



# WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

## MEMORANDUM

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To: Mayor & Village Council  
Village of Key Biscayne

From: Stephen J. Helfman, Village Attorney  
Kathryn M. Mehaffey

Subject: Medical Marijuana Zoning in Progress

Date: June 25, 2018

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### **Background**

In 2014, the Florida Legislature approved Senate Bill 1030 providing for the growing, processing, and distributing of specific forms of low-THC (non-euphoric) Cannabis to qualified patients and their caregivers for the treatment of certain medical conditions. That law was effective on June 16, 2014 and codified at Section 381.986, Florida Statutes and later slightly amended. In November 2016 the Florida voters approved a ballot initiative amending the Florida Constitution to allow for broader sale and use of marijuana for medical purposes within the State of Florida. On June 23, 2017, Governor Scott signed Senate Bill 8A ("SB 8A") aimed at implementing the approved Constitutional amendment to legalize medical marijuana in the state. SB 8A significantly changed the regulatory framework that was previously enacted by the state in 2014.

There are currently 13 approved Medical Marijuana Treatment Centers (MMTCs) in various stages of licensing. The five MMTCs currently licensed for dispensing operate 43 retail dispensing locations. The number of open dispensaries has increased by 1 to 3 dispensaries a week, for the last 7 weeks. When the 13 currently approved MMTCs are all licensed for dispensing, there is the potential for 390 dispensaries. There are also currently an additional 8 MMTC licenses available, with potential for an additional 240 dispensaries. Delivery is currently available statewide from 9 of the MMTCs.

If all 21 MMTC licenses are issued, there will be a pool of up to 630 dispensary facilities available. Under SB 8A, the dispensaries are dispersed across the state based on

population. The 5-county Southeast Region, which includes the Village, includes approximately 30 percent of the State's population, which could permit an estimated potential of up to 189 dispensing facilities in the Southeast Region (Martin, Palm Beach, Broward, Miami-Dade and Monroe Counties).

One of the most significant changes in the 2017 legislation is that local governments are now specifically permitted to ban medical marijuana dispensaries by ordinance. However, if a ban is not adopted, a local government may not place any restrictions on the number of dispensing facilities allowed and cannot adopt regulations for the location of dispensing facilities that are more restrictive than its ordinances regulating pharmacies. Regulation of cultivation, processing, manufacturing and delivery are all preempted to the State.

The statute does not automatically impose the regulatory limitations or requirements; thus a local government must proactively ban dispensaries or alternatively, choose to regulate the location of dispensaries similar to pharmacies. While the bill requires that dispensing facilities be located at least 500 feet from an elementary, middle, or secondary school, no other distance limitations are established.

Although much of the authority to regulate these facilities still belongs to the State, the Village must still decide whether to:

- 1) Permit Medical Marijuana Dispensaries anywhere that a pharmacy may be located;
- 2) Revise treatment of pharmacies and then regulate Medical Marijuana Dispensaries in the same manner; or
- 3) Ban Medical Marijuana Dispensaries.

### **Zoning in Progress**

The Village enacted a Zoning in Progress in October, 2017, but did not make a determination on how to proceed. The proposed Resolution readopts a Zoning in Progress and freezes the acceptance, processing and approval of all applications for medical marijuana uses for a period of 180 days or until the Village Council adopts final Code revisions implementing changes to regulate these facilities. Regardless of the regulatory direction the Council takes, adoption of this resolution implementing Zoning in Progress is essential to preserving the Village's land development control while changes are implemented and to ensure that whatever facilities may or may not eventually be permitted, they are permitted only in compliance with the Council's chosen policies and regulatory framework.

**RESOLUTION NO. 2018- \_\_\_\_\_**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, DECLARING ZONING IN PROGRESS FOR PREPARATION OF AMENDMENTS TO THE LAND DEVELOPMENT REGULATIONS TO PROHIBIT OR REGULATE MEDICAL MARIJUANA FACILITIES; PROVIDING FOR TRANSMITTAL; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, Marijuana (Cannabis) is a Schedule I drug under the federal Controlled Substances Act, 21 U.S.C. §811; and

**WHEREAS**, notwithstanding federal law, the 2014 Florida Legislature approved Senate Bill 1030 providing for the growing, processing, and distributing of specific forms of low-THC (non-euphoric) Cannabis to qualified patients and their caregivers for the treatment of listed medical conditions, which became effective on June 16, 2014 as Chapter 2014-157, Laws of Florida, and is codified at Section 381.986, Florida Statutes (“Senate Bill 1030”); and

**WHEREAS**, in November 2016 the Florida voters approved a ballot initiative amending the Florida Constitution to allow for broader sale and use of marijuana for medical purposes within the State of Florida; and

**WHEREAS**, to implement the Constitutional provisions for medical marijuana the state legislature adopted Senate Bill 8A during its 2017 Special Session which provides a framework for local government regulation of medical marijuana dispensaries, allowing a local government to either ban medical marijuana dispensaries or to regulate them similar to pharmacies; and

**WHEREAS**, Senate Bill 8A was signed by the Governor on June 23, 2017; and

**WHEREAS**, the Village Council desires to evaluate the options permitted by statute, to either prohibit medical marijuana dispensaries or to regulate them similar to pharmacies and to undertake revisions to its Village Code consistent with Florida Law; and

**WHEREAS**, the Village is concerned that the acceptance, processing and approval of applications for the location of Medical Marijuana uses would be premature and result in development inconsistent with the Village’s development goals, regulatory framework and state law; and

**WHEREAS**, pending the adoption of the amended regulations, the Village desires to invoke the zoning in progress or pending ordinance doctrine as referenced in *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2nd DCA 1980), with respect to the Village's Code of Ordinances, thereby deferring the acceptance, processing and approval of all applications and permits identified above for Medical Marijuana uses for a period of 180 days, or until the Village Council adopts on second reading, the amendments under review and such amendments become effective, whichever occurs earlier, except as provided in this Resolution; and

**WHEREAS**, the Village Council finds that this Resolution is necessary for the preservation of the environment, public health, safety and welfare of the Village's residents and visitors.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF KEY BISCAWAYNE, FLORIDA, AS FOLLOWS:**

**Section 1.** **Recitals Adopted.** That each of the recitals stated above is hereby adopted and confirmed.

**Section 2.** The Village Council adopts this Resolution and invokes the zoning in progress or pending ordinance doctrine with respect to the Village's Code of Ordinances, thereby deferring the acceptance, processing and approval of all applications not filed as of the effective date of this Resolution for the location of Medical Marijuana Dispensaries.

**Section 3.** This deferral shall last for 180 days, or until the Village Council adopts on second reading the amendments under review and such amendments become effective, whichever occurs earlier, except as provided below.

**Section 4.** Applicants claiming infringement with vested or constitutional rights, or other justification, may request relief from this Resolution through written request to and decision by the Village Manager, where the Village Manager may grant relief only upon findings based on competent substantial evidence that such infringement will in fact occur, or has in fact occurred, or other justification suggesting relief therefrom, and the public health, safety and welfare are not adversely impacted by allowing such applications to be accepted and processed. Such request shall be an administrative remedy and condition precedent to all judicial relief sought arising from this Resolution. Appeals from decisions of the Village Manager shall be processed pursuant to Section 30-70.- Appeal of an Administrative Decision, of the Village

Code. The Village shall retain complete administrative, quasi-judicial or legislative discretion in whether to approve or deny any application so filed.

**Section 5.** The appropriate Village officials are authorized to take any necessary action to effectuate the intent of this Resolution.

**Section 6.** **Effective Date.** That this Resolution shall be effective immediately upon adoption hereof.

PASSED and ADOPTED this 25<sup>th</sup> day of June, 2018.

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MAYOR MAYRA PEÑA LINDSAY

ATTEST:

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JENNIFER MEDINA, CMC  
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

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VILLAGE ATTORNEY