

Meeting Date
July 11, 2017



AGENDA	
Section	Unf. Business
Item No.	V B

AGENDA REPORT

BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Medical Marijuana ordinance		
DEPT/OFFICE:	County Attorney		
Requested Action:	Request Board direction on whether to draft a medical marijuana ordinance that either 1) bans dispensaries altogether or 2) that provides location criteria for dispensaries tracking location criteria mirroring location criteria for pharmacies, along with a public hearing process allowing dispensaries less than 500 feet from a school.		
Summary Explanation & Background:	<p>The County Attorney seeks the direction of the Board regarding Medical Marijuana Amendment 2 legislation.</p> <p>On June 9th, 2017, the Senate passed Senate Bill 8A which, if signed into law, would amend existing medical marijuana law. Senate Bill 8A provides additional restrictions relating to the operation of medical marijuana treatment centers and also limits county and municipal home rule power as it relates to these facilities.</p> <p>Among other things, Senate Bill 8A restricts the number of dispensing facilities a licensed medical marijuana treatment center is able to operate throughout the state, mandates security system requirements for facilities, and regulates the sort of advertisements that MMTCs are allowed to place. Regulation of cultivation, processing, and delivery of marijuana by medical marijuana treatment centers is preempted to the state.</p> <p>Senate Bill 8A allows the Board to ban dispensing facilities from locating to the unincorporated area of the county. However, if dispensing facilities are to be allowed within unincorporated Brevard County, the Board is prohibited from placing specific limits, by ordinance, on the number of dispensing facilities that may locate within unincorporated Brevard County.</p> <p>If the Board elects to allow dispensing facilities within unincorporated Brevard County, Senate Bill 8A prohibits dispensing facilities from being located within 500 feet of a public or private school. However the Board, after a formal hearing, may allow a dispensing facility within 500 feet of a public or private school if the Board determines that the location promotes the health, safety, and general welfare of the community.</p> <p>The Board retains the power to pass ordinances containing criteria for location and other permitting requirements that do not conflict with state law. However, the Board may not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies.</p> <p>The options would be:</p> <ol style="list-style-type: none"> 1) Draft ordinance banning dispensaries in the unincorporated area of the County. 2) Draft ordinance mirroring location criteria for pharmacies and providing a hearing process for locations less than 500 feet from a school. 3) Take no action. <p>FISCAL IMPACT: None known Contact Person: Scott Knox Phone: 321-633-2090</p>		
Clerk to the Board Instruction:			
Exhibits Attached:	CAO Report - Senate Bill 8A		
Contract / Agreement (if attached):	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
County Manager's Office	County Attorney	PR <input type="checkbox"/>	
Frank Abbate, Interim County Manager	Scott Knox, County Attorney, 321-633-2090 		



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

July 12, 2017

M E M O R A N D U M

TO: Scott Knox, County Attorney

RE: Item V.B., Medical Marijuana Ordinance

The Board of County Commissioners, in regular session on July 11, 2017, authorized you to draft an ordinance for medical marijuana facilities to be in a BU-1 zoning classification and to be the same as pharmacies.

Your continued cooperation is greatly appreciated.

Sincerely yours,

**BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK**

Tammy Rowe

Tammy Rowe, Deputy Clerk

/cmw

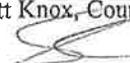
ADD ON

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Frank Abbate, Interim County Manager	Scott Knox, County Attorney, 321-633-2090 		



BOARD OF COUNTY COMMISSIONERS

County Attorney's Office
2725 Judge Fran Jamieson Way
Building C, Room 308
Viera, Florida 32940

Intra-Office Memo

TO: Scott Knox, County Attorney
FROM: Matthew Soss, Assistant County Attorney
SUBJECT: Senate Bill 8A
DATE: 6/12/2017

On June 9th, 2017, the Senate passed Senate Bill 8A which, if signed into law, would amend existing medical marijuana law. Senate Bill 8A provides additional restrictions relating to the operation of medical marijuana treatment centers and also limits county and municipal home rule power as it relates to these facilities.

Among other things, Senate Bill 8A restricts the number of dispensing facilities a licensed medical marijuana treatment center is able to operate throughout the state, mandates security system requirements for facilities, and regulates the sort of advertisements that MMTCs are allowed to place. Regulation of cultivation, processing, and delivery of marijuana by medical marijuana treatment centers is preempted to the state.

Senate Bill 8A allows the Board to ban dispensing facilities from locating to the unincorporated area of the county. However, if dispensing facilities are to be allowed within unincorporated Brevard County, the Board is prohibited from placing specific limits, by ordinance, on the number of dispensing facilities that may locate within unincorporated Brevard County.

If the Board elects to allow dispensing facilities within unincorporated Brevard, Senate Bill 8A prohibits dispensing facilities from being located within 500 feet of a public or private school. However the Board, after a formal hearing, may allow a dispensing facility within 500 feet of a public or private school if the Board determines that the location promotes the health, safety, and general welfare of the community.

The Board retains the power to pass ordinances containing criteria for location and other permitting requirements that do not conflict with state law. However, the Board may not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies.

Sec. 62-1482. - General retail commercial, BU-1.

The BU-1 general retail commercial zoning classification encompasses land devoted to general retail shopping, offices and personal services to serve the needs of the community. Where this zoning classification is presently located or is proposed to be located adjacent to the lagoonal water edge or fronts on the ocean, water-dependent uses such as fish, shellfish and wildlife production, recreation, water-dependent industry and utilities, marinas and navigation shall have the highest priority. The next highest priority for uses along the waterfront include water-related uses such as utilities, commerce and industrial uses. Water-enhanced uses such as restaurants and tourist attractions shall have the next highest use priorities. Of lowest priority are those uses which are nonwater-dependent and nonwater-enhanced, and those which result in an irretrievable commitment of coastal resources.

(1)

Permitted uses.

a.

All business uses and all material and products shall be confined within substantial buildings completely enclosed with walls and a roof; however, retail items of substantial size or which of necessity must remain outside of a building may be permitted to be displayed outside the buildings. Such retail items include but are not limited to motor vehicles, utility sheds, nursery items such as plants and trees, and boats.

b.

The following uses, or other uses of a similar nature compatible with the character of the uses specifically described in this subsection, are permitted, and shall be limited to retail only: Administrative, executive and editorial offices.

Antique shops.

Aquariums.

Art goods and bric-a-brac shops.

Artists' studios.

Auditoriums.

Automobile hire.

Automobile parts, if confined within a structure.

Automobile repairs, minor (as defined in [Section 62-1102](#)).

Automobile sales and storage, provided sales are from a permanent structure and the storage area meets the requirements of article VIII of this chapter, pertaining to site plans, and article XIII, division 2, of this chapter, pertaining to landscaping.

Automobile tires and mufflers (new), sales and service.

Automobile washing.

Bait and tackle shop.

Bakery sales, with baking permitted on the premises.

Banks and financial institutions.

Barbershops and beauty parlors.

Bed and breakfast inn.

Bicycle sales and service.

Billiard rooms and electronic game arcades (soundproofed).

Bookstores.

Bowling alleys (soundproofed).

Cafeterias.

Ceramics and pottery; finishing and sales; no production or firing except accessory to on site sales only.

Civic, philanthropic or fraternal organizations.

Coin laundromats.

Colleges and universities.

Commercial schools offering instruction in dramatic, musical or other cultural activity, including martial arts.

Confectionery and ice cream stores.

Conservatories.

Contractors' offices, with no outside storage.

Convenience stores, with or without gasoline sales.

Curio shops.

Dancing halls and academies (soundproofed).

Child or adult day care centers.

Display and sales rooms.

Dog and pet hospitals and beauty parlors, with no outside kennels or runs.

Drug and sundry stores.

Dyeing and carpet cleaning.

Electrical appliance and lighting fixtures.

Employment agencies.

Fraternities and sororities.

Florist shops.

Foster homes.

Fruit stores (packing on premises).

Funeral homes and mortuaries.

Furniture stores.

Furriers.

Gift shops.

Grocery stores.

Group homes, levels I and II.

Hardware stores.

Hat cleaning and blocking.

Hobby shops.

Hospitals.

Interior decorating, costuming and draperies.

Jewelry stores.

Laboratories.

Laundries.

Lawn mower sales.

Leather good stores.

Luggage shops.

Mail order offices.

Meat, fish and seafood markets.

Medical buildings and clinics, and dental clinics.

Messenger offices.

Millinery stores.

Motorcycle sales and service.

Music, radio and television shops and repairs.

Newsstands.

Nursing homes.

Optical stores.

Paint and wallpaper stores.

Parking lots (commercial).

Parks and public recreational facilities.

Pawnshops.

Pet shops, with property enclosed to prevent any noxious odors.

Photograph studios and galleries.

Plant nurseries (no outside bulk storage of mulch, topsoil, etc.).

Post offices.

Printing services.

Professional offices and office buildings.

Resort dwellings.

Restaurants.

Sale of alcoholic beverage, package only.

Schools for business training.

Schools, private or parochial.

Shoe repair shops.

Shoe stores.

Single-family residence.

Soft drink stands.

Souvenir stores.

Stationery stores and bookstores.

Tailor shops.

Tearooms.

Telephone and telegraph stations and exchanges.

Television and broadcasting stations, including studios, transmitting stations and towers and other incidental uses usually pertaining to such stations.

Theaters, but no drive-ins.

Ticket offices and waiting rooms for common carriers.

Tobacco stores.

Upholstery shops.

Wearing apparel stores.

Worship, places of.

c.

Permitted uses with conditions are as follows (see division 5, subdivision II, of this article):

Assisted living facility.

Automobile and motorcycle repair (major) and paint and body work.

Boat sales and service.

Cabinetmaking and carpentry.

Dry cleaning plants, accessory to pickup stations.

Farm machinery sales and service.

Gasoline service stations.

Manufacturing, compounding, processing, packaging, storage, treatment or assembly of certain products.

Outdoor restaurant seating.

Outside sale of mobile homes.

Preexisting use.

Substations, and transmission facilities.

Security mobile home.

Self storage mini-warehouses.

Tourist efficiencies and hotels and motels.

Treatment and recovery facility.

(2)

Accessory buildings or uses. Accessory buildings and uses customary to commercial and residential uses are permitted. (Refer to definition cited in section 62-1102 and standards cited in section 62-2100.5). Additional accessory uses are as follows:

a.

Completely enclosed lumber sales are permitted as an accessory use to hardware and supply stores.

b.

A roadside stand used as provided in chapter 86, article IV, is permitted as an accessory use.

(3)

Conditional uses. Conditional uses are as follows:

Alcoholic beverages for on-premises consumption.

Change of nonconforming agricultural use.

Commercial entertainment and amusement enterprises (small scale and large scale).

Commercial/recreational and commercial/industrial marinas.

Land alteration (over five acres and up to ten acres).

Performance Overlay Districts.

Plant nurseries (with outside bulk storage of mulch, topsoil, etc.)

Security mobile home.

Substantial expansion of a preexisting use.

Trailer and truck rental.

Wireless telecommunication facilities and broadcast towers.

(4)

Minimum lot size. Except for gasoline service stations, an area not less than 7,500 square feet is required, having a width and depth of not less than 75 feet.

(5)

Setbacks.

a.

Generally.

1.

Gasoline Service Station setbacks in this zoning classification shall be governed by section 62-1835.7.

2.

The front setback shall be 25 feet from the front lot line.

3.

The rear setback shall be 15 feet from the rear lot line. However, if the rear lot line abuts a dedicated 20-foot alley or roadway, the setback shall be five feet.

4.

Side Setbacks:

a.

Where a side lot line abuts a residential zone, such side setback shall be a minimum of 15 feet.

b.

Where a side lot line abuts a non-residential zone, such side setback shall be 5 feet.

c.

Where a side lot line abuts a combination of commercial, industrial or residential zonings, the respective side setbacks as stated in a. or b. above shall apply to the affected side yard area.

d.

Where a 20 foot dedicated alleyway or roadway exists adjacent to or abutting the rear lot line, and the zoning adjacent to the side yard area is non-residential, no side setback is required when a three hour firewall is constructed along the side lot line. However, where the side lot line abuts a residential zone on that side, the minimum side setback shall be 15 feet.

e.

Notwithstanding the requirements of section 5(a)(4)(b) above, where a 20-foot dedicated alleyway or roadway does not exist adjacent to or abutting the rear lot line, lots whose sides abut non-residential zonings may utilize a ten-foot paved driveway setback along one side and a zero foot setback on the other provided a three-hour firewall is constructed where the building is proposed within five feet

of the side property line. However, where the side lot line abuts a residential zone on that side, the minimum side setback shall be 15 feet.

f.

On a corner lot, the side street setback shall be 15 feet. If a corner lot is contiguous to a key lot, then the side street setback shall 25 feet.

5.

Within the Merritt Island Redevelopment Area. On all lots in the Merritt Park Place Subdivision except corner lots, structures shall be set back not less than 15 feet from the front lot line where parking is located to the side or rear of the principal structure. Otherwise, all other provisions as described above shall apply.

b.

Breezeway/visual corridor. All riverfront and oceanfront properties are subject to breezeway/visual corridor regulations enumerated in section 62-2105.

(6)

Minimum floor area. All structures shall contain a minimum of 300 square feet of floor area.

(7)

Structural height standards.

a.

Where the property abuts any other land located in the GU, AGR, AU, ARR, REU, RU-1-7, RU-1-9, RU-1-11, RU-1-13, RR-1, EU, EU-1, EU-2, SEU, SR, RVP, TR-1-A, TR-1, TR-2, TR-3, TRC-1, RRMH-1, RRMH-2.5, RRMH-5, EA, PA or GML zoning classification, the maximum height threshold of any structure or building thereon shall be 35 feet.

b.

Where the property abuts any other land located in the RA-2-4, R-2-6, RA-2-8, RA-2-10, RU-2-4, RU-2-6, RU-2-8, RU-2-10, RU-2-12, RP or BU-1-A zoning classification, the maximum height threshold of any structure or building thereon shall be 45 feet.

c.

Where the property abuts any other land located in the RU-2-15, RU-2-30, BU-1, BU-2, PIP, PBP, IU, IU-1, TU-1 or TU-2 zoning classification, the maximum height threshold of any structure or building thereon shall be 60 feet.

d.

Where any structure or building exceeds 35 feet in height, all conditions enumerated in section 62-2101.5 as applicable shall be fully satisfied.

e.

Structures or buildings may not exceed the maximum height thresholds stated in this subsection unless otherwise permitted by section 62-2101.5.

(8)

Fencing and buffering. See article XIII, division 2, of this article, pertaining to landscaping.

(9)

Metal buildings. Metal buildings shall be permitted in this zoning classification subject to the restrictions presented in section 62-2115.

(10)

Maximum floor area ratio. The floor area ratio shall be governed by section 62-2110.

Knox, Scott L

From: Knox, Scott L
Sent: Friday, June 30, 2017 3:38 PM
To: Prasad, Billy
Cc: Woodard, Patrick; Newell, Marcia; Alward, Elizabeth M; Goude-lock, Margaret; Calkins, Tad; Barfield, Jim; Isnardi, Kristine; Pritchett, Rita; Smith, Curt; Tobia, John
Subject: RE: Marijuana Ordinance

Billy:

Since MMTCs are not listed specifically as a permitted use in the zoning regulations, per Cindy Fox, the Zoning department would classify an MMTC as retail commercial under BU-1 zoning—which is how pharmacies are classified even though pharmacies are not specifically listed as a permitted use. Put another way, the county's position would be that MMTCs—like any other retail commercial use that is not specifically listed in the BU-1 zoning classification, the MMTC would fall under that zoning classification by virtue of the retail business it conducts. That would be the County view of the “no action option.”

However, a litigious company or individual with standing could take the position that the wording of the law requires the specific adoption of a regulatory ordinance to establish any regulations applicable to an MMTC and that, absent a duly adopted zoning regulation specifically regulating the zoning classifications in which MMTCs (and pharmacies) can be located, the MMTC can locate anywhere in the county, subject only to the 500 foot separation from a school requirement imposed by state law. The remedy for that scenario is to enact an ordinance that, at a minimum, permits MMTCs (and pharmacies) in BU-1 retail commercial zoning district.

Another option would be to enact a temporary ban of MMTCs in the unincorporated area pending adoption of new regulations regulating both pharmacies and MMTCs. Although ambiguous language in the statute leaves open the possibility that the ban could be imposed countywide, an attempt to do so would likely be met with litigation and a legislative fix at the next session of the Legislature—at least according to the Florida Association of Counties, Continuing Legal Education presentation on the medical marijuana legislation.

Incidentally, one area the legislature did not preempt is compliance with fire and building codes, including local amendments to those codes. At the FACA CLE conference, the point was made that the process for extracting THC from marijuana is very similar to that used in meth houses, which have been known to catch fire or explode under certain circumstances. Some local jurisdictions are looking at amending their fire codes to deal with this issue.

Scott L. Knox, Brevard County Attorney
2725 Judge Fran Jamieson Way
Melbourne, FL 32940
(321) 633-2090

The State of Florida has a broad public records law and a request made under the authority of that Public Records law may require the disclosure and copying of any email sent to this office unless exempt, privileged or confidential under state law .

From: Prasad, Billy
Sent: Friday, June 30, 2017 12:18 PM
To: Knox, Scott L
Cc: Boatwright, Ashley
Subject: Marijuana Ordinance

Mr. Knox,

What would be the effect on the Board taking no action on MMTCs? Would they be given even more lax requirements than pharmacies, essentially treating them like other similarly-situated businesses?

Thanks,

Billy M. Prasad
Chief of Staff/Legal Analyst to Commissioner Tobia, District 3
Billy.Prasad@BrevardFL.gov
(321) 633-2075
2725 Judge Fran Jamieson Way, Bldg. C - Suite 201
Viera, FL 32940

Please note:

Florida has a very broad public records law. Most written communications to or from the offices of elected officials are public records available to the public and media upon request. .Your email communications may therefore be subject to public disclosure.