

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: September 26, 2017

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 16-0069 fka File No. 1361 –1236 Ocean Drive–Il Giardino.
Revocation/Modification Hearing**

BACKGROUND

October 20, 1998

Le Deux Fontaines restaurant received a Conditional Use Permit (CUP) in order to operate an outdoor entertainment establishment limited to a non-amplified jazz band at 1230-1238 Ocean Drive.

May 23, 2006

Hosteria Romana 2, LLC was issued a modification to the CUP to change the name owner/operator of an outdoor entertainment establishment and remove the limitation on amplification of a jazz band or similar ensemble.

July 27, 2010

Reta Ocean Drive, LLC applied for and was granted a Modified Conditional Use Permit (MCUP) to change the name of the owner/operator and remove the condition limiting entertainment to a jazz band and allow for entertainment level amplified music with volume controls conforming to the sound study provided.

February 22, 2011

As a result of a progress report due to numerous noise violations, the MCUP was further modified by the Planning Board to compel the applicant to conduct another sound study and install the speakers in accordance with the new plan.

November 15, 2011

The Planning Board modified the MCUP further to remove the ability for the applicant to have amplified music outdoors that is played at an entertainment levels as a result of continued violations and noise complaints.

April 24, 2012

The MCUP was suspended by the Planning Board for one month due to non-compliance with the modified Planning Board order.

May 22, 2012

The Planning Board modified the MCUP to change some conditions regarding the awning structure and sprinkler system.

- December 20, 2016* The Planning Board issued a MCUP to Il Giardino, LLC for an outdoor entertainment establishment in order to change the name of the restaurant and the name of the owner/operator.
- July 11, 2017* At the direction of the Planning Board, a Cure Letter was issued regarding open violations and complaints about the operation of the establishment.
- July 27, 2017* The Planning Board heard from the applicant at a progress report in response to the Cure Letter. There was a discussion and the Board requested that a public hearing be set to consider a revocation, modification or imposition of additional conditions due to code violations and complaints.

UPDATE

The Board requested a detailed description of the violations (see attached.)

PROGRESS REPORT

Staff research of city records found that the following violations are showing in the city's records as of this writing:

Case Number	Main Address	Case Type	Description	Case Status	Open Date
CC2017-03254	1236 OCEAN DR	City Code Violation	Sidewalk Café violations	Notice of Violation	07/14/2017
CC2017-03255	1236 OCEAN DR	City Code Violation	Resort Tax payments	Notice of Violation	07/14/2017
SV2017-02747	1236 OCEAN DR	Sanitation Violation	Trash not in the container	Notice of Violation	06/19/2017
ZV2017-01122	1236 OCEAN DR	Zoning Violation	Selling cigars in unapproved area	Notice of Violation	05/26/2017
SMA2017-00488	1236 OCEAN DR	Special Master Appeal	Failing to itemize bill for tax and tip	Appealed	04/18/2017
SMA2017-00517	1236 OCEAN DR	Special Master Appeal	Alcoholic beverages in to-go cups	Appealed	05/17/2017
SMA2017-00676	1236 OCEAN DR	Special Master Appeal	Sidewalk Café vio #CC2017-03254	Appealed	08/08/2017

STAFF ANALYSIS

Below is a list of the conditions of the attached Modified CUP that are related to the violations and complains discussed at the last Planning Board meeting:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
6. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation should there be complaints about unreasonably loud, excessive, unnecessary, or unusual noise.
20. As proffered by the applicant, the applicant shall comply with the requirements of the Ten Point Plan for Ocean Drive.

In light of the inconsistencies with the above MCUP conditions, as well as the absence of any documentation from the applicant advising of corrective actions or measures to ensure

compliance with the MCUP in the future, the Board should consider the issue of noncompliance and consider modifying the conditions of the MCUP, or revoking the MCUP.

STAFF RECOMMENDATION

Staff recommends that the Planning Board discuss modifying or revoking the MCUP.

TRM/MAB/TUI

CC2017-03254

Violation of section 82-385 Failing to adhere to the standards, criteria, and conditions of sidewalk cafes

Ref: Receipt obtained on 7/14/2017 @ 12:01 pm shows that City Resort Tax percentage is not shown on it. Also no total or combined percentage is displayed on receipt that includes all taxes.

w) A sidewalk cafe that automatically includes a gratuity or service charge, either in the price of the meal or drink or separately imposed for all items ordered, and fails to properly notify the customer of the automatic gratuity or service charge is prohibited from operating on the city's property. The notification must be consistent with those requirements set forth in sections 82-381(i) and 82-382(b)(17).

CC2017-02753

Violation of Section 70-87(a)(3).

It shall be unlawful for any alcoholic beverage establishment or special event permittee to allow any person to take from the premises, sidewalk cafe permit area, or special event permit area, any open or unsealed glass, metal, plastic, or other open or unsealed container of beer, wine, liquor, or any other alcoholic beverage

REF: Waiter poured alcoholic beverages in to go cups. Observed patrons leaving the sidewalk cafe with the alcohol beverages.

First violation within a 12-month period: \$1,000.00

**PLANNING BOARD
CITY OF MIAMI BEACH, FLORIDA**

PROPERTY: 1236 Ocean Drive

FILE NO. PB16-0069 f.k.a., PB 1361

IN RE: The applicant, Il Giardino, LLC, requested a modification to a previously issued Conditional Use Approval for an outdoor entertainment establishment. Specifically the applicant is requesting to change the owner/operator, pursuant to Section 118, Article IV of the City Code.

LEGAL DESCRIPTION: Lots 4 and 5, Block 17, of Ocean Beach, FLA. Addition no. 2, according to the Plat thereof as recorded in Plat Book 2 at page 56 of the Public Records of Miami-Dade County, Florida.

MEETING DATE: December 20, 2016

MODIFIED CONDITIONAL USE PERMIT

The applicant, Il Giardino, LLC, filed an application with the Planning Director to modify a previously approved Conditional Use Permit for an outdoor entertainment establishment in order to change the owner/operator, pursuant to Section 118, Article IV of the City Code. Notice of the request was given as required by law and mailed out to owners of property within a distance of 375 feet of the exterior limits of the property, upon which the application was made.

The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the of the record for this matter:

That the property in question is located in the MXE, Mixed Use Entertainment Zoning, District;

That the use is consistent with the Comprehensive Plan for the area in which the property is located;

~~That the intended use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;~~

That structures and uses associated with the request are consistent with the Land Development Regulations;

~~That the public health, safety, morals, and general welfare will not be adversely affected;~~

That necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values if the following conditions are met.

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PB16-0069 f.k.a., PB 1361 -1236 Ocean Drive
December 20, 2016

Page 2 of 5

IT IS THEREFORE ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including the staff recommendation, that a Conditional Use Permit as requested and set forth above be **GRANTED**, subject to the following conditions to which the applicant has agreed: Underlining denotes new language and strikethrough denotes stricken language from the previous Order.

1. The Planning Board shall maintain jurisdiction of this Modified Conditional Use Permit. The Board reserves the right to modify the Conditional Use approval at the time of the progress report, in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for further progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
2. This Modified Conditional Use Permit is issued to ~~Reta Ocean Drive, LLC~~, Il Giardino, LLC, for the restaurant now known as Mia Bella Roma. Any change of operator or ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit. Any substantive change in the operation from a restaurant shall require review and approval by the Planning Board as an amendment to this Modified Conditional Use Permit. Subsequent owners and operators shall be required to appear before the Board within 90 days of the change in ownership or operator to affirm their understanding of the conditions listed, herein.
3. Music, whether live or recorded, amplified or non-amplified, shall not be played at a volume that is defined as entertainment, i.e. louder than ambient background music (defined as at a level that does not interfere with normal conversation). Special "teen night" promotions and "all-ages" events are prohibited. The sound system's maximum volume shall be limited to the volume which is permitted by the Noise Ordinance. No third party sound system shall be allowed; only the house sound system shall be used. Following installation and testing, the sound system shall be locked and password protected, so that its volume can never be changed by a person other than an owner or the restaurant Manager on Duty (MOD) or to a volume which would violate the City's Noise Ordinance. The house sound system, shall, in all respects, be installed, tested, and operated so that it complies with the specifications and requirements of the April 11, 2011 proposal by The Audio Bug, Inc. and with this Modified Conditional Use Permit, and a report on such installation, testing, and compliance, shall be submitted to staff for review and approval no later than 30 days prior to the July 26, 2011 Board hearing.
4. All components of the house sound system shall at all times have the locations and the orientations identified in the April 11, 2011 report by the Audio Bug, Inc.
5. In addition to the limitations set forth in condition number 3 above, the hours of live music shall be limited to 11:00 P.M. on weekdays, and midnight on Friday, Saturday and Sunday. Pre-recorded background music may be played the rest of the time.

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PB16-0069 f.k.a., PB 1361 -1236 Ocean Drive
December 20, 2016

Page 3 of 5

6. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation should there be complaints about unreasonably loud, excessive, unnecessary, or unusual noise.
7. The receipt of a written warning pursuant to section 46-158, Code of the City of Miami Beach, Florida, or a notice of violation of section 46-152, Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended and as these sections may in the future be renumbered, shall be deemed a violation of this Modified Conditional Use Permit and subject to the remedies as described in section 118-194, Code of the City of Miami Beach, Florida.
8. The applicant shall be responsible for maintaining the frontage and exterior of the building and the property in excellent condition, including keeping the sidewalk, curb and gutter in front of the building in a clean and sanitary condition, free of all refuse, at all times. When sweeping the sidewalks, the personnel doing the sweeping shall ensure that they do not merely push the refuse in front of another building, but pick up all trash and dispose of it appropriately. In addition, at the end of business each day sidewalks shall be swept and hosed down.
9. The existing awnings at the first level of the east elevation have not been permitted and shall be removed. New awnings, composed of woven fabric, with a low profile and minimum pitch, may be permitted; the final details, dimensions, color, material, location and method of attachment of any awnings shall be subject to Certificate of Appropriateness approval.
10. Any sign that may be desired shall be submitted to staff for review and approval.
11. The applicant shall complete the installation of the awnings and sprinkler system and advise staff before the July 24, 2012 meeting. Staff shall in turn notify the Board informally.
12. ~~Within a reasonable time after receipt of this~~ This Modified Conditional Use Permit, as signed and issued by the Planning Director, ~~the applicant shall be recorded it in the Public Records of Miami-Dade County, at the expense of the applicant and return it to the Planning Department.~~
13. The establishment and operation of this Modified Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-7 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.

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PB16-0069 f.k.a., PB 1361 -1236 Ocean Drive
December 20, 2016

Page 4 of 5

14. The applicant shall satisfy code violations, outstanding liens, past due City bills, if any, to the satisfaction of the City prior to the issuance of this Modified Conditional Use permit before a Modified Certificate of Use/Business Tax Receipt is approved.
15. Street flyers and handouts shall not be permitted, including handbills from third-party promotions. Violation of this condition shall be deemed a violation of this Modified Conditional Use Permit and subject to the remedies as described in Sec. 118-194 of the City Code.
16. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
17. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.
18. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 118-194, Code of the City of Miami Beach, Florida.
19. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the Code of the City of Miami Beach, Florida, and shall be subject to enforcement procedures set forth in Section 114-8 of said Code and such enforcement procedures as are otherwise available. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.
20. As proffered by the applicant, the applicant shall comply with the requirements of the Ten Point Plan for Ocean Drive.

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PB16-0069 f.k.a., PB 1361 -1236 Ocean Drive
December 20, 2016

Page 5 of 5

Dated this 19th day of JANUARY, 2017.

PLANNING BOARD OF THE
CITY OF MIAMI BEACH, FLORIDA

BY:

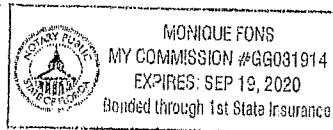
Michael Belush
Michael Belush, Planning and Zoning Manager
For Chairman

STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 19th day of January, 2017, by Michael Belush, Planning and Zoning Manager of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.

[Signature]

[NOTARIAL SEAL]



Notary:

Print Name: MONIQUE FONS

Notary Public, State of Florida

My Commission Expires: SEP 18, 2020

Commission Number:

Approved As To Form:
Legal Department

[Signature] 1/18/17

Filed with the clerk of the Planning Board on 1/19/2017 [Signature]

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MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

PLANNING DEPARTMENT
Tel: 305-673-7550 Fax: 305-673-7559

July 11, 2017

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

1236 Ocn Dr, LLC
1400 Broadway, 15th FL
New York, NY 10018

Il Giardino, LLC
1236 Ocean Drive
Miami Beach, FL 33139

Re: PB16-0069 fka Planning Board File No. 1361 –1236 Ocean Drive

Dear Sir/Madam:

A Conditional Use Permit (CUP) for modifications to a previously issued Conditional Use approval in order to change the owner/operator for an outdoor entertainment establishment was issued on December 20, 2016. It has come to the Planning Department's attention that complaints have been made regarding the operational conditions contained in the attached modified conditional use permit (MCUP.)

In light of the aforementioned complaints and the inconsistencies with the following conditions of approval contained in the Conditional Use Permit, **you are requested to appear at the July 25, 2017 Planning Board hearing** for a verbal progress report:

1. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
6. The Planning Board shall retain the right to call the operators back before them and modify the hours of operation should there be complaints about unreasonably loud, excessive, unnecessary, or unusual noise.
20. As proffered by the applicant, the applicant shall comply with the requirements of the Ten Point Plan for Ocean Drive.

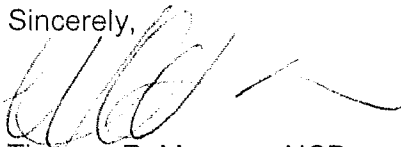
Please be advised that at the time of the progress report, in accordance with the provisions of City Code Section 118-194(3), the Planning Board may consider setting a public hearing for the purpose

of examining the noncompliance issues and initiate modification/revocation proceedings. Should the Planning Board consider setting a public hearing for the purpose of examining the noncompliance issues and initiate modification/revocation proceedings, this issue may be placed at the next available meeting of the Board.

If a modification/revocation hearing is set at that public hearing, the board may consider the issue of noncompliance and the possible modification or revocation of the approval. Based on substantial competent evidence, the board may revoke the approval, modify the conditions thereof, or impose additional or supplemental conditions.

If you have any questions, please do not hesitate to contact Ms. Tui Munday at (305) 673-7000 ext. 6320.

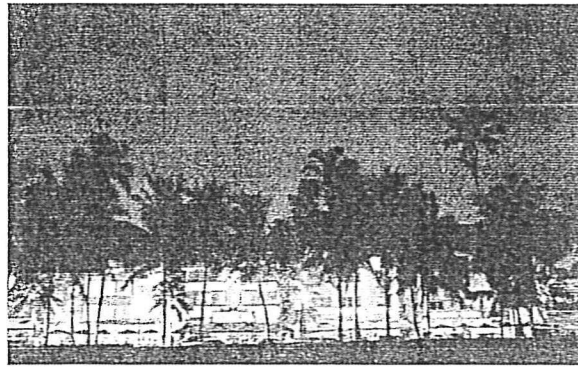
Sincerely,



Thomas R. Mooney, AICP
Planning Director

TRMTUI

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TEN POINT PLAN FOR OCEAN DRIVE

Introduction

At the July 20th Commission meeting, Mayor Levine asked Commissioner Arriola to meet with Ocean Drive businesses and other stakeholders to negotiate a comprehensive proposal for changes to Ocean Drive that would reinvigorate and improve numerous aspects of this critically important and iconic street. Over the past several weeks, Commissioner Arriola has had many discussions with residents, neighborhood groups, business owners, the Police Chief, City Manager, City Attorney and other City Staff.¹ Therefore, this work product is the result of careful deliberation with and collaboration among key stakeholders. The proposal contained in this document (the "Proposal") aims to balance the vision of City leaders with the interests of residents, private property owners and businesses in order to create a more welcoming and safer environment for residents and tourists visiting Ocean Drive. Ultimately, all parties desire to re-create the charm and glamour of Ocean Drive.

Many of the issues addressed here have, over the last 12 months, been the subject of extensive analysis by the Mayor's Ocean Drive Task Force. The Task Force received substantial public comment and testimony on these issues. This document incorporates many of those same Task Force recommendations, which previously were approved by the City Commission and referred to City Staff for implementation.

This Proposal takes aim at the major elements that must be addressed in a comprehensive plan – police/security; noise; safety; sanitation; aesthetics; code of conduct; allowable businesses and other related matters.

¹ Commissioner Arriola also has had many meetings with Jonathan Plutzik, Chairman of the Ocean Drive Task Force. Further, the Commissioner met with Mike Palma, Executive Vice President of Brio Destinations, which owns The Clevelander Hotel; and Alexander Tachmes, Partner at Shutts & Bowen LLP and the Clevelander's counsel. In July of this year, the Clevelander had submitted a proposal to the Mayor and City Commission proposing changes to Ocean Drive.

Recommendations

1. *Immediate additional police, security and sanitation workers for Ocean Drive*

- A. Patrolling public areas. In its FY 2016/17 budget, the City allocated funds for an additional 12 new officers dedicated solely to the City's Mixed Use Entertainment District ("MXE"), which includes Ocean Drive from 5th to 15th Streets and Collins Avenue from 5th to 16th Streets. Due to training and other hiring protocols, some of these 12 new officers are expected to begin patrolling in early 2017 with the remainder commencing in the summer of 2017. Although the presence of these additional 12 officers will definitely provide safety benefits for the area, as indicated above, the officers will not be dedicated solely to Ocean Drive (5 officers will be dedicated to Ocean Drive) and it will be some time before the officers commence work.

Many believe that the need to improve the safety of Ocean Drive is one of the most urgent issues facing the street. Due to the *immediate* need for additional security dedicated exclusively to Ocean Drive, between now and the date that additional police officers are physically present on Ocean Drive, the City and/or Ocean Drive businesses will pay a private security company to have 2 security guards stationed on every other block of Ocean Drive between 5th and 15th Streets, 7 days per week (with the number of hours per day to be determined). The issue of who will pay for the additional security and/or what percentages of the overall cost will be paid by which party will be discussed between the City and Ocean Drive property owners. Once the additional police officers begin patrolling in the summer of 2017, the City and Ocean Drive businesses will re-evaluate whether to decrease or maintain the private security presence.

- B. Police and Park Rangers. At the discretion of the Commission and Police Chief, Miami Beach police officers and park rangers may be shifted from other areas to Ocean Drive. Off-duty Miami Beach police officers and off-duty police officers from neighboring municipalities may be contracted to patrol Ocean Drive (although finding sufficient officers who want to perform this off-duty work remains a major challenge). Off-duty officers will not be allowed to be assigned to specific bars or restaurants. To the extent that Miami Beach Police, off-duty police and Park Rangers can be allocated to Ocean Drive, the need for private security will decrease.
- C. Open Containers. Police officers will continue to enforce open container laws and conduct undercover operations to identify those businesses that allow patrons to leave their establishments with open containers. Additional enforcement and self-regulation of open container laws also will be responsibilities of Ocean Drive businesses as stated in this Proposal.
- D. Security to Patrol Private Property. All bars and restaurants on Ocean Drive shall be required to hire private security. Private security guards will be required to receive

the BID boundaries. Moreover, if a BID is formed, the members of the BID will be responsible for establishing an annual budget, which will be paid, at least in part, by property owners.

If a BID is formed, an Executive Director will be appointed to ensure that all Ocean Drive businesses are operating consistent with City Code and the BID mission statement and other relevant guidelines. This Executive Director will be in constant communication with the City and the BID board of directors, consisting of Ocean Drive businesses. The Executive Director will be the main point of contact between Ocean Drive businesses and the City. The above protocol, which is consistent with other BIDs, will provide very important "self-policing" benefits and other great improvements to Ocean Drive.

The process to form a BID is estimated to take at least 9 months. Therefore, to address the window of time between now and the date of BID formation, the Ocean Drive Association and its members have agreed to hire (at their sole cost) an Interim Street Manager who will be in charge of ensuring that businesses comply with new Code provisions and otherwise take all appropriate steps to enhance existing operations. The Interim Street Manager will report to the Ocean Drive Association board and interface regularly with Miami Beach Police, Code Enforcement and City leadership. If a BID is formed, this position can be converted to the BID Executive Director. However, it is important that a manager be appointed now to drive change and compliance on the street.

SUPPORTED BY OCEAN DRIVE TASK FORCE AND ALREADY APPROVED BY CITY COMMISSION

3. *Umbrellas, Furniture and Fixtures*

The Ocean Drive Task Force voted in favor of moving furniture to the west part of the sidewalk in order to provide a clear pedestrian pathway and remove the "gauntlet" or "tunnel" effect that currently exists on the street.

The Historic Preservation Board ("HPB") recommended at its August meeting that furniture be moved to the west part of the sidewalk and certain trees be relocated to enhance the visibility of the beautiful, historic facades of the hotels on Ocean Drive. However, the HPB acknowledged that moving furniture to the west would not be feasible for certain properties due to the layout of the particular property and related factors. In those cases where it is not feasible, the HPB determined that furniture would not need to be moved to the west as long as an alternate plan for that area of the sidewalk is approved by the Planning Department and a clear 5 foot path for pedestrians is maintained.

- A. New Guidelines. All umbrellas, furniture and fixtures on the Ocean Drive sidewalk must adhere to the Umbrella, Furniture and Fixtures Design Guidelines approved by Resolution of the HPB at its meeting of August 9, 2016, as supplemented or amended by this Proposal (collectively, the "Design Guidelines"). (At its meeting, the HPB reviewed the Planning Department Design Guidelines and approved those guidelines with changes.) Within seven (7) days of the Commission's approval of this Proposal,

obviously the tables can be located only in the area directly east of the applicable upland hotel or property).

- G. Securing Umbrellas into the Sidewalk. Sidewalk café umbrellas will be allowed to be bolted into the sidewalk in order to address safety, sanitation and space concerns. First, due to the heavy wind gusts that come off the ocean, there is a concern that umbrellas could become projectiles and cause damage to persons and property. Therefore, the ability to secure umbrellas into the sidewalk is important from a public safety standpoint. Second, having umbrella bases held down by bricks and weights creates sanitation and insect problems. And third, bolting umbrellas is the most space efficient approach to securing the umbrellas. Space efficiency is significant especially because sidewalk expansion is not contemplated by this proposal.
- H. Lighting. Strong illumination at sidewalk cafes in the evening is preferred and does not need to be limited to battery operated votive candles. Illumination is needed from a practical standpoint so patrons can read their menus and see their food and beverages. Meaningful sidewalk and street illumination is also helpful in promoting crime reduction as it facilitates better police observation of all public areas. Proper illumination creates a safe environment for both consumers who are walking on Ocean Drive and employees who work there.
- I. Umbrella Zippers. Umbrellas will be able to be zipped together with gutters provided that no more than three (3) umbrellas can be zipped together. Because rain rarely falls perpendicular to the street, diners are likely to get wet if there is space between umbrellas. The ability to fasten umbrellas together is important to protect diners from rain and can be done in an inconspicuous manner.
- J. Roll-Down Tarp. Umbrellas will be allowed to have roll-down transparent tarp to be rolled down only during rain or wind events.

ACTION ITEM: Sidewalk café permits are subject to renewal by October 1 of each year. According to City Code Section 82-385(b), the City Manager has discretion to allow sidewalk cafes to deviate temporarily from sidewalk café Code provisions and regulations. Such temporary deviation will be allowed from the period of October 1 until the dates referenced below.

Each sidewalk café business will have 90 days from the date of the Commission resolution to adhere to the new Design Guidelines, including purchasing new umbrellas/furniture/fixtures as necessary. The renewal date of sidewalk café permits for 2016-17 will be the 90 day date referenced above. Any business not in compliance by this renewal date will have to cease operating its sidewalk café business until its permit is approved unless the date extended by the City Manager for good cause shown. Per Commissioner Aleman's comment, each sidewalk café business will have to submit written documentation to the Planning Department within 30 days of the Commission resolution showing proof that the business has placed its order with an umbrella company for new umbrellas.

Going forward, the Planning Department will propose further limitations on the size of retail on Ocean Drive. Variances to exceed the maximum size will be prohibited.

Any retail store that has a business tax receipt as of the date of zoning in progress will be grandfathered (legally nonconforming) regarding the legislation encompassed in this Section 4(B).

- C. Certain Stores. Liquor stores, tattoo shops, pawn shops and check cashing stores will be prohibited for those properties fronting on Ocean Drive or one of the streets perpendicular to Ocean Drive west to Collins Avenue. (The Planning Board recently voted to recommend in favor of legislation prohibiting package liquor sales in MXE.) These kinds of retail establishments chase away more desirable and upscale restaurants and other retailers and ultimately lead to blight along city streets and neighborhoods.
- D. Food Displays. Real and artificial food and beverage displays, including but not limited to “ghost drinks” placed on tables to attract attention of patrons, will be prohibited on public property and will be prohibited on private property to the extent such displays are visible from a public sidewalk or street.

**SUPPORTED BY OCEAN DRIVE TASK FORCE AND ALREADY APPROVED
BY CITY COMMISSION**

- E. “Bait and Switch.” There is a major concern that some food and beverage businesses on Ocean Drive are not being transparent with their customers on what they are being charged and, as a result, proper disclosures are not being made. This lack of transparency and disclosure has led to many negative comments about Ocean Drive on travel websites. Therefore, it is essential that we address this issue and prevent “bait and switch” problems.

All food and beverages and their prices must be listed in a conspicuous manner on the menu for the establishment. To the extent that the establishment is adding an automatic gratuity or service charge to the bill, the gratuity/service charge must be noted in a conspicuous manner on the menu, the bill and the credit card charge slip. Moreover, if an automatic gratuity/service charge is being added, patrons also must be notified verbally by restaurant staff prior to or simultaneously with the provision of the bill.

- F. Hospitality Training. Ocean Drive café employees will be required to undergo third party hospitality training within thirty (30) days of commencing work at any sidewalk café venue on Ocean Drive and to undergo refresher third party training annually. The company or person providing the training must be approved by the Ocean Drive Association. Proof of such training must be presented to the City as a condition of the business obtaining and/or retaining its sidewalk café license.

7. *Music or other noise being produced by golf carts or other open-air commercial vehicles shall be prohibited.*

SUPPORTED BY OCEAN DRIVE TASK FORCE AND ALREADY APPROVED BY CITY COMMISSION

8. *Music Heard on Sidewalks and Lummus Park*

There is a need to thoughtfully mitigate the volume of music projected on Ocean Drive sidewalks so that the pedestrian experience is enhanced.

A. Food and beverage establishments. Food and beverage establishments on Ocean Drive will be prohibited from having east facing speakers within 20 feet of the property's east boundary, unless music is being played at ambient levels.

B. Retail stores. A substantial number of storefronts have speakers bolted to the outside of their premises and music is blasting day and night. This music substantially increases the amount of noise and the "party atmosphere" along Ocean Drive. There is no reason for T-shirt and other clothing stores, souvenir shops, liquor stores and similar establishments to have music playing like they are nightclubs. Therefore, this Proposal recommends elimination of all such outside speakers and a prohibition on any music from such establishments being able to be heard outside their premises.

C. Other legislation. In view of the above recommendations regarding east traveling music, the agenda items discussed during the July, 2016 Commission meeting regarding the same topic will be withdrawn.

9. *Lummus Park should be activated with art/sculpture installations and cultural programming. The area between the serpentine walkway and the beach west of the dunes should be activated with additional recreational amenities. In order to minimize food consumption in Lummus Park, urban appropriate picnic tables should be considered for this same underutilized area between the serpentine walkway and the dunes. The City's Department of Tourism and Cultural Affairs should be responsible to create a regular schedule of cultural programming and recreational activities for these areas.*

SUPPORTED BY OCEAN DRIVE TASK FORCE AND ALREADY APPROVED BY CITY COMMISSION

10. *No person or business is allowed to sell, buy, dispense, use or otherwise possess marijuana in Miami Beach. This Proposal underscores this point for the area of Ocean Drive. No person or business will be allowed to sell, buy, dispense, use or otherwise possess marijuana on Ocean Drive, including but not limited to on the sidewalks, street, Lummus Park, Ocean Court alley or other public areas in the vicinity of Ocean Drive, or in any private property fronting Ocean Drive or a street perpendicular to Ocean Drive west to Collins Avenue. With regard to medical marijuana, if that becomes legal in Miami Beach, medical marijuana dispensaries will be banned in properties fronting Ocean Drive*