


MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

FROM: Thomas R. Mooney, AICP 
Planning Director

SUBJECT: **PB 19-0329. Certificates of Use**

DATE: November 19, 2019

REQUEST

PB 19-0329. Certificates of Use. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "GENERAL PROVISIONS," BY AMENDING SECTION 114-1 THEREOF, ENTITLED "DEFINITIONS," TO MODIFY THE DEFINITION OF "CERTIFICATE OF USE"; AMENDING CHAPTER 118, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," BY AMENDING SECTION 118-2 THEREOF, ENTITLED "CERTIFICATES OF OCCUPANCY AND CERTIFICATE OF USE," TO ESTABLISH A CRITERIA FOR OBTAINING A CERTIFICATE OF USE, AND BY AMENDING SECTION 118-356 THEREOF, ENTITLED "REVOCATION OR MODIFICATION OF VARIANCE," FOR CONSISTENCY WITH THE AMENDMENTS MADE IN THE AFORESTATED SECTIONS; BY AMENDING CHAPTER 102, ENTITLED "LOCAL BUSINESS TAX," BY AMENDING SECTIONS 102-371 AND 102-372 THEREOF FOR CONSISTENCY WITH THE AMENDMENTS MADE IN THE AFORESTATED SECTIONS; BY AMENDING CHAPTER 14, ENTITLED "BUILDING REGULATIONS," BY AMENDING SECTION 14-404 THEREOF, ENTITLED "GROUNDS FOR SUSPENSION OR REVOCATION," BY PROVIDING THAT THE CITY MANAGER OR DESIGNEE MAY EITHER REVOKE OR TEMPORARILY SUSPEND THE CERTIFICATE OF USE IF CERTAIN CONDITIONS ARE PRESENT; AND, 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 October 16, 2019 the City Commission referred the item to the Planning Board for review and recommendation (item C4 P).

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.**

Not applicable - The proposed ordinance amendment does modify the scale of development in the City.

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 – The need to address the complexity of the City's BTR process and facilitate a streamlines process of obtaining a certificate of use makes the passage of the proposed change necessary.

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

Not Applicable – The proposed ordinance amendment will not affect living conditions in the city.

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.**

Not Applicable – 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.**

Not Applicable – The proposed change will not affect light and air to adjacent areas.

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

Not Applicable – The proposed change will not have any impact on property values.

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

Not Applicable – The proposed change should will not affect 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.**

Not applicable.

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.**

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

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

Not Applicable – The proposal will have no effect on 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.**

Not Applicable – The proposal does not affect the City's sea level rise mitigation and resiliency efforts.

ANALYSIS

The City has received various customer complaints regarding the complexity of the City's Business Tax Receipt ("BTR") process, and the impact it has had on the multitude of business operations in the City. After an evaluation by staff, it was determined that the combined processes, compared to the surrounding municipalities, confused the timeline for review and issuance. This confusion resulted in complaints and non-compliance. To remediate and provide clarity, the BTR should be assessed and collected solely as tax for doing business in the city. Bifurcating it from the Certificate of Use ("CU") allows a business' "use" to be reviewed separate from the collection of BTR fees and establishes the CU as the mechanism for enforcement.

In order to provide customers with clear steps, expectations, and a thorough explanation of their

requirements for properly operating within the City, the application process is being bifurcated to clearly delineate the distinctions between a BTR and a CU. To properly facilitate a streamlined process of obtaining a CU and a BTR, the amendments to the City's Land Development Regulations ("LDR") are necessary to accomplish the above objectives. In summary, those provisions of the LDR which have been modified, deleted, or otherwise altered in order to streamline and clarify the process of obtaining a certificate of use, are proposed as follows:

1. The term "certificate of use," as defined in Section 114-1 of the City Code, was modified to grant the city manager or designee the sole authority to issue a certificate of use. Consequently, Section 118-356(d) was amended to replace "code compliance director (or his/her successor in interest with respect to the issuance of occupation licenses and certificates of use" with "the city manager or designee" to reflect the modification in Section 114-1.
2. Section 118-2 of the City Code, entitled "Certificated of occupancy and certificate of use" was amended to create subsection 118-2(2) to provide for types of buildings or premises or part thereof that require a certificate of use. Consequently, for consistency, Sections 102-371 and 102-372 of the City Code were amended to replace an outdated section of the City Code referring to a certificate of use with the newly created Section 118-2(2) of the City Code.

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.

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "GENERAL PROVISIONS," BY AMENDING SECTION 114-1 THEREOF, ENTITLED "DEFINITIONS," TO MODIFY THE DEFINITION OF "CERTIFICATE OF USE"; AMENDING CHAPTER 118, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," BY AMENDING SECTION 118-2 THEREOF, ENTITLED "CERTIFICATES OF OCCUPANCY AND CERTIFICATE OF USE," TO ESTABLISH A CRITERIA FOR OBTAINING A CERTIFICATE OF USE, AND BY AMENDING SECTION 118-356 THEREOF, ENTITLED "REVOCATION OR MODIFICATION OF VARIANCE," FOR CONSISTENCY WITH THE AMENDMENTS MADE IN THE AFORESTATED SECTIONS; BY AMENDING CHAPTER 102, ENTITLED "LOCAL BUSINESS TAX," BY AMENDING SECTIONS 102-371 AND 102-372 THEREOF FOR CONSISTENCY WITH THE AMENDMENTS MADE IN THE AFORESTATED SECTIONS; BY AMENDING CHAPTER 14, ENTITLED "BUILDING REGULATIONS," BY AMENDING SECTION 14-404 THEREOF, ENTITLED "GROUNDS FOR SUSPENSION OR REVOCATION," BY PROVIDING THAT THE CITY MANAGER OR DESIGNEE MAY EITHER REVOKE OR TEMPORARILY SUSPEND THE CERTIFICATE OF USE IF CERTAIN CONDITIONS ARE PRESENT; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach has the authority to enact laws which promote the public health, safety, and general welfare of its citizens; and

WHEREAS, the City has received various customer complaints regarding the complexity of the City's Business Tax Receipt ("BTR") process, and the impact it has had on the multitude of business operations in the City; and

WHEREAS, in order to provide customers with clear steps, expectations, and a thorough explanation of their requirements for properly operating within the City, application process is being bifurcated to clearly delineate the distinctions between a BTR and a Certificate of Use ("CU"); and

WHEREAS, to properly facilitate a streamlined process of obtaining a CU and a BTR, the amendments to the City's Ordinances is necessary to accomplish the above objectives.

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

SECTION 1. That Section 114-1 of Chapter 114 of the Code of the City of Miami Beach is hereby amended as follows:

CHAPTER 114
GENERAL PROVISIONS

Sec. 114-1. Definitions.

* * *

Certificate of occupancy means a document issued by the building official allowing the occupancy of a building and certifying that the structure has been constructed in compliance with all applicable codes, regulations and ordinances.

Certificate of use means a document issued by the city manager or designee ~~fire department, department of code compliance~~ allowing the use of a building and certifying that the use is in compliance with all applicable city codes, regulations and ordinances.

* * *

SECTION 2. That Sections 118-2 and 118-356 of Chapter 118 of the Code of the City of Miami Beach are hereby amended as follows:

CHAPTER 118
ADMINISTRATION AND REVIEW PROCEDURES

ARTICLE I. In General

* * *

Sec. 118-2. Certificates of occupancy and certificate of use.

(1) General.

(a) No building or structure, or part thereof, or premises, which are hereafter erected or altered, or changed in occupancy, or land upon which a new or different use is established, shall be occupied or used until a certificate of occupancy and certificate of use shall have been applied for and issued.

(b) Certificates of occupancy and certificates of use shall not be issued until the premises have been inspected and found to comply with all requirements of the Code of the city and of these land development regulations, and with the requirements of all other agencies having regulatory authority over the project.

(c) A record of all certificates of occupancy issued hereunder shall be kept on file in the office of the building official.

(d) A record of all certificates of use issued hereunder shall be kept on file in the department of code compliance.

(e) All applications for certificates of occupancy shall be approved or disapproved within three days following application.

(2) Certificate of use.

(a) No new building or premises or part thereof, except one-family and two-family residences, shall be occupied until a certificate of use is issued by the city. Certificates of use shall not be issued until the premises have been inspected and found to comply with all requirements of this Code.

1. Apartment buildings, hotels and other multiple residential occupancies containing three or more units and occupied by only residential tenants shall require one certificate of use. Where these occupancies contain commercial activities in addition to residential tenants, an additional certificate of use for each commercial activity contained in the building shall be required.

2. Industrial, office and commercial buildings being occupied by a single tenant shall require one certificate of use. If an industrial, office or commercial building contains more than one tenant, an additional certificate of use shall be required for each unit occupied therein.

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ARTICLE VIII. Procedure for Variances and Administrative Appeals

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Sec. 118-356. Revocation or modification of variance.

(a) The applicable board may revoke or modify a variance pursuant to the following procedures:

(1) The planning director shall notify the applicant by certified mail of the failure to comply with the conditions of the variance.

(2) If, after expiration of a 15-day cure period (commencing on the date of the notice), the applicant fails to comply with the conditions, or the applicant has exhibited repeated or intermittent noncompliance with the conditions prior to the cure period and the planning director is concerned about further repeated or intermittent noncompliance, the planning director shall advise the board at the next meeting and the board may consider setting a public hearing for the purpose of examining the noncompliance issues.

(3) If the board elects to set a public hearing, the planning director shall place the matter on the board's agenda in a timely manner and all notice requirements imposed for variance applications as set forth in section 118-134 shall be applicable, with the addition of notice to the applicant.

(4) The applicable board shall hold a public hearing to consider the issue of noncompliance and the possible revocation or modification of the variance, and, based on substantial competent evidence, the board may revoke the variance, modify the conditions thereof, or impose additional or supplemental conditions.

- (b) In determining whether substantial competent evidence exist to support revocation, modification or the imposition of additional or supplemental conditions to the variance, intermittent noncompliance with the conditions, as well as the frequency, degree and adverse impact of such intermittent noncompliance, may be considered by the board.
- (c) In the event the board takes any of the enforcement actions authorized in this subsection, the applicant shall reimburse the planning department for all monies expended to satisfy notice requirements and to copy, prepare or distribute materials in anticipation of the public hearing. The applicant shall not be permitted to submit a new application (for related or unrelated matters), nor shall an application be accepted affecting the subject property (for related or unrelated matters), for consideration by the board of adjustment, planning board, design review board, or historic preservation board, or the design review/historic preservation board until repayment in full of all monies due and payable pursuant to this subsection (c).
- (d) In addition to all other enforcement actions available to the board, based upon a board finding that the applicant has failed to comply with the conditions of the variance, the board may recommend that the city manager or designee code compliance director ~~(or his/her successor in interest with respect to the issuance of occupational licenses and certificates of use)~~, in his/her discretion, revoke or suspend the certificate of use for the subject property and/or the applicant's occupational license applicable to the business conducted at the subject property.

* * *

SECTION 3. That Sections 102-371 and 102-372 of Article V of Chapter 102 of the Code of the City of Miami Beach are hereby amended as follows:

CHAPTER 102

TAXATION

* * *

ARTICLE V. Local Business Tax

* * *

Sec. 102-371. - Application procedures.

* * *

- (f) *Obtaining certificate of use prior to issuance of business tax receipt.* Those businesses required to obtain a certificate of use pursuant to subsection 118-2(2) 44-66(3) of this Code must do so prior to the issuance of a business tax receipt. An issued certificate of use will expire should the applicant fail to obtain a business tax receipt within 90 days from the issuance of the certificate of use.

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Sec. 102-372. Grounds for denial.

* * *

(6) That the applicant has failed to obtain a certificate of use as required by subsection 118-2(2) 44-66(3) of this Code.

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SECTION 4. That Section 14-404 of Article VII of Chapter 14 of the Code of the City of Miami Beach is hereby amended as follows:

CHAPTER 14

BUILDING REGULATIONS

* * *

ARTICLE VII. Permits Applied For on or After March 1, 2002

* * *

Sec. 14-404. Grounds for suspension or revocation.

The city manager or designee ~~special master~~ shall either revoke or temporarily suspend the certificate of use of any owner/applicant where it is determined by the city manager or designee ~~special master~~ that:

- (1) The owner/applicant has misrepresented or failed to disclose material information required by this article to be included in the certificate of use application form.
- (2) The owner/applicant, as part of the owner/applicant's business activity within the city, is engaged in conduct that is an actual threat to the public health, welfare or safety.
- (3) The owner/applicant is conducting business from premises that do not possess a valid and current certificate of occupancy as may be required by city or county laws.
- (4) Habitual conduct has occurred at the owner/applicant's premises that violates city, county or state law.
- (5) The certificate of use issued by the city depended upon the owner/applicant's compliance with specific provisions of federal, state, city or county law, and the owner/applicant has violated such specific provisions of law.
- (6) The owner/applicant has violated any provision of this article and has failed or refused to cease or correct the violation after notification thereof.
- (7) The owner/applicant, as part of the owner/applicant's business activity within the city, knowingly lets, leases or gives space for unlawful gambling purposes at the owner/applicant's premises.
- (8) The owner/applicant, within the preceding five years in this state, any other state, or the United States, has been adjudicated guilty of or forfeited a bond when charged with soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in narcotics.

- (9) The premises have been condemned by the local health authority for failure to meet sanitation standards or the premises have been condemned by the local authority because the premises are unsafe or unfit for human habitation.
- (10) The owner/applicant's premises have been found to constitute a public nuisance by the nuisance abatement board.

The suspension or revocation shall be of the certificate of use in effect at the date of such suspension or revocation, even though it may have been issued to an owner/applicant other than the person who held the certificate of use at the time the cause for such suspension or revocation arose. No certificate of use shall be suspended or revoked under this section for a period of more than 12 months. No new certificate of use shall be issued to the owner/applicant, or to any other firm in which the owner/applicant or any of its general partners, limited partners or shareholders owning 20 percent or more of its shares, or its agents or employees when such persons are actively involved in the business under revocation/suspension and had knowledge of the violations which caused the suspension/regulation is interested, for any premises during the term of such suspension or revocation. At the end of such period of suspension or revocation, the owner/applicant may apply for a new certificate of use.

* * *

SECTION 5. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6. SEVERABILITY.

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

SECTION 7. 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 re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 8. EFFECTIVE DATE.

This Ordinance shall take effect on the ____ day of _____, 2020.

PASSED AND ADOPTED this ____ day of _____, 2020.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions

~~Strikethrough~~ denotes deletions

(Sponsored by Vice-Mayor Ricky Arriola)