

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: **PB21-0438 - Lincoln Road Retail Uses and Size Limits.**

RECOMMENDATION

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

HISTORY

On October 14, 2020, at the request of Commissioner Ricky Arriola, a discussion pertaining to retail use and size regulations was referred to the Land Use and Sustainability Committee (LUSC) by the City Commission (item C4L). On November 18, 2020 the item was deferred to the December 15, 2020 LUSC. On December 15, 2020 the item was discussed briefly and continued to the January 2021 LUSC meeting.

On January 20, 2021 the item was discussed and continued to the February 17, 2021 meeting with direction to prepare a draft ordinance addressing retail sizes and uses. On February 17, 2021, the LUSC reviewed and discussed the draft Ordinance prepared by the Administration and recommended that the City Commission refer the item to the Planning Board, with the following additional direction:

1. The Planning Board is requested to provide a recommendation on whether the 45,000 square foot threshold for retail uses should be lowered.
2. The Administration and the City Attorney were requested to explore a waiver provision for the 45,000 square foot threshold, or lower threshold, in consultation with the item sponsor.

On March 17, 2021, at the request of Commissioner Ricky Arriola, the City Commission referred the item to the Planning Board (Item C4 I).

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

BACKGROUND

Currently there are no size regulations for business establishments on Lincoln Road. Over the years there has been a balance of larger stores and smaller, boutique stores. Given the

uncertainty of current and future economic conditions, as well as the change in venue of larger operators such as the Regal Cinema at Alton Road, regulations addressing business sizes are being proposed.

For comparison purposes, the following is a list of regulations from other cities regarding commercial building size:

- **San Francisco, CA**
To maintain a diversity of small-scale, neighborhood-serving businesses, San Francisco prohibits stores over 4,000 square feet in several of its neighborhood commercial districts.
- **Fairfield, CT**
In 2007, the city of Fairfield limited retail stores and restaurants located in neighborhood business districts to no more than 4,000 square feet.
- **Guilford, CT**
This town of 20,000 people caps the size of retail stores townwide. The size limit varies by area, ranging from 15,000 to 60,000 square feet.
- **Whatcom County, WA**
In September 2008, Whatcom County in Washington state adopted a store size cap measure limiting retail stores to no more than 65,000 square feet in urban growth areas and no more than 35,000 square feet in the rest of the county.
- **Walpole, NH**
On March 14, 2000, the residents of Walpole voted overwhelmingly to enact a 40,000-square-foot size limit on new retail stores and restaurants.
- **North Elba, NY**
North Elba adopted a size cap ordinance limiting single retail stores to 40,000 square feet and capping shopping centers at 68,000 square feet.
- **Charlevoix, MI**
The city enacted a measure that caps stores at 45,000 square feet, which is about 20 percent smaller than a football field and about one-quarter the size of a typical retail "supercenter."
- **Easthampton, MA**
In June 2015, the City Council of Easthampton, a 16,000-person town in western Massachusetts, unanimously approved a zoning ordinance that caps new retail development at 50,000 square feet.
- **Rockville, MD**
In August 2000, the city of Rockville enacted an ordinance prohibiting stores over 65,000 square feet and requiring stores greater than 25,000 square feet to comply with design and siting guidelines.
- **Westford, MA**

The town of Westford prohibits the construction of large retail developments (over 60,000 square feet) and requires special permits for developments between 30,000 – 60,000 square feet, allowing the opportunity for citizen input and review by planning boards.

- **Agoura Hills, CA**

In 2002, voters in Agoura Hills, a community 20 miles north of Los Angeles, adopted a measure limiting stores to no more than 60,000 square feet.

- **Miami, FL**

The two Coconut Grove Neighborhood Conservation Districts prohibit retail establishments over 70,000 square feet. The Miami 21 Code requires that commercial establishments occupying more than 55,000 square feet of floor area be approved as a Conditional Use in T6-O districts, as an Administrative Conditional Use in D1 districts, and by right in D2 districts. They are prohibited in other commercial districts. In addition, the code has additional design requirements to ensure that the building is designed in an urban manner in T6-O and D1 districts.

- **Clermont, Florida**

Clermont's zoning code prohibits retail development over 100,000 square feet.

- **Largo, Florida**

In 2005, Largo adopted an ordinance capping stores at 125,000 square feet and requiring those over 50,000 square feet to meet design standards.

At the request of the item sponsor, the Administration reached out to the Lincoln Road BID to obtain input on this proposal. Members of the Administration participated in the November 19, 2020 BID meeting, at which time a subcommittee was formed to take a closer look at the proposed regulations. On December 2, 2020, the subcommittee met to discuss the proposal and recommended that the focus be on 'uses' and not overall square footage at this time.

On January 5, 2021, the Lincoln Road BID subcommittee met again to discuss the proposal. The subcommittee again recommended that the focus of the proposed legislation should be on the types of uses that are sought to be controlled, and not overall square footage.

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.**

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

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 associated with entertainment habits and the closure of multiscreen movie theaters makes passage of the proposed change necessary to allow for the adaptive reuse of such spaces.

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.

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 and the intensity of uses is not proposed to be increased.

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.**

Consistent – Existing restrictions would not allow for the appropriate reuse of existing large commercial spaces in the event that the existing use becomes obsolete.

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

The Land Development Regulations already prohibit a number of uses on Lincoln Road that are associated with negative neighborhood impacts/nuisances, and which would be detrimental to the historic and economically vibrant character of the corridor. These include the following:

1. Pawnshops;
2. Secondhand dealers of precious metals/precious metals dealers;
3. Tobacco/vape dealers;

4. Check cashing stores;
5. Medical cannabis dispensaries (medical marijuana dispensaries);
6. Convenience stores;
7. Grocery stores;
8. Occult science establishments;
9. Pharmacy stores;
10. Souvenir and t-shirt shops; and
11. Tattoo studios.

While the exclusion of additional uses can certainly be explored, careful consideration must be given to the types of uses this may affect. As part of the larger discussion, a threshold square footage for commercial spaces on Lincoln Road, based upon existing buildouts of larger, historic structures was considered.

Pertaining the adaptive re-use of larger, existing structures, such as the Regal Cinema, future uses should be viewed within the larger context of Lincoln Road. Additionally, not all large retail uses and establishments are the same, and there may be an opportunity to incentivize desired uses.

In this regard, there are examples of multiplex theaters being transformed into warehouse fulfillment centers (high ceilings), offices/office clusters (existing segmented spaces), as well as mixed-use with retail, restaurants, apartments, and office. Other potential successful uses could be a niche furniture store, production company or even an arts and cultural space. Organizations such as Young At Art Museum, which has expressed interest in a space in Miami Beach, could be a unique opportunity, as well as a good fit. However, for most such arts and culture organizations, financing could be a challenge, so it is not likely that they would be able to use the entire space.

From an Economic Development perspective, spaces such as this could be well suited for a number of uses, including an advanced manufacturing facility, tech startup office hub, gallery space, business incubator, brewery/restaurant, or any combination of the above. Although some of these uses require amendments to the CD-3 regulations, they would offer an opportunity to provide new uses that would not compete with the businesses along the rest of Lincoln Road.

SUMMARY

Following the direction of the LUSC at the January 20, 2021 meeting, staff prepared the attached draft Ordinance, which applies to properties with a lot line on Lincoln Road between Alton Road and Collins Avenue. On the subject properties, the Ordinance prohibits retail establishments over 45,000 square feet in size, but provides an exemption for specific types of commercial uses, which are encouraged in larger commercial spaces, pursuant to the Economic Development suggestions above.

For reference purposes, the following is survey data from the Miami-Dade Property Appraiser and includes the size of the larger existing retail establishments along the Lincoln Road corridor:

- H&M – 37,787 SF
- Forever21 – 41,370 SF
- The Gap – 29,741 SF
- Nike – 31,573 SF

As retail establishments over 45,000 SF would generally only be feasible on lots over 50,000 SF, the draft Ordinance provides alternative uses that could be located above the ground floor on such lots along the corridor. The additional uses are similar to those described above and include the following:

- Main Permitted Uses:
 1. Artisanal Retail for On-Site Sales Only,
 2. Production Studios,
 3. Furniture sales establishments over 45,000 SF, and
 4. Major Cultural Institutions.
- Conditional Uses (i.e. uses that require Planning Board approval):
 1. Artisanal Retail with Off-Site Sales,
 2. Neighborhood Fulfillment Center (with a cap of one establishment).

At present there are only two lots over 50,000 SF that could take advantage of the additional uses, should they be approved. However, more sites could potentially be created by establishing unified development sites, though for much of the corridor this would be unfeasible or unlikely.

The LUSC requested that the Planning Board study the proposed size limit of 45,000 square feet for retail establishments. Additionally, subsequent to the February 17, 2021 LUSC, and at the direction of the Committee, staff discussed different options pertaining to a possible waiver provision of the 45,000 square foot threshold with the item sponsor. In this regard, a 'no variance' provision has been added, as a safeguard to ensure that new development complies with the provisions of this Ordinance. Further, any modifications to this 45,000 square foot threshold would need to be approved by the City Commission, as an amendment to the LDRs.

Staff believes that the proposed draft ordinance represents a careful balance between encouraging certain types of uses within larger spaces and providing measurable limits on such spaces, as opposed to solely limiting certain types of uses, which may have unintended consequences.

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.

Lincoln Road Retail Use and Size Limits

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," SECTION 114-1, "DEFINITIONS," TO ESTABLISH DEFINITIONS FOR "PRODUCTION STUDIO" AND RELATED TERMS; AND AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 6, ENTITLED "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," AT SECTION 142-332, ENTITLED "MAIN PERMITTED USES," TO AMEND THE LIST OF MAIN PERMITTED USES FOR PROPERTIES WITH A LOT LINE ON LINCOLN ROAD, BETWEEN COLLINS AVENUE AND ALTON ROAD; AT SECTION 142-333, ENTITLED "CONDITIONAL USES," TO AMEND THE LIST OF CONDITIONAL USES FOR PROPERTIES WITH A LOT LINE ON LINCOLN ROAD, BETWEEN COLLINS AVENUE AND ALTON ROAD; 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 PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, properties fronting Lincoln Road, between Collins Avenue and Alton Road, are within the CD-3 Commercial, High Intensity District, and properties (generally) eastward of Lenox Avenue are also located within the locally designated Flamingo Park Historic District as well as the National Register Architectural District; and

WHEREAS, Lincoln Road is an iconic shopping area in the City of Miami Beach (the "City"); and

WHEREAS, the Lincoln Road corridor has historically been composed of low intensity service and retail establishments, which primarily serve City residents; and **WHEREAS**, today, Lincoln Road is a premier street in Miami Beach that provides residents and visitors with a unique cultural, retail, and dining experience, which is vital to Miami Beach's economy, especially the tourism industry; and

WHEREAS, in order to ensure consistency with the recently-adopted Lincoln Road Master Plan, and to ensure the integrity of the Lincoln Road experience, the City Commission recommends revising the list of permitted, conditional, and prohibited uses for the subject area; and

WHEREAS, it is the intent of the City to limit the number of establishments which may negatively affect this unique and historic corridor; 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:

* * *

Artisanal retail for on-site sales only shall mean a retail establishment where consumer-oriented goods, services, or foodstuffs are produced; including, but not limited to, works of art, clothing, personal care items, dry-cleaning, walk-in repairs, and alcoholic beverages production, for sale to a consumer for their personal use or for consumption on the premises only. Such facilities use moderate amounts of partially processed materials and generate minimal noise and pollution.

Artisanal retail with off-site sales shall mean a retail establishment where consumer-oriented goods, services, or foodstuffs are produced; including, but not limited to, works of art, clothing, personal care items, dry-cleaning, walk-in repairs, and alcoholic beverages production, for sale to a consumer for their personal use or for consumption on the premises and concurrently for sale to vendors and retailers off the premises. Such facilities use moderate amounts of partially processed materials and generate minimal noise and pollution.

* * *

Neighborhood fulfillment center shall mean a retail establishment where clients collect goods that are sold off-site, such as with an internet retailer. Additionally, the establishment provides a hub where goods can be collected and delivered to clients' homes or places of business by delivery persons that do not use cars, vans, or trucks. Such facilities are limited to 35,000 square feet.

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Production studio means a facility that provides the physical basis for works in the fields of performing arts, new media art, film, television, radio, comics, interactive arts, photography, video games, websites, and video.

* * *

SECTION 2. 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**

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ARTICLE II. - DISTRICT REGULATIONS

* * *

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

* * *

Sec. 142-332. - Main permitted uses.

(a) The main permitted uses in the CD-3 commercial, high intensity district are:

- (1) Commercial uses;
- (2) ~~a~~Apartment;
- (3) ~~a~~Apartment hotels, hotels, hostels, and suite hotels (pursuant to section 142-1105 of this chapter);
- (4) ~~a~~Alcoholic beverage establishments pursuant to the regulations set forth in chapter 6; and
- (5) ~~r~~Religious institutions with occupancy of 199 persons or less; and
- (6) ~~For those lots fronting~~ Offices are prohibited on the ground floor on that portion of Lincoln Road which is closed to traffic, unless the office area is office uses may be located in a mezzanine; or, when located on the ground floor, shall be set back 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.

(b) ~~In addition to Sec. 143-332(a), the following regulations shall apply to~~ 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;

- (1) ~~d~~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.

(c) ~~In addition to the main permitted uses in Sec. 143-332(a), the following uses shall be permitted above the ground floor on properties with a lot size greater than 50,000 square feet and with a lot line adjoining Lincoln Road between Collins Avenue and Alton Road:~~

- (1) Artisanal retail for on-site sales only;
- (2) Production studios;
- (3) Furniture sale establishments larger than 45,000 SF; and
- (4) Major cultural institutions.

Sec. 142-333. - Conditional uses.

(a) The conditional uses in the CD-3 commercial, high intensity district are as follows:

- (1) ~~n~~New construction of structures 50,000 square feet and over (even when divided by a district boundary line), which review shall be the first step in the process before the review by any of the other land development boards;
- (2) ~~e~~Outdoor entertainment establishment;
- (3) ~~n~~Neighborhood impact establishment;
- (4) ~~e~~Open air entertainment establishment;
- (5) ~~r~~Religious institutions with an occupancy greater than 199 persons;
- (6) ~~v~~Video game arcades;
- (7) ~~p~~Public and private institutions;
- (8) ~~s~~Schools and major cultural dormitory facilities as specified in section 142-1332; and
- (9) ~~s~~Storage and/or parking of commercial vehicles on a site other than the site at which the associated commerce, trade or business is located, except such storage and/or parking of commercial vehicles shall not be permitted on lots with frontage on Lincoln Road, Collins Avenue, 41st Street and 71st Street. See subsection 142-1103(c). ~~When located on that portion of Lincoln Road that is closed to traffic, these uses shall comply with section 142-335.;~~
- (10) Alcoholic beverage establishments located in the area generally bounded by 40th Street to the south, 42nd Street to the north, Alton Road to the west, and the Indian Creek waterway to the east, shall be subject to the additional requirements set forth in section 142-340.; and
- (11) When located above the ground floor on properties with a lot size greater than 50,000 square feet and with a lot line adjoining Lincoln Road between Collins Avenue and Alton Road, the following uses shall be conditional uses: artisanal retail with off-site sales and neighborhood fulfillment center (provided that there is no more than one such center located on Lincoln Road between Collins Avenue and Alton Road).

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Sec. 142-335. – Prohibited uses.

(a) The prohibited uses in the CD-3 commercial, high intensity district are as follows:

- (1) Pawnshops;
- (2) Secondhand dealers of precious metals/precious metals dealers; and
- (3) Accessory outdoor bar counter, except as provided in article IV, division 2 of this chapter and in chapter 6; ~~and~~
- (4) Tobacco/vape dealers; and
- (5) The storage and/or parking of commercial vehicles on lots with frontage on Lincoln Road, Collins Avenue, 41st Street or 71st Street.

(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;-
- (9) Retail establishments greater than 45,000 square feet. Notwithstanding the foregoing, this prohibition does not include the specific types of retail and commercial uses identified as main permitted uses or conditional uses above the ground floor on properties with a lot size greater than 50,000 square feet and with a lot line adjoining Lincoln Road between Collins Avenue and Alton Road in section 142-332 and 143-333 above. There shall be no variances from the regulations in this subsection (b)(9); and
- (10) Offices on the ground floor on that portion of Lincoln Road which is closed to traffic; Notwithstanding the foregoing, this prohibition does not include office uses located in a mezzanine, or set back at least 75 feet back from the storefront.

SECTION 3. Repealer.

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

SECTION 4. 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 5. Severability.

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

SECTION 6. Effective Date.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this ____ day of _____, 2021.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

First Reading: June 23, 2021

Second Reading: July __, 2021

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

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