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MIAMI BEACH
PLANNING DEPARTMENT

Staff Report & Recommendation — PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: May 28, 2024

FROM: Thomas R. Mooney, AICP
Planning Director

DS for TRM

SUBJECT: **PB24-0673. Mandatory Progress Reports for CUPs.**

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

HISTORY
On December 13, 2023, at the request of Commissioner Alex Fernandez, the City Commission referred a discussion item (C4 P) pertaining to Conditional Use Permit applications for Neighborhood Impact Establishments to the Land Use and Sustainability Committee (LUSC). Commissioner Tanya K. Bhatt is the co-sponsor of the proposal.

On February 26, 2024, the LUSC discussed the item and recommended the following for future CUPs issued for a Neighborhood Impact Establishments:

1. A mandatory progress report shall be required within six (6) months of the issuance of a certificate of use (CU) for the establishment.

2. A yearly progress report shall be required, regardless of whether any violations may have occurred.

The LUSC further recommended that the City Commission refer an amendment to the Land Development Regulations of the City Code (LDRs) to the Planning Board to effectuate these new requirements. On April 3, 2024, at the request of Commissioner Alex Fernandez, the City Commission referred an amendment to the Land Development Regulations to the Planning Board to require mandatory progress reports for Neighborhood Impact Establishments (item C4 A).

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

1. Whether the proposed change is consistent and compatible with the

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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.**

   Not Applicable – The proposed ordinance does not create any district.

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

   Not Applicable – The proposed ordinance is not out of scale with the needs of any neighborhood.

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

   Not Applicable – 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 desire to more closely monitor neighborhood impact establishments make the passage of the proposed change necessary.

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

   Not Applicable – The proposed ordinance amendment does not affect living conditions.

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.**

   Not Applicable – The proposed ordinance will have no impact on traffic congestion or levels of service.

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

   Not Applicable – The proposed change will have no impact on light and air on adjacent areas.

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

Not Applicable – The proposed change will not adversely affect property values in adjacent areas.

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

Consistent – The proposed change will not be a deterrent to the improvement or development of certain 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 of the LDRs 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.

Not applicable.

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

Not applicable.

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

Not applicable.

ANALYSIS

A Neighborhood Impact Establishment (NIE) is defined in the Land Development Regulations of the City Code (LDR's) as follows:

- An alcoholic beverage establishment or restaurant (without entertainment) with an occupant content of 300 or more persons.

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- An alcoholic beverage establishment or restaurant (with entertainment) with an occupant content of 200 or more persons.

- An alcoholic beverage establishment or restaurant located on a rooftop within 200 feet of a residential property.

A conditional use permit (CUP), issued by the Planning Board, is required to operate any NIE in the City.

Currently, CUPs are issued in perpetuity and as long as the use does not cease operations for more than 180 days, the business can continue operating pursuant to the conditions in the approved Planning Board order. Generally, the Planning Board places requirements for progress reports, and the most typical requirement is for a progress report to occur 90 days after the business begins operating. If the business operates in accordance with the conditions of the CUP and does not create nuisances for neighbors, the business will likely not be called back to the Planning Board.

The existing system is intended to ensure that NIEs do not negatively impact surrounding residents. When a business does not comply with the conditions of approval, the Code Compliance Department can issue violations. The Planning Department is notified of those violations, and in most instances will issue a Cure Letter and set a progress report before the Planning Board. If the issue is not corrected, the Planning Board generally schedules a noticed Revocation/Modification Hearing, where the conditions of approval can be modified, or the CUP can be revoked.

The attached draft ordinance includes the LUSC recommendations for mandatory progress reports before the Planning Board, on an annual basis, after an NIE begins operating. This is intended to reinforce the conditions of approval and ensure that the business is abiding by those conditions, while providing certainty that if a business operates appropriately, it will be able to continue operating.

It is anticipated that the number of new CUP approvals will increase in the future, resulting in an increase in the number of progress reports. As such, both staff and the board will likely need to develop strategies in the coming years to manage the additional progress reports.

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.

Mandatory Progress Report Requirements for CUP

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 RESIIENCY CODE," CHAPTER 2, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE V, ENTITLED "REZONINGS AND DEVELOPMENT APPROVALS," TO ESTABLISH MANDATORY PROGRESS REPORT REQUIREMENTS FOR CONDITIONAL USE PERMITS ISSUED FOR NEIGHBORHOOD IMPACT ESTABLISHMENTS; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and City Commission desire to amend and enhance the current requirements in the City Code pertaining to Neighborhood Impact Establishments (NIE); and

WHEREAS, NIE's, 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, NIE's can negatively impact the character of neighborhoods and quality of life for surrounding residents and businesses; and

WHEREAS, mandatory progress reports for NIE's 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 2 of the Miami Beach Resiliency Code, entitled "General Provisions," Article II, entitled "Definitions," is hereby amended as follows:

CHAPTER 2
ADMINISTRATION AND REVIEW PROCEDURES

* * *

ARTICLE V – REZONINGS AND DEVELOPMENT APPROVALS

* * *

2.5.2 Conditional Use

* * *

2.5.2.5 Compliance with conditions; revocation or modification

a. No occupational license, certificate of use, certificate of occupancy, or certificate of completion shall be issued until all conditions of approval have been met. The establishment of a conditional use without complying with the conditions of approval shall constitute a violation of these land development regulations and shall be subject to enforcement procedures as set forth chapter 1, and as provided herein.
b. Within a reasonable time after a conditional use application or amendment has been approved, the applicant shall record the planning board's action and conditions in the public records of the county. No building permit, certificate of use, certificate of occupancy, certificate of completion or occupational license shall be issued until compliance with this regulation has demonstrated.
c. <u>The following mandatory progress reports shall apply to any application that includes approval for a Neighborhood Impact Establishment (NIE):</u>
    1. <u>Within 6 months of the approval of an application that includes an NIE, the applicant shall provide a progress report to the Board.</u>
    2. <u>The applicant shall be required to provide annual progress reports to Board, in perpetuity. In addition to all enforcement provisions herein, the Board reserves the right to schedule a modification / revocation hearing if determined necessary when reviewing any annual progress report.</u>
d. The board may revoke or modify a conditional use approval pursuant to the following procedures:
    1. The planning director shall notify the applicant by certified mail of the failure to comply with the conditions of the approval;
    2. If, after expiration of a 15-day cure period commencing on the date of the notice, the applicant fails to comply with the conditions, or the applicant has exhibited repeated or intermittent noncompliance with the conditions prior to the cure period and the planning director is concerned about further repeated or intermittent noncompliance, the planning director shall advise the board at the next meeting and the board may consider setting a public hearing for the purpose of examining the noncompliance issues;
    3. If the board elects to set a public hearing, the planning director shall place the matter on the board's agenda in a timely manner and all notice requirements imposed for conditional use applications as set forth in subsection 2.2.4.1 shall be applicable, with the addition of notice to the applicant; and
    4. The board shall hold a public hearing to consider the issue of noncompliance and the possible revocation or modification of the approval, and, based on substantial competent evidence, the board may revoke the approval, modify the conditions thereof, or impose additional or supplemental conditions.
e. In determining whether substantial competent evidence exists to support revocation, modification or the imposition of additional or supplemental conditions to the approval, intermittent noncompliance with the conditions, as well as the frequency, degree and adverse impact of such intermittent noncompliance, may be considered by the board.
f. In the event the board takes any of the enforcement actions authorized in this subsection, the applicant shall reimburse the Planning Department for all monies expended to satisfy notice requirements and to copy, prepare or distribute materials in anticipation of the public hearing. The applicant shall not be permitted to submit a new application, for related or unrelated matters, nor shall an application be accepted affecting the subject property for related or unrelated matters, for consideration by the board of adjustment, planning board, design review board, or historic preservation

board, until repayment in full of all monies due and payable pursuant to the foregoing sentence.

g. In addition to all other enforcement actions available to the board, based upon a board finding that the applicant has failed to comply with the conditions of the approval, the board may recommend that the code compliance director (or his successor in interest with respect to the issuance of occupational licenses and certificates of use), in his discretion, revoke or suspend the certificate of use for the subject property or the applicant's occupational license applicable to the business conducted at the subject property.

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 _____, 2024.

ATTEST:

_____
Steven Meiner, Mayor

_____
Rafael E. Granado, City Clerk

First Reading: June 26, 2024
Second Reading: July 24, 2024

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

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