



# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMITTEE MEMORANDUM

TO: Members of the Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: November 16, 2016

SUBJECT: **ADDENDUM TO THE LAND USE AND DEVELOPMENT COMMITTEE MEETING AGENDA**

**1. CMB Preparations for Likely Passage of State Medical Marijuana Constitutional Amendment.**

(Continued from the October 26, 2016 LUDC Meeting  
Sponsored by Commissioner Ricky Arriola and  
Commissioner Michael Grieco and City Commission  
February 10, 2016 City Commission Meeting, Item R9F)

**3. Discussion Regarding An Ordinance Amendment To Curb The Proliferation Of Formula Retail Establishments.**

(Continued from the October 26, 2016 LUDC meeting  
Sponsored by Commissioner Ricky Arriola  
September 14, 2016 City Commission Meeting, Item C4 M)

**6. a) Discussion Regarding an Ordinance Amendment Prohibiting Variances To Exceed The Maximum Size Of Accessory Retail On Ocean Drive.**

(Sponsored by Commissioner Ricky Arriola  
November 9, 2016 City Commission Meeting, Item C4 M)

**6. b) Discussion Regarding an Ordinance Amendment Prohibiting East Facing Exterior Speakers On Ocean Drive Within 20 Feet Of The Property's East Boundary.**

(Sponsored by Commissioner Ricky Arriola  
November 9, 2016 Item C4 N)

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## Cannabis Ordinance

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," TO PROVIDE FOR INCLUSION OF THE FOLLOWING DEFINITIONS: CANNABIS, CANNABIS DISPENSARY, DERIVATE PRODUCT, LOW-THC CANNABIS, LOW-THC CANNABIS DISPENSARY; CREATING DIVISION 10, ENTITLED "CANNABIS REGULATIONS AND USE," SECTIONS 142-1501 – 142-1504, RELATING TO APPLICABILITY, DEFINING MEDICAL USE OF CANNABIS, DESIGNATING ZONING DISTRICTS FOR THE USE, ZONING REQUIREMENTS RELATING TO THE USE, AND PROHIBITING GROW HOUSES; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

**WHEREAS**, 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, as of January 1, 2015; and

**WHEREAS**, in 2016, the Florida Legislature amended Section 381.986 of the Florida Statutes to include medical cannabis, revise 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, revise the Florida Department of Health's authority and responsibility and provide for penalties; and

**WHEREAS**, pursuant to Section 381.986(8) of the Florida Statutes, 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 for dispensing facilities of dispensing organizations located within its municipal boundaries; and

**WHEREAS**, due to the historical prohibition of cannabis, the City of Miami Beach does not currently have any land development regulations governing 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 as provided by Florida Statutes Sections 381.986 and 499.0295; and

**WHEREAS**, in order to promote the effective regulation of such activities, the City Commission wishes to preserve the status quo while researching, studying, and analyzing the potential impact of dispensing facilities within the City's boundaries upon adjacent uses and the surrounding areas, including its effect on traffic, congestion, surrounding property values, demand for City services including inspections and increase police monitoring, and other aspects of the operation of dispensing facilities impacting the general welfare of the community; and

**WHEREAS**, the City Commission finds it is in the best interest of the citizens of the City to minimize and control the adverse effects of dispensing facilities by adopting appropriate land development and licensing regulations; 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.** Chapter 114 of the City Code, entitled "General Provisions," is hereby amended as follows:

**CHAPTER 114  
GENERAL PROVISIONS**

**Sec. 114-1. Definitions.**

The following words, terms and phrases when used in this subpart B, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

\* \* \*

Cannabis means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant of its seeds or resin.

Cannabis dispensary means an establishment where derivative product of the cannabis plant, except for low-THC cannabis, is dispensed at retail.

\* \* \*

Derivative product means any form of cannabis suitable for routes of administration.

\* \* \*

Dispensing facility" refers to the building or structure where low-THC cannabis or medical cannabis, as well as cannabis delivery devices, are dispensed at retail.

"Dispensing organization" means an organization approved by the state to cultivate, process, transport, and dispense low-THC cannabis or medical cannabis.

\* \* \*

Low-tetrahydrocannabinol cannabis or Low-THC cannabis means a plant of the genus Cannabis, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof, the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seed or resin that is dispensed only from a dispensing organization approved by the Florida Department of Health pursuant to Section 381-986, Florida Statutes.

Low-THC cannabis dispensary means an establishment where low-THC cannabis is dispensed at retail.

\* \* \*  
\* \* \*  
\* \* \*

May means permissive, not required.

Medical cannabis means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, sale, derivative, mixture, or preparation of the plant or its seeds or resin that is dispensed only from a dispensing organization for medical use by an eligible patient.

“Medical marijuana dispensary,” otherwise known as “medical marijuana treatment centers” as utilized in Article X, Section 29, of the Florida Constitution, means a facility that is operated by an organization or entity holding all necessary licenses and permits from which marijuana, cannibis, cannabis-based products or cannabis plants are cultivated, delivered, purchased, possessed, or dispensed for medical purposes and operated in accordance with all applicable laws, regulations and ordinances.

\* \* \*

Must shall mean a mandatory and not merely directory action or requirement. The term is interchangeable with the word “shall.”

\* \* \*

Shall means a mandatory and not merely directory action or requirement. The term is used interchangeable with the word “must.”

\* \* \*

**Section 2.** Chapter 142 of the City Code, entitled “District Regulations,” is hereby amended as follows:

**DIVISION 10**  
**CANNABIS REGULATIONS AND USE**

**Sec. 142-1500 Intent.**

Section 381.986, Florida Statutes, and Florida Administrative Code Chapter 64-4 authorize a limited number of dispensing organizations throughout the State of Florida to cultivate, process, and dispense low-tetrahydrocannabinol (low-THC) cannabis and medical cannabis for use by qualified patients suffering from cancer, terminal conditions, and certain chronic conditions. The dispensing organizations must be approved by the Florida Department of Health and, once approved, are subject to state regulation and oversight.

The intent of this division is to establish the criteria for the location and permitting of establishments that dispense low-THC cannabis or medical cannabis in accordance with Section 381.986, Florida Statutes, and Florida Administrative Code Chapter 64-4.

**Sec. 142-1501 – Applicability and Defining Medical Use of cannabis**

This division shall only be construed to allow the dispensing of low-THC *cannabis* or medical *cannabis* by a state-approved dispensing organization for medical use. The sale of *cannabis* or marijuana is prohibited the City of Miami Beach except in accordance with this Division.

"Medical use" means administration of the ordered amount of low-THC *cannabis* or medical *cannabis*. The term does not include the:

- (1) Possession, use, or administration of low-THC *cannabis* or medical *cannabis* by smoking; or
- (2) Transfer of low-THC *cannabis* or medical *cannabis* to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative authorized to receive it on the qualified patient's behalf.
- (3) Use or administration of low-THC *cannabis* or medical *cannabis*:
  - i. On any form of public transportation.
  - ii. In any public place.
  - iii. In a qualified patient's place of employment, if restricted by his or her employer.
  - iv. In a correctional institution.
  - v. On the grounds of any child care facility, preschool, or school.
  - vi. On or in any vehicle, aircraft, or motorboat.

**Sec. 142-1502 - Zoning districts where dispensing allowed.**

Only in accordance with the requirements of this division and the applicable zoning district, dispensing of low-THC or medical *cannabis* shall be permitted in:  
\_\_\_\_\_ districts.

**Sec. 142-1503. - Zoning requirements for dispensing facilities.**

Low-THC and medical *cannabis* dispensing facilities shall comply with the following requirements:

- (a) No low-THC or medical *cannabis* dispensing facility shall be located within:
  - (1) one (1) mile from any other low-THC or medical *cannabis* dispensing facility;
  - (2) 1,500 feet of any child care facility, preschool, kindergarten, elementary school, middle school, junior high school, high school, or religious facility; or
  - (3) 500 feet of any property in any RS or RM Zoning District.

(b) Distances between low-THC or medical *cannabis* dispensing facilities shall be measured by drawing a straight between the front doors of the respective dispensing facilities. The distance from a child care facility, preschool, kindergarten, elementary school, middle school, junior high school, high school, religious facility, or residential property shall be

measured by following a straight line from the nearest point of the respective structure to the front door of the proposed dispensing facility.

The applicant shall furnish a certified survey from a registered engineer or surveyor, indicating the distance between the proposed dispensing facility and any existing low-THC or medical *cannabis* dispensing facility, child care facility, preschool, kindergarten, elementary school, middle school, junior high school, high school, religious facility, or residential property within the applicable radius. In case of dispute, the measurement scaled by the Director shall govern. The Director shall verify in writing receipt of the survey from the applicant, which shall serve as a reservation of said location by a state-approved dispensing organization to dispense low-THC or medical *cannabis*. Upon reservation, the applicant shall have 180 days to apply for a permit or certificate of use.

(c) Dispensing of, payment for, and receipt of low-THC or medical *cannabis* is prohibited anywhere outside of the dispensing facility, including, but not limited to, on sidewalks, in parking areas, or in the rights-of-way surrounding the dispensing facility; provided, however, this provision shall not be construed to prohibit delivery of low-THC or medical *cannabis* to an eligible patient, as permitted by state law or rule.

(d) Consumption of low-THC or medical *cannabis* or alcoholic beverages is prohibited onsite at the dispensing facility, including, but not limited to, in the parking areas, sidewalks, or rights-of-way surrounding the dispensing facility; provided, however, this provision shall not be construed to prohibit consumption associated with a dispensing facility employee, trained by a medical professional such as a doctor, nurse, pharmacist, or medical or physician's assistant, instructing an eligible patient on the mechanism of consumption of low-THC or medical *cannabis*, as permitted by state law or rule.

(e) Irrespective of any statutory amendment, facilities dispensing low-THC or medical *cannabis* shall only be allowed to operate between the hours of 7:00 a.m. and 9:00 p.m. daily, as provided by Section 381.986, Florida Statutes.

(f) A certificate of use shall be obtained for the low-THC or medical *cannabis* dispensing facility on an annual basis. The application for the certificate of use shall be made on a form prescribed by the Director.

(1) The low-THC or medical *cannabis* dispensing facility must be established on the premises by a state-approved dispensing organization within 180 days of the date the certificate of use is issued; after 180 days, unless the time period is extended by the Director for good cause shown, the certificate of use shall be null and void and the applicant must re-apply.

(2) The Department shall have the right to periodically inspect the premises of the dispensing facility at any reasonable time to ensure that the facility has a current and valid certificate of use, and to ensure compliance with the terms and conditions under which it was issued. Violators will be subject to all appropriate penalties, including revocation of the certificate of use.

(3) Where, a civil violation notice relating to the dispensing of low-THC or medical *cannabis* has been issued and appealed by the alleged violator, the certificate of use shall not be renewed where the appeal has been pending for 180 days or more and the delay is attributable to the alleged violator. Where, determinations of guilt for three or more violations have been made, or the Special Master has determined that a nuisance exists at the dispensing facility, the certificate of use shall be revoked immediately, and a new application may not be made within a period of 12 months.

(g) Any use, created and established under this division in a legal manner, which may thereafter become legally nonconforming, may continue until there is an abandonment of said use. Once a legally nonconforming use is abandoned, it shall not be re-established unless it conforms to the requirements of this division. Abandonment shall consist of: a change of use or suspension of active business with the public for a period of at least three (3) months; or a lesser time if a written declaration of abandonment is provided by the owner of the premises or, if the property is subject to a lease, by the owner and tenant thereof.

(h) No certificate of use, license, or building or other permit shall be issued for a low-THC or medical *cannabis* dispensing facility where the proposed place of business does not conform to the requirements of this subsection.

**Sec. 142-1504. Prohibition on outdoor grows; growing marijuana in residential structures.**

(1) It shall be unlawful for any person to cultivate, produce, or possess, or cause to be or permit to be cultivated, produced, or possessed, marijuana plants, *cannabis*, in any location that is not entirely contained with a structure that is completely enclosed by walls and a roof.

(2) It shall be unlawful for any person to cultivate, produce, or possess, or cause to be or permit to be cultivated, produced, or possessed, marijuana plants in residential structures unless it is performed in full compliance with the following conditions:

(a) If for medical use by a patient or primary caregiver for medical use as such terms are defined by Article X, Section 29 of the Florida Constitution, such cultivation, production, or possession of marijuana plants must be in full compliance with all applicable provisions of 381.986, Florida Statutes; and

(b) If for medical use by a patient or primary caregiver as such terms are defined by Article X, Section 29 of the Florida Constitution, such marijuana plants are cultivated, produced, or possessed within a licensed patient's or registered caregiver's primary residence, as defined by paragraph (g) below; and

(c) The cultivation, production, or possession of any marijuana plants must not be perceptible from the exterior of the primary residence, including, but not limited to:

1. Common visual observation, which would prohibit any form of signage;

2. Unusual odors, smells, fragrances, or other olfactory stimulus;
3. Light pollution, glare, or brightness that disturbs the repose of another;
4. Undue vehicular or foot traffic, including excess parking within the residential zone; and
5. Noise from fans that interferes with the neighbors and is loud.

(d) No marijuana plants shall be cultivated, produced, processed, or possessed:

1. In the common areas of a multi-family or attached residential development; or
2. In any location that is not the primary residence.

(e) Any cultivation, production, or possession of marijuana plants shall be limited to the following space limitations within a primary residence:

1. Within a single-family dwelling unit: A secure, defined, contiguous 150-square-foot area within the primary residence of the licensed patient or registered caregiver.
2. Within a multi-family dwelling unit: A secure, defined, contiguous 100-square-foot area within the primary residence of the patient or registered caregiver.

(f) Any cultivation, production, or possession of marijuana plants shall meet the requirements of all adopted Florida Building and Life/Safety Codes.

(g) For purposes of this section, "primary residence" means the place that a person, by custom and practice, makes his or her principle domicile and address and to which the person intends to return, following any temporary absence, such as vacation. Residence is evidenced by actual daily physical presence, use, and occupancy of the primary residence and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of and partaking of meals, regular mail delivery, vehicle and voter registration, or credit, water, and utility billing. A person shall have only one primary residence. For the purpose of this section, a primary residence shall not include accessory buildings, attached garages (unless such space was lawfully improved and finished for occupancy in compliance with all applicable requirements of the city code as it existed at the time of the improvement), or any outdoor space.

(h) For purposes of this section, "a secure" area means an area within the primary residence accessible only to individuals residing in the residence who are 21 years of age or older or are the patient or primary caregiver if the marijuana is for lawful medical use. Secure premises shall be locked or

partitioned off to prevent access by children, visitors, casual passersby, vandals, or anyone not licensed and authorized to possess medical marijuana.

(i) If for medical use by a patient or primary caregiver as such terms are defined by Article X, Section 29 of the Florida Constitution and such licensed patient or registered caregiver raises quantities of marijuana requiring more than the square footage limitations of paragraph (f) above, such patient or caregiver must be in full compliance with Florida law; and

1. Such patient or caregiver may grow medical marijuana for personal use and solely to address a debilitating medical condition within the Industrial Zoned Districts of the city; and

2. Such patient or caregiver must submit plans, obtain a building permit, and pass inspections to ensure that the premises are in compliance with the City of Florida's Building Code, Electrical Code, Fire Code, and all other relevant life/safety codes in order to obtain a certificate of occupancy from the City of Miami Beach's Building Division;

3. Such patient or caregiver must ensure that the premises are secure, as defined in paragraph (i) above; however, within the industrial setting, so that no children, visitors, passersby, vandals, or anyone else not licensed to possess medical marijuana may access the premises.

(j) Any cultivation, production or possession of marijuana plants, cannabis, shall not exceed 12 per primary residence.

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### **SECTION 3. Repealer.**

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

### **SECTION 4. 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 5. Severability.**

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

**SECTION 6. Effective Date.**

This Ordinance shall take effect ten days following adoption.

**PASSED** and **ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Philip Levine  
Mayor

**ATTEST:**

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

First Reading: \_\_\_\_\_, 2016

Second Reading: \_\_\_\_\_, 2016

Verified by: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

C:\Documents\South Beach Commercial Character Ordinance\Art Deco - MiMo Commercial  
Character Overlay District.docx

**ITEM  
THREE**

# MIAMI BEACH

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

## COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager



DATE: November 16, 2016

SUBJECT: **Discussion Regarding an Ordinance Amendment to Curb the Proliferation of Formula Retail Establishments.**

### HISTORY/BACKGROUND

On September 14, 2016, at the request of Commissioner Ricky Arriola, the City Commission referred this item to the Land Use and Development Committee (Item C4 M). On September 21, 2016, the Land Use and Development Committee continued the item to the October 26, 2016 meeting. On October 26, 2016, the item was continued to a date certain of November 16, 2016, at the request of the sponsor.

On September 27, 2016, at the request of Commissioner Ricky Arriola, the City Commission adopted a 10-point plan that recommends a prohibition on formula restaurants and limits on certain types of retail (Item R9 B).

### ANALYSIS

The commercial areas of Miami Beach's historic districts are world renown for providing unique experiences to residents and visitors. These include over a century of evolving, highly significant styles of architecture (including Art Deco and Post-War Modern/MiMo) that are unique to the area, dining experiences and styles of food that are difficult to experience outside of South Florida. Additionally, the retail industry provides goods and services unique to the region. Collectively, this highly unique mixture of architecture, food & dining and specialized retail have fostered and maintained a brand unique to Miami Beach. In turn, this unique brand reintroduced a strong tourism industry in Miami Beach, which is the City's primary economic engine.

However, in recent years, the character of these areas has been changing with an influx of businesses that are common to many suburban areas of the country. These businesses include chain (formula) restaurants, chain (formula) retail, check cashing stores, convenience stores, and pharmacy stores. These types of establishments have multiple locations throughout the country, as well as standardized identities, logos, color schemes, uniforms, and merchandise.

The proliferation of such establishments limit, and in some cases eliminate business establishment opportunities for the unique business that have traditionally been part of the fabric of the historic commercial districts. This has had a homogenizing effect of on the commercial areas, and has resulted in a decrease in the diversity of cultural, retail, and dining services unique to the Miami Beach brand.

Over the last 4 decades, the City's historic districts have thrived on a careful balance of cultural, retail, and dining experiences that are not found elsewhere in the country. The increased level of homogeneity has detracted from the uniqueness of the City's brand. Over the longer term, this could have a negative effect on the City's economy, since visitors will encounter similar businesses to those that they see in their home cities, and less of the City's brand.

Additionally, certain nuisance uses such as pawnshops, souvenir and t-shirt shops, tattoo studios, fortune tellers (occult science establishments), and package liquor stores have also affected the character of the City's historic districts in a negative way, as they detract from the experience that tourists and residents are seeking. Medical marijuana dispensaries have recently been permitted in the State of Florida, and these may have a similar impact as the aforementioned uses.

Ocean Drive is of particular concern, due to its importance to the City's tourism industry. Its unique architecture, sidewalk cafés, and beachfront location are one of the City's primary tourism attractions. Due to the location, exposure and successful branding, the aforementioned homogenizing uses have become highly attractive for property owners; a number of such uses have already opened on Ocean Drive, with more seeking to open. In order to address this concern, the proposed Overlay District prohibits the previously described uses from opening on properties that front Ocean Drive within the district boundaries.

### **THE PROPOSAL**

The proposed Ordinance would establish the "Art Deco – MiMo Commercial Character Overlay District." The Overlay would generally cover areas of South Beach fronting Ocean Drive, Collins Avenue, and Washington Avenue between 5<sup>th</sup> Street and 16<sup>th</sup> Street. Additionally, the areas of North Beach fronting Ocean Terrace, Collins Avenue, and Harding Avenue between 73<sup>rd</sup> Street and 75<sup>th</sup> Street are also included.

The following provisions are in this draft:

- **Check Cashing Stores:** Such establishments shall be prohibited on lots fronting Ocean Drive and in the Ocean Terrace/Harding Townsite Area.

In areas of the Overlay District not included in subsection a. above, there shall be no more than two (2) such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.

- **Convenience Stores:** Such establishments shall be prohibited on lots fronting Ocean Drive.

In the Ocean Terrace/Harding Townsite Area, there shall be a limit of one (1) such establishment.

In areas of the Overlay District not included in subsection a. and b. of the attached ordinance, there shall be no more than five (5) such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.

- **Formula Commercial:** Such establishments shall be prohibited on lots fronting Ocean Drive and Ocean Terrace.

This subsection shall not apply to any establishments in the South Beach Art Deco Area other than establishments fronting Ocean Drive nor to any establishment in the Ocean Terrace/Harding Townsite Area, other than Ocean Terrace.

- **Formula Restaurants:** Such establishments shall be prohibited on lots fronting Ocean Drive or Ocean Terrace.

This subsection shall not apply to any establishments in the South Beach Art Deco Area other than establishments fronting Ocean Drive, nor to any establishment in the Ocean Terrace/Harding Townsite Area, other than Ocean Terrace.

A formula restaurant where at least some food or beverage orders are communicated by a customer to an employee over a counter or similar projection and the food or beverage that is ordered is provided to the customer at or over the counter or similar projection is prohibited on Ocean Drive and Ocean Terrace.

- **Marijuana dispensaries:** Prohibited in all areas.
- **Occult Science Establishments:** Prohibited in the overlay district.
- **Package liquor stores:** Such establishments shall be prohibited on lots in the South Beach Art Deco Area with an underlying MXE zoning designation and in the Ocean Terrace/Harding Townsite Area.

In areas of the Overlay District not included in subsection a. of the attached ordinance, there shall be no more than three (3) such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.

- **Pawnshops:** Prohibited in all areas.
- **Pharmacy stores:** Such uses shall be prohibited on lots fronting Ocean Drive.

In the Ocean Terrace/Harding Townsite Area, there shall be a limit of one (1) such establishment.

In areas of the overlay district not included in subsection a. and b. above, there shall be no more than five (5) such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.

- **Souvenir and t-shirt shops:** Such establishments shall be prohibited on lots fronting Ocean Drive and in the Ocean Terrace/Harding Townsite Area.

In areas of the overlay district not included in subsection a. of the attached ordinance, there shall be no more than five (5) such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.

- **Tattoo studios:** Such uses shall be prohibited on lots fronting Ocean Drive and in the Ocean Terrace/Harding Townsite Area.

In areas of the overlay district not included in subsection a. of the attached ordinance, there shall be no more than three (3) such establishments.

Additionally, the Overlay would prohibit variances of these regulations. It also establishes minimum submittal requirements to allow City staff to ensure compliance with these regulations.

#### **CONCLUSION**

The Administration recommends that the Land Use and Development Committee discuss the matter further and provide appropriate policy direction. If there is consensus on the subject Ordinance, it is further recommended that the Land Use Committee recommend that the City Commission transmit the Ordinance to the Planning Board with favorable recommendation.

JLM/SMT/TRM/RAM

**ART DECO / MIMO COMMERCIAL CHARACTER OVERLAY DISTRICT**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," TO PROVIDE FOR DEFINITIONS FOR "CHECK CASHING STORE," "CONVENIENCE STORE," "FORMULA RESTAURANT," "FORMULA COMMERCIAL ESTABLISHMENTS," "MARIJUANA DISPENSARY," "CANNABIS DISPENSARY," "OCCULT SCIENCE ESTABLISHMENT," "PHARMACY," "SOUVENIR AND T-SHIRT SHOP," "TATTOO STUDIO," AND RELATED DEFINITIONS; AMENDING CHAPTER 142 OF THE CITY CODE, ENTITLED "ZONING DISTRICTS AND REGULATIONS," AT ARTICLE III, ENTITLED "OVERLAY DISTRICTS," TO ESTABLISH DIVISION 12, ENTITLED "ART DECO / MIMO COMMERCIAL CHARACTER OVERLAY DISTRICT," TO PROVIDE ADDITIONAL REGULATIONS FOR THE AFOREMENTIONED USES, INCLUDING DISTANCE SEPARATION REQUIREMENTS, LIMITATIONS ON NUMBER OF ESTABLISHMENTS, AND PROHIBITIONS UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

**WHEREAS**, properties fronting Ocean Drive and Collins Avenue that have a zoning designation of MXE Mixed Use Entertainment are located in the Ocean Drive/Collins Avenue Historic District, as well as the Miami Beach Architectural National Register Historic District; and

**WHEREAS**, properties fronting Washington Avenue that have a zoning designation of CD-2 Commercial Medium Intensity District, are located in the Flamingo Park Historic District and the Miami Beach Architectural National Register Historic District; and

**WHEREAS**, Ocean Drive, Collins Avenue, and Washington Avenue are some of the premier streets in Miami Beach and provide residents and visitors with a unique cultural, retail, and dining experience and are vital to Miami Beach's economy, especially the tourism industry; and

**WHEREAS**, properties fronting Ocean Terrace and Collins Avenue between 73<sup>rd</sup> and 75<sup>th</sup> Streets are within the Harding Townsite Historic District and the North Shore National Register Historic District; and

**WHEREAS**, properties fronting Harding Avenue between 73<sup>rd</sup> and 75<sup>th</sup> Streets are within North Shore National Register Historic District; and

**WHEREAS**, the City of Miami Beach has undertaken a master planning process for the North Beach area that includes the Harding Townsite Historic District and North Shore National Register District, in order to encourage the revitalization of the area by improving cultural, retail, and dining experiences for residents and visitors to the area; and

**WHEREAS**, formula commercial establishments and formula restaurants are establishments with multiple locations and standardized features or a recognizable appearance. Recognition is dependent upon the repetition of the same characteristics of one store in multiple locations; and

**WHEREAS**, formula commercial establishments and formula restaurants are increasing in number along Ocean Drive and within other historic districts; and

**WHEREAS**, the sameness of formula commercial establishments, while providing clear branding for retailers, counters the City's Vision Statement which includes creating "A Unique Urban and Historic Environment"; and

**WHEREAS**, notwithstanding the marketability of a retailer's goods or services or the visual attractiveness of the storefront, the standardized architecture, color schemes, decor and signage of many formula commercial establishments detract from the distinctive character and aesthetics of the historic districts; and

**WHEREAS**, the increase of formula commercial establishments hampers the unique cultural, retail, and dining experience in commercial and mixed-use areas of the City's historic districts. Specifically, the proliferation of formula commercial establishments may unduly limit or eliminate business establishment opportunities for non-traditional or unique businesses, thereby decreasing the diversity of cultural, retail, and dining services available to residents and visitors; and

**WHEREAS**, the homogenizing effect of formula commercial establishments, based on its reliance on standardized branding, is greater if the size of the establishment, in number of locations or size of use or branded elements, is larger. The increased level of homogeneity detracts from the uniqueness of the historic districts, which thrive on a high level of interest maintained by a mix of cultural, retail, and dining experiences that are not found elsewhere in the country; and

**WHEREAS**, sidewalk cafes are central to the economy of Ocean Drive and enhance the pedestrian experience and historic and cosmopolitan character of the street; and

**WHEREAS**, it is not the intent of the City to limit interstate commerce, but rather to maintain the historic character of neighborhoods and promote their unique cultural, retail, and dining experiences that are vital to the City's economy; and

**WHEREAS**, it is the intent of the City that if an establishment that has multiple locations and standardized features or a recognizable appearance seeks to locate within certain areas affected by this ordinance that such establishment provide a distinct array of merchandise, façade, décor, color scheme, uniform apparel, signs, logos, trademarks, and servicemarks; and

**WHEREAS**, convenience stores, pharmacy stores and eating establishments have similar impacts as formula stores; and

**WHEREAS**, check cashing stores, pawnshops, souvenir and t-shirt shops, tattoo studios, fortune tellers (occult science establishments), and package liquor stores are uses which negatively affect surrounding areas; and

**WHEREAS**, it is the intent of the City to limit the number of establishments which may negatively affect surrounding areas; and

**WHEREAS**, the amendments set forth below are necessary to accomplish the objectives identified herein.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA.**

**SECTION 1.** Chapter 114 of the City Code, entitled "General Provisions," is hereby amended as follows:

**CHAPTER 114  
GENERAL PROVISIONS**

**Sec. 114-1. Definitions.**

The following words, terms and phrases when used in this subpart B, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

\* \* \*

Check cashing store means a business which cashes checks on a regular basis for a fee. This definition does not include banks, which may cash checks in addition to providing other financial services such as, but not limited to, money savings accounts, loan services, and checking accounts.

\* \* \*

Convenience store means a retail store with direct access from the street or sidewalk operating at a minimum between the hours of 8:00 AM and midnight containing less than 6,000 square feet of floor area that is designed and stocked to sell primarily food (packaged and/or prepared), beverages, newspapers, magazines, and other household supplies to customers who generally purchase a relatively few number of items (in contrast to a "grocery store" or "super market"). It is designed to attract and depends upon a large turnover of customers.

Establishment, as used in the definition of Formula commercial establishment, means a place of business with a specific store name or specific brand. Establishment refers to the named store or brand and not to the owner or manager of the store or brand. As an example, if a clothing store company owns 4 brands under its ownership umbrella and each branded store has 10 locations, the term "Establishment" would refer only to those stores that have the same name or brand.

\* \* \*

Formula restaurant means a restaurant, that has 50 or more other establishments in operation anywhere in the United States of America or five or more with approved development orders in Miami Beach. In addition to the 50 or more establishments either in operation or with

approved development orders, the establishments maintain two or more of the following features: a standardized (formula) array of merchandise; a standardized façade; a standardized decor or color scheme; uniform apparel for service providers, food, beverages or uniforms; standardized signs, logos, trademarks or servicemarks. For the purpose of this definition, the following shall apply:

- (1) Standardized (formula) array of merchandise or food means that 50% or more of in-stock merchandise or food is from a single distributor and bears uniform markings.
- (2) Trademark means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods or food of one party from those of others.
- (3) Servicemark means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service or food of one party from those of others.
- (4) Decor means the style of interior or exterior furnishings, which may include but is not limited to, style of furniture, wall coverings or permanent fixtures.
- (5) Color scheme means the selection of colors used throughout, such as on the furnishings, permanent fixtures, and wall coverings, or as used on the facade.
- (6) Facade means a face (usually the front) of a building, including awnings, that looks onto a street or an open space.
- (7) Uniform food, beverages or apparel/uniforms means standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hats, and pins (other than name tags) as well as standardized colors of clothing, food or beverages listed on the menus of such establishments or standardized uniforms worn by employees.

\* \* \*

Formula commercial establishment means a commercial use, excluding office, restaurant and hotel use, that has ten (10) or more retail sales establishments in operation or with approved development orders, in the United States of America. In addition to the ten (10) or more establishments either in operation or with approved development orders; provided, however, for those businesses located in a building that is two (2) stories or less with frontage on Ocean Drive, formula commercial establishment means a commercial use, excluding office, restaurant and hotel, which has five (5) or more other establishments in Miami Beach. In addition to meeting or exceeding the numerical thresholds in the preceding sentence, the definition of formula commercial establishment also means an establishment that maintains two or more of the following features: a standardized (formula) array of merchandise; a standardized façade; a standardized decor or color scheme; uniform apparel; standardized signs, logos, trademarks or servicemarks. For the purpose of this definition, the following shall apply:

- (1) Standardized (formula) array of merchandise means that 50 percent or more of in-stock merchandise is from a single distributor and bears uniform markings.

- (2) Trademark means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods of one party from those of others.
- (3) Servicemark means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service of one party from those of others.
- (4) Decor means the style of interior or exterior furnishings, which may include but is not limited to, style of furniture, wall coverings and permanent fixtures.
- (5) Color scheme means the selection of colors used throughout, such as on the furnishings, permanent fixtures, and wall coverings, or as used on the facade.
- (6) Facade means a face (usually the front) of a building, including awnings, that looks onto a street or an open space.
- (7) Uniform apparel means standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hats, and pins (other than name tags) as well as standardized colors of clothing.

\* \* \*

Grocery store means a retail store with direct access from the street or sidewalk containing 6,000 or more square feet of floor area that primarily sells food, including canned and frozen foods, fresh fruits and vegetables, and fresh (raw) and prepared meats, fish, and poultry.

\* \* \*

Marijuana dispensary or Cannabis dispensary means a building, structure, or other facility where marijuana or cannabis, inclusive of medical cannabis, and cannabis delivery devices, are dispensed at retail.

\* \* \*

Occult science establishment shall mean an establishment engaged in the occupation of a fortune teller, palmist, astrologist, numerologist, clairvoyant, craniologist, phrenologist, card reader, spiritual reader, tea leaf reader, prophet, psychic or advisor or who in any other manner claims or pretends to tell fortunes, or claims or pretends to disclose mental faculties of individuals for any form of compensation. Nothing contained herein shall be construed to apply to a person pretending to act as a fortune teller in a properly licensed theater as part of any show or exhibition presented therein or as part of any play, exhibition, fair or show presented or offered in aid of any benevolent, charitable or educational purpose.

\* \* \*

Pharmacy store means a store with direct access from the street or sidewalk, containing a minimum of 3,500 square feet, where medicinal drugs requiring a prescription from a qualified medical professional are dispensed and sold and that operates at a minimum between the hours of 9:00 AM and 10:00 PM and is also designed and stocked to sell health and wellness products, food (packaged and/or prepared), beverages, newspapers, magazines, and other household

supplies to customers who generally purchase relatively few number of items (in contrast to a "grocery store" or "super market").

\* \* \*

Souvenirs are items, exclusive of books, magazines or maps, which serve as a token of remembrance of Miami Beach or any geographic areas in Florida and which bear the name of the City or geographic areas or streets thereof or of events associated with Miami Beach or South Florida.

\* \* \*

Souvenir and t-shirt shop means any business with direct access from the street or sidewalk in which the retail sale of T-shirts or souvenirs or both is conducted as a principal use of the business, or together with some other business activity, but which constitutes the primary, or is the major attraction to the business.

\* \* \*

Supermarket. (See "Grocery store.")

\* \* \*

Tattoo studio means any establishment, place of business, or location, other than a licensed medical facility, an office or clinic of a licensed medical professional, or a duly licensed beauty shop or barber shop, wherein adornment of any part of the human body or head, whether artistic, cosmetic or otherwise, is practiced through the use of needles, scalpels, or any other instruments designed to touch, penetrate or puncture the skin for purposes of: (1) inserting, attaching or suspending jewelry, decorations or other foreign objects; (2) producing an indelible mark or figure on the human body or face by scarring skin or flesh; (3) producing an indelible mark or figure on the human body or face by inserting a pigment under or upon the skin; or (4) permanently changing the color or other appearance of the skin. This term shall not, however, include piercing an ear with a disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear.

\* \* \*

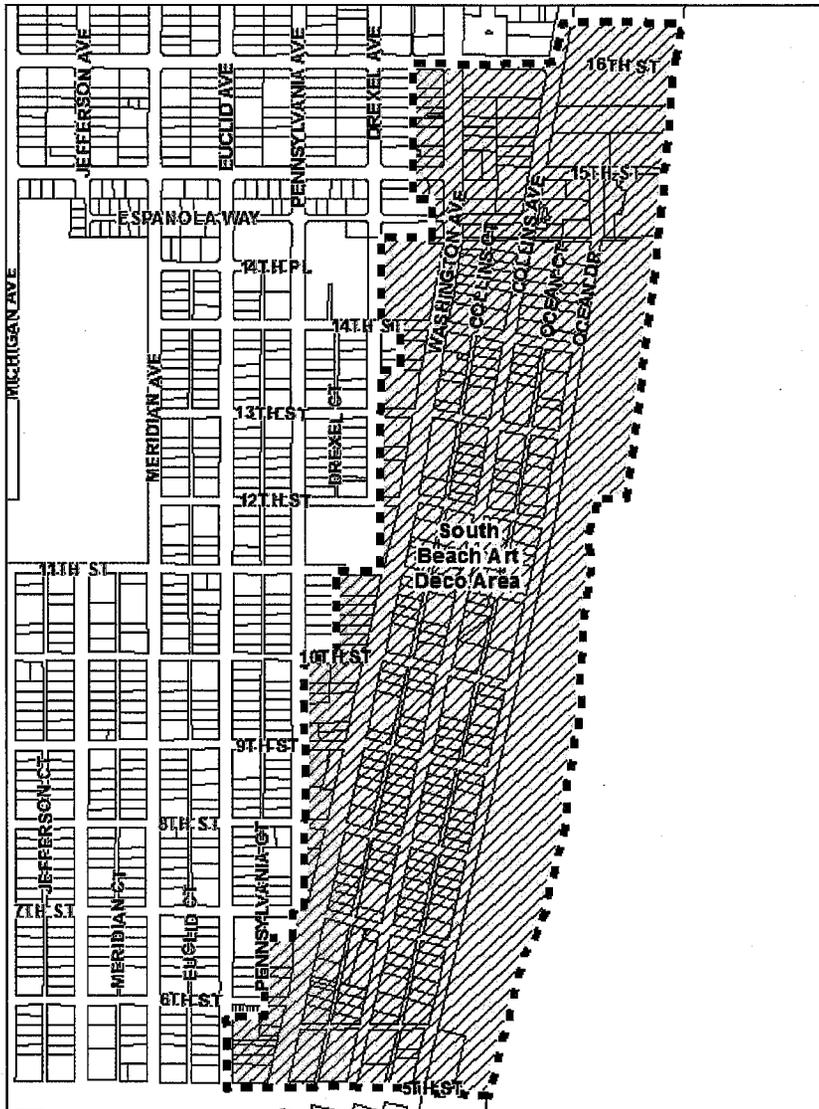
T-shirt is any garment or article of clothing which has no collar, including, but not limited to, T-shirts, sweat shirts, tank tops, shirts or scrub shirts, which are designed or intended generally to be worn on or over the chest and containing any communicative verbiage, graphics, or images imprinted or to be imprinted on the garment or article of clothing, exclusive of a garment manufacturer's mark or logo, exclusive of decorative words and information woven or dyed in the fabric by the manufacturer of the fabric, exclusive of hand stitched, needle work or embroidery, exclusive of tie-dye garments, and exclusive of hand painted or air-brushed garments that contain no communicative verbiage, graphics or images.

**Section 2.** Chapter 142 of the City Code, entitled "Zoning Districts and Regulations," at Article III, entitled "Overlay Districts," is hereby amended as follows:

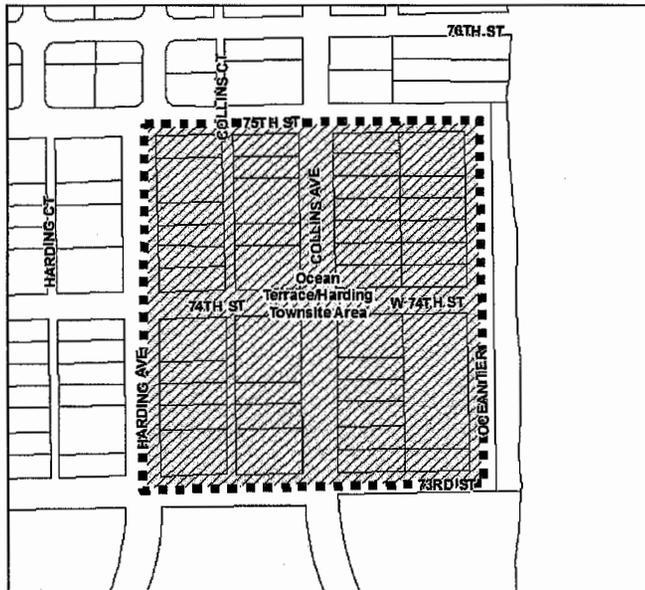
**DIVISION 12 – ART DECO / MIMO COMMERCIAL CHARACTER OVERLAY DISTRICT**

Sec. 142-870.10. – Location and purpose.

- (a) There is hereby created the Art Deco / Mimo Commercial Character Overlay District (the “Overlay District”). The Overlay District consists of the properties in the South Beach Art Deco Area identified in the map below in this subsection (a) and the properties identified in the Ocean Terrace / Harding Townsite Area described in subsection (b) below. The South Beach Art Deco Area is generally located east of the western lot lines of properties fronting the west side of Washington Avenue between 5<sup>th</sup> Street to the south and 16<sup>th</sup> street to the north and west of the ocean:



- (b) The Ocean Terrace / Harding Townsite Area is identified in the map below and is generally located between Harding Avenue to the west and Ocean Terrace to the east, between 73<sup>rd</sup> and 75<sup>th</sup> Streets:



(c) The purpose of this Overlay District is to limit the proliferation of uses which may diminish the character of historic commercial areas within the City.

Sec. 142-870.11. – Compliance with regulations.

The following regulations shall apply to the Overlay District. There shall be no variances allowed from these regulations. All development regulations in the underlying zoning district and any other applicable overlay regulations shall apply, except as follows:

(a) The following limitations shall apply to the commercial uses listed below:

(1) Check cashing stores shall comply with the following regulations:

- a. Such establishments shall be prohibited on lots fronting Ocean Drive and in the Ocean Terrace/Harding Townsite Area.
- b. In areas of the Overlay District not included in subsection a. above, there shall be no more than two (2) such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.

(2) Convenience stores shall comply with the following regulations:

- a. Such establishments shall be prohibited on lots fronting Ocean Drive.
- b. In the Ocean Terrace/Harding Townsite Area, there shall be a limit of one (1) such establishment.
- c. In areas of the Overlay District not included in subsection a. and b. above, there shall be no more than five (5) such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.

- (3) Formula commercial establishments shall comply with the following regulations:
- a. Such establishments shall be prohibited on lots fronting Ocean Drive and Ocean Terrace.
  - b. This subsection shall not apply to any establishments in the South Beach Art Deco Area other than establishments fronting Ocean Drive nor to any establishment in the Ocean Terrace/Harding Townsite Area, other than Ocean Terrace.
- (4) Formula restaurants shall comply with the following regulations:
- a. Such establishments shall be prohibited on lots fronting Ocean Drive or Ocean Terrace.
  - b. This subsection shall not apply to any establishments in the South Beach Art Deco Area other than establishments fronting Ocean Drive, nor to any establishment in the Ocean Terrace/Harding Townsite Area, other than Ocean Terrace.
  - c. A formula restaurant where at least some food or beverage orders are communicated by a customer to an employee over a counter or similar projection and the food or beverage that is ordered is provided to the customer at or over the counter or similar projection is prohibited on Ocean Drive and Ocean Terrace.
- (5) Marijuana dispensaries or Cannabis dispensaries shall be prohibited in the Overlay District.
- (6) Occult science establishments shall be prohibited in the Overlay District.
- (7) Package stores shall comply with the following regulations:
- a. Such establishments shall be prohibited on lots in the South Beach Art Deco Area with an underlying MXE zoning designation and in the Ocean Terrace/Harding Townsite Area.
  - b. In areas of the Overlay District not included in subsection a. above, there shall be no more than three (3) such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.
- (8) Pawnshops shall be prohibited in the Overlay District.
- (9) Pharmacy stores shall comply with the following regulations:
- a. Such uses shall be prohibited on lots fronting Ocean Drive.
  - b. In the Ocean Terrace/Harding Townsite Area, there shall be a limit of one (1) such establishment.
  - c. In areas of the overlay district not included in subsection a. and b. above, there shall be no more than five (5) such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.

(10) Souvenir and t-shirt shops shall comply with the following regulations:

- a. Such establishments shall be prohibited on lots fronting Ocean Drive and in the Ocean Terrace/Harding Townsite Area.
- b. In areas of the overlay district not included in subsection a. above, there shall be no more than five (5) such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.

(11) Tattoo studios shall comply with the following regulations:

- a. Such uses shall be prohibited on lots fronting Ocean Drive and in the Ocean Terrace/Harding Townsite Area.
- b. In areas of the overlay district not included in subsection a. above, there shall be no more than three (3) such establishments.

(b) Review procedures.

(1) Commercial establishments in the Overlay District that are not identified in section 142-870.11. (a) shall comply with the following regulations:

- a. A signed affidavit indicating that they are not an establishment that is regulated by section 142-870.11. (a) shall be provided to the city as part of the application for obtaining a business tax receipt and building permit, as applicable.
- b. If the establishment is found not to be in compliance with the applicable requirements of the signed affidavit, the business tax receipt will be revoked and the establishment shall immediately cease operation.

(2) Commercial establishments in the Overlay District that are identified in section 142-870.11. (a) shall comply with the following regulations:

- a. If applicable, the applicant shall provide a signed and sealed survey dated not older than six (6) months, indicating the number, location, name, business tax receipt numbers, and separation of the applicable type of establishments within the Overlay District. Distance separation shall be measured as a straight line between the principal means of entrance of each establishment and the proposed establishment.
- b. Establishments existing as of the date of the enactment of this ordinance shall count towards the maximum number of such establishments permitted within section 142-870.11. (a).
- c. A signed affidavit indicating compliance with the regulations of section 142-870.11. (a) for the applicable type of establishment shall be provided prior to obtaining a business tax receipt.
- d. If the establishment is found not to be in compliance with the applicable requirements of the signed affidavit, the business tax receipt will be revoked and the establishment shall immediately cease operation.

- e. If a particular establishment meets more than one definition (i.e., formula commercial establishment and pharmacy store), it must meet the requirements for each use, and if there is a conflict, the more stringent code requirement prevails.

**SECTION 3. Repealer.**

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

**SECTION 4. 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 5. Severability.**

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

**SECTION 6. Effective Date.**

This Ordinance shall take effect ten days following adoption.

**PASSED and ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Philip Levine  
Mayor

**ATTEST:**

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

First Reading: \_\_\_\_\_, 2016  
Second Reading: \_\_\_\_\_, 2016

Verified by: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

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# MIAMI BEACH

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

## COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager 

DATE: November 16, 2016

SUBJECT: **Proposed Zoning Amendments Pursuant To The 10 Point Plan Approved For Ocean Drive:**

- a. **Discussion Regarding an Ordinance Amendment Prohibiting Variances To Exceed The Maximum Size Of Accessory Retail On Ocean Drive (November 9, 2016 City Commission Meeting, Item C4M).**
- b. **Discussion Regarding an Ordinance Amendment Prohibiting East Facing Exterior Speakers On Ocean Drive Within 20 Feet Of The Property's East Boundary (November 9, 2016 City Commission Meeting, Item C4N).**

### HISTORY

On November 9, 2016, at the request of Commissioner Ricky Arriola, the City Commission referred the above noted items to the Land Use and Development Committee and the Planning Board.

### ANALYSIS

On September 27, 2016, the Mayor and City Commission adopted Resolution No. 2016-29590, approving a 10-Point Plan for Ocean Drive. The attached draft ordinances pertain to the following items in the 10-point plan:

1. Placing further limitations on the size of retail uses permitted on Ocean Drive and a prohibition on variances to exceed the maximum size of accessory retail.
2. Food and beverage establishments. Food and beverage establishments on Ocean Drive will be prohibited from having east facing speakers within 20 feet of the property's east boundary, unless music is being played at ambient levels.

The modifications to the size and extent of retail uses on Ocean Drive proposed in the attached draft ordinance is consistent with the original intent of the MXE regulations. In this regard, in order to foster an active sidewalk, with outdoor café and restaurants, retail uses were limited to being an accessory use to a main permitted apartment or hotel. Additionally, limitations on the actual percentage of accessory retail uses were implemented in Section 142-904. Only existing structures that are 2 stories in height or less facing Ocean Drive are currently permitted to have retail as a stand-alone use.

The proposed modifications herein would further limit the amount of retail permitted on Ocean Drive, both as an accessory use, as well as a main permitted use in 2 story buildings. Additionally, a no variance provision has been added.

As it pertains to exterior speakers playing music above ambient levels, CUP approval is already required for any exterior speakers playing music above ambient levels on Ocean Drive, as that would be considered outdoor or open-air entertainment. The Administration is seeking guidance and policy direction as it pertains to this particular proposal.

### **CONCLUSION**

The Administration recommends that the Land Use and Development Committee discuss the matter further and provide appropriate policy direction. If there is consensus on one or both of the draft ordinances, it is further recommended that they be transmitted to the Planning Board with a favorable recommendation

**JLM/SMT/TRM**

M:\\$CMB\CCUPDATES\Land Use and Development Committee\2016\November 16, 2016\Ocean Drive -Access. Retail and Speakers - MEM Nov 2016 LUDC.docx

Ocean Drive –Accessory Retail Modifications

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-546 THEREOF, ENTITLED "ADDITIONAL RESTRICTIONS FOR LOTS FRONTING ON OCEAN DRIVE, OCEAN TERRACE AND COLLINS AVENUE," TO MODIFY REGULATIONS PERTAINING TO RETAIL USES ON LOTS FRONTING OCEAN DRIVE, AND BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE IV, "SUPPLEMENTARY DISTRICT REGULATIONS," DIVISION 2, "ACCESSORY USES," BY AMENDING SECTION 142-904 THEREOF, ENTITLED "ADDITIONAL MIXED USE ENTERTAINMENT DISTRICT REGULATIONS" TO MODIFY REGULATIONS PERTAINING TO RETAIL USES ON LOTS FRONTING OCEAN DRIVE; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS,; and

WHEREAS,; and

WHEREAS,; 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.** Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 13, "MXE Mixed Use Entertainment District," Is amended as follows:

Sec. 142-546. - Additional restrictions for lots fronting on Ocean Drive, Ocean Terrace and Collins Avenue.

In the MXE mixed use entertainment district permitted uses in existing buildings at the time of adoption of this section with two stories or less fronting on Ocean Drive or Ocean Terrace and any building fronting on Collins Avenue from Sixth Street to 16th Street shall comply with the following:

- (1) The entire building shall be substantially renovated and comply with the South Florida Building Code, fire prevention safety code and the property maintenance standards. If the building is a historic structure, the plans shall substantially comply with the Secretary of the Interior Standards and Guidelines for Rehabilitating Historic Structures, U.S. Department of the Interior (revised 1983), as amended.

- (2) The buildings may contain offices, retail, food service establishments, alcoholic beverage establishments, and residential uses or any combination thereof. Medical and dental offices shall be prohibited uses in the MXE districts. Commercial uses located above the ground floor shall only have access from the interior of the building; no exterior access shall be permitted, unless a variance from this requirement is granted.
- (3) Required parking may be satisfied through participation in the parking impact fee program as set forth in chapter 130, article V, where applicable under the regulations contained therein.
- (4) No existing building shall be internally reconstructed to change the number of stories except that 20 percent of each floor plate may be removed to create an open area or atrium.
- (5) For existing buildings with two stories or less fronting on Ocean Drive or Ocean Terrace, the addition of a story shall require that commercial uses comply with all provisions of section 142-904 for accessory uses, ~~unless a variance from the provisions of section 142-904 is granted.~~ For purposes of example only, in buildings described in the foregoing sentence, the existence of commercial uses on the ground floor which exceed 25 percent of the floor area shall not, upon the addition of one story, be deemed grandfathered in, and the percentage of commercial uses on the ground floor, upon the addition of one story, must comply with the requirements of section 142-904, ~~except if a variance is granted.~~
- (6) For existing buildings with two stories or less fronting on Ocean Drive, no more than 25 percent of the first floor may be used for retail and/or office uses.
- (7) No variances shall be granted from the requirements of this section 142-546, except as specified in subsections 142-546(2) ~~and 142-546(5).~~

**SECTION 2.** Chapter 142, "Zoning Districts and Regulations," Article IV, "Supplementary District Regulations," Division 2, "Accessory Uses," Is amended as follows:

**Sec. 142-904. - Additional mixed use entertainment district regulations.**

- (a) *General provisions.* Accessory uses shall comply with the following mandatory criteria in addition to the regulations contained in sections 142-901 and 142-902:
  - (1) All structures shall conform to the South Florida Building Code, the city property maintenance standards and the fire prevention and safety code.
  - (2) The existing building and the proposed improvements shall be built in a manner that is substantially consistent with the design recommendations in neighborhood plans for the area if one exists, and the Secretary of the Interior Standards for Rehabilitation and Guidelines for Historic Structures, U.S. Department of the Interior, as may be amended from time to time.
  - (3) The minimum and average floor area requirements for the units as set forth in article II, division 13 of this chapter shall be met.
  - (4) If the building or plans do not indicate compliance with subsections (a)(1), (a)(2) and (a)(3) of this section, then accessory uses are not permitted.

(b) *Permitted accessory uses.* The following are permitted accessory uses in the mixed use entertainment district.

(1) *Permitted accessory uses in hotels.*

- a. Those accessory uses that are customarily associated with the operation of a hotel as determined by the planning and zoning director. The amount of retail space shall not exceed 75 square feet per hotel unit. Notwithstanding the foregoing, for properties fronting Ocean Drive, the amount of retail space shall not exceed 50 square feet per hotel unit and not be more than 25 percent of the subterranean or ground floor.
- b. Hotels may have offices not associated with the operation of a hotel. The floor space associated with offices shall not exceed 35 square feet per hotel unit; medical or dental related offices are prohibited.
- c. Restaurants, outdoor cafes, sidewalk cafes.
- d. Solarium, sauna, exercise studio, health club or massage service which are located in either the subterranean, ground, mezzanine or roof levels only and are operated by an individual licensed by the state or other appropriate agencies.
- e. Antiques, bookstore, art/craft galleries, artist studios.
- f. Sale of alcoholic beverages as per article V, division 4 of this chapter.
- g. Uses located on the porch, terrace or patio of a building are limited to table seating for eating and drinking establishments, which have their fixtures and cooking facilities located in the interior of the building, and the sale of flowers when conducted from a movable stand that is placed inside the building at the close of business.
- h. The sale of cigars and cigarettes on the porch, terrace or patio of a building, or in permitted sidewalk cafe areas to seated patrons, by a vendor licensed on the premises with the consent of the restaurant and sidewalk cafe licensee, is permitted provided that such sale or transaction shall only occur on such premises, and not on other city rights-of-way. Soliciting passersby and obstructing the right-of-way are prohibited. Goods and merchandise transported from one location to another shall be covered and obscured from view. Vendors shall not use flashing lights, signs, markings, or other devices to call attention to themselves or the goods and merchandise, and shall not otherwise violate the provisions of section 74-1 of this Code. The following civil fines and penalties shall be imposed for violations of this subsection:
  1. If the offense is the first offense, \$100.00 fine.
  2. If the offense is the second offense within six months of the first offense, \$250.00 fine.
  3. If the offense is the third offense within 12 months of the first offence, one seven-consecutive-day suspension.
  4. If the offense is the fourth offense within 12 months of the first offense, one 30-consecutive-day suspension.
5. If the offense is the fifth offense within 12 months of the first offense, the vendor shall be considered a habitual offender, and the city manager shall issue an administrative complaint for suspension or

revocation of an occupational license and certificate of use as provided in section 102-383.

For purposes of this section, suspension or revocation of a license shall apply to all licenses held by a principal or all individuals with a controlling financial interest in the business entity. The term "controlling financial interest" shall mean the ownership, directly or indirectly, of ten percent or more of the outstanding capital stock in any corporation or a direct or indirect interest of ten percent or more in a firm.

In the event of a revocation, as a condition of being permitted to resume operation under the occupational license, the city manager may impose conditions or restrictions as deemed appropriate to assure compliance with all city codes.

A vendor who has been served with a notice of violation shall be subject to enforcement provisions as set forth in chapter 30[, code enforcement,] of the Code. If the special master finds that a violation has occurred, the applicable penalty set forth above shall be imposed.

- (2) *Permitted accessory uses in apartment buildings.* The following are permitted accessory uses in apartment buildings:
    - a. Apartment buildings may have commercial, office, eating or drinking uses, with access to the street, on the ground floor and subterranean level or in the highest floor of a building; however, no more than 25 percent of the floor area of the subterranean or ground floor shall be used for commercial uses. Office space, when located on the ground floor, shall be located at least 50 feet from the front property line.
    - b. Restaurants, outdoor cafes, sidewalk cafes with sale of alcoholic beverages as per article V, division 4 of this chapter.
    - c. Solarium, sauna, exercise studio, health club or massage service by an individual licensed by the state or other appropriate agencies.
  - (3) *Permitted accessory uses in apartment hotels.* Apartment hotels may have the same accessory use regulations as hotels if a minimum of 75 percent of the total number of units are hotel units.
- (c) *Additional requirements.* In addition to the regulations and accessory uses listed in subsections (a) and (b) of this section, structures located in the below areas shall comply with the following:
- (1) Permitted accessory uses for properties on Collins Avenue from Sixth to 15th Streets and on the west side of Collins Avenue from 15th to 16th Streets and Ocean Terrace include the above accessory uses but must comply with the following requirements:
    - a. Offices that are medical or dental related are prohibited.
    - b. Offices are only allowed in existing structures, otherwise, they are prohibited.
    - c. If a lobby is present or was originally constructed it shall be retained or reinstated. Such lobby may be used for a reception area with no partitions; however, offices are not permitted in the lobby.
    - d. Commercial uses, apartments, or hotel units either as a main permitted use or in any combination.
  - (2) Permitted accessory uses for properties that front on Ocean Terrace:

- a. Commercial uses.
- b. Offices. If the office space is located on the ground floor shall be 50 feet from any front property line facing a street and be consistent with subsections (c)(1)a and (c)(1)b of this section.
- c. At least 50 percent of the total floor area shall be used as hotel or apartment, the floor area for hotel or apartment units shall meet the minimum area requirements established for the zoning district.

(d) No variances shall be granted from the requirements of this section 142-904.

**SECTION 3. REPEALER.**

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

**SECTION 4. 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 re-numbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

**SECTION 5. SEVERABILITY.**

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

**SECTION 6. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Philip Levine  
Mayor

ATTEST:

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

First Reading: \_\_\_\_\_, 2017  
Second Reading: \_\_\_\_\_, 2017

Verified By: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

Ocean Drive – Exterior Speaker Locations

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-546 THEREOF, ENTITLED "ADDITIONAL RESTRICTIONS FOR LOTS FRONTING ON OCEAN DRIVE, OCEAN TERRACE AND COLLINS AVENUE," TO CREATE REGULATIONS PERTAINING TO EXTERIOR SPEAKERS ON LOTS FRONTING OCEAN DRIVE; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS,; and

WHEREAS,; and

WHEREAS,; 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.** Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 13, "MXE Mixed Use Entertainment District," Is amended as follows:

**Sec. 142-546. - Additional restrictions for lots fronting on Ocean Drive, Ocean Terrace and Collins Avenue.**

(a) In the MXE mixed use entertainment district permitted uses in existing buildings at the time of adoption of this section with two stories or less fronting on Ocean Drive or Ocean Terrace and any building fronting on Collins Avenue from Sixth Street to 16th Street shall comply with the following:

- (1) The entire building shall be substantially renovated and comply with the South Florida Building Code, fire prevention safety code and the property maintenance standards. If the building is a historic structure, the plans shall substantially comply with the Secretary of the Interior Standards and Guidelines for Rehabilitating Historic Structures, U.S. Department of the Interior (revised 1983), as amended.
- (2) The buildings may contain offices, retail, food service establishments, alcoholic beverage establishments, and residential uses or any combination thereof. Medical and dental offices shall be prohibited uses in the MXE districts. Commercial uses located above the ground floor shall only have access from the interior of the building; no exterior access shall be permitted, unless a variance from this requirement is granted.

- (3) Required parking may be satisfied through participation in the parking impact fee program as set forth in chapter 130, article V, where applicable under the regulations contained therein.
- (4) No existing building shall be internally reconstructed to change the number of stories except that 20 percent of each floor plate may be removed to create an open area or atrium.
- (5) For existing buildings with two stories or less fronting on Ocean Drive or Ocean Terrace, the addition of a story shall require that commercial uses comply with all provisions of section 142-904 for accessory uses, unless a variance from the provisions of section 142-904 is granted. For purposes of example only, in buildings described in the foregoing sentence, the existence of commercial uses on the ground floor which exceed 25 percent of the floor area shall not, upon the addition of one story, be deemed grandfathered in, and the percentage of commercial uses on the ground floor, upon the addition of one story, must comply with the requirements of section 142-904, except if a variance is granted.
- (6) No variances shall be granted from the requirements of this section 142-546, except as specified in subsections 142-546(2) and 142-546(5).

(b) Commercial establishments fronting Ocean Drive, including, but not limited to, retail, office and eating and drinking venues, shall be prohibited from having speakers within 20 feet of the property's east boundary, unless music is being played at ambient levels, or unless the establishment is fully enclosed and the music is inaudible from the exterior.

**SECTION 2. REPEALER.**

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith 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 re-numbered or re-lettered 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.

**PASSED and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Philip Levine  
Mayor

ATTEST:

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

First Reading: \_\_\_\_\_, 2017

Second Reading: \_\_\_\_\_, 2017

Verified By: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

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