

**SUNSET HARBOUR
ALCOHOLIC BEVERAGE ESTABLISHMENT REGULATIONS**

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," (1) AT DIVISION 5, "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT," SECTION 142-302, "MAIN PERMITTED USES," SECTION 142-303, "CONDITIONAL USES," SECTION 142-304, "ACCESSORY USES," AND SECTION 142-310, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS"; AND (2) AT DIVISION 11, "I-1 LIGHT INDUSTRIAL DISTRICT," SECTION 142-482, "MAIN PERMITTED USES," SECTION 142-483, "CONDITIONAL USES," SECTION 142-484, "ACCESSORY USES," AND SECTION 142-488, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS," TO CLARIFY PROHIBITED ENTERTAINMENT USES, AND AMEND THE HOURS OF OPERATION, LOCATION AND USE RESTRICTIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS IN THE SUNSET HARBOUR NEIGHBORHOOD, GENERALLY BOUNDED BY PURDY AVENUE, 20TH STREET, ALTON ROAD, AND DADE BOULEVARD; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Sunset Harbour ~~area~~ neighborhood is composed of a mixture of residential, light industrial, and low intensity service, restaurant and retail uses, which primarily serve City residents; and

WHEREAS, alcoholic beverage establishments in Miami Beach have historically been concentrated in the commercial and mixed-use entertainment districts along Washington Avenue, Collins Avenue, and Ocean Drive; and

WHEREAS, ~~the Sunset Harbour neighborhood's~~ residential uses in the Sunset Harbour neighborhood are divided only by the ~~distance~~ width of a street from the CD-2 commercial, medium intensity and the I-1 light industrial zoning districts; and

WHEREAS, the City Code ~~allows~~ permits certain uses within the CD-2 and I-1 zoning districts, which, absent mitigation, could be incompatible with adjacent residential uses in the Sunset Harbour neighborhood; and

WHEREAS, large restaurants, stand-alone bars, outdoor food and beverage service, entertainment establishments, and dance halls can, if not regulated, ~~sometimes~~ be incompatible with the scale, character, and quality of life of adjacent residential neighborhoods ~~if not regulated~~; and

WHEREAS, the Mayor and City Commission desire to encourage uses that are compatible with the scale and character of the neighborhood; and

WHEREAS, pursuant to Section 562.14, Florida Statutes, a municipality may, by ordinance, establish hours of sale for alcoholic beverages; and

WHEREAS, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (See *Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); and

WHEREAS, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that “[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones”; and

WHEREAS, in *Makos v. Prince* (Fla. 1953), the Florida Supreme Court recognized that a county may establish separate zones for the hours of sale of alcoholic beverages, and that the regulation of hours need not be uniform throughout the county as a whole; and

WHEREAS, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages (See *Village of North Palm Beach v. S & H Foster’s, Inc.* (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1978)); and

WHEREAS, Chapter 1, of the Land Use Element, Objective 2, “Land Use Compatibility,” of the City’s 2025 Comprehensive Plan (hereinafter “Plan”), specifies that the City’s land development regulations will be used to address the location, type, size and intensity of land uses and to ensure adequate land use compatibility between residential and non-residential land uses; and

WHEREAS, Policy 2.1 of the Plan provides that the land development regulations shall continue to address the location and extent of nonresidential land uses in accordance with the Future Land Use map and the policies and descriptions of types, sizes and intensities of land uses contained in [the Future Land Use] Element; and

WHEREAS, Policy 2.2 of the Plan provides that development in land use categories which permit both residential and non-residential uses shall be regulated by formalized land development regulations which are designed to ensure adequate land use compatibility; and

WHEREAS, compatibility shall be achieved by one or more of the following: (1) enumeration of special land uses which may be particularly incompatible with residential uses and may be prohibited in specified areas or zoning districts; (2) enumeration of special land use administrative procedures such as Conditional Use approval, which require public hearings prior to special land use approval; (3) enumeration of special land use criteria such as minimum required distance separations from residential districts or uses or allowable hours of operation, to ensure that non-residential special land uses are properly located with respect to any residential uses to which they may be incompatible; and (4) the vertical separation of residential and non-residential uses within mixed use buildings through the use of land use regulations on

accessory uses within residential buildings, and the identification of those types of commercial uses which are particularly incompatible with residential uses and which shall therefore NOT be permitted in mixed use buildings; and

WHEREAS, in determining incompatibility, consideration shall be given to noise, lighting, shadows, access, traffic, parking, height, bulk, landscaping, hours of operation, buffering and any other criteria that may be important to ensure that necessary safeguards are provided for the protection of surrounding property, persons, and neighborhood values; and

WHEREAS, in accordance with Chapter 1, Objective 2, Policies 2.1 and 2.2 of the Plan, is it is desirable to encourage uses in commercial districts that are properly balanced and compatible with the scale, character and context of adjacent residential neighborhoods; 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 II, "District Regulations," Division 5, "CD-2, Commercial, ~~Low~~-Medium Intensity District," is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

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ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 5. - CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT

* * *

Sec. 142-302. - Main permitted uses.

The main permitted uses in the CD-2 commercial, medium intensity district are commercial uses; apartments; apartment/hotels; hotels; religious institutions with an occupancy of 199 persons or less and alcoholic beverages establishments pursuant to the regulations set forth in Chapter 6. Alcoholic beverage establishments located in the following geographic areas in two geographic areas within the CD-2 commercial, medium intensity district shall be subject to the additional requirements set forth in section 142-310:

- (a) Alton Road corridor. ~~On~~ Properties on the west side of Alton Road and east of Alton Court, between 6th Street and 11th Street, and between 14th Street and Collins Canal; and properties on the east side of West Avenue, between Lincoln Road and 17th Street, except alcoholic beverage establishments fronting Lincoln Road between West Avenue and Alton Road, ~~shall be subject to the additional requirements set forth in section 142-310.~~

- (b) ~~Sunset Harbour~~ neighborhood. ~~The~~ The geographic area ~~Sunset Harbour~~ neighborhood, generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south.

Sec. 142-303. - Conditional uses.

(a) {Generally.} The conditional uses in the CD-2 commercial, medium intensity district include the following:

- (1) Adult congregate living facilities;
- (2) Funeral home;
- (3) Nursing homes;
- (4) Religious institutions;
- (5) Pawnshops;
- (6) Video game arcades;
- (7) Public and private institutions;
- (8) Schools;
- (9) Any use selling gasoline;
- (10) 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;
- (11) Outdoor entertainment establishment;
- (12) Neighborhood impact establishment;
- (13) Open air entertainment establishment; and
- (14) Storage and/or parking of commercial vehicles on a site other than the site at which the associated commerce, trade or business is located. See section 142-1103.

(b) ~~Sunset Harbour~~ neighborhood. All conditional uses shall comply with the conditional use criteria in section 118-192(a). The conditional uses for the Sunset Harbour ~~N~~neighborhood, generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard, to the south, shall include those conditional uses listed at section 142-303(a); ~~excluding~~ but shall exclude:

- subsection 142-~~18~~-303 ~~192~~(a)(11) Outdoor entertainment establishments;
subsection 142-303 ~~118-192~~(a)(12) Neighborhood impact establishments; and
subsection 142-303 ~~118-192~~(a)(13) Open air entertainment establishments;

as these specific uses are prohibited in the Sunset Harbour ~~N~~neighborhood pursuant to section 142-305. ~~Sunset Harbour Neighborhood shall also require conditional use approval for t~~The following additional ~~additional~~ uses shall require conditional use approval in the Sunset Harbour neighborhood: In addition to the conditional uses specified in section 142-303(a), and subject to the conditional use criteria in section 118-192(a), ~~and subject to the provisions of section 142-305 (which prohibits certain uses in the Sunset Harbour neighborhood)~~, conditional uses in the CD-2 commercial medium intensity district in the Sunset Harbour neighborhood, generally bounded by Purdy Avenue, 20th Street, Alton Road and Dade Boulevard shall also include the following:

- (1) Main use parking garages; and
- (2) Restaurants with alcoholic beverage licenses (alcoholic beverage establishments) with

more than 100 seats or an occupancy content (as determined by the fire marshal) in excess of 125, but less than 199 persons and a floor area in excess of 3,500 square feet.

(c) ~~North Beach Neighborhood neighborhood.~~ All conditional uses shall comply with the conditional use criteria in section 118-192(a). The conditional uses for the North Beach ~~Neighborhood~~ (located north of 65th Street) shall include those listed at section ~~- In addition to the conditional uses specified in section 142-303(a), and subject to the conditional use criteria in section 118-192(a), conditional uses in the CD-2 commercial medium intensity district in the North Beach neighborhood (located north of 65th Street), and shall also include the following:~~

- (1) Alcoholic beverage establishments (not also operating as a full restaurant with a full kitchen, serving full meals);
- (2) Dance halls; and
- (3) Entertainment establishments.

(d) ~~South Alton Road Corridor corridor.~~ All conditional uses shall comply with the conditional use criteria in section 118-192(a). The conditional uses for the South Alton Road ~~Corridor~~, which includes properties located along Alton Road between 6th and 11th Street, ~~-shall include those listed at section 142-303(a), and In addition to the conditional uses specified in section 142-303(a), and subject to the conditional use criteria in section 118-192(a), conditional uses in the CD-2 commercial medium intensity district in the South Alton Road Corridor, which includes properties located along Alton Road between 6th and 11th Street, shall also include the following:~~

- (1) Self storage warehouse, provided the minimum distance separation between self storage warehouses shall be 300 feet and self storage warehouses shall follow the development regulations for "self storage warehouse" in section 142-305 and setback requirements in section 142-307.

(e) Alcoholic beverage establishments located in the following geographic areas within the CD-2 commercial, medium intensity district shall be subject to the additional requirements set forth in section 142-310:

- (1) ~~Alton Road corridor. on~~ Properties on the west side of Alton Road and east of Alton Court, between 6th Street and 11th Street, and between 14th Street and Collins Canal; and properties on the east side of West Avenue, between Lincoln Road and 17th Street, except alcoholic beverage establishments fronting Lincoln Road between West Avenue and Alton Road., ~~shall be subject to the additional requirements set forth in section 142-310.~~
- (2) ~~Sunset Harbour neighborhood.~~ The geographic area generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south.

* * *

Sec. 142-304. - Accessory uses.

The accessory uses in the CD-2 commercial, medium intensity district are as required in article IV, division 2 of this chapter; and accessory outdoor bar counters, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.

Alcoholic beverage establishments located in the following geographic areas within the CD-2 commercial, medium intensity district shall be subject to the additional requirements set forth in section 142-310:

(a) Alton Road corridor. ~~on Properties on the west side of Alton Road and east of Alton Court, between 6th Street and 11th Street, and between 14th Street and Collins Canal; and properties on the east side of West Avenue, between Lincoln Road and 17th Street, except alcoholic beverage establishments fronting Lincoln Road between West Avenue and Alton Road., shall be subject to the additional requirements set forth in section 142-310.~~

(b) Sunset Harbour neighborhood. ~~The geographic area generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south.~~

~~Alcoholic beverage establishments located in two geographic areas shall be subject to the additional requirements set forth in section 142-310:~~

~~(a) — On the west side of Alton Road and east of Alton Court, between 6th Street and 11th Street, and between 14th Street and Collins Canal; and properties on the east side of West Avenue, between Lincoln Road and 17th Street, except alcoholic beverage establishments fronting Lincoln Road between West Avenue and Alton Road., shall be subject to the additional requirements set forth in section 142-310.~~

~~(b) — The Sunset Harbour neighborhood, generally bounded by Purdy Avenue, 20th Street, Alton Road and Dade Boulevard.~~

* * *

Sec. 142-310. Special regulations for alcohol beverage establishments.

(a) Alton Road corridor. The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located on the west side of Alton Road and east of Alton Court, between 6th Street and 11th Street, and between 14th Street and Collins Canal; and properties on the east side of West Avenue, between Lincoln Road and 17th Street, except alcoholic beverage establishments fronting Lincoln Road between West Avenue and Alton Road:

1. Operations shall cease no later than 2:00 a.m.
2. Establishments with sidewalk café permits shall only serve alcoholic beverages at sidewalk cafés during hours when food is served in the restaurant, shall cease sidewalk café operations at 12:00 a.m., and shall not be permitted to have outdoor speakers.
3. Commercial uses on rooftops shall be limited to restaurants only, shall cease operations no later than 11:00 p.m. on weekdays and 12:00 a.m. on weekends, and shall only be permitted to have ambient, background music.
4. Entertainment establishments shall be required to obtain conditional use approval from the planning board, in accordance with the requirements and procedures of chapter 118, article IV. Additionally, if approved as a conditional use, entertainment establishments shall be required to install a double door vestibule at all access points from the sidewalk, with the exception of emergency exits.
5. Outdoor bar counters shall be prohibited.

6. No special event permits shall be issued.

(b) ~~(b) 7.~~ This ~~ss~~section (a) above shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that (i) is in application status prior to April 14, 2016; or (ii) issued prior to May 21, 2016; or (iii) to an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired, prior to May 21, 2016. Any increase to the approved hours of operation shall meet the requirements of this section (a).

(c) (b) *Sunset Harbour neighborhood.* The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located in the Sunset Harbour neighborhood, which is generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south.~~generally bounded by Purdy Avenue, 20th Street, Alton Road and Dade Boulevard:~~

1. Operations shall cease no later than 2:00 a.m., except that outdoor operations (including sidewalk cafe operations) shall cease no later than 12:00 a.m.

2. Alcoholic beverage establishments may not operate any outside dining areas or accessory bar counters above the ground floor of the building in which they are located; however, outdoor restaurant seating, associated with indoor venues, not exceeding 40 seats, may be permitted above the ground floor until before 8:00 p.m.

3. Except as may be required by any applicable fire prevention code or building code, outdoor speakers shall only be permitted to play ambient, background music.

4. Special events shall not be permitted in any alcoholic beverage establishment.

~~1. This section (b) shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that was issued prior to August 23, 2016, or to an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired, prior to August 23, 2016. Any increase to the approved hours of operation shall meet the requirements of this section.~~
~~All establishment of any kind serving alcoholic beverages~~
~~Alcoholic beverage establishments may not operate any outside dining areas or accessory bar counters above the ground floor of the building in which they are located.~~

~~2. Except as may be required by any applicable fire prevention code or building code, Outdoor outdoor speakers except those required by the building and fire codes shall not be permitted in any establishment serving alcoholic beverages~~
~~alcoholic beverage establishment.~~

~~3.5. Special events shall not be permitted in any establishment serving alcohol~~
~~alcoholic beverage establishment.~~

~~4. All establishments serving alcohol shall close by 2:00 AM. The exterior portions~~

~~of alcoholic beverage establishments, including sidewalk cafes, shall cease operations at 12:00 AM.~~

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SECTION 2. Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 11, "I-1, Light Industrial District," is hereby amended as follows:

DIVISION 11. – I-1 LIGHT INDUSTRIAL DISTRICT

* * *

Sec. 142- 482. - Main permitted uses. Modified

The main permitted uses in the I-1 urban light industrial district are those uses that are consistent with the district purpose including the following:

* * *

- (13) Commercial uses that provide support services to the light industrial uses and to the adjacent RM-3 residents, including, but not limited to, retail sales, photocopying, coffee shops, video rentals, banks, restaurants, and alcoholic beverage establishments pursuant to the regulations set forth in Chapter 6, video rental, bank. ~~Additional requirements for alcoholic beverage establishment located in the Sunset Harbour neighborhood, generally bounded by Purdy Avenue, 20th Street, Alton Road and Dade Boulevard are set forth in section Sec. 142-488, video rental, bank;~~ Alcoholic beverage establishments located in the Sunset Harbour neighborhood, which is generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south, shall be subject to the additional requirements set forth in section 142-488.

Sec. 142-483. - Conditional uses.

The conditional uses in the I-1 urban light industrial district are any use that includes the retail sale of gasoline; new construction of structures, as defined in section 114-1, of 50,000 square feet and over, which review shall be the first step in the process before the review by any of the other land development boards; recycling receiving stations; ~~outdoor entertainment establishment; neighborhood impact establishment; open air entertainment establishment; and religious institutions with an occupancy greater than 199 persons.-~~ Restaurants with alcoholic beverage licenses (alcoholic beverage establishments) ~~Alcoholic beverage establishments~~ located in the Sunset Harbour neighborhood, which is generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south, shall be subject to the additional requirements set forth in section 142-488 and restaurants with alcoholic beverage licenses (alcoholic beverage establishments) with more than 100 seats or an occupancy content (as determined by the fire marshal) in excess of 125, but less than 199 persons and a floor area in excess of 3,500 square feet shall be subject to the conditional use procedures in section 118-193 of the City Code. -

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Sec. 142-484. - Accessory uses.

The accessory uses in the I-1 urban light industrial district are as follows: Those uses customarily associated with the district purpose. (See article IV, division 2 of this chapter). Alcoholic beverage establishments located in the Sunset Harbour neighborhood, which is generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south, shall be subject to the additional requirements set forth in section 142-488.

Sec. 142-485. - Prohibited uses.

The prohibited uses in the I-1 urban light industrial district are accessory outdoor bar counters, bars, dance halls, ~~or~~ entertainment establishments (as defined in section 114-1 of this Code), outdoor entertainment establishments, neighborhood impact establishments, open air entertainment establishments, and residential uses, except as provided for in subsection 142-483(10).

* * *

Sec. 142-488. Special regulations for alcohol beverage establishments.

(a) *Sunset Harbour neighborhood.* The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located in the Sunset Harbour neighborhood, which is generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south.

1. Operations shall cease no later than 2:00 a.m., except that outdoor operations (including sidewalk cafe operations) shall cease no later than 12:00 a.m.
2. Alcoholic beverage establishments may not operate any outside dining areas or accessory bar counters above the ground floor of the building in which they are

located; however, outdoor restaurant seating, associated with indoor venues, not exceeding 40 seats, may be permitted above the ground floor until before 8:00 p.m. .

3. Except as may be required by any applicable fire prevention code or building code, outdoor speakers shall only be permitted to play ambient, background music.~~not be permitted in any alcoholic beverage establishment.~~
4. Special events shall not be permitted in any alcoholic beverage establishment.
5. This section shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that was issued prior to August 23, 2016, or to an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired, prior to August 23, 2016. Any increase to the approved hours of operation shall meet the requirements of this section.

~~1. The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located in the Sunset Harbour neighborhood, generally bounded by Purdy Avenue, 20th Street, Alton Road and Dade Boulevard:~~

~~2. All establishment of any kind serving alcoholic beverages may not operate any outside dining areas above the ground floor.~~

~~3. Outdoor speakers except those required by the building and fire codes shall not be permitted in any establishment serving alcoholic beverages.~~

~~4. Special events shall not be permitted in any establishment serving alcohol.~~

~~5. All establishments serving alcohol shall close by 2:00 AM. The exterior portions of alcoholic beverage establishments, including sidewalk cafes, shall cease operations at 12:00 AM.~~

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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 re-numbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

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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 _____, 2016.

Attest:

Philip Levine
Mayor

Rafael E. Granado **ATTEST:**

City Clerk Rafael E. Granado
~~City Clerk~~

(Sponsored by Commissioner Joy Malakoff)

Underline denotes additions
~~Strike through~~ denotes deletions

First Reading: September 14_____, 2016
Second Reading: October 19_____, 2016

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

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