



CITY OF CONCORD

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REPORT TO MAYOR AND CITY COUNCIL

FROM: Carlos P. Baía, Deputy City Manager—Development
DATE: January 28, 2015
SUBJECT: Proposed amendments to Zoning Code related to “Alternative Treatment Centers”

Recommendation

If acceptable, set the attached ordinance amendment for public hearing in March.

Background

In 2013, the New Hampshire Legislature enacted a comprehensive law for the use of medical marijuana. The law has been codified as RSA chapter 126-X, entitled the Use of Cannabis for Therapeutic Purposes. RSA chapter 126-X includes administrative requirements for alternative treatment centers, which are non-profit entities registered for the purpose of acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, selling, supplying and dispensing cannabis to qualified patients and designated caregivers.

Discussion

RSA 126-X:7 required the New Hampshire Department of Health and Human Services to issue registration certificates to no more than four non-profit alternative treatment centers. At least two of the registration certificates must be issued within 18 months after the law goes into effect, which would be January 2015.

Currently there is no zoning use category under which an alternative treatment center could be operated, and therefore, the City of Concord’s Zoning Code requires that any use be placed in the category to which it is most similar and regulated under that category. Anticipating the need for local zoning, City Staff evaluated the new law and developed local zoning regulations to determine the most appropriate locations for an alternative treatment center.

An alternative treatment center is defined in RSA 126-X:1, I as a not-for-profit entity registered under RSA 126-X:7 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies, and dispenses cannabis, and related supplies and educational materials, to qualifying patients and alternative treatment centers. RSA 126-X:7, IV(2) states that an alternative treatment center “may include a second location for the cultivation of cannabis.”

Based on its review of the statute, City Staff is recommending the adoption of a new ordinance that would create three new principal uses. The first new principal use would be designated as an "Alternative Treatment Center," which is a facility permitted in the Industrial District that involves both the cultivation and dispensing of cannabis. The second new principal use would be designated as an "Alternative Treatment Center (Cultivation Location Only)," which is a facility that would be permitted in the Industrial District for the purpose of cultivating cannabis. The third new principal use would be designated as an "Alternative Treatment Center (Non-Cultivation Location)" which is a facility that is permitted in the Institutional District for the purpose of dispensing cannabis. The proposed ordinance also sets forth the parking requirements for an Alternative Treatment Center (Non-Cultivation Location).

The proposed ordinance also creates a new supplemental standard, Section 28-5-1, for Alternative Treatment Centers located in the Industrial District that involve both the cultivation of cannabis and dispensing to patients. Due to the potential increased traffic created by the retail dispensary for such facilities, the supplemental standard would require that it be located on lots that have direct access to and from a collector or arterial street, or access to a street which shall be physically improved in order to fulfill the function and meet the standards of a collector street.

It should be noted that RSA 126-X:8, II already prohibits alternative treatment centers from being located in a residential district or within 1,000 feet of the property line of a pre-existing public or private elementary or secondary school or designated drug free property zone. Any proposed location will need to comply with these requirements. It should be further noted that nothing in the proposed ordinance purports to permit activities that are otherwise illegal under state or local law.

The attached ordinance amendment was reviewed by the Planning Board at its January 21st meeting and recommended to City Council.

Council should be aware that the State Department of Health and Human Services rules governing alternative treatment centers labeled ATCs as "charitable trusts." This was done, in the City staff's estimation, to provide the State with the means to regulate these organizations through the Department of Justice's Charitable Trusts Unit. The challenge for municipalities is that this designation may prompt the entities to request an exemption under RSA 72:23, V from the payment of local property taxes. This issue was raised in a City letter sent to the Joint Legislative Committee on Administrative Rules (JLCAR) as well as through oral testimony at the final rule-setting hearing in December where the City voiced its disagreement over the charitable trust designation. The City's concerns were recognized by the members of JLCAR and a commitment was made to rectify the situation in the 2015 legislative session. SB 54 has since been filed that would mandate that ATCs enter into Payment in Lieu of Tax agreements (PILOTS) with municipalities for the same amount as they would have paid in ad valorem taxation.

On January 28th, the Senate Municipal and Public Affairs Committee took up SB 54. The City of Concord, again, testified that the "charitable trust" designation was not appropriate in the case of ATCs but supported SB 54 as a means to clarify the present situation. It is anticipated that the Committee will vote on the proposed bill in the following weeks.

Under the proposed ordinance, ATCs could be significant consumers of industrial real estate invaluable to the City's tax base. It is unknown whether the Legislature will have clarified the taxability of ATCs by the time Council holds a public hearing on this ordinance.