

ORDINANCE NO. 2016-13

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL AMENDING THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI BEACH, FLORIDA BY AMENDING CHAPTER 12 “LOCAL BUSINESS TAX RECEIPTS AND REGULATIONS”, ARTICLE III “CONDITIONS FOR SPECIFIC BUSINESS TAX RECEIPTS”, SECTION 12-4 “RESERVED”, AND CHAPTER XXI “HEALTH”, SECTION 21-5 “RESERVED” TO PROVIDE LICENSING CONDITIONS AND REQUIREMENTS TO REGULATE 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 law, and to adopt ordinances in furtherance of such authority; and

WHEREAS, Section 381.986(8)(b), *Florida Statutes*, provides that “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 or department rule for, dispensing facilities of dispensing organizations located within its municipal boundaries”; and

WHEREAS, on November 8, 2016, Florida voters will be considering the approval of 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, [as a result of Federal law, which makes it virtually impossible for banks to accept deposits.](#) significant safety and security concerns have been documented in states where medical marijuana dispensaries (“MMD”) and medical marijuana treatment centers (“MMTC”) are permitted; and

WHEREAS, MMD and MMTC’s are inherently attractive targets for criminals and criminal activity, it is essential for the City to limit the permissible scope and regulate such uses to ensure their compatibility with surrounding businesses, the community, and to protect the public health, safety, and welfare; and

WHEREAS, the Mayor and City Council believes it is in the best interests of the City to amend the Code of Ordinances to provide for licensing conditions and requirements regulating MMD and MMTC.

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

Section 1. The foregoing recitals are true and correct.

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Section 2. Chapter 12 “Local Business Tax Receipts and Regulations”, Article III “Conditions for Specific Business Tax Receipts”, Section 12-4 “Medical Marijuana Treatment Centers/Medical Marijuana Dispensaries” is amended as follows:

Article III. Conditions for Specific Business Tax Receipt

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12-4 RESERVED Medical Marijuana Treatment Centers/Medical Marijuana Dispensaries

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12-4 RESERVED Medical Marijuana Treatment Centers/Medical Marijuana Dispensaries.

No business tax receipt shall be issued for any medical marijuana treatment center or medical marijuana dispensary without meeting the requirements set forth in Section 21-5 North Miami Beach Marijuana Code and the North Miami Beach Zoning and Land Development Code. The requirements set forth herein shall be in addition to any other licensing and permitting requirements imposed by any other federal, state, or local law. In the event of a conflict between the requirements set forth herein and any other imposed requirements the more restrictive provision shall control.

Section 3. Chapter XXI “Health”, Section 21-5 “North Miami Beach Marijuana Code” is amended as follows:

CHAPTER XXI HEALTH

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21-5 RESERVED. North Miami Beach Medical Marijuana Code.

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Section 21-5. North Miami Beach Medical Marijuana Code.

Section 21-5.1 Purpose and Legislative Intent.

Although the possession and use of marijuana is ~~and remains~~ unlawful under Federal law, the Florida electorate ~~will be~~ considering a constitutional amendment 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 ~~article~~ **Section** shall not provide a defense to criminal prosecution under any applicable law.

Section 21-5.2 Definitions.

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.

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 Marijuana Dispensary means a business that sells or otherwise distributes marijuana through one (1) or more primary caregivers to six (6) or more 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.

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.

Section 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 ~~article~~Section. Any such medical marijuana treatment center/medical marijuana dispensary that does not or cannot meet the licensing requirements set forth in this ~~Article~~-Section and therefore fails to obtain a license shall be terminated immediately. The license requirement set forth in this ~~Article~~-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.

Section 21-5.4 Licensing Procedures.

Except as otherwise specifically provided in this ~~Article~~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 ~~Article~~-Section and Chapter 12, the provisions of this ~~Article~~-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: b Been denied an application for a medical marijuana treatment center/medical marijuana dispensary license pursuant to this ~~article~~ Section or any similar state or local licensing law, or had such a license suspended or revoked.
- ~~e.~~ d. Proof of ownership or legal ~~possession of 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.
- ~~d.~~ Proof of compliance with all State of Florida licensing requirements. An operating plan for the proposed medical marijuana treatment center/medical marijuana dispensary including the following information:
 - ~~1.~~ A description of the products and services to be provided by the medical marijuana treatment center/medical marijuana dispensary, including an indication of whether or not the center/dispensary proposes to engage in the retail sale of food for human consumption.
 - ~~2.~~ A floor plan, drawn to scale, showing the layout of the medical marijuana treatment center/medical marijuana dispensary and the principal uses of the floor area depicted therein, including a depiction of where any services other than the dispensing of medical marijuana are proposed to occur on the licensed premises.
 - ~~3.~~ A security plan indicating how the applicant intends to comply with the applicable City Code requirements, including an indication of whether or not the applicant intends to utilize licensed security guards.
 - ~~4.~~ e. An area map, drawn to scale, indicating, within a radius of one quarter mile from the boundaries of the property upon which the medical marijuana treatment center/medical marijuana dispensary is located, the proximity of the property to any school, daycare, or child care establishment, to any other marijuana treatment center/medical marijuana dispensary, to any place of worship, drug/alcohol rehabilitation service, to any bars, lounges, package liquor stores, or to any residential zone district.
- ~~e.~~ 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.
- ~~f.~~ g. The City Manager or designee shall perform an inspection of the proposed licensed premises to determine compliance with any applicable requirement of this ~~article~~ Section.
- ~~g.~~ h. The City Manager or designee shall deny any application for a license that is not in full compliance with this ~~article~~ 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.

Section 21-5.5 Persons Prohibited as Licensees and Managers.

No license provided by this ~~article~~ 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.

Section 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.

Section 21-5.7 Additional Requirements Related to Licensed Premises.

- ~~a. No marijuana shall be smoked, eaten or otherwise consumed or ingested on the licensed premises.~~
- ~~b. No person under eighteen (18) years of age shall be permitted on the licensed premises, unless the person has been qualified to possess marijuana for medical use in accordance with Florida Law and the person is accompanied by a parent or legal guardian.~~
- ~~c. The name and contact information for the owner or owners and any manager of the medical marijuana treatment center/medical marijuana dispensary shall be conspicuously posted in the dispensary.~~
- ~~d. Any and all processing, storage, display, sales or other distribution of marijuana shall occur within an enclosed building and shall not be visible from the exterior of the building.~~
- ~~e. Off-site delivery of any marijuana products shall be prohibited, all sales and distribution of medical marijuana and products shall occur only on the licensed premises.~~
- ~~f. No licensed premises shall be managed by any person other than the owner or the manager listed on the application for the license.~~
- ~~g. Conspicuous signage shall be posted stating the no loitering is allowed, and patients or business invitees shall not be directed or encouraged to gather or loiter outside of the building where the dispensary/center operates, including in any parking areas, sidewalks, rights-of-way, or neighboring properties for any period of time longer than reasonably required for patients/business invitees to conduct their official business and depart.~~
- ~~h. The hours of operation shall be between 7:00am and 7:00pm, Monday through Saturday and between 12:00pm and 5:00pm on Sundays.~~
- ~~i. Medical marijuana treatment centers/medical marijuana dispensaries must comply with the North Miami Beach Zoning and Land Development Code.~~
- ~~j. The licensed premises shall be monitored and secured twenty four (24) hours per day including, at a minimum, the following security measures:
 - ~~1. Installation and use of security cameras to monitor all areas of the licensed premises where persons may gain or attempt to gain access to marijuana or cash maintained by the~~~~

- ~~medical marijuana treatment center/medical marijuana dispensary. Recordings from security cameras shall be maintained for a minimum of seventy-two (72) hours in a secure off-site location.~~
- ~~2. Installation and use of a safe for overnight storage of any processed marijuana, and cash on the licensed premises, with the safe being incorporated into the building structure or securely attached thereto.~~
 - ~~3. Installation of a monitored user alarm system.~~

Section 21-5.8-7 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~~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 ~~s~~Section and any other applicable law or regulation.

Section 21-5.9-8 Compliance with State Law.

~~To the extent the State has adopted or adopts in the future any additional or stricter law or regulation governing the sale or distribution of marijuana for medical use, the additional or stricter regulation shall control the establishment or operation of any medical marijuana dispensary in the City.~~ Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this ~~article~~Section, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

~~Any medical marijuana treatment center/ medical marijuana dispensary licensed pursuant to this article may be required to demonstrate, upon demand by the City Manager or designee or by law enforcement officers, that the source and quantity of any marijuana found upon the licensed premises is in full compliance with any applicable state law or regulation.~~

~~If the State prohibits the sale or other distribution of marijuana through medical marijuana treatment center/medical marijuana dispensaries, any license issued pursuant to this article shall be deemed to be~~

~~immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.~~

The issuance of any license pursuant to this ~~article~~ 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.

Section 21-5.10-9 No Entitlement to Licensing.

Nothing in this Ssection 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.

Section 21-5.101 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 4. All ordinances or parts of ordinances in conflict therewith be and the same are hereby repealed.

Section 5. If any section, subsection, clause or provision of this Ordinance is held invalid, the reminder shall not be affected by such invalidity.

Section 6 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 **1st day of November, 2016.**

APPROVED AND ADOPTED on second reading this **15th day of November, 2016.**

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 Council.

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