

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: June 27, 2023

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB23-0608. Conditional Use Approval for Rooftop Alcohol Establishments.**

RECOMMENDATION

Transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

HISTORY

On May 17, 2023, at the request of Commissioner Alex Fernandez, the City Commission referred the proposal (C4 A) to the Land Use and Sustainability Committee (LUSC) and the Planning Board. The LUSC is scheduled to review the item on July 19, 2023.

REVIEW CRITERIA

Pursuant to Section 2.4.2 of the Resiliency Code, in reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:

- 1. Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

Consistent – The proposed ordinance is consistent with the goals, objectives, and policies of the Comprehensive Plan.

- 2. Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.**

Consistent – The proposed amendment does not create an isolated district unrelated to adjacent or nearby districts.

- 3. Whether the change suggested is out of scale with the needs of the neighborhood or the city.**

Consistent - The proposed ordinance does modify the scale of development, as such the amendment is not out of scale with the needs of the neighborhood or the city.

4. Whether the proposed change would tax the existing load on public facilities and infrastructure.

Consistent – The proposed ordinance will not affect the load on public facilities and infrastructure.

5. Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.

Not applicable – The proposed amendment does not modify district boundaries.

6. Whether changed or changing conditions make the passage of the proposed change necessary.

Consistent – The need to ensure that residents have the ability to peacefully enjoy their homes and maintain quality of life in light of an increase in rooftop alcoholic beverage establishments makes passage of the proposed change necessary.

7. Whether the proposed change will adversely influence living conditions in the neighborhood.

Consistent – The proposed ordinance amendment will not adversely affect living conditions in the neighborhood, as it is intended to ensure that the quality of life of nearby residents is maintained.

8. Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.

Consistent – The proposed change will not create or increase traffic congestion from what is currently permitted.

9. Whether the proposed change will seriously reduce light and air to adjacent areas.

Consistent – The proposed change will not affect light and air to adjacent areas.

10. Whether the proposed change will adversely affect property values in the adjacent area.

Consistent – The proposed change will not adversely affect property values in the adjacent areas.

11. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.

Partially Consistent – The proposed change should not be a deterrent to the improvement or development of properties in the City.

12. Whether there are substantial reasons why the property cannot be used in

accordance with existing zoning.

Not applicable.

- 13. Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.**

Not applicable.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 7.1.2.4 (ii) of the Resiliency Code establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

- (1) Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.**

Partially Consistent – The proposal does affect areas that are vulnerable to the impacts of sea level rise in the long term.

- (2) Whether the proposal will increase the resiliency of the City with respect to sea level rise.**

Partially Consistent – The proposal should not impact the resiliency of the City with respect to sea level rise.

- (3) Whether the proposal is compatible with the City’s sea level rise mitigation and resiliency efforts.**

Consistent – The proposal is compatible with the City’s sea level rise mitigation and resiliency efforts.

ANALYSIS

The Land Development Regulations of the City Code (LDRs) currently define Neighborhood Impact Establishment (NIE) as follows:

Neighborhood impact establishment means:

- (1) An alcoholic beverage establishment or restaurant, not also operating as an entertainment establishment or dance hall, with an occupant content of 300 or more persons as determined by the chief fire marshal; or*
- (2) An alcoholic beverage establishment or restaurant, which is also operating as an entertainment establishment or dance hall, with an occupant content of 200 or more persons as determined by the chief fire marshal.*

Open air or outdoor roof-top establishments that include entertainment require a CUP regardless of the occupational content. However, roof-top alcoholic beverage establishments, whether enclosed or unenclosed, that have no entertainment do not require a CUP unless the occupational content of the establishment exceeds 300 persons.

To address future impacts on adjacent properties that contain residential uses, a 3rd NIE tier is proposed, for roof-top establishments, as follows:

- (3) *An alcoholic beverage establishment or restaurant located on the top floor of a building, whether fully enclosed, partially open or open to the sky, which is located on a property that is within 200 feet of a property containing a residential unit.*

This proposed 3rd NIE tier would be added to the definition of NIE as part of a LDR amendment. If adopted, Planning Board approval of a CUP would be required for any future roof-top alcohol establishment that is on a property within 200 feet of a property containing a residential unit.

The proposed amendment is intended to address impacts from roof-top alcoholic beverage establishments that are located near residences. The primary impacts that are expected to be addressed through the conditional use process include hours of operation, occupancy, noise and lighting spillage. These impacts are consistent with those associated with entertainment establishments and establishments with an occupancy greater than 299 persons. As such, the proposed new NIE tier applicable to a defined distance from properties with a residential unit is suitable to address potential impacts.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

Conditional Use Approval for Rooftop Alcohol Establishments

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 “MIAMI BEACH RESILIENCY CODE,” CHAPTER 1, ENTITLED “GENERAL PROVISIONS,” ARTICLE II, ENTITLED “DEFINITIONS,” SECTION 1.2.2, ENTITLED “USE DEFINITIONS”, SUBSECTION 1.2.2.4, ENTITLED “COMMERCIAL,” BY AMENDING AND EXPANDING THE DEFINITION OF NEIGHBORHOOD IMPACT ESTABLISHMENT TO INCLUDE ROOF TOP ALCOHOLIC BEVERAGE ESTABLISHMENTS ADJACENT TO PROPERTIES WITH A RESIDENTIAL UNIT; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, there is a desire to amend and enhance the current requirements in the City Code pertaining to roof top venues; and

WHEREAS, roof-top alcohol establishments, if not properly regulated, can become a nuisance and negatively impact adjacent residential properties, the impacts of which can be difficult to control; and

WHEREAS, roof-top alcohol establishments can negatively impact the character of neighborhoods and quality of life for surrounding residents and businesses; and

WHEREAS, the City of Miami Beach (“City”) desires to implement increased standards for roof-top alcohol establishments; and

WHEREAS, the regulations set forth herein will promote the general health, safety and welfare of the residents of the City; 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 1 of the Miami Beach Resiliency Code, entitled “General Provisions,” Article II, entitled “Definitions,” is hereby amended as follows:

1.2.2 USE DEFINITIONS

* * *

1.2.2.4 Commercial

* * *

Neighborhood impact establishment means:

- a. An alcoholic beverage establishment or restaurant, not also operating as an entertainment establishment or dance hall (as defined in Section 1.2.2), with an occupant content of 300 or more persons as determined by the chief fire marshal; or
- b. An alcoholic beverage establishment or restaurant, which is also operating as an entertainment establishment or dance hall (as defined in Section 1.2.2), with an occupant content of 200 or more persons as determined by the chief fire marshal.
- c. An alcoholic beverage establishment or restaurant located on the top floor of a building, whether fully enclosed, partially open or open to the sky, which is located on a property that is within 200 feet of a property containing a residential unit.

SECTION 2. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

SECTION 3. CODIFICATION.

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this _____ day of _____, 2023.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

First Reading: July 26, 2023
Second Reading: September 13, 2023

Verified By: _____
Thomas R. Mooney, AICP
Planning Director