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## Staff Analysis and Recommendation

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**To:** Honorable Chair and Members of the Land Planning Agency

**From:** Darby P. Delsalle, AICP, Planning Director

**Subject:** Cannabis Dispensaries and Medical Marijuana Treatment Facilities

**Date:** July 7, 2017

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AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, RELATING TO ZONING; CREATING SECTION 13-799.7, PROHIBITING CANNABIS DISPENSING ORGANIZATIONS, MEDICAL MARIJUANA TREATMENT FACILITIES, AND INDEPENDENT TESTING LABORATORIES WITHIN THE TERRITORIAL JURISDICTION OF THE TOWN; PROVIDING FOR INCLUSION INTO THE CODE; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

### A. BACKGROUND

The legal status of the medical use of marijuana has been evolving since 2014 when the Florida Legislature enacted laws regarding low-THC cannabis and medical marijuana, entitled the “Compassionate Medical Cannabis Act of 2014” (codified at Section 381.986, Florida Statutes) (“Act”). The Act permitted the use of a non-euphoric strain of cannabis for narrowly defined medical conditions typically associated with seizures and chemotherapy. The Act authorized a limited number of large nurseries to cultivate, process, transport and dispense non-euphoric, low THC cannabis and operate “Dispensing Organizations” for individuals with certain specified serious ailments. The Legislature again in 2016 amended the Act (Section 381.986, Florida Statutes) to include the use of full strength “medical marijuana” for eligible patients with terminal conditions to ease their suffering.

On November 8, 2016, Florida’s voters approved an amendment to the Florida Constitution, entitled “Use of Marijuana for Debilitating Medical Conditions (“Amendment 2”)”. Amendment 2 had the net effect of further expanding the legal use of medical marijuana throughout the State of Florida for those individuals with specified debilitating conditions. It also authorized the cultivation, processing, distribution, and sale of marijuana and related activities by licensed “Medical Marijuana Treatment Centers.” This matter became the subject of a bill adopted by the Florida Legislature (SB 8-A) during their 2017 Special Session that,

among other provisions, outlined the conditions under which local municipalities may regulate the location of cannabis dispensaries and medical marijuana treatment centers. The legislation provided the option for municipalities to outright ban such uses within their territorial jurisdiction, or to permit them provided they were regulated in a manner similar to pharmacies, and provided for minimum distance separations of such uses from educational facilities. Town Staff's proposed ordinance is reflective of the ban option.

As a final note, the cultivation, processing, distribution, sale, and use of cannabis and marijuana in all its forms continues to be identified as illegal acts with the laws of the Federal Government of the United States of America.

## **B. STAFF RECOMMENDATION**

Based on the analysis provided below and other factors contained in this report, Staff recommends approval of the ordinance banning cannabis dispensaries, medical marijuana treatment facilities, and independent testing laboratories related thereto.

## **C. ANALYSIS**

The Land Development Code (LDC) provides that all proposed amendments to the LDC shall be evaluated by the Administrative Official, the Local Planning Agency and the Town Council, and that, in evaluating the proposed amendment, the criteria in Subsection 13-306(b) shall be considered. All portions of this report are hereby incorporated into all portions of this analysis. The following is a staff analysis of the criteria as applied to this proposed ordinance.

### **1. Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the concurrency management program.**

*Analysis:* Although the Comprehensive Plan does not specifically address uses presented in the proposed ordinance, Objective 1.2 provides underlying intent to ensure the LDC's appropriately regulate the use of land reflective of the community's desires. Notwithstanding the Federal Government's laws pertaining to marijuana and/or its derivative products, supporting such uses within the Town's LDC may result in impacts that are not entirely foreseeable at this time.

#### **Objective 1.2: LAND DEVELOPMENT CODE**

Maintain an effective and efficient Land Development Code (LDC), which implements the community vision underlying the goals, objectives and policies of adopted Comprehensive Plan, regulates the quality, scope and impacts of new development and redevelopment, coordinates future land uses with topography and soil conditions, and incorporates innovative land development techniques.

*Finding:* Complies

### **2. Whether the proposal is in conformance with all applicable requirements of this Code of Ordinances, including this chapter.**

*Analysis:* The proposed ordinance conforms with the Town's LDC's. A review of the LDC's found no conflicts. Further, the proposed ordinance is consistent with adopted Florida Senate Bill SB 8-A as provided at Section 381.986, Florida Statutes.

*Finding:* Complies.

3. **Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether such changes support or work against the proposed change in land use policy.**

*Analysis:* See Section "A", Background, of this report. The Background section of this report provides a fuller accounting of the evolution of legalized low THC cannabis and medical marijuana within the State of Florida. The Town's current LDC's do not address the uses associated with those identified in the State of Florida's Statutes. If the LDC goes unamended, the Town is left with little authority to prevent such uses from locating within its territorial jurisdiction. The most recent legislation, SB 8-A at Section 381.986, permits a municipality to ban cannabis dispensaries and medical marijuana treatment facilities outright within their territorial jurisdiction. The statute is silent as to independent testing facilities. For consistency across the Town regulations, Staff also includes those facilities as part of the ban.

*Finding:* Complies.

4. **Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved, the impact on adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land use.**

*Analysis:* See Section "A", Background, of this report. By banning the uses described within the proposed ordinance, the potential for incompatible land uses is eliminated.

*Finding:* Complies.

5. **Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and services, exceeding the capacity of such facilities and services, existing or programmed, including schools, transportation, water and wastewater services, solid waste disposal, drainage, water supply, recreation, education, emergency services, and similar necessary facilities and services.**

*Analysis:* The proposed ordinance does not impact the above systems.

*Finding:* Complies.

6. **Whether, and the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of any groundwater aquifers, wildlife habitats, and vegetative communities.**

*Analysis:* The proposed ordinance does not impact the above systems.

*Finding:* Complies.

7. **Whether, and the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.**

*Analysis:* See Section “A”, Background, of this report. By banning the uses described within the proposed ordinance, the potential for incompatible land uses and any adverse effect is eliminated.

*Finding:* Complies.

8. **Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on such pattern shall be identified.**

*Analysis:* See Section “A”, Background, of this report. By banning the uses described within the proposed ordinance, the potential for incompatible land uses is eliminated.

*Finding:* Complies.

9. **Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and intent of this chapter.**

*Analysis:* See Section “A”, Background, of this report. No portion of the proposed amendment is in conflict with the existing regulations of the LDC. By banning those uses associated with low TCH cannabis and medical marijuana, any potential unintended impacts of locating those uses in the Town are negated.

*Finding:* Complies.

10. **Other matters which the Local Planning Agency or the Town Council, in its legislative discretion, may deem appropriate.**

*Analysis:* See Summary Section and all portions of this analysis. The Local Planning Agency and the Town Council may consider other appropriate factors to determine whether the proposed FLUM amendment is appropriate and consistent with the public interest. The Analysis Section addressed the conditions suggested by the Planning and Zoning Board.

*Finding:* As determined by the Town Council.