


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
FROM: Alina T. Hudak, City Manager 
DATE: January 25, 2023

SUBJECT: **Discuss Permitting Live Entertainment to Promote Arts and Culture**

HISTORY

On March 9, 2022, at the request of Commissioner Ricky Arriola (item C4 D), the City Commission referred the subject discussion item to the Land Use and Sustainability Committee (LUSC) and the Public Safety Neighborhood and Quality of Life Committee (PSNQLC). The item was placed on the April 8, 2022 LUSC agenda and deferred to the May 13, 2022 LUSC meeting. On May 13, 2022 the item was deferred to the June 1, 2022 LUSC meeting, with no discussion.

The June 1, 2022 LUSC was postponed and moved to a new date of June 6, 2022. On June 6, 2022 the LUSC discussed the item and continued it to the September 23, 2022 LUSC meeting, with the following direction:

1. The City Attorney will study the current definition of 'Entertainment' and propose potential options for consideration.
2. The Economic Development Department will reach out to different businesses in Sunset Harbor and South of Fifth Street, to assess specific needs and obtain input and feedback.
3. A potential pilot program will be developed.

The September 23, 2022, LUSC meeting was moved to September 28, 2022. On September 28, 2022, the item was deferred to the October 28, 2022, LUSC meeting.

On October 28, 2022, the item was discussed and continued to the January 25, 2023, LUSC meeting with direction to the Administration and the City Attorney's Office to draft a pilot program for entertainment within a limited area and based upon limited hours, days and uses, as well as provide additional, applicable information on regulating different types of DJ's.

ANALYSIS

As noted in the attached referral memo, the item sponsor has requested that the LUSC and the PSNQLC discuss permitting ambient indoor live entertainment citywide to promote arts and culture. To assist in this discussion the following is the definition for entertainment establishment in Section 114-1 of the Land Development Regulations (LDR's) of the City Code:

Entertainment establishment means a commercial establishment with any live or recorded, amplified or nonamplified performance, (excepting television, radio and/or recorded background music, played at a volume that does not interfere with normal conversation, and indoor movie theater operations). Entertainment establishments may not operate between the hours between the hours of 5:00 a.m. and 10:00 a.m., except as provided for under subsection 6-3(3)(b).

Additionally, attached are maps of the north and south parts of the city, which show the areas where entertainment is currently permitted.

UPDATE - September 28, 2022 LUSC

The following is an update specific to the direction previously provided by the LUSC on June 6, 2022:

Definition of Entertainment

The City Attorney's Office and the Administration have evaluated some potential modifications to the definition of 'Entertainment' in the City Code. In this regard, the following are some potential options for the LUSC to consider:

1. Amend the definition of entertainment, so that we treat equally (i) live performance at an ambient volume level and (ii) recorded performance at an ambient volume level.

For example:

Entertainment establishment means a commercial establishment with any live or recorded, amplified or nonamplified performance, (excepting television, radio and/or recorded background music, played any performance, whether live or recorded, that is conducted at a volume that does not interfere with normal conversation, and indoor movie theater operations). Entertainment establishments may not operate between the hours between the hours of 5:00 a.m. and 10:00 a.m., except as provided for under subsection 6-3.

2. Leave the current definition for entertainment establishment as is and create a new, separate definition for 'ambient entertainment establishments'. This would allow an eligible establishment to obtain a license for ambient performances (e.g., DJ, pianist or mime) without having to go through the CUP process.

For example:

Current Definition:

Entertainment establishment means a commercial establishment with any live or recorded, amplified or nonamplified performance, (excepting television, radio and/or recorded background music, played at a volume that does not interfere with normal conversation, and indoor movie theater operations). Entertainment establishments may not operate between the hours between the hours of 5:00 a.m. and 10:00 a.m., except as provided for under subsection 6-3(3)(b).

Proposed Additional Definition:

Entertainment establishment ambient means a commercial establishment with any live,

amplified or nonamplified, performance, including television, radio and/or recorded background music, where all aspects of a performance, and all music, is played or performed at a volume that does not interfere with normal conversation. Entertainment establishments ambient may not operate between the hours between the hours of 5:00 a.m. and 10:00 a.m., except as provided for under subsection 6-3(3)(b).

NOTE: The zoning districts or areas of the City that would be eligible for entertainment establishments ambient would need to be further studied and established.

Survey of Businesses in Sunset Harbor and South of Fifth Area

The Economic Development Department visited the Sunset Harbour and South of Fifth Street neighborhoods, each on three (3) separate occasions (between August 16 and 31, 2022, in Sunset Harbor and between August 18 and 27, 2022 in the South of Fifth area). The purpose of these visits, which occurred in the late afternoon and evening, was to conduct a business survey and obtain feedback from restaurant operators.

Following initial in-person contact made onsite with restaurant staff, each business received an email correspondence providing access to an online survey. Those businesses that did not initially complete the online survey received 2-3 follow-up email correspondences and 1-2 phone calls to encourage participation and/or ensure business management was properly notified about the survey.

Seventeen (17) restaurants with active business tax licenses were identified in Sunset Harbour, of which the City received eleven (11) completed surveys (65% participation rate). Thirty-four (34) restaurants with active business tax licenses were identified South of Fifth Street, of which the City received twenty-one (21) completed surveys (62% participation rate). Survey responses were only accepted from restaurant management or business proprietors and the detailed findings of each are attached.

Sunset Harbour Summary Findings

- A majority of survey respondents support the following:
 1. Allowing live performances with DJ and/or recorded music (91%);
 2. Mandatory Conditional Use Permit (CUP) for entertainment (67%);
 3. Requirement of an independent sound feasibility study (64%);
 4. Limitations on operational hours/days when entertainment could occur (64%); and
 5. The suspension of entertainment if a restaurant receives a specified number of valid code violations within a 12-month period (78%).
- A majority of survey respondents do NOT support the following:
 1. Limiting live entertainment based on occupancy (80%) or for mixed-use buildings or outdoors (60%); or
 2. Requiring double-door vestibules in establishments (78%).
- Respondents were equally split when considering requirements for distance separation from residential uses.
- Surveys were completed by the following establishments:
 1. Barceloneta, 1400 20th St.
 2. Delicious Raw Kitchen & Juice Bar, 1828 Bay Rd.

3. Diya Miami, 1766 Bay Rd.
4. Icebox Café, 1855 Purdy Ave.
5. Lucali, 1930 Bay Rd.
6. NaiYaRa Thai & Sushi, 1900 Bay Rd.
7. Sardinia Enoteca Ristorante, 1801 Purdy Ave.
8. Sushi Garage / Sunny Poke, 1784 West Ave.
9. Sweetgreen, 1929 Purdy Ave.
10. Stiltsville Fish Bar, 1787 Purdy Ave.
11. Tequiztlan Mexican, 1884 Bay Rd.

South of Fifth Street Summary Findings

- A majority of survey respondents support the following:
 1. Allowing live performances with DJ and/or recorded music (90%);
 2. Mandatory Conditional Use Permit (CUP) for entertainment (80%);
 3. Providing notice to residents / properties located within a certain distance (81%);
 4. Limiting entertainment outdoors and/or in mixed-use buildings (72%); and
 5. requiring an approved sound mitigation plan (75%).
- A majority of survey respondents do NOT support the following:
 1. Restrictions based on minimum distance separation from residential uses (65%);
 2. Limitations based on occupancy levels (59%); or
 3. Required double-door vestibules at establishments (66%).
- Respondents were equally split when considering limitations on operational hours/days for live entertainment.
- Surveys were completed by:
 1. Big Pink, 157 Collins Ave.
 2. Estiatorio Milos, 730 First St.
 3. Forte dei Marmi, 150 Ocean Dr.
 4. Fratelli La Bufala, 437 Washington Ave.
 5. Joe's Stone Crab, 1 Washington Ave.
 6. The Lobster Shack, 40 South Pointe Dr.
 7. Monty's, 300 Alton Rd.
 8. Matilda's Taco Bar, 413 Washington Ave.
 9. La Locanda, 419 Washington Ave.
 10. Lobster Shack, 40 South Pointe Dr.
 11. Kalamata, 423 Washington Ave.
 12. Papi Steak, 736 First St.
 13. Pizza Days, 448 Ocean Dr.
 14. Portofino Deli Corp, 500 South Pointe Dr.
 15. Prime Fish, 100 Collins Ave.
 16. Prime Italian, 101 Ocean Dr.
 17. Prime 112, 112 Ocean Dr.
 18. Red Steakhouse, 801 South Pointe Dr.
 19. SoBe Vegan, 110 Washington Ave.
 20. Smith & Wollensky, 1 Washington Ave.
 21. Stubborn Seed, 101 Washington Ave.

Potential Pilot Program

The following are 2 options for pilot programs:

1. Amend the Ambient Entertainment Permit Program Ordinance, adopted in 2019 and attached, to add new eligible areas of the City (e.g., South of Fifth Street and / or Sunset Harbor). This would be a more incremental approach, and the safeguards in the Ordinance would allow for a trial period before altogether exempting all ambient performance from the definition of entertainment.
2. Implement a new pilot to allow indoor entertainment in the Sunset Harbor and/or South of 5th Street areas; such pilot could be composed of the following:
 - Entertainment would be limited to indoor portions of full-service restaurants only;
 - Entertainment would be limited to weekends only (e.g., Thursday to Sunday);
 - Entertainment could be no earlier than 11:00 am and no later than 11:00 pm;
 - The occupant content of the establishment could not to exceed 300 persons; and
 - The establishment could have up to 4 Special Event Permits (SEP) per year.

UPDATE – January 25, 2023 LUSC

The following is an update specific to the direction previously provided by the LUSC on September 28, 2022:

Sunset Harbor and South of Fifth Street Entertainment Pilot Program

The following pilot program would apply to indoor portions of venues located in the Sunset Harbor and South of 5th Street areas:

1. Entertainment would be limited to indoor portions of full-service restaurants only.
2. Entertainment could occur no earlier than 11:00 am and no later than 10:00 pm, from Friday to Sunday only.
3. Sound associated with entertainment shall not exceed ambient levels, and shall not be audible anywhere along the exterior of the premises at any time.
4. The occupant content of the establishment could not to exceed 300 persons, at any time.
5. Dance halls shall not be permitted.
6. The establishment could have up to 4 Special Event Permits (SEP) per year, provided such SEP do not contravene the criteria associated with the pilot program.
7. The pilot program shall be approved by the City Commission for an initial period of six (6) months; the City Commission may extend the pilot program, at its sole discretion, for additional six (6) month intervals.
8. An eligible establishment shall agree in writing, on a form acceptable to the City Attorney, to fully comply with all conditions and requirements of the pilot program. The City Commission, at its sole discretion, may revoke any establishments approval issued in accordance with this pilot program prior to the conclusion of any six (6) month period, if the Commission determines that an establishment has failed to comply with

any of the conditions and requirements of the pilot program.

Expanded Provisions for DJ

Because a DJ is considered a performer, it is not legally defensible to establish a different set of rules and criteria applicable solely to a DJ and not to other types of performers. Any special regulations pertaining to an ambient DJ, or any other specific type of performer, would need to apply to other forms of entertainment conducted at an ambient volume level. Any pilot program should instead be focused on whether the proposed entertainment is conducted at an **ambient volume level**, without regard to the type of entertainment or content of the performance.

CONCLUSION

The Administration recommends that the Land Use and Sustainability Committee discuss the item and provide any applicable recommendations to the City Commission.

RW
ATH/RW/TRM