



Staff Analysis

Amending Land Development Code Definitions Regarding Medical Cannabis Dispensaries

Presented by:
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CITY OF GAINESVILLE STAFF ANALYSIS

Legistar No: 160395

Title: Amending Land Development Code Definitions Regarding Medical Cannabis Dispensaries

Sponsor: Planning and Development Services Department

City Staff Contact: Dean Mimms, AICP, Lead Planner

11/3/16

Issue Statement

Provide additional information and propose changes to the proposed medical cannabis dispensaries based on City Commission direction.

Planning staff reviewed best practice materials including:

- Florida City and County Management Association’s (FCCMA) 2016 Fall Symposium entitled “Marijuana: What Does It Mean For Your Local Government” that was held on October 20th in Haines City, FL. (See Exhibits 1-7).
- Florida League of Cities (Ryan Padgett)
- Susan Trevarthen, land use attorney and presenter FCCMA symposium.

Staff Recommendation – Amend draft Ordinance 160221 to eliminate the use from the MU-1 zoning district and establish minimum distance and other requirements for medical marijuana dispensaries as outlined in Option D below and summarized as follows:

Minimum distances:

- 500 ft. between medical marijuana dispensaries
- 300 ft. to places of religious assembly
- 300 ft. to residential zoning districts (per Sec. 30-41 of LDC)
- 750 ft. to schools

Additional requirements:

- Limit hours of on-site dispensing to 7:00 AM to 9:00 PM, per F.S. 381.986 (6)(d)4
- Prohibit the sale of alcohol
- Prohibit on-site consumption of cannabis or alcohol

- Prohibit limitation of payment to cash only
- Retain current limitation to accessory use in OR, OF and CP zoning districts

History/Background Information

The City Commission struck Legistar No. 160221 (Ordinance No. 160221, Petition PB-16-84 TCH) from the agenda on September 15, 2016 and referred the matter to the Public Policy Committee. The City Commission expressed interest in making significant changes to the ordinance including: where medical marijuana dispensaries can be located.

Medical Cannabis timeline:

- 2014, Legislature enacted the “Compassionate Medical Cannabis Act of 2014” (subsequently codified in Section 381.986, F.S.), which authorized licensed physicians to order low-THC cannabis for specified patients. This Act granted local governments the authority to allow, or not, and provide zoning regulations for the dispensing cannabis for the medical purposes specified in the 2014 Act. Accordingly, on November 19, 2015, the City Commission adopted Ordinance No. 150395 to amend the Land Development Code to allow “Medical Marijuana Dispensaries” to operate in various zoning districts strictly in accordance with the 2014 Act.
- 2016, Legislature adopted HB 307 substantially amending the 2014 Act to expand the forms of cannabis available for medical purposes and expand the kinds of patients that may receive medical marijuana.
- 2016, City Plan Board proposes amendment of the City’s Land Development Code (LDC) to make it consistent with the expanded 2016 state law.

Options

A. Status quo. This option would keep the existing Land Development Code (LDC) regulations in place. This means that we would retain our Section 30-23 (c) definitions of *Low-THC cannabis* and *Medical marijuana dispensary*, and that we would continue to allow Medical marijuana dispensaries as a permitted use (by right) in the Office districts (OR and OF), General business district (BUS), Mixed use low intensity (MU-1), Mixed use medium intensity (MU-2), Urban mixed-use district 1 (UMU-1), Urban mixed-use district 2 (UMU-2), Central city district (CCD), Medical services district (MD), and Corporate park district (CP).

Pros: This would continue to limit the use strictly to the dispensing of *Low-THC cannabis* (also known as Charlotte’s Web). This would preclude the dispensing of *Medical cannabis*, which would limit the demand for medical marijuana dispensaries (some might deem that to be positive).

Cons: This would not update our LDRs for consistency with the 2016 Florida legislation that expanded the forms of cannabis available for medical purposes and expanded the

range of patients that may receive medical marijuana, among various other changes. This also could potentially open the City to potential legal challenge, for example, from an applicant that could have met all of our requirements other than the dispensing of medical cannabis, which our current LDRs do not allow.

B. Moratorium. Enact a moratorium on approval of medical marijuana dispensaries for a defined period of time.

Pros: A moratorium that would not end until three-four months following the close of the 2017 session of the Florida Legislature would enable the City to revise its regulations so that they would reflect the most current State law. Planning staff is of the opinion that Constitutional Amendment 2 (Use of Marijuana for Debilitating Medical Conditions) will be approved by the electorate, and that the Florida Legislature is likely to pass legislation that will provide substantial guidance for its implementation by local governments.

Cons: A moratorium could create needless uncertainty within the medical marijuana dispensary community at a time (following the likely passage of Amendment 2) when there may be increased interest in establishing medical marijuana dispensaries. The City could avoid such delay by taking the approach proposed in the draft to-be-revised ordinance (Ordinance No. 160221) with respect to consistency with state law. That provision is within the proposed, revised definition of: “Medical marijuana dispensary means a facility that dispenses cannabis to medical patients for medical purposes pursuant to and in accordance with Section 381.986, Florida Statutes, as may be amended from time to time, dispensary organization approved by the Florida Department of Health pursuant to and in accordance with to the regulations of the “Compassionate Medical Cannabis Act of 2014” (codified in Section 381.986, Florida Statutes) to cultivate, process, and dispense low-THC cannabis for medical use to Florida residents who have been added to the state compassionate use registry by a physician licensed under Chapter 458 or Chapter 459, Florida Statutes, because the patient is suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms with no other satisfactory alternative treatment options.

A moratorium could have a minor negative fiscal impact due to a potential loss of sales tax revenues for the duration of the moratorium.

C. Revise the LDRs for consistency with current Florida law, but prohibit medical marijuana dispensaries until such time as marijuana (cannabis) is allowed by Federal law.

Pros: This would eliminate the conflict between Florida law and Federal law in which marijuana is a Schedule 1 drug under the Controlled Substances Act, 21 U.S.C., s. 811. Federal law does not distinguish between medical and recreational marijuana, and considers marijuana to be a controlled substance (cocaine and heroin are also controlled substances).

Cons: Because Florida and many other states allow medical marijuana, because the allowance of medical marijuana is increasingly supported by the general public, and because it is staff's understanding that the U.S. Department of Justice has not been prosecuting the dispensing of state-regulated medical marijuana since 2009 and has no reason to think that this is likely to change, this would be a needless prohibition that would adversely impact the seven Florida businesses (two of which are in Alachua County) that have been approved by the State of Florida to cultivate, process and dispense medical marijuana.

D. Amend draft Ordinance 160221 to eliminate the use from the MU-1 zoning district and establish minimum distance and other requirements.

Pros: By eliminating the use (i.e., removing it from the list of permitted uses) from the MU-1 zoning district (MU-1 comprises more than 620 acres of land), which is often adjacent to single-family or residential low-density districts, the City would limit the number of such dispensaries and eliminate the potential proliferation of a use with which the City has no direct experience to date (no medical marijuana dispensaries have opened, although one zoning compliance permit has been issued (for Low-THC cannabis only. ZC-16-00175 was approved on May 24, 2016 for Knox Medical Cannabis (3400 SW 34th Street)). We could also consider removing it from the list of permitted uses in the OR and OF zoning districts, but a substantial limitation in those districts is that it is allowed only as an accessory use ("accessory to and in the same building as health services or offices of physicians, dentists and other health practitioners").

The City could establish minimum distance requirements between medical marijuana dispensaries (something between 500 and 1,000 ft.) and between marijuana dispensaries and places of religious assembly (we could use the 300-ft. minimum distance our LDC requires between Alcoholic beverage establishments and Places of Religious Assembly, although there is no spacing requirement in the CCD (Central City) zoning district)). The City could also establish a minimum distance requirement of 300 ft. to residential zoning districts (listed in Sec. 30-41 of our LDC). The City could establish minimum distance requirements between medical marijuana dispensaries and any accredited public or private school offering any grades from kindergarten through 12th grade. Although we could use the same 400-ft. minimum distance from public or private schools that our LDC requires for Alcoholic beverage establishments, we would be consistent with Alachua County by using a 750-ft. minimum distance from schools.

Proposed additional (to minimum distance) requirements:

- Limit hours of on-site dispensing to 7:00 AM to 9:00 PM, per F.S. 381.986 (6) (d) 4.
- Prohibit the sale of alcohol.

- No on-site consumption of cannabis or alcohol.
- Prohibit the limitation of payment to cash only.

Limiting the hours of operation is in accordance with the current statute. Prohibiting the sale of alcohol and prohibiting on-site consumption of cannabis or alcohol would reduce the nuisance potential. Prohibiting the limitation of payment at medical marijuana dispensaries to cash only would tend to reduce the amount of on-hand cash in comparison to electronic payment, which would presumably make them less attractive targets for robbery or burglary.

Although the use is heavily restricted and regulated by the State of Florida, eliminating the use from the MU-1 district and establishing minimum distance and other requirements would allow the City to take a moderated approach in allowing such businesses and would give the City as much time as needed, perhaps several years, to evaluate how the businesses are impacting the community, particularly with respect to any adverse impacts. The City could subsequently revise the ordinance as appropriate based on future evaluations.

Cons: It is not evident at this time what the potential adverse impacts of medical marijuana dispensaries in Florida might be, so there might not be a need for minimum distance requirements or for eliminating this use from the MU-1 district or for minimum distance or other additional requirements. Prohibiting the limitation of payment to cash only is something that could be difficult to enforce.

Staff Recommended Option

Planning staff recommends Option D as discussed and described above. The minimum distances are suggestions and could be increased. Despite the enforcement challenge for the recommended prohibition of cash only payments, staff believes it is a worthwhile requirement.

Please see *Staff Recommendation* on Page 1 of this report.

Attachments/References

- Exhibit 1 “In The Weeds: The Municipalities Response to Medical Marijuana” (from FCCA 2016 Fall Symposium)
- Exhibit 2 Medical Marijuana – (Table listing municipalities and provisions, dated 8/6/14, from City Attorney’s office)
- Exhibit 3 Alachua County Medical Marijuana Ordinance
- Exhibit 4 Cape Canaveral – Pain management clinic & medical marijuana treatment center regulations
- Exhibit 5-A Lauderdale-by-the-Sea – Marijuana businesses
- Exhibit 5-B Lauderdale-by-the-Sea – B-1-A district – Business
- Exhibit 6 Zoning Practice, Issue Number 8: Marijuana Land Use
- Exhibit 7 City of Tucson Fact Sheet: Medical Marijuana Dispensaries and Cultivation Locations (from FCCA 2016 Fall Symposium)