

(5:08:20)

Mr. Mark Berman, City Attorney, explained to the Board that the City Commission recently passed regulations regarding medical marijuana that largely reflected the recommendations that they, the Board, made. He stated that the State legislature held a special session and passed legislation last week, however, that is in conflict with the City's new ordinance. He stated that this legislature appears to have been hastily put together and is somewhat unclear in certain respects. One aspect that is clear, however, is that local municipalities or counties may ban medical marijuana treatment center dispensing facilities from being within their boundaries. The jurisdiction may not place restrictions on the number of facilities if they are going to be permitted, however. He explained further that the State legislature preempts the City by cutting in half the distance separation requirements that the City had established from 1,000 feet to 500 feet from schools and also prohibits a municipality from enacting an ordinance from making the permitting of a marijuana dispensing facilities more difficult than the permitting of a regular pharmacy. Since the City has very little regulation for pharmacies, marijuana dispensing facilities would be able to be located within any of the commercial zoning districts. As such, Development Services staff recommends that the Board make the recommendation to the City Commission that the City repeal its recent marijuana ordinance and move to prohibit these facilities from being located anywhere in the City. He stated that it is his opinion that the Board's main purview is that of recommending the repeal of the City's medical marijuana ordinance, noting that a prohibition to outright marijuana facilities would be a part of the business code, not a zoning matter per se.

Ms. Jennifer Gomez, Assistant Development Services Director, stated that when the staff report was written staff did not know exactly what the State statute language would look like. She stated that the legislation was passed very quickly and so staff is responding very quickly. She noted that the recommended amendment would be to Chapter 115, Miscellaneous Businesses. She noted that this chapter actually deals with business regulations, and is not the Zoning Code. Mr. Berman reiterated that the real question for the Board is whether to recommend repeal of the prior medical marijuana ordinance that was passed.

Mr. Klosiewicz asked if the City can restrict or prohibit dispensaries.

Mr. Berman confirmed that the City can ban dispensaries outright. He added that the statute is unclear, but that in it "medical marijuana treatment centers" include cultivation, transport, and dispensing. The ban that the City may enact is for "medical marijuana dispensaries", which may or may not include all the other medical marijuana uses. Under federal law, the City can preclude marijuana dispensing from taking place which is what staff is recommending at this time. He pointed out that the effort that staff put into crafting the recent ordinance was made to try to find a balance in allowing marijuana uses in particular parts of the City, but if the option now is between having no control over the use or banning it outright, staff is recommending the later. He commented that there is soon likely to be litigation on the matter.

Ms. Coleman asked if the State statute controls in the absence of any City ordinance on medical marijuana.

Mr. Berman said that it could be argued that it's not an allowed use due to its absence from the Zoning Code, but stated that if the City doesn't want it, it should clearly say so. He said that the statute states that it may be banned but that action must be taken to ban it via ordinance.

Ms. Coleman asked if the City is put at risk by repealing the ordinance it has without replacing it with something else.

Ms. Gomez responded that staff is recommending that something else be put in its place in Chapter 115 that clearly prohibits medical marijuana uses. She stated that language has not yet been finalized.

Dr. Mills commented that medical marijuana is necessary for many people and so he is against banning it outright. He asked if there is no way that the City can restrict it somehow.

Mr. Berman responded that the current statute says that the City may not treat marijuana dispensing facilities any more harshly than it treats pharmacies. He commented that this is a preemption of the City's home rule power. He further noted that a ban could be changed later if state law changes, but the City must act now based on the present circumstances.

Mr. Stacer commented that he thinks there is a high possibility that this will be revisited by the legislature in the near future since this is such a significant home rule issue.

Mr. Berman commented that this is not any commentary on the need or otherwise of medical marijuana, but rather that this conversation is about the City being able to control this new industry within its borders.

MOTION by Joan Kovac and second by Tony Hill to recommend the repeal of Ordinance #2017-42 and the adoption of Ordinance #115.28. All voted in favor with the exception of Dwight Evans and Jerry Mills.