

ORDINANCE NO.

2019-4309

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 12 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ARTS, CULTURE AND ENTERTAINMENT," BY AMENDING ARTICLE II, ENTITLED "SPECIAL EVENTS," BY CREATING SECTION 12-6, ENTITLED "AMBIENT ENTERTAINMENT PERMIT PROGRAM," TO CREATE AN AMBIENT ENTERTAINMENT PERMIT PROGRAM, SET FORTH DEFINITIONS, IDENTIFY ELIGIBLE ESTABLISHMENTS, PROVIDE FOR AN APPLICATION, ESTABLISH REGULATIONS APPLICABLE TO THE PERMIT PROGRAM (INCLUDING THE TERM OF THE PERMIT, NOTICE REQUIREMENTS, AND MINIMUM STANDARDS, CRITERIA, AND CONDITIONS), PROVIDE FOR ENFORCEMENT AND PENALTIES, AND CREATE REPORTING REQUIREMENTS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City Code broadly defines an "entertainment establishment" as "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)"; and

WHEREAS, the City's Land Development Regulations identify "entertainment" as either a permitted, conditional, or prohibited use in various City zoning districts; and

WHEREAS, in districts where entertainment is listed as a conditional use, applicants are required to obtain a conditional use permit for "entertainment" from the Planning Board, even if the applicant is only proposing to conduct a performance at a volume that does not interfere with normal conversation (hereinafter, at an "ambient volume level"); and

WHEREAS, performances conducted at an ambient volume level are unlikely to cause a nuisance to neighboring residents, businesses, or property owners; and

WHEREAS, in order to provide a mechanism for businesses (particularly small businesses, which struggle to remain competitive in today's market) to conduct live or recorded performances at an ambient volume level, without creating a vested right to conduct entertainment, the Mayor and City Commission desire to establish an ambient entertainment permit program, subject to the conditions specified herein; and

WHEREAS, each ambient entertainment permit will be conditional at all times, and may be revoked by the City upon a finding of a violation of the permit or of the provisions of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1.

That Chapter 12 of the Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 12
ARTS, CULTURE, AND ENTERTAINMENT**

* * *

ARTICLE II. SPECIAL EVENTS

* * *

Sec. 12-6. Ambient entertainment permit program.

The city's tourism and culture director shall have the authority to issue, modify, or revoke permits for ambient entertainment performances, in accordance with criteria set forth in this section.

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

- (1) *Ambient entertainment* shall mean any live or recorded, amplified or nonamplified performance played or conducted at a volume that does not interfere with normal conversation (excepting television, radio and/or recorded background music, played at a volume that does not interfere with normal conversation, and indoor movie theater operations).
- (2) *Permit* shall mean an ambient entertainment performance permit issued pursuant to this section, which permit shall authorize a permittee to conduct ambient entertainment, subject to the conditions set forth in this section. The granting of a permit is a privilege and not a right, and the approval, issuance, and continued operation of a permit is conditional, and subject to revocation by the city manager at all times.
- (3) *Permittee* shall mean the recipient of an ambient entertainment performance permit issued pursuant to this section.

- (b) Eligible establishments. Only restaurants (i) with an occupant content of 299 or fewer persons, (ii) that are located north of 40th Street or in the Collins Park neighborhood (which is generally bounded by Washington Avenue on the west, Collins Canal, Lake Pancoast, and 25th Street on the north, the Atlantic Ocean on the east, and 17th Street on the south), and ~~(iii)~~ (iii) that are located in zoning districts where entertainment is a permitted or conditional use, shall be eligible to apply for and obtain a permit pursuant to this section.

Notwithstanding the foregoing, an establishment with a conditional use permit shall not be eligible to apply for a permit under this section.

During the one (1) year period prior to the date of the submittal of an application, an applicant shall not have received an adjudication of a violation of this section, or of any of the following City Code provisions: chapter 6 (alcoholic beverages); section 12-5 (special events); or chapter 46, article IV (noise).

- (c) Application. Applicants wishing to conduct ambient entertainment must submit a completed permit application to the tourism and culture director, in a form prescribed by the city manager. All requirements of this section must be fully satisfied, including payment of an application fee, in the amount of \$250.00, before an application will be reviewed. Each application must be accompanied by a sworn affidavit, signed by the applicant, acknowledging and agreeing to comply with all applicable provisions of the City Code, including this section.

- (d) Annual permit. Each permit issued pursuant to this section shall have a term of one year, from October 1 until September 30 of the following year. Each permittee shall pay an annual permit fee, in the amount of \$250.00, which shall be due and payable on October 1 of each year. The fee shall be collected by the tourism and culture department or by such other department as may be designated by the city manager.

A permittee with no violations of this section shall be eligible to renew a permit for additional one-year terms. Notice of the amount due and instructions for payment shall be provided to permittees at least 60 days prior to October 1 of each year.

- (e) Notice. Copies of submitted permit applications must be provided to the corresponding neighborhood, homeowners, or business association in the neighborhood where the applicant's business establishment is located.

- (f) Minimum standards, criteria, and conditions.

- (1) The granting of a permit is a privilege and not a right, and the approval, issuance, and continued operation of a permit is conditional, and subject to revocation by the city manager at all times.

- (2) All permits shall be revocable at the sole discretion of the city manager, which revocation may be without cause and for convenience, upon seven days' prior written notice to the permittee.
- (3) At no point shall an ambient performance conducted pursuant to this section be conducted at a volume that exceeds an ambient volume level (i.e. at a level that interferes with normal conversation). Additionally, in order to ensure compliance with this requirement, permittees shall ensure that windows remain closed, and shall use all best efforts to ensure that doors remain closed, while performances are taking place.
- (4) Ambient entertainment performances conducted pursuant to a permit may only take place indoors, and shall be inaudible from the exterior of the premises.
- (5) Ambient entertainment performances may only occur between the hours of 10:00 a.m. and midnight each day.
- (6) The permittee shall recognize, agree, and acknowledge that, upon a finding of a violation pursuant to subsection (h), the permit shall be subject to immediate revocation by order of the city manager, in the city manager's sole discretion, and the revocation order will not be subject to any subsequent review.
- (7) The permittee shall acknowledge and agree to provide unobstructed and immediate access to the applicant's business establishment for inspection by the City's tourism and culture department and/or code compliance department, in order to ensure the permittee's compliance with the provisions of this section and all applicable city, county, state, and federal laws.
- (8) Each permittee shall agree to indemnify, defend, save, and hold harmless the city, its officers, and employees from any and all claims, liability, lawsuits, damages and causes of action which may arise out of any activities conducted pursuant to the permittee's permit, including, without limitation, the permittee's agreement to allow the city access to inspect the premises for compliance with this section.
- (9) Permittees shall at all times comply fully with all applicable city, county, state, and federal laws.
- (g) Maximum number of permits. Permits issued pursuant to this section shall be issued on a first-come, first-served basis. The city manager shall, in consultation with the tourism and culture director and code compliance director, establish (and, from time to time, revise) a maximum number of permits for each of the following areas of the city:
 - (1) South Beach (between 6th Street and 23rd Street);

(2) Mid-Beach (between 23rd Street and 63rd Street); and

(3) North Beach (north of 63rd Street).

(h) Enforcement and penalties.

(1) The city manager shall be authorized to issue a revocation order of the permit where it is determined by the city manager, in the city manager's sole discretion, that a violation of the permit or of the provisions of this section has occurred. In the event of such a violation, the city manager shall be authorized to issue an immediate order revoking the permit and suspending any activities conducted in furtherance thereof, and the permittee must cease any such activities. The issuance of an order revoking the permit shall not be subject to any subsequent review, and will be deemed administratively as a final action.

(2) If the city manager believes that a permittee has engaged or is engaged in conduct warranting the revocation of a permit, the city manager shall serve the permittee by certified mail or hand delivery, at the permittee's business address as disclosed in the permit application.

(i) Reporting. The city manager shall, on an annual basis, ~~present~~ submit to the city commission (in the agenda materials for a regularly scheduled commission meeting) with a written report detailing the city's permitting and enforcement activities relating to the provisions of this section. The report shall include statistics relating to the number of permits issued, number of active permits in good standing, number of complaints received, and number of permits revoked.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith 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 26 day of October, 2019.

PASSED AND ADOPTED this 16 day of October, 2019.

ATTEST:

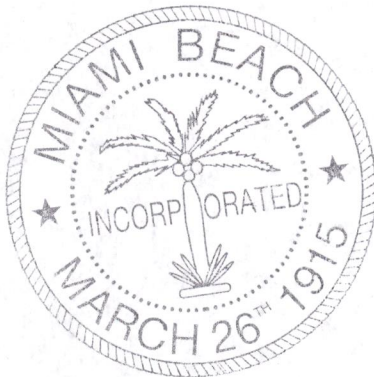
78/ 10/29/19
Rafael E. Granado
City Clerk

[Signature]
Dan Gelber
Mayor

Underline denotes additions
~~Strikethrough~~ denotes deletions

(Sponsored by Commissioner John Elizabeth Alemán)

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION
[Signature] 10-7-19
City Attorney Date
NK

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Jimmy L. Morales, City Manager
DATE: October 16, 2019

1:45 p.m. Second Reading Public Hearing

SUBJECT: AMBIENT ENTERTAINMENT PERMIT PROGRAM

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 12 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ARTS, CULTURE AND ENTERTAINMENT," BY AMENDING ARTICLE II, ENTITLED "SPECIAL EVENTS," BY CREATING SECTION 12-6, ENTITLED "AMBIENT ENTERTAINMENT PERMIT PROGRAM," TO CREATE AN AMBIENT ENTERTAINMENT PERMIT PROGRAM, SET FORTH DEFINITIONS, IDENTIFY ELIGIBLE ESTABLISHMENTS, PROVIDE FOR AN APPLICATION, ESTABLISH REGULATIONS APPLICABLE TO THE PERMIT PROGRAM (INCLUDING THE TERM OF THE PERMIT, NOTICE REQUIREMENTS, AND MINIMUM STANDARDS, CRITERIA, AND CONDITIONS), PROVIDE FOR ENFORCEMENT AND PENALTIES, AND CREATE REPORTING REQUIREMENTS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

The administration recommends that the City Commission adopt the subject ordinance.

ANALYSIS

SUMMARY

The attached ordinance creates an ambient entertainment permit program, consisting of the following components:

- Identifying eligible establishments;
- Establishing regulations applicable to the Program, including the term of the permit, notice requirements, and minimum standards, criteria, and conditions;
- Providing for stringent enforcement and penalties.

HISTORY

On January 16, 2019, at the request of Commissioner John Elizabeth Aleman, the City Commission referred the following discussion item to the Land Use and Development Committee (Item C4 AD) in order to create equity between the current entertainment exemption for recorded ambient music, and ambient music performed by live musicians:

DISCUSSION REGARDING AN ORDINANCE TO CREATE AN EXEMPTION FROM THE DEFINITION OF "ENTERTAINMENT ESTABLISHMENT" FOR PERFORMANCES CONDUCTED AT A VOLUME THAT DOES NOT INTERFERE WITH NORMAL CONVERSATION.

On March 6, 2019, the Land Use and Development Committee (LUDC) discussed the item and recommended that the City Attorney's Office draft a revised ordinance for consideration. The LUDC continued the item to the April 3, 2019 meeting. On April 3, 2019, the item was continued to the June 12, 2019 meeting.

On May 28, 2019, City staff and the item sponsor met with affected stakeholders from the Sunset Harbour neighborhood to discuss potential options being developed by City staff.

On June 12, 2019, the LUDC held a lengthy discussion and continued the item to a date certain of July 24, 2019. Also, at the request of the item sponsor, the title of the item was amended as follows:

DISCUSSION TO CREATE OPTIONS FOR INDOOR AMBIENT ENTERTAINMENT.

The LUDC also directed the City Attorney to draft a non-LDR amendment, in accordance with Option 1 (as further defined below), including the following additional operating standards:

- The permit process will be administered by the Tourism and Culture Department, in a manner similar to special event permits.
- Code Compliance shall be granted full access to the venue as a pre-condition of a permit.
- There will be a cap on the number of permits issued during the pilot to mitigate any staffing impact for Code Compliance.

Additionally, the administration was directed to look at the areas of the City where indoor entertainment is currently permitted and identify sub-areas where the current CUP process may be onerous and could be modified. The LUDC requested that additional recommendations regarding these areas be provided.

On July 9 and 11, 2019, public outreach (town hall) meetings were held in North and South Beach, in order to provide an opportunity for additional public outreach and stakeholder input.

On July 24, 2019, the LUDC discussed the revised draft of the proposed ordinance and transmitted it to the City Commission with a recommendation for approval.

BACKGROUND

Chapter 114 of the City Code provides the following definition for entertainment establishment:

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).

Under Chapter 142 of the City Code, myriad regulations exist regarding entertainment within eating and drinking establishments. The attached chart provides a grid outline of where

entertainment is permitted as of right, where conditional use approval (CUP) is required and where entertainment is prohibited outright. These locations have also been identified in the attached maps.

RESEARCH

Staff has reviewed the codes of several local governments, and summarized regulations that were relevant to regulating entertainment uses. The cities analyzed define entertainment differently when compared to Miami Beach, and generally, the cities reviewed in Florida do not regulate where and how music can be played. Instead they regulate where alcoholic beverage establishments and specific types of entertainment venues can locate, and primarily deal with noise-related concerns through noise ordinances.^[1] Coral Gables and Fort Lauderdale do provide some regulation on hours of operation when music can be, but playing music is permitted in all commercial districts of those cities.

Staff also reviewed the codes of Austin, Texas which is known for its nightlife. Austin does regulate where entertainment can take place; however, they make certain allowances for restaurants and bars, allowing live entertainment with strict noise limits. Issues related to entertainment are primarily dealt with through a noise ordinance which has a permitting process for exceeding base noise limits.

A summary of the applicable regulations for each of the cities analyzed is attached.

PLANNING AND LEGAL ANALYSIS

At the March 6, 2019 meeting, the LUDC directed the administration and the City Attorney's Office to explore other options to allow indoor restaurants to conduct ambient live performances, as the original proposal to exempt ambient performances from the definition of entertainment raised concerns among members of the community. In response, the following three separate, potential options to address the proposal were presented to the LUDC on June 12, 2019:

Option 1: Revocable Permit for Ambient Entertainment

Amend the City Code to authorize the City Manager to issue a revocable permit for ambient entertainment, with conditions (i.e. like a special event permit). The ordinance would include the following provisions:

- Identify districts where permitted;
- Limit to indoor restaurants only;
- Establish maximum occupancy and hours; and
- Establish a maximum number of permits issued by district.

The following additional operating standards were presented on the floor, in conjunction with Option 1:

1. The permit process will be administered by the Tourism and Culture Department, in a manner similar to special event permits.
2. Code Compliance shall be granted full access to the venue as a pre-condition of a permit.
3. Include a cap on the number of permits issued.

Option 2: Create a Separate Definition for Ambient Entertainment

Amend Chapter 114 of the City Code to create the following definition for "ambient

entertainment”:

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

For comparison purposes, the following is the definition for “entertainment establishment” in 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, the following would apply to this option:

- Identify districts where ambient entertainment is a permitted use;
- Limit to indoor restaurants only;
- Establish maximum occupancy and hours; and
- Require a separate BTR / CU for ambient entertainment.

Option 3: Original Proposal

Amend the current definition of “entertainment” to exclude indoor performances played or conducted at ambient volume levels, as follows:

Entertainment establishment means a commercial establishment with any live or recorded, amplified or nonamplified performance, (excepting television, radio and/or recorded background music, and any other indoor performance played or 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(3)(b).

As indicated previously, Options 1 and 2 both create equity between the current entertainment exemption for recorded ambient music, and ambient music performed live by musicians (or, for that matter, any other performance conducted at an ambient volume level). By creating a separate, defined category for ambient entertainment establishments, there would no longer be a need for an exception to the definition of entertainment establishment. Further, the immediate revocability of the permit proposed in Option 1, and similar enforcement provisions associated with Option 2, would penalize rogue or illegal operators with the revocation of the permit or, in the context of Option 2, the suspension or revocation of a business’s ambient entertainment BTR, in a relatively short period of time. These new enforcement mechanisms would be separate and apart from the City’s existing authority to suspend or revoke a business’s BTR, which effectively shuts down the entire business operation.

Finally, the item sponsor has indicated that an opportunity for a neighborhood to opt out of any of the options noted above will be considered for those areas of the City that currently prohibit

entertainment. This can be done legislatively, by excluding the affected areas from the different options noted above. For those areas that currently allow for entertainment, but with a mandatory CUP review regardless of occupational content (e.g., the west side of Alton Road), additional legislative changes can be explored.

UPDATE

Draft Ordinance creating an Ambient Entertainment Permit Program

Pursuant to the direction of the LUDC on July 24, 2019, to proceed with Option 1, the City Attorney's Office prepared a draft ordinance for first reading, creating an ambient entertainment permit program. The ordinance, in pertinent part, defines the scope of the program; identifies eligible establishments (restaurants, with an occupant content of 299 or fewer persons, which are in zoning districts where entertainment is a permitted or conditional use); creates operating standards and conditions; provides for enforcement; and requires annual review.[2]

The Ordinance also provides that, as a condition of obtaining a permit, a permittee shall agree and acknowledge that (i) the permit shall be subject to immediate revocation in the event of a violation, and (ii) the permittee shall be required to provide unobstructed and immediate access to the business establishment for inspection by Tourism and Culture staff and Code Compliance officers, in order to ensure compliance with the provisions of the Ordinance and all other applicable laws.

Potential amendments to existing conditional use regulations

Regarding the LUDC's request to explore areas of the City where the current CUP process may be onerous and could be modified, at first reading on September 11, 2019, the administration identified the CD-2 and RM-3 areas of North Beach (east of Indian Creek), as well as the CD-3 properties along 41st Street, as possible locations. In this regard, both sub-areas, which are composed of high intensity multifamily residential and medium-high intensity commercial, zoning districts, have been identified for redevelopment. Currently, the affected properties along 41st Street, and those zoned CD-2 in North Beach, must obtain CUP approval for any type of indoor entertainment, regardless of the occupational content of the venue. For the RM-3 properties in North Beach, indoor entertainment would be allowed as an accessory use and the occupational content must exceed 200 persons before a CUP review is required. It should be noted, that the properties identified in these sub-areas would still be subject to CUP approval once the occupational content hits 300 persons, regardless of whether entertainment is proposed or not.

FIRST READING UPDATE

The subject ordinance was approved at first reading on September 11, 2019, with no substantive modifications to the permit program. However, the City Commission modified the boundaries of the proposal, to be applicable only to eligible properties located within the Collins Park area and north of 40th Street. These minor revisions, including the specific boundaries of the Collins Park area, have been incorporated into a revised ordinance for second reading.

The City Commission also requested that a yearly update on the number of permits issued be provided, via LTC.

Footnotes:

^[1] Subsequent to the March 6, 2019 LUDC meeting, City staff studied the feasibility and practicality of shifting to a decibel-based standard for enforcement of the City's Noise

Ordinance. Based upon the reasons previously cited by the City Attorney's Office, as well as concern from Code Compliance regarding the objectivity and enforceability of the use of decibel meters, the Administration does not recommend shifting from the current standard to a decibel-based standard.

[2] The City Attorney's Office conducted research on distinctions between "amplified" and "non-amplified" entertainment. Because certain performances may require amplification to reach a certain volume level, and others may not, the attached Ordinance is focused on limiting the volume of performances—at a level that does not interfere with normal conversation (i.e. at an ambient volume level).

CONCLUSION

The Administration recommends that the City Commission adopt the attached ordinance.

Applicable Area

Citywide

Is this a Resident Right to Know item?

Yes

Does this item utilize G.O. Bond Funds?

No

Legislative Tracking

Planning

Sponsor

Commissioner John Elizabeth Aleman

ATTACHMENTS:




Description

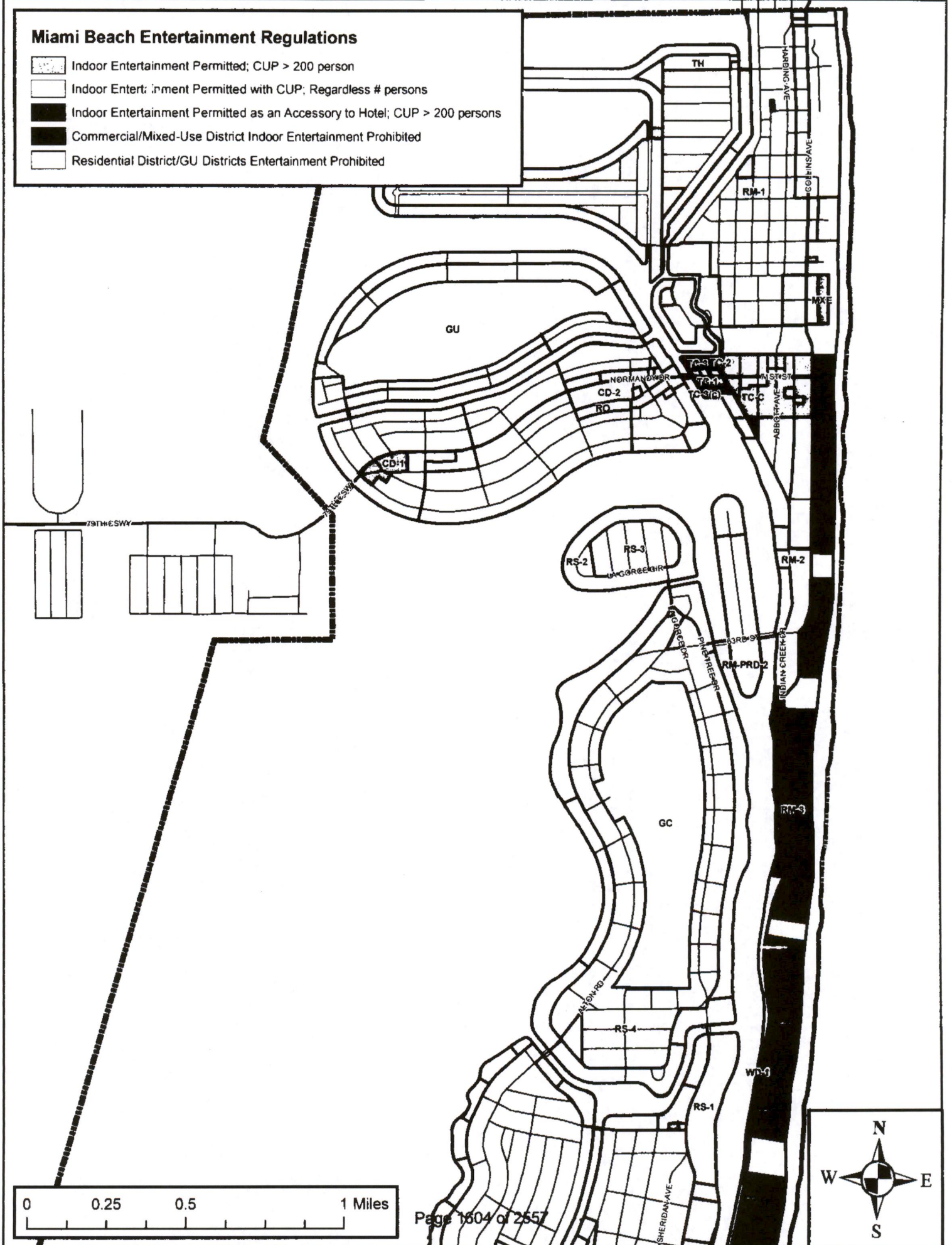
- ☐ Entertainment Uses CHART
- ☐ Entertainment Locations MAP NORTH
- ☐ Entertainment Locations MAP SOUTH
- ☐ Entertainment RESEARCH SUMMARY
- ☐ Ordinance

Indoor Entertainment - Current Regulations

Indoor Entertainment Permitted As of Right (No CUP)	Indoor Entertainment Permitted with CUP	
All Commercial (CD), MXE and TC Districts (except TC-3), as well as accessory uses to a hotel in the RM-3 Districts (where hotels are permitted), when a venue serving alcohol has an occupant content of less than 200 persons;	All Commercial (CD), MXE and TC Districts(except TC-3), as well as accessory uses to a hotel in the RM-3 District (where hotels are permitted), when a venue serving alcohol has an occupant content over 199 persons;	All PS districts, south of 6 th street (South of Fifth);
Any commercial use not selling or serving alcohol, regardless of occupant content.	Regardless of occupant content: CD-3 district, along and adjacent to 41st Street;	All CD-2, I-1, and RM-3 districts in the Sunset Harbour area;
	Regardless of occupant content: CD-2 district, north of 65th Street	All RS, TH, TC-3, RM-2 and RM-1 districts city wide;
	Regardless of occupant content: CD-2 district on the west side of Alton Road from 6th Street to Collins Canal and on the east side of West Avenue between Lincoln Road and 17th Street.	In RM-3 districts ground floor additions for oceanfront lots located in the architectural district relocating existing hotel units;
		Package liquor stores in the MXE district which have been grandfathered.

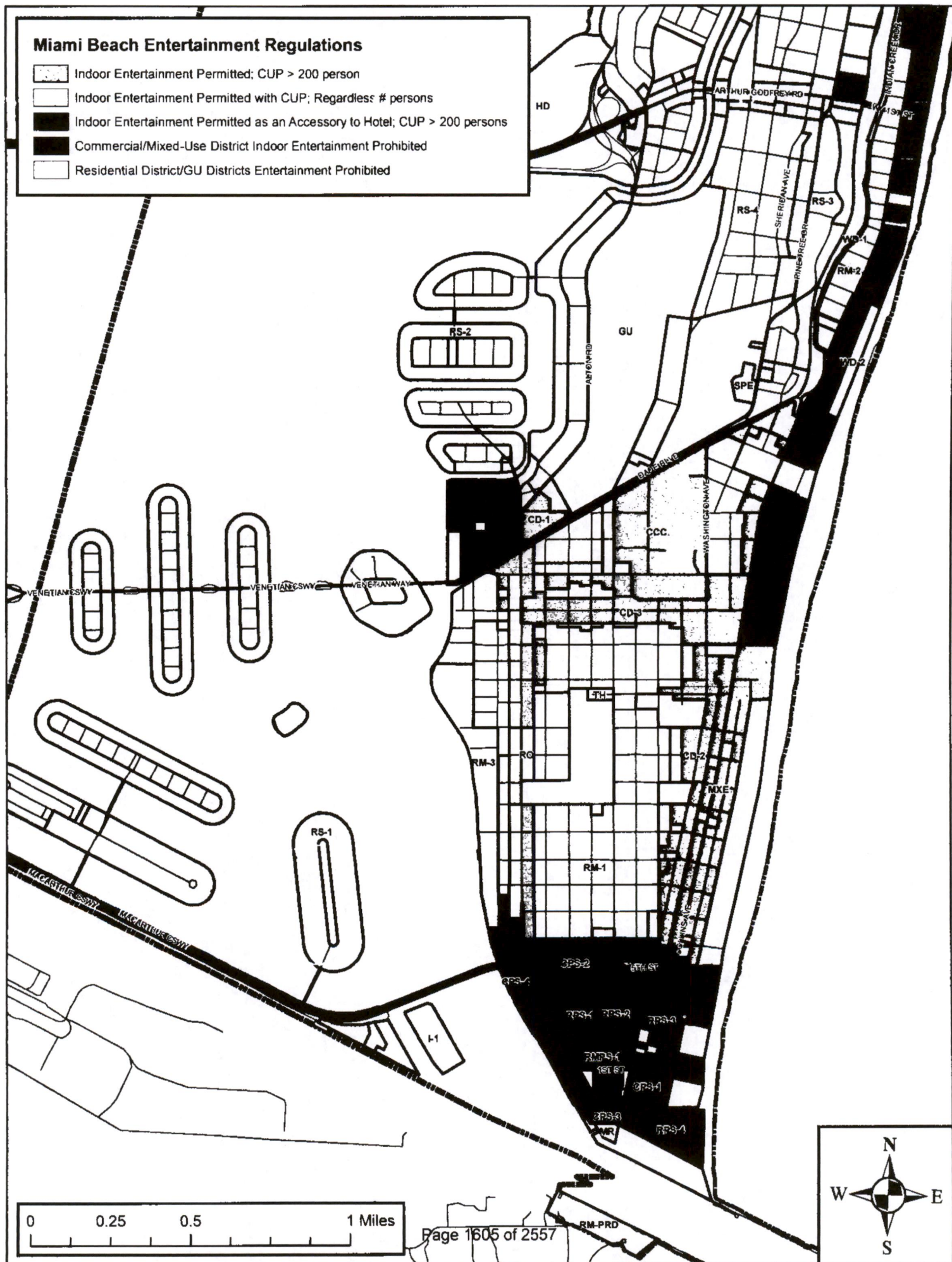
Miami Beach Entertainment Regulations

-  Indoor Entertainment Permitted; CUP > 200 person
-  Indoor Entertainment Permitted with CUP; Regardless # persons
-  Indoor Entertainment Permitted as an Accessory to Hotel; CUP > 200 persons
-  Commercial/Mixed-Use District Indoor Entertainment Prohibited
-  Residential District/GU Districts Entertainment Prohibited



Miami Beach Entertainment Regulations

- Indoor Entertainment Permitted; CUP > 200 person
- Indoor Entertainment Permitted with CUP; Regardless # persons
- Indoor Entertainment Permitted as an Accessory to Hotel; CUP > 200 persons
- Commercial/Mixed-Use District Indoor Entertainment Prohibited
- Residential District/GU Districts Entertainment Prohibited



Research Summary – Entertainment Regulations

City of Miami, Florida

An entertainment establishment in the City of Miami is defined and includes a cinema, billiard parlor, teen club, dance hall, or video arcade. The zoning ordinance allows entertainment establishments by right in Commercial (T4-O, T5-O, and T6-O), High Density Limited Commercial (T6-L), Light Industrial (D1), and Industrial (D2) zoning districts, and by an administrative special permit in Medium Density Limited Commercial districts (T5-L). Alcoholic beverage establishments, not including restaurants, are also regulated and require the equivalent of a conditional use permit be approved by the City's Planning Board (Article 4, Table 3, Miami 21 Code), with certain exceptions. Food service establishments, which may serve alcoholic beverages, are permitted in all commercial and limited commercial districts.

The city code provides additional regulations for the location and distance separation of alcoholic service establishments, which excludes restaurants serving alcohol. Alcoholic service establishments are required to be a minimum of 1,500 feet from other establishments of the same type, in addition to separation from churches and schools. The code also establishes entertainment districts such as Wynwood, Little Havana, Brickell Village, Brickell Riverside, Park West, etc., Establishments located in these districts are approved administratively thru a conditional use permit and are not subject to distance separation requirements. The number of establishments within a district are capped and hours of operation and operating conditions apply (Chapter 4, Miami Code of Ordinances). Additionally, the administrative review for the conditional use permit requires that a noise attenuation plan addressing noise control be submitted for staff review.

The ability to have live music in other types of establishment is not regulated by the City. However, noise is regulated through the city's noise ordinance (Chapter 36, Miami Code of Ordinances). The ordinance provides that it is unlawful for noise or music to be "*plainly audible at a distance of 100 feet from the building, structure, vehicle or premises in which or from which it is produced.*" The city commission is authorized to provide exceptions from these provisions for special occasions by resolution.

City of Fort Lauderdale, Florida

The City of Fort Lauderdale Unified Land Development Code generally allows for bars, cocktail lounges and nightclubs as a permitted use in several of the city's commercial districts and as an accessory to hotels containing 100 or more rooms (Chapter 47, Article II, Fort Lauderdale Unified Land Development Code).

The code provides additional regulations regarding the sale of alcohol, including distance separation requirements. It also requires that no establishment, except nightclubs, allow, after 11:00 p.m., playing of instrumental music, singing or conduct other forms of entertainment, in any room where beer, wine, liquor or alcoholic beverages are sold or offered for sale, indoors or outdoors, unless such room or rooms are soundproofed, (Chapter 5, Article II, Fort Lauderdale Code of Ordinances). The code also allows for the establishment of special entertainment overlay Districts for areas of two acres or larger under common control. The overlays include operational criteria, but removes distance separation requirements and allows for music, singing and other forms of entertainment whether amplified or not to be played indoors at any time

that the business is open and for outdoor music until midnight on weekdays and 1 a.m. on weekends (Chapter 5, Article III, Fort Lauderdale Code of Ordinances).

While there are some limitations in hours for entertainment in alcoholic beverage establishment that aren't sound proofed, the City of Fort Lauderdale does not prohibit entertainment in other types of establishments. However, noise is regulated by the city's noise control ordinance (Chapter 17, Fort Lauderdale Code of Ordinances). The ordinance establishes decibel levels by types of sounds, during different hours, and by use. It also provides for greater decibel levels within a special entertainment district overlay.

City of Coral Gables, Florida

The City of Coral of Coral Gables Zoning Code defines "*Entertainment Use*" as "*a commercial accessory use where entertainment, either passive or active, is provided for the pleasure of the patrons of the principal use, including but not limited to vocal and instrumental music, dancing, comedy, and theater, but not including an adult use.*" Nightclubs are also defined as an accessory use to a restaurant. Since entertainment use is an accessory to commercial uses, it is allowed in all districts where commercial uses are permitted. The zoning code provides specific conditions for the playing of music, including hours of operation and noise limitations subject to the city's general noise ordinance; however, entertainment use is not prohibited in any area, but accessory only to commercial uses.

Like other cities, Coral Gables regulates noise emanating from a property, and provides decibel limits for different types of sound emanating from different districts, along with hours in which sound can emanate (Chapter 34, Article VI, Coral Gables Code of Ordinances). The playing of music is subject to these limitations found therein.

City of West Palm Beach, Florida

The City of West Palm Beach land development regulations do not define entertainment. The regulations do allow for bars, lounges, and related entertainment, as a permitted use in most commercial districts and with extra requirements in neighborhood commercial and office commercial districts. The code provides for operating hours and special requirements for such uses, along with modified hours for specific streets.

The code establishes requirements for the sale of alcoholic beverages and establishes separation requirements from other establishments and residential districts, hours of operation, and other requirements, along with providing specific exemptions and limitations for the downtown area, (Chapter 6, West Palm Beach Code of Ordinances).

The city has a noise control ordinance which establishes limits for sound citywide and also provides for specific areas where higher levels of noise are permitted, which include the city's downtown and entertainment areas (Chapter 34, Article II, West Palm Beach Code of Ordinances).

City of Austin, Texas

The City of Austin Land Development Code establishes requirements for permitting entertainment uses within the city (Title 25, Article 1, Land Development Code of Austin). "*Indoor entertainment*" is a *conditional use, permitted use, or not permitted use* depending on the zoning district. "*Outdoor entertainment*" is a *conditional use or not permitted* depending on the zoning district. However, the code provides that live

entertainment is permitted at restaurants and cocktail lounges if the amplified sound does not exceed 70 decibels, measured at the property line of the licensed premises.

Additionally, the code provides additional regulations regarding noise and amplified sound and establishes decibel limits for sound at the property line. (Chapter 9-2, Code of Austin). For example, a business cannot operate equipment that produces sound in excess of 85 decibels between 10:00 a.m. and 2:00 a.m. and audible at the property line between 2:00 a.m. and 10:00 a.m. Any sound that exceeds the prescribed decibel levels requires a permit to operate sound equipment audible to the public. The ordinance also has separate requirements for "*outdoor music permits*" and outdoor "*live music permits*," which have different standards depending on the specific neighborhood. Permits are issued administratively, however, they have specific criteria which must be considered before they can be issued.