

1 **VILLAGE OF ESTERO, FLORIDA**

2  
3 **ORDINANCE NO. 2016 - 14**

4  
5 **AN ORDINANCE OF THE VILLAGE COUNCIL OF THE**  
6 **VILLAGE OF ESTERO, FLORIDA, ESTABLISHING A**  
7 **TEMPORARY MORATORIUM ON CANNABIS**  
8 **DISPENSING BUSINESSES AS FURTHER DEFINED**  
9 **HEREIN; PROVIDING FOR GEOGRAPHIC AREA**  
10 **COVERED; PROVIDING FOR PENALTIES;**  
11 **PROVIDING A SAVINGS CLAUSE, A GENERAL**  
12 **REPEALER CLAUSE, AND AN EFFECTIVE DATE.**

13  
14 **WHEREAS**, in 2014 the Florida Legislature enacted a law legalizing low-THC  
15 medical cannabis in Florida; and

16  
17 **WHEREAS**, in 2016 the Florida Legislature expanded the law to legalize medical  
18 cannabis in Florida; and

19  
20 **WHEREAS**, future constitutional amendments and legislation may further expand the  
21 legal use of cannabis in Florida; and

22  
23 **WHEREAS**, a comprehensive State licensing and regulatory framework for the  
24 cultivation, processing, and dispensing of cannabis now exists; and

25  
26 **WHEREAS**, the comprehensive State licensing and regulatory framework directs that  
27 the criteria for the number and location of, and other permitting requirements that do not  
28 conflict with state law or department rule for, dispensing facilities of cannabis businesses may  
29 be determined by local ordinance; and

30  
31 **WHEREAS**, cannabis businesses licensed pursuant to the law have begun cultivating  
32 cannabis for processing and dispensing; and

33  
34 **WHEREAS**, the dispensing of cannabis is currently illegal under federal law and the  
35 United States Drug Enforcement Agency has recently confirmed that cannabis remains a  
36 Schedule I drug under federal law, but the United States Department of Justice has discussed  
37 federal enforcement of such laws with respect to state regulated cannabis operations in the  
38 2012 "Cole Memorandum;" and

39  
40 **WHEREAS**, potential adverse impacts on the health, safety, and welfare of residents  
41 and business from secondary effects associated with the distribution of cannabis exist,  
42 potentially including, offensive odors, trespassing, theft, fire hazards, increased crime in and  
43 about the dispensary, robberies, negative impacts on nearby businesses, nuisance problems,  
44 and increased DUI incidents; and

46           **WHEREAS**, certain of the above potential adverse impacts are accentuated by the  
47 current difficulties experienced by cannabis businesses in obtaining banking services  
48 necessitating such businesses to operate on a cash basis; and  
49

50           **WHEREAS**, there exists the potential for misappropriation of medical cannabis to  
51 non-medical uses; and  
52

53           **WHEREAS**, an overabundance of dispensing facilities can affect the viability of such  
54 facilities, result in compliance issues, lead to the improper diversion of products, and  
55 accentuate threats to the public health, safety, and welfare; and  
56

57           **WHEREAS**, in November of this year, Florida voters ~~will decide whether to approved~~  
58 an amendment to the Florida Constitution to legalize the cultivation, production, and  
59 dispensing of medical cannabis for a broader population of eligible patients; and  
60

61           **WHEREAS**, Florida laws relating to the cultivation, production, and dispensing of  
62 cannabis products are rapidly changing – raising substantial questions about whether cannabis-  
63 related land uses, as a category of commercial use, may have deleterious and negative  
64 secondary effects on surrounding land uses and communities; and  
65

66           **WHEREAS**, the purpose of this ordinance is to place a temporary moratorium on the  
67 opening of certain new cannabis dispensing facilities, and on the expansion or relocation of  
68 certain existing cannabis dispensing facilities; and  
69

70           **WHEREAS**, the Village hereby finds that the temporary moratorium imposed by this  
71 ordinance is intended to give the Village the time reasonably necessary to investigate the  
72 impacts of cannabis dispensing facilities, and if necessary, to promulgate reasonable  
73 regulations relating to such establishments; and  
74

75           **WHEREAS**, the Village hereby finds that this ordinance advances an important  
76 government purpose by reducing the likelihood of the unregulated negative secondary effects  
77 of cannabis dispensing facilities; and  
78

79           **WHEREAS**, the Village hereby finds that this ordinance is in the best interest of the  
80 public health, safety, and welfare; and  
81

82           **WHEREAS**, the Village has determined it is in the public interest to adopt this  
83 Ordinance pursuant to the Village police powers to protect the health, safety, and welfare of  
84 the public.  
85

86           **NOW, THEREFORE**, be it ordained by the Village Council of the Village of Estero,  
87 Florida:  
88  
89  
90

91 **Section 1. Purpose and Intent.**

92  
93 The purpose of this Ordinance is to provide the Village with the opportunity to review  
94 the impact of recent changes in law and the potential passage of a constitutional  
95 amendment, as well as the impact of cannabis dispensing in other jurisdictions, to  
96 determine how such dispensing should be permitted or regulated in the Village.  
97

98 **Section 2. Definitions.**

99  
100 (1) The following words and phrases, when used in this Ordinance, shall have the  
101 meanings ascribed to them in this Ordinance:  
102

- 103 a. **Cannabis** means all parts of any plant of the genus Cannabis, whether  
104 growing or not; the seeds thereof; the resin extracted from any part of the  
105 plant; and every compound, manufacture, salt, derivative, mixture, or  
106 preparation of the plant or its seeds or resin.  
107  
108 b. **Cannabis dispensing business** or **business** shall mean a business location  
109 offering cannabis for retail sale pursuant to a license to dispense cannabis  
110 issued under applicable law.  
111  
112 c. **Compassionate Use Act** shall mean section 381.986, Florida Statutes, and  
113 chapter 2016-123, Laws of Florida, as amended from time to time, and  
114 any rules or regulations promulgated thereunder.  
115  
116 d. **State** shall mean the State of Florida.  
117

118 (2) In addition to the definitions contained in Subsection (1), other terms used in  
119 this Ordinance shall have the meaning ascribed to them in the Compassionate Use Act,  
120 and such definitions are incorporated into this Ordinance by this reference.  
121

122 **Section 3. Temporary Moratorium.**

123  
124 Beginning on the effective date of this Ordinance, for a period of twelve (12) months  
125 from the effective date, a moratorium is hereby imposed on the opening of new  
126 cannabis dispensing businesses and on the expansion or relocation of existing cannabis  
127 dispensing businesses in the Village.  
128

- 129 a. During the moratorium, it is unlawful and a violation of this ordinance for  
130 any person or entity to open or cause to be opened any cannabis  
131 dispensing business within the Village.  
132  
133 b. During the moratorium, it is unlawful and a violation of this ordinance for  
134 any person or entity to relocate or cause to be relocated any cannabis  
135 dispensing business within the Village.

- 136 c. During the moratorium, it is unlawful and a violation of this ordinance for  
137 any person or entity to expand or cause to be expanded any cannabis  
138 dispensing business within the Village.  
139  
140 d. During the moratorium, the Village shall not accept, process or approve  
141 any application for business tax receipts, licenses, building permits, land  
142 use permits, or any development permits concerning or related to a  
143 cannabis dispensing business.  
144  
145 e. During the moratorium, the Village shall not accept, process or approve  
146 any business tax receipts, building permits, land use permits, or any  
147 development permits concerning or related to a cannabis dispensing  
148 business.  
149  
150 f. During the moratorium, the Village shall not accept, process or approve  
151 any licenses, permits, or approvals for any property, entity, or individual  
152 for the sale or dispensation of cannabis so long as this ordinance is in  
153 effect.  
154

155 Nothing in this temporary moratorium shall be construed to prohibit the use of cannabis  
156 pursuant to the Compassionate Use Act or other applicable Florida Law, or the delivery  
157 of cannabis in compliance with the Compassionate Use Act or other applicable Florida  
158 Law.  
159

160 **Section 4. Study and Recommendations.**  
161

162 The Village Manager is hereby directed to study land development regulations for  
163 cannabis dispensaries and the impact of such regulations in other jurisdictions.  
164

165 **Section 5. Penalties.**  
166

167 Any person or entity who violates any provision of this Ordinance or who fails to  
168 comply therewith, or with any of the requirements thereof, shall be fined in an amount  
169 not exceeding five hundred dollars (\$500.00) per violation, per day, or be imprisoned  
170 for a period of time not to exceed sixty (60) days.  
171

172 **Section 6. Severability.**  
173

174 If any provision of this ordinance or its application to any person or circumstance is  
175 held invalid, the invalidity does not affect other provisions or applications of this  
176 ordinance which can be given effect without the invalid provision or application, and  
177 to this end the provisions of this ordinance are severable.  
178  
179  
180

**Section 7. Repeal.**

All ordinances, resolutions, official determinations or parts thereof previously adopted or entered by the Village or any of its officials and in conflict with this ordinance are hereby repealed to the extent inconsistent herewith.

**Section 8. Effective Date.**

This ordinance shall take effect immediately upon adoption, and shall remain in effect for a period of twelve (12) months from that date.

**PASSED** on first reading this 16<sup>th</sup> day of November, 2016.

**PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero, Florida this 7<sup>th</sup> day of December, 2016.

Attest:

**VILLAGE OF ESTERO, FLORIDA**

By: Kathy Hall  
Kathy Hall, MMC, Village Clerk

By: Nicholas Batos  
Nicholas Batos, Mayor

Reviewed for legal sufficiency:

By: Burt Saunders  
Burt Saunders, Esq., Village Attorney

Vote:	AYE	NAY
Mayor Batos	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vice Mayor Levitan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember Boesch	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember Brown	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Councilmember Errington	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember Ribble	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councilmember Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>