

**MEDICAL CANNABIS TREATMENT CENTERS AND PHARMACY STORE
AMENDED LAND USE REGULATIONS FOR DISTANCE SEPARATION FROM SCHOOLS**

PLANNING BOARD VERSION

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," ARTICLE V, ENTITLED, "SPECIALIZED USE REGULATIONS," DIVISION 10, ENTITLED "CONTROLLED SUBSTANCES REGULATIONS AND USE," TO: (1) PROVIDE FOR A METHOD OF CALCULATION FOR DISTANCE SEPARATION REQUIREMENTS BETWEEN MEDICAL CANNABIS TREATMENT CENTERS AND PRIVATE OR PUBLIC ELEMENTARY, MIDDLE OR SECONDARY SCHOOLS; (2) CREATE A DISTANCE SEPARATION REQUIREMENT BETWEEN MEDICAL CANNABIS TREATMENT CENTERS AND BETWEEN PHARMACIES; AND (3) CREATE A DISTANCE WAIVER PROCEDURE BETWEEN MEDICAL CANNABIS TREATMENT CENTERS AND PRIVATE OR PUBLIC ELEMENTARY, MIDDLE OR SECONDARY SCHOOLS; 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; AMENDING SECTION 142-1502 OF THE CITY CODE ENTITLED "ZONING DISTRICTS ALLOWING MEDICAL CANNABIS TREATMENT CENTERS, PHARMACY STORES, AND RELATED USES, PROHIBITED LOCATIONS, AND NONCONFORMING USES," TO CORRECT THE ZONING DESIGNATION FROM "TC-1" "TC-2" AND "TC-3(c)" TO "TC-1" AND "TC-C" FOR A MAJORITY OF THE BOUNDARY OF AREA 4, DUE TO THE ADOPTION OF THE "NORTH BEACH TOWN CENTER – CENTER CORE" REGULATIONS PURSUANT TO ORDINANCE NO. 2018-4224; AND TO CORRECT A SCRIVENER'S ERROR TO REPLACE HARDING AVENUE WITH BONITA AVENUE, AS THE WESTERN BOUNDARY OF AREA 4; 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), Florida Statutes, 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 (Note: the City's Ordinance refers to the medical marijuana treatment center dispensing facilities as "medical cannabis treatment centers"), 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, 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, a 300 foot distance separation requirement between individual medical marijuana treatment center dispensing facilities, is essential to regulate potentially nuisance causing high impact establishments from proliferating throughout the City; and

WHEREAS, the City also finds that it is in the best interest of its residents and visitors to establish a 300 foot distance separation requirement 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; and

WHEREAS, subsequent to the adoption of Ordinance No. 2017-4133, the City created a new zoning district known as the “North Beach Town Center – Center Core”, adopted pursuant to Ordinance No. 2018-4224, which changed the designation of much of the Town Center area from the “TC-1” “TC-2” and “TC-3(c)” zoning designations to a new zoning designation of “TC-C”, which TC-C designation now encompasses a majority of the boundary of the medical cannabis treatment center and pharmacy district of Area 4, and which designation should be reflected in this Ordinance; and

WHEREAS, additionally, the City desires to correct a scrivener’s error within the boundary description of Area 4, to replace Harding Avenue with Bonita Avenue as the western boundary.

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

SECTION 1. Chapter 142 of the City Code, entitled “Zoning District and Regulations,” Article V, entitled “Specialized Use Regulations,” entitled, Division 10, “Controlled Substances Regulations and Use,” is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICT AND REGULATIONS**

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ARTICLE V. SPECIALIZED USE REGULATIONS

* * *

DIVISION 10. CONTROLLED SUBSTANCES REGULATIONS AND USE

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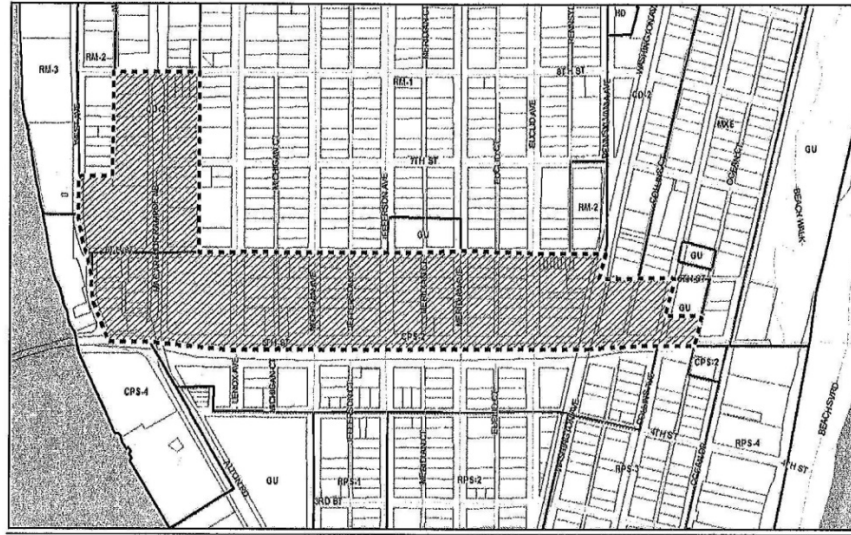
Sec. 142-1502. Zoning districts allowing medical cannabis treatment centers, pharmacy stores, and related uses, prohibited locations, and nonconforming uses.

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:

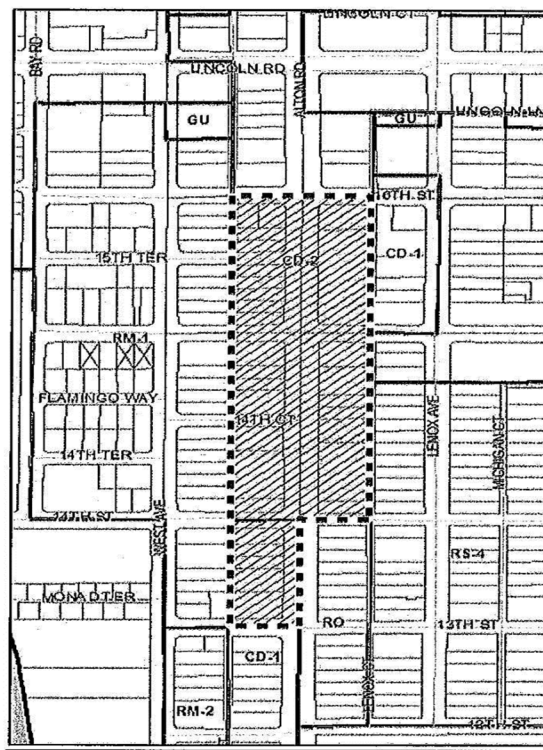
(a) *Permitted areas.* Only in accordance with the requirements of this division and the applicable zoning district, medical cannabis treatment centers and pharmacy stores shall be permitted only in the areas listed below:

(1) Area 1 shall include the following subareas:

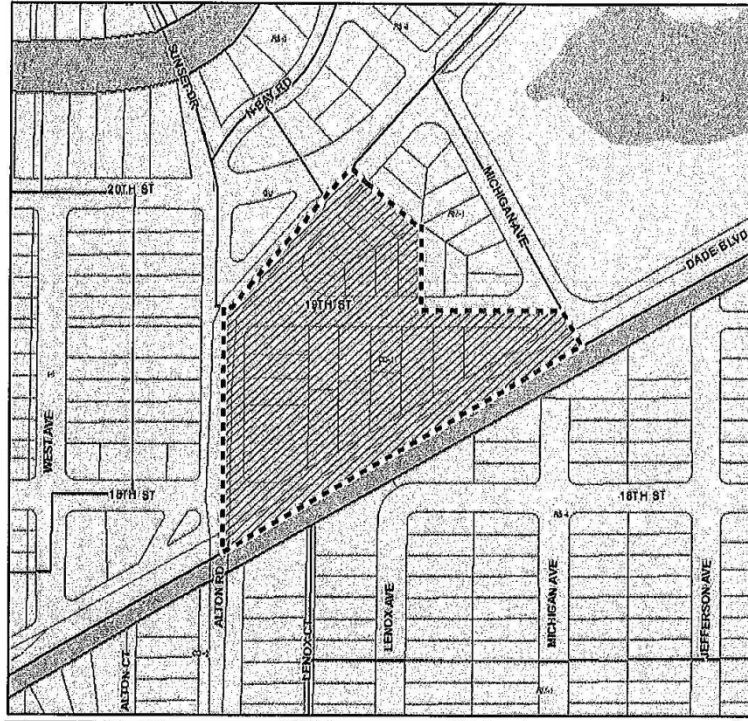
a. Lots zoned CD-2, generally located along Alton Road between 6th Street and 8th Street: lots zoned C-PS2 located north of 5th Street between Ocean Court on the east and West Avenue on the west; as depicted in the map below:



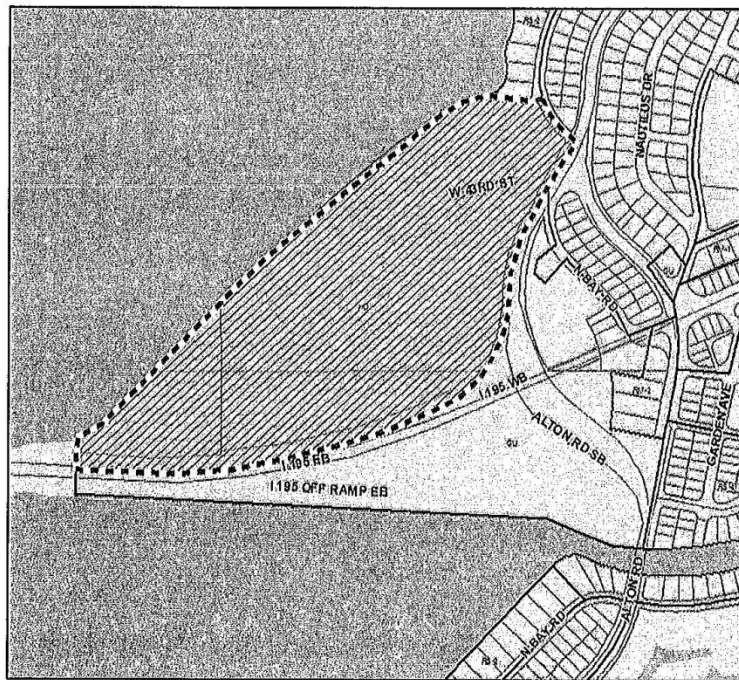
- b. Lots zoned CD-1 and CD-2 fronting Alton Road between 13th Street and 16th Street, as depicted in the map below:



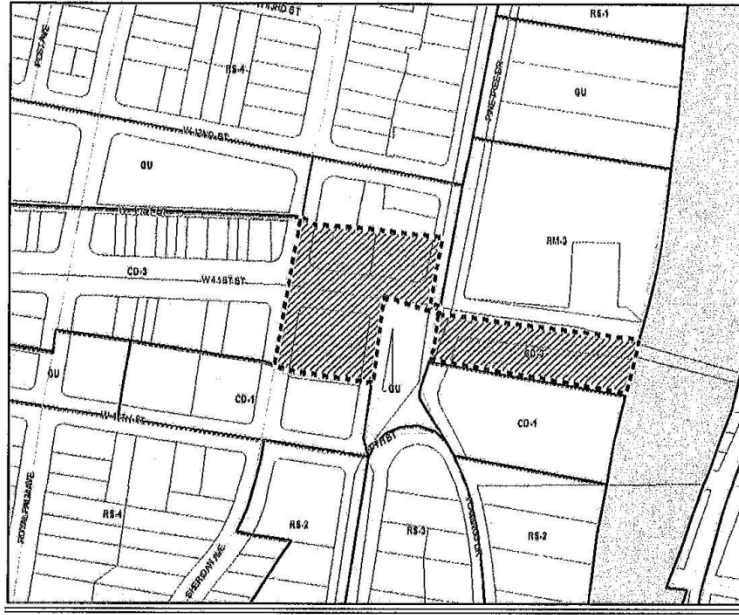
- c. Lots zoned CD-1, generally located between Alton Road on the east and north, Dade Boulevard on the south, Michigan Avenue on the west, as depicted in the map below:



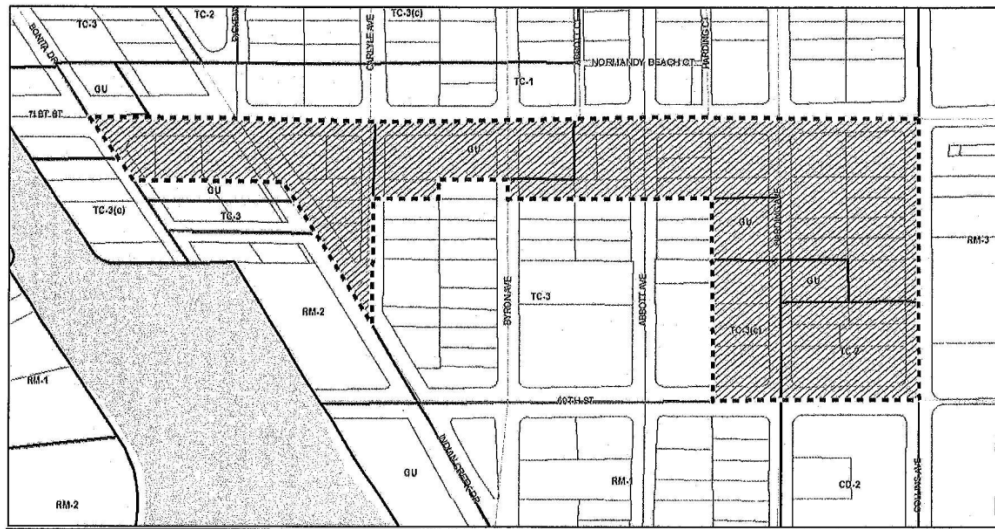
- (2) Area 2 shall include the lots zoned HP located north of the Julia Tuttle Causeway - Interstate 195, as depicted in the map below:



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



(b) Prohibited 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 or pharmacy store shall be located within 500 feet of a public or private school. The term school shall include, but not be limited to, preschool, primary elementary, middle or secondary school, or secondary school, as provided in F.S. § 1006.06. 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) The distance separation requirements from schools, pursuant to subsection (3) above, may be reduced, if approved by the Planning Board, after public hearing by the Planning Board, provided the Board determines that the location promotes the public health, safety, and general welfare of the community, and determines that the use is consistent with the following requirements:
- (a) The use is consistent with the comprehensive plan or neighborhood plan if one exists for the area in which the property is located.
 - (b) The intended use will not result in an impact that will exceed the thresholds for the levels of service as set forth in the comprehensive plan.
 - (c) Structures and uses associated with the request are consistent with these land development regulations.
 - (d) The public health, safety, morals, and general welfare will not be adversely affected.
 - (e) Adequate off-street parking facilities will be provided.
 - (f) Necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood compatibility.
 - (g) The concentration of similar types of uses will not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of uses should be discouraged.

Separate notice shall be provided to all affected schools within the time frame for notice provided in Section 118-8, for an application before the Planning Board. The fee for a waiver hearing shall be the same as for a Conditional Use hearing before the Planning Board, as delineated in Appendix A, entitled "Fee Schedule."

- (5) No medical cannabis treatment center shall be located within 300 feet of another medical cannabis treatment center.
- (6) No pharmacy store shall be located within 300 feet of another pharmacy.
- (7) The minimum distance separation requirements set forth in subsections (5) and (6) shall be determined by measuring a straight line from the entrance and exit of each business.

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

(a) Reserved.

(b) Dispensing of, payment for, and receipt of low-THC, medical cannabis, 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, 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 treatment center 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 City Code, entitled "Off-Street Parking," Article VI, entitled, "Parking Credit System," Section 130-161, entitled, "Regulations," is hereby amended as follows:

**Chapter 130
Off-Street Parking**

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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 treatment centers 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 (10) days following adoption.

PASSED AND ADOPTED this ____ day of _____, 2019.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

First Reading: January 16, 2019
Second Reading: February 13, 2019

(Sponsored by: Commissioner John Elizabeth Alemán)

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