



PLANNING & DEVELOPMENT DEPARTMENT COMMUNITY DEVELOPMENT BOARD STAFF REPORT

MEETING DATE: October 17, 2017

AGENDA ITEM: G.1

CASE: TA2017-01001

ORDINANCE NO.: 9042-17

REQUEST: The Community Development Board is reviewing a request to amend the Clearwater Development Code to establish criteria pertaining to medical marijuana treatment center dispensing facilities (retail sales and service use) and medical marijuana treatment center processing and cultivating facilities (urban farm use) to recognize statutory requirements and to update noticing requirements for Level Three cases.

INITIATED BY: City of Clearwater, Planning and Development Department

BACKGROUND:

Florida Constitutional Amendment 2, which became effective January 3, 2017, established that marijuana could be used for medical use by individuals with debilitating medical conditions as determined by a licensed Florida physician. On February 2, 2017, the City Council imposed a temporary moratorium (Ordinance No. 8995-17) on the operation of any additional “dispensing organizations” that dispense “low-THC cannabis” or “medical cannabis” or on the operation of “medical marijuana treatment centers” within the City for a period of six months. This moratorium expired on June 3, and since that time the State Legislature during their special session enacted Senate Bill 8-A (SB 8-A), which was approved by Governor Scott on June 23, 2017, addressing medical marijuana.

SB 8-A establishes numerous regulations for medical marijuana, and requires the Department of Health to authorize existing growing, processing and dispensing facilities as medical marijuana treatment centers, which are able to distribute as of July 3, 2017. Regulation of cultivation, processing, and delivery of marijuana is preempted to the State. SB 8-A acknowledges two functions of medical marijuana treatment centers – medical marijuana treatment center processing and cultivating facility and medical marijuana treatment center dispensing facility – although it does not define these two functions. A municipality may not impose restrictions on the dispensing facility function that are greater than the restrictions imposed by ordinance for the permitting and location of pharmacies; however, the Bill establishes that neither a processing and

cultivating facility nor a dispensing facility may be within 500 feet of a school, unless through a public hearing process a municipality determines the location promotes the public health, safety and general welfare of the community.

Pharmacies are a retail sales and service use and generally are permitted in the Commercial (C), Tourist (T), Downtown (D), Office (O), US 19 and Institutional (I) Districts. Retail sales and service uses are also allowed in the Mobile Home Park (MHP), Industrial, Research and Technology (IRT) and Open Space/Recreation (OS/R) Districts; however, certain criteria limit the use in a manner that would preclude a pharmacy from locating within these districts.

The processing and cultivating facilities closely resemble the City's urban farm use, which is permitted in the Industrial, Research and Technology (IRT) District. To accommodate the processing and cultivating facility within the City, a definitional change to urban farms was required.

ANALYSIS:

Proposed Ordinance No. 9042-17 amends several sections of the Community Development Code (CDC) in order to provide clarity within regarding medical marijuana treatment center uses. The following is a brief analysis of each aspect of the proposed ordinance.

1. Amends Use Table Footnotes [pages 3 and 8 of Ordinance]

The proposed amendment adds a footnote for retail plaza, retail sales and service and urban farm uses, where allowed as minimum standard uses, stating that a medical marijuana treatment center dispensing facility (Commercial (C) District) and a medical marijuana treatment center processing and cultivating facility (Industrial, Research and Technology (IRT) District) must comply with the statutory requirements of section 381.986, Florida Statutes, as amended.

2. Amends Flexible Development Criteria [pages 4 – 7 and 11 of Ordinance]

For Level I Flexible Standard Development uses (FLS), flexibility criteria are added to retail sales and service uses stating that medical marijuana treatment center dispensing facilities shall comply with the statutory requirements of section 381.986, Florida Statutes, as amended. This applies to the Commercial (C), Tourist (T), Downtown (D), and Institutional (I) Districts.

For Level II Flexible Development uses (FLD), flexibility criteria are added to retail sales and service uses stating that medical marijuana dispensing facilities shall comply with the statutory requirements of section 381.986, Florida Statutes, as amended. An additional criterion is added, allowing a dispensing facility to be located within the 500 ft buffer from schools, if the application goes through a public hearing process. This applies to the Commercial (C), Tourist (T), Downtown (D) and Institutional (I) Districts.

3. Amends Notice Requirements [page 9 of Ordinance]

The amendment proposes to modify exemptions for Level Three applications regarding posting notice signs to exempt an application from posting requirements if it includes 25 or more contiguous parcels or is more than ten acres cumulatively in size, whereas currently an application must include 25 or more contiguous parcels and be more than ten acres in size to

be exempt. The proposed amendment does not affect mailed notices which shall continue to be sent by the city clerk.

4. **Definitions** *[pages 9 and 10 of Ordinance]*

- Retail sales and services – modifies the definition to include medical marijuana treatment center dispensing facility
- Urban farms – modifies the definition to include medical marijuana treatment center processing and cultivating facility to the urban farms use

CRITERIA FOR TEXT AMENDMENTS:

CDC Section 4-601 sets forth the procedures and criteria for reviewing text amendments. All text amendments must comply with the following:

1. The proposed amendment is consistent with and furthers the goals, policies and objectives of the Comprehensive Plan.

A review of the Clearwater Comprehensive Plan identified the following Goal, Objective and Policy which will be furthered by the proposed Code amendments:

- Goal A.6 The City of Clearwater shall utilize innovative and flexible planning and engineering practices, and urban design standards in order to protect historic resources, ensure neighborhood preservation, redevelop blighted areas, and encourage infill development.
- Objective A.6.2 The City of Clearwater shall continue to support innovative planned development and mixed land use development techniques in order to promote infill development that is consistent and compatible with the surrounding environment.
- Policy A.6.2.1 On a continuing basis, the Community Development Code and the site plan approval process shall be utilized in promoting infill development and/or planned developments that are compatible.

The proposed amendments are intended to incorporate new uses into existing regulations in the Community Development Code that already apply to a pharmacy (retail sales and service use), consistent with the requirements of SB 8-A. However, the proposed amendments will also further the functionality of the City's development approval process making it easier to navigate and provide clarity for businesses and residents to know where these uses are allowed. In addition, the reference to the statutory requirements allows the City to remain consistent with the regulations as they are likely to change over time. As such, the above referenced Goal, Objective and Policy of the Comprehensive Plan will be furthered.

2. The proposed amendment furthers the purposes of the Community Development Code and other City ordinances and actions designed to implement the Plan.

The proposed text amendment will further the purposes of the CDC in that it will be consistent with the following purposes set forth in CDC Section 1-103:

- Sec. 1-103.A. It is the purpose of this Development Code to implement the Comprehensive Plan of the city; to promote the health, safety, general welfare and quality of life in the city; to guide the orderly growth and development of the city; to establish rules of procedure for land development approvals; to enhance the character of the city and the preservation of neighborhoods; and to enhance the quality of life of all residents and property owners of the city.
- Sec. 1-103.B.1. Allowing property owners to enhance the value of their property through innovative and creative redevelopment;
- Sec. 1-103.E.3. Protect and conserve the value of land throughout the city and the value of buildings and improvements upon the land, and minimize the conflicts among the uses of land and buildings.
- Sec. 1-103.E.9. Establish permitted uses corresponding with the purpose and character of the respective zoning districts and limit uses within each district to those uses specifically authorized.

The amendments proposed by this ordinance will further the above referenced purposes by implementing the aforementioned Goal, Objective and Policy of the Comprehensive Plan; by establishing new permissible uses - medical marijuana treatment center dispensing facilities as retail sales and services uses and medical marijuana treatment center processing and cultivating facilities as an urban farm use. The statutes establish the 500 ft buffer rule for dispensing facilities, but also allow for cities to permit closer through a public hearing process. This is captured in the proposed amendments and is also consistent with Section 1-103.E.3.

SUMMARY AND RECOMMENDATION:

The proposed amendment to the Community Development Code is consistent with and will further the goals of the Clearwater Comprehensive Plan and the purposes of the Community Development Code. Based upon the above, the Planning and Development Department recommends **APPROVAL** of Ordinance No. 9042-17 that amends the Community Development Code.

Prepared by Planning and Development Department Staff:



Kyle Brotherton,
Senior Planner

ATTACHMENTS: Ordinance No. 9042-17
Resume