

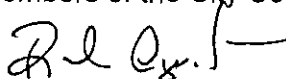
# MIAMI BEACH

1700 Convention Center Drive, Miami Beach, Florida 33139

## COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Raul Aguila, City Attorney



DATE: May 17, 2017

**SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CITY CODE, ENTITLED "ALCOHOLIC BEVERAGES," TO MODIFY THE TITLE TO REFLECT "ALCOHOLIC BEVERAGES AND MEDICAL CANNABIS/MARIJUANA;" TO CREATE ARTICLE III, ENTITLED "MEDICAL CANNABIS" TO CREATE A LICENSURE PROCEDURE FOR MEDICAL CANNABIS DISPENSARIES; PROVIDING FOR APPLICATIONS, REVIEW PROCESS, APPEALS, ENFORCEMENT, PENALTIES, CRITERIA FOR INSPECTIONS, GENERAL SECURITY AND VIDEO REQUIREMENTS, AND OTHER GENERAL LICENSURE REQUIREMENTS; AMENDING CHAPTER 102, "TAXATION," ARTICLE V, "LOCAL BUSINESS TAX" AT SECTION 102-379, "SCHEDULE OF TAXES, EFFECTIVE OCTOBER 1, 2016;" PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

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### Background:

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. In 2016, the Florida Legislature amended Section 381.986 of the Florida Statutes to include medical cannabis, revised 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, revised the Florida Department of Health's (the "Department") authority and responsibilities, and provided for penalties.

Thereafter, on November 8, 2016, a supermajority of voters in the State of Florida approved Amendment No. 2, creating Article X, Section 29 of the Florida Constitution, recognizing the public policy that the medical use of marijuana (cannabis) by a qualifying patient or caregiver in compliance with Section 29 of the Constitution is not subject to criminal or civil liability or sanctions under Florida law. Section 29 also recognizes that a physician shall not be subject to

criminal or civil liability or sanctions under Florida law solely for issuing a physician certification with reasonable care to a person diagnosed with a debilitating medical condition in compliance with the Constitutional Amendment; and actions and conduct by a Medical Marijuana Treatment Center registered with the Department, or its agents or employees, and in compliance with Section 29 and Department regulations, shall not be subject to criminal or civil liability or sanctions under Florida law.

Please note, under federal law, the consumption, sale, distribution, or use of cannabis/marijuana (whether for medical purposes or for recreational purposes) is still considered a criminal act. Because of the foregoing, federally insured banks will not allow the deposit of proceeds from a cannabis dispensary into their bank, as the bank could be charged with conspiracy in assisting with a criminal enterprise. Moreover, for the same reason, credit card companies will not allow for the purchase of medical cannabis/marijuana through the use of credit card machines or debit machines. As such, the cannabis dispensary business is a cash business, and requires additional security measures, to protect from assaults, robbery, and theft, amongst other criminal activities.

The Florida Legislature is currently contemplating enacting House Bill 1397 and the companion Senate Bill 406, to regulate Medical Marijuana Treatment Centers, which the city identifies as "cannabis dispensaries." The two bills contemplate between 7 and 10 "Medical Marijuana Treatment Center" (MMTC) providers. The first six MMTC providers are existing "qualified dispensing organizations" recognized by the state under the 2014 and 2016 legislation (codified at chapter 381, Florida Statutes), as those organizations approved by the state to cultivate, process, transport, and dispense low-THC cannabis or medical cannabis. The next MMTC provider is from the class action group that sued the state to become a qualified dispensing organization. The remaining MMTC licenses would be eligible for release after a certain number of patients are signed up (the House Bill requires an additional MMTC after 100,000 patients in registry; the Senate Bill requires an additional MMTC after 75,000 patients in registry. The Florida Legislature has yet to adopt a final bill.

Due to all the proposed changes in the law, the City Commission adopted a moratorium through March 18, 2017. This moratorium has expired. In the interim, however, the Planning Board issued favorable recommendation of the medical cannabis zoning ordinance on February 28, 2017, which triggered "zoning in progress" through July 28, 2017 for the zoning ordinance. As contemplated, no applications may be received until 10 days following final passage of the City's medical cannabis dispensary ordinance.

Attached hereto is the business tax receipt ordinance that would work jointly with the zoning ordinance in the City's regulation of the medical cannabis industry.

**Analysis:**

Utilizing best practices from other states (for example, the systems established in Colorado, California, and Massachusetts, amongst others) the City proposes to establish a comprehensive business tax receipt process. Through this process, and the controls identified in the medical cannabis zoning ordinance, the City shall regulate local cannabis dispensaries as follows:

1. Establish that it is a privilege to have a dispensary, not a right. As such, there are no vested rights to a business tax receipt (BTR). All conditions for a BTR must be complied with at all times.

2. A State MMTC license and City BTR are both required. A state MMTC license requires a \$5,000,000 bond, and vertical integration of the industry (from agriculture growth of the cannabis, manufacture, distribution, and MMTC – retail distribution).
3. Extensive and detailed felony and moral turpitude background checks shall be conducted by the City's Police Department, of all principals, management, and employees. The BTR applicant is responsible for reimbursing the Police Department for its investigative costs.
4. A multistate Administrative Code violation background check shall be conducted by the City's Police Department, of all principals, management and employees. The BTR applicant is responsible for reimbursing the Police Department for its investigative costs.
5. Each applicant must establish a minimum of \$400,000 in liquid assets under control of the entity(ies) named on the Business Tax Receipt. Such assets must be available at the time of application. As federal banking is not an option, the liquid assets would ensure that the business can run properly.
6. Detailed and extensive security plan, including but not limited to security cameras, guards, locks, and procedures.
7. Certain specific design guidelines as identified in the ordinance.
8. Employment guidelines and background check requirements.
9. Precluding the sale of other items in the cannabis dispensary (no paraphernalia, t-shirts, etc.).
10. No window advertising of actual cannabis or authorized cannabis paraphernalia.
11. A BTR is valid for one (1) year, and may be revoked for violations of Chapter 6, or due to inspections by Code Compliance or the Police Department, or for a criminal or administrative violation of Chapter 6 that occurs after the initial BTR is issued.
12. Provide for random inspections of medical cannabis dispensaries.
13. An appeal process to the Special Master.
14. Enforcement [Section 6-62]: (a) 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. (b) the following fine schedule:
  - 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.

15. Delineated prohibitions [Section 60-60]: A retail medical cannabis dispensary is prohibited:

(a) From dispensing, delivering or otherwise transferring marijuana to a person other than a registered qualifying patient or to his or her personal caregiver, or to another dispensary.

(b) From acquiring marijuana except through the cultivation of marijuana by a properly licensed state entity.

(c) From acquiring, possessing, delivering, transferring, transporting, supplying, or dispensing marijuana for any purpose except to assist registered qualifying patients.

(d) From receiving orders for marijuana in any manner other than from a registered qualifying patient or personal caregiver in-person at the dispensary.

(e) From selling any products other than marijuana. No marijuana paraphernalia may be sold on premises.

(f) From allowing the consumption of marijuana on the premises or grounds of the dispensary.

(g) From adulterating the marijuana, including with psychoactive additives or other illicit substances.

(h) From acquiring or selling marijuana plants from the dispensary.

(i) From selling marijuana to anyone under the age of 21.

Finally, the draft Ordinance includes a modification to Chapter 102, "Taxation," Article V, "Local Business Tax" at Section 102-379, "Schedule of taxes, effective October 1, 2016," to reflect the following business tax receipt cost:

102-379(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
	<u>Medical Cannabis/Marijuana</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, determined as follows; based on cost of inventory:	*
95012100	1. First \$1,000.00 of value or less	274.00
95012100	2. Each additional \$1,000.00—\$99,999.00	27.00
95012100	3. From \$100,000.00—\$199,000.00	2,815.00
95012100	4. From \$200,000.00—\$499,000.00	4,221.00
95012100	5. From \$500,000.00 and over	5,629.00

The fee is consistent with other closely monitored and regulated uses in the City.

**Fiscal Impact:**

The proposed Ordinance is not expected to have a negative fiscal impact upon the City.

**Recommendation:**

The Administration recommends that the City Commission adopt the attached Ordinance.