

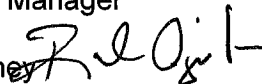
# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,  
www.miamibeachfl.gov

## COMMISSION MEMORANDUM

TO: Mayor Philip Levine and  
Members of the City Commission  
Jimmy L. Morales, City Manager

FROM: Raul Aguila, City Attorney



DATE: June 28, 2017

SUBJECT. **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, PERTAINING TO ESTABLISHING A TEMPORARY MORATORIUM FOR SIX MONTHS FROM THE EFFECTIVE DATE OF THIS ORDINANCE ON THE ACCEPTANCE, REVIEW, APPROVAL OR ISSUANCE OF ANY LAND DEVELOPMENT PERMITS AS THE TERM IS DEFINED IN FLORIDA STATUTES SECTION 163.3164(16), BUSINESS TAX RECEIPTS OR ANY OTHER LICENSE OR PERMIT FOR THE ESTABLISHMENT OR OPERATION OF DISPENSING FACILITIES WITHIN THE CITY ENGAGED IN THE ON-SITE DISTRIBUTION, SALE, DELIVERY OR RETAIL OF LOW-THC CANNABIS, MEDICAL CANNABIS OR CANNABIS DELIVERY DEVICES PURSUANT TO SECTIONS 381.986 AND 499.0295 OF THE FLORIDA STATUTES, IN ORDER TO PROVIDE THE CITY WITH AN OPPORTUNITY TO REVIEW AND ENACT REGULATIONS GOVERNING THE ESTABLISHMENT AND OPERATION OF DISPENSING FACILITIES; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR SEVERABILITY; REPEAL OF CONFLICTING ORDINANCE PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE RETROACTIVE TO JUNE 28, 2017; FOR ZONING IN PROGRESS PURPOSES, THIS ORDINANCE SHALL BE EFFECTIVE UPON FIRST READING OF THIS ORDINANCE.**

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### **Background**

On February 10, 2016, at the request of Commissioner Michael Grieco, the City Commission referred a discussion item to the Land Use and Development Committee (LUDC) relating to medical cannabis. Commissioner Grieco desired to discuss, in anticipation of the statewide initiative under "ballot question 2," regulations relating to medical cannabis. The statewide initiative ballot proposed to allow the use of marijuana for debilitating medical conditions. Due to the historical federal and state prohibition of cannabis as an illegal narcotic, the City of Miami Beach did not have any land development regulations nor business tax receipt procedures to govern 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. Commissioner Grieco sought to explore land use regulations relating to medical cannabis, in case

the statewide ballot was enacted.

### **Statewide Ballot on the Use of Marijuana for Debilitating Medical Conditions:**

On November 8, 2016, a supermajority of Florida voters (79 percent of Miami Beach residents) approved Amendment 2 to the Florida Constitution, entitled "Use of Marijuana for Debilitating Medical Conditions." Amendment 2 generally provides for the following in the Florida Constitution, at Article X, Section 29

"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."

The Amendment required that the Florida Department of Health provide rules for the implementation of the Amendment within six (6) months of the effective date of the Amendment, which was January 6, 2017. Due to the potential for impacts to surrounding areas, the City started considering regulations regarding the location and requirements for medical marijuana dispensaries, in advance of any potential state regulations taking effect, to ensure that potential impacts are minimized and mitigated.

The Amendment recognized the public policy that the medical use of marijuana 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; 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.

### **City Legislative History on Medical Cannabis**

On November 9, 2016, the City Commission adopted a five (5) month moratorium on medical marijuana dispensaries sponsored by Commissioner Ricky Arriola), retroactive to October 19, 2016 (Ordinance No. 2016-4051). Additionally, the City Commission referred the draft legislation pending in the Land Use & Development Committee to the Planning Board. The City Commission adopted the moratorium so that the City could create rules and regulations relating to the location, and minimum zoning and licensure requirements for the industry.

On November 16, 2016, the Land Use and Development Committee (LUDC) discussed the item and continued it to a date certain of December 12, 2016. On December 12, 2016, the LUDC discussed the item and recommended that the City Commission extend the current moratorium on medical marijuana facilities for three (3) months and continued the item to January 18, 2017. The Committee also requested that staff analyze additional areas for the location of medical marijuana facilities, and bring these findings back on January 18, 2017.

On January 25, 2017, the moratorium extension was approved by the City Commission

on First Reading. However, on February 8, 2017, the extension failed at Second Reading and the moratorium was NOT extended. The moratorium that was adopted on November 9, 2016 *expired* on March 18, 2017.

Based, originally, upon the direction of Commissioner Grieco (who later withdrew his sponsorship due to a perceived conflict of interest); then at the direction of Commission Arriola (who became an interim sponsor of the Legislation); once again Commissioner Grieco (who had determined that he did not have a conflict of interest), and, finally, under the direction of the sponsorship of Commissioner Aleman, staff drafted land development regulations and business tax receipt legislation for the regulation of medical cannabis. The proposed legislation took into consideration, amongst other factors, the safety concerns raised by the police department, the proposed distance requirements of such medical cannabis dispensaries [recommended by the various sponsors and the Land Use and Development Committee] from parks, schools and residential districts, so as to ensure that the proposed medical cannabis dispensaries would not be a cause of concern for the health, safety, and welfare, of the residents, and minor children of Miami Beach.

On January 18, 2017, the LUDC discussed the item and continued it to a date certain of February 15, 2017, to allow for the review of related proposed amendments regarding the issuance of Business Tax Receipts for medical cannabis facilities. On February 15, 2017, the LUDC recommended that the Planning Board transmit the proposed Ordinance to the City Commission with a favorable recommendation. On February 28, 2017, the Planning Board recommended approval of the proposed ordinances, and zoning in progress was implemented.

Sometime after February 15, 2017, Commissioner Grieco again withdrew his sponsorship of the ordinances. As a result, to fulfill the directive of the voters, Commissioner Aleman became the final sponsor of the legislation: (1) a BTR medical cannabis ordinance, and (2) land development regulations of medical cannabis dispensaries. The draft ordinances were approved at First Reading on June 7, 2017. Second Reading, public hearing, is scheduled for July 26, 2017.

### **State Legislation:**

During the regular legislative session the Florida House and Senate failed to obtain a consensus on medical marijuana. As a result, the regulation session ended, without a final bill. The bill that had been proposed authorized local regulation by municipalities and counties, as to the zoning of medical marijuana dispensaries, and authorized local business licensure. The proposed ordinances sponsored by Commissioner Aleman were drafted to be consistent with the proposed state legislation.

However, 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). Governor Rick Scott signed the bill into law on June 23, 2017. Under the enacted bill, medical cannabis can be administered for the following ailments: cancer, epilepsy, glaucoma, HIV, AIDS, amyotrophic lateral sclerosis, Crohn's disease, Parkinson's disease, multiple sclerosis, terminal conditions, chronic nonmalignant pain, and similar conditions to the above listed ailments. The law allows for 10 companies to be licensed to cultivate, distribute, and to sell medical cannabis through medical marijuana treatment centers. Each licensee can also deliver medical

marijuana to an eligible patient's home.

The law provides, effective no later than July 3, 2017, that the licenses issue for the cultivation, processing, manufacturing, distribution and sale through medical marijuana treatment centers (what the City has called "medical cannabis dispensaries" or "medical marijuana dispensaries"). The law allows for a maximum of 25 treatment centers, Statewide, per license holder. Once there are 100,000 registered patients, the number of treatment centers a license holder has, may increase by five (5), on a statewide. Every time there is an additional 100,000 patients registered, each license holder can add an additional five (5) treatment centers, statewide.

The law regulates the distribution of the Statewide number of treatment centers by region, calculated based upon a percentage of the county population estimates from the "Florida Estimates of Population 2016." The State has a population of 20,148,654 and Miami-Dade County has a population of 2,700,794 (7.5 % of the state's population) If the 25 treatment center "initial" maximum is divided by 7.5 percent, it appears that 3.5-4 (rounded up) treatment centers, per license holder, can be located in Miami-Dade County. Theoretically, with 10 license holders, and 4 treatment centers allowed in the region, per each license holder, there could be up to 40 treatment centers in Miami-Dade County. This number would rise by 5 treatment center, per license holder, every 100,000 registered patients.

### **State Preemption**

Additionally, the law 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 elementary school, middle school, or secondary school *unless the county or municipality approves the location through a formal proceeding open to the public at which the county or municipality determines that the location promotes the public health, safety, and general welfare of the community;*

(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 that may locate within [that city]" Additionally, a city "*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 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.*"

(4) The preemption provisions of the state law does not prohibit any local jurisdiction from ensuring medical marijuana treatment center facilities comply with the Florida Building Code, the Florida Fire Prevention Code, or any local amendments to the Florida Building Code or the Florida Fire Prevention Code.

## **Conclusion**

The enacted Senate Bill 8A, would in effect require the City to either ban medical marijuana treatment centers, or if the City authorizes the use, it shall be required to treat such treatments centers like pharmacies (excluding areas within 500 feet of a school) Theoretically, if the use is authorized by the City Commission, a large number of medical marijuana treatment centers could operate on Miami Beach.

Under the existing land development regulations, pharmacies, unless prohibited by an overlay, such as on Lincoln Road, or as part of the proposed Formula Retail ordinance affecting the MXE, are permitted, as right in any I1, CD (CD-1, CD-2, CD-3) or CPS (CPS-1, CPS-2, CPS-3, CPS-4) district. Additionally, they are an allowable accessory use to:

1. Apartments and hotels in the RM3 district.
2. Hotels in the RM-2 district.
3. They may also be permitted as an accessory use to apartments and hotels in the RPS-4 district
4. As an accessory to hotel or apartment, they may also be permitted in limited locations (pending distance separation) in MXE, should the formula retail ordinance be enacted on June 28, 2017.

The enacted Senate Bill 8-A has preempted the content of Commissioner Aleman's proposed draft ordinances. All regulation of the number of medical cannabis treatment centers, their location, and regulation via licensure (BTR) cannot be enacted.

**Based upon the enactment of Senate Bill 8A, and its possible impacts on the City of Miami Beach, it is the recommendation of the City Attorney's office to implement a new moratorium relating to medical marijuana treatment centers so as to best determine whether to allow the use or to further regulate pharmacies and treatment centers.**