



COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Eric Carpenter, City Manager
DATE: June 25, 2025
TITLE: REFERRAL TO THE PLANNING BOARD - DISTANCE SEPARATION EXEMPTION FOR TOBACCO AND VAPE USES IN NORTH BEACH.

RECOMMENDATION

The Administration does not recommend that the Mayor and City Commission (City Commission) refer the attached draft ordinance to the Planning Board.

BACKGROUND/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, in accordance with the direction of the LUSC.

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.

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, city wide 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, the Administration 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, the Administration does not recommend that the LDRs be amended as proposed, and that the City Commission not refer the proposed ordinance to the Planning Board.

APPLICATION FEE WAIVER

The subject amendment is proposed on a comprehensive basis, and not on behalf of a private applicant or third party. Pursuant to section 2.4.1.c of the Land Development Regulations of the City Code, amendments to the City Code require the payment of the applicable fees in section 2.2.3.5, 2.2.3.6, and appendix A to the City Code. These fees may be waived by a five-sevenths (5/7ths) vote of the City Commission, based upon one or more of the following circumstances:

1. The City Commission determines that the proposed amendment is necessary due to a change in federal or state law, or to implement best practices in urban planning, or based on circumstances unique to the proposed amendment.
2. Upon the written recommendation of the City Manager acknowledging a documented financial hardship of a property owner(s) or developer(s).
3. If requested, in writing, by a non-profit organization, neighborhood association, or homeowner's association for property owned by any such organization or association, so long as the request demonstrates that a public purpose is achieved by enacting the applicable amendment.

Should this proposal be referred to the Planning Board, the Administration recommends that the City Commission determine that the proposed amendment is necessary based on circumstances unique to the proposed amendment and waive the applicable fees.

FISCAL IMPACT STATEMENT

No Fiscal Impact Expected

Does this Ordinance require a Business Impact Estimate? (FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on:

See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notice/>

FINANCIAL INFORMATION

Not Applicable

CONCLUSION

The Administration does not recommend that the City Commission refer the attached draft

ordinance to the Planning Board. Should the ordinance be referred, the Administration does recommend, in accordance with section 2.4.1.c.1 of the LDRs, that the City Commission waive the applicable fees based on circumstances unique to the proposed amendment.

Applicable Area

North Beach

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?

Yes

Is this item related to a G.O. Bond Project?

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

Planning

Sponsor(s)

Commissioner Kristen Rosen Gonzalez

Co-sponsor(s)

Condensed Title

Ref: PB - Distance Separation Exemption for Tobacco & Vape Uses in North Beach. (KRG) PL

Previous Action (For City Clerk Use Only)