



COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Kathie G. Brooks, Interim City Manager *KGB for LUDC*

DATE: March 20, 2013

SUBJECT: **DISCUSSION OF MIAMI BEACH CITY CODE CHAPTER 6-4 (3) RELATING TO ALCOHOLIC BEVERAGE SALES THAT REQUIRES A 300 FOOT DISTANCE BETWEEN LIQUOR STORES**

BACKGROUND

A discussion of the existing distance separation requirement of a minimum 300 foot distance between liquor stores as specified by Miami Beach City Code Chapter 6-4 (3), and a request that the City explore adopting the Miami-Dade County requirement of 1,500 feet was referred to the Land Use and Development Committee at the October 19, 2011 City Commission meeting, at the request of Commissioner Jorge R. Exposito.

On March 28, 2012, the Land Use Committee referred an Ordinance Amendment to the Planning Board (see attached) and instructed staff to bring the matter back to the Committee after Planning Board review. On September 24, 2012, the Planning Board recommended that the subject ordinance not be approved, by a unanimous vote of 7-0, citing concerns about anti-competitiveness.

ANALYSIS

Section 6-4 of the Land Development Regulations of the City Code contains location and use restrictions for alcoholic beverage sales within Miami Beach. Specifically, section 6-4(a)(3) regulates retail liquor stores, and requires a minimum distance separation between retail stores primarily selling alcoholic beverages for consumption off the premises of 300 feet. This regulation has been in effect since at least 1989.

Attached, please find maps showing the locations of existing liquor stores, the current 300 foot radius around each of them (which equates to approximately one per block), and the same map with a 1,500 foot radius around each existing liquor store. Extending the required distance separation from 300 to 1,500 feet will result in fewer locations at which liquor stores could locate at as of right.

Also attached are a comparison chart of package store distance separation requirements for neighboring municipalities, as well a copy of Article X, pertaining to 'Alcoholic Beverages', of the Miami-Dade County Code. Additionally, it is important to note that currently variances from the distance separation regulations are possible to apply for and obtain from the Board of Adjustment; this type of distance separation variance is somewhat common.

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CONCLUSION

In light of the Planning Board action recommending denial of the proposed Ordinance, the Administration recommends that the Committee provide staff with policy direction on this matter.

Attachments
KGB/JGG/RGL/TRM

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ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 6, ALCOHOLIC BEVERAGES, SECTION 6-4, "LOCATION AND USE RESTRICTIONS" BY REQUIRING THAT THE MINIMUM DISTANCE SEPARATION BETWEEN RETAIL STORES PRIMARILY SELLING ALCOHOLIC BEVERAGES FOR CONSUMPTION OFF THE PREMISES AS A MAIN PERMITTED USE SHALL BE 1,500 FEET; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, Section 6-4(a)(3) of the City Code specifically regulates retail liquor stores, and requires a minimum distance separation between retail stores primarily selling alcoholic beverages for consumption off the premises of 300 feet; and

WHEREAS, the Land Use and Development Committee (LUDC), discussed the issue of extending the distance separation from 300 feet to 1,500 feet and the resulting need to require a variance for just about any newly proposed liquor store; and

WHEREAS, It is common for the Board of Adjustment to approve variance requests with voluntary proffers from applicants to limit sales of single cans of beer or similar sized containers which have proved problematic; and

WHEREAS, the intent of this new distance separation would be not to prohibit new liquor stores, but subject them to additional scrutiny in order to limit concentration of uses, and provide the opportunity for proffers of additional community safeguards; 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. That City Code Chapter 6, Alcoholic Beverages, Section 6-4, "Location And Use Restrictions," is hereby amended as follows:

- (a) *Generally*. The following location and use restrictions are applicable for facilities selling or offering alcoholic beverages for consumption:
 - (3) *Retail stores for off-premises consumption*. The minimum distance separation between retail stores primarily selling alcoholic beverages for consumption off the premises as a main permitted use shall be ~~300~~ 1,500 feet.

SECTION 2. Repealer.

All ordinances or parts of ordinances and all sections and parts of sections in conflict herewith be and the same are hereby repealed.

SECTION 3. 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 4. Severability.

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

SECTION 5. Effective Date.

This Ordinance shall take effect ten days following adoption.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this _____ day of _____, 2013.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney Date

First Reading:
Second Reading:

Verified by: _____
Richard G. Lorber, AICP, LEED AP
Acting Planning Director

~~Strikethrough~~ denotes deleted language

Underscore denotes new language

03/07/2013

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Comparison Chart of Package Store Distance Requirements

Municipality	Distance Requirement From Other Establishments	Waiver or Variance
Miami-Dade County	1,500 feet (see Sec. 33-150)	Exceptions see 33-150(E) or Special Exception by hearing
City of Miami	500 feet - see Sec. 4-7	See Sec. 4-11 or Special Exception by hearing
Doral	1,500 feet - see Sec. 74-193	Special Exception by hearing
Hialeah	1,000 feet - see Sec. 6-66	It appears a variance would be required by hearing
Aventura	1,500 feet - see Sec. 4-2	It appears a variance would be required by hearing
North Miami	1,500 feet - see Sec. 3-11	Variance by hearing see Sec. 3-14
Homestead	400 feet - see Sec. 3-6	Waiver see Sec. 3-11
South Miami	None - see Sec. 4-2	

CODE City of MIAMI BEACH, FLORIDA

Chapter 6 - ALCOHOLIC BEVERAGES

ARTICLE I. - IN GENERAL

Sec. 6-4. - Location and use restrictions.

(a) *Generally.* The following location and use restrictions are applicable for facilities selling or offering alcoholic beverages for consumption:

(1) *Educational facilities.* No alcoholic beverage shall be sold or offered for consumption in a commercial use within 300 feet of any property used as a public or private school operated for the instruction of minors in the common branches of learning. Except for uses in the civic and convention center (CCC) district, hospital (HD) district or within 300 feet of a marina.

(2) *Places of worship.* No alcoholic beverage shall be sold or offered for consumption in a commercial use, except in restaurants for consumption on the premises, within 300 feet of any property used as a place of worship.

(3) *Retail stores for off-premises consumption.* The minimum distance separation between retail stores primarily selling alcoholic beverages for consumption off the premises as a main permitted use shall be 300 feet.

(4) *Motion picture theater.* No alcoholic beverages shall be sold or offered for consumption in any motion picture theater or in any room opening directly or indirectly into or in connection with any motion picture theater. Motion picture theaters shall not be permitted to operate between the hours of 3:00 a.m. and 8:00 a.m., except that motion picture theaters may apply for up to three special event permits from the city per calendar year to operate during such hours.

(5) *Filling station.* No liquor shall be sold or offered for consumption on or off the premises of any filling station.

(6) *Curb service sales.* No alcoholic beverages shall be sold or served to persons in a vehicle of any kind or from an exterior counter or any type of walk-up window. All sales are to be from the interior of the structure.

(7) *Off-premises consumption.* All sales of alcoholic beverages for consumption off the premises shall be in a sealed container.

(8) *Bottle clubs.* There shall be no bottle clubs within 300 feet of any property used as a public or private school operated for the instruction of minors in the common branches of learning or place of worship.

(9) *Dance halls.* The minimum distance separation between dance halls licensed to sell alcoholic beverages, and not also operating as restaurants with full kitchens and serving full meals, shall be 300 feet.

(10) *Entertainment establishments.* The minimum distance separation between entertainment establishments licensed to sell alcoholic beverages, and not also operating as restaurants with full kitchens and serving full meals, shall be 300 feet.

(b) *Determination of minimum distance separation.*

(1) For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the main entrance or exit in which the use associated with alcoholic beverages occurs to the nearest point of the property used for a public or private school. In cases where a minimum distance is required between two uses associated with the alcoholic beverages for consumption on or off the premises, the minimum requirement shall be determined by measuring a straight line between the principal means of entrance of each use.

(2) When a distance separation is required, a scaled survey drawn by a registered land surveyor shall be submitted attesting to the separation of the uses in question. This requirement may be waived upon the written certification by the planning and zoning director that the minimum distance separation has been met.

(c) *Variances.* Variances to the provisions of this section may be granted pursuant to the procedure in section 118-351 et seq.

CODE of MIAMI-DADE COUNTY, FLORIDA

ARTICLE X. - ALCOHOLIC BEVERAGES

Sec. 33-150. - Location of establishments.

(A) Distance from other establishments. Unless approved as a special exception (Section 33-311(A)(3)), no premises shall be used for the sale of any alcoholic beverages, as defined herein, to be consumed on or off the premises where the structure or place of business intended for such use is located less than fifteen hundred (1,500) feet from a place of business having an existing, unabandoned, legally established (and not one (1) of the uses excepted from the spacing requirements hereinafter provided) alcoholic beverage use which permits consumption on or off the premises. The fifteen hundred (1,500) feet distance requirements shall be measured by following a straight line from the nearest portion of the structure of the place of business.

(B) Distance from church or school. Unless approved as a special exception (Section 33-311(A)(3)), no premises shall be used for the sale of alcoholic beverages to be consumed on or off the premises where the structure or place of business intended for such use is located less than twenty-five hundred (2,500) feet from a church or public school. The twenty-five-hundred-foot distance requirement shall be measured and computed as follows:

(1) From a church, the distance shall be measured by following a straight line from the front door of the proposed place of business to the nearest point of the church structure, and

(2) From a public school, the distance shall be measured by following a straight line from the front door of the proposed place of business to the nearest point of the school grounds.

(C) Compliance prerequisite to issuance of licenses, permits and certificates. No certificate of use or occupancy, license, building or other permit shall be issued to any person, firm, or corporation for the sale of alcoholic beverages to be consumed on or off the premises where the proposed place of business does not conform to the requirements of Subsections (A) and (B) above.

(D) Nonconforming uses; definition of abandonment. The uses referred to in Subsections (A) and (B) above that are in violation of the provisions thereof, and that were in existence on or before June 14, 1956, shall be deemed to be nonconforming and as such may continue until there is an abandonment thereof, provided that such nonconforming uses have been established and proven to the satisfaction of the Department on or before October 1, 1956, and not thereafter. After October 1, 1956, the right to establish a use not conforming with the requirements of Subsections (A) and (B) shall have expired and shall not thereafter be recognized. Any uses, created and established in a legal manner, which may thereafter become nonconforming, may continue until there is an abandonment. Once a nonconforming use is abandoned it cannot be re-established unless it can conform to the requirements of this chapter.

Abandonment shall consist of a change of use or of a suspension of active business with the public for a period of not less than three (3) months, or prior to the end of the period, on a written declaration of abandonment by the tenant and owner of the premises if under lease, and if not, by the owner.

(E) Exceptions to spacing and distance requirements. The restrictions and spacing requirements set forth in Subsections (A) and (B) above shall not apply:

(1) To private clubs, provided such clubs conform to all the requirements of a private club as stated in Chapter 561 of the Florida Statutes and other applicable State laws, and providing that there are no signs of any type exhibited or displayed or other indications that can be seen from the exterior of the clubhouse, building or structure that alcoholic beverages are served. Before a certificate of use and occupancy to serve alcoholic beverages will be issued, the applicant must submit necessary data to prove that it is eligible for the use and complies with Chapter 561 of the Florida Statutes or other applicable State laws; provided, anything to the contrary notwithstanding, these requirements must be complied with, even though the club intends to serve only beer and/or wine.

(2) ESTABLISHMENTS IN RU-4, RU-4A DISTRICTS. To cocktail lounges, bars and cabarets located in RU-4 or RU-4A Districts and which conform to the requirements of said districts, or such other cocktail lounges, bars and cabarets in other liberal districts as may comply with the RU-4 or RU-4A requirements.

(3) RESTAURANTS IN BU-1, BU-1A DISTRICTS. To dining rooms or restaurants located in

the BU-1 or BU-1A Districts which comply with the requirements of such districts and serve cooked, full course meals, daily prepared on the premises, or such other dining rooms or restaurants in other more liberal districts complying with the requirements of the BU-1 or BU-1A District and which serve cooked, full course meals, daily prepared on the premises, providing that only a service bar is used and the sale of alcoholic beverages are sold only to persons seated at tables.

(4) **CERTAIN COCKTAIL LOUNGE-BARS IN RESTAURANTS.** To cocktail lounge-bars as an accessory use in restaurants located in any IU or BU-1A or more liberal BU District, provided the restaurant occupies no less than four thousand (4,000) square feet of gross floor space, and has accommodations for service of two hundred (200) or more patrons at tables, and provided that the restaurant prepares and serves fully cooked meals daily and contains full kitchen facilities, meaning commercial grade burners, ovens, range hood(s) and refrigeration units of such size and quantity to accommodate the occupancy content of the restaurant, and provided that the restaurant shall be prohibited from advertising itself as a bar, cocktail lounge-bar, saloon, nightclub or similar type of establishment; and further provided that once the restaurant use is terminated, the cocktail lounge use will automatically terminate. The cocktail lounge-bar in the restaurant structure shall not have separate outside patron entrances, provided, however, a fire door exit shall be permitted, when the same is equipped with panic-type hardware and locks and is maintained in a locked position except in emergencies; and provided the cocktail lounge-bar shall be so located that there is no indication from the outside of the structure that the cocktail loungebar is within the structure, and provided that the accessory cocktail lounge-bar is no larger than fifteen (15) percent of the gross square footage of the restaurant, and provided that the alcoholic beverages are served for on-premises consumption only; and further provided that the operating hours for the cocktail lounge-bar shall not extend beyond the permitted hours of operation for the restaurant.

(5) **BEER AND WINE FOR OFF-PREMISES CONSUMPTION.** To the sale of beer and wine as a grocery item for consumption off the premises, from grocery stores and meat markets within the hours adopted and prescribed by the County Commission.

(6) **CONVENTION HALLS IN BU-1A DISTRICTS.** To convention halls located in BU-1A, or more liberal business and industrial districts, which meet the following requirements: (a) Where the hall is part of the operation of a hotel or motel and directly under its management. (b) Where the square footage area of the convention hall is at least ten thousand (10,000) square feet. (c) Where the seating capacity of the hall is in excess of five hundred (500) persons. (d) Where the sign advertising the cocktail lounge or bar use is of same or similar type as is permitted for motels in the RU-4 Districts, that is, the advertisement is incorporated into the sign proper for the convention hall.

(7) **BEER AND WINE IN BOWLING ALLEYS.** To beer and wine bars in bowling alleys:

(a) Where there are no signs of any type exhibited or displayed, or other indications, that can be seen from the outside of the structure concerned, that beer or wine or other malt and vinous beverages are being served, and

(b) When such bowling alleys are in a fully air conditioned building having at least ten thousand (10,000) square feet of floor space under one (1) roof and under one (1) ownership of title, and

(c) Where the building contains at least six (6) alleys usable for bowling, and where the bowling alley has facilities for the service of food and beverages in an area separate from the alleys themselves and contains at least two thousand (2,000) square feet of usable floor space, including the bar and other facilities for the service of food and beverages and has accommodations for at least sixty (60) patrons at tables, and

(d) Provided that such building be not less than five hundred (500) feet from a school or church measured as provided hereinabove.

(8) **NIGHT CLUBS IN CERTAIN HOTELS AND MOTELS.** To night clubs and cabarets where the same are located in a hotel, motel, or apartment hotel and under the same roof, which contains at least two hundred (200) guest rooms or apartment units under the same roof, provided the exterior of any such building shall not have store fronts or give the appearance of commercial or mercantile activity as viewed from the highways. In the event the use contains windows which may be seen from the highway, said windows shall be of fixed, obscure glass. Such night club or cabaret shall be entered only through lobby, and no additional entrance shall be permitted. An additional entrance or door shall be permitted when the same opens into a courtyard or patio (away from street side) which is enclosed and which is not visible from the street. A fire door or exit shall be permitted, provided that the same is equipped with panic-type hardware and locks and is maintained in a locked position except in emergency.

(9) **PACKAGE STORES IN SHOPPING CENTERS IN BU-1A DISTRICT.** Package stores in shopping centers in a BU-1A (limited business) or more liberal district containing a net ground building area of not less than five (5) acres including dedicated rights-of-way under one (1) ownership with an improved building area of not less than forty-one thousand (41,000) square feet of floor area thereon, and with an improved and developed parking area of not less than two hundred twenty-one (221) vehicles. Only one (1) such package store will be permitted in the shopping center. Said package store shall be at least two thousand five hundred (2,500) feet from any church, school and at least five hundred (500) feet from any other licensed alcoholic beverage establishment measured as otherwise provided in this section.

(10) **COCKTAIL LOUNGES IN GOLF COURSE CLUBHOUSES AND BEER IN ANCILLARY REFRESHMENT STANDS LOCATED ON SAID GOLF COURSE.** To cocktail lounges in golf course clubhouses and beer in ancillary refreshment stands located on said course, whether governmentally or privately owned provided a bona fide regular, standard golf course is maintained and consists of at least nine (9) holes, with clubhouse, locker rooms and attendant golf facilities and comprising in all at least one hundred (100) acres of land. Failure of such club to maintain the golf course, clubhouse and golf facilities shall ipso facto terminate the privilege of the cocktail lounge and sale of beer from the refreshment stands.

(11) **EXCURSION, SIGHTSEEING OR TOUR BOATS.** To excursion, sightseeing or tour boats, providing the operators thereof obtain a State beverage license for such boats, the same being designated as their place of business, upon compliance with all the laws relating to vendors operating places of business where consumption on the premises is permitted; provided that such excursion, sightseeing or tour boats contain all the necessary equipment and supplies in order to, and do, serve full course meals regularly, and have accommodations at all times for the service of two hundred (200) or more patrons at tables and occupying more than four thousand (4,000) square feet of space.

(12) **TENNIS CLUBS AND INDOOR RACQUETBALL CLUBS.** To any chartered or incorporated club owning or leasing and maintaining any bona fide tennis club or four-wall indoor racquetball club consisting of not less than ten (10) regulation-size tennis courts or ten (10) regulation-size four-wall indoor racquetball courts, or a combination of tennis courts and four-wall indoor racquetball courts numbering fifteen (15), with clubhouse facilities, pro shop, locker rooms, and attendant tennis or racquetball facilities, all located on a contiguous tract of land owned or leased by such club and providing that there are no signs of any type exhibited or displayed or other indications that can be seen from the exterior of the clubhouse, building or structure that alcoholic beverages are served.

(13) **NOT-FOR-PROFIT THEATERS WITH LIVE PERFORMANCES.** To any State-chartered not-for-profit legal entity organized principally for the purpose of operating a theater with live stage performances and with not fewer than one hundred (100) seats. Sales of alcoholic beverages shall be permitted only for consumption on the premises and only to patrons during any regularly scheduled live theater performance. No sit-down bar shall be permitted.

(14) Winery (farm related) as defined in Section 33-1 (115.01).

(F) Prerequisites to use of premises as exception. For the purpose of this chapter, the right to use premises for the sale of beer, wine or liquor for consumption on, or off, such premises shall be established at such time as a building permit is issued, the application for which states that such use is to be established, and provided that the structure for which the building permit was issued is completed, and an occupancy permit issued for such use within the time prescribed for the completion of said structure under these regulations. In cases where the use is to be established in an existing structure, such use will be considered as existing at such time as the occupancy permit for such use has been issued, provided the use has been established within the time prescribed in the permit.

(G) Sketch indicating location. For the purpose of establishing the distance between alcoholic beverage uses, and between such uses and churches or public schools, the applicant for such use shall furnish a certified sketch of survey from a registered engineer or surveyor. Such sketch shall indicate the distance between the proposed place of business and any existing alcoholic beverage establishment within 2,000 feet, and any church or school within 3,000 feet. Each sketch shall indicate all such distances and routes. In case of dispute, the measurement scaled by the Director shall govern.

(H) Entertainment in night clubs and cabarets; hearing on night club use. Except in night clubs and cabarets, band or orchestra music or dancing or entertainment shall be prohibited in all bars, gardens, saloons, package stores or similar establishments dispensing of alcoholic beverages. Night club use shall be prohibited unless the same is approved after a public hearing.

(I) Transfer of nonconforming use. Upon good and justifiable cause proven to the

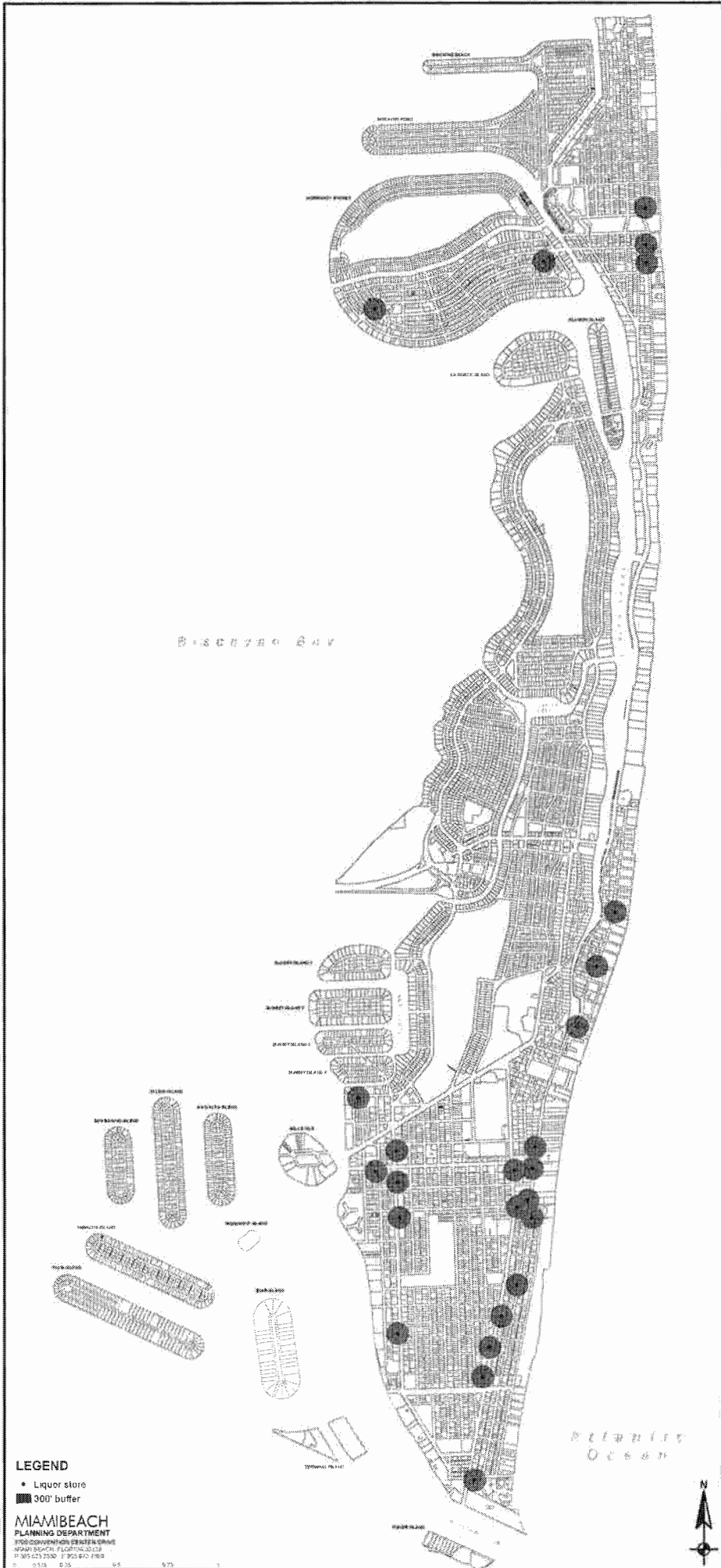
satisfaction of the Zoning Board, a legally existing nonconforming alcoholic beverage use may be transferred to another nonconforming but properly zoned site in the same general neighborhood, not to exceed three hundred (300) feet from the sold site, upon approval of the appropriate Zoning Board after a public hearing.

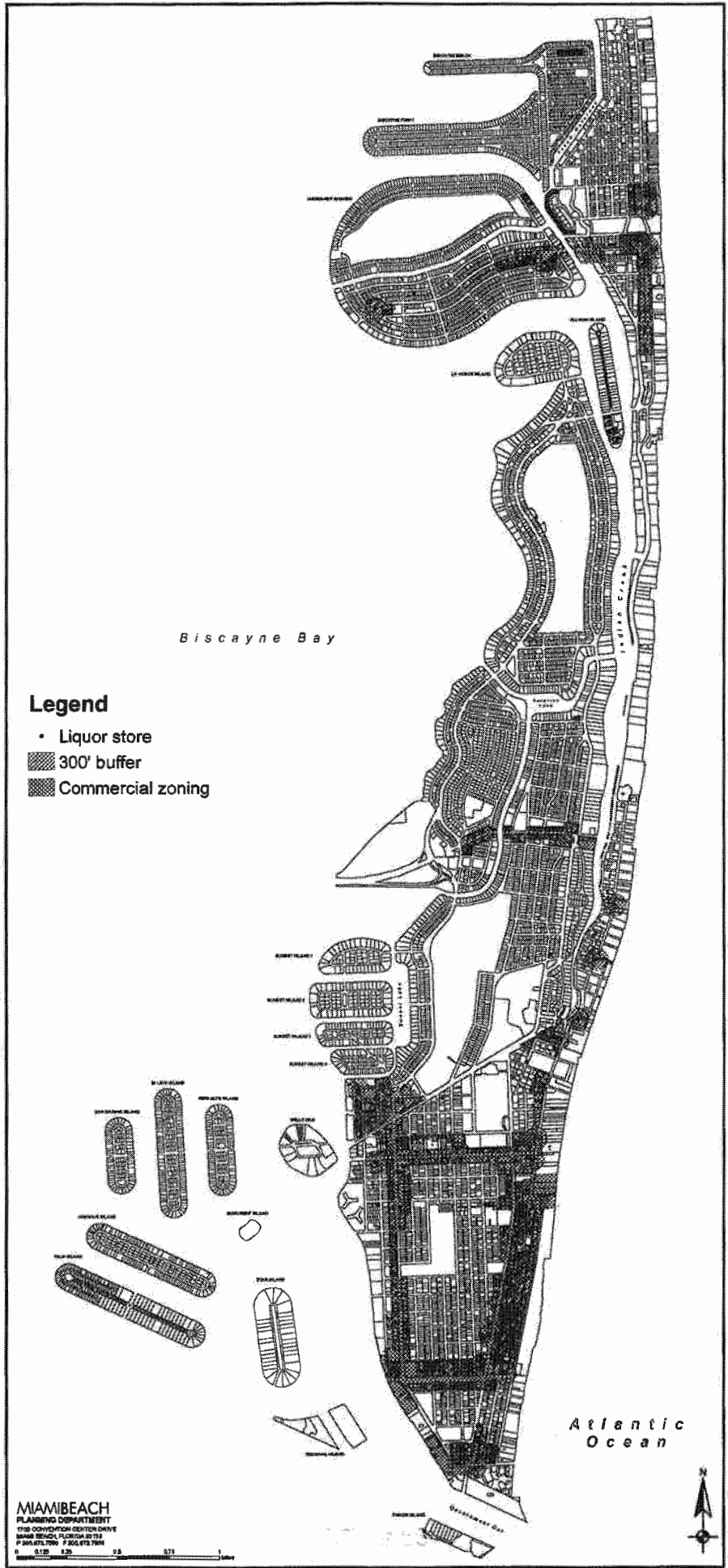
(J) Expansion of nonconforming use. Legally existing alcoholic beverage made nonconforming by reason of the regulations establishing distance restrictions between such uses, or any of them, or between any such uses and churches or schools, shall not be expanded unless and until such expansion shall have been approved by the appropriate Zoning Board for good and justifiable cause after a public hearing. "Expansion" as used herein, shall include the enlargement of space for such use and uses incidental thereto, the extension of a beer and wine bar to include intoxicating liquor, and the extension of a bar use to a night club use.

Nothing herein, however, shall be deemed an attempt to modify any prohibition or make less restrictive any requirement by the laws of the State of Florida.

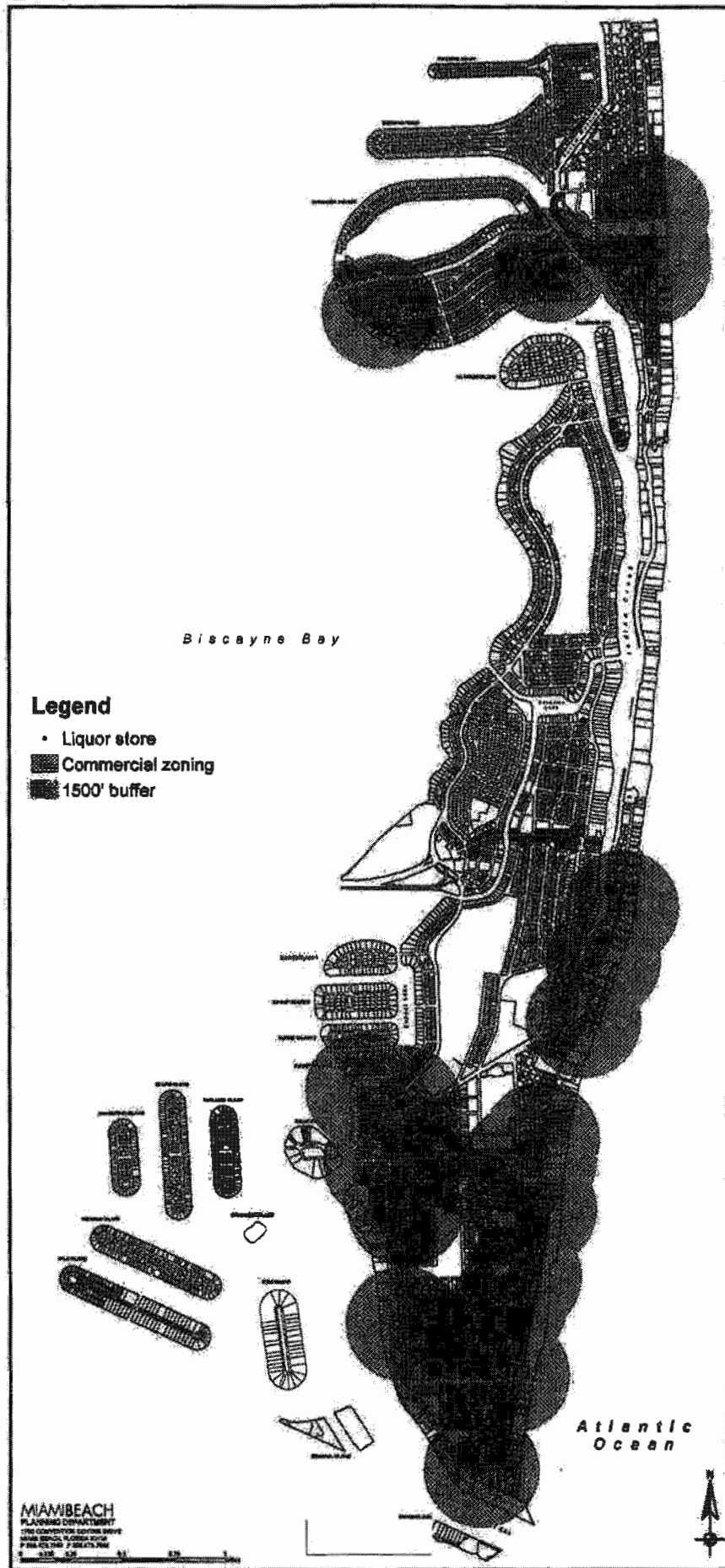
(K) Certificate void after thirty (30) days if premises not established. All alcoholic beverage uses must be established on the premises within thirty (30) days of the date of the issuance of a certificate of use and occupancy, otherwise said certificate of use and occupancy shall be null and void.

(L) Compliance prerequisite to issuance of license. Anything to the contrary notwithstanding, no liquor license of any type may be used in a manner contrary to this chapter. The Tax Collector shall issue no license unless a current certificate of use or occupancy in the applicant's name accompanies the application. The license as issued shall note thereon any special limitations or restrictions applicable due to the zoning on the property.





LUDC#62



LUDC#63

