

# MIAMI BEACH

OFFICE OF THE CITY ATTORNEY  
RAUL AGUILA, CITY ATTORNEY

## COMMISSION MEMORANDUM

TO: MAYOR DAN GELBER  
MEMBERS OF THE CITY COMMISSION FIRST READING  
JIMMY L. MORALES, CITY MANAGER

FROM: RAUL J. AGUILA, CITY ATTORNEY *Raul Aguil*

DATE: APRIL 24, 2019

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 102 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "TAXATION," BY AMENDING ARTICLE V, ENTITLED "LOCAL BUSINESS TAX," BY AMENDING SECTION 102-356 THEREOF, ENTITLED "CONSTRUCTION OF ARTICLE; DEFINITIONS," TO AMEND THE DEFINITION OF "PROMOTER"; AMENDING SECTION 102-360 THEREOF, ENTITLED "BUSINESS TAX RECEIPT DURATION AND EXPIRATION DATE," TO ESTABLISH A PROHIBITION ON THE ISSUANCE OF BUSINESS TAX RECEIPTS TO PROMOTERS DURING HIGH IMPACT PERIODS, AND FURTHER ESTABLISHING THE SUSPENSION, DURING HIGH IMPACT PERIODS, OF THOSE ANNUAL BUSINESS TAX RECEIPTS ISSUED TO PROMOTERS; AMENDING SECTION 102-377 THEREOF, ENTITLED "PENALTIES, ENFORCEMENT; COLLECTION OF DELINQUENT FEES AND TAXES, AND CRIMINAL PENALTIES," BY SETTING FORTH ADDITIONAL PENALTIES FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS THAT HAVE A PROMOTED EVENT DURING A HIGH IMPACT PERIOD; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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In response to the extensive public discussion, and resulting concerns, and direction given by, the Mayor and City Commission at the April 10, 2019 City Commission meeting, the scope of the proposed ordinance, surrounding the issuance and suspension of business tax receipts issued to promoters for dance and entertainment events to occur (or take place at) alcoholic beverage establishments during "high impact" periods, has been substantially narrowed.

In summary, those provisions of the ordinance which have been modified, deleted, or otherwise altered, are as follows:

1. The term "promoter", as defined in Section 102-356 of the City Code, was unmodified in the previous ordinance, which was heard by the City Commission in its April 10, 2019, meeting.

However, as a result of questions which arose at the April 10, 2019 meeting regarding who is or isn't included in the City's definition of "promoter," for the current ordinance clarifies and amends the definition to:

- a) Clarify that only those persons who promote dance or entertainment events, which are to occur at an "alcoholic beverage establishment," are promoters;
  - b) Expand upon what activities would constitute "promoting." The term has been clarified so that in order to be considered a "promoter," the person has to exercise control and decision-making authority over the planning, organizing, and execution of the event;
  - c) Clearly explain that the term "promoter" **does not** include the promotion of a dance or entertainment event by an alcoholic beverage establishment, or any full-time employee of such establishment (i.e. self-promotion);
  - d) Further amend the provision exempting 501(c) corporations as promoters, so that if a not-for-profit corporation personally plans, prepares, or executes an event on its own behalf, it shall **not** be deemed a promoter;
  - e) Identify that the term "promoter" **does not** include a person merely hired to host a dance or entertainment event, or a person who sponsors or allows their name to be used in conjunction with a dance or entertainment event, but exercises no other promoter related activities;
  - f) Specify that the term "promoter" **does not** include the City of Miami Beach or any City-owned facility which is operated and managed by a third party, pursuant to a written agreement with the City; and
  - g) Specify that a person or entity issued a City special event permit, or who enters into a written agreement with the City to plan, prepare and execute a special event, shall also **not** be considered a promoter.
2. A concern was expressed that the scope of the previous ordinance was too broad. Consequently, the geographic area, to which the current ordinance is intended to apply, has been narrowly tailored. It applies now only to promoters promoting dance and other entertainment events at alcoholic beverage establishments **within the "entertainment district."** The entertainment district has been defined to include only alcoholic beverage establishments in the areas of: Ocean Drive, from 5th to 16th Street; Collins Avenue, from 5th to 16th Street; and Washington Avenue, from 5th to 16th Street.

3. The current ordinance also replaces the phrase "high impact event" with the term "high impact period." A "high impact" event is currently defined in Section 82-443 of the City Code (see Exhibit "A"). Since City Code Section 82-443 currently gives the City Manager certain discretion (once he finds and declares that a high impact event exists) to implement certain measures, the City Commission felt the term was too broad. Therefore, it is our intention that, at the City Commission meeting on May 8, 2019, when the City Commission considers second reading of the "high impact" ordinance (see Exhibit "B"), to not only re-define the definition of what constitutes a "high impact" period, but to also limit the Manager's powers during such period(s) to a limited time (i.e. for example, 72 hours; following which he has to go to the City Commission for an extension).
  
4. Finally, the current ordinance supplements those penalty provisions set forth in Section 102-377 of the City Code, by unequivocally stating in a new subsection 102-377(f), that an alcoholic beverage establishment which permits, allows, authorizes, grants or approves the use of its premises by a promoter, who has violated the provisions of Section 102-360, shall be subject to the immediate closure of its business operations for the duration of the event.

RA/AB/sp

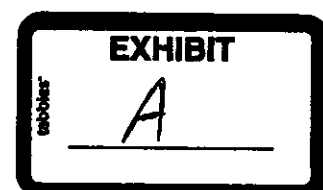
**Sec. 82-443. - High impact events on beach property.**

*High impact event* means an event or gathering on beach property in the City of Miami Beach during which one or more of the following occur:

- (1) An event, activity or period of time that generates a significant spike in social media conversations, increasing audience impressions, and attention on the City, which is expected to generate attendance by more than 5,000 people for an area of beach property that extends less than 15 City blocks from south to north;
- (2) City parking lots and garages in an area within a 15 block radius of an event that is held on beach property pursuant to a special event permit, or otherwise, are at full capacity;
- (3) An event is held pursuant to a special event permit. which is expected to result in attendance by more than 25,000 people on beach property;
- (4) There is a designated major event period (as set forth and identified within the special event regulations and guidelines, as may be amended from time to time);
- (5) A maintenance of traffic plan would be required, or is required (e.g., including, but not limited to, street closures, lane closures, shuttle service) based upon the high impact event, or pursuant to a special event permit;
- (6) Hotel occupancy levels are anticipated to be greater than 75 percent in the City;
- (7) Law Enforcement Mutual Aid or other assistance from outside law enforcement agencies is required to provide for the safety and well-being of residents and visitors to the beach property; or
- (8) An event on beach property, which may impact public property, is anticipated to result in more than 25,000 visitors to the City.

*City manager's authority to impose immediate measure(s) for high impact events.* Whenever the City Manager determines that a high impact event on beach property will occur, or is in progress, one or more of the following immediate measures may be imposed on beach property to protect the beach property from damage, property degradation, and/or unauthorized uses:

- (1) The prohibition of coolers.
- (2) The prohibition of any inflatable devices.
- (3) The prohibition of tents, tables, and similar structures.
- (4) The limitation of live or amplified music.
- (5) The limitation of traffic routes to prohibit vehicular access to non-residents, and permit access only for residents and those patrons and employees of businesses located in the specific area where traffic routes have been limited (e.g., south of Fifth Street).
- (6) The establishment of occupancy limits for different segments of beach property, and prohibiting access to those areas that have reached those occupancy limits, in order to protect the health, safety, and welfare of the general public.
- (7) The prohibition of any direct or indirect consumption of alcohol on the beach property.



(8) The implementation of a license plate reader police detail, which may be utilized on eastbound traffic lanes of the MacArthur Causeway, Julia Tuttle Causeway, and on any other access points into the city.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 102 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "TAXATION," BY AMENDING ARTICLE V, ENTITLED "LOCAL BUSINESS TAX," BY AMENDING SECTION 102-360 THEREOF, ENTITLED "BUSINESS TAX RECEIPT DURATION AND EXPIRATION DATE," TO ESTABLISH A PROHIBITION ON THE ISSUANCE OF BUSINESS TAX RECEIPTS TO PROMOTERS DURING CERTAIN HOLIDAY PERIODS AND HIGH IMPACT EVENTS; AND FURTHER ESTABLISHING THE SUSPENSION, DURING CERTAIN HOLIDAY PERIODS AND HIGH IMPACT EVENTS, OF THOSE ANNUAL BUSINESS TAX RECEIPTS ISSUED TO PROMOTERS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach is an internationally renowned tourist destination that is famous for its beaches, shopping and entertainment, which are among the best in the world; and

**WHEREAS**, due to its domestic and international popularity as a resort and entertainment destination, many events, both authorized by City permits and otherwise, occur within the City; and

**WHEREAS**, many of the events that take place during holiday weekends, Spring Break, and other "high impact events" (as such term is defined in Section 82-443(a) of the City Code), are the result of promoters of dance and entertainment events, which occur on the premises of those businesses that are licensed to serve alcoholic beverages; and

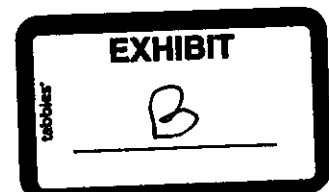
**WHEREAS**, the increasingly large number of individuals attending these events has strained the City's resources and has caused numerous law enforcement issues and other challenges for the City; and

**WHEREAS**, oftentimes the promoters of dance and entertainment events attract patrons who are underage, engage in disorderly conduct, or violate the occupancy limit of the alcoholic beverage establishment; and

**WHEREAS**, dance and entertainment events create excessive noise, thereby disturbing neighborhoods and negatively impacting nearby businesses and residents; and

**WHEREAS**, promoted dance and entertainment events directly cause severe congestion and overcrowding upon the City's streets, and these promoted events result in excessive litter from flyers, handbills, and other debris; and

**WHEREAS**, the Mayor and City Commission desire to adopt the following amendment, to address those problems and concerns caused by promoters of dance and entertainment events, which occur on holiday weekends, Spring Break, and other high impact events, and adversely affect the public health, safety and welfare.



**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:**

**SECTION 1.** That Article V of Chapter 102 of the Code of the City Miami Beach is hereby amended as follows:

**CHAPTER 102  
TAXATION**

\* \* \*

**ARTICLE V. LOCAL BUSINESS TAX**

\* \* \*

**Sec. 102-360. Business tax receipt duration and expiration date.**

Each business tax receipt shall be valid for one year. Tax receipts shall be issued beginning October 1 of each year and shall expire on September 30 of the following year. Notwithstanding the foregoing, or any other section in this chapter to the contrary;

- (1) Business tax receipts for promoters may be issued for a single dance or entertainment event.
- (2) No business tax receipt shall be issued to a promoter for any event if such event is to occur during the period commencing at 11:59 p.m. on the Thursday preceding the holidays of Memorial Day, Fourth of July, Labor Day, or Columbus Day, and continuing until 11:59 p.m. on Monday, provided that the observed date for the holiday is a Friday, Saturday, Sunday or Monday.
- (3) No business tax receipt shall be issued to a promoter for any event if such event is to occur during a high impact event, as designated by the City Manager pursuant to Section 82-443 of the City Code.
- (4) All annual business tax receipts issued to promoters shall be suspended during those holiday periods and high impact events, as identified in subsections (2) and (3).
- (5) For purposes of compliance and enforcement of this section, the term "promoter" shall include the definition set forth in Section 102-356, and further include any person or entity that is hired by the alcoholic beverage establishment to distribute, mail or otherwise disseminate any invitation, flyer, poster, handbill or other marketing material in connection with a dance or entertainment event to occur on the premises of a business that is licensed to serve alcoholic beverages.

**SECTION 2. REPEALER.**

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

**SECTION 3. SEVERABILITY.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 4. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, 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, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**ATTEST:**

\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

(Sponsored by Mayor Dan Gelber)

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

Paul C. Guil      4/4/19  
City Attorney      Date  
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