

Agenda Item 13 (Legislative Hearing)

Land Development Code Text Amendment

DEV2017-076

Amend Article 5, 6, and 11

STAFF REPORT

DATE: July 20, 2017

TO: Planning Board Members

FROM: Richard Walton, AICP, Planning Director

AMENDMENT REQUEST

A request by Development and Administrative Services, Planning Division, to amend Sections 5, 6, and 11 of the Land Development Code to prohibit Marijuana Dispensaries.

AMENDMENT DESCRIPTION

At the City Commission meeting on Wednesday, July 19th, the Commission discussed options related to the recently approved Senate Bill 8A regarding guidelines for the medical marijuana industry. The options available are as follows:

1. Allow medical marijuana treatment center dispensing facilities but regulate them no more restrictively than we do pharmacies.
2. A local government may ban medical marijuana treatment center dispensing facilities from locating within the boundaries of the city.

Attached is the agenda discussion item (*Attachment A*) that was presented to the Commission. After discussions, a majority vote of the Commission directed staff to move forward with an Ordinance to establish a City ban medical marijuana treatment center dispensing facilities.

Attached are the changes to Sections 5.2 and 6.2 (*Attachment B*) of the Land Development and the following is the definition that will be added to Section 11.5.

Marijuana Dispensary. Any facility or entity, whether licensed by the State of Florida Department of Health or not, that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials.

Text Amendment Review Standards

The purpose of Section 3.4.B. is to provide a uniform means for amending the text of this Code whenever the public necessity, convenience, general welfare, comprehensive plan, or appropriate land use practices justify or require doing so.

The advisability of amending the text of this Code is a matter committed to the legislative discretion of the City Commission and is not controlled by any one factor. In determining whether to adopt or deny the proposed text amendment, the City Commission shall weigh the relevance of and consider whether and the extent to which the proposed amendment:

a. Is consistent with the comprehensive plan;

The proposed text amendment is consistent with the comprehensive plan.

b. Is in conflict with any provision of this Code or the Code of Ordinances;

The proposed text amendments is in compliance with the Land Development Code and Code of Ordinances.

c. Is required by changed conditions;

Florida Legislature passed new regulations regarding medical marijuana.

d. Addresses a demonstrated community need;

The proposed text amendment will maintain the current status of the community.

e. Is consistent with the purpose and intent of the zoning districts in this Code, or would improve compatibility among uses and would ensure efficient development within the city;

The proposed text amendment will best protect established neighborhoods.

f. Would result in a logical and orderly development pattern; and

The proposed text amendment is not anticipated to have any adverse impacts on the existing development patterns.

g. Would result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, storm water management, wildlife, vegetation, wetlands, and the natural functioning of the environment.


Staff has reviewed the proposed Land Development Code text amendment request and determined the request would not have adverse impacts on the natural environment.

RECOMMENDATION

Based on staff analysis and review of the above standards, approval of the requested text amendments are recommended. A majority vote of the Planning Board members present and voting is required to recommend approval to the City Commission.

AGENDA SUMMARY

The City of Daytona Beach

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|--|--|--|--|
| <p>DEPARTMENT/DIVISION: Development and Administrative Services, Planning Division</p> <p>STAFF CONTACT: Richard Walton, Planning Director</p> <p>ITEM TITLE: Discussion - Medical Marijuana</p> | <p>Meeting Date: 7-19-17</p> <p>First Agenda Action:</p> <p>Second Agenda Action:</p> | | |
| <p>ACTION (check one): Presentation <input type="checkbox"/> Discussion <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution – PUBLIC HEARING <input type="checkbox"/> Ordinance on first reading – PUBLIC HEARING <input type="checkbox"/></p> | | | |
| <p>IS ITEM BUDGETED: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> BUDGET \$ _____ TOTAL COST \$ 0</p> | | | |
| <p>VISION PLAN/STRATEGIC PLANNING INITIATIVE: <u>N/A</u></p> | | | |
| <p>BACKGROUND: <u>Discussion regarding Medical Marijuana and how the City will proceed to regulate the use. In June of 2017, the Florida Legislature approved SB 8A which included guidelines for the medical marijuana industry. There are two options: 1.) Treat medical marijuana treatment center dispensing facilities no more restrictively than pharmacies, or 2.) Ban medical marijuans treatment center dispensing facilites from being located within the boundaries of the city.</u></p> | | | |
| <p>STAFF/BOARD RECOMMENDATION: <u>Discussion Item.</u></p> <p>REVIEWED BY AS REQUIRED:</p> | | | |
| <p>DEPT./DIVISION HEAD</p> <p style="text-align: center;"><i>RW</i></p> <p>DATE: _____</p> | <p>PURCHASING</p> <p>DATE: _____</p> | <p>LEGAL</p> <p style="text-align: center;"><i>CA</i></p> <p>DATE: <u>7/11/17</u></p> | <p>CITY MANAGER</p> <p style="text-align: center;"></p> <p>DATE: _____</p> |



The CITY OF DAYTONA BEACH

"THE WORLD'S MOST FAMOUS BEACH"

MEMORANDUM

DATE: July 11, 2017

To: James V. Chisholm, City Manager

Thru: James Morris, Deputy City Manager

FROM: Richard Walton, AICP, Planning Director ^{RW}

SUBJECT: Medical Marijuana Dispensaries

With the most recent legislation regarding Medical Marijuana, we have two options regarding how we treat the use. Below is a brief history of recent state regulation, as well as two options staff needs direction on as to how the City Commission would like the City to proceed.

History

Medical Marijuana regulations in Florida have continued to evolve over the past few years. On March 20, 2014, the Florida House of Representatives passed the "so-called Charlotte's Web measure (CS/HB 843)" [1] designed to limit prosecutors' ability to prosecute those in possession of low THC/high CBD marijuana ("0.5 percent or less of tetrahydrocannabinol, and more than 15 percent of cannabidiol") used for treating seizures. The bill took effect July 2014.

On November 8, 2016 Florida voters approved Amendment 2 which was a state constitutional amendment with a goal to increase access to those suffering from medical conditions.

In June of 2017, the Florida Legislature approved SB 8A (attached) which included guidelines for the medical marijuana industry. The bill expands the illnesses that can be provided for from past legislation, and allows for more medical marijuana treatment centers. The bill still bans smoking the marijuana although law suits to overturn this ban have been filed. Medical marijuana products can be sold as edibles, vaping, oils, sprays or tinctures. Patients may receive an order for three 70-day supplies before having to visit a doctor again to get re-examined.

Options

Local governments across the state vary in their regulation of the use. Section **(11)** of the Bill, entitled "**Preemption**" (attached relevant pages starting on page 30) sets forth local government options.

1. Allow medical marijuana treatment center dispensing facilities but regulate them no more restrictively than we do pharmacies*.
2. A local government may ban medical marijuana treatment center dispensing facilities from locating within the boundaries of the city.

Note: If we do not ban the use, we may not place specific limits on the number of these facilities. They are required to meet State law that currently provides a separation of 500 feet from a public or private school, and meet all Florida Building Code and Fire Code regulations.

* Our Land Development Code permits pharmacies to be located in BR-1, BR-2, BA, T-4, T-5, RDB-1, RDB-2, RDB-3, RDB-5, RDB-8, RDB-9, RDD-1, RDD-2, RDD-3, RDD-4, RDM-1, RDM-2, RDM-3 and RDM-5. They also must satisfy the following Land Development Code conditions:

- 5.2.B.22.h. *Drug Store or Pharmacy with Drive-Through Service.* A drug store or pharmacy with drive-through service shall comply with the following standards:
- i. The drive-through service facilities shall be located at least 100 feet from any residential zoning district.
 - ii. The drive-through service facilities shall be designed with a sufficient number of vehicular stacking spaces to comply with the standards in Section 6.2.E, Vehicle Drop-Off/Pick-Up Zones, Stacking Spaces, and to avoid obstructions to vehicular movement along adjacent streets, through parking areas, and in front of buildings.
 - iii. A bypass lane at least ten feet wide shall also be provided.
 - iv. The drive-through service facilities shall be designed to avoid obstructions to pedestrian movement along sidewalks, through public use areas, or between parking spaces and building entrances.

4. Improperly disclosing personal and confidential information of the qualified patient.

5. Attempting to procure medical marijuana treatment center approval by bribery, fraudulent misrepresentation, or extortion.

6. Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the business of a medical marijuana treatment center.

7. Making or filing a report or record that the medical marijuana treatment center knows to be false.

8. Willfully failing to maintain a record required by this section or department rule.

9. Willfully impeding or obstructing an employee or agent of the department in the furtherance of his or her official duties.

10. Engaging in fraud or deceit, negligence, incompetence, or misconduct in the business practices of a medical marijuana treatment center.

11. Making misleading, deceptive, or fraudulent representations in or related to the business practices of a medical marijuana treatment center.

12. Having a license or the authority to engage in any regulated profession, occupation, or business that is related to the business practices of a medical marijuana treatment center suspended, revoked, or otherwise acted against by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law.

13. Violating a lawful order of the department or an agency of the state, or failing to comply with a lawfully issued subpoena of the department or an agency of the state.

(g) The department may suspend, revoke, or refuse to renew a medical marijuana treatment center license if the medical marijuana treatment center commits any of the violations in paragraph (f).

(h) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.

(11) PREEMPTION.—Regulation of cultivation, processing, and delivery of marijuana by medical marijuana treatment centers is preempted to the state except as provided in this subsection.

(a) A medical marijuana treatment center cultivating or processing facility may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school.

(b)1. 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. A county or 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.

2. A municipality may determine by ordinance the criteria for the location of, and other permitting requirements that do not conflict with state law or department rule for, medical marijuana treatment center dispensing facilities located within the boundaries of that municipality. A county may determine by ordinance the criteria for the location of, and other permitting requirements that do not conflict with state law or department rule for, all such dispensing facilities located within the unincorporated areas of that county. Except as provided in paragraph (c), a county or 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 licensed under chapter 465. A municipality or county may not charge a medical marijuana treatment center a license or permit fee in an amount greater than the fee charged by such municipality or county to pharmacies. A dispensing facility location approved by a municipality or county pursuant to former s. 381.986(8)(b), Florida Statutes 2016, is not subject to the location requirements of this subsection.

(c) A medical marijuana treatment center dispensing facility may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the county or municipality approves the location through a formal proceeding open to the public at which the county or municipality determines that the location promotes the public health, safety, and general welfare of the community.

(d) This subsection does not prohibit any local jurisdiction from ensuring medical marijuana treatment center facilities comply with the Florida Building Code, the Florida Fire Prevention Code, or any local amendments to the Florida Building Code or the Florida Fire Prevention Code.

(12) PENALTIES.—

(a) A qualified physician commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, if the qualified physician issues a physician certification for the medical use of marijuana for a patient without a reasonable belief that the patient is suffering from a qualifying medical condition.

(b) A person who fraudulently represents that he or she has a qualifying medical condition to a qualified physician for the purpose of being issued a physician certification commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Table 5.2.A.4: Principal Use Table for Planned Development and Overlay Districts

PD Districts : PD = Allowed Subject to a PD Plan/Agreement Blank Cell = Prohibited (Only for PD Districts)

Overlay Districts (Only Modifications of Underlying Base District Use Standards Are Shown):

P = Permitted by Right S = Allowed with a Special Use Permit X = Prohibited

| Use Category | Use Type | Planned Development Districts | Overlay Districts | | | | | | | | | | Use-Specific Standards | | | | | |
|--------------------------------------|-----------------------------|-------------------------------|-------------------|--------------|----|----|---------|-------|-----|-----|-----|-----|------------------------|-----|--------|-----|--------|-------------------|
| | | | Historic | Transitional | | | Airport | Other | | | | | | | | | | |
| | | | | HO | TA | TB | | TC | TD | AHO | ANO | STO | | WO | EPO | NRO | E-ZONE | AO |
| <u>Retail Sales and Service Uses</u> | <u>Marijuana Dispensary</u> | PD-G | PD-RD | HO | TA | TB | TC | TD | AHO | ANO | STO | WO | EPO | NRO | E-ZONE | AO | ISBGO | <u>Prohibited</u> |

ATTACHMENT B

| Table 6.2.C.1: Minimum Number of Off-Street Parking Spaces ¹ | | |
|---|---|----------------------------------|
| Use Category | Use Type | Minimum Number of Parking Spaces |
| | Blood/tissue collection center | 4 per 1,000 sf |
| | Drug or alcohol treatment facility | 1.5 per patient bed |
| | Hospital | 1.5 per patient bed |
| Health Care Uses | Blood/tissue collection center | 4 per 1,000 sf |
| | Drug or alcohol treatment facility | 1.5 per patient bed |
| | Hospital | 1.5 per patient bed |
| | Medical marijuana dispensary | 4 per 1,000 sf |
| | Medical or dental clinic/office | 4 per 1,000 sf |
| | Medical or dental lab | 4 per 1,000 sf |
| | Medical treatment facility | 4 per 1,000 sf |
| | Nursing home facility | 1.5 per patient bed |