

MIAMI BEACH


PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: February 26, 2019

FROM: Thomas R. Mooney, AICP 
Planning Director

SUBJECT: **PB18-0264. Prohibited Use Amendment and Expansion (Lincoln Road and Art Deco Overlay District).**

REQUEST

PB 19-0264. 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 AMEND THE DEFINITIONS FOR "CONVENIENCE STORE" AND "GROCERY STORE"; AND AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 6, ENTITLED "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," 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 BY 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 PROHIBITED USES FOR PROPERTIES IN THE OVERLAY DISTRICT; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

RECOMMENDATION

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

HISTORY

On January 16, 2019, at the request of Commissioner Ricky Arriola and Vice-Mayor Michael Gongora, the City Commission referred the proposed ordinance amendment to the Land Use and Development Committee and Planning Board (Item C4 AP).

The Land Use and Development Committee is scheduled to review the proposed amendment on February 20, 2019.

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.**

Not applicable – The proposed amendment does not modify district boundaries.

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

Consistent - The proposed ordinance amendment is not out of scale with the surrounding neighborhood.

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.

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 – The need to further protect the unique cultural, retail, and dining experience in commercial and mixed-use areas of the City's historic districts 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.

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.

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

Consistent – The proposed change will 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.

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

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

Consistent – The proposal will not affect 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 does not diminish or in any way affect the City's sea level rise mitigation and resiliency efforts.

BACKGROUND

On March 1, 2017, the City Commission adopted an ordinance creating definitions for check cashing store, **convenience store**, occult science establishment, pharmacy store, souvenirs, souvenir and t-shirt shop, tattoo studio, and T-shirt. The ordinance also expanded the list of the prohibited uses in the CD-3 commercial, high intensity district with a lot line on Lincoln Road to include the above noted uses as prohibited uses.

On September 25, 2017, the City Commission adopted an ordinance creating the 'Art Deco / MIMO Overlay District.' This ordinance established definitions related to formula retail / restaurant establishments, and also created definitions for **grocery store**, marijuana dispensary or cannabis dispensary, and massage therapy center. This Ordinance also established limitations and prohibitions on uses within the overlay district, including the prohibition of convenience stores on lots fronting Ocean Drive, and limits on such establishments in other areas within the overlay district.

ANALYSIS

As proposed, the definitions for both convenience store and grocery store will be modified as follows:

Convenience store means a retail store with direct access from the street or sidewalk ~~containing less than 6,000 square feet of floor area~~ that is designed and stocked to sell a mixture of goods such as primarily food (packaged and/or prepared), non-prescription medications, beverages, newspapers, magazines, food (packaged and/or prepared), school/office supplies, cosmetics, and other household supplies. ~~to customers who generally purchase a relatively few number of items (in contrast to a "grocery store" or "super market"). It is designed to attract and depends upon a large turnover of customers.~~ A store that markets itself as a "pharmacy store" or "pharmacy" in addition to selling the goods described above, but that does not provide pharmacy services, including the dispensing of medicinal drugs by a pharmacist shall be considered a convenience store and not a pharmacy or pharmacy store.

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Grocery store means a retail store with direct access from the street or sidewalk ~~containing 6,000 or more square feet of floor area~~ that primarily sells food, including canned and frozen foods, fresh fruits and vegetables, and fresh (raw) and prepared meats, fish, and poultry.

Currently, in order to be classified as a *convenience store* under the City's definition, such an establishment must be **under 6,000 square feet**. For example, an establishment that otherwise met the definition of a convenience store, but was over 6,000 square feet would not be defined as a convenience store. Thus, currently a 'convenience store' that is under 6,000 square feet is a prohibited use on Lincoln Road, but a 'convenience store' above 6,000 square feet is not prohibited. The proposal to eliminate the square footage delineation will treat convenience stores the same regardless of size, and such uses will be prohibited on Lincoln Road regardless of size.

In a similar manner, in order to be classified as a grocery store under the City's definition, such establishment must be **6,000 square feet or more**. The proposal to eliminate the square footage requirement would treat all grocery stores the same in terms of use.

As proposed, the prohibited uses in the CD-3 district will be expanded to include grocery stores as a prohibited use for properties with a lot line on Lincoln Road between Alton Road and Collins Avenue:

Sec. 142-335. – Prohibited uses.

The prohibited uses in the CD-3 commercial, high intensity district are

- (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.

For properties with a lot line on Lincoln Road, between Alton Road and Collins Avenue, the following additional uses are prohibited:

- (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.

Additionally, the proposed ordinance adds *grocery stores* to the list of uses that are restricted within the Art Deco / Mimo Overlay District, as follows:

(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.

Collectively, these changes, which are minor in nature, create better clarity and balance as it pertains to the regulation of convenience store and grocery store uses.

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.

TRM/MAB

**Prohibited Use Amendment and Expansion
(Lincoln Road and Art Deco 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 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, "DEFINITIONS," TO AMEND THE DEFINITIONS FOR "CONVENIENCE STORE" AND "GROCERY STORE"; AND AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 6, ENTITLED "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," 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 BY 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 PROHIBITED USES FOR PROPERTIES IN THE OVERLAY DISTRICT; 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 (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 retail, 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 compliance 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, 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, 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 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:

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Convenience store means a retail store with direct access from the street or sidewalk containing ~~less than 6,000 square feet of floor area~~ that is designed and stocked to sell a mixture of goods such as primarily food (packaged and/or prepared), non-prescription medications, beverages, newspapers, magazines, food (packaged and/or prepared), school/office supplies, cosmetics, and other household supplies. ~~to customers who generally purchase a relatively few number of items (in contrast to a "grocery store" or "super market"). It is designed to attract and depends upon a large turnover of customers.~~ A store that markets itself as a "pharmacy store" or "pharmacy" in addition to selling the goods described above, but that does not provide pharmacy services, including the dispensing of medicinal drugs by a pharmacist, shall be considered a convenience store and not a pharmacy or pharmacy store.

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Grocery store means a retail store with direct access from the street or sidewalk containing ~~6,000 or more square feet of floor area~~ that primarily sells food, including canned

and frozen foods, fresh fruits and vegetables, and fresh (raw) and prepared meats, fish, and poultry.

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Pharmacy store means a pharmacy as defined in F.S. § 465.003.

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Souvenirs are items, exclusive of books, magazines or maps, which serve as a token of remembrance of Miami Beach or any geographic areas in Florida and which bear the name of the City or geographic areas or streets thereof or of events associated with Miami Beach or South Florida.

Souvenir and t-shirt shop means any business with direct access from the street or sidewalk in which the retail sale of T-shirts or souvenirs or both is conducted as a principal use of the business, or together with some other business activity, but which constitutes the primary, or is the major attraction to the business.

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Tattoo studio means any establishment, place of business, or location, other than a licensed medical facility, an office or clinic of a licensed medical professional, or a duly licensed beauty shop or barber shop, wherein adornment of any part of the human body or head, whether artistic, cosmetic or otherwise, is practiced through the use of needles, scalpels, or any other instruments designed to touch, penetrate or puncture the skin for purposes of:

- (1) Inserting, attaching or suspending jewelry, decorations or other foreign objects;
- (2) Producing an indelible mark or figure on the human body or face by scarring skin or flesh;
- (3) Producing an indelible mark or figure on the human body or face by inserting a pigment under or upon the skin; or
- (4) Permanently changing the color or other appearance of the skin.

This term shall not, however, include piercing an ear with a disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear.

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T-shirt is any garment or article of clothing which has no collar, including, but not limited to, T-shirts, sweat shirts, tank tops, shirts or scrub shirts, which are designed or intended generally to be worn on or over the chest and containing any communicative verbiage, graphics, or images imprinted or to be imprinted on the garment or article of clothing, exclusive of a garment manufacturer's mark or logo, exclusive of decorative words and information woven or dyed in the fabric by the manufacturer of the fabric, exclusive of hand stitched, needle work or embroidery, exclusive of tie-dye garments, and exclusive of hand-painted or air-brushed garments that contain no communicative verbiage, graphics or images.

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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

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

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Sec. 142-335. – Prohibited uses.

The prohibited uses in the CD-3 commercial, high intensity district are

- (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.

For properties with a lot line on Lincoln Road, between Alton Road and Collins Avenue, the following additional uses are prohibited:

- (4) Check cashing stores;_i
- (5) medical cannabis dispensaries (medical marijuana dispensaries);_i
- (6) convenience stores;_i
- (7) grocery stores;
- (8) occult science establishments;_i
- (9) pharmacy stores;_i
- (10) souvenir and t-shirt shops;_i and
- (11) tattoo studios.

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SECTION 3. 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**

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ARTICLE III. - OVERLAY DISTRICTS

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DIVISION 12. - ART DECO

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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.
- (b) Review procedures.
 - (1) Commercial establishments in the Overlay District that are not identified in section 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 section 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 section 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 section 142-870.11(a).
 - c. A signed affidavit indicating compliance with the regulations of section 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.

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 _____, 2019.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO FORM
AND LANGUAGE
AND FOR EXECUTION

City Attorney

Date

First Reading:

Second Reading:

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