

**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 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**

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### **ARTICLE II. – DISTRICT REGULATIONS**

\* \* \*

#### **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**

\* \* \*

#### **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**

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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 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: May 8, 2019  
Second Reading: June 5, 2019  
(Sponsored by: Commissioners Joy Malakoff)

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

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