

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 102-356 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.**

**WHEREAS**, the City of Miami Beach is an internationally renowned tourist destination; and

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

**WHEREAS**, dance and other entertainment events that take place during "high impact periods" (as such term is defined in Section 82-443 of the City Code), which periods may include, but are not limited to, New Year's Eve, Super Bowl Weekend, Spring Break, Gay Pride, Memorial Day Weekend, and Fourth of July, attract a tremendous number of visitors to the City; and

**WHEREAS**, prior to the commencement of these events occurring during high impact periods, the City and the event programmers work together to validate the event, and to mitigate potential issues such as traffic, crowd control, street closures, whether alcohol will be served, etc., through either the City's special events permitting process (i.e. New Year's Eve, Gay Pride, Fourth of July) or, where City venues are being utilized, through a written agreement with the City (i.e. Art Basel, Food and Wine Festival, Air and Sea Show); and

**WHEREAS**, there are, however, high impact periods (i.e. Winter Music Conference, Memorial Day, Spring Break), not subject to the City's special events permitting process, or which do not utilize a City venue (so there is no written agreement with the City); and

**WHEREAS**, high impact periods, such as Memorial Day and Spring Break, rely heavily upon attracting numerous patrons to these events, which are promoted and organized by third-party dance and entertainment promoter(s) at alcoholic beverage establishments; and

**WHEREAS**, a high concentration of these events occur in nightclubs, bars, and other alcoholic beverage establishments located within the City's "entertainment district," which has been traditionally identified as that area of Ocean Drive, from 5<sup>th</sup> to 16<sup>th</sup> Street, Collins Avenue, from 5<sup>th</sup> to 16<sup>th</sup> Street, and Washington Avenue, from 5<sup>th</sup> to 16<sup>th</sup> Street; and

**WHEREAS**, this "entertainment district" represents an area of the City with a higher than average, dense concentration of nightclubs, bars, and other alcoholic beverage establishments within this limited area; and

**WHEREAS**, consequently, during some high impact periods such as Memorial Day and Spring Break, these establishments attract large crowds to the area, challenging the public safety and quality of life in the surrounding neighborhoods; placing an enormous strain upon the City's resources; and causing numerous law enforcement issues and logistical challenges for the City; and

**WHEREAS**, these dance and entertainment events take place throughout a multitude of venues in the entertainment district every night during these high impact periods; and, again, the majority are the direct result of promoted events that attract a large number of individuals; and

**WHEREAS**, the event promoter industry has been radically transformed over the last decade through the utilization of the internet and other forms of social media, which enable event promoters to reach masses of people and attract ever-larger crowds to these promoted events; and

**WHEREAS**, these promoted dance and entertainment events are advertised and marketed on social media to the "college age" and "twenty-something" demographic, but also have the effect of also luring and enticing younger, underage patrons; and

**WHEREAS**, the allure of these promoted events may also result in facilitating and encouraging illegal behavior such as underage drinking, engaging in disorderly conduct, violating the occupancy limits of these alcoholic beverage establishments, and other conduct and disturbances creating a danger to the health, safety, and welfare of the public; and

**WHEREAS**, these promoted dance and entertainment events cause excessive noise and increased traffic (both vehicular and pedestrian congestion), thereby directly disturbing the quality of life in the surrounding neighborhoods, and negatively impacting nearby businesses and residents; and

**WHEREAS**, these events also result in excessive litter on City streets and surrounding commercial and residential common areas, from flyers, handbills, liquor bottles and cans, empty cups and straws, used drug paraphernalia, and other debris; and

**WHEREAS**, the associated overflowing of crowds upon the public streets and right of ways disturbs the tranquility and order of the surrounding areas (i.e., both business and residential); and

**WHEREAS**, the Mayor and City Commission desire to adopt the following amendments, to directly address, and hopefully alleviate, those problems and issues that are caused, directly and indirectly, by promoters of dance and entertainment events, within the entertainment district, occurring during high impact periods.

**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 to set forth the Definition of Promoter, as follows:

**CHAPTER 102  
TAXATION**

\* \* \*

**ARTICLE V. LOCAL BUSINESS TAX**

\* \* \*

**Sec. 102-356. Construction of article; definitions.**

All of the provisions of this article shall be construed liberally on behalf of the city. Words and terms not defined in this section shall be interpreted in accordance with their normal dictionary meaning and customary usage. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

\* \* \*

*Promoter* means any person who promotes a dance or entertainment event, ~~on the which is to occur or take place on the premises of a an alcoholic beverage establishment. business that is licensed to serve alcoholic beverages.~~ To promote a dance or entertainment event is to be involved in one or more of the following activities: (a) hiring any of the persons staffing the event (e.g., deejay, host, cashier, doorman, etc.); (b) hiring any of the persons to market and or advertise the event including, without limitation, disseminating information on the internet, social media, and other forms of electronic communications, and/or distributing or mailing invitations, flyers, posters, or other marketing materials in connection with such event; or (c) making the ultimate a decision concerning the cost of entrance to the event-, or (d) other activities which evidence that the person is directly or indirectly responsible for the organization of the dance or entertainment event. A promoter does not include (a) a the promotion of a dance or entertainment event by an alcoholic beverage establishment business, or any full-time employee of the that establishment business, that promotes a dance or entertainment event to occur on its premises (i.e. self-promotion) for which the business holds a valid city business tax receipt; (b) a 501(c) not-for-profit corporation, unless it is permitting the use of its temporary alcoholic beverage license by another business to the extent that the not-for-profit personally plans, prepares, or executes an event on its own behalf; on the premises of such other business; (c) a person who holds or promotes a private reception not open to the general public; (d) a person who is hired by a Ppromoter to host, plan or market a dance or entertainment event but exercises no other promoter related activities, as set forth herein; or (e) a person who sponsors, or allows his/her name to be used in connection with, a dance or entertainment event, provided such Person does not also Promote the event. but exercises no other promoter related activities, as set forth herein. The term promoter shall not be deemed to include the City of Miami Beach or any City-owned facility (including, without limitation,

the Miami Beach Convention Center, the Fillmore at the Jackie Gleason Theater of the Performing Arts, the Colony Theater, and the Botanical Garden) which is operated and managed by a third party pursuant to a written agreement with the City. A person or entity issued a City of Miami Beach 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 deemed to be a promoter under this section.

\* \* \*

**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, or for the full year commencing on October 1 and expiring on September 30 of the following year.
- (2) No business tax receipt shall be issued to a promoter for any event if such event is to occur during a high impact period, as designated by the City Manager pursuant to Section 82-443 of the City Code, and to be held at an alcoholic beverage establishment located in any of the following areas:
  - i. MXE mixed use entertainment district, excluding that portion of the MXE District located between 73rd and 75th Streets;
  - ii. that portion of the CD-2 commercial, medium intensity district between Pennsylvania Avenue and Collins Court, from 5th Street to 16th Street.
- (3) All annual Any business tax receipt(s) issued to promoters shall be suspended during high impact periods events, as specifically set forth and identified within subsection (2).
- (4) The provisions prohibiting the issuance of a business tax receipt set forth herein, shall not apply to those promoters that obtain a special event permit issued by the City Manager.

**[EDITOR'S NOTE: THE CITY MANAGER'S DETERMINATION OF A HIGH IMPACT PERIOD, SHOULD BE LIMITED TO A FINITE PERIOD ("72 HOURS"), UNLESS OTHERWISE EXTENDED BY THE MAYOR AND CITY COMMISSION. WE RECOMMEND INCLUDING THIS IN THE DEFINITION OF "HIGH IMPACT EVENTS."]**

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**Sec. 102-376. Business owner's responsibility/joint responsibility for violations.**

- (a) It shall be unlawful and a violation of this article for any person to operate or permit to operate upon his/her/its premises a business not currently taxed as required by this article.
- (b) Further, if a business rents, leases, contracts, assigns, or otherwise permits the use of its premises, or any portion thereof, by a promoter, then such business will be jointly responsible for all city code violation fines incurred by the promoter; provided, however, that if the promoter has a valid promoter business tax receipt and a bond, if any, has been posted by

the promoter pursuant to section 102-378, such bond shall first be used to pay any Code violation fines incurred as a result of the promoted dance or entertainment event.

\* \* \*

**Sec. 102-377. Penalties, enforcement; collection of delinquent fees and taxes, and criminal penalties.**

- (a) Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the offense which shall have a civil fine of \$1,000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d) herein.

The enforcement and appeal of the notice of violation shall be consistent with those requirements set forth in subsection 102-386(c)(2) and (3).

- (b) Any person who violates any other provision of this article shall be cited with a notice of violation as provided in subsection 102-386(c) of this Code, and may be subject to one or more of the following enforcement/collection procedures:

- (1) Suspension/revocation proceedings as set forth in sections 102-383 through 102- 385.
- (2) Suit for injunctive relief to enjoin operation of the business in violation of this article.

- (c) As an additional means of enforcement/collection and supplemental to the above, when a notice or record of any past-due business tax/fees and penalties that become due and payable to the city after the effective date of this section is recorded in the public records of the county, the notice shall constitute a special assessment lien upon all real and personal property of the business owing such fees and penalties, and shall remain a lien equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the property involved. Such liens may be foreclosed or levied upon in the manner provided by law.

- (d) In addition to the above, a continued violation of subsection 102-377(a) for a period of 30 days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

- (e) As an additional means of enforcement and supplemental to the above, if any person carries on or conducts any business for which a tax receipt is required by this article without first obtaining such tax receipt, then the city may prevent the business from operating until the required tax receipt is obtained.

- (f) An alcoholic beverage establishment that permits, allows, authorizes, grants, or approves the use of its premises by a promoter, who has violated the provision(s) of Section 102-360, shall be subject to the immediate closure of its business operations for the event duration.

**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

Underline denotes additions  
~~Strikethrough~~ denotes deletions  
Double underline denotes additions after First Reading

(Sponsored by Mayor Dan Gelber)

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

*Rafael E. Granado*      4/18/19  
City Attorney                      Date