

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: February 22, 2022

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB22-0483 - Mobility Fee Waiver for Restaurant and Sidewalk Cafes.**

RECOMMENDATION

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

HISTORY

On January 20, 2022, at the request of Commissioner Ricky Arriola, the City Commission referred the proposed Ordinance to the Planning Board for review and recommendation (item C4 AF).

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, as Policy TE 1.1.2 authorizes the City Commission to provide vesting and exceptions for Mobility Fees through the Land Development Regulations.

2. **Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

Consistent – The proposed amendment does not amend district boundaries nor create an isolated district unrelated to adjacent or nearby districts.

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

Consistent - The proposed ordinance amendment does not affect the scale of development within the affected 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 as the maximum floor area ratio (FAR) is not modified.

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 Covid-19 pandemic which lead to reductions in tourism and people dining out, lead to several restaurants within the City to reduce the number of sidewalk café seats in order to reduce their expenses. As tourism and dining-out has begun to return to normal, restaurants are looking to return to their previous scale. The desire to facilitate restaurants returning to their previous scale of operations in order to support the local economy makes passage of the proposed change necessary.

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 has been permitted in the prior two years.

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

Consistent – The proposed change does not modify height or setback limits and would not reduce light and air to adjacent areas beyond what is currently allowed.

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

Consistent – The proposed change will 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 will 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.**

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.**

Partially 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.**

Partially Consistent – The proposal does 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 is compatible with the City's sea level rise mitigation and resiliency efforts.

ANALYSIS

As a result of the Covid-19 pandemic, tourism and dining-out were greatly reduced, leading to significant losses of business for many of the restaurants within the City. In order to reduce expenses, many restaurants reduced their sidewalk café seating. Now that tourism and dining-out have returned to pre-pandemic levels, many of those restaurants are seeking to re-introduce the seating that had previously been removed.

Under the current code requirements for Mobility Fees, credit is only given for the use approved immediately prior to the request to increase. As a result of this, restaurants must pay a Mobility Fee to reintroduce seats that would have been permitted less than two years. The Mobility Fee for restaurants and sidewalk cafes is currently \$903.91 per seat. This results in an unfair burden to restaurants that were struggling to survive a global economic downturn.

In such a situation, the reintroduction of seats does not create a transportation impact that is beyond what was previously considered and mitigated against. To this end, the proposed

ordinance would provide credit for the highest number of legally established seats that existed in the two-years prior to the re-introduction of the seats. This additional credit is only provided if there was no intervening change of use or ownership. As a result, such restaurants would not be unfairly penalized with a mobility fee that likely was already paid in years prior.

The ordinance also provides related clarifications so that it is clear that existing credits apply for both concurrency mitigation and mobility fees and defining what is considered an active use.

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.

Mobility Fee Waiver for Restaurant and Sidewalk Cafes

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 BY AMENDING CHAPTER 122 OF THE LAND DEVELOPMENT REGULATIONS, ENTITLED "CONCURRENCY MANAGEMENT AND MOBILITY FEES," ARTICLE I, ENTITLED "PURPOSE AND GENERAL PROVISIONS," AT SECTION 122-2, ENTITLED "DEFINITIONS"; ARTICLE II, ENTITLED "CONCURRENCY," AT SECTION 122-12, ENTITLED "DETERMINATION OF CONCURRENCY," AND ARTICLE III, ENTITLED "MOBILITY FEES," AT SECTION 122-23, ENTITLED "IMPOSITION AND COLLECTION OF MOBILITY FEES," TO PROVIDE FOR A MOBILITY FEE CREDIT AND CAPACITY CREDIT FOR RESTAURANT AND SIDEWALK CAFÉ USES THAT HAVE REDUCED THE TOTAL NUMBER OF SEATS SUBSEQUENT TO THE INITIAL MOBILITY FEE AND/OR CONCURRENCY DETERMINATION FOR THE USE, AND PROVIDE FOR RELATED CLARIFICATIONS; AND PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; 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, many Miami Beach restaurants scaled back business operations during the COVID pandemic by reducing seat counts; and

WHEREAS, restaurants are increasing the number of seats to match what they were originally approved; and

WHEREAS, the City seeks to encourage investment in restaurants; 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 122 of the City Code, entitled "Concurrency Management and Mobility Fees," Article I, entitled "Purpose and General Provisions," at Section 122-2, entitled "Definitions," is hereby amended as follows:

Sec. 122-2. Definitions.

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Active use means an approved use that obtained a business tax receipt, certificate of occupancy, or other permit or issuance documenting that a use was or is legally operating. This definition does not include uses that are authorized through a special events permit.

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Capacity credit means a credit for certain existing or demolished improvements toward concurrency requirements for future development.

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Legally established use means the following:

- (1) For existing structures that have an active use, the current use shall be used as the basis for calculating capacity credits.
- (2) For vacant structures or structures undergoing construction, the last active use shall be used as the basis for calculating capacity credits.
- (3) For vacant land, the last active use shall be used as the basis for calculating capacity credits, provided the activity has not been inactive for more than ten years.
- (4) For restaurant and sidewalk café uses that previously reduced the total number of seats, the highest number of legally established seats that existed in the two (2) years prior to the re-introduction of seats shall be considered the legally established use for the purposes of calculating mobility fee credit and capacity credit, provided no intervening change of use or change of ownership occurred.

SECTION 2. Chapter 122 of the City Code, entitled “Concurrency Management and Mobility Fees,” Article II, entitled “Concurrency,” at Section 122-12, entitled “Determination of concurrency,” is hereby amended as follows:

Sec. 122-12. Determination of concurrency.

- (a) As part of an application for a development order that increases the density or intensity of a site, as applicable, each applicable review department shall make a determination of concurrency in accordance with section 122-26 as to whether required public facilities are or will be available when needed to serve the proposed development; determine the effective period during which such facilities will be available to serve the proposed development; and issue an invoice for necessary concurrency mitigation fees or identify other mitigation measures.
- (b) Capacity credits shall be given for a legally established use as follows: as defined in section 122-2.
 - ~~(1) For existing structures that have an active use, the current use shall be used as the basis for calculating capacity credits.~~
 - ~~(2) For vacant structures or structures undergoing construction, the last active use shall be used as the basis for calculating capacity credits.~~
 - ~~(3) For vacant land, the last active use shall be used as the basis for calculating capacity credits, provided the activity has not been inactive for more than ten years.~~

SECTION 3. Chapter 122 of the City Code, entitled “Concurrency Management and Mobility Fees,” Article III, entitled “Mobility Fees,” at Section 122-23, entitled “Imposition and collection of mobility fees,” is hereby amended as follows:

Sec. 122-23. Imposition and collection of mobility fees.

- (a) Mobility fees shall be assessed upon the issuance of a building permit or change of use for any development within the city. Mobility fees shall be calculated in the manner set forth in section 122-26 hereof and the mobility fee study referenced in section 122-22.
 - (1) Mobility fees assessed in connection with the issuance of a development order shall be collected and paid prior to or concurrent with the issuance of the building permit.
 - (2) Mobility fees assessed in connection with a change of use shall be collected and paid prior to issuance of the certificate of use, business tax receipt, or other similar approval. The mobility fee shall be computed at the difference between the rate established in the mobility fee schedule for the proposed use and the rate established in the mobility fee schedule for the ~~current~~ legally established use as defined in section 122-2.
- (b) Modifications to an existing use and changes of use which do not result in a higher assessment under the mobility fee schedule shall be exempted from payment of the mobility fee.
- (c) The city shall also require a site-specific multimodal transportation analysis and mitigation plan pursuant to the applicable land use board application requirements set forth in chapter 118.

SECTION 4. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

SECTION 5. 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 renumbered or relettered to accomplish such intention; and that the word “ordinance” maybe changed to “section” or other appropriate word.

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. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this _____ day of _____, 2022.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

First Reading: March____, 2022

Second Reading: April____, 2022

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

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