

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: October 25, 2022

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB22-0557. Vitamin Shop Regulations.**

RECOMMENDATION

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

HISTORY

On March 9, 2022, the City Commission referred a discussion item regarding regulations for vitamin stores to the Land Use and Sustainability Committee (C4 E). The sponsor of the item is Commissioner Alex Fernandez.

On May 13, 2022 the LUSC discussed the proposal and continued the item to the July 7, 2022, meeting with direction to the Administration to bring back a draft Ordinance for review and consideration. On July 7, 2022 the LUSC endorsed the attached draft Ordinance and recommended that the City Commission refer the proposal to the Planning Board. Additionally, Commissioners Ricky Arriola and David Richardson became co-sponsors of the item.

On September 14, 2022, the City Commission referred the proposal to the Planning Board for review and recommendation (Item C4 V).

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, therefore, the proposal is not out of scale with the needs of the neighborhood or the city.

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

Consistent – The proposed ordinance does not modify allowable densities or intensities for new development, and therefore does not change the potential loads on public facilities and infrastructure.

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

Not Applicable –District boundaries are not proposed to be modified.

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

Consistent – The need to control negative impacts related to the proliferation of stores selling CBD products 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 minimize negative impacts related to a proliferation of stores selling CBD products.

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 – Since the City is now a transportation concurrency exception area, the proposed change will not create or increase traffic congestion beyond the levels of service set forth in the Comprehensive Plan, or otherwise affect public safety. Additionally, the proposal does not increase the development potential beyond what currently exists.

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

Consistent – The proposed amendment does not modify the scale of development and as such will not reduce light and air to adjacent areas beyond what is currently permitted.

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.

PLANNING ANALYSIS

In 2019, the Florida Legislature established Section 581.217, Florida Statutes, which created the State Hemp Program; this program provides that hemp is not a controlled substance. The statute defines hemp as "*the plant Cannabis sativa L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers*

thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.” While hemp is associated with cannabis, because the tetrahydrocannabinol (THC) is below 0.3 percent, it does not have the same psychoactive effect typically associated with cannabis.

Since the creation of the State Hemp Program, there has been a significant rise in the number of retail stores selling hemp derived products, including CBD oils and smoking products. The association these products have with marijuana has had a negative impact on many of the City's neighborhoods. This potentially makes these areas undesirable for other types of businesses and to residents and tourists.

Because hemp is not a controlled substance, it can only be regulated as dietary supplement or vitamin. Therefore, to address the concerns related to a proliferation of such stores, the attached Ordinance amendment has been drafted and includes the following provisions:

1. Amend section 114-1 of the Land Development Regulations (LDR's) to create a definition for “vitamin shop” as follows:

Vitamin shop means any commercial establishment where the primary use is selling one or more of the following products: health supplements, including vitamins, nutritional supplements, dietary supplements, consumable hemp products, or performance enhancers.”

2. Establish Division 12, to be entitled “Vitamin Shops” under Chapter 142, Article V, of the LDR's entitled “Specialized Use Regulations,” as follows:
 - a. Create regulations for vitamin shops where they are the primary use.
 - b. Establish a minimum distance separation requirement of 1,200 feet between vitamin shops.
 - c. Establish a minimum distance separation requirement of 500 feet between vitamin shops and schools.
 - d. Create standards for determining distance separation requirements.
 - e. Create regulations where vitamin shops are an accessory use to another type of commercial establishment. In such a situation, the vitamin shop goods would need to occupy less than 50 percent of the establishment's floor area. Where the vitamin shop is an accessory use, the establishment would not be subject to the distance separation requirements; however, it would be subject to the following additional requirements:
 - i. No more than 10 percent of the floor area may be used for vitamin shop goods.
 - ii. Exterior signage would be prohibited related to the vitamin shop use and related products.
 - iii. Vitamin shop merchandise must not be visible from public rights-of-way.

3. Amend section 142-335 (b) of the LDR's, pertaining to prohibited uses in the CD-3 district fronting Lincoln Road between Alton Road and Collins Avenue, to add "vitamin shops" to the list of prohibited uses.

If the subject Ordinance moves forward, a separate amendment to section 102-379 of the City Code will be required, to establish a vitamin shop business tax receipt (BTR) category.

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.

Vitamin Shop Regulations – LDR Amendment

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 114, ENTITLED "GENERAL PROVISION," AT SECTION 114-1, ENTITLED "DEFINITIONS," TO ESTABLISH A DEFINITION FOR "VITAMIN SHOP" AND RELATED DEFINITIONS; AMENDING CHAPTER 142 OF THE CITY CODE, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II ENTITLED "DISTRICT REGULATIONS," DIVISION 6, ENTITLED "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," AT SECTION 142-335, ENTITLED "PROHIBITED USES," TO PROHIBIT VITAMIN SHOPS IN THE CD-3 DISTRICT LOCATED ALONG LINCOLN ROAD; AND AMENDING ARTICLE V ENTITLED "SPECIALIZED USE REGULATIONS", TO ESTABLISH DIVISION 12 ENTITLED "VITAMIN SHOPS," TO ESTABLISH REGULATIONS TO LIMIT THE PROLIFERATION OF VITAMIN SHOPS AS A PRIMARY USE AND MINIMIZE THE IMPACT OF VITAMIN SHOPS AS AN ACCESSORY USE; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, vitamin shops are uses which may negatively affect surrounding areas; and

WHEREAS, the City Commission finds that it is in the best interest of residents to limit the exposure of certain vitamin shop products to children and adolescents; 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 retail, service and retail establishments, which primarily serve City residents; and

WHEREAS, 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 prohibited uses for the subject area; and

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

WHEREAS, the City Commission finds that it is in the best interest of its residents, businesses, and visitors to adopt regulations to protect the public health, safety, welfare, and morals; and

WHEREAS, the amendment set forth below is 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. That Chapter 114, entitled "General Provisions", at Section 114-1, entitled "Definitions" is hereby amended as follows:

Vitamin shop means any commercial establishment where the primary use is selling one or more of the following products: health supplements, including vitamins, nutritional supplements, dietary supplements, consumable hemp products, or performance enhancers. This definition excludes medical cannabis treatment centers.

SECTION 2. That Chapter 142, entitled "Zoning Districts and Regulations," Article II entitled "District Regulations," Division 6, entitled "CD-3 Commercial, High Intensity District," at section 142-335, entitled "Prohibited Uses," is hereby amended as follows:

Sec. 142-335. Prohibited uses.

* * *

(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;
- (8) Tattoo studios;
- (9) Retail establishments larger than 45,000 square feet (except as otherwise provided in section 142-332 and 142-333) (note: no variances shall be granted 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; and
- (11) Vitamin Shops.

SECTION 3. That Chapter 142, entitled "Zoning Districts and Regulations," Article V entitled "Specialized Use Regulations", Division 12 entitled "Vitamin Shops" is hereby created as follows:

DIVISION 12. VITAMIN SHOPS

Sec. 142-1515. Intent.

It is the intent of this division to limit access and exposure of vitamin shop products to children and adolescents due to the potential effects on health of certain products. It is also the

intent to limit the proliferation of vitamin shops in areas where the city encourages tourism, and to minimize the negative implications that these types of businesses may portray to the city's visitors seeking a unique vacation destination.

Sec. 142-1516. Compliance with regulations.

(a) Vitamin Shops as a Primary Use. Where Vitamin Shops are the primary use of a site (vitamin shop goods occupy 50 percent or more of the establishment's floor area) the following shall apply:

(1) *Prohibited locations.* Such establishments are prohibited in the following locations:

- i. Within 500 feet of any property used as a public or private, elementary, middle, or secondary school. The minimum distance separation requirement shall be determined by measuring a straight line from the main entrance or exit of the establishment which contains the Vitamin Shop to the nearest point of the property line of the school.
- ii. In those specific areas that have been identified within the underlying zoning district regulations in chapter 142, article II or overlay district regulations in chapter 142, article III of the City Code.

(2) *Distance separation from Vitamin Shops.* Vitamin Shops shall not be located within 1,200 feet of another Vitamin Shop. The minimum distance separation requirement shall be determined by measuring a straight line from the main entrance or exit of the establishment which contains the Vitamin Shop to the nearest point of the property line of the other Vitamin Shop.

(3) *Determination of minimum distance separation.* 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 or designee that the minimum distance separation has been properly satisfied.

(b) Vitamin Shops as an Accessory Use. Where Vitamin Shops are an accessory use to another type of commercial establishment (vitamin shop goods occupy less than 50 percent of the establishment's floor area) the following shall apply:

- (1) No more than 10 percent of the floor area may be used for vitamin shop goods.
- (2) Exterior signage is prohibited related to the vitamin shop use and related products.
- (3) Vitamin shop merchandise shall not be visible from public rights-of-way.

(c) *[Variances.]* Variances from the requirements of this section shall be prohibited.

SECTION 4. REPEALER.

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

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. SEVERABILITY.

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

SECTION 7. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this _____ day of _____, 2022.

Dan Gelber
Mayor

ATTEST:

Rafael E. Granado
City Clerk

APPROVED AS TO FORM
AND LANGUAGE
AND FOR EXECUTION

City Attorney Date

First Reading: November 16, 2022
Second Reading: December 7, 2022

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

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