

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: September 9, 2025

FROM: Thomas R. Mooney, AICP
Planning Director

^{DS}


For TRM

SUBJECT: **PB25-0782. Distance Separation Exemption for Tobacco and Vape Uses in North Beach**

RECOMMENDATION

Transmit the proposed ordinance amendment to the Mayor and City Commission (City Commission) with an unfavorable recommendation.

HISTORY

On February 3, 2025, at the request of Commissioner Kristen Rosen Gonzalez, the Mayor and City Commission (City Commission) referred a discussion item pertaining to distance separation requirements for tobacco and vape sales in North Beach (C4 Z) to the LUSC. On March 11, 2025, the LUSC discussed and continued the item to the April 15, 2025 LUSC meeting with direction to staff to prepare draft text amendments for narrow exceptions to the current distance separation requirements for tobacco and vape uses within convenience stores in North Beach.

On April 15, 2025 the item was deferred to a future LUSC meeting, with no discussion. On May 8, 2025, the LUSC discussed the item and recommended that the City Commission refer an ordinance to the Planning Board, in accordance with the draft text contained in the LUSC memorandum.

On July 23, 2025, at the request of Mayor Steven Meiner, the City Commission referred the ordinance to the Planning Board (C4 B).

REVIEW CRITERIA

Pursuant to Section 2.4.2 of the Resiliency Code, in reviewing a request for an amendment to these land development regulations (LDRs), the board shall consider the following when applicable:

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

Not Consistent – The proposed LDR amendment may be inconsistent with Goal RLU 1 of the Comprehensive Plan, which is to ‘*Preserve and enhance the character of Miami Beach and its quality of life through the implementation of future land use and land development requirements that maximize the potential for economic benefit and the enjoyment of natural and man-made resources, while minimizing the threat to health, safety and welfare posed by hazards, nuisances, incompatible land uses, and environmental degradation.*’

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

Partially Consistent – The proposed amendment does create an isolated exemption area within the North Beach Commercial Character Overlay District, which otherwise prohibits tobacco / vape dealers.

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

Not Consistent - The proposed ordinance amendment is not compatible with the needs of the neighborhood.

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

Consistent – The proposed amendment should not tax the existing 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

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

Not Consistent – There are no changing conditions that make the passage of the proposed change necessary in order to expand the availability of tobacco and vape products.

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

Consistent – The proposed ordinance amendment should not adversely affect living conditions.

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 excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.

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

Not Applicable

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 Consistent. There are no substantial reasons why properties within the designated area cannot be used in accordance with existing zoning regulations.

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 Consistent. Tobacco and Vape Uses are widespread in the city.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 7.1.2.4 of the LDRs 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.**

Not Applicable

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

Not Applicable

- (3) **Whether the proposal is compatible with the City’s sea level rise mitigation and resiliency efforts.**

Not Applicable

ANALYSIS

The following are the applicable definitions in Chapter 1 of the Land Development Regulations of the City Code (LDRs), pertaining to tobacco and vape stores:

- *Retail tobacco products dealer means the holder of a retail tobacco products dealer permit that is authorized to sell tobacco products.*
- *Retail smoking devices dealer means any retail establishment that sells smoking devices.*
- *Retail vape products dealer means any retail establishment that sells vapor-generating electronic devices and components, parts, and accessories for such products.*

The above noted definitions do not distinguish between stand-alone establishments, such as smoke shops, and retail stores that sell tobacco and vape products as an accessory component,

like a convenience store or supermarket.

Additionally, the sale of tobacco and vape products, citywide and in North Beach, is regulated under Chapter 7 of the LDRs, pursuant to Sections 7.5.5.9 and 7.3.10, as follows:

7.5.5.9 TOBACCO/VAPE DEALERS

- a. *Intent. It is the intent of this division to limit access and exposure of tobacco and vaping products to children and adolescents due to their addictive nature and damaging effects on health. It is also the intent to limit the proliferation of tobacco, vaping, and smoking device product dealers 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.*
- b. *Locations prohibiting the sale of tobacco and vape products.*
 1. *Prohibited locations. Tobacco/vape dealers are prohibited in the following locations:*
 - A. *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 tobacco/vape dealer to the nearest point of the property line of the school.*
 - B. *In those specific areas that have been identified within the underlying zoning district regulations in Articles 2, 3 or 4 of chapter 7 - the Zoning Districts and Regulations in the Land Development Regulations.*
 - C. *Notwithstanding the foregoing, the prohibitions of this section shall not be applicable to medical cannabis treatment centers permitted pursuant to section 7.5.5.8.*
 2. *Distance separation. No tobacco/vape dealer shall be located within 1,200 feet of another tobacco/vape dealer.*
 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.*
 4. *[Variances.] Variances from the requirements of this section shall be prohibited.*

7.3.10 NORTH BEACH COMMERCIAL CHARACTER OVERLAY DISTRICT

Tobacco/vape dealers are prohibited in the overlay district, and there shall be no variances allowed from the provisions of this section.

At the direction of the LUSC on May 8, 2025, the attached ordinance amendment has been drafted, which creates a narrow exception for tobacco and vape uses in North Beach, as part of the operation of a convenience store. Specifically, a tobacco/vape dealer operating within a convenience store would be exempt from the minimum distance separation requirements from another tobacco/vape use if the following thresholds are met:

1. The convenience store is in a CD-2 zoning district fronting Collins Avenue, between 65th and 67th Streets.
2. No more than five (5%) percent of the floor area of the convenience store contains tobacco, vape or smoking device products,

The North Beach use regulations have also been amended to allow for tobacco/vape dealers operating as part of a convenience store that comply with the aforementioned thresholds.

The current definitions for tobacco and vape entities were drafted broadly to apply to all types of tobacco and vape product dealers. The reason for this was to ensure that these products are adequately controlled and do not become easily accessible to children and minors. In this regard, it is important to re-emphasize the following intent of the current tobacco and vape product regulations:

It is the intent of this division to limit access and exposure of tobacco and vaping products to children and adolescents due to their addictive nature and damaging effects on health. It is also the intent to limit the proliferation of tobacco, vaping, and smoking device product dealers 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.

The limited exception proposed in the attached draft ordinance is intended to minimize the negative impacts of tobacco and vape sales within the identified commercial area of Collins Avenue between 65th and 67th Streets in North Beach. Notwithstanding, staff has concerns with an LDR amendment that relaxes the current distance separation requirements for tobacco and vape uses, even in a limited area.

In this regard, there is the strong potential for an unintended precedent to be set, which could encourage future requests for limited exceptions to the distance separation requirements. As such, staff does not recommend that the LDRs be amended as proposed and recommends that the Planning Board transmit the ordinance to the City Commission with an unfavorable recommendation.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed ordinance to the City Commission with an unfavorable recommendation.

Distance Separation Exemption for Tobacco and Vape Uses in North Beach

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE RESILIENCY CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 7, ENTITLED “ZONING DISTRICTS AND REGULATIONS,” BY AMENDING ARTICLE III, ENTITLED “OVERLAY DISTRICTS,” SECTION 7.3.10, ENTITLED “NORTH BEACH COMMERCIAL CHARACTER OVERLAY DISTRICTS,” TO MODIFY REQUIREMENTS FOR TOBACCO AND VAPE DEALERS; BY AMENDING ARTICLE V, ENTITLED “SUPPLEMENTARY DISTRICT REGULATIONS,” SECTION 7.5.5, ENTITLED “SPECIALIZED USE REGULATIONS,” TO MODIFY THE MINIMUM DISTANCE SEPARATION REQUIREMENTS FOR TOBACCO AND VAPE DEALERS IN NORTH BEACH; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission seeks to provide for limited relief from minimum distance separation requirements for tobacco and vape dealers in North Beach; and

WHEREAS, tobacco and vape dealers that are incidental to a convenience store are likely to have less impact on an established area; and

WHEREAS, amending the distance separation requirements for tobacco and vape dealers associated with convenience stores would have a positive impact for small businesses; 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 7 of the Miami Beach Resiliency Code, entitled “Zoning Districts and Regulations,” Article III, entitled “Overlay Districts,” is hereby amended as follows:

CHAPTER 7 - ZONING DISTRICTS AND REGULATIONS

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ARTICLE III. – OVERLAY DISTRICTS

* * *

7.3.10 NORTH BEACH COMMERCIAL CHARACTER OVERLAY DISTRICT

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7.3.10.2 Compliance with regulations (North Beach Commercial Character Overlay District).

The following regulations shall apply to the overlay district. There shall be no variances allowed from the provisions of this section. 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:

* * *

xi. Tobacco/vape dealers shall be prohibited in the overlay district. Notwithstanding the foregoing, a tobacco/vape dealer operating as part of a convenience store that is i. located in a CD-2 zoning district fronting Collins Avenue, between 65th and 67th Streets, and ii. where no more than 5 percent of the floor area of the convenience store contains tobacco, vape or smoking device products, may be permitted in accordance with the requirements specified in Section 7.5.5.9.b

SECTION 2. Chapter 7 of the Miami Beach Resiliency Code, entitled “Zoning Districts and Regulations,” Article V, entitled “Supplementary District Regulations,” is hereby amended as follows:

CHAPTER 7 - ZONING DISTRICTS AND REGULATIONS

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ARTICLE V. – SUPPLEMENTARY DISTRICT REGULATIONS

* * *

7.5.5 SPECIALIZED USE REGULATIONS

* * *

7.5.5.9 TOBACCO/VAPE DEALERS

a. Intent. It is the intent of this division to limit access and exposure of tobacco and vaping products to children and adolescents due to their addictive nature and damaging effects on health. It is also the intent to limit the proliferation of tobacco, vaping, and smoking device product dealers 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.

b. Locations prohibiting the sale of tobacco and vape products.

1. Prohibited locations. Tobacco/vape dealers are prohibited in the following locations:
 - A. 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 tobacco/vape dealer to the nearest point of the property line of the school.
 - B. In those specific areas that have been identified within the underlying zoning district regulations in Articles 2, 3 or 4 of chapter 7 - the Zoning Districts and Regulations in

the Land Development Regulations.

C. Notwithstanding the foregoing, the prohibitions of this section shall not be applicable to medical cannabis treatment centers permitted pursuant to section 7.5.5.8.

2. Distance separation. No tobacco/vape dealer shall be located within 1,200 feet of another tobacco/vape dealer. Notwithstanding the foregoing, a tobacco/vape dealer operating within a convenience store that is i. located in a CD-2 zoning district fronting Collins Avenue, between 65th and 67th Streets, and ii. where no more than 5 percent of the floor area of the convenience store contains tobacco, vape or smoking device products, shall be exempt from the distance separation requirement of another tobacco/vape dealer.
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.
4. [Variances.] Variances from the requirements of this section shall be prohibited.

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 renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

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 _____, 2025.

Steven Meiner, Mayor

ATTEST:

Rafael E. Granado, City Clerk

First Reading: _____, 2025
Second Reading: _____, 2025

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

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