

Darlene Christensen

From: Reddick, Ernest L. <Ernest.Reddick@DOS.MyFlorida.com>
Sent: Thursday, May 12, 2016 2:43 PM
To: Darlene Christensen
Cc: County Ordinances
Subject: Emailing - Hernando20160512_Ordinance2016_5_Ack.pdf
Attachments: Hernando20160512_Ordinance2016_5_Ack.pdf

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FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

May 12, 2016

Honorable Don Barbee Jr.
Hernando County Clerk's Office
20 North Main Street, Rm. 3621
Brooksville, Florida 34601

Attention: Darlene Christensen, Administrative Services

Dear Mr. Barbee:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Hernando County Ordinance No. 2016-5, which was filed in this office on May 12, 2016.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb

ORDINANCE NO. 2016- 5

1
2
3 AN ORDINANCE AMENDING CHAPTER 18 (LICENSES, PERMITS AND
4 MISCELLANEOUS BUSINESS REGULATIONS) OF THE HERNANDO COUNTY
5 CODE OF ORDINANCES BY ADDING ARTICLE VII ENTITLED "MEDICAL
6 MARIJUANA DISPENSARIES AND CULTIVATION FACILITIES REGISTRATION,"
7 PROVIDING FOR A TITLE, PROVIDING FOR LEGISLATIVE FINDINGS AND
8 AUTHORITY, PROVIDING FOR THE PURPOSE AND INTENT, PROVIDING FOR
9 DEFINITIONS, REQUIRING CERTIFICATE OF USE PERMITTING, PROVIDING
10 FOR A ONE YEAR MORATORIUM, CREATING A PERMIT APPLICATION PROCESS
11 AND REQUIREMENTS FOR PERMITTING, PROVIDING FOR GROUNDS TO DENY,
12 NOT RENEW, OR REVOKE A PERMIT, PROVIDING FOR REVIEW OF PERMIT
13 DENIAL, NON-RENEWAL OR REVOCATION, PROVIDING FOR ADDITIONAL
14 PERMIT COMPLIANCE REQUIREMENT, PROVIDING FOR PERMIT RENEWALS
15 AND FEES, PROVIDING FOR VIOLATIONS AND INSPECTIONS, PROVIDING FOR
16 ENFORCEMENT AND PENALTIES, PROVIDING FOR ALLOCATION OF FINES,
17 PENALTIES AND FORFEITURES; AMENDING APPENDIX A (ZONING CODE)
18 ARTICLE III (SPECIFIC USE REGULATIONS), BY PROVIDING FOR SECTION 5
19 (MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION FACILITIES);
20 PROVIDING FOR SPECIFIC LOCATION RESTRICTIONS; PROVIDING FOR
21 SEVERABILITY; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR
22 FILING WITH THE DEPARTMENT OF STATE; PROVIDING FOR INCLUSION IN
23 THE CODE AND PROVIDING FOR AN EFFECTIVE DATE.

24
25 WHEREAS, the Board of County Commissioners (County) has adopted the Hernando County
26 Comprehensive Plan within which are included goals, objectives, and policies related to the
27 process for review and approval of certain development applications; and

28
29 WHEREAS, Chapter 163, Part II, Florida Statutes, requires the implementation of these goals,
30 objectives, and policies through the adoption of consistent land development regulations; and

31
32 WHEREAS, the State may determine to regulate medical marijuana dispensaries and cultivation
33 facilities; however, these laws and regulations will not resolve all local issues associated with
34 medical marijuana dispensaries and cultivation facilities; and

35
36 WHEREAS, the Board finds and declares a need to permit and regulate the business of medical
37 marijuana dispensaries and cultivation facilities; and

38
39 WHEREAS, the County desires to update and modernize its land development regulations, and
40 to provide for additional criteria and standards for the location of medical marijuana dispensaries
41 and cultivation facilities; and

42
43 WHEREAS, this proposed amendment to the Hernando County Land Development Regulations,
44 Appendix "A", (Zoning Code), has received public hearings before the Planning and Zoning
45 Commission, Local Planning Agency and the Board of County Commissioners as required by state
46 and local law; and

1
2 **WHEREAS**, the Board of County Commissioners, for itself and acting as the Local Planning
3 Agency, finds and determines that the proposed amendment is consistent with the goals,
4 objectives, and policies of the Comprehensive Plan.

5
6 **NOW THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY**
7 **COMMISSIONERS OF HERNANDO COUNTY, FLORIDA:**

8
9 The recitals set forth above, including findings of fact and conclusions of law, are true and correct
10 and incorporated herein by this reference.

11
12 **SECTION I. Amending Chapter 18 (LICENSES, PERMITS AND MISCELLANEOUS**
13 **BUSINESS REGULATIONS).** Chapter 18 (Licenses, Permits and Miscellaneous Business
14 Regulations) is amended to read as follows, with the following new text being added to the code:

15
16 *[Section 18-16 thru Section 18-164 remain unchanged]*

17
18 **Article VII. MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION**
19 **FACILITIES REGISTRATION**

20
21 **Section 18-165. Title.**

22
23 This article shall be known and may be cited as the "Medical marijuana dispensaries and
24 cultivation facilities Ordinance."

25
26 **Section 18-166. Legislative Findings and Authority.**

27
28 The recitals set forth above are incorporated herein. The Hernando County Board of County
29 Commissioners finds and declares that there exists an urgent need to enact an ordinance
30 regulating certain medical marijuana dispensaries and cultivation facilities within
31 unincorporated Hernando County.

32
33 This Ordinance is enacted pursuant to Chapter 125, Florida Statutes, and the home rule powers
34 of county government and is determined by the Board to be in the best interest of the health,
35 safety and general welfare of the people of Hernando County.

36
37 **Section 18-167. Purpose and Intent.**

38
39 The purpose and intent of this article is to promote the health, safety and general welfare of the
40 residents of Hernando County through the regulation of medical marijuana dispensaries and
41 cultivation facilities (as defined below) operating in the County as of the effective date of this
42 Ordinance.

43
44

1 **Section 18-168. Definitions.**

2
3 *Applicant* means the owner or a person(s) authorized by the owner to complete an application
4 for a permit to operate medical marijuana dispensary.

5
6 *Article* shall mean Chapter 18, Article VII, of the Hernando County Code of Ordinances; and
7 Appendix A, Zoning, Article III, Specific Use Regulations, Section 5, Medical marijuana
8 dispensaries and cultivation facilities.

9
10 *Certificate of Use* shall mean a certificate issued pursuant to this article by the Department, on
11 an annual basis, authorizing the operation of a specific medical marijuana dispensary or
12 cultivation facility location in Hernando County and which contains the State's required
13 registration number on its face (if applicable), and authorizes the occupancy of a structure or
14 premises and is required prior to occupancy, change of use and under other specific conditions.
15 Each Certificate of Use shall at a minimum identify on its face, the dispensary or cultivation
16 facility name and physical address, the dispensary or cultivation facility name and mailing
17 address (if different from the physical address), and the property owner's name and address.

18
19 Each permit shall have a unique number identification on its face.

20
21 *Inspections.* Any person authorized to enforce this article, including but not limited to law
22 enforcement officers employed by the Sheriff, may perform spot or random inspection(s) of
23 the medical marijuana dispensary or cultivation facility.

24
25 *Person* shall mean an individual, partnership, corporation, association or other legal entity.

26
27 *Sheriff* shall mean the Hernando County Sheriff, a constitutional officer.

28
29 *Sheriff's Office* shall mean the Hernando County Sheriff's Office.

30
31 *County or Hernando County* shall mean all unincorporated areas of Hernando County, Florida.

32
33 *Department* shall mean that department, division, or section within Hernando County
34 government charged with overseeing and regulating zoning and land use activities within the
35 unincorporated area of Hernando County, Florida.

36
37 *Medical marijuana cultivation facility* means the use of property or a structure for the planting,
38 growing, harvesting, drying, processing, or storage of marijuana plants.

39
40 *Medical marijuana dispensary* means the use of property or a structure for any privately owned
41 medical marijuana dispensary, facility or office to store, distribute, transmit, give, dispense, or
42 otherwise provide medical marijuana in any form or manner.

1 **Section 18-169. Certificate of Use Required; Temporary Moratorium on New Medical**
2 **Marijuana Dispensaries and Medical Marijuana Cultivation Facilities.**

- 3
- 4 (a) No medical marijuana dispensaries or medical marijuana cultivation facilities, as defined
5 in this article, may operate in Hernando County, nor may any person operate a medical
6 marijuana dispensary or cultivation facility in Hernando County, without first obtaining
7 a medical marijuana dispensary or cultivation facility certificate of use issued by the
8 Department pursuant to land use requirements and this article.
- 9
- 10 (b) Each medical marijuana dispensary or cultivation facility shall stand alone and shall
11 require its own certificate of use.
- 12
- 13 (c) In order to allow Hernando County as of the effective date of this Ordinance time to
14 examine and review criteria for the siting of medical marijuana dispensaries or medical
15 marijuana cultivation facilities, and to put in place procedures for the issuance of a
16 certificate of use, no medical marijuana dispensary or medical marijuana cultivation
17 facility may open or operate in Hernando County or make application for a certificate of
18 use for the shorter of (1) 12 months or (2) the enactment of a new ordinance by the board
19 from the effective date of this Ordinance.
- 20
- 21 (d) The board hereby imposes a moratorium beginning on the effective date of this article on
22 the issuance of zoning approvals, development permits (including building permits) or
23 other development approvals for the establishment or location of medical marijuana
24 dispensaries or medical marijuana cultivation facilities on any property located in whole
25 or in part within the county for the shorter of (1) 12 months or (2) the enactment of a new
26 ordinance by the board.
- 27

28 **Section 18-170. Certificate of Use Application Process and Requirements**

- 29
- 30 (a) No medical marijuana dispensary or medical marijuana cultivation facility, as defined in
31 this article, may operate in Hernando County, nor may any person operate a medical
32 marijuana dispensary or cultivation facility in Hernando County, without first obtaining
33 a medical marijuana dispensary or cultivation facility certificate of use issued by the
34 Department pursuant to this article.
- 35
- 36 (b) The licensing requirements set forth in this article shall be in addition to, and not in lieu
37 of, any other licensing and permitting requirements imposed by any federal, state or local
38 laws.
- 39
- 40 (c) The issuance of a certificate of use does not create an exception, defense, or immunity in
41 regard to any potential criminal liability the person may have for the production, sale,
42 distribution or possession of marijuana.
- 43
- 44 (d) *Application required.* Any person seeking to operate a medical marijuana dispensary or
45 cultivation facility (as defined in this article) within unincorporated Hernando County
46 shall complete an application as provided by the Department. If any person seeks to

1 operate more than one dispensary or cultivation facility, a separate application for each
2 use shall be required. As part of the application, the applicant shall provide all of the
3 following information:
4

5 (1) Business name of the dispensary or cultivation facility, Address of the site
6 location, Square footage of unit, Date of planned opening, Type of businesses
7 located adjacent to proposed dispensary or cultivation facility.
8

9 (2) Detailed description of the services or products provided or equipment used, and
10 a professionally drawn floor plan to scale with all rooms identified.
11

12 (3) Detailed description of all proposed improvements to the site.
13

14 (4) A site plan showing the total number of parking spaces on the property.
15

16 (5) The registration number from the State, if the use must be registered in
17 accordance with state law or proof that the applicant is exempt from registration
18 with the state.
19

20 (6) Proof satisfactory to the Department that the applicant has legal ownership or
21 control of the property that is being proposed as a medical marijuana dispensary
22 or cultivation facility (examples include a copy of the deed if the property is
23 owned by the applicant, a copy of the lease or license agreement if the property
24 is not owned by the applicant).
25

26 (7) An affidavit executed by the owner of the property, if other than the applicant
27 acknowledging that the owner is aware that its property is being used as a
28 marijuana dispensary or cultivation facility and providing that the owner will hold
29 Hernando County harmless for any loss resulting from actions taken by the United
30 States government against the owner for permitting the operation of a business
31 that is or may be in violation of federal law.
32

33 (8) A list of all persons, associated with the management and/or operation of the
34 dispensary or cultivation facility, whether paid or unpaid, part-time or full time,
35 including all contract labor and independent contractors. This list shall include,
36 but is not limited, to all owners, operators, employees and volunteers. For each
37 and every person listed, the following additional information shall be provided:
38

39 a. The person's full name;

40
41 b. The person's title or position with the dispensary or cultivation facility
42 (e.g. owner, operator, manager, employee, volunteer etc.);
43

44 c. The person's current home address, telephone number and date of birth;
45

- 1 d. A copy of the person's current Florida driver's license or a government
2 issued photo I.D.;
- 3
- 4 e. State whether the person has any financial or business interest in a
5 dispensary or cultivation facility;
- 6
- 7 f. For each person listed, a criminal history form or other similar document
8 completed by the Sheriff or such persons designated by the Sheriff and
9 which indicates whether said person has any criminal conviction(s), and,
10 if so, a listing of said conviction(s), or indicates no known criminal
11 convictions. The Sheriff may charge a fee for each criminal background
12 check performed and the applicant shall be responsible for paying said
13 fees. No criminal history form or similar document may be accepted if
14 dated earlier than sixty (60) days from the date filed with the Department.
15 If during the Department's review of the certificate of use application,
16 there is a deletion, substitution or addition of any person so listed, the
17 Department shall be immediately advised of such change(s) and shall be
18 furnished a new criminal history form for each new person that has been
19 substituted or added.
- 20
- 21 (9) Such information designated by the Zoning Supervisor/Administrative Official
22 as necessary in order for County staff (hereinafter "Staff") to make a reasonable
23 determination to grant or deny the certificate of use.
- 24
- 25 (e) *Completeness of Application.* It is the applicant's sole responsibility to provide accurate
26 contact information when submitting the application to the Department. If the
27 application for a medical marijuana dispensary or cultivation facility certificate of use is
28 not properly completed, in the sole discretion of the Department, the Department shall
29 notify the designated contact person listed in the application. A completed application
30 must be received by the Department within fifteen (15) business days of receipt of the
31 deficiency notice from the Department in order to avoid assessment of another
32 application fee. Failure to timely respond within the fifteen (15) days shall result in a
33 denial of the application as incomplete. A new application must then be submitted that is
34 accompanied by the full nonrefundable application fee, in order to request a certificate
35 of use.
- 36
- 37 (f) *Inspections.* Inspections may be made as necessary to determine whether or not the
38 application submitted is accurate in all respects, and/or whether the terms of this article
39 are being adhered to.
- 40
- 41 (g) *Initial Application Fee.* Each application for a medical marijuana dispensary or
42 cultivation facility certificate of use shall be accompanied by a nonrefundable application
43 fee in the amount of Five Thousand Dollars (\$5,000.00). The application fee for a
44 medical marijuana dispensary or cultivation facility certificate of use is in addition to the
45 Two Thousand Five Hundred Dollars (\$2,500.00) annual fee/ renewal fee. Any changes
46 to the application fee or certificate of use fee authorized by this article may be

1 accomplished by Resolution of the Board of County Commissioners without the need to
2 revise this article.

3
4 (h) *Annual Permit Fee.* An applicant, upon approval of its application for a medical
5 marijuana dispensary or cultivation facility certificate of use in accordance with this
6 article, shall pay a Two Thousand Five Hundred Dollars (\$2,500.00) annual fee to the
7 Department. The receipt of the annual fee is a prerequisite to the Department issuing the
8 certificate of use. Any changes to the annual permit fee authorized by this article may be
9 accomplished by Resolution of the Board of County Commissioners without the need to
10 revise this article.

11
12 (i) *Change of Information Following the Issuance of Certificate of Use; Fees.* Should any
13 information or conditions change from that stated in the initial certificate of use
14 information, the applicant shall provide that information to the Department within ten
15 (10) days of such change:

16
17 (1) Change of the owner or operator of the medical marijuana dispensary or
18 cultivation facility shall require a new initial application and payment of a new
19 application fee.

20
21 (2) Substitution or addition of any person required to be listed in the above
22 subsections shall require all information set forth in the above subsection to the
23 Department and paying the Department a \$500.00 processing fee for each person.
24 A current criminal history form shall be provided on all new persons (which the
25 Sheriff's Office may charge a separate fee for). Any changes to the processing
26 fee authorized by this article may be accomplished by Resolution of the Board of
27 County Commissioners without the need to revise this article.

28
29 **Section 18-171. Grounds for Certificate of Use Denial, Non-Renewal or Revocation.**

30
31 The County shall deny, not renew or revoke a medical marijuana dispensary or cultivation
32 facility certificate of use upon the occurrence of one or more of the following:

33
34 (a) An application contains false information or missing information;

35
36 (b) The dispensary or cultivation facility is not registered, if required, with the State;

37
38 (c) The dispensary or cultivation facility has had its registration suspended or revoked by the
39 State;

40
41 (d) Consistent with Section 18-175 of this Article, failure to allow for inspection of the
42 dispensary or cultivation facility by any law enforcement officer employed by or under
43 the Sheriff's Office, any county code enforcement officer, or any other person authorized
44 to enforce ordinance violations in Hernando County at any time the dispensary is open
45 or occupied;

- 1 (e) Failure to abide by any provision of this article;
- 2
- 3 (f) Allowing any person to work or volunteer at the dispensary or cultivation facility,
- 4 whether paid or unpaid, who has been convicted of or plead guilty or nolo contendere to
- 5 (even if sealed or expunged) an offense that constitutes any felony offense of Florida
- 6 Statutes or federal law;
- 7
- 8 (g) If the payment for the application fee or certificate of use fee is invalid or uncollectible
- 9 for any reason;
- 10
- 11 (h) If, after any medical marijuana dispensary or cultivation facility certificate of use is
- 12 issued, a change in any of the information relative to the initial application occurs and
- 13 such change, upon review and determination of the Department, is determined to be
- 14 grounds for denial or revocation;
- 15
- 16 (i) Failure to notify the Department of any change of information following the issuance of
- 17 any certificate of use.
- 18

19 **Section 18-172. Additional Certificate of Use Compliance Requirements**

- 20
- 21 (a) A valid Hernando County medical marijuana dispensary or cultivation facility certificate
- 22 of use issued pursuant to this article must be prominently displayed in a common public
- 23 area of the medical marijuana dispensary or cultivation facility.
- 24
- 25 (b) The medical marijuana dispensary or cultivation facility certificate of use is non-
- 26 transferable and cannot be assigned. Whenever ownership or management of a medical
- 27 marijuana dispensary or cultivation facility changes, a new application must be filed for
- 28 a new certificate of use and all applicable fees paid.
- 29
- 30 (c) The medical marijuana dispensary or cultivation facility shall be precluded from having
- 31 any outdoor seating areas, queues, or customer waiting areas. All activities of the
- 32 medical marijuana dispensary, including all patient contact, examination, prescribing,
- 33 dispensing, sale, display, and storage without limitation, shall be conducted entirely
- 34 within a completely enclosed building.
- 35
- 36 (d) Mobile or temporary facilities (including mobile vans, motor homes, buses, trailers or
- 37 movable structures, without limitation) are prohibited.
- 38
- 39 (e) The use of vending machines to dispense medical marijuana is prohibited.
- 40
- 41 (f) No medical marijuana dispensary or cultivation facility may locate in any area not
- 42 properly zoned and designated for use under the County Zoning Ordinance.
- 43
- 44 (g) The medical marijuana dispensary or cultivation facility shall meet and satisfy all
- 45 applicable land development regulations and applicable County codes and regulations.
- 46

- 1 (h) No person under the age of twenty-one (21) shall be permitted on the premises of a
2 medical marijuana dispensary or cultivation facility without a prescription from a
3 qualified medical provider.
4
- 5 (i) The hours of operation of the medical marijuana dispensary shall be limited to 9:00 a.m.
6 to 6:00 p.m., Monday through Saturday.
7
- 8 (j) Medical marijuana dispensaries or cultivation facilities shall not be allowed as a home
9 occupation.
10
- 11 (k) The use, consumption, ingestion or inhalation of marijuana products on the property, or
12 within the premise is prohibited.
13
- 14 (l) The retail sale of devices, contrivances, instruments and paraphernalia for inhaling or
15 otherwise consuming medical marijuana shall be prohibited.
16
- 17 (m) The sale, dispensation, consumption of alcohol shall be prohibited on site.
18
- 19 (n) No retail sales or dispensation of marijuana may be permitted at a cultivation facility.
20
- 21 (o) The outside cultivation of medical marijuana is prohibited, and the cultivation of medical
22 marijuana must occur completely within a fully enclosed structure with a minimum of
23 5,000 square feet of gross floor area. The structure shall be properly ventilated and
24 comply with all building code regulations. No outside storage shall be allowed.
25
- 26 (p) Exterior signage shall only include the name and location of the business. Symbols
27 and/or terms that depict or include marijuana, pot, or other references commonly used
28 for marijuana shall be prohibited.
29
- 30 (q) The medical marijuana dispensary or cultivation facility shall provide a security plan that
31 includes, at a minimum interior and exterior security surveillance cameras installed to
32 monitor all entrances, a professionally monitored alarm system, the location and type of
33 exterior security lighting, deadbolt locks on all exterior doors, and a permanently affixed
34 locking safe suitable for the overnight storage of cash and product.
35
- 36 (r) All surveillance security recordings shall be preserved for at least seventy two (72) hours
37 and must be made available upon request by the County.
38
- 39 (s) There must be posted in a conspicuous location a legible sign indicating that the use of
40 marijuana or marijuana products may impair a person's ability to drive a motor vehicle
41 or operate machinery, that it is illegal to drive a motor vehicle or operate machinery while
42 under the influence of marijuana, loitering in or around the dispensary is prohibited, that
43 possession of marijuana is a federal offense, and that no one under the age of twenty one
44 (21) is permitted on the premises without a prescription from a qualified medical
45 provider.
46

- 1 (t) Every medical marijuana dispensary or cultivation facility shall maintain an accurate and
2 complete record of all transactions of medical marijuana purchased, transferred, sold or
3 dispensed. The records shall identify the seller and purchaser involved in each
4 transaction, the quantity of the transaction, and the date/time/location of each transaction.
5 Records shall be kept in chronological order, and shall be made available for a minimum
6 period of 3 years from the date of each transaction. These records shall be made available
7 to law enforcement consistent with the requirements of state and federal law including,
8 but not limited to, the Health Insurance Portability and Accountability Act (HIPAA), Title
9 42, U.S. Code, Section 17935 and Section 164.512, Title 45, Code of Federal Regulations
10 and shall be used for regulatory purposes only, and shall not be a matter of public record.
11

12 **Section 18-173. Review of Certificate of Use Denial, Non-Renewal or Revocation.**
13

- 14 (a) The department shall provide written notice of a denial of any new or renewal registration
15 certificate specifying in writing the grounds for the denial. The denial notice shall be sent
16 by certified mail or hand delivery to the mailing address set forth on the application for
17 the medical marijuana dispensary or cultivation facility registration. The applicant whose
18 application has received a denial may request a formal de novo appeal hearing before a
19 hearing officer. All the appeal requirements are jurisdictional; failure to correctly file an
20 appeal waives the applicant's rights to challenge the department's decision.
21
- 22 (b) The appeal and request for a de novo appeal hearing must be received by the department
23 within ten (10) business days of the date the denial notice is mailed to the applicant. The
24 applicant must file an appeal on an official appeal application with the department before
25 the appeal deadline. An appeal narrative shall be submitted to support the appeal and
26 shall specify the specific alleged error or errors made by the department citing specific
27 code provisions of this article along with any and all facts and evidence submitted as part
28 of the application that support the applicant's position that the registration certificate was
29 erroneously denied. A copy of the final action by the department shall be attached to the
30 appeal. The appeal shall be signed by the applicant and be accompanied by a one-
31 thousand-dollar (\$1,000.00) deposit toward the estimated costs. The deposit for costs will
32 be returned to the applicant if the applicant prevails in the appeal, otherwise the deposit
33 will be applied to the full costs of the hearing.
34
- 35 (c) The appeal shall be transmitted to the hearing officer as soon as possible after receipt by
36 the department. The hearing officer shall review the appeal, and may, upon motion of a
37 party or on its own motion, determine if the jurisdictional appeal requirements of this
38 section have been met. If the appeal has not been properly filed, the hearing officer shall
39 make this jurisdictional determination in writing and dismiss the appeal. In this case, the
40 final action of the department shall stand as the final decision of the county.
41
- 42 (d) If the appeal is properly filed, the hearing officer shall set a hearing date within thirty
43 (30) business days of the receipt of the appeal by the department, unless the parties agree
44 to additional time. The department shall transmit the final written decision together with
45 the department's application file and record of decision to the hearing officer with a copy
46 to the appellant and the county attorney's office.
47

- 1 (e) The hearing officer shall conduct a hearing in accordance with due process. At a
2 minimum, the following procedures shall be observed:
3
- 4 (1) The file constituting the record of decision by the department shall be entered into
5 evidence.
6
- 7 (2) Pre-filed written testimony and evidence is encouraged prior to the hearing date.
8
- 9 (3) The parties are permitted to present direct testimony and evidence at the hearing.
10 All testimony shall be under oath and shall be recorded.
11
- 12 (4) The applicant shall be entitled to cross examine county witnesses and the county
13 shall be permitted to cross examine the applicant's witnesses.
14
- 15 (5) Formal rules of evidence shall not apply unless required by the hearing officer,
16 but fundamental due process shall be observed and shall govern the proceedings.
17
- 18 (6) The parties may submit proposed recommended orders for consideration of the
19 hearing officer.
20
- 21 (7) The hearing officer shall produce a written decision including findings of fact and
22 conclusions of law within a reasonable time after conclusion of the hearing but
23 no more than ten (10) business days after the hearing.
24
- 25 (8) Notwithstanding the above, the hearing procedures of the Florida Department of
26 Management Services, Division of Administrative Hearings (DOAH) shall be
27 followed in the event the matter is referred to DOAH. Local procedures shall be
28 observed but DOAH procedures control in the event of a conflict.
29
- 30 (9) All hearings and proceedings shall be open to the public.
31
- 32 (10) The county shall be represented by the county attorney's office.
33
- 34 (11) If the department prevails and the de novo decision of the hearing officer is
35 consistent with the department's action, the deposit for costs shall be applied to
36 the cost of the hearing officer. If the applicant prevails and the de novo decision
37 of the hearing officer is inconsistent with the department's action, the deposit for
38 costs shall be returned in full to the applicant.
39
- 40 (12) The decision of the hearing officer shall be the final decision of the county and
41 may only be appealed to Circuit Court in and for Hernando County within thirty
42 (30) days of said decision. Such an appeal shall not be a hearing de novo but shall
43 be limited to appellate review of the record created before the hearing officer.
44 Any decision of a DOAH administrative law judge shall be appealed as provided
45 for in Florida law.
46

- 1 (f) Any dispensary or cultivation facility whose registration certificate is denied, non-
2 renewed (except for an incomplete registration certificate application), or revoked, shall
3 not be eligible to reapply for five (5) years unless the denial, non-renewal or revocation
4 is overturned on appeal. In addition, the owner(s) listed on the application, regardless of
5 the clinic's name, may not be an applicant for a registration certificate renewal at another
6 clinic for a period of five (5) years, unless the individual was previously the applicant for
7 that clinic, or unless the denial or non-renewal is based solely on an incomplete
8 application.
9

10 **Section 18-174. Certificate of Use Renewals; Fees**
11

12 Certificates of use required for medical marijuana dispensaries or cultivation facilities shall be
13 valid for only one (1) year. Provided the medical marijuana dispensary or cultivation facility
14 requesting renewal is in full compliance with this article and no material information contained
15 in its initial application has changed, a renewal certificate shall be issued by the Department,
16 after the applicant pays an annual renewal fee of Two Thousand Five Hundred Dollars
17 (\$2,500.00) to the Department. Renewals shall only be issued to clinics that were previously
18 issued a certificate of use and who timely filed a renewal application. A medical marijuana
19 dispensary or cultivation facility that fails to timely request renewal shall be required to file a
20 new application and pay a new non-refundable application fee.
21

22 **Section 18-175. Inspections**
23

24 With the permission of the applicable property owner or tenant or with a warrant obtained in
25 accordance with Chapter 933, Florida Statutes, any law enforcement officer employed by the
26 sheriff's office, any code enforcement officer, or any other persons authorized to enforce
27 county ordinances may enter the dispensary or cultivation facility premises and conduct an
28 inspection to determine compliance with this article at any time the dispensary is open or
29 occupied.
30

31 **Section 18-176. Violations**
32

33 It shall be unlawful for any person to violate any provision of this article or to operate a medical
34 marijuana dispensary or cultivation facility without a valid county issued medical marijuana
35 dispensary or cultivation facility registration certificate. It shall be a violation for the property
36 owner where the dispensary or cultivation facility is situated to allow any medical marijuana
37 dispensary or cultivation facility to open or operate without a valid medical marijuana
38 dispensary or cultivation facility registration certificate issued pursuant to this article.
39

40 **Section 18-177. Criminal and civil penalties, code enforcement, revocation costs of
41 prosecution**
42

- 43 (a) Revocation of a medical marijuana dispensary or cultivation facility registration
44 certificate may be pursued by the county at any time in addition to code violation
45 enforcement actions specified in this article.
46

1 (b) Any person or persons, firm or corporation, or any agent thereof who violates any
2 provision of this article may be prosecuted in the manner provided for in Chapter 2,
3 Article III, of the Hernando County Code of Ordinances.

4
5 (c) The remedies and penalties herein are not intended to be exclusive and the sheriff's office
6 and/or the county may institute any appropriate action or proceedings to prevent, restrain,
7 enjoin, correct or abate a violation of this article as allowed by law.

8
9 (d) In any of the above code enforcement or revocation actions, in the event the county
10 prevails, the entire cost of prosecution, including attorney fees and witness costs are
11 recoverable against the responsible parties, including, but not limited to, the owner,
12 designated physician or other person.

13
14 **Section 18-178. Allocation of fines, penalties and forfeitures**

15
16 For all enforcement actions initiated by the sheriff and prosecuted by or in the name of the
17 sheriff or the State of Florida, all fines, penalties and forfeitures assessed by the court or
18 recovered shall be retained by the sheriff except as otherwise required to be shared with, or
19 turned over to, the State of Florida. For all enforcement actions initiated and prosecuted by or
20 in the name of the county, all fines, penalties and forfeitures assessed by the court or in
21 applicable code enforcement proceedings, or otherwise recovered shall be retained by the
22 county except as otherwise required to be shared with, or turned over to, the State of Florida.

23
24 **SECTION II. Amending Appendix A (Zoning) Article III (Specific Use Regulations).**

25
26 Appendix A (Zoning) Article III (Specific Use Regulations) is amended to read as follows, with
27 the following new text being added to the code:

28
29 **Section 5. Medical marijuana dispensaries and cultivation facilities**

30
31 A. *Location restrictions.* Medical marijuana dispensaries shall only be permitted in those
32 commercial districts designated as C-1 or C-2.

33
34 B. *Location restrictions.* Medical marijuana cultivation facilities shall only be permitted in
35 those commercial/industrial districts designated C-4, I-1 and I-2.

36
37 C. *Location restrictions.* Medical marijuana cultivation facilities shall not be located on any
38 land owned, or leased by a federal, state or local governmental body.

39
40 D. *Location restrictions.* Medical marijuana dispensaries and cultivation facilities shall meet
41 the following distance separation requirements.

42
43 (1) Medical marijuana dispensaries or cultivation facilities shall not be located within
44 the same building as another registered medical marijuana dispensary or
45 cultivation facility or within 1,000 feet of the following;

46
47 (a) another registered medical marijuana dispensary or cultivation facility;

- 1 (b) a religious institution, church or place of public assembly;
- 2
- 3 (c) a public or private primary or secondary school, or public community or
- 4 state college campus;
- 5
- 6 (d) a state, county or municipal park or similar facility, including but not
- 7 limited to the Sand Hill Boy Scout Reservation, the Suncoast Trail, the
- 8 Good Neighbor Trail and the Withlacoochee State Trail;
- 9
- 10 (e) a licensed day-care center;
- 11
- 12 (f) a boundary of any residential district;
- 13
- 14 (g) an alcohol or drug rehabilitation facility;
- 15
- 16 (h) a publicly owned building, including but not limited to a library,
- 17 courthouse, city hall, government office, and fire station;
- 18
- 19 (i) a halfway house, group home, congregate care facility or correctional
- 20 facility.
- 21

22 E. The distance requirement is without regard to whether or not such other establishment or
23 facility is in the same zoning district or classification, and without regard to whether there
24 are any intervening municipal, county or other jurisdictional boundaries between the
25 medical marijuana dispensary or medical marijuana cultivation facility business and such
26 other establishment or facility.

27
28 F. For the purpose of this section, measurement shall be made in a straight line, without
29 regard to intervening structures or objects, from the nearest portion of the building or
30 structure used as a part of the premises where a medical marijuana dispensary or
31 cultivation facility is conducted, to the nearest property line of separated use, premise or
32 activity.

33
34 **SECTION III. Severability.** It is declared to be the intent of the Board of County Commissioners
35 that if any section, subsection, clause, sentence, phrase, or provision of this ordinance is for any
36 reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of the
37 remaining portions of this ordinance.

38
39 **SECTION IV. Repeal of Conflicting Ordinances.** The provisions of any other Hernando County
40 ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to
41 the extent of such inconsistency or conflict.

42
43 **SECTION V. Inclusion in the Code.** It is the intention of the Board of County Commissioners
44 of Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall
45 become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end,
46 any section or subsection of this Ordinance may be renumbered or relettered to accomplish such

NOTE: all language proposed for addition to existing Code provisions.

1 intention, and the word "ordinance" may be changed to "section, "article," or other appropriate
2 designation.

3
4 **SECTION VI.** Effective date. This ordinance shall take effect upon filing with the Department
5 of State.

6
7 **BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO**
8 **COUNTY** in Regular Session this 10th day of MAY, 2016.

9
10 **BOARD OF COUNTY COMMISSIONERS**
11 **HERNANDO COUNTY, FLORIDA**

12
13
14 Attest: *Donald C. Barbée Jr.*
15 **DONALD C. BARBEE JR, CLERK**

14 By: *James E. Adkins*
15 **JAMES E. ADKINS, CHAIRMAN**



16
17
18 (Seal)

19
20
21
22 Approved as to Form and
23 Legal Sufficiency

24
25 By: *John J. ...*
26