

MIAMI BEACH

PLANNING DEPARTMENT


Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: April 30, 2019

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB19-0272. Speakers on Lincoln Road.**

REQUEST

PB 19-0272. SPEAKERS ON LINCOLN ROAD. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 6, "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," BY AMENDING SECTION 142-336 THEREOF, ENTITLED "LINCOLN ROAD REQUIREMENTS," TO MODIFY REGULATIONS PERTAINING TO INTERIOR AND EXTERIOR SPEAKERS ON LOTS FRONTING LINCOLN ROAD, AND TO ESTABLISH PENALTY AND ENFORCEMENT PROVISIONS APPLICABLE TO VIOLATIONS THEREOF; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

Transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

HISTORY

On November 14, 2018, at the request of Commissioners Ricky Arriola and John Elizabeth Aleman, the City Commission referred the discussion item to the Land Use and Development Committee (Item C4P).

On February 20, 2019 the LUDC discussed a draft ordinance and recommended that the City Commission refer the item to the Planning Board.

On March 03, 2019, at the request of Commissioners Ricky Arriola and John Elizabeth Aleman, the City Commission referred the attached Ordinance to the Planning Board (Item C4Q)

REVIEW CRITERIA

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these land development regulations, 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 ordinance 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 – The proposed amendment does not modify district boundaries.

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

The proposed ordinance amendment is not out of scale with the surrounding neighborhood.

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

Consistent – The proposed ordinance will not affect the load on public facilities and infrastructure.

5. **Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.**

Not applicable. – The proposed amendment does not modify district boundaries.

6. **Whether changed or changing conditions make the passage of the proposed change necessary.**

Consistent – A number of restaurants operators have expressed a desire to allow ambient music available for their patrons played at level that will not cause disturbance within the surrounding area. The proposed ordinance is necessary to allow operators more flexibility to accommodate their patrons needs and improve economic growth.

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

Consistent – The proposed ordinance amendment will not 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.**

Consistent – The proposed change will not create or increase traffic congestion from what is currently permitted.

9. **Whether the proposed change will seriously reduce light and air to adjacent areas.**

Consistent – The proposed change will not reduce light and air to adjacent areas.

10. Whether the proposed change will adversely affect property values in the adjacent area.

Consistent – The proposed change should not adversely affect property values in the adjacent areas.

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

Consistent – The proposed change should not be a deterrent to the improvement or development of properties in the City.

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

Consistent – The proposed modifications are required in order to fulfill operators needs and promote economic growth, while still preventing excessive noise in the vicinity of Lincoln Road..

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 applicable –

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(b) of the Land Development Regulations 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.

Partially Consistent – The proposal does affect areas that are vulnerable to the impacts of sea level rise.

(2) Whether the proposal will increase the resiliency of the City with respect to sea level rise.

Consistent – The proposal will not affect the resiliency of the City with respect to sea level rise.

(3) Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.

Consistent – The proposal does not diminish and is compatible with the City's sea level rise mitigation and resiliency efforts.

ANALYSIS

The attached draft ordinance would allow café and restaurant uses to have exterior speakers under limited circumstances. Specifically, restaurant and café uses may be permitted to have exterior speakers in accordance with all of the following:

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1. A certificate of appropriateness is granted, in accordance with the applicable requirements of Chapter 118, Article X of these Land Development Regulations, shall be required for any and all exterior speakers.
 2. Music played by exterior speakers shall remain at or below ambient levels at all times.
 3. If a restaurant or café use, with approved exterior speakers, is replaced by a uses other than a restaurant or café, all exterior speakers shall be removed.

The draft ordinance also includes a penalty schedule, as recommended by the LUDC.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

Lincoln Road – Speaker Regulations

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 6, "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," BY AMENDING SECTION 142-336 THEREOF, ENTITLED "LINCOLN ROAD REQUIREMENTS," TO MODIFY REGULATIONS PERTAINING TO INTERIOR AND EXTERIOR SPEAKERS ON LOTS FRONTING LINCOLN ROAD, AND TO ESTABLISH PENALTY AND ENFORCEMENT PROVISIONS APPLICABLE TO VIOLATIONS THEREOF; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, Lincoln Road is a premier street in Miami Beach that provides residents and visitors with a unique cultural, retail, and dining experience; and

WHEREAS, the Lincoln Road area is vital to Miami Beach's economy, especially the tourism industry; and

WHEREAS, the Mayor and City Commission now desire to amend the regulations applicable to interior and exterior speakers at business establishments on lots fronting Lincoln Road; and

WHEREAS, the amendments set forth below are necessary to accomplish the objectives identified herein; and

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA.

SECTION 1. Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 6, "CD-3 Commercial, High Intensity District," is amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

Article II. – District Regulations

* * *

Division 6. – CD-3 Commercial, High Intensity District

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Sec. 142-336. - Lincoln Road requirements.

The following additional regulations shall apply to the portion of Lincoln Road that is closed to vehicular traffic:

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(b) The following requirements shall apply ~~for~~ to the installation or placement of speakers:

(1) Restaurant and sidewalk café uses may only be permitted to place or install exterior speakers if the following conditions have been met:

a. A certificate of appropriateness is granted, in accordance with the applicable requirements of Chapter 118, Article X of this Code.

b. Music or any other sound shall be played at or below ambient volume levels at all times.

c. If a restaurant or sidewalk café use with approved exterior speakers is replaced by a use other than a restaurant or sidewalk café, then all exterior speakers shall be removed.

~~(1) All exterior speakers and interior speakers within the first 20 feet of the boundary facing Lincoln Road or a side street shall be prohibited.~~

~~(2) Notwithstanding the above, interior~~ Interior speakers may be permitted within the first 20 feet of the boundary facing Lincoln Road or within the first 20 feet of the boundary of a side street, provided, however, that any music or other sound being that is played does not exceed ambient levels. Additionally, music played indoors at a volume above ambient levels must be inaudible from the exterior of the premises at all times.

(3) In the event that the doors of an establishment remain open to the sidewalk, only ambient music shall be permitted within the premises.

(4) No variances shall be granted from the requirements of this section 142-336(b).

~~(5) All exterior use of speakers, whether or not the speakers are affixed to a property or structure, is prohibited. Except as provided in this subsection (b), no other commercial establishments shall be permitted to place or install exterior speakers.~~

(c) Penalties and enforcement.

(1) A violation of subsection (b) shall be subject to the following civil fines and penalties:

a. If the violation is the first violation, a person or business shall receive a written warning or a civil fine of \$250.00;

b. If the violation is the second violation within the preceding 12 months, a person or business shall receive a civil fine of \$1,000.00;

c. If the violation is the third violation within the preceding 12 months, a person or business shall receive a civil fine of \$2,000.00;

d. If the violation is the fourth violation within the preceding 12 months, a person or business shall receive a civil fine of \$3,000.00; and

- e. If the violation is the fifth or subsequent violation within the preceding 12 months, a person or business shall receive a civil fine of \$5,000.00, and the City shall suspend the business tax receipt.
- (2) Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies from any action to assure compliance with this section and all applicable laws. If a violation of this section is observed, the enforcement officer will be authorized to issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten days after service of the notice of violation, and that the failure to appeal the violation within ten days of service shall constitute an admission of the violation and a waiver of the right to a hearing.
- (3) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
- a. A violator who has been served with a notice of violation must elect to either:
 - i. Pay the civil fine in the manner indicated on the notice of violation; or
 - ii. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten days of the service of the notice of violation.
 - b. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. A request for administrative hearing must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
 - c. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by the code compliance officer. The failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.
 - d. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the 61st day following the recording of any such lien that remains unpaid, the city may foreclose or otherwise execute upon the lien.

- e. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- f. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten days of the service of the notice of violation.
- g. The special master shall not have discretion to alter the penalties prescribed in subsection (c)(1).

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 re-numbered or re-lettered 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 _____, 2019.

ATTEST:

Dan Gelber
Mayor

Rafael E. Granado
City Clerk

First Reading: _____, 2019

Second Reading: _____, 2019

Verified By: _____
Thomas R. Mooney, AICP
Planning Director

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Rafael E. Granado 3/20/19
City Attorney Date
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