

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Eric Carpenter, City Manager

DATE: May 21, 2025 10:40 a.m. First Reading Public Hearing

TITLE: DISTANCE SEPARATION EXEMPTIONS FOR ADULT MATERIAL IN RETAIL COSMETICS STORES
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.

RECOMMENDATION

The Administration recommends that the Mayor and City Commission (City Commission) approve the ordinance at First Reading and schedule a Second Reading public hearing for June 25, 2025.

BACKGROUND/HISTORY

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).

ANALYSIS

The following are existing definitions in Chapter 1 of the Land Development Regulations of the City Code (LDRs) 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 is offered for sale or rent, the 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 LDRs. Pursuant to Section 7.5.5.2(a) of the LDRs, 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.

Section 7.5.5.2(b) of the LDRs also contains 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 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.

Additionally, the proposed ordinance amends Section 7.5.5.2(a) of the LDRs to allow for a limited expansion of the minimum distance separation requirements for the sale of items classified as adult material within retail cosmetic stores. Specifically, the proposed ordinance amends the distance separation requirements for cosmetic stores located in a commercial zoning district, where adult material constitutes less than 10% of the floor area of the establishment. In this regard, 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 1,000 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.

PLANNING BOARD REVIEW

On April 8, 2025, the Planning Board held a public hearing and transmitted the proposed ordinance to the City Commission with a favorable recommendation (7-0). Additionally, the Planning Board recommended that adult material in cosmetic stores be limited to personal massage devices. This recommendation has been incorporated into the draft ordinance.

APPLICATION FEE WAIVER

The subject amendment is proposed on a comprehensive, citywide 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.

The Administration recommends that the City Commission waive the applicable fees based on circumstances unique to the proposed amendment.

SUMMARY/UPDATE

The subject ordinance was discussed at First Reading on April 23, 2025 and referred to the Miami Beach Commission for Women (MBCW) and the Land Use and Sustainability Committee (LUSC). On May 6, 2025, the MBCW discussed the proposed ordinance and recommended the following:

1. Modify the ordinance text to narrow what would qualify as a personal massage device, so that such devices are limited to the merchandise proposed in the Geske cosmetics store.
2. Modify the exemption to ensure that individuals under the age of 18 do not have access to any adult material.

On May 8, 2025, the LUSC discussed the following revised text for the ordinance, which is consistent with the recommendations of the MBCW:

7.5.5.2 ADULT ENTERTAINMENT

- a. Adult entertainment establishments prohibited in certain locations.

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4. A cosmetics store located in a commercial zoning district and where adult material
 - i. is limited to personal massagers that do not resemble specified anatomical areas as defined in Chapter 1 of this Code,
 - ii. constitutes less than 10% of the floor area of the establishment, and
 - iii. are not visible from any storefront, nor visible to minors (persons under 18 years of age) shall be exempt from subsections a.1.B, a.1.C, and a.1.E. of this section.

The LUSC endorsed this revised text and recommended that the City Commission approve the proposed ordinance at First Reading. The revised text noted above has been incorporated into the attached ordinance for First Reading.

Finally, the sponsor has requested that the City Commission waive the annual zoning cycle restriction for the subject amendment, pursuant to Section 2.3.2 of the LDRs, and schedule a Second Reading public hearing prior to June 25, 2025.

FISCAL IMPACT STATEMENT

No Fiscal Impact Expected

Does this Ordinance require a Business Impact Estimate? Yes
(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 recommends the following:

1. The City Commission approve the ordinance at First Reading and pursuant to Section 2.3.2 of the LDRs, waive the annual zoning cycle restriction for the subject amendment and schedule a Second Reading public hearing for June 25, 2025.
2. In accordance with section 2.4.1.c.1 of the Land Development Regulations of the City Code, the City Commission waive the applicable fees based on circumstances unique to the proposed amendment.

Applicable Area

Citywide

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? Yes

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

Department

Planning

Sponsor(s)

Commissioner Kristen Rosen Gonzalez

Co-sponsor(s)

Condensed Title

10:40 a.m. 1st Rdg PH, Distance Sep Exem-Adult Material in Retail Cosmetics Stores. (KRG)
PL

Previous Action (For City Clerk Use Only)

Referred to LUSC and CFW on 4/23/2025 - R5 T

