

**Medical Cannabis Treatment Centers
and Pharmacy Store – Land Use Regulations**

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED “GENERAL PROVISIONS,” TO DEFINE THE FOLLOWING DEFINITIONS: CANNABIS, MEDICAL CANNABIS TREATMENT CENTER, DISPENSING ORGANIZATION, PHARMACY STORE, AND TERMS RELATING TO MEDICAL CANNABIS, MEDICAL CANNABIS TREATMENT CENTERS, CONVENIENCE STORES, AND PHARMACY STORES; AMENDING CHAPTER 118, ENTITLED “ADMINISTRATION AND REVIEW PROCEDURES,” ARTICLE IX, ENTITLED “NONCONFORMANCES,” AT SECTION 118-393 TO ESTABLISH REFERENCES TO ADDITIONAL NONCONFORMING REGULATIONS WITHIN CHAPTER 142, DIVISION 10, FOR MEDICAL CANNABIS TREATMENT CENTERS AND PHARMACY STORES, IDENTIFYING PROHIBITED USES; AMENDING CHAPTER 130, ENTITLED “OFF-STREET PARKING,” ESTABLISHING MINIMUM PARKING REQUIREMENTS FOR “MEDICAL CANNABIS TREATMENT CENTERS” AND “PHARMACY STORES” AND PROHIBITING PARTICIPATION IN THE FEE IN LIEU OF PARKING PROGRAM; AMENDING CHAPTER 142, ENTITLED “ZONING DISTRICTS AND REGULATIONS,” BY CREATING DIVISION 10, ENTITLED “CANNABIS AND PHARMACY STORE REGULATIONS AND USE,” AND AMENDING SECTIONS 142-1501 TO 142-1505, RELATING TO APPLICABILITY, DEFINING MEDICAL USE OF CANNABIS, DESIGNATING AREAS FOR THE USE, NONCONFORMING USE REGULATIONS RELATING TO THE USE, ZONING REQUIREMENTS RELATING TO THE USE, AND PROHIBITING CULTIVATION, PRODUCTION OR POSSESSION OF CANNABIS PLANTS; PROVIDING FOR PENALTIES, ENFORCEMENT AND APPEALS; AMENDING CHAPTER 102, “TAXATION,” ARTICLE V, “LOCAL BUSINESS TAX” AT SECTION 102-379, “SCHEDULE OF TAXES, EFFECTIVE OCTOBER 1, 2016” TO PROVIDE NEW BUSINESS TAX RECEIPT FOR SAID USES; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, pursuant to the Compassionate Medical Cannabis Act of 2014, the Florida Legislature authorized a very limited number of large nurseries to cultivate, process, and dispense non-euphoric, low-THC cannabis and operate dispensing organizations, as of January 1, 2015; and

WHEREAS, in 2016, the Florida Legislature amended Section 381.986 of the Florida Statutes to include medical cannabis, revise the requirements for physicians ordering low-THC cannabis, medical cannabis, or cannabis delivery devices, amend the requirements for the cultivation, processing, transportation, and dispensing of low-THC cannabis or medical cannabis, revise the Florida Department of Health's authority and responsibility and provide for penalties; and

WHEREAS, due to the historical prohibition of cannabis, the City of Miami Beach does not currently have any land development regulations governing the use of real property for the purpose of on-site distribution, sale, delivery or retail of low-THC cannabis,

medical cannabis or cannabis delivery devices as provided by Florida Statutes Sections 381.986 and 499.0295; 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 Centers for Disease Control and Prevention (CDC) declaring a national opioid epidemic has been occurring in the United States, which has been an epidemic plague to the nation since February 2011; and

WHEREAS, Governor Rick Scott on May 3, 2017, declared the opioid epidemic a public health emergency — some four (4) years after it began cutting a deadly swath through the Sunshine State; and

WHEREAS, Florida has been hit especially hard by the deadly opioid overdose epidemic; and

WHEREAS, in 2015, heroin, fentanyl and oxycodone were directly responsible for the deaths of 3,896 Floridians, according to the most recent Florida Department of Law Enforcement statistics, which is about 12 percent of all the 33,000 people nationwide who died that year of opioid overdoses; and

WHEREAS, Last year in South Florida, the morgues in Palm Beach County were strained to capacity by 525 fatal opioid overdoses, the Sun Sentinel newspaper reported in March 2017; and

WHEREAS, the deadly cocktail of heroin mixed with fentanyl or carfentanil figured in 220 deaths in Miami-Dade County last year, the paper reported. And 90 percent of the fatal drug overdoses in Broward County involved heroin, fentanyl or other opioids; and

WHEREAS, the declaration allows the state to tap more than \$54 million in U.S. Department of Health and Human Services grant money to pay for prevention, treatment and recovery services; and

WHEREAS, the Governor also gave the green light to state Surgeon General Celeste Philip to start distributing the anti-overdose treatment Naloxone to first responders; and

WHEREAS, on November 1, 2015, the American Pharmacists Association published the article “Pharmacies in the crosshairs: Prescription drug crime and law enforcement,” which advises that the industry is in the cross-hairs; and

WHEREAS, according to the article, “It gets dangerous for pharmacists who discover that a prescription was issued for other than a legitimate medical purpose and is clearly intended for drug diversion, or who have to say no because “some very aberrant behavior is going on”—there’s no telling what kind of reaction they’ll get from the consumer in the pharmacy. “You don’t know what’s going to come out from underneath the overcoat,” Jackson said. “I’ve had to look down the barrel of a gun before. So, I know precisely how that feels;” and

WHEREAS, according to the article on the law enforcement side of prescription drug abuse—there has been a rise in pharmacy crime, such as robberies;” and

WHEREAS, in 2011, there were 689 crimes related to opioids and pharmacies reported to the DEA, and in 2015, that number has increased to 916 (with not all crimes being reported to the DEA); and

WHEREAS, on September 30, 2015, Pharmacists Mutual Insurance Company announced publication of a report, Pharmacy Crime: A Look at Pharmacy Burglary and Robbery in the United States and the Strategies and Tactics Needed to Manage the Problem (<https://apps.phmic.com/RMNLFlipbook/PharmacyCrime2015/>); and

WHEREAS, the industry recommends that pharmacies start protecting its window and have an alarm system and strong locks on the doors; to harden the pharmacy by doing things that make it less attractive to the potential criminal (“Before a criminal robs a pharmacy or burglarizes it, they have been in that pharmacy multiple times. They’re checking to look at the security. If they feel it’s going to be a difficult target, they will move down the street and find another pharmacy to go after.”), and to pay attention to what is happening in the area that the pharmacy is in (“We find that a lot of the techniques we see the criminals follow are very regional. Some parts of the country, they pry back doors open. Other parts, they cut a hole through the ceiling. In Indiana, the big thing is ‘I’m just going to take a gun and walk into the store.’ So pay attention to what is going on, and then build your defenses around that.”); and

WHEREAS, based upon the foregoing, it is vital to protect the residents and visitors of the City of Miami Beach from the opioid epidemic and to ensure that the City’s pharmacists and residents are safe from crime caused by the epidemic – crime which has affected the entire nation; 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 114 of the Land Development Regulations, entitled “General Provisions,” is hereby amended as follows:

**CHAPTER 114
GENERAL PROVISIONS**

Sec. 114-1. Definitions.

The following words, terms and phrases when used in this subpart B, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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Cannabis or marijuana means 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, *cannabis* derivative product, mixture or preparation of the plant of its seeds or resin.

Cannabis delivery devices means a device utilized for the consumption of prescribed medical cannabis or low-THC *cannabis*. Such devices can only be sold to a qualified patient

that has been prescribed medical *cannabis* or low-THC *cannabis* or someone authorized by the qualified patient or the qualified patient's legal representative authorized to receive the device on the qualified patient's behalf.

Cannabis derivative product means any form of medical cannabis or low-THC cannabis that is suitable for routes of administration.

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Convenience store means a retail store with direct access from the street or sidewalk containing less than 6,000 square feet of floor area that is designed and stocked to sell primarily food (packaged and/or prepared), beverages, newspapers, magazines, and other household supplies to customers who generally purchase a relatively few number of items (in contrast to a "grocery store" or "super market"). It is designed to attract and depends upon a large turnover of customers. A store that markets itself as a "pharmacy store" or "pharmacy" in addition to selling the goods described above, but that does not provide pharmacy services, including the dispensing of medicinal drugs by a pharmacist shall be considered a convenience store and not a pharmacy or pharmacy store.

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Dispensing organization means an organization approved by the state to cultivate, process, transport, and dispense low-THC *cannabis* or medical *cannabis*.

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Low-tetrahydrocannabinol cannabis or *low-THC cannabis* means a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, cannabis derivative product, mixture, or preparation of such plant or its seed or resin that is dispensed only from a dispensing organization approved by the Florida Department of Health pursuant to Section 381.986, Florida Statutes.

Low-THC cannabis treatment center means an establishment where low-THC *cannabis* is dispensed at retail.

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May means permissive, not required.

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Medical cannabis or *medical marijuana* means 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, sale, cannabis derivative product, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a dispensing organization for medical use by an eligible patient.

Medical cannabis treatment center or *dispensing facility* means an establishment where medical *cannabis*, low-THC *cannabis*, as well as *cannabis* delivery devices, is dispensed at retail that is operated by a dispensing organization.

Medical use of cannabis means administration of the ordered amount of low-THC cannabis or medical cannabis. The term does not include the:

- (a) Possession, use, or administration of low-THC cannabis or medical cannabis by or for smoking; or
- (b) Transfer of low-THC cannabis or medical cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative authorized to receive it on the qualified patient's behalf.
- (c) Use or administration of low-THC cannabis or medical cannabis:
 - i. On any form of public transportation.
 - ii. In any public place.
 - iii. In a qualified patient's place of employment, if restricted by their employer.
 - iv. In a correctional institution.
 - v. On the grounds of any child care facility, preschool, or school.
 - vi. On or in any vehicle, aircraft, or motorboat.

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Must means a mandatory and not merely directory action or requirement. The term is interchangeable with the word “shall.”

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Pharmacy store means a pharmacy as defined in Section 465.003, Florida Statutes.

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Shall means a mandatory and not merely directory action or requirement. The term is used interchangeable with the word “must.”

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State qualified dispensing organization means a qualified dispensing organization or medical marijuana treatment center or other organization qualified to cultivate, process, transport, and dispense low-THC cannabis or medical cannabis by the Florida Department of Health, or successor agency, pursuant to Chapter 381, Florida Statutes.

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Vapor lounge shall mean a commercial establishment at which individuals consume cannabis, medical cannabis, or low-THC cannabis.

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SECTION 2. Chapter 118 of the Land Development Regulations, entitled “Administration and Review Procedures,” Article IX, entitled “Nonconformances” is hereby amended as follows:

**CHAPTER 118
ADMINISTRATION AND REVIEW PROCEDURES**

ARTICLE IX. - NONCONFORMANCES

Sec. 118-393. – Nonconforming use of buildings.

- (a) Except as otherwise provided in these land development regulations, the lawful use of a building existing at the effective date of these land development regulations may be continued, although such use does not conform to the provisions hereof. Whenever a nonconforming use has been changed to a conforming use, the former nonconforming use shall not be permitted at a later date. A nonconforming use shall not be permitted to change to any use other than one permitted in the zoning district in which the use is located.
- (b) A nonconforming use of a building shall not be permitted to extend throughout other parts of that building.
- (c) For specific regulations for nonconforming uses related to medical cannabis treatment centers and pharmacy stores, see Section 142-1502(d).

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Section 3. Chapter 130 of the Land Development Regulations, entitled “Off-Street Parking,” is hereby amended as follows:

**Chapter 130
Off-Street Parking**

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Sec. 130-32. - Off-street parking requirements for parking district no. 1.

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(32) ~~Reserved~~ Medical *cannabis* treatment center, pharmacy store: 1 space per ~~250~~ 300 square feet of floor area.

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Sec. 130-33. - Off-street parking requirements for parking districts nos. 2, 3, 4, 5, 6, and 7.

Except as otherwise provided in these land development regulations, when any building or structure is erected or altered in parking districts nos. 2, 3, 4 and 5 accessory off-street parking spaces shall be provided for the building, structure or additional floor area as follows.

There shall be no off-street parking requirement for uses in this parking district except for those listed below:

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(4A) Medical *cannabis* treatment center, pharmacy store: 1 space per 250 300 square feet of floor area.

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Sec. 130-131. - Generally.

A fee in lieu of providing parking may be paid to the city in lieu of providing required parking on- site, or within 1,200 feet of the site in the architectural district or otherwise within 500 feet of the site, only in the following instances, except that parking requirements for accessory commercial uses in newly constructed buildings within the Collins Waterfront Historic District in an area in the RM-2 zoning district that is bounded by 41st Street on the south and 44th Street on the north, and for medical *cannabis* treatment centers and pharmacy stores shall be satisfied by providing the required parking spaces, and may not be satisfied by paying a fee in lieu of providing parking.

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Section 4. Chapter 142 of the Land Development Regulations, entitled “District Regulations,” is hereby amended as follows:

**CHAPTER 142
DISTRICT REGULATIONS**

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**DIVISION 10
CONTROLLED SUBSTANCES REGULATIONS AND USE**

Sec. 142-1500 – Intent.

Section 381.986, Florida Statutes, and Florida Administrative Code Chapter 64-4 authorize a limited number of dispensing organizations throughout the State of Florida to cultivate, process, and dispense low-tetrahydrocannabinol (low-THC) *cannabis* and medical *cannabis* for use by qualified patients suffering from cancer, terminal conditions, and certain chronic conditions as defined in 381.986(2), Florida Statutes. The state qualified dispensing organizations must be approved by the Florida Department of Health and, once approved, are subject to state regulation and oversight and zoning approval through the City’s procedures.

The intent of this division is to establish the criteria for the location and permitting of establishments that dispense low-THC *cannabis*, ~~or~~ medical *cannabis*, and medicinal drugs in accordance with Section 381.986, Florida Statutes, and Florida Administrative Code Chapter 64-4.

The intent is also to regulate pharmacy stores to better protect the industry, the residents and visitors to the City of Miami Beach from the national emergency, and the State of Florida

declared public health emergency due to the opioid epidemic. In 2015, heroin, fentanyl and oxycodone were directly responsible for the deaths of 3,896 Floridians, according to the most recent Florida Department of Law Enforcement statistics, which is about 12 percent of all the 33,000 people nationwide who died that year of opioid overdoses. Last year in South Florida, the morgues in Palm Beach County were strained to capacity by 525 fatal opioid overdoses, the Sun Sentinel newspaper reported in March 2017. The deadly cocktail of heroin mixed with fentanyl or carfentanil figured in 220 deaths in Miami-Dade County last year, the paper reported. And 90 percent of the fatal drug overdoses in Broward County involved heroin, fentanyl or other opioids. On November 1, 2015, the American Pharmacists Association published the article "Pharmacies in the crosshairs: Prescription drug crime and law enforcement," which advises that the industry is in the cross-hairs. And according to the article on the law enforcement side of prescription drug abuse—there has been a rise in pharmacy crime, such as robberies. On September 30, 2015, Pharmacists Mutual Insurance Company announced publication of a report, Pharmacy Crime: A Look at Pharmacy Burglary and Robbery in the United States and the Strategies and Tactics Needed to Manage the Problem (<https://apps.phmic.com/RMNLFlipbook/PharmacyCrime2015/>) and recommend enhanced safety measure to protect from the opioid crisis and the City of Miami Beach desires to implement regulations to protect the residents, visitors and pharmacists in the City.

Sec. 142-1501 – Applicability.

This division shall *only* be construed to allow the dispensing of low-THC *cannabis* or medical *cannabis* by a state qualified dispensing organization for medical use of *cannabis*. The sale of *cannabis* or marijuana is prohibited the City of Miami Beach except in a medical *cannabis* treatment center approved in accordance with this Division.

Pharmacy stores shall be required to comply with the provisions of this division to ensure the safety and security of the community, residents and the employees of a pharmacy store from crimes associated with the opioid epidemic.

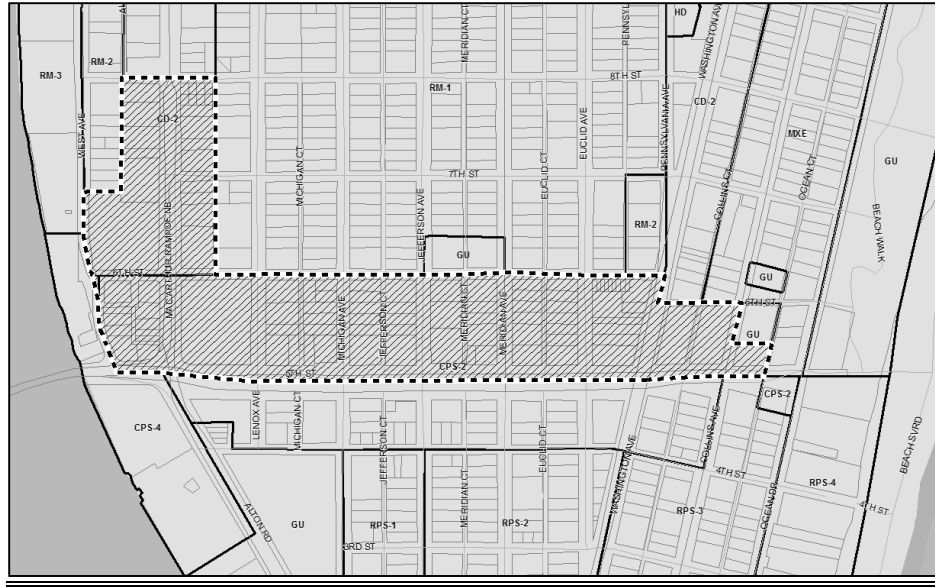
Sec. 142-1502. – Zoning districts allowing medical cannabis treatment centers, pharmacy stores, and related uses, prohibited locations, and nonconforming uses.

Any term not specifically defined in these land development regulations shall maintain the meaning provided for in chapter 381, Florida Statutes, Medical *cannabis* treatment centers and pharmacy stores shall comply with the following regulations:

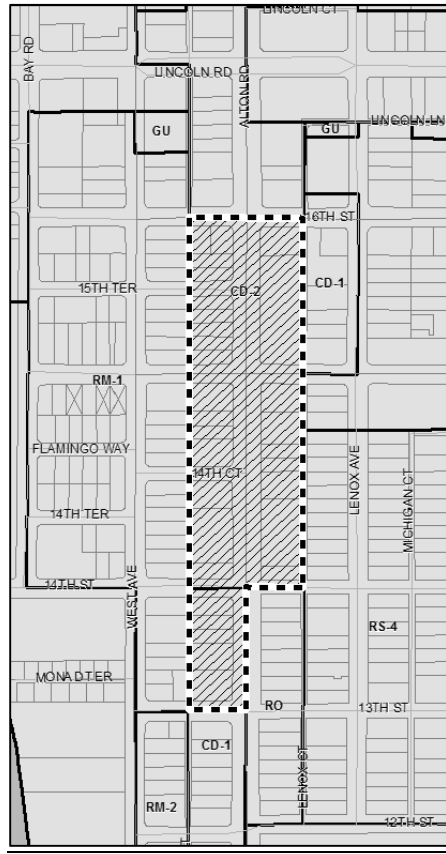
(a) *Permitted areas.* Only in accordance with the requirements of this division and the applicable zoning district, medical *cannabis* treatment centers and pharmacy stores shall be permitted only in the areas listed below:

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

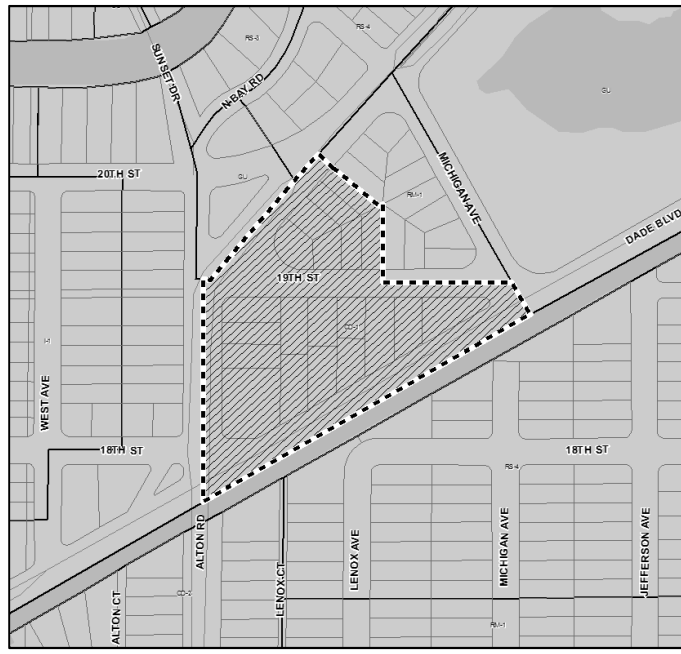
(A.) Lots zoned CD-2, generally located along Alton Road between 6th Street and 8th Street; lots zoned C-PS2 located north of 5th Street between Ocean Court on the east and West Avenue on the west; as depicted in the map below:



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



(3) Area three (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 four (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 69th Street on south, as depicted in the map below:



(b) Prohibited 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 school, or secondary school, as provided in section 1006.06, Florida Statutes.

(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) 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 (6) 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 applying for a new conditional use approval and meeting the requirements of this division as if it were a new establishment.

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

(a) Conditional use approval from the planning board is required prior to applying for a certificate of use, license, business tax receipt, building permit or other permit for a medical *cannabis* treatment center or pharmacy store. In addition to the standard conditional use criteria set forth in section 118-192 of these land development regulations, the planning board shall consider the criteria in section 142-1504 prior to making its determination on the conditional use permit.

(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 is prohibited.

(d) The facility shall comply with the following regulations related to signage, advertisement, and display of merchandise:

(1) Signage visible from public rights-of-way and adjacent establishments and parcels shall be limited to the name of the establishment and signs necessary to comply with the requirements of the State of Florida, Miami-Dade County, and the City of Miami Beach. Depictions of *cannabis*, *cannabis* products and pharmaceutical products shall not be visible from public rights-of-way and adjacent establishments and parcels.

(2) No advertisement for the establishment, *cannabis*, *cannabis* derivative product, *cannabis* delivery devices, *cannabis* related products, or *pharmaceutical* products is permitted on signs mounted on vehicles, temporary signs, hand-held or other portable signs, handbills, leaflets or other flyers directly handed to any person in a public place, left upon a motor vehicle or posted upon any public or private property without consent of the property owner. This prohibition shall not apply to (1) any advertisement contained within a newspaper, magazine or other periodical of general circulation within the City or on the Internet; and (2) advertising which is purely incidental to sponsorship of a charitable event not geared to or for the benefit of children or youth.

(3) Under no circumstances shall activities related to sales of *cannabis*, *cannabis* derivatives, *cannabis* delivery devices, *cannabis*-infused products and *pharmaceutical* products be visible from the exterior of the business.

(e) All *cannabis* treatment center or pharmacy store establishments shall be divided within a building from floor to ceiling. Unless higher performance is required by applicable law, there must be a minimum of a one-hour fire separation between a medical *cannabis* treatment center or pharmacy store and any adjacent business.

(f) Each *Individual cannabis* treatment center or pharmacy store establishment shall not exceed 7,500 square feet, exclusive of required parking. This limitation shall not apply to establishments located in area (2) two.

(g) A business tax receipt (BTR) shall be obtained for the low-THC, medical *cannabis* dispensing facility, or pharmacy store on an annual basis. The application for the BTR shall be made on a form prescribed by the City.

(1) The City shall have the right to periodically inspect the premises of any medical *cannabis* treatment center, or pharmacy store at any reasonable time to ensure that the facility has a current and valid BTR, and to ensure compliance with the terms and conditions under which it was issued. Violators will be subject to all appropriate penalties, including revocation of the BTR.

(2) Where a civil violation notice relating to this division has been issued and appealed by the alleged violator, the BTR shall not be renewed where the appeal has been pending for 180 days or more and the delay is attributable to the alleged violator. Where, determinations of guilt for three (3) or more violations have been made, or the Special Master has determined that a nuisance exists at the medical cannabis treatment center facility or pharmacy store, the BTR shall be revoked immediately, and a new application may not be made within a period of 12 months.

(h) No certificate of use, business tax receipt, or building or other permit shall be issued for a medical *cannabis* treatment center facility or pharmacy store where the proposed place of business does not conform to the requirements of this division.

(i) Neither use shall be allowed a drive-thru component.

Sec. 142-1504. Specific additional criteria.

In addition to the conditional use review criteria in Section 118-192, the planning board Planning staff shall consider the criteria below when reviewing the application making its determination. Only state qualified dispensing organizations entitled to a medical cannabis treatment center (as authorized under chapter 381, Florida Statutes) business tax receipt, or a dispensing pharmacy store (as authorized under Chapter 465) business tax receipt, Florida Statutes, pursuant to the regulations in section 142-1505, of these Land Development Regulations, shall be eligible to submit an application for a pharmacy or medical marijuana treatment center a conditional use permit.

A general security plan shall be provided. The plan must sufficiently demonstrate enhanced security measures in excess of the minimum requirements set forth in State regulations. The enhanced security measures include, but are not limited to, steel security doors, improved video surveillance system capability, advanced alarm systems, improved fire safety systems, natural disaster security, packaging of dispensed products, procedures for waste removal, and other measures, such as the use of hurricane impact windows. If the facility is located below the base

flood elevation plus City of Miami Beach Freeboard, the plan should incorporate flood proofing measures to ensure the continued functioning of security devices in the event of a natural disaster and sea level rise. The plan must be reviewed and approved by the City of Miami Beach Police Department before it can be considered by the Planning staff-Board. Both uses should protect its window and have an alarm system and strong locks on the doors; to harden the establishment by doing things that make it less attractive to the potential criminal. There should be physical barrier to protect the pharmacist or medical marijuana treatment center employee from the general public and ensure that the narcotics or medical cannabis is not accessible to a person under the influence of opioids or other narcotics. A glass barrier wall shall be installed around the area holding the prescription pharmaceuticals or the medical cannabis and the general public.

(a) A business plan shall be provided. The plan is to demonstrate the applicant's ability to successfully operate in a highly regulated industry over an extended period of time. The plan may include, but is not limited to the following: scope of work for the planning and development; scope of work for capital improvements; an estimate of first-year revenues; an estimate of first-year operating expenses and evidence that the applicant will have the resources necessary to pay for those expenses; and a description of the applicant's history of compliance in a highly regulated industry. The plan must be reviewed and approved by the City of Miami Beach Police Department before it can be considered by planning staff.

(b) An operating plan shall be provided. The operating plan is to enumerate the specific means through which the applicant intends to achieve the business goals and comply with the city and state regulatory requirements. The operating plans may include, but is not limited to the following: staffing schedules to ensure adequate coverage and experience during all business hours; employee training programs for security, product knowledge and safety; proactive consumer education and community outreach practices; an operations manual demonstrating compliance with state and city retail marijuana laws or pharmaceutical drug laws, as applicable; and disposal of waste. The plan must be reviewed and approved by the City of Miami Beach Police Department before it can be considered by planning staff.

(c) An odor management plan shall be provided. It shall be required that the odor of marijuana must not be perceptible at the exterior of the building or at any adjoining use of the property. Facilities shall adopt best management practices with regard to implementing state-of-the-art technologies in mitigating odor, such as air scrubbers, charcoal filtration systems, and sealed walls. The plan must include maintenance of systems, including preventing the buildup of mold.

Sec. 142-1505. Penalties, Enforcement and Appeals.

(a) Penalties and enforcement.

(1) The city manager has the authority to suspend or revoke a business tax receipt following notice and hearing, or to summarily suspend a business tax receipt pending a hearing pursuant to section 102-385 of the City Code.

(2) A violation of this division 10 shall be subject to the following fines:

A. If the violation is the first offense, a person or business shall receive a civil fine of \$5,000.00;

B. If the violation is the second violation within the preceding six (6) months, a person or business shall receive a civil fine of \$10,000.00;

C. If the violation is the third violation within the preceding six (6) months, a person or business shall receive a civil fine of \$20,000.00; and

D. If the violation is the fourth or subsequent violation within the preceding six (6) months, a person or business shall receive a civil fine of \$30,000.00 and the business tax receipt shall be revoked.

(3) Enforcement. The code compliance department shall enforce this division 10. This shall not preclude other law enforcement agencies from any action to assure compliance with this division 10 and all applicable laws. If a violation of this division 10 is observed, the enforcement officer will be authorized to issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

(4) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.

(A.) A violator who has been served with a notice of violation must elect to either:

i. pay the civil fine in the manner indicated on the notice of violation;
or

ii. request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.

(B.) The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this City Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.

(C.) If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the police officer or code compliance officer. The failure of the named violator to appeal the decision of the police officer or code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.

(D.) A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the ~~sixty-first~~ (61st) day following the recording of any such lien that remains unpaid, the city may foreclose or otherwise execute upon the lien.

(E.) Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

(F.) The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ~~ten~~ (10) days of the service of the notice of violation.

(G.) The special master shall not have discretion to alter the penalties prescribed in subsection (a)(2).

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Section 5. Chapter 102, "Taxation," Article V, "Local Business Tax" at Section 102-379 "Schedule of taxes, effective October 1, 2016," is hereby amended as to a certain business tax receipt, as follows:

**CHAPTER 102
TAXATION
ARTICLE V -
LOCAL BUSINESS TAX**

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Sec. 102-379. - Schedule of taxes, effective October 1, 2016.

(a) Business taxes for the following businesses, occupations or professions are hereby levied and imposed as follows:

(b) Effective on October 1, 2005 (fiscal year 2005-2006), the following business taxes will be increased by five percent rounded to the nearest dollar, and further increased by five percent every other year on October 1, until such taxes/fees have caught up with the cumulative percentage change in the Consumer Price Index (CPI) measure between June 1994 through March 2003, which is 24.5 percent; further providing for another change equal to the cumulative percentage change in the CPI from March 2003 to September 2011.

(c) As provided in Resolution No. 2003-25299, a review of the annual permit fee/business tax will be required whenever the change in the Consumer Price Index (CPI), between the latest CPI and the date of the CPI used for the last tax/fee adjustment, is five percent or greater.

(d) Effective on October 1, 2009 (fiscal year 2009—2010), business tax receipt applications shall be charged a \$45.00 fee for the processing of new applications.

Occupation Code	Business Tax Category	Amount
	* * *	
	M	
	Machine and games, mechanical photographs, consoles, jukeboxes, picture-taking, record-making, or other similar machines:	
95011800	Distributors	845.00
95011802	Each machine	106.00
95004705	Mail order business; bond required	233.00
95011600	Manufacturers, all products; to include any assembling or processing operations otherwise mentioned in this section	310.00
95011700	Manufacturer representative	233.00
95240008	Marine appraiser, surveyor, testing	233.00
95011999	Massage clinic; state license required	233.00
95012000	Massage therapist; state license required	49.00
	<u>Medical Cannabis/Marijuana</u>	*
	<u>Merchants, all persons engaged in the business of selling medical cannabis, as defined in Chapter 6, Article III, or Chapter 142, Division 10, of any kind, sort or description, except as otherwise specifically provided by this section, shall be required to pay a merchant's business tax,</u>	*

	determined as follows; based on cost of inventory:	
<u>95012100</u>	1. <u>First \$1,000.00 of value or less</u>	<u>274.00</u>
<u>95012100</u>	2. <u>Each additional \$1,000.00—\$99,999.00</u>	<u>27.00</u>
<u>95012100</u>	3. <u>From \$100,000.00—\$199,000.00</u>	<u>2,815.00</u>
<u>95012100</u>	4. <u>From \$200,000.00—\$499,000.00</u>	<u>4,221.00</u>
<u>95012100</u>	5. <u>From \$500,000.00 and over</u>	<u>5,629.00</u>
05012200	Messenger service (exclusive of telegrams)	128.00
95000625	Model, talent agency; state license required	233.00
95012400	Money broker	233.00
	* * *	
95004850	Pharmacy store; state license required.	353.00
<u>95004850</u>	1. <u>First \$1,000 or value or less</u>	<u>274.00</u>
<u>95004850</u>	2. <u>Each additional \$1,000-\$99,999.00</u>	<u>27.00</u>
<u>95004850</u>	3. <u>From \$100,00.00 - \$199,000.00</u>	<u>2,815.00</u>
<u>95004850</u>	4. <u>From \$200,000.00-\$499,000.00</u>	<u>4,221.00</u>
<u>95004850</u>	5. <u>From \$500,000 and over</u>	<u>5,629.00</u>
95015000	Phlebotomist; state license required	269.00

* * *

SECTION 4. Repealer.

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

SECTION 5. 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 6. Severability.

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

SECTION 7. Effective Date.

This Ordinance shall take effect ten days following adoption.

SECTION 8. Planning Board review.

Planning Board shall review this Ordinance and its effectiveness 12 months after enactment.

PASSED AND ADOPTED this ____ day of _____, 2017.

ATTEST:

Philip Levine, Mayor

Rafael E. Granado, City Clerk

First Reading: July 26, 2017

Second Reading: September 13, 2017

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