

MIAMIBEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: April 8, 2025

FROM: Thomas R. Mooney, AICP
Planning Director

^{DS}


For TRM

SUBJECT: **PB25-0745. Distance Separation Exemptions for Cosmetic Stores w/Adult Material**

RECOMMENDATION

Transmit the proposed ordinance amendment to the City Commission with a favorable recommendation, with the modification noted herein.

HISTORY/BACKGROUND

On February 26, 2025, at the request of Commissioner Kristen Rosen Gonzalez, the City Commission referred the proposed ordinance to the Planning Board (C4 H).

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:

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

Consistent – The proposed amendment 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

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

Partially Satisfied – If not carefully controlled, the proposed change could be incompatible with the needs of the city.

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

Not applicable

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.**

Partially Consistent – While adult material can be accessed in other physical locations, and online, a potential cosmetics retailer has indicated that there is a market for their products in Miami Beach, some of which are classified as adult material.

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

Partially Satisfied – If not carefully controlled, the proposed change to expand where adult material may be sold, could be 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.**

Not applicable

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.**

Partially Satisfied – If not carefully controlled, the proposed change to expand where adult material may be sold, could adversely affect property values.

11. **Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.**

Partially Satisfied – If not carefully controlled, the proposed change to expand where adult material may be sold, could be a deterrent to the improvement of adjacent properties.

12. **Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.**

Not Satisfied – It has not been established that the property cannot be used in accordance with existing zoning.

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 Satisfied. It has not been demonstrated that the proposed use could be adequately established in another part of 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 existing definitions in Chapter 1 of the Land Development Regulations of the City Code (LDR's) pertaining to adult entertainment and adult material:

Adult bookstore means an establishment which sells, offers for sale or rents adult material for commercial gain. This definition includes establishments selling or renting adult videos when applicable under the above-stated conditions.

Adult entertainment establishment means any adult bookstore, adult booth, adult motion picture theater or nude dancing establishment as defined in this section.

Adult material means one or more of the following, regardless of whether it is new or used:

- a. Books, magazines, periodicals or other printed matter; photographs, films, motion pictures, videocassettes, slides or other visual representations; recordings, other audio matter; and novelties or devices, including, but not limited to, clothing, food, drinks, materials for preparing food and drinks; which have as their primary or dominant theme subject matter depicting, exhibiting, illustrating, describing or relating to sexual conduct or specified anatomical areas as defined in this section; or*
- b. Instruments, novelties, devices or paraphernalia which are designed for use in connection with sexual conduct as defined in this section, except for birth control devices or devices for disease prevention.*

Whenever any adult material offered for sale or rent, such establishment is classified as both an 'Adult bookstore,' and an 'Adult entertainment establishment', both of which are subject to the minimum distance separation requirements set forth in Section 7.5.5.2 of the LDR's. Pursuant to Section 7.5.5.2 of the LDR's, no such establishment may be located:

1. Within 300 feet of any district designated as RS, RM, or RPS on the city's official zoning district map;
2. Within 300 feet of any parcel of land upon which a house of worship, school, public park or playground is located; or
3. Within 1,000 feet of any parcel of land upon which another adult entertainment establishment is located.

The only exemption to the above noted distance separation requirements is for a hotel with a minimum of 300 hotel units.

Additionally, Section 7.5.5.2(b) of the city code includes the following prohibitions on the sale or rental of adult material to minors:

1. Adult bookstores are prohibited from displaying adult material in such manner that such material is visible to minors (persons under 17 years of age).
2. Adult bookstores are prohibited from knowingly selling or renting adult material to minors. As used in this subsection, "knowingly" shall mean having general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both.

The attached draft ordinance would amend Section 7.5.5.2 of the LDR's to allow for a limited expansion of the sale of items classified as adult material by allowing for a portion of retail cosmetic stores to have certain exceptions from the current minimum distance separation requirements from residential zoning districts and houses of worship.

As proposed, the subject ordinance creates the following definition for cosmetics store:

Cosmetics store is a non-medical retail business that is primarily engaged in retailing cosmetics, perfumes, toiletries, personal grooming products, hair-care products, skin-care products and beauty tools.

The ordinance further amends the distance separation requirements for cosmetic stores located in a commercial zoning district, where adult material constitutes less than 20% of the floor area of the establishment. Specifically, a cosmetics store with limited adult material may be located within 300 feet of a multi-family residential (RM or RPS) district and within 300 feet of a house of worship. Such an establishment would not be allowed within 1000 feet of another adult entertainment establishment, nor within 300 feet of a residential single-family district (RS) district, nor within 300 feet of a school, public park, or playground.

The following is the draft text proposed:

7.5.5.2 ADULT ENTERTAINMENT

a. Adult entertainment establishments prohibited in certain locations.

1. No adult entertainment establishment is permitted on a parcel of land located:
 - A. Within 300 feet of any district designated as RS, ~~RM, or RPS~~ on the city's official zoning district map;

- B. Within 300 feet of any district designated as RM, or RPS on the city's official zoning district map;
 - C. Within 300 feet of any parcel of land upon which a house of worship, ~~school,~~ public park or playground is located;
 - D. Within 300 feet of any parcel of land upon which a school, public park or playground is located; or
 - E. Within 1,000 feet of any parcel of land upon which another adult entertainment establishment is located.
2. The minimum distance separation shall be measured by following a straight line from the main entrance or exit of the adult entertainment establishment to the nearest point of the property designated as RS, RM, or RPS on the city's official zoning district map or used for a house of worship, school, or public park or playground. In cases where a minimum distance is required between an adult entertainment establishment and another adult entertainment establishment, the distance separation shall be determined by measuring a straight line between the principal means of entrance of each use.
3. A hotel with a minimum of 300 hotel units shall be exempt from subsections ~~7.5.5.2.a.1, 7.5.5.2.a.2, and 7.5.5.2.a.3~~ a.1.A through a.1.E of this section.
4. A cosmetics store located in a commercial zoning district and where adult material constitutes less than 20% of the floor area of the establishment, and such material is not visible from any storefront, nor visible to minors (persons under 17 years of age) shall be exempt from subsections a.1.B , a.1.C, and a.1.E. of this section.

To ensure that the amount of adult material is clearly incidental to the business, staff recommends that the percentage of the floor area where adult material is permitted be reduced from 20% to 10%, not to exceed 100 square feet.

RECOMMENDATION

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

Distance Separation Exemptions for Adult Material in Retail Cosmetics Stores

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 1, ENTITLED "GENERAL PROVISIONS," ARTICLE II, ENTITLED "DEFINITIONS," SECTION 1.2.2, ENTITLED "USE DEFINITIONS," BY ADDING A DEFINITION FOR 'COSMETICS STORE', AND BY AMENDING CHAPTER 7, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE V, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," SECTION 7.5.5, ENTITLED "SUPPLEMENTARY USE REGULATIONS," SECTION 7.5.5.2, ENTITLED "ADULT ENTERTAINMENT", BY CREATING EXEMPTIONS FROM THE DISTANCE SEPARATION REQUIREMENTS FOR COSMETIC STORES, WHERE ADULT MATERIAL CONSTITUTES LESS THAN 20% OF THE FLOOR AREA OF THE ESTABLISHMENT; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, adult material is a legally protected form of expression under the First Amendment of the United States Constitution, and reasonable zoning regulations can ensure that such expression is balanced with community standards and business operations; and

WHEREAS, the integration of adult material within a retail cosmetics store, when restricted to designated areas and managed according to applicable zoning and licensing laws, can create a unique and appealing customer experience that differentiates the business in a competitive market; and

WHEREAS, proper oversight and adherence to age restrictions and content guidelines can ensure that adult material remains appropriate for the intended audience and does not interfere with the primary business of the cosmetics store; and

WHEREAS, limiting adult material to specific areas within a retail cosmetics store allows the business to maintain a professional and welcoming atmosphere for all customers while providing a separate space for adult material; and

WHEREAS, for the purposes of regulation and consistency, a "**cosmetics store**" shall be defined as a is a non-medical retail business that is primarily engaged in retailing cosmetics, perfumes, toiletries, personal grooming products, hair-care products, skin-care products and beauty tools; 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 1 of the Miami Beach Resiliency Code, entitled "General Provisions," Article II, entitled "Definitions," is hereby amended as follows:

**CHAPTER 1
GENERAL PROVISIONS**

* * *

ARTICLE II – DEFINITIONS

* * *

1.2.2 USE DEFINITIONS

* * *

Cosmetics store is a non-medical retail business that is primarily engaged in retailing cosmetics, perfumes, toiletries, personal grooming products, hair-care products, skin-care products and beauty tools.

* * *

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**

* * *

ARTICLE V. – SUPPLEMENTARY DISTRICT REGULATIONS

* * *

7.5.5 SUPPLEMENTARY USE REGULATIONS

* * *

7.5.5.2 ADULT ENTERTAINMENT

a. Adult entertainment establishments prohibited in certain locations.

1. No adult entertainment establishment is permitted on a parcel of land located:
 - A. Within 300 feet of any district designated as RS, ~~RM, or RPS~~ on the city's official zoning district map;
 - B. Within 300 feet of any district designated as RM, or RPS on the city's official zoning district map;
 - C. Within 300 feet of any parcel of land upon which a house of worship, ~~school, public park or playground~~ is located;

- D. Within 300 feet of any parcel of land upon which a school, public park or playground is located; or
 - E. Within 1,000 feet of any parcel of land upon which another adult entertainment establishment is located.
- 2. The minimum distance separation shall be measured by following a straight line from the main entrance or exit of the adult entertainment establishment to the nearest point of the property designated as RS, RM, or RPS on the city's official zoning district map or used for a house of worship, school, or public park or playground. In cases where a minimum distance is required between an adult entertainment establishment and another adult entertainment establishment, the distance separation shall be determined by measuring a straight line between the principal means of entrance of each use.
 - 3. A hotel with a minimum of 300 hotel units shall be exempt from subsections 7.5.5.2.a.1, 7.5.5.2.a.2, and 7.5.5.2.a.3 a.1.A through a.1.E of this section.
 - 4. A cosmetics store located in a commercial zoning district and where adult material constitutes less than 20% of the floor area of the establishment, and such material is not visible from any storefront, nor visible to minors (persons under 17 years of age) shall be exempt from subsections a.1.B , a.1.C, and a.1.E. of this section.

* * *

SECTION 2. REPEALER.

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

SECTION 3. 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 4. SEVERABILITY.

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

SECTION 5. 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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