



**City of Coral Gables
CITY COMMISSION MEETING
November 18, 2014**

AGENDA ITEM NO. _____

ITEM TITLE:

Ordinance on Second Reading. Zoning Code Text Amendment.

1. An Ordinance of the City Commission of Coral Gables, Florida providing for text amendments to the City of Coral Gables Official Zoning Code: Amending Article 8, "Definitions" by providing definitions related to medical marijuana uses; Amending Article 4, "Zoning Districts", to restrict the location of medical marijuana uses; Amending Article 5 "Development Standards", by providing development standards for medical marijuana uses; Affirming that the City will only approve uses that are legal under federal and state law; providing for severability, repealer, codification, and an effective date.

Ordinance on Second Reading. City Code Text Amendment.

2. An Ordinance of the City Commission of Coral Gables, Florida providing for text amendments to the City of Coral Gables Official Code of Ordinances: amending Chapter 14, "Businesses", by creating Article V. "Marijuana Sales", to provide regulations, restrictions and procedures for the operation of Medical Marijuana Retail Centers; Amending Section 38-6, to prohibit the public consumption of marijuana; Affirming that the City will only approve uses that are legal under federal and state law; providing for severability, repealer, codification, and an effective date.

Resolution. Medical Marijuana Permit Fee.

3. A Resolution of the City Commission of Coral Gables amending Resolution No. 2013-89, known as the Fee Ordinance, by adding a Medical Marijuana Permit Fee in accordance with Section 14-162 of the City of Coral Gables Official Code of Ordinances; affirming that the City will only approve uses that are legal under Federal and state law; and providing for an effective date.

DEPARTMENT HEAD RECOMMENDATION:

Approval.

PLANNING AND ZONING BOARD RECOMMENDATION:

The Planning and Zoning Board at their 10.08.14 meeting recommended approval of the proposed Zoning Code text amendment (vote: 7-0).

BRIEF HISTORY:

On October 28, 2014, the City Commission approved the proposed Zoning Code text amendments (vote: 4-1) and City Code text amendments (vote: 4-1) on first reading.

RECENT REFERENDUM DEVELOPMENT

On November 4, 2014, Amendment 2, the constitutional amendment to allow the use of marijuana for certain medical conditions in the State of Florida, although had majority support of 57.58%, did not gain the required 60% to pass referendum. Supporters of the referendum anticipate reintroducing the item

again in 2016. To address the possibility of the referendum being reintroduced and approved or the federal and state law on this topic to change in the future, staff requests to move forward on Second Reading of the proposed Ordinances. It should be noted that the Ordinances are still applicable to Senate Bill 1030 that is explained in more detail later in the report.

ZONING ORDINANCE CHANGE SINCE FIRST READING

At the Planning and Zoning Board meeting, staff requested consideration to apply the 1,000 foot distance separation between Medical Marijuana Retail Centers not only inside but also outside the city limits. The premise is that if a similar one exists within 1,000 feet just outside the city limits, it would preclude one from being located in the city. The staff's request ultimately was not made part of the Board's motion of approval. Staff is presenting this change to the Second Reading of the proposed Zoning Ordinance at lines 189-193 for the Commission's consideration, as it is consistent with the City Commission's directive to make the regulations as restrictive as possible.

BACKGROUND

In June, the Governor signed Senate Bill 1030, codified in Florida Statutes, Section 381.986, which legalized the use of a non-euphoric, Low-THC cannabis/marijuana for limited medical use by Florida residents. Regardless of the approved use of marijuana under Florida law or the potential change to the Florida Constitution, the Federal Controlled Substances Act (CSA) expressly prohibits the production, distribution and use of marijuana, for medical or recreational purposes. Under the principle of federal supremacy, the CSA is still effective and the Federal Government can still enforce it throughout the country – regardless of state regulations, constitutions or referendums allowing the use of marijuana.

The existing State legislation, proposed Amendment and their interaction with Federal law were reviewed by the City Commission at its September 23, 2014 Commission Meeting. At that time the Commission directed the City Manager to move forward with development of strict regulatory options.

Two Ordinances are proposed, both of which provide that no uses will be permitted unless they are allowed under state AND federal law. Specifically, the City will not allow any Medical Marijuana Permit be issued or Conditional Use to be approved unless the City Attorney renders a written opinion that such use is lawful under both state and federal law. (Lines 307 and 308 of the Zoning Ordinance; and Lines 126 through 128 and Lines 252 and 253 of the Business License Ordinance.) The first Ordinance addresses zoning, use and location requirements. The second Ordinance provides business regulations which would be applicable in the event that federal law changes to allow marijuana related uses. The two proposed Ordinances are discussed below.

PROPOSED ZONING ORDINANCE

The attached Ordinance amends the City's Zoning Code to provide definitions and land use regulations which will address the location of medical marijuana uses in the City.

First, it is important to note that the proposed Ordinance affirms the City's commitment to the enforcement of federal and state law. Section 4 of the Ordinance specifically identifies that Medical Marijuana Retail Centers will not be approved until they are legal under state and federal law. So why should the City adopt an ordinance now? Adopting the regulations send a clear signal to the industry and the public of the City's position on the use, and allows the City to be prepared with a zoning strategy as

the legal environment changes over time. The language in lines 159 and 309-310 of the proposed ordinance allows for a Medical Marijuana Retail Center ONLY if that use is permitted under state AND federal law. Thus, given the current prohibition under the federal Controlled Substances Act, the use would not be permitted. If Federal law ultimately legalizes the use, the City's regulations will immediately provide regulatory guidance and protection.

The proposed Ordinance will allow only for a "Medical Marijuana Retail Center" subject to a limited, two-year conditional use approval by the City Commission. All other related uses, including cultivation, processing, storage, on-site consumption, etc., are prohibited under the Ordinance.

Under the proposed Ordinance, the use must:

- Be located only in the Commercial (C) Zoning District;
- Be located outside of the Central Business District (CBD);
- Be located at least 500 feet from a SFR or MF1 Zoning District;
- Be located at least 1,000 feet from any other Medical Marijuana Retail Center;
- Be located at least 1,000 feet from an elementary, middle or secondary school, child day care facility, county or municipal park, or place of worship;
- Obtain conditional use approval from the City Commission which must be renewed every two years; and
- Provide on-site parking at 1 space per 150 square feet of floor area plus one (1) space per Full Time Employee (FTE) and 1 space for every two (2) Part Time Employees (PTE).

In addition to the City Code's standard public hearing notice to property owners within 1,000 feet of the property, the proposed Ordinance also requires that the applicant provide notice to *tenants* within 1,000 feet of the property for all conditional use public hearings. Other provisions include specific application requirements, and grounds for revocation and transfer of a conditional use approval.

The Planning and Zoning Board reviewed the Ordinance and recommended approval by a vote of 7-0.

PROPOSED BUSINESS REGULATION ORDINANCE

This Ordinance also restricts marijuana related uses as prohibited under federal law. The Ordinance requires a Medical Marijuana Retail Center to obtain, annually a Medical Marijuana Permit, but allows for the issuance of a Medical Marijuana Permit ONLY if the use is permitted under state AND federal law (lines 125 and 126). The business regulations will include, among other requirements:

- A requirement that a Medical Marijuana Retail Center obtain an annual Medical Marijuana Permit annually;
- Applicant, owner and employee Level 2 background screening requirements;
- Extensive security requirements, including
 - Operations plan
 - Video
 - Display and storage security planning requirements
 - Cash storage and protection planning requirements
 - Alarm system
 - Implementation of Police Crime Prevention Through Environmental Design Review

(CPTED) standards

- On-site security 24-hours a day, 7 days a week
- Limited hours of operation;
- A prohibition of on-site consumption of marijuana or alcohol;
- Performance-based standard for odor mitigation, including double doors and air filtration/scrubbing system;
- Signage controls;
- Increased maintenance of the business premises and surrounding areas; and
- Grounds for revocation of the Medical Marijuana Permit.

Section 3, at Line 509 of the Ordinance, prohibits the public consumption of marijuana, in any form. Finally, Section 4 of the Ordinance, at Line 513, reiterates the City's commitment to the enforcement of federal and state law and specifically identifies that Medical Marijuana Retail Centers will not be approved until they are legal under state and federal law.

PROPOSED MEDICAL MARIJUANA PERMIT FEE RESOLUTION

A proposed Certificate of Use application fee for a Medical Marijuana Permit is proposed at \$1,000, with a \$500 application fee for annual renewal, to cover the administrative costs for such applications. The approval of this application will result in a Medical Marijuana Permit for the Medical Marijuana Retail Center. It should be noted that since the proposed Business Regulation Ordinance entails significantly more levels of review and processes for this type of use, a higher than the typical \$114.19 Certificate of Use fee and \$76.13 renewal fee is justified.

The current conditional use application fee of \$11,418.75 plus advertising fee would also apply to this use for zoning approval. Further, the Local Business Tax for a Medical Marijuana Retail Center would fall under Category 16300 "Merchant" of the current fee schedule, which charges \$156.00 for the first \$1,000 of inventory and \$13.50 for each additional \$1,000 of inventory. No changes are proposed with respect to those existing fees.

The draft Ordinances in ~~strike-through~~/underline format showing the proposed amendments is provided as Exhibits A and B. The draft Resolution is provided as Exhibit C. Staff's report and recommendation with attachments is provided as Exhibit D, and the comments and issues discussed by the Board at the meeting are presented in the meeting minutes provided in Exhibit E. A revised map depicting areas affected by the proposed Ordinance is provided as Exhibit F.

LEGISLATIVE ACTION:

Date:	Resolution/Ordinance No.	Comments
10.28.14	Ordinances	Approved proposed Zoning Code text amendments (vote: 4-1) and City Code text amendments (vote: 4-1) on first reading.

OTHER ADVISORY BOARD/COMMITTEE RECOMMENDATION(S):

Date	Board/Committee	Comments (if any)
10.08.14	Planning and Zoning Board	Recommended approval of the proposed Zoning Code text amendment (vote: 7-0).

PUBLIC NOTIFICATION(S):

Date	Form of Notification
09.23.14	Legal advertisement.
10.03.14	Post agenda at City Hall.
10.03.14	Posted agenda, staff report, legal notice and all attachments on City web page.
10.17.14	Advertisement of Ordinance headings.
10.17.14	Advertisement of legal ad with map.
11.07.14	Advertisement of Ordinance headings.
11.07.14	Advertisement of legal ad with map.

APPROVED BY:

Department Director	City Attorney	City Manager

EXHIBIT(S):

- A. Draft Ordinance – Zoning Code text amendment.
- B. Draft Ordinance – City Code (Business License) text amendment.
- C. Draft Resolution – Resolution (Business License Fee)
- D. Map depicting areas affected by the proposed Ordinance.