



CITY OF FORT PIERCE

PLANNING DEPARTMENT

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HISTORIC PRESERVATION ♦ URBAN DESIGN ♦ URBAN FORESTRY ♦ ZONING

TO: Robert Bradshaw, City Manager
Nicholas Mimms, Deputy City Manager

FROM: Rebecca Grohall, Planning Manager

RE: Medical Marijuana Proposed/Draft Ordinance Conference Agenda

DATE: October 13, 2014

Overview

At the direction of the City Commission, the Planning and Development Department in coordination with the City Attorney's office has prepared the attached draft ordinance to the City's Land Development Regulations to regulate medical marijuana dispensaries and cannabis farms. The proposed regulations address the location, development standards and operations of facilities for dispensing of medical marijuana, as well as cannabis growing operations. The draft ordinance is in response to the possibility that medical marijuana use may become legal in the State of Florida with the passage of Amendment 2 creating Article X, Section 29 of the Florida Constitution. If the voters approve the Amendment, the effective date would be January 2015, so it is incumbent if the City wishes to regulate that the ordinance be adopted by the end of the calendar year. To achieve that goal, the draft is being presented to the Conference Agenda in October, then will be presented to the Technical Review Committee and be placed on the November 12th meeting (Nov. 11th is a holiday), followed by City Commission in December.

Constitutional Ballot Amendment Summary

If approved by the voters, the medical marijuana constitutional amendment would legalize the production, processing, dispensing, possession and use of medical marijuana in the State of Florida. A copy of the full text of the proposed amendment is attached.

If passed, the amendment would not legalize any non-medical/recreational use, possession, or production of marijuana. It would only apply to Florida law and would not authorize violations of federal law. [Note: The Federal Controlled Substances Act prohibits the production, distribution and use of marijuana for medical and recreational purposes; however, a 2009 Deputy U.S. Attorney's General's memorandum providing policy guidance to selected U.S. Attorneys, provides that individuals who use, acquire, and supply medical marijuana in accordance with state law will not be prosecuted by the federal government.]

The amendment would allow the use of marijuana for individuals with a debilitating medical condition as defined in the amendment and as determined by a licensed Florida physician. Personal caregivers would be allowed to assist patients in the medical use of marijuana. The Florida Department of Health would have six months from the date of passage of the amendment to issue implementing regulations as detailed in the amendment, including the registration and regulation of centers that produce and distribute marijuana for medical purposes and the issuance of identification cards to patients and caregivers.

The term "Debilitating Medical Condition" is defined in the proposed amendment as: "...cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis or other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient."

Concerns and Potential Impacts of the Proposed Amendment. Some of the concerns raised regarding potential secondary impacts on local communities should the amendment pass include:

- No limits are established for the number of Medical Marijuana Treatment Centers ("Centers"), which, as defined in the text of the amendment, include entities given the power to acquire, cultivate, possess, process, transfer, transport, sell, distribute, dispense, or administer marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers.
- No location requirements are identified that would prohibit the Centers from being located next to schools, public parks, residential neighborhoods, or other sensitive uses.
- Nothing restricts or prevents children or the general public from frequenting the Centers to obtain and use marijuana.
- The definition of a "debilitating medical condition" is so broad that with a physician's certification anyone could legally obtain medical marijuana for even minor ailments if the physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient."

In addition to the above concerns, other potential local impacts include:

- The Centers may be targets for increased criminal activity because of valuable inventory and large amounts of cash.
- Marijuana may be diverted for unintended purposes creating further drug related problems for a community including marijuana-impaired driving fatalities.
- The Centers have the potential to create a blighting influence on neighboring properties if not properly regulated.
- The Centers may increase traffic and noise and loitering in the immediate vicinity.

Staff Approach

In response to the above concerns and uncertainty regarding future state regulations and enforcement should the amendment pass, the City Commission gave direction to prepare land use regulations that would govern the location, site development standards, and the operations of medical marijuana facilities.

In response to the above mentioned concerns, Planning staff has prepared a draft ordinance that, among other listed requirements, strictly limits medical marijuana uses in the City of Fort Pierce:

- Allowing only the dispensing of medical marijuana at "medical marijuana dispensaries," excluding the cultivation and processing of medical marijuana within the city limits. This ordinance still prohibits the use or cultivation of "non medical" marijuana (aka recreational use).

- Allowing "medical marijuana dispensaries" only within the C3 (Commercial General) District, and only as a conditional use. Medical Marijuana cultivation would be allowed in C3 as well as I1 (Light Industrial) and also require a conditional use application. [See attached map roughly depicting the area of the City eligible for locations of the two zoning districts.]
- Requiring physical separation of medical marijuana dispensaries from schools, child day care centers, public parks, residential zoning districts, and other medical marijuana dispensaries.
- Establishing site design standards to address security and other concerns, through CPTED principles.
- Placing limits on the size of the medical marijuana dispensaries, the business hours to primarily day-time hours, and the sale of products to only medical marijuana, related supplies, or educational materials.
- Prohibiting the on-site consumption of both alcoholic beverages and marijuana at the medical marijuana dispensaries.

One possible addition (not currently included): Limiting access to the medical marijuana dispensaries to qualifying patients over the age of 18, personal caregivers, employees of the business, or other qualified individuals including authorized city and state officials.

The draft ordinance would also apply to low-THC medical marijuana that is currently allowed (aka "Charlotte's Web"). The State is now in rulemaking to enact regulations to govern this type of medical marijuana, which is authorized pursuant to Section 381.986, Florida Statutes. The staff believes the conservative and prudent approach is to include municipal regulation of low-THC medical marijuana in the draft ordinance before you. Note that the ordinance can be amended in the future, if necessary, when the regulations for the low-THC medical marijuana and the regulations pursuant to the amendment, if passed, are enacted by the State.

Staff Review and Analysis

The staff reviewed the proposed text amendment to the Land Development Regulations based on the standards outlined for modifications to the Land Development Code. The staff's analysis and findings are as follows:

Justification for the Amendment. As noted above, the real concerns regarding legalizing medical marijuana use and its potential impacts on the public health, safety, and welfare clearly justify the need for the proposed ordinance. This need is further warranted by the many unknowns of how the constitution amendment, if it passes, will be implemented and how the medical use of marijuana will be regulated by the State. Therefore, the staff finds the proposed text amendment to be justified and warranted pursuant to Article IX of Section 22.

Consistency with Land Development Regulations. The staff finds that the proposed ordinance is consistent with the Land Development Regulations. A medical marijuana dispensary is a use that has the potential for significant external impacts on the community and neighboring uses.

Limiting the use to the zoning district C3 General Commercial and I1 Light Industrial is appropriate and internally consistent with the City's Land Development Regulations. The separation requirements from non-compatible land uses and other medical marijuana dispensaries and the requirement that the use is to be treated as a conditional use further protects other uses. It ensures that an "enclave" of medical marijuana dispensaries is not created which may have a deleterious impact on nearby uses and property values.

Consistency with the Comprehensive Plan. The staff finds the text amendment to be consistent with Land Use element of the Comprehensive Plan that states: "The City shall establish and maintain land use/development regulations that will reduce and prevent land uses that are inconsistent with community character and incompatible with adjacent development. " The proposed ordinance for regulating medical marijuana dispensaries is clearly consistent with this objective. The specific location, site development, and operational standards for these medical marijuana dispensaries and medical cannabis farms are intended to protect nearby properties in proximity and sensitive land uses from the potential adverse impacts of this type of use.

Recommendation

Staff is requesting direction on the proposed amendment, either moving forward as is presented or to suggest modifications.