

MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 17-042

DATE: February 1, 2017

TO: Planning and Zoning Board

VIA: Robin M. Bird, Director of Development Services *MB*

FROM: Karen Friedman, AICP, Principal Planner *KBF*

RE: Proposed Revisions to Zoning Code re Medical Marijuana

Background

On June 28, 2016, via Ord. 2016-16, the City Commission adopted a 180 day moratorium on the acceptance of applications and the issuance of zoning use certificates, business tax receipts and of all development orders and permits, approving any and all uses related to medical cannabis.

On November 8, 2016, via Ord. 2017-06, a temporary extension to the moratorium was adopted and the moratorium is scheduled to lapse on May 8, 2017.

The intent of the moratorium was to allow staff the time to review legislation and administrative rules related to medical cannabis (aka medical marijuana) and to research issues related to the processing, dispensing, and testing of medical cannabis as well as issues related to the safety, security, hours of operation, noise, traffic, parking and odor, in order to effectively and properly enact zoning and any other necessary ordinances to fairly regulate the distribution and other related uses to medical cannabis in the City in order to best serve the City's residents and to ensure compliance with the City's Comprehensive Plan and a moratorium would serve to provide the necessary time; and

Staff has researched these issues and prepared a Staff Report which includes research, analysis, and recommendations. ***A copy of the Staff Report is attached.***

Comprehensive Plan Consistency

The recommended text amendments are consistent with the following Future Land Use Objectives and Policies:

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| Objective 01.03.00 | Annually review and periodically update adopted land development regulations and established procedures that encourage the elimination or reduction of uses inconsistent with the City's character and Future Land Use Plan. |
| Policy 01.03.08 | Establish criteria to protect residential areas and other land uses that are adjacent to industrial and commercial areas from excessive noise, odors, traffic and parking impacts. |
| Policy 01.07.07 | Through ongoing updates to the land development regulations revise prohibited and permitted uses in the commercial, industrial and non-residential zoning districts. |

Proposed Text Amendments

Per the "City's Zoning Considerations" table in the Staff Report, the strictest standards are proposed for the retail use, as this use has the greatest potential for negative impacts.

The proposed text amendments are described in the below table.

Section	Description
Article 4; Part 7	<ul style="list-style-type: none">• Create new Part of Article 4 to address Medical Marijuana Establishments
155.4701	<ul style="list-style-type: none">• Seven General Standards applicable to all Medical Marijuana Uses<ol style="list-style-type: none">1. Require Minor Site Plan, even for change in use2. Security Plan3. Exterior Appearance standards4. Garbage Control Plan5. Odor Control Plan6. Limitation on allowance in PCD7. Variances are prohibited
155.4702	<ul style="list-style-type: none">• Establish three Medical Marijuana Establishment Uses, permitted locations, and use specific standards:<ol style="list-style-type: none">A) Retail Use, which has six use specific standards:<ol style="list-style-type: none">1. 1,000 ft Separation from various uses; 1 mile separation from other medical marijuana retail use2. Prohibit in the NW CRA3. Hours of Operation4. Multiple Uses Prohibited5. Indoor Waiting Area6. Drive Through Service ProhibitedB) Health Care Use, which has three use specific standards:<ol style="list-style-type: none">1. Comply with Specialty Medical Facility Standards2. 1,000 ft Separation from retail uses3. No on-site dispensingC) Industrial Use, which has two use specific standards:<ol style="list-style-type: none">1. 1,000 ft Separation from retail uses and Residential Districts2. No on-site retail sales
155.5102.D.1	Add the three Medical Marijuana Establishment Uses to the Off-Street Parking Table
Article 9; Part 5	Add the three Medical Marijuana Establishment Uses to Definitions
155.5102.D.1	Add the three Medical Marijuana Establishment Uses to the Consolidated Use Table

Staff's Request

Staff is requesting the Board approve the recommended changes to the Zoning Code to the City Commission for adoption.

ARTICLE 3: ZONING DISTRICTS

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155.3703. ATLANTIC BOULEVARD OVERLAY DISTRICT (AOD)

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C. Modified Use Standards

2. Prohibited Uses

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xvi. Medical Marijuana Establishments

ARTICLE 4: USE STANDARDS

PART 7 MEDICAL MARIJUANA ESTABLISHMENTS

The purpose of this part is to designate those establishments legally engaged in uses involving medical cannabis or marijuana for medical purposes allowed in each of the various zoning districts, whether as permitted by right or only after special review, and to provide use-specific standards to minimize or otherwise mitigate potential adverse impacts.

§ 155.4701. STANDARDS APPLICABLE TO ALL MEDICAL MARIJUANA ESTABLISHMENTS

In addition to the standards applicable to all uses listed in §155.4201.B, Medical Marijuana Establishments shall comply with the following standards:

A. Required Approval.

Minor Site Plan is required for all applicants for a Zoning Use Certificate, unless the applicant has previously received Special Exception or Site Plan approval for this site for use as a Medical Marijuana Establishment.

B. Security Plan.

1. A Security Plan shall be provided and approved by the City's Law Enforcement Agency. At a minimum the Security Plan shall address all of the following:
 - a. Proposed security arrangements for ensuring the safety of employees and visitors;
 - b. Plan to prevent theft at the premises, including robberies, burglaries, and shoplifting;
 - c. Plan to prevent loitering on the property where the medical marijuana establishment is located, including in parking areas, and in abutting rights-of-way and neighboring properties.
 - c. Plan to control access to the establishment and ensure that no one under the age of 21 is admitted; and
 - d. Plan to ensure that marijuana products sold by your business are not consumed irresponsibly in public or in the immediate vicinity of the license premises.
2. The City's Law Enforcement Agency may impose additional site and operational safety requirements as are deemed reasonable necessary to ensure the safety of the business owner, employees, customer, adjacent property owners, adjacent businesses, and nearby residents.

C. Exterior Appearance.

Marijuana plants, products, and paraphernalia (and depictions thereof) shall not be visible from a public sidewalk or public right-of-way.

D. Garbage Control Plan.

A garbage control plan shall be approved and shall detail how access to all exterior garbage containers is secured.

E. Odor Control Plan.

An odor control plan shall be approved and shall detail how odor will not be detectable from other properties, or in the case of establishments located in a multi-tenant building or development, how the odor will not be detectable by other tenants. At a minimum, a double door system shall be provided at all entrances to mitigate odor intrusion into the outside air.

F. Planned Commercial Industrial Districts

A Medical Marijuana Establishment shall only be permitted in a PCD District provided the underlying land use is Industrial and provided the use was listed as a permitted use in the Ordinance that established the PCD.

G. Right to Appeal

1. Other than the procedures to appeal the decision of the City's Development Services Director as provided for in subsection 2 below, no variances from the standards listed in Section 155.4701 or 155.4702 shall be permitted for any reason.
2. A party aggrieved by the final decision of the Development Services Director on an application to establish a Medical Marijuana Establishment may appeal the Decision to the ZBA in accordance with the procedures and standards in Section 155.2424, Appeal.

§ 155.4702. MEDICAL MARIJUANA ESTABLISHMENTS

A. MEDICAL MARIJUANA RETAIL ESTABLISHMENT

1. Districts Where Permitted

<u>RS-1</u>	<u>RS-2</u>	<u>RS-3</u>	<u>RS-4</u>	<u>RS-L</u>	<u>RD-1</u>	<u>RM-7</u>	<u>RM-12</u>	<u>RM-20</u>	<u>RM-30</u>	<u>RM-45</u>	<u>MH-12</u>	<u>B-1</u>	<u>B-2</u>	<u>B-3</u>	<u>B-4</u>
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<u>M-1</u>	<u>CR</u>	<u>I-1</u>	<u>I-IX</u>	<u>OIP</u>	<u>M-2</u>	<u>TO</u>	<u>PR</u>	<u>CF</u>	<u>PU</u>	<u>T</u>	<u>BP</u>	<u>RPU-D</u>	<u>PCD</u>	<u>PD-TO</u>	<u>LAC</u>	<u>PD-I</u>
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2. Definition

A medical marijuana retail establishment is an establishment dispensing medical marijuana at retail.

3. Standards

A Medical marijuana retail establishment shall comply with the following standards:

a. Separation for other and similar uses.

- i. 1,000 Foot Separation:** A Medical Marijuana Retail Establishment shall be separated by 1,000 feet from the following uses: Residential Zoning Districts, Schools, Public Parks, Sexually Oriented Business, Liquor Store, Beer or Wine Store, a Medical Marijuana Health Care Establishment, and a Medical Marijuana Industrial Establishment.
 - ii. 1 Mile Separation:** A Medical Marijuana Retail Establishment shall be separated by 1,000 feet from another Medical Marijuana Retail Establishment.
 - b. Prohibited locations.** Medical Marijuana Retail Establishments are prohibited within the NW CRA.
 - c. Hours of Operations.** The establishment shall not operate between the hours of 7:00 p.m. and 7:00 a.m.
 - d. Multiple Uses Prohibited.**
 - i.** If located in a freestanding building the Medical Marijuana Retail Establishment shall be the only use permitted for the free-standing building.
 - ii.** If located in a bay or multi-bay space within a multi-tenant structure, the Medical Marijuana Retail Establishment shall be the only use permitted within the bay or multi-bay space it occupies.
 - e. Indoor Waiting Area Required.**
 - i.** Adequate indoor seating for clients, customers, and other visitors shall be provided.
 - ii.** Queuing or loitering outside of the Medical Marijuana Retail Establishment shall be considered outdoor activity and is prohibited.
 - f. Drive Through Service Prohibited.**
 - i.** Drive Through service is prohibited.
 - ii.** If a Medical Marijuana Retail Establishment locates at a facility with an existing drive through service, the drive through service must be demolished prior to the approval of the Zoning Use Certificate.

B. MEDICAL MARIJUANA HEALTH CARE ESTABLISHMENT**1. Districts Where Permitted**

<u>RS-1</u>	<u>RS-2</u>	<u>RS-3</u>	<u>RS-4</u>	<u>RS-L</u>	<u>RD-1</u>	<u>RM-7</u>	<u>RM-12</u>	<u>RM-20</u>	<u>RM-30</u>	<u>RM-45</u>	<u>MH-12</u>	<u>B-1</u>	<u>B-2</u>	<u>B-3</u>	<u>B-4</u>
														<u>S</u>	<u>S</u>

<u>M-1</u>	<u>CR</u>	<u>I-1</u>	<u>I-IX</u>	<u>OIP</u>	<u>M-2</u>	<u>TO</u>	<u>PR</u>	<u>CF</u>	<u>PU</u>	<u>T</u>	<u>BP</u>	<u>RPU-D</u>	<u>PCD</u>	<u>PD-TO</u>	<u>LAC</u>	<u>PD-I</u>
		<u>S</u>		<u>S</u>									<u>P</u>			

2. Definition

A medical marijuana health care establishment is a physician's office where the primary medical services offered is the processing of physician certifications, treatment of qualified patients with medical cannabis, and ordering of medical marijuana for qualified patients. Exterior advertising or signage or documentation from the Florida Department of Health may be used in determining if a physician's office will be classified as a Medical Marijuana Health Care Establishment.

3. Standards

A Medical marijuana health care establishment shall comply with the following standards:

- a. A medical marijuana health care establishment shall comply with all of the use specific standards for a Specialty Medical Facility listed in §155.4209.B.3
- b. **Separation.** A Medical Marijuana Health Care Establishment shall be separated by 1,000 feet from a Medical Marijuana Retail Establishment
- c. On-Site dispensing of medical marijuana is prohibited.

C. MEDICAL MARIJUANA INDUSTRIAL ESTABLISHMENT**1. Districts Where Permitted**

<u>RS-1</u>	<u>RS-2</u>	<u>RS-3</u>	<u>RS-4</u>	<u>RS-L</u>	<u>RD-1</u>	<u>RM-7</u>	<u>RM-12</u>	<u>RM-20</u>	<u>RM-30</u>	<u>RM-45</u>	<u>MH-12</u>	<u>B-1</u>	<u>B-2</u>	<u>B-3</u>	<u>B-4</u>

<u>M-1</u>	<u>CR</u>	<u>I-1</u>	<u>I-IX</u>	<u>OIP</u>	<u>M-2</u>	<u>TO</u>	<u>PR</u>	<u>CF</u>	<u>PU</u>	<u>T</u>	<u>BP</u>	<u>RPU-D</u>	<u>PCD</u>	<u>PD-TO</u>	<u>LAC</u>	<u>PD-I</u>
		<u>S</u>	<u>S</u>	<u>S</u>									<u>P</u>			

2. Definition

A medical marijuana industrial establishment is an establishment engaged in industrial uses involving medical marijuana including: the planting, growing, harvesting, drying, cleaning, curing, packaging and extraction of active ingredients to create cannabis related products and concentrate within a fully enclosed structure; analytical and testing services for medical marijuana dispensing organizations, including laboratory functions to ensure the products are safe for use/consumption and the labeled potency is accurate; or the storage and/or wholesale distribution of medical marijuana products.

3. Standards

A Medical marijuana industrial establishment shall comply with the following standards:

- a. No retail sales shall be permitted
- b. **Separation.** A Medical Marijuana Industrial Establishment shall be separated by 1,000 feet from a Medical Marijuana Retail Establishment
- c. No outdoor uses, including but not limited to outdoor growing or outdoor storage, shall be permitted.

ARTICLE 5: DEVELOPMENT STANDARDS

§ 155.5102. OFF-STREET PARKING AND LOADING

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D. OFF-STREET PARKING SPACE REQUIREMENTS

1. Minimum Number of Off-Street Parking Spaces

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TABLE 155.5102.D.1: MINIMUM NUMBER OF OFF-STREET PARKING SPACES		
Use Category	Use Type	Minimum Number of Parking Spaces
<u>MEDICAL MARIJUANA ESTABLISHMENTS</u>		
<u>Medical Marijuana Retail Establishment</u>		<u>1 per 150 square feet of floor area</u>
<u>Medical Marijuana Health Care Establishment</u>		<u>1 per 200 sq ft floor area for treatment + 1 per 300 sq ft for remaining areas</u>
<u>Medical Marijuana Industrial Establishment</u>		<u>1 per 400 sq ft of floor area used for offices + 1 per 1,000 sq ft for remaining areas</u>

ARTICLE 9: DEFINITIONS AND INTERPRETATION

PART 5 TERMS AND USES DEFINED

The following words, terms, and phrases, when used in this Code, shall have the meaning ascribed to them in this section.

MEDICAL MARIJUANA ESTABLISHMENT

An establishment legally engaged in retail, health care, or industrial uses involving medical cannabis or marijuana for medical purposes.

MEDICAL MARIJUANA HEALTH CARE ESTABLISHMENT

A physician's office where the primary medical services offered is the processing of physician certifications, treatment of qualified patients with medical cannabis, and ordering of medical marijuana for qualified patients. Exterior advertising or signage or documentation from the Florida Department of Health may be used in determining if a physician's office will be classified as a Medical Marijuana Health Care Establishment.

MEDICAL MARIJUANA INDUSTRIAL ESTABLISHMENT

An establishment engaged in industrial uses involving medical marijuana including: the planting, growing, harvesting, drying, cleaning, curing, packaging and extraction of active ingredients to create cannabis related products and concentrate within a fully enclosed structure; analytical and testing services for medical marijuana dispensing organizations, including laboratory functions to ensure the products are safe for use/consumption and the labeled potency is accurate; or the storage and/or wholesale distribution of medical marijuana products.

MEDICAL MARIJUANA RETAIL ESTABLISHMENT

An establishment dispensing medical marijuana at retail.

APPENDIX A: CONSOLIDATED USE TABLE

P = PERMITTED PRINCIPAL USE S = USE ALLOWED AS A SPECIAL EXCEPTION A = PERMITTED ACCESSORY USE
 T = TEMPORARY USE ALLOWED WITH A MAJOR TEMPORARY USE PERMIT I = INTERM USE ALLOWED WITH AN INTERM USE PERMIT N = TEMPORARY USE ALLOWED WITHOUT TEMPORARY USE PERMIT
 I = INTERM USE ALLOWED WITH AN INTERM USE PERMIT BLANK CELL = PROHIBITED USE

USE CATEGORY (PRINCIPAL USES) AND/OR USE TYPE		RESIDENTIAL DISTRICTS												COMMERCIAL DISTRICTS					INDUSTRIAL DISTRICTS				SPECIAL DISTRICTS							PLANNED DEVELOPMENT DISTRICTS				USE-SPECIFIC STANDARDS	
		RS-1	RS-2	RS-3	RS-4	RS-1	RD-1	RM-7	RM-12	RM-20	RM-30	RM-45	MH-12	B-1	B-2	B-3	B-4	M-1	CR	I-1	I-1X	OIP	M-2	TO	PR	CF	PU	T	BP	RPU-D	P-C-D	PD-10	LAC		PD-1
<u>Medical Marijuana Establishments</u>	<u>Medical Marijuana Retail Establishment</u>																<u>S</u>			<u>S</u>		<u>S</u>									<u>P</u>				<u>155.4702.A</u>
	<u>Medical Marijuana Health Care Establishment</u>																<u>S</u>			<u>S</u>		<u>S</u>									<u>P</u>				<u>155.4702.B</u>
	<u>Medical Marijuana Industrial Establishment</u>																			<u>S</u>	<u>S</u>											<u>P</u>			