

Mr. Shulmister provided an extensive explanation regarding his suggestions.

Comr. Hardin referred to a minor scrivener's error on Page 11 of 15, Item 2(b). Obstruction Construction or Alternation Notification. The word should be "Alteration"

Mr. Berman will ensure that correction is made.

A motion was made by Commissioner Hardin, seconded by Commissioner Moss, that the Resolution be APPROVED FIRST READING. The motion carried by the following vote:

Yes: Hardin
Moss
Perkins
Sobel
Burrie

Excused: Fisher

21. [17-529](#) P.H. 2017-76: (PUBLIC HEARING 1ST READING)
AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, RESCINDING ORDINANCE NO. 2017-42; AMENDING CHAPTER 115, "MISCELLANEOUS BUSINESSES," BY CREATING SECTION 115.28, "MEDICAL MARIJUANA," TO BAN MEDICAL MARIJUANA USES WITHIN THE CITY; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.
(Fiscal Impact: N/A)

(Staff Contact: David Recor/Jean Dolan)

Vice Mayor Burrie announced that the item would be tabled to the July 25, 2017 meeting. A discussion followed regarding the use of Table versus Postpone an item which common practice to table the item has been exercised by the Commission.

Mark Berman, City Attorney stated that the item is on the medical marijuana ordinance and because of the state statute; the City Commission may want to take action here. If it is tabled/postpone today, only one reading will be allowed on it prior to the break of the Commission. He then explained why it could not be done in an emergency manner. He recommended that the item could pass as is and amend it prior to the second reading, which might be more beneficial. To approve it with the understanding today that it may be amended for second reading.

Comr. Sobel withdrew his motion to table.

Mr. Berman indicated that staff recommends that the Commission proceed with first reading and then amend it prior to second reading because this cannot be done prior to September. During the interim month, there may be applications or opportunities for people coming in. Therefore, the Commission could proceed now, and prior to second reading and approval, they will amend it.

David Recor, Development Services Acting Director presented the item and stated that on April 25, 2017 the Commission adopted on second reading an ordinance approving zoning and other regulations related to the processing, dispensing and testing of medical cannabis. In an effort to serve best the City's residents and to ensure compliance with the City's Comprehensive Plan, those regulations addressed issues related to the safety, security, hours of operation, noise, traffic, parking and odor of medical marijuana establishments in order to regulate the distribution and other related uses pertaining to medical cannabis in the City.

Since the adoption of Ordinance No 17-42, Florida Senate Bill 8A was passed on June 9, 2017 during a special session of the Florida legislature. The Bill was signed into law on July 1, 2017. The new law endowed authority and local governments to ban the medical marijuana dispensary Land Use or to establish regulations to permit it. However, the new law includes language, which states local governments may not be more restrictive on this land use than that of pharmacies licensed under Chapter 465, Florida Statutes and determining the location of medical marijuana dispensaries within the City. The State Legislation is not clear whether the new restrictions of regulating this land use apply retroactively or apply prospectively. Under former President Obama's administration, the Deputy Attorney General issued a memorandum to all US attorneys determining that enforcement of federal laws and states where medical marijuana was heavily regulated it would be a low priority. However, with the current president Trump's administration it is now unclear how the President will treat Florida's legalization of medical marijuana while it still remains illegal under federal law, to process dispense or test medical cannabis. As a result, the City is in an uncertain climate with both the passage of Senate Bill 8A and the new administration as to the application of the conflict between state and federal law under the Supremacy Clause of the United States Constitution.

Staff is recommending that the City Commission rescind Ordinance 17-42 and amend Chapter 115 of the City Code of Ordinance to expressly prohibit the processing, dispensing, and testing of medical cannabis in the City based on these reasons.

Vice Mayor Burrie noted that the ordinance and the presentation indicated that the Commission void out the other ordinance and asked if that would be a separate item.

Mr. Berman responded that it was done in one item that addressed one subject matter. In addition, he briefly mentioned that the City set up something that established retail establishments where they can go, health care establishments and industrial uses, where it can be grown in the I1-X General. He said a procedure was set up and there were requirements where in the B-3, B-4, or where they had to be near major arterial, eliminating the amount but still allowing the uses in the City to a limited extent to the benefit of the public. He then explained in detail what the Florida Legislature did in their Special Session, which will change the City's requirements established prior. There is nothing at this point regulating location of pharmacies. Therefore, to change how the City regulates pharmacies to keep these in limited areas would not be fair to pharmacies. They have set the tone for this by preempting what the City can do currently. He also presented another argument regarding the matter. Notwithstanding, the City does not know what the legislature is going to do to straighten out some of the confusing wording.

Finally, after the reviewing of additional information and discussion prior to the meeting, staff recommends that the City disband the dispensing facilities. Therefore, Mr. Berman suggested that the Commission approve the item in its current state with the understanding for second reading and amended ordinance will be brought back to the Commission for approval. This will provide sufficient time to pass this item prior to the Commission going on break in August.

Comr. Hardin indicated that it is unfortunate the state “messed this up badly” that the City cannot institute what the voters have asked for. He agrees with going with the conservative approach at this time and ban it.

Comr. Sobel reiterated Comr. Hardin’s comments and noted that the City Attorney’s Office spent so much careful time and energy trying to adequately protect the residents and set forth a very specific policy. The ordinance was enacted, and if we go ahead with this today, we will be losing our legal standing, and essentially, we are chasing a possibility without really knowing. The state legislature acted quickly and apparently very ambiguously. He is uncertain if it is prudent for the City to chase that kind of process and put us in the same position. Once this is passed, the City will lose its pre-existing ordinance standing, which is critical to this. Therefore, Comr. Sobel suggested that the Commission pass a moratorium with regard to application or enforcement of it, but allow the statutes to stand so the City can maintain its strong pre-existing position.

Mr. Berman indicated he should have mentioned earlier the moratorium option as it was discussed prior on a one on one basis with the Commission. The ordinance would stay in place is the only benefit with the moratorium. This could be prepared for both readings for the second meeting of the month. Whether the City has standing or not is still to be determined by the court or by the legislature. He mentioned after polling several cities they found out that Lighthouse Point is banning, and Fort Lauderdale may go with what they have in place. Cities are handling it differently and it is a “mixed bag at this point.” There is no clear consensus. It is a policy determination and each has its individual risks.

Comr. Sobel proposed that the City do not give up its excellent legal position at this point based on the uncertainty through either the courts or legislature, and pass a six-month moratorium in lieu of that with the potential to extend if necessary, to keep our position and firm policy at the same time protect the citizenry. He then asked how this would be accomplished.

Comr. Sobel made a motion, seconded by Comr. Hardin to amend the ordinance in lieu of banning it to have a moratorium on the enforcement of it for a period of six months. No vote was taken.

Mr. Berman respectfully suggested that the Commission postpone this with the understanding of what will be brought back to the Commission. Therefore, we will not lose the advertising and the ability to proceed if there are further developments prior to the next meeting. In sum, he suggested to postpone this item to second reading where it may be stricken and for the July 25, 2017 meeting bring an ordinance back for a moratorium for six months.

A motion was made by Commissioner Hardin seconded by Vice Mayor Burrie to postpone First Reading until July 25, 2017 City Commission meeting. The motion carried by the following vote:

Yes: Hardin

Moss

Perkins

Sobel

Burrie

Excused: Fisher

A motion was made by Commissioner Hardin, seconded by Commissioner Sobel to direct the City Attorney to prepare a Moratorium. The motion carried unanimously by voice vote.

22. [17-509](#) P.H. 2017-77: (PUBLIC HEARING 2ND READING)
AN ORDINANCE AMENDING CHAPTER 92, "CEMETERIES," OF THE CODE OF ORDINANCES OF THE CITY OF POMPANO BEACH, FLORIDA, BY AMENDING SECTION 92.06, "CEMETERY HOURS," TO AMEND THE HOURS FOR VEHICULAR TRAFFIC AND THE HOURS OF OPERATION FOR THE CEMETERY OFFICE; BY AMENDING SECTION 92.26, "PERPETUAL CARE FUND," TO MODIFY REQUIREMENTS FOR USE OF FUNDS; BY AMENDING SECTION 92.32, "PLOT PRICES AND SERVICE CHARGES," TO REFERENCE BURIAL VAULT SALES; BY AMENDING SECTION 92.44, "CONCRETE BOXES; VAULTS," TO MODIFY REQUIREMENTS FOR PROVISION OF AND INSTALLATION OF VAULTS; BY AMENDING SECTION 92.65, "MONUMENTS," TO MODIFY LOCATIONS WHERE MONUMENTS ARE AUTHORIZED; AND BY AMENDING SECTION 92.66, "BRONZE MARKERS," TO INCLUDE THE CENTER LAWN; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.
(Fiscal Impact: N/A)

FIRST READING: JULY 11, 2017

(Staff Contact: Robert McCaughan)

Robert McCaughan, Public Works Director presented the item and stated that the code currently restricts the use of the cemetery perpetual care fund to be used only on Capital Improvement projects. Consequently, staff is requesting modification of the code to allow spending on operational expenses, specifically to purchase bronze grave markers, which earn revenue from the cemetery. In addition, request is made to modify the code to allow sale of concrete burial vaults, which also earn revenue for the cemetery.

Finally, Mr. McCaughan indicated that it was mentioned that the change of the time at the cemetery but he thinks it is unnecessary to be in the ordinance. Nevertheless, it closely mirrors the actual hours of the