

**AGENDA**  
**REGULAR MEETING OF THE CITY PLANNING AND ZONING BOARD**  
**THURSDAY, NOVEMBER 3, 2016, AT 1:30 PM**  
**COUNCIL CHAMBERS, CITY HALL, VERO BEACH, FLORIDA**

**I. PRELIMINARY MATTERS**

Agenda Additions and/or Deletions

**II. APPROVAL OF MINUTES**

Regular/Workshop Meeting –September 15, 2016

**III. PUBLIC COMMENT**

**IV. PUBLIC HEARING**

[Quasi-judicial]

A. An Ordinance of the City of Vero Beach, Florida, Requested by TV20, LLC, Amending the Official Zoning Map by Changing the Zoning District Designation of POI, Professional Office and Institutional, to C-1B, General Commercial Trades and Services, for Property Located on the Southeast Corner of 20<sup>th</sup> Street and 10<sup>th</sup> Avenue Containing 3.73 Acres, More or Less; Providing for Conflict and Severability; and Providing for an Effective Date.

[Legislative]

B. An Ordinance of the City of Vero Beach, Florida, Amending Section 71.14 in the Land Development Regulations of the Code of the City of Vero Beach Relating to Restrictions on Improvement of Certain Designated City Rights-of-Way; Providing for Clarification; Providing for Conflict and Severability; Providing for Codification; and Providing for an Effective Date.

[Legislative]

C. An Ordinance of the City of Vero Beach, Florida, Amending the Land Development Regulations, Part II of the Code of the City of Vero Beach, Relating to Medical Marijuana Dispensaries; Providing for Conflict and Severability; Providing for an Effective Date.

**V. PLANNING DEPARTMENT MATTERS**

A. Options for Revising Regulations Related to the Requirement for a 20-foot Landscape Buffer 6 Foot High Hedge between Conditional Uses and Single Family Uses with an Intervening Right-of-Way.

B. Provide Update on Revisions to the Comprehensive Plan.

**VI. BOARD MEMBERS' MATTERS**

## **VII. ADJOURNMENT**

**ANY PERSON AGGRIEVED BY A DECISION OF THE PLANNING AND ZONING BOARD RELATIVE TO SITE PLAN APPROVAL MAY WITHIN TEN DAYS AND IN ACCORDANCE WITH SECTION 64.08(j) FILE AN APPEAL WITH THE PLANNING DIRECTOR OF THE CITY OF VERO BEACH. ANYONE WHO MAY WISH TO APPEAL ANY DECISION THAT MAY BE MADE AT THIS HEARING WOULD NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE THAT INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL WILL BE BASED.**

**ANYONE IN NEED OF SPECIAL ACCOMMODATIONS FOR THIS MEETING MAY CONTACT THE CITY'S AMERICANS WITH DISABILITIES ACT (ADA) COORDINATOR AT 978-4920 AT LEAST 48 HOURS IN ADVANCE OF THE MEETING.**

**PUBLIC INVITED TO ATTEND**

**PLANNING AND ZONING BOARD MINUTES  
THURSDAY, SEPTEMBER 15, 2016 - 1:30 PM  
CITY HALL, COUNCIL CHAMBERS, VERO BEACH, FLORIDA**

**PRESENT:** Chairman, Lawrence Lauffer; Vice Chairman, Honey Minuse; Members: Norman Wells, Alternate Member #1, Richard Cahoy and Alternate Member #2, Kenneth Daige **Also Present:** Planning and Development Director, Tim McGarry; Planner, Gayle Lafferty; Assistant City Attorney, Peggy Lyon and Deputy City Clerk, Sherri Philo

**Excused Absences:** Don Croteau and Linda Hillman

**I. PRELIMINARY MATTERS**

**A) Agenda Additions and/or Deletions**

Mr. Tim McGarry, Planning and Development Director, noted that item IV - A) would be heard as a quasi-judicial hearing.

**II. APPROVAL OF MINUTES**

**A. Regular/Workshop Meeting – August 18, 2016**

**Mrs. Minuse made a motion to approve the minutes of the August 18, 2016 Planning and Zoning Board meeting. Mr. Daige seconded the motion and it passed unanimously.**

**B. Regular/Workshop Meeting – September 1, 2016**

**Mrs. Minuse made a motion to approve the minutes of the September 1, 2016 Planning and Zoning Board meeting. Mr. Wells seconded the motion and it passed unanimously.**

**III. PUBLIC COMMENT**

None

**IV. PUBLIC HEARING**

**A. Code Compliance Certification Application #CC16-000371 Submitted by City of Vero Beach Public Works Department to Install 894 Feet of Eight Foot High Chain Link Fence with One Foot Barbed Wire Top at 1225 16<sup>th</sup> Street – City Storage Yard**

The Chairman read Code Compliance Certification Application #CC16-000371 by title only.

There were no ex parte communications reported.

The Deputy City Clerk swore in staff testifying for today's public hearing en masse.

Ms. Gayle Lafferty, Planner, went over staff's report with the Board members (attached to the original minutes). Based on the need to protect the public from hazardous material, possibility of theft, and individuals injuring themselves in the storage yard, staff finds that the applicant has provided adequate demonstration of need. Staff recommends approval of the request for the

installation of the proposed eight-foot high fence with one-foot of barbed wire on top.

The Chairman opened and closed the public hearing at 1:35 p.m., with no one wishing to be heard.

Mrs. Minuse asked does the existing fence have barbed wire on top of it.

Ms. Lafferty answered yes.

Mr. Cahoy asked does the existing eight-foot fence and proposed eight-foot fence include the barbed wire.

Ms. Lafferty said there is an eight-foot chain-link fence with one-foot of barbed wire on top for a total of nine-feet.

Mr. McGarry said they were basically extending the existing fence to cover that area.

**Mr. Wells made a motion that the Board approves Code Compliance Certification Application #CC16-000371 as recommended by staff. Mrs. Minuse seconded the motion and it passed 5-0 with Mr. Daige voting yes, Mr. Cahoy yes, Mr. Wells yes, Mrs. Minuse yes, and Mr. Lauffer yes.**

## **V. WORKSHOP**

### **A. Discussion of Draft Goal, Objectives and Policies (GOPs) for the Conservation Element and Revised Draft GOPs for the Land Use and Housing Elements of the Comprehensive Plan**

Mr. Tim McGarry, Planning and Development Director, gave a brief overview of the proposed changes to *Chapter 8 Conservation Element Goal, Objectives, and Policies* with the Board members (attached to the original minutes). He noted that on page 8-3, *Section 2.3* needed to be revised and would probably be placed under storm drainage.

\*Please note that discussion took place throughout the presentation.

Mr. Cahoy referred to page 8-4, *Section 2.9*. He questioned why certain dates were specified.

Mr. McGarry said that he would remove the dates because the dates could change in time.

Mr. Daige referred to the map provided on *Wellhead Protection Areas* (attached to the original minutes).

Mr. McGarry noted that not all of them are in use.

Mr. Daige asked can the ones that are not in use function if needed.

Mr. McGarry answered yes.

Mr. Lauffer referred to page 8-12, *Section 5.3*. He said if an individual owns a lot and there is a lot of invasive vegetation and native vegetation on the property that intermingle with each other, it would be hard to remove the non-native vegetation without harming the native vegetation. He asked how this would be viewed by the City.

Mr. McGarry said they were not writing the regulations, but the intent.

Mr. Lauffer said that his daughter and son-in-law are building a home and they had to take down some native trees because they had to get the Pepper Trees off the property. He asked if this would change the way the City would address a situation like this.

Mr. McGarry said this would change how the City deals with tree removal. He said that he would look at rewording this section.

Mr. McGarry noted that *Section "10.5"* on page 8-21 should be *Section "9.5."* He said that he was going to work on the wording in this section and would bring it back before the Board.

At this time, Mr. McGarry gave a brief overview of the revised changes to *Chapter 2 – Land Use Element Goal, Objectives, and Policies* with the Board members (attached to the original minutes).

Mr. Cahoy referred to page 2-9, *Section 1.22*. He asked why is it necessary to specify "*youth sailing facility*."

Mr. McGarry said that he would change "*youth sailing facility*" to "*recreation facility*."

Mr. Daige referred to page 2-10, *Section 1.24*. He read the statement in part, "*The intent of this zoning district is to provide for a transition and/or buffer between medium to high density residential and/or intensive non-residential uses or high volume traffic corridors to preserve the essentially residential character of existing residential areas...*" He said that he understood about the buffer, but POI does not preserve the character of neighborhoods. He wished that Mr. McGarry could figure out a way to word it differently. He said there are a lot of RM-10 zoned areas where POI zones backed into them and degraded the residential neighborhoods. He said they could up-zone the POI.

Mr. McGarry said they would have to meet the requirements.

Mr. Daige said it states in this section that it is good for residential neighborhoods. He did not think it should be in there. He said POI is not a good buffer.

Mr. McGarry said they need to deal with this on a case-by-case basis. He said the problem is that there are certain uses that need to be looked at more closely.

Mr. Daige said that he was trying to figure out a way where it is not comfortable for someone to come along and up-zone, which could happen in the future.

Mr. McGarry said the only up-zone that has been done was probably on the barrier island. He said that he has not done any POI zoning on the mainland since he has worked for the City.

Mr. Daige referred to State Road 60 where the "Welcome" sign is located. He said that he would like to see the POI line there. He said it is where the current POI zoning is and he would not like it to go any further south. He said they had this problem a number of years ago at the height of development and they are getting back into the height of development. He said by not having clear cut rules in place people are going to want to push that POI zone line back into the neighborhoods and he would like rules in place where they could not go any further to the south.

Mr. Lauffer referred to page 2-30, *Objective 8 – Cardinal Drive/Ocean Drive Commercial District /*

*Policies*. He said in several areas “*Oceanside Business Association*” is identified. He questioned if they should be more generic, rather than identifying a certain group because groups change.

Mr. McGarry agreed. He said that he would make some changes. He said there are some organizations that he would identify that would not change, such as “*Main Street*.”

Mr. Lauffer noted that “*Original Town Neighborhood Association*” is mentioned.

Mr. Daige said Original Town and Osceola Park each have a neighborhood plan and prior to review of this Comprehensive Plan, they were told that their plans would be included in the Comprehensive Plan.

Mr. McGarry said that he would look at this again and make some changes.

At this time, Mr. McGarry gave a brief overview of the revised changes to *Chapter 4 – Housing Element Goal, Objectives, and Policies* with the Board members (attached to the original minutes).

Mrs. Minuse referred to page 4-11, *Section 8.3*.

Mr. McGarry said that he would be reworking this Section so it reflects the Land Use Element.

## **VI. PLANNING DEPARTMENT MATTERS**

Mr. McGarry reported that he would be bringing before the Board at their next meeting, a few options regarding hedge requirements for churches prior to him writing the actual Ordinance in that he would like some direction from the Board.

### **A. Attached is the Florida Statute for Intergovernmental Programs as Promised by the Assistant City Attorney**

This item was not discussed. The information was provided to the Board as promised by Mrs. Peggy Lyon, Assistant City Attorney and is on file in the City Clerk’s office.

## **VII. BOARD MEMBER’S MATTERS**

None

## **VIII. ADJOURNMENT**

Today’s meeting adjourned at 3:05 p.m.

/sp



## DEPARTMENTAL CORRESPONDENCE

TO: Chairman Larry Lauffer and Planning  
and Zoning Board Members

THRU: Timothy J. McGarry, AICP   
Planning and Development Director

FROM: Cheri B. Fitzgerald, AICP   
Principal Planner

DATE: September 29, 2016

SUBJECT: **Public Hearing Request by TV 20, LLC to Amend the Zoning Map from  
POI to C-1B, for Property Totaling Approximately 3.73 Acres Located at  
901-963 SR60/20<sup>th</sup> Street (Application #Z16-000004-MAP) – Planning and  
Zoning Board meeting of October 6, 2016**

### Request

TV20, LLC is requesting a zoning map amendment to change the zoning from POI, Professional Office and Institutional to C-1B, General Commercial Trades and Services District for property comprising approximately 3.73 acres located at 901-963 SR 60/20<sup>th</sup> Street (south side of 20<sup>th</sup> Street, north of 19<sup>th</sup> Place, between 10<sup>th</sup> and 9<sup>th</sup> Avenues). Attachments to the report include: Attachment A- Draft Ordinance Amending Zoning Map and Attachment B- Application and Traffic Impact Summary.

It should be noted the applicant initially requested the higher intensive C-1, Highway Oriented Commercial zoning designation (e.g. hotel/motels, commercial amusements, vehicular sales and services). The staff indicated to the applicant that the C-1 zoning designation was not appropriate for this location.

### Description of Parcel and Designations

<i>Property Owner:</i>	<i>TV 20, LLC</i>
<i>Parcel ID:</i>	<i>33-39-01-00027-0030-00001.0</i>
<i>Size of Parcel:</i>	<i>Approximately 3.73 acres</i>
<i>FLUM Designation:</i>	<i>MX, Mixed Use</i>

*Existing Zoning Designation:* POI, Professional Office & Institutional

*Requested Zoning Designation:* C-1B, General Commercial Trades and Services

**Existing Site Conditions and Infrastructure**

Existing Site Conditions. The site is currently vacant or undeveloped.

Neighborhood Land Use and Zoning Patterns. Due north of the subject property, across SR60/20<sup>th</sup> Street, the parcels are zoned C-1B, General Commercial Trades and Services, and include various office/commercial uses. To the north and west of the subject project is the Wells Fargo Bank. To the south, across 19<sup>th</sup> Place, are a mixture of office buildings and residential duplexes and multi-family residential uses, which are zoned MXD, Mixed Use. To the east, across 9<sup>th</sup> Avenue, is a vacant single-family residential dwelling unit, office building and vacant land zoned POI, Professional Office and Institutional. To the west, across 10<sup>th</sup> Avenue, the land use is government offices (Vero Beach Police Department) and is zoned MXD, Mixed Use.

Utilities. The subject property is located within the City’s electric, water and sewer, and storm drainage service areas. Water and sewer facilities are available in the vicinity of the site. Capacity is available in all these systems to support the proposed change in zoning designation and the allowable uses.

Transportation Facilities. The subject property borders SR 60 (20<sup>th</sup> Street) to the north, 19<sup>th</sup> Place to the south, 9<sup>th</sup> Avenue to the east and 10<sup>th</sup> Avenue to the west. SR 60/20<sup>th</sup> Street is a 3-lane undivided State road and is a principal arterial roadway. 10<sup>th</sup> Avenue is a city collector roadway and has a 2015 average annual traffic volume of 3,580. SR60/20<sup>th</sup> Street, at this location, has a 2015 average annual traffic volume of 14,444.

**Comparison of Existing Versus Requested Zoning District Designations**

Zoning Designations. The existing zoning of the subject property is POI, Professional Office and Institutional. The proposed zoning designation is C-1B, General Commercial Trades and Services. A comparison of the two zoning districts permitted/allowable uses is provided in the table below:

<i>Uses</i>	<i>Zoning Districts</i>	
	<i>C-1B</i>	<i>POI</i>
Administrative Services	P	P
Adult Congregate Living Facilities	-	P
Business and Professional Offices	P	P*
Day Care Services	P	P

Single-Family Residences	-	P
Cultural and Civic Activities	P	-
Banks and Financial Institutions	P	P
Fire Stations	P	-
Funeral Homes	P	-
General Retail Sales and Services	P	-
Government Use	P	-
Medical Services	P	P**
Nonprofit Clubs	P	-
Parking Lots and Garages	P	-
Radio or Television Studios or Stations	-	P
Places of Worship	P	P
Plant Nurseries	P	-
Cosmetology Salons and Barber Shops	P	P
Nursing or Convalescent Homes	-	P
Public and Private Utilities	P	P
Recreation and Park Areas	P	-
Restaurants	P	-
Restricted Sales and Services	P	-
Self-Service Storage Facilities	P	-
Trade Service and Repair	P	-
Veterinary Services	P	-
Wholesale Trades and Services	P	-
Health and Fitness Clubs	P	P*
Accessories to Permitted Uses	P	P

P = Permitted Use; \* with conditions/exceptions (excludes veterinary services);  
 \*\* includes medical and dental offices that are listed separately in the POI district.

As indicated in the above table of uses, both zoning districts allow professional offices and banks and financial institutions, salons and barber shops, utilities, day care services, and others. The proposed C-1B zoning district allows several additional commercial uses including funeral homes, retail sales and services, government use, restaurants, self-service storage, trade service and repair, veterinary services, and others.

In summary the two zoning districts share a few allowable uses. The proposed zoning district includes several commercial uses, some of which are considered to be more intense in nature (e.g. restaurant/bar), that are not allowed in the existing zoning district.

## **Review and Analysis**

The staff reviewed the request to amend the Zoning Map based on the standards for considering such amendments pursuant to the provisions of Chapter 65, Article III, of the City's Land Development Regulations. Section 65.22(i) sets the standards for review and approval of amendments.

Justification for Amendment. Pursuant to Section 65.22(i)(1), the staff finds that the requested amendment is warranted and justified to provide for development options that are more commercial in nature due to the change in conditions of the subject property. The proposed C-1B zoning classification allows for a variety of commercial uses.

**Finding:** The staff finds that the requested amendment to the Zoning Map is warranted and justified to provide for development options that are more commercial in nature due to the change in conditions of the subject property.

Consistency of the Requested Rezoning with the Comprehensive Plan and Land Development Regulations. Pursuant to Section 65.22(i)(5) a through g., the staff finds that the requested amendment to the Zoning Map is consistent with the goals, objectives, and policies of the Comprehensive Plan and Land Development Regulations and zoning district standards and criteria as discussed below:

- Land Use Element Policy 1.15: *The City shall rezone land consistent with Table 1.11, Relationship between Land Use Designation and Zoning Districts. The City recognizes that not every zoning district allowed within a land use designation is appropriate for every site within that designation. Therefore, the City may deny a rezoning request, even if the requested zoning district is consistent with a site's land use designation, if the request does not meet zoning map amendment standards of the land development regulations or other legitimate public purpose.* The C-1B, General Commercial Trades and Services zoning district is listed as one of the appropriate zoning districts under the MX, Mixed Use future land use designation. The request to amend the zoning map meets the standards of the land development regulations as stated in the following review and analysis.

**Finding:** The staff finds the request consistent with the Policy 1.15 and Table 1.11.

- Zoning District Standards and Criteria: *The amendment shall be consistent with the Land Development Regulations and zoning standards and criteria.* Section 62.34 states in the purpose statement of the all the various Commercial Districts including the proposed C-1B that *"these districts are designed to provide*

*adequate space in appropriate and highly accessible locations suitable for accommodating various levels of commercial development, including multiple-family residential structures and hotels and motels oriented to serving seasonal or transient residents.”* The section that applies in the case to the proposed C-1B zoning district is that the subject property is bounded on all four sides with roadways including: SR60/20<sup>th</sup> Street, 10<sup>th</sup> Avenue, 9<sup>th</sup> Avenue and 19<sup>th</sup> Place. The highly accessible location is suitable for accommodating various levels of commercial development.

**Finding:** The staff finds the requested amendment is consistent with the applicable zoning district standards and criteria based on the highly accessible location of the subject property.

- **Compatibility with Zoning Map Designations within the Immediate Vicinity of the Subject Property:** *The amendment shall be compatible with Zoning Map designations within the immediate vicinity of the proposed change.* Across SR60/20<sup>th</sup> Street, the properties located due north, northwest and northeast of the subject property are zoned C-1B, General Commercial Trades and Services, and are the same as the proposed zoning designation. The properties to the west and south are zoned MXD, Mixed Use. The property located to the east is zoned POI, Professional Office and Institutional.

The properties to the north are compatible as they share the same C-1B zoning designation. The two other zoning map designations (MXD and POI) in the immediate vicinity of the subject property are also generally compatible with the proposed C-1B zoning designation as they allow some similar uses (with the exception of residential uses) such as professional/medical offices and limited restricted sales/services in combination with residential units and city government services (MXD) and banks and financial institutions, with drive- thru facilities (POI).

The subject property is bound on all four sides by road right-of-ways (minimum of 50 feet); therefore, there are no common property lines with any adjacent properties. The roadway separation provides a buffer which may decrease any potential impacts of future development of the subject property.

**Finding:** The staff finds the proposed C-1B zoning designation is compatible with the zoning district designations in the immediate vicinity of the subject property.

- **Changed Conditions:** *Changed conditions to the property, neighborhood, or the area in the vicinity in which the property is located that warrant an amendment.*  
As stated before in the justification for the proposed amendment, the change in zoning designation will allow for development options that are more commercial in nature than the existing zoning.

With the exception of a few existing older residential uses (single-family, duplexes, and multi-family) most of the properties located along SR 60/20<sup>th</sup> Street in the vicinity of the subject property have a C-1B, General Commercial Trades and Services zoning designation and are developed with commercial, government services and professional office uses. The commercial/office development pattern in the area has already occurred based on the change in conditions.

**Finding:** The staff finds that the request to change the zoning district designation to C-1B is warranted due to the already existing commercial/office uses in the area.

- **Maintenance of the Level of Service:** *The amendment is consistent with the concurrency requirements of the Comprehensive Plan and Land Development Regulations.* Under either the existing zoning designation or the requested designation the existing sanitary sewer, potable water, solid waste, drainage/stormwater, and traffic have sufficient capacity to handle potential future development and meet Level of Service standards.

A comparison analysis of the conceptual possible redevelopment assumptions between the existing zoning uses and the proposed and the potential impacts on level of service standards and concurrency was conducted. The analysis concludes the potential impacts would be similar or equal with the proposed change in zoning for sanitary sewer, potable water, solid waste generation and drainage.

Hypothetically, the drainage impacts are similar between the two zoning district uses, with perhaps more intense improvements required for the commercial/professional office uses. The change in zoning has no negative impact to City drainage facilities according to the City Public Works Engineering Department. All drainage/stormwater improvements that are part of a future development project would be required to conform to city and state requirements.

The traffic impact analysis prepared by the applicant (summary attached) states the potential increase in traffic generation due to the change in zoning designation (assumptions made: 5,000 square feet Bank and 32,300 square feet Medical Office (existing POI zoning) and 37,300 square feet of General Commercial (proposed C-1B zoning) is an increase of approximately 157 (total daily trips) and a potential decrease in peak hour trips.

Overall the traffic analysis indicates the potential increase in traffic due to the proposed change in zoning designation is minor in nature. It should be noted both zoning designations allow banks and medical offices. Based on Indian River County Links Maintenance Report there is sufficient roadway capacity to accommodate a potential increase in traffic along SR60/20<sup>th</sup> Street at this location.

**Finding:** Staff finds that the potential impact of the proposed change in zoning designation will not have an adverse impact on LOS standards for public services and infrastructure.

- Maintenance of an Orderly & Logical Development Pattern: *The requested amendment will result in the maintenance of an orderly and logical development pattern.* As discussed above, the changed conditions to the property and the properties in the area will continue the mostly commercial/office development pattern.

**Finding:** The staff finds that the orderly and logical development pattern will be maintained.

- Consistency and Harmony: *The requested amendment is consistent with the public interest and is in harmony with the purpose and intent of the land development regulations.* The proposed amendment is in the public interest by potentially facilitating development of a vacant parcel of land is consistent with the purpose and intent of the land development regulations and the C-1B zoning district, as discussed in previously in this document.

**Finding:** The staff finds that the requested change in zoning designation is consistent with the public interest and in harmony with the intent of the Land Development Regulations.

## **Recommendation**

Based on the analysis and findings above, the staff recommends that the Planning and Zoning Board approve submittal of the following ordinance to the City Council for favorable consideration: Draft Ordinance amending the Official Zoning Map for the subject property from POI to C-1B.

/cbf

Attachments

**ORDINANCE NO. 2016 – \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, REQUESTED BY TV20, LCC AMENDING THE OFFICIAL ZONING MAP BY CHANGING THE ZONING DISTRICT DESIGNATION OF POI, PROFESSIONAL OFFICE AND INSTITUTIONAL DISTRICT, TO C-1B, GENERAL COMMERCIAL TRADES AND SERVICES DISTRICT, FOR PROPERTY LOCATED AT 901-963 SR60/20<sup>th</sup> STREET, CONTAINING 3.73 ACRES, MORE OR LESS; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, property owner TV 20, LLC submitted an application for an amendment to the City of Vero Beach Official Zoning Map pursuant to Chapter 65, Article III, of the City's Land Development Regulations, requesting a change in the Official Zoning Map designation from POI, Professional Office Institutional District to C-1B, General Commercial Trades and Services District for property comprising 3.73 acres, more or less, located at 901-963 SR60/20thStreet; and

WHEREAS, the Planning and Zoning Board held an advertised public hearing on the zoning map amendment on October 6, 2016, and made a recommendation to the Vero Beach City Council; and

WHEREAS, the Vero Beach City Council finds the proposed amendment is in the public interest and consistent with the Future Land Use Map, goals, objectives, and policies of the Comprehensive Plan, and the other standards and criteria for review and approval of amendments to the Official Zoning Map pursuant to Section 65.22(i)(1) and (5) of the Vero Beach Code of Ordinances,

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:**

**Section 1. Adoption of “WHEREAS” clauses.**

The foregoing “WHEREAS” clauses are hereby adopted and incorporated herein.

**Section 2. Adoption of Amendment to the Official Zoning Map.**

The amendment to the Official Zoning Map of the City of Vero Beach is hereby adopted for the property located at 901-963 SR60/20<sup>th</sup> Street, comprising 3.73 acres, more or less, as graphically depicted in the Exhibit “A” attached and incorporated herein.

**Section 3. Conflict and Severability.**

In the event any provision of this Ordinance conflicts with any other provision of the Code or other applicable law, the provisions of this Ordinance shall apply and supersede. If any phrase or portion of this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion.

**Section 4. Effective Date**

This Ordinance shall become effective upon final adoption by the City Council.

\*\*\*\*\*

This Ordinance was read for the first time on the \_\_\_\_ day of \_\_\_\_\_, 2016, and was advertised on the \_\_\_\_ day of \_\_\_\_\_, 2016, as being scheduled for a public hearing to be held on the \_\_\_\_ day of \_\_\_\_\_, 2016, at the conclusion of which hearing it was moved for adoption by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and adopted by the following vote:

Mayor Jay Kramer \_\_\_\_\_  
Vice Mayor Randolph B. Old \_\_\_\_\_  
Councilmember Pilar E. Turner \_\_\_\_\_

Councilmember Richard G. Winger \_\_\_\_\_  
Councilmember Harry Howle, III \_\_\_\_\_

ATTEST:

CITY OF VERO BEACH, FLORIDA

\_\_\_\_\_  
Tammy K. Vock  
City Clerk

\_\_\_\_\_  
Jay Kramer  
Mayor

[SEAL]

Approved as to form and legal  
sufficiency:

Approved as conforming to municipal  
policy:

\_\_\_\_\_  
Wayne R. Coment  
City Attorney

\_\_\_\_\_  
James R. O'Connor  
City Manager

Approved as to technical requirements:

\_\_\_\_\_  
Timothy J. McGarry, AICP  
Director, Planning & Development

/cbf



**ZONING MAP CHANGE AMENDMENT APPLICATION**

City of Vero Beach Planning & Development Department

1053 20<sup>th</sup> Place – P.O. Box 1389

Vero Beach, Florida 32961-1389

Phone (772) 978-4550 / Fax (772) 778-3856

*Revised*

Date Received 8-18-16

Application # Z16-00004-MAP

*Prior to completing or signing this application, applicants and property owners are encouraged to read it thoroughly. If you have any questions, please do not hesitate to contact the Planning Department at (772) 978-4550.*

APPLICANT TV20, LLC Telephone 772-360-9289  
Fax #: \_\_\_\_\_

MAILING ADDRESS 3505 Ocean Drive, Vero Beach, FL 32963

SITE OWNER TV20, LLC Telephone 772-360-9289  
Fax #: \_\_\_\_\_

OWNER ADDRESS 3505 Ocean Drive, Vero Beach, FL 32963

SITE LOCATION 901 963 20th Street, Vero Beach, FL 32960

PARCEL I.D. NUMBER 33 39 01 00027 003 000001.0

PROPOSED ZONING CHANGE: FROM PO1 TO C1-B

(If this amendment requires a comprehensive plan change, a future land use map amendment application must accompany this request.)

Application Fee\*

with Future Land Use Change

Large Scale (More than 10 acres) \$3,370

\$4,090

Small Scale (Less than 10 acres) \$2,460

\$3,010

\* See attached fee schedule for additional advertising and administrative costs.



[Signature]  
Applicant Signature Date

[Signature]  
Property Owner Signature Date

John E Taylor, Jr.  
(Print Name)

John E Taylor, Jr.  
(Print Name)

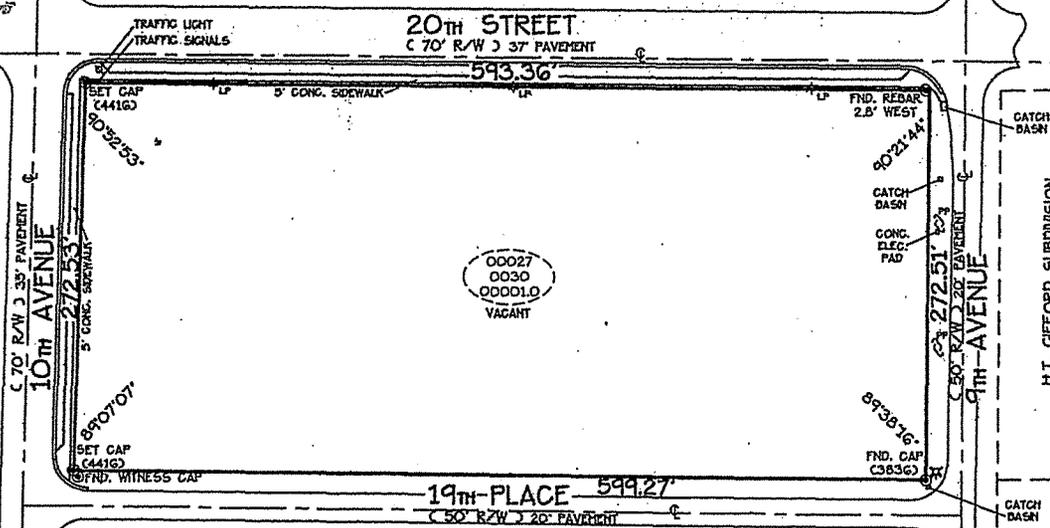
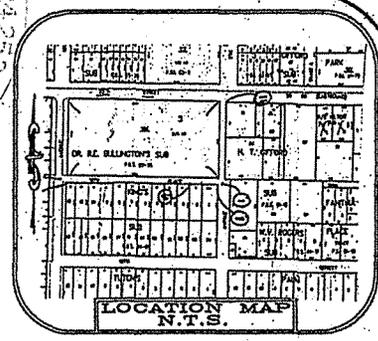
AUG 2016  
City of Fort Beach  
Planning Dept.

**LEGEND OF SURVEY ABBREVIATIONS:**

- A/C AIR CONDITIONER
- A/V AVERAGE
- B.A. BEARING BACK
- B.M. BENCH MARK
- B.L.K. BLOCK
- B.V. BOULEVARD
- C. CALCULATED
- C.D. CHORD BEARING
- C.D.S. CHORD DISTANCE
- C.M. CONCRETE MASONRY STRUCTURE
- C.S. CENTERLINE
- C.L. CHAIN LINK FENCE
- C.M. CONCRETE MASONRY
- C.M.P. CORRUGATED METAL PIPE
- C.M.C. CONCRETE
- C.P. CORNER
- C.P. CURB
- D. DITCH
- D.B. DIRT BANK
- D.F. DRAINFIELD
- D.S. DISTANCE
- D.R. DRAINAGE
- E. EAST
- E.L. ELECTRICAL
- F. FLOOR
- F.F. FIRST FLOOR
- F.F. FILLS
- F.C. FORM CONCRETE
- F.M. FURNACE
- F.L. FLUORIDE POWDER & LIGHT
- G.O. GROUND
- H.V. HEAD WALL
- H.D. FIRE HYDRANT
- I.P. IRON PIPE
- I.R. IRON ROD
- L. LENGTH
- L.B. LIGHTER BUSINESS
- L.P. LIGHT POLE
- M. MEASURED
- M. MANHOLE
- M.W. MEAN HIGH WATER LINE
- M. MOUND
- M. MOUNT
- M.V. MATERIAL, GEODETIC
- V. VERTICAL DATUM
- P. PLAT
- P.C. POINT OF CURVATURE
- P.P. PERMANENT CONTROL POINT
- P.I. POINT OF INTERSECTION
- P.M. POINT OF BEGINNING
- P.M. PERMANENT REFERENCE
- P.M. POINT
- P.P. POWER POLE
- P.T. POINT OF TANGENCY
- R. RECORD BY PLAT OR BOOK
- R. RADIUS OR RADIUS
- R/V. RIGHT OF WAY
- S. SECTION
- S.F. SQUARE FEET
- S.R. STATE ROAD
- S.T. STREET
- S.T. STATION
- T. TANGENT
- T. TELEPHONE
- T. TRACT
- T.V. TOWNSHIP
- U & B. UTILITY & DRAINAGE
- U. UTILITY
- V. VEST
- V.F. VERT. FENCE
- V.M. WATER METER
- V.V. WATER VALVE
- W. WELLS
- W. WELLS
- W. WELLS
- W. WELLS

CITRUS PARK  
PLAT BOOK 5, PAGE 28

00001  
0000  
00015.6  
PLAT BOOK 2, PAGE 11



**LEGAL DESCRIPTION:** LOT 1 LESS THE NORTH 20.0 FEET AS IN O.R.B. 519, PAGE 605, BLOCK 3, LESS ADDITIONAL RIGHT-OF-WAY FOR 10TH AVENUE AS IN O.R.B. 896, PAGE 755  
**DR. RICHARD E. BULLINGTONS S/D**  
ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 5 OF THE PUBLIC RECORDS OF INDIAN RIVER CO., FLORIDA, SAID LANDS LYING IN INDIAN RIVER CO., FLORIDA, CONTAINING 3.73 ACRES MORE OR LESS

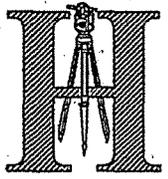
- SURVEY NOTES:**
1. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY AND/OR EASEMENTS OF RECORD.
  2. NORTH ARROW SHOWN HEREON IS ORIENTATED AS SHOWN.
  3. THIS SURVEY IS CERTIFIED ONLY TO THE BELOW NAMED INDIVIDUALS
  4. ELEVATIONS (IF SHOWN) HEREON ARE BASED ON N.G.V.D. (1929), UNLESS OTHERWISE NOTED.
  5. LEGAL DESCRIPTION SUPPLIED BY CLIENT.
  6. SQ. FT. OF HOUSE (IF SHOWN) SUPPLIED BY CLIENT.
  7. NO STRUCTURES THAT ARE BENEATH THE SURFACE HAVE BEEN LOCATED.

**CERTIFIED TO:**  
TV 20, LLC  
INDIAN RIVER PARTNERS, LLC  
ROSSWAY MOORE & TAYLOR, ATTORNEYS  
COLLINS, BROWN, CALDWELL, BARKETT &  
GARAVAGLIA, CHARTERED  
ATTORNEY'S TITLE INSURANCE COMPANY

NOTE: COUNTY WATER AVAILABLE FOR THIS PARCEL.  
NOTE: PLOT PLANS ARE NOT TO BE USED FOR CONSTRUCTION LAYOUT PURPOSES.

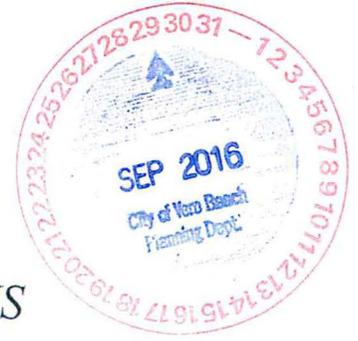
THIS DRAWING AND COPIES THEREOF ARE NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

*William H. Hayhurst*  
WILLIAM H. HAYHURST  
PROFESSIONAL SURVEYOR & MAPPER  
FLORIDA REGISTRATION NO 4418 DATE SIGNED 6/17/05



**HAYHURST LAND SURVEYING INC.**  
CERTIFICATE OF AUTHORIZATION NUMBER (L.B. 7364)  
SURVEYING & MAPPING COMPANY  
843 8TH STREET  
VERO BEACH, FL. 32982  
PHONE: (772) 569-6680  
FAX: (772) 770-3446

SURVEY TYPE: BOUNDARY		DATE:	REVISIONS:	RT.	FLOOD ZONE X EFFECTIVE DATE 5/4/04 FIRM No. 12DGC00158 E
DRAWN BY:	J.D.J.				
CHECKED BY:	W.E.H.				
FIELD BOOK:	201				
PAGE NO:	53				
FIELD DATE:	6/13/05				
SCALE:	1"=80'				
JOB NO:	05-535				



*REZONING TRAFFIC ANALYSIS*

TV 20, LLC  
Indian River County, FL

*Prepared for:*  
TV 20, LLC  
Vero Beach, Florida

*Prepared by:*

**MacKenzie**  
Engineering & Planning, Inc.  
10795 SW Civic Lane  
Port St. Lucie, FL 34987  
(772) 345-1948



Shaun G. MacKenzie P.E.  
PE Number 61751

9/28/16

048002  
May 2016  
© MacKenzie Engineering and Planning, Inc.  
CA 29013

## **EXECUTIVE SUMMARY**

### **TV 20, LLC – REZONING TRAFFIC IMPACT SUMMARY**

September 2016

048002

- Location: East of 10<sup>th</sup> Avenue and South of SR 60/20<sup>th</sup> Street  
901-963 20<sup>th</sup> Street, Vero Beach, FL 32960.
- Size: Total Site Area on 3.73 acres
- Trip Generation:  
Maximum Allowable Building Square Footage 10,000 per acre (37,300 SF)

Existing Zoning Maximum 5,000 SF Bank (Land Use Codes 912)  
& 32,300 SF Medical Office Uses (Land Use Codes 720)

ADT: Bank  $T = 148.15 (X)$  = 741 trips/day  
 Medical Office  $T = 36.16 (X)$  = 1,167 trips/day  
 Total = 1,908 trips/day

PM peak hour trips: Bank  $T = 25.82 (X)$  = 129 PM Peak hour trips  
 Medical Office  $Ln (T) = 0.88 Ln(X) + 2.24$  = 104 PM Peak hour trips

AM peak hour trips: Bank  $T = 12.35 (X)$  = 62 AM Peak hour trips  
 Medical Office  $T = 2.3 (X)$  = 74 AM Peak hour trips

PM Total = 233 PM in = 93 PM out = 140

AM Total = 136 AM in = 93 AM out = 43

Proposed Zoning Maximum 37,300 SF General Commercial (Land Use Code 820)

ADT:  $Ln (T) = 0.65 Ln(X) + 5.83$  = 3,577 trips/day

PM peak hour trips:  $Ln (T) = 0.67 Ln(X) + 3.31$  = 309 PM peak hour trips

AM peak hour trips:  $Ln (T) = 0.61 Ln(X) + 2.24$  = 85 AM peak hour trips

PM Total = 309 PM in = 148 PM out = 161

AM Total = 85 AM in = 53 AM out = 32

Net Increase in Trips Resulting from Zoning Change

ADT: = + 157 trips/day

PM peak hour trips: = - 24 PM peak hour trips

AM peak hour trips: = - 66 AM peak hour trips

PM in = + 9 PM out = - 33

AM in = - 52 AM out = - 14

- Area of Influence:
  - NORTH – Royal Palm Blvd
  - SOUTH – 16<sup>th</sup> Street/17<sup>th</sup> Street
  - EAST – US Highway 1
  - WEST – 43<sup>rd</sup> Avenue
  
- Significant Roads:
  - US Highway 1 (8<sup>th</sup> Avenue)
  - SR 60 (20<sup>th</sup> Street)
  - 10<sup>th</sup> Avenue
  
- Significant Intersections: None
  
- Trip Distribution:
 

• NORTH	-	25 percent
• SOUTH	-	40 percent
• EAST	-	15 percent
• WEST	-	20 percent
  
- Internal Capture: None
  
- Pass-by Capture:
 

General Commercial	Ln(T) = -0.29 Ln(X) + 5
Bank	47%
Medical Office	0%
  
- PM Peak Hour Directional % (ingress/egress):
 

General Commercial	48% entering / 52% exiting
Bank	50% entering / 50% exiting
Medical Office	27% entering / 73% exiting
  
- AM Peak Hour Directional % (ingress/egress):
 

General Commercial	62% entering / 38% exiting
Bank	56% entering / 44% exiting
Medical Office	79% entering / 21% exiting
  
- Traffic Count Factors Applied: None
  
- Off-Site Improvements: None
  
- Roadway Capacities (IRC Link Sheets): See Appendix
  
- Assume roadway and / or intersection improvements: None
  
- Significant Dates
  - a) Pre-study conference: None

b) Traffic Assignment Approval: None

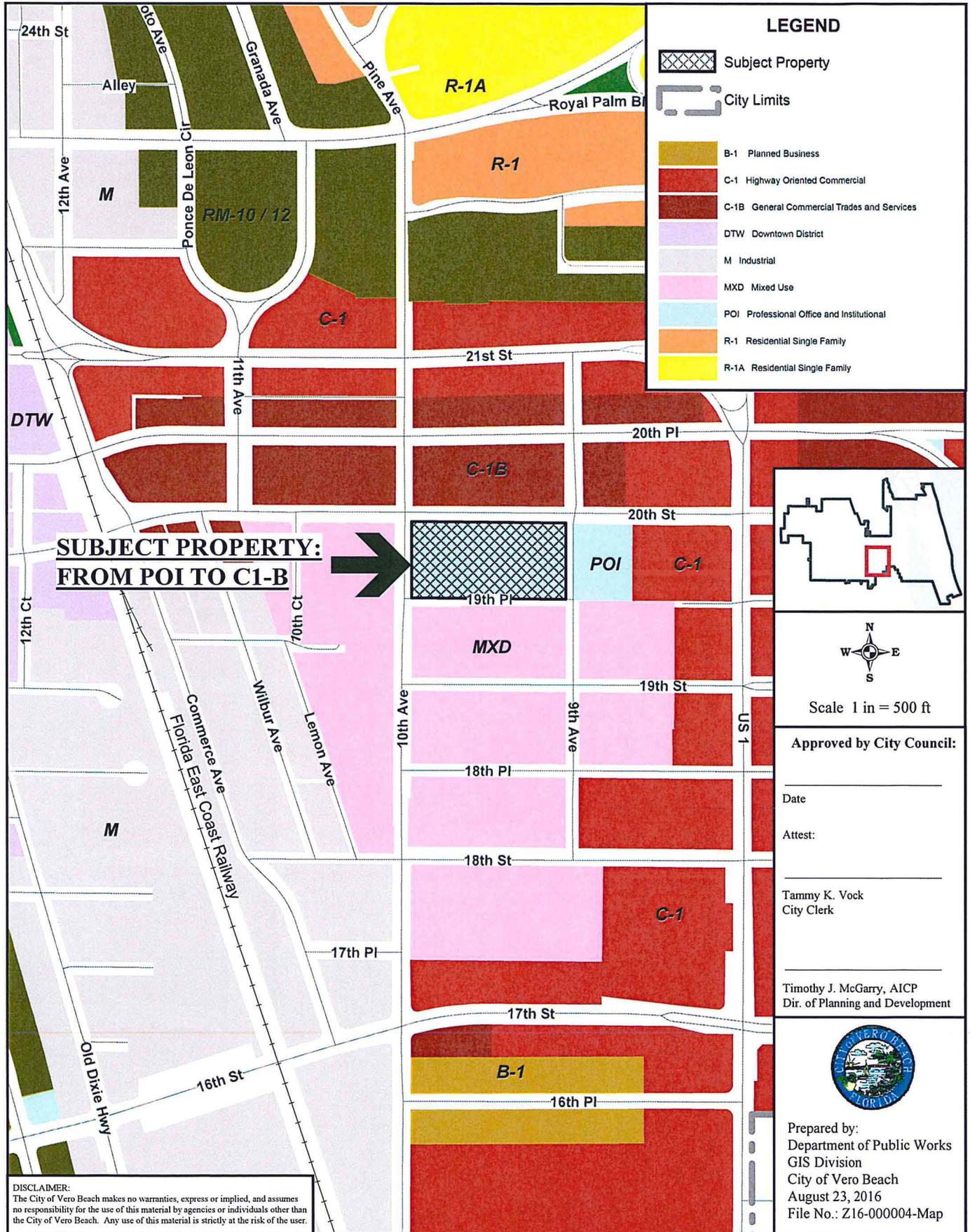
c) Traffic counts: None

d) Study approval: .....

- SR 60 Interest Fare Share Fee is not applicable at this time.

# Location and Zoning Map

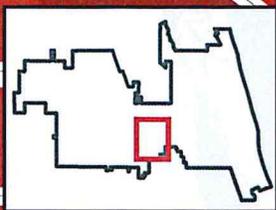
Exhibit "A"



## LEGEND

-  Subject Property
-  City Limits
-  R-1A Residential Single Family
-  R-1 Residential Single Family
-  C-1 Highway Oriented Commercial
-  C-1B General Commercial Trades and Services
-  DTW Downtown District
-  M Industrial
-  MXD Mixed Use
-  POI Professional Office and Institutional
-  B-1 Planned Business

**SUBJECT PROPERTY:  
FROM POI TO C-1-B**



Scale 1 in = 500 ft

Approved by City Council:

Date \_\_\_\_\_

Attest: \_\_\_\_\_

Tammy K. Vock  
City Clerk

Timothy J. McGarry, AICP  
Dir. of Planning and Development



Prepared by:  
Department of Public Works  
GIS Division  
City of Vero Beach  
August 23, 2016  
File No.: Z16-000004-Map

**DISCLAIMER:**  
The City of Vero Beach makes no warranties, express or implied, and assumes no responsibility for the use of this material by agencies or individuals other than the City of Vero Beach. Any use of this material is strictly at the risk of the user.

## DEPARTMENTAL CORRESPONDENCE

TO: Chairman Larry Lauffer and Planning and  
Zoning Board Members

FROM: Timothy J. McGarry, AICP   
Director of Planning and Development

DATE: September 27, 2016

SUBJECT: **Public Hearing on a Proposed Ordinance Amending Section 71.14 of the Code Relating to Restrictions on Improvement of Certain Designated City Rights-of-Way**

### Overview

Upon the request of the City Water and Sewer Department, the City Attorney has prepared the attached draft Ordinance that amends Section 71.14 in the City's Land Development Regulations. The proposed amendment removes certain restrictions on the improvement of rights-of-way that were intended to protect Live Oak tree canopies and to protect the historical significance and aesthetic appeal of these designated rights-of-way. The amendment would allow installation of sewer collection lines along, on, or under these rights-of-way as part of the City's Septic Tank Effluent Pump ("STEP") System Program.

### Background

In 2014, the City Council adopted the STEP System Program in Chapter 78 of the City Code to provide for the conversion of properties utilizing private septic tank and drain field systems to the modified septic tank effluent pump ("STEP") system. This STEP system is a more affordable and effective method to capture and treat effluent from the converted septic systems at the City's wastewater treatment plant. The elimination of septic tanks and drain fields as a point source of pollution leaching to the Indian River Lagoon is a major goal of the City.

Over the last couple of years, the City Water and Sewer Department has been successfully implementing its STEP System Program on the barrier island to connect residences to the central sewer that are served by septic and drain field systems for effluent disposal. However, the implementation of this important program in certain residential areas is restricted by the provisions of Section 71.14 of the Code. Section 71.14 prohibits the installation of "sewers" along, on, or under the rights-of-way of the following:

- Sandfly Lane;
- Lady Bug Lane;
- Painted Bunting Lane between Club Drive and Ocean Drive;
- Camino Del Rio (east and west); and
- Eugenia Road east of A-1-A.

The construction of the STEP System does not involve substantial digging in or disruption of rights-of-way but rather is accomplished by the use of directional boring for installation of the effluent sewer collection lines. This construction practice would preserve existing Live Oaks and the historical significance and aesthetic appeal of the City's rights-of-way designated to remain unimproved.

Therefore, the Water and Sewer Department has proposed the attached draft Ordinance amending Section 71.14 that specifically would exempt the STEP sewer system installed by directional boring methods from the prohibition on the installation sewers along, on, or under the rights-of-way of the aforementioned ("canopy") streets. These streets would still remain narrow, unimproved sand or shell roads.

### **Staff Review and Analysis**

The staff reviewed the proposed text amendments to the Land Development Regulations based on the standards outlined in Section 65.22(i)(1) and (3) of the Vero Beach Code. The staff's analysis and findings are as follows:

*Justification for the Amendment.* Approximately 1,500 septic systems exist in the City of Vero Beach, a significant portion of which exist on the barrier island. Septic systems have been identified as a significant source of groundwater contamination, especially in areas with a high water table and dense concentration of septic tanks. The contaminated groundwater from these septic systems leach into the groundwater that conveys nitrogen, phosphate, and other pollutants to the Indian Lagoon and contributes to the degradation of this significant estuary.

The proposed amendment will enable the City to move forward with its STEP system program in those areas with existing residences along the five named streets. The residences on these streets are all currently served by private on-site septic systems. The amendment will allow installation of the STEP system that will lead to elimination of septic tanks that are contaminating the groundwater and contributions to the degradation of the Indian River Lagoon's water quality.

Therefore the staff finds the proposed text amendment to be justified and warranted pursuant to Section 65.22(i)(1) based upon the above facts.

*Consistency with the Comprehensive Plan.* The existing objectives and policies do not address in an adequate manner the problems with septic tank systems and the need for their removal. The only references are broad policies such as those directed at "preventing estuarine pollution" with no linkage of the effluent from these systems entering the groundwater and then the Indian River Lagoon. However, the draft Comprehensive Plan under preparation will contain several policies relevant to the implementation of the STEP system and the need to connect residences currently on private septic system to reduce pollutants entering the Lagoon through groundwater leaching from septic tank drainage fields.

Therefore, the staff finds the proposed text amendment is consistent with the broad language related to protecting water quality in the current Comprehensive Plan and will be consistent with

the proposed policy language in the update of the Sanitary Sewer Sub-Element and Conservation and Coastal Management Elements of the Comprehensive Plan.

*Consistency with Land Development Regulations.* The proposed amendment clarifies existing language to improve its readability and administration. It provides a specific exemption for the STEP system from the prohibition on installing sewers along, on, or under the right-of-way of the designated streets in Section 71.14 that does not create any conflicts with other provisions of that section. Therefore, the staff finds the proposed text amendment is consistent with the Land Development Regulations.

### **Recommendation**

The staff recommends Planning and Zoning Board approval of the attached draft Ordinance for transmittal to the City Council for favorable action.

TJM/tf  
Attachment

**ORDINANCE NO. 2016-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING SECTION 71.14 IN THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF VERO BEACH RELATING TO RESTRICTIONS ON IMPROVEMENT OF CERTAIN DESIGNATED CITY RIGHTS-OF-WAY; PROVIDING FOR CLARIFICATION; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, section 71.14 in the City's land development regulations of the City's Code of Ordinances was previously adopted designating certain City rights-of-way to remain in an unimproved condition as much as possible in order to protect the City's large desirable trees and to protect the historical significance and aesthetic appeal of such designated rights-of-way, including a prohibition on installation of utility poles and sewers; and

**WHEREAS**, the City Council previously adopted a Septic Tank Effluent Pump ("STEP") System Program in Chapter 78 of the City Code to provide for the conversion of properties utilizing private wastewater disposal systems (septic systems) to a modified septic tank effluent pump ("STEP") system and thereby enable a more affordable and convenient method to capture and treat effluent from such converted septic systems at the City's wastewater treatment plant; and

**WHEREAS**, the residences along and served by the aforementioned rights-of-way typically are served by septic tank and drain field systems for effluent disposal, making them prime candidates for conversion to the City's STEP System in furtherance of the City's goal of eliminating septic tanks and drain fields as a point source of pollution leaching to the Indian River Lagoon; and

**WHEREAS**, construction of the City's STEP System does not involve substantial digging in or disruption of rights-of-way but rather is accomplished by the use of directional boring for installation of the effluent sewer collection lines thereby preserving the historical significance or aesthetic appeal of the City's rights-of-way designated to remain unimproved; and

**WHEREAS**, the City Council finds that the amendments provided for herein also serve to provide clarification and serve a municipal purpose and are in the best interest of and promote the health, safety and welfare of the public, the community, and the health of the Indian River Lagoon by expediting installation of the City STEP system for collection and proper treatment and disposal of wastewater,

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA:**

**Section 1 – Adoption of “Whereas” Clauses.**

The foregoing “WHEREAS” clauses are hereby adopted and incorporated herein as the legislative findings, purpose, and intent of this Ordinance.

**Section 2 – Amendment of Section 71.14.**

Section 71.14, “Rights-of-way required to be improved,” of Chapter 71, “Public Rights-of Way” is hereby amended to read as follows:

**[CODING: Words deleted are designated by ~~strikethrough~~; words added are underscored]**

Sec. 71.14. - Rights-of-way ~~required to be~~ remain unimproved.

~~This~~ The city right-of-way improvement policy shall not be interpreted to require the improving of certain rights-of-way if it is determined by the public works director that paving would result in the destruction of large, well-maintained, and desirable trees, or if the rights-of-way which have historical significance or aesthetic appeal which would be ruined detrimentally impacted by improvement. It shall be up to the discretion of the city council to ~~elassify~~ designate such rights-of-way in these categories on an individual basis. Pursuant to the foregoing, and the following streets rights-of-way are hereby designated to remain unimproved except to the extent otherwise provided herein:

- (a) Sandfly Lane;
- (b) Lady Bug Lane;
- (c) Painted Bunting Lane between Club Drive and Ocean Drive;
- (d) Camino Del Rio (east and west); and
- (e) Eugenia Road east of A-1-A.

It is the intent of this section that the streets within said roads rights-of-way shall remain narrow sand and shell roadways, not paved or hard-surfaced, not straightened or widened, or the grade changed, and the city shall do no pruning or removal of trees or plants unless said tree or plant ~~had~~ has been determined to be a safety hazard by the city manager or his designee; in which case the pruning or removal shall be guided by standards established by the International Society of Arboriculture. There shall be no installations of any utility poles ~~and~~ or sewers (except a septic tank effluent pump “STEP” sewer system installed by directional boring methods) along, on, or under ~~same~~ such rights-of-way and ~~said the roads streets~~ shall remain in

their present condition and state as much as possible, and the material used for maintenance of the roadways shall be sand or shell similar to ~~what is there now~~ that currently existing.

**Section 3 – Conflict and severability.**

In the event any provision of this Ordinance conflicts with any other provision of the Code or other applicable law, the provisions of this Ordinance shall apply and supersede. If any phrase or portion of this Ordinance or article or application thereof to any person or circumstance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

**Section 4 – Codification.**

The amendments provided for herein shall be codified in the Code of the City of Vero Beach, Florida.

**Section 5 - Effective Date.**

This Ordinance shall become effective upon adoption by the City Council.

\*\*\*\*\*

This Ordinance was read for the first time on the \_\_\_ day of \_\_\_\_\_ 2016 and was advertised on the \_\_\_\_\_ day of \_\_\_\_\_ 2016, for a public hearing to be held on the day of \_\_\_\_\_ 2016, at the conclusion of which hearing it was moved for adoption by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and adopted by the following vote of the City Council:

Mayor Jay Kramer \_\_\_\_\_  
Vice Mayor Randolph B. Old \_\_\_\_\_  
Councilmember Pilar E. Turner \_\_\_\_\_  
Councilmember Richard G. Winger \_\_\_\_\_  
Councilmember Harry Howle III \_\_\_\_\_

ATTEST:

CITY OF VERO BEACH, FLORIDA

---

Tammy K. Vock  
City Clerk

---

Jay Kramer  
Mayor

[Seal]

Approved as to form and  
legal sufficiency:

Approved as conforming to municipal  
policy:

---

Wayne R. Coment  
City Attorney

---

James R. O'Connor  
City Manager

Approved as to technical requirements:

Approved as to technical requirements:

---

Robert J. Bolton  
Water and Sewer Director

---

Monte K. Falls  
Public Works Director

Approved as to technical requirements:

---

Timothy McGarry  
Planning & Development Director

**DEPARTMENTAL CORRESPONDENCE**

TO: Chairman Larry Lauffer and Planning and  
Zoning Board Members

FROM: Timothy J. McGarry, AICP  
Director of Planning and Development 

DATE: October 27, 2016

SUBJECT: **Public Hearing on a Draft Ordinance to Amend the  
City of Vero Beach's Land Development Regulations  
Relating to Medical Marijuana Dispensaries**

**Overview**

The City Attorney's office has prepared the attached draft Ordinance to the City's Land Development Regulations to amend existing regulations governing medical marijuana dispensaries. The proposed amendment is primarily intended to respond to the language contained in the proposed constitutional amendment (No. 2), amending Article X, Section 29 of the Florida Constitution. The proposed constitutional amendment is on the November 8, 2016, ballot for voter approval.

**Background**

The City Council enacted Ordinance No. 2015-27 ("Marijuana Ordinance") regulating the location, operation, and regulation of medical marijuana dispensaries, in advance of the legalization of the dispensing of marijuana for medical purposes by the State of Florida. In the 2016 Legislative Session, the Florida Legislature enacted amendments to the Florida Statutes expanding the legal use of medical marijuana by allowing patients with a terminal condition to be prescribed medical cannabis (as defined in Section 381.986(1)(b), Florida Statutes) rather than only low-THC cannabis. The 2016 legislation established a comprehensive State licensing and regulatory framework for the cultivation, processing, and dispensing of medical marijuana.

A major provision of the 2016 legislation was the creation of Section 381.986 (8) reserving to the state the regulation of the cultivation and processing of medical cannabis or low-THC cannabis by dispensing organizations. The new section of the statutes does provide that a municipality may determine by ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with state law or department rule for, dispensing facilities of dispensing organizations located within its municipal boundaries.

The proposed constitutional amendment would further expand the use of medical marijuana to include patients with a "debilitating medical condition." As defined in the full text of the proposed constitutional amendment (see attached), a "debilitating medical condition" means cancer, epilepsy, glaucoma, HIV, AIDS, PTSD, ALS, Crohn's disease, Parkinson's disease, MS,

or other debilitating medical conditions of the same kind or class as those enumerated, and for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient. [Note: The acronyms HIV, AIS, PTSD, ALS, and MS were used above rather than the medical terms for these conditions used in the proposed constitutional amendment text.]

Under the existing statutes (Section 499.0295, Florida Statutes), a “terminal condition means a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible even with the administration of available treatment options currently approved by the United States Food and Drug Administration, and, without the administration of life-sustaining procedures, will result in death within 1 year after diagnosis if the condition runs its normal course.”

The state statutes prohibit the possession, use, or administration of low-THC cannabis or medical cannabis by smoking. The use and administration of low-THC cannabis or medical cannabis is also prohibited on any form of public transportation, in any public place, in a qualified patient’s place of employment, if restricted by his or her employer, on schools grounds, and on a school bus or in a vehicle, aircraft, or motorboat.

### **Summary of Proposed Revisions**

The proposed draft Ordinance amends specific provisions of the “Marijuana Ordinance” in the Land Development Regulations as follows:

- *General:* The term “medical marijuana dispensary” used in the City’s existing regulations has been universally replaced with the term “medical marijuana treatment center.” This latter term is the one used in the proposed constitutional amendment.

*Commentary:* The proposed amendment uses the same term for medical marijuana dispensing facilities as the one used in the proposed constitutional amendment. The definition of medical marijuana treatment center in the proposed constitutional amendment was not applied to the City’s definition of a medical marijuana treatment center as it includes the cultivation and processing (including development related products such as food, tinctures, aerosols, oils, or ointments) of marijuana at these facilities. In adopting the 2015 “Marijuana Ordinance,” the City Council, upon recommendation of the Planning and Zoning Board, strongly opposed the cultivation and processing of marijuana in these facilities and in the City. However, it should be recognized that the state pre-emption provisions related to the cultivation and processing of marijuana may create a potential issue for the City.

- *General:* The term “personal caregiver” in several locations has been revised to refer only to “caregiver” as this is the term used in the proposed constitutional amendment.

- *Chapter 60, Appendix, Definitions.* In the definition of “medical marijuana treatment center” the phrase “(including development of related products such as food, tinctures, aerosols, oils, or ointments) of marijuana” has been deleted.

*Commentary:* The exclusion of the last line in the existing definition was for clarity and administration of the code. It is preferable from a planning and legal perspective to keep regulations out of definitions as much as possible. This language is relocated to Section 62.48.1 under the conditional use provisions for a medical marijuana treatment center.

- *Section 62.652. (1):* The additional language related to “Low-THC” cannabis has been included to be consistent with the 2016 revisions to the Florida Statutes.
- *Section 62.652(4):* The added language is intended to be consistent with the language in the proposed constitutional amendment in the definition of “qualifying patient.”

All substantive elements of the existing “Marijuana Ordinance” remain the same.

### **Staff Review and Analysis**

The staff reviewed the proposed text amendment to the Land Development Regulations based on the standards outlined in Section 65.22(i)(1) and (3) of the City of Vero Beach Code. The staff’s analysis and findings are as follows:

*Justification for the Amendment.* The proposed amendment is needed to bring the City’s regulations governing medical marijuana distribution facilities into compliance with the 2016 amendments to Sections 381.986 and 499.0295, Florida Statutes, and the language in the proposed constitutional amendment. The proposed revisions to the Marijuana Ordinance will place the City in a better position to respond to prospective businesses seeking to locate a medical marijuana treatment center in Vero Beach. It may strengthen the City’s vesting position should the Florida Legislature decide to enact further regulations to pre-empt local government regulations related to the legal dispensing of medical marijuana. Therefore, the staff finds the text amendment to be justified and warranted pursuant to Section 65.22(i)(1).

*Consistency with the Comprehensive Plan.* The “Marijuana Ordinance” adopted in 2015, was found by staff to be consistent with Objective 3 of the Land Use Element of the Comprehensive Plan that states: “*The City shall establish and maintain land use/development regulations that will reduce and prevent land uses that are inconsistent with community character and incompatible with adjacent development.*” The revisions proposed in the attached draft ordinance only further strengthen the “Marijuana Ordinance,” and, therefore, the draft ordinance is consistent with Objective 3 of the Land Use Element.

Consistency with Land Development Regulations. The staff finds that the proposed ordinance amending the “Marijuana Ordinance” is consistent with the Land Development Regulations as it brings Vero Beach’s regulations governing medical marijuana treatment centers into compliance with 2016 legislation expanding legal medical marijuana use and the language in the proposed constitutional amendment related to medical marijuana production, possession and use.

**Recommendation**

The staff recommends Planning and Zoning Board approval of the draft ordinance for transmittal to the City Council for favorable consideration.

TJM/tf  
Attachments

**ORDINANCE NO. 2016-**

**AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS, PART II OF THE CODE OF THE CITY OF VERO BEACH, RELATING TO MEDICAL MARIJUANA DISPENSARIES; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on October 20, 2015, the City Council of the City of Vero Beach ("City Council") passed Ordinance No. 2015-27 ("Marijuana Ordinance") regulating the location, operation, and regulation of medical marijuana dispensaries, in advance of the legalization of the dispensing of marijuana for medical purposes by the State of Florida; and

**WHEREAS**, a constitutional amendment entitled "Use of Marijuana for Debilitating Medical Conditions," ("Ballot Amendment") will be placed on the Florida election ballot by People United for Medical Marijuana, to be considered by voters in the State of Florida at the November 8, 2016 election ("Election"); and

**WHEREAS**, the Ballot Amendment includes definitions that differ from those used in the Marijuana Ordinance; and

**WHEREAS**, the City Council has determined that it is in the best interests of and would serve to promote and protect the public health, safety, and welfare to amend the Marijuana Ordinance definitions to include language that strengthens the Marijuana Ordinance in light of the proposed Ballot Amendment language, in the event that it is approved by the voters at the Election; and

**WHEREAS**, the City Council finds the adoption of this Ordinance is in the public interest by serving to promote and protect the public health, safety, and welfare and otherwise serves a municipal purpose,

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VERO BEACH, FLORIDA, THAT:**

**Section 1. Adoption of “WHEREAS” Clauses.**

The foregoing “WHEREAS” clauses are hereby adopted and incorporated herein as forming the legislative purpose hereof.

**Section 2. Amendment of Chapter 60, Appendix. Definitions.**

Chapter 60, Appendix, is hereby amended to add the following definition:

*Medical marijuana ~~dispensary~~ treatment center*: A facility, operated by a person authorized by law and holding all necessary licenses and permits from the State of Florida in accordance with local and state laws, that possesses or dispenses marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers for medical use. This definition excludes any cultivation or processing ~~(including development of related products such as food, tinctures, aerosols, oils, or ointments)~~ of marijuana.

**Section 3. Amendment of Chapter 62, Article IV. M Industrial District Creating a New Section 62.48.1.**

Section 62.48.1 is hereby amended to reads as follows:

**Section 62.48.1. Medical Marijuana ~~Dispensaries~~ Treatment Center Conditional Use.**

Medical marijuana ~~dispensaries~~ treatment center pursuant to Article XV of this chapter may be permitted as a conditional use. Medical marijuana treatment center as a conditional use excludes any cultivation or processing (including development of related products such as food, tinctures, aerosols, oils, or ointments) of marijuana.

**Section 4. Amendment of Chapter 62 Creating a New Article XV.**

Article XV is hereby amended to reads as follows:

**ARTICLE XV. MEDICAL MARIJUANA ~~DISPENSARIES~~ TREATMENT CENTERS**

**Sec. 62.651. Purpose**

The purpose of this article is to protect the public health, safety, and welfare by prescribing the manner and standards under which a medical marijuana ~~dispensary~~ treatment center may be approved for locating and conducting business in the city. The regulations contained in this article and part are intended to:

- (1) Provide for the lawful, safe sale and distribution of marijuana for medical use to qualifying patients who are authorized to legally obtain, possess, and use medical marijuana or to ~~personal~~ caregivers authorized to obtain and possess marijuana in accordance with state law; and
- (2) Protect public health and safety through reasonable limitations on business operations as they relate to noise and public safety, security for the business and its personnel, and other health and safety concerns; and
- (3) Promote and protect the character and vitality of the city's residential neighborhoods and commercial districts through site development standards for treatment centers ~~dispensaries~~—and limiting location of ~~dispensaries~~ treatment centers to the M, Industrial District and only as a conditional use; and
- (4) Protect sensitive land uses from the potential adverse impacts of ~~dispensaries~~ treatment centers by requiring physical separation between such uses and schools, public parks, and child care centers; and
- (5) Prohibit any cultivation and processing of marijuana within the city limits.

**Sec. 62.652. Definitions.**

Unless otherwise indicated, the following words and phrases used in this article shall have the following meanings:

- (1) *Marijuana* has the same meaning given cannabis in Section 893.02(3), Florida Statutes and, in addition, “Low-THC cannabis” as defined in Section 381.986(1)(b), Florida Statutes, shall also be included in the meaning of the term “marijuana.”
- (2) *Medical use* means the acquisition, possession, use, delivery, transfer, or administration of marijuana or related supplies by a qualifying patient or ~~personal~~ caregiver for use by a qualifying patient for the treatment of a debilitating medical condition.
- (3) *Personal eCaregiver* means a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient's medical use of marijuana and has a caregiver identification card issued by the Florida Department of Health.
- (4) *Qualifying patient* means a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card pursuant to state law. If the Florida Department of Health does not begin issuing identification cards

within nine (9) months after the voters approve Ballot Amendment – Use of Marijuana for Debilitating Medical Conditions, then a valid physician certification will serve as a patient identification card in order to allow a person to become a "qualifying patient" until the Department begins issuing identification cards.

**Sec. 62.653. Application review and approval process.**

The site plan application submittal, review, and approval process for a marijuana medical ~~dispensary~~ treatment center and any subsequent amendments shall follow the procedures, review standards, and requirements of this article and chapter 64, article I, of this part for a conditional use. The application shall be in a form as prescribed by the planning director and shall contain all pertinent information necessary for the planning and zoning board to make its decision including documentation by the applicant demonstrating compliance with conditional use requirements and special conditions for operation of a medical marijuana ~~dispensary~~-treatment center.

**Sec. 62.654. Conditional use requirements and special conditions.**

(a) A medical marijuana ~~dispensary~~ treatment center may be permitted by the planning and zoning board as a conditional use, provided that it is so designed, located, and proposed to be operated so that the public health, safety, and welfare are protected. Each application for a medical marijuana ~~dispensary~~ treatment center shall be considered on a case-by-case basis. As a condition of approval, the planning and zoning board may attach any other conditions reasonably related to the requirements of this chapter.

(b) The planning and zoning board shall not approve a proposed medical marijuana ~~dispensary~~ treatment center, if it determines any one of the following:

- (1) The proposed medical marijuana ~~dispensary~~ treatment center will create noise, traffic, odor, public safety hazards, or other nuisances to a degree that it will be disruptive to abutting or nearby properties and will lead to degradation of property values and instability to nearby neighborhoods or business districts; or
- (2) The proposed medical marijuana ~~dispensary~~-treatment center does not comply with all the criteria for site plan approval in section 64.10 of this title or the special site standards and conditions of subsection (c) below; or
- (3) The applicant is unable to demonstrate to the satisfaction of the planning and zoning board that the proposed medical marijuana ~~dispensary~~ treatment center will be operated in a manner that the required conditions for its operation and conducting of business in subsection (d) will be met and consistency maintained.

(c) A medical marijuana ~~dispensary~~ treatment center shall meet the following site standards:

- (1) Contain all activity at the medical marijuana ~~dispensary~~ treatment center within the ~~dispensary~~ treatment center building except for on-site parking and waste receptacles; and
  - (2) Not be located within 1,000 feet of any school, child day care facility, public park, or other existing medical marijuana ~~dispensary~~ treatment center or within 500 feet of any residentially zoned property or within 250 feet of any residence. Distance shall be measured by drawing a straight line between the perimeter property line of the site occupied by the medical marijuana ~~dispensary~~ treatment center use to the closest property line of the school, child day care, public park, residentially zoned property, residence, or property containing any other medical marijuana ~~dispensary~~ treatment center; and
  - (3) Contain no more than 2,500 square feet of floor area; and
  - (4) Meet all on-site parking requirements for a medical clinic; and
  - (5) Post conspicuous signs on at least four sides of the building that no loitering is allowed on the property; and
  - (6) Conspicuously post a sign at the entrance of the medical marijuana ~~dispensary~~ treatment center notifying persons of the restrictions regarding those authorized to enter the medical marijuana ~~dispensary~~ treatment center, as listed in (d)(7) and (8) below; and
  - (7) Not have a drive-through, drive-up, or drive-in facility; and
  - (8) Be properly ventilated to sufficiently filter any odor of marijuana emanating from the medical marijuana ~~dispensary~~ treatment center; and
  - (9) Install and maintain a security alarm system and/or panic buttons approved by the city police department in the interior of the medical marijuana ~~dispensary~~ treatment center building.
- (d) In conducting its business, a medical marijuana ~~dispensary~~ treatment center shall:
- (1) Not allow the consumption or administration of marijuana or alcoholic beverages on the property on which the medical marijuana ~~dispensary~~ treatment center is located, including parking areas and sidewalks; and

- (2) Not allow individuals qualified to enter the ~~dispensary~~ treatment center to stand, sit (including in a parked car), or gather outside of the building, including in any parking areas, sidewalks, or rights-of-way proximate to the ~~dispensary~~ treatment center for any period of time longer than that reasonably required to arrive, transact the necessary business in accordance with the law and depart; and
- (3) Ensure that no queuing of vehicles of those utilizing said ~~dispensary~~ treatment center occurs in the rights-of-way abutting or proximate to the ~~dispensary~~ treatment center; and
- (4) Be compliant at all times with state and local laws and regulations; and
- (5) Only operate or accept deliveries between 9:00 a.m. and 7:00 p.m., Monday through Friday, and between 9:00 a.m. and 12:00 p.m. on Saturday; and
- (6) Not allow the odor of marijuana to be detected by a person with a normal sense of smell outside the exterior of the ~~dispensary~~ treatment center building; and
- (7) Not allow a person under the age of 18 in the medical marijuana ~~dispensary~~ treatment center at any time; and
- (8) Allow only qualifying patients 18 years and older, ~~personal~~ caregivers, employees of the business, or other qualified individuals including authorized city and state officials within the medical marijuana ~~dispensary~~ treatment center; and
- (9) Permit entry and inspection by authorized city and state officials of the medical marijuana ~~dispensary~~ treatment center during business hours; and
- (10) Not conduct sales of any products other than medical marijuana, related supplies and educational materials; and
- (11) Provide an armed security guard on the premises at all times the ~~dispensary~~ treatment center is open for business.

#### **Section 5. Codification.**

The provisions of this Ordinance shall be codified in the Code of the City of Vero Beach, Florida.

#### **Section 6. Conflict and Severability.**

In the event any provision of this Ordinance conflicts with any other provision of this Code or any other ordinance or resolution of the City of Vero Beach on the subject matter of this Ordinance, the more strict provision shall apply and supersede. If any provision of this Ordinance is held to be invalid, unconstitutional, or unenforceable for any reason by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this Ordinance, which shall be deemed separate, distinct, and independent provisions enforceable to the fullest extent possible.

**Section 7. Effective Date.**

This Ordinance shall become effective upon final adoption by the City Council.

\*\*\*\*\*

This Ordinance was read for the first time on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, and was advertised on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, as being scheduled for a public hearing to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, and was also advertised on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, as being scheduled for a second public hearing to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, at the conclusion of which hearing it was moved for adoption by Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and adopted by the following vote:

<b>Mayor Jay Kramer</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Vice-Mayor Randolph B. Old</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Councilmember Harry Howle III</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Councilmember Pilar E. Turner</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Councilmember Richard G. Winger</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

**ATTEST:**

**CITY OF VERO BEACH, FLORIDA**

\_\_\_\_\_  
Tammy K. Vock  
City Clerk

\_\_\_\_\_  
Jay Kramer  
Mayor

Approved as to form and legal sufficiency:

Approved as conforming to municipal policy:

\_\_\_\_\_  
Wayne R. Coment  
City Attorney

\_\_\_\_\_  
James R. O' Connor  
City Manager

Approved as to technical requirements:

Approved as to technical requirements:

\_\_\_\_\_  
Timothy J. McGarry, AICP  
Planning and Development Director

\_\_\_\_\_  
David E. Currey  
Chief of Police

DRAFT

## CONSTITUTIONAL AMENDMENT PETITION FORM

**Note:**

- All information on this form, including your signature, becomes a public record upon receipt by the Supervisor of Elections.
- Under Florida law, it is a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.08, Florida Statutes, to knowingly sign more than one petition for an issue. [Section 104.185, Florida Statutes]
- If all requested information on this form is not completed, the form will not be valid.

Your name \_\_\_\_\_

Please Print Name as it appears on your Voter Information Card

Your address \_\_\_\_\_

City \_\_\_\_\_ Zip \_\_\_\_\_ County \_\_\_\_\_

Please change my legal residence address on my voter registration record to the above residence address (check box, if applicable).

Voter Registration Number \_\_\_\_\_ or Date of Birth \_\_\_\_\_

I am a registered voter of Florida and hereby petition the Secretary of State to place the following proposed amendment to the Florida Constitution on the ballot in the general election:

**BALLOT TITLE:** Use of Marijuana for Debilitating Medical Conditions

**BALLOT SUMMARY:** Allows medical use of marijuana for individuals with debilitating medical conditions as determined by a licensed Florida physician. Allows caregivers to assist patients' medical use of marijuana. The Department of Health shall register and regulate centers that produce and distribute marijuana for medical purposes and shall issue identification cards to patients and caregivers. Applies only to Florida law. Does not immunize violations of federal law or any non-medical use, possession or production of marijuana.

**ARTICLE AND SECTION BEING CREATED OR AMENDED:** Article X, Section 29

**FULL TEXT OF THE PROPOSED CONSTITUTIONAL AMENDMENT:**

**ARTICLE X, SECTION 29.— Medical marijuana production, possession and use.**

(a) PUBLIC POLICY.

(1) The medical use of marijuana by a qualifying patient or caregiver in compliance with this section is not subject to criminal or civil liability or sanctions under Florida law.

(2) A physician shall not be subject to criminal or civil liability or sanctions under Florida law solely for issuing a physician certification with reasonable care to a person diagnosed with a debilitating medical condition in compliance with this section.

(3) Actions and conduct by a Medical Marijuana Treatment Center registered with the Department, or its agents or employees, and in compliance with this section and Department regulations, shall not be subject to criminal or civil liability or sanctions under Florida law.

(b) DEFINITIONS. For purposes of this section, the following words and terms shall have the following meanings:

(1) "Debilitating Medical Condition" means cancer, epilepsy, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), post-traumatic stress disorder (PTSD), amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, multiple sclerosis, or other debilitating medical conditions of the same kind or class as or comparable to those enumerated, and for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.

(2) "Department" means the Department of Health or its successor agency.

(3) "Identification card" means a document issued by the Department that identifies a qualifying patient or a caregiver.

(4) "Marijuana" has the meaning given cannabis in Section 893.02(3), Florida Statutes (2014), and, in addition, "Low-THC cannabis" as defined in Section 381.986(1)(b), Florida Statutes (2014), shall also be included in the meaning of the term "marijuana."

(5) "Medical Marijuana Treatment Center" (MMTC) means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Department.

(6) "Medical use" means the acquisition, possession, use, delivery, transfer, or administration of an amount of marijuana not in conflict with Department rules, or of related supplies by a qualifying patient or caregiver for use by the caregiver's designated qualifying patient for the treatment of a debilitating medical condition.

(7) "Caregiver" means a person who is at least twenty-one (21) years old who has agreed to assist with a qualifying patient's medical use of marijuana and has qualified for and obtained a caregiver identification card issued by the Department. The Department may limit the number of qualifying patients a caregiver may assist at one time and the number of caregivers that a qualifying patient may have at one time. Caregivers are prohibited from consuming marijuana obtained for medical use by the qualifying patient.

(8) "Physician" means a person who is licensed to practice medicine in Florida.

(Continues on next page)

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(9) "Physician certification" means a written document signed by a physician, stating that in the physician's professional opinion, the patient suffers from a debilitating medical condition, that the medical use of marijuana would likely outweigh the potential health risks for the patient, and for how long the physician recommends the medical use of marijuana for the patient. A physician certification may only be provided after the physician has conducted a physical examination and a full assessment of the medical history of the patient. In order for a physician certification to be issued to a minor, a parent or legal guardian of the minor must consent in writing.

(10) "Qualifying patient" means a person who has been diagnosed to have a debilitating medical condition, who has a physician certification and a valid qualifying patient identification card. If the Department does not begin issuing identification cards within nine (9) months after the effective date of this section, then a valid physician certification will serve as a patient identification card in order to allow a person to become a "qualifying patient" until the Department begins issuing identification cards.

(c) LIMITATIONS.

- (1) Nothing in this section allows for a violation of any law other than for conduct in compliance with the provisions of this section.
- (2) Nothing in this section shall affect or repeal laws relating to non-medical use, possession, production, or sale of marijuana.
- (3) Nothing in this section authorizes the use of medical marijuana by anyone other than a qualifying patient.
- (4) Nothing in this section shall permit the operation of any vehicle, aircraft, train or boat while under the influence of marijuana.
- (5) Nothing in this section requires the violation of federal law or purports to give immunity under federal law.
- (6) Nothing in this section shall require any accommodation of any on-site medical use of marijuana in any correctional institution or detention facility or place of education or employment, or of smoking medical marijuana in any public place.
- (7) Nothing in this section shall require any health insurance provider or any government agency or authority to reimburse any person for expenses related to the medical use of marijuana.
- (8) Nothing in this section shall affect or repeal laws relating to negligence or professional malpractice on the part of a qualified patient, caregiver, physician, MMTTC, or its agents or employees.

(d) DUTIES OF THE DEPARTMENT. The Department shall issue reasonable regulations necessary for the implementation and enforcement of this section. The purpose of the regulations is to ensure the availability and safe use of medical marijuana by qualifying patients. It is the duty of the Department to promulgate regulations in a timely fashion.

(1) Implementing Regulations. In order to allow the Department sufficient time after passage of this section, the following regulations shall be promulgated no later than six (6) months after the effective date of this section:

- a. Procedures for the issuance and annual renewal of qualifying patient identification cards to people with physician certifications and standards for renewal of such identification cards. Before issuing an identification card to a minor, the Department must receive written consent from the minor's parent or legal guardian, in addition to the physician certification.
- b. Procedures establishing qualifications and standards for caregivers, including conducting appropriate background checks, and procedures for the issuance and annual renewal of caregiver identification cards.
- c. Procedures for the registration of MMTTCs that include procedures for the issuance, renewal, suspension and revocation of registration, and standards to ensure proper security, record keeping, testing, labeling, inspection, and safety.
- d. A regulation that defines the amount of marijuana that could reasonably be presumed to be an adequate supply for qualifying patients' medical use, based on the best available evidence. This presumption as to quantity may be overcome with evidence of a particular qualifying patient's appropriate medical use.

(2) Identification cards and registrations. The Department shall begin issuing qualifying patient and caregiver identification cards, and registering MMTTCs no later than nine (9) months after the effective date of this section.

(3) If the Department does not issue regulations, or if the Department does not begin issuing identification cards and registering MMTTCs within the time limits set in this section, any Florida citizen shall have standing to seek judicial relief to compel compliance with the Department's constitutional duties.

(4) The Department shall protect the confidentiality of all qualifying patients. All records containing the identity of qualifying patients shall be confidential and kept from public disclosure other than for valid medical or law enforcement purposes.

(e) LEGISLATION. Nothing in this section shall limit the legislature from enacting laws consistent with this section.

(f) SEVERABILITY. The provisions of this section are severable and if any clause, sentence, paragraph or section of this measure, or an application thereof, is adjudged invalid by a court of competent jurisdiction other provisions shall continue to be in effect to the fullest extent possible.

\_\_\_\_\_  
DATE OF SIGNATURE

X \_\_\_\_\_  
SIGNATURE OF REGISTERED VOTER

Initiative petition sponsored by People United for Medical Marijuana, 20 North Orange Avenue, Suite 1600, Orlando, FL 32801.

If paid petitioner circulator is used:

Circulator's name: \_\_\_\_\_

Circulator's address: \_\_\_\_\_

\_\_\_\_\_

**RETURN TO:**  
**People United for Medical Marijuana**  
**Post Office Box 402527**  
**Miami Beach, FL 33140**

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For Official Use Only: Serial Number: 15-01  
Date Approved: 1/9/2015

## DEPARTMENTAL CORRESPONDENCE

TO: Chairman Larry Lauffer and  
Planning and Zoning Board Members

FROM: Timothy J. McGarry, AICP  
Director of Planning and Development 

DATE: September 20, 2016

SUBJECT: **Options for Revising Regulations Related to  
the Requirement for a 20-foot Landscape Buffer  
6 Foot High Hedge Between Conditional Uses and  
Single Family Uses with an Intervening Right-of-Way**

### Overview

As discussed at the Planning and Zoning Board's meeting on September 1, the staff has prepared several options for consideration by the Board related to revising the above referenced requirements for all conditional uses. Attachment One provides the three different options for consideration for conditional uses in the Single Family zoning districts. Attachment Two provides the existing regulations for both single-family and multiple-family zoning districts related to the above referenced requirement.

Based on the Board's direction, the staff will moved forward to prepare a draft ordinance amending all pertinent provisions of the Land Development Regulations to reflect the Board's decision.

### Issue Background

As shown in Attachment Two, conditional uses are required to provide a 20-foot wide landscape buffer with one tree every 40 lineal feet and a hedge of at least 6 feet in height that "substantially obscures view of the site from the abutting site." This requirement also applies to "single-family sites separated from the proposed development site by a right-of-way."

All conditional uses are required to meet the provisions of Section 61.04 for single-family zoning districts and similar sections for multiple-family zoning districts. Conditional uses in residential zoning districts schools, golf courses and country clubs, churches, public parks and recreation areas, public and private utilities, cultural activities, and day care services. No distinction is made between different uses.

Based on the Board's discussion, the policy issue under review is not the application of the landscape buffer and hedge requirements to abutting single-family residences, but the provision that these requirements where the conditional use is separated from single-family residences by right-of-way.

It is the staff's opinion, this requirement may only result in an undesirable separation of the conditional use from a residential neighborhood rather than integrating the use into the neighborhood. The blanket requirement for the landscape buffer and hedge only adds to the development costs with little or no positive value to the neighborhood. If followed literally, it would require such a landscape buffer and 6-foot edge along the perimeter of many of the City's parks which are separated from single-family residences by right-of-way.

## Options

The staff has prepared three different options, which are provided in Attachment One. In preparing each of the options, the staff made revisions to the existing language to improve grammar and readability. Additionally, the dubious requirement for allowing abutting owners to dictate that a 6-foot concrete wall be installed rather than a 6-foot hedge was eliminated.

The following are the three options:

- Option #1: Eliminate landscape buffer requirements with intervening right-of-way between single family use and conditional use.* This option removes the requirement for a landscape buffer and hedge along right-of-way. It retains these requirements for single-family property abutting the conditional use.
  
- Option #2: Eliminate landscape buffer and hedge requirements with intervening right of-way of 20 feet or less between single family use and conditional use.* This option removes the requirement for a landscape buffer and edge along the right-of-way, where the right-of-way is less than 50 feet in width. This requirement would then apply only to alleys that are either 15 feet or 20 feet in width. It retains these requirements for single-family property abutting the conditional use.
  
- Option #3: Require compliance with the landscape buffer and hedge requirements along an intervening right-of-way from single-family sites if the Planning and Zoning Board determines that such compliance is necessary to approve the conditional use.* This option leaves the determination of whether this requirement is necessary up to the Planning and Zoning Board. Basically, the Planning and Zoning Board must find that this requirement is necessary to approve the conditional use pursuant to the provisions of Section 61.04. It retains these requirements for single-family property abutting the conditional use.

The staff favors either Option #1 or Option #2 as it does not believe that the landscape buffer and hedge requirements are needed or contribute to the integration of conditional uses into a neighborhood. Option #3 allows this requirement to be applied on a case-by-case basis by the Planning and Zoning Board. It would only apply where the landscape buffer and hedge are considered necessary by the Board to approve the conditional use.

**Recommendation**

The staff recommends that the Planning and Zoning Board choose one of the three options with or without revisions or come up with another alternative option.

Attachments

**ATTACHMENT ONE  
OPTIONS FOR REVISING THE LANDSCAPE BUFFER  
REQUIREMENTS FOR CONDITIONAL USES**

**Chapter 61, Article I, R-1AAA, R-1AA, R-1A, and R-1 Single Family Residential Districts**

**Sec. 61.04-Provisions regulating all conditional uses.**

- (7) A 20-foot-wide landscape buffer shall be provided which includes 1 tree for every 40 linear feet along the common property line between the single-family use and the conditional use and screen of plant material a minimum of six feet in height which substantially obscures view of the site from the abutting site. Landscape material shall meet or exceed the specifications outlined in the Landscape and Tree Protection Ordinance. The owner of the abutting property shall have the option to select a solid, concrete block wall six feet in height, in place of the six-foot-high landscape screen. Stucco and paint shall be applied to both sides of the wall. The cost of such wall shall be paid by the owner seeking the conditional use. This section shall also apply to single-family sites separated from the proposed development site by a right-of-way.

*Option #1: Eliminate landscape buffer requirements with intervening right-of-way between single family use and conditional use.*

- (7) A 20-foot-wide landscape buffer shall be provided which includes 1 tree for every 40 linear feet along the common property line between the single-family use and the conditional use and a screen of plant material of a minimum of six feet in height which that substantially obscures view of the site from the abutting site. Landscape material shall meet or exceed the specifications outlined in Chapter 72, Landscaping and Tree Protection. ~~the Landscape and Tree Protection Ordinance. The owner of the abutting property shall have the option to select a solid, concrete block wall six feet in height, in place of the six-foot-high landscape screen. Stucco and paint shall be applied to both sides of the wall. The cost of such wall shall be paid by the owner seeking the conditional use. This section shall also apply to single family sites separated from the proposed development site by a right-of-way.~~

*Option #2: Eliminate landscape buffer and hedge requirements with intervening right-of-way of 20 feet or less between single family use and conditional use.*

- (7) A 20-foot-wide landscape buffer shall be provided which includes 1 tree for every 40 linear feet along the common property line between the single-family use and the conditional use and a screen of plant material of a minimum of six feet in height which that substantially obscures view of the site from the abutting site. Landscape material shall meet or exceed the specifications outlined in Chapter 72, Landscaping and Tree Protection. ~~the Landscape and Tree Protection Ordinance. The owner of the abutting property shall have the option to select a solid, concrete~~

~~block wall six feet in height, in place of the six-foot-high landscape screen. Stucco and paint shall be applied to both sides of the wall. The cost of such wall shall be paid by the owner seeking the conditional use. This section shall also apply to single-family sites uses separated from the proposed conditional use development site by a right-of-way of less than 50 feet.~~

*Option #3: Require compliance with the landscape buffer and hedge requirements along an intervening right-of-way from single-family sites if the Planning and Zoning Board determines that such compliance is necessary to approve the conditional use.*

- (7) A 20-foot-wide landscape buffer shall be provided ~~which~~ that includes 1 tree for every 40 linear feet along the common property line between the single-family use and the conditional use and a screen of plant material of a minimum of six feet in height ~~which~~ that substantially obscures view of the site from the abutting site. Landscape material shall meet or exceed the specifications outlined in Chapter 72, Landscaping and Tree Protection. ~~the Landscape and Tree Protection Ordinance.~~ ~~The owner of the abutting property shall have the option to select a solid, concrete block wall six feet in height, in place of the six-foot-high landscape screen. Stucco and paint shall be applied to both sides of the wall. The cost of such wall shall be paid by the owner seeking the conditional use. This section shall also apply to single-family sites separated from the proposed development site by a right-of-way. If the proposed conditional use is separated from single-family uses by right-of-way, this section shall apply if the Planning and Zoning Board determines that application of its provisions are necessary to approve the conditional use pursuant to the provisions of Section 61.04.~~

**ATTACHMENT TWO  
EXISTING PROVISIONS GOVERNING  
SCREENING OF CONDITIONAL USES**

**Chapter 61, Article I, R-1AAA, R-1AA, R-1A, and R-1 Districts**

**Sec. 61.04-Provisions regulating all conditional uses.**

- (7) A 20-foot-wide landscape buffer shall be provided which includes 1 tree for every 40 linear feet along the common property line between the single-family use and the conditional use and screen of plant material a minimum of six feet in height which substantially obscures view of the site from the abutting site. Landscape material shall meet or exceed the specifications outlined in the Landscape and Tree Protection Ordinance. The owner of the abutting property shall have the option to select a solid, concrete block wall six feet in height, in place of the six-foot-high landscape screen. Stucco and paint shall be applied to both sides of the wall. The cost of such wall shall be paid by the owner seeking the conditional use. This section shall also apply to single-family sites separated from the proposed development site by a right-of-way.

**Chapter 61, Article III, RM-8 and RM-10 Districts**

**Sec. 61.38. - Provisions regulating all conditional uses.**

- (8) For sites abutting or separated by a right-of-way from a single-family zoning district or a single-family use in any residential zoning district, the following requirements shall apply:
- a. A 20-foot-wide landscape buffer shall be provided which includes one tree for every 40 linear feet along the common property line and screen of plant material a minimum of six feet in height which substantially obscures view of the site from the abutting site. Landscape material shall meet or exceed the specifications outlined in the Landscape and Tree Protection Ordinance. The owner of the abutting property shall have the option to select a solid, six-foot-high concrete block wall in place of the six-foot-high landscape screen. Stucco and paint shall be applied to both sides of the wall. The cost of such wall shall be paid by the owner seeking the conditional use.

**Chapter 61, Article IV, RM-10/12 Districts**

**Sec. 61.54. - Provisions regulating all conditional uses.**

- (8) For sites abutting or separated by a right-of-way from a single-family zoning district or a single-family use in any residential zoning district, the following requirements shall apply:
- a. A 20-foot-wide landscape buffer shall be provided which includes one tree for every 40 linear feet along the common property line and screen of plant material a minimum of six feet in height which substantially obscures view of the site from the abutting site. Landscape material shall meet or exceed the specifications outlined in the Landscape and Tree Protection Ordinance. The owner of the abutting property shall have the option to select a solid, six-foot-high concrete-block wall in place of the six-foot-high landscape screen. The cost of such wall shall be paid by the owner seeking the conditional use. Stucco and paint shall be applied to both sides of the wall.

#### **Chapter 61, Article V, RM-13 District**

##### **Sec. 61.76. - Provisions regulating all conditional uses.**

- (8) For sites abutting or separated by a right-of-way from a single-family zoning district or a single-family use in any residential zoning district, the following requirements shall apply:
- a. A 20-foot-wide landscape buffer shall be provided which includes one tree for every 40 linear feet along the common property line and screen of plant material a minimum of six feet in height which substantially obscures view of the site from the abutting site. Landscape material shall meet or exceed the specifications outlined in the Landscape and Tree Protection Ordinance. The owner of the abutting property shall have the option to select a solid, six-foot-high concrete-block wall in place of the six-foot-high landscape screen. The cost of such wall shall be paid by the owner seeking the conditional use. Stucco and paint shall be applied to both sides of the wall.