

**R-PS4 Amendment For Accessory Uses**

**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 MODIFY RESTRICTIONS APPLICABLE TO NEIGHBORHOOD IMPACT ESTABLISHMENTS 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 require outdoor seating areas above the ground floor to close by 8:00 PM ; and

**WHEREAS**, the current R-PS4 Zoning District regulations prohibit ambient level background music in outdoor areas above the ground floor; and

**WHEREAS**, certain restaurant operators ("Operators") seek to open within the R-PS4 district;

**WHEREAS**, these Operators seek to utilize existing outdoor rooftop terraces until 11:00 PM on weekdays (Sunday – Wednesday) and 12:00 AM on weekends (Thursday – Saturday), with 30 additional minutes for cessation of operations each night; and

**WHEREAS**, these Operators seek to play ambient background level music on these existing outdoor rooftop terraces to improve the dining experience for their patrons while adhering to safeguards intended to prevent impacts on adjacent properties, including restricting sound levels to ambient background level music, utilizing a digital tamper-resistant sound level limiter, utilizing directional speakers, and other sound attenuation techniques; 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	N	N	P* North of 5th Street only.	N

<p>an accessory outdoor bar counter which is adjacent to a property 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. 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</p>	<p>C</p>	<p>N</p>

		primary use with a minimum square footage of 8,000 square feet.		
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.

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- (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.
- (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 may be permitted on an open level above the ground floor. The patron-occupant load shall be determined by the Fire Marshall.
  - b. The hours of operation for the open level above the ground floor shall be 11:00 PM Sunday thru Wednesday and 12:00 AM Thursday thru Saturday, with an additional 30 minutes for cessation of operations permitted each night. The additional 30 minutes for cessation of operations shall only be utilized for staff closing and clean-up. No patrons shall be served past 11:00 PM Sunday thru Wednesday and 12:00 AM Thursday thru Saturday. ~~not be occupied past 8:00 PM;~~
  - c. Outdoor music and television sets, whether amplified or nonamplified, shall be prohibited in open levels above the ground floor. Notwithstanding the foregoing, recorded background music, played at a level that does not interfere with normal conversation, may be permitted, provided that a sound system with directional speakers and a digital tamper-resistant sound level limiter is used to minimize impacts to adjacent properties. Nothing in this subparagraph shall be construed to exempt or otherwise limit the applicability of Section 46-152 to the accessory uses permitted by this subsection.
  - 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 during the hours of operations 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) and (i)(2)(iv), 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 \_\_\_\_\_ 2022.

**PASSED** and **ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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

**ATTEST:**

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

APPROVED AS TO FORM  
AND LANGUAGE  
AND FOR EXECUTION

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

First Reading: September 14, 2022  
Second Reading: October 26, 2022

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

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