



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

PLANNING AND ZONING BOARD STAFF REPORT

Medical Marijuana Treatment Center - Dispensing Facility

Meeting	File No.	Application Type
November 14, 2022	2022-136-LDR	Amendment to the Land Development Regulations
Property Owner	Agent	Applicant
Not applicable.	Not applicable.	Neil Schiller, Esq., Government Law Group

Request

Provide a recommendation to the City Commission regarding Ordinance No. 33-22, a privately initiated amendment the Land Development Regulations (LDR), amending Section 4.3.3(G), "Medical Marijuana Treatment Center—Dispensing Facility" to allow such uses subject to terms and conditions; amending Section 4.3.3(LLL), "Pharmacies" to subject such uses to the regulations in Section 4.3.3(G); and amending Section 4.4.9, "General Commercial (GC) District," Section 4.4.11, "Neighborhood Commercial (NC) District," Section 4.4.13, "Central Business (CBD) District," Section 4.4.18, "Planned Commerce Center (PCC) District," and Section 4.4.29, "Mixed Residential, Office, and Commercial (MROC) District to allow the operation of Medical marijuana treatment centers—Dispensing facilities in such districts.

Background

On November 8, 2016, voters in Florida approved a constitutional amendment (Florida Constitution, Article X, Section 29) that established that:

- "The medical use of marijuana by a qualifying patient or caregiver in compliance with this section is not subject to criminal or civil liability or sanctions under Florida law" and that,
- "A physician shall not be subject to criminal or civil liability or sanctions under Florida law solely for issuing a physician certification with reasonable care to a person diagnosed with a debilitating medical condition in compliance with this section," and,
- "Actions and conduct by a Medical Marijuana Treatment Center registered with the Department, or its agents or employees, and in compliance with this section and Department regulations, shall not be subject to criminal or civil liability or sanctions under Florida law".

A Medical Marijuana Treatment Center (MMTC) is defined by the State as "an entity 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 to qualifying patients or their caregivers and is registered by the Department" (Florida Constitution, Article X, Section 29).

The City has adopted the following regulations related to medical cannabis products and MMTCs:

- September 8, 2016. Ordinance No. 27-16 was adopted, imposing a temporary year-long moratorium on the operation of medical marijuana treatment centers and dispensing organizations within the city.
- September 26, 2017. Ordinance No. 34-17 was adopted, to define Medical Marijuana Treatment Centers (MMTC) – Dispensing Facilities, and to prohibit MMTCs within all zoning districts in the city.

Project Planner:

Rebekah Dasari, Interim Principal Planner
dasarir@mydelraybeach.com,
 561.243.7040, Ext. 7044

Attachments:

- Ordinance No. 33-22
- Justification Statement
- School Radius Map
- Existing Pharmacies Map
- DDA Recommendation Letter

In March 2022, the applicant submitted a request to amend the LDR to allow MMTCs in certain zoning districts, and to adopt regulations governing the use.

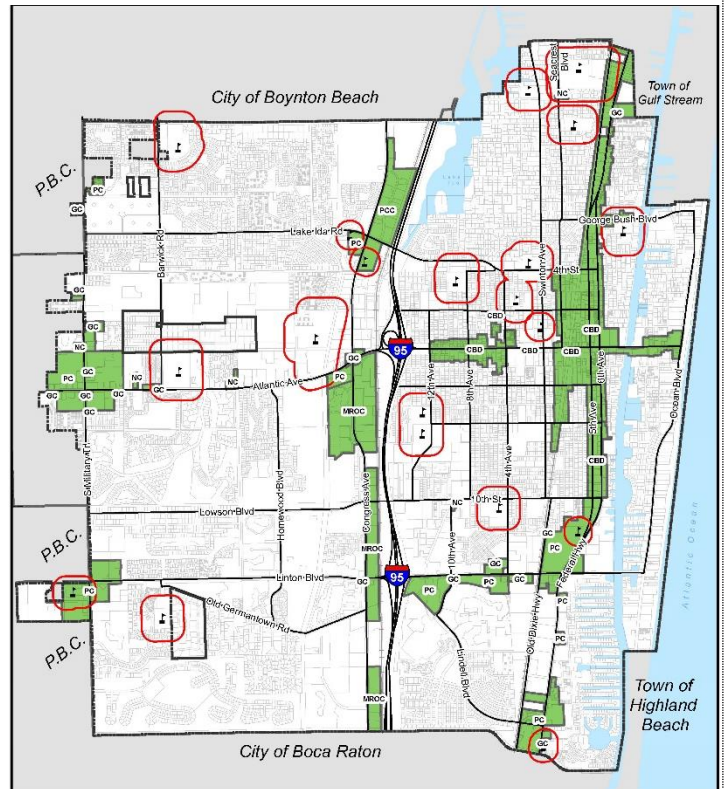
Description of Proposal

The proposed privately initiated LDR amendment provides regulations to allow MMTCs within certain zoning districts within the municipal limits of Delray Beach. City staff requested that the applicant add special requirements for the specific Pharmacy use and the applicable zoning districts to the ordinance. The proposed amendment to the LDR is summarized as follows:

- Section 4.3.3(G), Medical marijuana treatment center—Dispensing facility

- Establishes a minimum gross floor area of 4,000 square feet
- Establishes a 4,000-foot separation between MMTCs
- Requires a Business Tax Receipt
- Prohibits MMTCs and pharmacies on East Atlantic Avenue
- Exempts existing pharmacies from the minimum gross floor area and distance separation requirements, if established by the effective date of the ordinance.

The map at right (and provided as an attachment) indicates the proposed zoning districts and the location of schools within the city, with a 500-foot buffer indicated in red. The statute requires a minimum separation of 500 feet between an MMTC dispensing facility and any public or private elementary school, middle school, or secondary schools, unless specifically approved by the local government. The proposed language does not specifically reference this requirement, but any proposed MMTC would nevertheless be subject to it.



- Section 4.3.3(LLL), Pharmacies

The State imposes certain restrictions on the ability of local governments to regulate MMTC dispensing facilities. Notably, “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.”

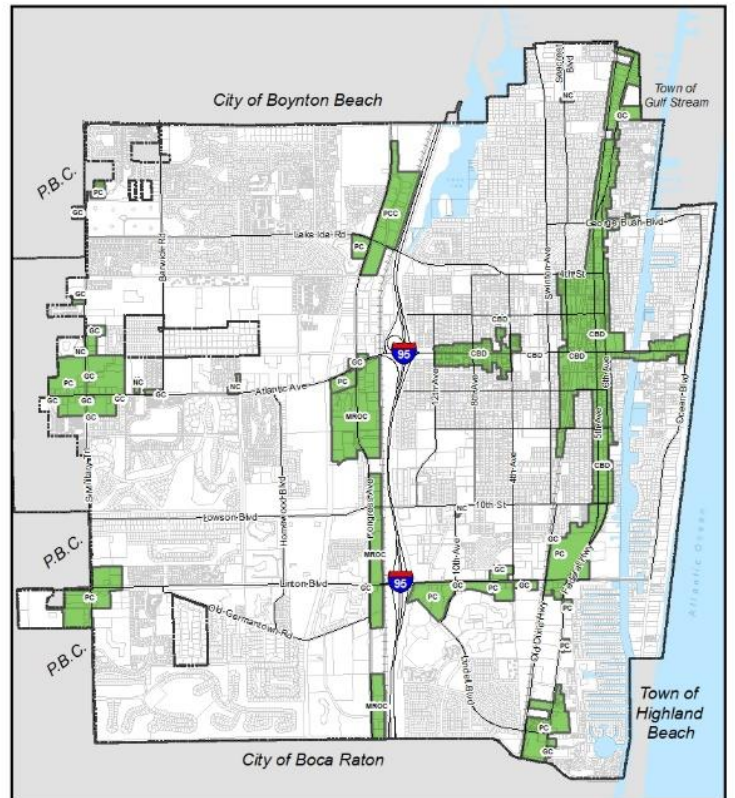
Therefore, language is proposed that subjects pharmacies to the same minimum gross floor area and locational restrictions as MMTCs. Language is proposed that exempts any existing pharmacy established before the effective date of the ordinance.

- Article 4.4, Base Zoning District

The proposed language adds MMTCs to the list of permitted principal uses and structures in the following zoning districts (map on following page, and attached).

- Section 4.4.9, General Commercial (GC) District

- Section 4.4.11, Neighborhood Commercial (NC) District
- Section 4.4.12, Planned Commercial (PC) District
- Section 4.4.13, Central Business (CBD) District
- Section 4.4.18, Planned Commerce Center (PCC) District
- Section 4.4.29, Mixed Residential, Office, and Commercial (MROC) District



Review and Analysis

Pursuant to **LDR Section 1.1.6, Amendments**, the text of these Land Development Regulations may from time to time be amended, changed, supplemented, or repealed. No such action however, shall be taken until a recommendation is obtained from the Planning and Zoning Board and until a public hearing has been held by the City Commission. Pursuant to **LDR Section 2.4.5(M)(1)**, amendments to the Land Development Regulations may be initiated by the City Commission, Planning and Zoning Board or City Administration; or an individual. The proposed amendment is privately initiated.

LDR Section 2.4.5(M)(5), Findings, says that “the City Commission must make a finding that the text amendment is consistent with and furthers the Goals, Objectives and Policies of the Comprehensive Plan.” The following objectives and policies of the adopted Always Delay Comprehensive Plan are applicable to the proposed amendment.

Neighborhoods, Districts, and Corridors Element

Objective NDC 3.5 Update Land Development Regulations: Regularly review and update the Land Development Regulations to provide timely, equitable and streamlined processes including, but not limited to, building permit processes for residential developments and to accommodate mixed-use developments, address market changes and development trends, and other innovative development practices.

When Florida legalized medical marijuana in 2016, a new market developed. While municipalities may either prohibit MMTCs, or permit the use with limited regulations, the applicant is requesting a change to existing City policy to provide a regulatory framework for the operations of this relatively new industry.

Healthy Community Element

Policy HCE 1.3.1: Allow wellness centers and physical and mental health offices and clinics along corridors and within commercial districts.

Medical marijuana products are only available at MMTCs to qualifying patients, who are defined by State regulations at “a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card” (Florida Constitution, Article X, Section 29, “Medical marijuana production, possession and use”). Qualifying conditions are cancer, epilepsy, glaucoma, HIV, AIDS, HIV, Post-traumatic stress disorder (PTSD), Amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis (MS), medical conditions of the same kind or class as or comparable to those above, a terminal

condition diagnosed by a physician other than the qualified physician issuing the physician certification, and chronic nonmalignant pain caused by a qualifying medical condition or that originates from a qualifying medical condition and persists beyond the usual course of that qualifying medical condition. MMTCs provide additional healthcare options to meet the health and wellness needs of city residents.

Economic Prosperity Element

Policy ECP 3.1.6: *Promote both good job creation and business ownership opportunities when encouraging the development and diversification of industry clusters.*

Policy ECP 3.3.9: *Encourage business and commercial growth to better distribute the tax burden from the residential community.*

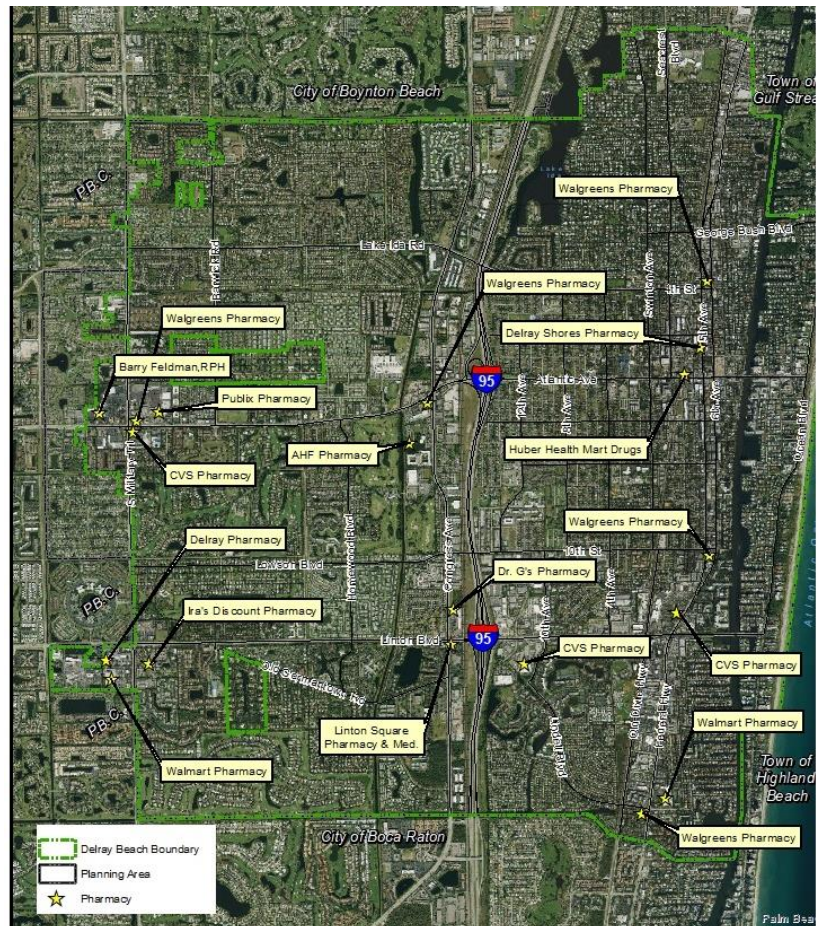
Objective ECP 4.3 Business Regulations: *Streamline and reform permitting, development review, and other regulatory processes, to provide a predictable legal and regulatory environment for businesses.*

Objective ECP 6.3 Business-ready Environment: *Create a business-ready environment for existing and emerging industry clusters.*

Policy ECP 6.3.1: *Review and improve the Land Development Regulations to ensure permitted uses and building requirements align with desirable industry clusters in targeted areas and with the vision of adopted neighborhood revitalization plans.*

Florida has 753,618 qualified medical marijuana patients. The industry had over \$1 billion in sales in 2020 (Source: Forbes.com), and approximately 32,000 individuals employed by the industry, with nearly 15,000 new jobs were generated in 2020 (Source: USAToday.com). The proposed amendment provides a regulatory framework for this rapid-growth industry to operate in the city, should the City determine that it is appropriate to allow MMTCs to operate.

Whereas the City was able to adopt strict regulations governing CBD oil establishments (Ordinance No. 58-20), State statutes limit the ability of municipal governments to regulate MMTCs. State statutes require municipalities to treat MMTCs the same as pharmacies. Therefore, stringent restrictions on MMTC dispensing facilities are not possible, unless the City desires to impose the same regulations on pharmacy uses. Any attempt to regulate the industry will result in the curtailing of traditional pharmacies. A small neighborhood pharmacy, or big box pharmacy such as Walgreens or CVS, would be subject to the same restrictions that govern MMTCs. The Board should consider the impact of the proposed amendment on pharmacies that may seek to begin operations within the city, which may be counter to the interests of the City and its residents. A map of the existing pharmacies in the city is located at right (and attached).



There are existing pharmacies within 4,000 feet of each other; the Board should consider the potential impact of clustering, if the amendment is approved. There are currently 22 vertically integrated medical marijuana providers in the State of Florida; each approved operator receives authorization for cultivation, processing, and dispensing. Although medical marijuana can only be dispensed by one of these providers, it is unclear if multiple established pharmacies within 4,000 feet of each other could cease operations and an MMTC could begin operations in its place (since pharmacy and MMTC uses must be treated the same).

Technical Notes

- The proposed ordinance should be revised to substitute the 6-month time period for nonconforming uses with 180 days, to be consistent with the regulations governing nonconforming use and structures in Article 1.3.

Review By Others

The Downtown Development Authority (DDA) reviewed the item on October 11, 2022 and voted unanimously to recommend denial of the request. The DDA recommendation is provided as an attachment.

The **City Commission** will review Ordinance No. 33-22 at upcoming meetings; the specific meeting dates have not yet been determined.

Options for Board Action

- A. Recommend **approval** to the City Commission of Ordinance No. 33-22, amending Section 4.3.3(G), "Medical Marijuana Treatment Center—Dispensing Facility" to allow such uses subject to terms and conditions; amending Section 4.3.3(LLL), "Pharmacies" to subject such uses to the regulations in Section 4.3.3(G); and amending Section 4.4.9, "General Commercial (GC) District," Section 4.4.11, "Neighborhood Commercial (NC) District," Section 4.4.13, "Central Business (CBD) District," Section 4.4.18, "Planned Commerce Center (PCC) District," and Section 4.4.29, "Mixed Residential, Office, and Commercial (MROC) District of the Land Development Regulations, by finding that the amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in Land Development Regulations.
- B. Recommend **approval** to the City Commission of Ordinance No. 33-22, **as amended**, amending Section 4.3.3(G), "Medical Marijuana Treatment Center—Dispensing Facility" to allow such uses subject to terms and conditions; amending Section 4.3.3(LLL), "Pharmacies" to subject such uses to the regulations in Section 4.3.3(G); and amending Section 4.4.9, "General Commercial (GC) District," Section 4.4.11, "Neighborhood Commercial (NC) District," Section 4.4.13, "Central Business (CBD) District," Section 4.4.18, "Planned Commerce Center (PCC) District," and Section 4.4.29, "Mixed Residential, Office, and Commercial (MROC) District of the Land Development Regulations, by finding that the amendment as amended and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in Land Development Regulations.
- C. Recommend **denial** to the City Commission of Ordinance No. 33-22, amending Section 4.3.3(G), "Medical Marijuana Treatment Center—Dispensing Facility" to allow such uses subject to terms and conditions; amending Section 4.3.3(LLL), "Pharmacies" to subject such uses to the regulations in Section 4.3.3(G); and amending Section 4.4.9, "General Commercial (GC) District," Section 4.4.11, "Neighborhood Commercial (NC) District," Section 4.4.13, "Central Business (CBD) District," Section 4.4.18, "Planned Commerce Center (PCC) District," and Section 4.4.29, "Mixed Residential, Office, and Commercial (MROC) District of the Land Development Regulations, by finding that the amendment and approval thereof is not consistent with the Comprehensive Plan and does not meet the criteria set forth in Land Development Regulations.
- D. Continue with direction.

Public and Courtesy Notices

 x Courtesy notices were sent to the following:

- Chamber of Commerce

 x Public Notices are not required for this request at the Planning and Zoning Board hearing; a legal ad and courtesy notice is required for 1st and 2nd reading at City Commission.