

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Planning Board

TO: Chairperson and Members  
Planning Board

DATE: December 18, 2018

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB 18-0249. Medical Cannabis Treatment Centers and Pharmacy Store Amended Land Use Regulations for Distance Separation from Schools.**

#### **REQUEST**

**PB 18-0249. Medical Cannabis Treatment Centers and Pharmacy Store Amended Land Use Regulations for Distance Separation from Schools.** 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," OF AMENDING CHAPTER 130, OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "OFF-STREET PARKING," TO MODIFY AND CLARIFY MINIMUM PARKING REQUIREMENTS FOR "MEDICAL CANNABIS TREATMENT CENTERS" AND "PHARMACY STORES"; AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," DIVISION 10, ENTITLED "CANNABIS AND PHARMACY STORE REGULATIONS AND USE," BY AMENDING THE DISTANCE SEPARATION REQUIREMENTS FOR MEDICAL CANNABIS TREATMENT CENTERS AND PHARMACY STORES AND PROVIDING FOR A PUBLIC HEARING TO WAIVE DISTANCE REQUIREMENTS; CONSISTENT WITH SECTION 381.986(11)(c) FLORIDA STATUTES. PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

#### **RECOMMENDATION:**

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

#### **HISTORY**

On November 14, 2018, at the request of Commissioner John Elizabeth Aleman, the City Commission referred the discussion item to the Land Use and Development Committee (LUDC) (Item C4N). Additionally, the Quality Education Committee (QEC) requested that the Planning Department provide a presentation, in an effort to further understand the approved Ordinance and the Planning Board recommendations.

On November 27, 2018, the QEC discussed the item and made recommendations for consideration by the Mayor and City Commission.

On November 28, 2018, the LUDC discussed the item and recommended that the regulations for Medical Cannabis Treatment Centers and Pharmacy Stores be approved with modifications.

## **REVIEW CRITERIA**

In accordance with Section 118-163 (3), when reviewing a request for an amendment to these land development regulations, the Board shall consider the following where applicable:

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

**Consistent** – The proposed modifications are 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.**

**Not Applicable**

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

**Not Applicable** – The proposed ordinance does not affect 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 modify the intensity of development.

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

**Not Applicable** – The proposed ordinance does not affect district boundaries.

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

**Consistent** – The need to ensure that the code is clear and transparent makes passage of the proposed changes necessary.

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

**Consistent** - The proposed changes should not adversely influence living conditions in the surrounding neighborhood.

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** - From the standpoint of traffic congestion, trip generation, and parking availability, the proposed change should not create or excessively increase traffic

- congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.

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

**Consistent** - The proposed changes will not seriously reduce light and air to adjacent areas; as the maximum building intensity is not affected by the proposed amendments.

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

**Consistent** – Property values should not be negatively impacted by the proposed changes.

**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 changes would not be a deterrent to the redevelopment or improvement of any adjacent property.

**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.**

**Not Applicable.**

**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 affects areas that are vulnerable to Sea Level Rise. However, the elevation is within the range of the low and high mean high water projections.

For reference, the Sea Level Rise Projection is below:

<b>Sea Level Rise Projections (NAVD)</b>				
	Low Prj.	High Prj.	Low Prj.	High Prj.
	Mean Sea Level		Mean High Water	
1992	-0.96	-0.96	0.25	0.25
2030	-0.46	-0.13	0.75	1.08
2060	0.21	1.21	1.42	2.42
2100	1.62	4.12	2.83	5.33

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

**Not Applicable** – The proposal does not affect aspects of resiliency of the City related to sea level rise.

**3. Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.**

**Consistent** – The proposal will meet current and future Building Codes and the City's standards in a manner that is compatible with the City's sea level rise mitigation and resiliency efforts.

**BACKGROUND**

On September 25, 2017, the City Commission adopted an ordinance amendment, which set forth specific regulations for medical cannabis treatment centers (dispensaries) and pharmacy stores. The effective date of the Ordinance was 90 days following adoption, on December 25, 2017. The adopted Ordinance contained a provision for the Planning Board to review the Ordinance and its effectiveness 12 months after adoption.

The adopted City ordinance has a minimum distance separation requirement of 500 feet between dispensaries and schools. However, there is no method provided in the Ordinance for determining compliance with this distance separation requirement. As such, the City has used the State mandated distance separation requirement, which is measured from property line to property line. Additionally, although permitted under state law, the City ordinance does not contain a process to waive or vary the minimum distance separation requirement of 500 feet.

**PLANNING ANALYSIS**

On October 23, 2018, the Planning Board reviewed the ordinance pertaining to medical cannabis treatment centers and pharmacy stores. As part of the review of the ordinance, the Planning Board took testimony from representatives of two separate dispensary operators regarding the distance separation requirements from schools. In order to address the distance separation issues, the Planning Board recommended that the City Commission consider the following amendments to the ordinance:

1. Establish a clear method for compliance with the required 500 foot distance separation from a public or private school. The Planning Board recommended that a formal method for determining distance separation be included in a revised ordinance. Additionally, the Board recommended that the methodology for determining distance separation be the same as that which currently applies to alcoholic beverage establishments, which is as follows:

*For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the main entrance or exit in which the use associated with alcohol beverages occurs to the nearest point of the property used for a public or private school.*

2. Introduce a process, with specific criteria, to allow for a reduction of the minimum distance separation requirements from schools. The Planning Board recommended that they be the body to review and approve requests for reductions in this minimum distance separation requirement.

There are currently six defined areas in the City (as described in the ordinance) where a medical cannabis treatment center or pharmacy store may potentially be located. However, based upon the locations of existing public or private schools, some of these areas are fairly restricted, which is the case for area three (the eastern portion of Arthur Godfrey Road zoned CD-3).

#### **UPDATE**

The QEC discussed the proposed recommendations from the Planning Board at their November 27, 2018 meeting. The QEC recommended that the Mayor and Commission consider the following in regards to medical marijuana dispensaries in Miami Beach:

1. Keep the same distance separation between medical marijuana dispensaries as the distance in feet already in place for night clubs and adult entertainment establishments.
2. Keep with State distance minimum requirements of 500 feet property line to property line from schools.
3. Not restrict distance requirement to schools only, but rather where legitimate youth programs are run out of like Jewish Community Center (JCC), Parks and Recreation programs, etc.

On November 28, 2018, the LUDC discussed the recommendations from the QEC and recommended that the following changes be incorporated into the draft ordinance:

1. The 500 foot distance separation requirement from schools shall be measured from the entrance and exit points of the dispensary.
2. A distance separation requirement between facilities shall be included and the City Attorney's office will continue to review the legal feasibility of this.
3. A separate notice to affected schools shall be provided.

The LUDC also recommend that if a distance waiver is to be considered in the future, the City Commission should be the entity to review any such waivers. Additionally, waivers should only be potentially allowed provided the medical cannabis facility is not located on the ground floor.

Attached is a draft ordinance which incorporates the aforementioned recommendations from the LUDC, with the exception of the waiver provision and notice to schools. In the event that a waiver provision is considered in the future, a specific notice provision for schools can be incorporated.

**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.

**Medical Cannabis Treatment Centers and Pharmacy Store  
Amended Land Use Regulations for Distance Separation from Schools**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA; AMENDING CHAPTER 142 OF THE CITY CODE, ENTITLED "ZONING DISTRICTS AND REGULATIONS," DIVISION 10, ENTITLED "CANNABIS AND PHARMACY STORE REGULATIONS AND USE," TO: (1) PROVIDE FOR A METHOD OF CALCULATION FOR DISTANCE SEPARATION REQUIREMENTS BETWEEN MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES AND PRIVATE OR PUBLIC ELEMENTARY, MIDDLE OR SECONDARY SCHOOLS; AND (2) CREATE A DISTANCE SEPARATION REQUIREMENT BETWEEN MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES AND PHARMACIES; AND AMENDING CHAPTER 130 OF THE CITY CODE, ENTITLED "OFF-STREET PARKING," ARTICLE VI, ENTITLED "PARKING CREDIT SYSTEM," SECTION 130-161, ENTITLED "REGULATIONS," TO CLARIFY PARKING REQUIREMENTS FOR SUCH USES AND PRECLUDE USE OF THE PARKING CREDIT SYSTEM; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

**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, and allows caregivers to assist patients' medical use of marijuana; and

**WHEREAS**, 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; and

**WHEREAS**, on June 9, 2017, the Florida Legislature adopted Senate Bill 8A, which provided regulations for implementing Amendment 2, and established the definition of medical marijuana treatment center dispensing facilities and parameters for local regulations; and

**WHEREAS**, on June 23, 2017, the Florida Legislature enacted Section 381.986 of the Florida Statutes, which allows a municipality to determine, by ordinance, the criteria for the location of, and other permitting requirements for, medical marijuana treatment center dispensing facilities located within the boundaries of a municipality, provided such requirements do not conflict with State law or department rule; and

**WHEREAS**, Florida law, under Section 381.986(11)(b)(2), requires that 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 (as licensed under Chapter 465 of the Florida Statutes); and

**WHEREAS**, under Florida law, however, a medical marijuana treatment center dispensing facility is prohibited from being located within 500 feet of a public or private elementary, middle or secondary school, unless the local government expressly waives the distance separation requirement pursuant to a public hearing, determining that such waiver of the distance separation requirements would promote the public health, safety, and general welfare of the community; and

**WHEREAS**, the Mayor and City Commission adopted regulations for medical marijuana treatment center dispensing facilities and pharmacy stores on September 25, 2017, pursuant to Ordinance No. 2017-4133, and now seek to establish and codify the method for calculating the aforementioned distance separation requirements set forth under Florida law (pertaining to the 500 foot distance separation between a school property line and a medical marijuana treatment center dispensing facility); and

**WHEREAS**, a 300 foot distance separation requirement between individual medical marijuana treatment center dispensing facilities or pharmacies is essential to regulate potentially nuisance causing high impact establishments from proliferating throughout the City; and

**WHEREAS**, the City is legally authorized, pursuant to Section 381.986(11)(b)(2), Florida Statutes, to determine by ordinance, criteria for the location of medical marijuana treatment center dispensing facilities, provided there are no specific limits on the number of those businesses to be located within the City; and

**WHEREAS**, the City may not enact ordinances for permitting or determining the location of dispensing facilities that are more restrictive than its ordinances permitting or determining the location of pharmacies, and therefore; the City finds that it is in the best interest of its residents and visitors to establish a 300 foot distance separation requirement between medical marijuana treatment center dispensing facilities and between pharmacies; and

**WHEREAS**, this will serve to prevent the clustering or concentration of these businesses, and further accomplish the purpose of disbursing and mitigating the potential deleterious impacts more widely.

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

**SECTION 1.** Chapter 142 of the Land Development Regulations, entitled "District Regulations," is hereby amended as follows:

**CHAPTER 142  
DISTRICT REGULATIONS**

\* \* \*

**DIVISION 10  
CONTROLLED SUBSTANCES REGULATIONS AND USE**



\* \* \*

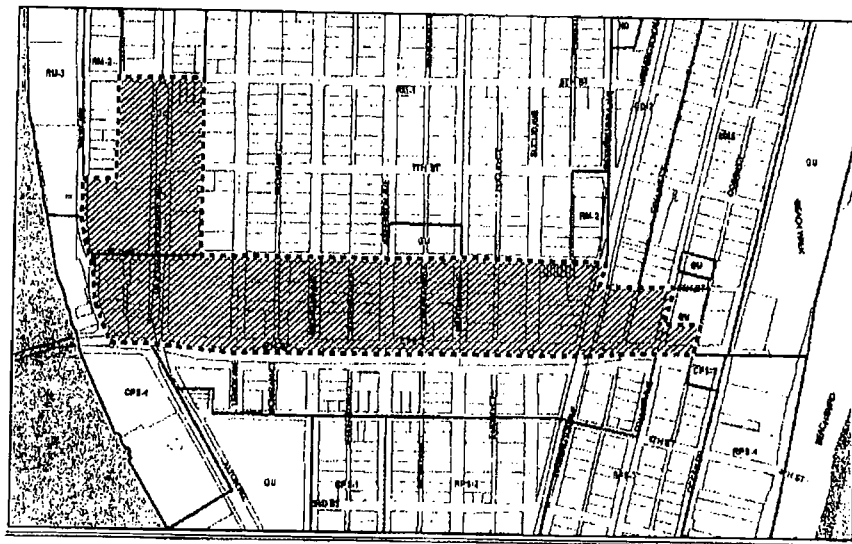
**Sec. 142-1502. Zoning districts allowing medical cannabis treatment centers, pharmacy stores, and related uses, prohibited locations, and nonconforming uses.**

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:

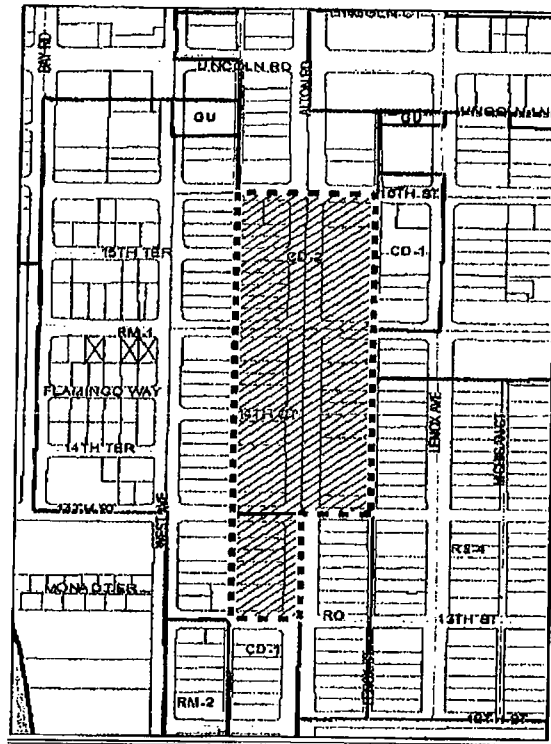
- (a) *Permitted areas.* Only in accordance with the requirements of this division and the applicable zoning district, medical cannabis treatment centers and pharmacy stores shall be permitted only in the areas listed below:

- (1) Area 1 shall include the following subareas:

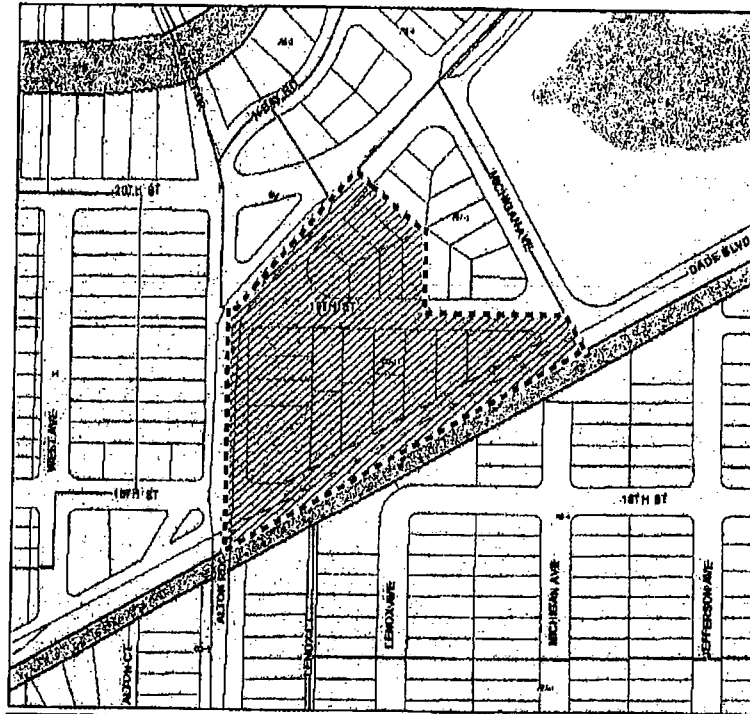
- a. Lots zoned CD-2, generally located along Alton Road between 6th Street and 8th Street: lots zoned C-PS2 located north of 5<sup>th</sup> Street between Ocean Court on the east and West Avenue on the west; as depicted in the map below:



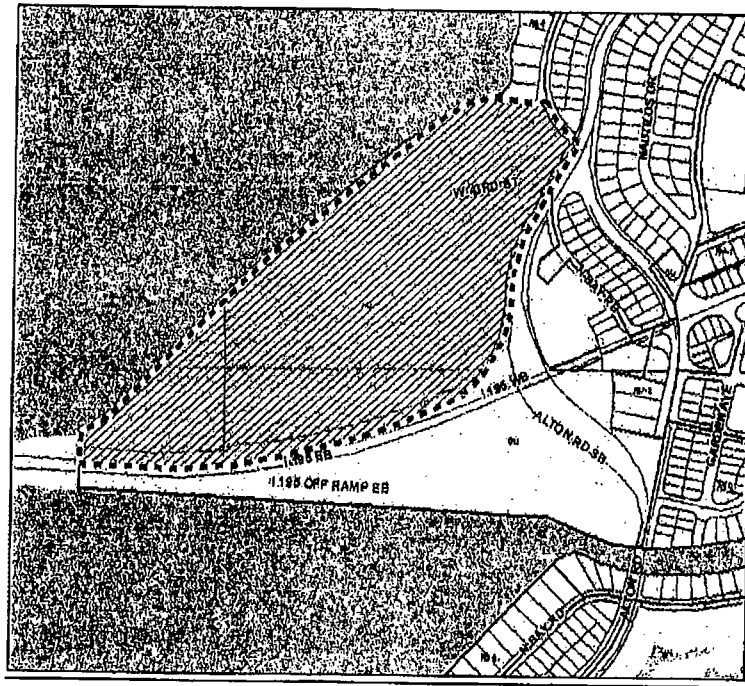
- b. Lots zoned CD-1 and CD-2 fronting Alton Road between 13th Street and 16th Street, as depicted in the map below:



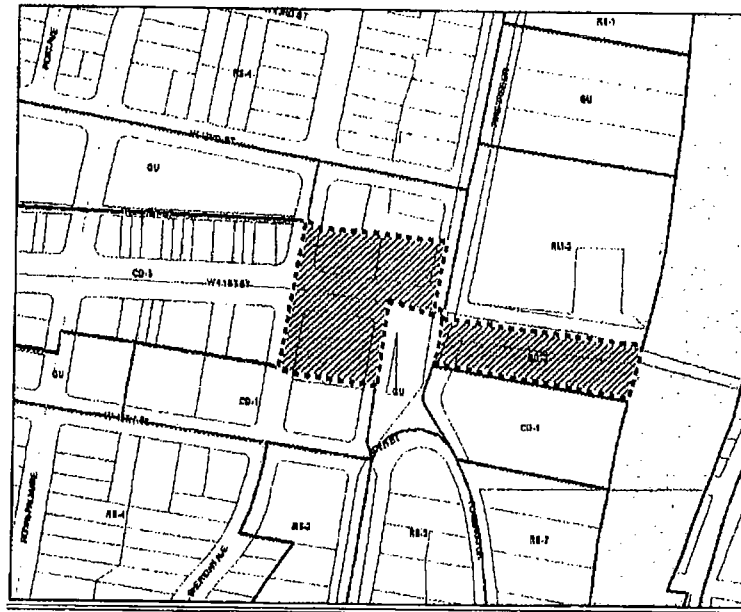
- c. Lots zoned CD-1, generally located between Alton Road on the east and north, Dade Boulevard on the south, Michigan Avenue on the west, as depicted in the map below:



- (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 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 south of 71st Street and lots zoned TC-2 and TC-3(C), generally located between Collins Avenue on the east, 71st Street on the north, the west lot line of lots fronting Harding Avenue on the west, and 69<sup>th</sup> Street on south, as depicted in the map below:



**Sec. 142-1503. Requirements for medical ~~cannabis~~ marijuana treatment centers and pharmacy stores.**

(a) Reserved.

(b) Dispensing of, payment for, and receipt of low-THC, medical ~~cannabis~~ marijuana, or pharmaceutical drugs administered by a pharmacy is prohibited anywhere outside of the dispensing facility, including, but not limited to, on sidewalks, in parking areas, drive-thrus, or in the rights-of-way surrounding the dispensing facility; provided, however, this provision shall not be construed to prohibit delivery of low-THC, medical ~~cannabis~~ marijuana, or pharmaceutical drugs to an eligible patient, as permitted by state law or rule.

(c) Required parking shall be located on the same parcel or unified development site as the medical ~~cannabis~~ marijuana treatment center dispensing facilities or pharmacy store, or within 500 feet of the site either in private parking facilities or a public parking facility, not within a residential district, with a lease, unity of title, or covenant-in-lieu of unity of title, or other document of a similar nature. Participation in the fee-in-lieu of parking program and the parking credit program is prohibited.

**SECTION 2.** Chapter 130 of the Land Development Regulations, entitled "Off-Street Parking," is hereby amended as follows:

**Chapter 130  
Off-Street Parking**

\* \* \*

**ARTICLE VI. PARKING CREDIT SYSTEM**

**Sec. 130-161. Regulations.**

Whenever a lawfully permitted building or use is changed in a manner that results in an increase in the number of required parking spaces, the following regulations shall apply. Such building or use shall receive a parking credit equivalent to the adopted parking requirement for the building or uses in existence at the time of application for a building permit or change of use. The most recent available certificate of use or certificate of occupancy shall be utilized to determine the credit. If a building or use was established prior to the adoption of a parking district that reduces the parking requirement, the parking credit shall be calculated pursuant to the parking requirements of parking district no 1. The parking credit shall be calculated at the time of building permit or change of use application and be applied toward the required parking as follows:

- (1) The parking credit shall only be applied to the area within the existing shell of the building, unless otherwise specifically provided in chapter 118, article IX, of these land development regulations.
- (2) Parking credits shall not be applicable to buildings or portions of a building that have been demolished, unless otherwise specifically exempted in chapter 118, article IX, of these land development regulations. Parking credits shall not be applicable to medical ~~cannabis~~ marijuana treatment centers dispensing facilities and pharmacy stores.

- (3) In order to calculate the parking requirement of a proposed use, the parking credit shall be subtracted from the total parking requirement of the proposed use. The additional required parking shall be provided pursuant to the requirements of section 130-36 or if eligible, the fee in lieu of parking program described in article V of this chapter.
- (4) Existing required parking spaces, inclusive of spaces for which a complete fee in lieu of required parking was made, for a building or use shall not count towards meeting additional required parking for a proposed use, unless the total number of existing required parking spaces exceeds the total number of required parking spaces of the proposed use.

**SECTION 3.** Repealer.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

**SECTION 4.** Codification.

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

**SECTION 5.** Severability.

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

**SECTION 6.** Effective Date.

This Ordinance shall take effect ten days following adoption.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2019.

**ATTEST:**

\_\_\_\_\_  
Mayor

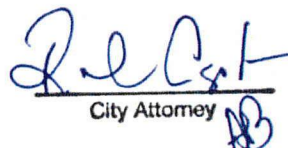
\_\_\_\_\_  
Rafael E. Granado, City Clerk

First Reading: \_\_\_\_\_, 2019

Second Reading: \_\_\_\_\_, 2019

Verified by: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

 12-10-18  
\_\_\_\_\_  
City Attorney      Date