

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 29 OF THE CODE OF ORDINANCES ENTITLED, "LAND DEVELOPMENT REGULATIONS", BY AMENDING ARTICLE 5, DIVISION 3 ENTITLED, "ADULT ENTERTAINMENT USES", SPECIFICALLY AT SECTION 5-303 ENTITLED, "NO ADDITIONAL ZONING CONDITIONS, RESTRICTIONS, SAFEGUARD OR CONDITIONS", IN ORDER TO REMOVE THE PROHIBITION ON THE CONSUMPTION, POSSESSION, AND SALE OF ALCOHOLIC BEVERAGES; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, on April 28, 2009, the Mayor and City Council of the City of North Miami ("City") adopted the Land Development Regulations ("LDRs") under Chapter 29 of the City's Code of Ordinances; and

WHEREAS, Article 5, Division 3 of the LDRs entitled, "Adult Entertainment Uses", establishes guidelines to regulate the location of adult entertainment businesses, so as to prevent the adverse secondary effects on the public health, safety and welfare caused by the presence of even one such establishment, and to lessen the concentration of such uses by establishing a distance requirement; and

WHEREAS, Section 5-303 of the LDRs, prohibits the consumption, distribution, possession and sale of alcoholic beverages by Adults Entertainment Businesses; and

WHEREAS, Sunny Isles Eatery has leased a warehouse property within the M-1 Industrial Zoning District located at 2050 NE 151st Street, and proposes to establish an Adult Entertainment Business with the desire to provide alcoholic beverages for consumption on the premises to its patrons; and

WHEREAS, Sunny Isles Eatery filed an application with the Community Planning and Development Department on March 26, 2012, requesting that the City amend Section 5-303 of the LDRs to remove the prohibition restricting the sale, consumption, distribution and possession of alcoholic beverages in Adult Entertainment Businesses; and

WHEREAS, Policy 9.4.6 of the City's Comprehensive Plan requires that the City "Create land use designations and zoning regulations that encourage the retention, attraction and expansion of business and industry"; and

WHEREAS, City Administration believes the proposed ordinance satisfies the intent of the Comprehensive Plan in that it allows for the attraction of new businesses in the City's M-1 Industrial Zoning District, and furthers economic development in an area of the City that is poised for redevelopment; and

WHEREAS, the Mayor and City Council of the City of North Miami has determined that the proposed amendment to the ordinance is in the best interest of the City and does not adversely affect the health, safety, and welfare of its residents.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

Section 1. The Mayor and City Council of the City of North Miami, Florida, hereby amend Chapter 29 of the Code of Ordinances entitled, "Land Development Regulations", by amending Article 5, Division 3 entitled, "Adult Entertainment Uses", specifically at Section 5-303 entitled, "No Additional Zoning Conditions, Restrictions, Safeguard or Conditions", in order to remove the prohibition on the consumption, possession, and sale of alcoholic beverages, as follows:

CHAPTER 29. LAND DEVELOPMENT REGULATIONS

* * * * *

ARTICLE 5. DEVELOPMENT STANDARDS

* * * * *

DIVISION 3. ADULT ENTERTAINMENT USES

Sec. 5-301. - Purpose, construction.

The purpose of this division is to regulate the location of adult entertainment businesses so as to prevent the adverse secondary effects on the public health, safety, and welfare, which, are "caused by the presence of even one (1) such establishment." This section is designed to eliminate or lessen such adverse secondary effects by preventing or lessening the concentration of such adult entertainment businesses by maintaining minimum distances between such adult

entertainment businesses and between certain other uses, and allowing adult entertainment businesses to locate in appropriate areas only. This section is based upon the fundamental zoning principle that certain uses, by the very nature of the adverse secondary effects such uses are recognized to have upon the surrounding community, must be subjected to particular restrictions so that such uses may exist without destroying the vitality of existence of other lawful and reasonable uses. The sole purpose of the legislative body of the city in enacting this section is the desire to preserve and protect the quality of life, public health, safety, and general welfare of the citizens of the city, and not to suppress free speech or impair the constitutional rights of any person. Nothing herein shall be construed to authorize a commission of any obscenity offense or other criminal offense, as proscribed by the laws of the State of Florida and the laws of the city.

Sec. 5-302. - Locations and distance restrictions.

- A. Adult entertainment businesses shall be allowed within the M-1 industrial district only.
- B. No adult entertainment business shall be located within five hundred (500) feet of:
 - 1. Any lawfully pre-existing adult entertainment business that is located within jurisdictional boundaries of the city, unless such location is within the same building as the lawful pre-existing adult entertainment business;
 - 2. Any pre-existing zoning district within the city that is zoned for residential use, including, but not limited to, residential planned unit development districts;
 - 3. Any lawfully pre-existing place of religious worship, public park, or school that is located within jurisdictional boundaries of the city;
 - 4. The distances provided for in this subsection shall be measured in a straight line, without regard to intervening structures or objects, from the nearest property line of the parcel upon which the adult entertainment business is located to the nearest property line of a parcel:
 - a. Upon which such a lawfully pre-existing adult entertainment business, place of religious worship, public park, or school, is located; or
 - b. Within a district zoned for residential use.

Sec. 5-303. - No additional zoning conditions, restrictions, safeguards, or conditions.

No zoning conditions, restrictions, safeguards, or standards shall apply to or be imposed on any adult entertainment business protected by the first amendment to the United States Constitution, other than:

- 1. ~~The prohibition on the consumption, distribution, possession, and sale of alcoholic beverages contained in section 3-3 of the city's code; The distance requirements set forth under Section 3-11 of the city code shall apply only to those adult entertainment businesses providing alcoholic beverages for consumption on the premises;~~
- 2. Those prohibitions and restrictions expressly set forth in this section; and
- 3. Signage, parking and landscaping requirements of article 5 of these LDRs.

Sec. 5-304. - No application, license, or permit.

With the express exception of those applications, licenses, and permits required by chapter 11, article II, of the city's code, no application or permit shall be required for the establishment of any adult entertainment business protected by the first amendment to the United States Constitution and no such adult entertainment business shall be subject to section 11-34 or 11-37 of the city's code.

Sec. 5-305. - No variances.

No variances from the criteria set forth in section 5-301 or 5-302 shall be permitted for any reason.

Section 2. Repeal. All ordinances or parts of ordinances in conflict or inconsistent are hereby repealed.

Section 3. Conflicts. In the event that the provisions of this Ordinance are in conflict with any other ordinance, rule or regulation, the provisions of this Ordinance shall prevail.

Section 4. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

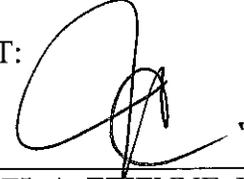
Section 5. Codification. The provisions of this Ordinance may become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article" or any other appropriate word.

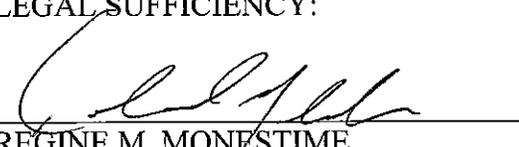
Section 6. Effective Date. This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a 4-1 vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this 8 day of May, 2012.

PASSED AND ADOPTED by a 3-2 vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this 26 day of June, 2012.


ANDRE D. PIERRE, ESQ.
MAYOR

ATTEST: 
MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Councilman Galvin
Seconded by: Councilwoman Steril

Vote:

Mayor Andre D. Pierre, Esq.	<u> </u>	(Yes)	<u> X </u>	(No)
Vice Mayor Jean R. Marcellus	<u> X </u>	(Yes)	<u> </u>	(No)
Councilperson Michael R. Blynn, Esq.	<u> </u>	(Yes)	<u> X </u>	(No)
Councilperson Scott Galvin	<u> X </u>	(Yes)	<u> </u>	(No)
Councilperson Marie Erlande Steril	<u> X </u>	(Yes)	<u> </u>	(No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.