

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: September 28, 2021

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB21-0461. Medical Cannabis and Pharmacy Overlay.**

RECOMMENDATION

Transmit the proposed Ordinance amendment to the City Commission with a favorable recommendation.

HISTORY

On April 21, 2021, at the request of Commissioner Michael Gongora, the City Commission referred a discussion item to the Land Use and Sustainability Committee (LUSC) pertaining to a proposal by Care Resource for a non-profit pharmacy within an existing office building (Item C4 M). On May 26, 2021, the LUSC discussed the proposal and continued the item to the June 21, 2021 meeting with direction to the City Administration and City Attorney to work with Care Resource to prepare a draft ordinance.

On June 21, 2021, the LUSC reviewed a draft Ordinance prepared by representatives for Care Resource and recommended that the City Commission refer the proposal to the Planning Board. Additionally, the LUSC recommended that minor modifications pertaining to distance separation requirements for like uses be included in the draft Ordinance for referral to the Planning Board.

On July 28, 2021, the City Commission referred the attached Ordinance to the Planning Board for review and recommendation (Item C4 N).

REVIEW CRITERIA

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:

1. **Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

Consistent – The proposed ordinance is consistent with the goals, objectives, and policies of the Comprehensive Plan.

2. **Whether the proposed change would create an isolated district unrelated to**

adjacent or nearby districts.

Consistent – The proposed amendment does not create an isolated district unrelated to adjacent or nearby districts.

3. Whether the change suggested is out of scale with the needs of the neighborhood or the city.

Consistent - The proposed ordinance amendment does not modify the scale of development.

4. Whether the proposed change would tax the existing load on public facilities and infrastructure.

Consistent – The proposed ordinance will not affect the load on public facilities and infrastructure as the maximum floor area ratio (FAR) is not modified.

5. Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.

Not applicable – The proposed amendment does not modify district boundaries.

6. Whether changed or changing conditions make the passage of the proposed change necessary.

Consistent – Changes in Federal guidelines regarding non-profit healthcare agencies makes passage of the proposed change necessary.

7. Whether the proposed change will adversely influence living conditions in the neighborhood.

Consistent – The proposed ordinance amendment will not adversely affect living conditions in the neighborhood as it contains safeguards to minimize the impacts of the proposed use.

8. Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.

Consistent – The proposed change will not create or increase traffic congestion from what is currently permitted, as the FAR is not being modified by this ordinance and the intensity of uses is not proposed to be increased.

9. Whether the proposed change will seriously reduce light and air to adjacent areas.

Consistent – The proposed change would not reduce light and air to adjacent areas.

10. Whether the proposed change will adversely affect property values in the adjacent area.

Consistent – The proposed change will not adversely affect property values in the adjacent areas as it contains safeguards to ensure that impacts are minimized.

11. **Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.**

Consistent – The proposed change will not be a deterrent to the improvement or development of properties in the City.

12. **Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.**

Not applicable.

13. **Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.**

Consistent – The existing regulations do not allow for pharmacies to be developed as an accessory to medical offices, and distance separation requirements from existing pharmacies limit the areas where new pharmacies can be located.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(b) of the Land Development Regulations establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

- (1) **Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.**

Partially Consistent – The proposal does affect areas that are vulnerable to the impacts of sea level rise in the long term.

- (2) **Whether the proposal will increase the resiliency of the City with respect to sea level rise.**

Partially Consistent – The proposal does not impact the resiliency of the City with respect to sea level rise.

- (3) **Whether the proposal is compatible with the City’s sea level rise mitigation and resiliency efforts.**

Consistent – The proposal is compatible with the City’s sea level rise mitigation and resiliency efforts.

BACKGROUND

Under Chapter 142, Article 5, Division 10 of the Land Development Regulations (LDR’s) of the City Code, pertaining to “Controlled Substances Regulations and Use”, pharmacies and medical cannabis treatment centers are limited to certain, defined areas of the City. The regulations set forth in the City LDR’s were adopted in response to State law regulating medical cannabis

dispensaries. Specifically, pursuant to Section 381.986(11)(b)(2), Florida Statutes:

“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.”

Accordingly, City regulations governing medical cannabis treatment centers cannot be more restrictive than the regulations pertaining to pharmacy stores.

Care Resource is a non-profit health agency that provides a number of health services for the entire Miami Beach community. Care Resource is seeking to add an in-house pharmacy for its patients within its current location at 1680 Michigan Avenue. However, this location is not within an area of the City that permits pharmacy uses.

ANALYSIS

In order for Care Resource to accommodate an in-house pharmacy at its current location, the attached Ordinance has been drafted, which amends Chapter 142, Article 5, Division 10 of LDR's, pertaining to “Controlled Substances Regulations and Use”, to create a new district for both pharmacies and medical cannabis dispensaries. Specifically, a new sub-area (Area 5) for medical cannabis and pharmacy uses, is proposed, and includes lots zoned CD-3 south of 17th Street, generally located between Michigan Avenue on the east, 17th Street on the north, Lenox Avenue on the west, and the north lot line of City parking lot number P25. Due to its proximity to the single-family residential area to the north, Area 5 contains additional safeguards to minimize potential impacts.

Within Area 5, the following would apply:

- Only medical cannabis treatment centers or pharmacy stores that are accessory to a medical office, clinic, or health center. The hours of operation of the pharmacy store or medical cannabis treatment center shall match the hours of the principal medical office, clinic, or health center, but in no event shall an accessory pharmacy store or medical cannabis treatment center operate past 6:00 PM, except for one (1) night per week during which the pharmacy or medical cannabis treatment center may operate until 7:00 PM.
 - As used in the subsection, the term “medical office, clinic, or health center” requires a minimum of two (2) full-time physicians or physician extenders (physician’s assistants or nurse practitioners), and a minimum of five (5) patient examination rooms.
- The building in which the medical cannabis treatment center or pharmacy store is located shall be an existing office building that is a minimum of 25,000 square feet in size on of the effective date of this ordinance.
- A medical cannabis treatment center or pharmacy store shall not be located on the ground floor.
- The area dedicated for use as a pharmacy store or medical cannabis treatment center shall not exceed 1,000 square feet. For the purpose of calculating the area of the accessory pharmacy store or medical cannabis treatment center, only the portion of the building that is being used as a pharmacy store or medical cannabis treatment center shall

be considered, and the portion of the building that serves as the principal medical office, clinic, or health center shall not be considered in the maximum area calculation. The pharmacy store or medical cannabis treatment center will use its best efforts to sell only to medical office, clinic, or health center patients and not to the general public.

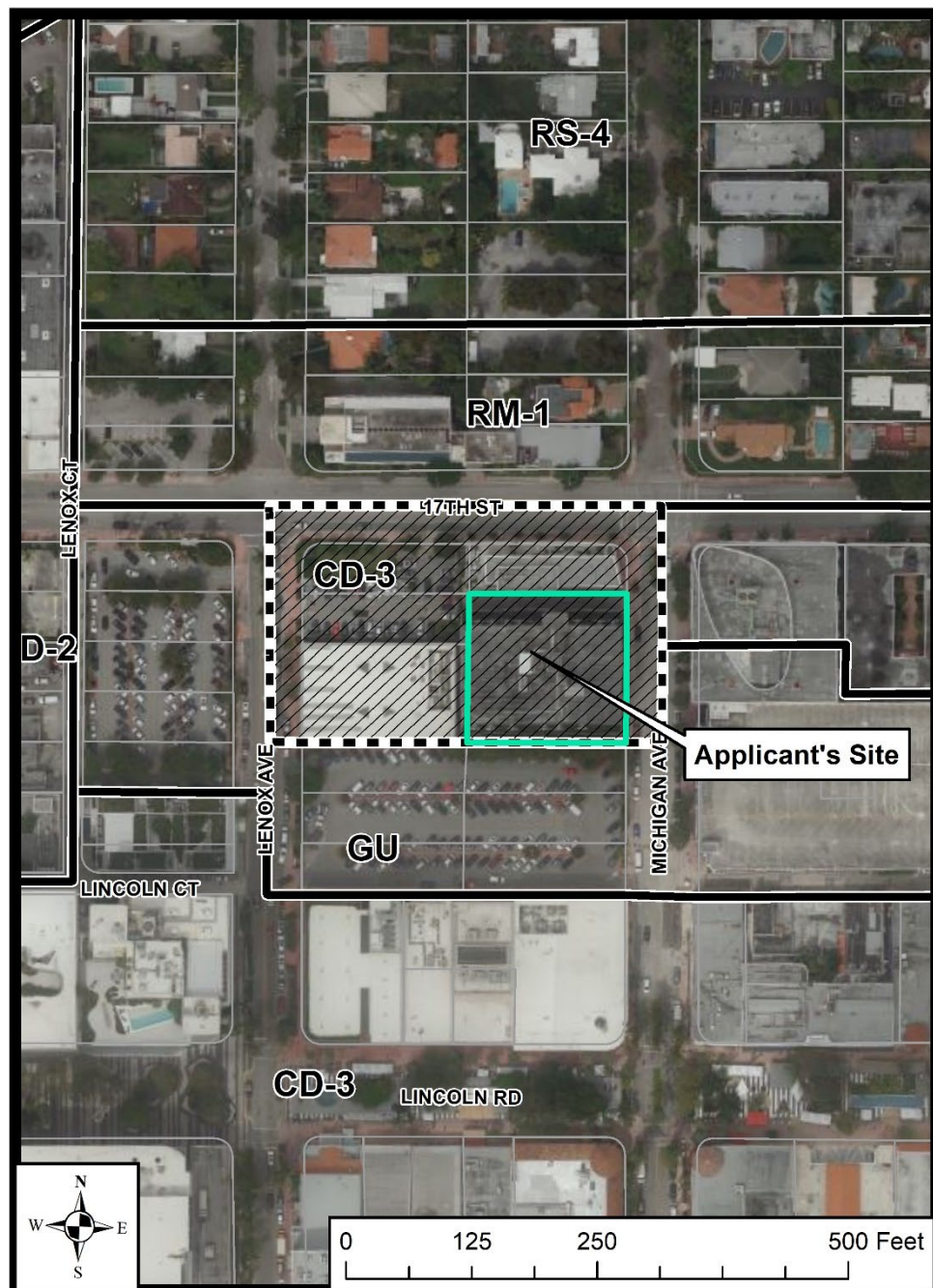
- Pharmacy stores and medical cannabis treatment centers shall only service patients from private waiting rooms.
- Queueing of patients in hallways or common areas of the building in which the use is located is prohibited. Violations of this subsection shall be subject to the penalties under Section 142-1512.
- Accessory pharmacy stores and medical cannabis treatment centers are exempt from the wall separation requirement of Section 142-1503(e).
- Pharmacy stores are prohibited from distributing cannabis or cannabis products.
- Exterior signage is prohibited for pharmacy stores or medical cannabis treatment centers.
- No pharmacy store shall be located within 600 feet of another pharmacy store.
- No medical cannabis treatment center shall be located within 600 feet of another medical cannabis treatment center.
- There shall be no variances from the requirements of this section.

In general, staff has no objections to the proposed Ordinance amendment, as it is very limited in scope. However, although the proposed Ordinance is limited in applicability, it is important to point out that a medical cannabis treatment center would be eligible to be located within the proposed new boundaries (Area 5) and would not be required to be a stand-alone use.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed Ordinance amendment to the City Commission with a favorable recommendation.

ZONING/SITE MAP



New Overlay - Medical Cannabis Treatment Centers and Pharmacy Stores

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," BY AMENDING CHAPTER 142 OF THE CITY CODE ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE V, ENTITLED "SPECIALIZED USE REGULATIONS," DIVISION 10, ENTITLED "PS CONTROLLED SUBSTANCES REGULATIONS AND USE," BY AMENDING SECTION 142-1502, ENTITLED "ZONING DISTRICTS ALLOWING MEDICAL CANNABIS TREATMENT CENTERS, PHARMACY STORES, AND RELATED USES, PROHIBITED LOCATIONS, AND NONCONFORMING USES," TO CREATE A NEW AREA WHERE SUCH USES MAY BE PERMITTED, PROVIDED THAT THE PROPOSED USE MEETS CERTAIN ELIGIBILITY CRITERIA, AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (the "City") has the authority to enact laws which promote the public health, safety and general welfare of its citizens; and

WHEREAS, the City seeks to facilitate the mission of non-profits that serve the underprivileged and vulnerable members of the community; and

WHEREAS, the price of pharmaceuticals is often a barrier for underprivileged, uninsured, or otherwise vulnerable individuals to obtain the medicine and care they need; and

WHEREAS, United States Federal Government has recognized the need for underprivileged individuals to have access to affordable healthcare and pharmaceuticals by adopting the 340B Drug Pricing Program ("340B Program"), under which manufacturers of pharmaceuticals provide lifesaving medications at substantially discounted rates to eligible healthcare organizations/covered entities; and

WHEREAS, Care Resource Community Health Centers, Inc. ("Care Resource"), is a Florida Not for Profit Corporation and federal 501(c)(3) non-profit that is eligible for to receive discounted medications from pharmaceutical manufacturers under the 340B Program; and

WHEREAS, Care Resource has provided healthcare services to underprivileged and vulnerable populations, as well as insured individuals, in the South Florida community since its predecessor was formed in 1983 in response to the HIV/AIDS epidemic; and

WHEREAS, Care Resource currently operates four (4) federally qualified health centers that are eligible to receive discounted pharmaceuticals under the 340B Program, one of which is located at 1680 Michigan Avenue and serves both traditionally insured and uninsured/underinsured populations in the City; and

WHEREAS, certain pharmaceutical manufacturers that provide discounted medications under the 340B Program have indicated that they will only continue providing discounted

medications to organization/covered entities who dispense discounted medications from their own independent pharmacies;

WHEREAS, the revenues from the 340B Program represents a substantial source of funding that allows Care Resource to provide services to vulnerable and underprivileged populations; and

WHEREAS, certain non-profits, such as Care Resource, seek to continue meeting the needs of underprivileged and vulnerable members of the community by establishing pharmacies associated with their existing eligible healthcare organizations/covered entities that will serve as the primary sources of funding needed to continue providing services to the underprivileged and vulnerable; and

WHEREAS, it is beneficial to the City for underprivileged and vulnerable members of the community to have continued access to life-saving discounted pharmaceuticals from the medical providers they are accustomed to receiving treatment from; and

WHEREAS, on November 8, 2016, Florida voters approved Amendment 2 to the Florida Constitution, entitled “Use of Marijuana for Debilitating Medical Conditions;” and

WHEREAS, Amendment 2 “Allows medical use of marijuana for individuals with debilitating medical conditions as determined by a licensed Florida physician;” “it allows caregivers to assist patients’ medical use of marijuana” and, Amendment 2 requires that “the Department of Health shall register and regulate centers that produce and distribute marijuana for medical purposes and shall issue identification cards to patients and caregivers.”

WHEREAS, Amendment 2 applies only to Florida law; and “does not immunize violations of federal law or any non-medical use, possession or production of marijuana;” and

WHEREAS, on June 9, 2017, the Florida Legislature adopted Senate Bill 8A, which provides regulations for implementing Amendment 2, and establishes the definition of medical marijuana treatment centers and parameters for municipal action; and

WHEREAS, Senate Bill 8A requires that a “municipality that does not ban dispensing facilities (medical cannabis treatment centers) under this subparagraph may not place specific limits, by ordinance, on the number of dispensing facilities (medical cannabis treatment centers) that may locate within that county or municipality;” and

WHEREAS, Senate Bill 8A requires that a “municipality may not enact ordinances for permitting or for determining the location of dispensing facilities (medical cannabis treatment centers) which are more restrictive than its ordinances permitting or determining the locations for pharmacy stores licensed under chapter 465 (pharmacies, pharmacy stores);” and

WHEREAS, on June 9, 2017, the Florida legislature, during a special session, in less than 48 hours’ time – introduced, modified, and passed, in both houses, a new cannabis bill (SB 8-A, 3rd Engrossed) unlike prior versions, which provides in relevant part: that the regulation of medical marijuana is preempted to the state, except as to the following: (1) the “medical marijuana treatment center (medical cannabis dispensary) cannot be within 500 feet of a public or private school; (2) that a city [or county] may ban medical marijuana treatment centers entirely; or (3), if a city does not ban medical marijuana treatment centers, the city “may not place specific limits, by ordinance, on the number of dispensing facilities (medical cannabis treatment centers) that

may locate within [that city]." "The city 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 [the city]." Additionally, a city "may not enact ordinances for permitting or for determining the location of dispensing facilities (medical cannabis treatment centers) which are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465. A municipality or county may not charge a medical marijuana treatment center a license or permit fee in an amount greater than the fee charged by such [city] to pharmacies; and

WHEREAS, the Governor signed Senate Bill 8-A into law on June 23, 2017; and

WHEREAS, the Mayor and City Commission finds it is in the best interest of the citizens of the City to minimize and control the adverse effects of dispensing facilities (medical cannabis treatment centers) by adopting appropriate land development and licensing regulations; and

WHEREAS, the amendments set forth below are necessary to accomplish all of the above objectives.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. Chapter 142, "Zoning Districts and Regulations," at Article V, entitled "Specialized Use Regulations," at Division 10, entitled "Controlled Substances Regulations and Use" of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

ARTICLE V. SPECIALIZED USE REGULATIONS

DIVISION 10. CONTROLLED SUBSTANCES REGULATIONS AND USE

Sec. 142-1502. - Zoning districts allowing medical cannabis treatment centers, pharmacy stores, and related uses, prohibited locations, and nonconforming uses.

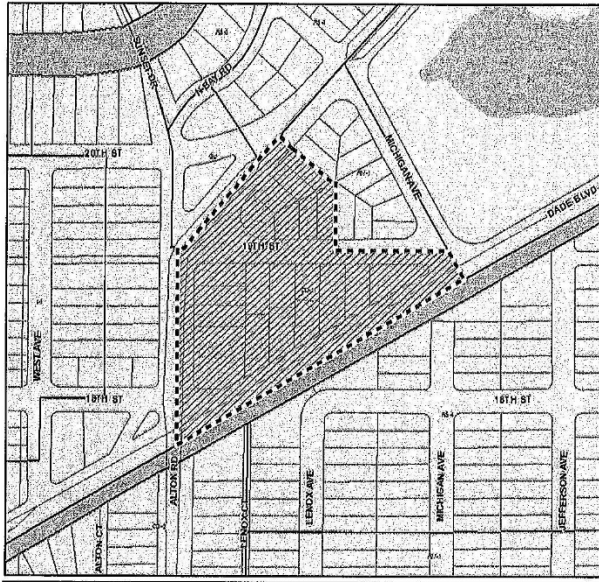
Any term not specifically defined in these land development regulations shall maintain the meaning provided for in F.S. ch. 381, medical cannabis treatment centers and pharmacy stores shall comply with the following regulations:

(a) *Permitted areas.* Only in accordance with the requirements of this division and the applicable zoning district, medical cannabis treatment centers and pharmacy stores shall be permitted only in the areas listed below:

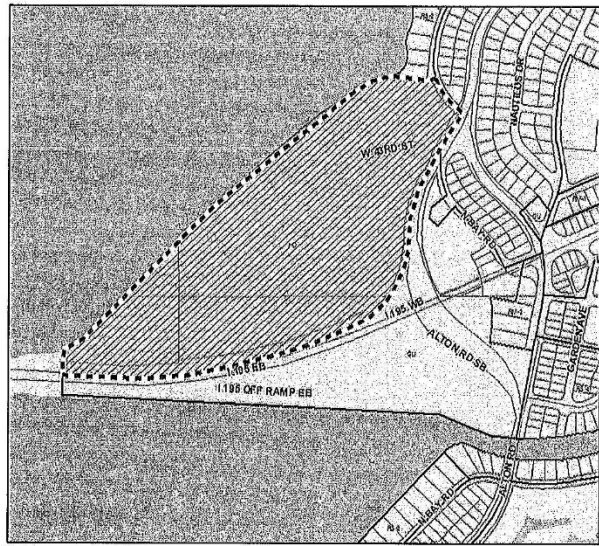
(1) Area 1 shall include the following subareas:

a. Lots zoned CD-2, generally located along Alton Road between 6th Street and 8th Street: lots zoned C-PS2 located north of 5th Street between Ocean Court on the east and West Avenue on the west; as depicted in the map below:

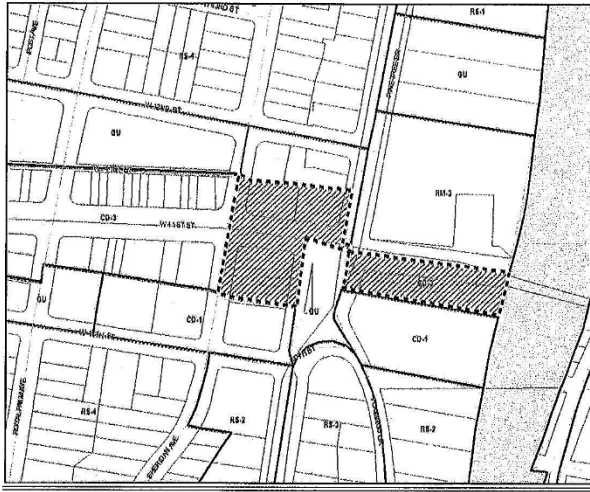
c. Lots zoned CD-1, generally located between Alton Road on the east and north, Dade Boulevard on the south, Michigan Avenue on the west, as depicted in the map below:



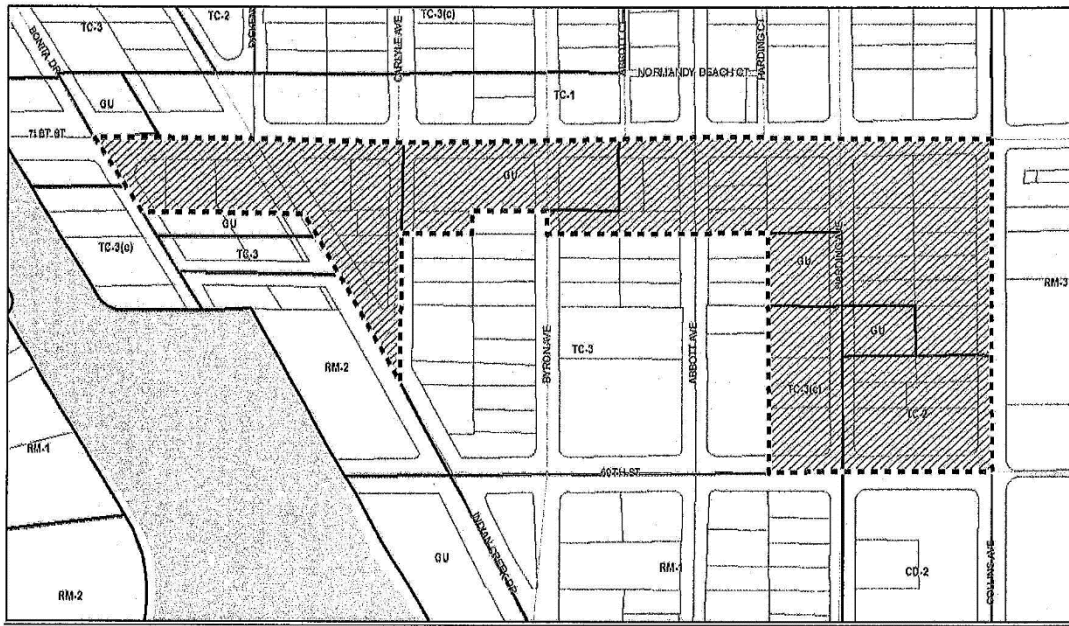
(2) Area 2 shall include the lots zoned HP located north of the Julia Tuttle Causeway - Interstate 195, as depicted in the map below:



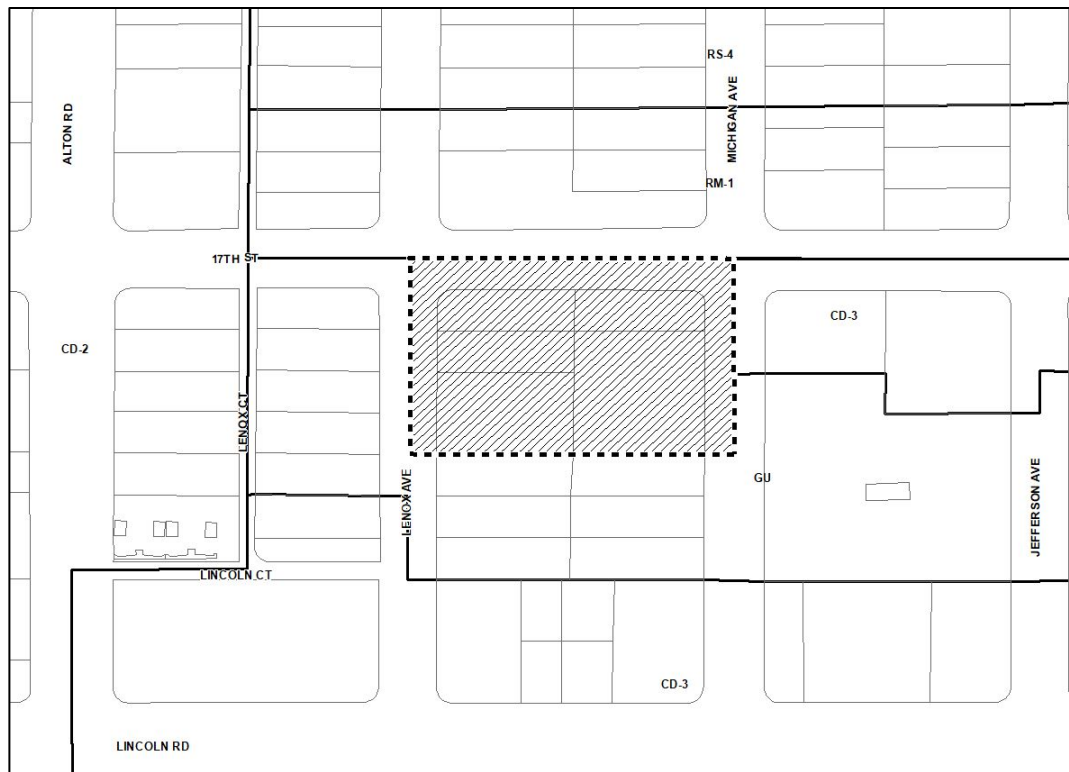
(3) Area 3 shall include [lots] zoned CD-3 and fronting 41st Street between Sheridan Avenue and the Indian Creek Waterway, as depicted in the map below:



(4) Area 4 shall include lots zoned TC-1 and TCC south of 71st Street, generally located between Collins Avenue on the east, 71st Street on the north, the west lot line of lots fronting Bonita Avenue on the west, and 69th Street on south, as depicted in the map below:



(5) Area 5 shall include lots zoned CD-3 south of 17th Street, generally located between Michigan Avenue on the east, 17th Street on the north, Lenox Avenue on the west, and the north lot line of City parking lot number P25, as depicted on the map below:



(b) *Location of uses.*

- (1) Medical cannabis treatment centers or pharmacy stores shall be prohibited in all zoning districts and areas not described in subsection (a), above.
- (2) Medical cannabis treatment centers and pharmacy stores shall be considered prohibited uses on all GU sites.
- (3) No medical cannabis treatment center shall be located within 500 feet of a public or private elementary, middle or secondary school. The minimum distance separation requirement shall be determined by measuring a straight line from the entrance and exit of the medical cannabis treatment center to the nearest point of the property line of the school.
- (4) No medical cannabis treatment center shall be located within 1,200 feet of another medical cannabis treatment center.
- (5) No pharmacy store shall be located within 1,200 feet of another pharmacy.
- (6) The minimum distance separation requirements set forth in subsections (4) and (5) shall be determined by measuring a straight line from the entrance and exit of each business.

(c) *Prohibited cannabis related uses.* The following cannabis related uses and activities shall be prohibited anywhere within the city:

- (1) Cultivation, production, processing, storage, distribution or possession of marijuana plants or cannabis plants.
- (2) Sale of cannabis from any motor vehicle.
- (3) Medical cannabis product and cannabis derivative product manufacturing.
- (4) Medical cannabis testing.
- (5) Storage of cannabis or cannabis-related products off the site of the medical cannabis treatment center.
- (6) Marijuana membership clubs.
- (7) Vapor lounges.

(d) *Prohibited accessory uses within medical cannabis treatment centers and pharmacy stores.*

- (1) Entertainment is prohibited within a medical cannabis treatment center or pharmacy store.
- (2) Any medical cannabis treatment center or pharmacy store shall be prohibited from obtaining a special events permit.

(e) Notwithstanding the foregoing, medical cannabis treatment centers and pharmacy stores in Area 5 shall satisfy the following conditions, which shall control in the event of a conflict with subsections (b), (c) and (d) above:

- (1) Only medical cannabis treatment centers or pharmacy stores that are accessory to a medical office, clinic, or health center, shall be permitted in Area 5. The hours of operation of the pharmacy store or medical cannabis treatment center shall match the hours of the principal medical office, clinic, or health center, but in no event shall an accessory pharmacy store or medical cannabis treatment center operate past 6:00 PM, except for one (1) night per week during which the pharmacy or medical cannabis treatment center may operate until 7:00 PM. As used in the subsection, the term "medical office, clinic, or health center" requires a minimum of two (2) full-time physicians or physician extenders (physician's assistants or nurse practitioners), and a minimum of five (5) patient examination rooms.
- (2) The building in which the medical cannabis treatment center or pharmacy store is located shall be an existing office building that is a minimum of 25,000 square feet in size on of the effective date of this ordinance.
- (3) A medical cannabis treatment center or pharmacy store shall not be located on the ground floor.
- (4) The area dedicated for use as a pharmacy store or medical cannabis treatment center shall not exceed 1,000 square feet. For the purpose of calculating the area of the accessory pharmacy store or medical cannabis treatment center, only the portion of the building that is being used as a pharmacy store or medical cannabis treatment center shall be considered, and the portion of the building that serves as the principal medical office, clinic, or health center shall not be considered in the maximum area calculation. The pharmacy store or medical cannabis treatment center will use its best efforts to sell only to medical office, clinic, or health center patients and not to the general public.
- (5) Pharmacy stores and medical cannabis treatment centers in Area 5 shall only service patients from private waiting rooms. Queueing of patients in hallways or common areas of the building in which the use is located is prohibited. Violations of this subsection shall be subject to the penalties under Section 142-1512.
- (6) Accessory pharmacy stores and medical cannabis treatment centers in Area 5 are exempt from the wall separation requirement of Section 142-1503(e).
- (7) Pharmacy stores in Area 5 are prohibited from distributing cannabis or cannabis products.
- (8) Exterior signage is prohibited for pharmacy stores and medical cannabis treatment centers located in Area 5.
- (9) No pharmacy store in Area 5 shall be located within 600 feet of another pharmacy store.

(10) No medical cannabis treatment center in Area 5 shall be located within 600 feet of another medical cannabis treatment center.

(11) The minimum distance separation requirement shall be measured in accordance with Section 142-1502(b)(6).

(12) There shall be no variances from the requirements of this section.

(f) Nonconforming uses.

(1) Any pharmacy store (authorized prior to the adoption of this division), any pharmacy store approved after adoption of this division, or a medical cannabis treatment center use, created and established under the land development regulations in a legal manner, which may thereafter become legally nonconforming, may continue until there is an abandonment of said use. Once the legally nonconforming pharmacy store or medical cannabis treatment center use is abandoned, it shall not be re-established unless it conforms to the requirements of this division. Abandonment shall consist of: a change of use or suspension of active business with the public for a period of at least six months; or a lesser time if a written declaration of abandonment is provided by the owner of the premises or, if the property is subject to a lease, by the owner and tenant thereof.

(2) A lawfully authorized medical cannabis treatment center cannot apply for a change of use or a business tax receipt to become a pharmacy store. A lawfully authorized pharmacy store cannot apply for a change of use or a business tax receipt to become a medical cannabis treatment center without meeting the requirements of this division as if it were a new establishment.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this ____ day of _____, 2021.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO FORM AND LANGUAGE
AND FOR EXECUTION

City Attorney

Date

First Reading: October ____, 2021
Second Reading: December ____, 2021

Verified by: _____
Thomas R. Mooney, AICP
Planning Director

T:\Agenda\2021\10_July 28\Planning\Ref to PB - CARE RESOUCCE Pharmacy Area - REF ORD.docx