

**City of Coral Gables City Commission Meeting
Agenda Item G-3
September 26, 2017
City Commission Chambers
405 Biltmore Way, Coral Gables, FL**

City Commission

**Mayor Raul Valdes-Fauli
Vice Mayor Pat Keon
Commissioner Vince Lago
Commissioner Frank Quesada
Commissioner Michael Mena**

City Staff

**City Manager, Cathy Swanson-Rivenbark
Assistant City Manager, Peter Iglesias
City Attorney, Craig E. Leen
Assistant City Attorney, Cristina Suarez
Deputy City Attorney, Miriam Ramos
City Clerk, Walter J. Foeman
Deputy City Clerk, Billy Urquia**

Public Speaker(s)

Agenda Item G-3 [0:00:00 p.m.]

A discussion regarding regulation of medical marijuana treatment centers prior to second reading of proposed ordinance related thereto.

(Sponsored by Commissioner Lago)

Mayor Valdes-Fauli: The next item is marijuana, medical marijuana treatment centers prior to second reading.

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Agenda Item G-3 - Discussion regarding regulation of medical marijuana treatment centers prior to second reading of proposed ordinance related thereto.

Commissioner Lago: I'll make it real brief.

Mayor Valdes-Fauli: No, don't do that.

Commissioner Lago: I want to see if I can get -- you know, as you're aware -- I'm going to have staff come up here, because I think maybe Craig or Miriam or Cristina, maybe...

City Attorney Leen: Is it medical marijuana the one we're talking about?

Commissioner Lago: Yes.

City Attorney Leen: Okay. Can I make a preface to your remarks?

Commissioner Lago: Of course.

City Attorney Leen: So, what happened was this went to first reading and was adopted on first reading. In between first and second reading, the sponsor wanted to have it changed to some extent. And, not that I didn't feel comfortable bringing it back on second reading, I felt that we should bring it back to the Commission and get your instructions. And so, we tried to -- we spoke with the Commissioner and we tried to put together a way forward that he would be able to sponsor and support, but we also wanted to bring it back to the Commission because it's really your ordinance now, because it's been passed on first reading. So, that's what Cristina's going to do.

Assistant City Attorney Suarez: Correct. So, just to kind of recap, the City's current position is that we have in place certain zoning regulations for medical marijuana dispensing facilities, and Ramon can explain what those zoning regulations are and where they would be allowed. However, the City's position is that under federal law, medical marijuana is still illegal, thus the medical marijuana dispensing facilities are currently prohibited within the City. The ordinance

that was approved on first reading was just simply restating that, but also making it clear that it was also prohibited under the new state statute. After discussing with Commissioner Lago, what we're -- you know, after there's discussion, if...

Commissioner Lago: And we've had multiple meetings, I mean, probably.

Assistant City Attorney Suarez: Yeah. So, what we would -- we can try to do through our discussions with Commissioner Lago is -- and change the ordinance or the draft -- or the proposed ordinance and sort of make it more -- an ordinance that encourages the federal government to reclassify medical marijuana from the Schedule I to a Schedule II or Schedule III controlled substance, which would allow it to be prescribed and dispensed. And then also, recognizes that it's -- medical marijuana dispensing facilities are currently prohibited under the current -- the City's current regulations and also federal law, and also, in addition to that, under this new statute.

Commissioner Lago: And I'll give you my reasoning very, very briefly, okay. Having the honor to be an elected official -- and this is something that I enjoy every day -- we get to speak to people who live in this community and conduct business in this community. And, I will be honest with you; I met with probably -- not activists, just family members. And, I was touched by one person specifically, who I had no clue was actually benefitting from medical marijuana, and that was their three-year-old son, and she goes to my gym. I always noticed that she would bring her son, that he was disabled. But I never knew the cause. I never really, you know, did a deep dive and spoke to that person and said, hey, you know, talk to me about your child. But after we had that first go around, she reached out to me and she said, I want to talk to you and I want to tell you some of the benefits that we, as a family -- by the way, the residents in the city -- some of the benefits that we receive by having our child be part of the study in reference to medical marijuana. There is no high factor or psychotropic, you know, parts to the medication that the child is offered. It is basically delivered to their home through a type of service, which is, you know, on a constant visual camera that is memorializing the delivery of that medicine.

So, after I had a conversation with her and a few other individuals, my opinion changed. My opinion changed in the sense that I think Senate Bill 8A -- and it's something that we talk about a lot. I think it's a direct attack on home rule. I think it's an issue where we need to do more as an elected body throughout South Florida to stop the attack on home rule. If you noticed -- and it always leads back to home rule. You know, the State is always trying to legislate on behalf of the elected officials at the local level. And to me, it's -- I think it's crazy that the options that were given to us by Senate Bill 8A is no or yes. Either you have dispensaries throughout the city at locations where pharmacies have the appropriate type of zoning, which would be throughout our downtown area, or no, you can't have a medical marijuana dispensary facility. I've tried every angle. I've looked at it and I've spoken to physicians, one of them being my father. I've talked to Craig. I've talked to staff. I met with Ramon on three or two different occasions. I've met with staff, with Cristina -- how many times do you think we've met?

Assistant City Attorney Suarez: At least three -- two or three times.

Commissioner Lago: At least, to discuss the issue of why -- if this is medical marijuana, why can it not be dispensed via a pharmacy. It has benefits. By the way, let me be clear. I am 100 percent against recreational marijuana. This is not about recreational marijuana. This is an issue about when you see residents in our community who are living day-to-day with children who have severe issues, either it may be seizures, hundreds of seizures in a day, or it may be other issues that, again, I'm not in the medical industry, but they benefit.

Commissioner Quesada: So, Commissioner Lago, I don't think you're going to get anyone to disagree with what you're saying. However...

Commissioner Lago: We're backed into a corner.

Commissioner Quesada: Hold on a second. I'm not done. The point is there's been studies related to crime related to medical marijuana locations throughout Colorado and there's been an

uptick in crime. I mean, that was the -- my rationale for voting the way I did. Are you -- I mean, how does that impact your opinion? You say you've completely changed...

Commissioner Lago: It impacts -- no, no, no.

Commissioner Quesada: But that's the issue for me, not the aspect that you just discussed.

Commissioner Lago: And, that's the reason why I wanted to bring it back. I mean, again, I've done research on that, and there are studies -- you're a hundred percent correct -- that say that there's an uptick in crime -- not around the dispensary, because there's an intense amount of security around the dispensary, but maybe a mile to two miles away. Again...

Commissioner Quesada: That's problematic. That's my problem.

Commissioner Lago: That's very problematic, but let's also be honest with ourselves. Dispensaries are going to pop up on the borders of the city no matter what. It's going to happen, and we're surrounded.

Commissioner Mena: And, I assume there's probably other businesses that that's true for, but you don't ban them.

Vice Mayor Keon: What?

City Attorney Leen: Well, we actually do have a number of prohibited uses.

Commissioner Mena: Cash business probably.

City Attorney Leen: We do.

Commissioner Quesada: More issues.

City Attorney Leen: We have some prohibited...

Commissioner Quesada: I don't know the answer to that.

City Attorney Leen: We do have some prohibited uses.

Commissioner Quesada: It's likely.

Commissioner Lago: But, the reason -- there -- to make -- before we open it up to discussion, I just wanted to bring it to you, because I didn't feel comfortable just saying no, you know, just approving on second reading, you know, a ban on dispensaries without having a real thorough discussion and seeing how it's going to impact people in our community who really suffer.

Commissioner Mena: You know when we first voted on this...

Commissioner Lago: And I admit I was wrong, by the way.

Commissioner Mena: No, no, no.

Commissioner Lago: I shouldn't have jumped the gun. I should have done a lot more homework, and I...

Commissioner Mena: You know, one of the questions I had was -- I was trying to get clarity, and I think what I said was I wanted to make it clear it was either A or B.

Commissioner Lago: Yes.

Commissioner Mena: It was either you ban then outright or you allow them wherever a pharmacy is allowed was basically the gist of it. And, that was one of the issues as well, in addition to what Commissioner Quesada just described, the prevalence of how many you would be allowing. And, I was wondering -- and this may require more research. But, one of the things I had thought of was is there a possibility, for example, of amending our requirements for pharmacies.

City Attorney Leen: Commissioner Mena.

Commissioner Mena: Is that a way to...

Commissioner Lago: I've talked about amending our Zoning Code, and I talked to our Zoning Director about that, you know, maybe having an overlay...

Commissioner Mena: Right.

Commissioner Lago: That puts into place the stringent rules of 500 feet, 1,000 feet away from a school and that type.

City Attorney Leen: Well, you know, Commissioners, the...

Commissioner Mena: Which, by the way, if somebody was opening a true pharmacy, if you will, they could come in for...

City Attorney Leen: They could.

Commissioner Mena: I guess -- what would it be, an amendment at that point?

City Attorney Leen: And a lot of times -- oh, I'm sorry.

Commissioner Mena: No, no.

Commissioner Lago: It's just a way...

Commissioner Mena: So, that's...

Commissioner Lago: And a pharmacy is a conditional use, correct?

City Attorney Leen: Yeah. Well, we just adopted an ordinance that says they're a conditional use in the commercial limited district. One thing I spoke with -- assuming it's a medical-related use, which I would interpret a pharmacy as a medical-related use. So, I talked to Mr. Trias, and we talked about maybe what we should do just in case -- by the way, the State Legislature could change the law again next year and say it's allowed everywhere a pharmacy's allowed, period. So, one thing we were thinking of was perhaps we should regulate pharmacies and make them a conditional use throughout the city.

Commissioner Mena: Right.

City Attorney Leen: Based on what you said.

Vice Mayor Keon: Can I ask a question with regard to that? If you can help me understand. When they say to operate them or open them where there's a pharmacy, it isn't within the pharmacy?

Commissioner Lago: No.

Vice Mayor Keon: It's next to the pharmacy.

Commissioner Lago: And I'm happy you brought that up, because that was...

Vice Mayor Keon: But it's not in a pharmacy.

Commissioner Mena: Correct.

Commissioner Lago: That was the goal -- that was one of our many meetings was can we do inside the pharmacy, because that would alleviate the problem because then, obviously, you would -- when you go to a pharmacy, you have to have a doctor's script.

Vice Mayor Keon: Do any pharmacies...

Commissioner Lago: Do not.

Vice Mayor Keon: Distribute medical marijuana?

Commissioner Lago: Because of the schedule...

Assistant City Attorney Suarez: No, they do not...

Vice Mayor Keon: They don't?

Assistant City Attorney Suarez: Because it's a Schedule I controlled substance...

Vice Mayor Keon: Oh.

Assistant City Attorney Suarez: So, they're not allowed to dispense them. And...

City Attorney Leen: I mean, the underlying issue going on here is that federal -- the federal government -- the FDA has not addressed this issue. So, you have every state -- or many states, not every state -- many states finding that there is a medical purpose. And, you have all these testimonials being made by families of how helpful it is, and then you have the federal government, which, frankly, regulates it more severely than cocaine and other types of drugs like that, which sometimes are Schedule II or Schedule III.

Mayor Valdes-Fauli: And they don't enforce it.

Commissioner Lago: Yeah, they don't enforce.

City Attorney Leen: They don't enforce it because there's a memorandum from the Attorney -- from the Department of Justice saying that there is like eight -- I think it was approximately eight factors they look at. And just the routine use of medical marijuana is not something that they will enforce. However, it is still illegal, and the Administration could change that any time.

Commissioner Mena: So, yeah. I mean -- so, that would be my suggestion is to see if there's a way to skin it that way, because I share your concerns. I also had a lot of people contact me after that vote, and I was somewhat uncertain about it at the time. I felt like I was boxed into a corner, because of the...

Commissioner Lago: Senate Bill 8A.

Commissioner Mena: State stat -- because of the Senate bill. Because, yeah, right now sitting in here today, I think if it came up on second reading, I'd probably vote no.

Commissioner Lago: I think I'd vote no against myself, to be honest with you.

Mayor Valdes-Fauli: You want to make a motion?

Commissioner Lago: Oh, no. I mean, this is a discussion.

Mayor Valdes-Fauli: Yeah.

Commissioner Lago: I mean, what I would love -- what I would -- I mean...

Commissioner Quesada: You were on the prevailing side, so you can move to reconsider it.

Commissioner Lago: Yeah. It's not even...

Mayor Valdes-Fauli: Okay.

City Attorney Leen: What we want to know is when we bring it back on second reading or a new first reading, would you be okay with -- as long as we retain the ban based on federal law that we include in there language saying that we're going to change -- we're going to look at the pharmacy regulations and also that we're going to encourage the federal government to legalize this and emphasize again that we're not prohibiting the actual medicinal use of marijuana. Is that what you wanted, Commissioner, or did you want more than that?

Commissioner Lago: Well, I think I want more than that because I think it's -- I think even by -- I think we need to start from scratch. And, I'll be honest with you because if we vote -- and I'm happy Mike agrees with me, because I think if we take a stance that, you know, we vote on this on second reading, we're sending a message that we're -- even though we're voting no on Senate Bill 8A, because we're boxed into that corner and we have no other choice -- I advise everybody here -- I know everybody here is very smart, read. Read what you can, what you can find. Ask staff to educate you. Reach out -- I'd even tell you to reach out to some of the family members who really have a wealth of knowledge. Maybe we can do a zoning overlay. Maybe we can do like what Commissioner Mena stated. There's different options in the book. I've talked to

Ramon about it. I just think that we need to start from square one and really analyze what we want to provide here. When people talk about medical marijuana -- let me be clear. This is not somebody going out and smoking marijuana on a corner or -- that's not the way that it works. This is actual medicine that people get confused very easily. And, a lot of the people that use -- I don't have the exact figures. I read it in an article. A lot of them are children who are under the medical supervision of a trained physician and their parents. So -- and they see significant gains. So, I think we need to start from square one, and I mean, if you have anything else...

Commissioner Mena: I agree with you, and I...

Commissioner Lago: I would like that. I mean, but let's not rush into this. I already made that mistake once. I own up to it. Let's take a step back. Let's have our very capable staff work together. If we need -- maybe the Manager can aid us in this. Maybe if we need outside counsel -- maybe we need to hire somebody who is very well versed in regards to this issue. I want to do it right. I don't just want to say no or yes. I want to do something that benefits...

Vice Mayor Keon: Maybe we can place it in the...

City Attorney Leen: Commissioner...

Vice Mayor Keon: Public Safety Building.

City Attorney Leen: We've already -- just remember, we already have the comprehensive set of regulations. We did actually use Susan Trevarthen of...

Commissioner Lago: You did.

City Attorney Leen: Weiss Serota. We did put together a comprehensive set of regulations. They're already in existence. We have on top of that, an opinion that it's not allowed under federal law. And the current regulations say -- so, we basically have a ban right now.

Commissioner Lago: We have a...

City Attorney Leen: The one point I would make, though -- I just need to make this point. We have actual prohibited uses in the Zoning Code, which we don't allow. If we go forward and allow an illegal use, I just have to say that that can pose a lot of issues.

Commissioner Mena: But, I think we need to evaluate that and really understand...

City Attorney Leen: Yes.

Commissioner Mena: What the options are. And, I would just -- to your point about sort of starting from scratch. If -- okay, that's a big "if", because we still need to evaluate that -- but if there was an approach that involved looking at the zoning requirements for pharmacies, I would almost deal with that in a vacuum. I wouldn't view it as part of a medical marijuana ordinance. I would view it as a standalone regulation for pharmacies. That way, later on, Craig, if you're dealing with some sort of challenge on this issue, it's a standalone ordinance on pharmaceutical zoning in Coral Gables that you can then use as a tool to potentially add a little more control over where, you know, these could open.

Commissioner Lago: Like a...

Vice Mayor Keon: But, why would you regulate where pharmacies can go?

Commissioner Lago: Because Senate Bill 8A highlights that.

Vice Mayor Keon: Well, it may, but aside from that, when you say just a standalone, not even related to that, why would you want to regulate where pharmacies can go?

Commissioner Mena: Why not?

Vice Mayor Keon: Because, usually they serve neighborhoods and you put them in neighborhoods, like your dry cleaner or shoemaker...

Commissioner Mena: You're not saying no.

Vice Mayor Keon: Or whatever.

Commissioner Mena: Sure, but you're not saying no.

Vice Mayor Keon: But, why would you regulate them?

Commissioner Mena: Because it enables you to -- again, I just want to investigate the possibility. I'm not...

City Attorney Leen: This is not...

Commissioner Mena: Saying that...

City Attorney Leen: And this is not the Commission doing this.

Vice Mayor Keon: Yeah.

City Attorney Leen: The State has linked them...

Vice Mayor Keon: This is the State.

City Attorney Leen: By law.

Commissioner Mena: The State's the one that's linked them.

City Attorney Leen: So...

Vice Mayor Keon: But people...

City Attorney Leen: When you're allowing a pharmacy use, now you have to also realize that you're also allowing a medicinal marijuana use potentially. So, you know, one thing we had thought of was to try to make them conditional uses throughout the city, which would at least require that every one of them come to the Commission, and then you could impose any appropriate conditions of approval.

Commissioner Lago: Those...

City Attorney Leen: And I think that...

Commissioner Lago: Craig...

City Attorney Leen: You should consider that.

Commissioner Lago: Craig, that's an example of that creative thinking that -- you know, come back with examples of what other municipalities are doing. I know that that's being addressed throughout the state and in other states. I think there needs to be more in-depth review. And I'm for -- if you have to hire somebody, we have to get a consultant, if we're willing...

Commissioner Mena: That's a totally fair point by Commissioner Keon, by the way.

Unidentified Speaker: Great point.

Commissioner Mena: And, I'm not suggesting that we a hundred percent should do that. I'm just saying -- I'm just trying to explore how else we can skin...

Vice Mayor Keon: How we can do that.

Commissioner Mena: This.

Vice Mayor Keon: Yeah.

Commissioner Mena: Are there other options?

Vice Mayor Keon: Well, you know...

Commissioner Lago: But, the State leaves the door wide open when they just say where pharmacies are located as per zoning. So, they're leaving the -- they cracked the door open and say, you know, maybe we can use an overlay.

Vice Mayor Keon: I think the issues regarding crime were the concerns related to it being a cash business. I want to know if it still is a cash-only business because that was a -- I mean, that makes them subject to...

Commissioner Lago: And it's also a federal offense.

Vice Mayor Keon: People...

Commissioner Lago: It's also a federal offense when you...

Vice Mayor Keon: Well, it's a federal offense.

Commissioner Lago: Cross state lines, and that's also another part...

Vice Mayor Keon: Right, so I mean, there are a number of things here. But I have -- actually, I have two friends who have children with seizure disorders who their children use medical marijuana, but they seem to be able to obtain that medical marijuana. I actually don't -- I don't know how they do it. I really don't. I mean, I just know that their children do. I know that they obtain it for them. So, even if, you know, while we're looking at this, we're not denying people access to it.

Commissioner Lago: A hundred percent.

Vice Mayor Keon: Maybe denying access to it down the street or within a three-minute ride, but you're not denying access to it. So, I think it still seems to be available. You said it was delivered to someone's home. So, there still is an opportunity for people to obtain this. So, I think, as you go forward, you know, it's weighing those issues of -- that it is a federal crime, that is a cash business, you know, against -- you know, and yet, you're not denying anybody's ability to obtain it, but you may do harm to a community by allowing it only because of those other things or what may spring from that. So, I hope we go carefully, but it is -- I mean, there's a lot of people...

City Attorney Leen: Mr...

Vice Mayor Keon: That need it.

City Attorney Leen: So, Mr. Mayor, what I would suggest is that, based on what the Commission seems to be saying, that we withdraw the ordinance. And, as long as there's unanimous consent, I don't see any issue with that. And, then we'll take a look at all these issues. I would say that then, at this point, we'll continue enforcing our current regulations, which is it does allow -- you know, we did -- we do allow medical marijuana dispensaries, assuming federal law changed, in a very limited area in the North Gables. The one thing is if federal law did change, the thing you have to realize is if we don't -- we either have to just continue enforcing those regulations right now, which does allow them in a certain area of the city, and then we may have a claim made against us by someone who wants to put it anywhere in the city where a pharmacy could be put, and then we would defend the claim, based on home rule. We would argue that basically we have a comprehensive set of regulations. We have the authority to do it. The state gave us a Hobson's choice. We can't choose between the two, and it was wrong for them to do it, and we would assert all of our home rule arguments, you know. But, I do still suggest that we go forward with conditional use review for pharmacies or medical-related uses throughout the city.

Mayor Valdes-Fauli: What is your pleasure, Commissioner?

Commissioner Lago: No, I would -- just like the City Attorney said, I'd like to move forward.

Vice Mayor Keon: What is the ordinance that we're withdrawing?

City Attorney Leen: Well, it would be -- Commissioner...

Commissioner Lago: Straightforward.

City Attorney Leen: Lago sponsored an ordinance...

Vice Mayor Keon: Oh, oh, oh.

City Attorney Leen: And it's being -- we're not going to go forward with it.

Vice Mayor Keon: Okay, so what would -- the ordinance that was passed that limited it based on all of the other information would...

Mayor Valdes-Fauli: It is withdrawn, right.

Vice Mayor Keon: Stay in effect until we...

City Attorney Leen: Yes.

Commissioner Lago: Yes.

Vice Mayor Keon: Come up with something else.

City Attorney Leen: Yes.

Vice Mayor Keon: Oh, okay.

Mayor Valdes-Fauli: It is withdrawn, right.

Vice Mayor Keon: Okay.

Mayor Valdes-Fauli: Okay, all that's in favor?

The Commission (Collectively): Aye.

Mayor Valdes-Fauli: Opposed, likewise.