

VILLAGE OF EL PORTAL, FLORIDA

ORDINANCE NO. 2018-06

CODE OF ORDINANCES: LAND DEVELOPMENT AMENDMENTS

AN ORDINANCE OF THE VILLAGE OF EL PORTAL, FLORIDA, AMENDING THE CODE OF ORDINANCES CHAPTER 24, APPENDIX B, "FORM-BASED CODE", ARTICLE III "USES", TABLE 1: SPECIFIC FUNCTION AND USE, SECTION 24-B.8 "DEFINITIONS OF BUILDING FUNCTIONS:USES", AND ARTICLE VI "SPECIFIC TO ZONES", SECTION 24-B.17 "ZONE 5 (Z5) URBAN CENTER", AND ARTICLE X "DEFINITIONS OF TERMS", IN ORDER TO PROVIDE THE CONDITIONS AND REQUIREMENTS FOR THE USE OF MEDICAL MARIJUANA DISPENSARIES, AND MEDICAL MARIJUANA TREATMENT CENTERS; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICTS, REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution, and Chapter 166, Florida Statutes, provides municipalities the authority to exercise any power for municipal purposes, except where prohibited by law, and to adopt ordinances in furtherance of such authority; and

WHEREAS, Section 381.986(8)(b), Florida Statutes, provides that "A municipality may determine by ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with state law or department rule for, dispensing facilities of dispensing organizations located within its municipal boundaries."; and

WHEREAS, On November 8, 2016, Florida voters approved an amendment (Amendment 2) to Article X of the Florida Constitution excluding from criminal or civil liability or sanctions under Florida law the use of medical marijuana by a qualifying patient and certain activities of caregivers, physicians or Medical Marijuana Treatment Centers, their agents or employees, in compliance with Amendment 2; and

WHEREAS, the Village of El Portal has a substantial and significant public interest in regulation the siting of Medical Marijuana Dispensaries (MMD) and Medical Marijuana Treatment Center (MMTC) dispensing facilities to promote the public health, safety, and general welfare; and

WHEREAS, there exists the potential for misappropriation and diversion of medical marijuana to non-medical uses; and

WHEREAS, the Marijuana Policy Group has published a memorandum called “Municipal Dispensary License Allocation: Florida,” which evaluated the market need for medical marijuana dispensaries and the harmful consequences and secondary effects of over-saturation of medical marijuana dispensaries within the marketplace and that memorandum, in part, concludes that an overabundance of medical marijuana treatment center dispensing facilities can affect the viability of such facilities, result in compliance issues and increased regulatory costs, lead to the improper diversion of products, and accentuate threats to the public health, safety, and welfare; and

WHEREAS, pharmacies licensed under Chapter 465 are not similar to MMTC dispensing facilities in many respects; and

WHEREAS, significant safety and security concerns have been documented in states where MMD and MMTC are permitted; and

WHEREAS, MMD and MMTC’s are inherently attractive targets for criminals and criminal activity, it is essential for the City to limit the permissible scope and regulate such uses to ensure their compatibility with surrounding businesses, the community, and to protect the public health, safety, and welfare; and

WHEREAS, Special Exception uses may be permitted with certain stipulated conditions that will serve to insure that the use will assimilate properly into its surrounding neighborhood without deleterious effects; and

WHEREAS, the Mayor and Village Council find the proposed amendment is consistent with the Village of El Portal Comprehensive Plan and is in the best interests of the Village.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF EL PORTAL, FLORIDA:

SECTION 1. The foregoing "**WHEREAS**" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof

SECTION 2. The provisions and language currently contained in Chapter 24, Appendix B: Form-Based Code, entitled "*Uses*", of the Village of El Portal Code of Ordinance is hereby amended to read as set forth below:

ARTICLE III: USES

ARTICLE III. TABLE 1: SPECIFIC FUNCTION AND USE. A parcel or Building shall be occupied by only the land uses allowed by Table 1 within the zone applied to the site by the Zoning Map. The land uses listed in Table 1 are defined in Section 24-B.8. Definitions of Building Function: Uses.

I. COMMERCIAL		Z3	Z4	Z5	C
Medical Marijuana Treatment Center				•	
Medical Marijuana Dispensary				•	

• BY RIGHT
* BY SPECIAL EXCEPTION

Sec. 24-B.8. Definitions of Building Function: Uses

(d) COMMERCIAL

(11.) Medical Marijuana Treatment Center means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers and is registered by the Department of Health or its successor agency.

(12.) Medical Marijuana Dispensary means a business that sells or otherwise distributes marijuana through one (1) or more primary caregivers to six (6) or more patients for medical use, along with any cultivation of marijuana associated with such sale or distribution. The term "medical marijuana dispensary" shall not include any person or entity that distributes marijuana for medical use exclusively to five (5) or fewer patients, and shall not include the private possession and medical use of marijuana by an individual patient or caregiver to the extent permitted by any applicable state of Florida law or regulation.

SECTION 3. Article VI of the Village of El Portal Code of Ordinances Chapter 24, Appendix B: Form-Based Code, entitled "*Specific to Zones*", is amended as follows:

ARTICLE VI: SPECIFIC TO ZONES

(H) SPECIAL REGULATIONS (Z5)

(3) Medical Marijuana Treatment Centers/ Medical Marijuana Dispensaries. Permitted by process of special exception. When considering an application for medical marijuana dispensaries/medical marijuana treatment centers the approving body must consider the special exception criteria listed below, in addition to that criteria listed in Section 17-59.-Requirements and procedures for site plan and special exceptions.

a. Whether the request will cause damage, hazard, nuisance or other detrimental impacts to persons or property.

b. Any parking demand created by a medical marijuana dispensary/medical marijuana treatment center shall not exceed the parking spaces located or allocated on site, as required by the Village's parking regulations. An applicant shall be required to demonstrate, with a current traffic and parking study prepared by a certified professional, that on-site traffic and parking attributable to the medical marijuana dispensary/medical marijuana treatment center will be sufficient to accommodate the traffic and parking demands generated by the medical marijuana dispensary/medical marijuana treatment center.

c. No medical marijuana dispensary/medical marijuana treatment center shall be located closer than 1,000 feet of another medical marijuana dispensary/medical marijuana treatment center, whether it is located in the Village or in another jurisdiction; closer than 1,000 feet of an elementary, middle or secondary school, child day care facility, county or municipal park, or place of worship. Locations, Distances shall be measured by drawing a straight between the closest point of the medical marijuana dispensary/medical marijuana treatment center structure to the closest property line of edge of leased space, whichever is closer, of the school, day care center, place of worship, residentially zoned property, or other medical marijuana dispensary/medical marijuana treatment center.

d. Medical marijuana dispensaries/medical marijuana treatment centers shall ensure that there is no queuing of vehicles in the rights-of-way.

e. No medical marijuana dispensaries/medical marijuana treatment centers shall have a drive-through or drive service aisle.

f. Medical marijuana dispensaries/medical marijuana treatment centers may be required to appear before the Village Council for annual progress reports prior to the issuance of business tax receipts and/or renewals.

g. Medical marijuana dispensaries/medical marijuana treatment centers shall, at all times, be in compliance with federal and state regulations, Miami-Dade County Code of Ordinances, and the Village of El Portal Code of Ordinances, as may be amended.

SECTION 4. Article X of the Village of El Portal Code of Ordinances Chapter 24, Appendix B: Form-Based Code, entitled "*Definitions of Terms*", is amended as follows:

ARTICLE X: DEFINITIONS OF TERMS

Marijuana. Marijuana has the meaning given cannabis in Section 893.02(3), Florida Statutes, as amended and in addition, "Low-THC cannabis" as defined in Section 381.986(1)(e), Florida Statutes, as amended, shall also be included in the meaning of the term "marijuana".

Medical Marijuana Dispensary. See Sec. 24-B.8 Definitions of Building Functions. d. Commercial.

Medical Marijuana Treatment Center. See Sec. 24-B.8 Definitions of Building Functions. d. Commercial.

SECTION 5. All ordinances or parts of ordinances inconsistent or in conflict with the provisions of this Ordinance are hereby repealed.


SECTION 6. If any section, part of section, paragraph, clause, phrase or word of this Ordinance is declared invalid, the remaining provisions of this Ordinance shall not be affected.

SECTION 7. It is the intention of the Village Council that the provisions of this Ordinance shall become and be made a part of Ordinance No. 213-06 as amended and known as the "Code of Ordinances" of the Village of El Portal, Florida, which provisions may be renumbered or re-lettered and the word ordinance be changed to "section", "article", or other appropriate word to accomplish such intention.


SECTION 8. If the Official Code of Ordinances of the Village of El Portal Tables of Contents or other reference portions is affected by these provisions, then changes are approved as a part of this Ordinance.

SECTION 9. This ordinance shall become effective 11/27, 2018.

PASSED AND ADOPTED by the Village Council of the Village of El Portal Florida, this 27 day of November, 2018.

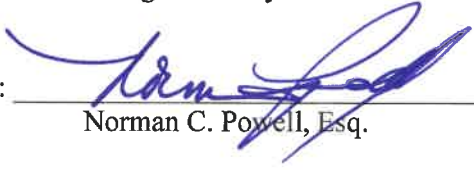


Claudia Cubillos, Mayor

ATTEST: 

Yenise Jacobi, Village Clerk

Approved as to form and legal sufficiency:
Interim Village Attorney

By: 

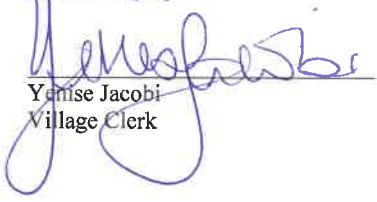
Norman C. Powell, Esq.

Vote:

- Councilperson Mathis: (Yes) (No)
- Councilperson Dreher: (Yes) (No)
- Councilperson Roman: (Yes) (No)
- Vice Mayor Nickerson.: (Yes) (No)
- Mayor Cubillos: (Yes) (No)

mot: Roman
2nd: V. Nickerson

I, Yenise Jacobi, Village Clerk of the Village of El Portal, Miami-Dade County, Florida, do hereby certify that this is a true and correct copy of Resolution No.: 2018-06 adopted on ~~October~~ November 27, 2018, 2018, as shown in the Official Records of the Village of El Portal, Miami-Dade County, Florida. Given under my hand and seal, this 27 day of November 2018.



Yenise Jacobi
Village Clerk

