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## MEMORANDUM

### E-MAIL

**TO:** Estero Village Council  
**CC:** Steve Sarkozy, Village Manager  
**FROM:** Burt L. Saunders  
**DATE:** October 7, 2016  
**SUBJECT:** Medical Marijuana Dispensaries

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On November 8th Florida voters will again decide whether or not the use of cannabis shall be legalized for debilitating medical conditions. As in 2014, Constitutional Amendment 2 requires the support of 60% of the voters to be approved. If approved, the result will undoubtedly be an expansion of the current legal administration surrounding medical cannabis. Florida law currently authorizes each of the six licensed cannabis producers to operate as dispensing organizations throughout the state without placing any limitations on the number of actual local dispensaries. While the current regime has not resulted in a proliferation of dispensaries, there is significant concern that with Amendment 2's passage the issue of local dispensaries could get ahead of local governments much as pill mills and internet cafes did previously.

Currently, local governments have the ability to regulate dispensaries both through their zoning powers and specifically the number of dispensary licenses issued pursuant to Florida's Compassionate Use Act, Section 381.986, Florida Statutes:

8) PREEMPTION.—

(b) 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. A county may determine by ordinance the criteria for the number, location, and other permitting requirements that do not conflict with state law or department rule for all dispensing facilities of dispensing organizations located within the unincorporated areas of that county.

Medical Marijuana  
October 7, 2016  
Page 2

Attached to this memorandum, the Council will find two model ordinances addressing the issue of medical cannabis dispensaries; a licensing ordinance and a temporary moratorium ordinance. Given the broad licensing authority provided by Section 381.986, F.S., we are not, at this time, recommending any changes to the land development regulations relating to the zoning of dispensaries.

The proposed licensing ordinance establishes a three-part licensure system for reviewing and approving local medical cannabis dispensaries. The ordinance also limits licenses to an initial three year permit in order to allow the Village to adjust the program as needed over time. Step one is qualification and that applicant must obtain a cannabis license from the State of Florida. Next, the Village determines whether or not the applicant receives a Certificate of Approval. This determination would be made by a three person Authority appointed by the Council to issue Certificates consistent with the scoring criteria provided for in the ordinance. The scoring criteria were established to highlight the sophistication and technical ability of each applicant. Additionally, the program limits the number of license holders to a specific population standard, the purpose of which is to avoid the potentially negative effects of both the unnecessary proliferation of dispensaries and cannibalization of the dispensary economic model (see Marijuana Policy Group study). Finally, after receipt of a Certificate of Approval, the applicant would need to get approval for the specific location. Bifurcating the certification and locational approvals protects both the applicants and the Village from the practical and legal issues surrounding an applicant's acquisition a real property interest without knowing whether or not the dispensing approval will be granted.

Alternatively, we have provided a draft temporary moratorium ordinance, the purpose of which is to provide the Village with additional breathing room in order to fully study the effects of Amendment 2's passage and adopt thoughtful regulation in the future. We recommend at a minimum that the Village Council adopt a moratorium to prevent the potential propagation of dispensaries throughout the Village.

Attachments

# Municipal Dispensary License Allocation: Florida<sup>1</sup>

## *Economic and Social Considerations*

**Synopsis:** This report describes the benefits and costs that should be considered by Florida’s city and county planners as they prepare their cannabis dispensary licensing rules. As cannabis policy and planning experts, the Marijuana Policy Group makes the following recommendations:

- *Phased Approach:* Based upon past experience, municipalities should use an incremental approach to issuing dispensary licenses. This mitigates the cost of early-stage errors in license criteria and processing. In general, it is easier for authorities to issue additional licenses over time, than to revoke licenses from previously issued licensees.
- *Optimal Number of Dispensaries:* The optimal number of dispensaries depends upon the number of patients likely to register, the local area population, and the required scale of operation for dispensaries to remain profitable. The average resident ratio among similar states (with laws similar to Amendment 2) is one dispensary per 67,222 residents (1:67,222). This ratio is found to be “optimal” by the MPG for cities and counties in Florida.
- *Risks of Unprofitable Dispensaries:* Unlike conventional business, cannabis business failure creates risks because the product is still prohibited by federal law. Small and struggling cannabis entities are more likely to sell (or “divert”) into illegal markets (e.g., minors and out-of-state smuggling). For example, struggling entities can utilize their license to legally cultivate or purchase cannabis, and then re-sell to illegal markets, if they cannot survive in Florida’s legal market.
- *The Minimum Effective Scale Ratio:* As a second rational approach to setting standards for dispensary numbers, it is helpful to note that the minimum effective scale for a dispensary is approximately 600 patients. Under Amendment 2, the minimum population-to-patient ratio in Florida should be *no more* than one dispensary for each fifty-thousand residents (1:50,000) with the optimal ratio at 1:67,222.
- *The Failure Rate:* The percentage of companies expected to become unprofitable in the regulated market is 61% if the allocation ratio is 1:30,000. Expected failures decline to 32% if the ratio is 1:50,000, and to only 13% if the ratio is 1:67,222.

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<sup>1</sup> The Marijuana Policy Group (MPG) is a Denver-based economics and policy consulting firm dedicated to cannabis economics and policy. This memo provides a quantitative assessment of the benefits and challenges related to cannabis dispensary permitting and licensing. The MPG is nationally recognized for its role in shaping the Colorado regulated cannabis market. Since 2014, the MPG has served as the lead cannabis economist for the State of Colorado, providing detailed market and economic analysis that informs state legislators and policymakers. MPG experts have also advised private sector clients for location, investment, and operations – this experience helps the MPG to bring private-sector understanding into the public-policy forum in an articulate manner. The MPG now operates in 13 states and two foreign countries.

- *Upper-Bound Sales:* The MPG finds no evidence to indicate an upper-boundary on the ability of dispensaries to service or supply customers. Single storefronts in Washington State, for example, were serving as many as 6,000 patrons in July 2016. It is therefore unlikely that a dispensary would experience “too many” patients to service.
- *Cole Memo Compliance:* Florida regulators should respect the priorities stated in the United States Department of Justice’s 2013 Cole Memorandum. This memorandum outlines the position of the federal government, and the conditions under which federal authorities will allow state-level rule on cannabis possession. Two of the eight priorities in the Cole Memorandum are to mitigate diversion to minors, and mitigate diversion out of the state. Proper allocation of licenses should be designed to ensure that licensees will remain compliant with state laws, and with federal guidelines.
- *Inexperienced Operators:* Due to increased risks associated with dispensary failures, regulators should prioritize license applicants who have demonstrated the ability to operate a successful cannabis business in the past.

## Contents

Municipal Dispensary License Allocation: Florida.....	1
<b>Background</b> .....	3
State-Level Licensing and Restrictiveness.....	3
Florida State Estimated Capture Rates .....	5
<b>Dispensary License Allocations</b> .....	5
<b>Dispensary Economics – Minimum Effective Scale</b> .....	8
<b>Dispensary Failure Rates Under Three Scenarios</b> .....	10
<b>Regulatory Risks from Failing Dispensaries</b> .....	10
<b>Summary</b> .....	11

## Background

Florida's medical cannabis program is changing rapidly. The passage of Amendment 2 in November 2016 will increase substantially the size and scope of the program. This ballot measure represents the latest of three measures which altered the state's approach to medical cannabis.

### Program Evolution: 2014-2016

Under the *Compassionate Medical Cannabis Act*, passed in 2014, the Legislature permitted low-THC/high CBD, non-smokable cannabis to be dispensed and utilized for the treatment of a handful of medical conditions. However, due to the legal restrictions, limiting access and prescriptions, and by forbidding smokable products, few patients have chosen to obtain medical cannabis through legal channels.

On March 25, 2016, Florida Governor Rick Scott signed House Bill 307 into law. This law expanded access to medical cannabis, including high-THC products as an efficacious treatment for patients with terminal illnesses. The state has licensed six medical cannabis dispensing organizations, which are vertically integrated and authorized to cultivate, manufacture, and sell medical cannabis. However, the program remains nascent; as of August, 2016, the Florida Department of Health has just 87 registered cannabis patients.

The passage of Amendment 2 is likely to expand significantly the number of registered patients and potential dispensaries seeking to serve such patients. State and local authorities must prepare themselves for an onslaught of medical cannabis dispensary applications. Under current law (section 381.986(8)(b), Florida Statutes), each county and municipality is authorized to implement rules and regulations for permitting of retail cannabis dispensaries. The statute specifies that such regulations should be reasonable and tailored to protect the public health, safety, and welfare. Most city or county managers have not faced such a decision, and are uncertain how many dispensaries to permit in a certain locality. This document is designed to help these authorities to understand what has been done elsewhere, and what to expect if too many or too few dispensaries are permitted in specific localities.

## State-Level Licensing and Restrictiveness

The MPG collected state-level medical cannabis program data for 22 states where some form of medical cannabis is allowed. Each state chose a regulatory system that is influenced by local sentimentality toward cannabis. Despite the disparity among different state and county rules, most impose restrictions on medical cannabis programs through 1) Limitations on the scope of medical conditions treatable using medical cannabis and the medical prescription ("recommendation") process; and 2) Rules to limiting dispensary numbers.

### *Restrictions on Condition Types – and the Capture Rate*

Certain states restrict use by limiting the types of conditions that are allowed to be treated using cannabis. Illinois, for example, has such restrictive conditions that there are only 7,000 approved medical cannabis patients, in a state with 12.8 million residents. The corresponding patient to population ratio – called the "Capture Rate" – is therefore just 5 people per 10,000, or 0.05%.

Most states have fewer restrictions on allowed medical conditions, and higher Capture Rates, than Illinois. Colorado, Maine, and Oregon allow most types of conditions, including “chronic pain,” to be recommended for treatment using cannabis. As a result, these states have much higher capture rates. The rate in Colorado is 1.94%, in Oregon, it is 1.83%, and in Maine it is 3.42%, the highest in the dataset. Table 1 provides a listing for selected states (22 different states where information was available), of the current patient count, compared to the resident population, to provide a *capture rate* for each state program.

*Table 1: Medical Cannabis State Populations and Eligible Patient Populations, based upon allowed medical conditions for medical cannabis.*

State	State population (2015)	Patient numbers	Current through	Capture Ratio
Maine	1,329,328	45,520	6/16/2016	3.42%
Michigan	9,922,576	203,889	6/18/2016	2.05%
Colorado	5,456,574	106,066	5/31/2016	1.94%
California	39,144,818	715,133	6/16/2016	1.83%
Oregon	4,028,977	73,605	6/6/2016	1.83%
Arizona	6,828,065	97,938	5/27/16	1.43%
Rhode Island	1,056,298	14,459	6/15/2016	1.37%
Montana	1,032,949	13,288	5/31/2016	1.29%
New Mexico	2,085,109	24,902	6/3/2016	1.19%
Hawaii	1,431,603	14,074	6/1/2016	0.98%
Nevada	2,890,845	18,599	5/31/2016	0.64%
D.C.	672,228	3,707	6/3/2016	0.55%
Vermont	626,042	2,936	6/27/2016	0.47%
Massachusetts	6,794,422	25,980	5/31/2016	0.38%
Connecticut	3,590,886	10,861	6/12/2016	0.30%
Delaware	945,934	1,490	6/15/2016	0.16%
Alaska	738,432	1,071	5/31/2016	0.15%
New Jersey	8,958,013	7,956	6/15/2016	0.09%
New Hampshire	1,330,608	780	7/1/2016	0.06%
Illinois	12,859,995	7,000	6/1/2016	0.05%
Minnesota	5,489,594	1,486	6/10/2016	0.03%
New York	19,795,791	4,688	6/9/2016	0.02%
<b>Average:</b>				<b>0.92%</b>

Source: MPG Calculations based upon publically-available state patient and population data. Patient data was sourced from the Marijuana Policy Project.

## Florida State Estimated Capture Rates

### *Under HB 307/SB 460*

Although HB 307/SB 460 has added access medical cannabis for the terminally ill, it is estimated that the patient-count will remain low given the restrictions that remain. Based upon the new regulations, the MPG estimates that the state’s patient Capture Rate will grow from current levels to approximately 12,000 patients.

The most binding constraints to access include the low-THC requirement for several of the qualifying conditions, difficulty for doctors to legally recommend the drug, and a cumbersome / costly path to become a registered cannabis patient. In total, the MPG estimates the Capture Rate under existing legislation to be approximately six-tenths of one percent (0.06%).

### *Under Amendment 2*

Upon passage of Amendment 2, the number of eligible conditions will expand to include more prevalent indications, and the use of high-THC, smokable products would be allowed, making the Florida law similar to laws in approximately 7 other states.

Using these states for guidance, the MPG constructed an estimated capture rate for Florida. The estimated capture rate for the state under Amendment 2 is 1.21%. The results are shown below, in Table 2.

*Table 2: Florida-Specific Patient Population - Based upon MPG Estimated Capture Rates*

Florida Estimated Patient Population	
Sample Average	0.92%
Average (Programs similar to Florida):	1.21%
Florida Population (2015)	20,271,272
<i>Estimated Florida Patient Count:</i>	
Using Sample Average (0.92%)	186,575
<b>Using Similar Program Ave (1.21%)</b>	<b>244,472</b>
Using Upper Bound (2.2%)	445,968

Source: MPG Calculations

While the overall sample average capture rate was 0.92%, the average for states who have deployed a program that is *similar* to Florida’s, is 1.21%. This higher rate reflects the exclusion of certain highly-restrictive states (e.g., New Jersey, New York, and Illinois).

## Dispensary License Allocations

The passage of Amendment 2 will lead to an onslaught of cannabis dispensary applications, and city and county planners must be prepared to handle such applications. Cannabis dispensaries and storefronts are perceived by many planners to carry increased risks compared to typical merchandise stores. These stores sell products that are prohibited under federal law, and they tend to hold large quantities of cash and high-value products. Accordingly, these stores can become burdensome on law enforcement resources. Additionally, community leaders in other states have expressed concern that numerous

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cannabis dispensaries increase the risk of blight and may reduce property values for neighboring communities.

In order to mitigate these risks and the burden on law enforcement, state and municipal authorities have placed limitations upon the number of dispensary operations in a given area. The first and most common limitation is population-based, where a fixed number dispensary licenses are allowed within a specific population center.

#### Experience from Other Industries

Rationing and allocation of licenses to certain types of private businesses is not new. Certain states with a more pious outlook continue to limit liquor store licensees. Utah, for example, limits storefronts to 1:44,000 residents.<sup>2</sup> Other regional limits are often requested by private business due to high startup costs. Hospital developers require a setback that limits competition for a period of time – in order to ensure they can survive and provide medical services. Pure public goods, such as fire stations and parks, are allocated to meet community needs, while balancing the costs and benefits of additional service outlets.

Cannabis dispensaries are privately-funded entities that provide services to a specific population segment. Therefore, the benefits of increased access to these entities is balanced against the potential costs of having too many outlets and subsequent failing businesses (along with considerations for the health, safety, and wellbeing of the public including increased risk of crime and burdens on law enforcement). While zoning rules can help to navigate the location of these entities, the number of entities can be directly controlled through license allocations.

#### Experience from Other States

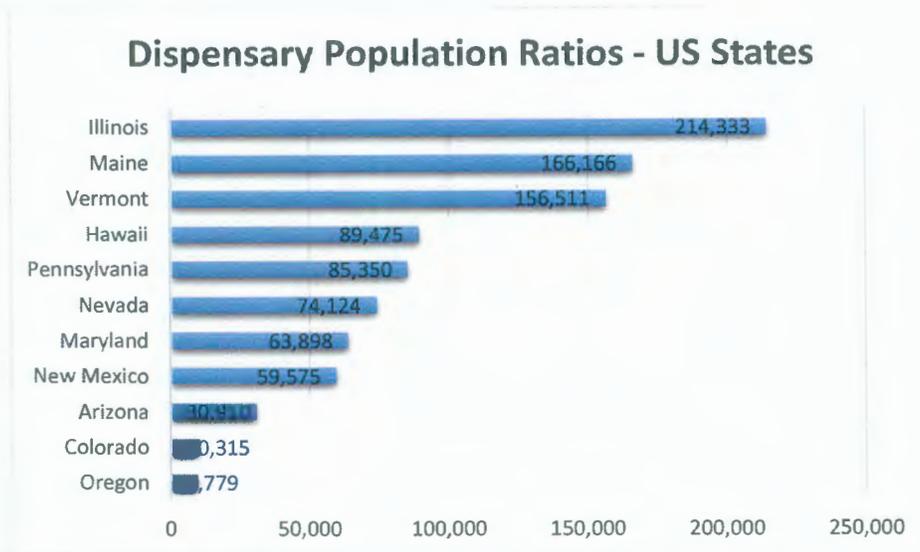
Of the 22 states from which MPG collected data, three states place no explicit limit upon the number of dispensing licenses: Colorado, New Mexico, and Oregon. Colorado and Oregon provide licenses to any applicant who can meet the qualifications to be an operator, while New Mexico takes into consideration the need for additional dispensaries on an annual basis. Since two of these states have legalized cannabis for anyone over 21 years of age, their policies should be viewed differently from states with medical programs only.

Among medical-only states, there is a gap between two types of dispensary allowances. Many states have systems that allow 1 dispensary for every 60,000 to 80,000 residents. The MPG compared these states with the program in Florida outlined in Amendment 2 – the most similar states are Arizona, New Mexico, Maryland, Nevada, Pennsylvania, and Hawaii. Those states had an average of 67,222 residents per dispensary. See Figure 0-1 below, for a graphical depiction of dispensary ratios.

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<sup>2</sup> Most state have liquor store ratios that average 1 for every 3,000 residents.

Figure 0-1: Ratio of State Resident Population to Cannabis Dispensaries for Selected US States (2015/2016)



Source: MPG Calculations based upon publically-available state patient and population data.

Two states stand out for the extremely “low” population to dispensary ratios: Colorado and Oregon. However these ratios can be misleading because most of these licensees are allowed to sell recreational (adult-use) cannabis from the same location.<sup>3</sup> The ability to sell adult-use as well as medical cannabis means that these locations are not relying solely upon patients to sustain their business, as dispensaries in medical-only states do.

#### Case of Oregon Dispensaries

The history of Oregon’s medical program offers some insights as a medical-only state that converted into an adult-use state. In Oregon, no *a-priori* limit was placed on dispensary licensing. As a result, the industry faced a “boom/bust” scenario.

In 2014 and 2015, some Oregon towns incurred periods of under-supply, and then over-supply, eventually leading to dispensary failures.<sup>4</sup> In 2015, pre-existing dispensaries benefitted by an interim law passed by the Oregon legislature, allowing medical dispensaries to sell cannabis to any adult over 21 years of age. At the same time, no recreational retail licenses were issued, giving pre-existing dispensaries exclusive rights to sell recreational cannabis to adults. Starting in January 2017, medical dispensaries must choose whether to sell exclusively to recreational or medical markets.

According to an article by the *Guardian*, Southeast Portland had approximately 12,000 medical card holders, and 136 medical dispensaries during calendar year 2015. This meant there were just 88 patients per dispensary, on average – leading to closures, license transfers, and product diversion. After October 2015, many dispensaries were revived, as their client base was expanded to any adult over 21 years of

<sup>3</sup> Stores and dispensaries are allowed to sell both products, so long as the area can be easily distinguished between medical and recreational retail. Most stores have a large orange line down the floor to indicate each section.

<sup>4</sup> See for example: <https://www.theguardian.com/us-news/2015/nov/21/oregon-cannabis-legalization-medical-marijuana-dying-market>.

age. In general, the Oregon program is perceived as one that was fraught with uncertainty, leading to general discontent among industry members.

### Dispensary Economics – Minimum Effective Scale

The Marijuana Policy Group has unique access to operating information for small and large vendors, both for medical and adult-use markets. The MPG can utilize their unique experience and insights to calculate – in a clear way – the so-called “minimum effective scale” required to sustain a medical cannabis operation. Clearly, cities and the state wish to have a well-organized and functional dispensary system, one that does not create negative incentives for failing operators.

**Approach:** We use the State of Florida capture rate that was estimated above (1.21%) to illustrate some basic economics related to the dispensary licensees – and to compute the share of “failing” dispensaries under different scenarios. We find that in Florida under Amendment 2, the minimum effective scale is one dispensary for every 50,000 residents. However, given the risk associated with failing dispensaries, the “optimal” ratios is one dispensary for every 67,222 residents.

If the estimated capture rate is used, then on average, each dispensary would serve either 813 patients using the 1:67,222 ratio, or 605 patients using the 1:50,000 ratio.

**Demand by Patients:** Previous demand studies conducted by the MPG show that medical patients typically use cannabis on a near daily basis. Those consumers are estimated to demand 1.6 grams of flower (or its equivalent in non-flower products) per day of use.<sup>5</sup> The average use rate is 29 days per month. Thus, total demand by weight for these customers is expected to be 1.6 g per day \* 29 days per month = 44.6 grams of cannabis per month – or 1.66 ounces of cannabis per month.

The average price of medical cannabis flower in Colorado is \$5.05 per gram. Typically, medical cannabis is purchased in portions of 1 ounce at a time.<sup>6</sup> If the dispensary ratios are 1:67,222, then a typical dispensary will serve 813 patients, and these dispensaries can be expected to have average revenues of approximately \$190,600 per month, under these assumptions.

On average, the cost of wholesale cannabis inputs account for 50% of total sales value (i.e., there is a 100% markup on product).<sup>7</sup> Thus, net revenues on average would be approximately \$95,300 per month. While rent and payroll expenses can vary widely, we can make some basic assumptions in order to provide context and draw a line of profitability.

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<sup>5</sup> See “Market Size and Demand for Colorado” (2014), produced by MPG and commissioned by the Colorado Marijuana Enforcement Division. This study supplied a deep assessment of market demand (by weight) for cannabis flower. The study found that heavy users consume almost 3 times as much cannabis per day than irregular users.  
<https://www.colorado.gov/pacific/sites/default/files/Market%20Size%20and%20Demand%20Study%2C%20July%209%2C%202014%5B1%5D.pdf>

<sup>6</sup> The price of illicit cannabis, according to “ThePriceofWeed.com” – a crowdsourcing site for product pricing, equals \$7.92 per gram for medium quality cannabis in Florida. This price is expected to decline, as it did in Colorado, under a regulated market.

<sup>7</sup> The same logic applies to vertically-integrated firms, who grow and sell the product. These firms implicitly pay wholesale prices for their own cannabis, because they could have sold their product at the wholesale price. This is a well-known economic concept regarding implicit versus explicit pricing.

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Table 3: Example Accounting for Florida Dispensaries - by Population Ratio

<b>Cost and Profits: Typical Dispensary Operation</b>			
Assumptions / Estimates:	Minimum	Below Minimum	Optimal
Dispensary Ratio:	1:50,000	1:30,000	1:67,222
Patient Capture Rate:	1.21%	1.21%	1.21%
Number of Patients per Dispensary	605	363	813
<b>Revenues and Costs:</b>			
<b>Total Estimated Revenues</b>	<b>\$142,008</b>	<b>\$85,205</b>	<b>\$190,921</b>
<b>Costs</b>			
COGS (Cost of Goods Sold)	\$71,004	\$42,602	\$ 95,461
Rent (or imputed rent)	\$15,000	\$15,000	\$15,000
Payrolls (including payroll taxes & insurance)	\$25,000	\$15,000	\$30,000
Utilities, cleaning, internet and other basic services	\$5,000	\$5,000	\$5,000
Accounting, legal, consulting, and professional services	\$6,000	\$6,000	\$6,000
<b>Total Estimated Costs:</b>	<b>\$122,004</b>	<b>\$83,602</b>	<b>\$151,461</b>
<b>EBITA (Earnings before Interest, Taxes, and Amortization)</b>	<b>\$ 20,004</b>	<b>\$1,602</b>	<b>\$39,461</b>
Income Taxes (assuming 280E Compliance)	\$19,881	\$11,929	\$26,729
Income Taxes (under regular conditions)	\$5,601	\$449	\$11,049
<b>Net Profit (Monthly)</b>			
Under 280E	\$123	(\$10,326)	\$12,732
Under Regular Conditions	\$14,403	\$1,154	\$28,412

\*Source: MPG Calculations based upon state captures rates and spending profiles.

Table 3 shows what a Florida state dispensary license holder can expect financially under various dispensary to population ratios. If there exists one dispensary for every 67,222 residents, then net profits after taxes (assuming the owner somehow maneuvers around certain applicable IRS regulations)<sup>8</sup> are \$31,896 per month on average, or \$382,752 per year. Under Section 280E of the IRS Code, profits would be \$211,392 for the year.

In contrast, if the ratio were 1:30,000 – then the license holder would lose approximately \$120,000 under 280E, or earn just \$13,212 under normal operating conditions. Profits are “normal” compared to the at-risk capital if the ratio is 1:50,000. In this case, annual after-tax profits would be \$1,475 under Section 280E, and would be \$172,835 under regular business conditions.

<sup>8</sup> Section 280E of the IRS Code prohibits cannabis vendors from claiming any expenses, except for the cost of the cannabis product itself. For more information see: <http://www.thedailybeast.com/articles/2016/02/18/feds-slap-70-tax-on-legal-marijuana-businesses.html>

These profit estimates do not include the initial cost of investment, called “at risk capital”. The initial investment expense to open a dispensary is expected to equal approximately \$200,000, depending upon the location, building, staff, and licensing process.

### Dispensary Failure Rates Under Three Scenarios

Under an allocation ratio of 1:50,000 residents, the MPG estimates that approximately 32% of the licensees will struggle or become unprofitable, and would present increased risks for enforcement and regulators. An allocation closer to the average among MPG’s sample (1:67,222) results in slightly fewer dispensaries, as well as a higher success rate, effectively shifting the failure rate down from 32% to 13% (i.e. only 1 in 8 licensees fail). In contrast, if more licenses are permitted, then assuming the same capture rate, a higher share of those licensees must be failures, since the total spending on cannabis is effectively “capped” by the number of patients. For example, if a ratio of 1:30,000 is used, more than half of the licensees would be expected to fail or be in danger of failing. Under this regime, the average dispensary teeters between a gain of \$1,039 per month if they do not comply with 280E, or a loss of \$10,379 per month, if they comply. Only 39% of dispensaries are expected to be sustainable under this scenario, and 61% of dispensaries become “high risk” failing entities.

Table 4 below shows the relative number of dispensaries under different allocation schemes:

*Table 4: Number of Dispensaries and Expected Failing Stores under different license allocation schemes.*

Dispensary Failure Rate			
Population Ratio	Number of Dispensaries	Failure Rate	Number of Store Failures
1:30,000	676	61%	412
1:50,000	405	32%	130
1:67:222	302	13%	39

\*Based upon 2015 Florida population, and MPG fail-rate estimates.

The expected failure rate is 61% under a 1:30,000 ratio. This rate falls to approximately one-third (32%) if fewer licenses are issued, to bring the dispensary population in-line with the state population (405 stores). Under this scenario, the number of failed stores falls from 412 to 130, for a 68% reduction in failed licensees. Under a ratio of 1:67,222, the failure rate falls to 13%, and the number of failed stores falls from 130 down to 39. The MPG believes that 1:67,222 provides an “optimal” balance between access of store locations and risks of store failures, given the estimated parameters for Florida, under passage of Amendment 2. It is also important to note that, because the six currently licensed organizations in Florida also offer statewide delivery, patients will have additional access to medicine (in addition to retail outlets). This suggests that rural and remote populations can still be served, in some manner, even when store density is not high.

### Regulatory Risks from Failing Dispensaries

In general, the free market system is an effective mechanism that allocates resources to their best use. It rewards efficient operators and it eventually pushes inefficient or ineffective operators out of the market through closures or consolidation.

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The free market system works best for the sale and distribution of innocuous goods and services. But there are special risks and considerations when the market is a “Schedule 1” narcotic. Most of these risks are related to product *diversion and crime*. An itemized list of considerations is below:

- Struggling cannabis vendors have an incentive to divert sales to illegal markets if they cannot compete in the regulated market. In order to survive, struggling operators are more likely to allow sales to unauthorized users or to divert some of their products for sale outside of the region, or outside of the state (ex-state diversion).
- The diversion of cannabis to minors or to other states are listed as the Federal Government’s “priorities and concerns” in relation to the state-level sale and distribution of cannabis products. These concerns are prominently described in the 2013 “Cole Memorandum.”
- Struggling vendors are less likely to pay for laboratory testing, for proper packaging, and for proper safety standards in the workplace. Profitable operators have an incentive to maintain their good-standing with state licensing agents, and are more likely to maintain higher levels of safety, quality-control, packaging, and monitoring, compared to poorly-funded organizations.
- Tax compliance and promptness of payment for license fees are generally higher for well-funded and well-organized licensees, compared to struggling and near-bankrupt licensees.<sup>9</sup> Near-bankrupt operators have “*less to lose*” compared to profitable enterprises, and therefore are therefore less likely to comply with the rules and regulations. This effect has been documented in studies of entrepreneurial behavior and attitudes among small-business owners.
- Until federal laws change, almost all cannabis dispensaries are cash-based operations. This raises the risk of crime and burglaries targeted toward dispensary locations. This, in turn, creates an incremental burden for local law enforcement and potential threats to public safety.

## Summary

The passage of Amendment 2 will fundamentally alter Florida’s medical cannabis program. City and county planners throughout the state will be faced with a number of decisions that will ultimately determine the success of medical cannabis operations in their respective communities. This report is intended to assist government administrators as they begin to consider cannabis dispensary licensing rules. MPG’s recommendations, based on other medical cannabis states’ experiences and data-driven economic analysis, provides Florida municipalities with a targeted rulemaking framework that will enable a well-functioning medical cannabis market.

MPG’s calculated “optimal ratio” of one dispensary per 67,222 residents (1:67,222) has been customized to Florida’s specific patient population and regulatory structure. The ratio ensures that the majority of licensed medical cannabis dispensaries in Florida will have a sufficient medical patient customer base, based upon an estimated Capture Rate of 1.21%, to create a profitable business environment for licensed actors. Reducing the number of “at-risk” or failing medical cannabis licensees is imperative for creating a medical cannabis market that mitigates regulatory risk in the form of diversion and crime. The

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<sup>9</sup> See, for example: Kamleitner, et. al. (2012). “Tax Compliance of Small Business Owners: A Literature Review and Conceptual Framework,” *International Journal of Entrepreneurial Behavior & Research* 18(3):330-351.  
*Note: Results and findings are solely based upon MPG research. Quotations or citations of the report findings must include “The Marijuana Policy Group” as the original owner of this intellectual property.*

actions taken and rules enacted by city and county planners must be cautious, incremental, and should reflect the medical cannabis market unique to Florida, as the ultimate success or failure of the medical cannabis program is highly dependent upon the regulatory structure.

## LICENSING ORDINANCE

**ORDINANCE \_\_ - Cannabis Dispensing Businesses**

WHEREAS, the Florida Legislature enacted legislation legalizing Cannabis for medical uses; and

WHEREAS, future constitutional amendments and legislation may further expand the legal use of Cannabis in Florida; and

WHEREAS, a comprehensive State licensing and regulatory framework for the cultivation, processing, and Dispensing of Cannabis exists; and

WHEREAS the comprehensive State licensing and regulatory framework directs that 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 Cannabis Dispensing Businesses may be determined by local ordinance; and

WHEREAS, Cannabis Dispensing Businesses licensed pursuant to the law have begun cultivating Cannabis for processing and Dispensing; and

WHEREAS, potential adverse impacts on the health, safety, and welfare of residents and business from secondary effects associated with the distribution of Cannabis exist, potentially including: offensive odors, trespassing, theft, fire hazards, increased crime in and about the Cannabis Dispensing Business, robberies, negative impacts on nearby businesses, nuisance problems; and

WHEREAS, certain of the above potential adverse impacts are accentuated by the current difficulties experienced by Cannabis Dispensing Businesses in obtaining banking services necessitating such businesses to operate on a cash basis; and

WHEREAS, there exists the potential for misappropriation and diversion of medical Cannabis to non-medical uses, and;

WHEREAS, an overabundance of Dispensing facilities can affect the viability of such facilities, result in compliance issues and increased regulatory costs, lead to the improper diversion of products, and accentuate threats to the public health, safety, and welfare; and

WHEREAS, other jurisdictions have regulated the Dispensing of Cannabis by limiting the number of such Cannabis Dispensing Businesses to reduce threats to the public health, safety, and welfare; and

WHEREAS, there is a need to adopt health, safety, and welfare regulations to avoid adverse impacts on the community which may arise from the distribution of Cannabis; and

WHEREAS, other jurisdictions that allow Cannabis Dispensing Businesses have implemented effective regulatory and enforcement systems that address the adverse impacts that Cannabis Dispensing Businesses could pose to public safety, health, and welfare; and

WHEREAS, an effective regulatory system governing the Dispensing of Cannabis, as provided in this Ordinance, will address potential adverse impacts to the public health, welfare, and safety consistent with Florida law; and

WHEREAS, it is not the purpose or intent of this section to restrict or deny access to Cannabis as permitted by Florida law, but instead to enact reasonable restrictions intended to protect the public health, safety, and welfare; and

WHEREAS, the Village has determined it is in the public interest to adopt this Ordinance pursuant to the Villages police powers, as well as other applicable state laws and provisions of the Florida Constitution, to protect the health, safety, and welfare of the public;

NOW THEREFORE, the following ordinance is adopted.

**Sec. \_\_ - \_\_-10. - Purpose and intent.**

The purpose of this Ordinance is to establish requirements that regulate Cannabis Dispensing Businesses in the interest of the public health, safety and general welfare and that ease the regulatory burden on the the Village. In particular, this Ordinance is intended to regulate the sale and distribution of Cannabis to ensure a supply of Cannabis to patients who qualify to obtain, possess, and use Cannabis, or any other use of Cannabis permissible under state law, while promoting compliance with other state laws that regulate Cannabis. Nothing in this Ordinance is intended to promote or condone the sale, distribution, possession, or use of Cannabis in violation of any applicable state law. Compliance with the requirements of this Ordinance shall not provide a defense to criminal prosecution under any applicable law.

**Sec. \_\_ - \_\_-20. - Definitions.**

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

- a. **Applicant** shall mean any person or entity that has submitted an application for a Certificate of Approval or renewal of a Certificate of Approval issued pursuant to this Ordinance. If the Applicant is an entity and not a natural person, Applicant shall include all persons who are the managers, officers, directors, contractual agents, partners, and licensors of such entity, as well as all members, shareholders, or Investors holding an ownership interest of 10% or more of such entity.
- b. **Cannabis** has the meaning given to it by section 893.02(3), Florida Statutes, and shall include all forms of medical Cannabis or low-THC Cannabis.
- c. **Cannabis Dispensing Business** or **Business** shall mean a business licensed to dispense Cannabis pursuant to applicable law and that is engaged in the retail

sale of Cannabis or Derivative Products, but shall not include making deliveries of Cannabis or Derivative Products to the residence or business of an authorized individual, or to a health care facility, as permitted by other relevant ordinances and state law.

- d. **Certificate of Approval** shall mean a document issued by the Village officially authorizing an Applicant to operate a Cannabis Dispensing Business pursuant to this Ordinance. A Certificate of Approval generally authorizes an Applicant to establish and operate a Cannabis Dispensing Business pursuant to this Ordinance, but does not authorize the Dispensing of Cannabis at any physical location within the Village until a Premises Authorization, as defined herein, has been issued for such location.
- e. **Compassionate Use Act** shall mean section 381.986, Florida Statutes, and chapter 2016-123, Laws of Florida, as amended from time to time, and any rules or regulations promulgated thereunder.
- f. **Cultivation** or **cultivate** shall mean the process by which a person grows a Cannabis plant.
- g. **Derivative Products** shall mean products derived from Cannabis, including but not limited to, Cannabis oil or consumable products containing or derived from Cannabis.
- h. **Dispensing** shall mean the retail sales of Cannabis or Derivative Products at a Cannabis Dispensing Business, but does not include making deliveries of Cannabis or Derivative Products to the residence or business of an authorized individual, or to a health care facility, as permitted by other relevant ordinances and state law.
- i. **Investor** shall mean any person or entity entitled to share in the profits of the Applicant, or any Lender. The term shall not include any employees who share in the profits of the Applicant pursuant to an employee profit sharing program.
- j. **Lender** shall mean any person or entity who has provided funds to an Applicant with the expectation of receiving from the Applicant repayment or the receipt from the Applicant of anything of value. The term Lender shall include any person who owns, directly or indirectly, 20% or more of any entity which qualifies as a Lender, but does not include any bank, credit union, or other financial institution created under federal or state law.
- k. **Jurisdiction** shall mean the Village of Estero, Lee County.
- l. **Operator** shall mean the person or entity to whom a Certificate of Approval has been issued pursuant to this Ordinance.
- m. **Premises Authorization** shall mean a document issued by the Jurisdiction to the Operator, authorizing the Operator to conduct Cannabis Dispensing Business operations at a single, specifically approved physical location. No Premises Authorization may be issued to any individual or entity who does not hold a
- n. **Certificate of Approval**. Each Certificate of Approval authorizes the issuance of a single Premises Authorization at any one time, and any relocation of

operations to a separate address shall require amendment of the Premises Authorization to authorize operations at the new location.

o. **State** shall mean the State of Florida.

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

**Sec. \_\_ - \_\_-30. - Approval authority created.**

There shall be and is hereby created a Cannabis Dispensing Regulatory Authority hereafter referred to in this Ordinance as the “Authority.”

**Sec. \_\_ - \_\_-40. - Composition of the Authority.**

The Authority shall consist of three members appointed by the Village Council for a term of three years each.

**Sec. \_\_ - \_\_-50. - Functions of the Authority.**

(1) The Authority shall be responsible, pursuant to the Compassionate Use Act and this Ordinance, for granting or denying Certificates of Approval and Premises Authorizations, and shall have all powers of municipal government as set forth in the Compassionate Use Act and any other applicable state laws.

(2) The Authority shall have the power to: (i) promulgate rules and regulations concerning the procedures for any hearings conducted by the Authority; (ii) require any Applicant or Operator to furnish any relevant information requested by the Authority; and (iii) administer oaths and to require the presence of persons and the production of papers, books, and records at any hearing that the Authority is authorized to conduct.

**Sec. \_\_ - \_\_-60. - Certificate of Approval required; term of Certificate of Approval; renewal application.**

(1) It shall be unlawful for any person or entity to establish or operate a Cannabis Dispensing Business in the Village without first having obtained from the State of Florida approval to do so pursuant to the Compassionate Use Act or any other relevant law, and having obtained from the Village a Certificate of Approval, and having obtained from the Village a Premises Authorization for the facility to be operated in connection with such business. Such Certificate of Approval and Premises Authorization shall be kept current at all times and shall be conspicuously displayed at all times in the premises to which they apply. The failure to maintain a current Certificate of Approval, or to maintain a current Premises Authorization for any location at which Cannabis Dispensing Business is conducted, shall constitute a violation of this Section.

(2) Each Certificate of Approval issued by the Village pursuant to this Ordinance shall specify the date of issuance, the period of licensure, and the name of the Operator.

(3) Any Certificate of Approval issued by the Authority under this Ordinance shall expire three years after the date of its issuance.

(4) Renewal of an existing Certificate of Approval shall be automatic for successive three year periods upon payment of required fees to the Village, as provided in the fee schedule adopted by the Village from time to time.

- a. Within 30 days of the expiration date, and upon notice of renewal by the Village, each Operator shall pay a nonrefundable fee to the Village, as set forth in the fee schedule adopted by the Village from time to time, to defray the costs incurred by the Village for review of the application and inspection of the proposed premises, as well as any other costs associated with the processing of the application. Notice of renewal shall be provided to each Operator no less than 30 days prior to the renewal date of the Certificate of Authority.
- b. A notice of intent to revoke shall be issued to all Operators who have not remitted renewal fees within 30 days of the renewal date. Notwithstanding the provisions of Subsection (a), an Operator whose Certificate of Authority has been expired for not more than 90 days will be reinstated upon the payment of a nonrefundable late application fee, as set forth in the fee schedule adopted by the Village from time to time. A Certificate of Authority shall be revoked if renewal fees have not been paid within 90 days of the renewal date.

(5) Any Premises Authorization issued by the Authority under this Ordinance shall be deemed to expire on the date upon which the Certificate of Approval pursuant to which it is issued expires. Any Premises Authorization shall be deemed automatically renewed upon the renewal, as set forth herein, of the Certificate of Approval pursuant to which it is issued.

(6) In the event a Certificate of Authorization is not renewed, it shall be noticed by the Authority as available and be subject to a new application process as set forth in Sec. \_\_ - \_\_ - 75.

**Sec. \_\_ - \_\_ -70. – Application minimum requirements; payment of application fee.**

(1) An Applicant for a new Certificate of Approval, or an Operator seeking to change the ownership of an existing Certificate of Approval, pursuant to the Compassionate Use Act, any other applicable state law, and the provisions of this Ordinance, shall submit an application to the Village. At the time of any such application, each Applicant shall pay an application fee to the Village, as set forth in the fee schedule adopted by the Village Council from time to time, to defray the costs incurred by the Village for review of the application, as well as any other costs associated with the processing of the application.

(2) The Applicant shall include the following in its application to the Village:

- a. Payment of the application fee as set forth in the fee schedule established by the Jurisdiction.

- b. If the Applicant is a business entity, information regarding the entity, including without limitation the name and address of the entity, its legal status and proof of registration with, or a certificate of good standing from, the Florida Secretary of State, as applicable;
- c. If the Applicant is an individual, government issued identification including name, address and photograph of the individual;
- d. Evidence of the State of Florida, Department of Health, Office of Compassionate Use's (or any successor agency of the State of Florida's) approval of the Operator to operate a Cannabis Dispensing Business pursuant to the Compassionate Use Act or any other relevant law;
- e. All documentation necessary to demonstrate compliance with the requirements identified in this Ordinance, including evidence that the Applicant continues to meet all requirements of section 381.986(5)(b)(1), Florida Statutes.
- f. All documentation the Applicant wishes to have considered for scoring purposes, including documentation demonstrating the Applicant meets the criteria detailed in Sec. \_\_ - \_\_ -75 of this Ordinance.

(3) Upon receipt of an application, the Authority shall review and score the application pursuant to the scoring and review process established by Sec. \_\_ - \_\_ -75 of this Ordinance.

**Sec. \_\_ - \_\_ -75. – The Application Period and Scoring and Review of Applications.**

(1) The initial application period shall commence on the effective date of this Ordinance and shall close 30 days after the effective date of this Ordinance. Subsequent application periods shall commence upon certification by the Authority that additional Certificates of Approval are available and shall close 30 days after such certification. Such certification will be posted in a conspicuous location on a website to be established by the Authority.

(2) The members of the Authority shall score and review each application pursuant to the criteria, and 100 point scale, detailed below. Members and Applicants may discuss their application at any time during the application process. Each application will be independently scored by Authority members.

- a. Previous retail dispensing experience in a regulated market in any state: 20 points
  - i. Number of different retail dispensaries operated.
  - ii. Total square footage of retail dispensaries operated.
  - iii. Number of years of operating retail dispensaries.
  - iv. Number of retail dispensary employees managed.
  - v. Gross sales of Cannabis and Cannabis Derivative Products.
  - vi. Number of different Cannabis strains and Derivative Products sold.
  - vii. Retail dispensing licenses held in different states.

- viii. Previous infractions resulting in the revocation of any Cannabis license.
  - ix. Experience with maintaining chain of custody and tracking mechanisms.
- b. Quality of Derivative Product offerings: 20 points
- i. Length of time Derivative Products you intend to dispense have been available in regulated markets.
  - ii. Gross sales number of units of these Derivative Products previously sold in regulated markets.
  - iii. Gross revenue derived from previous sales of these Derivative Products in regulated markets.
- c. Technical Ability: 10 points
- i. Review of standard operating procedures, operating manuals, policies, training modules, and procedures.
  - ii. Training process.
  - iii. Online ordering system.
  - iv. Procedures for expediting ordering and / or providing for medically disadvantaged.
  - v. Operational ERP (Enterprise Resource Planning) System.
  - vi. Retail delivery system.
  - vii. Point-of-sale systems and solutions.
- d. Qualifications of Security Team: 15 points
- i. Years of security experience with Cannabis dispensaries in a regulated Cannabis market.
  - ii. Integration of security procedures and training into your vertically integrated operations.
  - iii. All owners, Investors, and managers have successfully passed a Level 2 background check and have not been convicted of any felonies involving fraud, false representation, or distribution of Cannabis.
- e. Qualifications of Medical Director: 25 points
- i. Experience with epileptic patients;
  - ii. Experience with cancer patients;
  - iii. Experience with patients with severe seizures or muscle spasms;
  - iv. Experience with terminal patients;
  - v. Knowledge of the use of medical Cannabis for treatment of cancer or physical medical conditions that chronically produce symptoms of seizures or severe and persistent muscle spasms;
  - vi. Knowledge of good manufacturing practices;
  - vii. Knowledge of analytical and organic chemistry;
  - viii. Knowledge of analytical laboratory methods;
  - ix. Knowledge of analytical laboratory quality control, including maintaining a chain of custody;

- x. Knowledge of, and experience with, medical Cannabis CBD/low-THC extraction techniques;
- xi. Knowledge of medical Cannabis, including CBD/low-THC routes of administration;
- xii. Experience in or knowledge of clinical trials or observational studies;
- xiii. Knowledge of, and experience with, producing CBD/low-THC products;
- xiv. Experience with or knowledge of botanical medicines;
- xv. Experience with dispensing medications.

f. Awards: 10 points

- i. Any awards, recognitions, or certifications received for expertise in Cannabis related businesses.

(3) Prior to scoring applications the Authority shall review applications for compliance with this Ordinance, the Compassionate Use Act, or any other applicable law, and shall reject any application which does not meet such requirement. Rejected applications shall not be scored. The Authority shall also disqualify any application that contains any false or misleading information.

(4) Within 30 days after the Authority's identified deadline for filing applications, the scores awarded by the members of the Authority for each Applicant shall be totaled and averaged for each Applicant. The Applicants shall then be ranked from highest to lowest based on the average scores awarded, with Certificates of Approval issued to the highest scoring Applicant, and proceeding to the next highest scored Applicant until all Certificates of Approval authorized pursuant to this Ordinance have been awarded. In the event of a tie in the rankings, the Authority shall by majority vote break the tie.

(5) Challenges to the Authority's award decision shall be filed with the Village Manager within ten days of the decision being challenged. The Village Manager shall review the challenge and issue a decision dismissing such challenge or affirming such challenge. Challenges to the Village Manager's decision dismissing or affirming such challenge shall be via a request for administrative hearing pursuant to Florida's Administrative Procedures Act, and must be filed within ten days of issuance of the decision being challenged. Petitions meeting the requirements of Florida's Administrative Procedures Act shall be referred to the Division of Administrative Hearings for a formal hearing, and issuance of a recommended order to the village. Within 15 days of issuance of a recommended order, the Village will issue a final order.

**Sec. \_\_-\_\_-80. – Issuance of Certificate of Approval.**

(1) Upon expiration of the challenge deadlines detailed in Sec. \_\_-\_\_-75(5) if no challenge is filed, or upon issuance of a final order if a challenge is filed, the Authority shall issue Certificates of Approval as provided in Sec. \_\_-\_\_-100 of this Ordinance.

(2) A Certificate of Approval issued pursuant to this Ordinance does not eliminate the need for the Operator to obtain other required permits or licenses related to the operation of the

Cannabis Dispensing Business including, without limitation, any development approvals or building permits required by this Code.

(3) Amendment of a Certificate of Approval or Premises Authorization, as defined below, solely to change the location of a Cannabis Dispensing Business shall not be denied so long as all other conditions for the issuance of a Certificate of Approval have been met and the new location complies with all premises requirements set forth in this Ordinance and all applicable zoning requirements.

(4) A Certificate of Approval or Premises Authorization may be transferred only to an entity which has been approved by the State of Florida, Department of Health, Office of Compassionate Use (or any successor agency of the State of Florida) to operate a Cannabis Dispensing Business pursuant to the Compassionate Use Act or any other relevant law, and who meets all other requirements of this Ordinance.

**Sec. \_\_ - \_\_-85. - Persons or Entities prohibited as Operators.**

No Certificate of Approval shall be issued to, held by, or renewed by any Applicant or Operator who fails to comply with the following Mandatory Requirements:

(1) Maintain approval as a dispensing organization by the State of Florida, Department of Health, Office of Compassionate Use pursuant to the Compassionate Use Act, or any other applicable law.

(2) Ensure no owner, Investor, or manager of the Applicant or Operator has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent, and the record has not been sealed or expunged for, any crime enumerated in section 435.04(2), Florida Statutes, or any felony involving false representations or false statements, fraud, or money laundering.

**Sec. \_\_ - \_\_-90. – Confidential, Proprietary, Copyrighted, or Trade Secret Material**

(1) If an Applicant considers any portion of the documents, data or records submitted with its application to be confidential, proprietary, trade secret or otherwise not subject to disclosure pursuant to chapter 119, Florida Statutes, the Florida Constitution or other authority, the Applicant must mark the document as “Confidential” and simultaneously provide the Authority a separate redacted copy of its application and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation for such exemption. This redacted copy shall contain the name of the Applicant on the cover, and shall be clearly titled “Redacted Copy.” The Redacted Copy should only redact those portions of material that the Applicant claims are confidential, proprietary, trade secret or otherwise not subject to disclosure.

(2) If a request for public records pursuant to chapter 119, Florida Statutes, the Florida Constitution or other authority, is filed, to which documents that are marked as confidential are responsive, the Authority will provide the Redacted Copy to the requestor. If a

requestor asserts a right to the Confidential Information, the Authority will notify the Applicant such an assertion has been made. It is the Applicant’s responsibility to assert that the information in question is exempt from disclosure under chapter 119 or other applicable law. If the Authority becomes subject to a demand for discovery or disclosure of the Confidential Information of the Applicant in a legal proceeding, the Authority shall give the Applicant prompt notice of the demand prior to releasing the information (unless otherwise prohibited by applicable law). The Applicant shall be responsible for defending its determination that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

(3) If Applicant fails to submit a redacted copy of information it claims is confidential, the Authority is authorized to produce the entire documents, data, or records submitted to the Authority in answer to a public records request for these records.

**Sec. \_\_-\_\_-100. - Numerical limit on Cannabis Dispensing Businesses.**

(1) The maximum number of Certificates of Approval in the Jurisdiction shall not exceed one for every 67,600 residents, as certified in the most recent census or periodic demographic studies conducted by the University of Florida. However, if a census or periodic demographic studies conducted by the University of Florida indicates a resident count of at least 50% of that required for issuance of a new Certificate of Authority, a new Certificate of Approval shall be authorized. For example:

<b>Residents Indicated</b>	<b>Certificates of Authority Authorized</b>
0 - 101,399	1
101,400 – 169,000	2
169,001 – 236,599	3
236,600 – 304,199	4
304,200 – 371,799	5

(2) A dispensing organization may hold more than one Certificate of Approval, but may not hold all available Certificates of Approval issued by the Authority if more than one are available.

(3) In order to ensure that the population of the Jurisdiction has access to the best qualified dispensing organizations, while likewise maintaining competition in the Cannabis Dispensing industry within the Jurisdiction, when multiple Certificates of Approval are available Applicants shall be entitled to receive, upon request, up to the number of Certificates of Approval set forth in the below table, and shall identify in their application the number of Certificates of Approval that they are requesting:

<b>Number of Certificates Available</b>	<b>First Ranked Applicant</b>	<b>Second Ranked Applicant</b>	<b>Third Ranked Applicant</b>	<b>Fourth Ranked Applicant</b>
<b>1</b>	1	0	0	0
<b>2</b>	1	1	0	0
<b>3</b>	2	1	0	0

4	2	1	1	0
5	3	1	1	0
6	3	2	1	0
7	4	2	1	0
8	4	2	1	1
9	5	2	1	1
10	5	2	2	1
11	6	2	2	1
12	6	3	2	1
13	7	3	2	1
14	7	4	2	1
15	8	4	2	1
16	8	4	2	2
17	9	4	2	2
18	9	4	3	2
19	10	4	3	2
20	10	5	3	2

If any Certificates of Approval remain available following the distribution of requested Certificates of Approval to Applicants in accordance with the above table, one Certificate of Approval shall be offered to each remaining eligible applicant, in declining order of rank, until all Certificates of Approval have been distributed. If, following the completion of such process, Certificates of Approval still remain available, one additional Certificate of Approval shall be offered to each Applicant, in declining order of rank, until all Certificates of Approval have been distributed.

(4) If additional Certificates of Approval are made available, the Authority shall provide notice of a new application process conducted pursuant to this Ordinance.

(5) Each Certificate of Approval authorizes the holder to operate a single licensed premises pursuant to an approved Premises Authorization.

**Sec. \_\_ - \_\_-110. – Premises Authorization.**

After obtaining a Certificate of Approval, and prior to Dispensing Cannabis, an Operator shall select a location from which such Dispensing will occur, and provide notice to the Authority of the Dispensing location and request issuance of Premises Authorization for such location. Such request shall be provided a minimum of 10 days prior to the Dispensing of any Cannabis from the location, and shall identify the Certificate of Approval at issue, and the location from which Dispensing will occur.

**Sec. \_\_ - \_\_-115. – Zoning Requirements**

(1) Premises Authorization shall be granted for any location which complies with the requirements of this Ordinance and in which retail sales of any kind are permitted pursuant to applicable zoning or land use regulations, either as a principal or accessory use.

(2) No Cannabis Dispensing Business shall be located within 250 feet of any public or private elementary, middle, or secondary school or house of worship. However, a Cannabis Dispensing Business does not violate this subsection and may not be forced to relocate if it meets the requirements of this section and a school or house of worship is subsequently established within 250 feet of the business.

(3) For purposes of this Ordinance, measurements shall be made from the nearest property line of the school or house of worship to the nearest property line of the Cannabis Dispensing Business. If the Cannabis Dispensing Business is located in a multi-tenant building, the distance shall be measured from the nearest property line of the school or house of worship to the nearest line of the leasehold or other space actually controlled or occupied by the Cannabis Dispensing Business. The Cannabis Dispensing Business shall ensure security for Cannabis activities complies with state requirements.

**Sec. \_\_ - \_\_-120. - Inspection of approved premises and issuance of Premises Authorization.**

(1) During business hours and other times of apparent activity, all approved premises shall be subject to inspection by the Fire Chief, the Building Official, County Sheriff, or the authorized representative of any of them, for the purpose of investigating and determining compliance with the provisions of this Ordinance and any other applicable state or local law or regulation. Such inspection may include, but need not be limited to, the inspection of books, records, and inventory. Where any part of the premises consists of a locked area, such area shall be made available for inspection, without delay, upon reasonable request. The frequency of such inspections shall not be unreasonable and shall be conducted in a manner to ensure the operation of the premises is not inhibited.

(2) Cannabis may not be Dispensed pursuant to a Certificate of Approval until the Authority has caused the proposed premises to be inspected to determine compliance of the premises with any applicable requirements of this Ordinance and Code, and has issued Premises Authorization.

(3) The Authority shall, within 10 days of receipt of a request for Premises Authorization, and after inspection of the premises to be utilized, notify the Certificate holder that it may begin Dispensing Cannabis at that premises and issue a Premises Authorization to the Certificate holder, or provide to the Operator written notice detailing the reasons the selected location does not comply with this Ordinance. Each Premises Authorization issued by the Village pursuant to this Ordinance shall specify the Certificate of Approval pursuant to which it is issued, all information set forth on the Certificate of Approval, and the physical location of the premises approved, once such approval is received.

**Sec. \_\_ - \_\_-125. - Requirements related to the premises.**

Cannabis Dispensing Businesses shall be subject to the following additional requirements:

(1) All Cannabis or Cannabis Derivative products ready for sale shall be in a sealed or locked container or cabinet except when being accessed for distribution.

(2) Only individuals authorized pursuant to Florida law may Dispense Cannabis, and such Cannabis may only be Dispensed to persons authorized pursuant to Florida law to receive Cannabis.

(3) No Cannabis shall be Dispensed outside of the hours permitted by Florida law. However, Cannabis Dispensing Businesses may conduct administrative or delivery functions, including making deliveries of Cannabis or Derivative Products to the residence or business of an authorized individual, or to a health care facility, as permitted by other relevant ordinances and state law.

(4) No unaccompanied minor may be Dispensed Cannabis unless otherwise authorized under state law.

(5) The Cannabis Dispensing Business shall employ reasonable measures and means to eliminate odors emanating from Dispensing and shall properly dispose of controlled substances in a safe, sanitary and secure manner and in accordance with applicable laws and regulations.

(6) After issuance of a Premises Authorization, an Operator shall not make a physical change, alteration or modification of the premises that would not comply with this Ordinance.

**Sec. \_\_ - \_\_-130. - Signage requirements.**

All signage associated with a Cannabis Dispensing Business shall meet the standards established in this Code for signs.

**Sec. \_\_ - \_\_-135. - Nonrenewal, suspension or revocation of Certificate of Approval.**

The Authority may suspend, revoke, or refuse to renew a Certificate of Approval for any of the following reasons, after notice and opportunity to cure is given:

(1) The Applicant or Operator, or his or her agent, manager, or employee, have violated, do not meet, or have failed to comply with, any of the terms, Mandatory Requirements as specified in Sec \_\_ - \_\_-85, conditions, or provisions of this Ordinance or with any applicable state law or regulation, only if such failure materially impacts the accessibility, availability, or safety of the Cannabis or Derivative Product.

(2) The Authority shall provide notice of any of the above deficiencies accompanied by a 30 calendar day period in which to cure such deficiencies. Within 30 days of receipt of notice a notice of deficiencies, the Operator shall submit to the Authority a plan to correct such deficiencies. The Operator must execute the plan within 30 days of the date the plan was submitted to the Authority. If a plan is not timely submitted, or the plan is not timely executed, the Authority may take appropriate action. If any deficiencies are incapable of being cured, the

Authority shall direct the Operator to take reasonable steps to ensure the deficiency is mitigated and does not pose a material threat to the public health, safety, or welfare. Compliance with such mitigation requirements shall constitute a cure of such deficiencies.

(3) A Certificate of Approval shall be revoked and be available for issuance subject to the process outlined in Sec \_\_ - \_\_ -75 if Dispensing fails to occur within thirty-six months after the Certificate has been issued, except that the Authority may grant an extension of this requirement upon good cause shown.

(4) Notwithstanding the foregoing, upon a finding by the Authority, for good cause shown, that the continued operation of the business presents an imminent and immediate grave threat to the public health or safety, the Village may issue an emergency order directing the Operator to temporarily cease sales at that location pending resolution of the deficiency.

**Sec. \_\_ - \_\_ -140. - No Village liability; indemnification; no defense.**

(1) By accepting a Certificate of Approval and Premises Authorization issued pursuant to this Ordinance, the Operator waives any claim concerning, and releases the Village, its officers, elected officials, employees, attorneys and agents from, any liability for injuries or damages of any kind that result from any arrest or prosecution of business owners, Operators, employees, clients, or customers of the Operator for a violation of state or federal laws, rules, or regulations.

(2) By accepting a Certificate of Approval and Premises Authorization issued pursuant to this Ordinance, all Operators, jointly and severally if more than one, agree to indemnify, defend, and hold harmless the Village, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims, and demands on account of any injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or in any manner connected with the operation of the Cannabis Dispensing Business that is the subject of the Certificate of Approval and Premises Authorization.

(3) The issuance of a Certificate of Approval and Premises Authorization pursuant to this Ordinance shall not be deemed to create an exception, defense, or immunity for any person in regard to any potential criminal liability the person may have under state or federal law for the cultivation, possession, sale, distribution, or use of Cannabis.

**Sec. \_\_ - \_\_ -150. - Treatment of Existing Cannabis Dispensing Businesses.**

Notwithstanding anything in this Ordinance to the contrary, any Cannabis Dispensing Business operating in the Jurisdiction as of September 1, 2016, may continue operating at any retail locations from which the Cannabis Dispensing Business dispensed medical cannabis on or before September 1, 2016. Such Cannabis Dispensing Business shall be issued a non-transferable Certificate of Approval and non-moveable Premise Authorization, and shall be disregarded for purposes of Section 100 of this Ordinance. Such Certificates of Approval and

Premises Authorization shall become void if the Cannabis Dispensing Business ceases retail operations.

**Sec. \_\_ - \_\_-160. - Severability.**

If any provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

## TEMPORARY MORATORIUM ORDINANCE

**ORDINANCE \_\_\_\_\_**

**AN ORDINANCE OF THE VILLAGE OF ESTERO, ESTABLISHING  
A TEMPORARY MORATORIUM ON CANNABIS DISPENSING  
BUSINESSES AS FURTHER DEFINED HEREIN; PROVIDING FOR  
GEOGRAPHIC AREA COVERED; PROVIDING FOR PENALTIES,  
PROVIDING A SAVINGS CLAUSE, A GENERAL REPEALER  
CLAUSE, AND AN EFFECTIVE DATE.**

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

WHEREAS, in 2016 the Florida Legislature expanded the law to legalize medical cannabis in Florida; and

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

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

WHEREAS the comprehensive State licensing and regulatory framework directs that 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 cannabis businesses may be determined by local ordinance; and

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

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

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

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

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

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

WHEREAS, in November of this year, Florida voters will decide whether to amend the Florida Constitution to legalize the cultivation, production, and dispensing of medical cannabis for a broader population of eligible patients; and

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

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

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

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

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

WHEREAS, the Village has determined it is in the public interest to adopt this Ordinance pursuant to the Village police powers to protect the health, safety, and welfare of the public;

NOW THEREFORE, the following ordinance is adopted.

**Sec. \_\_ - \_\_-10. - Purpose and intent.**

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

**Sec. \_\_ - \_\_-20. - Definitions.**

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

- a. **Cannabis** means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.
- b. **Cannabis dispensing business or business** shall mean a business location offering cannabis for retail sale pursuant to a license to dispense cannabis issued under applicable law.

c. **Compassionate Use Act** shall mean section 381.986, Florida Statutes, and chapter 2016-123, Laws of Florida, as amended from time to time, and any rules or regulations promulgated thereunder.

d. **State** shall mean the State of Florida.

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

**Sec. \_\_-\_\_-30. – Temporary Moratorium.**

Beginning on the effective date of this Ordinance, a moratorium is hereby imposed on the opening of new cannabis dispensing businesses and on the expansion or relocation of existing cannabis dispensing businesses in the Village.

a. During the moratorium, it is unlawful and a violation of this ordinance for any person or entity to open or cause to be opened any cannabis dispensing business within the Village.

b. During the moratorium, it is unlawful and a violation of this ordinance for any person or entity to relocate or cause to be relocated any cannabis dispensing business within the Village.

c. During the moratorium, it is unlawful and a violation of this ordinance for any person or entity to expand or cause to be expanded any cannabis dispensing business within the Village.

d. During the moratorium, the Village shall not accept, process or approve any application for business tax receipts, licenses, building permits, land use permits, or any development permits concerning or related to a cannabis dispensing business.

e. During the moratorium, the Village shall not accept, process or approve any business tax receipts, building permits, land use permits, or any development permits concerning or related to a cannabis dispensing business.

f. During the moratorium, the Village shall not accept, process or approve any licenses, permits, or approvals for any property, entity, or individual for the sale or dispensation of cannabis so long as this ordinance is in effect.

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

**Sec. \_\_-\_\_-40. – Study and Recommendations.**

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

**Sec. \_\_-\_\_-50. – Penalties.**

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

**Sec. \_\_ - \_\_ -60. – Severability.**

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

**Sec. \_\_ - \_\_ -70. – Repeal.**

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

**Sec. \_\_ - \_\_ -80. – Effective Date.**

This ordinance takes effect immediately upon adoption.