

Distance Separation and 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 PROVISIONS," AT SECTION 114-1, ENTITLED "DEFINITIONS," TO DEFINE RETAIL TOBACCO PRODUCTS DEALER, RETAIL VAPE PRODUCTS DEALER, RETAIL SMOKING DEVICES DEALER, TOBACCO/VAPE DEALER, CIGAR/HOOKAH BAR, AND RELATED TERMS; 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 have used e-cigarettes in 2017, and that nearly 10.7 million teens are at risk for e-cigarette use and potential addiction; and

WHEREAS, new established research has determined that the use of e-cigarettes by minors could have extensive negative impacts, and increase the likelihood of addiction to tobacco products; and

WHEREAS, the Journal of Pediatrics has published various studies which identify 5 cancer causing toxins that has been located 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 that these minors are at 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 has been identified as an iconic shopping district in the City of Miami Beach (the "City"), and has historically been composed of low intensity retail, service and retail establishments, which services City residents and tourists from around the world; and

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

WHEREAS, the City must ensure that there is consistency with the recently-adopted Lincoln Road Master Plan, which is absolutely essential to the integrity of the Lincoln Road experience, thereby; the City Commission must revise the list of prohibited uses for this area; and

WHEREAS, the Ocean Drive/Collins Avenue Historic District and the Miami Beach Architectural National Register Historic District has a zoning designation of MXE Mixed Use Entertainment; and

WHEREAS, Ocean Drive, Collins Avenue, and Washington Avenue are premier streets in the City, and provide residents and visitors with a unique cultural, retail, and dining experience, which is essential to the City's economy and tourism industry; and

WHEREAS, the Alton Road Gateway area is the primary entrance to the South Beach neighborhood of the City, and provides an important aesthetical impression to residents, tourists and guests; 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 these establishments throughout the City, which may negatively affect these identified areas; and

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

WHEREAS, the Mayor and City Commission finds that it is in the best interest of its residents, businesses, and visitors to adopt these regulations to protect the public health, safety, welfare, and morals; and

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 Provisions," at Section 114-1, entitled "Definitions," is hereby amended as follows:

Chapter 114. GENERAL PROVISIONS.

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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:

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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.

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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.

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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

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ARTICLE II. DISTRICT REGULATIONS

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DIVISION 5. CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT

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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

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ARTICLE II. DISTRICT REGULATIONS

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DIVISION 6. CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT

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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

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DIVISION 12. ART DECO MIMO COMMERCIAL CHARACTER OVERLAY DISTRICT

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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:

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(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

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ARTICLE V. SPECIALIZED USE REGULATIONS

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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, elementary, middle, or secondary school. The minimum distance separation requirement shall be determined by measuring a straight line from the main entrance or exit of the establishment which contains the tobacco/vape dealer to the nearest point of the property line of the school.
- (2) In those specific areas that have been identified within the underlying zoning district regulations in Chapter 142, Article II or overlay district regulations in Chapter 142, Article III of the City Code.

- (3) Notwithstanding the foregoing, the prohibitions of this section shall not be applicable to medical cannabis treatment centers permitted pursuant to the Chapter 142, Article V, Division 10.
- (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.

The following penalties shall be imposed against a person or business for a violation of this Section:

(1) 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.

(2) 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.

(3) 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)(1).

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:

Rafael E. Granado, City Clerk

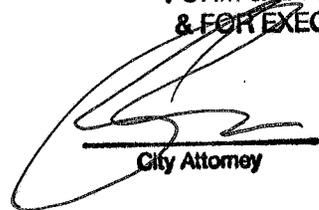
Dan Gelber, Mayor

First Reading: May 8, 2019
Second Reading: June 5, 2019

(Sponsored by: Commissioner Joy Malakoff)

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

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney

5/3/19
Date