

MIAMI BEACH

PLANNING DEPARTMENT

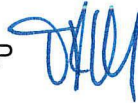
Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: April 30, 2019

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 19-0276. Prohibition on Vaping and Smoke Shops.**

REQUEST

PB 19-0276. PROHIBITION ON VAPING AND SMOKE SHOPS. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 114, ENTITLED "GENERAL PROVISION," AT SECTION 114-1, ENTITLED "DEFINITIONS," TO ESTABLISH DEFINITIONS FOR RETAIL TOBACCO PRODUCTS DEALER, RETAIL VAPE PRODUCTS DEALER, RETAIL SMOKING DEVICES DEALER, TOBACCO/VAPE DEALER, CIGAR/HOOKAH BAR, AND RELATED DEFINITIONS; CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 5, ENTITLED "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT," AT SECTION 142-311, ENTITLED "ALTON ROAD GATEWAY AREA DEVELOPMENT REGULATIONS," TO PROHIBIT TOBACCO/VAPE DEALERS; CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 6, ENTITLED "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," AT SECTION 142-335, ENTITLED "PROHIBITED USES," TO PROHIBIT TOBACCO/VAPE DEALERS; CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE III, ENTITLED "OVERLAY DISTRICTS," DIVISION 12, ENTITLED "ART DECO MIMO COMMERCIAL CHARACTER OVERLAY DISTRICT," AT SECTION 142-870.11, ENTITLED "COMPLIANCE WITH REGULATIONS," TO PROHIBIT TOBACCO/VAPE DEALERS; AND CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE V, ENTITLED "SPECIALIZED USE REGULATIONS," ESTABLISHING DIVISION 11, TO BE ENTITLED "TOBACCO AND VAPING PRODUCTS," TO PROHIBIT TOBACCO/VAPE DEALERS IN PROXIMITY TO ELEMENTARY, MIDDLE, AND SECONDARY SCHOOLS, AND ESTABLISH DISTANCE SEPARATION REQUIREMENTS; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

RECOMMENDATION

Transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

HISTORY

On January 16, 2019, at the request of Commissioner Micky Steinberg, the City Commission referred the discussion item to the Land Use and Development Committee (Item C4 AE).

On February 20, 2019, the Land Use and Development Committee (LUDC) discussed the item and recommended that the City Attorney's Office draft an ordinance for consideration. The LUDC continued the item to the April 3, 2019 meeting.

On April 3, 2019 the LUDC discussed the attached ordinance and recommended that the City Commission refer it to the planning board. In addition to discussing the regulations set forth in the draft ordinance, the LUDC also consider the following recent motion from the Quality Education Committee (QEC):

The Miami Beach Committee for Quality Education request the Miami Beach Commission to restrict any establishments that sell tobacco and smoke products and/ or paraphernalia and accessories to be located more than 300 feet from schools, and that 41st Street be designated a prohibition zone with no waiver/variance provisions.

On February 20, 2019, the Land Use and Development Committee (LUDC) discussed separate ordinance amendments pertaining to the Lincoln Road, Art-Deco / MiMo and Alton-Gateway areas of the City. As part of this discussion, further limitations on the following types of uses were proposed:

1. Vaping stores.
2. Smoke and tobacco stores.
3. Hookah stores.
4. Related smoking paraphernalia stores.

Specifically, the LUDC recommended that a separate ordinance, prohibiting the above noted uses within the Lincoln Road, Art-Deco / MiMo, and Alton-Gateway areas of the City, be referred to the Planning Board. The ordinance, pertaining to the prohibition of these uses in certain areas of the City, was referred to the Planning Board by the City Commission on March 13, 2019 (Item C4 O).

On April 3, 2019, in order to avoid duplication, the LUDC recommended that these related ordinances be combined for legislative purposes. The LUDC also recommended the following modifications to the ordinance:

1. A minimum distance separation of 1200 feet between all affected establishments, citywide.
2. The distance separation from schools shall be increased to 500 feet.

On April 10, 2019, the City Commission referred the ordinance to the Planning Board for review and recommendation (Item C4 AD)

REVIEW CRITERIA

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:

1. **Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

Consistent – The proposed ordinance is consistent with the goals, objectives, and policies of the Comprehensive Plan.

2. **Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

Not applicable – The proposed amendment does not modify district boundaries.

3. **Whether the change suggested is out of scale with the needs of the neighborhood or the city.**

Consistent - The proposed ordinance amendment is not out of scale with the surrounding neighborhood.

4. **Whether the proposed change would tax the existing load on public facilities and infrastructure.**

Consistent – The proposed ordinance will not affect the load on public facilities and infrastructure.

5. **Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.**

Not applicable. – The proposed amendment does not modify district boundaries.

6. **Whether changed or changing conditions make the passage of the proposed change necessary.**

Consistent – The need to protect the health and welfare of young residents, as well as protect the atmosphere of important areas of the City makes passage of the proposed changes necessary.

7. **Whether the proposed change will adversely influence living conditions in the neighborhood.**

Consistent – The proposed ordinance amendment will not adversely affect living conditions in the neighborhood.

8. **Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.**

Consistent – The proposed change will not create or increase traffic congestion from what is currently permitted.

9. **Whether the proposed change will seriously reduce light and air to adjacent areas.**
Consistent – The proposed change will not reduce light and air to adjacent areas.
10. **Whether the proposed change will adversely affect property values in the adjacent area.**
Consistent – The proposed change should not adversely affect property values in the adjacent areas.
11. **Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.**
Consistent – The proposed change should not be a deterrent to the improvement or development of properties in the City.
12. **Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.**
Not applicable.
13. **Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.**
Not applicable.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(b) of the Land Development Regulations establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

- (1) **Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.**
Partially Consistent – The proposal does affect areas that are vulnerable to the impacts of sea level rise.
- (2) **Whether the proposal will increase the resiliency of the City with respect to sea level rise.**
Consistent – The proposal will not affect the resiliency of the City with respect to sea level rise.
- (3) **Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.**
Consistent – The proposal does not diminish and is compatible with the City's sea level rise mitigation and resiliency efforts.

ANALYSIS

E-cigarette usage among minors in and out of schools continues to grow. U.S. Food and Drug

Administration (FDA) reported that more than 2 million middle and high school students used e-cigarettes in 2017 and nearly 10.7 million teens are at risk for e-cigarette use and potential addiction. New research has started to shed light that e-cigarettes can be just as or more dangerous and addicting than tobacco products. The Journal of Pediatrics published a recent study, which found that there were 5 cancer causing toxins in the urine of 16-year-old adolescents who inhaled e-cigarette vapor. The U.S. Center for Disease Control (CDC) indicates that 9 out of 10 smokers begin smoking before the age of 18. Young people that smoke are at risk of nicotine addiction, reduced lung growth, reduced lung function, and early cardiovascular disease. As a result, the proposed ordinance prohibits retail vaping and tobacco dealers within 500 feet of a school, in order to limit access and visibility of these products to minors.

There has also recently been a proliferation of vape and smoking device dealers opening in several of the culturally-significant and tourist-oriented areas of the City. These uses are negatively affecting the aesthetics and attractiveness of the areas. To minimize this negative impact, the proposed ordinance prohibits such establishments in these significant areas. This includes the Art Deco/MiMo Commercial Character Overlay District, Lincoln Road area, Collins Park area, 41st Street corridor, and the Alton Road Gateway area. Additionally, the ordinance requires that such establishments be separated by a minimum distance of 1,200 feet throughout the City.

The subject ordinance combined the City Commission referrals of March 13, 2019 (Item C4 O) and April 10, 2019 (Item C4 AD) into a single ordinance.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

TRM/MAB/RAM

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Prohibition on Vaping and Smoke Shops

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 114, ENTITLED "GENERAL PROVISION," AT SECTION 114-1, ENTITLED "DEFINITIONS," TO ESTABLISH DEFINITIONS FOR RETAIL TOBACCO PRODUCTS DEALER, RETAIL VAPE PRODUCTS DEALER, RETAIL SMOKING DEVICES DEALER, TOBACCO/VAPE DEALER, CIGAR/HOOKAH BAR, AND RELATED DEFINITIONS; CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 5, ENTITLED "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT," AT SECTION 142-311, ENTITLED "ALTON ROAD GATEWAY AREA DEVELOPMENT REGULATIONS," TO PROHIBIT TOBACCO/VAPE DEALERS; CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 6, ENTITLED "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," AT SECTION 142-335, ENTITLED "PROHIBITED USES," TO PROHIBIT TOBACCO/VAPE DEALERS; CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE III, ENTITLED "OVERLAY DISTRICTS," DIVISION 12, ENTITLED "ART DECO MIMO COMMERCIAL CHARACTER OVERLAY DISTRICT," AT SECTION 142-870.11, ENTITLED "COMPLIANCE WITH REGULATIONS," TO PROHIBIT TOBACCO/VAPE DEALERS; AND CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE V, ENTITLED "SPECIALIZED USE REGULATIONS," ESTABLISHING DIVISION 11, TO BE ENTITLED "TOBACCO AND VAPING PRODUCTS," TO PROHIBIT TOBACCO/VAPE DEALERS IN PROXIMITY TO ELEMENTARY, MIDDLE, AND SECONDARY SCHOOLS, AND ESTABLISH DISTANCE SEPARATION REQUIREMENTS; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, U.S. Food and Drug Administration (FDA) reported that more than 2 million middle and high school students used e-cigarettes in 2017, and nearly 10.7 million teens are at risk for e-cigarette use and potential addiction; and

WHEREAS, new research has started to shed light that e-cigarettes can be just as or more dangerous and addicting than tobacco products; and

WHEREAS, the Journal of Pediatrics published study identifies 5 cancer causing toxins in the urine of 16-year-old adolescents who inhaled e-cigarette vapor; and

WHEREAS, the U.S. Center for Disease Control (CDC) indicates that 9 out of 10 smokers begin smoking before the age of 18; and

WHEREAS, those minors that smoke are at a greater risk of nicotine addiction, reduction in lung growth, reduced lung function, and early on-set of cardiovascular disease; and

WHEREAS, properties fronting Lincoln Road, between Collins Avenue and Alton Road, are within the CD-3 Commercial, High Intensity District, and (generally) eastward of Lenox

Avenue are also located within the locally designated Flamingo Park Historic District as well as the National Register Architectural District; and

WHEREAS, Lincoln Road is an iconic shopping area in the City of Miami Beach (the “City”); and

WHEREAS, the Lincoln Road corridor has historically been composed of low intensity retail, service and retail establishments, which primarily serve City residents; and

WHEREAS, Lincoln Road is a premier street in Miami Beach that provides residents and visitors with a unique cultural, retail, and dining experience, which is vital to Miami Beach’s economy, especially the tourism industry; and

WHEREAS, in order to ensure consistency with the recently-adopted Lincoln Road Master Plan, and to ensure the integrity of the Lincoln Road experience, the City Commission recommends revising the list of prohibited uses for the subject area; and

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, Ocean Drive, Collins Avenue, and Washington Avenue are also premier streets in Miami Beach, all of which 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, the Alton Road Gateway area is the primary entrance to the South Beach neighborhood of the City of Miami Beach, and provides an important aesthetical impression to residents, guests and workers; and

WHEREAS, retail tobacco products dealers, retail vape dealers, and retail smoking device dealers are uses which may negatively affect surrounding areas; and

WHEREAS, it is the intent of the City to limit the proliferation of establishments which may negatively affect the subject areas; and

WHEREAS, the City Commission finds that it is in the best interest of residents to limit the exposure of tobacco and vape-related products to children and adolescents; and

WHEREAS, the City Commission finds that it is in the best interest of its residents, businesses, and visitors to adopt regulations to protect the public health, safety, welfare, and morals; 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. The City Code of the City of Miami Beach, Chapter 114, entitled “General Provision,” at Section 114-1, entitled “Definitions,” 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:

* * *

Cigar/hookah bar means an alcoholic beverage establishment which is combined with a retail tobacco products dealer, and where smoking of the tobacco products sold at the establishment is permitted on the premises. Such an establishment must comply with all of the requirements for an alcoholic beverage establishment.

* * *

Retail tobacco products dealer means the holder of a retail tobacco products dealer permit that is authorized to sell tobacco products.

Retail smoking devices dealer means any retail establishment that sells smoking devices.

Retail tobacco products dealer permit means a permit issued by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, or successor agency, pursuant to section 569.003, Florida Statutes, as amended that authorizes the sale of tobacco products.

Retail vape products dealer means any retail establishment that sells vapor-generating electronic devices and components, parts, and accessories for such products.

* * *

Smoking means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.

Smoking devices mean any of the following devices:

- (1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic smoking pipes, with or without screens, permanent screens, or punctured metal bowls.
- (2) Water pipes;
- (3) Carburetion tubes and devices;
- (4) Chamber pipes;
- (5) Carburetor pipes;
- (6) Electric pipes;
- (7) Air-driven pipes;
- (8) Chillums;
- (9) Bongs; or
- (10) Ice pipes or chillers.

* * *

Tobacco products means loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

Tobacco/vape dealer means a commercial establishment that is a retail tobacco products dealer, retail vape products dealer, or retail smoking device dealer. This definition shall exclude a cigar/hookah bar.

* * *

Vapor means aerosolized or vaporized nicotine, or other aerosolized or vaporized substance produced by a vapor generating electronic device or exhaled by the person using such a device.

Vapor-generating electronic device means any product that employs an electronic, a chemical, or a mechanical means capable of producing vapor or aerosol from a nicotine or tetrahydrocannabinol (THC) product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of a solution or other substance intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

Section 2. The City Code of the City of Miami Beach, Chapter 142, entitled “Zoning Districts and Regulations,” Article II, entitled “District Regulations,” Division 5, entitled “CD-2 Commercial, Medium Intensity District,” at section 142-311, entitled “Alton Road Gateway Area Development Regulations,” is hereby amended as follows:

Chapter 142 – ZONING DISTRICTS AND REGULATIONS

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 5. – CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT

* * *

Sec. 142-311 – Alton Road Gateway Area Development Regulations.

* * *

(b) The following regulations shall apply to the properties located within the Alton Road Gateway Area; where there is conflict within this division, the regulations below shall apply:

- (1) **Prohibited uses.** In addition to the prohibited uses identified in Section 142-305, the following uses shall also be prohibited: accessory outdoor bar counters, hostels, hotels, apartment hotels, suite hotels, outdoor entertainment establishments, neighborhood impact establishments, open air entertainment establishments, bars, dance halls,

entertainment establishments (as defined in Section 114-1), exterior alcoholic beverage service after 12:00 a.m., interior alcoholic beverage service after 2:00 a.m., package stores, any use selling gasoline, storage and/or parking of commercial vehicles on site other than the site at which the associated trade or business is located, (in accordance with Section 142-1103), pawnshops, secondhand dealers of precious metals/precious metals dealers, check cashing stores, convenience stores, occult science establishments, souvenir and t-shirt shops, and-tattoo studios, and tobacco/vape dealers.

Section 3. The City Code of the City of Miami Beach, Chapter 142, entitled “Zoning Districts and Regulations,” Article II, entitled “District Regulations,” Division 6, entitled “CD-3 Commercial, High Intensity District,” at section 142-335, entitled “Prohibited uses,” is hereby amended as follows:

Chapter 142 – ZONING DISTRICTS AND REGULATIONS

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 6. – CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT

* * *

Sec. 142-335 – Prohibited uses.

The prohibited uses in the CD-3 commercial, high intensity district are

- (1) pawnshops;
- (2) secondhand dealers of precious metals/precious metals dealers;~~and~~
- (3) accessory outdoor bar counter, except as provided in article IV, division 2 of this chapter and in chapter 6-; and
- (4) tobacco/vape dealers.

For properties with a lot line on Lincoln Road, between Alton Road and Collins Avenue, the following additional uses are prohibited:

- (1) Check cashing stores;
- (2) medical cannabis dispensaries (medical marijuana dispensaries);
- (3) convenience stores;
- (4) grocery stores;
- (5) occult science establishments;
- (6) pharmacy stores;
- (7) souvenir and t-shirt shops; and
- (8) tattoo studios.

Section 4. The City Code of the City of Miami Beach, Chapter 142, entitled “Zoning Districts and Regulations,” Article III, entitled “Overlay Districts,” Division 12, entitled “Art Deco MiMo Commercial Character Overlay District,” at section 142-870.11, entitled “Compliance with Regulations,” is hereby amended as follows:

Chapter 142 – ZONING DISTRICTS AND REGULATIONS

* * *

DIVISION 12. - ART DECO MIMO COMMERCIAL CHARACTER OVERLAY DISTRICT

* * *

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:

* * *

- (13) Tobacco/vape dealers shall be prohibited in the overlay district.

Section 5. The City Code of the City of Miami Beach, Chapter 142, entitled “Zoning Districts and Regulations,” Article V, entitled “Specialized Use Regulations,” establishing Division 11, to be entitled “Tobacco and Vaping Products,” is hereby established as follows:

Chapter 142 – ZONING DISTRICTS AND REGULATIONS

* * *

ARTICLE V. – SPECIALIZED USE REGULATIONS

* * *

DIVISION 11. – TOBACCO/VAPE DEALERS

Sec. 142-1510. Intent.

It is the intent of this division to limit access and exposure of tobacco and vaping products to children and adolescents due to their addictive nature and damaging effects on health. It is also the intent to limit the proliferation of tobacco, vaping, and smoking device product dealers in areas where the City encourages tourism, and to minimize the negative implications that these types of businesses may portray to the City’s visitors seeking a unique vacation destination.

Sec. 142-1511. Locations prohibiting the sale of tobacco and vape products.

(a) Prohibited locations. Tobacco/vape dealers are prohibited in the following locations:

(1) Within 500 feet of any property used as a public or private school elementary, middle, or secondary school. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the main entrance or exit from the establishment which contains the tobacco/vape dealer to the nearest point of the property used for a public or private elementary, middle, or secondary school.

(2) In those specific areas that have been identified in the underlying zoning district in Chapter 142, Article II or overlay districts in Chapter 142, Article III of the City Code.

(b) Distance separation. No tobacco/vape dealer shall be located within 1,200 feet of another tobacco/vape dealer.

(c) Determination of minimum distance separation. 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 director or designee that the minimum distance separation has been properly satisfied.

(d) Variances from the requirements of this section shall be prohibited.

Sec. 142-1512. Penalties, enforcement, and appeals.

(a) Penalties and enforcement.

(1) The city manager has the authority to suspend or revoke a business tax receipt following notice and hearing, or to summarily suspend a business tax receipt pending a hearing pursuant to section 102-385 of the City Code.

(2) A violation of this division shall be subject to the following fines:

A. If the violation is the first offense, a person or business shall receive a civil fine of \$1,000.00;

B. If the violation is the second violation within the preceding six months, a person or business shall receive a civil fine of \$3,000.00;

C. If the violation is the third violation within the preceding six months, a person or business shall receive a civil fine of \$5,000.00; and

D. If the violation is the fourth or subsequent violation within the preceding six months, a person or business shall receive a civil fine of \$7,500.00 and the business tax receipt shall be revoked.

(3) Enforcement. The code compliance department shall enforce this division. This shall not preclude other law enforcement agencies from any action to assure compliance with this division and all applicable laws. If a violation of this division is observed, the enforcement

officer will be authorized to issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten days after service of the notice of violation, and that the failure to appeal the violation within ten days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

(4) *Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.*

- A. A violator who has been served with a notice of violation must elect to either:
 - i. Pay the civil fine in the manner indicated on the notice of violation; or
 - ii. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten days of the service of the notice of violation.
- B. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this City Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
- C. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the police officer or code compliance officer. The failure of the named violator to appeal the decision of the police officer or code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.
- D. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the 61st day following the recording of any such lien that remains unpaid, the city may foreclose or otherwise execute upon the lien.
- E. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- F. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten days of the service of the notice of violation.
- G. The special master shall not have discretion to alter the penalties prescribed in subsection (a)(2).

SECTION 6. REPEALER.

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

SECTION 7. 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 8. SEVERABILITY.

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

SECTION 9. EFFECTIVE DATE.

This Ordinance shall take effect ten (10) days following adoption.

PASSED and **ADOPTED** this _____ day of _____, 2019.

ATTEST:

Dan Gelber
Mayor

Rafael E. Granado
City Clerk

First Reading: _____, 2019
Second Reading: _____, 2019
(Sponsored by: Commissioners Joy Malakoff)

Verified By: _____
Thomas R. Mooney, AICP
Planning Director

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