

## **Legal Memorandum on MMTCs**

TO: City Commission and City Manager's Office  
FROM: City Attorney's Office  
DATE: June 3, 2026  
RE: Medical Marijuana Treatment Center Dispensing Facilities:  
Ordinance Options, Recommended Action and Commission Directive Request

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### **I. PURPOSE AND SCOPE**

This memorandum summarizes the recommended ordinance approach for Medical Marijuana Treatment Center dispensing facilities ("MMTC dispensing facilities") following Commission discussion of Ordinance 2026-20 and the concerns raised regarding existing facilities, pending applicants, and potential reliance claims, and timing issues raised by recent hurricane-disaster legislation to the extent applicable to the City

### **II. SUMMARY OF POSITION**

The City has strong legal authority under Section 381.986(11)(b), Florida Statutes, to prohibit future MMTC dispensing facilities within City limits by ordinance. If the City does not ban MMTC dispensing facilities, state law substantially limits the City's ability to regulate them differently from pharmacies.

A separate, unresolved timing issue is whether recent hurricane-disaster legislation temporarily limits a covered municipality's ability to exercise that authority through a new City-initiated amendment to its Land Development Regulations. No controlling court decision has been identified that resolves the interaction between Section 381.986(11)(b), Florida Statutes, and Chapter 2025-190, Section 28, Laws of Florida, in the MMTC context.

The primary legal risk therefore is not the City's ultimate authority to ban future facilities. The primary risk is how the ordinance treats:

1. existing lawfully operating MMTC dispensing facilities;
2. applicants or property owners with final approvals or permits;
3. parties claiming reliance based on City action, zoning/land use verification letters, leases, purchases, or expenditures; and
4. potential challenges that Ordinance 2026-20 is a more restrictive City-initiated LDR amendment if adopted or enforced during an applicable disaster-recovery restricted period.

If the Commission elects to proceed with a prospective prohibition, the recommended primary approach is to proceed with a prospective ban while treating lawfully established and operating MMTC dispensing facilities as legal nonconforming uses. A broad discretionary "hybrid" exception process is not recommended. A narrow vested-rights determination process should be considered only as a fallback if the City confirms credible reliance claims that cannot be addressed through ordinary nonconforming-use treatment.

### III. GOVERNING LAW

Section 381.986(11)(b), Florida Statutes, allows a municipality to ban MMTC dispensing facilities by ordinance. If a municipality does not ban them, it may not cap the number of dispensing facilities and generally may not impose permitting or location requirements more restrictive than those applied to pharmacies licensed under Chapter 465, except for the statutory school-distance process and building/fire code compliance.

Recent hurricane-disaster legislation presents a separate timing and enforceability issue. Chapter 2025-190, Section 28, Laws of Florida, restricts covered counties and municipalities, before October 1, 2027, from proposing or adopting more restrictive or burdensome amendments to comprehensive plans or land development regulations, or more restrictive or burdensome procedures concerning review, approval, or issuance of site plans, development permits, or development orders. The statute also provides that covered measures are null and void ab initio, applies retroactively to August 1, 2024, and authorizes affected residents and business owners to seek declaratory and injunctive relief.

The City has a colorable argument that Section 381.986(11)(b), as the specific statute governing MMTC dispensing-facility location, authorizes the City to adopt a citywide prohibition. A challenger may argue that Section 381.986 preserves the City's substantive authority but does not override the separate disaster-recovery restriction on more restrictive City-initiated LDR amendments during the restricted period. That statutory interaction has not been resolved by controlling case law.

Florida law also recognizes legal nonconforming uses and fact-specific vested-rights or equitable-estoppel claims. A party generally does not acquire vested rights merely because regulations were favorable at one time. Stronger claims usually require a specific governmental act or approval, good-faith reliance, substantial change in position or expenditures, and circumstances making denial inequitable.

The Bert J. Harris Act may create exposure where a governmental action inordinately burdens an existing use of real property or a vested right to a specific use. Exposure is reduced if existing lawful operations may continue and if the City provides a clear process for any credible vested-rights claim.

### IV. ORDINANCE OPTIONS

| Option                                     | Summary                                                                                                                             | Strengths                                                                                                                         | Risks                                                                                                                                                                     | Recommended Use                    |
|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| Option A: Legal nonconforming use approach | Ban future MMTC dispensing facilities; allow lawfully established and operating facilities to continue as legal nonconforming uses. | Strongest fit with state ban authority; clear public message; easiest to administer; consistent with verified municipal examples. | May not fully address approved but not-yet-operating applicants or documented reliance claims, may also face an unresolved timing challenge under Chapter 2025-190, § 28. | <b>Primary recommendation.</b>     |
| Option B: Vested-rights-only approach      | Require existing operators and applicants to prove vested rights before continuing or proceeding.                                   | Creates individualized review.                                                                                                    | Unnecessarily destabilizes existing lawful operators; higher due process, Bert Harris, and optics risk.                                                                   | <b>Reject as primary approach.</b> |

|                                            |                                                                                                                                |                                                                                                     |                                                                                 |                                                               |
|--------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|---------------------------------------------------------------|
| Option C:<br>Narrow vested-rights fallback | Keep Option A, but add a time-limited process for non-operating applicants or property owners with credible reliance evidence. | Builds record; improves procedural fairness; may reduce litigation risk for strong reliance claims. | Must be tightly drafted; cannot become discretionary post-ban permitting.       | Use only if City inventory confirms credible reliance claims. |
| Option D: Site-specific recognition        | Identify protected sites or approved projects in the ordinance.                                                                | Clear if the record is complete.                                                                    | Equal protection and optics risk if any similarly situated property is omitted. | Use only if the City has a complete verified inventory.       |

## V. APPROACHES

The legal nonconforming use approach remains as the primary ordinance structure, if the City proceeds with a prospective prohibition:

1. Prohibit new MMTC dispensing facilities prospectively.
2. Treat lawfully established and operating MMTC dispensing facilities as legal nonconforming uses.
3. Define the protected scope of each existing facility by address, parcel, operator, approved floor area, approvals, and lawful operating status.
4. Clarify rules for ordinary repair, code compliance, ADA work, security improvements, casualty restoration, ownership/operator transition, abandonment, expansion, relocation, and intensification.

Subject to the unresolved disaster-recovery timing issue, this approach is legally sound, administratively workable, and easier to explain publicly. It also preserves existing patient access while implementing the Commission's policy direction for future facilities.

### Fall Back Vested-Rights Process

A narrow vested-rights determination process may be useful only if the City confirms a credible non-operating reliance claim. This should not be a broad discretionary exception process. It also should not be framed as a complete cure for any SB 180 or Chapter 2025-190 timing issue. A vested-rights process recognizes rights that may already exist under Florida law; it should not operate as a discretionary post-ban approval process, cap, quota, or method for selecting future MMTC locations.

If used, the process should be limited to a property owner or authorized applicant claiming a pre-effective-date right based on specific evidence, such as:

- a. final development order;
- b. approved site plan;
- c. issued building permit;
- d. certificate of occupancy;
- e. business tax receipt;
- f. written zoning verification or City assurance;
- g. complete application accepted by the City;
- h. substantial reliance expenditures tied to a specific City action.

Leases, purchase contracts, expenditures, zoning inquiries, or verification letters should not automatically create protected rights. They may be considered as evidence only. Any relief should be limited to the specific property, use, intensity, approvals, and operational scope supported by the record.

## **VI. LITIGATION EXPOSURE**

The City's strongest litigation position is that the ordinance is prospective, authorized by state law, generally applicable, and preserves lawful existing operations. If the City proceeds during an applicable disaster-recovery restricted period, the City should also recognize that a challenger may argue the ordinance is a more restrictive City-initiated LDR amendment, even though the City has substantive MMTC ban authority.

The highest litigation exposure would arise from:

- a. denying continuation rights to existing lawfully operating facilities;
- b. applying strict casualty, abandonment, or transfer rules without clear standards;
- c. ignoring a documented final approval or reliance claim;
- d. making informal staff determinations without written findings or appeal rights;
- e. treating similarly situated applicants or properties differently without a rational record; and
- f. adopting or enforcing the ordinance during an applicable disaster-recovery restricted period without addressing the unresolved statutory-interaction issue.

A narrow fallback process may reduce litigation exposure if credible reliance claims exist. If no such claims exist, adding a process may add unnecessary administrative complexity.

## **MUNICIPAL COMPARABLES**

| <b>Municipality</b> | <b>Ordinance Approach</b>                                | <b>Short Summary</b>                                                                                                                                     | <b>Municode Documents Included</b> |
|---------------------|----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| Greenacres          | Ban plus legal nonconforming use treatment.              | Prohibited new MMTC dispensing facilities after previously allowing them; lawfully operating facilities as of the stated date became nonconforming uses. | Ordinance<br>Municode Chapters     |
| Okeechobee          | Ban plus legal nonconforming use treatment.              | Removed medical marijuana dispensaries as permitted uses and treated existing dispensaries as nonconforming uses.                                        | Ordinance<br>Municode Chapters     |
| Palmetto Bay        | Site-specific nonconforming/grandfathering approach.     | Recognized one existing facility and one approved facility as permitted nonconforming uses while prohibiting additional facilities.                      | Ordinance<br>Municode Chapters     |
| Crystal River       | Ban with existing nonconforming/vested-rights framework. | Adopted a citywide ban; staff record recognized existing approved facilities under nonconforming provisions and noted vested-rights relief provisions.   | Ordinance<br>Municode Chapters     |

## VII. RECOMMENDATION AND DIRECTION

If the Commission elects to proceed with a prospective prohibition, proceed with the legal nonconforming use approach as the primary ordinance structure:

1. ban future MMTC dispensing facilities;
2. preserve lawfully established and operating facilities as legal nonconforming uses;
3. define the protected scope of existing operations;
4. clarify continuation, repair, casualty, transfer, abandonment, and enforcement rules;
5. add a narrow vested-rights determination process only if the City's factual inventory confirms credible reliance claims, and makes clear that the process recognizes pre-existing legal rights rather than creating discretionary post-ban approvals.

A broad discretionary hybrid approach is not recommended. A vested-rights-only approach is not recommended. Because the interaction between Section 381.986 and Chapter 2025-190, Section 28 has not been resolved in the MMTC context, the Commission may proceed with the preferred ordinance structure while accepting litigation risk, or defer final adoption while continuing to administer the current code and completing the factual inventory of existing facilities, pending applications, approvals, permits, and reliance claims.