

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMITTEE MEMORANDUM

TO: Land Use and Sustainability Committee Members

FROM: Alina T. Hudak, City Manager

Eric Carpenter for

DATE: May 13, 2022

SUBJECT: **DISCUSS ESTABLISHMENT OF AN INCENTIVE PROGRAM TO MOTIVATE PROPERTY OWNERS TO CONVERT NUISANCE NON-CONFORMING ESTABLISHMENTS IN THE EXPANDED ART DECO CULTURAL DISTRICT, INCLUDING PACKAGE LIQUOR STORES, SMOKE SHOPS, AND TATTOO PARLORS.**

History:

On October 19, 2016, the City Commission adopted Ordinance No. 2016-4047, which prohibited package stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment within the Entertainment District (the "MXE"). Thereafter, on September 25, 2017, the City Commission adopted Ordinance No. 2017-4137, creating the Art Deco / MiMo Commercial Character Overlay District (the "Overlay"), to limit uses that detract from the historic character of the MXE district in South Beach and the Ocean Terrace/Harding Townsite area in North Beach.

The Overlay limits the number of, or prohibits, nuisance uses within its boundaries to improve the quality of businesses within the district. These uses include check cashing stores, pawn shops, pharmacy stores, convenience stores, occult science establishments, package stores, souvenir and t-shirt shops, tattoo studios, grocery stores, and tobacco/vape dealers. Based on the existing regulations within the Overlay, potential exists for such establishments to congregate in nearby commercial areas where such regulations currently do not exist. The potential is particularly prevalent along the Washington Avenue corridor and within the Collins Park neighborhood.

As a result of these ordinances and pursuant to Chapter 118, Article IX of the Land Development Regulations, many of the aforementioned legally established uses are legally nonconforming within the MXE and Overlay districts, as these uses conformed to the code at the time the districts were established. Consequently, legally existing nuisance uses remain and continue to impact the surrounding vicinity. These uses may continue as they are deemed active pursuant to limited specified criteria established in the City Code including:

1. A nonconforming use may not be enlarged, extended, intensified, or changed, except for a change to a use permitted in the district in which the property is located.
2. If there is an intentional and voluntary abandonment of a nonconforming use for a period of more than 183 consecutive days, or if a nonconforming use is changed to a conforming use, said use shall lose its nonconforming status. Thereafter, subsequent occupancy and use of the land, building, and/or structure shall

conform to the regulations of the districts in which the property is located and any structural alterations necessary to make the structure or building conform to the regulations of the district in which the property is located shall be required. An intentional and voluntary abandonment of use includes, but is not limited to, vacancy of the building or structure in which the nonconforming use was conducted, or discontinuance of the activities consistent with or required for the operation of such nonconforming use.

3. The planning director or designee shall evaluate the evidence of an intentional and voluntary abandonment of a nonconforming use and determine the status of the nonconforming use. In order for a nonconforming use to retain a nonconforming status, the evidence, collectively, shall at a minimum demonstrate at least one of the following:(1) Continual operation of the use or (2) Continual possession of any necessary and valid state and local permits, building permits, licenses, or active/pending application(s) for approval related to prolonging the existence of the use.
4. Evidence of an intentional and voluntary abandonment of a nonconforming use may include, but shall not be limited to:(1) Public records, including those available through applicable City of Miami Beach, Miami-Dade County, and State of Florida agencies;(2) Utility records, including water/sewer accounts, solid waste accounts, and electrical service accounts;(3) Property records, including executed lease or sales contracts.

On December 8, 2021, at the request of Commissioner Alex Fernandez, the City Commission made a dual referral of the proposed Code amendment to the Land Use and Sustainability Committee and Planning Board. The amendment proposed to expand the Overlay to include properties along Washington Avenue and Collins Avenue, from 5th Street to 23rd Street. This expansion primarily prohibits the aforementioned uses and certain uses with a distance separation requirement.

On May 4, 2022, the City Commission approved the Ordinance amendment at Second Reading, to expand the boundaries of the Overlay to include Washington Avenue and portions of the Collins Park neighborhood.

ANALYSIS

Faced with increasing challenges, associated with the commercial character of the MXE, the City has endeavored to revitalize the historic Architectural District and highlight the art deco cultural heritage. In addition to a citywide effort at economic diversification, which includes exploring new revenue streams and marketing the city's business climate, a focus must be placed on promoting and attracting commercial activities that support the City's cultural arts legacy.

Arts and culture are the pillars of Miami Beach, having played a vital role in the 1990s renaissance, and continuing to reaffirm the city's relevance today. Arts and culture attract both visitors, tourists, and new residents to Miami Beach and should be nourished as a source of our identity. A nuanced approach to curating desirable commercial activities and reducing the prevalence of nuisance uses could help improve the retail character of the MXE and enrich the City's existing tourism, hospitality, and entertainment industries. One

way of addressing the existing retail void in the MXE is to attract unique retail activity that discourages legal non-conforming uses at a minimum and ideally accentuates arts and culture. The type of activity the City desires to promote would be characterized by vibrant placemaking, promoting wholesome and family-friendly activity, and improving residential quality of life while also enhancing the tourist/visitor experience.

The City Commission has expressed an interest in strengthening the arts and culture, tourism and hospitality industries while diversifying the City's economy and revenue sources. By capitalizing on the economic growth opportunities presented by current and projected business growth in the region, the resulting efforts may transform the MXE/Art Deco Cultural District (ADCD). In 2020, the Economic Development Department originally developed a lease subsidy program in furtherance of these objectives articulated by the City Commission.

Retail Market Trends

Miami Beach is home to several commercial hubs including two commercial districts that are landmark destinations and economic engines, Lincoln Road and Ocean Drive. Tourists, visitors, and seasonal residents drive consumer spending in these commercial areas, and annually Miami Beach residents account for a fraction of the retail spending in this submarket. Due to the tourist/visitor-centric nature of the submarket, the initial impact of the coronavirus pandemic was significant. However, the retail sector has rebounded dramatically, as has the leisure travel industry, the real estate sector, and the local economy overall.

At roughly \$88/SF, retail asking rents in Miami Beach are, by far, the highest in the Miami metro area, where the Countywide average rent is \$42/SF. Miami Beach submarket rents took a slight downturn during the pandemic, however, rent growth has improved over the past few quarters.

Commercial Lease Subsidy Program

On September 30, 2021, the City Commission approved the Fiscal Year 2022 Budget, including a \$40,000 enhancement request from the Economic Development Department to pilot a Commercial Lease Subsidy Program to encourage and promote arts and culture establishments within the MXE/ADCD. At its April 6, 2022 meeting, the City Commission referred a discussion item (Exhibit A) to the Land Use and Sustainability Committee regarding establishing an incentive program to motivate property owners to convert nuisance nonconforming establishments in the expanded MXE/Art Deco Cultural District, including package liquor stores, smoke shops, and tattoo parlors.

The Administration has identified that the concept of the Commercial Lease Subsidy Program, as envisioned, is in close alignment with the intent of the referral item regarding establishing an incentive program to address nuisance nonconforming establishments. Given this similarity in objectives, the Commercial Lease Subsidy Program (the "Program") is now being contemplated to also address nuisance uses. Based on the City's Business Tax Receipt ("BTR") records, there are approximately 116 nuisance establishments in the Overlay as shown on the map (Exhibit B) and described as below:

Food Sales	38
Liquor Sales	33
Money Order Agency	1
Occult Science/Fortune Teller	9
Pawnbroker	3
Pharmacy	4
Tattoo Establishment	28
Total	116

Program Purpose and Goals:

- Strengthen and transform commercial corridors within the Overlay/ MXE / ADCD Districts by encouraging the transition of legal nonconforming uses to permitted uses and attracting targeted businesses in the arts and cultural industries;
- Encourage property owners/businesses to transition to permitted uses; and
- Promote arts and culture

Financial Incentive:

- Property owners/businesses selected to participate in the Program are eligible to receive reimbursement of eligible expenses of up to \$20,000 per year, over a three (3) year Program term.
- These funds may only be used to reimburse payments related to rent, lease-related expenses, or mortgage payments and must support an establishment's transition from a nonconforming nuisance use to a use permitted in the Overlay. As proposed, the participating property owner/business would also receive a waiver of the annual BTR fee for the three (3) year period.

Program Funding:

- Total Program funding:
 - \$ 40,000 (FY2022 – approved)
 - \$120,000 (FY 2023 – enhancement request)
- Current funding would only permit two (2) property owners/businesses to participate once the Program is authorized and operational. Creation and term of the Program is dependent upon City Commission authorization and budget appropriation.

Targeted Businesses:

- Eligible businesses include, but are not limited to:
 - Priority 1 – Existing businesses transitioning from legal nonconforming uses such as: check cashing stores, pawn shops, pharmacies, convenience stores, occult science establishments, package stores, souvenir and t-shirt shops, tattoo studios, grocery stores, and tobacco/vape dealers);
 - Priority 2 - New businesses which create an immersive and shareable experience that prioritizes customer engagement and leverages onsite activities and events, such as:
 - *experiential and artisanal retailers*

- for example, technology-driven retail and incubator-inspired artisan experiences, e.g., offering patrons an opportunity to learn to make their own gastronomic, culinary, or sensory product, and low-scale performing arts and cultural spaces
- *interactive and activity-based spaces*
 - e.g., social media museums and artistic installations (e.g., Artechouse art exhibition on Collins Avenue, Van Gogh on Lincoln Road, Museum of Ice Cream) and activity-based destinations of recreation, leisure, and amusement

Eligibility Criteria:

- Businesses must operate a physical location in the Overlay.
- Applications will be evaluated on criteria approved by the City Commission, including but not limited to, whether the business’s activities:
 - transition from a nuisance to a permitted use;
 - enhance the city’s reputation as a family-friendly destination for cultural arts, leisure, and wellness;
 - provide a unique opportunity for experiential activities compatible with the City’s brand positioning; and/or
 - appeal to residents, tourists and visitors, increase and diversify employment opportunities, attract economic investment, and enhance real property values.
- The City Commission, at its discretion, may consider any criteria at the request and recommendation of the City Manager.
- Property owners/businesses applying for the Program may be an existing nuisance use (Priority 1) or new-to-market (Priority 2).

Participant Subsidy Payments:

- After transition to a permitted use or establishment of an arts and culture focused business (as evidenced by a BTR and/or CU and determined by the Administration) and upon verification of eligible expenses (rent, lease, or mortgage), valid payments will be reimbursed in an amount not to exceed \$2,500 per month
 - Reimbursements may be adjusted at the City’s discretion if rental/lease/mortgage payments are paid for periods in excess of one (1) month.
- The total cumulative amount of the annual incentive award should not exceed \$20,000.00 per participant, per year over a three (3) year period.
- Notwithstanding an executed agreement, the Program is contingent upon annual budgeted funding availability and appropriation, City Commission approval of a participant’s application, and compliance with all Program requirements.

Application Requirements:

- As an application requirement, property owners/businesses must submit:
 - Completed application form;

- Current Business Tax Receipt and Certificate of Use for a permitted use;
- Executed lease agreement or, for Priority 2 businesses, a Letter of Intent (LOI) summarizing lease terms and use may be accepted;
 - Prior to the execution of the Program contractual agreement, Applicant must provide an executed lease agreement; and
- Business plan with narrative detailing the proposed business activities.
- The Administration will recommend potential business applications to the City Commission for consideration. Approval for participation in the Program is at the sole and absolute discretion of the City Commission.

Program Guidelines:

Approved applicants enter into a written agreement with the City that sets forth the terms and conditions, for example, the leased premises must be “rent ready” prior to commencement of the leasing rental period for which the subsidy would apply and reimbursements are contingent on the business obtaining and maintaining a valid and active certificate of occupancy, certificate of use, and business tax receipt. Award payments will be distributed by the City on a reimbursement basis, requiring the property owner/tenant business to first submit documentation of the payment of mortgage or rent for the period to be reimbursed by the City. The agreement would contain a provision for the business to agree to the City’s right to require the business to repay the value of any reimbursement funds if the business violates the terms of the agreement.

CONCLUSION

Subject to the policy direction of the Committee, the Administration recommends that the Committee transmit the Program to the City Commission with a favorable recommendation, with further outreach and input from the business community.