

To: Planning Commission
From: Lonnie Smith, Community Development Department
Date: November 14, 2016
Subject: *REQUEST TO PLANNING COMMISSION FOR RECOMMENDATION THAT PROPOSED ORDINANCE #2016-12 IS CONSISTENT WITH THE COMPREHENSIVE PLAN.*

MEETING DATE: November 15, 2016

REQUEST:

Proposal: Request for recommendation from the Planning Commission that proposed Medical Marijuana Moratorium Ordinance 2016-12 is consistent with the City's Comprehensive Plan

AUTHORITY & THE PROCESS:

Sec. 94-37. - Powers and duties.

The function, powers, and duties of the city's planning commission shall be as follows:

- (1) The commission will keep a record of all of its findings with regard to quasi-judicial hearings. All decisions will be made by resolution. A binder will be available with numbered resolutions by year and the city will use its best efforts to also have these records available on the city's web page and by internet access.
- (2) Acquire and maintain such information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions. Such information and material may include maps and photographs of manmade and natural physical features of the area concerned, statistics on past trends and present conditions with respect to population, property values, economic base, and land use, and such other information as is important or likely to be important in determining the amount, direction, and kind of development to be expected in the area and its various parts.
- (3) **The commission may review, revise and discuss the city's comprehensive plan for the purposes of making recommendations to the city council with regard to consistency with the current comprehensive plan concerning any land/zoning change or request and with regards to possible future changes.**
- (4) Establish principles and policies for guiding action in the development of the area.
- (5) Conduct such public hearings as may be required to gather information necessary for the drafting, establishment, and maintenance of the comprehensive plan, and such additional public hearings as are specified under the provisions of F.S. § 163.2511 et seq.

- (6) Make, or cause to be made, any necessary special studies on the location, condition, and adequacy of specific facilities in the area. These may include, but are not limited to, studies on housing, commercial and industrial conditions and facilities, public and private utilities, traffic, transportation, and parking.
- (7) Perform any other duties which may be lawfully assigned to the planning commission by the city council.
- (8) Perform any and all functions, powers and duties as enumerated in F.S. § 163.2511 et seq.
- (9) Appeals. To hear and make recommendations to the City Council on appeals when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance or regulation adopted pursuant to law.

Sec. 94-37.5. - Overview of the planning commission.

The City of Dunnellon's planning commission merges the powers and duties of traditional planning boards with additional duties and responsibilities previously handled by the city's now defunct board of adjustment. **The planning commission has an administrative review function whereby the commission reviews all changes to the city's comprehensive plan, by amendment, evaluation, addition, and appraisal for consistency with the existing comprehensive plan and reviews all land related/zoning ordinances to determine consistency to the comprehensive plan.** With regard to its administrative review function, the commission makes recommendations of consistency to the city council. The planning commission holds quasi-judicial hearings with regards to land planning/zoning cases, site plan reviews, variances, special exceptions, and review/appeal of administrative orders and forwards its findings/recommendations to the city council.

BACKGROUND INFORMATION

On November 8, 2016, Florida voters approved an amendment to the State Constitution legalizing the use of medical marijuana for “debilitating” illnesses. The Florida Department of Health (DOH) has approximately six months to adopt new rules for the cultivation, processing, and dispensing of cannabis/medical marijuana. The DOH must promulgate rules by June 2017 to implement the program regulation outlined in the amendment to the State Constitution.

Medical marijuana dispensing facilities are a new and unique use not currently addressed by the City's Land Development Code or Code of Ordinances. As the new DOH rules may not be known until as late as June 2017, Staff has concerns regarding how dispensing of medical marijuana may be regulated. Without zoning protections in place, these regulations could allow dispensing at location that could place potential detrimental impacts on nearby neighborhoods, schools, religious facilities, and the community in general based on observations from practices within other States. Also, the new rules for dispensing may affect the ability of Dunnellon law enforcement to adequately respond to any associated problems generated from medical businesses dispensing medical marijuana.

Staff believes it is in the best interest of the City to place a temporary moratorium on the acceptance of applications for, the processing of, and the issuance of development permits for new medical marijuana dispensing facilities to allow the City time to review, study, hold public hearings, and prepare any pertinent amendments to the City's Land Development Code during and/ or Code of Ordinances during the time that DOH works toward establishing and implementing rules regarding Medical Marijuana.

REVIEW OF COMPREHENSIVE PLAN:

Staff has reviewed the current Comp Plan along with our Planning Consultants from the North Central Florida Regional Planning Commission (NCFRPC) and finds no inconsistencies with the Dunnellon City Comp Plan.

FINDINGS OF FACT:

Criteria

- A. Whether it is consistent with all adopted elements of the comprehensive plan and recommend the same to city council as the planning commission.

Response: In review of the complete 2015 Comprehensive plan, staff finds no inconsistencies.

RECOMMENDATION:

Based on the findings of fact above, Staff recommends the Local Planning Agency find Ordinance #ORD2016-12 consistent with the comprehensive plan.

RESOLUTION #RES2016-38

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DUNNELLON, FLORIDA, MAKING RECOMMENDATION TO THE CITY COUNCIL ON PROPOSED ORDINANCE 2016-12, SAID ORDINANCE BEING ATTACHED TO THIS RESOLUTION; FINDING THAT THE PROPOSED ORDINANCE IS INTERNALLY CONSISTENT WITH THE CITY'S LAND DEVELOPMENT REGULATIONS AND IS CONSISTENT WITH THE COMPREHEHENSIVE PLAN; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Dunnellon Planning Commission held a public meeting to consider Ordinance 2016-12; and

WHEREAS, the Planning Commission reviewed proposed Ordinance 2016-12; and

WHEREAS, the Planning Commission has determined that Ordinance 2016-12 attached to this Resolution is consistent with Dunnellon's Land Development Code; and

WHEREAS, the Planning Commission, sitting as the local planning agency, finds that Ordinance 2016-12 is consistent with the City's Comprehensive Plan.

NOW THEREFORE BE IT RESOLVED by the City of Dunnellon Planning Commission that:

A recommendation of approval of Ordinance 2016-12 will be forwarded to the City Council for their consideration.

BE IT, FURTHER, RESOLVED that this Resolution shall be effective immediately upon adoption.

Upon motion duly made and carried, the foregoing Resolution was approved this 15th day of November, 2016 by the Planning Commission upon a motion by Commissioner _____ and seconded by Commissioner _____ and upon being put to a vote, the result was as follows;

Commissioner Brenda D'Arville	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Abstain	<input type="checkbox"/> Did Not Vote
Commissioner Lisa Sheffield	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Abstain	<input type="checkbox"/> Did Not Vote
Commissioner Tracy Fero	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Abstain	<input type="checkbox"/> Did Not Vote
Commissioner Wilber Vanwyck	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Abstain	<input type="checkbox"/> Did Not Vote
Vacant, Commissioner	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Abstain	<input type="checkbox"/> Did Not Vote
Commissioner Hilton - 1 st Alt	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Abstain	<input type="checkbox"/> Did Not Vote
Vacant - 2 nd Alt	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Abstain	<input type="checkbox"/> Did Not Vote

Attested by:
PLANNING COMMISSION

Approved as to Legal Form and Legality
For use and reliance by the City of Dunnellon,
Florida

BY: _____
Brenda D'Arville, Chairwoman
Planning Commission, City of Dunnellon

BY: _____
Andrew J. Hand
City Attorney

This ____ day of _____, 2016.

This ____ day of _____, 2016.

ORDINANCE #ORD2016-12

AN ORDINANCE OF THE CITY OF DUNNELLON, FLORIDA, DECLARING ZONING IN PROGRESS AND IMPOSING A MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF NEW APPLICATIONS FOR THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSING FACILITIES FOR A PERIOD OF 180 DAYS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, as provided in section 2(b), Article VIII of the Constitution of the State of Florida, and section 166.021(1), Florida Statutes, the City of Dunnellon, a municipal corporation, enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, as provided in section 166.021(3), Florida Statutes, the governing body of each municipality in the state has the power to enact legislation concerning any subject matter upon which the state legislature may act, except when expressly prohibited by law; and

WHEREAS, the Dunnellon City Council determines that it is in the best interest of its residents, businesses and visitors to enact sufficient zoning regulations to ensure their health, safety and welfare; and

WHEREAS, on November 8, 2016, the voters of the State of Florida amended the Florida Constitution to legalize the cultivation, production, and dispensing of medical marijuana to a broader population of eligible patients than was previously legal under Florida's Compassionate Use Act; and

WHEREAS, medical marijuana dispensing facilities are a new and unique use which is not currently addressed by the City's Land Development Code or Code of Ordinances; and

WHEREAS, a temporary moratorium, imposed for a reasonable duration on the acceptance of applications for, the processing of, and the issuance of development permits, development orders or any other official action of the City permitting or having

the effect of permitting new medical marijuana dispensing facilities will allow time to review, study, hold public hearings, and prepare and adopt an amendment or amendments to the Land Development Code and Code of Ordinances to address this new and unique use; and

WHEREAS, the Dunnellon City Council hereby finds that this ordinance advances an important government purpose by reducing the likelihood of the unregulated negative secondary effects of marijuana dispensing facilities; and

WHEREAS, adoption of this ordinance will further the health, safety and welfare of the citizens of Dunnellon, Florida.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF DUNNELLON, FLORIDA AS FOLLOWS:

SECTION 1: The Whereas clauses cited herein are the legislative findings of the City Council.

SECTION 2: Purpose. The purpose of this ordinance is to preserve the status quo for a time period of 180 days, and enable sufficient time to review, study, hold public hearings, and prepare and adopt an amendment or amendments to the Land Development Code and/or Code of Ordinances, relating to the appropriate locations for medical marijuana dispensing facilities, if any. During this 180 day time period, the City will not take any action on any application for development permit or issue any development order or take other official action which would have the effect of allowing or permitting the development of medical marijuana dispensing facilities, except as provided in this ordinance. It is not the purpose of this ordinance to permanently deny development orders and permits for other uses that are permitted by right or special use permit and that otherwise comply with all applicable codes, ordinances, regulations and policies.

SECTION 3: Zoning in Progress. The City of Dunnellon hereby recognizes that City staff intend to study and prepare regulations that would result in the regulation of medical marijuana dispensing facilities. These regulations, if adopted, will amend the City Land Development Code and/or Code of Ordinances. All affected property and business owners are placed on notice with respect to these pending regulations and the action being taken by the appropriate departments within the City.

SECTION 4: Definition. The following definition applies to the term used in this ordinance:

"Medical Marijuana Dispensing Facility" means any establishment where low-THC or medical cannabis is permitted to be dispensed by an approved dispensing organization pursuant to Section 381.986, Florida Statutes, and Florida Department of Health Rules.

SECTION 5: Imposition of Temporary Moratorium. The City of Dunnellon hereby imposes a temporary moratorium on the acceptance of applications for, the processing of, and the issuance of development permits, development orders or any other official action of the City permitting or having the effect of permitting Medical Marijuana Dispensing Facilities, except as provided in this ordinance, for a period of 180 days following the effective date of this ordinance. Further, the review of any applications for Medical Marijuana Dispensing Facilities pending upon the effective date of this ordinance shall be abated.

SECTION 6: Existing Authorized Medical Marijuana Dispensing Facilities. This temporary moratorium shall not affect a Medical Marijuana Dispensing Facility of a Dispensing Organization which has received dispensing authorization from the Florida Department of Health in accordance with Section 381.986, Florida Statutes and Chapter 64-4.001, F.A.C. for which the City zoning official has issued a zoning verification letter which confirms the permissibility of the zoning status of the proposed location for use as a Medical Marijuana Dispensing Facility, and for which development permits have been obtained in reliance on the zoning verification letter prior to the effective date of this Ordinance. During the moratorium period, a Medical Marijuana Dispensing Facility for which a zoning verification letter and development permits have been issued shall not be permitted to expand its square footage.

SECTION 7: Submittal of Applications. Beginning upon the effective date of this ordinance, an applicant for any development permit, development order or any other official City action which would facilitate the establishment of a Medical Marijuana Dispensing Facility shall be required to disclose its intention to establish a Medical Marijuana Dispensing Facility in connection with its application for a permit. In the event that it is determined by the City that an applicant for a permit has failed to disclose its intent to establish a Medical Marijuana Dispensing Facility, the City shall be authorized to enforce this ordinance by the methods set forth in Section 9.

SECTION 8: APPLICABILITY. This ordinance shall be applicable within the City limits of the City of Dunnellon.

SECTION 9: PENALTIES. This moratorium may be enforced by the following methods of enforcement:

- (A) Revocation or temporary suspension of necessary development permits, development orders and/or certificates of occupancy and/or licenses; or
- (B) By an action for injunctive relief, civil penalties or both, through a court of competent jurisdiction; or
- (C) By any other process permitted by law or equity.

SECTION 10: SEVERABILITY. If any section, subsection, sentence, clause, phrase, or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this ordinance invalid or unconstitutional.

SECTION 11: CONFLICT WITH STATE LAW. Nothing in this ordinance is intended to conflict with the provisions of the Florida Constitution or any Florida Statute. In the event of a direct and express conflict between this ordinance and either the Florida Constitution or the Florida Statutes, then the provisions of the Florida Constitution or Florida Statutes, as applicable, control.

SECTION 12: FILING OF ORDINANCE AND EFFECTIVE DATE. This ordinance takes effect immediately upon adoption.

Upon motion duly made and carried, the foregoing Ordinance was approved upon the first reading and public hearing on the 12th day of December, 2016.

Upon motion duly made and carried, the foregoing Ordinance was approved and passed upon the second and final reading and public hearing on the 9th day of January, 2017.

Ordinance Posted on the City's website on November 11, 2016. Public hearing advertised on the City's website on November 18, 2016 and advertised in the Riverland News on December 1, 2016.

Second public hearing advertised on the City's website on December 16, 2016 and advertised in the Riverland News on December 29, 2016.

ATTEST:

CITY OF DUNNELLON

Dawn M. Bowne, M.M.C.
City Clerk

Walter Green, Mayor

Approved as to Form and Legal Sufficiency:

Andrew Hand, City Attorney

I HEREBY CERTIFY that copies of the foregoing Ordinance were posted at City Hall, the Chamber of Commerce, and the Dunnellon Library, in the City of Dunnellon, Florida, and on the City's Official Website this 18th day of November 2016.

Dawn M. Bowne M.M.C.
City Clerk