INDOOR RESTAURANT AMBIENT ENTERTAINMENT PILOT PROGRAM

ORDINANCE NO. _____

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 AMENDING SECTION 12-6, ENTITLED "AMBIENT ENTERTAINMENT PERMIT PROGRAM," TO CREATE AN INDOOR RESTAURANT ENTERTAINMENT PERMIT PROGRAM, TO IDENTIFY ELIGIBLE ESTABLISHMENTS, ESTABLISH REGULATIONS APPLICABLE TO THE PERMIT PROGRAM (INCLUDING THE TERM OF THE PERMIT, AND MINIMUM STANDARDS, CRITERIA, AND CONDITIONS); 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 previously established an ambient entertainment permit program, subject to the conditions specified herein; and

WHEREAS, each ambient entertainment permit is a 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; and

WHEREAS, the Mayor and City Commission now desire to create an Indoor Restaurant Ambient Entertainment Pilot Program, subject to strict conditions, for restaurants in specified areas of the City which are not eligible for the existing ambient entertainment pilot program.

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.

(I) 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) 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 the city commission 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.

(II) *Indoor Restaurant Ambient Entertainment Pilot Program.*

(a) As a separate matter from the ambient entertainment permit program under subsection (I) herein, the city commission shall have the authority to issue, modify, or revoke temporary indoor restaurant ambient entertainment permits (each, a "permit") for indoor portions of restaurants located in the following areas, in accordance with the criteria and provisions set forth herein:

(1) _____ area.

(2) _____ area.

(b) Each permit shall be subject to strict compliance with the following:

(1) Ambient entertainment shall be limited to indoor portions of full-service restaurants only.

(2) Ambient entertainment shall occur no earlier than 11:00 a.m. and no later than 4:00 p.m. each day, on Friday, Saturday, and Sunday only.

(3) Sound associated with entertainment shall not exceed ambient levels at any time and shall not be audible anywhere along the exterior of the premises at any time.

(4) The occupant content of the establishment, as determined by the Fire Marshal, shall not be more than 300 persons.

(5) Dance halls shall not be permitted.

(6) The establishment may be issued up to 4 Special Event Permits (SEP) per year, provided such SEPs do not contravene the criteria and requirements herein.

(7) Each permit shall require the prior approval of the City Commission, and such permit shall have an initial term of six (6) months, or such lesser time as determined by the City Commission. The City Commission may extend the permit, at its sole discretion, for additional six (6) month intervals, or a lesser interval as determined by the City Commission.

(8) The City Commission, at its sole discretion, may revoke any entertainment permit issued in accordance with this section prior to the end of the term, if the Commission determines that an establishment has failed to comply with any of the conditions and requirements of this subsection (II).

(9) In order to be eligible for this program, an eligible applicant shall first agree in writing, on a form acceptable to the City Attorney, to fully comply with all conditions and requirements of the indoor restaurant ambient entertainment pilot program, and shall agree to hold the city harmless and fully indemnify the City from any and all liability in the event a permit is not extended, or is revoked, for any reason. The applicant shall also agree and acknowledge that the permit is temporary, conditional, and revocable by the city commission at any time, with or without cause, upon seven days' prior written notice to the permittee.

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 _____ day of _____, 2023.

PASSED AND ADOPTED this ____ day of _____, 2023.

ATTEST:

_____
Dan Gelber
Mayor

_____
Rafael E. Granado
City Clerk

Underline denotes additions
~~Strikethrough~~ denotes deletions

(Sponsored by Commissioner Ricky Arriola)

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