



To: Mayor and Commissioners
Cathy Swanson-Rivenbark, City Manager

From: Cristina M. Suárez, Assistant City Attorney for the City of Coral Gables

Approved: Craig E. Leen, City Attorney for the City of Coral Gables 

Re: Medical Marijuana Treatment Center Dispensing Facilities

Date: August 22, 2017

This memorandum summarizes the City's current position regarding medical marijuana treatment center dispensing facilities and the potential implications of Florida Statutes § 381.986 which authorizes municipalities to ban such dispensing facilities.

Medical marijuana treatment center dispensing facilities are currently not allowed under the City Code or the Zoning Code. Specifically, Sec. 14-221 of the City Code provides that no permit authorizing a business to sell medical marijuana will be approved "if such use is unlawful in the opinion of the city attorney under either state or federal law" and sections 4-302(C)(5) and 4-417 of the Zoning Code provide that medical marijuana retail centers are a conditional use in the Commercial District, subject to certain regulations, but only if not prohibited by both state and federal law. Under federal law, marijuana is still a Schedule I controlled substance, which means it cannot be lawfully prescribed or dispensed. Thus, while the Florida Legislature recently adopted Florida Statutes § 381.986, implementing the medical marijuana amendment to the Florida Constitution, because it remains unlawful under federal law to prescribe or dispense marijuana, medical marijuana treatment center dispensing facilities are still not allowed within the boundaries of the City, under the City Code and Zoning Code.

The recently enacted Florida Statutes § 381.986(11)(b)(1) expressly authorizes municipalities to ban dispensing facilities. It provides that "[a] county or municipality may, by ordinance, ban medical marijuana treatment center dispensing facilities from being located within the boundaries of that county or municipality." It further provides, however, that a municipality that "does not ban dispensing facilities under this subparagraph may not place specific limits, by ordinance, on the number of dispensing facilities that may locate within that county or municipality." Moreover, a municipality "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,” except that a dispensing facility may not be located within 500 feet of a school, unless approved through a formal proceeding open to the public and the municipality determines that the location promotes the public health, safety, and general welfare of the community,” and a municipality “may not charge a medical marijuana treatment center a license or permit fee in an amount greater than the fee charged . . . to pharmacies.” Fla. Stat. § 381.986(11)(2).

In sum, medical marijuana treatment center dispensing facilities are prohibited in the City because marijuana is not legal under federal law. Moreover, Florida Statutes § 381.986(11) authorizes municipalities to ban dispensing facilities. Failure to do so, according to the language in the statute, would mean that (1) the City may not place specific limits on the number of dispensing facilities located within the City’s boundaries; and (2) except for not allowing them within 500 feet of a school, the City cannot enact ordinances regulating permit requirements and locations of dispensing facilities that are more restrictive than its ordinances regulating pharmacies and may not charge a greater permit fee to dispensing facilities than the fee charged to pharmacies. However, notwithstanding the provisions of § 381.986, because federal law takes precedence over state law, the City’s position is that dispensing facilities would continue to be prohibited in the City, even if the ban is not enacted under § 381.986(11) as long as marijuana remains a Schedule I controlled substance. If there is a change to federal law such that medical marijuana becomes classified as a Schedule II or III controlled substance, and the City has not enacted a ban under Florida Statutes § 381.986(11), the City’s existing regulations may not be enforceable and the City may be prohibited from placing limits on the number of dispensing facilities and from enacting ordinances regulating dispensing facilities in a more restrictive manner than pharmacies. Thus, in an abundance of caution, the City Commission may consider enacting a ban that it could modify at a later date.

Our office has also received an inquiry as to whether the Commission could support medical marijuana being sold at pharmacies, instead of at separate dispensing facilities. Presently, medical marijuana cannot be sold at pharmacies. Such a possibility would require that the federal government reclassify medical marijuana from a Schedule I controlled substance to a Schedule II or III controlled substance.

Pursuant to section 2-201(e)(1) and (8) of the City Code, as well as section 2-702 of the Zoning Code.

CITY OF CORAL GABLES

CITY ATTORNEY'S OFFICE

MEMORANDUM

To: Mayor and Commissioners
Cathy Swanson-Rivenbark, City Manager

From: Cristina M. Suárez, Assistant City Attorney for the City of Coral Gables *CMS*

Approved: Craig E. Leen, City Attorney for the City of Coral Gables

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be located within 500 feet of a school, unless approved through a formal proceeding open to the public and the municipality determines that the location promotes the public health, safety, and general welfare of the community,” and a municipality “may not charge a medical marijuana treatment center a license or permit fee in an amount greater than the fee charged . . . to pharmacies.” Fla. Stat. § 381.986(11)(2).

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From: [Leen, Craig](#)
To: [Paulk, Enga](#)
Cc: [Ramos, Miriam](#); [Suarez, Cristina](#)
Subject: FW: Memorandum Regarding Medical Marijuana Treatment Center Dispensing Facilities
Date: Tuesday, August 22, 2017 4:09:56 PM
Attachments: [image001.png](#)
[image002.png](#)

I adopt this as a City Attorney Opinion pursuant to section 2-201(e)(1) and (8) of the City Code, as well as section 2-702 of the Zoning Code. Please publish.

Craig E. Leen, City Attorney

*Board Certified by the Florida Bar in
City, County and Local Government Law*
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com



Celebrating 90 years of a dream realized.

From: Suarez, Cristina
Sent: Tuesday, August 22, 2017 3:48 PM
To: Commissioners <Commissioners1@coralgables.com>
Cc: Swanson-Rivenbark, Cathy <cswanson@coralgables.com>; Leen, Craig <cleen@coralgables.com>; Ramos, Miriam <mramos@coralgables.com>; Throckmorton, Stephanie <sthrockmorton@coralgables.com>
Subject: RE: Memorandum Regarding Medical Marijuana Treatment Center Dispensing Facilities

Mayor and Commissioners:

The proposed ordinance on Second Reading will be placed on the September 12th agenda for your consideration. In the meantime, the City Attorney's Office interprets section 14-221 of the City

Code and sections 4-302(C)(5) and 4-417 of the Zoning Code to be a ban on dispensing facilities within the City of Coral Gables.

Please do not reply to all, and please call with any questions.

Thanks,
Cristina

Cristina M. Suárez

Assistant City Attorney

City of Coral Gables

405 Biltmore Way, 3rd Floor

Coral Gables, Florida 33134

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From: Suarez, Cristina

Sent: Tuesday, August 22, 2017 11:54 AM

To: Commissioners

Cc: Swanson-Rivenbark, Cathy; Leen, Craig; Ramos, Miriam; Throckmorton, Stephanie

Subject: Memorandum Regarding Medical Marijuana Treatment Center Dispensing Facilities

Mayor and Commissioners:

Attached please find a memorandum regarding medical marijuana treatment center dispensing facilities and the potential implications of the recently enacted Florida Statutes s. 381.986.

Please do not reply to all, and please call with any questions.

Thanks,
Cristina

Cristina M. Suárez

Assistant City Attorney

City of Coral Gables

405 Biltmore Way, 3rd Floor

Coral Gables, Florida 33134

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