtaining an annual certificate of use or penalties for violating any provisions of the Code, will be borne by the business establishment. Additionally, by setting minimum distance standards from certain institutions and residential neighborhoods, this proposed ordinance controls the number of locations available to these establishments.



Jack Osterholt
Deputy Mayor

161473



MEMORANDUM
(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: July 6, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Substitute
Agenda Item No. 5(A)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Substitute
Agenda Item No. 5(A)
7-6-16

ORDINANCE NO. 16-67

ORDINANCE PERTAINING TO ZONING; CREATING ARTICLE IXA OF CHAPTER 33 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; AMENDING SECTIONS 33-238, 33-259, 33-279, AND 33-284.83; ESTABLISHING ZONING REGULATIONS FOR THE DISPENSING OF LOW-THC CANNABIS AND MEDICAL CANNABIS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Article IXA of Chapter 33 of the Code of Miami-Dade County, Florida, is hereby created to read as follows:¹

>>ARTICLE IXA – LOW-THC CANNABIS AND MEDICAL CANNABIS DISPENSING FACILITIES

Sec. 33-149.1 - Intent

Section 381.986, Florida Statutes, and Florida Administrative Code Chapter 64-4 authorize a limited number of dispensing organizations throughout the State of Florida to cultivate, process, and dispense low-tetrahydrocannabinol (low-THC) cannabis and medical cannabis for use by qualified patients suffering from cancer, terminal conditions, and certain chronic conditions. The dispensing organizations must be approved by the Florida Department of Health and, once approved, are subject to state regulation and oversight.

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

The intent of this article is to establish the criteria for the location and permitting of establishments that dispense low-THC cannabis or medical cannabis in accordance with Section 381.986, Florida Statutes, and Florida Administrative Code Chapter 64-4.

Sec. 33-149.2 - Applicability

The provisions of this article shall be applicable in the unincorporated areas of Miami-Dade County. This article shall only be construed to allow the dispensing of low-THC cannabis or medical cannabis by a state-approved dispensing organization for medical use. The sale of cannabis or marijuana is prohibited in Miami-Dade County except in accordance with this article.

Sec. 33-149.3 - Definitions

Except as provided herein, all terms shall be defined in accordance with this chapter and Section 381.986, Florida Statutes, as may be amended from time to time:

- (A) “Dispensing facility” refers to the building or structure where low-THC cannabis or medical cannabis, as well as cannabis delivery devices, are dispensed at retail.
- (B) “Dispensing organization” means an organization approved by the state to cultivate, process, transport, and dispense low-THC cannabis or medical cannabis.
- (C) “Low-tetrahydrocannabinol cannabis” or “low-THC cannabis” means a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed only from a dispensing organization.

- (D) “Medical cannabis” means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, sale, derivative, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a dispensing organization for medical use by an eligible patient.
- (E) “Medical use” means administration of the ordered amount of low-THC cannabis or medical cannabis. The term does not include the:
- (1) Possession, use, or administration of low-THC cannabis or medical cannabis by smoking; or
 - (2) Transfer of low-THC cannabis or medical cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient’s legal representative authorized to receive it on the qualified patient’s behalf.
 - (3) Use or administration of low-THC cannabis or medical cannabis:
 - i. On any form of public transportation.
 - ii. In any public place.
 - iii. In a qualified patient’s place of employment, if restricted by his or her employer.
 - iv. In a correctional institution.
 - v. On the grounds of any child care facility, preschool, or school.
 - vi. On or in any vehicle, aircraft, or motorboat.

Sec. 33-149.4 – Zoning districts where dispensing allowed.

Only in accordance with the requirements of this article and the applicable zoning district, dispensing of low-THC or medical cannabis shall be permitted in: the BU-1, BU-1A, BU-2, BU-3, IU-1, IU-2, IU-3, and IU-C Zoning Districts; areas designated MC, MCS, MCI, and ID in an Urban Center or Urban Area District; and the DKUC and PLMUC Urban Center Districts. Where ancillary to

cultivation or processing, dispensing of low-THC or medical cannabis shall also be permitted in the AU Zoning District; provided, however, that dispensing shall not be permitted in the area known as Horse Country, as identified in Resolution No. R-429-16.

Sec. 33-149.5 – Zoning requirements for dispensing facilities.

Low-THC and medical cannabis dispensing facilities shall comply with the following requirements:

- (A) No low-THC or medical cannabis dispensing facility shall be located within:
- (1) 1 mile from any other low-THC or medical cannabis dispensing facility;
 - (2) 1,000 feet of any child care facility, preschool, kindergarten, elementary school, middle school, junior high school, high school, or religious facility;
or
 - (3) 500 feet of any property in an EU or RU Zoning District (except for RU-5A), or any area designated R in an Urban Center or Urban Area District.
- (B) Distances between low-THC or medical cannabis dispensing facilities shall be measured by drawing a straight between the front doors of the respective dispensing facilities.

The distance from a child care facility, preschool, kindergarten, elementary school, middle school, junior high school, high school, religious facility, or residential property shall be measured by following a straight line from the nearest point of the respective structure to the front door of the proposed dispensing facility.

The applicant shall furnish a certified survey from a registered engineer or surveyor, indicating the distance between the proposed dispensing facility and any existing low-THC or medical cannabis dispensing facility, child care facility, preschool, kindergarten, elementary school, middle school, junior high school, high school, religious facility, or residential property within the applicable radius. In case of dispute, the measurement scaled by the Director shall govern. The Director shall verify in writing receipt of

the survey from the applicant, which shall serve as a reservation of said location by a state-approved dispensing organization to dispense low-THC or medical cannabis. Upon reservation, the applicant shall have 180 days to apply for a permit or certificate of use.

- (C) Dispensing of, payment for, and receipt of low-THC or medical cannabis is prohibited anywhere outside of the dispensing facility, including, but not limited to, on sidewalks, in parking areas, or in the rights-of-way surrounding the dispensing facility; provided, however, this provision shall not be construed to prohibit delivery of low-THC or medical cannabis to an eligible patient, as permitted by state law or rule.
- (D) Consumption of low-THC or medical cannabis or alcoholic beverages is prohibited onsite at the dispensing facility, including, but not limited to, in the parking areas, sidewalks, or rights-of-way surrounding the dispensing facility; provided, however, this provision shall not be construed to prohibit consumption associated with a dispensing facility employee, trained by a medical professional such as a doctor, nurse, pharmacist, or medical or physician's assistant, instructing an eligible patient on the mechanism of consumption of low-THC or medical cannabis, as permitted by state law or rule.
- (E) Irrespective of any statutory amendment, facilities dispensing low-THC or medical cannabis shall only be allowed to operate between the hours of 7:00 a.m. and 9:00 p.m. daily, as provided by Section 381.986, Florida Statutes, as of the effective date of Ordinance No. [Insert Ordinance No.].
- (F) A certificate of use shall be obtained for the low-THC or medical cannabis dispensing facility on an annual basis. The application for the certificate of use shall be made on a form prescribed by the Director.

- (1) The low-THC or medical cannabis dispensing facility must be established on the premises by a state-approved dispensing organization within 180 days of the date the certificate of use is issued; after 180 days, unless the time period is extended by the Director for good cause shown, the certificate of use shall be null and void and the applicant must re-apply.
 - (2) The Department shall have the right to periodically inspect the premises of the dispensing facility at any reasonable time to ensure that the facility has a current and valid certificate of use, and to ensure compliance with the terms and conditions under which it was issued. Violators will be subject to all appropriate penalties, including revocation of the certificate of use.
 - (3) Where, pursuant to Chapter 8CC of this Code, a civil violation notice relating to the dispensing of low-THC or medical cannabis has been issued and appealed by the alleged violator, the certificate of use shall not be renewed where the appeal has been pending for 180 days or more and the delay is attributable to the alleged violator. Where, pursuant to Chapter 8CC of this Code, determinations of guilt for three or more violations have been made, or the Nuisance Abatement Board has determined that a nuisance exists at the dispensing facility, the certificate of use shall be revoked immediately, and a new application may not be made within a period of 12 months.
- (G) Any use, created and established under this article in a legal manner, which may thereafter become legally nonconforming, may continue until there is an abandonment of said use. Once a legally nonconforming use is abandoned, it shall not be re-established unless it conforms to the requirements of this article. Abandonment shall consist of: a change of use or suspension of active business with the public for a period of at least 3 months; or a lesser time if a written declaration of abandonment is provided by the owner of the premises or, if the property is subject to a lease, by the owner and tenant thereof.

(H) No certificate of use, license, or building or other permit shall be issued for a low-THC or medical cannabis dispensing facility where the proposed place of business does not conform to the requirements of this subsection.<<

Section 2. Section 33-238 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-238. – Uses permitted

No land, body of water or structure shall be used or permitted to be used and no structure shall be hereafter erected, constructed, moved, reconstructed or structurally altered or maintained in any BU-1 District, which is designed, arranged or intended to be used or occupied for any purpose, except for one (1) or more of the following uses:

* * *

>>(13.1) Dispensing facilities for low-THC or medical cannabis, pursuant to article IXA of this chapter.

(13.2)<< ~~[(13.5)]~~ Drugstores.

* * *

Section 3. Section 33-259 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-259. – Uses permitted

No land, body of water or structure shall be used or permitted to be used and no structure shall be hereinafter erected, constructed, moved, reconstructed or structurally altered or maintained which is designed, arranged or intended to be used or occupied for any purpose, unless otherwise provided herein, in IU-1 District, excepting for one (1) or more of the following:

* * *

>>(27.01) Dispensing facilities for low-THC or medical cannabis, pursuant to article IXA of this chapter.<<

* * *

Section 4. Section 33-279 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-279. – Uses permitted

No land, body of water or structure shall be used or permitted to be used and no structure shall be hereafter erected, constructed, moved, reconstructed or structurally altered or be permitted to be erected, constructed, moved, reconstructed or structurally altered for any purpose in an AU District which is designed, arranged, or intended to be used or occupied for any purpose other than the following:

* * *

>>(6.2) Dispensing facilities for low-THC or medical cannabis, pursuant to article IXA of this chapter may be permitted in the area designated agriculture on the Adopted Land Use Plan Map of the Comprehensive Development Master Plan, upon compliance with the following conditions:

- (a) Such dispensing facility shall be located on property approved by the state for cultivating or processing low-THC or medical cannabis, and shall be operated only by the dispensing organization authorized to cultivate or process the low-THC or medical cannabis on that property.
- (b) A minimum of 6 parking spaces shall be provided; said spaces shall be located a minimum of 35 feet from right-of-way pavement.
- (c) The dispensing facility shall be located on the property with the following setbacks:
 - 1. From right-of-way pavement, 60 feet;
 - 2. From rear property line, 25 feet;
 - 3. From side street property line, 25 feet; and
 - 4. From interior side property line, 100 feet.

(d) The dispensing facility shall be a permanent, enclosed structure that shall not exceed 5,000 square feet.

(e) A dispensing facility shall not be permitted in the area known as Horse Country, as identified in Resolution No. R-429-16.<<

* * *

Section 5. Section 33-284.83 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33-284.83. - Uses.

No land, body of water, or structure shall be used or permitted to be used, and no structure shall be hereafter erected, constructed, reconstructed, moved, structurally altered, or maintained for any purpose in the Urban Center (UC) or Urban Area (UA) Districts, except as provided in this article. The uses delineated herein shall be permitted only in compliance with the Regulating Plans and standards provided in this article. The following regulations outline permitted uses in the R (Residential), RM (Residential Modified), MC (Mixed-Use Corridor), MM (Mixed-Use Main Street), MO (Mixed-Use Optional), MCS (Mixed-Use Special), MCI (Mixed-Use Industrial), ID (Industrial District) and I (Institutional) Land Use Areas.

* * *

B. *Land Use Groups.* The uses listed following each group in this section shall be permitted in the land use categories shown in Table (C) subject to the provisions noted for each land use category. Uses provided in Table (C) below not listed in this subsection shall be permitted subject to the provisions noted for each land use area. The Director shall have the authority to determine that a use not specifically enumerated below may nevertheless be permitted in a land use category because it is similar to an enumerated use.

* * *

- (11) *General Retail/Personal Service Establishments:* Establishments that provide goods and services geared toward an individual consumer. This group shall include businesses such as: banks; beauty parlors; adult day care; bakeries; bookstores; apparel stores; grocery stores; pharmacies; tailor shops; health clubs; gift shops; indoor pet care centers/boarding and indoor kennels (soundproofed and air-conditioned building required); vehicle retail showrooms; and similar uses. This group shall also include schools offering instruction in dance, music, martial arts and similar activities, but this group shall not include colleges/universities. Except as otherwise authorized in this article, uses enumerated in the BU-3 zoning district shall only be permitted in the MCS and MCI categories and shall be subject to the public hearing and spacing requirements set forth in Section 33-255 of this chapter. >>Dispensing facilities for low-THC or medical cannabis, in accordance with the requirements of article IXA of this chapter, shall also be allowed in areas designated MC, MCS, MCI, and ID.<<

* * *

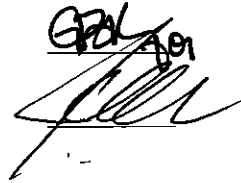
Section 6. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 7. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 8. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED: July 6, 2016

Approved by County Attorney as
to form and legal sufficiency:

A handwritten signature in black ink, appearing to be 'G. J. ...', written over a horizontal line.

Prepared by:

James Eddie Kirtley
Dennis A. Kerbel

Prime Sponsor: Commissioner Sally A. Heyman