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 DISPENSARY, DERIVATE PRODUCT, LOW-THC CANNABIS, AND RELATED DEFINITIONS; AMENDING CHAPTER 130, ENTITLED "OFF-STREET PARKING," ESTABLISHING MINIMUM PARKING REQUIREMENTS FOR "MEDICAL CANNABIS DISPENSARIES" 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 REGULATIONS AND USE," AND AMENDING SECTIONS 142-1501 TO 142-1504, RELATING TO APPLICABILITY, DEFINING MEDICAL USE OF CANNABIS, DESIGNATING AREAS FOR THE USE, ZONING REQUIREMENTS RELATING TO THE USE, AND PROHIBITING CULTIVATION, PRODUCTION OR POSSESSION OF CANNABIS PLANTS; 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, pursuant to Section 381.986(8) of the Florida Statutes, a municipality may determine by ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with state law for dispensing facilities of dispensing organizations located within its municipal boundaries; 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. Allows caregivers to assist patients' medical use of marijuana. 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. Applies only to Florida law. Does not immunize violations of federal law or any non-medical use, possession or production of marijuana;" and

WHEREAS, the 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 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 114 of the City Code, 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:

* * *

Cannabis or *marijuana* means all parts of any plat 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.

* * *

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

* * *

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 dispensary means an establishment where low-THC *cannabis* is dispensed at retail.

* * *

May means permissive, not required.

* * *

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 dispensary 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.

* * *

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

* * *

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

* * *

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

Section 2. Chapter 130 of the City Code, entitled "Off-Street Parking," is hereby amended as follows:

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

* * *

(32) ~~Reserved~~ Medical *cannabis* dispensary: 1 space per 250 square feet of floor area.

* * *

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:

* * *

(4A) Medical *cannabis* dispensary: 1 space per 250 square feet of floor area.

* * *

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* dispensaries shall be satisfied by providing the required parking spaces, and may not be satisfied by paying a fee in lieu of providing parking:

Section 3. Chapter 142 of the City Code, entitled "District Regulations," is hereby amended as follows:

DIVISION 10
CANNABIS 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. The dispensing organizations must be approved by the Florida Department of Health and, once approved, are subject to state regulation and oversight.

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* in accordance with Section 381.986, Florida Statutes, and Florida Administrative Code Chapter 64-4.

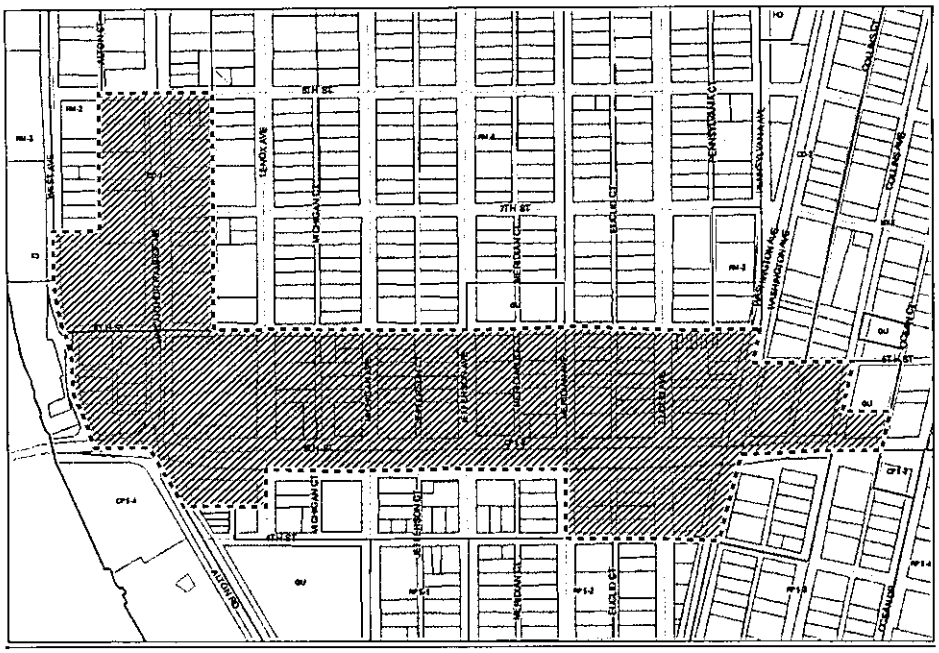
Sec. 142-1501 – Applicability.
This division shall only be construed to allow the dispensing of low-THC *cannabis* or medical *cannabis* by a state-approved dispensing organization for medical use of *cannabis*. The sale of *cannabis* or marijuana is prohibited the City of Miami Beach except in a medical *cannabis* dispensary approved in accordance with this Division.

Sec. 142-1502. - Requirements for medical cannabis dispensing facilities.
Medical *cannabis* dispensaries shall comply with the following regulations:

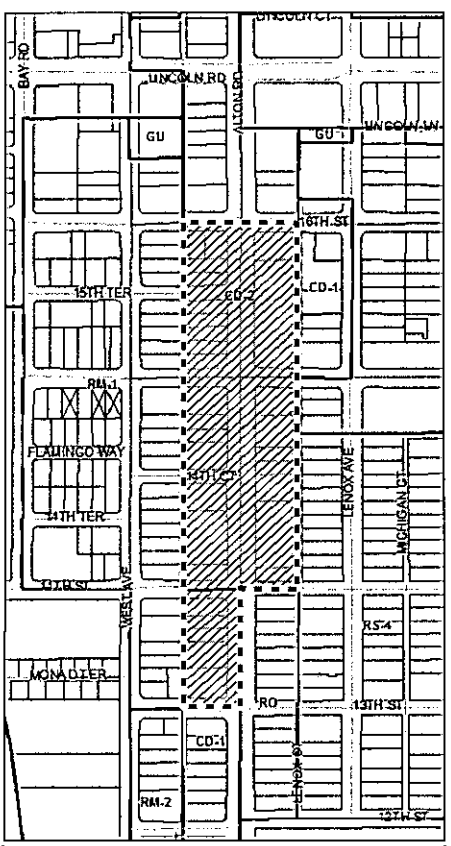
(a) Only in accordance with the requirements of this division and the applicable zoning district, one (1) medical *cannabis* dispensary shall be permitted in each of the areas listed below:

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

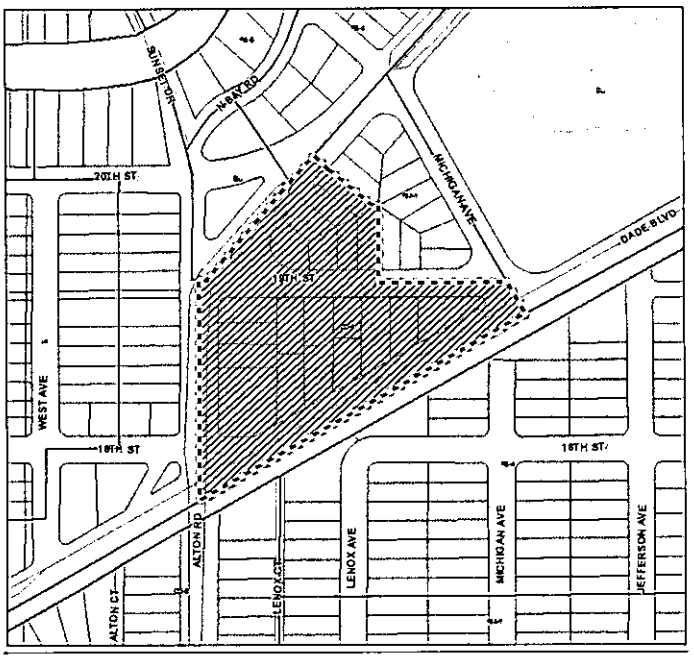
a. Lots zoned CD-2, generally located along Alton Road between 6th Street and 8th Street; lots zoned C-PS2 located north of 5th Street between Ocean Court on the east and West Avenue on the west; and lots zoned C-PS2 between 5th Street on the north and 4th Street on the south between Washington Avenue on the east and Meridian Avenue on the west; and lots zoned C-PS2 fronting the south side of 5th Street between Lenox Avenue on the east and Alton Road on the west; as depicted in the map below:



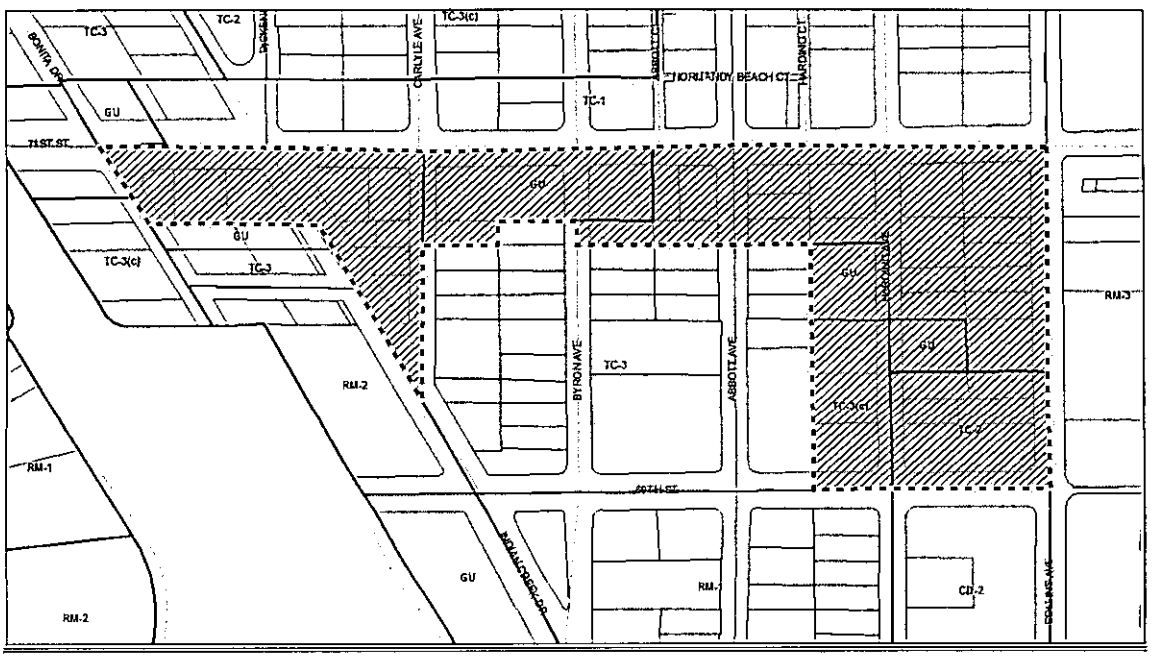
b. Lots zoned CD-1 and CD-2 fronting Alton Road between 13th Street and 16th Street; as depicted in the map below:



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:

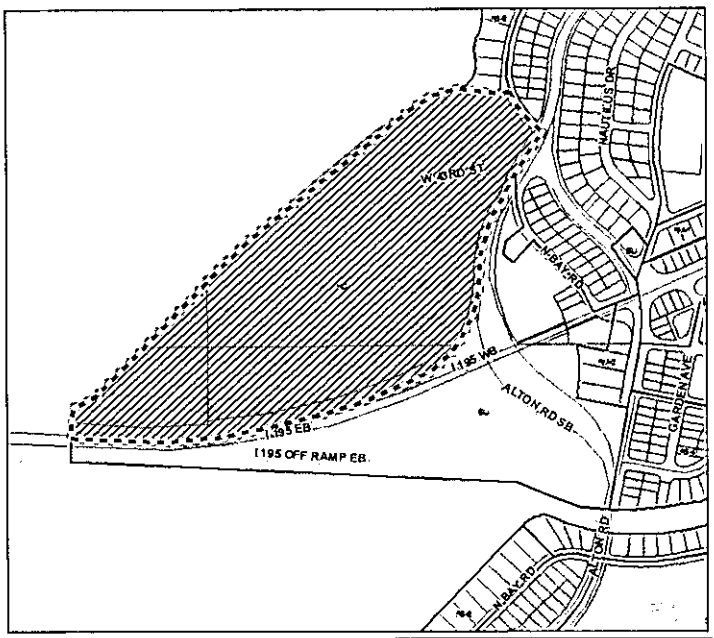


(2) Area two (2) shall include lots zoned TC-1 south of 71st Street and lots zoned TC-2 and TC-3(C), generally located between Collins Avenue on the east, 71st Street on the north, the west lot line of lots fronting Harding Avenue on the west, and 69th Street on south, as depicted in the map below:



(3) Area three (3) shall include the following subareas:

a. Lots zoned HD located north of the Julia Tuttle Causeway / Interstate 195, as depicted in the map below:



b. Lots zoned CD-3 and fronting 41st Street between Sheridan Avenue and the Indian Creek Waterway, as depicted in the map below:



(b) 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* dispensary. In addition to the standard conditional use criteria set forth in section 118-192 of this code, the Planning Board shall consider the criteria in section 142-1504 prior to making its determination on the Conditional Use Permit.

(c) Dispensing of, payment for, and receipt of low-THC or medical *cannabis* 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 or medical *cannabis* to an eligible patient, as permitted by state law or rule.

(d) Medical c*annabis* dispensaries shall only be allowed to operate between the hours of 7:00 a.m. and 9:00 p.m. daily.

(e) No other uses are allowed within the dispensing facility. The sale of any products other than *medical cannabis*, low-THC *cannabis*, *cannabis* derivative products, or *cannabis* delivery devises is prohibited within the facility.

(f) Entertainment is prohibited within a medical *cannabis* dispensary.

(g) Required parking shall be located on the same parcel or unified development site as the medical *cannabis* dispensary. Participation in the fee-in-lieu of parking program is prohibited.

(h) 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* and *cannabis* 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 or *cannabis* related 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) No merchandise being dispensed or sold within the dispensing facility may be visible within areas of the facility accessible to the public unless it is being shown by an employee of the facility to a client.

(4) Under no circumstances shall activities related to the cultivation, production, processing, distribution, storage, display, or sales of *cannabis*, *cannabis* derivatives, *cannabis* delivery devises, and cannabis-infused products be visible from the exterior of the business.

(i) Each establishment shall have separate operations, ventilation, security, and fire suppression systems, and separate access from a public area.

(j) Each establishment 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* dispensary and any adjacent business.

(k) Each establishment shall not exceed 7,500 square feet, exclusive of required parking.

(l) Building permit plans shall be consistent with the security plan required by section 6-54 (g) of the City Code.

(m) Consumption of low-THC or medical *cannabis* or alcoholic beverages is prohibited onsite at the dispensing facility, including, but not limited to, in the parking areas, sidewalks, or rights-of-way surrounding the dispensing facility; provided, however, this provision shall not be construed to prohibit consumption associated with a dispensing facility employee, trained by a medical professional such as a doctor, nurse, pharmacist, or medical or physician's assistant, instructing an eligible patient on the mechanism of consumption of low-THC or medical *cannabis*, as permitted by state law or rule.

(n) A certificate of use shall be obtained for the low-THC or medical *cannabis* dispensing facility on an annual basis. The application for the certificate of use shall be made on a form prescribed by the City:

(1) The medical *cannabis* dispensing facility must be established on the premises by a state-approved dispensing organization within 180 days of the date the certificate of use is issued; after 180 days, unless the time period is extended by the Director for good cause shown, the certificate of use shall be null and void and the applicant must re-apply.

(2) The City shall have the right to periodically inspect the premises of the dispensing facility at any reasonable time to ensure that the facility has a current and valid certificate of use, 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 certificate of use.

(3) Where, a civil violation notice relating to the dispensing of low-THC or medical *cannabis* has been issued and appealed by the alleged violator, the certificate of use 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 or more violations have been made, or the Special Master has determined that a nuisance exists at the dispensing facility, the certificate of use shall be revoked immediately, and a new application may not be made within a period of 12 months.

(o) Any use, created and established under this division in a legal manner, which may thereafter become legally nonconforming, may continue until there is an abandonment of said use. Once a legally nonconforming 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 three (3) 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.

(p) No certificate of use, business tax receipt, license, or building or other permit shall be issued for a medical *cannabis* dispensing facility where the proposed place of business does not conform to the requirements of this subsection.

(q) Any medical *cannabis* dispensary shall be prohibited from obtaining a special events permit.

Sec. 142-1503. Prohibited *cannabis*-related uses.

The following *cannabis* related uses and activities shall be prohibited anywhere within the City:

(a) Cultivation, production or possession of marijuana plants or *cannabis* plants.

(b) Sale of *cannabis* from any motor vehicle.

(c) Medical *cannabis* product and *cannabis* derivative product manufacturing.

(d) Medical *cannabis* testing.

(e) Storage of *cannabis* or *cannabis*-related products off the site of the medical *cannabis* dispensary.

(f) Marijuana membership clubs.

(g) Vapor lounges.

Sec. 142-1504. Conditional review criteria.

In addition to the conditional use review criteria in Section 118-192, the Planning Board shall consider the criteria below when making its determination. Prior to applying for the conditional use permit, all owners shall be required to undergo a City of Miami Beach background check pursuant to section 6-53 of the City Code:

(a) 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 Board.

(b) 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.

(c) 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; and disposal of waste.

(d) 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 marijuana odor, such as air scrubbers, charcoal filtration systems, and sealed walls. The plan must include maintenance of systems, including preventing the buildup of mold.

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.

PASSED and **ADOPTED** this _____ day of _____, 2017.

Philip Levine
Mayor

ATTEST:

Rafael E. Granado
City Clerk

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

City Attorney — Date: 4-5-17

First Reading: _____, 2017
Second Reading: _____, 2017

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

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