

ORDINANCE NO. 2017-16

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION AMENDING THE CODE OF THE ORDINANCES OF THE CITY OF NORTH MIAMI BEACH, FLORIDA BY AMENDING CHAPTER XXI "HEALTH", SECTION 21-5 "RESERVED" TO AMEND LICENSING CONDITIONS AND REQUIREMENTS FOR MEDICAL MARIJUANA DISPENSARIES AND MEDICAL MARIJUANA TREATMENT CENTERS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING FOR SEVERABILITY; CODIFICATION; AND FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Florida Constitution, and Chapter 166, *Florida Statutes*, provides municipalities the authority to exercise any power for municipal purposes, except where prohibited by, and to adopt ordinances in furtherance of such authority; and

WHEREAS, on November 8, 2016, Florida voters approved Constitutional Amendment Number 2, *Use of Marijuana for Debilitating Medical Conditions*, which allows for the broader use of medical marijuana for individuals with debilitating medical conditions within the State; and

WHEREAS, after Constitutional Amendment Number 2 was approved, Section 381.986, *Medical Use of Marijuana*, Florida Statutes (2017), was amended to provide that a municipality may adopt regulations either banning medical marijuana dispensaries ("MMD") and medical marijuana treatment centers ("MMTC") from being located in the City OR may adopt regulations governing the location of MMTC/MMD, however, the regulation may not be more restrictive than ordinances governing the location of pharmacies except for distance separations; and

WHEREAS, in addition to changing the City of North Miami Beach's Zoning and Land Development Code, the City's Code of Ordinances must be amended for consistency with legislative changes made by the Florida Legislature; and

WHEREAS, the licensing requirements have been amended to reflect the approval of Amendment 2, remove language providing the intent to regulate MMD and MMTC's, and remove requirements governing the inspection, changing, alternation or modification of premises; and

WHEREAS, the Mayor and City Commission find it is in the best interests of the City to amend the Code of Ordinances to amend the licensing requirements for MMD and MMTC.

NOW, THEREFORE, BE IT ORDAINED by the City Commission of the City of North Miami Beach, Florida:

Section 1. The foregoing recitals are true and correct.

Section 2. Chapter XXI "Health", Section 21-5 "North Miami Beach Marijuana Code" is amended as follows:

CHAPTER XXI HEALTH

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21-5 - NORTH MIAMI BEACH MEDICAL MARIJUANA CODE.

21-5.1 Purpose and Legislative Intent.

Although the possession and use of marijuana is unlawful under Federal law, the Florida electorate is ~~considering a~~ approved ~~e~~Constitutional aAmendment 2 Use of Marijuana for Debilitating Medical Conditions ("Amendment 2") on the November 8, 2016, ballot. ~~If approved,~~ The proposed legislation Use of Marijuana for Debilitating Medical Conditions ("Amendment 2") will allow for the broader use, cultivation, purchase, and possession of marijuana to treat medical conditions. The purpose of this article is to license ~~and regulate~~ medical marijuana dispensaries and medical marijuana treatment centers in the interest of public health, safety and general welfare. ~~In particular, this article is intended to regulate the sale and distribution of marijuana in the interest of patients who qualify to obtain, possess and use marijuana for medical purposes as provided for in Section 381.986, Florida Statutes, and to include broader use, which may be permitted by Amendment 2, while promoting compliance with other state laws that prohibit trafficking in marijuana for nonmedical purposes.~~ Nothing in this article is intended to promote or condone the sale, distribution, possession or use of marijuana in violation of any applicable law. Compliance with the requirements of this section shall not provide a defense to criminal prosecution under any applicable law.

21-5.2 Definitions.

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Marijuana has the meaning given cannabis in Section 893.02(3), Florida Statutes, as amended and shall include, "Low-THC cannabis" as defined in Section 381.986(1)(e), Florida Statutes, as amended shall also be included in the meaning of the term "marijuana".

Medical Marijuana Dispensary means a business that sells or otherwise distributes marijuana ~~through one (1) or more primary caregivers to six (6) or more~~ to patients for medical use, along with any cultivation of marijuana associated with such sale or distribution. The term "medical marijuana dispensary" shall ~~not include any person or entity that distributes marijuana for medical use exclusively to five (5) or fewer patients, and shall not include the private possession and medical use of marijuana by an individual patient or caregiver to the extent permitted by any applicable state of Florida law or regulation.~~ include Medical Marijuana Dispensing Facilities authorized by Florida law.

Medical Marijuana Treatment Center means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers and is registered by the Department of Health or its successor agency.

Medical Use means the acquisition, possession, use, delivery, transfer, or administration of marijuana or related supplies by a qualifying patient or personal caregiver for use by a qualifying patient for the treatment of a debilitating medical condition.

21-5.3 License Required.

It shall be unlawful for any person to sell or otherwise distribute any marijuana for medical use in North Miami Beach without obtaining a license to operate as a medical marijuana dispensary or medical marijuana treatment center pursuant to the requirements of this section. Any such medical marijuana treatment center/medical marijuana dispensary that does not or cannot meet the licensing requirements set forth in this section and therefore fails to obtain a license shall be terminated immediately. The license requirement set forth in this section shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or city law including, by way of example, a retail sales tax license, a retail food establishment license if applicable, any applicable zoning or building permit.

21-5.4 Licensing Procedures.

Except as otherwise specifically provided in this section, the general procedures and requirements for issuance and administration of licenses by the Director, as more fully set forth in Chapter 12, Local Business Tax Receipts and Regulations of the North Miami Beach Code of Ordinances, shall apply to medical marijuana treatment center/medical marijuana dispensary licenses. To the extent there is any conflict between the provisions of this section and Chapter 12, the provisions of this section shall control.

Application for a medical marijuana treatment center/medical marijuana dispensary license shall be made to the City. In addition to the information required by Chapter 12 of this Code, the application shall include the following information:

- a. Name and address of the owner or owners of the medical marijuana treatment center/ medical marijuana dispensary in whose name the license is proposed to be issued.
- b. Name and address of any manager or managers of the medical marijuana treatment center/medical marijuana dispensary, if the manager is proposed to be someone other than the owner.
- c. A statement of whether or not any of the foregoing persons have been denied an application for a medical marijuana treatment center/medical marijuana dispensary license pursuant to this section or any similar state or local licensing law, or had such a license suspended or revoked.
- d. Proof of ownership or legal authority over the licensed premises for the term of the proposed license. If the licensed premises will be leased, the application shall include written consent by the owner of the property to the licensing of the premises for a medical marijuana treatment center/medical marijuana dispensary.
- e. Proof of compliance with all State of Florida licensing requirements.
- f. Any application for a medical marijuana treatment center/medical marijuana dispensary permit shall be accompanied by the application fee and annual fee as required by Chapter 12.
- g. ~~The City Manager or designee shall perform an inspection of the proposed licensed premises to determine compliance with any applicable requirement of this section.~~
- h. The City Manager or designee shall deny any application for a license that is not in full compliance with this section, any other applicable City law or regulation, or any State law or regulation governing medical marijuana treatment center/medical marijuana dispensaries. The City Manager or designee shall also have the authority to deny and/or revoke any application that contains any false or incomplete information.

21-5.5 Persons Prohibited as Licensees and Managers.

No license provided by this section shall be issued to or held by any person/entity who, in the immediately preceding twelve (12) months had a medical marijuana treatment center/medical marijuana dispensary license revoked by the City.

21-5.6 Permitted Locations.

All medical marijuana treatment center/medical marijuana dispensary licenses shall be issued for a specific fixed location that shall be considered the licensed premises. ~~All sales or distribution of medical marijuana shall be made directly by a primary caregiver to a patient upon the licensed premises, or via personal delivery of the medical marijuana by the primary caregiver from the licensed premises to the patient at the patient's residence.~~

Medical marijuana treatment center/medical marijuana dispensary license shall be issued for the locations in accordance with the North Miami Beach Zoning and Land Development Code.

21-5.7 ~~Changing, Altering, or Modifying Licensed Premises.~~

~~After issuance of a medical marijuana treatment center/medical marijuana dispensary license, the licensee shall make no physical change, alteration, or modification of the licensed premises which materially or substantially alters the licensed premises or the usage of the licensed premises from the plans and specifications submitted at the time of obtaining the original license without the prior written consent of the City Manager or designee. For purposes of this section, physical changes, alterations, or modifications requiring prior written consent shall include, but not be limited to:~~

- ~~a. Any increase in the total size or capacity of the licensed premises.~~
- ~~b. The sealing off, creation of or relocation of a common entryway, doorway or passage or other such means of public ingress or egress.~~
- ~~c. Any substantial or material enlargement of a sales counter, or relocation of a sales counter, or addition of a separate sales counter.~~
- ~~d. Any material change in the interior of the premises that would affect the basic character of the premises or the physical structure that existed in the plan on file with the application.~~

~~The foregoing shall not apply to painting and redecorating of premises; the installation or replacement of electric fixtures or equipment, the lowering of a ceiling; the installation and replacement of floor coverings; the replacement of furniture and equipment; nor to any nonstructural remodeling of a licensed premises where the remodel does not expand the existing approved area.~~

~~In making a decision with respect to any proposed changes, alterations, or modifications, the City Manager or designee shall consider whether the premises, as changed, altered, or modified, will comply with the requirements of this section and any other applicable law or regulation.~~

21-5.87 Compliance with State Law.

Compliance with any applicable state law or regulation shall be required for issuance or denial of any license under this section, noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

The issuance of any license pursuant to this section shall not be deemed to create an exception, defense, or immunity to any person in regard to any potential criminal liability the person may have for the cultivation, possession, sale, distribution, or use of marijuana.

21-5.9 No Entitlement to Licensing.

Nothing in this section shall be deemed to create any property interest, vested right, or entitlement to receive a future license to operate a medical marijuana center, a medical marijuana infused products manufacturer, or an optional premises grow operation under Florida Law. In order to lawfully exist, any and all commercial medical marijuana businesses shall be required to qualify for state and local licensing under the state code and otherwise comply fully with the requirements of any other applicable state or city laws.

21-5.10 Enforcement and Penalties.

Any person violating provisions of this section shall be deemed guilty of an offense punishable as provided in Section 14-8, Administration and Enforcement of Building, Planning, and Zoning Regulations.

Section 3. All ordinances or parts of ordinances in conflict therewith be and the same are hereby repealed.

Section 4. If any section, subsection, clause or provision of this Ordinance is held invalid, the reminder shall not be affected by such invalidity.

Section 5. It is the intention of the City of North Miami Beach and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami Beach, Florida. The Sections of this Ordinance may be renumbered or relettered to accomplish this intention and the word Ordinance” may be changed to “Section”, “Article”, or other appropriate word as the Codifier may deem fit.

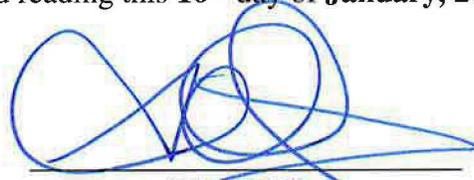
APPROVED on first reading this **19th** day of **December, 2017**.

APPROVED AND ADOPTED on second reading this **16th** day of **January, 2018**.

ATTEST:



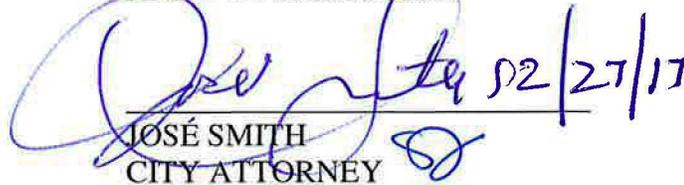
PAMELA L. LATIMORE
CITY CLERK



GEORGE VALLEJO
MAYOR

(CITY SEAL)

APPROVED AS TO FORM, LANGUAGE
AND FOR EXECUTION



JOSE SMITH
CITY ATTORNEY

Sponsored by: Mayor and City Commission.

Note: Proposed additions to existing City Code text are indicated by underline.