

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 1

Meeting Date: May 9, 2018

Prepared By: Denine M. Sherear, Planning and Zoning Board Secretary

SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

The minutes must reflect the actions taken by the Board:

- Who made the Motion
- What is the motion
- Who seconded the motion
- What was the vote

Malabar has historically included discussion to provide the reader the understanding of how the Board came to their vote. It is not verbatim and some editing is done to convey the thought. People do not speak the way they write.

ATTACHMENTS:

Draft minutes of P&Z Board Meeting of 03/28/2018(not ready)

Draft minutes of P&Z Board Meeting of 04/25/2018(not ready)

ACTION OPTIONS:

Secretary requests approval of the minutes.

**TOWN OF MALABAR
AGENDA ITEM REPORT**

**AGENDA ITEM NO: 2
Meeting Date: May 9, 2018**

Prepared By: Denine Sherear, Planning & Zoning Board Secretary

SUBJECT: Recommendation to Council to Approve Proposed Amendment RE: Medical Marijuana Dispensary Regulations within the Town of Malabar (Ord. 2018-03)

BACKGROUND/HISTORY:

Finalize discussion and clarify recommendation to Council to either not allow Dispensary/ Pharmacies or determine locations and zoning that will allow this in the Town of Malabar.

As per the recommendation from Council on 3/19/2018, the Council voted to send the proposed amendment to add "pharmacies" to the Ordinance; the PZ Board discussed & reviewed this Ordinance at their last few meetings.

At the April 11, 2018 PZ Meeting the Board discussed the distance of 2500 feet as a separation from medical marijuana dispensaries. Municipalities cannot treat these different than pharmacies. The statues is 500 feet that deals with medical marijuana dispensaries. The discussion included Conditional Use & zoning locations of dispensaries as noted in *draft Ord 2018-03*.

ATTACHMENTS:

- Email & information provided By Chair Liz Ritter/CM Danny White concerning Medical Marijuana - Florida Senate Bill SB-8A (**March 2017?**)
- Florida Senate Bill SB-8A- **Third Engrossed (June or July 2017)**
- **BRING YOUR PZ PACKET FROM APRIL 25, 2018**

ACTION OPTIONS: Recommend Action to Council

Medical Marijuana Info for P&Z May 9th Meeting

UC

UPDATE CENTER <flizritter@aol.com>

Yesterday, 7:25 PM

Denine Sherear; coachmary01@yahoo.com; malabarbud@yahoo.com; +5 more ▾

👍 🔄 Reply all | ▾

Inbox



Action Items



Hi All,

I'd like to thank Danny White who did some research for us.
Please go to the [address](#) below. It is the Florida Senate Bill **SB-8A**
Our Main emphasis will be **Page 49; Line 1408**
(11) PREEMPTION. thru Page 51; Line 1454
With Special attention to (11) (b) 1. & (11) (b) 2.

I believe we have two options to recommend to Council:
An Ordinance to either : 1. Ban them or 2. Determine Location
Please come with your opinions, ideas, & choice. Thanks, Liz

<https://www.flsenate.gov/Session/Bill/2017A/8A/BillText/Filed/PDF>

5-00003C-17A

20178A

1393 regulated profession, occupation, or business that is related to
 1394 the business practices of a medical marijuana treatment center
 1395 suspended, revoked, or otherwise acted against by the licensing
 1396 authority of any jurisdiction, including its agencies or
 1397 subdivisions, for a violation that would constitute a violation
 1398 under Florida law.

1399 13. Violating a lawful order of the department or an agency
 1400 of the state, or failing to comply with a lawfully issued
 1401 subpoena of the department or an agency of the state.

1402 (g) The department may suspend, revoke, or refuse to renew
 1403 a medical marijuana treatment center license if the medical
 1404 marijuana treatment center commits any of the violations in
 1405 paragraph (f).

1406 (h) The department may adopt rules pursuant to ss.
 1407 120.536(1) and 120.54 to implement this subsection.

1408 (11) PREEMPTION.-Regulation of cultivation, processing, and
 1409 delivery of marijuana by medical marijuana treatment centers is
 1410 preempted to the state except as provided in this subsection.

1411 (a) A medical marijuana treatment center cultivating or
 1412 processing facility may not be located within 500 feet of the
 1413 real property that comprises a public or private elementary
 1414 school, middle school, or secondary school.

1415 (b)1. A county or municipality may, by ordinance, ban
 1416 medical marijuana treatment center dispensing facilities from
 1417 being located within the boundaries of that county or
 1418 municipality. A county or municipality that does not ban
 1419 dispensing facilities under this subparagraph may not place
 1420 specific limits, by ordinance, on the number of dispensing
 1421 facilities that may locate within that county or municipality.

5-00003C-17A

20178A

1422 2. A municipality may determine by ordinance the criteria
1423 for the location of, and other permitting requirements that do
1424 not conflict with state law or department rule for, medical
1425 marijuana treatment center dispensing facilities located within
1426 the boundaries of that municipality. A county may determine by
1427 ordinance the criteria for the location of, and other permitting
1428 requirements that do not conflict with state law or department
1429 rule for, all such dispensing facilities located within the
1430 unincorporated areas of that county. Except as provided in
1431 paragraph (c), a county or municipality may not enact ordinances
1432 for permitting or for determining the location of dispensing
1433 facilities which are more restrictive than its ordinances
1434 permitting or determining the locations for pharmacies licensed
1435 under chapter 465. A municipality or county may not charge a
1436 medical marijuana treatment center a license or permit fee in an
1437 amount greater than the fee charged by such municipality or
1438 county to pharmacies. A dispensing facility location approved by
1439 a municipality or county pursuant to former s. 381.986(8)(b),
1440 Florida Statutes 2016, is not subject to the location
1441 requirements of this subsection.

1442 (c) A medical marijuana treatment center dispensing
1443 facility may not be located within 500 feet of the real property
1444 that comprises a public or private elementary school, middle
1445 school, or secondary school unless the county or municipality
1446 approves the location through a formal proceeding open to the
1447 public at which the county or municipality determines that the
1448 location promotes the public health, safety, and general welfare
1449 of the community.

1450 (d) This subsection does not prohibit any local

5-00003C-17A

20178A

1451 jurisdiction from ensuring medical marijuana treatment center
1452 facilities comply with the Florida Building Code, the Florida
1453 Fire Prevention Code, or any local amendments to the Florida
1454 Building Code or the Florida Fire Prevention Code.

1455 (12) PENALTIES.-

1456 (a) A qualified physician commits a misdemeanor of the
1457 first degree, punishable as provided in s. 775.082 or s.
1458 775.083, if the qualified physician issues a physician
1459 certification for the medical use of marijuana for a patient
1460 without a reasonable belief that the patient is suffering from a
1461 qualifying medical condition.

1462 (b) A person who fraudulently represents that he or she has
1463 a qualifying medical condition to a qualified physician for the
1464 purpose of being issued a physician certification commits a
1465 misdemeanor of the first degree, punishable as provided in s.
1466 775.082 or s. 775.083.

1467 (c) A qualified patient who uses marijuana, not including
1468 low-THC cannabis, or a caregiver who administers marijuana, not
1469 including low-THC cannabis, in plain view of or in a place open
1470 to the general public; in a school bus, a vehicle, an aircraft,
1471 or a boat; or on the grounds of a school except as provided in
1472 s. 1006.062, commits a misdemeanor of the first degree,
1473 punishable as provided in s. 775.082 or s. 775.083.

1474 (d) A qualified patient or caregiver who cultivates
1475 marijuana or who purchases or acquires marijuana from any person
1476 or entity other than a medical marijuana treatment center
1477 violates s. 893.13 and is subject to the penalties provided
1478 therein.

1479 (e)1. A qualified patient or caregiver in possession of

5-00003C-17A

20178A

1480 marijuana or a marijuana delivery device who fails or refuses to
1481 present his or her marijuana use registry identification card
1482 upon the request of a law enforcement officer commits a
1483 misdemeanor of the second degree, punishable as provided in s.
1484 775.082 or s. 775.083, unless it can be determined through the
1485 medical marijuana use registry that the person is authorized to
1486 be in possession of that marijuana or marijuana delivery device.

1487 2. A person charged with a violation of this paragraph may
1488 not be convicted if, before or at the time of his or her court
1489 or hearing appearance, the person produces in court or to the
1490 clerk of the court in which the charge is pending a medical
1491 marijuana use registry identification card issued to him or her
1492 which is valid at the time of his or her arrest. The clerk of
1493 the court is authorized to dismiss such case at any time before
1494 the defendant's appearance in court. The clerk of the court may
1495 assess a fee of \$5 for dismissing the case under this paragraph.

1496 (f) A caregiver who violates any of the applicable
1497 provisions of this section or applicable department rules, for
1498 the first offense, commits a misdemeanor of the second degree,
1499 punishable as provided in s. 775.082 or s. 775.083 and, for a
1500 second or subsequent offense, commits a misdemeanor of the first
1501 degree, punishable as provided in s. 775.082 or s. 775.083.

1502 (g) A qualified physician who issues a physician
1503 certification for marijuana or a marijuana delivery device and
1504 receives compensation from a medical marijuana treatment center
1505 related to the issuance of a physician certification for
1506 marijuana or a marijuana delivery device is subject to
1507 disciplinary action under the applicable practice act and s.
1508 456.072(1)(n).

Definition of:

Engrossed Bill

A legislative proposal that has been prepared in a final form for its submission to a vote of the lawmaking body after it has undergone discussion and been approved by the appropriate committees.

20178Ae3

- 1393 2. Failing to maintain qualifications for approval.
1394 3. Endangering the health, safety, or security of a
1395 qualified patient.
1396 4. Improperly disclosing personal and confidential
1397 information of the qualified patient.
1398 5. Attempting to procure medical marijuana treatment center
1399 approval by bribery, fraudulent misrepresentation, or extortion.
1400 6. Being convicted or found guilty of, or entering a plea
1401 of guilty or nolo contendere to, regardless of adjudication, a
1402 crime in any jurisdiction which directly relates to the business
1403 of a medical marijuana treatment center.
1404 7. Making or filing a report or record that the medical
1405 marijuana treatment center knows to be false.
1406 8. Willfully failing to maintain a record required by this
1407 section or department rule.
1408 9. Willfully impeding or obstructing an employee or agent
1409 of the department in the furtherance of his or her official
1410 duties.
1411 10. Engaging in fraud or deceit, negligence, incompetence,
1412 or misconduct in the business practices of a medical marijuana
1413 treatment center.
1414 11. Making misleading, deceptive, or fraudulent
1415 representations in or related to the business practices of a
1416 medical marijuana treatment center.
1417 12. Having a license or the authority to engage in any
1418 regulated profession, occupation, or business that is related to
1419 the business practices of a medical marijuana treatment center
1420 suspended, revoked, or otherwise acted against by the licensing
1421 authority of any jurisdiction, including its agencies or

20178Ae3

1422 subdivisions, for a violation that would constitute a violation
1423 under Florida law.

1424 13. Violating a lawful order of the department or an agency
1425 of the state, or failing to comply with a lawfully issued
1426 subpoena of the department or an agency of the state.

1427 (g) The department may suspend, revoke, or refuse to renew
1428 a medical marijuana treatment center license if the medical
1429 marijuana treatment center commits any of the violations in
1430 paragraph (f).

1431 (h) The department may adopt rules pursuant to ss.
1432 120.536(1) and 120.54 to implement this subsection.

1433 (11) PREEMPTION.--Regulation of cultivation, processing, and
1434 delivery of marijuana by medical marijuana treatment centers is
1435 preempted to the state except as provided in this subsection.

1436 (a) A medical marijuana treatment center cultivating or
1437 processing facility may not be located within 500 feet of the
1438 real property that comprises a public or private elementary
1439 school, middle school, or secondary school.

1440 (b)1. A county or municipality may, by ordinance, ban
1441 medical marijuana treatment center dispensing facilities from
1442 being located within the boundaries of that county or
1443 municipality. A county or municipality that does not ban
1444 dispensing facilities under this subparagraph may not place
1445 specific limits, by ordinance, on the number of dispensing
1446 facilities that may locate within that county or municipality.

1447 2. A municipality may determine by ordinance the criteria
1448 for the location of, and other permitting requirements that do
1449 not conflict with state law or department rule for, medical
1450 marijuana treatment center dispensing facilities located within

20178Ae3

1480 (12) PENALTIES.-

1481 (a) A qualified physician commits a misdemeanor of the
1482 first degree, punishable as provided in s. 775.082 or s.
1483 775.083, if the qualified physician issues a physician
1484 certification for the medical use of marijuana for a patient
1485 without a reasonable belief that the patient is suffering from a
1486 qualifying medical condition.

1487 (b) A person who fraudulently represents that he or she has
1488 a qualifying medical condition to a qualified physician for the
1489 purpose of being issued a physician certification commits a
1490 misdemeanor of the first degree, punishable as provided in s.
1491 775.082 or s. 775.083.

1492 (c) A qualified patient who uses marijuana, not including
1493 low-THC cannabis, or a caregiver who administers marijuana, not
1494 including low-THC cannabis, in plain view of or in a place open
1495 to the general public; in a school bus, a vehicle, an aircraft,
1496 or a boat; or on the grounds of a school except as provided in
1497 s. 1006.062, commits a misdemeanor of the first degree,
1498 punishable as provided in s. 775.082 or s. 775.083.

1499 (d) A qualified patient or caregiver who cultivates
1500 marijuana or who purchases or acquires marijuana from any person
1501 or entity other than a medical marijuana treatment center
1502 violates s. 893.13 and is subject to the penalties provided
1503 therein.

1504 (e)1. A qualified patient or caregiver in possession of
1505 marijuana or a marijuana delivery device who fails or refuses to
1506 present his or her marijuana use registry identification card
1507 upon the request of a law enforcement officer commits a
1508 misdemeanor of the second degree, punishable as provided in s.

20178Ae3

1451 the boundaries of that municipality. A county may determine by
1452 ordinance the criteria for the location of, and other permitting
1453 requirements that do not conflict with state law or department
1454 rule for, all such dispensing facilities located within the
1455 unincorporated areas of that county. Except as provided in
1456 paragraph (c), a county or municipality may not enact ordinances
1457 for permitting or for determining the location of dispensing
1458 facilities which are more restrictive than its ordinances
1459 permitting or determining the locations for pharmacies licensed
1460 under chapter 465. A municipality or county may not charge a
1461 medical marijuana treatment center a license or permit fee in an
1462 amount greater than the fee charged by such municipality or
1463 county to pharmacies. A dispensing facility location approved by
1464 a municipality or county pursuant to former s. 381.986(8)(b),
1465 Florida Statutes 2016, is not subject to the location
1466 requirements of this subsection.

1467 (c) A medical marijuana treatment center dispensing
1468 facility may not be located within 500 feet of the real property
1469 that comprises a public or private elementary school, middle
1470 school, or secondary school unless the county or municipality
1471 approves the location through a formal proceeding open to the
1472 public at which the county or municipality determines that the
1473 location promotes the public health, safety, and general welfare
1474 of the community.

1475 (d) This subsection does not prohibit any local
1476 jurisdiction from ensuring medical marijuana treatment center
1477 facilities comply with the Florida Building Code, the Florida
1478 Fire Prevention Code, or any local amendments to the Florida
1479 Building Code or the Florida Fire Prevention Code.

**TOWN OF MALABAR
AGENDA ITEM REPORT**

AGENDA ITEM NO: 3
Meeting Date: May 9, 2018

Prepared By: Denine Sherear, Planning & Zoning Board Secretary

SUBJECT: Continued Discussion: Recommended by Council to Review “Clean Copy” of Signage Regulations of Proposed Ordinance 2018-02 and simplify the regulations

BACKGROUND/HISTORY:

The PZ Board at the last Meeting of 4/25/2018 discussed reviewing and simplifying the regulations for signs. The Board will review page by page the comparisons between the Attorney's recommendations and “submitted” recommendations provided by this Board.

This Agenda Item is for continued discussion, the proposed Signage Ordinance 2018-02 that Council (at RTCM meeting of March 19, 2018) voted to send a “clean copy” back to PZ Board is for continued review (clarify and simplify) to Amend the Signage Regulations.

ATTACHMENTS:

- **PLEASE BRING YOUR PZ PACKET FROM APRIL 25, 2018
“AGENDA ITEM 3”**

ACTION OPTIONS: Discussion/Action

TOWN OF MALABAR
PLANNING AND ZONING

AGENDA ITEM REPORT

AGENDA ITEM NO: 4
Meeting Date: May 9, 2018

Prepared By: Denine Sherear, P&Z Board Secretary

SUBJECT: Five-year Plan

BACKGROUND/HISTORY:

This packet includes information from the past review of the Five-year Plan that was done in 2017; this is to assist you with working on the Five-year Plan for 2018.

See attached status from staff & projected 5 years Capital Improvement Plan for 2017-2021

ATTACHMENTS:

- Town of Malabar 5- year Capital Improvement Plan –WORKSHEET dated 4/12/2017
- Blank WORKSHEET Town of Malabar 5- year Capital Improvement Plan 2018
- Doug Hoyt TA 2017-2021 Town of Malabar 5- year Capital Improvement Plan provided by Debby Franklin, Town Clerk/Treasurer

ACTION OPTIONS:

Discussion

**TOWN OF MALABAR
FIVE YEAR PLAN PRIORITIES
Revised APRIL 12, 2017
(WORKSHEET)**

LAND ACQUISITION	INFRASTRUCTURE
1. Acquire Land for ROW on Corey & Weber Road that approaches Malabar Road (SR514) 3 lanes per side	1. Corey & Weber Roads that approaches to Malabar Road (SR514) 3 lanes per side
2. East side of Malabar Woods Blvd to work with EEL's for shared building for Town Hall	2. Multi Modal trail from Northside of Malabar Road from US-1 to Palm Bay Hospital
3. River Access – Potential north end of Rocky Point for non-motorized boats	3. Jordan Blvd to Atz Road & Improvement-reconnect ROW & add multi-modal path
	4. Consider Road resurfacing now due to oil prices (liquid rock)
	5. Connect drainage to west side of Malabar Road to the Tillman Canal
	6. Update the topology/Elevation survey map of Malabar (1988) for drainage * (ask Morris)
	7. Possibility –clearing creeks on private property
FACILITIES	PUBLIC SAFETY
1. Community Center (Land Use Fire Dept./ Park)	1. Fire Department to provide list
2. New Town Hall Land (Land Use Fire Dept./ Park)	2. Fire Hydrants- Artesian Well to have Strategically located throughout the Town
3. Public Works Pole Barn for Equipment	
EQUIPMENT	
1. Slope Mower	

CAPITAL IMPROVEMENT PLAN - 5 YR SCHEDULE 2017 - 2021

CAPITAL IMPROVEMENT	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	Projected Cost	COST / FUNDING SOURCE / notes
	FY2017	FY2018	FY2019	FY2020	FY2021		
COMMUNITY CENTER					X	\$50,000.00	2725 Malabar bldg On hold
SHARED TOWN HALL w/ EEL		X	X			\$675,000.00	EEL education Ctr \$, FEMA EOC \$ - do plan on hold pending lack of personnel
RIVER FRONT ACCESS			X			on hold	50/50 Fla Inland Navigational Dist Grant - T&G working T&G
BASEBALL FIELD DUGOUTS AND CONCESSION STAND			X				Park & Rec Board to explore grant funding P&R
COREY RIGHT TURN LANE			X	X	X		TIFT ask TPO if it is part of their project (pend 2019) Working on grant
WEBER RIGHT TURN LANE			X	X	X		TIFT ask TPO if it is part of their project (pend 2019) Working on grant
FIRE DEPT FLASHING LIGHT			X				TIFT ask FDOT if pole with flasher can be done/grant Working on grant
RESURFACE WEST HALL				X		\$300,000.00	ANNUAL BUDGET
RESURFACE WEST ATZ			X			\$300,000.00	ANNUAL BUDGET
RESURFACE OLD MISSION			X			\$250,000.00	ANNUAL BUDGET
SW PROJECTS FROM 2014	X	X	X	X	X	\$326,000.00	In order or priority and subject to review In process
NEW SLOPEMOWER	X	X				\$142,000.00	Purchased machine inhouse s/w funds fy 2017 2018 Complete
Maintain existing SW infrastructure	X	X	X	X	X	\$56,300.00	Ongoing work, Storm water funding In process
S/E Rocky Pt. Rd. repairs to ROW	X	X				\$10,000.00	Out for bid, SW funds or FEMA assistance Complete Complete
Replace steel culverts under roads	X	X	X	X	X	\$150,000.00	Ongoing, culverts failing after 23-30 years S/W In process / ongoing
Ditch on southside of Atz Rd, Smith to Jordan Blvd/Twin Lakes	X	X				\$112,000.00	In process, short weather delay On hold - funding and personnel
Cason Lane, west side to Atz.	X		X		X	\$2,500.00	Annual cost Re-contour ditch to Atz Rd. SW Revenue

