

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: March 22, 2022

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB22-0492 – Expansion of Art Deco/MiMo Overlay.**

RECOMMENDATION

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

HISTORY

On December 8, 2021, at the request of Commissioner Alex Fernandez, the City Commission referred the proposal for an Ordinance to the Land Use and Sustainability Committee and Planning Board (C4 X). The sponsor is proposing to expand the Art Deco/MiMo Commercial Character Overlay District to include properties along Washington Avenue and Collins Avenue, from 5th Street to 23rd Street. This expansion would pertain primarily to prohibited uses and uses with a distance separation requirement.

On March 4, 2022, the LUSC recommended that the Planning Board transmit the item to the City Commission with a favorable recommendation.

BACKGROUND

On September 25, 2017, the City Commission adopted Ordinance No. 2017-4137, creating the Art Deco / MiMo Commercial Character Overlay District (the "Overlay"), to limit uses that detract from the historic character of the MXE zoning district in South Beach and the Ocean Terrace/Harding Townsite area in North Beach. On April 13, 2021, as a member of the Planning Board, Commissioner Fernandez submitted a memo to the Planning Board providing recommendations and requesting that the Board discuss potential changes to the Overlay. On June 22, 2021, the Planning Board discussed the item and made several recommendations, including a recommendation that the City Commission expand the boundaries of the Overlay to the western lot line of properties fronting the west side of Washington Avenue, and along Collins Avenue to 23rd Street on the north. A Letter to Commission summarizing the Planning Board's recommendations is attached.

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.

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 affect the scale of development within the affected neighborhoods.

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 floor area ratio (FAR) is not modified.

5. **Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.**

Consistent – The existing boundaries of the Art Deco/MiMo Commercial Character Overlay District do not include the broader touristic area, including Washington Avenue and the Collins Park neighborhood, as a result some of the nuisance uses which are intended to be regulated by the ordinance locate in those nearby areas.

6. **Whether changed or changing conditions make the passage of the proposed change necessary.**

Consistent – The proliferation of the nuisance uses in the areas affected by the ordinance 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 is intended to limit nuisance uses in a larger area.

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 does not modify height or setback limits and would not reduce light and air to adjacent areas beyond what is currently allowed.

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

Consistent – The proposed change will 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 will 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 will 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 Art Deco / MiMo Commercial Character Overlay District limits in number or prohibits several nuisance uses within its boundaries in an effort to improve the quality of businesses within its boundaries over time. These include check cashing stores, convenience stores, occult science establishments, package stores, souvenir and t-shirt shops, tattoo studios, grocery stores, and tobacco/vape dealers. As a result of the regulations within the overlay, the potential exists for such establishments to congregate in nearby commercial areas where such regulations do not exist. This potential is particularly high along the Washington Avenue corridor and within the Collins Park neighborhood.

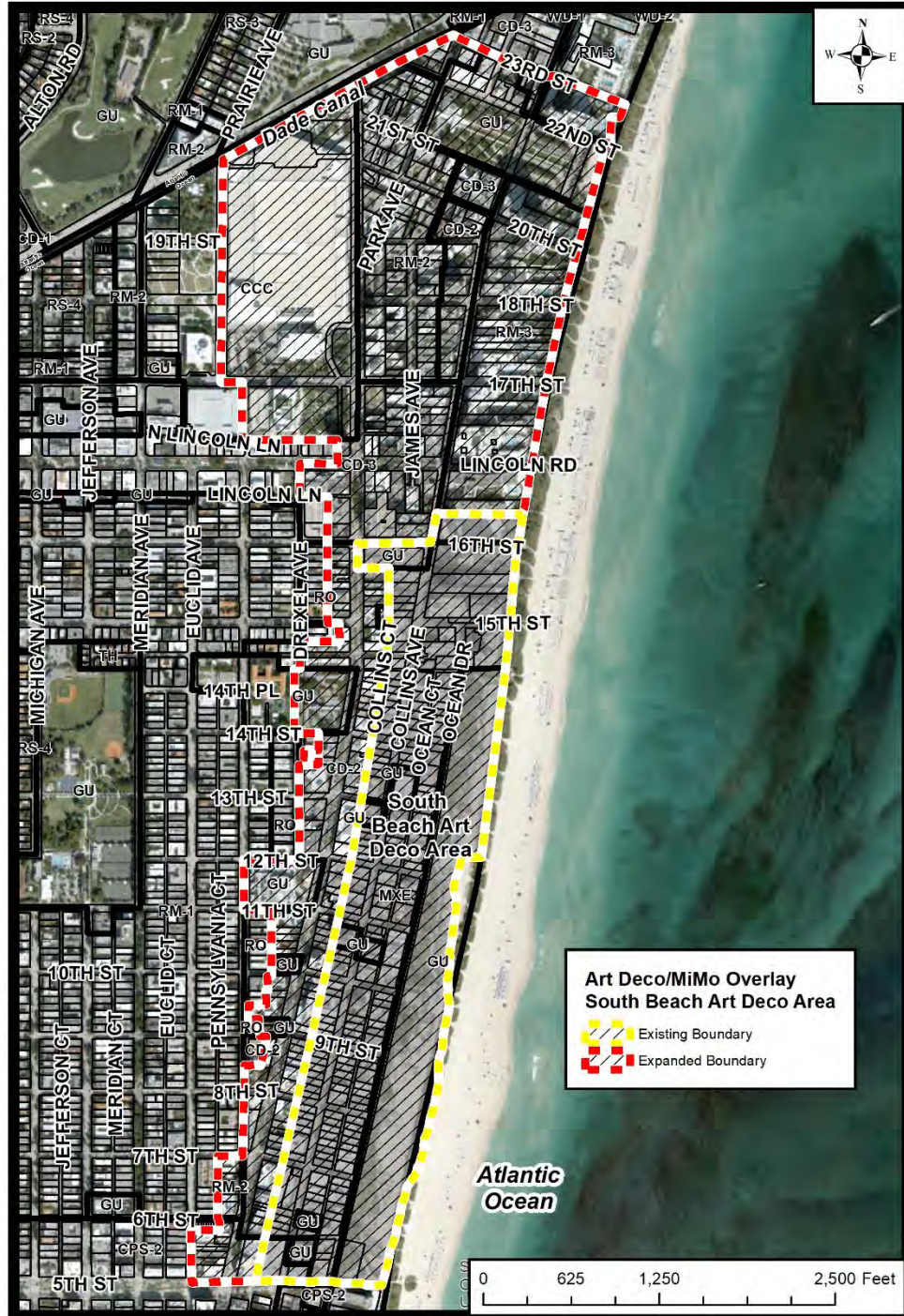
The attached draft Ordinance expands the boundaries of the Overlay to include properties fronting Washington Avenue, between 5th Street and Dade Boulevard, and properties between 16th Street and 23rd Street to the east of Washington Avenue (see the map at the end of this report). This expansion applies to prohibited uses and uses with a distance separation requirement.

Staff is supportive of the proposal as it will reduce the likelihood of uses not permitted within the current boundaries of overlay to oversaturate the adjacent Collins Park and Washington Avenue business district. Moreover, it should further elevate the image of the Collins Park and Washington Avenue areas.

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.

Art Deco/MiMo Overlay Expansion



Expansion of Art Deco MIMO Overlay District

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 142, ENTITLED “ZONING DISTRICTS AND REGULATIONS,” BY AMENDING ARTICLE III, ENTITLED “OVERLAY DISTRICTS,” DIVISION 12, ENTITLED “ART DECO,” TO EXPAND THE BOUNDARIES OF THE OVERLAY AND AMEND THE REQUIREMENTS FOR USES FOR PROPERTIES IN THE OVERLAY DISTRICT; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, properties fronting Ocean Drive and Collins Avenue that have a zoning designation of MXE Mixed Use Entertainment are located in the Ocean Drive/Collins Avenue Historic District, as well as the Miami Beach Architectural National Register Historic District; and

WHEREAS, Ocean Drive, Collins Avenue, and Washington Avenue are also premier streets in Miami Beach, all of which provide residents and visitors with a unique cultural, retail, and dining experience and are vital to Miami Beach’s economy, especially the tourism industry; and

WHEREAS, the Collins Park neighborhood has become a cultural hub within the City that contains many unique establishments; and

WHEREAS, check cashing stores, convenience stores, pharmacies, grocery stores, souvenir and t-shirt shops, tattoo studios, and fortune tellers (occult science establishments) are uses which may negatively affect surrounding areas; and

WHEREAS, it is the intent of the City to limit the number of establishment which may negatively affect the subject areas; and

WHEREAS, the amendments set forth below are necessary to accomplish all of the above objectives.

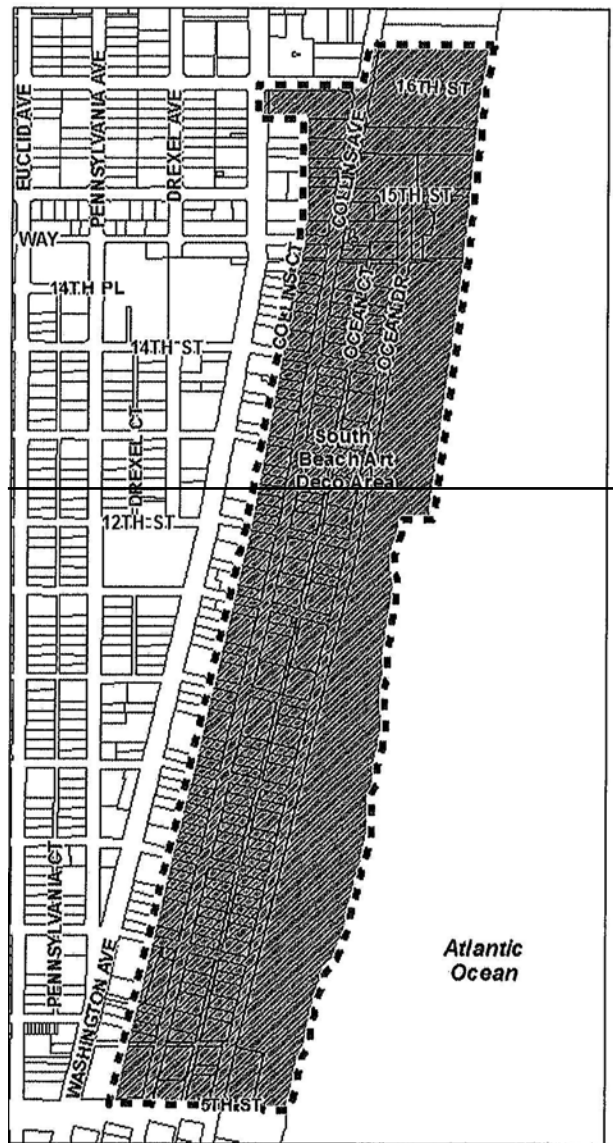
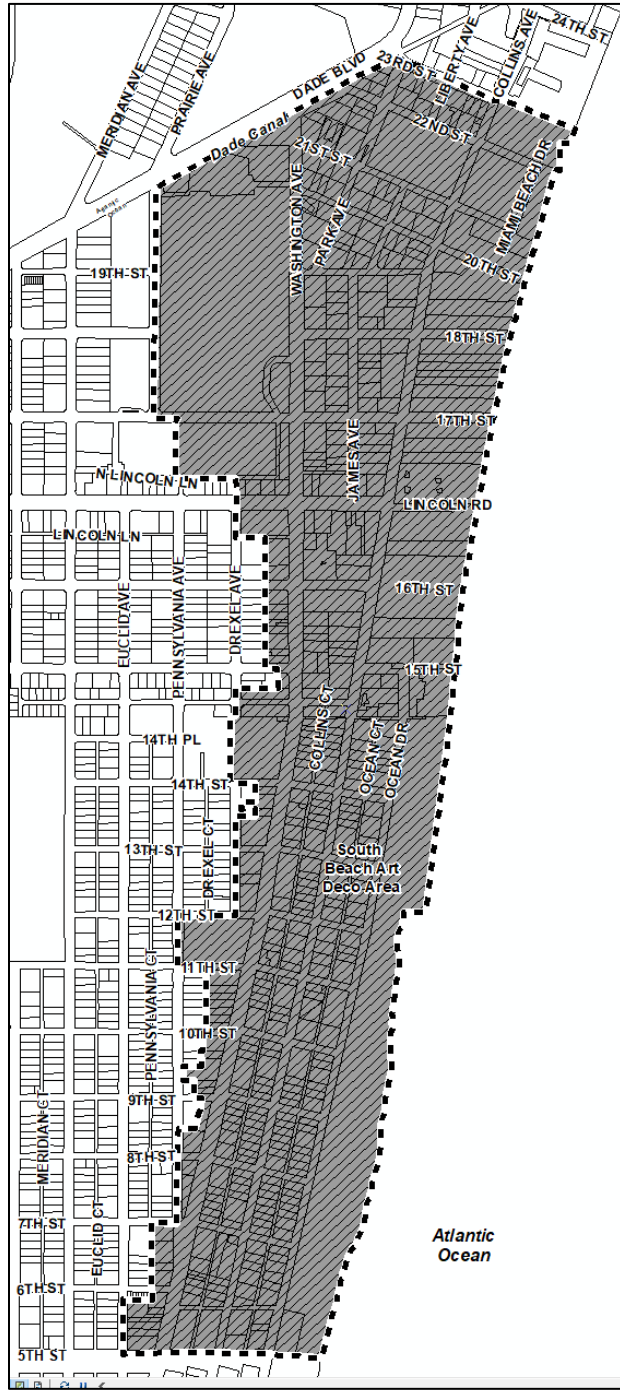
NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA.

SECTION 1. Chapter 142, “Zoning Districts and Regulations,” Article III, “Overlay Districts,” Division 12, “Art Deco,” is hereby amended as follows:

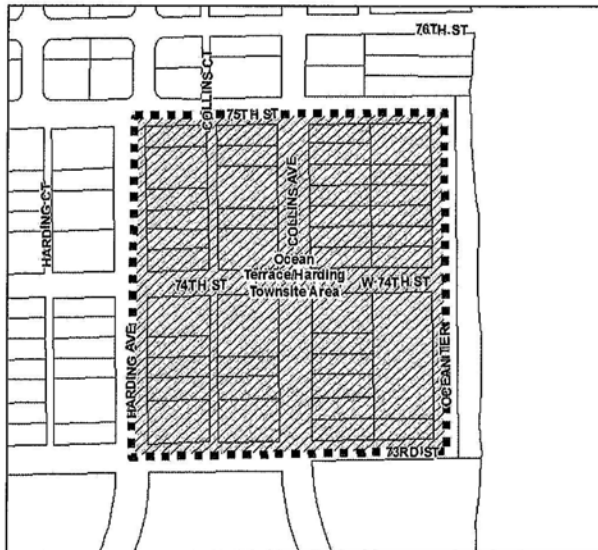
MIMO COMMERCIAL CHARACTER OVERLAY DISTRICT

Sec. 142-870.10. Location and purpose.

- (a) There is hereby created the Art Deco/Mimo Commercial Character Overlay District (the "overlay district"). The overlay district consists of the properties in the South Beach Art Deco Area identified in the map below in this subsection (a) and the properties identified in the Ocean Terrace/Harding Townsite Area described in subsection (b) below. The South Beach Art Deco Area is generally located east of the western lot lines of properties fronting the west side of Collins-Washington Avenue between 5th Street to the south and 16th-23rd street to the north and west of the ocean:



- (b) The Ocean Terrace/Harding Townsite Area is identified in the map below and is generally located between Harding Avenue to the west and Ocean Terrace to the east, between 73rd and 75th Streets:



- (1) Properties fronting Ocean Drive and Collins Avenue that have a zoning designation of MXE mixed use entertainment are located in the Ocean Drive/Collins Avenue historic district, as well as the Miami Beach Architectural National Register Historic District;
- (2) Properties fronting Washington Avenue that have a zoning designation of CD-2 commercial medium intensity district, are located in the Flamingo Park historic district and the Miami Beach Architectural National Register Historic District;
- (3) Ocean Drive, Collins Avenue, and Washington Avenue are some of the premier streets in Miami Beach and provide residents and visitors with a unique cultural, retail, and dining experience and are vital to Miami Beach's economy, especially the tourism industry;
- (4) Properties fronting Ocean Terrace and Collins Avenue between 73rd and 75th Streets are within the Harding Townsite historic district and the North Shore National Register historic district;
- (5) Properties fronting Harding Avenue between 73rd and 75th Streets are within North Shore National Register historic district: and
- (6) The City of Miami Beach has undertaken a master planning process for the North Beach area that includes the Harding Townsite historic district and North Shore National Register district, in order to encourage the revitalization of the area by improving cultural, retail, and dining experiences for residents and visitors to the area;
- (7) Formula commercial establishments and formula restaurants are establishments with multiple locations and standardized features or a recognizable appearance, where recognition is dependent upon the repetition of the same characteristics of one store in multiple locations;
- (8) Formula commercial establishments and formula restaurants are increasing in number along Ocean Drive and within other historic districts;
- (9) The sameness of formula commercial establishments, while providing clear branding for retailers, counters the city's Vision Statement which includes creating "A Unique Urban and Historic Environment";

- (10) Notwithstanding the marketability of a retailer's goods or services or the visual attractiveness of the storefront, the standardized architecture, color schemes, decor and signage of many formula commercial establishments detract from the distinctive character and aesthetics of the historic districts;
- (11) The increase of formula commercial establishments hampers the unique cultural, retail, and dining experience in commercial and mixed-use areas of the city's historic districts;
- (12) Specifically, the proliferation of formula commercial establishments may unduly limit or eliminate business establishment opportunities for non-traditional or unique businesses, thereby decreasing the diversity of cultural, retail, and dining services available to residents and visitors;
- (13) The homogenizing effect of formula commercial establishments based on its reliance on standardized branding, is greater if the size of the establishment, in number of locations or size of use or branded elements is larger;
- (14) The increased level of homogeneity detracts from the uniqueness of the historic districts, which thrive on a high level of interest maintained by a mix of cultural, retail, and dining experiences that are not found elsewhere in the country;
- (15) Sidewalk cafés are central to the economy of Ocean Drive and enhance the pedestrian experience and historic and cosmopolitan character of the street;
- (16) It is not the intent of the city to limit interstate commerce, but rather to maintain the historic character of neighborhoods and promote their unique cultural, retail, and dining experiences that are vital to the city's economy;
- (17) It is the intent of the city that if an establishment that has multiple locations and standardized features or a recognizable appearance seeks to locate within certain areas affected by this division that such establishment provide a distinct array of merchandise, facade, decor, color scheme, uniform apparel, signs, logos, trademarks, and service marks;
- (18) Convenience stores, pharmacy stores and eating establishments have similar impacts as formula stores;
- (19) Check cashing stores, pawnshops, souvenir and t-shirt shops, tattoo studios, fortune tellers (occult science establishments), massage therapy center, and package liquor stores are uses which negatively affect surrounding areas; and
- (20) It is the intent of the city to limit the number of establishments which may negatively affect surrounding areas.

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.
- (b) Review procedures.
 - (1) Commercial establishments in the overlay district that are not identified in subsection 142-870.11(a) shall comply with the following regulations:
 - a. A signed affidavit indicating that they are not an establishment that is regulated by subsection 142-870.11(a) shall be provided to the city as part of the application for obtaining a business tax receipt and building permit, as applicable.
 - b. If the establishment is found not to be in compliance with the applicable requirements of the signed affidavit, the business tax receipt will be revoked and the establishment shall immediately cease operation.
 - (2) Commercial establishments in the overlay district that are identified in subsection 142-870.11(a) shall comply with the following regulations:
 - a. If applicable, the applicant shall provide a signed and sealed survey dated not older than six months, indicating the number, location, name, business tax receipt numbers, and separation of the applicable type of establishments within the overlay district. Distance separation shall be measured as a straight line between the principal means of entrance of each establishment and the proposed establishment.
 - b. Establishments existing as of the date of the enactment of this ordinance shall count towards the maximum number of such establishments permitted within subsection 142-870.11(a).
 - c. A signed affidavit indicating compliance with the regulations of subsection 142-870.11(a) for the applicable type of establishment shall be provided prior to obtaining a business tax receipt.
 - d. If the establishment is found not to be in compliance with the applicable requirements of the signed affidavit, the business tax receipt will be revoked and the establishment shall immediately cease operation.
 - e. If a particular establishment meets more than one definition (i.e., formula commercial establishment and pharmacy store), it must meet the requirements for each use, and if there is a conflict, the more stringent code requirement prevails.

Sec. 142-870.12. Applicability.

Notwithstanding any provision of these regulations to the contrary, the overlay ordinance shall not apply to real property that satisfies all of the foregoing criteria:

- (1) The property fronts Ocean Drive:
- (2) The property has a received an order from the historic preservation board for a substantial rehabilitation, issued between January 1, 2017 and September 13, 2017, provided a full building permit is issued pursuant to such order within the allowable timeframes set forth in chapter 118 of the land development regulations of the city Code.
- (3) Any property described above will become legal nonconforming and, consistent with the city's land development regulations that address nonconformities, shall be permitted to continue as a legal nonconforming use in accordance with the applicable provisions of chapter 118 of the land development regulations of the city Code.

- (4) In the event the above-noted order of the historic preservation board should expire prior to the issuance of a building permit, any property described above shall conform with all the provisions under chapters 114 and 142 of this Code.

SECTION 2. Repealer.

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

SECTION 3. 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 4. Severability.

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

SECTION 5. Effective Date.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this ____ day of _____, 2022.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

First Reading: _____, 2022

Second Reading: _____, 2022

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

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