

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Planning Board

TO: Chairperson and Members
Planning Board

DATE: June 28, 2016

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **Ordinance Amendment**
South of Fifth Alcoholic Beverage Establishment Operational Regulations

REQUEST

PB0616-0029. SOUTH OF FIFTH ALCOHOLIC BEVERAGE ESTABLISHMENT OPERATIONAL REGULATIONS. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS", ARTICLE II, "DISTRICT REGULATIONS," DIVISION 18, "PS PERFORMANCE STANDARD DISTRICT," SECTION 142-693, "PERMITTED USES," TO AMEND THE HOURS OF OPERATION, LOCATION AND USE RESTRICTIONS FOR PROPERTIES SOUTH OF FIFTH STREET; PROVIDING FOR "VESTING" OF EXISTING HOURS FOR EXISTING ALCOHOLIC BEVERAGE ESTABLISHMENTS, IN PERPETUITY; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

(REVISED TITLE) AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS", ARTICLE II, "DISTRICT REGULATIONS," DIVISION 18, "PS PERFORMANCE STANDARD DISTRICT," SECTION 142-693, "PERMITTED USES," TO AMEND THE HOURS OF OPERATION, LOCATION AND USE RESTRICTIONS FOR PROPERTIES SOUTH OF FIFTH STREET; PROVIDING FOR ~~"VESTING" OF EXISTING HOURS FOR THAT~~ EXISTING ALCOHOLIC BEVERAGE ESTABLISHMENTS SHALL BE DEEMED LEGAL CONFORMING USES; ~~IN PERPETUITY;~~ AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

RECOMMENDATION

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

HISTORY

On April 13, 2016, the City Commission referred a discussion item pertaining to operational regulations for alcoholic beverage establishments south of Fifth Street to the Land Use and

Development Committee (item C4C). The referral was sponsored by Commissioner Michael Grieco.

The Land Use and Development Committee (LUDC) discussed the item on April 20, 2016 and directed staff to bring back a draft ordinance on May 18, 2016. On May 18, 2016, the Land Use Committee discussed the proposed ordinance and recommended that the City Commission refer the ordinance to the Planning Board in accordance with the following:

1. Modify the exceptions provision to allow existing 5:00 am establishments to remain;
2. Develop language to ensure that existing 5:00 am establishments do not become non-conforming in the future due to 6 month rule;
3. Incorporate additional ordinance text based upon the input of affected stakeholders and the Marriott Hotel to address the issue of above ground seating hours.

On June 8, 2016, the City Commission referred the proposed ordinance amendment to the Planning Board for review and recommendation.

REVIEW CRITERIA

Pursuant to Section 118-163 of the City 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 amendment does not modify the permitted uses in the affected area and 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 amendment does not modify district boundaries.

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

Consistent – The proposed Ordinance will not modify the scale of development.

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

Consistent – The proposed will not modify the intensity of development.

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

Not applicable – The proposed change does not modify existing district boundaries.

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

change necessary.

Consistent – The increase in late night entertainment uses has had an impact on the quality of life of nearby residents. The proposed change will limit the increase of future late night entertainment uses to address concerns.

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

Consistent – The proposed change will not adversely affect living conditions in the neighborhood.

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.

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

Consistent – The proposal will not reduce light and air to adjacent areas.

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

Consistent – The proposed change should 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 proposal may deter properties owners with tenants expecting to open late alcoholic beverage establishments from improving their properties; however, it should not be a deterrent to the improvement of or development of most properties in the neighborhood.

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.

ANALYSIS

Regulations specific to alcoholic beverage establishments exist for the South of Fifth neighborhood and other parts of the City including North Beach, Sunset Harbour and pending legislation for the west side of Alton Road. These areas of the City have a mixture of residential developments and destination eating and drinking establishments.

Currently, alcoholic beverage establishments located south of Fifth Street that do not exceed neighborhood impact establishment (NIE) thresholds have very few operational restrictions and are permitted to stay open until 5:00 am. The south of fifth neighborhood has expressed a desire to further regulate hours of operation for all alcoholic beverage establishments. At the direction of the LUDC, a draft ordinance was prepared to address these issues and concerns. The following is a summary of the changes proposed for the zoning districts south of Fifth Street:

- All alcoholic beverage establishments shall close by 2:00 AM.
- All outdoor or open air areas of an alcoholic beverage establishment shall close by 12:00 AM.
- Outdoor bar counters shall be prohibited.
- Alcoholic beverage establishments with sidewalk café permits shall only serve alcoholic beverages at sidewalk cafes during hours when food is served in the restaurant, and shall cease sidewalk café operations no later than 12:00 AM and shall not be permitted to have outdoor speakers.
- Special events permits shall not be permitted.
- Modified regulations pertaining to the number of seats and hours of operation for above ground, open-air establishments have been proposed for ocean front hotels with at least 200 rooms.

An exceptions clause has also been included for existing establishments or those establishments that have submitted an application for a BTR, or have received land use board approval, by June 28, 2016. The exceptions clause provides that such uses are deemed legal conforming uses, so that they may continue to operate and make modifications without having to losing the ability to operate. The revised title is intended to clarify this clause.

After further discussion and analysis, it is recommended that the term “legal conforming use” not be utilized. Rather, it is recommended that the nonconforming section of the LDR’s be modified to provide additional time to businesses to obtain a new tenant and/or complete repairs. It is recommended that the six (6) month period of 118-394 be modified, and that a new section be added to address nonconforming hours, where the use may remain conforming, but the hours are no longer conforming, but “vested.”

RECOMMENDATION

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

TRM/MAB/RAM/AG