

1 **VILLAGE OF ESTERO, FLORIDA**

2
3 **ORDINANCE NUMBER 2017 - 10**

4
5 **AN ORDINANCE OF THE VILLAGE COUNCIL OF THE**
6 **VILLAGE OF ESTERO, FLORIDA, AMENDING**
7 **CHAPTER 34, DIVISION 31 OF ESTERO LAND**
8 **DEVELOPMENT CODE TO PROHIBIT MEDICAL**
9 **MARIJUANA FACILITIES WITHIN THE BOUNDARIES**
10 **OF THE VILLAGE; PROVIDING FOR A**
11 **MORATORIUM CONTINGENCY; PROVIDING FOR**
12 **CODIFICATION, SEVERABILITY, CONFLICTS AND**
13 **AN EFFECTIVE DATE.**
14

15 **WHEREAS**, the Village of Estero, Florida has the authority to adopt this
16 Ordinance pursuant to Article VIII of the Constitution of the State of Florida; Chapters
17 163 and 166; and Section 381.986 Florida Statutes; and
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19 **WHEREAS**, The Marijuana Policy Group has published a memorandum called
20 "Municipal Dispensary Allocation: Florida," which evaluated the market need for
21 medical marijuana dispensing facilities and the harmful consequences and secondary
22 effects of over-saturation of medical marijuana dispensing facilities within the
23 marketplace; and
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25 **WHEREAS**, The Marijuana Policy Group determined that Florida should have
26 no more than one dispensing facility for each fifty-thousand residents and the optimal
27 ratio is one dispensing facility per 67,222 residents, and the Village of Estero has a
28 population (approximately 31,000) below such ratios; and
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30 **WHEREAS**, the Village Council had previously enacted Ordinance 2016-14
31 instituting a temporary moratorium on cannabis dispensing businesses, generally, while
32 the Florida Legislature established a regulatory framework to implement and expand the
33 legal medical use of cannabis; and
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35 **WHEREAS**, Section 381.986(11), Florida Statutes, now authorizes a county or
36 municipality to "ban medical marijuana treatment center dispensing facilities from being
37 located within the boundaries of that county or municipality;" and
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39 **WHEREAS**, Section 381.986, Florida Statutes, severely limits, through State
40 preemption, the Village's control over the zoning and permitting of medical marijuana
41 dispensaries, thereby substantially restricting the Village's ability to protect surrounding
42 land uses for which dispensaries may not be compatible; and
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44 **WHEREAS**, given, among other things, the potential negative secondary land
45 use effects of medical marijuana dispensing facilities, The Marijuana Policy Group's
46 analysis of optimal population ratios (residents per dispensing facility) and the statutory
47 restrictions on local government authority to regulate number and location of dispensing
48 facilities if not banned, there is a rational basis for the Village to exercise its authority
49 under 381.986(11), Florida Statutes to ban dispensing facilities within the boundaries of
50 the Village; and

51
52 **WHEREAS**, the Village Council has all powers of self-government not
53 inconsistent with general or special law, including the power and authority to adopt
54 ordinances providing for the public health, safety and welfare of the residents of the
55 Village of Estero; and

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57 **WHEREAS**, the Village finds that this Ordinance is in the interests of the public
58 health, safety, and welfare.

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60 **NOW, THEREFORE, BE IT ORDAINED** by the Village Council of the
61 Village of Estero, Florida:

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63 **Section 1.** Recitals. The foregoing recitals are hereby ratified and confirmed
64 as being true and correct and are hereby made a part of this Ordinance and adopted as
65 legislative findings.

66
67 **Section 2.** Amendment of the Village Code. Chapter 34, Zoning, Article VII,
68 Supplementary District Regulations, Division 31 of the Village of Estero, Florida, Land
69 Development Code of the is hereby amended to add the following new provisions:

70
71 Division 31 – Medical Marijuana

72
73 Section. 34-2351 – Medical Marijuana Treatment Center Dispensing Facilities.

74
75 (a) Prohibition. Medical Marijuana Treatment Center Dispensing Facilities
76 are prohibited within the boundaries of the Village. The Village shall not accept,
77 process or approve any request or application for a development order, building
78 permit or other approval associated with a proposed Medical Marijuana Treatment
79 Center Dispensing Facility.

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81 (b) Definition. For the purposes of this section, the term "Medical Marijuana
82 Treatment Center Dispensing Facility" means any facility where medical
83 marijuana or any product derived therefrom is dispensed.

84
85 (c) Interpretation. This section and the terms used herein shall be interpreted
86 in accordance with Section 381.986, Florida Statutes, and Chapter 64-4 of the
87 Florida Administrative Code. The intent of this section is to ban medical

marijuana treatment center dispensing facilities from being located within the boundaries of the Village as authorized by Section 381.986(11), Florida Statutes.

Section. 34-2351 – Medical Marijuana Cultivation Facilities.

(a) Prohibition. Medical Marijuana Cultivation Facilities are prohibited within the boundaries of the Village. The Village shall not accept, process or approve any request or application for a development order, building permit or other approval associated with a proposed Medical Marijuana Cultivation Facility.

(b) Definition. For the purposes of this section, the term “Medical Marijuana Cultivation Facility” means any facility where cannabis or any product derived therefrom is cultivated or processed.

Section 3. **Moratorium Contingency.** In the event that Section 381.986, Florida Statutes, is amended or interpreted by a court of competent jurisdiction in a way as to eliminate or prevent the Village’s ability to ban or prohibit Marijuana Treatment Center Dispensing Facilities within the Village’s boundaries, upon the effective date of such, an automatic one-year moratorium will go into place on the acceptance, processing and approval of Marijuana Treatment Center Facilities (including by way of acceptance, proceeding and approval of applications for development orders and permits) within the Village boundaries in order to give the Village time to evaluate changes in the applicable law, the Village’s ability to regulate such uses and activities and potentially enact local legislation regarding the same. Such one-year moratorium may be terminated early through superseding resolution or ordinance of the Village Council.

Section 4. **Codification.** This Ordinance shall be incorporated into the Code of Laws and Ordinances and Land Development Code of the Village of Estero. The sections of this Ordinance can be renumbered or re-lettered to the appropriate word or phrase to accomplish codification. Omissions, grammatical, and typographical errors as well as clarifications of ambiguous wording that do not affect the intent of this Ordinance may be authorized by the Village Manager without the need for a public hearing.

Section 5. **Severability.** In the event that any portion of this Ordinance is for any reason 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 portions of this Ordinance.

Section 6. **Conflicts.** The provisions of this Ordinance shall supersede any provision of existing ordinances in conflict herewith to the extent of said conflict.

Section 7. **Effective Date.** This ordinance shall become effective immediately upon adoption by the Village Council of the Village of Estero, Florida.

132 **PASSED** on first reading this 1st day of November, 2017.

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134 **PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of
135 Estero, Florida this 15th day of November, 2017

136

137 Attest:

VILLAGE OF ESTERO, FLORIDA

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140 By: Kathy Hall
141 Kathy Hall, MMC, Village Clerk

By: William F. Ribble, Jr.
William F. Ribble, Jr., Vice Mayor

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144 Reviewed for legal sufficiency:

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

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152 Vote: AYE NAY

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154 Mayor Boesch	<u>Absent</u>	_____
155 Vice Mayor Ribble	<u>✓</u>	_____
156 Councilmember Batos	<u>✓</u>	_____
157 Councilmember Errington	<u>✓</u>	_____
158 Councilmember Levitan	<u>✓</u>	_____
159 Councilmember McLain	<u>✓</u>	_____
160 Councilmember Wilson	<u>✓</u>	_____