

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; and

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

WHEREAS, the operational conditions set forth in this Ordinance will promote compatibility, and mitigate impacts to the neighborhood associated with outdoor motion picture theaters.

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

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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, 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. The restrictions in this paragraph 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**

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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. 142-305. 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).

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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 outdoor motion picture theater 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 only be delivered to patrons 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 be limited to no more than one (1) screen or display per establishment.
- e. Outdoor motion picture theaters shall commence operations no earlier than 4:30 p.m., and shall cease operations no later than 12:00 a.m. on weekdays and 1:00 a.m. on weekends. Any accessory bar counter shall commence operations no earlier than 4:30 p.m., and 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.
- f. Outdoor motion picture theaters shall have no more than three (3) movie showings per night.
- g. Any outdoor bar counter shall be located away from immediately neighboring residential areas and shall not be substantially visible from the right-of-way.
- h. 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.
- i. 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.

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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

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DIVISION 3. SUPPLEMENTARY DISTRICT REGULATIONS

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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, any of which serve 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 _____, 2020.

ATTEST:

Mayor Dan Gelber

Rafael E. Granado, City Clerk

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION

[Handwritten Signature] 7/21/20
City Attorney NK Date

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

Verified by: _____
Thomas Mooney, AICP
Planning Director

Underscore denotes new language