

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Planning Board

TO: Chairperson and Members
Planning Board

DATE: December 20, 2016

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 16-0076. Lincoln Road Prohibited Use Regulations**

REQUESTS

PB 16-0076. LINCOLN ROAD PROHIBITED USE REGULATIONS. AN ORDINANCE OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," TO PROVIDE FOR DEFINITIONS FOR "CHECK CASHING STORE," "CONVENIENCE STORE," "OCCULT SCIENCE ESTABLISHMENT," "PHARMACY STORES," "SOUVENIR AND T-SHIRT SHOP," "TATTOO STUDIO," AND RELATED DEFINITIONS; AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," AT DIVISION 6, "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," SECTION 142-335, "PROHIBITED USES"; TO CREATE CERTAIN PROHIBITED USES ON LINCOLN ROAD BETWEEN COLLINS AVENUE AND ALTON ROAD; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

RECOMMENDATION:

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

HISTORY/ BACKGROUND

On November 9, 2016, the City Commission referred the proposed Ordinance to the Land Use and Development Committee and the Planning Board (Item C4 B).

On November 16, 2016 the Land Use and Development Committee discussed the Ordinance and recommended that the Planning Board transmit the item to the City Commission with a favorable recommendation.

REVIEW CRITERIA

In accordance with Section 118-163 (3), when reviewing a request for an amendment to these land development regulations, the Board shall consider the following where applicable:

1. **Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

Consistent – The proposed LDR change is consistent with Comprehensive Plan..

2. **Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

Not Applicable – The amendment does not modify district boundaries.

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

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

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

Consistent – The proposed ordinance does not increase the development capacity for the area and would not tax the existing load on public facilities.

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

Not Applicable – The proposal does not modify district boundaries.

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

Consistent – The City recently adopted the new Lincoln Road Master Plan, and in order to ensure compliance with the Master Plan and ensure the integrity of Lincoln Road, revising the list of permitted uses to preclude certain uses from the area is necessary.

7. **Whether the proposed change will adversely influence living conditions in the neighborhood.**

Consistent – The proposed amendments should not adversely influence living conditions in the surrounding 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 amendment will not create or excessively increase traffic congestion.

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

Consistent – The proposed changes do not modify the scale of development and will not reduce light and air to adjacent areas.

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

Consistent – Property values should not be negatively impacted.

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 would not be a deterrent to the redevelopment or improvement of any adjacent property.

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 – Although the proposed Ordinance expands the list of prohibited uses on Lincoln Road, such uses are allowed in many other commercial districts in the City.

ANALYSIS

Lincoln Road is the City's premier shopping district, located within the Flamingo Park Local Historic District and National Register Architectural District. The Lincoln Road corridor has historically been composed of low intensity retail, service and retail establishments, which primarily serve City residents. The City recently adopted the new Lincoln Road Master Plan, and in order to ensure compliance with the Master Plan and ensure the integrity of Lincoln Road the proposed Ordinance amends the list of permitted uses to preclude certain uses from the area. The list of prohibited uses includes check cashing stores, convenience stores, pharmacies, souvenir and t-shirt shops, tattoo studios, and fortune tellers (occult science establishments). Such uses can negatively impact the character and integrity of this premier shopping district, and threaten its long term viability and integrity.

As proposed, the ordinance adds the following definitions:

Check cashing store means a business which cashes checks on a regular basis for a fee. This definition does not include banks, which may cash checks in addition to providing other financial services such as, but not limited to, money savings accounts, loan services, and checking accounts.

Convenience store means a retail store with direct access from the street or sidewalk operating at a minimum between the hours of 8:00 AM and midnight containing less than 6,000 square feet of floor area that is designed and stocked to sell primarily food (packaged and/or prepared), beverages, newspapers, magazines, 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.

Occult science establishment shall mean an establishment engaged in the occupation of a fortune teller, palmist, astrologist, numerologist, clairvoyant, craniologist, phrenologist, card reader, spiritual reader, tea leaf reader, prophet, psychic or advisor or who in any other manner claims or pretends to tell fortunes, or claims or pretends to disclose mental faculties of individuals for any form of compensation. Nothing contained herein shall be construed to apply to a person pretending to act as a fortune teller in a properly licensed theater as part of any show or exhibition presented therein or as part of any play, exhibition, fair or show presented or offered in aid of any benevolent, charitable or educational purpose.

Pharmacy store means a store with direct access from the street or sidewalk, containing a minimum of 3,500 square feet, where medicinal drugs requiring a prescription from a qualified medical professional are dispensed and sold and that operates at a minimum between the hours of 9:00 AM and 10:00 PM and is also designed and stocked to sell health and wellness products, food (packaged and/or prepared), beverages, newspapers, magazines, and other household supplies to customers who generally purchase relatively few number of items (in contrast to a "grocery store" or "super market").

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.

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.

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.

Currently, the prohibited uses in the CD-3 commercial, high intensity district are pawnshops; secondhand dealers of precious metals/precious metals dealers; and accessory outdoor bar counter, except as otherwise permitted in Article IV, Division 2.

Under the proposed Ordinance, within the boundaries of Lincoln Road between Alton Road and Collins Avenue the prohibited uses would be expanded to include the following uses: check cashing stores, convenience stores, occult science establishments, pharmacy stores, souvenir and t-shirt shops, and tattoo studios.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed amendment to the City Commission with a favorable recommendation.

TRM/MAB

F:\PLAN\PLB\2016\12-20-16\PB16-0076 - ORD - Lincoln rd regulations\PB16-0076 -Lincoln Road Regulations - Staff Report 12-20-16.docx

Lincoln Road Prohibited Use Amendment

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," ~~TO PROVIDE FOR DEFINITIONS FOR "CHECK CASHING STORE," "CONVENIENCE STORE," "OCCULT SCIENCE ESTABLISHMENT," "PHARMACY STORES," "SOUVENIR AND T-SHIRT SHOP," "TATTOO STUDIO,"~~ AND RELATED DEFINITIONS; AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," AT DIVISION 6, "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," SECTION 142-335, "PROHIBITED USES"; TO CREATE CERTAIN PROHIBITED USES ON LINCOLN ROAD BETWEEN COLLINS AVENUE AND ALTON ROAD; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, properties fronting Lincoln Road between Collins Avenue and Alton Road, are within the Commercial High Intensity, CD-3, District, are located in the Flamingo Park Historic District; and

WHEREAS, Lincoln Road is the City's iconic shopping area; 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, properties fronting Lincoln Road that have a zoning designation of CD-3 Commercial Medium Intensity District, are located in the Flamingo Park LOCAL Historic District and the National Register Architectural District; and

WHEREAS, Lincoln Road is a premier street 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; and

WHEREAS, the City recently adopted the new Lincoln Road Master Plan, and in order to ensure compliance with the Master Plan and ensure the integrity of Lincoln Road the City Commission recommends revising the list of permitted uses to preclude certain uses from the area; and

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

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

WHEREAS, the amendments set forth below are necessary to accomplish the objectives identified herein.

WHEREAS, the City Commission desires to define certain of the uses within chapter 114, of the Land Development Regulations; 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:

* * *

Check cashing store means a business which cashes checks on a regular basis for a fee. This definition does not include banks, which may cash checks in addition to providing other financial services such as, but not limited to, money savings accounts, loan services, and checking accounts.

* * *

Convenience store means a retail store with direct access from the street or sidewalk operating at a minimum between the hours of 8:00 AM and midnight containing less than 6,000 square feet of floor area that is designed and stocked to sell primarily food (packaged and/or prepared), beverages, newspapers, magazines, 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.

* * *

Occult science establishment shall mean an establishment engaged in the occupation of a fortune teller, palmist, astrologist, numerologist, clairvoyant, craniologist, phrenologist, card reader, spiritual reader, tea leaf reader, prophet, psychic or advisor or who in any other manner claims or pretends to tell fortunes, or claims or pretends to disclose mental faculties of individuals for any form of compensation. Nothing contained herein shall be construed to apply

to a person pretending to act as a fortune teller in a properly licensed theater as part of any show or exhibition presented therein or as part of any play, exhibition, fair or show presented or offered in aid of any benevolent, charitable or educational purpose.

*

*

*

Pharmacy store means a store with direct access from the street or sidewalk, containing a minimum of 3,500 square feet, where medicinal drugs requiring a prescription from a qualified medical professional are dispensed and sold and that operates at a minimum between the hours of 9:00 AM and 10:00 PM and is also designed and stocked to sell health and wellness products, food (packaged and/or prepared), beverages, newspapers, magazines, and other household supplies to customers who generally purchase relatively few number of items (in contrast to a "grocery store" or "super market").

*

*

*

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.

*

*

*

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.

*

*

*

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.

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:

DIVISION 6. - CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT

* * *

Sec. 142-335. - Prohibited uses.

The prohibited uses in the CD-3 commercial, high intensity district are pawnshops; secondhand dealers of precious metals/precious metals dealers; and accessory outdoor bar counter, except as provided in Article IV, Division 2 of this Chapter and in Chapter 6. Within the boundaries of Lincoln Road between Alton Road and Collins Avenue the following uses are prohibited: check cashing stores, convenience stores, occult science establishments, pharmacy stores, souvenir and t-shirt shops, and tattoo studios.

* * *

SECTION 3. 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 _____, 2017.

Philip Levine
Mayor

ATTEST:

Rafael E. Granado
City Clerk

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

City Attorney _____
Date

First Reading: _____, 2017
Second Reading: _____, 2017

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