

PLANNING AND ZONING BOARD MEMORANDUM & STAFF REPORT

MEETING DATE: AUGUST 21, 2017

AGENDA NO: IX.A

AGENDA ITEM: MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES PROHIBITION

ITEM BEFORE THE BOARD

The item before the Board is a recommendation to the City Commission regarding a city-initiated amendment to Land Development Regulations (LDRs) to prohibit medical marijuana retail facilities and medical marijuana treatment centers.

PROPOSED AMENDMENT

On September 8, 2016, the City of Delray Beach adopted Ordinance No. 27-16 establishing a moratorium on the operation of medical marijuana treatment centers and dispensing organizations to provide time for the City to evaluate the rules that would be promulgated for the constitutional amendment and any subsequent legislation.

On November 8, 2016, Florida voters approved an amendment to the Florida Constitution to allow for broad use of medical marijuana (including euphoric strains) and alternative dispensing methods such as marijuana-based food products within the State (the "2016 Constitutional Amendment"). The 2016 Constitutional Amendment authorizes and defines "Medical Marijuana Treatment Centers" to encompass the entire supply chain (cultivation, processing, transporting, distribution, dispensing and administering), not just retail sales to qualified patients.

In June of 2017, the Florida Legislature met in Special Session and approved Senate Bill 8-A, which substantially amends existing Florida law on medical marijuana. The City's Land Development Regulations need to be amended to conform to the new requirements of Senate Bill 8-A, which was signed into law by Governor Rick Scott on June 23, 2017.

Senate Bill 8-A provides that the City is permitted to ban medical marijuana treatment center dispensing facilities (the stand-alone retail component) by ordinance. If the City does not ban the dispensing facilities outright, then the City cannot treat the dispensing facilities any differently than pharmacies with respect to zoning and permitting requirements.

With respect to medical marijuana treatment centers, Senate Bill 8-A provides that the City cannot regulate the cultivation, processing and delivery activities of these centers. Senate Bill 8-A also provides that 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.

Senate Bill 8-A provides that the Florida Department of Health will license medical marijuana treatment centers in the State of Florida. Initially, there will be 10 licenses. Additional licenses may be issued once the names of qualified patients in the compassionate use registry reach certain thresholds. Additionally, Senate Bill 8-A provides substantial regulations for qualifying patients and caregivers (registration with State and issuance of State ID cards), for physicians issuing certifications to patients (cannot issue more than three 70-day supplies of marijuana; must track patients registered with State to make sure there are not multiple doctors prescribing for one patient), and for treatment centers, which include, but are not limited to, the hours of operation for centers (closed between 9 p.m. and 7 a.m., but deliveries to qualified patients can occur 24 hours a day); security requirements for centers (e.g., seed-to-sale tracking systems, security cameras, 2 employees on site at all times; level 2 background checks for employees; and employees must be at least 21 years of age); delivery requirements for centers (e.g., a minimum of 2 employees must be present for all deliveries; maintain delivery manifest), packaging requirements (e.g., cannot be attractive to children); and advertising limitations for centers (e.g., ads cannot be attractive to children; centers cannot have sidewalk spinners). Finally, Senate Bill 8-A provides that the medical use of marijuana does not include possession, use or administration in the form of smoking, but it does allow for edibles, and flowers in a sealed, tamper-proof receptacle for vaping. The Department of Health shall begin issuing qualified patient identification cards by October 3, 2017.

Given the two options posed by Senate Bill 8-A, the proposed amendment is to ban all medical marijuana dispensing facilities as the City is not permitted to establish additional regulations for this use.

ANALYSIS

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 amendments are City-initiated text amendments to the Land Development Regulations.

Pursuant to **LDR Section 2.4.5(M)(5), Findings**, in addition to LDR Section 1.1.6(A), 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.

A review of the objectives and policies of the adopted Comprehensive Plan was conducted, and the following was identified as applicable to this specific request.

Future Lane Use Element

Objective A-2

To reduce, and eventually eliminate, uses which are inconsistent with predominant adjacent land uses, and to insure compatibility of future development, the following policies shall be applied.

Given the above, the adoption of the proposed amendments is in keeping with the applicable policies, goals and objectives of the Comprehensive Plan.

ALTERNATIVE ACTIONS

- A. Continue with direction.
- B. Move a recommendation of approval to the City Commission of the amendment of the amendment to Land Development Regulations as proposed in Ordinance No. 34-17 amending Section 4.3.3(G) and Appendix A Definitions, by adopting the findings of fact and law contained in the Staff Report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M).
- C. Move a recommendation of denial to the City Commission of the amendment to Land Development Regulations as proposed in Ordinance No. 34-17 amending Section 4.3.3(G) and Appendix A Definitions, by adopting the findings of fact and law contained in the Staff Report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M).

RECOMMENDED ACTION

Recommend approval to the City Commission of the amendment to Land Development Regulation to Land Development Regulations as proposed in Ordinance No. 34-17 amending Section 4.3.3(G) and Appendix A Definitions, by adopting the findings of fact and law contained in the Staff Report, and finding that the text amendment and approval thereof is consistent with the Comprehensive Plan and meets the criteria set forth in LDR Section 2.4.5(M).