

ORDINANCE NO. 2016-009

AN ORDINANCE OF NORTH BAY VILLAGE, FLORIDA AMENDING CHAPTER 152, SECTION 152.003 ENTITLED “DEFINITIONS”; ADDING DEFINITIONS FOR GROW HOUSE, MARIJUANA, MARIJUANA BASED PRODUCT, MARIJUANA DISPENSARY, MOBILE MARIJUANA DISPENSARY; SECTIONS 152.026 THRU 152.029 AND 152.0296 PROHIBITING MARIJUANA DISPENSARIES (EXCEPT IN THE CG ZONING DISTRICT), GROW HOUSES, AND MOBILE MARIJUANA DISPENSARIES; SECTION 152.030 ENTITLED “CG GENERAL COMMERCIAL DISTRICT” TO ALLOW MARIJUANA DISPENSARIES AS ALLOWABLE USES; SECTION 152.044 ENTITLED “MINIMUM SPACE REQUIREMENTS” REVISE PARKING SPACE REQUIREMENTS, TO INCLUDE MARIJUANA DISPENSARIES; CREATING SECTION 152.113 ENTITLED “MARIJUANA DISPENSARIES” TO PROVIDE CONDITIONS FOR APPROVAL OF A MARIJUANA DISPENSARY AND OPERATING PROCEDURES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE VILLAGE CODE; AND PROVIDING AN EFFECTIVE DATE. *(INTRODUCED BY COMMISSIONER RICHARD CHERVONY)*

WHEREAS, North Bay Village is mainly a residential community with a limited area of commercial uses primarily devoted to the needs of the local population;

WHEREAS, marijuana dispensaries are commercial uses, and the Village Commission finds that such uses are not compatible with the Village’s residential areas;

WHEREAS, grow houses are both an agricultural and commercial use associated with the growing and production of marijuana, which is not compatible with the Village’s residential areas and does not conform to the limited retail/office/services character of the commercial sector of the Village;

WHEREAS, the Village’s adopted Comprehensive Plan includes in its Future Land Use Element, the following objectives and policies which are supportive of the Ordinance including:

Objective 2.1: Manage future growth and development by implementing and enforcing all existing plans and regulations and by preparing and adopting new regulations as needed.

Policy 2.1.3: Prohibit infilling of lots, expansion of existing uses, or replacement of land uses with development that is incompatible with the Future Land Use Plan by strict enforcement of development regulations.

Objective 2.2: Develop a program and policies to promote the Village’s character as an attractive waterfront community and direct future development and redevelopment to be consistent with the desired community character and goals, objectives, and policies within the Plan.

Policy 2.2.5: The Village shall continue to encourage all future land use development and redevelopment to emphasize aesthetic quality and overall acceptability to local residents.

Policy 2.3.2: Protect distinct functional areas and districts from intrusion and encroachment of incompatible uses by strict compliance to the land use plan.

WHEREAS, the Planning and Zoning Board has found that, based on the foregoing Objectives and Policies in the Comprehensive Plan, this ordinance is consistent with the Comprehensive Plan and will promote the public health, safety, and welfare of the Village.

WHEREAS, marijuana dispensaries and mobile marijuana dispensaries are a commercial use which, when present in substantial numbers, can potentially cause traffic congestion;

WHEREAS, the Planning and Zoning Board has reviewed this Ordinance at a duly advertised public hearing on October 18, 2016 and recommended approval of the Ordinance; and

WHEREAS, the Commission of North Bay Village hereby finds and declares that adoption of this Ordinance is necessary, appropriate, and advances the public interest.

NOW, THEREFORE, BE IT ENACTED BY THE VILLAGE COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. Each of the above stated recitals is true and correct and incorporated herein by this reference.

Section 2. Village Code Amended. Chapter 152 “Zoning” of the North Bay Village Code of Ordinances are hereby amended to read as follows:

§ 152.003 - Definitions.

Grow house. A grow house is a property, usually located in a residential neighborhood, that is primarily used for the production of marijuana but may also be used as a dwelling. The houses are typically outfitted with equipment to provide water, food, and light to the marijuana plants, and the houses themselves are usually kept in good condition to blend in with the neighborhood. Illegal electrical hookups are a common feature of grow houses, to both save money and to make it harder for authorities to identify them due to their unusually high electrical usage.

Marijuana. Marijuana is defined as Cannabis, meaning all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.

Marijuana-based product. A marijuana-based product means a product that contains marijuana or any of its derivatives, including, but not limited to, tonics, tinctures, balms, salves, lotions, sprays, ointments, drinks, foods, and pills.

Marijuana dispensary. A marijuana dispensary is a facility where marijuana or marijuana-based products are made available for medical purposes in accordance with Florida law. A marijuana dispensary may also be defined as a “dispensing organization” as provided in s. 381.986(1), Florida Statutes. Any medical marijuana treatment center at which marijuana or marijuana-based products are dispensed as part of a program of medical treatment shall be included within the definition of a marijuana dispensary.

Mobile marijuana dispensary. A mobile marijuana dispensary is any legal entity, clinic, cooperative, club, business, or group which transports, delivers, or arranges the transportation or delivery, of marijuana or marijuana-based products to any person.

§ 152.026 - RS-1 Low Density Single-Family Residential District.

(D) Prohibited uses.

- (1) Facility or base for mobile marijuana dispensing.
- (2) Grow house.
- (3) Marijuana Dispensary.
- (4) All other uses not specifically or provisionally permitted herein.

§ 152.027 - RS-2 Medium Density Single-Family Residential District.

(D) Prohibited uses.

- (1) Facility or base for mobile marijuana dispensing.
- (2) Grow house.
- (3) Marijuana Dispensary.
- (4) All other uses not specifically or provisionally permitted herein.

§ 152.028 - RM-40 Medium Density Multiple-Family Residential District.

(E) Prohibited uses.

- (1) Facility or base for mobile marijuana dispensing.
- (2) Grow house.
- (3) Marijuana Dispensary.
- (4) All other uses not specifically or provisionally permitted herein.

§ 152.029 - RM-70 High Density Multiple-Family Residential District.

(D) Prohibited uses.

- (1) Facility or base for mobile marijuana dispensing.
- (2) Grow house.
- (3) Marijuana Dispensary.
- (4) All other uses not specifically or provisionally permitted herein.

§ 152.030 - CG General Commercial District.

(B) Uses permitted:

- (14) Marijuana dispensary meeting the requirements of Section 152.112.

§ 152.044 - Minimum space requirements.

(B) Commercial uses.

- (12) Wholesale trade establishments: One space for every 300 square feet of gross floor area.
(13) Drugstores, pharmacies, and marijuana dispensaries: One space for each 200 square feet of gross floor area.

§ 152.113 – Marijuana Dispensaries.

(a) Dispensaries generally.

- (1) A marijuana dispensary may distribute, purchase, sell, convey, or possess with the intent to sell or convey, marijuana or marijuana-based products for medical use only for the purpose of dispensing and selling marijuana or marijuana-based products to a qualifying patient or the patient's caregiver, all as defined and permitted by Florida law. A marijuana dispensary must be licensed by the State of Florida department regulating marijuana. A marijuana dispensary must be licensed before possessing, purchasing, conveying, distributing, or retailing marijuana or marijuana-based products, and copies of its licensure documents must be filed with the Village prior to opening for business. It is the responsibility of the owner and the operator of the marijuana dispensary to have current, valid, and unexpired state licensure documents on file at all times with the Village. No marijuana or marijuana-based products may be obtained from a grow house or marijuana farm located in the Village. All marijuana or marijuana-based products, must be sold by and at a state licensed and approved marijuana dispensary or dispensing organization, and all marijuana must be purchased from a medical marijuana farm that has a valid, state of Florida-issued permit for said purpose. A marijuana dispensary may not conduct wholesale sales or transactions.
- (2) Marijuana dispensaries must at all times meet all the operating criteria for the dispensing of marijuana or marijuana-based products as required from time to time pursuant to Florida law and administrative regulations.

(b) Conditions for approval.

(1) A marijuana dispensary must be located:

- (i) At least 500 feet from any single family zoned district as designated on the Village's official zoning district map; and
- (ii) At least 500 feet from any parcel of land upon which a religious facility, public school, private school, public park, public playground, library, daycare center or nursery for children is located; and
- (iii) At least 500 feet of from any parcel of land upon which an adult entertainment establishment is located; and

(iv) At least 50 feet from a building that contains a business that sells or dispenses alcohol; and

(v) At least 1,000 feet from another building that contains a marijuana dispensary.

(2) No variance shall be granted to the spacing requirements of subsection (1) above.

(3) The minimum distance separation shall be measured by following a straight line from any portion of the building used for a marijuana dispensary to:

(i) The nearest point of a property designated as single family residential on the Village's official zoning district map; or

(ii) The nearest point of a building that contains a business that sells or dispenses alcohol; or

(iii) The nearest point of any property used for a religious facility, public school, private school, public park, playground, library, daycare center, nursery for children, adult entertainment center, or another marijuana dispensary.

(4) No drive-in, drive-up, or drive through use shall be permitted as a part of any marijuana dispensary.

(5) At a minimum, a marijuana dispensary must have storage facilities approved and meeting applicable federal and state statutes and rules. If the federal and state governments do not set minimum requirements for storage of marijuana or marijuana-based products or if federal and state law does not prohibit stricter requirements from being adopted by the Village, marijuana or marijuana-based products storage must meet the security and storage requirements for Schedule I and Schedule II drugs (as defined in s. 893.03, Florida Statutes, and 21 U.S.C. s. 812) as provided in 21 C.F.R. s. 1301.72. The storage facility or system must be located on the site of the marijuana dispensary and used solely for marijuana or marijuana-based products storage. The storage facility shall be locked and made secure when the marijuana dispensary is not open and serving the public.

(c) *Dispensary operation.*

(1) No marijuana dispensary within the Village shall sell or distribute marijuana or marijuana-based products other than what is manufactured, grown, and processed in the State of Florida and that has not left the state before arriving at the marijuana dispensary.

(2) It is unlawful for any person or legal entity operating a marijuana dispensary under the provisions of this code to permit any breach of peace therein or any disturbance of public order or decorum by any riotous or disorderly conduct, or otherwise.

- (3) It is unlawful for any marijuana dispensary to remain open to the public for the sale, distribution, conveyance of marijuana or marijuana-based products between the hours of 8 p.m. and 8 a.m. the next day. It is unlawful for any person or legal entity operating a marijuana dispensary under the provision of this code to permit such dispensary to remain open, or patrons to remain upon the premises, between the hours of 8 p.m. and 8 a.m. the next day.
- (4) No living marijuana plants are permitted on the site of a marijuana dispensary.
- (5) Smoking, ingesting, or other consumption.
- (i) No marijuana or marijuana-based products legally obtained with a physician's recommendation or certification shall be smoked, ingested or otherwise consumed in a marijuana dispensary or in the parking lot for a marijuana dispensary. Any marijuana dispensary must, at all times when such establishment is open to the public or is selling marijuana or marijuana-based products, have a sign on the premises located where it can be readily seen and read by all customers of the marijuana dispensary which is at least six by eight and one-half inches (6" × 8.5") in size and with one-half inch (0.5") minimum lettering and contains the following information:
- IT IS UNLAWFUL TO SMOKE, INGEST, OR CONSUME MARIJUANA INSIDE, OR IN THE PARKING LOT, OF THIS ESTABLISHMENT.
- (ii) It is unlawful for the owner or operator of any marijuana dispensary to fail to comply with this section or for any person to sell or dispense marijuana or marijuana-based products in any establishment which is not in compliance with this section. The requirements of this section apply to all marijuana dispensaries.
- (5) All sales and dispensing of marijuana or marijuana-based products shall be conducted inside the premises of the marijuana dispensary. No off-site delivery of marijuana shall be permitted by the owner, operator, or any employee of the marijuana dispensary. No mobile marijuana dispensary shall operate, or obtain marijuana or marijuana-based products, from a marijuana dispensary or grow house located in the Village.
- (6) A marijuana dispensary shall not hold or maintain a State of Florida alcoholic beverage license to sell any type of alcoholic beverages, or operate a business that sells alcoholic beverages. No alcoholic beverages may be consumed on the premises or sold within fifty (50) feet of a marijuana dispensary, except at a package store, bar, or lounge the existence which preceded the date of adoption of these provisions relating marijuana dispensaries. No package store, bar, or lounge shall locate and sell or dispense alcoholic beverages within fifty (50) feet of a marijuana dispensary.
- (7) A marijuana dispensary shall provide litter removal services and actively remove litter at least twice each day of operation on, inside the premises, in front of the premises, in any parking lot adjacent to the marijuana dispensary or used by patrons of the marijuana dispensary, and, if necessary, on public sidewalks within one-hundred (100) feet of the outer perimeter of the marijuana dispensary.

- (8) A marijuana dispensary shall provide and maintain adequate security on the premises, including fully operational lighting and alarms reasonably designed to ensure the safety of persons and to protect the premises from theft, both inside the marijuana dispensary and in the parking area adjacent to the marijuana dispensary. Any breaking and entering at a marijuana dispensary, regardless of whether marijuana or marijuana-based products are stolen, shall constitute a violation of this code section if the security alarm shall fail to activate simultaneous with the breaking and entering in a loud and audible manner within the hearing of average police officers and citizens on the public right-of-way within two (200) hundred feet of marijuana dispensary.
- (9) Notwithstanding other signage provisions of this land development code, a marijuana dispensary shall have one non-illuminated wall sign within 5 feet of the main entrance which is between 2 and 3 square feet in area and which shall include only the following language:

ONLY INDIVIDUALS WITH LEGALLY RECOGNIZED MARIJUANA OR CANNABIS IDENTIFICATION CARDS OR A VERIFIABLE, WRITTEN RECOMMENDATION FROM A PHYSICIAN FOR MEDICAL MARIJUANA MAY OBTAIN MARIJUANA OR MARIJUANA-BASED PRODUCTS FROM A MARIJUANA DISPENSARY.

The text shall be a minimum of two inches in height. This requirement shall remain in effect so long as the system for distributing or assigning medical marijuana identification cards preserves the anonymity of the qualified patient or primary caregiver.

- (10) The marijuana dispensary shall provide the Village manager and all property owners and tenants located within one hundred (100) feet of the marijuana dispensary with the name, phone number, and e-mail or facsimile number of an on-site community relations staff person to whom one can provide notice during marijuana dispensary business hours if there are operating problems associated with the marijuana dispensary. The marijuana dispensary shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any, before any calls or complaints are made to the Police Department or other Village officials.
- (11) It shall be unlawful for any marijuana dispensary to employ any person to engage in the sale, distribution, conveyance of marijuana or marijuana-based products, who is not at least 18 years of age. A person under the age of 18 years of age may be employed to perform routine maintenance or janitorial work in a marijuana dispensary; provided, that such employee under the age of 18 years of age shall not handle or touch any marijuana or marijuana-based product within the marijuana dispensary.

or neighboring properties for any period of time longer than that reasonably necessary to arrive and depart. A marijuana dispensary shall post conspicuous signs on three sides of any building in which it is located that no loitering is permitted on the property.

(14) A marijuana dispensary shall ensure that there is no queuing of motor vehicles in the right-of-way or in any parking lot serving or adjacent to a marijuana dispensary. The marijuana dispensary shall take all necessary and immediate steps to ensure compliance with this paragraph.

Section 3. Repeal. All ordinances or parts of ordinances, resolutions or parts of resolutions in conflict herewith are repealed to the extent of such conflict.

Section 4. Severability. The provisions of this Ordinance are declared to be non-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 render this Ordinance void in its entirety.

Section 5. Inclusion in the Code. It is the intention of the Village Commission, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of North Bay Village; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

A motion to approve the foregoing Ordinance on first reading on October 25, 2016 was offered by Commissioner Richard Chervony, seconded by Vice Mayor Jorge Gonzalez.

The Votes were as follows:

Mayor Connie Leon-Kreps	<u>Yes</u>
Vice Mayor Jorge Gonzalez	<u>Yes</u>
Commissioner Richard Chervony	<u>Yes</u>
Commissioner Andreana Jackson	<u>Yes</u>
Commissioner Eddie Lim	<u>Yes</u>

A motion to adopt the foregoing Ordinance on second reading was offered by Commissioner Andreana Jackson, seconded by Commissioner Eddie Lim.

FINAL VOTES AT ADOPTION:

Mayor Connie Leon-Kreps	<u>Yes</u>
Commissioner Jose Alvarez	<u>Yes</u>
Commissioner Andreana Jackson	<u>Yes</u>
Commissioner Eddie Lim	<u>Yes</u>

DULY PASSED AND ADOPTED 29th day of November 2016.



Connie Leon-Kreps
Mayor

ATTEST:


Yvonne P. Hamilton, CMC
Village Clerk

**APPROVED AS TO FORM FOR THE USE OF
NORTH BAY VILLAGE ONLY:**



Robert L. Switkes & Associates, P.A.
Village Attorney

North Bay Village: Marijuana Dispensary Ordinance.