

RESOLUTION NO. 2018-41

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 BISCAIYNE, 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 25th day of June, 2018.


MAYOR MAYRA PEÑA LINDSAY



ATTEST:


JENNIFER MEDINA, CMC
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY


VILLAGE ATTORNEY