

BAL HARBOUR


- V I L L A G E -

OFFICE OF THE VILLAGE MANAGER

LETTER TO COUNCIL

NO. 061-2018

To: Mayor Gabriel Groisman and Members of the Village Council

From: Jorge M. Gonzalez, Village Manager
Susan L. Trevarthen, Village Attorney 

Date: April 6, 2018

Subject: **Municipal Regulation of Medical Marijuana Dispensaries**

The purpose of this Letter to Council (LTC), is to transmit to you information concerning the municipal regulation of medical marijuana dispensaries.

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. On June 23, 2017, Governor Scott signed Senate Bill 8A ("SB 8A") aimed at implementing the approved Constitutional amendment. One of the most significant aspects of SB 8A is that local governments are specifically permitted to ban medical marijuana dispensaries by ordinance. However, if a local government does not ban, it may not place any restrictions on the number of dispensing facilities allowed and it cannot adopt regulations for the location of dispensing facilities that are more restrictive than its ordinances regulating pharmacies. A pharmacy under the statute is a facility licensed as a pharmacy under Chapter 465, Florida Statutes. Under the Village Code, Drugstores would be the identified use which would apply. Thus the Village could either ban medical marijuana dispensaries altogether or they could regulate them in the same manner they do Drugstores. The 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. If dispensaries are not banned, they are allowed, and their location cannot be regulated more strictly than pharmacies.

The Village Code regulates pharmacies as "Drugstores" requiring conditional use approval through the site plan process. I have consulted with the Village Manager and we concur that, due to the very limited amount of land zoned business where drug stores could locate, it is unlikely that the Village will see dispensary applications. We therefore do not propose to take any action at this time. If one of you desires to pursue a ban, we request that you submit a discussion item for consideration at a Council meeting.

The possession and use of marijuana is still prohibited by federal law. We would note that on January 4, 2018, Attorney General Jeff Sessions reversed the Department of Justice's (DOJ) stance on the treatment of state authorized marijuana facilities. In 2013, the DOJ had issued a policy prohibiting the expenditure of funds to enforce federal law against marijuana facilities which were operating pursuant to, and in compliance with state laws. That policy has now been reversed and it will be up to the state US Attorneys to decide whether or not to enforce federal law against these state-licensed facilities.

If you have any further questions or would like to discuss this, please contact me or the Village Manager.

JMG/SLT/KM