

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: June 23, 2020

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB20-0374. CD-2 Alton Road Outdoor Movie Theaters.**

**PB20-0374. CD-2 Alton Road Outdoor Movie Theaters.** An Ordinance of the Mayor and City Commission of the City of Miami Beach, Florida, amending the Code of the City of Miami Beach, Florida, by amending Chapter 6, entitled "Alcoholic Beverages," Article I, entitled "In General," Section 6-4, entitled "Location and Use Restrictions," in order to permit outdoor motion picture theaters fronting on Alton Road to sell and/or offer alcoholic beverages for consumption; by amending Chapter 142, entitled "Zoning Districts and Regulations," Article II, "District Regulations," Division 5, "CD-2 Commercial, Medium Intensity District," Section 142-305, "Prohibited Uses," and Section 142-310, entitled "Special Regulations for Alcohol Beverage Establishments," to provide regulations for outdoor motion picture theaters and accessory outdoor bar counters; by amending Article IV, Division 3, Section 142-1109, entitled "Accessory Outdoor Bar Counters," to permit outdoor bar counters as an accessory use to outdoor motion picture theaters; and by amending Division 5, "Height Regulations," Section 142-1161, entitled "Height Regulation Exceptions," to amend the list of height exceptions; and providing for codification, repealer, severability, and an effective date.

#### **RECOMMENDATION**

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

#### **BACKGROUND**

On February 12, 2020, at the request of Commissioner Ricky Arriola, the City Commission referred a discussion item to the Land Use and Sustainability Committee (Item C4 X), pertaining to outdoor movie theatres on Alton Road. The item was discussed at the February 18, 2020 LUSC meeting and continued to March 17, 2020 with the following direction:

1. The item proposer shall engage in community outreach to gauge public and neighborhood support for the proposal.
2. A C4 referral item shall be placed on the March 18, 2020 agenda of the City Commission, to refer an ordinance to the Planning Board that would permit outdoor theater uses along the west side of Alton Road.

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 should not excessively 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 seriously 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 in the long term.

- (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.**

Boulevard, also include hostels, outdoor entertainment establishments, neighborhood impact establishments, open air entertainment establishments, bars, dance halls, and entertainment establishments (as defined in section 114-1 of this Code).

**Sec. 142-310. - Special regulations for alcohol beverage establishments.**

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(8) Notwithstanding the foregoing, outdoor motion picture theaters with accessory outdoor bar counters may be permitted, including on rooftops, subject to conditional use approval pursuant to chapter 118, article IV, and subject to the following operational limitations:

- a. The use shall front on Alton Road.
- b. No television, radio, and/or recorded background music may exceed an ambient volume level (i.e. a volume that does not interfere with normal conversation). On rooftops, audio from motion picture presentations shall be delivered to patrons only through individually-worn headphones.
- c. Movie projectors and related equipment, as well as all theater screens or displays, shall be oriented away from immediately neighboring residential areas and projections may not be substantially visible from the right-of-way. The projection system shall be designed so as not to negatively impact adjacent residential areas.
- d. Outdoor motion picture theaters shall cease operations no later than 12:00 a.m. on weekdays and 1:00 a.m. on weekends. Any accessory bar counter shall cease operations no later than 11:00 p.m. on weekdays and 12:00 a.m. on weekends. The accessory bar counter may be open and operational only during times when the theater use is operational.
- e. Any outdoor bar counter shall be located away from immediately neighboring residential areas and may not be substantially visible from the right-of-way.
- f. The area surrounding any bar counter in which alcoholic beverages may be served shall be segregated to comply with the applicable requirements of chapter 6 of this Code, and shall incorporate sound attenuation devices in order to reduce the level of noise.
- g. Theater seats shall be required at all times and shall not be removed from the movie viewing areas during all times the business is open. This shall not preclude the temporary removal of seats for cleaning and maintenance purposes.

**Sec. 142-1109. – Accessory outdoor bar counters.**

Accessory outdoor bar counters shall be prohibited as a main permitted use and shall only be permitted as an accessory use to an outdoor motion picture theater fronting on Alton Road as provided in section 142-310, an outdoor cafe with a minimum of 30 chairs or as an accessory use to a hotel pool deck. Accessory counters shall not be visible from any point along the property line adjacent to a public right-of-way.

### **PLANNING ANALYSIS**

The concept of an outdoor, roof-top movie theater venue is intriguing, as it would provide a unique and forward-thinking level of roof-top activation. Additionally, with the use of individual headphones, the negative impacts of spillover noise are reduced. Any proposed rooftop movie theater would be subject to the conditional use process and design review process. In addition to the criteria in the proposed ordinance, the application would have to comply with the conditional use criteria which serves to minimize any potential impacts from the use.

In regard to the specific proposal at 1212 Lincoln Road, and based upon the information provided by the developer to date, staff identified the following areas that will require more information and/or further development:

1. According to the Building Permit for the main building (B1505070) only 20 parking spaces are excess / surplus parking. A detailed roof top plan and floor plans for the proposal will be needed, in order to verify whether the operational attributes of theater utilize more than 20 parking spaces. Such roof plan roof plan will need to clearly delineate all of the components of the proposed theater, including, but not be limited to seating, café space, bar counter, concession areas, restrooms and all points of access. If more than 20 parking spaces are needed for the theater operation, an additional amendment to Chapter 130 may be required.
2. The location and operation of the accessory bar component of the proposal needs to be further studied, in order to prevent the venue from becoming an outdoor bar with an accessory theater use. To this end, it is suggested that the bar component be located closer to the east side of the roof, and that the areas for outdoor bar congregation and theater seating be segregated and tightly controlled. The proposed amendment requires that the location of these components be located away from the neighboring residential areas. However, as part of the conditional use process, any potential impacts must be verified.
3. The location of the movie screen should be placed on the west side of the roof top, with the projection facing east. The proposed ordinance requires that this component be oriented away from the neighboring residential areas and that it not be substantially visible from the public right of way. However, this must be verified as part of the conditional use process.

The proposed regulations would allow for the development of a roof-top theater, while ensuring that the quality of life for nearby residents is not negatively impacted. The conditional use and design review processes provide additional safeguards and opportunities for public input.

### **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.

**CD-2 Alton Road Outdoor Movie Theaters**

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

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, BY AMENDING CHAPTER 6, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-4, ENTITLED "LOCATION AND USE RESTRICTIONS," IN ORDER TO PERMIT OUTDOOR MOTION PICTURE THEATERS FRONTING ON ALTON ROAD TO SELL AND/OR OFFER ALCOHOLIC BEVERAGES FOR CONSUMPTION; BY AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 5, "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT," SECTION 142-305, "PROHIBITED USES," AND SECTION 142-310, ENTITLED "SPECIAL REGULATIONS FOR ALCOHOL BEVERAGE ESTABLISHMENTS," TO PROVIDE REGULATIONS FOR OUTDOOR MOTION PICTURE THEATERS AND ACCESSORY OUTDOOR BAR COUNTERS; BY AMENDING ARTICLE IV, DIVISION 3, SECTION 142-1109, ENTITLED "ACCESSORY OUTDOOR BAR COUNTERS," TO PERMIT OUTDOOR BAR COUNTERS AS AN ACCESSORY USE TO OUTDOOR MOTION PICTURE THEATERS; AND BY AMENDING DIVISION 5, "HEIGHT REGULATIONS," SECTION 142-1161, ENTITLED "HEIGHT REGULATION EXCEPTIONS," TO AMEND THE LIST OF HEIGHT EXCEPTIONS; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, the Mayor and City Commission desire to encourage innovative and compatible redevelopment in the Alton Road Corridor;

**WHEREAS**, outdoor motion picture theater uses are an innovative entertainment use that will help encourage the commercial success of the Alton Road area.

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

**SECTION 1.** Chapter of 6 the City Code, entitled "Alcoholic Beverages," is hereby amended as follows:

**CHAPTER 6  
ALCOHOLIC BEVERAGES**

**ARTICLE I. – IN GENERAL**

\* \* \*

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

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

the remainder of the theater by a barrier or other physical demarcation. All alcohol beverages must be served from within the designated alcohol beverage consumption areas, and no alcohol beverages may be consumed or carried beyond the boundary limits of the designated alcohol beverage consumption areas. Access to the designated alcohol beverage consumption areas is restricted to patrons who can present a valid identification for inspection demonstrating they are 21 years of age or older. This restriction shall not apply to outdoor motion picture theaters fronting Alton Road that meet the requirements of section 142-310, and article IV, division 2 of this chapter.

iv. There may be special customer promotions that combine purchase of a motion picture theater ticket with purchase of food and an alcohol beverage. No "happy hour" type of reduced price alcohol beverage promotion shall be allowed.

v. Motion picture theaters selling alcohol beverages, shall obtain the requisite state license for sales and consumption of such beverages.

vi. Motion picture theaters selling alcoholic beverages as defined in section 102-306 shall collect and remit resort taxes to the city for alcohol sales as required under section 102-306.

(5) *Filling station.* No liquor as defined by F.S. § 568.01, shall be sold or offered for consumption on or off the premises of any filling station.

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

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

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

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

(10) *Entertainment establishments.* The minimum distance separation between entertainment establishments licensed to sell alcohol beverages, and not also operating as restaurants with full kitchens and serving full meals, shall be 300 feet. The provisions of this paragraph shall not apply to outdoor motion picture theaters fronting Alton Road that meet the requirements of section 142-310.

(b) *Determination of minimum distance separation.*

(1) For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the main entrance or exit in which the use associated with alcohol beverages occurs to the nearest point of the property used for a public or private school. In cases where a minimum

the east side of West Avenue, between Lincoln Road and 17th Street, except alcoholic beverage establishments fronting Lincoln Road between West Avenue and Alton Road:

- (1) Operations shall cease no later than 2:00 a.m.
- (2) Establishments with sidewalk cafe permits shall only serve alcoholic beverages at sidewalk cafes during hours when food is served in the restaurant, shall cease sidewalk cafe operations at 12:00 a.m., and shall not be permitted to have outdoor speakers.
- (3) Commercial uses on rooftops shall be limited to restaurants only, shall cease operations no later than 11:00 p.m. on weekdays and 12:00 a.m. on weekends, and shall only be permitted to have ambient, background music.
- (4) Entertainment establishments shall be required to obtain conditional use approval from the planning board, in accordance with the requirements and procedures of chapter 118, article IV. Additionally, if approved as a conditional use, entertainment establishments shall be required to install a double door vestibule at all access points from the sidewalk, with the exception of emergency exits.
- (5) Outdoor bar counters shall be prohibited.
- (6) No special event permits shall be issued.
- (7) This subsection (a) above shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that (i) is in application status prior to April 14, 2015; or (ii) issued prior to May 21, 2015; or (iii) to an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired, prior to May 21, 2015. Any increase to the approved hours of operation shall meet the requirements of this subsection (a).
- (8) Notwithstanding the foregoing, outdoor motion picture theaters with accessory outdoor bar counters may be permitted, including on rooftops, subject to conditional use approval pursuant to chapter 118, article IV, and subject to the following operational limitations:
  - a. The use shall front on Alton Road.
  - b. No television, radio, and/or recorded background music may exceed an ambient volume level (i.e. a volume that does not interfere with normal conversation). On rooftops, audio from motion picture presentations shall be delivered to patrons only through individually-worn headphones.
  - c. Movie projectors and related equipment, as well as all theater screens or displays, shall be oriented away from immediately neighboring residential areas and projections may not be substantially visible from the right-of-way. The projection system shall be designed so as not to negatively impact adjacent residential areas.

(a) The height regulations as prescribed in these land development regulations shall not apply to the following when located on the roof of a structure or attached to the main structure. For exceptions to the single-family residential districts, see subsection 142-105(e).

- (1) Air conditioning, ventilation, electrical, plumbing equipment or equipment rooms.
- (2) Chimneys and air vents.
- (3) Decks, not to exceed three feet above the main roofline and not exceeding a combined deck area of 50 percent of the enclosed floor area immediately one floor below.
- (4) Decorative structures used only for ornamental or aesthetic purposes such as spires, domes, belfries, not intended for habitation or to extend interior habitable space. Such structures shall not exceed a combined area of 20 percent of the enclosed floor area immediately one floor below.
- (5) Elevator bulkheads or elevator mechanical rooms.
- (6) Flagpoles subject to the provisions of section 138-72.
- (7) Parapet walls, not to exceed three and one-half feet above the main roofline unless otherwise approved by the design review board up to a maximum of 25 feet in height.
- (8) Planters, not to exceed three feet in height above the main roofline.
- (9) Radio, television, and cellular telephone towers or antennas, and rooftop wind turbines.
- (10) Stairwell bulkheads.
- (11) Skylights, not to exceed five feet above the main roofline.
- (12) Stage towers or scenery lofts for theaters.
- (13) Swimming pools, whirlpools or similar structures, which shall have a four-foot wide walkway surrounding such structures, not to exceed five feet above the main roofline.
- (14) Trellis, pergolas or similar structures that have an open roof of cross rafters or latticework.
- (15) Water towers.
- (16) Bathrooms required by the Florida Building Code, not to exceed the minimum size dimensions required under the Building Code, provided such bathrooms are not visible when viewed at eye level (five feet, six inches from grade) from the opposite side of the adjacent right-of-way; for corner properties. Such bathrooms shall also not be visible when viewed at eye level (five feet, six inches from grade) from the diagonal corner at the opposite side of the right-of-way and from the opposite side of the side street right-of-way.
- (17) Solar panels.
- (18) Wind turbines on oceanfront properties.
- (19) Sustainable roofing systems.
- (20) Display or screen structures, projection devices, lobby, concession space, and sound attenuation and screening devices, serving an outdoor movie theater fronting on Alton Road as provided in section 142-310 of this chapter.

(b) The height of all allowable items in subsection (a) of this section, unless otherwise specified, shall not exceed 25 feet above the height of the roofline of the main structure. With the exception of items described in subsection (a)(17) and (a)(18) of this section, when any of the above items are freestanding, they shall follow the height limitations of the underlying zoning district (except flagpoles which are subject to section 138-72).



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### Staff Report & Recommendation

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#### **RECOMMENDATION**

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

#### **BACKGROUND**

On February 12, 2020, at the request of Commissioner Ricky Arriola, the City Commission referred a discussion item to the Land Use and Sustainability Committee (Item C4 X), pertaining to outdoor movie theatres on Alton Road. The item was discussed at the February 18, 2020 LUSC meeting and continued to March 17, 2020 with the following direction:

1. The item proposer shall engage in community outreach to gauge public and neighborhood support for the proposal.
2. A C4 referral item shall be placed on the March 18, 2020 agenda of the City Commission, to refer an ordinance to the Planning Board that would permit outdoor theater uses along the west side of Alton Road.

The March 17, 2020 LUSC meeting was cancelled. The LUSC reviewed the proposal on May 6, 2020 and recommended that the City Commission discuss the proposed ordinance and proposal. The LUSC did not make a formal recommendation.

On May 13, 2020, the City Commission referred the item to the Planning Board (item R9 B).

### **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.**

**Partially Consistent** – The proposed ordinance is consistent with the goals, objectives, and policies of the Comprehensive Plan as proposed to be amended.

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 should 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 offer alternatives to current cultural offerings, in light of the covid-19 health pandemic, makes passage of the proposed change 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, as it contains safeguards to ensure that the surrounding neighborhood will not be impacted by noise.

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 should not excessively 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 seriously 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 in the long term.

- (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.

### **PROPOSAL**

The developer of the 1212 Lincoln Road project, which is located on the west side of Alton Road, from 16th Street to Lincoln Road, is proposing to introduce a roof-top, outdoor movie theater use, with an accessory outdoor bar. Attached is an illustration of the proposal.

The developer has proposed the following operational components:

- A single screen theater with one showing each evening; movies would commence once it is dark.
- A concession stand with food and beverage, similar to an indoor movie theater.
- The hours of operation are 5:00 pm to 12:00 midnight on weekdays and 5:00pm to 1:00 am on weekends. The outdoor bar counter would cease operations at 11:00 pm on weekdays and 12:00 midnight on weekends.
- The theater seats 250 persons, using both single seats and couch seats.
- The sound of the movie is heard only through headsets.
- According to the proposer, all of the parking spaces proposed to be converted to theater area are excess, surplus parking and not required parking; this will need to be confirmed by the City.
- Food preparation is proposed to take place in the restaurant downstairs, but sales, including table service, will occur upstairs.

Under the current regulations of the City Code, the proposed use is not permitted on the roof top of a structure on the west side of Alton Road. Specifically, the Alton Road corridor, which includes properties on the west side of Alton Road and east of Alton Court, between 14th Street and Collins Canal, has explicit regulations pertaining to roof-top uses and alcoholic beverage establishments, and the proposal herein is inconsistent with some of the current regulations.

It should also be noted that an outdoor movie theater meets the definition of an outdoor entertainment establishment. As such, pursuant to section 142-303 of the LDR's, conditional use approval from the Planning Board would be required (with or without an accessory outdoor bar). Additionally, pursuant to section 142-304 of the LDR's, the accessory outdoor bar counter proposed would not be permitted to operate past 12:00 midnight.

In order to allow for the proposed outdoor theater use at the subject location, the developer has drafted the attached ordinance, which proposes to amend sections 142-305, 142-310, 142-1109 and 142-1161 of the LDRs, as well as section 6-4 of the City Code, in order to allow for an outdoor movie theater use with an accessory outdoor bar. The following is a summary of the specific code sections that are proposed to be amended:

### **Sec. 142-305. – Prohibited uses.**

The prohibited uses in the CD-2 commercial, medium intensity district are accessory outdoor bar counters, except as provided in section 142-310, or in article IV, division 2 of this chapter and in chapter 6. Except as otherwise provided in these land development regulations, prohibited uses in the CD-2 commercial medium intensity district in the Sunset Harbour Neighborhood, generally bounded by Purdy Avenue, 20th Street, Alton Road and Dade

Boulevard, also include hostels, outdoor entertainment establishments, neighborhood impact establishments, open air entertainment establishments, bars, dance halls, and entertainment establishments (as defined in section 114-1 of this Code).

**Sec. 142-310. - Special regulations for alcohol beverage establishments.**

\*\*\*

(8) Notwithstanding the foregoing, outdoor motion picture theaters with accessory outdoor bar counters may be permitted, including on rooftops, subject to conditional use approval pursuant to chapter 118, article IV, and subject to the following operational limitations:

- a. The use shall front on Alton Road.
- b. No television, radio, and/or recorded background music may exceed an ambient volume level (i.e. a volume that does not interfere with normal conversation). On rooftops, audio from motion picture presentations shall be delivered to patrons only through individually-worn headphones.
- c. Movie projectors and related equipment, as well as all theater screens or displays, shall be oriented away from immediately neighboring residential areas and projections may not be substantially visible from the right-of-way. The projection system shall be designed so as not to negatively impact adjacent residential areas.
- d. Outdoor motion picture theaters shall cease operations no later than 12:00 a.m. on weekdays and 1:00 a.m. on weekends. Any accessory bar counter shall cease operations no later than 11:00 p.m. on weekdays and 12:00 a.m. on weekends. The accessory bar counter may be open and operational only during times when the theater use is operational.
- e. Any outdoor bar counter shall be located away from immediately neighboring residential areas and may not be substantially visible from the right-of-way.
- f. The area surrounding any bar counter in which alcoholic beverages may be served shall be segregated to comply with the applicable requirements of chapter 6 of this Code, and shall incorporate sound attenuation devices in order to reduce the level of noise.
- g. Theater seats shall be required at all times and shall not be removed from the movie viewing areas during all times the business is open. This shall not preclude the temporary removal of seats for cleaning and maintenance purposes.

**Sec. 142-1109. – Accessory outdoor bar counters.**

Accessory outdoor bar counters shall be prohibited as a main permitted use and shall only be permitted as an accessory use to an outdoor motion picture theater fronting on Alton Road as provided in section 142-310, an outdoor cafe with a minimum of 30 chairs or as an accessory use to a hotel pool deck. Accessory counters shall not be visible from any point along the property line adjacent to a public right-of-way.

## **Section 142-1161 – Height Exceptions.**

The following new text is proposed:

For all districts, except RS-1, 2, 3 and 4 (single-family residential districts).

\* \* \*

- (20) Display or screen structures, projection devices, lobby, concession space, and sound attenuation and screening devices, serving an outdoor movie theater fronting on Alton Road as provided in section 142-310 and article IV, division 2 of this chapter.

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

The following modified text is proposed:

(4) *Motion picture theaters.* No alcohol beverages shall be sold or offered for consumption in any motion picture theater, or in any room opening directly or indirectly into or in connection with any motion picture theater, except alcohol beverages may be served in motion picture theaters (i) of at least 15,000 square feet in total floor area, (ii) containing at least 300 permanent auditorium seats, and (iii) which are located in CD-3 commercial, high intensity districts. Additionally, alcohol beverages may be sold or offered for consumption in outdoor motion picture theaters fronting Alton Road that meet the requirements of section 142-310, and article IV, division 2 of this chapter. Notwithstanding chapter 142, article 5, division 6 of the city Code, a an indoor motion picture theater in which the sale and consumption of alcohol beverages is permitted shall not be considered a neighborhood impact establishment. Motion picture theaters shall not be permitted to operate between the hours of 3:00 a.m. and 8:00 a.m., except that motion picture theaters may apply for up to three special event permits from the city per calendar year to operate during such hours. This section shall not relieve any person, entity or establishment from the restrictions contained in chapter 6, article II or the land development regulations of the city Code.

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iii. Designated alcohol beverage consumption areas, including concession and cafe areas, and those specific auditoriums in which alcohol beverages may be served and consumed, must be clearly designated as such and separated from the remainder of the theater by a barrier or other physical demarcation. All alcohol beverages must be served from within the designated alcohol beverage consumption areas, and no alcohol beverages may be consumed or carried beyond the boundary limits of the designated alcohol beverage consumption areas. Access to the designated alcohol beverage consumption areas is restricted to patrons who can present a valid identification for inspection demonstrating they are 21 years of age or older. This restriction shall not apply to outdoor motion picture theaters fronting Alton Road that meet the requirements of section 142-310, and article IV, division 2 of this chapter.

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(10) *Entertainment establishments.* The minimum distance separation between entertainment establishments licensed to sell alcohol beverages, and not also operating as restaurants with full kitchens and serving full meals, shall be 300 feet. The provisions of this paragraph shall not apply to outdoor motion picture theaters fronting Alton Road that meet the requirements of section 142-310.

### **PLANNING ANALYSIS**

The concept of an outdoor, roof-top movie theater venue is intriguing, as it would provide a unique and forward-thinking level of roof-top activation. Additionally, with the use of individual headphones, the negative impacts of spillover noise are reduced. Any proposed rooftop movie theater would be subject to the conditional use process and design review process. In addition to the criteria in the proposed ordinance, the application would have to comply with the conditional use criteria which serves to minimize any potential impacts from the use.

In regard to the specific proposal at 1212 Lincoln Road, and based upon the information provided by the developer to date, staff identified the following areas that will require more information and/or further development:

1. According to the Building Permit for the main building (B1505070) only 20 parking spaces are excess / surplus parking. A detailed roof top plan and floor plans for the proposal will be needed, in order to verify whether the operational attributes of theater utilize more than 20 parking spaces. Such roof plan roof plan will need to clearly delineate all of the components of the proposed theater, including, but not be limited to seating, café space, bar counter, concession areas, restrooms and all points of access. If more than 20 parking spaces are needed for the theater operation, an additional amendment to Chapter 130 may be required.
2. The location and operation of the accessory bar component of the proposal needs to be further studied, in order to prevent the venue from becoming an outdoor bar with an accessory theater use. To this end, it is suggested that the bar component be located closer to the east side of the roof, and that the areas for outdoor bar congregation and theater seating be segregated and tightly controlled. The proposed amendment requires that the location of these components be located away from the neighboring residential areas. However, as part of the conditional use process, any potential impacts must be verified.
3. The location of the movie screen should be placed on the west side of the roof top, with the projection facing east. The proposed ordinance requires that this component be oriented away from the neighboring residential areas and that it not be substantially visible from the public right of way. However, this must be verified as part of the conditional use process.

The proposed regulations would allow for the development of a roof-top theater, while ensuring that the quality of life for nearby residents is not negatively impacted. The conditional use and design review processes provide additional safeguards and opportunities for public input.

### **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.





CD-2 Alton Road Outdoor Movie Theaters

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

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, BY AMENDING CHAPTER 6, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-4, ENTITLED "LOCATION AND USE RESTRICTIONS," IN ORDER TO PERMIT OUTDOOR MOTION PICTURE THEATERS FRONTING ON ALTON ROAD TO SELL AND/OR OFFER ALCOHOLIC BEVERAGES FOR CONSUMPTION; BY AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 5, "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT," SECTION 142-305, "PROHIBITED USES," AND SECTION 142-310, ENTITLED "SPECIAL REGULATIONS FOR ALCOHOL BEVERAGE ESTABLISHMENTS," TO PROVIDE REGULATIONS FOR OUTDOOR MOTION PICTURE THEATERS AND ACCESSORY OUTDOOR BAR COUNTERS; BY AMENDING ARTICLE IV, DIVISION 3, SECTION 142-1109, ENTITLED "ACCESSORY OUTDOOR BAR COUNTERS," TO PERMIT OUTDOOR BAR COUNTERS AS AN ACCESSORY USE TO OUTDOOR MOTION PICTURE THEATERS; AND BY AMENDING DIVISION 5, "HEIGHT REGULATIONS," SECTION 142-1161, ENTITLED "HEIGHT REGULATION EXCEPTIONS," TO AMEND THE LIST OF HEIGHT EXCEPTIONS; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

**WHEREAS**, the Mayor and City Commission desire to encourage innovative and compatible redevelopment in the Alton Road Corridor;

**WHEREAS**, outdoor motion picture theater uses are an innovative entertainment use that will help encourage the commercial success of the Alton Road area.

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

**SECTION 1.** Chapter of 6 the City Code, entitled "Alcoholic Beverages," is hereby amended as follows:

**CHAPTER 6  
ALCOHOLIC BEVERAGES**

**ARTICLE I. – IN GENERAL**

\* \* \*

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

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

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

(2) *Places of worship.* No alcohol beverage shall be sold or offered for consumption in an alcoholic beverage establishment, including bottle clubs, within 300 feet of any property used as a place of worship, except in restaurants operating with full kitchens and serving full meals for consumption on the premises.

(3) *Retail stores for off-premises consumption.* The minimum distance separation between retail stores primarily selling alcoholic beverages for consumption off the premises as a main permitted use shall be 1,500 feet. A retail store primarily selling alcoholic beverages may obtain conditional use approval from the planning board to operate at a lesser distance from an existing store, but in no event shall such a store open at a distance less than 700 feet from an existing store. There shall be no variances from this distance separation requirement.

(4) *Motion picture theaters.* No alcohol beverages shall be sold or offered for consumption in any motion picture theater, or in any room opening directly or indirectly into or in connection with any motion picture theater, except alcohol beverages may be served in motion picture theaters (i) of at least 15,000 square feet in total floor area, (ii) containing at least 300 permanent auditorium seats, and (iii) which are located in CD-3 commercial, high intensity districts. Additionally, alcohol beverages may be sold or offered for consumption in outdoor motion picture theaters fronting Alton Road that meet the requirements of section 142-310, and article IV, division 2 of this chapter. Notwithstanding chapter 142, article 5, division 6 of the city Code, a an indoor motion picture theater in which the sale and consumption of alcohol beverages is permitted shall not be considered a neighborhood impact establishment. Motion picture theaters shall not be permitted to operate between the hours of 3:00 a.m. and 8:00 a.m., except that motion picture theaters may apply for up to three special event permits from the city per calendar year to operate during such hours. This section shall not relieve any person, entity or establishment from the restrictions contained in chapter 6, article II or the land development regulations of the city Code.

Any approval granted pursuant to this section shall also be subject to the following restrictions:

- i. The sale of alcohol beverages for consumption off the premises is strictly prohibited.
- ii. A minor control plan, setting forth conditions regarding hours of operation and alcohol sales, alcohol service and monitoring procedures, food service, and staff training, must be approved by the city manager or designee prior to the issuance of a license for alcohol sales or consumption.
- iii. Designated alcohol beverage consumption areas, including concession and cafe areas, and those specific auditoriums in which alcohol beverages may be served and consumed, must be clearly designated as such and separated from

the remainder of the theater by a barrier or other physical demarcation. All alcohol beverages must be served from within the designated alcohol beverage consumption areas, and no alcohol beverages may be consumed or carried beyond the boundary limits of the designated alcohol beverage consumption areas. Access to the designated alcohol beverage consumption areas is restricted to patrons who can present a valid identification for inspection demonstrating they are 21 years of age or older. This restriction shall not apply to outdoor motion picture theaters fronting Alton Road that meet the requirements of section 142-310, and article IV, division 2 of this chapter.

iv. There may be special customer promotions that combine purchase of a motion picture theater ticket with purchase of food and an alcohol beverage. No "happy hour" type of reduced price alcohol beverage promotion shall be allowed.

v. Motion picture theaters selling alcohol beverages, shall obtain the requisite state license for sales and consumption of such beverages.

vi. Motion picture theaters selling alcoholic beverages as defined in section 102-306 shall collect and remit resort taxes to the city for alcohol sales as required under section 102-306.

(5) *Filling station.* No liquor as defined by F.S. § 568.01, shall be sold or offered for consumption on or off the premises of any filling station.

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

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

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

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

(10) *Entertainment establishments.* The minimum distance separation between entertainment establishments licensed to sell alcohol beverages, and not also operating as restaurants with full kitchens and serving full meals, shall be 300 feet. The provisions of this paragraph shall not apply to outdoor motion picture theaters fronting Alton Road that meet the requirements of section 142-310.

(b) *Determination of minimum distance separation.*

(1) For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the main entrance or exit in which the use associated with alcohol beverages occurs to the nearest point of the property used for a public or private school. In cases where a minimum

distance is required between two uses associated with the alcohol beverages for consumption on or off the premises other than a public or private school, the minimum requirement shall be determined by measuring a straight line between the principal means of entrance of each use.

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

(c) *Variances.* Variances to the provisions of this section may be granted pursuant to the procedure in section 118-351 et seq., except that no variances may be granted on the provisions of [subsection] 6-4(a)(4) concerning the sale or consumption of alcohol beverages in motion picture theaters.

**SECTION 2.** Chapter 142 of the City Code, entitled "Zoning districts and regulations," Article II, "District regulations," Division 5, "CD-2 Commercial, medium intensity district," is hereby amended as follows:

**CHAPTER 142  
ZONING DISTRICTS AND REGULATIONS**

\* \* \*

**ARTICLE II. – DISTRICT REGULATIONS**

\* \* \*

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

\* \* \*

**Sec. 142-305. – Prohibited uses.**

The prohibited uses in the CD-2 commercial, medium intensity district are accessory outdoor bar counters, except as provided in section 142-310, or in article IV, division 2 of this chapter and in chapter 6. Except as otherwise provided in these land development regulations, prohibited uses in the CD-2 commercial medium intensity district in the Sunset Harbour Neighborhood, generally bounded by Purdy Avenue, 20th Street, Alton Road and Dade Boulevard, also include hostels, outdoor entertainment establishments, neighborhood impact establishments, open air entertainment establishments, bars, dance halls, and entertainment establishments (as defined in section 114-1 of this Code).

\* \* \*

**Sec. 142-310. - Special regulations for alcohol beverage establishments.**

(a) *Alton Road corridor.* The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located on the west side of Alton Road and east of Alton Court, between 5th Street and 11th Street, and between 14th Street and Collins Canal; and properties on

the east side of West Avenue, between Lincoln Road and 17th Street, except alcoholic beverage establishments fronting Lincoln Road between West Avenue and Alton Road:

- (1) Operations shall cease no later than 2:00 a.m.
- (2) Establishments with sidewalk cafe permits shall only serve alcoholic beverages at sidewalk cafes during hours when food is served in the restaurant, shall cease sidewalk cafe operations at 12:00 a.m., and shall not be permitted to have outdoor speakers.
- (3) Commercial uses on rooftops shall be limited to restaurants only, shall cease operations no later than 11:00 p.m. on weekdays and 12:00 a.m. on weekends, and shall only be permitted to have ambient, background music.
- (4) Entertainment establishments shall be required to obtain conditional use approval from the planning board, in accordance with the requirements and procedures of chapter 118, article IV. Additionally, if approved as a conditional use, entertainment establishments shall be required to install a double door vestibule at all access points from the sidewalk, with the exception of emergency exits.
- (5) Outdoor bar counters shall be prohibited.
- (6) No special event permits shall be issued.
- (7) This subsection (a) above shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that (i) is in application status prior to April 14, 2015; or (ii) issued prior to May 21, 2015; or (iii) to an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired, prior to May 21, 2015. Any increase to the approved hours of operation shall meet the requirements of this subsection (a).
- (8) Notwithstanding the foregoing, outdoor motion picture theaters with accessory outdoor bar counters may be permitted, including on rooftops, subject to conditional use approval pursuant to chapter 118, article IV, and subject to the following operational limitations:
  - a. The use shall front on Alton Road.
  - b. No television, radio, and/or recorded background music may exceed an ambient volume level (i.e. a volume that does not interfere with normal conversation). On rooftops, audio from motion picture presentations shall be delivered to patrons only through individually-worn headphones.
  - c. Movie projectors and related equipment, as well as all theater screens or displays, shall be oriented away from immediately neighboring residential areas and projections may not be substantially visible from the right-of-way. The projection system shall be designed so as not to negatively impact adjacent residential areas.

- d. Outdoor motion picture theaters shall cease operations no later than 12:00 a.m. on weekdays and 1:00 a.m. on weekends. Any accessory bar counter shall cease operations no later than 11:00 p.m. on weekdays and 12:00 a.m. on weekends. The accessory bar counter may be open and operational only during times when the theater use is operational.
- e. Any outdoor bar counter shall be located away from immediately neighboring residential areas and may not be substantially visible from the right-of-way.
- f. The area surrounding any bar counter in which alcoholic beverages may be served shall be segregated to comply with the applicable requirements of chapter 6 of this Code, and shall incorporate sound attenuation devices in order to reduce the level of noise.
- g. Theater seats shall be required at all times and shall not be removed from the movie viewing areas during all times the business is open. This shall not preclude the temporary removal of seats for cleaning and maintenance purposes.

\* \* \*

**SECTION 3.** Chapter 142 of the City Code, entitled "Zoning districts and regulations," Article IV, "Supplementary district regulations," Division 3, "Supplementary use regulations," is hereby amended as follows:

#### **ARTICLE IV. – SUPPLEMENTARY DISTRICT REGULATIONS**

\* \* \*

#### **DIVISION 3. – SUPPLEMENTARY DISTRICT REGULATIONS**

\* \* \*

##### **Sec. 142-1109. – Accessory outdoor bar counters.**

Accessory outdoor bar counters shall be prohibited as a main permitted use and shall only be permitted as an accessory use to an outdoor motion picture theater fronting on Alton Road as provided in section 142-310, an outdoor cafe with a minimum of 30 chairs or as an accessory use to a hotel pool deck. Accessory counters shall not be visible from any point along the property line adjacent to a public right-of-way.

**SECTION 4.** Chapter 142 of the City Code, Article IV, "Supplementary district regulations," Division 5, "Height regulations," is hereby amended as follows:

#### **DIVISION 5. – HEIGHT REGULATIONS**

##### **Sec. 142-1161. – Height regulation exceptions.**

For all districts, except RS-1, 2, 3 and 4 (single-family residential districts).

(a) The height regulations as prescribed in these land development regulations shall not apply to the following when located on the roof of a structure or attached to the main structure. For exceptions to the single-family residential districts, see subsection 142-105(e).

- (1) Air conditioning, ventilation, electrical, plumbing equipment or equipment rooms.
- (2) Chimneys and air vents.
- (3) Decks, not to exceed three feet above the main roofline and not exceeding a combined deck area of 50 percent of the enclosed floor area immediately one floor below.
- (4) Decorative structures used only for ornamental or aesthetic purposes such as spires, domes, belfries, not intended for habitation or to extend interior habitable space. Such structures shall not exceed a combined area of 20 percent of the enclosed floor area immediately one floor below.
- (5) Elevator bulkheads or elevator mechanical rooms.
- (6) Flagpoles subject to the provisions of section 138-72.
- (7) Parapet walls, not to exceed three and one-half feet above the main roofline unless otherwise approved by the design review board up to a maximum of 25 feet in height.
- (8) Planters, not to exceed three feet in height above the main roofline.
- (9) Radio, television, and cellular telephone towers or antennas, and rooftop wind turbines.
- (10) Stairwell bulkheads.
- (11) Skylights, not to exceed five feet above the main roofline.
- (12) Stage towers or scenery lofts for theaters.
- (13) Swimming pools, whirlpools or similar structures, which shall have a four-foot wide walkway surrounding such structures, not to exceed five feet above the main roofline.
- (14) Trellis, pergolas or similar structures that have an open roof of cross rafters or latticework.
- (15) Water towers.
- (16) Bathrooms required by the Florida Building Code, not to exceed the minimum size dimensions required under the Building Code, provided such bathrooms are not visible when viewed at eye level (five feet, six inches from grade) from the opposite side of the adjacent right-of-way; for corner properties. Such bathrooms shall also not be visible when viewed at eye level (five feet, six inches from grade) from the diagonal corner at the opposite side of the right-of-way and from the opposite side of the side street right-of-way.
- (17) Solar panels.
- (18) Wind turbines on oceanfront properties.
- (19) Sustainable roofing systems.
- (20) Display or screen structures, projection devices, lobby, concession space, and sound attenuation and screening devices, serving an outdoor movie theater fronting on Alton Road as provided in section 142-310 of this chapter.

(b) The height of all allowable items in subsection (a) of this section, unless otherwise specified, shall not exceed 25 feet above the height of the roofline of the main structure. With the exception of items described in subsection (a)(17) and (a)(18) of this section, when any of the above items are freestanding, they shall follow the height limitations of the underlying zoning district (except flagpoles which are subject to section 138-72).

- (c) Notwithstanding other provisions of these regulations, the height of all structures and natural growth shall be limited by the requirements of the Federal Aviation Agency and any airport zoning regulations applicable to structure and natural growth.

**SECTION 5. 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 6. REPEALER.** All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

**SECTION 7. SEVERABILITY.** If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 8. EFFECTIVE DATE.** This Ordinance shall take effect ten days following adoption.

**PASSED** and **ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Dan Gelber  
Mayor

**ATTEST:**

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

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

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

First Reading:            July 29, 2020  
Second Reading:        September 16, 2020

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

Underscore denotes new language

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