

24. DISCUSS THE CURRENT REQUIREMENTS OF THE LAND DEVELOPMENT REGULATIONS OF THE CITY CODE (LDRS) APPLICABLE TO TOBACCO AND VAPE SALES, INCLUDING MINIMUM DISTANCE SEPARATION AND NORTH BEACH USE RESTRICTIONS, AND POTENTIAL DISTINCTIONS BETWEEN STANDALONE TOBACCO/VAPE SHOPS AND THE SALE OF THESE PRODUCTS AS AN INCIDENTAL OR ACCESSORY USE TO A GROCERY, CONVENIENCE STORE, OR OTHER SIMILAR RETAIL USE.

Applicable Area:

MIAMI BEACH

COMMITTEE MEMORANDUM

TO: Land Use and Sustainability Committee Members

FROM: Eric Carpenter, City Manager

DATE: May 8, 2025

TITLE: DISCUSS THE CURRENT REQUIREMENTS OF THE LAND DEVELOPMENT REGULATIONS OF THE CITY CODE (LDRS) APPLICABLE TO TOBACCO AND VAPE SALES, INCLUDING MINIMUM DISTANCE SEPARATION AND NORTH BEACH USE RESTRICTIONS, AND POTENTIAL DISTINCTIONS BETWEEN STANDALONE TOBACCO/VAPE SHOPS AND THE SALE OF THESE PRODUCTS AS AN INCIDENTAL OR ACCESSORY USE TO A GROCERY, CONVENIENCE STORE, OR OTHER SIMILAR RETAIL USE.

RECOMMENDATION

The Administration recommends that the Land Use and Sustainability Committee (LUSC) discuss the proposed amendments to the Land Development Regulation of the City Code (LDRs) and provide an unfavorable recommendation to the City Commission.

The Administration does not recommend that the LDRs be amended as proposed.

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.

ANALYSIS

As noted in the attached referral memorandum, the item sponsor has requested that the LUSC review the Land Development Regulations of the City Code (LDRs) applicable to retail establishments that sell tobacco and vape products and discuss whether the Code should be amended to distinguish between standalone tobacco/vape shops, and the sale of tobacco or tobacco-related products as an incidental or accessory use to a grocery, convenience store, or other similar retail use. Additionally, the sponsor has requested that this discussion be limited to commercial areas in North Beach, and that any proposed amendments maintain or expand restrictions on both standalone and incidental/accessory sales near schools.

The following are the applicable definitions in Chapter 1 of the 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.

Currently 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, such as a convenience store or supermarket. Additionally, the sale of tobacco and vape products, city wide and in North Beach, is regulated pursuant to Sections 7.5.5.9 and 7.3.10 of the LDRs, as follows:

7.5.5.9 TOBACCO/VAPE DEALERS

- 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.*
- Locations prohibiting the sale of tobacco and vape products.*
 - Prohibited locations. Tobacco/vape dealers are prohibited in the following locations:*
 - 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.*
 - 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.*
 - 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.*
 - Distance separation. No tobacco/vape dealer shall be located within 1,200 feet of another tobacco/vape dealer.*
 - 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.*
 - [Variances.] Variances from the requirements of this section shall be prohibited.*

7.3.10 NORTH BEACH COMMERCIAL CHARACTER OVERLAY DISTRICT

* * *

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:

- The following limitations shall apply to the commercial uses listed below:*
 - Tobacco/vape dealers shall be prohibited in the overlay district.*

UPDATE

At the direction of the LUSC on March 11, 2025, the following text amendments (underscore) to the applicable sections of the LDRs have been drafted, to allow for a narrow expansion of tobacco and vape uses in North Beach, as part of the operation of a convenience store:

Tobacco and Vape Dealer 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.*

North Beach Use Regulations

7.3.10 NORTH BEACH COMMERCIAL CHARACTER OVERLAY DISTRICT

* * *

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:

- b. 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.

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 tight restraints proposed in the draft text amendment are intended to minimize the negative impacts of tobacco and vape sales within the commercial area of Collins Avenue between 65th and 67th Streets in North Beach. Notwithstanding, the Administration continues to have 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.

In conclusion, the Administration recommends that an unfavorable recommendation be provided to the City Commission. Should the LUSC recommend in favor of the proposed text amendments, a separate referral by the City Commission to the Planning Board would be required.

FISCAL IMPACT STATEMENT

No Fiscal Impact

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

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 that the LUSC discuss the proposed amendments to the LDR's

and provide an unfavorable recommendation to the City Commission.

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

Discuss The Current Requirements Of The Land Development Regulations Of The City Code (LDR) Applicable To Tobacco And Vape Sales, Including Minimum Distance Separation And North Beach Use Restrictions, And Potential Distinctions Between Standalone Tobacco/Vape Shops And The Sale Of These Products As An Incidental Or Accessory Use To A Grocery, Convenience Store, Or Other Similar Retail Use.

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Commissioner Kristen Rosen Gonzalez

DATE: February 3, 2025

TITLE: REFERRAL TO THE LAND USE AND SUSTAINABILITY COMMITTEE - DISCUSS THE CURRENT REQUIREMENTS OF THE LAND DEVELOPMENT REGULATIONS OF THE CITY CODE (LDR) APPLICABLE TO TOBACCO AND VAPE SALES, INCLUDING MINIMUM DISTANCE SEPARATION AND NORTH BEACH USE RESTRICTIONS, AND POTENTIAL DISTINCTIONS BETWEEN STANDALONE TOBACCO/VAPE SHOPS AND THE SALE OF THESE PRODUCTS AS AN INCIDENTAL OR ACCESSORY USE TO A GROCERY, CONVENIENCE STORE, OR OTHER SIMILAR RETAIL USE.

RECOMMENDATION

BACKGROUND/HISTORY

Please place the above item on the February 3, 2025 City Commission meeting agenda as a referral to the Land Use and Sustainability Committee ("LUSC").

I would like the LUSC to review the Land Development Regulations applicable to retail establishments that sell tobacco and vape products, and discuss whether the Code should be amended to distinguish between standalone tobacco/vape shops, and the sale of tobacco or tobacco-related products as an incidental or accessory use to a grocery, convenience store, or other similar retail use.

Any proposed amendments should maintain or expand restrictions on both standalone and incidental/accessory sales near schools.

ANALYSIS

FISCAL IMPACT STATEMENT

NA

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

CONCLUSION

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? No

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

Department

Office of Commissioner Kristen Rosen Gonzalez

Sponsor(s)

Commissioner Kristen Rosen Gonzalez

Co-sponsor(s)

Condensed Title

Ref: LUSC - Current Tobacco Use Distance Separation and NB Restrictions. (Rosen Gonzalez)

Previous Action (For City Clerk Use Only)