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MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 17- 240

DATE: June 20, 2017

TO: Planning and Zoning Board

VIA: Robin M. Bird, Director of Development Services
Jennifer Gomez, AICP, Assistant Director of Development Services

FROM: Jean E. Dolan, AICP, Principal Planner

RE: Ch. 155, Zoning Code
Repeal of Ordinance 2017-42 Medical Marijuana Establishments

Background

On April 25, 2017, the City Commission approved Ordinance 2017-42 on second reading. This ordinance regulates medical marijuana. Recently, Senate Bill 8-A was approved by the State Legislature and is expected to be signed by the Governor into law. This legislation precludes the City's ability to regulate medical marijuana as stated in Ordinance 2017-42. The State legislation provides cities and counties two options: to ban medical marijuana uses outright; or to regulate them the same way pharmacies are regulated. The need to repeal Ordinance 2017-42, therefore, is clear. Staff is working with the City Attorney to identify the most appropriate code section for a proposed ban on medical marijuana in the City.

Text Amendments

To date, there are three options for creating the ban on medical marijuana in Pompano's code of regulations. These include the following:

- Chapter 155.4601 Interpretation of Unlisted Uses (possible amendment language attached); or
- Chapter 155.4201 General Standards Applicable to All Uses (possible amendment language attached); or
- Chapter 115 Miscellaneous Business (possible amendment language attached).

The City Attorney is reviewing these three options to determine the best approach. Staff will advise the Board at the meeting of June 28, 2017, if there is a strong preference for one of these three options. Typically, staff would not send text amendment options for your consideration, however, time is of the essence to ensure the City has regulations in place consistent with State law before applications for these uses are submitted for staff review.

Staff Request

Staff is requesting the Board approve the recommended repeal of Ordinance 2017-42 and the proposed ban on medical marijuana. This recommendation will be presented to the City Commission when they consider the revised ordinances to repeal Ordinance 2017-42 and adopt the proposed ban.

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THREE OPTIONS FOR CODE AMENDMENTS TO BAN MEDICAL MARIJUANA

OPTION #1:

155.4201. GENERAL

A. Purpose

The purpose of this part is to designate those principal land uses allowed in each of the various zoning districts – whether as permitted by right or only after special review – and to provide use-specific standards where necessary to minimize or otherwise mitigate potential adverse impacts on other development in the zoning district.

B. Standards Applicable to all Uses

The following use standards shall be applicable to all uses:

1. All uses shall be totally and permanently enclosed within a building.
2. If an Eating and Drinking Establishment includes outdoor seating, it shall comply with the standards in Section 155.4303.V
3. If the use includes accessory outdoor storage of the following components, materials, equipment, or objects, the outdoor storage area shall comply with standards in Section 155.4303.W:
   a. Equipment and Materials;
   b. Inoperable vehicles trailers, heavy equipment, or boats, including those that will be serviced. (operable vehicles, trailers, heavy equipment, or boats are those that are in a condition that they may be moved under their own power at any time except when under repair in garages); and
   c. Automobile parts, dismantled vehicles, and similar materials.
4. If the use includes outdoor storage of items listed above, and the outdoor storage area exceeds the limitation of accessory outdoor storage (35% or less of the total gross floor area of the building containing the principal use(s) on the lot), the outdoor storage area shall comply with the standards in Section 155.4228;
5. If the use is an Alcoholic Beverage Establishment, it shall comply with the standards in Section 155.4501, Separation Requirements;
6. If the use includes drive-through service, it shall comply with the standards in Section 155.4303.I;
7. If the use is subject to county, state, or federal license requirements, it shall provide proof of such valid license; and
8. If the use is subject to allocation of flex or reserve units, the applicant shall apply for and obtain required flex or reserve units.
9. Unless otherwise expressly permitted by statutory or general law, on-site dispensing of controlled substances that are identified in Schedule II, III or IV in F.S. §§ 893.03, 893.035 or 893.0356, is prohibited, regardless of zoning district. The following are exempt from this prohibition:
   a. A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session;
   b. A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice or intermediate care facility for the developmentally disabled which is licensed in this state;
   c. A health care practitioner when administering a controlled substance in the emergency room of a licensed hospital;
   d. A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16; and
   e. A health care practitioner when dispensing a onetime, 72-hour emergency resupply of a controlled substance to a patient.

   Any request for reasonable accommodation to the prohibition of on-site dispensing of controlled substances, as listed above, shall be submitted in accordance with Section 155.2432, Reasonable Accommodation.
10. The manufacturing of hazardous substances is strictly prohibited. Hazardous substances include:
    a. Acids, ammunition, fertilizer, soap, insecticides, and/or batteries;
    b. Any substance or material which, by reason of its toxic, caustic, corrosive, abrasive, or otherwise injurious properties may be detrimental or deleterious to the health of any person handling or using or otherwise coming into contact with the material or substance; and
    c. In accordance with Section 98.13.A of the City's Code of Ordinances , hazardous substances include any substances or materials defined or listed as a hazardous substance, pollutant or a contaminant in any applicable federal or state law or regulation or any substances or materials in a quantity or form which, in the determination of the respective

Fire Chief or his/her authorized designee, poses an imminent risk to the life, health, safety, or welfare of persons or property within the City of Pompano Beach.

11. Sales of used merchandise and/or goods.

a. Unless specifically provided for in a use's definition or in a use-specific standard, the sale of used merchandise and/or goods is prohibited in all Residential, Special Base, Planned Development, and Overlay Zoning Districts, as well as in the Limited Business (B-1), Community Business (B-2), and Commercial Recreation (CR) Zoning Districts.

b. Unless specifically provided for in a use's definition or in a use-specific standard, the sale of used merchandise and/or goods is limited to 20% of the floor space in the General Business (B-3) Zoning District.

c. Unless specifically restricted to the sale of new merchandise and/or goods as provided for in a use's definition or in a use-specific standard, the sale of used merchandise and/or goods is permitted in the Heavy Business (B-4), Marine Business (M-1), and in the Industrial Zoning Districts.

12. Medical Marijuana. In accordance with State Statute (Currently, SB 8-A), all medical marijuana related establishments are banned from the City of Pompano Beach.

OPTION #2:

155.4601. INTERPRETATION OF UNLISTED USES

A. Procedure for Interpreting Unlisted Uses

Except for Medical Marijuana related uses which are banned from the City of Pompano Beach, the Development Services Director may interpret a particular principal use or accessory use or structure not expressly listed in this Article, as allowed in a particular zoning district—as a permitted principal use, a Special Exception principal use, or a permitted accessory use or structure—in accordance with the procedure in Section 155.2423, Interpretation, and based on the standards in subsection B or C below, as appropriate.

B. Criteria for Allowing Unlisted Principal Uses

The Development Services Director shall interpret an unlisted principal use as an allowed permitted use or a Special Exception use in a particular zoning district only after determining that the nature, function, and duration of the use and the impact of allowing it in the zoning district are so similar to those of a use type or use category that is allowed in the zoning district that the unlisted use should be deemed allowed in the same manner (i.e., as a permitted use or a Special Exception use) as the similar use type or use category and subject to the same use-specific standards.

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OPTION #3:

CHAPTER 115: MISCELLANEOUS BUSINESSES

Section

Fortune-Tellers, Carnivals, and Fairs

115.01 Fortune-telling
115.02 Carnivals and fairs
115.03 Animal-drawn carriages

Gasoline Stations

115.10 Sign requirements

Solicitors

115.15 Hours of operation
115.16 (Reserved)
115.17 Secondhand dealers; secondary metals recyclers; pawnbrokers
115.18 Moving vendor, itinerant merchant, or peddler

Dance Halls, Arcade Amusement Centers

115.20 Dance halls
115.21 Arcade amusement centers

115.25 Casino slot machines

115.26 Business security

115.27 Bingo

115.28 Medical Marijuana

Casinos

Business Security

Bingo

Medical Marijuana

FORTUNE-TELLERS, CARNIVALS, AND FAIRS

§ 115.01 FORTUNE-TELLING.

(A) No person shall engage in or practice in any manner, within the corporate limits of the city, fortune-telling as defined herein unless such person files an application and obtains a Zoning Use Certificate and a city business tax receipt from the Development Services Director or his designee.

…

BINGO

§ 115.27 BINGO.

No Zoning Use Certificate or Business Tax Receipt shall be approved for any facility that does not fully meet the requirements of F.S. § 849.0931, as amended.
(Ord. 2015-03, passed 10-28-14)

MEDICAL MARIJUANA

§ 115.28 Medical Marijuana

Medical marijuana related businesses and establishments are banned from the City of Pompano Beach including medical marijuana treatment centers which are licensed to manufacture, possess, sell, deliver, distribute, dispense, and lawfully dispose of marijuana or a marijuana delivery device as provided in state statute (reference when available, currently SB 8-A).