



COLUMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM REQUEST FORM

The Board of County Commissioners meets the 1st and 3rd Thursday of each month at 5:30 p.m. in the Columbia County School Board Administrative Complex Auditorium, 372 West Duval Street, Lake City, Florida 32055. All agenda items are due in the Board's office one week prior to the meeting date.

Today's Date: 11/21/2016 Meeting Date: 12/1/2016

Name: Joel Foreman Department: County Attorney

Division Manager's Signature:

Ben Scott

1. Nature and purpose of agenda item:

Adoption Hearing for proposed ordinance imposing 6-month moratorium on Marijuana Dispensaries in the Unincorporated Areas of the County

2. Recommended Motion/Action:

There is no recommended motion or action.

3. Fiscal impact on current budget.

This item has no effect on the current budget.

**COLUMBIA COUNTY, FLORIDA
ORDINANCE NO. 2016-__**

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF COLUMBIA COUNTY, FLORIDA, ESTABLISHING A TEMPORARY MORATORIUM ON CANNABIS DISPENSING BUSINESSES AS FURTHER DEFINED HEREIN; PROVIDING FOR GEOGRAPHIC AREA COVERED; PROVIDING FOR PENALTIES, PROVIDING A SAVINGS CLAUSE, A GENERAL REPEALER CLAUSE, AND FOR AN EFFECTIVE DATE.

WHEREAS, in 2014 the Florida Legislature enacted a law legalizing low-THC medical cannabis in Florida;

WHEREAS, in 2016 the Florida Legislature expanded the law to legalize medical cannabis in Florida;

WHEREAS, future constitutional amendments and legislation may further expand the legal use of cannabis in Florida;

WHEREAS, a comprehensive State licensing and regulatory framework for the cultivation, processing and dispensing of cannabis now exists;

WHEREAS, the comprehensive State licensing and regulatory framework directs that the criteria for the number and location of, and other permitting requirements that do not conflict with state law or department rule for, dispensing facilities of cannabis businesses may be determined by local ordinance;

WHEREAS, cannabis businesses licensed pursuant to the law have begun cultivating cannabis for processing and dispensing;

WHEREAS, the dispensing of cannabis is currently illegal under federal law and the United States Drug Enforcement Agency has reiterated that cannabis remains a Schedule I drug under federal law, but the United States Department of Justice has discussed the low probability federal enforcement of such laws with respect to state-regulated cannabis operations in the 2013 “Cole Memorandum”;

WHEREAS, potential adverse impacts on the health, safety, and welfare of residents and businesses from secondary effects associated with the distribution of cannabis exist, potentially including offensive odors, trespassing, theft, fire hazards, increased crime in and about the dispensary, robberies, negative impacts on nearby businesses, nuisance problems, and increased DUI incidents;

WHEREAS, there exists the potential for misappropriation of medical cannabis to non-medical uses;

WHEREAS, an overabundance of dispensing facilities can affect the viability of such facilities, result in compliance issues, lead to the improper diversion of products, and accentuate threats to the public health, safety, and welfare;

WHEREAS, in November of this year, Floridians voted to amend the Florida Constitution to legalize the cultivation, production, and dispensing of medical cannabis for a broader population of eligible patients; and

WHEREAS, Florida laws relating to the cultivation, production, and dispensing of cannabis products are rapidly changing, raising substantial questions about whether cannabis-related land uses, as a category of commercial use, may have negative secondary effects on surrounding land uses and communities;

WHEREAS, the purpose of this ordinance is to place a temporary moratorium on the opening of certain new cannabis dispensing facilities, and on the expansion or relocation of certain existing cannabis dispensing facilities;

WHEREAS, the Columbia County Board of County Commissioners has determined that a temporary moratorium imposed by this ordinance is intended to give the county the time reasonably necessary to investigate the impacts of cannabis dispensing facilities and, if necessary, promulgate reasonable regulations relating to such establishments;

WHEREAS, the Columbia County Board of County Commissioners finds that this ordinance advances an important government purpose by reducing the likelihood of the unregulated negative secondary effects of cannabis dispensing facilities;

WHEREAS, the Columbia County Board of County Commissioners finds that this ordinance is in the best interest of the public health, safety, and welfare; and

WHEREAS, the Columbia County Board of County Commissioners has determined it is in the public interest to adopt this Ordinance pursuant to the County's police powers and section 381.986(8)(b) to protect the health, safety, and welfare of the public.

NOW THEREFORE, be it ordained by the Board of County Commissioners for Columbia County, Florida:

Purpose and intent.

The purpose of this Ordinance is to provide the County with an adequate opportunity to review the likely impact of recent changes in the law and passage of a constitutional amendment relating to dispensary of medical cannabis, as well as the impact of cannabis dispensing in other jurisdictions, to determine how such dispensing should be permitted or regulated in the County.

Definitions.

(1) The following words and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this Ordinance:

a. **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, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

b. **Cannabis dispensing business** or **business** shall mean a business location offering cannabis for retail sale pursuant to a license to dispense cannabis issued under applicable law.

c. **Compassionate Use Act** shall mean section 381.986, Florida Statutes, and chapter 2016-123, Laws of Florida, as amended from time to time, and any rules or regulations promulgated thereunder.

d. **State** shall mean the State of Florida.

(2) In addition to the definitions contained in Subsection (1), other terms used in this Ordinance shall have the meaning ascribed to them in the Compassionate Use Act, and such definitions are incorporated into this Ordinance by this reference.

Temporary Moratorium.

Beginning on the effective date of this Ordinance, a moratorium is hereby imposed on the opening of new

cannabis dispensing businesses or the expansion or relocation of existing cannabis dispensing businesses in the County.

(1.) During the moratorium, it shall be unlawful and a violation of this ordinance for any person or entity to obtain any permit from the County to open or cause to be opened any cannabis dispensing business within the unincorporated areas of the County.

(2.) During the moratorium, it shall be unlawful and a violation of this ordinance for any person or entity to obtain any permit from the County to relocate or cause to be relocated any cannabis dispensing business within the unincorporated areas of the County.

(3.) During the moratorium, it is unlawful and a violation of this ordinance for any person or entity to obtain any permit from the County to expand or cause to be expanded any cannabis dispensing business within the unincorporated areas of the County.

(4.) During the moratorium, the County shall not accept, process or approve any application for business tax receipts, licenses, building permits, land use permits, or any development permits concerning or related to a cannabis dispensing business.

(5.) During the moratorium, the County shall not accept, process or approve any business tax receipts, building permits, land use permits, or any development permits concerning or related to a cannabis dispensing business.

(6.) During the moratorium, the County shall not accept, process or approve any licenses, permits, or approvals for any property, entity, or individual for the sale or dispensation of cannabis so long as this ordinance is in effect.

Nothing in this temporary moratorium shall be construed to prohibit the use of cannabis pursuant to the Compassionate Use Act or other applicable Florida Law, or the delivery of cannabis in compliance with the Compassionate Use Act or other applicable Florida Law.

Study and Recommendations.

The County Manager is hereby directed to study potential land development regulations for cannabis dispensaries and the impact of such regulations in other jurisdictions, and to make report to the Board of County Commissioners of the County Manager's findings together with proposals for amendments to the County's Land Development Regulations to address any identified potential adverse impacts.

Penalties.

Any person or entity who violates any provision of this Ordinance or who fails to comply therewith, or with any of the requirements thereof, shall be fined in an amount not exceeding five hundred dollars (\$500.00) per violation, per day, or be imprisoned for a period not to exceed sixty (60) days.

Severability.

If any provision of this ordinance or its application to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

Repeal.

All ordinances, resolutions, official determinations or parts thereof previously adopted or entered by the County or any of its officials that conflict with this ordinance are hereby repealed to the extent inconsistent herewith.

Effective Date.

This ordinance takes effect immediately upon adoption.

ADOPTED this ____ day of _____, 2016.

**BOARD OF COUNTY COMMISSIONERS
COLUMBIA COUNTY, FLORIDA**

By: _____

Bucky Nash, Chairman

ATTEST: _____

P. DeWitt Cason, Clerk of Courts

(SEAL)



U.S. Department of Justice


Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole 
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.¹

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

¹ These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
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