

MEMORANDUM

Development Services

ADMINISTRATIVE MEMORANDUM NO. 17- 384

DATE: November 2, 2017

TO: Planning and Zoning Board

VIA: David Recor, Acting Director of Development Services
Jennifer Gomez, AICP, Assistant Director of Development Services

FROM: Jean E. Dolan, AICP, Principal Planner

RE: Ch. 155, Zoning Code
Amendment to 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. Senate Bill 8-A was approved by the State Legislature and was signed by the Governor into law on June 23, 2017. This legislation amended Section 381.986 Florida Statutes. The State legislation provides cities and counties two options in regard to medical marijuana dispensing facilities: to ban medical marijuana dispensing outright; or to regulate dispensing facilities the same way pharmacies are regulated. The City Commission reviewed the options related to medical marijuana regulations and on July 25, 2017, voted to establish a 6-month moratorium to give staff more time to study the issues and make sure the State law was being interpreted correctly. The 6-month moratorium ends on January 25, 2017. Staff is moving forward with the necessary code amendments to ban medical marijuana dispensing but allow other medical marijuana related businesses as defined in State law and the City's Ordinance 2017-42, as proposed for amendment.

Text Amendments

The proposed Ordinance amending City Ordinance 2017-42 to remove references to marijuana retail establishments (dispensing) and banning medical marijuana dispensaries in the City in the proposed new Code Section 115.28, "Medical Marijuana Dispensaries" is attached. The references to and definition of "Medical Marijuana Treatment Center (MMTC)" has been added to Ordinance 2017-42 to incorporate the language in the State law into the City's Ordinance for clarification.

Staff Request

Staff is requesting the Board approve the recommended amendment of Ordinance 2017-42 and the proposed ban on medical marijuana dispensing facilities as specified in the attached Ordinance. This recommendation will be presented to the City Commission when they consider the attached Ordinance.

CITY OF POMPANO BEACH

Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING ORDINANCE NO. 2017-42; AMENDING CHAPTER 115, "MISCELLANEOUS BUSINESSES," BY CREATING SECTION 115.28, "MEDICAL MARIJUANA DISPENSARIES" TO BAN DISPENSING OF MEDICAL MARIJUANA WITHIN THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission of the City of Pompano Beach on April 25, 2017, passed Ordinance No. 2017-42 establishing locations, uses and standards in various sections of the City's Code of Ordinances for Medical Marijuana Establishments; and

WHEREAS, subsequently, on June 19, 2017, the Florida Legislature approved Senate Bill 8A, and forwarded same to the Governor who signed the legislation on June 23, 2017; and

WHEREAS, the aforementioned legislation, signed into law by the Governor, contains provisions that are in conflict with the Ordinance previously passed by the City Commission, including certain preemptive language limiting the City's ability to control locations of medical marijuana treatment centers and particularly the dispensing facilities associated therewith; and

WHEREAS, the State of Florida has legalized the dispensing of marijuana for medical purposes and is in the process of developing regulations; and

WHEREAS, Senate Bill 8A provides for the authority of cities to ban medical marijuana treatment center dispensing facilities; and

WHEREAS, the City Commission has determined that it is in the best interests of the citizenry and general public to prohibit medical marijuana dispensaries; and

WHEREAS, the City Commission has the responsibility and authority to determine what uses are best suited within the City and to prohibit unlawful conduct and nuisances within the City; and

WHEREAS, the City Commission has determined that given the potential impact on the City, that medical marijuana treatment dispensaries should be prohibited in the City; and

WHEREAS, the City Commission of the City of Pompano Beach herein finds that the enactment of this Ordinance is in the best interest of the public health, safety, morals and welfare, and that local regulation of the matters set forth in this Ordinance is necessary to complement State law regulating the subjects of this Ordinance; and

WHEREAS, in accordance with Florida Statutes, Section 166.041(3)(c)2, advertisements in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano Beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be, and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That all of the foregoing “WHEREAS” clauses are adopted and incorporated herein.

SECTION 2. That Ordinance No. 2017-42 is hereby amended in part related to dispensaries (retail) uses, in accordance with Exhibit “A.”

SECTION 3. That Chapter 115, “Miscellaneous Businesses,” of the Pompano Beach Code of Ordinances is hereby amended to create Section 115.28 to read as follows:

§ 115.28 MEDICAL MARIJUANA DISPENSING.

Medical Marijuana dispensing (retail) establishments are banned from the City of Pompano Beach as defined and regulated under Florida Statutes.

SECTION 4. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 5. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2017.

PASSED SECOND READING this _____ day of _____, 2018.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

MEB/jrm
7/14/17
L:ord/ch115/2017-259

EXHIBIT "A"
AMENDMENT TO ADOPTED MEDICAL MARIJUANA ORDINANCE

ORDINANCE NO. 2017-_____

CITY OF POMPANO BEACH

Broward County, Florida

AN ORDINANCE AMENDING CHAPTER 155, "ZONING CODE," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING ARTICLE 4, "USE STANDARDS," BY AMENDING PART 7, "MEDICAL MARIJUANA ESTABLISHMENTS," TO DELETE THE USE STANDARDS AND REQUIREMENTS FOR MEDICAL MARIJUANA RETAIL ESTABLISHMENTS; BY AMENDING THE DEFINITION AND STANDARDS OF MEDICAL MARIJUANA HEALTH CARE ESTABLISHMENT AND BY AMENDING THE STANDARDS FOR MEDICAL MARIJUANA INDUSTRIAL ESTABLISHMENT; BY AMENDING SECTION 155.5102., "OFF-STREET PARKING AND LOADING," BY DELETING REFERENCE TO MEDICAL MARIJUANA RETAIL ESTABLISHMENT; BY AMENDING PART 5, "TERMS AND USES DEFINED," BY AMENDING DEFINITIONS AND DELETING REFERENCE TO MEDICAL MARIJUANA RETAIL ESTABLISHMENT; BY AMENDING APPENDIX A: "CONSOLIDATED USE TABLE," TO DELETE REFERENCE TO MEDICAL MARIJUANA RETAIL ESTABLISHMENT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with Florida Statutes, Section 166.041(3)(c)2, advertisements in accordance with said statute have been published in a newspaper of general paid circulation in the City of Pompano Beach and of general interest and readership in the community, notifying the public of two public hearings on this proposed Ordinance; and

WHEREAS, two public hearings have been held pursuant to said published hearings and all persons so desiring had the opportunity to be, and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Article 4, Use Standards, of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

ARTICLE 4: USE STANDARDS

PART 7 MEDICAL MARIJUANA ESTABLISHMENTS

Medical Marijuana establishments are regulated under State law (Ch. 381.986 Florida Statutes). Medical Marijuana related business that involved growing, processing or dispensing medical marijuana must be associated with a State licensed Medical Marijuana Treatment Center (MMTC). The licensed MMTC will be allowed to operate in Pompano excluding the operation of medical marijuana dispensaries which are prohibited in the City of Pompano Beach per Chapter 115.28.

§ 155.4703. MEDICAL MARIJUANA ESTABLISHMENTS

A. MEDICAL MARIJUANA RETAIL ESTABLISHMENT

1. Districts Where Permitted

| RS-1 | RS-2 | RS-3 | RS-4 | RS-L | RD-1 | RM-7 | RM-12 | RM-20 | RM-30 | RM-45 | MH-12 | B-1 | B-2 | B-3 | B-4 |
|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-----|-----|-----|-----|
| | | | | | | | | | | | | | | | S |

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

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. — One Mile Separation: A Medical marijuana retail establishment shall be separated by one mile from another Medical marijuana retail establishment.~~

~~b. — Prohibited locations~~

~~Medical Marijuana Retail Establishments are prohibited within the NW CRA.~~

~~c. — Accessible Roadway Required Classification~~

~~Medical Marijuana Retail Establishments shall be located on a site that has direct access to and from an arterial roadway.~~

~~d. — Hours of Operations~~

~~The establishment shall not operate between the hours of 7:00 p.m. and 7:00 a.m.~~

~~e. — 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.~~

~~f. — 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.~~

~~g. — 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.~~

A B. MEDICAL MARIJUANA HEALTH CARE ESTABLISHMENT

1. Districts Where Permitted

| RS-1 | RS-2 | RS-3 | RS-4 | RS-L | RD-1 | RM-7 | RM-12 | RM-20 | RM-30 | RM-45 | MH-12 | B-1 | B-2 | B-3 | B-4 |
|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-----|-----|-----|-----|
| | | | | | | | | | | | | | | S | S |

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

2. Definition

A Medical Marijuana Health Care Establishment is a physician's office where the primary medical services offered is diagnosis of a qualifying medical condition and the processing of physician certifications (which means a qualified physician's authorization for a qualified patient to receive marijuana and related devices); ~~treatment of qualified patients with medical cannabis patient care;~~ 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. Physicians qualified to prescribe marijuana are defined by the State (2017 SB 8-A) and are not allowed to be associated with a licensed MMTC.

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~~
- ~~e~~ b. On-Site dispensing of medical marijuana is prohibited.

€ B. MEDICAL MARIJUANA TREATMENT CENTER (MMTC) RELATED INDUSTRIAL ESTABLISHMENT

1. Districts Where Permitted

| RS-1 | RS-2 | RS-3 | RS-4 | RS-L | 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-IX | OIP | M-2 | TO | PR | CF | PU | T | BP | RPU-D | PCD | PD-TO | LAC | PD-I |
|-----|----|-----|------|-----|-----|----|----|----|----|---|----|-------|-----|-------|-----|------|
| | | S | S | S | | | | | | | | | P | | | |

2. Definition

A Medical Marijuana Treatment Center Related Industrial Establishment must be licensed by the State as an MMTC and is an establishment engaged in indoor industrial uses involving medical marijuana including: the indoor planting, growing, harvesting, drying, cleaning, curing, packaging and extraction of active ingredients to create cannabis related products and concentrate within a fully enclosed structure; the use may include 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 Treatment Center Related Industrial Establishment shall comply with the following standards:

- a. No retail sales (dispensing) shall be permitted
- b. **Separation.** In accordance with State law (Ch. 381.986 F.S), a Medical Marijuana Treatment Center Related Industrial Establishment shall be separated by 1,000–500–feet from a ~~medical marijuana retail establishment~~ public or private elementary school, middle school or secondary school.
- c. No outdoor uses, including but not limited to outdoor growing or outdoor storage, shall be permitted.

SECTION 2. That Article 5, Development Standards, of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

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

...

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

...

SECTION 3. That Article 9, Definitions and Interpretation, of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

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 OR DENTAL LAB

Consists of facilities and offices providing diagnostic analysis of medical tests (such as blood test urinalysis, CT Scan, X-ray or other medical tests related to diagnostic treatment); collecting or withdrawing human blood, organs, skin, or other human tissue; or producing such items as dentures, caps, bridges and optical prescriptions.

MEDICAL MARIJUANA ESTABLISHMENT

An establishment legally engaged in ~~retail~~, health care or industrial uses involving medical cannabis or marijuana for medical purposes. Any establishment involved with the industrial aspect of medical marijuana including but not limited to the growing, processing

and/or distribution of medical marijuana must be licensed by the State of Florida as a Medical Marijuana Treatment Center (MMTC).

MEDICAL MARIJUANA HEALTH CARE ESTABLISHMENT

A physician's office where the primary medical services offered is the processing of physician certifications to qualify patients for the use of medical marijuana, treatment of qualified patients with medical cannabis patient care, 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. The State of Florida defines qualified physicians as those that hold an active, unrestricted license as an allopathic physician under Chapter 458 or as an osteopathic physician under Chapter 459 and is in compliance with the physician's education requirements of SB 8-A (2017) and is not employed by or associated with a licensed MMTC.

MEDICAL MARIJUANA TREATMENT CENTER RELATED INDUSTRIAL ESTABLISHMENT

A Medical Marijuana Treatment Center Related Industrial Establishment must be licensed by the State as an MMTC and is an establishment engaged in indoor industrial uses involving medical marijuana including: the indoor planting, growing, harvesting, drying, cleaning, curing, packaging and extraction of active ingredients to create cannabis related products and concentrate within a fully enclosed structure; the use may include 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.~~

MEDICAL MARIJUANA TREATMENT CENTER (MMTC) PER CH. 381.986 F.S

An establishment licensed by the State of Florida Department of Health to engage in the cultivation, preparation, wholesale storage, distribution, transfer, processing and dispensing of medical marijuana and medical marijuana products and related supplies and which does not allow on-site consumption of marijuana or marijuana products.

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SECTION 4. That Appendix A, "Consolidated Use Table," of Chapter 155, "Zoning Code," of the Code of Ordinances of the City of Pompano Beach is hereby amended to read as follows:

...

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 t = TEMPORARY USE ALLOWED WITH A MINOR TEMPORARY USE PERMIT √ = TEMPORARY USE ALLOWED WITHOUT TEMPORARY USE PERMIT
I = INTERIM USE ALLOWED WITH AN INTERIM 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-L | 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 | P | PD-TO | IAC | PD-1 | |
| Medical Marijuana Establishments | Medical Marijuana Retail Establishment | | | | | | | | | | | | | | | S | | | S | | S | | | | | | | | P | | | | | 455.4703.A |
| | Medical Marijuana Health Care Establishment | | | | | | | | | | | | | | | S | S | | S | | S | | | | | | | | P | | | | | 155.4703.B |
| | Medical Marijuana Treatment Center (MMTC) Related Industrial Establishment | | | | | | | | | | | | | | | | | | S | S | S | | | | | | | | P | | | | | 155.4703.C |

...

SECTION 5. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 6. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2017.

PASSED SECOND READING this _____ day of _____, 2017.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

jrm
7/14/17
L:ord/ch155/2017-292