

Marijuana: What Does It Mean for Your City?

Susan L. Trevarthen, Esq., FAICP

Weiss Serota Helfman * slt@wsh-law.com * www.wsh-law.com
Palm Beach League of Cities * Lake Worth, FL * October 22, 2014

Overview

- This is not about whether or not you support the use of medical marijuana. This is about the facts:
 - limited marijuana use **is already legal** in Florida
 - a much broader range of marijuana use is contemplated by Amendment 2; if the voters approve it, it becomes effective January 6, 2015
 - even if Amendment 2 fails, broader medical marijuana and possibly recreational marijuana will be back in future legislative sessions and elections – national trend
 - once a majority of states and US population allow it, for how long can the federal government continue to prohibit it?
 - recent experiences with state regulation of difficult uses and preemption of local regulatory power over such uses do not inspire confidence in cities:
 - vacation rentals * pill mills
 - internet cafes and adult arcades * sober houses
- Lobby for state laws and rules to continue to respect for local zoning, land use and business regulations, if a city chooses to adopt them.
- Early city regulations have pros and cons:
 - it's always easier to loosen strict regulations in the future than to tighten them
 - they may influence choices by the industry as to where to invest and locate
 - they may influence the provisions of future state laws and rules
 - they could be grandfathered from future state restrictions of local authority
 - they could draw legal challenges from property owners and the industry
 - they could be used to avoid claims of reasonable investment-backed expectations in the use of particular parcels for marijuana uses, and future Harris Act-type claims
 - they may well need to be amended or repealed in the future as events unfold
 - uncertainty as to whether and to what extent federal prohibitions will remain in place
- Evaluate potential regulations in light of the nature of your city. Decide what is compatible and best for your community. Suggestions regarding potential regulations are derived from a review of ordinances around the state and in other states; work with several cities in South Florida, including input from city attorneys/planners/commissioners/police chiefs and others; and work with the Florida League of Cities and APA Florida task forces on the issue.
- Zoning and spacing regulations can have dramatically different impacts in different cities – need to customize to your community.

“Compassionate Medical Cannabis Act of 2014/Compassionate Use of Low-THC Cannabis” § 381.986, Fla. Stats. (SB 1030) (aka “Charlotte’s Web”)

KEY FEATURES:

- Low THC Cannabis (Non-euphoric), no smoking

Marijuana: What Does It Mean for Your City?

Susan L. Trevarthen, Esq., FAICP

Weiss Serota Helfman * slt@wsh-law.com * www.wsh-law.com
Palm Beach League of Cities * Lake Worth, FL * October 22, 2014

- Limited qualifying illnesses - cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms
- Patient must be a permanent resident of Florida
- Up to 5 regionally located dispensing organizations
- Implemented by the Department of Health who must:
 - develop rules and implement by January 1, 2015– Rule draft currently under an Administrative Law Challenge, which may delay implementation
 - develop a compassionate use registry for the registry of physicians and patients
 - authorize and regulate the dispensing organizations

Amendment 2 to Florida Constitution - November 4, 2014 Election

TITLE: Use of Marijuana for Certain Medical Conditions

SUMMARY: Allows the medical use of marijuana for individuals with debilitating diseases. Allows caregivers to assist patients' medical use of marijuana.

KEY FEATURES:

- Implemented by the Department of Health
- Applies only to Florida law.
- Does not authorize violations of federal law or any non-medical use, possession or production of marijuana
- Allows use of any kind of marijuana which can be consumed in any form
- Patient required to obtain a physician certification from a physician licensed in the state of Florida – with certification, becomes a “Qualified Patient”
- Certifying physician must:
 - determine that the person has a “Debilitating Medical Condition;” and
 - find that the “potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient”
 - “Debilitating Medical Condition”: cancer, glaucoma, positive HIV, AIDS, hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn’s disease, Parkinson’s disease, multiple sclerosis or **other conditions for which a physician believes that the medical use of marijuana would likely outweigh the potential health risks for a patient.**”
- A Qualified Patient or a personal caregiver with an identification card, may obtain medical marijuana for the Patient’s use
- Medical marijuana will be obtained from “Medical Marijuana Treatment Centers” (“Treatment Centers”): an entity that “acquires, cultivates, possesses, processes (including development or 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 personal caregivers.”

Marijuana: What Does It Mean for Your City?
Susan L. Trevarthen, Esq., FAICP
Weiss Serota Helfman * slt@wsh-law.com * www.wsh-law.com
Palm Beach League of Cities * Lake Worth, FL * October 22, 2014

HOW WILL IT BE REGULATED BY THE STATE:

- Florida Legislature is not preempted from regulating, but is not required to regulate
- Implemented by the Department of Health. Regulations for:
 - procedures for the issuance and renewal of qualifying patient and caregiver identification cards
 - procedures for the registration of Medical Marijuana Treatment Centers
- Within 9 months of the effective date of the Amendment, the Department must begin:
 - Issuing qualifying patient and personal caregiver identification cards
 - registering Medical Marijuana Treatment Centers
- If the state fails to implement:
 - a patient with a physician certification is still allowed to use medical marijuana
 - the provisions for Medical Marijuana Treatment Centers are not self-executing, so there is nowhere for patients to “legally” procure

Constitutional Amendment vs. Statute

- Statute limits the type of marijuana that can be grown and who may grow it, prohibits smoking as a method of consumption, integrates the use into research studies, and greatly limits the qualifying conditions for use of the marijuana
- Existing state law is not broad enough to fully implement the Amendment – for example:
 - Type of marijuana
 - Method of delivery
 - Qualifying illnesses
- Distribution system under statute may not be in conflict with the Amendment

Implementation Time Frames

- June, 2014 - Restricted form of medical marijuana legalized by Florida Statute
- November 4, 2014 – Public vote on legalization of broader types and uses of marijuana through constitutional amendment
- January 1, 2015 – Department of Health begins implementation of Florida Statutes – limited type and use of medical marijuana (If the administrative rule challenge is not resolved, the implementation of the statute will be delayed)
- January 6, 2015 – Effective date of Constitutional Amendment legalizing broader types and uses of medical marijuana
- March-April, 2015 - If the Amendment is approved, the Legislature is likely to enact additional legislation effective in May, July or October 2015
- July 6, 2015 – Department of Health rule-making related to the Amendment must be complete
- October 6, 2015 – Department of Health must begin issuing qualifying patient and personal caregiver identification cards and registering Treatment Centers

Marijuana: What Does It Mean for Your City?
Susan L. Trevarthen, Esq., FAICP
Weiss Serota Helfman * slt@wsh-law.com * www.wsh-law.com
Palm Beach League of Cities * Lake Worth, FL * October 22, 2014

Interaction with Federal Law

- The Federal Controlled Substances Act (CSA) prohibits the production, distribution and use of marijuana, for medical or recreational purposes
- No state statute or law protects against federal prosecution
- Treatment of out of state medical marijuana patients (if you are approved to receive in your home state, will Florida allow you to purchase here under the amendment?)
- Under AG Holder, guidance memos allow discretion in local US Attorneys to decide whether to prosecute. The Cole Memo dated August 29, 2013: focus enforcement on
 - Preventing the distribution of marijuana to minors
 - Preventing revenue from sale of marijuana from going to criminal enterprises
 - Preventing state authorized marijuana activity as a pretext for illegal activity
 - Preventing violence and use of firearms in the cultivation and distribution of marijuana
 - Preventing adverse public health consequences and crimes
- Banking system issues

Experiences in Other States

- 23 states and the District of Columbia already have some form of medical marijuana. Two states (Colorado and Washington) have recreational marijuana, and additional states will be voting on recreational marijuana over the next year
- Anecdotal experiences shows that preparation is key. Those who regulate (or prohibit) early and strictly, suffer the least. See California.
- Revenue
 - Significant in some states, where local governments are expressly empowered to levy sales and excise taxes
 - Colorado – January 2014: \$2 million in recreational marijuana taxes (sales tax, extra sales tax, 15% excise tax) and \$1.5 million in medical marijuana taxes (sales tax, lesser extra sales tax) = \$3.5 million in one month
- Florida municipalities **cannot** impose a local sales tax unless the Florida Legislature empowers them to do so. All forms of taxation are preempted to the State, except as local taxation may be authorized by general law. Article VII, section 9(a), Florida Constitution, provides: “. . . municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes. . . .”

Potential Prohibition or Moratorium

- Scope of prohibition or moratorium
- Length of moratorium and possibility of waivers
- Base prohibition on federal law or on local determination of what is best for your community?

Marijuana: What Does It Mean for Your City?
Susan L. Trevarthen, Esq., FAICP
Weiss Serota Helfman * slt@wsh-law.com * www.wsh-law.com
Palm Beach League of Cities * Lake Worth, FL * October 22, 2014

- Pros and cons of waiting to regulate

Potential Medical Marijuana Zoning Regulations

- Define terms
 - Marijuana
 - Medical Marijuana Treatment Center
 - Qualified registered patient/Qualified patient
 - Medical Marijuana Retail Center: one possible definition is “A retail establishment, licensed by the Florida Department of Health as a “medical marijuana treatment facility,” “medical marijuana treatment center,” “dispensing organization,” “dispensing organization facility” or similar use, that sells and dispenses medical marijuana, but does not engage in any other activity related to preparation, wholesale storage, distribution, transfer, cultivation, or processing of any form of Marijuana or Marijuana product, and does not allow on-site consumption of Marijuana.”
- Consider potential zoning regulations - Generally, different zoning and development standards would apply to these different uses
 - Retail only? Combined with cultivation, processing, bulk storage, testing labs, etc.?
 - Require freestanding use, or allow attached to other uses? Other specialized bulk regulations? Lot size requirements?
 - Zoning district
 - Site plan requirement
 - Measurement rules and spacing requirements from uses such as:
 - Doctor’s office or medical facility
 - Any other Medical Marijuana Retail Center
 - Residential uses and zoning districts
 - Schools, day cares, bus stops
 - Parks
 - Places of worship
 - Allow variances to the location standards?
 - Effect of later-arriving protected uses
- Consider approval process:
 - By right
 - As a conditional use/special exception:
 - Duration/expiration of approval?
 - Transfers of approval?
 - Binding both the property owner and tenant?
 - Suspension or revocation procedures?
- Consider additional notice requirements – larger radius? Notice to tenants?
- Allow mixing with other uses? Example: alcoholic beverage license
- Sign regulations
- Application fees

Marijuana: What Does It Mean for Your City?

Susan L. Trevarthen, Esq., FAICP

Weiss Serota Helfman * slt@wsh-law.com * www.wsh-law.com
Palm Beach League of Cities * Lake Worth, FL * October 22, 2014

- Traffic and parking
 - Regulate loitering or queuing of vehicles and pedestrians?
 - Allow drive-through service?
 - Location in relation to transit service
 - Parking standard
 - Retail may be somewhere between restaurant and medical? No national standards. Anecdotal experience is that it is more intense than typical retail.
 - Parking for growing, processing, manufacture, warehouse types of uses

Potential Medical Marijuana Business Regulations

- Define additional terms addressing the application and operational requirements to assist with implementation and enforcement – owner, applicant, employee, etc.
- Medical Marijuana Permit
 - Procedures for issuance, term, transferability and renewal of permit
 - Standards for rejection, revocation and re-application
 - Applicant, owner & employee level 2 background screening requirements and identification tags
 - Application, permit and tag fees
 - Keeping evidence of current and valid state paperwork on file with city at all times
 - Ability to obtain if have an alcoholic beverage permit for same premises
- Hours of operation
- Maintenance standards for the business premises and surrounding areas
- On-site consumption of marijuana or alcohol
- Outdoor activities and storage
- Live plants in a retail setting
- Prohibit tourists and gawkers? Only allow persons onsite who are approved to work there or to purchase?
- Employment of or access to minors
- Control of garbage
- Ombudsman for neighborhood issues
- Odor mitigation
- Security Issues:
 - Operations plan, including in an emergency (no power, hurricane, etc.)
 - Video surveillance
 - Display and storage security planning requirements
 - Cash storage and protection planning requirements
 - Alarm system
 - Security personnel on-site
 - Crime Prevention Through Environmental Design Review (CPTED) site plan review

Potential Prohibition of Public Consumption of Marijuana Generally