

ORDINANCE NO. 2019-6

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 30, ARTICLE II, "DEFINITIONS" TO PROVIDE DEFINITIONS RELATED TO MEDICAL MARIJUANA ; AMENDING CHAPTER 30, ARTICLE V, "SCHEDULE OF DISTRICT, USE, AND SETBACK REGULATION" TO AMEND THE LIST OF PERMITTED CONDITIONAL AND PROHIBITED USES IN COMMERCIAL DISTRICTS TO ADDRESS MEDICAL MARIJUANA; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council recognizes that changes to the adopted Code of Ordinances are periodically necessary in order to ensure that the Village of Key Biscayne (the "Village") regulations are current and consistent with the Village's planning and regulatory needs and changes in State law; and

WHEREAS, according to the Controlled Substances Act, Marijuana has a high potential for abuse and has no currently accepted medical use in treatment in the United States; 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 *Gonzales v. Raich*, the U.S. Supreme Court held in 2005 that the Federal Government has the authority under the Commerce Clause to prohibit marijuana for all purposes pursuant to the Controlled Substances Act, and that the Supremacy Clause of the U.S. Constitution "unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail." *Gonzales v. Raich*, 545 U.S. 1, 29; and

WHEREAS, 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 ; and

WHEREAS, Section 381.986, Florida Statutes, authorizes and defines “Medical Marijuana Treatment Centers” to encompass the entire supply chain (cultivation, processing, storage, distribution, etc.), not just retail sales to qualified patients; and

WHEREAS, the Florida Department of Health adopted a rule to implement Senate Bill 1030, which became effective June 17, 2015; and

WHEREAS, on November 8, 2016, voters approved Constitutional Amendment 2 (“Amendment 2”) which expanded the use of Medical Marijuana for individuals with debilitating conditions that was originally provided under Senate Bill 1030; and

WHEREAS, the 2017 Florida Legislature passed Senate Bill 8A (“SB 8A”) to enact Amendment 2 and Governor Rick Scott signed SB 8A into law on June 23, 2017; and

WHEREAS, SB 8A permits the use of additional alternative forms of marijuana (marijuana in all its forms including low-THC cannabis, together referred to as “marijuana”) and alternative dispensing methods; and

WHEREAS, SB 8A grants authority to municipalities to ban medical marijuana treatment center dispensing facilities from being located within its boundaries or alternatively to regulate them in the same manner they regulate pharmacies; and

WHEREAS, significant safety and security issues exist for any establishment involved in the dispensing of marijuana, because they maintain large drug inventories and are forced to deal in cash because their activities have not yet been sanctioned by federal law; and

WHEREAS, such businesses are inherently attractive targets for criminals, and it is therefore essential that the Village prevent such uses to protect and advance the public health, safety and welfare; and

WHEREAS, the Village Council has determined that it is in the best interests of the citizenry and general public to prohibit or regulate medical marijuana treatment center

dispensing facilities to ensure the safety of the employees, neighbors, customers and area residents; and

WHEREAS, the Village Council has been designated as the Local Planning Agency for the Village pursuant to Section 163.3174, Florida Statutes; and

WHEREAS, the Village Council, in its capacity as the Local Planning Agency, has reviewed the proposed amendments to the Village Code pursuant to the required public hearing and has recommended approval of this Ordinance; and

WHEREAS, the Village Council has reviewed the proposed amendments, and finds that it is in the best interests of the public to amend the Village Code as set forth in this Ordinance; and

WHEREAS, the Village Council has held the required public hearings, duly noticed in accordance with law; and

WHEREAS, the Village Council has reviewed the action set forth in the Ordinance and has determined that such action is consistent with the Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA, AS FOLLOWS:¹

Section 1. **Recitals.** That the above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. **Amending Village Code.** That section 30-11, “Definitions” of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

ARTICLE II. – DEFINITIONS

* * *

Sec. 30-11. – Definitions.

¹ Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with highlighted double-strikethrough and double underline.

Medical marijuana means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin or oil extracted from any part of the plant; and every compound, manufacture, sale, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, that are dispensed from a state licensed facility for medical use by a qualified patient.

Medical marijuana dispensary means a retail establishment licensed by Florida Department of Health as a “medical marijuana treatment facility,” “medical marijuana treatment center,” “dispensing organization,” “dispensing organization facility” or similar use, that sells and dispenses medical marijuana.

* * *

Section 3. Amending Village Code. That section 30-101, “Commercial Districts” of Chapter 30, Article V “Schedule of District , Use, And Setback Regulations” of the Code of Key Biscayne Village, Florida, is hereby amended to read as follows:

ARTICLE V. - SCHEDULE OF DISTRICT, USE, AND SETBACK REGULATIONS

* * *

Sec. 30-101. – Commercial Districts.

C-1 Low Intensity Commercial District.

(a) *Purpose and Uses.*

District Purpose	Main Permitted Uses*	Conditional Uses	Accessory Uses	Prohibited Uses
This district permits the Development of land in a low intensity manner and Uses that provide for the sale of goods and products that are needed throughout the entire Village.	<p>Bar</p> <p>Commercial Uses</p> <p>1. Offices: No individual or multiple business entity(ies) that are affiliated can occupy more than 10,000 sq. ft. Medical offices shall not exceed 10,000 sq. ft.</p>	Service Station where the primary use on the site; Package Store	Any Use that is customarily associated with the Main Permitted Uses (See Sec. 30-111)	Any Use not listed as a Main Permitted Use, Conditional Use, or Accessory Use. (See Sec. 30-113) Medical marijuana dispensary. In accordance with Section 381.986, Florida Statutes, the

<p>The permitted uses provide goods and services that primarily serve the residents of the Village.</p>	<p>2. Retail uses, <u>including Pharmacies and Medical Marijuana Dispensaries:</u> No individual or multiple business entity(s) shall occupy more than 10,000 sq. ft.*. except for stores whose principal product is food for consumption off the premises.</p>			<p><u>dispensing of marijuana in any form, by any person or business, is prohibited.</u></p>
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* * *

Section 4. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

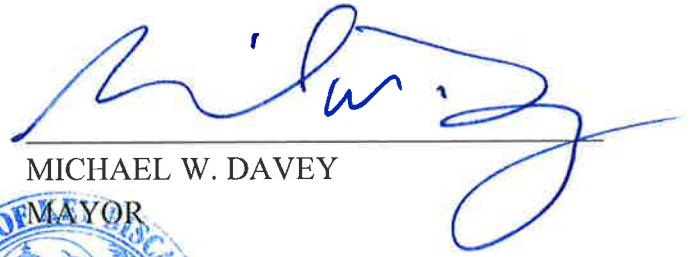
Section 5. Codification. That it is the intention of the Village Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Village's Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

Section 6. Conflicts. That all ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 7. Effective Date. That this Ordinance shall become effective immediately upon final adoption on second reading.

PASSED on first reading on the 15th day of January, 2019.

PASSED AND ADOPTED on second reading on the 5th day of February, 2019.


MICHAEL W. DAVEY

ATTEST:


JENNIFER MEDINA, CMC
VILLAGE CLERK



APPROVED AS TO FORM AND LEGALITY:


VILLAGE ATTORNEY

Village of Key Biscayne

Office of the Village Clerk

NOTICE OF PUBLIC HEARING TO AMEND THE LAND DEVELOPMENT CODE TO CHANGE THE LIST OF PERMITTED, CONDITIONAL AND PROHIBITED USES

Notice is hereby given that the following ordinance will be considered on Second Reading by the Village Council of the Village of Key Biscayne at a Local Planning Agency (LPA) Meeting to be held on Tuesday, February 5, 2019 at 6:00 p.m., and at the Village Council Meeting immediately following the LPA Meeting in the Council Chamber, located at 560 Crandon Boulevard, Key Biscayne, Florida:

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING CHAPTER 30, ARTICLE II, "DEFINITIONS" TO PROVIDE DEFINITIONS RELATED TO MEDICAL MARIJUANA; AMENDING CHAPTER 30, ARTICLE V, "SCHEDULE OF DISTRICT, USE, AND SETBACK REGULATION" TO AMEND THE LIST OF PERMITTED CONDITIONAL AND PROHIBITED USES IN COMMERCIAL DISTRICTS TO ADDRESS MEDICAL MARIJUANA; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

The proposed Ordinance may be inspected by the public at the Office of the Village Clerk. Interested parties may appear at the Public Hearing and be heard with respect to the proposed Ordinances. Any person wishing to address the Village Council on any item at this Public Hearing is asked to register with the Village Clerk prior to that item being heard.

In accordance with the Americans With Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this proceeding because of that disability should contact the Office of the Village Clerk, 88 West McIntyre Street, Suite 220, Key Biscayne, Florida 33149, telephone number (305) 365-5506, not later than two business days prior to such proceeding.

Should any person desire to appeal any decision of the Village Council with respect to any matter to be considered at this meeting, that person shall insure that a verbatim record of the proceedings is made including all testimony and evidence upon which any appeal may be based (F.S. 286.0105).

Comments of any interested party relative to this matter may be submitted in writing and or presented in person at the public hearing.

Jennifer Medina, CMC
Village Clerk

VENEZUELA

What's next for nation's dueling presidents?

BY JIM WYSS
jwyss@miamiherald.com

BOGOTÁ, COLOMBIA

Newly recognized interim Venezuelan President Juan Guaidó spent his second day in office out of the public eye but rallying the world's support over Twitter and the telephone. Meanwhile, his so-called "illegitimate" rival, Nicolás Maduro, who also claims to be the country's leader, received the backing of his armed forces and the Supreme Court and vowed he would "never step down."

What seems clear is that Venezuela is in a political stalemate that will test the resolve of the international community. Guaidó has support but no real power, and Maduro has power but no real support. But both men will see just how much strength each has in coming days, as the international community grapples with how to deal with the South American nation and its dueling presidents.

The first real showdown could come as soon as Sunday at the U.S. Embassy in Caracas. Shortly after Washington recognized Guaidó as the country's president on Wednesday, Maduro broke diplomatic ties and ordered all U.S. Embassy staff to leave the country within 72 hours. But Guaidó countermanded that directive, and U.S. Secretary of State Mike Pompeo says the country's diplomats are staying put. It's a game of diplomatic chicken.

"Nicolás Maduro put the rope around his own neck," said Ronal Rodríguez, the head of the Venezuelan Observatory, a think tank that's part of Colombia's Rosario University. "Is he really capable of keeping his promise and expelling the U.S. diplomats? Is he going to expel the diplo-

How will the international community help resolve the crisis in Venezuela, as newly recognized interim president Juan Guaidó and Nicolás Maduro dig in over who's really in control of the troubled country?

But exactly how Guaidó will bring in the cargo without the approval and help of the Bolivarian National Guard, which controls the borders, is far from clear. Despite opposition hopes that factions of the military might break ranks and support Guaidó, there's no clear evidence of it yet. On Thursday, Defense Minister Vladimir Padrino López, flanked by the high command of the armed forces, pledged his allegiance to Maduro and accused Washington of flirting with civil war by trying to install a puppet leader.

If Guaidó wants to make good on his promise of a humanitarian corridor, he may have to rely on foreign troops to protect the cargo, leaving his international allies open to charges that they're engaged in a military invasion.

The corridor issue could show exactly how far the international community is willing to go to support Guaidó's claims of legitimacy, said Eric Farnsworth, with the Americas Society / Council of the Americas.

"If the Maduro government wants to repress Guaidó or take actions to delegitimize him, then what's the international community prepared to do? And if they don't do anything what's their support worth?" he asked.

Maduro claims he won 68 percent of the vote in May, giving him the right to rule through 2025. But Washington and others say the election was marred by fraud, that Maduro is illegitimate and that Venezuela's constitution requires Guaidó, the head of congress, to be acting president.

And Washington has repeatedly said that all "options are on the table" to make that transition a reality. On Thursday, Na-

tional Security Adviser John Bolton said the U.S. will be targeting Maduro's finances.

"What we're focusing on today is disconnecting the illegitimate Maduro regime from the source of its revenues," he said. "We think consistent with our recognition of Juan Guaidó as the constitutional interim president of Venezuela that those revenues should go to the legitimate government."

Despite all the heated rhetoric and existing sanctions from Washington, the United States is still Venezuela's largest market for crude, sending more than \$8 billion back to state-run PDVSA oil company in 2016. One of the ideas making the rounds on Capitol Hill is to divert that money. In 1989, the United States used a similar approach with Panamanian strongman Manuel Noriega, putting money from

Panama Canal tolls into an escrow account until it could be turned over to his successor.

But it's not clear that tactic would work with Venezuela, as the country could simply quit exporting crude to the United States, said David Moran, an economic analyst who served as Venezuela's vice minister of finance from 1994 to 1996.

"Venezuela is not going to send petroleum simply to lose it," he said. "That's not feasible."

However, the mere act of recognizing Guaidó will already create financial hardship for Maduro, he said.

"The legal uncertainty that [Guaidó's] recognition creates means nobody is going to make an investment, say, 10 to 15 years in the country," Morán said. And while Maduro still has international allies they're losing interest in a

country that has defaulted on \$10 billion worth of debt and seems to be teetering on collapse, he said. "China is not going to finance Venezuela's socialism, much less Russia or Turkey," he said.

It's unclear how long Venezuela will operate with two competing executives. Much will depend on whether Guaidó can keep from being arrested or forced into exile, like many other opposition politicians. Farnsworth said that if Guaidó doesn't have a firm plan in place to evade authorities and exercise his power, "things could get messy pretty quick."

"There is going to be greater entanglement going forward," he said. "Nobody out there is suggesting that Maduro will go anywhere anytime soon under his own volition."

McClatchy's Franco Ordoñez contributed to this report.



Venezuelan Defense Minister Vladimir Padrino Lopez delivers a press conference in Caracas along with members of the top military leadership in support of the constitutional president, Nicolás Maduro, on Thursday.

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MILITARY

That does not mean the military's decision will be easy, added Ellis, who has studied the difficulties of removing regimes that function more like a crime syndicate than traditional military dictatorships.

Much depends on the armed forces members' calculation on whether Maduro can really survive the coming storm with a regime that lacks money and legitimacy in its confrontation with a Guaidó government backed by the United States, Canada and several Latin American countries, Ellis said.

Senior military commanders are giving the impression, at least in public, that they believe Maduro's chances of surviving the crisis are high. "We will do nothing at all outside the constitution," Defense Minister Vladimir Padrino López said publicly, adding that the legal backing for Guaidó's presidency is "null" and that it is destined to fail.

Such statements from the military high command do not surprise Martha Roda, president of the Venezuelan American Leadership Council and an expert on the country's armed forces.

"The main posts with command or power within the Venezuelan armed forces are in the hands of people who over the past 18 years have been systematically corrupted by the Chavista [ruling party] structures and the Cuban intelligence agents who infiltrated the organization," Roda said.

"These are people involved in different types of crime — human trafficking, drug trafficking, illegal weapons sales," he added. "To expect that structure, so corrupted by different crimes, will come out in support of re-institutionalizing the country or rescuing constitutional rule just because the people ask for it is illusory at the very least."

That's because the people who now control the armed forces function more like a mob syndicate than a professional military, Roda said. "To persuade them will require very hard actions by the international community because, sadly, I don't believe that inside Venezuela there's the power to overcome this criminal gang that kidnapped the armed forces," he said. "The only way to force these people to hand over power is to confront them with a credible threat, a threat worse than they represent, so that they look for negotiation or some way out."

But not everything is well within the armed forces. Discontent among mid-ranking officers and soldiers is as high as in the rest of the population because of the withering food and medicine shortages unleashed by *Chavista* economic policies. National Guard Lt. José Antonio Colina, exiled in Miami, said the mid-ranking officers may wind up joining forces and supporting Guaidó in a struggle against generals who are involved in drug trafficking or support Maduro because of their socialist beliefs.

Any Lt. Jhoan Zepa, who also lives in exile in the United States, agreed that a military revolt could come from the middle and lower ranks of the armed forces. "The bottom rungs of the armed forces are the ones that might manage to move everything," Zepa said. And that would not be because of politics, he added.

"The demands of the National Guard sergeant who rebelled last week in Cojiza were, 'My daughter died. There's no medicine. I am hungry. My salary is not enough,'" said Zepa. "Another complained, 'My mother has cancer, and I don't have medicine.'"

Although turning their backs on Maduro would have a higher cost for the lower ranks, that possibility should not be totally dismissed. Aside from the possibility of an exit from the cri-

sis, officers must also consider that the regime faces critical economic problems that could turn worse as the United States and the rest of the international community tighten sanctions on the Maduro regime, Ellis said.

"We're reaching the point where the money has completely run out, and when the money completely runs out, the question that arises among regime officials is how to keep the military happy," he said. "What's more, Maduro's rule may also suffer even if the military decides not to do anything."

But not everything is well within the military. Discontent among mid-ranking officers and soldiers is as high as in the rest of the population because of the withering food and medicine shortages unleashed by *Chavista* economic policies.

Ellis used the example of the situation with the U.S. Embassy in Caracas after Maduro initially gave its staff 72 hours to abandon the country. Washington immediately responded that the diplomats would not leave because it does not recognize Maduro's power to give such orders.

On Thursday, Maduro said U.S. personnel had until Sunday to leave. Later, the State Department ordered non-essential staff to get out though it appears some will remain in Caracas.

"What is Maduro going to do about the embassy? Will he order the National Guard to occupy the U.S. Embassy in Caracas? The generals will prefer to stay in their barracks, because right now they don't trust that the men they command will obey their orders," said Ellis.

"The generals also know what it means to struggle against U.S. citizens," he added. "Therefore Maduro could issue an order and run the risk that the military will not obey them, which would spark grave problems of perception among the rest of the military because it would show that he had lost control."

Village of Key Biscayne

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