



# NEIGHBORHOOD DEVELOPMENT SERVICES DEPARTMENT

*Planning Division*

## STAFF REPORT

### Low-THC and Medical Cannabis Regulations Ordinance 2017-11 (TXT-17-062)

Dispensing Facilities Amendments.

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**To:** Planning & Zoning Advisory Board

**Thru:** Scott Williams, Neighborhood Development Services Director

**From:** Nicole Galehouse, Interim Planning Manager

**Date:** August 7, 2017, amended August 22, 2017 & September 27, 2017

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#### **I. GENERAL INFORMATION**

**Project:** Petition No. TXT-17-062, Ordinance No. 2017-11, Updating code language related to cannabis dispensing facilities and medical marijuana treatment centers to be consistent with Florida Constitution Article X, Section 29 and 2017 Senate Bill 8-A by amending Unified Land Development Code Section 25-17 off-street parking regulations, Unified Land Development Code Section 53-254 special exception provisions, and Administrative Code Section 34-40 relating to business tax receipts.

**Request:** Approval of Ordinance No. 2017-11

**Applicant:** City of North Port

**Owner(s):** N/A

**Location:** Citywide Ordinance

**Property Size:** N/A

#### **II. BACKGROUND**

On November 22, 2016, the City Commission of the City of North Port adopted Ordinance No. 2016-33, which amended the City of North Port Unified Land Development Code to allow for medical cannabis dispensing facilities to locate within the City of North Port provided they meet the requirements of the ordinance. An amendment was made to the motion, at the adoption hearing, to add a requirement for an 800-foot buffer between any proposed medical cannabis dispensing facility and a residential property. City Commission directed staff to perform an analysis on the impact of this buffer and to return with an update. Staff was also directed to provide an update regarding the section of the ordinance that discusses lease requirements and

to provide information regarding the regulations in cities which already have a medical cannabis dispensing facility located in their boundaries.

Upon conducting the analysis, staff found that the 800-foot buffer added during the adoption hearing was severely limiting to the potential for placement of these facilities. Several scenarios were presented to the City Commission on April 4, 2017, providing options to create greater flexibility for this use. After discussion, City Commission directed staff to remove the 800 foot residential buffer and to reduce the buffer around schools, daycares, and churches from 1500 feet to 800 feet. Direction was also given to remove the restriction on the number of facilities permitted in each Activity Center and the number of facilities citywide.

The research conducted on the lease requirements throughout the City showed that no other use is required to include lease language that would allow for non-compliance with City codes to be a breach of the lease. To maintain consistency, City Commission directed staff to remove this language from the code language for medical cannabis dispensing facilities.

While going through this process, staff was closely monitoring the progress of proposed statutory regulations related to Article X, Section 29 of the Florida Constitution. A bill was being considered by the Florida Legislature for these regulations, which would have included Medical Marijuana Treatment Centers (MMTCs), as defined in Article X, Section 29, in Florida Statutes Section 381.986, which currently regulates Dispensing Organizations. However, on the final day of session, the House of Representatives and Senate were not able to agree on these regulations and the bill died.

During the special session convened by the Governor in early June to address the budget, a Senate Bill 8-A was introduced to implement Article X, Section 29. This new bill completely changed the preemption language as it relates to local authority. Regulation of the cultivation, processing, and delivery remained entirely preempted to the State. The new Statute language requires them to maintain a 500-foot separation from schools. The major changes in the preemption language came in terms of the dispensing facilities. Local governments are now given the option to ban dispensing facilities, however if they choose not to they may not impose limits on the number of dispensing facilities. Local governments are allowed to regulate criteria for the location of and other permitting requirements for dispensing facilities, provided that any regulations imposed are not more restrictive than those applied to retail pharmacies. The new Statute language requires the dispensing facilities to maintain a 500-foot separation from schools.

Senate Bill 8-A passed in the House and Senate on June 9, 2017 and was signed into law by the Governor on June 23, 2017.

### **III. STAFF RECOMMENDATION**

Staff recommends approval of the amendments to the Unified Land Development Code, Chapter 25 Parking and Loading Regulations, Article II Off-Street Parking, Section 35-17.B Minimum Off-Street Parking Requirements; Chapter 53 Zoning Regulations, Article XXII Special Exceptions,

Section 53-254 General Provisions, Subsection A(1)(g) Dispensing Facilities; and amendments to the Administrative Code of the City of North Port Chapter 34 Licenses, Permits and Miscellaneous Business Regulations, Article II Business Tax Receipts, Section 34-40 Dispensing Facilities.

**IV. SITE INFORMATION**

**Land Use**

**Adopted Future Land Use Map Designation:** City-wide

**Adopted Zoning Map Designation:** City-wide

**Existing Land Use(s):** City-wide

**Surrounding Land Uses:** City-wide

**Services and Facilities**

**Potable Water or Well:** N/A

**Sanitary Sewer or Septic:** N/A

**Transportation:** N/A

**Environmental**

**Conservation:** N/A

**Flood Zone:** N/A

**Fiscal Impact**

Not Applicable

No Impact

Fiscal Impact Confirmed

**V. STAFF ANALYSIS**

Due to the drastic changes to the preemption language that was signed into law (Chapter 2017-232, Laws of Florida), the direction provided by Commission in April is no longer able to be executed. At this point, the City simply needs to amend the Administrative Code and the Unified Land Development Code for two purposes – to update language for consistency and to comply with the new regulations provided in Chapter 2017-232, Laws of Florida.

To ensure that all potential types of facilities are covered under this code, the term “dispensing facility” has been replaced with “Medical Marijuana Treatment Center, or MMTC”. The definitions in Chapter 61 have been amended to include definitions for “Medical Marijuana Treatment Center” and “Medical Marijuana.” It is important to note that the definition for MMTC includes dispensing facilities as previously defined in this Chapter, ensuring that both terms will be covered by these regulations.

The term dispensing facility is also in the business tax receipts requirements of the Administrative Code, Section 34-40 Dispensing facilities. This section is also being updated to reflect the change in terminology and maintain consistency throughout the code.

Chapter 53 Zoning Regulations will need to be amended to remove the requirement for a dispensing facility to proceed using the special exception process. The new law requires that dispensing facilities be regulated no stricter than a pharmacy. Currently, the City does not have any specific requirements for the siting of pharmacies, and simply allows them to locate as a retail use. Requiring a dispensing facility to go through the special exception process would be more stringent than what is required of a pharmacy, and therefore must be removed from the ULDC as it is contradictory to State law. Additionally, there is no separate parking requirement for pharmacies, so the parking requirement for dispensing facilities in Chapter 25 Parking and Loading Regulations, Section 25-17.b Off-Street Parking Requirements must also be removed.

The Planning and Zoning Advisory Board heard this item at a regularly scheduled meeting on August 17, 2017. There was very minimal discussion on this item. A concern was raised regarding the potential future transformation of MMTCs into facilities that will distribute marijuana for recreational use and about the State's removal of home rule. It was stated that if the City now has the option to ban, it should consider exercising that choice. Counter discussion was raised that an overwhelming number of citizens in the State of Florida voted to support Amendment 2, and that the City has an obligation to implement the will of the people. The board voted 4 to 1 to recommend that the City Commission approve this item.

This item was heard for first reading on September 26, 2017. During this meeting, staff identified that the definitions in the Ordinance were in the ULDC, while all references to these definitions were in the Administrative Code. Staff recommended striking the new definitions from the Ordinance and instead adding a clause to the remaining language in Sec. 34-40 that refers to the definitions provided in Florida Statutes and the State Constitution. Commission approved the continuation of the Ordinance with the recommended amendments to the October 10, 2017 meeting for second reading and adoption.

The proposed amendments to Chapters 25, 53, and 61 of the Unified Land Development Code and Chapter 34 of the Administrative Code would meet the following goals, objectives and policies:

**Future Land Use Goals, Objectives, and Policies:**

**GOAL 1:** Ensure that the character and location of land uses maximize the potential for economic benefit and the enjoyment of natural and man-made resources by citizens while minimizing the threat to health, safety and welfare posed by hazards, nuisances, incompatible land uses, and environmental degradation.

**Objective 1:** Future development activities shall continue to be directed in appropriate areas as depicted on the Future Land Use Map, and shall encourage the use of innovative land

development regulations, consistent with sound planning principles, minimal natural limitations, the goals, objectives and policies contained within this plan, and the community character.

**GOAL 2:** To promote an intensive mixture of employment, goods and services, and residential uses in Activity Centers; to promote a wide variety of residential and employment alternatives; to achieve the highest standards of quality in the urban environment; and to provide a balanced and healthy tax base.

**Objective 5:** Future growth and development will be managed through the preparation, adoption, implementation, and enforcement of land development regulations.

**VI. REVIEW PROCESS**

Staff reviewed this petition for a Text Amendment and found this petition is consistent with the City’s Comprehensive Plan. The City Attorney reviewed and approved Ordinance 2017-11 as to form and correctness.

**VII. PUBLIC NOTICE**

The petition was advertised in a newspaper of general circulation within the City of North Port on August 2, 2017, September 21, 2017, and September 30, 2017 pursuant to the provisions of Section 166.041(3)(a), Florida Statutes and Section 9.01(b) of the Charter of the City of North Port, and Chapter 1 Article II, Section 1-12 of the City’s Unified Land Development Code (ULDC) as amended (**Exhibit A**).

**VIII. PUBLIC HEARING SCHEDULE**

<b>Planning and Zoning Advisory Board Public Hearing</b>	August 17, 2017 9:00 AM or as soon thereafter
<b>City Commission 1<sup>st</sup> Reading Public Hearing</b>	September 26, 2017 6:00 PM or as soon thereafter
<b>City Commission 2<sup>nd</sup> Reading Public Hearing</b>	October 10, 2017 1:00 PM or soon thereafter

EXHIBIT A

PUBLIC NOTICE - CITY OF NORTH PORT
NOTICE OF INTENT TO AMEND THE CODE OF THE CITY OF NORTH PORT AND THE CITY OF NORTH PORT UNIFIED LAND DEVELOPMENT CODE
PROPOSED ORDINANCE NO. 2017-11

NOTICE IS HEREBY GIVEN, pursuant to the provisions of Section 166.041(3)(a), Florida Statutes and Section 9.01(b) of the Charter of the City of North Port, and Chapter I, Article II, Section 1-12 of the City's Unified Land Development Code (ULDC), that the City of North Port proposes to adopt Ordinance No. 2017-11, Amendments to the City of North Port Florida Unified Land Development Code (ULDC).

A Public Hearing was held before the Planning and Zoning Advisory Board designated as the Local Planning Agency (LPA) on Thursday, August 17, 2017 at 9:00 a.m. in the City Hall Commission Chambers, 4970 City Hall Boulevard, North Port, Florida 34286.

A Public Hearing for the first reading of Ordinance 2017-11 will be held before the North Port City Commission in Commission Chambers on Tuesday, September 26, 2017 at 6:00 p.m., or as soon thereafter as the matter may be heard. The second and final reading will be held before the North Port City Commission in Commission Chambers on Tuesday, October 10, 2017 at 1:00 p.m., to consider enactment of Ordinance No. 2017-11.

These Public Hearings will be held in the North Port City Hall Commission Chambers, 4970 City Hall Boulevard, North Port, Florida, 34286.

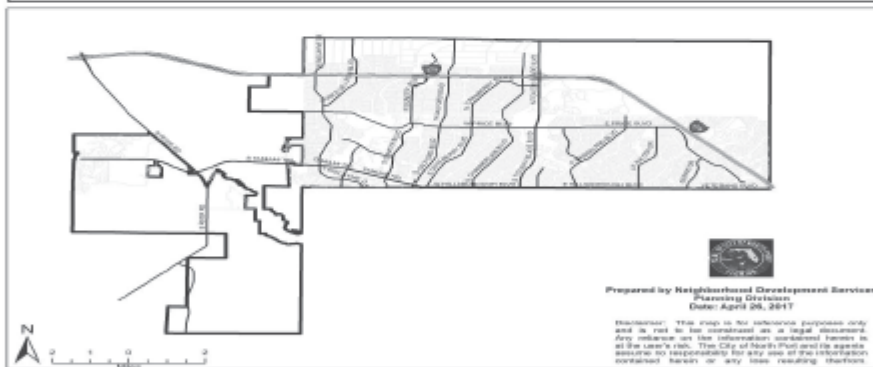
ORDINANCE NO. 2017-11

(Updating code language related to cannabis dispensing facilities and medical marijuana treatment centers to be consistent with Florida Constitution Article X, Section 29 and 2017 Senate Bill 8-A by amending Unified Land Development Code Section 25-17 off-street parking regulations, Unified Land Development Code Section 53-254 special exception provisions, Unified Land Development Code Section 61-3 definitions, and Administrative Code Section 34-40 relating to business tax receipts)

AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, UPDATING CODE LANGUAGE RELATED TO CANNABIS DISPENSING FACILITIES AND MEDICAL MARIJUANA TREATMENT CENTERS TO BE CONSISTENT WITH FLORIDA CONSTITUTION ARTICLE X, SECTION 29 AND 2017 SENATE BILL 8-A BY AMENDING UNIFIED LAND DEVELOPMENT CODE CHAPTER 25 PARKING AND LOADING REGULATIONS, ARTICLE II OFF-STREET PARKING, SECTION 25-17.B MINIMUM OFF-STREET PARKING REQUIREMENTS; AMENDING UNIFIED LAND DEVELOPMENT CODE CHAPTER 53 ZONING REGULATIONS, ARTICLE XXII SPECIAL EXCEPTIONS, SECTION 53-254 GENERAL PROVISIONS, SUBSECTION A(1)(g) DISPENSING FACILITIES; AMENDING UNIFIED LAND DEVELOPMENT CODE CHAPTER 61 DEFINITIONS, SECTION 61-3 DEFINITIONS AND WORD USAGE; AMENDING ADMINISTRATIVE CODE OF THE CITY OF NORTH PORT CHAPTER 34 LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS, ARTICLE II BUSINESS TAX RECEIPTS SECTION 34-40 DISPENSING FACILITIES; PROVIDING FOR FINDINGS; PROVIDING FOR ADOPTION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODING OF AMENDMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

City of North Port

Petition Number TXT-17-062
Ordinance No. 2017-11



Note: This map covers all of the incorporated lands of the City of North Port, Florida. The proposed Ordinance 2017-11, (Adoption of Amendments to the Code of the City of North Port (and the City of North Port Unified Land Development Code) Applies to the entire City of North Port as depicted on this map.

All interested parties are invited to appear and be heard in respect to this Ordinance at the public hearings in the City Hall Commission Chambers. Written comments filed with the Planning and Zoning Advisory Board and the City Commission will be heard and considered and will be made a matter of public record at these meetings. These public hearings may be continued from time to time as announced at the hearings, as may be found necessary. The file pertinent to Ordinance 2017-11, TXT-17-062, may be inspected by the public at the Neighborhood Development Services Department, Planning Division, and in the City of North Port City Clerk's Office, 4970 City Hall Boulevard, North Port, Florida 34286, during regular business hours.

NO STENOGRAPHIC RECORD BY A CERTIFIED COURT REPORTER IS MADE OF THESE MEETINGS. ACCORDINGLY, ANY PERSON WHO MAY SEEK TO APPEAL A DECISION INVOLVING THE MATTERS NOTICED HEREIN WILL BE RESPONSIBLE FOR MAKING A VERBATIM RECORD OF THE TESTIMONY AND EVIDENCE AT THESE MEETINGS UPON WHICH ANY APPEAL IS TO BE BASED (SEE F.S.S. 286.0105).

NOTE: PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE CITY CLERK'S OFFICE 48 HOURS IN ADVANCE OF THE MEETING (SEE F.S.S. 286.26).

NONDISCRIMINATION: The City of North Port does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities or services.

AMERICAN WITH DISABILITIES ACT OF 1990 - The North Port City Hall is wheelchair accessible. Special parking is available on the west side of City Hall and the building may be accessed from the parking area. Persons with hearing difficulties should contact the City Clerk to obtain a hearing device for use during meetings.

Patsy C. Adkins, MMC
City Clerk

Publish on Thursday, September 21, 2017.

adno-1009021

New legal ad to run on September 30, 2017 to reflect updated block with final amendments.