

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: May 25, 2021

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB21-0439: Ordinance Amendment - Retail Fulfillment Centers.**

RECOMMENDATION

Transmit the proposed Ordinance Amendment to the City Commission with a favorable recommendation.

HISTORY

On March 17, 2021, at the request of Commissioner David Richardson, the proposed Ordinance Amendment was referred to the Land Use and Sustainability Committee (LUSC) and the Planning Board (C4G). On March 24, 2021, the LUSC reviewed and discussed the attached draft Ordinance and recommended that the Planning Board transmit the item to the City Commission with a favorable recommendation.

On April 27, 2021, the Planning Board discussed the item and continued it to the May 25, 2021 meeting.

REVIEW CRITERIA

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these Land Development Regulations (LDRs), the board shall consider the following when applicable:

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

Consistent – The proposed ordinance is consistent with the goals, objectives, and policies of the Comprehensive Plan, including the regulations in the CD-3, CD-2, and MXE future land use category which allow for commercial uses.

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

Consistent – The proposed amendment does not create an isolated district unrelated to adjacent or nearby districts.

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

Consistent - The proposed ordinance amendment does not modify the scale of development.

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

Consistent – The proposed ordinance will not affect the load on public facilities and infrastructure as the maximum FAR is not modified.

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 – changes in the retail sector due to the advent of e-commerce 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 would improve the quality of development in the area and will not adversely affect living conditions in the neighborhood.

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

Consistent – The proposed change will not create or increase traffic congestion from what is currently permitted, as the FAR is not being modified by this ordinance.

9. Whether the proposed change will seriously reduce light and air to adjacent areas.

Consistent – The proposed change would not reduce light and air to adjacent areas.

10. Whether the proposed change will adversely affect property values in the adjacent area.

Consistent – The proposed change should not adversely affect property values in the adjacent areas.

11. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.

Consistent – The proposed change should not be a deterrent to the improvement or development of properties in the City.

12. **Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.**

Not applicable.

13. **Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.**

Not applicable.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

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

- (1) **Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.**

Partially Consistent – The proposal does affect areas that are vulnerable to the impacts of sea level rise in the long term.

- (2) **Whether the proposal will increase the resiliency of the City with respect to sea level rise.**

Partially Consistent – The proposal would not impact 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 is compatible with the City’s sea level rise mitigation and resiliency efforts.

ANALYSIS

Due to the increased use of online retailing, economic conditions are changing and impacting land use regulations that are more specific to traditional retail establishments. The proposed amendment creates a definition for retail fulfillment center, a use that will be viable into the future due to these changing economic conditions and establishes specific districts where it will be an allowable use. Retail fulfillment centers allow for goods to be purchased online and picked up by customers or delivered to customers, while maintaining a more traditional active storefront where walk-in customers can purchase goods. This use allows for modern commercial trends to continue while contributing to an active pedestrian realm.

The proposed Ordinance defines “retail fulfillment centers” as follows:

Retail fulfillment center shall mean a retail establishment where goods are primarily sold

online and delivered directly to a person's home or place of business. Such establishment must also have an active storefront, along all sidewalk facing portions of the building, that is open to the general public at least eight hours per day. The active storefront must have a minimum depth of 10' and a minimum area of 500 square feet. Retail fulfillment centers shall be limited to no more than 7,000 square feet. Goods sold by a retail fulfillment center may include goods similar to those that are sold in a convenience store.

Additionally, the proposal includes the following:

1. Creating a definition of "retail fulfillment center" in section 114-1 of the LDRs;
2. Listing "retail fulfillment centers" as a permitted use in the CD-2 and CD-3 districts;
3. Prohibiting "retail fulfillment centers" along Lincoln Road; and
4. Amending the Art Deco / MiMo Commercial Character Overlay regulations to limit the number of retail fulfillment centers within the Overlay and creating a distance separation requirement.

The proposed Ordinance is consistent with the goals, objectives, and policies of the Comprehensive Plan, including the regulations in the CD-3 and CD-2 future land use categories, which allow for commercial uses.

UPDATE

On April 27, 2021 the Planning Board discussed the proposed Ordinance and continued the matter to May 25, 2021. Additionally, members of the Planning Board expressed the following concerns:

- The appearance and operation of retail fulfillment centers. In particular concerns were expressed regarding the potential similarity with a typical convenience store or bodega in Miami Beach.
- The types of items that would be sold at the retail fulfillment centers, including alcoholic beverages and other items that may not be desirable for adjacent neighborhoods.
- Due to a lack of specific examples of retail fulfillment centers in the area it was suggested that additional restrictions be explored to ensure that the use would not have a negative impact on adjacent neighborhoods.

Staff has discussed the concerns of the Board with the item sponsor, including potential revisions to the Ordinance. At this time both staff and the item sponsor do not believe any additional modifications to the legislation are in order. In this regard, the following is noted:

1. The goods provided by retail fulfillment centers are no different than those provided by currently allowable retail uses. Also, any restrictions on certain products (e.g. the retail sale of alcohol or tobacco products) would apply to retail fulfillment centers. For example, establishments would be required to comply with, the following regulations:

- Chapter 6 of the City Code regarding the sale of alcoholic beverages, including hours of operation, distance separation from churches and schools, and other standards.
 - Chapter 142, Article V, Division 3, of the LDRs regarding adult use distance separation requirements and a prohibition on the displaying of adult material in such a manner that is visible to minors and sold or rented to minors.
 - Section 142, Article V, Division 10, of the LDRs regarding the regulation of the locations, distance separation, and sale of controlled substances including regulation of pharmacy stores and medical cannabis treatment centers.
 - Section 142, Article V, Division 11, of the LDRs regarding regulations for Tobacco/Vape Dealers, including distance separation requirements and areas where the use is prohibited. Additionally, there are prohibitions for such uses in certain underlying zoning districts and overlays.
2. The zoning districts proposed to permit retail fulfillment centers are limited to the CD-2 and CD-3 districts. Additionally, they would be prohibited along Lincoln Road and limited in the Harding Townsite CD2 district in North Beach.
 3. Defined benchmarks and safeguards are included in the definition of retail fulfillment centers, including minimum storefront activation requirements, as well as a maximum overall size of 7,000 square feet. These benchmarks and safeguards will ensure neighborhood compatibility.

The sponsor has also requested that the item be transmitted by the Board on May 25, 2021, in order to meet a legislative timeline.

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.

Retail Fulfillment Center

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, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," BY AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," AT SECTION 114-1, "DEFINITIONS," TO CREATE A DEFINITION FOR "RETAIL FULFILLMENT CENTER"; AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 5, ENTITLED "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT," AT SECTION 142-302, ENTITLED "MAIN PERMITTED USES," TO AMEND THE LIST OF PERMITTED USES; AMENDING DIVISION 6, ENTITLED "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," AT SECTION 142-332, ENTITLED "MAIN PERMITTED USES," TO AMEND THE LIST OF PERMITTED USES, AND AT SECTION 142-335, ENTITLED "PROHIBITED USES," TO AMEND THE LIST OF PROHIBITED USES FOR PROPERTIES WITH A LOT LINE ON LINCOLN ROAD, BETWEEN COLLINS AVENUE AND ALTON ROAD; AND AMENDING ARTICLE III, ENTITLED "OVERLAY DISTRICTS," DIVISION 12, ENTITLED "ART DECO," AT SECTION 142-870.11, ENTITLED "COMPLIANCE WITH REGULATIONS," TO AMEND THE LIST OF REGULATED USES FOR PROPERTIES IN THE OVERLAY DISTRICT; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, on March 17, 2021 this proposed ordinance was amendment was referred to the Land Use and Sustainability Committee and the Planning Board by the City Commission; and

WHEREAS, due to the advent of online retailing, economic conditions are changing, and impacting traditional retailers; and

WHEREAS, the City of Miami Bach seeks to allow uses that will be viable into the future dues to changing economic conditions; and

WHEREAS, retail fulfillment centers allow for goods to be purchased online while maintaining active storefronts which contribute to an active pedestrian realm; and

WHEREAS, the amendments set forth below are consistent with the goals, objectives, and policies of the Comprehensive Plan, including the regulations in the CD-3, CD-2, and MXE future land use categories which allow for commercial uses; and

WHEREAS, the City of Miami Beach has the authority to enact laws which promote the public health, safety, general welfare, and morals of its citizens; 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. Chapter 114 of the City Code, entitled "General Provisions," 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:

* * *

Retail fulfillment center shall mean a retail establishment where goods are primarily sold online and delivered directly to a person's home or place of business. Such establishment must also have an active storefront, along all sidewalk facing portions of the building, that is open to the general public at least eight hours per day. The active storefront must have a minimum depth of 10' and a minimum area of 500 square feet. Retail fulfillment centers shall be limited to no more than 7,000 square feet. Goods sold by a retail fulfillment center may include goods similar to those that are sold in a convenience store.

* * *

SECTION 2. Chapter 142, "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

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Sec. 142-302. – Main permitted uses.

The main permitted uses in the CD-2 commercial, medium intensity district are commercial uses (including, for example, personal service establishments); apartments; apartment hotels, hotels, hostels, and suite hotels (pursuant to section 142-1105 of this chapter); religious institutions with an occupancy of 199 persons or less retail fulfillment centers; and alcoholic beverages establishments pursuant to the regulations set forth in chapter 6; Alcoholic beverage establishments located in the following geographic areas within the CD-2 commercial, medium intensity district shall be subject to the additional requirements set forth in section 142-310:

* * *

SECTION 3. Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 6, "CD-3, Commercial, High Intensity District," is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE II. -DISTRICT REGULATIONS

* * *

DIVISION 6. - CD-3 Commercial, High Intensity District

* * *

Sec. 142-332. – Main permitted uses.

The main permitted uses in the CD-3 commercial, high intensity district are commercial uses; apartments; apartment hotels, hotels, hostels, and suite hotels (pursuant to section 142-1105 of this chapter); retail fulfillment centers; alcoholic beverage establishments pursuant to the regulations set forth in chapter 6, and religious institutions with occupancy of 199 persons or less. Offices are prohibited on the ground floor on that portion of Lincoln Road which is closed to traffic, unless the office area is located in a mezzanine, or at least 75 feet back from the storefront; also apartments, apartment hotels and hotels located on that portion of Lincoln Road shall comply with section 142-335. For properties located south of 17th Street, between Lenox Avenue and Meridian Avenue, and properties with a lot line adjoining Lincoln Road, from Collins Avenue to Alton Road, dance halls (as defined in section 114-1 of this Code) licensed as alcoholic beverage establishments shall only operate as restaurants with full kitchens and serving full meals. Additionally, such dance halls, on properties located south of 17th Street, between Lenox Avenue and Meridian Avenue, and properties with a lot line adjoining Lincoln Road, from Collins Avenue to Alton Road, shall be required to install a double door vestibule at all access points from the sidewalk, with the exception of emergency exits.

* * *

Sec. 142-335. – Prohibited uses.

- (a) The prohibited uses in the CD-3 commercial, high intensity district are
 - (1) Pawnshops;
 - (2) Secondhand dealers of precious metals/precious metals dealers;
 - (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.
- (b) 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; ~~and~~
- (9) Retail fulfillment centers.

* * *

SECTION 4. Chapter 142, "Zoning Districts and Regulations," Article III, "Overlay Districts," Division 12, "Art Deco," is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE III. - OVERLAY DISTRICTS

* * *

DIVISION 12. - ART DECO

* * *

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:
 - (1) Check cashing stores shall comply with the following regulations:
 - a. Such establishments shall be prohibited on lots fronting Ocean Drive and in the Ocean Terrace/Harding Townsite Area.
 - b. In areas of the overlay district not included in subsection a. above, there shall be no more than two such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.
 - (2) Convenience stores shall comply with the following regulations:
 - a. Such establishments shall be prohibited on lots fronting Ocean Drive.
 - b. In the Ocean Terrace/Harding Townsite Area, there shall be a limit of one such establishment.
 - c. In areas of the Overlay District not included in subsection a. and b. above, there shall be no more than five such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.
 - (3) Formula commercial establishments shall comply with the following regulations:

- a. Such establishments shall be prohibited on lots fronting Ocean Drive and Ocean Terrace.
 - b. This subsection shall not apply to any establishments in the South Beach Art Deco Area other than establishments fronting Ocean Drive nor to any establishment in the Ocean Terrace/Harding Townsite Area, other than Ocean Terrace.
- (4) Formula restaurants shall comply with the following regulations:
- a. Such establishments shall be prohibited on lots fronting Ocean Drive and Ocean Terrace.
 - b. This subsection shall not apply to any establishments in the South Beach Art Deco Area other than establishments fronting Ocean Drive nor to any establishment in the Ocean Terrace/Harding Townsite Area, other than Ocean Terrace.
- (5) Massage therapy centers shall not operate between 9:00 pm and 7:00 am in the overlay district.
- (6) Marijuana dispensaries shall be prohibited in the overlay district.
- (7) Occult science establishments shall be prohibited in the overlay district.
- (8) Package stores shall comply with the following regulations:
- a. Such establishments shall be prohibited on lots in the South Beach Art Deco Area with an underlying MXE zoning designation and in the Ocean Terrace/Harding Townsite Area.
 - b. In areas of the Overlay District not included in subsection a. above, there shall be no more than three such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.
- (9) Pawnshops shall be prohibited in the overlay district.
- (10) Pharmacy stores shall comply with the following regulations:
- a. Such uses shall be prohibited on lots fronting Ocean Drive.
 - b. In the Ocean Terrace/Harding Townsite Area, there shall be a limit of one such establishment.
 - c. In areas of the overlay district not included in subsection a. and b. above, there shall be no more than five such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.
- (11) Souvenir and t-shirt shops shall comply with the following regulations:
- a. Such establishments shall be prohibited on lots fronting Ocean Drive and in the Ocean Terrace/Harding Townsite Area.
 - b. In areas of the overlay district not included in subsection a. above, there shall be no more than five such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.
- (12) Tattoo studios shall comply with the following regulations:
- a. Such uses shall be prohibited on lots fronting Ocean Drive and in the Ocean Terrace/Harding Townsite Area.

- b. In areas of the overlay district not included in subsection a. above, there shall be no more than three such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.
- (13) Grocery stores shall comply with the following regulations:
- a. Such establishments shall be prohibited on lots fronting Ocean Drive.
 - b. In areas of the Overlay District not included in subsection a. above, there shall be no more than five such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment, with the exception of such uses in the Ocean Terrace/Harding Townsite Area.
- (14) Tobacco/vape dealers shall be prohibited in the overlay district.
- (15) Retail fulfillment centers shall comply with the following regulations:
- a. Such establishments shall be prohibited on lots fronting Ocean Drive.
 - b. In the Ocean Terrace/Harding Townsite Area, there shall be a limit of one such establishment.
 - c. In areas of the Overlay District not included in subsection a. and b. above, there shall be no more than five such establishments. Such establishments shall be located no closer than 2,500 feet from any other such establishment.

* * *

SECTION 5. Repealer.

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

SECTION 6. 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 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 _____, 2021.

Dan Gelber, Mayor

ATTEST:

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION

Rafael E. Granado, City Clerk

City Attorney

Date

First Reading: June __, 2021

Second Reading: July __, 2021

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