

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: November 17, 2020

FROM: Thomas R. Mooney, AICP  
Planning Director

SUBJECT: **PB20-0392 - 200 S Pointe Drive – Oche Miami**

An application has been filed for a Neighborhood Impact Establishment with an occupant content in excess of 200 persons pursuant to Chapter 118, Article IV, and Chapter 142, Articles II and V of the City Code.

#### **RECOMMENDATION**

Approval with conditions

#### **BACKGROUND**

August 24, 2020: The Planning Board discussed and transmitted an ordinance amending the regulations for Neighborhood Impact Establishments (NIE) in the R-PS4 district to the City Commission with a favorable recommendation (see attached ordinance.)

September 16, 2020: The City Commission approved the ordinance on first reading (item R5K). Second reading / adoption is scheduled for November 18, 2020.

#### **ZONING/SITE DATA**

<b>Legal Description:</b>	See exhibit "A"
<b>Zoning District:</b>	R-PS4 (Residential Performance Standard, High Density)
<b>Future Land Use Designation:</b>	R-PS4 (High Density Residential Performance Standard)
<b>Surrounding Uses:</b>	North: Mixed-use Commercial Establishments South: Park West: Residential Multifamily East: Mixed-use Commercial Establishments

#### **THE PROJECT**

The applicant, Oche Miami, LLC, has submitted plans entitled "Oche Miami Restaurant". The proposal is for a restaurant, with alcohol service, to occupy the existing two-story commercial building at 200 S. Pointe Drive.

Page A 3.1 of the plans, prepared by AW Architects, provides the proposed ground floor plan with a gaming area with 89 interior seats and a restaurant area with 110 interior seats for a total of 199 seats, and an occupancy load of 399 on the ground floor (page A 2.1). Note that the accessible

seats and existing open outdoor patio seats were not counted.

Page A 3.3 of the plans provides the proposed terrace floor plan with 196 outdoor seats and an occupancy load of 250, which is the maximum occupancy load permitted with the pending ordinance (see analysis). The kitchen, preparation and back of house areas are located on the ground floor.

Based upon the plans and exhibits provided with the application, the total occupancy load projected is 649 persons. An occupant content of more than 299 without entertainment constitutes a Neighborhood Impact Establishment (NIE).

**COMPLIANCE WITH CONDITIONAL USE REVIEW GUIDELINES:**

Conditional Uses may be approved in accordance with the procedures and standards set forth in the City Code Art. 4, Sec. 118-191 and Sec. 118-192:

- 1. The Use is consistent with the Comprehensive Plan or Neighborhood Plan if one exists for the area in which the property is located.**

**Consistent** – The request is consistent with the permissible uses in the High Density Residential Performance Standard Category (R-PS4) as designated on the Future Land Use Map within the Comprehensive Plan.

- 2. The intended Use or construction would not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan**

**Consistent** – The proposal should not result in an impact that would exceed the thresholds for the levels of service as set forth in the Comprehensive Plan.

- 3. Structures and uses associated with the request are consistent with these Land Development Regulations.**

**Consistent** –Neighborhood Impact Establishments are permitted as conditional uses in this zoning district. This comment shall not be considered final zoning review or approval. This and all zoning matters shall require final review and verification prior to the issuance of a Building Permit.

- 4. Public health, safety, morals and general welfare would not be adversely affected.**

**Consistent** – The proposed establishment may adversely affect the general welfare of nearby residents if noise and other issues are not controlled. The facility would have to comply with all applicable laws and regulations for licensure.

- 5. Adequate off-street parking facilities would be provided.**

**Partially Consistent** – There are no parking spaces on site and the applicant will utilize valet parking services. Additionally, there are public parking facilities and street parking adjacent to the site. See the detailed traffic study prepared by Alfka, LLC.

Any deficiencies with the parking requirement will have to be addressed with a fee in lieu at the time of permit and BTR issuance.

- 6. Necessary safeguards would be provided for the protection of surrounding**

**property, persons, and neighborhood values.**

**Consistent** – Staff is recommending conditions to mitigate any adverse impacts from noise and other issues on the surrounding neighbors.

- 7. The concentration of similar types of uses would not create a negative impact on the surrounding neighborhood. Geographic concentration of similar types of conditional uses should be discouraged.**

**Partially Consistent** – There are other restaurants within the vicinity, neighborhood impact establishments are permitted in the R-PS4 Zoning District as a conditional use. If not carefully controlled, such concentration could negatively impact the surrounding neighborhood.

**NEIGHBORHOOD IMPACT ESTABLISHMENT REVIEW GUIDELINES**

In accordance with Sec. 142-1362 of the Miami Beach City Code, in reviewing an application for an outdoor entertainment establishment, open air entertainment establishment or a neighborhood impact establishment, the Planning Board shall apply the following supplemental review guidelines criteria in addition to the standard review guidelines for conditional uses pursuant to chapter 118, article IV:

- 1. An operational/business plan which addresses hours of operation, number of employees, menu items, goals of business, and other operational characteristics pertinent to the application.**

The operational plan was submitted with the application including details of hours for deliveries, hours of operation, number of employees, and other procedures.

- 2. A parking plan which fully describes where and how the parking is to be provided and utilized, e.g., valet, self-park, shared parking, after-hour metered spaces and the manner in which it is to be managed.**

There are no parking spaces on site and the applicant will utilize valet parking services. Additionally, there are adequate public parking facilities and street parking adjacent to the site. See the detailed traffic Assessment prepared by Kimley Horn, Inc.

- 3. An indoor/outdoor crowd control plan which addresses how large groups of people waiting to gain entry into the establishment, or already on the premises would be controlled.**

A crowd control plan was included with the application. Staff is proposing conditions to mitigate any potential issues with crowd control and queuing in the outdoor areas and sidewalk.

- 4. A security plan for the establishment and any parking facility, including enforcement of patron age restrictions.**

The applicant has indicated that there will be cameras to monitor the facility and alcohol patronage age restrictions will be performed by reception and wait staff.

- 5. A traffic circulation analysis and plan which details the impact of projected traffic on the immediate neighborhood and how this impact is to be mitigated.**

A traffic study was provided.

**6. A sanitation plan which addresses on-site facilities as well as off-premises issues resulting from the operation of the establishment.**

Staff has included recommended conditions to mitigate any potential issues related sanitation operations.

**7. A noise attenuation plan which addresses how noise would be controlled to meet the requirements of the noise ordinance.**

A sound study was not required, as no outdoor or open-air entertainment is proposed.

**8. Proximity of proposed establishment to residential uses.**

The project is surrounded by commercial and residential uses. The Continuum the Portofino and the South Pointe Tower are the closest buildings with residential uses.

**9. Cumulative effect of proposed establishment and adjacent pre-existing uses.**

There are other restaurants within the vicinity in this district. If not carefully controlled, such concentration could negatively impact the surrounding neighborhood.

**COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(a) of the Land Development establishes review criteria for sea level rise and resiliency that must be considered as part of the review process for board orders. The following is an analysis of the request based upon these criteria:

1. A recycling or salvage plan for partial or total demolition shall be provided.  
**Satisfied.** The applicant shall provide a recycling or salvage plan as part of any building permit.
2. Windows that are proposed to be replaced shall be hurricane proof impact windows.  
**Satisfied.** Windows are hurricane impact windows.
3. Where feasible and appropriate, passive cooling systems, such as operable windows, shall be provided.  
**Not applicable.** Existing Building
4. Whether resilient landscaping (salt tolerant, highly water-absorbent, native or Florida friendly plants) will be provided.  
**Satisfied.** Per letter of intent, the applicant will preserve the Florida friendly plants.
5. Whether adopted sea level rise projections in the Southeast Florida Regional Climate Action Plan, as may be revised from time-to-time by the Southeast Florida Regional Climate Change Compact, including a study of land elevation and elevation of surrounding properties were considered.  
**Satisfied.**
6. The ground floor, driveways, and garage ramping for new construction shall be adaptable to the raising of public rights-of-ways and adjacent land.  
**Not Applicable.**

7. Where feasible and appropriate, all critical mechanical and electrical systems shall be located above base flood elevation.  
**Satisfied.** All critical mechanical and electrical systems will be located above BFE.
8. Existing buildings shall be, where reasonably feasible and appropriate, elevated to the base flood elevation.  
**Satisfied.** The existing building was constructed above BFE.
9. When habitable space is located below the base flood elevation plus City of Miami Beach Freeboard, wet or dry flood proofing systems will be provided in accordance with Chapter of 54 of the City Code.  
**Not Applicable.**
10. Where feasible and appropriate, water retention systems shall be provided.  
**Not Applicable.**
11. Cool pavement materials or porous pavement materials shall be utilized.  
**Not Applicable.**
12. The design of each project shall minimize the potential for heat island effects on-site.  
**Not Applicable.**

## **ANALYSIS**

### **Project Description and Operations**

The proposal is for the renovation of an existing restaurant space formerly occupied by Cibo. The applicant is proposing to operate a restaurant serving alcoholic beverages, as well as provide space for dart games. Based upon the exhibits provided in the application, the total projected occupancy load is 649 with alcohol service. Per Section 142-1361 of the Land Development Regulations, an alcoholic beverage establishment, including a restaurant, which is not operating as an entertainment establishment or dance hall, and has an occupant content of 290 or more persons constitutes a Neighborhood Impact Establishment (NIE).

As per the plans, letter of intent, operational plan and pending code amendment, the following is a breakdown of the areas, the occupancy, and the proposed hours:

LOCATION	SEATING	OCCUPANCY	PROPOSED HOURS
Ground floor restaurant	Bar:	399	<b>Monday - Sunday:</b>
	8		11:00 a.m. to 2:00 a.m.
	Dining area:		<b>Outdoor seating area:</b>
	102		11:00 a.m. to 12:00 a.m.
	Outdoor area:		
	Data not provided		
	110		
Ground floor gaming area	89		
Roof top		Per recent approved code amendment:	<b>Monday - Sunday:</b>
	196	250	11:00 AM to 8:00 PM
<b>TOTAL:</b>	395	649	

On the ground floor, the accessible seating areas and outdoor seats were not counted and will have to be incorporated into a revised seating and occupancy load data. To comply with the recently approved amendment to the code, the upper level cannot exceed a patron-occupancy load of 250. The occupancy load takes into consideration the total area of the space, layout configuration, life safety, means of egress, and is subject to a final determination by the Fire Marshall. The proposed roof top plan, as presented, appears to contain a higher occupancy load than the proposed 250, and will have to be revised to comply with the maximum requirements.

The Recently approved code amendment for R-PS4 zoning district has additional regulations for alcoholic beverage establishments and Neighborhood Impact Establishments as follows:

1. A maximum patron-occupant load of no more than 250 individuals located on an open level above the ground floor. The patron-occupant load shall be determined by the Fire Marshall;
2. The open level above the ground floor shall not be occupied past 8:00 PM;
3. Outdoor music and television sets, whether amplified or nonamplified, shall be prohibited in open level above the ground floor;
4. Outdoor bar counters shall be prohibited;
5. Special event permits are prohibited;
6. Notwithstanding the prohibition set forth in 142-693(i)(2), alcoholic beverages are permitted in this open level above the ground floor permitted by this subsection until 8:00 PM; and
7. Any open area above the ground floor shall only be open when the restaurant is open serving full meals.
8. With regard to ground floor outdoor areas the following restrictions shall apply:
  - a. Outdoor bar counters shall be prohibited;
  - b. There shall be no issuance of any special event permit for this area;
  - c. This area shall not be occupied past 12:00 AM midnight.
9. With regard to the interior area of this separate accessory use building, as defined herein, the following restrictions shall apply:
  - a. The area shall not be occupied past 2:00 AM;
  - b. There shall be no issuance of any special event permit for this area.

A copy of the full ordinance is attached, for informational purposes. Additionally, any and all music within the confines of the venue will be limited to background music only, to be played at a volume that does not interfere with normal conversation.

### **Deliveries and Sanitation**

The operations plan indicates that all deliveries will be made from the existing loading area at the rear of the property for trucks less than five (5) ton, for a larger than five (5) ton truck the delivery will occur from the existing loading space along South Pointe Drive and will occur between 8 a.m. and 12 p.m.

Refuse collection will be made from the terminus of the service road on the southside of the Portofino and South Pointe Tower. The only time indicated on the operational plan is that weekend collections will not occur before 9:00 a.m. to prevent neighborhood disturbance.

Staff has recommended conditions in the attached draft order to ensure that the impacts of the operations are minimized.

### **Valet Parking and Access**

Patrons arriving as passengers in automobiles or for valet drop off will use the valet station located on South Pointe Drive. Access to the property for all costumers is from the main entrance located on the north side of the building on South Pointe Drive.

### **Security and Crowd Control**

The applicant is proposing to have a host desk at the front of the property, and no security personnel is proposed during operating hours. There will be cameras to monitor the facilities. Access to the rooftop will be limited to guests utilizing dining seats to ensure no congregation of standing patrons occur and to comply with the recently approved code amendment.

The operational plan is silent on patron age limitations, queueing and crowd control on the ground floor. Staff has recommended conditions in the attached draft order to address this.

### **STAFF RECOMMENDATION**

In view of the foregoing analysis, staff recommends that the application be approved subject to the conditions enumerated in the attached Draft Order.

## EXHIBIT“ A”

### Legal Description

Commence (P.O.C.) at the Southeasterly corner of Biscayne Street (formerly Biscayne Avenue) and Washington Avenue, as said Street and Avenue are shown on the SOUTH BEACH PARK SUBDIVISION, recorded in Plat Book 6, Page 77, of the Public Records of Miami - Dade County, Florida, and run South  $10^{\circ} 47' 35''$  West, along the Easterly line of said Washington Avenue, a distance of 6.16 feet to a point on the Southerly line of a 6.00 foot Roadway Dedication, said Dedication recorded in Official Records Book 12566, Page 2914, of the Public Records of Miami - Dade County, Florida; thence run North  $87^{\circ} 38' 57''$  East, along the Southerly line of said 6.00 foot Dedication, along the existing Southerly line of Biscayne Street, as expanded by said 6.00 foot Dedication, a distance of 566.28 feet to the Point of Beginning of the following described parcel of land; thence continue North  $87^{\circ} 38' 57''$  East, along the last described course, for a distance of 69.34 feet to a point; thence run South  $01^{\circ} 10' 37''$  West for a distance of 212.06 feet to a point; thence run South  $04^{\circ} 09' 08''$  West for a distance of 25.56 feet to a point; thence run North  $85^{\circ} 50' 52''$  West for a distance of 4.33 feet to a point; thence run South  $04^{\circ} 09' 08''$  West for a distance of 15.63 feet to a point; thence run South  $62^{\circ} 18' 04''$  West for a distance of 15.52 feet to a point; thence run South  $27^{\circ} 41' 56''$  East for a distance of 4.33 feet to a point; thence run South  $62^{\circ} 18' 04''$  West for a distance of 36.38 feet to a point; thence run North  $27^{\circ} 41' 56''$  East for a distance of 68.49 feet to a point; thence run North  $62^{\circ} 18' 04''$  East for a distance of 2.00 feet to a point; thence run North  $27^{\circ} 41' 56''$  West for a distance of 8.33 feet to a point; thence run North  $26^{\circ} 10' 10''$  East for a distance of 60.35 feet to a point; thence run North  $02^{\circ} 21' 03''$  West for a distance of 154.92 feet to the Point of Beginning.

Said lands lying and being in Section 10, Township 54 South, Range 42 East, City of Miami Beach, Miami-Dade County, Florida.



**EXHIBIT “ B”**

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

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED “LAND DEVELOPMENT REGULATIONS,” BY AMENDING CHAPTER 142 OF THE CITY CODE ENTITLED “ZONING DISTRICTS AND REGULATIONS,” ARTICLE II, ENTITLED “DISTRICT REGULATIONS,” DIVISION 18, ENTITLED “PS PERFORMANCE STANDARD DISTRICT,” BY AMENDING SECTION 142-693, ENTITLED “PERMITTED USES,” TO PERMIT NEIGHBORHOOD IMPACT ESTABLISHMENTS AS A CONDITIONAL USE WHEN SUCH USE IS AN ACCESSORY TO OCEANFRONT APARTMENT BUILDINGS WITH 300 UNITS MORE, AND TO FURTHER PERMIT SUCH NEIGHBORHOOD IMPACT ESTABLISHMENTS APPROVED BY THE PLANNING BOARD AS A CONDITIONAL USE TO OPERATE OPEN AREAS ABOVE THE GROUND FLOOR WITH A MAXIMUM PATRON-OCCUPANT LOAD OF 250 PERSONS, SUBJECT TO SPECIFIC USE LIMITATIONS INTENDED TO PREVENT IMPACTS ON NEIGHBORING RESIDENTIAL COMMUNITIES, AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.**

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

**WHEREAS**, the City seeks to encourage investment in restaurants and social dining; and

**WHEREAS**, the current R-PS4 regulations permit neighborhood impact establishments in a limited way; and

**WHEREAS**, the current R-PS4 Zoning District regulations limit the patron-occupant load of areas above the ground floor to 40 persons; and

**WHEREAS**, certain properties in the R-PS4 district contain occupancies that meet the definition of neighborhood impact establishment and operate with a patron-occupant load of more than 40 persons above the ground floor; and

**WHEREAS**, Oche Miami, LLC (“Oche”) seeks to operate a novel social dining concept from Norway featuring high-end dining and darts within a property in the R-PS4 district, and with a patron-occupant load that is consistent with the definition of neighborhood impact establishment; and

**WHEREAS**, the amendments set forth below are necessary to accomplish all of the above objectives.

**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," at Article II, entitled "District Regulations," at Division 18, entitled "PS Performance Standard Districts" of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

Sec. 142-693. - Permitted uses.

(a) The following uses are permitted in the performance standard districts:

General Use Category	R-PS 1, 2	R-PS 3, 4	C-PS 1, 2, 3, 4	RM-PS1
Single-family; townhome; apartment; apartment hotel pursuant to section 142-1105 of this chapter	P	P	P	P Apartment hotel not permitted
Hotel and suite hotels pursuant to section 142-1105 of this chapter	N	P	P	N
Hostel, pursuant to section 142-1105 of this chapter	N	N	Not permitted in C-PS1, C-PS2; Permitted in C-PS3 and C-PS4	N
Commercial	N	N	P	P 8% of floor area
Institutional	C	C	C	C 1.25% of floor area
Accessory outdoor bar counters, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property	N	N	P* North of 5th Street only.	N

<p>with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.</p>				
<p>Entertainment establishments, outdoor entertainment establishments, and open air entertainment establishments</p>	<p>N</p>	<p>N</p>	<p>N</p>	<p>N</p>
<p>Neighborhood impact establishments</p>	<p>N</p>	<p>N          However, in the R-PS4 district, this use is permitted, as an accessory use in oceanfront hotels with 250 or more hotel units, as a conditional use. Access to the establishment entrance shall be only from the interior lobby of the hotel and not from the street. <u>In addition, in the R-PS-4 district this use is also permitted as an accessory use to an oceanfront apartment building with more than 300 units that is adjacent to a park, as a conditional use, provided that the accessory use is located in a separate building from the primary use with a minimum</u></p>	<p>C</p>	<p>N</p>

		<u>square footage of 8,000 square feet.</u>		
Accessory	P* Alcoholic beverage establishments pursuant to the regulations set forth in chapter 6 are prohibited in the RPS-1 district, unless otherwise specified.	P*	P*	P*

P—Main permitted use    C—Conditional use    N—Not permitted

\* — Accessory use only

Floor area in the RM-PS1 district refers to total floor area in project. Commercial uses in RM-PS1 limited to stores and restaurants.

- (b) For purposes of this section, a car wash, filling station and any use that sells gasoline, automobiles or automotive or related repair uses are considered as industrial uses and are not permitted in the redevelopment area.
- (c) For purposes of this section, pawnshops and dance halls and entertainment establishments are not permitted as a main permitted or accessory use south of Fifth Street.
- (d) In the R-PS1, 2, 3 and 4 districts, the number of seats for accessory restaurants or bars that serve alcohol shall be limited to a maximum of 1.25 seats per hotel or apartment unit for the entire site. The patron occupant load, as determined by the planning director or designee, for all accessory restaurants and bars that serve alcohol on the entire site shall not exceed 1.5 persons per hotel and/or apartment unit. For a hotel or apartment property of 20 units or more, but less than 32 units, the restaurant or bar may have a maximum of 40 seats in the aggregate on the site. The number of units shall be those that result after any renovation.
- (e) Commercial and noncommercial parking lots and garages shall be considered as a conditional use in the R-PS1, 2, 3 and 4 districts.
- (f) Video game arcades shall be considered as a conditional use in the C-PS1, C- PS2, C-PS3, and C-PS4 districts.
- (g) New construction of structures 50,000 square feet and over in the C-PS1, 2 3, and 4 districts (even when divided by a district boundary line) shall be considered as a conditional use, which review shall be the first step in the process before the review by any of the other land development boards.
- (h) Religious institutions in R-PS1-4 and C-PS1-4 districts shall be permitted as a matter of right up to 199 occupancy, and over that occupancy shall be a conditional use.

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- (i) Additional regulations for alcoholic beverage establishments located south of 5th Street.
- (1) The following additional regulations shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located south of 5th Street:
- (i) Operations shall cease no later than 2:00 a.m., except as otherwise provided herein.
  - (ii) Operations in outdoor or open air areas of an alcoholic beverage establishment shall cease no later than 12:00 a.m., except as otherwise provided herein.
  - (iii) Alcoholic beverage establishments with sidewalk cafe permits shall only serve alcoholic beverages at sidewalk cafes during hours when food is served, shall cease sidewalk cafe operations no later than 12:00 a.m. (except as otherwise provided herein), and shall not be permitted to have outdoor speakers.
  - (iv) Outdoor bar counters shall be prohibited.
  - (v) No special events permits shall be issued.
  - (vi) The provisions of this subsection (i)(1) shall not apply, to the extent the requirements of this subsection are more restrictive, to an alcoholic beverage establishment with a valid business tax receipt that is in application status or issued prior to June 28, 2016; or an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired prior to June 28, 2016.
    - A. Existing sidewalk cafes issued a sidewalk cafe permit as of June 28, 2016, for alcoholic beverage sales after 12:00 a.m., with food service, may continue to be renewed, but shall not serve alcoholic beverages later than 1:30 a.m., and alcoholic beverages may not be consumed at sidewalk cafes after 2:00 a.m.
    - B. Should an alcoholic beverage establishment with a sidewalk cafe permit under (A), above, be delinquent in a payment obligation to the city, and/or receive two final adjudications of violations of section 12-5 (special event permit), section 46-152 (noise ordinance), or chapter 82, article IV, division 5 (sidewalk cafe ordinance), that alcoholic beverage establishment shall only be allowed to serve alcoholic beverages at its sidewalk cafe until 12:00 a.m. for a 12-month period.
- (2) Notwithstanding the uses permitted in (a) and (d) above, in all districts except GU, Government Use District, no alcoholic beverage establishment, or restaurant, may be licensed or operated as a main permitted, conditional, or accessory use in any open area above the ground floor (any area that is not included in the FAR calculations) located south of 5th Street, Except that:
- (i) Outdoor restaurant seating above the ground floor, not exceeding 40 seats, associated with indoor venues (except as provided under (iii) below) may be permitted until 8:00 p.m.
  - (ii) Outdoor music, whether amplified or nonamplified, and television sets shall be prohibited.
  - (iii) Oceanfront hotels in the R-PS4 district. For purposes of this subsection (iii), eastward-facing oceanfront portions of an open-air seating area shall be limited to the open area 50 feet west of the eastern boundary of the above-ground structure.
    - A. Oceanfront hotels in the R-PS4 district with at least 200 hotel units may have no more than 100 outdoor restaurant seats in open-air seating areas on one level that are located above the ground floor, of which at least half shall be

located on eastward-facing oceanfront portions of an open-air seating area, at which patrons shall be seated no later than 12:00 a.m., and the seating area shall be closed to the public no later than 1:30 a.m. Patrons shall not be seated in the remainder of any open-air seating areas in a particular hotel later than 11:00 p.m., and such seating areas shall be closed to the public no later than 12:00 a.m. Seating on the main roof shall not be permitted under any circumstances.

- B. Oceanfront hotels in the R-PS4 district with at least 100 hotel units, but less than 200 hotel units, may have no more than 50 outdoor restaurant seats in eastward-facing oceanfront portions of open-air seating areas that are located on one level above the ground floor, at which patrons shall be seated no later than 12:00 a.m., and the seating area shall be closed to the public no later than 1:30 a.m. Seating on the main roof shall not be permitted under any circumstances.

(iv) Oceanfront apartment buildings in the R-PS-4 district. Accessory uses approved as a conditional use to oceanfront apartment buildings with more than 300 units, located adjacent to a park and in a separate building from the primary use with a minimum square footage of 8,000 square feet shall be permitted subject to the following restrictions:

- a. A maximum patron-occupant load of no more than 250 individuals located on an open level above the ground floor. The patron-occupant load shall be determined by the Fire Marshall;
- b. The open level above the ground floor shall not be occupied past 8:00 PM;
- c. Outdoor music and television sets, whether amplified or nonamplified, shall be prohibited in open level above the ground floor;
- d. Outdoor bar counters shall be prohibited;
- e. Special event permits are prohibited;
- f. Notwithstanding the prohibition set forth in 142-693(i)(2), alcoholic beverages are permitted in this open level above the ground floor permitted by this subsection until 8:00 PM; and
- g. Any open area above the ground floor shall only be open when the restaurant is open serving full meals.
- h. With regard to ground floor outdoor areas the following restrictions shall apply:
  - i. Outdoor bar counters shall be prohibited;
  - ii. There shall be no issuance of any special event permit for this area;
  - iii. This area shall not be occupied past 12:00 AM midnight.
- i. With regard to the interior area of this separate accessory use building, as defined herein, the following restrictions shall apply:
  - i. The area shall not be occupied past 2:00 AM;
  - ii. There shall be no issuance of any special event permit for this area.

(v) Other than as permitted in subsection (i)(2)(iii), no commercial activity may be permitted on areas as described in this subsection (i)(2) between the hours of 8:00 p.m. and 10:00 a.m.

- (vi) Nothing herein shall prohibit residents of a multifamily (apartment or condominium) building, or hotel guests and their invitees to use these areas as described in this subsection (i)(2), which may include a pool or other recreational amenities, for their individual, personal use.
- (3) Any increase to an alcoholic beverage establishment's approved hours of operation shall meet the requirements of this section.
- (4) Variances from this subsection (i) shall not be permitted. Special events shall not be permitted.

**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 Miami Beach City Code. 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 \_\_\_\_\_ 2020.

**PASSED** and **ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**ATTEST:**

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

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

APPROVED AS TO FORM  
AND LANGUAGE  
AND FOR EXECUTION

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

First Reading: September 16, 2020  
Second Reading:

Verified By: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director