

AGENDA ITEM SUMMARY SHEET
VILLAGE COUNCIL MEETING
November 15, 2017

Agenda Item:

Ordinance 2017-10, an ordinance amending the Land Development Code to prohibit medical marijuana dispensing and cultivation facilities within the Village boundaries.

Description:

The Village Council had previously enacted Ordinance 2016-14 instituting a temporary moratorium on cannabis dispensing businesses while the Florida Legislature established a regulatory framework to implement and expand the legal medical use of cannabis. This Ordinance will expire on December 7, 2017.

Section 381.986(11), Florida Statutes, now authorizes a county or municipality to ban medical marijuana treatment center dispensing facilities from being located within the boundaries of that county or municipality.

The Statute severely limits, through State preemption, the Village's control over the zoning and permitting of medical marijuana dispensaries, and substantially restricts the Village's ability to protect surrounding land uses for which dispensaries may not be compatible. Because of these restrictions, there is a rational basis for the Village to exercise its authority under 381.986(11), Florida Statutes, to ban dispensing facilities within the boundaries of the Village, if it desires.

Furthermore, while the Statute generally preempts local regulation and specifically limits the Village's land use powers with respect to dispensaries, it does not specifically address the land use authority of local governments for other medical marijuana facilities such as cultivation and processing facilities. Until clarified, staff recommends implementing a general land use ban on cultivation and processing facilities within the Village.

Recommended Action:

Pass second reading and adopt Ordinance No. 2017-10.

Financial Impact:

N/A.

Attachment:

(1) Ordinance No. 2017-10

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VILLAGE OF ESTERO, FLORIDA

ORDINANCE NUMBER 2017 - 10

**AN ORDINANCE OF THE VILLAGE COUNCIL OF THE
VILLAGE OF ESTERO, FLORIDA, AMENDING
CHAPTER 34, DIVISION 31 OF ESTERO LAND
DEVELOPMENT CODE TO PROHIBIT MEDICAL
MARIJUANA FACILITIES WITHIN THE BOUNDARIES
OF THE VILLAGE; PROVIDING FOR A
MORATORIUM CONTINGENCY; PROVIDING FOR
CODIFICATION, SEVERABILITY, CONFLICTS AND
AN EFFECTIVE DATE.**

WHEREAS, the Village of Estero, Florida has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida; Chapters 163 and 166; and Section 381.986 Florida Statutes; and

WHEREAS, The Marijuana Policy Group has published a memorandum called “Municipal Dispensary Allocation: Florida,” which evaluated the market need for medical marijuana dispensing facilities and the harmful consequences and secondary effects of over-saturation of medical marijuana dispensing facilities within the marketplace; and

WHEREAS, The Marijuana Policy Group determined that Florida should have no more than one dispensing facility for each fifty-thousand residents and the optimal ratio is one dispensing facility per 67,222 residents, and the Village of Estero has a population (approximately 31,000) below such ratios; and

WHEREAS, the Village Council had previously enacted Ordinance 2016-14 instituting a temporary moratorium on cannabis dispensing businesses, generally, while the Florida Legislature established a regulatory framework to implement and expand the legal medical use of cannabis; and

WHEREAS, Section 381.986(11), Florida Statutes, now authorizes a county or municipality to “ban medical marijuana treatment center dispensing facilities from being located within the boundaries of that county or municipality;” and

WHEREAS, Section 381.986, Florida Statutes, severely limits, through State preemption, the Village’s control over the zoning and permitting of medical marijuana dispensaries, thereby substantially restricting the Village’s ability to protect surrounding land uses for which dispensaries may not be compatible; and

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

56
57 **WHEREAS**, the Village finds that this Ordinance is in the interests of the public
58 health, safety, and welfare.

59
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.

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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
82 Marijuana Treatment Center Dispensing Facility” means any facility where
83 medical 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
88 marijuana treatment center dispensing facilities from being located within the
89 boundaries of the Village as authorized by Section 381.986(11), Florida Statutes.

90
91 Section. 34-2351 – Medical Marijuana Cultivation Facilities.

92
93 (a) Prohibition. Medical Marijuana Cultivation Facilities are prohibited within
94 the boundaries of the Village. The Village shall not accept, process or approve
95 any request or application for a development order, building permit or other
96 approval associated with a proposed Medical Marijuana Cultivation Facility.

97
98 (b) Definition. For the purposes of this section, the term “Medical
99 Marijuana Cultivation Facility” means any facility where cannabis or any product
100 derived therefrom is cultivated or processed.

101
102 **Section 3.** Moratorium Contingency. In the event that Section 381.986,
103 Florida Statutes, is amended or interpreted by a court of competent jurisdiction in a way
104 as to eliminate or prevent the Village’s ability to ban or prohibit Marijuana Treatment
105 Center Dispensing Facilities within the Village’s boundaries, upon the effective date of
106 such, an automatic one-year moratorium will go into place on the acceptance, processing
107 and approval of Marijuana Treatment Center Facilities (including by way of acceptance,
108 proceeding and approval of applications for development orders and permits) within the
109 Village boundaries in order to give the Village time to evaluate changes in the applicable
110 law, the Village’s ability to regulate such uses and activities and potentially enact local
111 legislation regarding the same. Such one-year moratorium may be terminated early
112 through superseding resolution or ordinance of the Village Council.

113
114 **Section 4.** Codification. This Ordinance shall be incorporated into the Code
115 of Laws and Ordinances and Land Development Code of the Village of Estero. The
116 sections of this Ordinance can be renumbered or re-lettered to the appropriate word or
117 phrase to accomplish codification. Omissions, grammatical, and typographical errors as
118 well as clarifications of ambiguous wording that do not affect the intent of this Ordinance
119 may be authorized by the Village Manager without the need for a public hearing.

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121 **Section 5.** Severability. In the event that any portion of this Ordinance is for
122 any reason held invalid or unconstitutional by any court of competent jurisdiction, such
123 portion shall be deemed a separate, distinct and independent provision, and such holding
124 shall not affect the validity of the remaining portions of this Ordinance.

125
126 **Section 6.** Conflicts. The provisions of this Ordinance shall supersede any
127 provision of existing ordinances in conflict herewith to the extent of said conflict.

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

131
132 **PASSED** on first reading this 1st day of November, 2017.

133
134 **PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of
135 Estero, Florida this _____ day of _____, 2017

136
137 Attest: VILLAGE OF ESTERO, FLORIDA

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140 By: _____ By: _____
141 Kathy Hall, MMC, Village Clerk James R. Boesch, Mayor

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144 Reviewed for legal sufficiency:

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

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152 Vote:	AYE	NAY
153 Mayor Boesch	_____	_____
154 Vice Mayor Ribble	_____	_____
155 Councilmember Batos	_____	_____
156 Councilmember Errington	_____	_____
157 Councilmember Levitan	_____	_____
158 Councilmember McLain	_____	_____
159 Councilmember Wilson	_____	_____

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