

RESOLUTION NO. 2018-95

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING IN PROGRESS PURSUANT TO SECTION 30-30.10; DURING WHICH TIME THE COUNCIL WILL REVIEW AND CREATE SECTION 30-60.32; THIS NEW SECTION SHALL ADDRESS MEDICAL CANNABIS DISPENSARIES, MEDICAL MARIJUANA TREATMENT FACILITIES, AND INDEPENDENT TESTING LABORATORIES WITHIN THE MUNICIPAL BOUNDARIES OF THE VILLAGE OF PALMETTO BAY BY THE EARLIER OF 120 DAYS OR THE FINAL ADOPTION OF THE VILLAGE’S REVISIONS TO THE LAND DEVELOPMENT CODE; FOR THE DURATION OF THE ZIP NO DEVELOPMENT ORDERS OF ANY KINDIN CONNECTION WITH MEDICAL MARIJUANA SHALL BE ISSUED; AND PROVIDING FOR AN EFFECTIVE DATE. *(Sponsored by Administration)*

WHEREAS, in 2014, the State of Florida enacted Florida Statute 381.986, A/K/A the Compassionate Medical Cannabis Act, which provided a regulatory frame work for the cultivation, transportation, processing and dispensing of low THC cannabis for limited medical use treatment only; and

WHEREAS, in 2015 those same rules were expanded to include full strength medical marijuana for the treatment of individuals diagnosed with a terminal illness and/or are undergoing chemotherapy; and

WHEREAS, on November 8, 2016, the residents of the State of Florida approved by referendum, expanded use for medical marijuana and low TCH cannabis to extend to a greater range of ailments; and

WHEREAS, the Florida Legislature amended Florida Statute 381.986 by adopting bill SB 8-A during a 2017 Special Session that among other provisions, outlined the conditions under which local municipalities may regulate the location of cannabis dispensaries and medical marijuana treatment centers; and

WHEREAS, Florida Statute 381.986(8)(b) permits “[a] municipality [to] determine by Ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with state law or

1 department rule for, dispensing facilities of dispensing organizations
2 located within its municipal boundaries;” and

3
4 **WHEREAS**, the Village Council, now desires to exercise its’ right to
5 research and study those districts and zoning standards necessary to
6 appropriately locate and regulate medical marijuana and low THC cannabis
7 dispensaries within its jurisdictional boundaries, and therefore directs the
8 Village Manager to return within 90 days of this action, with either a report
9 detailing the need for a ban or to bring forward an Ordinance which
10 provides zoning standards for medical marijuana and low THC cannabis
11 dispensaries; and

12
13 **WHEREAS**, to preserve the status quo is necessary to establish a
14 Zoning-In-Progress prohibition on the issuance of building permits for
15 developments, and/or certificates of uses within the Village for medical
16 marijuana and low THC cannabis dispensaries for a 120-day period.

17
18 **NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE**
19 **COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS**
20 **FOLLOWS:**

21
22 **Section 1.** Upon the date of approval of this Resolution, staff shall
23 comply with Section 30-30.10 and return within 90 days of this action, with
24 an Ordinance which bans the use of, or to bring forward an Ordinance
25 which provides zoning standards for, medical marijuana and low THC
26 cannabis dispensaries. During the 120 days, following adoption of this
27 Resolution, no building permits, certificates of use, development orders,
28 including but not limited to site plans, shall be submitted or issued for
29 developments for medical marijuana and low THC cannabis dispensaries
30 within the Village. This zoning in progress Resolution shall expire within
31 120 days of the date of this Resolution or upon the first reading of zoning
32 provisions for the regulations of a medical marijuana and low THC
33 cannabis dispensary Ordinance.

34
35 **Section 2.** The Village Council approves this proposed zoning-in-
36 progress Resolution. The Village Council has determined that a zoning in
37 progress Resolution will allow the preparation of a detailed and
38 comprehensive analysis of the area in question, which reasonably
39 necessary and desirable; and as such, the Village Council approves this

1 zoning-in-progress Resolution and order a fixed time, not to exceed 90
2 calendar days, within which Village staff shall report to the Village Council
3 with its findings regarding the need for a moratorium, or a proposed
4 Ordinance creating regulations for medical marijuana and low THC
5 cannabis dispensaries.

6
7 **Section 3.** Upon adoption of the zoning-in-progress Resolution, the
8 Village Clerk shall publish the adopted Resolution in a newspaper of
9 general circulation published in the Village, or Miami-Dade County, Florida
10 within ten days following the date of adoption.

11
12 **Section 4.** During the 120-day zoning-in-progress period of time no
13 permit(s), certificate(s) of use, or development order(s) of any kind in
14 connection with medical marijuana shall be issued.

15
16 **Section 5.** Nothing in this Resolution should be construed or applied
17 to abrogate the vested right of a property owner to develop or utilize his/her
18 property in any other way commensurate with zoning and other regulations,
19 including any required renewal of permits for existing legally erected
20 premises.

21
22 **Section 6.** This Resolution shall take effect immediately upon
23 enactment.

24
25 **PASSED AND RESOLVED** this 16th day of July, 2018.

26
27 Attest:

28
29 DocuSigned by:
30 *Missy Arocha*
31 6EDC211E5E8C48C...
32 Missy Arocha
33 Village Clerk

34 DocuSigned by:
35 *Eugene Flinn*
36 3B8854AD569F494...
37 Eugene Flinn
38 Mayor

39 APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
40 AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:

37 DocuSigned by:
38 *Dexter W. Lehtinen*
39 1B1D06E71321445...
40 Dexter W. Lehtinen
Village Attorney

1	<u>FINAL VOTE AT ADOPTION:</u>	
2		
3	Council Member Karyn Cunningham	<u>YES</u>
4		
5	Council Member David Singer	<u>YES</u>
6		
7	Council Member Larissa Siegel Lara	<u>YES</u>
8		
9	Vice Mayor John DuBois	<u>ABSENT</u>
10		
11	Mayor Eugene Flinn	<u>YES</u>



Re: **Medical Cannabis Dispensaries, Third Reading**

Date: July 9, 2018

To: Honorable Mayor and Village Council

From: Mark Alvarez,
Interim Planning Director

AN ORDINANCE OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO ZONING; CREATING SECTION 30-60.32, BANNING MEDICAL CANNABIS DISPENSARIES; BANNING MEDICAL MARIJUANA TREATMENT FACILITIES; BANNING MEDICAL CANNABIS CULTIVATION; BANNING MEDICAL CANNIBIS MANUFACTURING; AND BANNING INDEPENDENT TESTING LABORATORIES WITHIN THE MUNICIPAL BOUNDARIES OF THE VILLAGE OF PALMETTO BAY; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

BACKGROUND

The legal status of the medical use of marijuana has been evolving since 2014, when the Florida Legislature enacted laws regarding low-THC (dried flowers or manufactured compound of which contain 0.8% or less tetrahydrocannabinol and more than 10% of cannabidiol weight for weight) cannabis and medical marijuana, entitled the "Compassionate Medical Cannabis Act of 2014" (codified at Section 381.986, Florida Statutes) ("Act"). The Act permitted the use of a non-euphoric strain of cannabis for qualified patients narrowly defined medical conditions typically associated with seizures and chemotherapy. The Act authorized a limited number of medical marijuana facilities to cultivate, process, transport and dispense non-euphoric, low-THC cannabis and operate "*Dispensing Organizations*" for individuals with qualifying medical conditions. The Legislature again in 2016 amended the Act (Section 381.986, Florida Statutes) to include the use of full-strength "medical marijuana" for eligible patients with terminal conditions to ease their suffering.

On November 8, 2016, voters approved an amendment to the Florida Constitution, entitled "Use of Marijuana for Debilitating Medical Conditions ("Amendment 2"). Amendment 2 had the net effect of further expanding the legal use of medical marijuana throughout the State for those individuals with specified debilitating conditions. It also authorized the cultivation, processing, distribution, and sale of marijuana and related activities by licensed, "*Medical Marijuana Treatment Centers*." This matter became the subject of a bill adopted by the Florida Legislature (SB 8-A) during their 2017 Special Session that, among other

provisions, outlined the conditions under which local municipalities may regulate the location of cannabis dispensaries and medical marijuana treatment centers.

As a final note, the cultivation, processing, distribution, sale, and use of cannabis and marijuana in all its forms continues to be identified as illegal acts with the laws of the Federal Government of the United States of America.

B. STAFF RECOMMENDATION

Based on the analysis provided below, Staff recommends approval of the ordinance banning within the jurisdictional limits of the Village of Palmetto Bay, cannabis dispensaries, cannabis cultivation, cannabis manufacturing, medical marijuana treatment facilities, and independent testing laboratories related thereto.

ANALYSIS

Section 381.986, Florida Statutes authorizes the cultivation, processing, distribution, and sale of marijuana and related activities by licensed, "*Medical Marijuana Treatment Centers.*" Conditions under which local municipalities may regulate the location of cannabis dispensaries and medical marijuana treatment centers are codified in Section 381.986(11) "Preemption" which provides that regulation of cultivation, processing, and delivery of marijuana by medical marijuana treatment centers is preempted to the State except:

- A medical marijuana treatment center cultivating or processing facility may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school, unless the municipality approves the location through a formal proceeding open to the public at which the municipality determines that the location promotes the public health, safety, and general welfare of the community. [381.986(11)(a) and 381.986(11)(c)]
- A municipality may, by ordinance, ban medical marijuana treatment center dispensing facilities from being located within the boundaries of that county or municipality. [381.986(11)(b)1.]
- A county or municipality that does not ban dispensing facilities under this subparagraph may not place specific limits, by ordinance, on the number of dispensing facilities that may locate within that county or municipality. [381.986(11)(b)1.]
- A municipality may determine by ordinance the criteria for the location of, and other permitting requirements that do not conflict with state law or department rule for, medical marijuana treatment center dispensing facilities located within the boundaries of that municipality. [381.986(11)(b)2.]
- A municipality may not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465. 381.986(11)(b)2.
- A municipality may not charge a medical marijuana treatment center a license or permit fee in an amount greater than the fee charged by such municipality to pharmacies. [381.986(11)(b)2.]

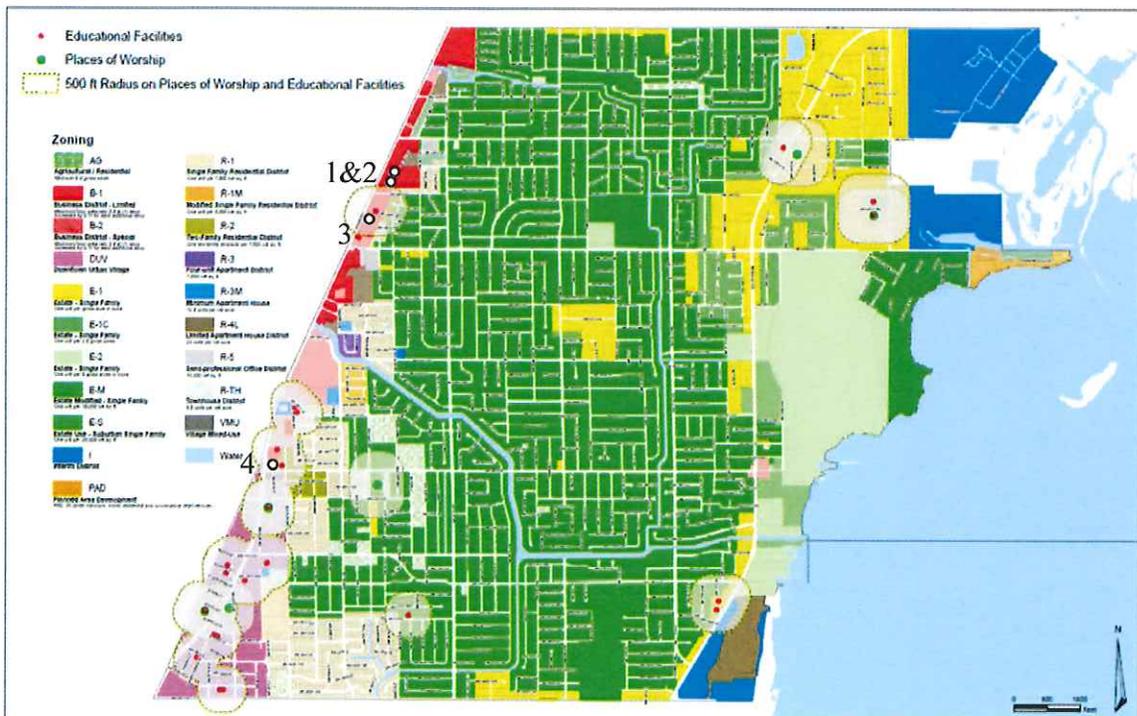
- A dispensing facility location approved by a municipality or county pursuant to former s. 381.986(8)(b), 1439 Florida Statutes 2016, is not subject to the location requirements of this subsection. [381.986(11)(b)2.]
- Local jurisdictions are not prohibited from ensuring medical marijuana treatment center facilities comply with the Florida Building Code, the Florida Fire Prevention Code, or any local amendments to the Florida Building Code or the Florida Fire Prevention Code.

The legislation provides two options for municipalities:

- 1) ban medical marijuana treatment centers within their territorial jurisdiction, or
- 2) permit medical marijuana treatment centers provided they are similarly regulated to licensed pharmacies, and provide minimum distance separations schools and day cares.

The Village Staff's has considered both options; however, staff recognizes that to permit medical marijuana treatment centers with separation distances from schools and other uses, then the ordinance would have to restrict the location of pharmacies within the Village and create legally non-conforming uses. The map below shows the Village of Palmetto Bay zoning districts with 500-foot radial distances from schools and day care centers, and shows the location of existing pharmacies in the Village:

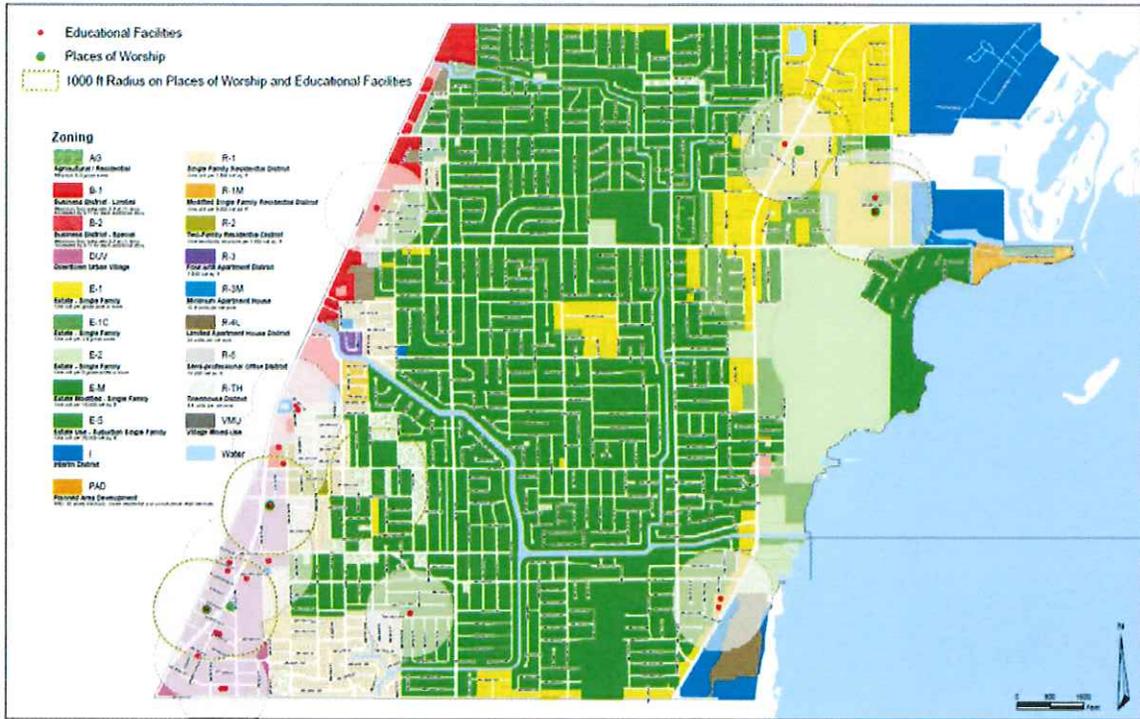
1. Publix, 14601 South Dixie
2. CVS, 14705 South Dixie Highway
3. Walgreen's, 15043 South Dixie Highway
4. Walgreen's, 16795 South Dixie Highway



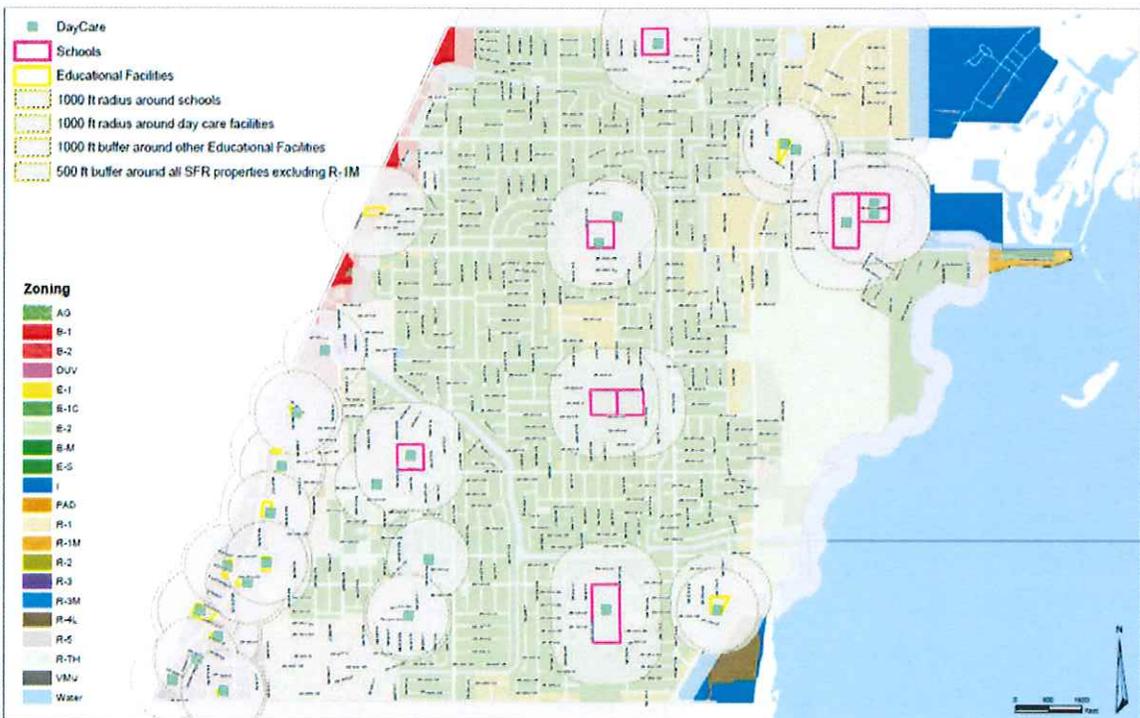
Education facilities and places of worship with 500-foot radius separation and existing pharmacies

Using only the State-required 500-ft distance separation from educational facilities, legally non-conforming uses would be created at two locations.

Based on prior staff reports, the Village had considered a 1,000-foot distance separation of marijuana treatment centers from educational facilities and religious institutions, and 500-foot distance separation from single-family residential districts. The analysis from these prior considerations is shown below.



Education facilities and places of worship with 1,000-foot radius separation



Education facilities and places of worship with 1,000-foot radius separation and single-family residential with 500-foot radius

The following is a review of the request pursuant to the criteria found at Section 30-30.7(b) of the Land Development Code. The Background and the Proposed Ordinance sections of this report are hereby incorporated by reference into this Analysis.

Criteria (1) Whether the proposal is consistent with the Comprehensive Plan, including the adopted infrastructure minimum levels of service standards and the Village's concurrency management program.

Analysis: In reviewing the Village's Comprehensive Plan, the following Goals, Objectives, and Policies (GOP) below were identified within the Village's Comprehensive Plan as relating to this proposed ordinance. Each GOP is provided with a brief analysis. The finding of those analyses is provided at the end of this criterion.

GOAL 1: To guide the Village of Palmetto Bay from birth to early maturity as an outstanding and truly livable community in southeast Florida by building on, and improving, the existing land use blueprint through visionary planning and place-making, cost efficient provision of high quality facilities and services, quality neighborhood protection, and enhancement of its unique and beautiful coastal environmental resources.

Analysis: Although the Comprehensive Plan does not specifically address uses presented in the proposed ordinance, Goal 1 provides underlying intent to ensure the LDC's appropriately regulate the use of land reflective of the community's desires. Notwithstanding the Federal Government's laws pertaining to marijuana and/or its derivative products, supporting such uses within the Town's LDC may result in impacts that are not entirely foreseeable at this time.

Finding: Consistent.

Criteria (2) Whether the proposal is in conformance with all applicable requirements of Chapter 30.

Analysis: There is nothing within the proposed ordinance that violates any portion of Chapter 30. Further, the proposed ordinance is consistent with adopted Florida Senate Bill SB 8-A as provided at Section 381.986, Florida Statutes.

Finding: Consistent.

Criteria (3) Whether, and the extent to which, land use and development conditions have changed since the effective date of the existing regulations, and whether the changes support or work against the proposed change in land use policy.

Analysis: See Section "A", Background, of this report. The Background section of this report provides a fuller accounting of the evolution of legalized low-THC cannabis and medical marijuana within the State of Florida. The Village's current LDC's do not address the uses associated with those identified in the State of Florida's Statutes. If the LDC is not amended, the Village is left with little authority to prevent such uses from locating within its jurisdictional boundaries. The most recent legislation, SB 8-A at Section 381.986, permits a municipality to ban cannabis dispensaries, cultivation, manufacturing and medical marijuana treatment facilities outright within their territorial jurisdiction. The statute is

silent as to independent testing facilities. For consistency across Village regulations, Staff also includes those facilities as part of the ban.

Finding: Consistent.

Criteria (4) Whether, and the extent to which, the proposal would result in any incompatible land uses, considering the type and location of uses involved, the impact on adjacent or neighboring properties, consistency with existing development, as well as compatibility with existing and proposed land uses.

Analysis: See Section "A", Background, of this report. By banning the uses described within the proposed ordinance, the potential for incompatible land uses is eliminated.

Finding: Consistent.

Criteria (5) Whether, and the extent to which, the proposal would result in demands on transportation systems, public facilities and services; would exceed the capacity of the facilities and services, existing or programmed, including: transportation, water and wastewater services, solid waste disposal, drainage, recreation, education, emergency services, and similar necessary facilities and services.

Analysis: The proposed ordinance does not impact the above systems.

Finding: Consistent.

Criteria (6) Whether, and to the extent to which, the proposal would result in adverse impacts on the natural environment, including consideration of wetland protection, preservation of groundwater aquifer, wildlife habitats, and vegetative communities.

Analysis: The proposed ordinance does not impact the above systems.

Finding: Consistent.

Criteria (7) Whether, and the extent to which, the proposal would adversely affect the property values in the affected area, or adversely affect the general welfare.

Analysis: By banning the uses described within the proposed ordinance, the potential for incompatible land uses and any adverse effect is eliminated, and the potential for creating legally non-conforming uses by this issue is eliminated.

Finding: Consistent.

Criteria (8) Whether the proposal would result in an orderly and compatible land use pattern. Any positive and negative effects on land use pattern shall be identified.

Analysis: By banning the uses described within the proposed ordinance, the potential for incompatible land uses and any adverse effect is eliminated, and the potential for creating legally non-conforming uses by this issue is eliminated.

Finding: Consistent.

Criteria (9) Whether the proposal would be in conflict with the public interest, and whether it is in harmony with the purpose and intent of Chapter 30.

Analysis: No portion of the proposed amendment is in conflict with the existing regulations of the LDC. By banning those uses associated with low-TCH cannabis and medical marijuana, any potential unintended impacts of locating those uses in the Village are negated.

Finding: Consistent.

Criteria (10) Other matters which the Local Planning Agency or the Village Council in its legislative discretion may deem appropriate.

Analysis: See Summary Section and all portions of this analysis. The Local Planning Agency and the Village Council may consider other appropriate factors to determine whether the proposed amendment is appropriate and consistent with the public interest.

Finding: Decision for the Village Council.

FISCAL/BUDGETARY IMPACT:

There are no fiscal or budgetary impacts anticipated by the enactment of the ordinance.

RECOMMENDATION:

Approval



Mark Alvarez, Interim Planning Director
Planning and Zoning Department