

**CITY OF MIAMI BEACH
BOARD OF ADJUSTMENT**

IN RE: Appeal of Administrative Decision to Board of Adjustment

APPLICANT: Beach Blitz Co., a Florida corporation d/b/a Ocean 9 Liquor

PROPERTY: 865 Collins Avenue, Unit D, Miami Beach, Florida 33139

FILE NO. ZBA18-0077

HEARING DATE: November 2, 2018 Board of Adjustment Meeting

APPENDIX TO

**THE CITY'S RESPONSE IN OPPOSITION TO BEACH BLITZ'S
APPEAL FROM DENIAL OF NONCONFORMING STATUS
FOR 865 COLLINS AVENUE, UNIT D**

Richard J. Ovelmen
Enrique D. Arana
Todd M. Fuller
Scott E. Byers
CARLTON FIELDS JORDEN BURT, P.A.
Miami Tower, Suite 4200
100 S.E. Second Street
Miami, Florida 33131
Telephone: (305) 530-0050
Facsimile: (305) 530-0055

*Attorneys for City of Miami Beach and
City of Miami Beach Planning Department*

September 14, 2018

**Appendix to
The City's Response in Opposition to Beach Blitz's Appeal
from Denial of Nonconforming Status for 865 Collins Avenue, Unit D**

Exhibit	Document
1	June 12, 2018 Planning Department Determination
2	Composite of City of Miami Beach Code of Ordinances
3	Affidavit of Manuel Marquez
4	Testimony of Manuel Marquez
5	Magistrate's Report and Recommendation
6	Testimony of Doron Doar
7	Commission Memorandum and Ordinance dated October 19, 2016
8	Testimony of Hernan Cardeno
9	Affidavit of Hernan Cardeno
10	Invoice dated June 27, 2017
11	Email to Special Master dated September 1, 2017
12	BTR Application dated December 27, 2017
13	January 19, 2018 Planning Review and BTR Screenshots; Email from Carlos Markovich dated January 23, 2018
14	City's Response in Opposition to Beach Blitz's Appeal from Denial of BTR for 865 Collins Avenue, Unit D, dated March 21, 2018
15	Transcript of May 4, 2018 Board of Adjustment Hearing
16	Email from Rogelio Madan to Doron Doar, dated August 7, 2018

EXHIBIT 1

MIAMI BEACH

PLANNING DEPARTMENT

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139

Tel: (305) 673-7550, Fax: (305) 673-7559

June 12, 2018

Doron Doar, Owner
Beach Blitz LLC dba Ocean 9 Liquor
865 Collins Avenue
Miami Beach, Florida 33139

**Subject: Request for Determination of Legally Established Non-Conforming Use
865 Collins Avenue
Miami Beach, FL 33139**

Dear Mr. Doar:

This letter is in response to your May 18, 2018 request (attached) for a zoning determination letter as to whether a package store at 865 Collins Avenue is a legally established non-conforming use. The subject property is currently zoned **MXE, Mixed Use Entertainment**. One of the prohibited uses in the MXE zoning district is package stores.

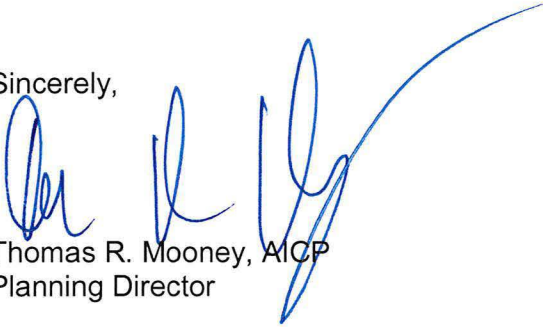
City Ordinance No. 2016-4047, which prohibits package stores in the MXE, Mixed Use Entertainment zoning district, was enacted by the City Commission on October 19, 2016. Based upon City records, the previous Business Tax Receipt (BTR) for the subject package store (RL-10005692) expired on September 30, 2016 and a new BTR application was submitted on December 27, 2017.

After careful review of the records and evidence presented, it has been determined that the package store at 865 Collins Avenue was not legally established at the time of the effective date of Ordinance No. 2016-4047. As such, the package store at 865 Collins Avenue does not meet the necessary criteria for a legal non-conforming use under Chapter 118, Article IX of the Land Development Regulations of the City Code.

You may appeal this determination to the Board of Adjustment within 30 days of posting, in accordance with the applicable regulations set forth in Chapter 118 of the Land Development Regulations of the City Code.

If we may be of any further assistance, please do not hesitate to contact this department again.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tom Mooney', with a long, sweeping flourish extending to the right.

Thomas R. Mooney, AICP
Planning Director

EXHIBIT 2

Miami Beach, Florida – Code of Ordinances
Subpart A – GENERAL ORDINANCES / Chapter 102 – TAXATION

Chapter 102 - TAXATION^{[11](#)}

Footnotes:

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Cross reference— Any ordinance levying or imposing taxes, charges, rates or fees saved from repeal, § 1-10(a)(7); any ordinance providing for local improvements and assessing taxes therefor saved from repeal, § 1-10(a)(11); administration, ch. 2; independent city auditor, § 2-251 et seq.; finance, § 2-276 et seq.; businesses, ch. 18; special assessments, ch. 94.

ARTICLE I. - IN GENERAL

Sec. 102-1. - Homestead exemption.

- (a) In accordance with subsection 6(f), Art. VII, of the Florida Constitution and F.S. § 196.075 of the Florida Statutes, any person 65 years or over who has legal or equitable title to real estate located within the City of Miami Beach, Florida, and maintains thereon his or her permanent residence which residence qualifies for and receives homestead exemption pursuant to subsection 6(a), Art. VII, of the Florida Constitution, and whose household income does not exceed \$23,414.00 shall be entitled to make application for an additional homestead exemption of \$50,000.00 in fiscal year 2007-2008, and each fiscal year thereafter. This additional homestead exemption, if granted, shall be applicable to all ad valorem tax millage rates levied by the city.
- (b) Every person claiming the additional homestead exemption pursuant to this section must file an application therefore with the Miami-Dade County Property Appraiser (the "property appraiser"), not later than March 1 of each year for which such exemption is claimed. Such application shall include a sworn statement of household income for all members of the household and shall be filed on a form prescribed by the Florida Department of Revenue. On or before June 1 of each such year every applicant must file supporting documentation with the property appraiser. Said documentation shall include copies of all federal income tax returns, wage and earnings statements, and such other documentation as required by the property appraiser, including documentation necessary to verify the income received by all of the members of the household for the prior year. For the purposes of this section, the terms "household" and "household income" shall have the meanings ascribed thereto in F.S. § 196.075, as the same may be amended from time to time.
- (c) Failure to file the application and sworn statement by March 1 or failure to file the required supporting documentation by June 1 of any given year shall constitute a waiver of the additional exemption privilege for that year.
- (d) This additional exemption shall be available commencing with the year 2007 tax roll, and the property appraiser may begin accepting applications and sworn statements for the year 2007 tax roll as soon as the appropriate forms are available from the Department of Revenue.
- (e) Commencing January 1, 2007, and each January 1 thereafter, the \$23,414.00 annual income limitation in this section shall be adjusted annually and applicable as of January 1 of that year. The annual income limitation shall be adjusted by the percentage of change in the average cost-of-living index for the calendar year immediately prior to that year. As used herein, "index" shall be the average of the monthly consumer-price index figures for the stated period, for the United States as a whole, issued by the United States Department of Labor.

(Ord. No. 2007-3558, §§ 1—5, 5-16-07

Sec. 102-2. - Homestead exemption for low-income senior citizens who are long-term residents.

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- (a) In accordance with Article VII, Section 6(d)(2) of the Florida Constitution and F.S. § 196.075, any person who meets the following criteria shall be entitled to make application for an additional homestead exemption for the amount of the assessed value of the property:
 - (1) Has the legal or equitable title to real estate located within the City of Miami Beach, Florida, with a just value of less than \$250,000.00;
 - (2) Has maintained thereon the permanent residence of the owner for at least 25 years;
 - (3) Has attained the age of 65; and
 - (4) Has a household income that does not exceed the income limitations set forth in state law, which is currently \$27,030.00 and adjusted annually.
- (b) The exemption set forth in subsection (a) above shall be in addition to and shall not replace the additional \$50,000.00 senior citizen homestead exemption adopted pursuant to Ordinance No. 2007-3558 and codified in section 102-1 of the city Code.
- (c) Every person claiming the additional homestead exemption pursuant to subsection (a) above must file an application therefore with the Miami-Dade County Property Appraiser ("property appraiser") no later than March 1 of each year for which such exemption is claimed. Such application shall include a sworn statement of household income for all members of the household and shall be filed on a form prescribed by the Florida Department of Revenue. On or before June 1 of each such year, every applicant must file supporting documentation with the property appraiser, unless the filing of annual supporting documentation is waived by the Miami-Dade County Board of County Commissioners. Such documentation shall include copies of all federal income tax returns, wage and earning statements, and such other documentation as required by the Miami-Dade County Board of County Commissioners, including documentation necessary to verify the income received by all of the members of the household for the prior year.
- (d) Failure to file the application and sworn statement by March 1 or failure to file the required supporting documentation by June 1 of any given year shall constitute a waiver of the additional exemption privilege for that year.
- (e) Notwithstanding subsections (c) and (d) above, if the property appraiser, pursuant to F.S. § 196.011(9), requests that the Miami-Dade County Board of County Commissioners waive the requirement that an annual application and income statement be made for renewal of the exemption provided in F.S. § 196.075, then after an initial application for exemption has been made and the exemption is granted pursuant to F.S. § 196.075, subsection (c) and (d) shall not apply and the requirement that an annual renewal application or income statement be submitted to the property appraiser for exemption of property within the county shall be waived except in the circumstances set forth below. A timely annual application together with the required income statement for exemption shall be required whenever:
 - (1) Property exempted on the assessment roll of the immediately preceding tax year is sold or otherwise disposed of;
 - (2) The ownership changes in any manner;
 - (3) The applicant ceases to use the property as his or her homestead; or
 - (4) The status of the owner changes so as to change the exempt status of the property, as provided in F.S. § 196.011(9)(a).
- (f) This additional exemption shall be available commencing with the 2013 tax roll and shall continue with all subsequent tax rolls.
- (g) Commencing January 1, 2013, and each January 1 thereafter, the annual income limitation applicable to this section shall be adjusted annually as provided in state law and shall be applicable as of January 1 of each year.

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- (h) The city clerk shall file a copy of this Ordinance [No. 2013-3792] in the appropriate books and records and shall transmit a copy to the Miami-Dade County Property Appraiser on or before March 1, 2013.

(Ord. No. 2013-3792, § 1, 2-6-13)

Secs. 102-3—102-45. - Reserved.

ARTICLE II. - INSURANCE PREMIUMS^[2]

Footnotes:

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Cross reference— Police officers and firefighters supplemental pension, § 78-181 et seq.

DIVISION 1. - GENERALLY

Secs. 102-46—102-70. - Reserved.

DIVISION 2. - PROPERTY INSURANCE^[3]

Footnotes:

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State Law reference— Property insurance premium tax authorized, F.S. § 175.101.

Sec. 102-71. - Amount of tax.

There is hereby assessed and imposed on every insurance company, corporation or other insurer engaged in or carrying on the business of insuring property against loss or damage by fire or tornado, an excise or license tax amounting to one and eighty-five hundredths percent of the gross amount of receipts of premiums from policyholders on all premiums collected on fire and tornado insurance policies covering property within the city.

(Code 1964, § 41-28)

Sec. 102-72. - Disposition of tax receipts; administration of receipts.

All money derived from the taxes imposed by this division is hereby appropriated to the firefighters' relief and pension fund of the city, which shall be administered in accordance with the provisions of F.S. ch. 175.

(Code 1964, § 41-29)

Sec. 102-73. - Tax is in addition to other taxes.

The license tax assessed and imposed by this division shall be in addition to all other license taxes levied by the city.

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(Code 1964, § 41-30)

Sec. 102-74. - Collection of tax.

The tax provided for in this division shall be payable and collected in the manner provided for by F.S. ch. 175.

(Code 1964, § 41-31)

Secs. 102-75—102-105. - Reserved.

DIVISION 3. - CASUALTY INSURANCE^[4]

Footnotes:

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State Law reference— Casualty insurance premium tax, F.S. § 185.08.

Sec. 102-106. - Assessment and imposition of tax; same in addition to all other taxes.

There is hereby assessed and imposed on every insurance company, corporation or other insurer engaged in or carrying on the business of casualty insuring, as shown by the records of the state treasurer in his capacity as state insurance commissioner, an excise or license tax in addition to any lawful license or excise tax now levied by the city, amounting to eighty-five hundredths percent of the gross amount of receipts of premiums from policyholders on all premiums collected on casualty insurance policies covering property within the city.

(Code 1964, § 41-32)

Sec. 102-107. - Purpose for which tax imposed; payment, collection and appropriation of same.

The tax provided for in this division is assessed and imposed by authority of F.S. §§ 185.01—185.37. Such tax shall be payable and collected in the manner provided for in such sections, and the money derived from such tax is hereby appropriated for the purposes set forth in such sections.

(Code 1964, § 41-33)

Secs. 102-108—102-150. - Reserved.

ARTICLE III. - PUBLIC SERVICE TAX^[5]

Footnotes:

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Cross reference— Cable communications, ch. 22; utilities, ch. 110.

Miami Beach, Florida – Code of Ordinances
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Sec. 102-151. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fuel oil means all Bunker C. Oil, number 1, 2, 3, 4, 5, or 6 fuel oil, and kerosene, or any combination thereof, for lighting, heating, cooking, power or any other purpose delivered to any purchaser thereof within the city.

Purchase means every act or transaction whereby possession of, utilization of, control over or title to electricity, metered gas, bottled gas, fuel oil and telecommunication service, and the duty and obligation to pay therefor, become vested in the purchaser within the corporate limits of the city; but such term shall not pertain to nor include any such act or transaction when undertaken or performed by an agency or instrumentality of the United States government, the state, the county or a municipality.

Purchaser means every person or agency legally liable for the payment of electricity, metered gas, bottled gas, or fuel oil delivered, or telecommunication service rendered to him, by a seller, unless such person is specifically exempted by section 102-154.

Seller means every person delivering electricity, metered gas, bottled gas, or fuel oil, or rendering telecommunication service to any purchaser thereof.

(Code 1964, § 41-37; Ord. No. 2001-3306, § 2, 5-16-01)

Cross reference— Definitions generally, § 1-2.

Sec. 102-152. - Rate and amount of tax on purchase of electricity, metered gas, bottled gas and fuel oil public utility services.

There is hereby levied and imposed by the city upon every purchase in the corporate limits of the city of electricity, metered gas, bottled gas, and fuel oil included in or reflected by any bills required to be rendered by the seller to the purchaser as provided in subsection (1) of this section, a tax based upon a charge made by the seller thereof, as follows:

- (1) When the seller renders a bill to the purchaser to cover such purchase made during the period of time to which such bill is applicable, the amount of tax shall be ten percent, exclusive of governmental charges and taxes, of the total amount shown on such bill as due and payable on account of the purchase of electricity, metered gas, bottled gas. The amount of tax on the purchase of fuel oil shall be four cents per gallon. The total amount of taxes due pursuant to this section shall be computed to the nearest whole cent.
- (2) In the use and application set out in this section, purchases of electricity, metered gas, bottled gas and fuel oil, shall be considered and treated as constituting and being distinct and unrelated classes of purchases; and if more than one such class shall be shown upon the same bill, the amount of excise tax payable pursuant to this section shall be determined and computed for each such class separately.

(Code 1964, § 41-38)

Secs. 102-153, 102-154. - Reserved.

Editor's note— Ord. No. 2001-3306, § 2, adopted May 16, 2001, repealed §§ 102-153 and 102-154 which pertained to telecommunications public service tax and exemptions from tax, respectively, and derived from Code 1964, §§ 41-39 and 41-40.

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Sec. 102-155. - Records to be kept by seller; inspection of records; transcripts; remittance to city.

(a) *Records required to be kept.*

- (1) Every seller is hereby required by the Federal Communications Commission and the state public service commission to establish and maintain appropriate accounts and records of all purchases of electricity, metered gas, bottled gas, and fuel oil within the corporate limits of the city, which records shall show the price charged upon each purchase, the period of time covered thereby, the amount of tax levied and imposed under this section, and the date of payment thereof. These records shall be kept open for inspection by the duly authorized officers or agents of the city during business hours on all business days upon 60 days' notice, and these duly authorized officers or agents of the city shall have the right, power and authority to make such transcripts therefrom during such times as they may desire.
- (2) Any such information received by the city is confidential and is not subject to the provisions of F.S. § 119.07(1).
- (3) The city finance director is hereby authorized and empowered to promulgate from time to time such rules and regulations with respect to the establishment and maintenance of such accounts and records reasonably necessary to carry into effect the purpose and intent of the provisions of this section.

- (b) *Remittance to city.* Every seller is hereby required to execute and file no later than the 20th day of each month at the office of the finance department a statement setting forth the amount of such public service tax to which the city became entitled under the provisions of this section on account of bills paid by purchasers during the preceding month, and contemporaneously with the filing of such statements, shall pay the amount of such public service tax to the finance department. If any purchaser refuses to pay such tax specifically, the seller shall promptly inform the city of the name and address of the purchaser, and the amount of tax withheld by the purchaser.

(Code 1964, § 41-41; Ord. No. 2001-3306, § 2, 5-16-01)

Sec. 102-156. - Reports of deliveries for resale.

Every manufacturer, distributor, wholesaler or seller who shall deliver electricity, metered gas, bottled gas or fuel oil service to any seller or other person having a place of business in the corporation limits of the city, or licensed to do business therein, to be sold or resold to ultimate purchasers, shall report to the city finance department semiannually, as of June 30 and December 31, the names and addresses of such sellers or other persons, and the quantities received by each of them during the preceding six months, such reports to be filed not later than one month after the close of each semiannual period.

(Code 1964, § 41-42)

Sec. 102-157. - Penalties.

- (a) It shall be unlawful and a violation of this article for any purchaser identified in this article to evade the payment of the public service tax provided for herein or any part thereof, or to fail or neglect to pay such tax within 30 days after the tax has become due and payable unless the seller, as identified in this article, has elected to assume and pay such tax, or for any such seller to fail or refuse to pay to the city all amounts of tax payable to the city by the such seller, or to fail or refuse to keep the accounts and records required in this article or to set forth any erroneous false information therein with the intent to defraud the city, or to refuse to permit the city or its duly authorized agent, to examine such accounts and records; and any such purchaser willfully violating any provision of this article, or any such seller or any officer, agent or employee of the such seller willfully violating any provision of this article, shall be guilty of a violation of law and shall, upon conviction, be punished as provided in section 1-14.

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- (b) In addition to any penalties imposed in subsection (a) of this section, any seller who fails to remit or is delinquent in remitting tax due under this article shall pay interest at the rate of ten percent per annum or the rate as specified by F.S. § 687.01, whichever is higher, on the unpaid amount of tax from the date on which the tax first became delinquent until paid.

(Code 1964, § 41-43)

Sec. 102-158. - Deposits of revenues in general fund.

All revenue received, collected and derived from the tax levied by this article shall be deposited by the city finance director in the city's general operating account for utilization for such municipal purposes as are set forth in the annual budget estimate and appropriation ordinance of the city.

(Code 1964, § 41-44)

Secs. 102-159—102-205. - Reserved.

ARTICLE IV. - RESORT TAX^[6]

Footnotes:

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Charter reference— Tax on occupancy of hotels, etc., § 5.03.

State Law reference— Resort tax authority, Laws of Fla., ch. 67-930.

DIVISION 1. - GENERALLY

Secs. 102-206—102-245. - Reserved.

DIVISION 2. - VISITOR AND CONVENTION AUTHORITY^[7]

Footnotes:

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Cross reference— Boards, committees, commissions, § 2-61 et seq.

Sec. 102-246. - Created.

There is hereby created and established a tourist development authority to be known as the Miami Beach Visitor and Convention Authority.

(Code 1964, § 41-63)

Sec. 102-247. - Membership.

The visitor and convention authority shall consist of seven members, who shall be permanent residents of the county, and who have outstanding reputations for civic pride, interest, integrity,

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responsibility and business ability within the city. Members of the authority and any and all employees of the authority shall not hold any elective or appointive public office in the government of the city and shall be prohibited from voting on any matter they may be, directly or indirectly, financially interested in the profits or emoluments of any contract, work or service for the city or the authority, and shall not hold any elective or appointive public office in the government of the city or become a candidate for election to any public office, or take part in any city political campaign involving candidates for office except to exercise their rights as citizens privately to express their opinions and cast their votes. Any member of the authority, or any employee thereof, who announces his candidacy for public office in the government of the city shall be deemed to have vacated his office or position forthwith. The seven members of the authority shall be representative of the community as follows:

- (1) Not less than two nor more than three members shall be representative of the hotel industry; and
- (2) The remaining members, none of whom shall be representative of the hotel industry, shall represent the community at large.

Any member of the authority or employee thereof violating or failing to comply with the provisions of this division shall be deemed to have vacated his office or position.

(Code 1964, § 41-64; Ord. No. 98-3134, § 1, 7-15-98)

Sec. 102-248. - Appointment and qualifications of members; filling vacancies.

- (a) The members of the visitor and convention authority shall be appointed by a majority vote of the city commission in the following manner: Initially, four members shall be appointed for a period of two years, and three members shall be appointed for a period of one year. All subsequent appointments except for filling vacancies, shall be for a period of two years.
- (b) No two members shall be connected or have any financial ties with the same business entity, and no two original appointees having an appointment for the same period of years shall come from the same business classification. Vacancies occurring shall be filled by appointment of the city commission for the unexpired period, in the same manner as the original appointment. Members shall serve until the expiration of their terms or until a successor is appointed. Any vacancy occurring during the term of any member from whatsoever cause shall be filled by the city commission.

(Code 1964, § 41-65)

Sec. 102-249. - Removal of members.

Any member of the visitor and convention authority may be removed from office by four-sevenths vote of the city commission for malfeasance, misfeasance or nonfeasance in office, upon specific charges filed with the city commission. However, before a member may be removed, he must be served with a copy of the charges filed against him at least ten days before action thereon by the city commission and given an opportunity to be heard in person, or by counsel, at a public hearing, if requested in writing. Such member, if removed by the city commission, may have the action of the commission reviewed by proper court action. Upon proper showing before the city commission that a member of the authority has failed to attend, without good cause, as many as one-fourth of the meetings of the authority during any six-month period, such member shall be subject to removal from his office as a member of the authority.

(Code 1964, § 41-66)

Sec. 102-250. - Officers.

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- (a) As soon after appointment of the visitor and convention authority as may conveniently be done, the city commission shall call the first meeting of the authority, for the purpose of its organization. The authority shall select from its membership a chairman and a vice-chairman, who shall serve for a period of two years. The chairman and vice-chairman shall be representative of different industries, classifications or categories.
- (b) The authority shall employ a director, and may appoint an assistant director, neither of whom shall be members of the authority, and each of whom shall serve at the pleasure of the authority. The director shall have general charge of the work of the authority and shall direct the enforcement of all policies and directives established by the authority. The director shall be a person of recognized ability and experience. The director shall maintain and keep the records of the authority and shall be responsible for causing minutes of all authority meetings to be recorded, transcribed and maintained, subject to the supervision and control of the authority; and such minutes shall be public record. The appointment of the director shall be made by the authority within 90 days from its first meeting, and within 90 days after the position becomes vacant; otherwise he shall be appointed by the city commission. The director shall have administrative management of the property and facilities of the authority and the employees thereof, and shall perform such other duties as may be prescribed from time to time by the authority, in accordance with budgetary provision therefor.
- (c) The authority shall conduct its meetings at least once a month, and due public notice of the holding of such meetings shall be given.
- (d) Within budget limitations, as set forth in an appropriate budget document, the director may appoint or employ such employees as may be necessary for the proper performance of the duties and functions and the efficient operation of the authority and the work within its jurisdiction, subject to the approval of the authority. All persons employed by the director shall enter the employ of the authority in accordance with the statutes, requirements and procedures utilized by the city in the employment of its personnel.
- (e) All employees of the authority entering the service of the authority in the manner hereby prescribed shall be entitled to become members of the pension fund created and maintained by the city of its general employees, and the employees of the authority holding positions similar or analogous to those in the city's classified service shall be entitled to all benefits, including sick leave, compensatory time, vacations and hospitalization insurance, which are enjoyed by the employees of the city.
- (f) The employees of the authority shall not be deemed to have civil service status; however, any employee having civil service status and who is transferred to the authority shall continue to possess such civil service status; and employees of the city who possessed civil service status at the time of their transfer to the authority and who thereafter received a promotional appointment in accordance with civil service procedures shall be deemed to be a promoted civil service employee and entitled to all civil service rights and benefits as such promoted employee.
- (g) No division or department in the authority shall be created by the authority without approval of the city commission.
- (h) The authority shall pay from its fund all pension, hospitalization, vacation, sick leave and other benefit contributions for its employees in the same manner as are made by the city for its employees.

(Code 1964, § 41-67)

Sec. 102-251. - Powers and duties of authority as the city's local arts agency.

- (a) The visitor and convention authority shall, as the city's local arts agency, have the following powers and duties:
 - (1) To make all necessary rules and regulations for the efficient operations of the authority in conformance with all applicable law.

Miami Beach, Florida – Code of Ordinances
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- (2) To take all necessary and proper action to promote the tourist industry for the city, including but not restricted to causing expert studies to be made, promotional programs, the recommendations and development of tourist attractions and facilities within the city, and to carry out programs of information, special events, convention sales and marketing, advertising designed to attract tourists, visitors and other interested persons; provided, that no contract or agreement for advertising sales awarded by the authority shall be valid or effective unless the same shall have been made pursuant to competitive presentation, in conjunction with visual coordinating and promoting cultural affairs and seeking and distributing additional public and private funds for cultural arts purposes.
 - (3) To annually prepare and submit a budget for the expenditures of the portion of the resort tax provided for in this article allocated to the authority. The budget prepared and submitted by the authority to the city commission shall specify, with particularity, the expenditures anticipated and proposed to be made by the authority; and no budgetary provisions shall be made in broad or all-inclusive terms; and such proposed budget shall be in conformity with the requirements for a line-by-line budget. A sum not to exceed 20 percent of the total annual budget may be placed in an event contingency fund, to be expended by the authority during the budget period for events and projects authorized subsequent to passage and approval of the budget, and which will occur within one year from date of authorization thereof.
 - a. Subject to the limitations contained in subsection (a)(3)d. of this section with respect to the rights of bondholders, five percent of the resort tax monies collected by the city shall be allocated to the authority shall be distributed and paid to the authority on or before the 20th day of the month immediately following the month of collection thereof in the following manner:
 1. Twenty-five percent of the total collections for the months of October, November and December, the remaining 25 percent to be paid as hereinafter set forth.
 2. Forty percent of the total collections for the months of January, February and March, the remaining ten percent to be paid as hereinafter set forth.
 3. Fifty percent of the total collections in each of the remaining months of the fiscal year.
 4. On or before May 31 of each year the portion of collections withheld and not paid during the prior months of October through March shall be distributed and paid to the authority.
 - b. Subject to the limitations contained in subsection (a)(3)c. of this section with respect to the rights of bondholders, the authority's percentage of past due taxes shall be paid to the authority within 30 days after collected in the manner provided for current collections.
 - c. Commencing October 1, 1995. Prior to any distribution, the city shall be entitled to a collection fee of four percent of all sums collected on resort taxes.
 - d. Notwithstanding the provisions of this section, all payments shall be junior and subordinate in all respects to any and all obligations of the city under any ordinances and resolutions pursuant to which the city issues bonds or other indebtedness secured by the resort tax provided for in this article.
 - e. Notwithstanding the provisions of this section, any resort tax monies collected by the city in excess of those allocated to the authority pursuant to subsection (a)(3)a. of this section shall be retained by the city for tourism-related purposes consistent with Laws of Florida, Chapter 67-930.
 - (4) To take all action necessary and proper for carrying into execution the powers and all other powers vested in the authority by law provided for in this section.
- (b) The city commission shall have exclusive jurisdiction and power pertaining to the construction and expansion of all capital improvements and the operation and maintenance of all capital facilities and improvements.

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- (c) All purchasing contracts shall be in accordance with procedures required by the ordinances of the city or by general law. All purchasing and purchasing contracts shall be made or entered into only through the city and its purchasing division.
- (d) Any applicable percentage allocation of special funds to the authority as detailed in this section shall apply to the total net special fund receipts in any given period.
- (e) The city finance director shall be responsible for making such debits and credits between the city and the authority with reference to any disbursements or distributions made between October 1, 1969, and the effective date of this article as to achieve the percentages set forth in this section.
- (f) The provisions of the conflict of interest ordinance of the city shall be considered a part of this article.

(Code 1964, § 41-68; Ord. No. 93-2829, § 3, 1-6-93; Ord. No. 95-3016, § 1(41-68), 10-11-95; Elect. of 11-2-99)

Sec. 102-252. - Budget; expenditure of funds.

The visitor and convention authority shall not have the power to expend funds or obligate the city for any amount in excess of that provided for in the current budget of the authority, except that the Authority may enter into a contractual commitments for conventions and events scheduled in years following the then current fiscal year, and the authority may enter into multi-year funding commitments with the city, for public purposes consistent with and in accordance with Laws of Florida, Chapter 67-930. Such commitment shall be binding upon the authority and the city commission and shall be included in the budget of the authority in any and all fiscal years in which any payments required to be made thereunder shall become due and payable. The authority may enter into commitments with the city for sums to be included in budgets for capital improvements authorized by the city commission, in accordance with Laws of Florida, Chapter 67-930. Annually, on or before August 1, the authority shall prepare and submit to the city commission a budget accurately itemizing all estimated revenue and expenses for the succeeding fiscal year beginning October 1. The authority shall not expend funds or incur any liability which is not authorized or provided for in its current budget, or in any amendment thereto, unless as otherwise provided herein. All expenditures made by the authority within its budget shall be paid out by voucher as in the case of other municipal expenses. The authority shall operate within, and be bound by, the budget as approved by the city commission; provided, the commission's review and approval the authority's budget shall be limited solely to a determination of the legality of the expenditures.

(Code 1964, § 41-69; Ord. No. 99-3209, § 1, 10-6-99)

Sec. 102-253. - Amendment of article.

This article may be amended, supplemented or changed only by an affirmative vote of a majority of the members of the visitor and convention authority, in addition to the affirmative vote of a majority of the members of the city commission, or by a referendum election by the voters of the city in accordance with the provisions of Laws of Fla., ch. 67-930.

(Code 1964, § 41-70)

Sec. 102-254. - Employees to be bonded.

The visitor and convention authority shall require and provide that its employees be covered by a proper surety fidelity bond, in amounts to be fixed and determined by the authority, such bond to be approved by the city attorney.

(Code 1964, § 41-71)

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Secs. 102-255—102-279. - Reserved.

DIVISION 3. - TOURIST AND CONVENTION CENTER EXPANSION AUTHORITY^[8]

Footnotes:

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Editor's note— Per request of the city, former §§ 102-276—102-279, which pertained to the tourist and convention center expansion authority were moved in their entirety to Ch. 2 as Div. 24, §§ 2-190.81—2-190.84.

Cross reference— Boards, committees, commissions, § 2-61 et seq.

Sec. 102-280. - Rules and regulations.

The members of the authority and/or the city manager may promulgate rules, regulations and guidelines for the authority's governance and operation. All rules, regulations and guidelines must be approved by the city commission prior to their implementation.

(Code 1964, § 41-76)

Sec. 102-281. - Annual report and audit.

The authority shall submit to the city commission an annual report and an annual audit. The audit shall be performed by an internal auditor of the city.

(Code 1964, § 41-77)

Sec. 102-282. - Tax revenues.

- (a) As prescribed by the ordinance of the county imposing the tax authorized under F.S. § 212.057, the person receiving the consideration for such rental or lease shall receive, account for, and remit the tax to the state department of revenue at the time and in the manner provided for persons who collect and remit taxes under F.S. § 212.03. The same duties and privileges imposed by F.S. ch. 212 upon dealers' intangible property respecting the remission and collection of tax, the making of returns, the keeping of books, records and accounts, and compliance with the rules of the state department of revenue in the administration of that chapter shall apply to and be binding upon all persons who are subject to the provisions of F.S. § 212.057; however, the department of revenue may authorize a quarterly return and payment when the tax remitted by the person receiving the consideration for such rental or lease for the preceding quarter did not exceed \$25.00.
- (b) Collections received by the department of revenue from the tax, less costs of administration of F.S. § 212.057 and paid and returned, on a monthly basis, to the clerk of the board of county commissioners shall be available by the authority in accordance with the provisions of F.S. § 212.057.

(Code 1964, § 41-78)

Sec. 102-283. - Counsel.

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The city attorney's office shall provide legal services to the authority as may be necessary and requested by the authority.

(Code 1964, § 41-79)

Secs. 102-284—102-305. - Reserved.

DIVISION 4. - TAX

Sec. 102-306. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alcoholic beverages means all distilled or rectified spirits, brandy, whiskey, rum, gin, cordials, or similar distilled alcoholic beverages, including all dilutions and mixtures of one or more of the foregoing, and wines.

Apartment house means any building or part thereof, where separate accommodations for four or more families living independently of each other are supplied to transient or permanent guests or tenants.

Finance director means the finance director of the city or his authorized deputy.

Guest means any person purchasing food, beverages, intoxicating liquors or wine of any restaurant, or premises licensed for sale of beverages, intoxicating liquors or wine.

Hotels, motels and roominghouses means every building or other structure kept, used, maintained, advertised as or held out to the public to be a place where sleeping accommodations are supplied for pay to transient or permanent guests or tenants, whether or not there is in connection with any of the same, any dining rooms, cafes, or other places where meals or lunches are sold or served to guests.

Occupancy means the use or possession or the right to the use or possession of any room or rooms in a hotel, motel, roominghouse or apartment house, or the right to the use or possession of the furnishings or to the services and accommodations accompanying the use and possession of such room or rooms.

Occupant means a person who, for a consideration, uses, possesses or has the right to use or possess any room or rooms in a hotel, motel, roominghouse, or apartment house, under any lease, concession, permit, right of access, license to use or other agreement, or otherwise.

Operator means any person operating a hotel, motel, roominghouse, apartment house, or restaurant serving food, and any premises licensed by the city to sell beverages, intoxicating liquors or wine in the city, including but not limited to the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such hotel, motel, roominghouse, apartment house, restaurant serving food, and any premises licensed by the city to sell beverages, intoxicating liquors or wine.

Permanent resident means any person who has resided in the city for longer than six consecutive months.

Rent means the consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also any amount for which credit is allowed by the operator to the occupant, without any deduction therefrom whatsoever.

Responsible officer means any person, including but not limited to:

- (1) The officers of a corporation;
- (2) Any stockholder in a corporation controlling 51 percent or more of the voting stock of the corporation; or

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- (3) Any officer, employee, partner or agent of an operator who has authority to sign checks drawn on, or make withdrawals from any bank account of such operator into which revenues from transactions subject to resort tax have been deposited, regardless of whether such authority is actual or constructive.

Restaurant means any business or place for serving of food or refreshments required by law to be licensed by the hotel and restaurant commission of the state, or any premises licensed by the city for sale of intoxicating liquor or wine.

Return means any return filed or required to be filed as provided in this division.

Room means any room of any kind, in any part or portion of a hotel, motel, roominghouse or apartment house available for or let out for use or possession for any purpose other than a place of public assembly.

Sales price means the retail sales price charged by the operator to a guest, consumer or to any person for each sale of food, beverages, intoxicating liquors or wine sold.

(Code 1964, § 41-45; Ord. No. 93-2829, § 1, 1-6-93; Ord. No. 93-2862, § 1, 7-28-93; Ord. No. 94-2958, § 1(41-45), 12-7-94)

Cross reference— Definitions generally, § 1-2.

Sec. 102-307. - Imposition of tax; rate.

- (a) There is hereby levied and there shall be paid a tax of four percent on the rent of every occupancy of a room or rooms in any hotel, motel, roominghouse, or apartment house in the city, and two percent upon the total sales price of all items of food, beverages, alcoholic beverages or wine sold at retail of any restaurant.
- (b) Such tax shall constitute a debt owed by the occupant or guest to the city, extinguished only by payment to the operator or to the city. The occupant or guest shall pay the tax to the operator of the hotel, motel, roominghouse, apartment house or restaurant at the time the rent or sales price is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the occupant's ceasing to occupy space in the hotel, motel, roominghouse or apartment house.
- (c) The tax due on a transaction calling for the payment of rent or sales price of from:

	Cents
\$0.50 to \$0.99	2
1.00 to 1.49	4
1.50 to 1.99	6
2.00 to 2.49	8
2.50 to 2.99	10

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or on rents or sales in amounts of more than \$3.00, four percent shall be charged upon each dollar of price or rent, plus the above bracket charges upon any fractional part of a dollar in excess of even dollars.

(Code 1964, § 41-46; Ord. No. 93-2829, § 2, 1-6-93; Ord. No. 94-2958, § 1(41-46), 12-7-94; Ord. No. 2015-3975, § 1, 10-28-15)

Charter reference— Rate of tax, § 5.03.

Sec. 102-308. - Exemptions from tax.

No tax shall be imposed upon:

- (1) Federal, state or city governments, or any agency thereof.
- (2) Any nonprofit religious, nonprofit educational or nonprofit charitable institutions when engaged in carrying on the customary nonprofit religious, nonprofit educational or nonprofit charitable activities.
- (3) Any rents paid by a permanent resident on his permanent place of abode, provided that no permanent resident shall be permitted to have more than one exemption during the same period of time. No tax shall be imposed on any rents paid by a lessee, or the individual occupant with a written lease for a term longer than six months provided that the lessee, or the individual occupant authorized by the lease to occupy the premises, actually occupies the premises on a continuous basis for longer than six months. Tax shall be imposed on any rents paid by a lessee or individual occupant during the first six months of the occupancy term unless there is a written lease for a period longer than six months, and provided that the lessee, or the individual occupant authorized by the lease to occupy the premises, actually occupies the premises on a continuous basis for longer than six months.
- (4) School lunches served to students and teachers; all hospital meals and rooms.
- (5) All premises and all transactions exempted under the provisions of F.S. § 212.03.
- (6) Any transaction involving rent or sales price of less than \$0.50.

(Code 1964, § 41-47; Ord. No. 93-2847, § 1, 5-5-93; Ord. No. 94-2958, § 1(41-47), 12-7-94)

Sec. 102-309. - Duty of operators to collect tax.

Each operator shall collect the tax imposed by this division to the same extent and at the same time as the rent or sales price is collected from every occupant or guest. No operator shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent or sales price, or that if added, any part will be refunded except in the manner hereinafter provided.

(Code 1964, § 41-48)

Sec. 102-310. - Resort tax registration certificate.

- (a) Within 15 days after commencing business, each operator of any hotel, motel, roominghouse, apartment house or restaurant shall register such hotel, motel, roominghouse, apartment house or restaurant with the city finance director and obtain from him a resort tax registration certificate to be at all times posted in a conspicuous place on the premises. Such certificate shall, among other things, state the following:
 - (1) The name of the operator.

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- (2) The address of the hotel, motel, roominghouse, apartment house or restaurant.
- (3) The date upon which the certificate was issued.
- (4) The following statement:

This "Resort Tax Registration Certificate" signifies that the person named on the face hereof has fulfilled the requirements of the Resort Tax Ordinance by registering with the Finance Director for the purpose of collecting from occupants or guests the Resort Tax and remitting said tax to the Finance Director. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel, motel, rooming house, apartment house or restaurant without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department, or office of this city. This certificate does not constitute a permit.

- (b) The operator shall pay a registration fee as specified in appendix A to the finance director at the time of registration. Operators who fail or refuse to register for resort tax may be required to pay a registration fee as specified in appendix A when they are compelled to register.
- (c) This registration certificate shall not be assignable or transferable, and each new operator shall be required to obtain a new registration certificate.

(Code 1964, § 41-49; Ord. No. 93-2847, § 2, 5-5-93)

Sec. 102-311. - Reports and remittances.

- (a) The person or entity receiving the consideration for sales, rental or lease specified in section 102-310 shall receive, account for, and remit the tax to the city chief financial officer in accordance with the following procedures:
 - (1) Each operator shall, before the 20th day of the month following the close of each calendar month or at the close of any longer reporting period, which may be established by the chief financial officer with the approval of the city manager, make a return to the chief financial officer using an online program whereby operators may complete their tax return and authorize payment online. Effective April 1, 2008, for operators remitting more than \$10,000.00 per year in resort tax collections, and effective July 1, 2008, for operators remitting less than \$10,000.00 per year in resort tax collections, the city will assess a \$25.00 processing fee, per return, to operators filing manually (i.e. by submitting a paper report of the total rents or sales prices charged and received and the amount of tax collected) and/or paying by checks. The chief financial officer may also require statistical information on the activities of the operator over the course of the reporting period. At the time the return is filed the full amount of the tax collected shall be remitted to the chief financial officer. The chief financial officer may authorize a quarterly return and payment when the tax remitted by the operator for the preceding quarter did not exceed \$100.00. The chief financial officer may with the approval of the city manager establish shorter reporting periods for any certificate holder if he deems it necessary in order to ensure collection of the tax and he may require further information on the return. The city or its designated agent shall accept manual returns or payments if received no later than the 20th day of the month along with the additional \$25.00 processing fee per return and/or payment. Each operator shall file a return for each tax period even though no tax is due for such period. In complete or unsigned tax returns will be returned to the operator and considered delinquent if not properly completed and resubmitted timely. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this division shall be held in trust for the account of the city until payment thereof is made to the chief financial officer.
 - (2) The same duties, privileges, enforcement procedures and penalties imposed by F.S. ch. 212 upon dealers in tangible property respecting the remission and collection of tax, the making of returns, the keeping of books, records and accounts, and compliance with the rules of the state

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department of revenue in the administration of F.S. ch. 212, to the extent that such provisions of F.S. ch. 212 and department of revenue regulations are not in conflict with the provisions of this article, shall apply to and be binding upon all persons and entities who are subject to the provisions of this section.

- (3) For the purpose of this section, if an operator does not have adequate records of his sales or rentals, the city or its designated agent may, upon the basis of a test or sampling of the operator's available records or other information relating to the sales or rentals made by such operator, for a representative period, determine the proportion that taxable sales and rentals bear to total sales or total rentals. This section does not affect the duty of the operator to collect, or the liability of any guest, lessee or individual occupant to pay, any tax imposed by or pursuant to this division.
 - (4) If the records of the operator are adequate but voluminous in nature and substance, the city or its designated agent may statistically sample such records and project the audit findings derived therefrom over the entire audit period to determine the proportion that taxable sales amounts bear to total sales amounts provided the operator and the city have entered into an agreement that provides for the use of statistical sampling and projections and the means and methods to be used. The agreement shall be binding on the operator and the city.
 - (5) The city is authorized to audit or inspect the records and accounts of such operators and correct by credit any overpayment of tax; and, in the event of a deficiency, an assessment shall be made and collected. No administrative finding of fact is necessary prior to the assessment of any tax deficiency.
 - (6) If any operator charged in this section fails or refuses to make his records available for inspection so that no audit or examination has been made of the books and records of such operator or person, fails or refuses to register as an operator, or fails to make a report and pay the tax as provided by this division, or makes a grossly incorrect report, or makes a report that is false or fraudulent, it shall be the duty of the city to make an assessment from an estimate based upon the best information then available to it for the taxable period of sales or rentals, together with interest, plus penalty, if such have accrued, as the case may be. Then the city shall proceed to collect such taxes, interest and penalty on the basis of such assessment, which shall be considered prima facie correct; and the burden to show the contrary shall rest with the operator.
 - (7) In order to effectively provide for the collection of the tax by operators and for payment to the city, a person seeking to renew his annual business license pursuant to the provisions of chapter 18 of this Code and in addition to the requirements contained in chapter 18, shall provide to the finance director evidence of payment of all outstanding resort tax, penalties, interest and other charges as a condition to reissuance or renewal of the business license.
- (b) Dishonored checks will be charged a fee in the amount of either:
- (1) The charge paid by the city to the bank returning the check plus an additional percentage of the bank charge as specified in appendix A, for the city's administrative expenses, provided that the administrative fee shall not be less than as specified in appendix A; or
 - (2) A percentage, as specified in appendix A, of the amount of the check, whichever is greater.

(Code 1964, § 41-50; Ord. No. 93-2847, § 3, 5-5-93; Ord. No. 2008-3595, § 1, 2-13-08)

Sec. 102-312. - Escrow of tax.

Whenever any operator has been delinquent by more than 30 days in the remittance of resort tax to the city as required by this division, the finance director may require the operator to escrow resort tax collections on a daily basis or such other basis as he deems appropriate through the use of a depository receipt system or escrow account through any national or state bank located in the county if he deems such requirement necessary to secure the payment of the tax.

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(Code 1964, § 41-50.1; Ord. No. 93-2847, § 4, 5-5-93)

Sec. 102-313. - Liability of responsible officer.

If any operator shall fail to deposit resort tax funds through a depository receipt system or escrow account, if required by the finance director, or if any operator shall fail to pay resort tax to the city when due, then in addition to the liability imposed upon the operator, all responsible officers of such operator shall be liable for the payment of the tax and all penalties and interest which shall accrue thereon. The liability of each such responsible officer shall be joint and several with the liability of the operator and of each other such responsible officer of the operator. Upon the tax imposed by this division becoming delinquent, the same shall constitute a lien upon the property, real and personal, of such responsible officer as if such officer were the operator. The finance director may file a notice of lien with respect to the property of such responsible officer, as if such officer were the operator.

(Code 1964, § 41-50.2)

Sec. 102-314. - Penalties and interest.

- (a) *Original delinquency.* Any operator who fails to remit any tax imposed by this division within the time required shall pay a penalty of ten percent of the amount of the tax in addition to the amount of the tax.
- (b) *Continued delinquency.* Any operator who fails to remit the tax on or before the 30th day following the date on which the tax first became delinquent shall pay a second delinquency penalty of ten percent of the amount of the tax in addition to the amount of the tax and the ten percent penalty first imposed. An additional penalty of ten percent of the amount of the tax shall be paid for each additional 30-day period or part thereof during which the tax shall be delinquent, provided that the total penalty imposed by subsection (a) of this section and this subsection shall not exceed 50 percent of the amount of the tax. This penalty shall be in addition to the tax and interest imposed by this division.
- (c) *Fraud.* If the finance director determines that the nonpayment of any tax due under this division is due to fraud, a penalty of 50 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (a) and (b) of this section.
- (d) *Interest.* In addition to the penalties imposed, any operator who fails to remit any tax imposed by this article shall pay interest at the highest legal rate of interest permitted by law, on the amount of tax, exclusive of penalties, from the date on which the tax first became delinquent until paid.
- (e) *Penalties merged with tax.* Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid.
- (f) *Reporting fee.* Returns filed late where no tax is due will be charged a late reporting fee of \$50.00, as specified in appendix A.

(Code 1964, § 41-51; Ord. No. 93-2847, § 5, 5-5-93; Ord. No. 2014-3846, § 1, 3-5-14)

Sec. 102-315. - Failure to collect and report tax; determination of tax by finance director; notice and hearing.

- (a) If any operator shall fail or refuse to collect such tax and to make, within the time provided in this division, any report and payment of such tax or any portion thereof required by this division, the finance director shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the finance director shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by

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this division and payable by any operator who has failed or refused to collect the same and to make such report and payment, he shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this division. If such determination is made, the finance director shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the operator so assessed at his last known address. Such operator may within ten days after the serving or mailing of such notice make application in writing to the finance director for a hearing on the amount assessed. If application by the operator for a hearing is not made within the time prescribed, the tax, interest and penalties, if any, determined by the finance director shall become final and conclusive and immediately due and payable. If such application is made, the finance director shall give not less than five days' written notice in the manner prescribed in this division to the operator to show cause at a time and place fixed in such notice why such amount specified by the finance director should not be fixed for such tax, interest and penalties. At such hearing the operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed. After such hearing the finance director shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in this division of such determination and the amount of such tax, interest and penalties. The amount determined to be due shall be payable after 15 days unless an appeal is taken as provided in section 102-316.

- (b) The finance director may with the approval of the city manager charge a reasonable fee for obtaining information that requires the ascertainment of amounts of any tax collected by the operator, or any prorations and any expenses entailed by the finance director in determining the prorations of any amount collected or due upon any transfer.

(Code 1964, § 41-52)

Sec. 102-316. - Appeal.

Any operator aggrieved by any decision of the finance director with respect to the amount of such tax, interest and penalties, if any, may appeal to the finance director by filing a notice of appeal with the finance director within 15 days of the serving or mailing of the determination of tax due. The finance director shall fix a time and place for hearing such appeal, and the finance director shall give notice in writing to such operator at his last known address. The findings of the finance director shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

(Code 1964, § 41-53)

Sec. 102-317. - Records to be kept for three years.

Every operator upon whose premises the tax is levied under this division shall have the duty to maintain adequate records to show gross collections from all rentals or sales and the amount of tax due and paid under this division. It shall be the duty of every such person so charged with such duty to keep and preserve, for a period of three years, all invoices and other records of leases or sales under this division, and all such books, invoices and other records shall be open to examination at all reasonable hours to the finance director or his designated agent.

(Code 1964, § 41-54; Ord. No. 93-2847, § 6, 5-5-93)

Sec. 102-318. - Refunds.

- (a) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the city under this division, it may be refunded as provided in subsections (b) and (c) of this section provided a claim in writing therefor,

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stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the finance director within three years of the date of payment. The claim shall be on forms furnished by the finance director.

- (b) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received when it is established in a manner prescribed by the finance director that the person from whom the tax has been collected was not an occupant or guest; however, neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the occupant or guest credited to rent subsequently payable by the occupant or guest to the operator.
- (c) An occupant or guest may obtain a refund of taxes overpaid, paid more than once, or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection (a) of this section, but only when the tax was paid by the occupant or guest directly to the finance director, or when the occupant or guest having paid the tax to the operator, establishes to the satisfaction of the finance director that the occupant or guest has been unable to obtain a refund from the operator who collected the tax.
- (d) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

(Code 1964, § 41-55)

Sec. 102-319. - Operator's credit for collecting tax.

For the purpose of compensating the operator as compensation for the keeping of prescribed records and the proper accounting and remitting of taxes by him, such operator shall be allowed two percent on the first \$5,000.00 of taxes due and accounted for and remitted to the city in the form of a deduction in submitting his report and paying the amount due by him; and the finance director shall allow the deduction of two percent of the amount of the tax to the person paying same for remitting the tax in the manner provided in this division and for paying the amount due to be paid by him; however, the two percent allowance shall be limited to \$100.00 and shall not be granted nor shall any deduction be permitted where the tax is delinquent at the time of payment or where there is a manifest failure to maintain proper records or make proper prescribed reports. The finance director may reduce the operator's credit by ten percent or \$50.00, whichever is less, if the taxpayer files an incomplete return.

(Code 1964, § 41-56; Ord. No. 93-2847, § 7, 5-5-93)

Sec. 102-320. - Actions by city to collect tax; payment of collection costs and attorney fees.

Any tax required to be paid by any occupant or guest under the provisions of this division shall be deemed a debt owed by the occupant or guest to the city. Any such tax collected by an operator that has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this division shall be liable to an action brought in the name of the city for recovery of such amount and shall pay all costs of collection, including reasonable attorney fees, incurred in the collection of such amount.

(Code 1964, § 41-57)

Sec. 102-321. - Liens for tax.

If any operator shall neglect or refuse to pay resort tax after the tax is due and demand for same has been made upon the operator, the amount, including the maximum rate of interest allowable by law or any penalty, together with any costs of collection that may accrue in addition thereto, shall be a lien in

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favor of the city upon all property and rights to property whether real or personal of such operator and, until fully paid and discharged, shall be imposed as a special assessment lien against the subject property and shall remain a lien equal in rank and dignity with the lien of ad valorem taxes and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the property involved. Such liens shall be enforced by any of the methods provided in F.S. ch. 86, or, in the alternative, foreclosure proceedings may be instituted and prosecuted under the provisions applicable to practice, pleading and procedure for the foreclosure of mortgages on real estate set forth in state law or may be foreclosed per F.S. ch. 173; or the collection and enforcement of payment of the tax may be accomplished by any other method authorized by law. The operator shall pay all costs of collection, including reasonable attorney fees, incurred in the collection of fees, service charges, penalties and liens imposed by virtue of this division. This lien shall continue in full force and effect until liability for the amount of tax is satisfied or becomes unenforceable by reason of lapse of time. The finance director or his authorized deputy may issue a notice of lien and cause same to be recorded with the clerk of the circuit court. Such liens shall secure the tax due as of the date of its filing, together with such further tax as may become delinquent prior to the time the lien shall be released by the finance director. The notice of lien shall state the amount of tax due or estimated to be due as of the date of filing, but the amount stated in the notice shall not preclude the city from enforcing the lien up to the full amount of tax that may become due. Upon recording, the amount stated in such notice of lien shall become a perfected lien upon the delinquent operator's real property. The notice shall also perfect a lien upon any personal property of the operator located within the county upon service of a copy of the notice of any person having custody or possession of any personal property of the operator. Thereafter, such person shall be liable to the city if he fails to hold the property for the use and benefit of the city pending foreclosure of the lien.

(Code 1964, § 41-57.1)

Sec. 102-322. - Penalties for violation of division.

- (a) Any person who shall violate or fail to comply with any of the provisions of this division, who fails or refuses to register as required in this division or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the finance director, or who renders a false or fraudulent return or claim, or who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this division to be made, shall be guilty of a violation of this division. Each day such violation shall exist shall constitute a separate violation.
- (b) Violators shall be cited with a notice of violation as provided in chapter 30 of this Code and shall be subject to one of the following methods of enforcement/collection:
 - (1) Prosecution before one of the city's special masters as provided in chapter 30 of this Code, with penalties as set forth therein; or
 - (2) Prosecution in county court as provided in section 1-14 with penalties as set forth therein.
- (c) Additionally, violators may be subject to the following:
 - (1) Proceedings to revoke/suspend the city occupational license and/or the certificate of use for the business/premises involved with the violation as provided in sections 102-383 through 102-385; and/or
 - (2) Suit for injunctive relief to enjoin operation of the business in violation of this division.

(Code 1964, § 41-58; Ord. No. 93-2847, § 8, 5-5-93; Ord. No. 2010-3696, § 8, 9-20-10)

Secs. 102-323—102-355. - Reserved.

ARTICLE V. - LOCAL BUSINESS TAX^[9]

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Footnotes:

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Cross reference— Businesses, ch. 18; schedule of taxes, § 102-379; business tax for supplementary convention center parking, § 130-282.

State Law reference— Local business taxes, F.S. ch. 205.

Sec. 102-356. - Construction of article; definitions.

All of the provisions of this article shall be construed liberally on behalf of the city. Words and terms not defined in this section shall be interpreted in accordance with their normal dictionary meaning and customary usage. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advertise, advertising, advertisement and *publish* means all means of conveying to the public, whether by word of mouth, newspaper, magazine, periodical, handbill, written notice, printed display, poster, billboard, radio or television announcement or by any other means, notice of a sale or intention to conduct a sale.

Amusement attraction means any building or structure around, over, or through which persons may move or walk, without the aid of any moving device integral to the building or structure, which building or structure provides amusement, pleasure, thrills or excitement. This term does not include enterprises principally devoted to the exhibition of products of agriculture, industry, education, science, religion or the arts.

Amusement ride means any mechanical device that carries or conveys passengers around, over, or along a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, thrills or excitement.

Antique means an object 50 years of age or older that has a special value due to age or reproduction of the same.

Apartment house means a building with or without resident supervision occupied or intended to be occupied by more than two families living separately with separate cooking facilities in each unit.

Arcade means any place of business that has coin-operated game machines and/or pool tables that, when counted together, exceed five in number.

Auction business means a sole proprietorship, partnership or corporation that maintains a permanent office or branch office in the city and that, in the regular course of business, conducts, arranges, advertises, or promotes auctions or uses or allows the use of its facilities for auctions.

Automobile rental agency means any person who rents, leases or offers to rent or lease five or more motor vehicles within the city within any given year.

Automobile shipper means any person engaged in the business or occupation, as principal, agent, broker, intermediary or otherwise, or holding himself out by advertisement, solicitation or otherwise as being engaged in the business or occupation of receiving and accepting the custody or possession of the automobile of another, under any contract, agreement, understanding or arrangement, which provides for the furnishing, procuring or arranging for the transportation or shipment of such automobile to an agreed point or destination, by driving the same thereto, under its own power or propulsion, in lieu of the transportation or shipment thereof as freight by any auto transportation company or common carrier.

Bed and breakfast inn means an historic structure originally built as a single-family residence, which is owner occupied and operated to provide guest rooms with breakfast and/or dinner included as part of the room rate.

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Bottle club means a commercial establishment, operated for a profit, whether or not a profit is actually made, wherein patrons consume alcoholic beverages brought onto the premises and not sold or supplied to the patrons by the establishment, whether the patrons bring in and maintain custody of their own alcoholic beverages or surrender custody to the establishment for dispensing on the premises.

Business means every trade, occupation, profession or other manner of revenue-producing activity regardless of whether a profit is actually made. Business, profession and occupation do not include the customary religious, charitable or educational activities of nonprofit religious, nonprofit charitable and nonprofit educational institutions in this state, which institutions are more particularly defined and limited as follows:

- (1) *Religious institutions* means churches and ecclesiastical or denominational organizations or established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and also means church cemeteries.
- (2) *Educational institutions* means state tax-supported or parochial, church and nonprofit private schools, colleges or universities conducting regular classes and courses of study required for accreditation by or membership in the Southern Association of Colleges and Schools, the Department of Education, or the Florida Council of Independent Schools. Nonprofit libraries, art galleries and museums open to the public are defined as educational institutions and eligible for exemption.
- (3) *Charitable institutions* means only nonprofit corporations operating physical facilities in the state at which are provided charitable services, a reasonable percentage of which are without cost to those unable to pay.

Business tax means the fees charged and the method by which the city grants the privilege of engaging in or managing any business, profession, or occupation within the city's jurisdiction.

City manager or his designee means the city manager or one of his assistants or another employee of the city designated by the city manager to perform a function required by this article; however, that review required by section 102-385 shall not be conducted by the same person who performs functions pursuant to any other section of this article. Alternatively, "designee" for purposes of section 102-385 may also mean an independent hearing officer appointed pursuant to resolution of the city commission to perform the review functions set forth in this resolution or to adjudicate violations of the city's codes.

Closing-out sale means the sale or offer to sell by any person, to the public, of goods in stock, on order or in transit, with a declared advertised purpose that such sale:

- (1) Is anticipatory to the termination, closing, liquidation, discontinuance, conclusion, or abandonment, of the business, or any part thereof, or any line of goods, or any one store of a group of stores in connection with such sale; and it shall include all sales advertised in such manner as to reasonably convey to the public the impression that upon the disposal of the goods advertised or on hand, the business will permanently cease and be discontinued;
- (2) Is anticipatory to the temporary closing or discontinuance of the business due to alterations or remodeling of the premises or relocation;
- (3) Will consist of goods damaged or altered by fire, smoke, water, hurricane, flood, explosion or other means; or
- (4) Will consist of goods derived from a business that has failed, been closed, discontinued or liquidated, or where such advertising indicates a business failure or emergency affecting the seller or any previous holder of the goods to be sold.

Compensation means any money, reward or consideration, tangible or intangible, personal property or real property, or the use of real or personal property, received directly or indirectly or in trust or by other means.

Driver means an individual operating a motor vehicle whether as the vehicle owner or as agent, employee or lessee of the owner.

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Electrologist means any person who removes hair from or destroys hair on the human body by the use of an electric needle.

Electrolysis means the practice of removing surplus hair from any part of the human body by the application of electric current to the hair papilla by means of a needle to cause decomposition of hair papilla.

Employment agent or *employment agency* means any person in this city engaged for hire or compensation in the business of furnishing persons seeking employment or changing employment with information or other service, intended to enable such persons to procure employment, or furnishing any person who may be seeking to employ, for compensation, help of any kind, with information intended to enable such person to procure such help.

Escort service means any person in this city engaged for hire or compensation in the business of providing companions.

Ferrous metals means any metals containing significant quantities of iron or steel.

Firearm means any revolver, pistol, rifle, shotgun, machine gun, destructive device or other weapon that expels a projectile by the action of an explosive or air pressure or gas.

Florist means any person regularly engaged in the business of selling at retail flowers, funeral sprays, wreaths, designs or corsages.

Flower stand means any person engaged in the business of selling cut flowers exclusive of any, all and every other type and kind of flowers or plants.

For cause means the failure of a licensee to comply with those conditions, standards or requirements required for the issuance of his business tax receipt, or the violation of any other provision of this article or chapters of this Code incorporated in this article.

Gallery means a business which displays art for viewing and/or for sale regardless of whether a fee is charged for admission.

Guard, watchman, patrol includes any person, who, for consideration, advertises as providing or is engaged in the business of furnishing watchman, guard, patrol, or armored car services or who, for consideration, transports prisoners. This includes any person, who utilizes dogs to perform security services unless otherwise excluded.

Hotel means a building occupied or intended to be occupied generally for transient occupancy.

Janitorial service means any person in this city engaged for hire or compensation to provide cleaning services or persons who will perform these services for others.

Medical clinic means an outpatient facility in which the name of a fictitious entity is prominently featured, which provides for surgical and nonsurgical medical treatment and is not directly associated with a hospital.

Motor scooter means a two-wheeled vehicle with small wheels and a low powered engine.

Motor vehicle or *vehicle* means any motor-propelled vehicle, with the exception of motor scooters, including but not limited to motorbuses, vans and automobiles operating on the streets of the city for compensation.

News depot means a location where newspaper carriers pick up and prepare newspapers for delivery.

Nonferrous metals means metals not containing significant quantities of iron or steel, including but not limited to copper, brass, aluminum, bronze, lead, nickel, zinc, and alloys thereof.

Not-for-profit organization means an organization registered as a corporation not for profit pursuant to F.S. ch. 617, no part of the income or profit of which is distributable to its members, directors or officers.

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Parking lot means any business engaged in whole or in part in the parking of motor vehicles for the payment of a fee.

Pawn means either of the following transactions:

- (1) *Loan of money* means a written or oral bailment of personal property as security for an engagement or debt, redeemable on certain terms and with the implied power of sale on default.
- (2) *Buy-sell agreement* means any agreement whereby a purchaser agrees to hold property for a specified period of time to allow the seller the exclusive right to repurchase the property. A buy-sell agreement is not a loan of money.

Pawnbroker means any person who is not solely a secondary metals recycler subject to F.S. ch. 538, pt. II, which is regularly engaged in the business of making pawns. The term does not include a financial institution as defined in F.S. § 655.005 or any person who regularly loans money or any other thing of value on stocks, bonds or other securities.

Person means any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular.

Precious metals is as defined in F.S. § 538.03: Any item containing any gold, silver, or platinum, or any combination thereof, excluding any chemical or any automotive, photographic, electrical, medical, or dental materials or electronic parts.

Precious metals dealer is as defined in F.S. § 538.03: A secondhand dealer who normally or regularly engages in the business of buying used precious metals for resale. The term does not include those persons involved in the bulk sale of precious metals from one secondhand or precious metals dealer to another.

Prearranged travel or tourist-related services means any service, including but not limited to car rentals, lodging, transfers, and sightseeing tours, for which a traveler receives a premium or for which he contracts or pays prior to departure.

Preowned merchandise means personal property previously owned or used, including secondhand goods.

Private investigative agency includes any person who, for consideration, advertises as providing or is engaged in the business of furnishing private investigations as defined in F.S. § 493.6101(17).

Professional corporation means a corporation organized for the sole and specific purpose of rendering professional service and has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation.

Professional service means any type of personal service to the public that requires as a condition precedent to the rendering of such service the obtaining of a business tax receipt or other authorization from the state. By way of example and without limiting the generality thereof, the personal services which come within the provisions of this article are the personal services rendered by certified public accountants, public accountants, chiropractors, dentists, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, architects, veterinarians, attorneys at law, and life insurance agents.

Promoter means any person who promotes a dance or entertainment event on the premises of a business that is licensed to serve alcoholic beverages. To promote a dance or entertainment event is to be involved in one or more of the following activities: (a) hiring any of the persons staffing the event (e.g., deejay, host, cashier, doorman, etc.); (b) hiring any of the persons distributing or mailing invitations, flyers, posters, or other marketing materials in connection with such event; or (c) making the ultimate decision concerning the cost of entrance to the event. A promoter does not include (a) a business, or any full-time employee of the business, that promotes a dance or entertainment event on premises for which the business holds a valid city business tax receipt; (b) a 501(c) corporation, unless it is permitting the

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use of its temporary alcoholic beverage license by another business on the premises of such other business; (c) a person who holds or promotes a private reception not open to the general public; (d) a person who is hired by a Promoter to host, plan or market a dance or entertainment event; or (e) a person who sponsors, or allows his name to be used in connection with, a dance or entertainment event, provided such Person does not also Promote the event.

Public food service establishment means any building, vehicle, place or structure, or any room or division in a building, vehicle, place or structure, that is maintained and operated as a place where food is regularly prepared, served or sold.

Purchase transaction means a transaction in which a recycler gives consideration having a value in excess of \$10.00 in exchange for regulated metals property.

Receipt means the document that is issued by the city which bears the words "Local Business Tax Receipt" and evidences that the person in whose name the document is issued has complied with the provisions of this article relating to business tax.

Receptive tour operator means any person who prearranges tourist-related or tour guide services for individuals or groups visiting the city whose point of origin or departure is a foreign country. This does not include any person who provides services limited solely to any single one of the following: transportation, lodging, food or entertainment.

Recyclers means all persons engaged in the business or gathering or obtaining of ferrous or nonferrous metals, paper, glass or plastic products that have served their original economic purpose, or is in the business of performing the manufacturing process by which these products are converted into raw products consisting of prepared grades and having an existing or potential economic value; by methods including without limitation, processing, sorting, cutting, classifying, clearing, bailing, wrapping, shredding, shearing or changing the physical form or chemical content thereof.

Regulated metals property means any item composed primarily of any nonferrous metals, but shall not include aluminum beverage containers, used beverage containers, or similar beverage containers.

Restaurant means the same as "public food establishment."

Retail establishment means any store, merchant or organization selling merchandise to the general public.

Sale includes all transfers, assignments, pledges, leases, loans, barter or gifts.

Secondhand dealer is as defined in F.S. § 538.03: Any person, corporation, or other business organization or entity which is not a secondary metals recycler subject to part II and which is engaged in the business of purchasing, consigning, or trading secondhand goods.

Secondhand goods is as defined in F.S. § 538.03: Personal property previously owned or used, which is not regulated metals property regulated under part II and which is purchased, consigned, or traded as used property. Such secondhand goods do not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, cardio and strength training or conditioning equipment designed primarily for indoor use, and secondhand sports equipment that is not permanently labeled with a serial number. For purposes of this paragraph, "secondhand sports equipment" does not include golf clubs.

Seller of travel, travel bureau means any person maintaining a business location or branch office within the city who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel or tourist-related services for individuals or groups through vacation or tour packages or through lodging or travel certificates in exchange for a fee, commission or other valuable consideration. This includes offering membership in a travel club or travel services for an advance fee or payment, even if no travel contracts or certificates of vacation or tour packages are sold.

Talent agency means any person engaged in the occupation of operating an agency, bureau, office or other place for the purpose of procuring or attempting to procure engagements, or for the purpose of giving information as to where such engagements may be provided, for an artist who seeks employment by a buyer in, but not limited to, the following: a live or motion picture production, whether made on or by

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film, electronic tape, or other electronic device used to produce theatrical motion pictures, television entertainment motion pictures, industrial motion pictures, or television commercials; modeling services; conventions; print media; the legitimate stage; radio; circus; vaudeville; musical arts; or a musical organization.

Taxee means any person operating under a business tax receipt granted pursuant to this article.

Window cleaning service means any person engaged for hire or compensation to provide window cleaning services or persons who will perform these services for others.

(Ord. No. 95-2995, § 2(20), 6-7-95; Ord. No. 99-3173, § 1, 3-3-99; Ord. No. 99-3191, § 1, 7-3-99; Ord. No. 2007-3553, § 1, 4-11-07; Ord. No. 2013-3791, § 3, 2-6-13; Ord. No. 2017-4105, § 2, 6-7-17)

Cross reference— Definitions generally, § 1-2.

Sec. 102-357. - Levy.

The city commission hereby levies a business tax for the privilege of engaging in or managing any business, profession or occupation within the city. The business tax is levied on:

- (1) Any person who maintains a permanent business location or branch office within the city, for the privilege of engaging in or managing any business within its jurisdiction.
- (2) Any person who maintains a permanent business location or branch office within the city, for the privilege of engaging in or managing any profession or occupation within its jurisdiction.
- (3) Any person who does not qualify under subsection (1) or subsection (2) of this section and who transacts any business or engages in any occupation or profession in interstate commerce if the business tax is not prohibited by section 8, art. I of the United States Constitution.

(Ord. No. 2007-3553, § 1, 4-11-07)

State Law reference— Similar provisions, F.S. § 205.042.

Sec. 102-358. - Temporary business tax receipt.

- (a) A temporary business tax receipt to operate a business may be issued upon meeting the requirements set forth by the city manager or his designee and upon payment of one-half the annual tax applicable for that type of business. The requirements may include but are not limited to:

- (1) Approvals by various city departments.
- (2) Obtaining a certificate of use.
- (3) Submitting proof of a current state license.
- (4) County health department approval.

(b) A temporary business tax receipt may be issued for a continuous period of not more than four weeks. No more than three temporary business tax receipts may be issued to a business in a one-year period beginning October 1 and ending September 30.

(Ord. No. 95-2995, § 2(20-39), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-359. - Application of other laws.

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A business tax receipt issued under this article does not waive or supersede other city or county ordinances or state or federal regulations or laws; does not constitute city approval of any particular business activity or manner of conducting a business activity; and does not excuse the taxee from all other city, county, state and federal regulations, ordinances and laws applicable to the taxee's business. All licenses and application materials prepared under this article shall so state. Neither the payment of a business tax nor the procurement of a tax receipt under this article shall authorize or legalize in any manner a taxee's violation of city, county, state or federal ordinance, regulation or law.

(Ord. No. 95-2995, § 2(20-2), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-360. - Business tax receipt duration and expiration date.

Each business tax receipt shall be valid for one year. Tax receipts shall be issued beginning October 1 of each year and shall expire on September 30 of the following year. Notwithstanding the foregoing, or any other section in this chapter to the contrary, tax receipts for promoters may be issued for a single dance or entertainment event.

(Ord. No. 95-2995, § 2(20-3 A.), 6-7-95; Ord. No. 99-3173, § 2, 3-3-99; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-361. - Transfer of tax receipt following sale.

A business tax receipt may be transferred to a new owner when there is a bona fide sale of the business if the transfer occurs within 30 days of the sale. However, the transferred tax receipt shall be valid only for the remainder of the period for which it was originally issued. Any business transferring the tax receipt to new ownership must submit:

- (1) Proof of ownership showing the date of sale. In the case of a residential property, a copy of the recorded deed must be submitted.
- (2) The previous owner's business tax receipt.
- (3) All other application forms that would otherwise be required by this article of a new applicant for the business tax receipt.
- (4) Payment of the required transfer fee in section 102-364.

(Ord. No. 95-2995, § 2(20-3 B.), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07)

State Law reference— Similar provisions, F.S. § 205.043(2).

Sec. 102-362. - Transfer of business tax receipt after relocation.

A business tax receipt may be transferred to another location within the city if the taxed business is relocated when the following conditions are met:

- (1) A certificate of use must be obtained if required for the new location prior to opening for business.
- (2) All other business tax requirements of this article have been met.
- (3) The transfer fee in section 102-364 is paid and a tax receipt is obtained prior to opening for business at the new location.

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(Ord. No. 95-2995, § 2(20-3 C.), 6-7-95; Ord. No. 98-3148, § 1, 11-4-98; Ord. No. 2007-3553, § 1, 4-11-07)

State Law reference— Similar provisions, F.S. § 205.043(3).

Sec. 102-363. - Loss of opportunity to transfer business tax receipt.

Failure to follow the applicable procedure set forth in section 102-361 or 102-362 shall result in the loss of the opportunity to transfer a tax receipt to a new location or entity. The applicant shall thereafter be required to pay the total annual tax for the tax receipt as required by section 102-379 and shall be subject to all administrative, civil and criminal penalties authorized under this article for failure to procure a tax receipt.

(Ord. No. 95-2995, § 2(20-3 D.), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-364. - Transfer fee; time period for grant or denial.

- (a) A transfer fee shall be ten percent of the annual business tax, but not less than \$3.00 nor more than \$25.00.
- (b) A business tax receipt shall be granted or denied within a period of 30 days from the date of submittal of a complete application.

(Ord. No. 95-2995, § 2(20-3E., F.), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07)

State Law reference— Fee authorized, F.S. § 205.043(2), (3).

Sec. 102-365. - Pro rata payment; refund; existing tax receipt.

All tax receipts shall be payable on or before September 30 of each year, and expire on September 30 of the succeeding year. If September 30 falls on a weekend or holiday, the tax is due and payable on or before the first working day following September 30. No tax receipt shall be issued for any fractional portion of the year; however, those persons operating businesses or occupations covered by this article who establish permanent places of business in the city after May 1 may obtain a tax receipt for the remaining portion of the fiscal year upon the payment of half the business tax required by this article, and those establishing such businesses after July 1 shall pay a fourth of the required business tax. No refund of business taxes shall be granted.

(Ord. No. 95-2995, § 2(20-4), 6-7-95; Ord. No. 95-3017, § 1(20-4), 10-25-95; Ord. No. 2007-3553, § 1, 4-11-07)

State Law reference— Similar provisions, F.S. § 205.053(1).

Sec. 102-366. - Cumulative effect of article.

Taxes paid under this article are not in lieu of other fees and taxes required by other city departments, boards, commissions or officers for permits, registration, examination, inspection or other regulatory purposes. The provisions of this article are cumulative and in addition to all other federal, state, county and municipal ordinances, regulations and laws providing for the collection of taxes, permit fees and charges.

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(Ord. No. 95-2995, § 2(20-5), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-367. - Business limited by business tax receipt.

No business that has a business tax receipt to do a particular type of business shall engage in any other business subject to business tax under this article unless a separate tax receipt is acquired for that purpose. Violation of this section shall be subject to all administrative, civil and criminal penalties authorized under this chapter.

(Ord. No. 95-2995, § 2(20-6), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-368. - Posting of business tax receipt and decal.

- (a) Any person conducting a business for which a tax receipt is required by this article shall post his tax receipt in a conspicuous place in or about his place of business where it may be seen upon inspection by any official of the city. For his failure to do so, he may be fined as if he had never procured such tax receipt.
- (b) If the city supplies a decal indicating that a business has a current tax receipt to the taxee, the taxee shall display the decal in the front window of the business premises within 15 days of the date of mailing by the city of the decal. Failure to display the decal as required shall result in a fine of \$25.00. Failure to pay the fine will be considered a violation of this article.

(Ord. No. 95-2995, § 2(20-7), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-369. - Convention center activities exempt.

All business activities at the Miami Beach Convention Center and the Jackie Gleason Theater of the Performing Arts shall be exempt from the business tax requirements under this article.

(Ord. No. 95-2995, § 2(20-8), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-370. - Personal responsibility and liability of officers and agents.

- (a) The city shall endeavor to notify all business tax receipt holders that their business tax receipts are due for renewal. However, if the taxee does not receive a renewal notification, the taxee is responsible to renew the business tax prior to October 1 to avoid delinquent charges.
- (b) If any business fails to obtain a business tax receipt required by this article, the manager, chief responsible executive and sales agent of the business shall each, jointly and severally, be responsible to take out the business tax receipt on behalf of the business. It shall be the duty of all officers of a corporation engaged in business in the city to see that such corporation complies with the provisions of this article, and they shall each personally be subject to the penalties imposed by this article for failure of a corporation to comply with the requirements of this article. All corporate officers applying for a business tax receipt on behalf of a corporation shall be given written notice that they are personally liable for the corporation's compliance with this article and shall in addition be required to execute the application materials in their individual capacities.

(Ord. No. 95-2995, § 2(20-9), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-371. - Application procedures.

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- (a) *Procedures for issuance.* No license shall be issued or granted to any person to engage in any business named, identified or encompassed by this article unless an application is filed with the city manager or his designee on forms provided for that purpose, disclosing the following:
- (1) a. The applicant's name and address.
 - b. The name of the business for which a business tax receipt is sought.
 - c. The name and address of the owner and operator of the business and if a corporation, the names and addresses of each of its corporate officers and its resident or registered agent.
 - d. The type or classification of the business and the relationship of the applicant to the business.
 - e. The location in the city where the business will be operated.
 - f. The date of birth, social security number and driver's license number of the owner/operator and any applicable federal employer identification numbers.
- (2) When necessary for determining the proper business tax under this article, the area, capacity, capital invested, merchandise or property contained within the business, the stock carried, number of persons or things employed or engaged, the quantity, property or retail stock value or such other information as may be required by this article for purposes of determining the proper business tax. It shall be the duty of the city manager or his designee before issuing a business tax receipt requiring disclosure of such data to require the person applying for such business tax to file under oath a statement disclosing such data, which statement shall be kept permanently on file, and which statement shall promptly be amended by the taxee as the circumstances of the business change.
- (3) If the applicant is a corporation or partnership, the full name of the corporation or partnership and the state of incorporation.
- (4) If the business is a corporation and is to be conducted under another name, the business name and county of registration under F.S. § 865.09.
- (5) Whether any of the individuals listed on the application has had his business tax receipt, or the business tax receipt of any business in which he had substantial control or ownership interests, revoked or suspended under this article or other similar laws.
- (b) *Emergency locator.* The application shall contain a section designated "emergency locator." The applicant shall fill out as part of the business tax application the names, business and residence addresses and residence and business phone numbers of the owner, and the manager or other persons to be notified in case of fire or other emergencies. Any changes in such information during the period for which the business tax is issued shall be made to the city manager or his designee, in writing.
- (c) *Business tax receipt number.* All applications and business tax receipts shall be assigned a number, which may be an individual's social security number and a corporation's federal tax number, or such other uniform method of numbering selected by the city manager or his designee, with the director of management information systems.
- (d) *Statement of accuracy.* The application form shall contain the following language: The undersigned has carefully reviewed this application and all information contained herein has been freely and voluntarily provided, and all the facts, figures, statements contained in this application are true and correct.
- (e) *Name and signature.* The applicant shall print and sign his name to the applications immediately after the statement required in subsection (d) of this section. In the case of a corporation, an officer shall be required to sign the application in his individual capacity and not solely as a corporate agent, and shall be advised of the provisions of section 102-370.

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- (f) *Obtaining certificate of use prior to issuance of business tax receipt.* Those businesses required to obtain a certificate of use pursuant to subsection 14-66(3) must do so prior to the issuance of a business tax receipt.
- (g) *Smoke detector form.* All apartment houses, hotels, roominghouses, boardinghouses, ACLF's, nursing homes, and private hospitals must submit a smoke detector report on a form prescribed by the city manager or his designee prior to the issuance of the original business tax receipt. A business tax receipt will not be issued until the smoke detector report form is properly completed and submitted. Failure to do so in a timely manner will result in enforcement procedures and penalties as provided in this article.
- (h) *State tax receipt.* All businesses and professions regulated by the state must submit a copy of their current state business tax receipt prior to the issuance of their original city business tax receipts and thereafter each year at time of renewal in the case of sellers of travel only. Only the state tax receipt itself, or in the case of the state hotel and restaurant commission, the receipt issued by the state, shall constitute proof of current state tax receipt.
- (i) *Alcoholic beverage establishments.* All establishments that serve alcoholic beverages and all promoters shall submit a completed form supplied by the city acknowledging that compliance with the following laws and requirements is an express condition of holding the city applied for:
 - (1) F.S. § 562.11, entitled "Selling, giving, or serving alcoholic beverages to person under age 21; misrepresenting or misstating age or age of another to induce taxee to serve alcoholic beverages to person under 21; penalties"; F.S. § 562.14, entitled "Regulating the time for sale of alcoholic and intoxicating beverages; prohibiting use of taxed premises"; and F.S. § 562.48, entitled "Minors patronizing, visiting, or loitering in a dance hall";
 - (2) During the hours when alcoholic beverages are served by any business, a nontransferable identification bracelet must be placed on the right wrist of all persons entering the premises of the business who are over 21 years of age.
 - (3) Promoters shall post a copy of their business tax receipt in a conspicuous place at or near the entrance of any dance or entertainment event they promote, where it may be easily read.
- (j) *Compliance with City Minimum Living Wage.* No license shall be issued or granted to any person to engage in any business named, identified, or encompassed by this article unless that person or business' application includes an affidavit, legally binding upon the person or business, attesting to that person or business' compliance with the City Minimum Living Wage Ordinance, Chapter 18, Article XVII.

(Ord. No. 95-2995, § 2(20-10(a)), 6-7-95; Ord. No. 98-3148, § 2, 11-4-98; Ord. No. 99-3173, § 3, 3-3-99; Ord. No. 99-3191, § 2, 7-3-99; Ord. No. 2007-3553, § 1, 4-11-07; Ord. No. 2016-4020, § 1, 6-8-16)

Sec. 102-372. - Grounds for denial.

- (a) Any person whose application for a business tax receipt has been denied may seek a hearing under sections 102-384 and 102-385. An application for a business tax receipt under this article may be denied on the following grounds:
 - (1) That the applicant has failed to disclose or has misrepresented information required by this article in the application.
 - (2) That the applicant currently has a tax receipt under suspension or revocation. Whenever any business tax receipt has been suspended or revoked by the city for any cause whatsoever, no subsequent tax receipt shall be issued during the period of suspension/revocation to the taxee or to any other firm in which the taxee or any of its general partners, limited partners, officers or stockholders owning 20 percent or more of its stock or agents, employees or other persons who were actively involved in the business under suspension/revocation.

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- (3) That the applicant desiring to engage in the business as described in the application has selected a proposed site or type of business activity which does not comply with the city's zoning ordinance or other laws of the city.
 - (4) That the applicant fails to obtain a bond at the limits required of his business.
 - (5) That the applicant fails to obtain insurance at the limits required of his business.
 - (6) That the applicant has failed to obtain a certificate of use as required by subsection 14-66(3) of this Code.
 - (7) The certificate of use for the proposed business has been denied, suspended or revoked for any reason.
 - (8) The applicant's proposed business activity or portion thereof consists of conduct that is an actual threat to the public health, welfare or safety.
 - (9) Habitual conduct has occurred at the applicant's premises that violates city, county or state laws.
 - (10) The issuance of a tax receipt is based on the applicant's compliance with specific provisions of federal, state, city or county law and the applicant has violated such specific provisions.
 - (11) The applicant has violated any provision of this article and has failed or refused to cease or correct the violation after notification thereof.
 - (12) The applicant within the preceding five years in this state or any other state in the United States has been adjudicated guilty of or forfeited a bond when charged with soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in narcotics.
 - (13) The premises have been condemned by the local health authority for failure to meet sanitation standards or the premises have been condemned by the local authority because the premises are unsafe or unfit for human occupancy.
 - (14) The applicant's premises have been found to constitute a public nuisance by the nuisance abatement board as provided in section 70-206 et seq.
 - (15) The applicant is delinquent in the payment of any business tax/fee imposed under this article: code enforcement lien; special assessment lien and/or any other debt or obligation due to the city under state or local law.
 - (16) A business has permitted an promoter with no business tax receipt to hold a dance or entertainment event on the premises of the business on more than one occasion within a 12-month period.
- (b) In addition to the grounds set forth in section (a), an application for a Promoter tax receipt under this article may be denied on the following grounds:
- (1) A promoter has held a dance or entertainment event on the premises of a business that does not have a business tax receipt on more than one occasion within a 12-month period.
 - (2) Habitual conduct has occurred at, or in connection with, a promoter's dance or entertainment event that violates city, county, or state laws (or violates the laws of any other state or local government) including, but not limited to, laws prohibiting:
 - a. The serving of alcoholic beverages to minors;
 - b. Littering;
 - c. Excessive noise; and
 - d. Disorderly conduct.

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(Ord. No. 95-2995, § 2(20-10), 6-7-95; Ord. No. 98-3148, § 3, 11-4-98; Ord. No. 99-3173, § 4, 3-3-99; Ord. No. 2007-3553, § 1, 4-11-07; Ord. No. 2010-3696, § 8, 9-20-10)

Sec. 102-373. - Investigation to determine compliance with article.

The city manager or his designee may investigate persons engaged in any business encompassed by this article and make such inquiry as shall be necessary to determine whether or not such persons have procured a business tax receipt as required by this article, or engaged in conduct which violates this article or chapter 18.

(Ord. No. 95-2995, § 2(20-13), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-374. - Penalty for late payment.

- (a) Any person engaging in any business without obtaining a valid business tax receipt under this article shall be subject to a penalty of twice the applicable business tax in addition to any other penalty provided by this article or any other law.
- (b) All business tax renewal fees are due and payable on October 1 of each year. Any person failing to timely apply for the annual renewal of a business tax under this article may be issued a tax receipt only upon payment of a delinquency penalty of ten percent for the month of October or portion thereof and an additional five percent for each month of delinquency thereafter or portion thereof until paid. Payments must be received by the city prior to the first day of each penalty month to avoid additional penalties; however, the total delinquency penalty shall not exceed 25 percent of the business tax amount.
- (c) Renewed business tax receipts will not be issued until all delinquent payments for any business tax/fee imposed under this article: Code enforcement lien; special assessment lien and/or any other debt or obligation due to the city under state or local law has been paid in full. Any debt or obligation shall not be deemed due if any appeal has been timely filed and has not been disposed of.

(Ord. No. 95-2995, § 2(20-14), 6-7-95; Ord. No. 98-3148, § 4, 11-4-98; Ord. No. 2007-3553, § 1, 4-11-07)

State Law reference— Similar provisions, F.S. § 205.043.

Sec. 102-375. - Penalties for false disclosures.

Any person who shall knowingly make a false statement on a city application or knowingly fail to disclose or supplement information required by this article shall be subject to the civil and administrative penalties authorized by this article and state law.

(Ord. No. 95-2995, § 2(20-15), 6-7-95)

Sec. 102-376. - Business owner's responsibility/joint responsibility for violations.

- (a) It shall be unlawful and a violation of this article for any person to operate or permit to operate upon his/her/its premises a business not currently taxed as required by this article.
- (b) Further, if a business rents, leases, contracts, assigns, or otherwise permits the use of its premises, or any portion thereof, by a promoter, then such business will be jointly responsible for all city code violation fines incurred by the promoter; provided, however, that if the promoter has a valid promoter business tax receipt and a bond, if any, has been posted by the promoter pursuant to section 102-

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378, such bond shall first be used to pay any Code violation fines incurred as a result of the promoted dance or entertainment event.

(Ord. No. 95-2995, § 2(20-16), 6-7-95; Ord. No. 99-3173, § 5, 3-3-99; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-377. - Penalties, enforcement; collection of delinquent fees and taxes, and criminal penalties.

- (a) Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the offense. which shall have a civil fine of \$1,000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d) herein.

The enforcement and appeal of the notice of violation shall be consistent with those requirements set forth in subsection 102-386(c)(2) and (3).

- (b) Any person who violates any other provision of this article shall be cited with a notice of violation as provided in subsection 102-386(c) of this Code, and may be subject to one or more of the following enforcement/collection procedures:
 - (1) Suspension/revocation proceedings as set forth in sections 102-383 through 102- 385.
 - (2) Suit for injunctive relief to enjoin operation of the business in violation of this article.
- (c) As an additional means of enforcement/collection and supplemental to the above, when a notice or record of any past-due business tax/fees and penalties that become due and payable to the city after the effective date of this section is recorded in the public records of the county, the notice shall constitute a special assessment lien upon all real and personal property of the business owing such fees and penalties, and shall remain a lien equal in rank and dignity with the lien of ad valorem taxes, and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the property involved. Such liens may be foreclosed or levied upon in the manner provided by law.
- (d) In addition to the above, a continued violation of subsection 102-377(a) for a period of 30 days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.
- (e) As an additional means of enforcement and supplemental to the above, if any person carries on or conducts any business for which a tax receipt is required by this article without first obtaining such tax receipt, then the city may prevent the business from operating until the required tax receipt is obtained.

(Ord. No. 95-2995, § 2(20-17), 6-7-95; Ord. No. 96-3044, § 1, 5-1-96; Ord. No. 99-3173, § 6, 3-3-99; Ord. No. 2007-3553, § 1, 4-11-07; Ord. No. 2010-3696, § 8, 9-20-10; Ord. No. 2016-4062, § 1, 12-14-16)

Sec. 102-378. - Lapse of insurance, bond.

- (a) Those occupations requiring insurance as a prerequisite to the issuance of a tax receipt must submit an original certificate of insurance at the time of application, to be approved by the risk manager. It is the taxee's responsibility to ensure that an updated original certificate of insurance is forwarded to the city's business tax section prior to the expiration date of the certificate currently on file. If, at any time during the tax year, a taxee fails to maintain the insurance and/or bonds required by this article for the taxed business, the tax receipt issued to such business shall become null and void. Such businesses that continue operating without a valid tax receipt shall be subject to enforcement procedures as set forth in section 102-377, including business tax receipt revocation.

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- (b) (1) Promoters shall be required to post a bond or cash ("promoter bond") in the amount set forth below prior to the issuance or renewal of a tax receipt. If, at any time, the promoter fails to keep the bond in effect, the tax receipt issued to such promoter shall become null and void. No tax receipt shall be issued to a promoter if there are outstanding city fines assessed against such promoter, or outstanding city fines relating to promoters, assessed against the business at whose premises the promoter is seeking a premises specific tax receipt.
- (2) The promoter bond may be drawn upon to pay any city fines imposed upon either the promoter or upon the business which permitted the promoter to use its premises at the time the fine was incurred.
- (3) The amount of the promoter bond shall in no way be deemed to limit the liability of the promoter or business to less than the amount of any city fines which might be imposed. If the promoter bond is drawn down upon to pay a city fine, the promoter shall be obligated to replenish the promoter bond to its original amount within ten business days after written notice from the city. If the promoter fails to do so, the tax receipt issued to such promoter shall become null and void.
- (4) The promoter bond will be returned to the promoter within 30 days after the promoter tax receipt expires, less any deductions for city fines as provided herein; however, if there is an open violation without a fine amount, the promoter bond shall not be returned until the violation is closed or until there is a final adjudication by the city's special master and all fines have been paid. If the promoter tax receipt is renewed, the promoter bond posted with the city may be carried over to the renewed tax receipt.
- (5) The amount of the promoter bond shall be determined as follows:

License type	Bond amount
<i>Single event—Premises specific tax receipt</i>	
Premises with total permitted occupancy under 150	\$0
Premises with total permitted occupancy of 150 or more	Base amount of \$2,500.00 plus \$50.00 multiplied by the amount, if any, by which the total permitted occupancy load of the specific premises at which the dance or entertainment event will be held exceeds 150
<i>Multiple event—Premises specific tax receipt</i>	
Premises with total permitted occupancy under 150	\$0
Premises with total permitted occupancy of 150 or more	Base amount of \$2,500.00 plus \$50.00 multiplied by the amount, if any, by which the total permitted occupancy load of the specific premises at which the dance or entertainment event will be held exceeds 150

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150 or more	the dance or entertainment event will be held exceeds 150
<i>Multiple event—Premises general tax receipt</i>	
Premises with total permitted occupancy under 150	\$0
Premises with total permitted occupancy of 150 or more	\$10,000.00

- (6) In no event shall the amount of the required promoter bond exceed \$10,000.00, except as provided in subsection (8) below.
- (7) As used herein, total permitted occupancy shall include the total permitted occupancy load for the inside, outside, terrace, first floor, second floor, mezzanine, seating area, bar, and all other areas of the premises at which the dance and entertainment event could be held.
- (8) A promoter holding simultaneous events on different premises shall be required to obtain a separate bond for each premises where such simultaneous dance or entertainment events are held, unless the dance or entertainment event is held after June 9, 1999, and is in conjunction with a convention, trade show, or special event which is co-sponsored, co-hosted, and/or funded in whole or in part by the city, in which case, the provisions of subsection (b)(6) above, apply.
- (9) All applications for single event premises specific business tax receipts must be submitted at least ten business days before the dance or entertainment event.

(Ord. No. 95-2995, § 2(20-18), 6-7-95; Ord. No. 99-3173, § 7, 3-3-99; Ord. No. 99-3191, § 3, 6-23-99; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-379. - Schedule of taxes, effective October 1, 2016.

- (a) Business taxes for the following businesses, occupations or professions are hereby levied and imposed as follows:
- (b) Effective on October 1, 2005 (fiscal year 2005-2006), the following business taxes will be increased by five percent rounded to the nearest dollar, and further increased by five percent every other year on October 1, until such taxes/fees have caught up with the cumulative percentage change in the Consumer Price Index (CPI) measure between June 1994 through March 2003, which is 24.5 percent; further providing for another change equal to the cumulative percentage change in the CPI from March 2003 to September 2011.
- (c) As provided in Resolution No. 2003-25299, a review of the annual permit fee/business tax will be required whenever the change in the Consumer Price Index (CPI), between the latest CPI and the date of the CPI used for the last tax/fee adjustment, is five percent or greater.

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- (d) Effective on October 1, 2009 (fiscal year 2009—2010), business tax receipt applications shall be charged a \$45.00 fee for the processing of new applications.

Occupation Code	Business Tax Category	Amount
	A	
95000200	Accountant, auditor; requires state license	269.00
95000300	Acupuncturist; requires state license	233.00
95000400	Assisted living facility (ALF); requires state license:	
	1. First 10 beds	212.00
	2. Each additional bed	6.00
95000500	Advertising, all kinds	233.00
95901000	Adult entertainment establishments; must be 300 ft. from schools and churches	6,701.00
95000601	Agents, bureau, brokers, operators or dealers of all kinds, including commercial, insurance, loans, claims, transportation, manufacturer or any other kind of business or occupation except pawnbrokers, for each class of business handled, etc., unless covered elsewhere in this section; appropriate license required:	
	1. Each firm	233.00
	2. Ea. individual as salesman	100.00
	3. Ea. individual as broker	233.00
	4. Business broker	233.00
	5. Business consultant	269.00
	Alcohol beverage establishments selling beer, wine and/or liquor for consumption on premises:	

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95000700	1. Open after midnight, closing no later than 2:00 a.m.	1,322.00
95000701	2. Open after 2:00 a.m., closing no later than 5:00 a.m.	4,396.00
	All other businesses not specifically named (per § 102-380 of this Code):	
95240015	1. General business office uses	200.00
95240030	2. Heavy/industrial	342.00
	Alterations/tailor:	
95000550	1. Each shop	204.00
95000551	2. In another shop	100.00
95000800	Antique dealer, those who deal in preowned merchandise are not required to obtained a secondhand dealer license	529.00
95700000	Apartment buildings (rental), not including kitchens and bathrooms; (insurance and state license required):	
	1. 4 rental units or less	No fee
	2. 5—15 rental units	74.00
	Each additional rental unit	6.00
N/A	Apartment buildings (condominium); needs certificate of use only	No fee
95001000	Appraiser	233.00
95001100	Arcade:	233.00
95011801	1. Each coin machine (game/jukebox)	106.00
95001200	Architect; state license required	269.00
95001300	Armored car service	269.00

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95001400	Arms, ammo, pistols, knives, etc.:	
	1. Dealer, alone or in connection with any other business	529.00
	2. Each employee	91.00
95001401	3. Starting, tear gas and B.B. guns	529.00
95001500	Artists, including, retouching, sketching, cartooning, crayon or ferrotype or other similar line	106.00
95001600	Attorneys; appropriate license required	269.00
95001650	Auction business; state license required	4,396.00
95003602	Auto teller machine (off premises of financial institution) (each machine)	233.00
	Auto/truck:	
95008302	1. Body shop/garage/storage	345.00
95000630	2. Broker (no vehicles on premises)	233.00
95001704	3. Dealer	464.00
	4. Reserved	
	5. Reserved	
95008303	6. Painting	401.00
95001707	7. Parking garage	269.00
95001701	8. Rental agency	1,654.00
95001703	9. Sub rental agency (no cars on location)	529.00
95001900	10. Auto shipper (required bond)	529.00

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95008305	11. Wash and detailing, mobile	310.00
95008307	12. Wash and detailing and gas station, etc.	233.00
	Automobile for hire, limousines, except sightseeing busses:	
95001708	1. Each automobile	366.00
95001709	2. Each private or nursery bus, per bus	233.00
95001705	3. Limousine service	316.00
95001706	Each limousine (insurance required)	100.00
	B	
95002000	Baggage and transfer business, including moving companies	331.00
95002100	Bail bonds	233.00
95002200	Bakery, wholesale; state agricultural license required NOTE: For any retail sales a separate business tax receipt is required:	
	1. Five employees or less	128.00
	2. Six to 25 employees	282.00
	3. Over 25 employees	345.00
095002400	Barbershop (with or without manicurist and shoeshine stands, each shop); requires a state license; each barber needs to have his own business tax receipt:	
	1. With one to five chairs	233.00
	2. With six to ten chairs	288.00
	3. With 11 to 15 chairs	353.00

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	4. Each chair over 15	27.00
95002401	Barber; requires state license	27.00
95000665	Baths, Turkish, mineral, sun or similar	233.00
	Beach front concession:	
02002600	1. Upland fee, per unit	21.00
95002601	2. Per equip, activity/location	771.00
95002700	Beauty parlors, hairdressing, facial, nail shop, etc., each shop; state license required; each manicurist/beautician needs to have their own business tax receipt:	
	1. With one to five chairs	233.00
	2. With six to ten chairs	288.00
	3. With 11 to 15 chairs	353.00
	4. Each chair over 15	27.00
95002701	Beautician; state license required	27.00
95002750	Bed and breakfast inn; state license required	
	1. From one to 15 rooms	212.00
	2. Each additional room	20.00
95002800	Bicycle, rent and repair NOTE: Retail sales needs separate business tax receipt	233.00
95002900	Billiards, pool tables (each table)	128.00
95003100	Boardinghouse (as defined in section 17-1 of this Code):	

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	1. From one to 15 rooms	197.00
	2. Each additional room	20.00
	Boat, ship, watercraft, surfboards; insurance required:	
95003407	1. Boat slips	78.00
95003402	2. Commercial passenger boat (per boat)	100.00
95003406	3. Commercial docks	141.00
95003403	4. Charter (per boat)	100.00
95003410	5. Dealer (new)	464.00
95000603	6. Dealer broker (used)	401.00
95003408	7. Docks (per linear foot)	5.00
95003416	8. Ferry terminal	704.00
95009550	9. House barges	239.00
95003200	10. Livery (renting) requires special approvals and insurance:	
	One to eight boats	401.00
	Each additional five boats or fraction	78.00
99003417	11. Boat or surfboard rentals, as an accessory use in hotels under current zoning ordinance (requires special approvals and insurance):	
	One to eight units (total of both)	310.00
	Each additional five units (total of both)	78.00
95003412	12. Yards and ways doing repair work	529.00

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95003401	13. Sightseeing, excursion	663.00
95003418	14. Storage bases and sheds	663.00
95003404	15. Towing and lightering	233.00
95003415	16. Water taxi:	
	One to three boats	353.00
	Each additional boat	141.00
95003550	Bowling alley, per alley	78.00
95003600	Building and loan associations, mortgage companies, saving and loan associations, financial institutions (each branch thereof); state license required	795.00
	C	
95003700	Cabanas (each)	17.00
95003900	Carpet and rug cleaning	221.00
95000659	Casting office	191.00
95004100	Caterers; state license required	272.00
95004101	Caterers operating mobile unit, designed and intended for the purpose of vending from such mobile unit sandwiches, pastries, candy, beverages, soft drinks and like items to workmen on construction sites, city shops, and yards (one such permit shall be issued for each construction and state licensed required).	359.00
N/A	Charitable, etc., organizations; occasional sales, fundraising	N/A
95004200	Check cashing office	233.00
95004500	Chiropractor	269.00
95004700	Clerical office (mail order, requires bond)	233.00

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95004800	Clinic, medical, dental	353.00
	Closing out sale:	
95004900	Good for 30 days	845.00
95004901	Additional 15-day periods	529.00
95005000	Coin dealers	233.00
	Coin operated merchandise or service vending machines, except machines vending newspapers or drinking cups not otherwise provided for herein:	
95011305	Distributor, coin operated machine	310.00
95005101	1-cent to 25-cent machines (each mach.)	27.00
95005102	25-cent machines and over (each mach.)	44.00
95005200	Collection agency	233.00
95004600	Consultant, advisor, practitioners	269.00
95800000	Condo (no state license required)	
95400000	Conditional use	
95005300	Convention service bureau	233.00
95019802	Counselor, marriage, etc.	269.00
95005500	Court reporter	233.00
95240028	Credit bureau	233.00
95000627	Currency exchange	233.00
	D	

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	Dance hall/entertainment establishment; (for entertainment establishments without dancing, see entertainment establishments):	
95005800	1. Dance hall/entertainment establishment without alcohol (see subsection 142-1362(b) for after-hours dance halls)	1,322.00
95005805	2. Dance hall/entertainment establishment with alcohol	233.00
03005825	Additionally, for occupancy loads of 200 or more, nightclub fee of \$3.00 per person occupant load, based upon max. occupant load from building/fire department	
95015701	Day care center, nursery school HRS state license required	331.00
	Dealers in pre-owned/secondhand merchandise:	
95017000	1. Goods other than wearing apparel	401.00
95017001	2. Wearing apparel	453.00
95005910	Dental hygienists; state license required	233.00
95005900	Dentist; state license required	269.00
95006100	Dietician; state license required	269.00
95006200	Doctors, physicians (all others); state license required	269.00
95006300	Doctors, hospital staff; state license required	141.00
95006400	Doctors, physicians' assistant; state license required	78.00
95006500	Dog grooming or small animal clinic	269.00
	E	
95006600	Electric light company	11,131.00
95006700	Electrologists; state license required	269.00

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95006800	Employment agency (bond required)	233.00
95006900	Engineers, all; state license required	269.00
	Entertainment establishments; (see dance hall/entertainment establishment for establishments with dancing)	
95240029	Entertainment establishments without dance hall	233.00
95007100	Equipment rental	233.00
95006801	Escort service (bond required)	233.00
	Express mail service:	
95007250	1. P.O. box rentals, packing and sending; on-site copy, fax, money order, office supplies, stamps, money wire agent, notary, passport photos	464.00
95007251	2. All of number 1, plus answering service (5 phones):	534.00
	Each additional phone	28.00
	F	
95018701	Fax service:	269.00
	Accessory to main occupation	78.00
95007400	Fire prevention service	233.00
95007500	Florist	269.00
95007600	Flower stand, selling cut or potted flowers or plants	204.00
95007700	Food sales (retail inventory) each business, if zoning permits, will be allowed to sell any retail food item; however, all items will be totaled in their inventory assessment; state license required:	
95007701	1. 1st \$1,000.00 of value or less	274.00

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	2. Each \$1,000.00—\$89,999.00 of value	27.00
	3. From \$90,000.00—\$199,999.00 of value	2,815.00
	4. From \$200,000.00—\$499,999.00 of value	4,221.00
	5. From \$500,000.00 and over	5,628.00
95007104	Formal rental	233.00
95007900	Fortunetellers, palmists, clairvoyants, astrologers, phrenologists, physiognomist, numerologists, mind readers and others of a similar nature	2,202.00
95007950	1. Where not gratuitous, not in a nightclub or accessory to main business, each individual	529.00
	Provided that before tax receipt is issued to any persons pursuant to the foregoing item, a report must be made by the police department to the effect that the applicant has no record or conviction in any case involving a felony, and the application must be accompanied by three or more references	
95008000	Fruit, nut, packing, shipping, subject to the provisions of this chapter:	529.00
95008002	1. As an accessory	78.00
	Fuel dealers, bottled gas, etc.:	
95008100	1. Fuel oil dealer	401.00
95008101	2. Fuel bottled gas dealer	197.00
95008120	3. Wood yard dealer	155.00
95008200	Funeral home	823.00
	G	
95008001	Gallery	422.00
	Garbage, waste contractor insurance required; see Chapter 90, Article IV for all	

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	requirements; state license required	
95008404	1. Biohazardous	663.00
95008401	2. Franchise	663.00
95008403	3. Hazardous	663.00
95008402	4. Recycling (DERM permit)	663.00
95008400	5. Roll off	663.00
95008500	Gas companies	11,131.00
95008550	Gasoline wholesale dealer	3,300.00
95008600	1. Where only fuel oil not more volatile than diesel oil and (not exceeding 15,000 barrels in quantity is stored	774.00
	General merchandise retail sales (see also merchants category):	
	Merchant sales (based on cost of inventory):	
95012065	1. 1st \$1,000.00 of value or less	282.00
95012065	2. Each additional \$1,000.00—\$99,999.00	23.00
95012066	3. From \$100,000.00—\$199,000.00	2,815.00
95012066	4. From \$200,000.00—\$499,000.00	4,221.00
95012966	5. From \$500,000.00 and over	5,629.00
95008802	Golf driving courses	141.00
95008801	Golf miniature courses	316.00
95008800	Golf pro	233.00

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95006150	Guard, watchman, patrol agency; state license required	269.00
	H	
95021500	Hall for hire	155.00
95006255	Healers, magnetic	663.00
95009100	Health club, gym (a letter of approval or exemption from state department of agriculture and consumer services required)	233.00
95009200	Health maintenance plan	233.00
95000619	Home based business (plus occupation)	34.00
95006200	Homeopathic physicians; state license required	269.00
	Hotel; state license required:	
95009500	1. First 15 rooms	269.00
	2. For each additional room over 15	19.00
95009600	Hypnotist, hypnotherapist	233.00
	I	
95009700	Immigration service	233.00
95009800	Import and export dealer	233.00
95009900	Income tax service:	
	1. Reserved	233.00
	2. Inside only	
95010000	Installers, floor covering, carpet, tiles, glass, etc.	233.00

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95000606	Insurance agency	233.00
95010200	1. Adjuster	233.00
95000649	2. Insurance broker	233.00
95010100	3. Casualty and liability	338.00
95010105	4. Company	338.00
95010101	5. Fire	338.00
95010102	6. Industrial	338.00
95010103	7. Life	338.00
95010300	Interior decorators whose business is confined to furnishing curtains, draperies, hangings, furniture, etc., exclusively	269.00
95010301	Interior designers; state license required	269.00
95010400	Investment counselor; state license required	233.00
	J	
95010500	Janitorial and maid service (bond required)	269.00
	Jewelers shall be required to pay merchant's business tax determined as follows; (based on cost of inventory):	282.00
95010600	1. 1 st \$1,000.00 of value or less	282.00
95010600	2. Each additional \$1,000.00—\$99,999.00	23.00
95010601	3. From \$100,000.00—\$199,000.00	2,815.00
95010601	4. From \$200,000.00—\$499,000.00	4,221.00
95010601	5. From \$500,000.00 and over	5,629.00

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	K	
95010700	Key machines	34.00
	L	
95010900	Laboratory (chemical, dental, optical, x-ray, etc.) (independent); state license required	310.00
95010901	Laboratory technicians, including the taking of blood pressure	269.00
95011000	Land development companies; state license required	1,429.00
95011100	Landscape architects, contractors, nursery men, etc.	269.00
95011200	Landscape maintenance	63.00
95015601	Laser photo printing service	212.00
95011302	Laundry dry cleaners	401.00
95011303	Laundry dry cleaners (remote location)	128.00
95011304	Laundry coin operated location, each (includes accessory folding and hand ironing)	269.00
95011305	Laundry (coin equipment distributor)	310.00
95011307	Each machine	6.00
95011307	Laundry, coin operated equipment not licensed by one of the above listings, each machine	6.00
04007701	Liquor sales/merchant sales (based on cost of inventory):	
	1. First \$1,000.00 of value or less	274.00
	2. Each additional \$1,000.00—\$99,999.00	27.00

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	3. From \$100,000.00—\$199,000.00	2,815.00
	4. From \$200,000.00—\$499,000.00	4,221.00
	5. From \$500,000.00 and over	5,629.00
95011400	Locksmith	269.00
	M	
	Machine and games, mechanical photographs, consoles, jukeboxes, picture-taking, record-making, or other similar machines:	
95011800	Distributors	845.00
95011802	Each machine	106.00
95004705	Mail order business; bond required	233.00
95011600	Manufacturers, all products; to include any assembling or processing operations otherwise mentioned in this section	310.00
95011700	Manufacturer representative	233.00
95240008	Marine appraiser, surveyor, testing	233.00
95011999	Massage clinic; state license required	233.00
95012000	Massage therapist; state license required	49.00
	Merchants, all persons engaged in the business of selling merchandise of any kind, sort or description, except as otherwise specifically provided by this section, shall be required to pay a merchant's business tax, determined as follows; based on cost of inventory:	
95012065	1. First \$1,000.00 of value or less	282.00
95012065	2. Each additional \$1,000.00—\$99,999.00	23.00
95012066	3. From \$100,000.00—\$199,000.00	2,815.00

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95012066	4. From \$200,000.00—\$499,000.00	4,221.00
95012066	5. From \$500,000.00 and over	5,629.00
05012200	Messenger service (exclusive of telegrams)	128.00
95000625	Model, talent agency; state license required	233.00
95012400	Money broker	233.00
95012500	Money order agency	78.00
95012550	Monogram, silkscreen, retail	233.00
95000610	Mortgage broker, all firms; state license required:	233.00
95000610	1. Each additional broker connected therewith	233.00
95000652	2. Salesman; state license required	100.00
	Motor scooter, motorcycle, rental agency; insurance required:	
95012800	1. 1 to 20 units	401.00
95012800	2. Each unit over 20	27.00
	Movie theater:	
95012900	1. One screen	1,322.00
95012901	2. Each additional screen	141.00
	N	
95013300	Newspapers or periodicals	212.00
	Newsstand sidewalk	78.00
	Nightclub (see dance hall/entertainment establishment)	

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95013600	Nursing homes and private hospital; state license required	1,104.00
	O	
95013800	Office, other than listed	233.00
95013900	Optician; state license required NOTE: Retail sales needs separate merchant sales business tax receipt	269.00
95014000	Optometrist; state license required NOTE: Retail sales needs separate merchant sales business tax receipt	257.00
95240018	Orthodontist; state license required	269.00
95014200	Osteopath; state license required	269.00
	P	
95014350	Paper hanger	233.00
95014500	Parking lot	269.00
95001707	1. Parking garage	269.00
95014507	2. Under-utilized	269.00
95014502	3. Provisional	269.00
95014506	4. Temporary lot	269.00
95014505	5. Parking valet lot only	269.00
95014504	6. Self-parking lot	269.00
99020700	7. Valet parking (per location); insurance required. A letter of permission from the owner, lessee or operator of the business from which the valet service is operating must be submitted prior to the issuance of a valet parking business tax receipt.	310.00
	Each additional location	155.00

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95014600	Party planner	233.00
95014700	Pathologist; all	269.00
95017003	Pawnbroker, selling other than articles taken on pledge must also have a regular merchant's business tax receipt, no tax receipt issued to pawnbrokers shall be transferred from the person to whom it was issued	1,104.00
95007300	Pest control; state license required	310.00
95004850	Pharmacy; state license required	353.00
95015000	Phlebotomist; state license required	269.00
95015100	Photography, studio, film developing/printing on-site	269.00
95015101	Photography, drop off developing only, not done on-site	155.00
95015300	Physiotherapist; state license required	269.00
95015400	Picture framing	131.00
95015500	Podiatrist; state license required	269.00
95015550	Postal box rentals	233.00
N/A	Postage stamp sales:	
	1. Stamp machine distributor	233.00
	2. Each machine	17.00
	NOTE: Retail sales of postage stamps needs separate merchant sales business tax receipt	
95015600	Printing, copying service	212.00
95015602	As accessory to main occupation	78.00

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95006000	Private investigative agency; department of state license required	269.00
95015700	Private schools, schools, tutorial services, colleges or other educational or training institutions operating for profit, for each place of business	331.00
95015800	Process service	233.00
95000657	Production company	233.00
95006265	Professional association, corporation	269.00
	Promoter; bond required:	
95050199	1. Single event/single location (less than 150 permitted occupancy)	91.00
95050199	2. Single event/single location (greater than 150 permitted occupancy)	184.00
95050200	3. Multiple event/single location (less than 150 permitted occupancy)	91.00
95050200	4. Multiple event/single location (greater than 150 permitted occupancy)	184.00
95050201	5. Multiple event/multiple location (less than 150 permitted occupancy)	233.00
95050201	6. Multiple event/multiple location (greater than 150 permitted occupancy)	464.00
95015900	Property management, or the business of opening and closing of homes, or both	269.00
95240019	Psychiatrist; state license required	269.00
95016000	Public relations	233.00
95016100	Publisher	233.00
	Q	
	R	
95000670	Real estate brokerage firm, corp.; state license required:	233.00

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95000607	1. Each broker with firm	233.00
95000652	2. Each salesman with firm	100.00
95016300	Repair shops including upholstering, furniture repairing, knife and lawnmower sharpening/repair, etc., for each place of business	269.00
	Restaurant and bars:	
95016400	Restaurants, drugstores or other establishments serving food permitting the operation of cafe, cafeteria, dining room, tearoom or restaurant takeout with chairs, or stools, each to count as one seat	212.00
95016400	Bar (no restaurant); appropriate state licenses required. Restaurant, add occupancy code load. See "Nightclubs" for additional fees if applicable. See "Dance halls" for additional fees if applicable.	212.00
	1. Per chair up to 50 (not include sidewalk cafe area)	7.00
95016401	2. Per chair 51 and up (not include sidewalk cafe area)	8.00
	3. No chairs	212.00
	4. Sidewalk cafe area per sq. ft. Separate permit application. Must have a valid restaurant business tax receipt to have a sidewalk cafe.	
95000702	5. No sale of alcohol beverage for on-premises consumption	
95016650	Rink, skating, bike or others, owners or persons maintaining same; need commission approval	155.00
95016600	Roominghouses, lodginghouses, boardinghouses or hostels; state license required:	
	1. One to 20 rooms	197.00
	2. Each room over 20 Any apartment house, hotel or any other place serving meals or food other than a boardinghouse, requires a restaurant license.	6.00

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	S	
	Sailmaker	233.00
95016800	Sales office, developers, temporary	310.00
95013600	Sanitarium or institution of like character	1,104.00
95017001	Secondhand dealers/dealers in preowned merchandise:	
	1. Goods other than wearing apparel	401.00
	2. Wearing apparel	453.00
95017100	Service station:	
	1. One pump	155.00
	2. Each additional pump NOTE: Retail sales needs separate merchant sales business tax receipt	63.00
95017200	Shoe repairing	204.00
95017300	Transient short-term rental (state license required) each rental unit	65.00
95017400	Sightseeing buses (each bus); insurance required	663.00
95017500	Sign writers	269.00
95017600	Sociologist or marriage counselor; state license required	269.00
95006209	Social worker (LCSW); state license required	269.00
95017700	Soda fountain/ice cream parlor, provided that soda fountains operated in connection with regularly taxed restaurants do not require an additional business tax receipt. This tax receipt is restricted to soda, frozen yogurt and ice cream products. Any other item such as sandwiches, hot dogs, pastry, etc., will require a restaurant business tax receipt. State license required.	155.00
95017900	Sound recording operator	233.00

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95017905	Sound recording studio	401.00
95018300	Stockbrokers (full service); state license required:	1,654.00
	1. One to five employees	134.00
	2. Six to 15 employees	269.00
95018305	3. Sixteen to 20 employees	401.00
	4. Stockbroker salesman (each)	100.00
95021101	Storage yard	401.00
95018550	Swimming pools (concessions)	269.00
	T	
95018405	Tailor/alterations (each shop):	204.00
	1. As an accessory to main occupation	100.00
95000659	Talent/modeling agency; state license required	233.00
95017800	Tanning salon/solarium	269.00
	Tattoo:	
95006250	1. Tattoo establishment; state license required	269.00
95006250	2. Tattoo artist/body piercing (each person); state license required	269.00
95018500	Tag collection agencies, includes auto tags, driver's license, hunting and fishing licenses, boat registration, etc.):	269.00
95018510	1. As an accessory to main occupation	100.00
95000201	Tax service	269.00

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95018700	Telegraph companies, money wire	233.00
	Telephone:	
	1. Reserved	
	2. Reserved	
95019000	3. Sales office	233.00
	All persons engaged in the business of selling merchandise of any kind, sort or description, except as otherwise specifically provided by this section, shall also be required to pay a merchants business tax.	
95019100	Television rental	233.00
	Tennis:	
95019500	1. Tennis court	233.00
95019300	2. Tennis pro	233.00
95012902	Theaters; live shows:	
	1. Zero to 49 seats	634.00
	2. Fifty seats and over	1,322.00
	Theatrical:	
	1. Theatrical performances (charity)	N/A
95000614	2. Theatrical agency	233.00
95000616	3. Theatrical producer	233.00
95006203	Therapist; state license required	269.00
95019900	Ticket office	233.00

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95020000	Towel and linen supply service	269.00
95021400	Tow truck/wrecker service, each truck, insurance required	212.00
95020100	Tow truck, wrecker associated with a service station (each truck), insurance required	212.00
95020201	Transportation service (each vehicle), including, but not limited to, vans, cars, etc.; insurance required	269.00
95020300	Travel bureau; state certificate required	233.00
	Tour:	
95020302	1. Agency; state certificate required	233.00
95020301	2. Operator; state certificate required	233.00
95020304	3. Service and information (sold elsewhere)	233.00
95015702	Tutorial service	331.00
95020400	Typing, word processing, resume, letter writing service	233.00
95020410	1. Agency (done off-premises)	78.00
	U	
	V	
99020700	Valet parking (see parking)	310.00
95300000	Veterinarian or veterinarian surgeon	269.00
95021000	Video rental (each location), includes accessory rental of tape players and camcorders:	282.00
95021005	1. As an accessory to main occupation	78.00

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	W	
95021100	Warehouse or storage yard	401.00
95021200	Wholesale dealers	401.00
95021300	Window cleaning and janitorial service; bond required	269.00
	X	
	Y	
	Z	

(Ord. No. 95-2995, § 2(20-11), 6-7-95; Ord. No. 96-3055, § 2, 9-25-96; Ord. No. 97-3081, § 2, 6-4-97; Ord. No. 97-3099, § 1, 10-21-97; Ord. No. 99-3173, § 8, 3-3-99; Ord. No. 99-3184, § 1, 5-26-99; Ord. No. 2000-3260, § 1, 7-26-00; Ord. No. 2003-3420, § 1, 7-30-03; Ord. No. 2003-3429, § 1, 10-15-03; Ord. No. 2007-3553, § 1, 4-11-07; Ord. No. 2008-3594, § 1, 2-13-08; Ord. No. 2009-3655, § 1, 9-24-09; Ord. No. 2013-3814, § 1, 9-30-13; Ord. No. 2016-4056, § 1, 11-9-16; Ord. No. 2017-4105, § 3, 6-7-17)

Sec. 102-380. - All other businesses.

A city business tax, in the amount of \$164.06 for general business/office uses and \$281.25 for heavy/industrial uses, is levied and imposed upon all businesses operating within the city which are not specifically named or enumerated by this article until such time as they are specifically named or enumerated.

(Ord. No. 95-2995, § 2(20-12), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-381. - Grounds for suspension, revocation and denial.

- (a) The city manager or his or her designee shall either revoke or temporarily suspend the business tax receipt of any person where it is determined by the city manager or his or her designee that:
- (1) The taxee has misrepresented or failed to disclose material information required by this article to be included in the business tax application form.
 - (2) The taxee, as part of the taxee's business activity within the city, is engaged in conduct that is an actual threat to the public health, welfare or safety.
 - (3) The taxee is conducting business from premises that do not possess a valid and current certificate of occupancy and/or certificate of use as may be required by city and county laws.
 - (4) Habitual conduct has occurred at the taxee's premises that violates city, county or state law.

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- (5) The tax receipt issued by the city depended upon the taxee's compliance with specific provisions of federal, state, city or county law and the taxee has violated such specific provisions of law.
- (6) The taxee has violated any provision of this article and has failed or refused to cease or correct the violation after notification thereof.
- (7) The taxee, as part of the licensee's business activity within the city, knowingly lets, leases or gives space for unlawful gambling purposes at the taxee's premises.
- (8) The taxee, within the preceding five years in this state or any other state or in the United States, has been adjudicated guilty of or forfeited a bond when charged with soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in narcotics.
- (9) The premises have been condemned by the local health authority for failure to meet sanitation standards or the premises have been condemned by the local authority because the premises are unsafe or unfit for human occupancy.
- (10) The taxee's premises have been found to constitute a public nuisance by the nuisance abatement board.
- (11) A business has permitted an untaxed promoter to hold a dance or entertainment event on the premises of the business on more than one occasion within a 12-month period.
- (b) The suspension or revocation shall be of the business tax receipt in effect at the date of such suspension or revocation, even though it may have been issued to a taxee other than the person who held the tax receipt at the time the cause for such suspension or revocation arose.
- (c) No tax receipt shall be suspended under this section for a period of more than 12 months. No new tax receipt shall be issued during the period of suspension/revocation to the taxee, or to any other firm in which the taxee or any of its general partners, limited partners, officers or stockholders owning 20 percent or more of its stock or agents, employees or other persons who were actively involved in the business under suspension/revocation. At the end of such period of suspension or revocation, the taxee and/or agents, general or limited partners, officers or stockholders may apply for a new tax receipt.
- (d) The city manager shall deny a business tax receipt to any person as provided by sections 102-371 and 102-372.
- (e) In addition to the grounds set forth in subsection 102-381(a), the city manager or his or her designee shall either revoke or temporarily suspend the tax receipt of any promoter where it is determined by the city manager or his or her designee that:
 - (1) A promoter has held a dance or entertainment event on the premises of an untaxed business on more than one occasion within a 12-month period.
 - (2) Habitual conduct has occurred at, or in connection with, a promoter's dance or entertainment event that violates city, county, or state laws including, but not limited to, laws prohibiting:
 - a. The serving of alcoholic beverages to minors;
 - b. Littering;
 - c. Excessive noise; and
 - d. Disorderly conduct.

(Ord. No. 95-2995, § 2(20-40), 6-7-95; Ord. No. 99-3173, § 9, 3-3-99; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-382. - Standards; rule-making authority.

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A suspension not exceeding six months shall be imposed in cases where the taxee's violation is shown to be inadvertent and can be promptly corrected by the taxee; a revocation of the tax receipt shall be imposed in all other cases. The city manager shall have the authority to adopt written administrative rules to enforce the provisions of this article, which rules shall have the force and effect of city law, provided the rules are approved by the city attorney and ratified by the city commission.

(Ord. No. 95-2995, § 2(20-41), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-383. - Notice of violation; emergency action.

If the city manager or his designee believes that a taxee has engaged or is engaged in conduct warranting the suspension or revocation of a business tax receipt, he shall serve the taxee by certified mail or hand delivery, at his business address as disclosed in his application for the business tax, a written administrative complaint which affords reasonable notice to the taxee of facts or conduct that warrant the intended action. The complaint shall state what is required to be done to eliminate the violation, if any. The taxee shall be given adequate opportunity to request a prior administrative hearing unless the city manager finds that an emergency condition exists involving serious danger to public health, safety or welfare, in which case advance notice and hearing shall not be required. In the case of an emergency suspension or revocation, the taxee shall immediately be advised of the city manager's action and afforded a prompt post-suspension or revocation hearing in accordance with section 102-385.

(Ord. No. 95-2995, § 2(20-42), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-384. - Hearing when taxee or permittee fails to comply with notice or when requested by aggrieved applicant/taxee.

If a taxee or permittee fails to comply with any notice issued as provided in section 102-383, the city manager or his designee may issue an order in writing to the taxee, by certified mail or hand delivery, notifying him to appear at an administrative hearing before the city manager or his designee to be held at a time to be fixed in such order, which date shall be not less than five days after service thereof. Except as provided in subsection (b) of section 102-385, an administrative hearing may also be requested by an applicant/taxee aggrieved by a decision of a code compliance officer regarding denial of a business tax receipt, determination of fees/penalties due and/or warning of potential suspension/revocation for violation of a provision of this article. The request must be in writing and filed in the city manager's office within ten days of receipt of the decision of the inspector. The request must specify the decision complained of and the nature of the applicant's/taxee's grievance and must be accompanied by a fee as approved by a resolution of the city commission to defray expenses of the hearing. The fee will be refunded if the applicant/taxee prevails in the appeal. The city's costs and fees shall be assessed and lienied as provided in subsection 30-72(a).

(Ord. No. 95-2995, § 2(20-43), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07; Ord. No. 2010-3696, § 8, 9-20-10)

Sec. 102-385. - Hearing procedures; enforcement of orders.

(a) *City manager review.*

- (1) Other than as set forth in subsection (b) of this section, the city manager or his designee shall give written notice of the time and place of the hearing to the taxee/applicant by certified mail or hand delivery and to the city attorney's office.

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- (2) The proceedings shall be informal but shall afford the taxee/applicant the right to testify in his own defense, present witnesses, be represented by legal counsel, submit relevant evidence, cross examine witnesses and object to evidence.
 - (3) The proceedings shall be recorded and minutes kept by the city. Any applicant/taxee requiring verbatim minutes for judicial review may arrange for the services of a court reporter at his own expense.
 - (4) Within ten days of the close of the hearing, the city manager or his designee shall render his decision in writing determining whether or not the tax receipt shall be revoked or suspended or denied, or other action taken or continued, as the case may be, and stating his reasons and findings of fact.
 - (5) The city manager or his designee shall file his findings with the city clerk and shall send a true and correct copy of his order by certified mail, return receipt requested, or by hand delivery, to the business address listed on the business tax receipt or to any such other address as the taxee or applicant shall designate in writing.
- (b) *Board of adjustment review.* Denial of a business tax receipt for lack of proper zoning shall be appealable to the board of adjustment pursuant to sections 118-136 and 118-351 et seq. All appeals must be submitted to the board of adjustment within 15 days of the date of the denial.
- (c) *Administrative rulings as final.* The city manager's designee's/board of adjustment's findings shall constitute the final administrative action of the city for purposes of judicial review under state law.
- (d) *Enforcement.* If an applicant/taxee fails to seek timely appellate review of an order of the city manager or his designee/administrative hearing officer/board of adjustment, or to comply timely with such order, the code compliance officer may pursue enforcement procedures as set forth in section 102-377. Business closings required by suspension/revocation orders may be enforced by the police department.

(Ord. No. 95-2995, § 2(20-44), 6-7-95; Ord. No. 2007-3553, § 1, 4-11-07)

Sec. 102-386. - Property owner's responsibilities regarding legally permissible transient rental and occupancy (short-term) of residential property.

Prior to receiving a business tax receipt, resort tax registration certificate or advertising the property, a property owner must comply with the following provisions:

- (a) An owner of a residential property is prohibited from advertising the residential property, or any portion thereof, for its transient rental or occupancy, unless:
 - (1) The property owner submits an affidavit to the city, under penalty of perjury, for each residential property or unit (or any portion thereof), which states that the property owner:
 - a. Has confirmed that the city's land development regulations, which are applicable to the residential property, authorize the property owner to engage in the transient rental or occupancy of the residential property or unit; and
 - b. Has obtained a business tax receipt that has been issued to the property owner for the purpose of engaging in the transient rental or occupancy of the residential property or unit, as authorized by the city's land development regulations; and
 - c. Has registered the residential property with the city finance director, and obtained the appropriate resort tax registration certificate pursuant to chapter 102, article IV, division 4 of this Code;
 - d. Has complied with those applicable requirements of the American Disabilities Act Regulations and design standards, as may be required for the residential property or

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unit, in conjunction with attaining compliance with the Florida Fire Prevention Code and the Florida Building Code;

- e. Has obtained written authorization from the condominium association that expressly authorizes the property owner to engage in the transient rental or occupancy of the residential property or unit. The written authorization must be attached to, and incorporated within, the affidavit submitted to the City of Miami Beach;
 - f. Has disclosed the business tax receipt number for each residential property or unit in the advertisement, and that the property owner has fully complied with those provisions set forth within section 102-386.
- (b) Notwithstanding the requirements of subsection (a), a property owner of a residential unit(s), which is located within an apartment-hotel or a condominium-hotel, must disclose within the affidavit that each prospective guest receives written notification that the unit(s) is/are not affiliated with the primary hotel operator at the property, and whether or not the prospective guest is entitled to those benefits and amenities that are offered by the primary hotel operator. The advertisement of the residential unit(s) by the property owner must include a disclaimer that the unit(s) is/are not affiliated with the primary hotel operation at the property and whether or not there is entitlement to those benefits and amenities that may be offered by the primary hotel operator. A property owner of a residential unit(s), as set forth herein must provide the contact information (name, telephone number and email address) to the guest at the time of the reservation of the non-affiliated unit(s) at the property.
- (c) Penalties and enforcement.
- (1) A violation of this section shall be subject to the following fines:
 - a. If the violation is the first offense, a person or business shall receive a written warning;
 - b. If the violation is the second violation within the preceding six months, a person or business shall receive a civil fine of \$5,000.00;
 - c. If the violation is the third violation within the preceding six months, a person or business shall receive a civil fine of \$7,500.00; and
 - d. If the violation is the fourth or subsequent violation within the preceding six months, a person or business shall receive a civil fine of \$10,000.00 and the business tax receipt shall be revoked.
 - (2) Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies from any action to assure compliance with this section and all applicable laws. If a violation of this section is observed, the enforcement officer will be authorized to issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine. that the violation may be appealed by requesting an administrative hearing before a special master within ten days after service of the notice of violation, and that the failure to appeal the violation within ten days of service shall constitute an admission of the violation and a waiver of the right to a hearing.
 - (3) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
 - a. A violator who has been served with a notice of violation must elect to either:
 - i. Pay the civil fine in the manner indicated on the notice of violation; or
 - ii. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten days of the service of the notice of violation.
 - b. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. A request for the administrative

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hearing must be accompanied by a fee as approved by a resolution of the city commission. which shall be refunded if the named violator prevails in the appeal.

- c. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by the code enforcement officer. The failure of the named violator to appeal the decision of the code enforcement officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.
- d. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the 61st day following the recording of any such lien that remains unpaid, the city may foreclose or otherwise execute upon the lien.
- e. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- f. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten days of the service of the notice of violation.
- g. The special master shall not have discretion to alter the penalties prescribed in subsection (c)(1).

(Ord. No. 2016-4062, § 2, 12-14-16)

Chapter 114 - GENERAL PROVISIONS

Sec. 114-1. - Definitions.

The following words, terms and phrases when used in this subpart B, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory building means a detached subordinate building or portion thereof, the use of which is incidental to and customary in connection with the main building or use and which is located on the same lot with such main building or use. Where there is no main building on the lot, an accessory building shall be considered as a main building for the purpose of the height, area, and bulk regulations.

Accessory use means a subordinate use which is incidental to and customary in connection with the main building or use and which is located on the same lot with such main building or use.

Adult congregate living facility means any state licensed institution, building, residence, private home, boarding home, home for the aged, or other place whether operated for profit or not, which undertakes through its ownership or management to provide for a period exceeding 24 hours, one or more personal services for four or more adults, not related to the owner or administrator by blood or marriage, who require such services. A facility offering personal services for fewer than four adults shall be within the meaning of this definition if it holds itself out to the public to be an establishment which regularly provides such services.

Adult congregate living facility unit means any room, or inter-connected rooms with one main entrance, in an adult congregate living facility, containing one or more beds.

Aggregate area or aggregate width means the sum of two or more designated areas or widths to be measured, limited, or determined under these regulations.

Alcoholic beverage shall be as defined by F.S. § 561.01(4).

Alcoholic beverage establishment means any commercial establishment located in the city which allows for alcoholic beverages (liquor, beer or wine) to be consumed by patrons on the premises.

Motion picture theater means a building or part of a building used solely for the purpose of showing movies, motion pictures, and projections of events and performances conducted elsewhere, including permitted accessory uses such as eating and drinking concessions; and provided such theater, or any part thereof, is not an adult entertainment establishment (section 142-1271), dance hall, nor entertainment establishment (section 114-1).

Must means a mandatory and not merely directory action or requirement. The term is interchangeable with the word "shall."

Neighborhood plan means the neighborhood plan adopted by the city commission which establishes design guidelines, planning concepts and zoning recommendations for a geographical area.

Nonconforming building or structure means a building or structure or portion thereof which was designed, erected or structurally altered prior to the effective date of these land development regulations in such a manner that characteristics of the building or structure, other than its use, do not comply with the restrictions of these land development regulations.

Nonconforming use means a use which exists lawfully prior to the effective date of these land development regulations and is maintained at the time of and after the effective date of these land development regulations, although it does not conform to the use restrictions of these land development regulations.

Noncontributing building, structure, improvement, or landscape feature means a building, structure, improvement, site or landscape feature located in a designated historic district which does not add to the district's sense of time and place and historical development; or one where the location, design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.

Non-elderly and elderly low and moderate income housing shall be defined in chapter 58, article V.

Nursing home means a facility licensed by the state as a nursing home and providing long-term care of the chronically ill, the physically disabled, and the aged who are unable to move about without the aid of another person or device.

ARTICLE IX. - NONCONFORMANCES

Sec. 118-390. - Purpose/applicability.

- (a) Nothing contained in this article shall be deemed or construed to prohibit the continuation of a legally established nonconforming use, structure, or occupancy, as those terms are defined in section 114-1. The intent of this section is to encourage nonconformities to ultimately be brought into compliance with current regulations. This section shall govern in the event of conflicts with other regulations of this Code pertaining to legally established nonconforming uses, structures, and occupancies.
- (b) The term "nonconformity" shall refer to a use, building, or lot that does not comply with the regulations of this article. Only legally established nonconformities shall have rights under this section.
- (c) For purposes of this section, the term "expansion" shall mean an, addition, enlargement, extension, or modification to a structure that results in an increase in the square footage of the structure, an increase in the occupant content or an increase in the number of seats.
- (d) For the purpose of this section, "legally established" shall apply to the following circumstances:
 - (1) A lot that does not meet the lot frontage, lot width, lot depth, and/or lot area requirements of the current zoning district, provided that such lot met the regulations in effect at the time of platting.
 - (2) A site or improvement that is rendered nonconforming through the lawful use of eminent domain, an order of a court of competent jurisdiction, or the voluntary dedication of property.
 - (3) An existing use which conformed to the code at the time it was established.
 - (4) A building, use and/or site improvement that had received final approval through a public hearing pursuant to this chapter; or through administrative site plan review and had a valid building permit.
 - (5) There shall be no variance of the nonconforming use(s) section of this article IX.

(Ord. No. 2017-4076, § 1, 3-1-17)

Sec. 118-391. - Nonconforming use of land.

- (a) In any district where vacant land is being used as a nonconforming use, and such use is the main use and not accessory to the main use conducted in a building, such use shall be discontinued not later than two years from the effective date of these land development regulations. During the two-year period, such nonconforming use shall not be extended or enlarged either on the same or adjoining property. Any building incident and subordinate to

such use of land shall be removed at the end of the two-year period or, if such building is so constructed as to permit the issuance of a permit for a use not excluded from the district, such building may remain as a conforming use; thereafter, both land and building shall be used only as conforming uses.

- (b) A use approved as a conditional use pursuant to article IV of this chapter shall be considered a conforming use as long as the conditions of the approval are met.

(Ord. No. 89-2665, § 13-1, eff. 10-1-89)

Sec. 118-392. - Nonconforming signs.

Nonconforming signs shall be repaired or removed as provided in section 138-10. No permits for additional signs shall be issued for any premises on which there are any nonconforming signs.

(Ord. No. 89-2665, § 13-2, eff. 10-1-89; Ord. No. 93-2867, eff. 8-7-93)

Sec. 118-393. - Nonconforming use of buildings.

- (a) Except as otherwise provided in these land development regulations, the lawful use of a building existing at the effective date of these land development regulations may be continued, although such use does not conform to the provisions hereof. Whenever a nonconforming use has been changed to a conforming use, the former nonconforming use shall not be permitted at a later date. A nonconforming use shall not be permitted to change to any use other than one permitted in the zoning district in which the use is located.
- (b) A nonconforming use of a building shall not be permitted to extend throughout other parts of that building.
- (c) For specific regulations for nonconforming uses related to medical cannabis treatment centers and pharmacy stores, see section 142-1502(d).

(Ord. No. 89-2665, § 13-3, eff. 10-1-89; Ord. No. 2017-4133, § 2, 9-25-17)

Sec. 118-394. - Discontinuance of nonconforming uses.

- (a) A nonconforming use may not be enlarged, extended, intensified, or changed, except for a change to a use permitted in the district in which the property is located.
- (b) If there is an intentional and voluntary abandonment of a nonconforming use for a period of more than 183 consecutive days, or if a nonconforming use is changed to a conforming use, said use shall lose its nonconforming status. Thereafter, subsequent occupancy and use of the land, building, and/or structure shall conform to the regulations of the districts in which the property is located and any structural alterations necessary to make the structure or building conform to the regulations of the district in which the property is located shall be required. An intentional and voluntary abandonment of use includes, but is not limited to,

vacancy of the building or structure in which the nonconforming use was conducted, or discontinuance of the activities consistent with or required for the operation of such nonconforming use.

- (c) The planning director or designee shall evaluate the evidence of an intentional and voluntary abandonment of a nonconforming use and determine the status of the nonconforming use. In order for a nonconforming use to retain a nonconforming status, the evidence, collectively, shall at a minimum demonstrate at least one of the following:
 - (1) Continual operation of the use;
 - (2) Continual possession of any necessary and valid state and local permits, building permits, licenses, or active/pending application(s) for approval related to prolonging the existence of the use.
- (d) Evidence of an intentional and voluntary abandonment of a nonconforming use may include, but shall not be limited to:
 - (1) Public records, including those available through applicable City of Miami Beach, Miami-Dade County, and State of Florida agencies;
 - (2) Utility records, including water/sewer accounts, solid waste accounts, and electrical service accounts;
 - (3) Property records, including executed lease or sales contracts.

(Ord. No. 89-2665, § 13-4, eff. 10-1-89; Ord. No. 2017-4076, § 1, 3-1-17)

Sec. 118-395. - Repair and/or rehabilitation of nonconforming buildings and uses.

- (a) *Nonconforming uses.* If a building which contains a nonconforming use is, repaired or rehabilitated at a cost exceeding 50 percent of the value of the building as determined by the building official, it shall not be thereafter used except in conformity with the use regulations in the applicable zoning district contained in these land development regulations and all rights as a nonconforming use are terminated.
- (b) *Nonconforming buildings.*
 - (1) Nonconforming buildings which are repaired or rehabilitated by less than 50 percent of the value of the building as determined by the building official shall be subject to the following conditions:
 - a. The building shall have previously been issued a certificate of use, certificate of completion, certificate of occupancy or occupational license by the city to reflect its current use.
 - b. Such repairs or rehabilitation shall meet the requirements of the city property maintenance standards, the applicable Florida Building Code, and the Fire Safety Code.
 - c. If located within a designated historic district, or an historic site, the repairs or

rehabilitations shall comply substantially with the Secretary of Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Structures, as amended, as well as the certificate of appropriateness criteria in article X of these land development regulations. If the repair or rehabilitation of a contributing structure conflicts with any of these regulations, the property owner shall seek relief from the applicable building or fire safety code.

- d. Any new construction shall comply with the existing development regulations in the zoning district in which the property is located, provided, however, that open private balconies, including projecting balconies and balconies supported by columns, not to exceed a depth of 30 feet from an existing building wall, may be permitted as a height exception. The addition of balconies may be permitted up to the height of the highest habitable floor for a building non-conforming in height, provided such balconies meet applicable FAR and setback regulations. Any addition of a balcony in a nonconforming building shall be subject to the review and approval of the design review board or historic preservation board, as may be applicable.
- (2) Nonconforming buildings which are repaired or rehabilitated by more than 50 percent of the value of the building as determined by the building official, shall be subject to the following conditions:
- a. All residential and hotel units shall meet the minimum and average unit size requirements for rehabilitated buildings as set forth in the zoning district in which the property is located.
 - b. The entire building and any new construction shall meet all requirements of the city property maintenance standards, the applicable Florida Building Code and the Life Safety Code.
 - c. The entire building and any new construction shall comply with the current development regulations in the zoning district in which the property is located. No new floor area may be added if the floor area ratio is presently at maximum or exceeded.
 - d. Development regulations for buildings located within a designated historic district or for an historic site:
 - 1. The existing structure's floor area, height, setbacks and any existing parking credits may remain, if the following portions of the building remain substantially intact, and are retained, preserved and restored:
 - i. At least 75 percent of the front and street side walls, exclusive of window openings;
 - ii. For structures that are set back two or more feet from interior side property lines, at least 66 percent of the remaining interior side walls,

exclusive of window openings; and

- iii. All architecturally significant public interiors.
2. For the replication or restoration of contributing buildings, but not for noncontributing buildings, the historic preservation board may, at their discretion, waive the requirements of subsection (b)(2)d.1. above, and allow for the retention of the existing structure's floor area, height, setbacks or parking credits, if at least one of the following criteria is satisfied, as determined by the historic preservation board:
- i. The structure is architecturally significant in terms of design, scale, or massing;
 - ii. The structure embodies a distinctive style that is unique to Miami Beach or the historic district in which it is located;
 - iii. The structure is associated with the life or events of significant persons in the city;
 - iv. The structure represents the outstanding work of a master designer, architect or builder who contributed to our historical, aesthetic or architectural heritage;
 - v. The structure has yielded or is likely to yield information important in prehistory or history; or
 - vi. The structure is listed in the National Register of Historic Places.
- Notwithstanding the above, for buildings over three stories in height, at least 75 percent of the front facade and 75 percent of any architecturally significant portions of the street side facades shall be retained and preserved, in order to retain any nonconforming floor area, height, setbacks or parking credits. If the historic preservation board does not waive the requirements of subsection (b)(2)d.1. above for any reason, including the inability of a reconstructed building to meet the requirements of the applicable building code, any new structure shall be required to meet all current development regulations for the zoning district in which the property is located.
3. The building shall comply substantially with the secretary of interior standards for rehabilitation and guidelines for rehabilitating historic structures, as amended, as well as the certificate of appropriateness criteria in article X of these land development regulations.
4. If the repair or rehabilitation of a contributing structure or historic site conflicts with any of the requirements (as amended) in the applicable Florida Building Code or the Life Safety Code, the property owner shall seek relief

- from such code.
5. Regardless of its classification on the Miami Beach Historic Properties database, a building may be re-classified as contributing by the historic preservation board if it meets the relevant criteria set forth in the City Code.
 6. Contributing structures shall be subject to all requirements in section 118-503 of these land development regulations.
 7. Existing non-contributing structures in a designated historic district or site shall be subject to the sustainability and resiliency requirements for new construction in chapter 133.
- e. Development regulations for buildings not located within a designated historic district and not an historic site.
1. Buildings constructed prior to 1965 and determined to be architecturally significant by the planning director, or designee, may retain the existing floor area ratio, height, setbacks and parking credits, if the following portions of the building remain substantially intact and are retained, preserved and restored:
 - i. At least 75 percent of the front and street side facades, exclusive of window openings;
 - ii. At least 50 percent of all upper level floor plates; and
 - iii. At least 50 percent of the interior side walls, exclusive of window openings.
 2. For buildings satisfying the above criteria, the parking impact fee program may be utilized, provided that all repairs and rehabilitations, and any new additions or new construction is approved by the design review board.
 3. Buildings constructed prior to 1965 and determined to be architecturally significant by the planning director, or designee, shall comply with the sustainability and resiliency requirements for new construction in chapter 133; however, the sustainability fee for such buildings shall be valued at three percent of the total construction valuation of the building permit.
 4. Buildings construction in 1965 or thereafter, and buildings construction prior to 1965 and determined by the planning director, or designee not to be architecturally significant, shall be subject to the sustainability and resiliency requirements for new construction in chapter 133.
 5. For purposes of this subsection, the planning director, or designee shall make a determination as to whether a building is architecturally significant according to the following criteria:
 - i. The subject structure is characteristic of a specific architectural style

constructed in the city prior to 1965, including, but not limited to, vernacular, Mediterranean revival, art deco, streamline modern, post-war modern, or variations thereof;

- ii. The exterior of the structure is recognizable as an example of its style and/or period, and its architectural design integrity has not been modified in an irreversible manner; and
- iii. Exterior architectural characteristics, features, or details of the subject structure remain intact.

A property owner may appeal any determination of the planning director, or designee relative to the architectural significance of a building constructed prior to 1965 to the board of adjustment, in accordance with the requirements and procedures pursuant to the requirements of section 118-9.

- 6. Buildings constructed in 1965 or thereafter, and buildings constructed prior to 1965 and determined by the planning director, or designee not to be architecturally significant, shall be subject to the regulations set forth in subsection (b)(2)a—c herein.
 - f. Any new construction identified in subsections d. and e., above, shall comply with the existing development regulations in the zoning district in which the property is located, provided, however, that open private balconies, including projecting balconies and balconies supported by columns, not to exceed a depth of 30 feet from an existing building wall, may be permitted as a height exception. The addition of the highest habitable floor for a building nonconforming in height, provided such balconies meet applicable FAR and setback regulations. Any addition of a balcony in a nonconforming building shall be subject to the review and approval of the design review board or historic preservation board, as may be applicable.
- (3) There shall be no variances from any of the provisions herein pertaining to maximum floor area ratio and to parking credits.
 - (4) Unless superseded by the provisions in chapter 142, article II, division 2, single-family homes shall be treated the same as other buildings, in determining when an existing structures lot coverage, height and setbacks may remain.
 - (5) Notwithstanding the foregoing, in the event of a catastrophic event, including, but not limited to, fire, tornado, tropical storm, hurricane, or other act of God, which results in the complete demolition of a building or damage to a building that exceeds 50 percent of the value of the building as determined by the building official, such building may be

reconstructed, repaired or rehabilitated, and the structure's floor area, height, setbacks and any existing parking credits may remain, if the conditions set forth in subsection (b) (1)a—d herein are met.

(6) The foregoing regulations shall not apply to any building or structure located on city-owned property or rights-of-way, or property owned by the Miami Beach Redevelopment Agency.

(7) Gasoline service stations.

a. Notwithstanding the foregoing provisions, a nonconforming gasoline service station that provides a generator or other suitable equipment that will keep the station operational, and which has been damaged, repaired or rehabilitated by more than 50 percent of the value of the building as determined by the building official pursuant to the standards set forth in the Florida Building Code may be repaired or rehabilitated, if the following conditions are met:

1. The entire building and any new addition shall meet all requirements of the city property maintenance standards, the applicable Florida Building Code and the Life Safety Code.
2. The entire building and any new addition shall comply with the current development regulations in the zoning district in which the property is located, including, but not limited to all landscape requirements. New monument-style signs shall be required. Pole signs shall be prohibited.
3. No new floor area may be added if the floor area ratio is presently at maximum or exceeded.

b. Necessary repairs to add an emergency electrical generator and related facilities to a nonconforming gasoline service station shall be permitted.

c. A nonconforming gasoline service station that provides a generator or other suitable equipment that will keep the station operational, may add new floor area (other than floor area strictly necessary to house an emergency electrical generator and related facilities), or convert existing floor area or land, to add new accessory uses, such as a convenience sales area or a car wash, subject to conditional use approval, notwithstanding the nonconforming status of the gasoline service station.

(Ord. No. 89-2665, § 13-5, eff. 10-1-89; Ord. No. 94-2908, eff. 2-26-94; Ord. No. 94-2927, eff. 5-14-94; Ord. No. 98-3108, § 12, 1-21-98; Ord. No. 2005-3493, § 1, 9-8-05; Ord. No. 2006-3523, § 1, 7-12-06; Ord. No. 2007-3566, § 1, 9-5-07; Ord. No. 2015-3921, § 1, 2-11-15; Ord. No. 2015-3977, § 16, eff. 12-19-15; Ord. No. 2017-4083, § 3, 4-26-17; Ord. No. 2017-4118, § 1, 7-26-17)

The casual, intermittent, temporary, or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use and the existence of nonconforming use on a part of a lot or tract shall not be sufficient to establish a nonconforming use on the entire lot or tract.

(Ord. No. 89-2665, § 13-6, eff. 10-1-89; Ord. No. 2005-3493, § 1, 9-8-05)

Sec. 118-397. - Existence of a nonconforming building or use.

- (a) The planning and zoning director shall make a determination as to the existence of a nonconforming use or building and in so doing may make use of affidavits and investigation in addition to the data presented on the city's building card, occupational license or any other official record of the city.
- (b) The question as to whether a nonconforming use or building exists shall be a question of fact and in case of doubt or challenge raised to the determination made by the planning and zoning director, the question shall be decided by appeal to the board of adjustment pursuant to the requirements of section 118-9. In making the determination the board may require certain improvements that are necessary to insure that the nonconforming use or building will not have a negative impact on the neighborhood.

(Ord. No. 89-2665, § 13-7, eff. 10-1-89; Ord. No. 2005-3493, § 1, 9-8-05; Ord. No. 2015-3977, § 16, eff. 12-19-15)

Sec. 118-398. - Building nonconforming in height, density, parking, floor area ratio or bulk.

Except as provided in chapter 118, article IX, herein, a nonconforming building shall not be altered or extended, unless such alteration or extension decreases the degree of nonconformity but in no instance shall the floor area requirements of any unit which is being altered or extended be less than the required floor area set forth in the applicable zoning district.

(Ord. No. 89-2665, § 13-8, eff. 10-1-89; Ord. No. 91-2767, eff. 11-2-91; Ord. No. 2005-3493, § 1, 9-8-05)

Sec. 118-399. - Reserved.

Editor's note— Sec. 8 of Ord. No. 2015-3978, adopted Dec. 9, 2015, effective Apr. 1, 2016, repealed § 118-399 which pertained to the procedure for retention of illegally subdivided units, undersized units or illegally installed kitchens, and derived from Ord. No. 89-2665, effective Oct. 1, 1989; Ord. No. 90-2722, effective Nov. 21, 1990; Ord. No. 91-2767, effective Nov. 2, 1991; Ord. No. 92-2820, effective Oct. 31, 1992; Ord. No. 94-2959, effective Dec. 17, 1994; and Ord. No. 2005-3793, effective Sept. 8, 2005.

Secs. 118-400—118-500. - Reserved.

EXHIBIT 3

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 1:17-cv-23958-UU

BEACH BLITZ CO., a Florida
corporation d/b/a OCEAN 9 LIQUOR,
and d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,
a municipal corporation of the State of Florida,
PHILIP LEVINE, an individual,
JIMMY MORALES, an individual,
MICKEY STEINBERG, an individual,
RICKY ARRIOLA, an individual,
MICHAEL GREICO, an individual,
JOY MALAKOFF, an individual,
KRISTEN ROSEN GONZALEZ, an individual,
JOHN ELIZABETH ALEMAN, an individual,
RAUL J. AGUILA, an individual, and
ALEKSANDR BOKSNER, an individual,

Defendants.

_____ /

AFFIDAVIT OF MANUEL MARQUEZ

STATE OF FLORIDA)
) ss.
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, personally appeared Manuel Marquez, who
after being duly sworn, states:

1. My name is Manuel Marquez and I am over the age of 21 and am competent to
testify to the matters set forth in this Affidavit, which are based upon my personal knowledge,

including my knowledge of the business records of the City of Miami Beach, Florida (the “City”).

2. I currently serve as the Assistant Director of Finance of the City of Miami Beach, and have held that position since 2011.

3. A Business Tax Receipt (“BTR license”) is akin to an occupational license, and is required for any business engaging in the privilege of operating a business in the City of Miami Beach. An application for a BTR license is reviewed by numerous City Departments to protect the public interest, including Planning and Zoning, Concurrency, Building, Fire, Police, Risk Management, Public Works, Finance, and Code.

4. Beach Blitz Co. (“Beach Blitz”) has owned and operated a package liquor store in the City’s Mixed Use Environment District (“MXE”) at 865 Collins Avenue, Miami Beach, Florida since approximately 2012.

5. Beach Blitz first applied for and obtained a BTR license for a liquor store for the 2011-2012 fiscal year. *See* Exhibit 1 hereto. Beach Blitz renewed its BTR license for the 2012-2013, 2013-2014, and 2014-2015 fiscal years. *See, e.g.*, Exhibit 2 hereto.

6. Effective October 1, 2015, Beach Blitz applied for and renewed its BTR license for the 2015-2016 fiscal year. *See* Exhibit 3 hereto.

7. On or about July 1, 2016, in the ordinary course of business, the City mailed Beach Blitz a renewal notice, reminding the company to renew the BTR license for the 2016-2017 fiscal year. *See* Exhibit 4 hereto. Beach Blitz did not pay its renewal fee by September 30, 2016.

8. The BTR license expired on September 30, 2016. Thus, Beach Blitz was operating its liquor store illegally as of October 1, 2016. *See* Exhibit 3 hereto.¹

9. At no time during the 2016-2017 fiscal year, from October 1, 2016 through September 30, 2017, did Beach Blitz submit payment to the City to renew its BTR license. At no time during the 2016-2017 fiscal year did the City refuse payment from Beach Blitz to renew its BTR license.

10. On or about October 1, 2017, one year after the expiration of Beach Blitz's BTR license, the status of the BTR license changed from "expired" to "closed." *See* Exhibit 5 hereto. Once a business entity's license status is "closed," the business must submit a new BTR license application pursuant to Section 102-371 of the City Code in order for the City to act on a request for a BTR license.

11. To date, Beach Blitz has not submitted any application for a new BTR license, nor has any application for a BTR license been denied by the City. If any application for a new BTR license had been submitted and denied, the person who submitted the application could have appealed the denial pursuant to Section 102-372 of the City Code.

12. On or about October 4, 2017, Beach Blitz paid a \$1,000 fine pursuant to a consent agreement with the City to resolve three outstanding notices of violation. There is no record that the City ever refused payment of the \$1,000 settlement payment prior to October 4, 2017. There is no record that Beach Blitz submitted any payment for a new BTR license along with its \$1,000 settlement payment.

13. On October 11, 2017, over one year after Beach Blitz's 2016-2017 BTR license expired, Beach Blitz submitted payment to the City for a BTR license. *See* Exhibit 6 hereto.

¹ Beach Blitz owns and operates a second package liquor store at 1100 Collins Avenue for which it maintains an active BTR license.

Because Beach Blitz's license status was "closed" at the time the payment was made, a new BTR license application would need to be submitted pursuant to Section 102-371 of the City Code in order for the City to act on a request for a BTR license.

FURTHER AFFIANT SAYETH NAUGHT.

Manuel Marquez
MANUEL MARQUEZ

Sworn to and subscribed before me this 13th
day of November, 2017.

Guadalupe C Ramos
Notary Public
My commission expires: 9.8.2020

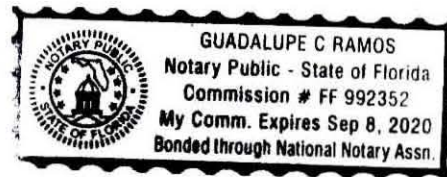


EXHIBIT 1

CITY OF MIAMI BEACH
CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT

1700 Convention Center Drive
 Miami Beach, Florida 33139-1819

TRADE NAME: BEACH BLITZ CO.
 IN CARE OF: DORAN DOAR
 ADDRESS: 13441 NW 5 CT
 PLANTATION, FL 33325

RECEIPT NUMBER: RL-10005692
 Beginning: 10/01/2011
 Expires: 09/30/2012
 Parcel No: 0242032580040

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A certificate of Use / Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Receipt are obtained prior to the opening of the new location.

Additional Information

Storage Locations

TRADE ADDRESS: 865 COLLINS AVE, D

Code 007701 btrapp	Certificate of Use/Occupation LIQUOR SALES BUSINESS TAX RECEIPT APPLICATION FEE
--------------------------	---

CERTIFICATE OF USE	300
SQUARE FOOTAGE	1800
PRORATION	quart
C_U # OF UNITS	1800
LIQUOR INVENTORY	\$ 15000

FROM: CITY OF MIAMI BEACH
 1700 CONVENTION CENTER DRIVE
 MIAMI BEACH, FL 33139-1819

PRESORTED
 FIRST CLASS
 U.S. POSTAGE
 PAID
 MIAMI BEACH, FL
 PERMIT No 1525

BEACH BLITZ CO.
 865 COLLINS AVE, D
 MIAMI BEACH, FL 33139-5807



New Business Tax Account #	<u>Activity # 64053</u>	Amount of Fee Due: \$45.00	Application Fee
Last City License # for This Address	<u>PL-05000956</u>	Make Check Payable to: CITY OF MIAMI BEACH	

City of Miami Beach
Certificate of Use (CU), Annual Fire Inspection Fee & Business Tax Application

This application is NOT your business tax receipt. Do not operate the business until the Certificate of Use and the Business Tax Receipt are issued.

The place of business must be available to all inspectors.

Type of Application:

☐ New Business ☐ Change of Owner ☐ Adding Seats ☐ Additional Occupation
☐ Change of Location

Application Checklist

☐ Federal ID No. ☐ Fictitious Name Registration ☐ Lease/Deed/Closing Statement
☐ Articles of Inc. (if applicable) ☐ State License (if applicable) ☐ CU and Annual Fire Fee (non refundable)
☐ Bill of Sale ☐ Insurance

Does the Application involve: ☐ Change of Use ☐ Renovation (Provide Certificate of Occupancy Process Number _____)

A Change of Use may generate additional building and fire code requirements as applied to new construction.

A valid Certificate of Occupancy is required before an occupational license can be issued.

Is the Business one or more of the following types:

<input type="checkbox"/> Apartment Building	<input type="checkbox"/> Condominium	<input type="checkbox"/> Hotel	<input type="checkbox"/> Restaurant	<input type="checkbox"/> Bakery
<input type="checkbox"/> Ice Cream Parlor	<input type="checkbox"/> Delicatessen	<input type="checkbox"/> Nightclub	<input type="checkbox"/> Dancing/Entertainment	<input type="checkbox"/> Real Estate
<input type="checkbox"/> Hair Salon	<input type="checkbox"/> Home Based Business	<input type="checkbox"/> Health club	<input type="checkbox"/> Promoter	<input type="checkbox"/> Valet
<input type="checkbox"/> Escort Service	<input type="checkbox"/> Janitorial Service	<input type="checkbox"/> Mail Order	<input type="checkbox"/> Pre-Package Food	<input type="checkbox"/> Motor Scooter
<input type="checkbox"/> Retail Alcohol Sales	<input type="checkbox"/> Travel (sales)	<input type="checkbox"/> Mobile Caterer	<input type="checkbox"/> Alcoholic Beverage Establishment	
<input type="checkbox"/> Beach Front Concession	<input type="checkbox"/> Machine Distributor			

Is the Business one of the following types:

<input type="checkbox"/> Adult Congr Liv Facility	<input type="checkbox"/> Day Care	<input type="checkbox"/> Nursing Home	<input type="checkbox"/> Religious Institution	<input type="checkbox"/> School
<input type="checkbox"/> Parking Lot / Garage	<input type="checkbox"/> Outdoor Entertainment	<input type="checkbox"/> Open Air Entertainment	<input type="checkbox"/> Pawnshop	<input type="checkbox"/> Warehouse
<input type="checkbox"/> Video Game Arcade	<input type="checkbox"/> Gasoline Sales	<input type="checkbox"/> Restaurant	<input type="checkbox"/> Alcoholic Beverage Establishment	

Business Name Beach Blitz Application Date: 6/14/12
Location 865 Collins Avenue #D Lease ☒ Own ☐
Type of Business (be very specific) Liquor Package Sales only Hours of Operation _____
Hours Serving Alcohol N/A

Name of Owner / President DORON DOAR Date of Birth _____ DL# D600-160-61-461-0
Federal ID # _____ SSN 590-58-5883
Home Address 13441 NW 5CT City Plantati State FL Zip 33325
Home Phone 954-709-2555 Business Phone _____ Cell Phone _____
Email Address DDOAR@bellsouth.net

Fax No. _____

Send Business Mail to Attention of: DORON DOAR Business Phone 305-672-8030
Address 865 Collins #D City MB State FL Zip 33139
Name of Emergency Contact Steve Poljanec Phone 305-788-7179

Is the Business a:

Hotel or Apartment? If yes, how many units? _____ # of washers/dryers (If owned) _____

Restaurant? How many seats inside? _____ How many seats outside? (private property only) _____
 If there will be seats outside on public property (sidewalk), then a Sidewalk Café Permit is required.
 Hours of Alcohol Sales _____ (Zoning Review for # of chairs)

Office or Retail Establishment? If yes, approximate sq. ft. 1800
 If Retail, what is the inventory value? General \$ _____ Food \$ _____ Liquor \$ 15000

Hair or Nail Salon? If yes, number of seats _____

Motor Scooter Rentals? If yes, number of scooters _____

A Miami-Dade County Business Tax Receipt is also required. See "Miami Dade County Business Tax for more information."

Contact the Planning Department for a Sign Permit which is required for all signage.

Any person who, in applying for a business license in the City of Miami Beach, who shall make a false statement and/or fail to disclose and/or misrepresent the information requested shall be subject to penalties authorized by City Code Section 102-375.

I UNDERSTAND THAT IT IS MY RESPONSIBILITY TO FOLLOW-UP ON THE APPROVAL PROCESS FOR THIS APPLICATION.

To follow-up on the status of approval, please contact Ricardo Arnau (305) 673-7000 x6951.

I HAVE READ THIS APPLICATION AND I DO FREELY AND VOLUNTARILY CONFIRM THAT THE STATEMENTS AND INFORMATION CONTAINED THEREIN ARE TRUE AND CORRECT.

Doran Doar
 Print Name

[Signature]
 Signature DORAN DOAR

6-15-12
 Date

Official Use Only: Review by the following Departments may be required:

Planning & Zoning	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Concurrency	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Building	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Fire	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Parking	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Risk Management	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Public Works	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Finance	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Code	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____

Notes/Comments _____

EXHIBIT 2

CITY OF MIAMI BEACH

CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT

1700 Convention Center Drive
Miami Beach, Florida 33139-1819

TRADE NAME: BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR

IN CARE OF:

ADDRESS:

RECEIPT NUMBER: RL-10005692

Beginning: 10/01/2014

Expires: 09/30/2015

Parcel No: 0242032580040

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A certificate of Use / Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Receipt are obtained prior to the opening of the new location.

Additional Information

Storage Locations

TRADE ADDRESS: 865 COLLINS AVE, D

Code	Certificate of Use/Occupation
007701	LIQUOR SALES
240029	ENTERTAINMENT ESTABLISHMENT W/O DANCING

CERTIFICATE OF USE	300
SQUARE FOOTAGE	1800
C_U # OF UNITS	1800
LIQUOR INVENTORY	\$ 15000
DANCE_ENT W_O ALCOH	Y

FROM: CITY OF MIAMI BEACH
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FL 33139-1819

PRESORTED
FIRST CLASS
U.S. POSTAGE
PAID
MIAMI BEACH, FL
PERMIT No 1525

BEACH BLITZ CO.
865 COLLINS AVE, D
MIAMI BEACH, FL 33139-5807



EXHIBIT 3

CITY OF MIAMI BEACH
CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT

1700 Convention Center Drive
 Miami Beach, Florida 33139-1819

TRADE NAME: BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR
 IN CARE OF: DORAN DOAR
 ADDRESS: 13441 NW 5 CT
 PLANTATION, FL 33325

RECEIPT NUMBER: RL-10005692
 Beginning: 10/01/2015
 Expires: 09/30/2016
 Parcel No: 0242032580040

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A certificate of Use / Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Receipt are obtained prior to the opening of the new location.

Additional Information

Storage Locations

TRADE ADDRESS: 865 COLLINS AVE, D

Code	Certificate of Use/Occupation
003602	AUTO TELLER MACHINES
007700	FOOD SALES
007701	LIQUOR SALES
012065	MERCHANTS SALES
240029	ENTERTAINMENT ESTABLISHMENT W/O DANCING

CERTIFICATE OF USE	300
SQUARE FOOTAGE	1800
RETAIL INVENTORY	\$ 15000
C_U # OF UNITS	1800
FOOD INVENTORY	\$ 500
LIQUOR INVENTORY	\$ 1000
# OF AUTOTELLER MACH	1
DANCE_ENT W_O ALCOH	Y

FROM: CITY OF MIAMI BEACH
 1700 CONVENTION CENTER DRIVE
 MIAMI BEACH, FL 33139-1819

PRESORTED
 FIRST CLASS
 U.S. POSTAGE
 PAID
 MIAMI BEACH, FL
 PERMIT No 1525

BEACH BLITZ CO.
 865 COLLINS AVE, D
 MIAMI BEACH, FL 33139-5807



New Business Tax Account # <u>00091184</u>	Amount of Fee Due: \$ <u>\$45.00 Application Fee</u>
Last City License # for This Address <u>linked to RL-10005692</u>	Make Check Payable to: CITY OF MIAMI BEACH

City of Miami Beach
Certificate of Use (CU), Annual Fire Inspection Fee & Business Tax Application

This application is NOT your business tax receipt. Do not operate the business until the Certificate of Use and the Business Tax Receipt are issued.
The place of business must be available to all inspectors.

Type of Application: ☐ New Business ☐ Change of Owner ☐ Adding Seats ☒ Additional Occupation
☐ Change of Location

Application Checklist
☒ Federal ID No. ☐ Fictitious Name Registration ☐ Lease/Deed/Closing Statement
☒ Articles of Inc. (if applicable) ☐ State License (if applicable) ☐ CU and Annual Fire Fee (non refundable)
☐ Bill of Sale ☐ Insurance

Does the Application involve: ☐ Change of Use ☐ Renovation (Provide Certificate of Occupancy Process Number _____)

A Change of Use may generate additional building and fire code requirements as applied to new construction.

A valid Certificate of Occupancy is required before an occupational license can be issued.

Is the Business one or more of the following types:

<input type="checkbox"/> Apartment Building	<input type="checkbox"/> Condominium	<input type="checkbox"/> Hotel	<input type="checkbox"/> Restaurant	<input type="checkbox"/> Bakery
<input type="checkbox"/> Ice Cream Parlor	<input type="checkbox"/> Delicatessen	<input type="checkbox"/> Nightclub	<input type="checkbox"/> Dancing/Entertainment	<input type="checkbox"/> Real Estate
<input type="checkbox"/> Hair Salon	<input type="checkbox"/> Home Based Business	<input type="checkbox"/> Health club	<input type="checkbox"/> Promoter	<input type="checkbox"/> Valet
<input type="checkbox"/> Escort Service	<input type="checkbox"/> Janitorial Service	<input type="checkbox"/> Mail Order	<input checked="" type="checkbox"/> Pre-Package Food	<input type="checkbox"/> Motor Scooter
<input type="checkbox"/> Retail Alcohol Sales	<input type="checkbox"/> Travel (sales)	<input type="checkbox"/> Mobile Caterer	<input type="checkbox"/> Alcoholic Beverage Establishment	
<input type="checkbox"/> Beach Front Concession	<input type="checkbox"/> Machine Distributor			

Is the Business one of the following types:

<input type="checkbox"/> Adult Congr Liv Facility	<input type="checkbox"/> Day Care	<input type="checkbox"/> Nursing Home	<input type="checkbox"/> Religious Institution	<input type="checkbox"/> School
<input type="checkbox"/> Parking Lot / Garage	<input type="checkbox"/> Outdoor Entertainment	<input type="checkbox"/> Open Air Entertainment	<input type="checkbox"/> Pawnshop	<input type="checkbox"/> Warehouse
<input type="checkbox"/> Video Game Arcade	<input type="checkbox"/> Gasoline Sales	<input type="checkbox"/> Restaurant	<input type="checkbox"/> Alcoholic Beverage Establishment	

Additional Service - Adding Categories

Business Name Beach Blitz Co D/B/A Ocean 9 Liquor Application Date: _____
Location 865 Collins Avenue, D Miami Beach, FL Lease _____ Own _____
Type of Business (be very specific) Adding: retail sales ① 33139 Hours of Operation _____
food sales ②
Atm ③
Hours Serving Alcohol _____

Name of Owner / President Doron Doar Date of Birth 12/61 Dlx# D60016061461-0 St. FL
Federal ID # 020639801 SSN _____
Home Address 13441 NW 5 court City Plantation State FL Zip 33325
Home Phone N/A Business Phone 305-397-8600 Cell Phone 954-709-2555
Email Address _____

Send Business Mail to Attention of: Doron Doar Business Phone 305-397 8600
Address 13441 N.W. 5th Court City Plantation State FLA Zip 33325
Name of Emergency Contact Rechelle Malek Phone 305-803-8855

Is the Business a:

Hotel or Apartment? If yes, how many units? _____ # of washers/dryers (if owned) _____

Restaurant? How many seats inside? _____ How many seats outside? (private property only) _____
 If there will be seats outside on public property (sidewalk), then a Sidewalk Café Permit is required.
 Hours of Alcohol Sales _____ (Zoning Review for # of chairs)

Office or Retail Establishment? If yes, approximate sq. ft. _____
 If Retail, what is the inventory value? General \$ 75,000.00 Food \$ 20,000.00 Liquor \$ _____

Hair or Nail Salon? If yes, number of seats _____

Motor Scooter Rentals? If yes, number of scooters _____

A Miami-Dade County Business Tax Receipt is also required. See "Miami Dade County Business Tax for more information."

Contact the Planning Department for a Sign Permit which is required for all signage.

Any person who, in applying for a business license in the City of Miami Beach, who shall make a false statement and/or fail to disclose and/or misrepresent the information requested shall be subject to penalties authorized by City Code Section 102-375.

I UNDERSTAND THAT IT IS MY RESPONSIBILITY TO FOLLOW-UP ON THE APPROVAL PROCESS FOR THIS APPLICATION TO FOLLOW-UP PLEASE CONTACT, HOWARD RAMIREZ (305) 673-7000 (ext. 6117) or E-mail: HowardRamirez@miamibeachfl.gov

I HAVE READ THIS APPLICATION AND I DO FREELY AND VOLUNTARILY CONFIRM THAT THE STATEMENTS AND INFORMATION CONTAINED THEREIN ARE TRUE AND CORRECT.

Doron Doan
 Print Name

[Signature]
 Signature

April 28, 2015
 Date

Official Use Only: Review by the following Departments may be required:

Planning & Zoning	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Concurrency	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Building	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Fire	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Parking	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Risk Management	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Public Works	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Finance	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____
Code	Required? <input type="checkbox"/> yes <input type="checkbox"/> no	By _____	Date _____	Comments _____

Notes/Comments _____

EXHIBIT 4

INVOICE (00011214)**BILLING CONTACT**

OCEAN 9 LIQUOR
 BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR
 865 Collins Ave, D
 Miami Beach, FI 33139-5807

1700 Convention Center Drive
 Miami Beach, Florida 33139
 305.673.7000

INVOICE NUMBER	INVOICE DATE	INVOICE DUE DATE	INVOICE STATUS	INVOICE DESCRIPTION
00011214	07/01/2016	07/01/2016	Void	Renewal Invoice

REFERENCE NUMBER	FEE NAME	TOTAL
RL-10005692	annfir	\$57.50
	occllc	\$274.00
	occllc	\$274.00
	occllc	\$233.00
	occllc	\$233.00
	occllc	\$604.00
865 Collins Ave D Miami Beach, FL 33139-5807		SUB TOTAL
		\$1,675.50

TOTAL **\$1,675.50**

Any refund associated with this invoice will only be issued to the billing contact listed herein.

EXHIBIT 5

Business License Search

Search Export

Search Criteria

☐ Shared

Note: name is only required if criteria needs to be saved.

Map Results

Viewing 5 of 5 results.

Drag a column header and drop it here to group by that column

<input type="checkbox"/>		Company Name	DBA	Business Address	License Status	License Number	License Year
>	<input type="checkbox"/>	BEACH BLITZ CO	BEACH BLITZ CO	1100 COLLINS AVE #APT 7	Active	RL-10001136	2018
	<input type="checkbox"/>	BEACH BLITZ CO	BEACH BLITZ CO	1100 COLLINS AVE #APT 7	Expired	RL-10001136	2016
	<input type="checkbox"/>	BEACH BLITZ CO	BEACH BLITZ CO	1100 COLLINS AVE #APT 7	Expired	RL-10001136	2017
	<input type="checkbox"/>	BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR	OCEAN 9 LIQUOR	865 COLLINS AVE #D	Expired	RL-10005692	2016
	<input type="checkbox"/>	BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR	OCEAN 9 LIQUOR	865 COLLINS AVE #D	Closed	RL-10005692	2017

EXHIBIT 6

865 Collins Ave

TRC-601368-11-10-2017

Billing Contact: BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR

Payment Method: Credit Card

Payment Amount: \$2,246.46

Payment Note: WEB-CC Payment(s) #65793.

Transaction Note:

Payment Date: 10/11/2017

Transaction Type: Fee Payment

Transaction Date: 10/11/2017

Office:

Transaction Status: Complete

Batch Number: 20171011

Deposit Reference:

Fee Payments Notes

Total Due: \$0.00

Primary Fees

Total: \$2,246.46

	Amount To Ap	Fee Name	Fee Total	Amount Due	Amount Paid	Invoice #	Entity	Reference Ent	FeePriority
>	\$233.00	Occ. Code 95240	\$233.00	\$0.00	\$233.00	00065793	Business License	RL-10005692	0
	\$274.00	Occ. Code 95007	\$274.00	\$0.00	\$274.00	00065793	Business License	RL-10005692	0
	\$604.00	Occ. Code 95012	\$604.00	\$0.00	\$604.00	00065793	Business License	RL-10005692	0
	\$274.00	Occ. Code 04007	\$274.00	\$0.00	\$274.00	00065793	Business License	RL-10005692	0
	\$570.96	BTR Upcharge - L	\$570.96	\$0.00	\$570.96	00065793	Business License	RL-10005692	0
	\$233.00	Occ. Code 95003	\$233.00	\$0.00	\$233.00	00065793	Business License	RL-10005692	0
	\$57.50	Mercantile Occup	\$57.50	\$0.00	\$57.50	00065793	Business License	RL-10005692	0

EXHIBIT 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 17-CV-23958

BEACH BLITZ CO.,

Miami, Florida

Plaintiff(s),

November 17, 2017

vs.

CITY OF MIAMI BEACH, FLORIDA,

Volume 01

Defendant(s).

Pages 1- 173

PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION
BEFORE THE HONORABLE JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): PHILLIP M. HUDSON, III, ESQ.
Arnstein & Lehr, LLP
200 South Biscayne Boulevard, Suite 3600
Miami, Florida 33131
(305) 374-3330
pmhudson@arnstein.com

FOR THE DEFENDANT(S): ENRIQUE DANIEL ARANA, ESQ.
Carlton Fields Jorden Burt, P.A.
Miami Tower
100 S.E. Second Street
Suite 4200
Miami, Florida 33131
(305) 530-0050
earana@cfjblaw.com

- and -

SCOTT EVERETT BYERS, ESQ.
GARY PAPPAS, ESQ.

REPORTED BY: Jill M. Felicetti, RPR, CRR, CSR
Official Court Reporter
400 N. Miami Avenue, Suite 08S27
Miami, Florida 33128
jill_felicetti@flsd.uscourts.gov

1 MR. ARANA: Assistant director of finance, and then
2 probably Hernan Cardeno.

3 THE COURT: How long are they going to take?

4 MR. ARANA: I don't think they are going to take long.
5 A half hour each.

6 THE COURT: For your direct?

7 MR. ARANA: For direct maximum.

8 THE COURT: How long are you going to take?

9 MR. HUDSON: Cross about the same, probably.

10 THE COURT: We will start up again at 2.

11 So far the estimate was this witness was going to be
12 an hour. He took two hours. Let's get a little more focused
13 on the next two witnesses. In fact, let's come back at a
14 quarter to 2. That should give you enough time to grab a
15 sandwich if you want to.

16 (Recess taken in proceedings.)

17 THE COURT: Does the plaintiff have any further
18 evidence or witnesses?

19 MR. HUDSON: No, your Honor.

20 THE COURT: Defendant call their first witness,
21 please.

22 MANUEL MARQUEZ,
23 having been first duly sworn on oath, was examined and
24 testified as follows:

25 THE WITNESS: Manuel Marquez. Last name

1 M-A-R-Q-U-E-Z.

2 DIRECT EXAMINATION

3 BY MR. ARANA:

4 Q. Good afternoon, Mr. Marquez.

5 A. Good afternoon.

6 Q. Do you work for the City of Miami Beach?

7 A. I do.

8 Q. What is your position with the city?

9 A. I am assistant director of the finance department.

10 Q. How long have you served in that capacity?

11 A. Since 2006.

12 Q. I think you submitted an affidavit in this case, which
13 suggests it was from 2011. Is that a typo?

14 A. That is a scrivener error.

15 Q. What is your general duties and responsibilities as
16 assistant director of finance?

17 A. I manage the day-to-day functions of our city's customer
18 service center, which handles business tax receipts, utility
19 billing, lien statements, and other revenue-generating
20 functions of the city.

21 Q. Thank you.

22 And what is a business tax receipt?

23 A. A business tax receipt is what lay people would call an
24 occupational license. It's a tax. For any business engaged in
25 a for profit business, the City of Miami Beach is required to

1 obtain a business tax receipt.

2 Q. Any business in the City of Miami Beach has to have a
3 business tax receipt to operate; is that correct?

4 A. That is correct.

5 Q. Can you briefly describe the process that a business
6 applicant must follow to apply for a new BTR?

7 A. Business tax receipts are governed by Florida statutes 205
8 and our city code section 102. A business that wants to obtain
9 a business tax receipt in the City of Miami Beach has to apply.
10 They can apply online or in person. They are required to fill
11 out an application. That application, you also have to submit
12 a lease or a warranty deed that tells us where you are going to
13 be operating. If the business that you are operating requires
14 a state license, you would also need to submit a state license
15 and you would also need to submit articles of incorporation.

16 Q. Are you familiar with Beach Blitz's BTR license history?

17 A. Yes.

18 Q. I am going to direct you to a few exhibits which are in the
19 black binder in front of you. If you could please look at
20 Exhibit 4, which is in evidence.

21 A. I have Exhibit 4.

22 Q. What is Exhibit 4?

23 A. Exhibit 4 is a business tax receipt for Beach Blitz company
24 located at 865 Collins Avenue for the fiscal year beginning
25 October 1, 2011 through September 30, 2012. It's a BTR,

1 business tax receipt, for liquor sales.

2 Q. And what was the city's procedure for processing this BTR
3 application?

4 A. This BTR application would have been received and it would
5 have been routed to all of our regulatory departments. For
6 this type of business the finance department does the
7 application intake and then we route it electronically to the
8 building department, the fire department, planning department,
9 and the code compliance department.

10 Q. And those departments weigh in on whether to approve the
11 BTR?

12 A. They do.

13 Q. Did Beach Blitz renew its BTR license for fiscal years
14 2012/13, 2013/14, 2014/2015 and 2015/2016?

15 A. They did.

16 Q. Okay. What was Beach Blitz required to do in order to
17 renew its BTR for those years?

18 A. To simply pay the BTR renewal, which is mailed out in July
19 of every year. We mail out the renewal for the upcoming fiscal
20 year.

21 Q. If the company wanted to add a new use, what would happen
22 then?

23 A. A company wanting to add a new use would fill out an
24 application similar to the first application that was filled
25 out for this entity, Beach Blitz. They would fill out an

1 application describing the type of business activity you wanted
2 to partake in and then we would take that application and route
3 it to all of the regulatory departments.

4 Q. So could you take a look at Exhibit 6. What is Exhibit 6?

5 A. Exhibit 6 is a BTR, business tax receipt, for Beach Blitz
6 at 865 Collins Avenue. It is for the time period October 1,
7 2015 through September 30, 2016. It's for all the categories
8 that are listed there in exhibit. They have an ATM machine
9 located at the facility, they are engaged in food sales, liquor
10 sales, merchant sales, and they also have a category for
11 entertainment establishment without dancing.

12 Q. So if we look at pages 2 and 3 of Exhibit 6, is this an
13 application for BTR?

14 A. Yes, it is.

15 Q. And this is Beach Blitz's application for a BTR for the
16 2015 and '16 fiscal year, correct?

17 A. Correct. This is an application where they added these
18 additional categories to their existing BTR.

19 Q. So that was my question. Why did Beach Blitz have to
20 submit a new application for this year?

21 A. Any time you add a category to your BTR, you are required
22 to fill out an application.

23 Q. So Beach Blitz submitted a new application adding the
24 categories and then this application, who routed this
25 application to the various departments. Is that right?

1 A. Correct. We would route it to building, planning, fire and
2 code compliance.

3 Q. And the BTR for 2015, fiscal year 2015 to '16 was issued,
4 correct?

5 A. It was, yes.

6 Q. And when did this BTR expire?

7 A. All BTRs expires September 30th of the year that they were
8 issued. This is by state statute chapter 205.

9 The period for BTR is from October 1th through
10 September 30th of the fiscal year.

11 Q. So did this BTR expire on September 30, 2016?

12 A. It did.

13 Q. And did Beach Blitz submit payment to renew its BTR prior
14 to that date?

15 A. It did. That's why it had this BTR.

16 Q. I am talking about prior to the expiration of this BTR.

17 A. Yes.

18 Q. Did Beach Blitz pay for a license, a BTR license for
19 2016/17?

20 A. They did not.

21 Q. And that's because the license -- because they did not pay
22 for that renewal, correct?

23 A. Correct.

24 Q. So just to clarify, Exhibit 6, which is the 2015/16 BTR,
25 expired on September 30, 2016, correct?

1 A. Correct.

2 Q. Without Beach Blitz having made a payment for the following
3 year, correct?

4 A. Correct.

5 Q. Now if you could take a look at Exhibit 7, please. What is
6 Exhibit 7?

7 A. Exhibit 7 is a printout from our system depicting the date
8 that the renewal for the fiscal year 2016/17, when it was
9 created. This renewal notice was created on July 1, 2016.

10 Q. And this was the renewal notice for Beach Blitz, correct?

11 A. Correct, for Beach Blitz.

12 Q. For the 865 Collins Avenue location, correct?

13 A. Yes, sir.

14 Q. And does the city send its BTR license holder an invoice to
15 renew their BTRs every year?

16 A. We do.

17 Q. And in July of the year in which the license expires, is
18 that the time when --

19 A. That's the time.

20 Q. -- when they are sent?

21 A. Yes. We send it out every July via U.S. Postal Service, we
22 send out renewal notices.

23 Q. But Beach Blitz did not pay its renewal invoice prior to
24 the expiration of the BTR on September 30, 2016, correct?

25 A. They did not. They did not pay for this location.

1 Q. Let's talk about, then, the 2016-17 fiscal year. Would
2 that be from October 1 until September -- I am sorry.
3 October 1 of 2016 to September 30 of 2017?

4 A. That is correct.

5 Q. Is there any process or procedure in your department which
6 would have prevented Beach Blitz from paying this invoice
7 during that fiscal year?

8 A. None whatsoever. They could have paid the invoice at City
9 Hall, 1700 Vintage Center Drive, at our customer service
10 center, 1755 Meridian Avenue, our lockbox. Our lockbox is on
11 our renewal notice. Our renewal notice has a link to our
12 website and you can click on the link and pay online.

13 Additionally, we have a satellite office in North
14 Beach Miami Beach where customers can pay it at our satellite
15 office.

16 Q. Can you explain to the court -- so just to be clear, the
17 city will always accept payment for a BTR, correct?

18 A. Correct. That's why we send out the renewal notices, so we
19 can get paid.

20 Q. Can you explain to the court the city's procedure for
21 actually issuing the BTR in the event that there are
22 outstanding fines or debts owing to the city?

23 A. Sure. In our city code on chapter 102, the city permits us
24 from withholding someone's BTR if it has been paid if a
25 business entity owes the city outstanding monies. So we mail

1 out a renewal notices in July. If a customer does not pay --
2 their period to pay ends September 30th of that fiscal year.
3 That BTR is good for one year, from October 1 through
4 September 30th.

5 THE COURT: If someone pays but they have a violation
6 that's outstanding, what happens then?

7 THE WITNESS: If someone comes to our office and pays
8 for a BTR and they have an outstanding violation, we would
9 notify them, thank you for your payment for the BTR but you
10 have these outstanding violations or you have these outstanding
11 moneys that are owed to the city. You need to remedy these
12 first before we can issue your BTR.

13 Now, if the outstanding violation is a code violation
14 and the customer wishes to challenge the violation, they say
15 this isn't right, I am going to challenge it at the special
16 master level, once they schedule something before a special
17 master and they show us evidence that it's going before the
18 special master, we will release the BTR. That's our standard
19 practice, because they haven't had their day in court, they
20 haven't been adjudicated guilty.

21 BY MR. ARANA:

22 Q. So if a notice of violation is issued and the time for
23 appeal runs, then that violation, that debt becomes due to the
24 city, correct?

25 A. Correct. Yes, sir.

1 Q. You would expect a business owner to pay that before the
2 city, before the city will issue the BTR, correct?

3 A. That is correct. Yes.

4 Q. But the city will accept payment for the BTR, correct?

5 A. Yes, we do. That's part of our practice every single day.

6 Q. And then when the violations are paid, it will go ahead and
7 issue the BTR; is that right?

8 A. Yes.

9 Q. As far as you know, did Beach Blitz during the 2016/17
10 fiscal year ever submit payment to the city for its BTR?

11 A. They did not.

12 Q. And if Beach Blitz had ever submitted payment to the city
13 for its BTR for the 2016/17 fiscal year, would the city have
14 accepted that check?

15 A. We would have accepted the payment.

16 Q. Let me ask you to take a look at Exhibit 15. What is
17 Exhibit 15?

18 A. Exhibit 15 is a reprint of an invoice for fiscal year
19 2016/17. The customer or customer's representative came to our
20 office on June 27 -- that's the invoice date that's on this
21 document -- and asked for a printout of what was owed for the
22 BTR for Beach Blitz at 865 Collins Avenue. One of my staff
23 members printed this and hand delivered it to the person
24 representing Beach Blitz.

25 Q. And if on June 27th Beach Blitz or its representatives had

1 handed the clerk a check for \$2,246.46, would the clerk have
2 accepted that payment?

3 A. The clerk would have accepted that payment. And if there
4 was no outstanding monies owed, we would have issued a BTR
5 there and then.

6 Q. Now, are you aware that Beach Blitz at this time on
7 June 27th had an outstanding violation from December 21 of
8 2016?

9 A. I am now aware that they had an outstanding violation.

10 Q. And you are aware that they were cited on December 21, 2016
11 and never appealed that violation? Correct?

12 A. Correct.

13 Q. So on June 27 when they came in, in addition to owing the
14 money for the BTR, Beach Blitz also owed \$1,000 for the
15 citation, correct?

16 A. Correct. If they would have paid the BTR, the \$2,246.46
17 and the thousand dollars for the violation, we would have
18 issued their BTR on the spot at that moment.

19 Q. Now, are you aware that on June 25th, two days before this
20 invoice was issued, Beach Blitz received two notices of
21 violation?

22 A. I am aware.

23 Q. Would those notices of violation have been due on
24 June 27th?

25 A. They would not have been due on June 27th.

1 Q. Okay. Is that because they are not due until the time for
2 appealing them runs?

3 A. Correct.

4 Q. So those invoices would not have impacted Beach Blitz's
5 ability to pay for and obtain its BTR at that moment, right?

6 A. No.

7 Q. All it had to do was pay \$2,246 plus a six-month-old \$1,000
8 fine?

9 A. Correct.

10 Q. If Beach Blitz had timely appealed those two June 25th
11 violations to a special master, would Beach Blitz have been
12 able to simply pay the BTR and obtain its license --

13 A. Yes.

14 Q. -- at that point?

15 A. Yes. If Beach Blitz timely appealed the two violations and
16 paid for the BTR, we would not withhold the BTR. We would have
17 issued a BTR as soon as we had confirmation of the payment for
18 the BTR.

19 Q. Because if Beach Blitz had timely appealed that, those two
20 citations, they wouldn't be due, correct?

21 A. They are not due until the special master makes a ruling on
22 that case.

23 Q. Okay. Now, we just talked about the June 25th, 2017
24 violation for operating without a BTR.

25 You are aware of that one, right?

1 A. Yes.

2 Q. Does the resolution of the appeal to the special master
3 regarding the fine resolve the issue of payment for the BTR?

4 A. No. They are two independent items. The BTR is a tax for
5 conducting business in Miami Beach that needs to be paid.

6 Q. So does the city expect business owners who are cited for
7 operating without a BTR to come in and pay for the BTR?

8 A. Yes.

9 Q. Independent of whether they choose to appeal that citation?

10 A. Correct. The BTR amount due are still due to the city.

11 Q. Let me ask you to take a look at Exhibit 8. If you could
12 explain to the court what is Exhibit 8.

13 A. Exhibit 8 is a screenshot from our database where we manage
14 our BTRs. This shows the Beach Blitz businesses. They have a
15 business at 1100 Collins Avenue and an additional business at
16 865 Collins Avenue. It shows that they have an active BTR for
17 Beach Blitz at 1100 Collins and a closed BTR at 865 Collins
18 Avenue.

19 Q. What does it mean that the 865, the location of the license
20 status is closed?

21 A. This means that in our database this business has been
22 closed. Their time frame to renew and pay for the renewal has
23 expired. In order for them to get a BTR for that location they
24 would have to reapply. They missed the renewal period.

25 They had approximately nearly 400 days to pay for

1 their BTR renewal since the mailings were sent out in July, and
2 they were due in July of 2016, and they had until
3 September 30th of 2017 to pay for the renewal. So this
4 business in our records has been closed. They didn't renew
5 their license.

6 Q. In any one of those 400 days Beach Blitz could have come in
7 and submitted their payment?

8 A. At any time in any of the payment methods I mentioned
9 before.

10 Q. And the city would have accepted that payment, correct?

11 A. Yes.

12 Q. If there was an outstanding violation that they were not
13 paying, then you would have held that BTR until they paid the
14 fine?

15 A. Correct. We would have advised them of the outstanding
16 violation and instructed them that this needs to be resolved
17 before we can issue your paid BTR.

18 Q. Once an account is closed over a year after the license
19 expires, correct, what does an applicant need to do, a business
20 owner need to do to obtain a BTR?

21 A. It's simple. It's one of our earlier exhibits. You submit
22 an application and the application is routed to all of our
23 regulatory department, building, planning, fire and code, and
24 they would review the application. The application intake
25 would happen in my department, the finance department, and we

1 would route it electronically to all of our regulatory
2 departments.

3 Q. And if you were to submit an application today for a new
4 BTR, is that the process you would follow?

5 A. Yes.

6 Q. And if the result of that application were a denial, does
7 the applicant have an opportunity to appeal that through the
8 city's processes?

9 A. Yes. Chapter 102 of our city code has an appeal process
10 for businesses that are denied BTR. The city manager or
11 designee would process the appeal.

12 Q. And if an application for a new BTR were submitted by Beach
13 Blitz, would you or your department make the decision about
14 whether to grant it in the first place?

15 A. No. My department, just the paper we receive, the
16 application. We are the intake department. We route it to the
17 regulatory departments. Once the regulatory departments have
18 reviewed, they give us the okay. Then we are the ones that
19 collect the money and issue the BTR.

20 THE COURT: They give you the okay or the denial?

21 THE WITNESS: Correct, they give us the okay or the
22 denial electronically in our system.

23 MR. ARANA: Mr. Marquez, I have no further questions.
24 Thank you.

25 THE COURT: Any cross?

1 MR. HUDSON: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. HUDSON:

4 Q. Let me understand the process first and then we will get
5 into some specifics. I kept hearing counsel say to you that
6 they would have accepted the money had money been tendered; is
7 that correct?

8 A. That is correct.

9 Q. But you wouldn't have -- you will help me with the words --
10 but you wouldn't have issued or released the license if there
11 were a special master proceeding pending or something pending,
12 correct?

13 A. If there were outstanding monies owed to the city, we would
14 withhold the BTR until the outstanding monies are either paid
15 or, if it's a special master case, it's been appealed at the
16 special master level. If it has been appealed at the special
17 master level, we would release the BTR.

18 Q. So payment alone doesn't solve the BTR problem; it's a step
19 in the right direction, correct?

20 A. Normally, typically payment alone solves the BTR problem.
21 Most businesses don't have outstanding violations or monies
22 owed to the city. So the typical practice is you receive a
23 renewal notice, you pay for your renewal notice, and then we
24 issue the BTR.

25 Q. In this case, on June 27th there was an outstanding

1 violation that had dated back to the prior year, 12/16. Are
2 you familiar with that?

3 A. The \$1,000 violation?

4 Q. Correct.

5 A. Okay.

6 Q. There's been testimony by my client that he walked in and
7 tried to get his BTR and he was told he couldn't because there
8 were outstanding violations. Is that inconsistent with how the
9 process works?

10 A. That would be an accurate statement. My staff would have
11 told them you can pay for your BTR or we will not release your
12 BTR until you pay this other outstanding monies owed to the
13 city. But we will accept payment for the BTR.

14 Q. Let's assume nothing changed and the fiscal year clicked
15 over. In other words, they had paid the BTR money on that
16 June 27th day. For whatever reason that violation had not been
17 resolved. The BTR would have expired or closed, as you call
18 it, correct?

19 A. It would have expired September 30. They are good for one
20 fiscal year.

21 Q. And he would have had to apply for a new BTR, correct?

22 A. If he had paid for his BTR and is handling something that's
23 going before the special master, we wouldn't close the BTR at
24 that point because it's an ongoing thing with the special
25 master.

1 Q. So it's your testimony it would have been simply a renewal?

2 A. Our system doesn't renew BTRs unless a payment has been
3 made. If no payment has been made for the BTR, our system
4 won't automatically renew a BTR.

5 Q. I think you testified that a renewal is simply just paying
6 the amount on the renewal notice or any late fee, correct?

7 A. A renewal is a courtesy notice the city sends to customers
8 so they can pay their BTR.

9 Q. Once the payment is made if there are no violations,
10 there's an automatic renewal, correct?

11 A. Correct.

12 Q. That didn't happen here, right?

13 A. That didn't happen here because the customer didn't pay
14 their BTR during the fiscal year.

15 Q. Let's talk about that. I have seen your affidavit. I
16 don't think we need to talk about your affidavit because you
17 testified to this today. You testified as to a process. I
18 understand process. Everybody tries to have process. But
19 process doesn't always work.

20 In this case we have alleged there is an additional
21 motive of the commission, the mayor, the city manager and
22 others to put liquor stores out of business. So we have
23 alleged that the city essentially violated its process by not
24 doing what it would normally do.

25 So in this case when you say in your affidavit and you

1 say under oath today, and I don't mean to put words in your
2 mouth so you tell me if I stated this incorrectly.

3 "I'm sure that they never tried to pay the BTR because
4 we would have accepted the money."

5 Did you interview every one of your -- I don't know
6 what they are called, the people at the desk. Did you
7 interview every one of them and ask them if they had any
8 recollection about this?

9 A. I did not interview every one of my staff members.

10 Q. So when you say I know he didn't pay, what you are really
11 saying is I can tell you what the process is and I could tell
12 you what they should have said, but I wasn't there and I can't
13 tell you what really happened?

14 A. Well, I was there during June 27. If there was a problem,
15 if a customer or any business for that matter came to our
16 office and attempted to pay and couldn't pay, they could have
17 easily called for one of my many supervisors or called for me
18 and I would have immediately gone out and solved whatever the
19 issue is or given some guidance. That did not happen in this
20 case.

21 Q. So since that didn't happen, I don't know, you don't know,
22 the judge doesn't know actually happened on June 27 at that
23 counter?

24 A. What I know is that the customer came in and a reprint of
25 his BTR was provided. It is our practice to tell customers,

1 this is your BTR, it's due, it's late. The penalty charges
2 were already calculated on that June 27th invoice. And we
3 would have instructed the customer as part of our standard
4 operations that here is your invoice, you could pay for it at
5 our window.

6 Q. Now in the context of what actually happened in this case,
7 let's play it out. There was a \$1,000 fine outstanding on a
8 matter from December the prior year, right? So if he had paid
9 that day, you would have accepted the money, but his license
10 would have been -- I am not even sure what the right word is --
11 in suspense?

12 A. If he would have paid the BTR that day and he would have
13 paid the \$1,000 violation and there's nothing else in our
14 system that he owes us any late monies for any other invoices,
15 he would have walked out with a BTR in his hands.

16 Q. But just paying the BTR money that day wouldn't have solved
17 the problem?

18 A. No, not just paying the BTR money. There was a thousand
19 dollar outstanding matter.

20 THE COURT: I thought you had to check with other
21 departments before you issued the BTR.

22 THE WITNESS: No. I check with our departments in a
23 brand new application.

24 THE COURT: Only on new applications.

25 THE WITNESS: This is a renewal notice. So for a

1 renewal notice, it's simply make a payment. If you don't owe
2 the city any money, we release the BTR.

3 BY MR. HUDSON:

4 Q. Turn to Exhibit 7 in the white binder.

5 THE COURT: Tell me the number again.

6 MR. HUDSON: Seven, your Honor. It's the agreed
7 special master order.

8 BY MR. HUDSON:

9 Q. Have you seen this document before?

10 A. I don't recall.

11 Q. On June 27 you testified that there was one outstanding
12 violation that was old. Were you aware that there were two
13 brand new violations that were issued on June 25th?

14 A. I am aware now. I wasn't aware in June 27th because the
15 customer did not speak with me. But I am aware now and since
16 sometime in October.

17 Q. Take a quick look at Exhibit 5, which are those two
18 June 25th violations. I want you to pay attention to the
19 violation numbers because then I want you to go to the special
20 master agreed order, which is Exhibit 7, again.

21 A. I see these violations were issued on June 25th. So I
22 imagine this is what triggered the customer, the business to
23 come to our office on June 27th.

24 Q. And that's what you want to happen, right?

25 A. Yes.

1 Q. You didn't pay your bill, come pay it, correct?

2 A. Yes.

3 Q. Now, by the way, you said notices. Sometimes you would
4 send courtesy notices out. In addition to the original invoice
5 you would send courtesy notices out. Did any courtesy notices
6 go to my client?

7 A. Yes. The renewal notice is a courtesy notice. We call the
8 renewal notice a courtesy notice because there's no requirement
9 by state statute or city code that a renewal notice be sent
10 out.

11 Q. Did my client Beach Blitz Ocean 9, the 865 address, did it
12 receive any other notices relative to the BTR violation?

13 A. It received its notice in July. I am not aware of Beach
14 Blitz receiving any other notices.

15 Q. The July 16 notice, that would have been for '16, '17?

16 A. Correct. This is very similar to like your driver's
17 license. Your driver's license expires on a certain date.
18 Whether you get a renewal notice or not, the expiration date is
19 the expiration date. Similar to tax day, April 15. April 15
20 is the day your IRS taxes are due. Whether you receive a
21 notice or not, that's the due date.

22 It's very similar in our business tax. The business
23 tax BTR is good for one fiscal year, October 1 through
24 September 30th, and most businesses are aware of this because
25 they renew every year. So it's a common thing.

1 Q. Look at the agreed order, which is Exhibit 7.

2 Wouldn't you agree that all three of the violations
3 that were outstanding were dealt with by the special master by
4 the order dated September 28?

5 A. I have to read the order.

6 Q. Sure. I am sorry. Take your time.

7 MR. ARANA: I'm going to object for lack of personal
8 knowledge. The witness is not familiar with this exhibit.

9 THE COURT: Objection is overruled.

10 You can answer.

11 A. This is something that would be done either at a special
12 master or a city attorney's office. It's not a form that I am
13 familiar with. I am not an attorney.

14 Q. I don't mean to cut you off, but I want you to tell me if
15 you can tell if the three outstanding violations for 865, which
16 is the Beach Blitz Ocean 9 business, are the three that were
17 outstanding on June 27th?

18 A. I am reading the citation number, cc 21601704 and cc
19 2170312 and cc 2170313 are hereby affirmed. I have no idea
20 what that means, but that's what I am reading.

21 Q. But by the citation numbers can you tell, as you looked at
22 something earlier either on your direct or speaking to me, that
23 there were three citations? In fact, we showed you Exhibit 5.

24 A. Correct. There was a citation for \$1,000.

25 Q. Look at the citation numbers in Exhibit 5. Those two are

1 the same as in the agreed order.

2 MR. ARANA: I will object. Again, lack of personal
3 knowledge.

4 THE COURT: Overruled. He is testifying to what his
5 company does or his office does. I can just take judicial
6 notice of 02.

7 Is there any objection that these are the three
8 citations we have been talking about?

9 MR. ARANA: No, your Honor.

10 THE COURT: The other two are from June 2017.

11 BY MR. HUDSON:

12 Q. When your office gets an order resolving all outstanding
13 violations, based on what I believe you have said today, now a
14 person can tender the money for the BTR, get the BTR
15 immediately, correct?

16 A. If I receive something from our city manager's office or
17 our city attorney's office saying these violations have been
18 settled, whatever terminology is used, if I receive something
19 from the city attorney's office or city manager's office and
20 the BTR payment has been made, the BTR would have been
21 released.

22 Is that your question?

23 Q. So this order wouldn't have been enough for you. You
24 needed direction either from the city attorney or from the city
25 manager, correct?

1 A. If I didn't understand this order presented to me and I
2 don't understand what I was reading, I would reach out to
3 whoever wrote the order to find out what this deals with.

4 Q. Can you tell from that order who wrote it?

5 A. What was the number of the exhibit again? I am sorry.

6 Q. Seven.

7 A. I see a special master. I can't make out the signature on
8 this special master.

9 Q. How often do you deal with special master orders and in the
10 context of BTRs and violations?

11 A. It's not a regular daily matter. It's not part of my daily
12 job. My job, I am the tax man. I send out bills and collect
13 money for the city.

14 Q. I don't know if I'd admit that in open court.

15 THE COURT: They made a song about that.

16 BY MR. HUDSON:

17 Q. Is it fair to say the people that work in your department
18 that are subordinate to you that are at the counter are
19 probably even less familiar with the special master process and
20 special master agreed orders?

21 A. I wouldn't say that. I have some people that are detached
22 and worked with the special master in prosecuting certain
23 cases.

24 Q. So the simple existence of this September 8th order may not
25 have been sufficient to allow the city to release the BTR?

1 A. If the customer came on this date that you just mentioned
2 with this order and paid for their BTR, we would have processed
3 the payment for the BTR and we would have investigated what is
4 this order all about, does this settle the three outstanding
5 violations. We would have done that if this came to our desk.

6 Q. That's what you would have done, you as the supervisor?

7 A. Correct. That's what our staff would do. They are trained
8 to solve issues, help customers.

9 We want the customer to get the BTR. We don't want
10 the customer not to get the BTR, and we want the customer to
11 pay the BTR.

12 Q. Our allegations in this case are that the city didn't want
13 the customer to get the BTR.

14 MR. ARANA: Objection.

15 BY MR. HUDSON:

16 Q. Let me ask to you look under -- I don't know where it is
17 there. It's a separate piece of paper. It may be in that
18 white binder.

19 THE COURT: Go up there and find it for him. He won't
20 know where it is.

21 Counsel is giving me an extra one.

22 BY MR. HUDSON:

23 Q. Take a look at that.

24 Do you recognize that? Can you tell us what it is?

25 A. It appears --

1 THE COURT: For the record, it's Plaintiff's 17 you
2 are showing him, right?

3 MR. HUDSON: Yes, your Honor.

4 THE COURT: Go ahead.

5 A. This appears to be a screenshot from our system. I can't
6 verify for sure because I didn't produce this document, but it
7 appears to be a screenshot from our system.

8 Q. Let's start with this. What system is this?

9 A. This is our database where we run BTR renewals.

10 Q. So this is under your division finance?

11 A. Correct. We would be the users of this system.

12 Q. Can you tell the date of this document?

13 A. I cannot tell the date of this document.

14 Q. Look at the top. There is a red line. Can you read what's
15 in the red line?

16 A. I read on the red line "active holds exist on this record."

17 Q. What does that mean?

18 A. That means that this record has outstanding -- this means
19 that this partial serial number, the address, has outstanding
20 monies or violations with the city, outstanding monies owed to
21 the city or outstanding violations with the city.

22 Q. Let's go into the white box in the middle. Read that for
23 the record.

24 A. Want me to read out loud?

25 Q. Yes.

1 A. The white box in the middle says, "As per city attorney
2 office, close BTR for nonpayment. Entity cannot reply for
3 liquor sales and/or entertainment at 865 Collins Avenue."

4 Q. Let's start with the first sentence. That's really
5 unnecessary, isn't it, because if the fiscal year had come and
6 gone, that 16/17 BTR is finished, correct?

7 A. That is correct. If the fiscal year came and went and the
8 BTR was not paid, the BTR would be moved to a closed status by
9 my staff.

10 Q. There was no reason for that first sentence, correct? The
11 city attorney didn't need to do that. It would happen as a
12 matter of law, as you testified?

13 A. No. It could have happened. I don't know who typed this
14 or if it even came from our system, but the city attorney could
15 reach out to us and say, hey, by the way, this BTR is in an
16 expired state, remember to close it. That's not within the
17 realm of possibility.

18 Q. Is that the ordinary course?

19 A. No. This case is not the ordinary course, though.

20 Q. I would agree with you.

21 Let's look at the next sentence. "Entity cannot
22 reapply for liquor sales and/or entertainment at 865 Collins
23 Avenue."

24 Any idea why that's there?

25 A. The entity can reapply and my department would accept an

1 application for this entity. Now, this might mean that this
2 type of use is no longer permitted in this area. So it may be
3 it's just giving a heads-up.

4 Now, this note here, if it's from our system, I have
5 no way of knowing who typed this note in. Many departments use
6 this system -- finance, building, planning, fire, code. So I
7 don't know who typed this note in the system. But the entity
8 can reapply. My department would accept the application and we
9 would route it to the regulatory departments. They are the
10 ones that would ultimately say entity cannot reapply for liquor
11 or sales or entertainment at 865 Collins Avenue.

12 Q. So --

13 A. It might be there is a heads-up, this use is no longer
14 permitted at this area because this BTR has expired.

15 Q. If my client was provided this document by somebody at your
16 counter, are you saying it was a mistake to give him this?

17 MR. ARANA: Objection.

18 A. No, I am not. If they came, if the customer came to our
19 office and there is something in our system that pertains to
20 his account, my staff would give them that information. The
21 same way he came on June 27 and we gave him the invoice that
22 was due, we would give him the information pertaining to his
23 account, if indeed this came from my office.

24 BY MR. HUDSON:

25 Q. Okay. One of our frustrations is we can't see the rest of

1 this document, but let's go to the left of the white box about
2 three quarters down. There is a word "violations" in all caps.

3 Do you see that?

4 A. I see that.

5 Q. Is there any way, based on your knowledge of the system and
6 this case, you can help figure out what might be behind that?

7 A. I need to go into our system and see what's there. And
8 this could be a simple box. It could have been moved from
9 somewhere else, it could have been moved and placed on top of
10 that. The system works in Windows so you can minimize and
11 maximize the windows.

12 Q. It looks like it's a regular window someone pulled up?

13 THE COURT: If you look at the next line, it starts
14 out the same, right?

15 THE WITNESS: It could be. If that's a note, you
16 click on that line underneath the violations. When you click
17 on that, this other box pops up. But I can't know for sure
18 unless I'm in the system.

19 BY MR. HUDSON:

20 Q. Sure. But the Judge accurately points out the next line is
21 interesting as well. If you look at it, it also says, "As per
22 the city attorney office, close BTR for nonpayment," and all we
23 can see on the rest of that line is a date on the other side,
24 which was the day they shut our business down, but it was five
25 and a half hours earlier in the day.

1 Is that a fair reading of that document?

2 THE COURT: Which side had that? Were they closed in
3 the morning?

4 MR. HUDSON: Closed at 5:00 p.m. on 10/6, your Honor.
5 It appears, we believe this says 10/6, 11:33 a.m.

6 BY MR. HUDSON:

7 Q. Is that a fair reading of that document of what little we
8 could see?

9 A. Could you repeat that?

10 Q. The second line under the "violations" also indicates the
11 city attorney's office gave a direction in this case to close
12 the BTR.

13 A. You could make that assumption from reading this, but the
14 BTR would have been closed anyway by my staff because it has
15 expired.

16 Q. Exactly. There was no need for that direction. Why would
17 the city attorney then give you the direction?

18 A. I don't know. You should ask the attorney.

19 MR. ARANA: Objection.

20 THE COURT: That's fair. Don't need to know.

21 MR. HUDSON: I'll take it step by step, Judge.

22 BY MR. HUDSON:

23 Q. Have you spoken -- who would the city attorney in this case
24 have been? Would there have been a particular city attorney?

25 A. The city attorney I dealt with --

1 MR. ARANA: I am going to instruct the witness not to
2 disclose attorney-client confidences or object on the grounds
3 that --

4 THE COURT: He can tell us the name of the city
5 attorney. That's not a confidence.

6 MR. HUDSON: I am taking it step by step to be
7 careful.

8 THE COURT: Tell us who the city attorney is.

9 THE WITNESS: Mr. Alex Boxner.

10 BY MR. HUDSON:

11 Q. Is he generally the deputy city attorney responsible for
12 these things?

13 A. I don't know his official title.

14 Q. Okay. Prior to the institution of this lawsuit have you
15 ever had a conversation with attorney Boxner about this case?

16 A. No.

17 MR. ARANA: Objection. Attorney-client privilege.

18 THE COURT: Sustained.

19 MR. HUDSON: I'm sorry, your Honor?

20 THE COURT: Sustained.

21 BY MR. HUDSON:

22 Q. Have you had a conversation with anyone in the city not
23 involving the city attorney about this case prior to the
24 lawsuit?

25 A. With my staff while we were preparing for this lawsuit and

1 preparing exhibits. I have spoken with my staff in providing
2 exhibits and locating exhibits in our database.

3 Q. I'm sorry. Maybe I misspoke.

4 Prior to filing the lawsuit, was this on your radar
5 for any reason?

6 A. No. Usually when something gets to my level it is because
7 there's some sort of issue. So that's how my involvement -- I
8 got involved with this sometime in October.

9 Q. Turn to Exhibit 3 in the white binder. Any idea what these
10 few pages are?

11 A. I can read what it says here, but it's not a document that
12 I am familiar with.

13 Q. I pulled these off the City of Miami Beach website. Does
14 that help refresh your recollection at all?

15 A. No, because I work for the finance department. I don't
16 work for the special master's office, so I wouldn't go into
17 this website.

18 Q. Let's take a look at something anyway and see if you have a
19 comment on it.

20 MR. ARANA: Object on foundation and relevance
21 grounds.

22 THE COURT: Let's see what it is first.

23 BY MR. HUDSON:

24 Q. Turn to the second page. The fourth bold item, "I just
25 received," do you see that?

1 A. Yes.

2 THE COURT: What page? I'm sorry.

3 MR. HUDSON: It is the second page of the exhibit,
4 your Honor. You are looking at Exhibit 3 in the white book.

5 THE COURT: Okay. Go ahead.

6 MR. HUDSON: Exhibit 3, fourth item down. "I just
7 received."

8 THE COURT: Got it.

9 BY MR. HUDSON:

10 Q. I will read it into the record.

11 "I just received a letter from the finance department
12 that my occupational license, certificate of use cannot be
13 renewed because of a special master case. What do I do?"

14 Seems to be an answer. "Call the special master
15 office. We will advise you accordingly."

16 So you are in the finance department, right?

17 A. I am.

18 Q. That's your specialty.

19 It seems that this document suggests that if you have
20 a special master case there may be a hold on your BTR. Is that
21 unfair?

22 A. Yes. This would be a hold on a BTR, how I am reading it.

23 Again, I am not -- this is not a document that was
24 prepared by my office. I received a letter from the finance
25 department that my occupational license, certificate of use

1 cannot be renewed because of a special master case. What do I
2 do. This can very well be there is a violation, the judge has
3 adjudicated guilty, the violation has been set \$1,000 or
4 there's a daily running fine, you need to -- if someone were to
5 come to my office and they have this, we would refer them to
6 the special master office.

7 So this is an accurate statement.

8 Q. Is it accurate or inaccurate?

9 A. It would be an accurate statement. If someone comes to our
10 office and there is a special master -- a special master has
11 adjudicated someone guilty, they owe the city monies. We would
12 refer them to the special master office so the special master
13 can provide them an invoice for the monies that are owed.

14 Q. I'm sorry. Maybe it's the echo in here. I will ask you to
15 spell it. Inaccurate with an I-N or accurate with an A-C-C --

16 A. I believe this --

17 Q. -- statement?

18 A. I believe this statement is accurate.

19 Q. You believe it's accurate?

20 A. Yes.

21 Q. In other words, during a special master proceeding your
22 occupational license cannot be renewed?

23 MR. ARANA: Objection. Mischaracterizing the
24 testimony.

25 THE COURT: Overruled.

1 Answer if you can.

2 A. If a special master has indicated a business guilty, they
3 have gone before the special master, they have been adjudicated
4 guilty, there is a fine. Sometimes there's a daily running
5 fine. You need to get that number. So my finance staff would
6 send someone to the special master office. You need to get an
7 invoice. Let's say they went to pay that special master
8 violation. My finance staff would direct the business to the
9 special master office so the special master office could print
10 an invoice for them so they could go pay at the cashier.

11 Q. Let's talk about this. The agreed order, which is Exhibit
12 7, was entered on Thursday, September 28. The Judge corrected
13 me this morning. The following Monday was October 2nd. So all
14 BTRs in the state, I think you told us earlier, right, expire
15 on September --

16 A. They are good for fiscal year October 1 through
17 September 30.

18 Q. So they expire September 30, 11:59 p.m., which would have
19 been on this date, would have been a Saturday, I believe.

20 A. September 30 was a Saturday, yes.

21 Q. So if the special master order wasn't entered until
22 September 28th, is there any procedure by which that person
23 could have cleared those violations soon enough to preserve a
24 16-17 BTR?

25 A. They could have paid their BTR. They could have paid the

1 fiscal year 2016/17 BTR before the 30th of September.

2 Q. If their testimony was they tried and they were rejected?

3 A. I wouldn't believe that they tried and they were rejected
4 because there's so many mechanisms to pay. They pay it in
5 person with cash, cashier's check or credit card, money order,
6 they could pay online, they could pay at our satellite office,
7 they could mail a payment, mail a payment to the lockbox. So I
8 would say that's a false statement.

9 We would not refuse. If someone came in to pay a BTR
10 we would not refuse payment. It doesn't make sense. It is not
11 our business process.

12 Q. The distinction that I think needs to be made was you would
13 have accepted payment, but that doesn't release the BTR?

14 A. We would not release the BTR. If there's outstanding
15 monies owed to the city, you need to take care of that first.

16 Q. As of September 28, if this agreed order had not been put
17 in the system, would that gentleman have been able to pay the
18 BTR? Would you have accepted the money?

19 A. Correct, we would have accepted the money.

20 Q. But if he hadn't by Friday 5:00 p.m. close of business,
21 either done -- he had to do something else.

22 A. If he had come to my office and said I want my BTR, I need
23 to get my BTR today, here is the money, let me first pay you
24 the BTR, I want to get my BTR, we would look at this document.
25 We would have reached out to special master, the city

1 attorney's office to see what needed to be done to get the BTR.

2 If that did not happen, if he did not come to my
3 office -- I don't recall him ever asking for me or asking for a
4 supervisor. None of my supervisors in preparing for this case
5 ever recall him requesting to speak to a supervisor. Because
6 if there is a problem, I'm here. I want to pay for something,
7 I need to get it and you don't get what you want, I think
8 common sense would dictate to call for a supervisor, and the
9 next person would come in. That did not happen.

10 Q. Common sense would dictate that someone that had a very
11 valuable business wouldn't lose it for \$1,000 either.

12 A. It's not common sense.

13 Q. I think I heard what you said, but let's be clear. You
14 couldn't do it on your own. You had to either go to the
15 special master, try to find him on Thursday afternoon or
16 Friday. They only work on Thursdays, right?

17 A. The special master staff, the clerks of the special masters
18 work at City Hall Monday through Friday during regular business
19 hours.

20 Q. You would have had to go to the special master, and I don't
21 know if it's this one or not but let's use the special master
22 in general for the moment, or the city attorney to get them to
23 clear it?

24 A. Or the city manager.

25 Q. Correct. If they were predisposed not to do so because

1 they wanted to close this liquor store down, you may not have
2 been able to find them within a day. Strike that.

3 THE COURT: Let me ask a question. As I understand
4 it, at least the testimony until now, none of these violation
5 notices were appealed within the 20-day time period that's
6 called for under, I don't know if it's under your code or on
7 the back of the ticket. So taken that for a granted, if -- but
8 the matter was before a special master. Somehow they were able
9 to get it in front of a special master on August --

10 MR. HUDSON: Twenty-eight it appears when the deal was
11 made.

12 THE COURT: If that's in front of a special master but
13 not pursuant to an appeal, but just in front of a special
14 master under some other circumstances, would the BTR be issued
15 if you were aware it was in front of a special master?

16 THE WITNESS: If we are aware it was in front of a
17 special master being appealed or being negotiated, we would
18 release the BTR if the BTR had been paid.

19 THE COURT: And assuming that the special master had
20 ruled and imposed a fine, once the special master rules and
21 imposes a fine, then the fine needs to be paid before you
22 release the BTR.

23 THE WITNESS: Yes, sir.

24 MR. HUDSON: Judge, just give me a moment. I am
25 almost there.

1 BY MR. HUDSON:

2 Q. Beach Blitz ultimately did pay online for the BTR, correct?

3 A. They paid online sometime in mid-October or first week of
4 October, approximately.

5 Q. October 11.

6 Would it surprise you if they testified that they
7 tried to pay online before and that was the first time at which
8 the system would accept the payment?

9 A. Yes, that would surprise me.

10 Q. If they had paid on October 11 of '17, was that a payment
11 for the old BTR that's now gone?

12 A. That's a payment that's in suspense right now. We are
13 waiting for the outcome of this either to refund the money or
14 see what the judge determines. But that payment is in
15 suspense. It can't be applied to 2017 because that permit has
16 expired.

17 Q. Cannot, correct?

18 A. Cannot, correct.

19 Q. So --

20 A. We were wondering, perhaps, if he intends to reapply, it
21 could be applied, reapplied to his new application.

22 Q. Well, if the city's internal system already said don't
23 reapply per the city attorney, what's point in reapplying?

24 A. That's not -- the case, if he comes in and reapplies, we
25 accept his application, then we route it to the regulatory

1 department. The regulatory department, we are the ones that
2 make that determination -- planning and zoning, building, fire,
3 or code compliance.

4 That's not my finance department to say whether or not
5 that business gets approved or rejected.

6 Q. One last question. I know I have asked it, but I want to
7 ask it one more time because it's important.

8 THE COURT: It's like asking for an objection.

9 MR. ARANA: Asked and answered.

10 MR. HUDSON: I am explaining in advance. I am trying
11 to get covered.

12 THE COURT: Go ahead.

13 BY MR. HUDSON:

14 Q. You testified as to the policies and procedures, and I get
15 that. This case, as you said, is not the normal case. We
16 agree with you. You do not have personal knowledge that
17 anybody at a counter told Mr. Doar, the owner of Beach Blitz,
18 that he was not able to get a BTR on the several times that he
19 and his hired professionals went down there to try to get one,
20 correct?

21 A. Please repeat the question.

22 Q. You have no personal knowledge of what the people at the
23 counter told Mr. Doar; is that correct?

24 A. I don't have any personal knowledge. I know what our staff
25 are trained to do and what they are trained to say to all of

1 our customers.

2 Q. Thank you.

3 MR. HUDSON: No further questions.

4 MR. ARANA: Could I have two questions?

5 THE COURT: Yes.

6 REDIRECT EXAMINATION

7 BY MR. ARANA:

8 Q. Counsel asked you whether you know whether staff may have
9 disregarded your procedures and refused payment of the BTR,
10 correct?

11 A. Yes.

12 Q. Can you testify for certain that the online system does not
13 shut anyone out from making a payment because there is an
14 outstanding violation?

15 A. The online system does not shut anybody out from making a
16 payment because there is a violation. On the contrary, we
17 accept payments. If there's an invoice, the online system will
18 accept payments for that invoice number at any time.

19 Q. And the online system can't disregard your instructions,
20 correct?

21 A. Correct. It's an automated system.

22 Many businesses when they are issued violations, they
23 go online and they immediately pay. Just because there's a
24 violation doesn't prevent them from making an online payment
25 for a BTR.

1 Q. At any time from July of 2016 until September 30 of 2017,
2 Beach Blitz could have made an online payment for its BTR,
3 correct?

4 A. Correct. Yes, sir.

5 Q. If it had done that, then, when it's outstanding, its
6 outstanding violations were paid, the BTR would have issued?

7 A. We would have issued it, yes.

8 Q. That's the case even if the outstanding violations were
9 paid in October of 2017, correct?

10 A. Come again.

11 Q. The BTR would issue even if the outstanding violations were
12 not paid until early October?

13 A. Correct, yes.

14 Q. Because the payment was made during the fiscal year?

15 A. During the fiscal year, correct.

16 MR. ARANA: Thank you.

17 THE COURT: Sir, thank you. You may step down. You
18 are excused.

19 (Witness excused)

20 THE COURT: The defendants can call their next
21 witness, please.

22 HERNAN CARDENO,
23 having been first duly sworn on oath, was examined and
24 testified as follows:

25 THE WITNESS: Cardeno, C-A-R-D-E-N-O, Hernan,

1 MR. ARANA: No, your Honor.

2 THE COURT: I don't want 80 pages on this thing.

3 MR. HUDSON: No, I won't have time to do 80. We will
4 do ten good pages.

5 THE COURT: Thanks, everybody, for your hard work
6 today. I will try to get something out quickly.

7 Court is in recess.

8 Thank you, all. Have a good Thanksgiving.

9 MR. HUDSON: Thank you for giving us a quick hearing.
10 We appreciate it.

11 C E R T I F I C A T E
12

13 I hereby certify that the foregoing is an accurate
14 transcription of the proceedings in the above-entitled matter.
15
16

17 November 22, 2017 /s/ Jill M. Felicetti
18 Jill M. Felicetti, RPR, CRR, CSR
19 Official Court Reporter
20 400 N. Miami Avenue, Suite 08S27
21 Miami, Florida 33128
22 jill_felicetti@flsd.uscourts.gov
23
24
25

EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 17-23958-CIV-UNGARO/O'SULLIVAN

BEACH BLITZ CO., a Florida
corporation d/b/a OCEAN 9 LIQUOR, and
d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,
a municipal corporation of the State of Florida,
PHILIP LEVINE, an individual, JIMMY
MORALES, an individual, MICKEY
STEINBERG, an individual, RICKY ARRIOLA,
an individual, MICHAEL GREICO, an individual,
JOY MALAKOFF, an individual, KRISTEN
ROSEN GONZALEZ, an individual,
JOHN ELIZABETH ALEMAN, an individual,
RAUL J. AGUILA, an individual, and
ALEKSANDR BOKSNER, an individual,

Defendants.

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REPORT AND RECOMMENDATION

THIS MATTER is before the Court on the Plaintiff's Emergency Motion for Preliminary Injunction with Incorporated Memorandum of Law (DE# 4, 11/3/17). This matter was referred to the undersigned by the Honorable Ursula Ungaro for a report and recommendation in accordance with 28 U.S.C. § 636(b). See Order of Reference (DE# 23, 11/14/17). Having carefully considered the applicable filings and the law and having held an evidentiary hearing on November 17, 2017, the undersigned respectfully recommends that the Plaintiff's Emergency Motion for Preliminary Injunction with Incorporated Memorandum of Law (DE# 4, 11/3/17) be **DENIED** for the reasons stated herein.

BACKGROUND

On October 30, 2017, Beach Blitz Co. d/b/a Ocean 9 Liquor and d/b/a as Ocean 11 Market (hereinafter “plaintiff” or “Beach Blitz”) filed the instant action alleging the following causes of action against all defendants: Declaratory Judgment/injunctive Relief (Wrongful Closure) (Count I); violation of 42 U.S.C. §1983 (Count II); violation of the 14th Amendment – substantive due process and takings claim (Count III); violation of 42 U.S.C. §1983 (Retaliation for First Amendment Expression) (Count IV); declaratory judgment/injunctive relief (Section 102-377(e) of the Code) (Count V); declaratory judgment/injunctive relief (The Ordinances) (Count VI) and breach of Fla. Stat. § 562.45 (The Ordinances) (Count VII). See Complaint (DE# 1, 10/30/17).

On November 3, 2017, the plaintiff filed the instant motion. See Plaintiff’s Emergency Motion for Preliminary Injunction with Incorporated Memorandum of Law (DE# 4, 11/3/17) (hereinafter “Motion”). The defendants filed their response on November 13, 2017. See Defendants’ Response to Plaintiff’s Emergency Motion for Preliminary Injunction (DE# 22, 11/13/17) (hereinafter “Response”). The plaintiff filed its reply on November 15, 2017. See Reply in Support of Plaintiff’s Emergency Motion for Preliminary Injunction [ECF NO. 4] (DE# 25, 11/15/17).

On November 17, 2017, the undersigned held an evidentiary hearing on the instant motion. The plaintiff presented the testimony of Doron Doar, the principal of Beach Blitz. The defendants presented the testimony of Manuel Marquez, the Assistant Director of Finance for the City of Miami Beach and Hernan Cardino, the Director of Code Compliance for the City of Miami Beach. The undersigned admitted into evidence

the Plaintiff's Exhibits 1 through 17 and the Defendants' Exhibits 1 through 18. The undersigned permitted the parties to file supplemental briefs. See Supplemental Memorandum in Support of Plaintiff's Emergency Motion for Preliminary Injunction (DE# 36, 11/22/17) (hereinafter "Plaintiff's Supplemental Memorandum"); Defendants' Response to Plaintiff's Supplemental Memorandum in Support of Its Emergency Motion for Preliminary Injunction (DE# 38, 11/26/17) (hereinafter "Defendants' Supplemental Memorandum"). This matter is ripe for adjudication.

FACTUAL FINDINGS

Ocean 9 Liquors (hereinafter "Ocean 9") is a liquor store operating in the City of Miami Beach (hereinafter "City"). On October 6, 2017, Ocean 9 was closed for failing to timely obtain a Business Tax Receipt.

I. Business Tax Receipts ("BTRs")

All for-profit businesses operating in the City are required to have a Business Tax Receipt (hereinafter "BTR"). A BTR is an occupational license. A business seeking to obtain a BTR must submit an application to the City along with other documentation such as a lease or warranty deed evidencing the location of the business, a state license if needed and articles of incorporation.

The Finance Department receives applications for BTRs involving liquor sales. Upon receipt of an application, the Finance Department electronically routes it to the City's other regulatory departments: the Building Department, the Fire Department, the Planning Department and the Code Compliance Department. These departments weigh in on whether to issue the BTR.

A BTR is valid for one fiscal year, from October 1 through September 30th of the following year. Pursuant to state law, all BTRs expire on September 30th of the fiscal year that they were issued. To renew a BTR, a business needs to pay the annual renewal fee. Every July, the City mails out a reminder notice as a courtesy to businesses. The City's records reflect that a renewal reminder notice was created for Ocean 9 on July 1, 2016. A business may pay the BTR renewal fee at City Hall, at the Customer Service Center, at the City's lockbox, at the City's satellite office in North Miami Beach or online. The online system does not prevent businesses from making an online payment for a BTR even if there are outstanding violations.

It is the City's practice to accept payments for BTRs.¹ In instances where a business has outstanding fines or debts owed to the City, the City will withhold the BTR until the business pays the money owed. Once the debt is paid, the City will release the BTR. If a business has an outstanding code violation and that business presents evidence to the City of a proceeding before the Special Master challenging that code violation, the City will release the BTR. If however, a violation has been issued and the time to appeal that violation has passed, the debt becomes due to the City and the City expects the business to pay the debt owed before releasing the BTR. If a Special Master has adjudicated a business guilty and imposed a fine, that business would need to pay the fine before obtaining a BTR. See Transcript (DE# 39 at 132).

If a fiscal year passes and a BTR is not renewed, that BTR will be placed in

¹ The plaintiff's principal, Dorian Doar, testified that he attempted multiple times to submit payment for Ocean 9's BTR, but each time, the City refused to accept payment.

“closed status.” A closed BTR cannot be renewed. If a business misses the time period for renewing its BTR, that business will need to file a new application to obtain another BTR. If an application for a BTR is denied, the City provides an appeal process through the City Manager or a designee.

II. Ocean 9 Liquors (“Ocean 9”)

Doran Doar is the owner of plaintiff Beach Blitz. Mr. Doar owns two businesses through Beach Blitz: Ocean 9, a liquor store, and Ocean 11 Market (hereinafter “Ocean 11”), a convenience store that sells beer and wine. Ocean 9 has been in business since 2012 and has been very profitable. Tourists make up approximately 85 percent of the customer base of the two stores.

Ocean 9 and Ocean 11 are located in the MXE District in the City of Miami Beach, Florida. Presently, there are only three liquor stores operating in the MXE District. The City has passed several ordinances reducing the hours of operation for liquor stores in the MXE District. The City has also passed an ordinance precluding the opening of any new liquor stores in the MXE District.

On September 30, 2016, the BTR for Ocean 9 expired when it was not renewed. On December 21, 2016, Ocean 9 was cited for selling alcohol outside the permitted hours. See Defendants’ Exhibit 10. The citation imposed a \$1,000 fine. The back of the citation contained a notice stating that fines could be appealed within twenty (20) days of receipt. Id.

On June 25, 2017, the City of Miami Beach Code Compliance Division issued two citations to Ocean 9. See Plaintiff’s Exhibit 5. One of the citations was for selling alcohol outside the permitted business hours. The other citation was for failing to timely

renew a BTR.² Each citation imposed a \$1,000 fine. The back of the citation contained a notice which stated that fines could be appealed within ten (10) days of receipt. At no time did the plaintiff appeal the three violations in the manner proscribed on the back of the citations.

Mr. Doar was overseas when the June 25, 2017 citations were issued. A store clerk advised Mr. Doar of the two citations and Mr. Doar returned to the United States on June 27, 2017. Prior to receiving notice of the citations, Mr. Doar did not realize the BTR for Ocean 9 was expired.

Ordinarily, Mr. Doar would receive courtesy renewal notices in July notifying him that the BTRs would expire on September 30th of that year. Mr. Doar testified that he never received the BTR renewal notice for Ocean 9 on or about July 2016 or anytime thereafter. Mr. Doar did receive a renewal notice for Ocean 11 and he renewed that BTR. Mr. Doar did not recall why he did not renew the Ocean 9 BTR at the same time he renewed the Ocean 11 BTR.

On June 27, 2017, Mr. Doar went to the City's Finance Department and tried to pay for the BTR. Mr. Doar did not recall the exact conversation he had with the employee in the Finance Department. However, he testified that the employee told him that he was not allowed to renew his BTR because he had violations. See Transcript (DE# 36 at 76). Mr. Doar understood, in general, that he needed to resolve the

² The Notice of Violation corresponding to this citation contained the following instruction "Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach." Defendants' Exhibit 12. Ocean 9 did not cease operating at that time.

violations³ in order to pay for his BTR. Id. at 77. The Finance Department employee provided Mr. Doar with an invoice totaling \$2,246.46, which included the BTR fee and late fee. See Defendants' Exhibit 15. If Mr. Doar had paid this amount plus the \$1,000 fine for the outstanding December 21, 2016 violation, he would have received the BTR.⁴

Mr. Doar did not believe the December 21, 2016 violation was merited. He wanted his "professional people" to deal with that violation and the other two outstanding violations.

Mr. Doar then went to the office of a woman named Rochelle Malik. Ms. Malik helps small business owners resolve problems with the City of Miami Beach and had worked with Mr. Doar in the past. Mr. Doar gave the June 25, 2017 citations (Plaintiff's Exhibit 5) to Ms. Malik and told her to appeal them. Mr. Doar also gave Ms. Malik the citation from December 2016 and told her to resolve that citation as well. Mr. Doar specifically instructed Ms. Malik to go to the City and try to get a BTR.

At the same time, Mr. Doar also hired an attorney, Guy Shir, to appeal the citations. Mr. Shir sent a check for \$100 to the Special Master's Office to appeal the citations, but that check was not accepted. It was Mr. Doar's understanding that without

³ At the evidentiary hearing, Mr. Doar referred to "violations" in the plural form. However, he also testified that he did not think the violations he needed to resolve to obtain his BTR included the June 25, 2017 violations because those violations were new.

⁴ The City presented testimony that the June 25, 2017 violations would not have been considered due on June 27, 2017 because the time to appeal those violations had not run. Therefore, the only violation that needed to be paid on June 27, 2017 was the December 21, 2016 violation.

resolving his citations, he could not obtain a BTR.⁵

At the end of July 2017, Mr. Doar hired another attorney, Harold Rosen. Mr. Rosen was successful in obtaining an appeal. However, it was not an ordinary appeal process through the Special Master's office. It was initiated through the City Attorney's office and later, an agreed order was placed before the Special Master for a hearing and ratification.

On August 28, 2017, Mr. Rosen reached an agreement with the City to resolve all three citations for \$1,000. On the same day, Mr. Doar gave Mr. Rosen a check for \$1,000 to pay for the citations. Mr. Rosen told Mr. Doar that he gave the check to Aleksandr Boksner, the Deputy City Attorney, on August 28 or August 29, 2017. The check was deposited by the City on October 18, 2017.

The Special Master did not sign the Agreed Order reflecting the parties agreement to resolve all three citations until September 28, 2017. See Plaintiff's Exhibit 7. The City was shut down for a number of days in September due to Hurricane Irma. Under the terms of the Agreed Order, the plaintiff admitted to the violations being properly issued by the City and the plaintiff was assessed a fine of \$1,000. While the Agreed Order's \$1,000 fine resolved all outstanding debt due to the City, Ocean 9 would still need to pay an additional amount to obtain a BTR.

Mr. Rosen provided Mr. Doar with a copy of the Agreed Order on September 28, 2017. On September 28 or September 29, 2017, Mr. Doar went to the City's offices to

⁵ The City of Miami Beach presented testimony that had Mr. Doar paid for his BTR with the citations still outstanding, the clerk would have accepted payment for the BTR and held onto the BTR until the citations were resolved.

pay the violation and to obtain a BTR. A City employee told Mr. Doar that Mr. Doar would not receive a BTR because there were outstanding violations. Mr. Doar told the employee that the violations had been resolved. The employee responded that Mr. Doar had a violation and he could not renew the BTR. Ms. Malik later explained to Mr. Doar that it probably meant that the City's computer system had not yet been updated.

The following week, on Tuesday, October 3, 2017, Mr. Doar again went to the City's offices to obtain a BTR. He renewed the BTR for Ocean 11. See Plaintiff's Exhibits 9 and 10.⁶ He also attempted to obtain a BTR for Ocean 9. The City refused to accept Mr. Doar's payment because Ocean 9 had open violations.

On October 6, 2017, two code enforcement officers and two Miami Beach police officers came to Ocean 9 and gave Mr. Doar a violation for operating without a BTR. They told Mr. Doar he had to shut down his store. Mr. Doar explained to them that he had an agreed order for the violations. They told Mr. Doar that if he did not shut down his business within five minutes, he would be arrested. Ocean 9 has been shut down since that time.

The Notice of Violation corresponding to the October 6, 2017 violation advised the plaintiff of its right to appeal within ten (10) days of receipt of the violation. See Defendants' Exhibit 14. The plaintiff never appealed the October 6, 2017 violation.

On or about Monday, October 9, 2017, someone from the City gave Mr. Doar a computer screenshot for the Ocean 9 account. See Plaintiff's Exhibit 17. The top of the

⁶ Mr. Doar could not renew the BTR for Ocean 11 on September 29, 2017 because Ocean 11 had an open violation. The violation was dismissed and on October 3, 2017, Mr. Doar renewed the BTR for Ocean 11.

document stated “Active Holds Exist On This Record,” signifying that the were outstanding monies owed to the City or outstanding violations. Id.; Transcript (DE# 36 at 123). The screenshot also contained the following note “As per City Attorney Office, close BTR for nonpayment. Entity cannot reapply for liquor sales and/or entertainment at 865 Collins Ave,” the location of Ocean 9. See Plaintiff’s Exhibit 17.

The plaintiff did not file an application for a new BTR. Had the plaintiff filed an application for a new BTR, it most likely would not have been granted because a City ordinance prohibits the new sale of liquor in the MXE District. Had the plaintiff applied for a new BTR and the application was denied, the plaintiff would have had the opportunity to appeal the decision, first through the City and then through the state court.

On October 11, 2017, the plaintiff paid for Ocean 9's BTR online. That payment is “in suspense” until the resolution of the instant action. Transcript (DE# 36 at 136). However, it cannot be applied to the fiscal year ending on September 30, 2017 because that “permit” has expired. Id.

Had the plaintiff made an online payment for a BTR, the BTR for Ocean 9 would have been issued once the plaintiff paid its outstanding violations, even if those violations were not paid until October 2017.

The plaintiff did not file a lawsuit in state court. The plaintiff filed the instant action on October 30, 2017.

STANDARD OF REVIEW

A preliminary injunction may be granted only if the moving party establishes four elements: (1) a substantial likelihood of success on the merits; (2) an immediate and

irreparable injury absent injunctive relief; (3) a threatened harm to the plaintiff that outweighs any injury the injunction would cause to the nonmovant and (4) the injunction will not disserve the public interest. Carillon Imps. v. Frank Pesce Int'l Grp. Ltd., 112 F.3d 1125, 1126 (11th Cir. 1997) (citation omitted); see also N. Am. Med. Corp. v. Axiom Worldwide, 522 F.3d 1211, 1217 (11th Cir. 2008) (citing Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc., 299 F.3d 1242, 1246-47 (11th Cir. 2002)). A preliminary injunction is “an extraordinary and drastic remedy not to be granted unless the movant clearly establishe[s] the ‘burden of persuasion’ as to the four [elements].” McDonald’s Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998) (citing All Care Nursing Serv., Inc. v. Bethesda Mem’l Hosp., Inc., 887 F.2d 1535, 1537 (11th Cir. 1989)).

ANALYSIS

The plaintiff seeks an Order:

(i) enjoining the enforcement of Ordinance No. 2016-4047 as applied to Plaintiff, (ii) enjoining the enforcement of Section 102-377(e) of the City of Miami Beach Code as applied to Plaintiff; (iii) preventing Defendants from enforcing Citation No. CC2017-03686 and (iv) ordering Defendants to issue Plaintiff a Business Tax Receipt for fiscal year 2017-2018 for its location at 865 Collins Avenue and to re-open said location without Defendants’ interference and (iv) granting such further relief deemed just and proper.

Reply (DE# 25 at 5, 11/15/17). As noted above, in order to obtain a preliminary injunction, the movant must demonstrate: “(1) [that there is] a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that the entry of the relief would serve the public interest.” Schiavo

ex. rel Schindler v. Schiavo, 403 F.3d 1223, 1225-26 (11th Cir. 2005). The undersigned will address each of these elements below.

I. Substantial Likelihood of Success on the Merits

The first element, the substantial likelihood of success on the merits, requires an analysis of the plaintiff's ability to make a showing of each of the required elements of the claims asserted. See Seiko Kabushiki Kaisha v. Swiss Watch Int'l, Inc., 188 F. Supp. 2d 1350, 1353-55 (S.D. Fla. 2002).

At the November 16, 2017 status hearing, the plaintiff told the undersigned that the plaintiff is seeking a preliminary injunction pursuant to the following counts: declaratory judgment/injunctive relief (Wrongful Closure) (Count I); violation of 42 U.S.C. §1983 (Count II); violation of the 14th Amendment – substantive due process and takings claim (Count III); violation of 42 U.S.C. §1983 (Retaliation for First Amendment Expression) (Count IV) and declaratory judgment/injunctive relief (Section 102-377(e) of the Code) (Count V). For the reasons stated below, the undersigned finds that the plaintiff has not shown a substantial likelihood of success on the merits of the above claims.

a. Procedural Due Process Claims (Counts I, II and V)

"[I]n order to maintain a § 1983 action, a plaintiff must allege conduct depriving him of a right, privilege or immunity secured by the Constitution or laws of the United States" Marrero v. City of Hialeah, 625 F.2d 499, 512 (5th Cir. 1980).⁷ The Due

⁷ The Eleventh Circuit in Bonner v. City of Prichard, 661 F. 2d 1206, 1207 (11th Cir. 1981) (en banc), adopted as precedent decisions of the former Fifth Circuit rendered prior to October 1, 1981.

Process Clause of the Fourteenth Amendment provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” U.S. Const. Amend. XIV, § 1. “The Supreme Court’s interpretation of this clause explicates that the amendment provides two different kinds of constitutional protection: procedural due process and substantive due process.” McKinney v. Pate, 20 F.3d 1550, 1555 (11th Cir. 1994). “A violation of either of these kinds of protection may form the basis for a suit under section 1983.” Id.

Procedural due process claims are analyzed in two steps: “the first asks whether there exists a liberty or property interest which has been interfered with by the State. . . . ; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient.” Kentucky Dep’t of Corr. v. Thompson, 490 U.S. 454, 460 (1989) (citations omitted).

“Protected property interests derive from ‘existing rules or understandings that stem from an independent source such as state law—rules or understandings that . . . support claims of entitlement to those benefits.’” Casas v. Swacina, No. 12-21083-CIV, 2012 WL 12894275, at *7 (S.D. Fla. Sept. 4, 2012), *aff’d sub nom.* Casas v. USCIS Dist. Dir. Miami, 518 F. App’x 669 (11th Cir. 2013) (quoting Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972)). “[T]he range of interests protected by procedural due process is not infinite.” Roth, 408 U.S. at 570. For instance, the Supreme Court has rejected a “generalized right to be secure in one’s business interests” as a property right protected by the Due Process Clause. Coll. Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 672 (1999). The Supreme Court has explained that:

The assets of a business (including its good will) unquestionably are

property, and any state taking of those assets is unquestionably a “deprivation” under the Fourteenth Amendment. But business in the sense of the activity of doing business, or the activity of making a profit is not property in the ordinary sense

Id. at 675.

Here, the parties dispute whether the plaintiff has asserted a protected property interest. The defendants argue that “there is no property right to the renewal of an expired business license or permit.” Defendants’ Supplemental Memorandum (DE# 38 at 7). The plaintiff maintains that “[t]he loss of Plaintiff’s business (including, inter alia, all associated goodwill, customers and reputation) is the loss of a protected property interest.” See Plaintiff’s Supplemental Memorandum (DE# 36 at 4).

The plaintiff cites to Marrero v. City of Hialeah, 625 F.2d 499, 514 (5th Cir. 1980) for the proposition that “Florida law recognizes business reputation/good will as an interest protectable under the strictures of 42 U.S.C. §1983.” See Plaintiff’s Supplemental Memorandum (DE# 36 at 4). The court in Marrero noted that:

Although Florida law may not recognize personal reputation as a liberty or property interest, **it does recognize business reputation, at least to the extent it approximates goodwill, as a property interest. Florida has long extended its protection to the intangible interests of a business. Under Florida law, “[o]ne’s business, aside from the investment of money and tangible property therein, is in every sense of the word property, and, as such, if lawful, entitled to protection from all unlawful interference.”** NAACP v. Webb’s City, Inc., 152 So.2d 179, 182 (Fla. Dist. Ct. App.1963), vacated as moot, 376 U.S. 190, 84 S. Ct. 635, 11 L. Ed. 2d 602 (1964). **Hence, since one’s business is property under Florida law, it cannot be injured or destroyed by the state without due process of law.** See Paramount Enterprises, Inc. v. Mitchell, 104 Fla. 407, 140 So. 328 (1932). Thus, for example, in eminent domain proceedings, the loss of goodwill is compensable. See, e. g., Matthews v. Division of Administration, State of Florida, Department of Transportation, 324 So.2d 664 (Fla. Dist. Ct. App. 1975). In addition, the State of Florida provides means of redress for private interference with goodwill. For

instance, the purchaser of the goodwill of a business may recover compensatory damages from a seller who destroys the value of the goodwill. See, e.g., West Shore Restaurant Corp. v. Turk, 101 So.2d 123 (Fla. 1958); Yoo Hoo of Florida v. Catroneo, 175 So.2d 220 (Fla. Dist. Ct. App.), cert. denied, 179 So.2d 212 (Fla. 1965). Also a plaintiff may recover actual damages caused by a defendant's disparaging comments about the plaintiff's business which are of a kind calculated to prevent others from dealing with the plaintiff. See, e.g., Continental Development Corp. of Florida v. Duval Title & Abstract Co., 356 So.2d 925 (Fla. Dist. Ct. App. 1978); Kilgore Ace Hardware, Inc. v. Newsome, 352 So. 2d 918 (Fla. Dist. Ct. App. 1977).

It thus appears that Florida does extend to appellants a “legal guarantee of present enjoyment” of goodwill, i.e., the value inhering in the favorable consideration of customers arising from a business’ reputation as being well established and well conducted. Since that interest is a protected property interest under Florida law, Florida may not deprive appellants of that interest without due process of law. Just as a state may not physically destroy a person's tangible property without complying with the requirements of the fourteenth amendment, so it may not destroy through the medium of speech a person's intangible property without the same compliance. **Hence, to the extent the defamatory statements injured appellants’ goodwill without due process of law, appellants have stated a claim upon which relief can be granted.**

Marrero, 625 F.2d at 514-15 (footnotes omitted; emphasis added).

Assuming, without deciding, that the plaintiff's business is a protected property interest under Florida law, the plaintiff has not shown a substantial likelihood of success on the merits of its procedural due process claims because the plaintiff has a post-deprivation remedy. “In order to state a claim under the fourteenth amendment, the complainant must allege facts showing not only that the State has deprived him of a liberty or property interest but also that the State has done so without due process of law.” Marrero, 625 F.2d at 519. “The United States Supreme Court has held that as long as some adequate post-deprivation remedy is available to a plaintiff, no procedural

due process violation has occurred.” Peterson v. Scott, No. 2:14-CV-420-FTM-38CM, 2015 WL 3935376, at *3 (M.D. Fla. June 26, 2015); see also Cotton v. Jackson, 216 F.3d 1328, 1330-31 (11th Cir. 2000) (stating that “[o]nly when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise.”). Here, the October 6, 2017 Notice of Violation which resulted in the plaintiff shutting down its store contained instructions on how to appeal the violation. The plaintiff could have pursued those appellate remedies.

As the Eleventh Circuit has noted, “the state may cure a procedural deprivation by providing a later procedural remedy; only when the state refuses to provide a process sufficient to remedy the procedural deprivation does a constitutional violation actionable under section 1983 arise.” McKinney, 20 F.3d at 1557; id. at 1560 (noting that “[w]hen a state procedure is inadequate, no procedural due process right has been violated unless and until the state fails to remedy that inadequacy.”). Assuming, arguendo, that had the plaintiff applied for a new BTR, the City would have denied the application, the plaintiff is not likely to succeed on the merits of a procedural due process claim because the plaintiff would still have an opportunity to appeal the City’s denial to the state court. See McKinney, 20 F.3d at 1563 (noting that “even if [the plaintiff] suffered a procedural deprivation at the hands of a biased Board at his termination hearing, he has not suffered a violation of his procedural due process rights unless and until the State of Florida refuses to make available a means to remedy the deprivation. As any bias on the part of the Board was not sanctioned by the state and was the product of the intentional acts of the commissioners . . . only the state’s refusal to provide a means to correct any error resulting from the bias would engender a

procedural due process violation.”).

The plaintiff has not shown that the process, which includes review by the state court, is inadequate. The plaintiff may appeal any decision by the City to the state court. The state court has the power to review and redress any deficiencies in the City’s decisions with respect to the issuance of a BTR. The plaintiff’s failure to avail itself of the protections afforded through the appeal process and through the state court system does not mean that the procedures available to the plaintiff were constitutionally inadequate. See Cotton, 216 F. 3d at 1331 (stating that “[i]f adequate state remedies were available but the plaintiff failed to take advantage of them, the plaintiff cannot rely on that failure to claim that the state deprived him of procedural due process.”).

The plaintiff’s argument that it is not required to exhaust administrative remedies, see Plaintiff’s Supplemental Memorandum (DE# 36 at 4-5), is inapposite. As the Eleventh Circuit explained in McKinney:

[the plaintiff] cannot state a valid constitutional claim . . . because Florida provides an adequate process to remedy [the plaintiff]’s alleged injury.
[The plaintiff]’s case fails, therefore, not for want of exhaustion;
indeed, exhaustion is irrelevant to our decision and finds no mention in the opinion. Rather, **[the plaintiff]’s case fails because he fails to state a procedural due process claim . . .** that would give rise to a section 1983 suit.

20 F.3d at 1564 n. 20 (emphasis added). Similarly here, whether the plaintiff must first exhaust administrative remedies or not, does not change the fact that a state procedure was available to the plaintiff to remedy the asserted loss of its business. “All that due process requires . . . is a post-deprivation ‘means of redress for property deprivations satisfy[ing] the requirements of procedural due process.’” McKinney, 20 F.3d at 1563 (quoting Parratt v. Taylor, 451 U.S. 527, 537 (1981) (alteration in original)).

For the foregoing reasons, the plaintiff has not shown a substantial likelihood of success on the merits of its procedural due process claims.

b. Substantive Due Process Claim (Count III)

The defendants maintain that the plaintiff cannot show a substantial likelihood of success on the merits of its substantive due process claim because the plaintiff cannot show the violation of a fundamental right. “A ‘fundamental’ right is one that is ‘explicitly or implicitly guaranteed by the Constitution.’” Morrissey v. United States, 871 F.3d 1260, 1268 (11th Cir. 2017) (quoting San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973)). Supreme Court jurisprudence provides that:

The substantive component of the Due Process Clause protects those rights that are “fundamental,” that is, rights that are “implicit in the concept of ordered liberty,” Palko v. Connecticut, 302 U.S. 319, 325, 58 S.Ct. 149, 152, 82 L.Ed. 288 (1937). The Supreme Court has deemed that most—but not all—of the rights enumerated in the Bill of Rights are fundamental; certain unenumerated rights (for instance, the penumbral right of privacy . . . also merit protection. It is in this framework that fundamental rights are incorporated against the states. A finding that a right merits substantive due process protection means that the right is protected “against ‘certain government actions regardless of the fairness of the procedures used to implement them.’” Collins v. City of Harker Heights, 503 U.S. 115, – , 112 S.Ct. 1061, 1068, 117 L.Ed.2d 261 (1992) (quoting Daniels v. Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 665, 88 L.Ed.2d 662 (1986)).

McKinney, 20 F.3d at 1556 (footnotes omitted). “[S]ubstantive due process rights are created only by the Constitution.” Id. (quoting Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 229 (1985) (Powell, J., concurring)).

“The substantive due process doctrine prevents the government from engaging in conduct that is ‘arbitrary or conscience shocking.’” Koeppel v. Romano, 252 F. Supp. 3d 1310, 1321 (M.D. Fla. 2017) (quoting Doe v. Braddy, 673 F.3d 1313, 1318 (11th Cir.

2012) (per curiam)). The facts presented at the evidentiary hearing and the allegations contained in the Complaint do not rise to this standard. Accordingly, the undersigned finds that the plaintiff has not shown a substantial likelihood of success on the merits of its substantive due process claim.

c. Retaliation/First Amendment Claim (Count IV)

Finally, the plaintiff has not shown a substantial likelihood of success on the merits of its retaliation/First Amendment claim. The Complaint alleges that “on or about October 5, 2017, Plaintiff, through his counsel met with Deputy City Attorney Boksner to discuss Plaintiff[s] concerns regarding the ongoing changes to the hours in which a package store could sell alcohol.” Complaint (DE# 1 at ¶ 137). The plaintiff’s counsel communicated to Mr. Boksner that “Defendant[s] ongoing changes to the hours were severely impacting Plaintiff’s business income and that as a result Plaintiff would oppose any further reductions to the hours of operation.” *Id.* at ¶ 138.⁸ The following day, Code Enforcement officers and City of Miami Beach police officers effectively shut down the plaintiff’s store. *Id.* at ¶ 140. These conclusory allegations are insufficient to support a section 1983 claim based on the alleged violation of the plaintiff’s First Amendment rights.

In sum, the plaintiff has not met its burden of showing a substantial likelihood of success on the merits. “If the movant is unable to establish a likelihood of success on the merits, a court need not consider the remaining conditions prerequisite to injunctive

⁸ The Complaint also asserts that “Deputy City Attorney Boksner essentially suggested that the City’s actions were intentional[ly] targeted toward Plaintiff.” Complaint (DE# 1 at ¶ 141). However, this conclusory allegation is not supported by any facts.

relief.” Johnson & Johnson Vision Care, Inc. v. 1-800 Contacts, Inc., 299 F.3d 1242, 1247 (11th Cir. 2002) (citing Pittman v. Cole, 267 F.3d 1269, 1292 (11th Cir. 2001)).

Nonetheless, for the sake of completeness, the undersigned will address the remaining elements for obtaining a preliminary injunction.

II. Immediate and Irreparable Injury Absent Injunctive Relief

The plaintiff must also show an immediate and irreparable injury if injunctive relief is not granted. To establish irreparable injury, the plaintiff must show that it will suffer an injury that cannot be adequately compensated if, at some later point in time, it prevails on the merits. United States v. Jefferson Cnty., 720 F.2d 1511, 1520 (11th Cir. 1983). The plaintiff is the owner of a liquor store that has been effectively shut down since October 6, 2017 and has been unable to generate revenue since that date. The injury complained of by the plaintiff is an economic injury. “An injury is ‘irreparable’ only if it cannot be undone through monetary remedies.” Ne. Florida Chapter of Ass’n of Gen. Contractors of Am. v. City of Jacksonville, Fla., 896 F.2d 1283, 1285 (11th Cir. 1990). Because the plaintiff can recover monetary damages, the undersigned concludes that the plaintiff has not shown it will suffer irreparable harm if an injunction is not issued.

III. Balancing of Harms

The plaintiff has shown that it will suffer economic injury should an injunction not issue. On the other hand, the issuance of an injunction would result in, at most, minimal harm to the defendants. The City has an interest in collecting taxes from businesses and ensuring that all businesses operating within the City are licensed businesses.

However, the plaintiff has been operating a licensed business since 2012. The City has also collected payment from the plaintiff for the BTR for Ocean 9 for the October 1, 2016 through September 30, 2017 fiscal year. That payment remains “in suspense” until this litigation is resolved. If an injunction is issued, the City would still be able to regulate the plaintiff’s business. The harm to the plaintiff therefore outweighs any harm to the defendants.

IV. Public Interest

The Court should also consider whether an injunction, if issued, will disserve the public interest. The plaintiff argues that “[a]n injunction which prevents the enforcement of patently unconstitutional Ordinances does not disserve the public interest. To the contrary, the public’s interest lies in the vindication of rights guaranteed under the Fourteenth Amendment.” Motion (DE# 4 at 15). The defendants maintain that “the public interest is not served by permitting unlicensed business owners to operate in the City.” Response (DE# 22 at 5). However, the issuance of the injunction sought by the plaintiff would only permit the operation of a single store, Ocean 9. The undisputed evidence is that had the plaintiff resolved its violations and paid the appropriate fee, the City would have renewed the BTR for Ocean 9. Therefore, the undersigned finds no basis to support the defendants’ assertion that “[i]t would create chaos in the City if unlicensed businesses could operate with impunity.” Id.

In the instant case, the undersigned finds that this factor is, at best, neutral.

RECOMMENDATION

Based on the foregoing, the undersigned respectfully **RECOMMENDS** that the Plaintiff’s Emergency Motion for Preliminary Injunction with Incorporated Memorandum

of Law (DE# 4, 11/3/17) be **DENIED**.

The parties shall have until **Friday, December 8, 2017**⁹ to file written objections, if any, with the Honorable Ursula Ungaro, United States District Judge. Failure to file objections timely shall bar the parties from a de novo determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. See 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140, 149 (1985); Henley v. Johnson, 885 F.2d 790, 794 (1989); 11th Cir. R. 3-1 (2016).

RESPECTFULLY SUBMITTED in Chambers at Miami, Florida this **1st** day of December, 2017.



JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
United States District Judge Ungaro
All Counsel of Record

⁹ The plaintiff has requested that the time period for filing objections be shortened because it has asserted a continuing injury.

EXHIBIT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 17-CV-23958

BEACH BLITZ CO.,

Miami, Florida

Plaintiff(s),

November 17, 2017

vs.

CITY OF MIAMI BEACH, FLORIDA,

Volume 01

Defendant(s).

Pages 1- 173

PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION
BEFORE THE HONORABLE JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): PHILLIP M. HUDSON, III, ESQ.
Arnstein & Lehr, LLP
200 South Biscayne Boulevard, Suite 3600
Miami, Florida 33131
(305) 374-3330
pmhudson@arnstein.com

FOR THE DEFENDANT(S): ENRIQUE DANIEL ARANA, ESQ.
Carlton Fields Jorden Burt, P.A.
Miami Tower
100 S.E. Second Street
Suite 4200
Miami, Florida 33131
(305) 530-0050
earana@cfjblaw.com

- and -

SCOTT EVERETT BYERS, ESQ.
GARY PAPPAS, ESQ.

REPORTED BY: Jill M. Felicetti, RPR, CRR, CSR
Official Court Reporter
400 N. Miami Avenue, Suite 08S27
Miami, Florida 33128
jill_felicetti@flsd.uscourts.gov

1 THE COURT: What he says is he has no administrative
2 process to go to because the BTR was wrongfully withheld from
3 him.

4 MR. ARANA: If he thinks that was the case, he
5 could -- yes, if he thinks it's been withheld from him already,
6 he can appeal that, whatever decision he -- you know, he's got
7 to identify at a point in time where the city said you can't
8 have one. But if at any point the city says we will not give
9 you a BTR, he can appeal that decision.

10 Section 102.372 of the city code says: Any person
11 whose application for business tax receipt has been denied may
12 seek a hearing under Sections 102.384 and 102.385.

13 If he in fact tried during the course of the year to
14 get a BTR license and the city said I am sorry, we are not
15 going to give it to you, he could appeal that.

16 THE COURT: All right. Very good.

17 Call your first witness, please.

18 MR. HUDSON: Doran Doar.

19 THE COURT: Come on up, Mr. Doar.

20 DORAN DOAR,
21 having been first duly sworn on oath, was examined and
22 testified as follows:

23 THE WITNESS: Doran Doar. Last name D-O-A-R.
24
25

DIRECT EXAMINATION

BY MR. HUDSON:

Q. Good morning.

Are you familiar with an entity by the name of Beach Blitz, which is the plaintiff in this case?

A. Yes.

Q. And what is your involvement with Beach Blitz?

A. I am the owner of the Beach Blitz, Florida corporation.

Q. Are you familiar with an entity or something called Ocean 9 Liquor?

A. Yes. It is the liquor store, the d/b/a Beach Blitz. Beach Blitz d/b/a Ocean 9 Liquor.

Q. So you own Ocean 9 Liquor store through Beach Blitz?

A. Yes.

Q. Please wait for me to finish my question, sir.

A. Yes.

Q. Thank you.

Are you familiar with something called Ocean 11 Liquor or Ocean 11 Market?

A. Yes.

Q. What is Ocean 11 Market?

A. It's a regular convenience store that I own.

Q. You own that as well?

A. Yes.

Q. Now, Ocean 9 Liquors is a full liquor store, correct?

1 A. Yes.

2 Q. Does Ocean 11 Market sell liquor?

3 A. Yes. Beer and wine.

4 Q. Only beer and wine?

5 A. Yes.

6 Q. Does Ocean 9 hold a Florida state license to sell all types
7 of liquor?

8 A. Yes.

9 Q. How long has Ocean 9 been in business?

10 A. From 2012.

11 Q. Is it a profitable company?

12 A. Very profitable.

13 Q. Briefly tell the court the location of Ocean 9 Liquor and
14 what type of business it is.

15 A. Ocean 9 Liquor, it's located in a very unique place in the
16 center of South Beach, half a block from Ocean Drive, next door
17 to Mangos Tropical Bar, and many turn to the beach. It's a
18 very unique, special location.

19 Q. Do you know what the MXE district is?

20 A. Yes.

21 Q. Tell the court what you understand the MXE district to be.

22 A. What I understand from right now that MXE, it's from Fifth
23 Street to 15th or 16th Street southwest and from Collins Avenue
24 to Ocean Drive east and west.

25 Q. And the City of Miami Beach recognizes the MXE district as

1 a separate zoning district; is that correct?

2 A. Yes.

3 Q. How many liquor stores that sell full liquor are presently
4 in the MXE district?

5 A. Three or four. Four liquor store.

6 Q. And does that include Ocean 9, which is closed?

7 A. Yes.

8 Q. So there are presently three liquor stores that are
9 operating?

10 A. Yes.

11 Q. Are you generally familiar with a series of ordinances over
12 the past 12 months or so where the City of Miami Beach has
13 substantially reduced the hours of operation of the liquor
14 stores in the MXE district?

15 A. Yes, I am familiar.

16 Q. Have you objected to those ordinances?

17 A. Yes.

18 Q. Have you hired professionals to help you deal with the City
19 of Miami Beach to try to change those ordinances?

20 A. Yes.

21 Q. What are the current hours of sale in the MXE district, do
22 you know?

23 A. Yes.

24 Q. What are they?

25 A. Until a few changes, but I think right now the hours is

1 between 10:00 a.m. to 8:00 p.m. in the evening. It used to be
2 8:00 a.m. in the morning to 12:00 a.m. in the night.

3 Q. So in the last 12 months there had been a series of
4 ordinances that have reduced the number of hours by six hours;
5 is that fair?

6 A. Yes. From 6 to 10.

7 Q. Do you believe Ocean 9 Liquors would be able to survive
8 with the substantially reduced hours? It's possible, but do
9 you believe --

10 A. Hard to believe, but it's possible.

11 Q. Do you believe the other stores -- strike that.

12 Is Ocean 11 Market also in the MXE district?

13 A. Yes.

14 Q. Could someone come into the MXE district today and open a
15 new full service liquor store?

16 A. I don't think it's even possible because of the new
17 ordinance that they did a few month ago, last year.

18 Q. So tell us what your understanding is of the ordinance that
19 would prevent any new liquor stores from opening in that
20 district.

21 A. What I understand from the ordinance, that notify that
22 nobody can open liquor store, any liquor store, any kind of
23 liquor store, not beer and wine, not any kind of liquor store
24 in the MXE district.

25 Q. Do you believe that fact makes your liquor store special or

1 unique?

2 A. For the moment it's going to be much more unique, much more
3 profitable because less competition possible.

4 Q. Do you know what a BTR is?

5 A. I learn about the BTR only in the last three or four month.

6 Q. What is your understanding of a BTR?

7 A. Business tax receipt.

8 Q. And is that like an occupational license?

9 A. Yes. It change the name from occupation license to
10 business tax receipt in -- I don't recall when.

11 Q. And that's a license -- do you understand that you need a
12 BTR to operate a business in Miami Beach?

13 A. Yes.

14 Q. Do you have BTRs for Ocean 11 Market?

15 A. Yes.

16 Q. You always had BTRs for Ocean 11 Market?

17 A. Always.

18 Q. Have you always had, except for fiscal years 2016 and '17,
19 have you always had BTRs for Ocean 9 Liquor?

20 A. Always.

21 Q. Did there come a time in 2017 when you realized that you
22 did not have or that your BTR was not current because you
23 didn't renew it at some point?

24 A. I didn't understand the question. I am sorry.

25 Q. At some point did you realize in 2017 that there was a

1 problem with your BTR?

2 A. I realize in June after I receive a BTR violation, which I
3 don't have the BTR. It's never happened to me before in the
4 surviving of my business. I realize for some reason that's
5 what happened.

6 THE COURT: Who usually went and got your BTR? You or
7 somebody else at your work?

8 THE WITNESS: Usually it's either me or another woman.
9 The name is Rochelle Malik. She is professional dealing with
10 the city with violation and with the license and all this. She
11 know the people and she lead me usually what to do.

12 MR. HUDSON: Your Honor, I'd like to point the witness
13 to what's been marked as Plaintiff Exhibit 5. I don't know if
14 he has a binder or not yet.

15 THE COURT: Did you give him one? Where is the
16 binder?

17 For the record, all these exhibits are in evidence.
18 You don't need to set the predicate or anything.

19 MR. HUDSON: Correct, your Honor. I am going to
20 proceed.

21 BY MR. HUDSON:

22 Q. Sir, turn to tab 5 in that white binder that I just sent to
23 you. Take a look at that document the first page. When you
24 have had an opportunity to look at it, tell the court, please,
25 what is there.

1 A. I see two violations. Usually the last three number 102
2 and 103.

3 102, it's selling alcohol after hour of ordinance
4 separation.

5 103 is not having business tax receipt license.

6 Q. When did you first see these two citations?

7 A. I saw this -- when I got it, I was overseas. I was in a
8 different country, in Israel, and I saw this when I came back
9 on June 27.

10 Q. So someone in the U.S. sent these to you while were you in
11 Israel?

12 A. Yes.

13 Q. You saw them. You returned to the United States a couple
14 of days later, correct?

15 A. Yes.

16 Q. And at that point did you do anything, sir, to try to
17 resolve these violations?

18 A. Of course. I handed them to Rochelle Malik and also I
19 handed them to Guy Shir, which is also a lawyer, and we tried
20 to appeal the violations.

21 Q. Let's start one at a time, and I know sometimes dates are
22 hard to remember, but do your best, please, for the Court.

23 When you came back in late June, did you personally do
24 anything at that time other than to contact Ms. Malik?

25 A. I went to the city on June 27 and I tried to pay the BTR.

1 Q. You physically went where?

2 A. To finance.

3 Q. Describe for the Court where that is physically.

4 A. I think it's on Meridian and 18, first floor.

5 Q. So there is a counter or something you go to?

6 A. It's a counter. You take a number, you stand in line, and
7 you do a few things over there, I mean, and --

8 Q. So you personally went in late June --

9 A. Yes.

10 Q. -- to the city. And describe for us what happened when you
11 were at the counter.

12 A. They did not renew. They didn't let me renew the license.
13 So I went to Rochelle office.

14 THE COURT: What did you tell the person at the
15 counter and what did the person tell you?

16 THE WITNESS: I don't remember exactly the
17 conversation, but I went over there, tried to renew, to pay my
18 BTR because I got the violation of the BTR. So I went to the
19 finance, tried to pay. For some reason they probably show me a
20 violation or some -- I don't remember exactly. I went to
21 Rochelle.

22 THE COURT: You went to what?

23 THE WITNESS: To Rochelle Malik, to the woman that
24 usually take care of --

25 THE COURT: No. I am talking about when you were at

1 the finance department in Miami Beach. Tell me exactly what
2 did you do; how much money did you give them; did you give them
3 cash, check; who do you give it to?

4 THE WITNESS: No. You ask them for how much to pay,
5 how much to pay. Then say they are not allow you to renew the
6 license.

7 THE COURT: Okay.

8 BY MR. HUDSON:

9 Q. So they told you specifically that day, someone behind the
10 counter at Miami Beach, that they would not allow to you renew
11 the license; is that your testimony?

12 A. Yes.

13 Q. Then what did you do next?

14 A. I went to Rochelle office and I hand her the violations and
15 I ask her to do, to appeal it.

16 Q. Explain to the court who Rochelle Malik is, to the best of
17 your knowledge.

18 A. Rochelle Malik, she is the wife of the former mayor of
19 Miami Beach. She is dealing with the Miami Beach city on
20 stuff, like on violations and BTR and helping people like me,
21 small business owners, to try to resolve problems. So she know
22 the system, how it's working. And I work with her for a few
23 years already and she usually help me to renew the license, or
24 maybe she go, maybe she pay some kind of checks. Sometimes
25 it's me.

1 Q. Earlier you told the court that you had hired folks from
2 time to time that helped you with the BTR process prior to when
3 you found out you had the problem, right? Ms. Malik had
4 already been working for you for some time to help you with
5 licensing and to help you with issues on Miami Beach, correct?

6 A. Yes.

7 Q. So when you couldn't accomplish what you wanted to
8 accomplish trying to get your BTR, you then asked her to get
9 involved, correct?

10 A. Yes.

11 Q. And you hired her to go down and try to pay the BTR as
12 well?

13 A. Yes.

14 Q. Was she successful?

15 A. No. From few month.

16 Q. How many times, let's --

17 THE COURT: I am a little confused. His testimony
18 before you started leading him was, I went to Malik, I handed
19 her the tickets and asked her to appeal it. He didn't say I
20 went to Malik and said, hey, they are not taking my money for
21 the license. He said I went to Malik, handed her the tickets
22 and said appeal it, is what I remember him saying.

23 So now all of a sudden you jump to Malik -- what he
24 testified to is he told Malik to appeal the tickets. Appealing
25 the tickets is not get me my BTR.

1 MR. HUDSON: I am not sure --

2 THE COURT: They are two different things. I think
3 it's extremely important. So you need to get answers from him
4 and he needs to provide answers.

5 MR. HUDSON: I agree with you, Judge. There is a big
6 distinction. I am trying to --

7 THE COURT: You seem to be doing it now by telling him
8 what he is going to say. I want to hear what he has to say
9 rather than what you have to say.

10 MR. HUDSON: I understand.

11 BY MR. HUDSON:

12 Q. Mr. Doar, focus on my questions and the Court's questions.

13 Okay. Let's go back. You personally went down at the
14 end of June, correct, to try to get a BTR license? Correct?

15 A. Yes.

16 Q. You had previously hired Ms. Malik to do other things for
17 you before the BTR problem, including renewing BTRs, paying
18 violations; is that correct?

19 A. Yes.

20 Q. After June 27 or 28 when you were unsuccessful at renewing
21 your BTR, did you hire Ms. Malik to assist you with the BTR?

22 A. Yes.

23 Q. And what was it that you asked her to try to accomplish?

24 A. I told her -- I give her the violations and I ask her to
25 deal with the violation. Part of the dealing with the

1 violation, as I understand, we have a few days to appeal it.

2 Q. So the violations that you are talking about is the Exhibit
3 5 in front of you, correct?

4 A. Yes.

5 Q. The violation ending in 102 and 103.

6 A. Yes.

7 If I am not mistaken, it was one more violation.

8 Q. There was a third violation from December of '16 as well,
9 correct?

10 A. Yes.

11 Q. That she was dealing with?

12 A. Yes.

13 Q. It was not a BTR violation, correct?

14 A. No.

15 Q. Okay. Did Ms. Malik report back to you whether she was
16 able to resolve the BTR problem?

17 A. She always told me that it's okay, it's under control, that
18 she's dealing with that. But she could not resolve the
19 problem.

20 Q. She could not. Please get closer to the microphone. I
21 can't hear you.

22 A. Rochelle Malik didn't resolve the -- she resolved the
23 problem with the violation but not with the BTR. They never
24 let her pay or me to pay the BTR.

25 Q. Did you specifically charge Ms. Malik with going down and

1 trying to get a BTR for you in June or July of 2017?

2 A. Yes.

3 Q. Did you either give her money to do so or did you have an
4 understanding that if she paid, you would repay her?

5 A. We have understanding. I didn't give her money but we have
6 understanding that, you know, she pay with her checks and she
7 get the money from me all the time.

8 Q. That understanding goes back years, correct?

9 A. Yes.

10 Q. It's a course and custom in business, correct?

11 MR. PAPPAS: I have got to object to the leading at
12 this point.

13 THE COURT: Stop the leading. On this part it doesn't
14 make much difference to me, but go ahead.

15 BY MR. HUDSON:

16 Q. When Ms. Malik reported that she was unsuccessful at
17 getting a BTR, what did you do next?

18 A. Also at the same time I went to a Guy, Shir which is a
19 lawyer from --

20 THE COURT: Can you spell that name?

21 MR. HUDSON: S-H-I-R.

22 THE COURT: The first name Guy?

23 MR. HUDSON: Yes.

24 BY MR. HUDSON:

25 Q. So you retained an attorney by the name of Guy Shir?

1 A. Guy Shir, and I also emailing the violations. And because
2 Rochelle had a hard time to deal with the city or with the
3 violation, he send the letter with the checks of \$100 to the
4 city to appeal with the letter to appeal the violation.

5 Q. The violations?

6 A. And for some reason after he send the letter, the city
7 didn't accept it.

8 Q. Mr. --

9 A. Because -- some reason.

10 Q. I am sorry. I didn't mean to cut you off.

11 A. Okay.

12 Q. So Mr. Shir was unsuccessful in getting you a BTR, correct?

13 MR. ARANA: Leading.

14 THE COURT: Sustained.

15 What he is talking about is that he sent a check with
16 \$100 to appeal, which they didn't accept, is what he said. I
17 mean, that's the way I understand what he said.

18 THE WITNESS: Yes. That's what I said. And I know
19 that Mr. Shir was speaking with a woman named Cindy in the
20 special master and she give him instruction, different
21 instruction than what he had, you know, to appeal it.

22 BY MR. HUDSON:

23 Q. Was Mr. Shir successful at getting you a BTR in 2017?

24 A. No.

25 Q. What did you do next?

1 THE COURT: Excuse me. What did Mr. Shir do to get
2 you a BTR in or last year before October of 2017, this past
3 year?

4 THE WITNESS: We understand from the city that without
5 resolve the violation we cannot get a BTR several time.

6 MR. HUDSON: May I continue, Judge?

7 THE COURT: Yes.

8 BY MR. HUDSON:

9 Q. So after Mr. Shir was unsuccessful, what did you do next?

10 A. I went to Harold Rosen.

11 Q. Who is Harold Rosen?

12 A. He is a lawyer that used to be a -- he is a former, of
13 Miami Beach that also dealing with violations and special
14 masters and tries to resolve problem for people like business
15 owners.

16 Q. So you retained Mr. Rosen, correct?

17 A. Yes. I hire him and -- I hire him in July, the end of
18 July. They lead me that without resolve the violation cannot
19 renew the BTR. So he had a special master on August 28th. On
20 August 28th he had an order with the special master.

21 Q. So let's break it down a little bit so everybody can
22 understand.

23 You hired Mr. Rosen, you said, sometime in late July?

24 A. Yes.

25 Q. And was Mr. Rosen successful at making some progress on the

1 violations and the BTR?

2 A. Not on the BTR, on the violation. He had some agreement
3 with the special master.

4 Q. Okay. How many violations were outstanding at the time
5 that you hired Harold Rosen?

6 A. Three.

7 Q. And what were those violations for?

8 A. One violation from December 22, if I don't mistake. That
9 say that I selling liquor before 10:00 a.m. This was maybe one
10 week, two weeks after the new ordinance, that they change the
11 time.

12 Q. That was one. What was the next one?

13 A. The second one, it was selling alcohol after 10:00 p.m.,
14 and the third violation was not having a BTR.

15 Q. So when Mr. Rosen was successful at getting a special
16 master involved, was he dealing with two of those or three of
17 those?

18 A. With the three of them.

19 Q. All three of them, correct?

20 A. All three of them.

21 Q. Including the BTR issue, correct?

22 A. All of them.

23 Q. Was he also retained by you to assist or try to get you a
24 BTR in 2017?

25 A. Excuse me. I didn't understand.

1 Q. Did you also hire him to help you get a BTR in 2017?

2 A. So I hired him to resolve my problem. So probably to get
3 the BTR was part of it, yeah.

4 Q. Was he successful at getting you a BTR in 2017?

5 A. No.

6 Q. At some point did Mr. Rosen indicate that he had an
7 agreement with the City of Miami Beach regarding the resolution
8 of all of the violations?

9 A. I am sorry. Can you repeat?

10 Q. Did Mr. Rosen tell you at any time that he had reached an
11 agreement with the city to solve all of the violations, all
12 three?

13 A. Yes.

14 Q. When did he tell you that?

15 A. On August 28th.

16 Q. Of what year?

17 A. 2017.

18 Q. Did he ask you to do anything on that date?

19 A. Yes. He asked me to give, to give a check to the City of
20 Miami Beach for \$1,000.

21 Q. Did you do so?

22 A. Yes.

23 Q. Turn to tab 1 in your book in front of you, please. Please
24 look at that.

25 Is that the check that you are talking about?

1 A. Yes.

2 Q. So did you write that check on or about August 28 of '17?

3 A. Yes.

4 Q. Is that your signature?

5 A. Yes.

6 Q. Is that your handwriting on the rest of the check?

7 A. Yes.

8 Q. And I note that it says in the line "paid in full," and it
9 seems to list the three violations. Is that a fair reading of
10 that document?

11 A. Yes.

12 Q. When did you give that to Mr. Rosen or -- I am sorry. Whom
13 did you deliver that check to?

14 A. To Mr. Rosen, in the meeting between Mr. Rosen and Rochelle
15 Malik.

16 Q. Did Mr. Rosen tell you that after that date that he had
17 delivered that to the City of Miami Beach?

18 A. He admit a few times in front of us.

19 Q. Did he tell you who at the City of Miami Beach he gave it
20 to?

21 A. He gave it to Alex Baxter, I think. He is deputy of city
22 attorney.

23 Q. Alex Boxner?

24 A. Alex Boxner.

25 Q. Did he say when he gave it to Mr. Boxner?

1 A. He said on August 28 or August 29.

2 Q. About the time, within a day or two of when you delivered
3 the check?

4 A. Yes. That's what he said, within a day or two.

5 Q. Look at the second page there, the back of the check.

6 Do you see that?

7 A. Yes.

8 Q. It seems to have been deposited by the City of Miami Beach
9 on 10/18/2017.

10 Do you have any idea why it would have taken the city
11 a month and a half, if not more, to deposit that check?

12 A. You are asking me?

13 MR. PAPPAS: Foundation, your Honor.

14 THE COURT: Overruled.

15 If you know, you know. If you don't, you don't.

16 MR. HUDSON: Exactly.

17 THE COURT: I assume he doesn't know, but maybe he
18 does.

19 Did he answer?

20 Do you know?

21 A. No, I don't know why.

22 BY MR. HUDSON:

23 Q. After you gave Mr. Rosen the check, did you personally go
24 down and try to obtain a BTR now that the violations were
25 cleared?

1 A. I don't remember if after I give him the check I went to
2 try to pay the BTR.

3 Q. Let's go to --

4 A. I tried on the month of September.

5 Q. I know. We are jumping ahead.

6 Turn to page 7 of your binder, please.

7 Have you seen that document before?

8 A. This is the agreed order. Yes.

9 Q. What do you understand this order to do?

10 A. I understand that this order, it's agreement between the
11 Beach Blitz to the City of Miami Beach regarding the three
12 violation that say they agree that \$3,000 resolve the problem.

13 Q. Do you have any idea why it took a month from August 28
14 when you delivered the check to Mr. Rosen told you he had a
15 deal for this order to be prepared and signed?

16 A. I don't have any idea.

17 Q. When did you first see this order?

18 A. Excuse me?

19 Q. When did you first see this order?

20 A. This order, on August -- when I see the order, I think on
21 September 28.

22 Q. Did Mr. Rosen give it to you?

23 A. Yes.

24 Q. At that time when you received it, did you personally go
25 down and try to get your BTR again?

1 A. Yes.

2 Q. September 28 was 2017 was a Thursday, was it not?

3 A. Yeah, Thursday.

4 Q. Do you recall?

5 A. It's either was Thursday or Friday.

6 THE COURT: It was a Thursday. I will take judicial
7 notice of that.

8 MR. HUDSON: Thank you, Judge.

9 BY MR. HUDSON:

10 Q. Do you recall, did you go down on the 28th or 29th, or
11 both?

12 A. Either the 28th or the 29th. Either was Thursday or
13 Friday.

14 Q. And so you personally once again went down to the city
15 first floor counter, correct?

16 A. Yes.

17 Q. And you personally asked to please allow to you get a BTR,
18 correct?

19 A. Yes.

20 Q. What did they tell you?

21 A. They tell me that they are not going to issue me a BTR
22 because I have the violations.

23 MR. HUDSON: One moment, your Honor.

24 THE COURT: Yes.

25 MR. ARANA: Your Honor, we were presented with a

1 document this morning that plaintiffs want to add to an exhibit
2 list. It appears to be a city record, but we haven't had an
3 opportunity to confirm.

4 We object on timeliness grounds.

5 THE COURT: What is it?

6 MR. HUDSON: It was potentially a rebuttal or
7 impeachment exhibit. It's a record that basically shows
8 internally why they closed his license and that it couldn't be
9 renewed or replied for. I believe the witness will testify
10 that it was given to him that day.

11 THE COURT: Well, I will allow it subject to the city,
12 if you determine that it's not a record, then let me know
13 afterwards and I will take the opportunity to strike it.

14 MR. HUDSON: This will be admitted?

15 MR. BYERS: Your Honor, we have an objection. It's
16 dated after September 28 and 29th. There's actually markings
17 on there showing October 6th of 2017. So therefore it is
18 impossible --

19 THE COURT: You should have saved that for
20 cross-examination.

21 MR. HUDSON: We don't know what it is. That's the
22 problem, Judge. But he is going to testify that he was given
23 this by the city.

24 THE DEPUTY CLERK: Speak into the microphone.

25 MR. HUDSON: May I approach the witness, your Honor?

1 THE COURT: We will mark that as 17. Is that your
2 next exhibit?

3 THE DEPUTY CLERK: Yes.

4 Can I have a brief description of it. Brief.

5 MR. HUDSON: It is a screenshot from the City of Miami
6 Beach that has, for lack of a better word, a rectangle in the
7 middle of it, that we can't see what it is, and I can't tell
8 you when it's dated, to be honest with you. Maybe the city
9 can, if they know how to read it. But we can't tell when it's
10 dated.

11 THE COURT: Okay. Give it to the witness to look at
12 it.

13 MR. HUDSON: Do you need a copy?

14 THE DEPUTY CLERK: I don't.

15 THE COURT: I do.

16 BY MR. HUDSON:

17 Q. Sir, you went down to the city on either the Thursday or
18 the Friday and, once again, they told you they could not give
19 you the BTR, correct?

20 A. Yes.

21 Q. Did you indicate to them at that time that your violations
22 had been resolved?

23 A. Yeah.

24 Q. And what did they say? What was their response?

25 A. I have a violation, that they cannot renew the BTR.

1 Q. Do you understand that to mean that their system had not
2 been updated or did you understand that to mean something else?

3 A. That's what Rochelle told me, that probably the system is
4 not updated.

5 Q. So when you were told you couldn't do it, did you call
6 Ms. Malik or did you ask her to go do it as well?

7 A. Yes. Yes. I told her that I can't renew it.

8 Q. Do you know whether Ms. Malik went down there that Thursday
9 or Friday to try to renew it?

10 A. I am not sure.

11 Q. But you were unable to, correct?

12 A. I wasn't.

13 Q. You went down there for the specific purpose of renewing
14 it?

15 A. Correct.

16 Q. You had the financial capability of renewing it at that
17 time?

18 A. Of course. The financial was no problem at any time.

19 Q. Okay. So next Monday was October 1st, correct?

20 MR. HUDSON: The court will take judicial notice of
21 that?

22 THE COURT: Next Monday was what?

23 MR. HUDSON: October 1.

24 THE COURT: No, that's not true. October 2.

25 MR. HUDSON: Okay. Thank you, Judge.

1 THE COURT: October 1st was Sunday. At least that's
2 what my government calendar says.

3 BY MR. HUDSON:

4 Q. So the following week, starting on October 2nd, any time
5 during that week did you go down and try to get the BTR?

6 A. Which week are you talking about?

7 Q. The Thursday or Friday was the 28th --

8 A. Yes.

9 Q. -- and 29th.

10 The next Monday or any day that following week
11 starting on October 2nd, as the court has just indicated, did
12 you personally go down to the city to try to get a BTR?

13 A. Yes, on October 3. On October 3.

14 Q. Did you go on October 3 for other reasons as well?

15 A. Yeah. I renew my Ocean 11 BTR, because they didn't want to
16 renew it on September 28. They told me that I had a violation.

17 Q. So turn to page 9.

18 THE COURT: You say page 9. You mean Exhibit 9?

19 MR. HUDSON: Exhibit 9, please.

20 BY MR. HUDSON:

21 Q. Please, in the book. You are at tab 9.

22 Is that an invoice for Miami Beach for \$966?

23 A. Yes.

24 Q. What is that, sir?

25 A. It's a payment of --

1 THE COURT: You need to talk into the microphone.

2 A. It's a license for Ocean 11 Market.

3 Q. So is this something that was given to you the day that you
4 were -- on October 3 when you were at the city? Did they give
5 this to you that day so you could tell how much to pay?

6 A. No, they didn't give me this paper. They give me the
7 receipt.

8 Q. So you had this paper in advance?

9 A. No, I didn't have. They give me this on October, on
10 October 9.

11 Q. So turning to Exhibit 10, tell us what Exhibit 10 is.

12 A. This is the bill for -- this is the bill for Ocean 11
13 Market.

14 Q. Is this the receipt that was physically given to you on
15 October 3 when you paid the bill for Ocean 11 Market?

16 A. I don't remember. But it's another receipt that I remember
17 they give it to me. I don't remember this one was together.

18 Q. Look at the date, sir.

19 A. Yes, yes. Actually, yes. They give me this. They give me
20 this and they give me also another receipt.

21 Q. Okay. So this Exhibit 10 was physically given to you by
22 someone at the City of Miami Beach on October 3, correct?

23 A. Yes.

24 Q. At that same time you attempted to pay the BTR for your
25 other business, Ocean 9, correct?

1 A. Of course.

2 Q. They refused?

3 A. They refused to take the money.

4 Q. Did they tell you why they refused?

5 A. Because I have violations.

6 Q. Because you had open violations?

7 A. Open violations.

8 Q. Consistent with everything they have told you in the past,
9 correct?

10 A. Yes.

11 Q. Do you know if Ms. Malik or Mr. Rosen or Mr. Shir or
12 anybody else continued to try to ask the city to --

13 A. All the time. All the time. Every day. Every day phone
14 calls.

15 Q. Ms. Malik's job, in fact, was to stay on top of this,
16 correct?

17 A. Yes.

18 Q. And she was unsuccessful, correct?

19 A. Yes. Also, Harold Rosen was calling.

20 Q. Turn to Exhibit 11, please. Tell the court what Exhibit 11
21 is, if you know.

22 A. This is the receipt and my check from the city after I paid
23 the BTR of Ocean 11.

24 Q. I am looking at --

25 A. Eleven you said?

1 Q. -- Exhibit 11. I think that's 10, sir.

2 A. Sorry.

3 Q. Eleven should be a document, a Miami Beach document
4 regarding the closing of violation 102.

5 A. Okay. The exhibit it's after the number, right? After the
6 number?

7 Q. It should be after the tab, correct.

8 Is that what you are looking at, sir?

9 A. Yeah, I think so, if it's regarding violation ending 102.

10 Q. Yes.

11 A. Yes, that's what I have.

12 Q. Do you know why only that violation was closed out on 10/4,
13 yet you had paid all three violations at one time?

14 MR. PAPPAS: Objection, your Honor. No foundation
15 whatsoever.

16 THE COURT: On the next day it shows all three were
17 closed out on the same day. So it's a bad question to start
18 with.

19 MR. HUDSON: Your Honor, part of our problem is we
20 don't have access to the records. We are using what we have.
21 But there were three violations.

22 THE COURT: You just asked the question why was 02
23 closed out. You look on the next page, 03 was closed out on
24 the next day.

25 MR. HUDSON: But the third wasn't. That's where we

1 are going.

2 THE COURT: Ask him if he knows why the third wasn't
3 closed out.

4 MR. PAPPAS: There's no foundation -- he hasn't
5 established that it was or it wasn't, and he can't with this
6 witness.

7 THE COURT: Overruled. He can if he knows. Hearsay
8 is admissible here. Maybe someone from Miami Beach told him
9 it's not closed out because we don't like you or something. I
10 don't know what they told him.

11 MR. PAPPAS: Let's hear.

12 BY MR. HUDSON:

13 Q. Turn to Exhibit 12.

14 A. Violation 704.

15 Q. Yes.

16 Do you have any idea why that violation was closed out
17 on 10/13 as opposed to 10/4?

18 A. What is this violation?

19 Q. Sir, if you know, you do. If you don't, you don't.

20 THE COURT: I think that's the earlier one. The
21 December 2016, if I recall.

22 MR. HUDSON: Correct.

23 A. Yes, I recall. This violation, it's for before 10:00 a.m.

24 BY MR. HUDSON:

25 Q. So you paid all three violations at one time with one

1 check, correct?

2 A. Yes.

3 Q. You have no idea why one lasted for two weeks into October,
4 correct?

5 A. No, I don't.

6 MR. PAPPAS: Leading.

7 THE COURT: Sustained.

8 MR. PAPPAS: No foundation.

9 A. This is part of the reloader.

10 BY MR. HUDSON:

11 Q. So to the best of your ability, sir, how many times between
12 you, Ms. Malik, Mr. Shir, and Mr. Rosen do you believe Beach
13 Blitz and Ocean 9 tried to get the 2016/2017 BTR before
14 October 1st of 2017?

15 A. Many, many times. Many times. I don't remember all the
16 dates, but many times.

17 Q. How much would the BTR have been?

18 A. Excuse me?

19 Q. How much would the BTR have been?

20 A. What do you mean?

21 Q. Money. How much would it cost?

22 A. About, I think, \$2,000 and change.

23 Q. Beach Blitz and Ocean 9 had the financial ability to pay
24 that, correct?

25 A. Of course.

1 Q. Today if you were to apply for a new license, do you
2 believe the City of Miami Beach would give you a new license?

3 A. I don't believe because of the new ordinance.

4 Q. That does what? Which ordinance?

5 A. That I'm not allowed to have -- if I went to renew, you ask
6 me?

7 Q. No. To apply for a new license.

8 A. To apply for a new license. They are not going to give me
9 a liquor license.

10 Q. Please look at the document that we gave you to the right
11 that's marked as 17.

12 A. This one?

13 Q. Yes.

14 A. Yes.

15 Q. Was that document given to you by someone at the City of
16 Miami Beach?

17 A. Yes.

18 Q. Do you recall which of the visits that you went that it was
19 given to you?

20 A. I think this give it to me, I think, I think on October --
21 I think on October -- Monday. It was a Monday, I think.

22 Q. Monday?

23 THE COURT: Monday was October 2nd.

24 THE WITNESS: No, the next, following Monday. After
25 October 6th.

1 BY MR. HUDSON:

2 Q. So let's talk about October 6th.

3 October 6th was a Friday.

4 A. Yes.

5 Q. What happened on October 6th?

6 A. October 6th, about 5:00 o'clock, two law code enforcement
7 came --

8 Q. Speak up, please.

9 A. On October 6th, about 5:00 o'clock afternoon, two code
10 enforcement came to my store with two policeman, Miami Beach
11 policemen, and give me violation for not having a BTR. They
12 told me that I have to shut down my store, and I told them that
13 it's impossible. I have agreed order for the violation. I
14 didn't understand exactly what they want from me. And they
15 told me within five minutes I am not shutting the door of the
16 business, I am going to be arrested.

17 I tried to talk to them, to show them paper, and they
18 told me, listen, we give you five minutes to close the door or
19 we taking you right now. There was very, very tough with me.
20 They didn't want to see any paper of mine, just want me to sign
21 and shut down the doors.

22 Q. That was a Friday, correct?

23 A. Yes.

24 Q. Are you aware of any contact on behalf of Beach Blitz the
25 day before that event?

1 A. What -- I don't understand.

2 Q. Do you recall -- strike that.

3 MR. HUDSON: Judge, I have no further questions.

4 THE COURT: Any cross-examination?

5 MR. PAPPAS: Yes, your Honor.

6 May I approach to give Mr. Doar a copy of the exhibits
7 as well?

8 CROSS-EXAMINATION

9 BY MR. PAPPAS:

10 Q. Mr. Doar, my name is Gary Pappas.

11 You and I have never met before, right?

12 A. Right. How are you doing?

13 Q. Nice to meet you.

14 A. Nice to meet you.

15 Q. Your spoken English is a little broken. My question for
16 you, and I don't mean this personally at all, do you read
17 English?

18 A. I read. I read, not perfect.

19 Q. Not perfect?

20 A. Yes.

21 Q. But you can read English?

22 A. I can read, but not perfect.

23 Q. Okay. Now, does Beach Blitz own any other businesses
24 besides the package store on 865 Collins, Ocean 9, and the
25 market on 1100 Collins, Ocean 11?

1 A. No.

2 Q. Those are the only two businesses that Beach Blitz owns and
3 operates?

4 A. Yes.

5 Q. Okay. And you are the sole shareholder, sole owner?

6 A. Yes.

7 Q. And just in general, given the location of those markets,
8 is it fair to say that customer base is tourists?

9 A. Yes.

10 Q. Almost exclusively, right?

11 A. Yes. I would say 85 percent.

12 Q. Before December 16, 2016, did either of your businesses --
13 strike that for a second.

14 Do you go by the Ocean 9, Ocean 11, or do you go by
15 the address? What's the best way you want to talk about them?

16 A. Any way you want.

17 Q. I have in my mind the address.

18 Ocean 9 is 865 Collins, correct?

19 A. Yes.

20 Q. And Ocean 11 is the 1100?

21 A. Yes.

22 Q. So back to my question. Before December 16, 2016, had
23 either Ocean 9 or Ocean 11 ever received any type of citation
24 from the City of Miami Beach for any reason?

25 A. Before? What you mean before?

1 Q. December 16, 2016 is when Ocean 9 received a citation by
2 the City of Miami Beach for selling alcohol too early, right?

3 A. I don't remember.

4 Q. Well, I mean, it's in all of our exhibits.

5 If you will just turn to -- I didn't want to get hung
6 up on that, but we could just turn to your exhibits.

7 MR. HUDSON: Yours and ours or yours?

8 MR. PAPPAS: He can do them off mine, too. I think
9 it's in mine. I will go to mine.

10 BY MR. PAPPAS:

11 Q. If you will turn in the black binder to tab 10E,
12 Plaintiff's 10.

13 Tell me when you are there. Are you there?

14 A. Yes.

15 Q. Okay. That is the citation that the City of Miami Beach
16 issued to 865 Collins Avenue, which is Ocean 9, on December 21,
17 2016 at 8:39 in the morning for selling alcohol too early in
18 the morning?

19 A. I recognize this. I thought you ask me about December 16,
20 2016. I'm sorry.

21 Q. That's the date of Defendants' 10, correct?

22 THE COURT: No, it's December 21.

23 BY MR. PAPPAS:

24 Q. My apologies. I was thinking 2016. December 21. Okay.

25 A. I recognize it.

1 Q. Right. No doubt that that citation was issued to your
2 store on December 21st at 8:39 in the morning, right?

3 A. Yes.

4 Q. Before December 21, 2016 -- let's start with Ocean 9. Had
5 Ocean 9 ever received a citation from the City of Miami Beach?

6 A. I think so. I don't remember, but I think so, after that
7 code enforcement on my store.

8 Q. And how about Ocean 11, had it received citations?

9 A. I believe so.

10 Q. All right. So let's just talk about 865 for the time
11 being. If you will turn to tab 4 in the black binder,
12 Defendants' 4.

13 That is the original BTR issued by the City of Miami
14 Beach for 865 Collins Avenue, correct?

15 A. The first BTR.

16 Q. The very first BTR?

17 A. I am getting confused.

18 Q. That's all right.

19 You are on Defendants' 4, correct? You are in number
20 4?

21 A. I think so.

22 Q. So let's start up in the upper left -- yes, you are in 4 --
23 upper left-hand corner. The trade name is Beach Blitz.

24 Do you see that?

25 A. Yes.

1 Q. And it says in care of you, Doran Doar, correct?

2 A. Yes.

3 Q. And then it has an address, 1344 Northwest 5th Court in
4 Plantation?

5 A. Correct.

6 Q. Who lives there?

7 A. Me.

8 Q. Is that where you live today?

9 A. Yes.

10 THE COURT: You have got about a half an hour more to
11 cross-examine this fellow. If you want to go through each of
12 these, you are welcome to. Nobody is saying -- I don't know
13 what this has to do with his cross-examination or how it's
14 moving the ball for you.

15 MR. PAPPAS: Judge, I will move on.

16 BY MR. PAPPAS:

17 Q. That's where you live, right?

18 A. Yes.

19 Q. Do you receive mail --

20 A. Yes.

21 Q. -- at that address?

22 A. Yes.

23 Q. Related to Beach Blitz?

24 A. Yes.

25 Q. And if you go to the right-hand side of Defendants' 4, it

1 shows that the beginning date for this BTR is October 1, 2011,
2 correct?

3 A. Yes.

4 Q. That was the first year Ocean 9 had a BTR?

5 A. I don't think so.

6 Q. All right. If you turn to --

7 A. You confuse me, because Beach Blitz -- Beach Blitz, if you
8 call it BTR or occupational license before this.

9 Q. But not for the 865 location?

10 A. Of course for the 865 location.

11 Q. Okay. And so if you turn to, if you turn to the second
12 page of Defendants' 4, you see that there is an application;
13 correct? Do you see the application on the second page of
14 Defendants' 4, with handwriting on it?

15 A. Yes.

16 Q. Is that your handwriting?

17 A. No.

18 Q. That's not your handwriting?

19 A. No.

20 Q. How about the signature on the third page, is that your
21 signature?

22 A. No.

23 Q. That's not your signature either?

24 A. No.

25 Q. It says your name. Your name is printed there. Is that

1 correct?

2 A. Yes.

3 Q. So someone forged your signature. On June 15, 2012 someone
4 forged your signature on an application for a BTR with the City
5 of Miami Beach?

6 A. You are talking on the right side?

7 THE COURT: Talk into the microphone. We can't hear
8 you, sir. What did you say?

9 Sir, look at me when I ask you a question. You have
10 got to answer. I said, what did you say? Look at me again.

11 THE WITNESS: Yes.

12 THE COURT: You said something when you were facing
13 the other way. I didn't hear it. You need to repeat what you
14 said.

15 THE WITNESS: This is not my signature.

16 THE COURT: You said something after that.

17 THE WITNESS: I don't remember. Sorry.

18 BY MR. PAPPAS:

19 Q. Do you recognize the signature? Do you recognize the
20 handwriting or the signature?

21 A. No.

22 Q. Is this Ms. Malik's signature and handwriting?

23 A. No. I don't know.

24 Q. In the years from 2011, 2012, 2013, 2014, did you receive
25 renewal notices from the City of Miami Beach in or about July

1 of each year notifying you that your BTR would expire on
2 September 30th?

3 A. Usually, yes.

4 Q. Yes.

5 To your address at home, correct?

6 A. Yes.

7 Q. And then what would you do with those renewal notices?

8 A. I renew.

9 Q. Before September 30, before the BTR expired, correct?

10 A. Sometime I was late.

11 Q. Sometimes you were late. But would you go down personally
12 and pay the check and renew?

13 A. I don't remember all the situation, but we renew the BTR.

14 Q. Well, I want to be clear. When you say we renew. Is there
15 anyone else that's associated with Beach Blitz that would go
16 down and renew BTR applications?

17 A. Yes.

18 Q. Who?

19 A. If it's not me, it was Rochelle Malik.

20 Q. Okay. Now did you receive -- turn to Defendants' 7. Are
21 you on Defendants' 7? Tab 7.

22 A. I think so.

23 Q. What is the address 865 Collins Avenue D?

24 A. Yes.

25 Q. Is that the address of --

1 A. Yes. This is the address of the Ocean 9 Liquor.

2 Q. This is an invoice from the City of Miami dated July 1,
3 2016, correct?

4 A. Yes.

5 Q. For the renewal of your BTR for that location?

6 A. This is what it look like. I never receive it.

7 Q. You never received it?

8 A. I never receive it.

9 Q. Okay. You received one, though, for 1100 Collins Avenue
10 because you renewed that license?

11 A. I receive for -- yeah, I receive it to 13441 Northwest 5th
12 Court.

13 Q. For 1100?

14 A. Yes.

15 Q. And you renewed 1100?

16 A. Yes.

17 Q. Why didn't you renew 865 Ocean 9 when you renewed 1100?
18 You knew they expired on the exact same date. Why didn't you
19 do that?

20 A. Because I didn't have the renewal, and I don't recall why,
21 what's happened. I don't remember what's happened, why.

22 Q. You knew --

23 A. I don't remember the situation.

24 Q. You knew that the BTRs expired on the exact same day year
25 after year after year, correct?

1 A. I do. I do remember the dates.

2 Q. Right. So when you renewed 1100, Ocean 11, for the
3 2016/2017 year beginning on October 1, 2016, you could have
4 renewed Ocean 9, but you didn't, right?

5 A. If I had a choice to renew it from the city, I would renew
6 it for sure. If something happened with the city -- I don't
7 remember what it was before -- they not allow me to renew the
8 license.

9 Q. You are testifying under oath here today that when you
10 renewed Ocean 11 for the 2016/2017 year, you tried to renew
11 Ocean 9 and the city told you you could not; that's your
12 testimony?

13 A. Yes.

14 Q. Did you bring a check?

15 A. I asked them, you know, to give me the bill. They didn't
16 give me the bill.

17 Q. When you went down --

18 A. How can I make a check if I don't have the bill. I don't
19 know how much.

20 Q. Did you bring your checkbook with you?

21 A. Of course. Always I have my credit card. I have anything
22 to pay. It's not a problem, the payment.

23 Q. When did you go back -- so this was what, before
24 September 30, 2016, you renewed Ocean 11 and you tried to renew
25 Ocean 9 and the city wouldn't give you an invoice; is that what

1 you are saying?

2 A. I said that I tried to pay before, before.

3 Q. I am talking -- I want to be very clear about the time we
4 are talking about. We are talking about before your BTR
5 expired on September 30, 2016.

6 Both of your BTRs for your two businesses expired on
7 the exact same date, correct?

8 A. Should, because this is from the Miami Beach. Yes.

9 Q. You got a renewal notice for Ocean 11 and you usually got a
10 renewal notice for Ocean 9, but you didn't this year, correct?
11 That's your testimony?

12 A. That I didn't renew? I don't remember the situation when I
13 renew exactly on Ocean 11. It was before 2016, 30th of
14 September or not, I don't remember. Maybe it was after.

15 Q. Well, sir, you know that the city charges you a late fee if
16 you renew after October 1, correct?

17 A. Yes, I know.

18 Q. You would always try to renew before to save the late fee,
19 correct?

20 A. You always try to save the money, but it's --

21 Q. So I am asking a very specific question. You went down and
22 renewed your license, your BTR license, for Ocean 11 before
23 September 30, 2016?

24 A. I don't think I renew it before September 30, 2016. I
25 don't think I -- I renew Ocean 11 before.

1 Q. After?

2 A. September.

3 Q. After.

4 A. Maybe after sometime, yeah. I don't remember the date.

5 Q. You only own two businesses. They have two BTRs. You went
6 down to renew Ocean 11 just like you had year after year after
7 year. You always have two to renew.

8 Are you saying you tried to renew Ocean 9 when you
9 renewed Ocean 11?

10 A. I don't remember what was the situation.

11 Q. Okay. So you don't remember?

12 A. I don't remember.

13 Q. You are not testifying --

14 THE COURT: Wait. He is talking.

15 MR. HUDSON: Your Honor, asked and answered as well.

16 THE COURT: Well, he's given a couple of different
17 answers is the problem.

18 BY MR. PAPPAS:

19 Q. Finish your answer.

20 A. I don't remember exactly the situation when I paid the
21 2016, '17 for Ocean 11 Market. I don't remember the situation,
22 if it was Ocean 9 or not, if I try, and I don't remember the
23 situation.

24 Q. So you are not saying that the city prohibited you from
25 renewing Ocean 9 when you renewed Ocean 11, correct?

1 A. I don't remember the situation. I don't remember the
2 situation. I don't remember.

3 Q. There is no doubt whatsoever as we sit here today that your
4 Ocean 9 BTR expired on September 30, 2016, correct?

5 MR. HUDSON: Objection to the extent it calls for a
6 legal conclusion.

7 THE COURT: Overruled.

8 BY MR. PAPPAS:

9 Q. Correct?

10 A. Yeah. According to the papers, yes.

11 Q. Did you display your BTR license prominently and
12 conspicuously at the location just as the BTR says you are
13 supposed to?

14 A. Usually, yes.

15 Q. Posted like right above the cash register or something,
16 right?

17 A. Usually, yes, something like that. I have a folder with --
18 I should have a folder with the license.

19 Q. But you know the license says it has to be posted somewhere
20 conspicuously, right?

21 A. Yes.

22 Q. You had the license posted at your store, right?

23 A. Usually, yes.

24 Q. And you work at the store, don't you?

25 A. I work. Of course I work.

1 Q. And so it was sitting there for nine months expired and you
2 didn't notice and you didn't remember that it was expired for
3 nine months, correct?

4 A. It's possible I didn't put, I didn't put it.

5 Q. You didn't notice. You testified on direct examination
6 that the first time you found out that you did not have a BTR
7 for Ocean 9 --

8 A. Was June 27th.

9 Q. June 27th?

10 A. June 25, yeah.

11 Q. Well --

12 A. Twenty-five, 27.

13 Q. So what happened was you were in Israel on June 25,
14 correct?

15 A. Yes.

16 Q. And one of your clerks sent you the notices of violation in
17 Israel?

18 A. I think so.

19 Q. And you came right back, correct?

20 A. Yes.

21 Q. And by the way, do you do the bookkeeping for your stores?

22 A. Most of it.

23 Q. Right. So don't you have a journal somewhere that says BTR
24 license every year? And you knew you wrote a check for Ocean
25 11 but you didn't write one for Ocean 9?

1 A. Usually I don't do mistakes. Usually I don't do mistakes.

2 Q. So you come back and -- let me back up for a second.

3 I want you to go back to Defendants' 10. Okay. Black
4 binder number ten. Right. That's the December 16 violation.
5 Okay.

6 THE COURT: December 21.

7 BY MR. PAPPAS:

8 Q. December 21, 2016. I will get my year. December 21.

9 Are you there, sir?

10 A. I think so, yeah.

11 Q. Did you receive this violation personally? Did you look at
12 it in person?

13 A. Yes. I didn't receive it personal, but I look at it.

14 Q. Did you obtain a copy of it at or about the time of
15 December 21, 2016?

16 A. If I had a copy of this violation, that's what you are
17 asking me?

18 Q. Yes. Within 24 hours of getting the violation you had a
19 copy of it, right?

20 A. I am not sure about 24 hours.

21 Q. Had you ever seen -- you said you thought you had received
22 violations before. You are familiar with the City of Miami
23 Beach's violation, aren't you?

24 A. Yes.

25 Q. Right at the bottom it says: Important. Appeal and ADA

1 information on the back.

2 Do you see that right at the bottom of the ticket?

3 A. What it says?

4 Q. Important?

5 A. Important appeal.

6 Q. Important appeal, right?

7 A. Yeah.

8 Q. And then turn over to the next page. You have read these
9 before, haven't you?

10 A. Usually I give it to -- when it's come to violation, I give
11 it to professional people to deal with it.

12 Q. You know that the city's policy is that you can appeal a
13 ticket within 20 days, correct?

14 MR. HUDSON: Objection on legal conclusion, your
15 Honor.

16 THE COURT: Overruled.

17 BY MR. PAPPAS:

18 Q. Correct.

19 A. I know that it's a different time for appeal for different
20 kind of violations. It's not all the same.

21 Q. And this ticket says right on the back of it that it must
22 be appealed within 20 days by a written request to the clerk.
23 Do you see that?

24 A. No. Where is it?

25 MR. PAPPAS: May I, your Honor?

1 THE COURT: Yes.

2 MR. HUDSON: I will object to this line of questioning
3 because the special master accepted jurisdiction and resolved
4 these three violations.

5 THE COURT: Overruled.

6 BY MR. PAPPAS:

7 Q. Sir, you never appealed this ticket, did you? Within 20
8 days you never filed a written appeal of this ticket, correct?

9 A. No, I didn't.

10 Q. Okay. So now let's go to December 25th. You find out
11 about the new hour violation, different than December 21, and
12 you find out that for the first time that you did not have a
13 BTR.

14 Are you with me?

15 THE COURT: I think you meant June 25. You said
16 December 25, I think. But go ahead.

17 MR. PAPPAS: My apologies. It's dyslexia kicking in.

18 THE COURT: Maybe you are thinking about Christmas. I
19 don't know.

20 BY MR. PAPPAS:

21 Q. And you personally went right down to the finance
22 department in person with the violations, correct?

23 A. Yes.

24 Q. That's what you testified. You went down in person with
25 the violations. You went to the finance department and you

1 have got your number. You waited to be called. You met face
2 to face with a human being at the City of Miami Beach finance
3 department, correct?

4 A. Yes.

5 Q. At that point in time you testified on direct examination
6 that you were told -- in fact, I wrote that they showed you
7 that you had an outstanding violation, correct?

8 A. Yes.

9 Q. That was the December 21, 2016 ticket that you did not
10 appeal, correct?

11 A. I don't remember which one it was.

12 Yes. Yes.

13 Q. And they told you, the people at the finance department
14 told you that in order to renew your BTR license you had to pay
15 the ticket?

16 MR. HUDSON: Objection. Speculation. He is
17 testifying to what someone at the counter told him. He can
18 testify differently.

19 THE COURT: That's what happens when you get to lead.
20 He says yes or no.

21 MR. HUDSON: It's leading, but it's an inappropriate.

22 THE COURT: Stand up if you are objecting, and the
23 objection is overruled.

24 You can answer the question, sir.
25

1 BY MR. PAPPAS:

2 Q. You can answer, sir.

3 A. Ask it again, the question, please.

4 Q. When you went down with the June 25th tickets on June 27th
5 in person and met with another human being from the City of
6 Miami Beach, they showed you you had an outstanding violation
7 back from December that you had to pay first in order to renew
8 your BTR license, correct?

9 A. I am not sure what they show me. I am not sure what they
10 show me.

11 Q. They showed you you had a violation?

12 A. They told me that I cannot renew the license.

13 Q. Because you had an outstanding violation, correct?

14 A. I don't remember for what. I think because of having
15 violations.

16 Q. Right, and they told you all you have to do, sir, is pay
17 the violation and you can renew your BTR license?

18 MR. HUDSON: Objection, your Honor. He's asked three
19 times and he's answered the same way three times.

20 THE COURT: He hasn't answered the question yet.

21 You need to stand up if you want to be recognized in
22 this courtroom. Okay?

23 MR. HUDSON: He said he doesn't remember three times,
24 your Honor. He's trying to get him to answer it. He says I
25 don't remember.

1 THE COURT: The question is, sir, they told you all
2 you have to do, sir, is pay the violation and you can renew
3 your BTR license. Answer that question, please.

4 A. I don't remember this exactly what they told me.

5 BY MR. PAPPAS:

6 Q. Was it something sort of like that if not exactly?

7 A. What I understand is that I cannot renew my license because
8 I have violations.

9 Q. Right. Did you ask how do I pay for the violations so I
10 can renew? Did you ask that?

11 A. I went to Rochelle Malik.

12 Q. No. I am talking about -- we are not at Rochelle Malik.

13 A. I don't remember exactly the conversation that I had with
14 cashier over there, the officer in the finance.

15 Q. We are sitting there on December 27th. You are sitting
16 there talking to a finance department --

17 THE COURT: I am sorry. You keep using the wrong
18 date. It's June 27.

19 MR. PAPPAS: June 27th.

20 BY MR. PAPPAS:

21 Q. You are sitting face to face at the finance department on
22 June 27th. They told you you could not renew because you had
23 an outstanding violation. Correct?

24 A. Something make a noise like that over here like boom, boom
25 something. Like a noise.

1 Q. They told you that you could not renew.

2 THE COURT: Now asked and answered. Let's go.

3 BY MR. PAPPAS:

4 Q. Did you simply ask while you were sitting there --

5 A. They told me -- I understand in general that I need to
6 resolve the violations in order to come and pay my license.

7 Q. Okay.

8 A. That's what I understand.

9 Q. And --

10 A. I didn't understand --

11 Q. And did you say, great, how do I resolve my violation from
12 December? Where do I pay it?

13 A. That's what I say great, to who?

14 Q. You wanted your BTR, didn't you?

15 A. What you mean I say great?

16 Q. They told you you had to resolve the violation in order to
17 get your BTR, right?

18 A. Yes. They told me that I need to resolve my violations in
19 order to pay my BTR.

20 Q. And resolve the violation from back --

21 THE COURT: Hold on a second. He is saying violations
22 and you are saying violation. So you can't change his
23 testimony. He is saying violations, which would include the
24 December 1 and the one that he got two days before, is what his
25 testimony is that he was told he had to resolve.

1 BY MR. PAPPAS:

2 Q. Right. And so you distinctly recall them telling you on
3 December 27th that you had to resolve all three of your
4 violations to get your BTR?

5 A. June 27. I don't understand.

6 THE COURT: You have to get the dates.

7 MR. HUDSON: Creating confusion.

8 A. December 27. I am sorry.

9 BY MR. PAPPAS:

10 Q. When you were there in person on June 27th --

11 A. When I was there on June 27.

12 Q. -- did the clerk from the finance department tell you you
13 had to resolve all three outstanding violations or only the
14 December 21, 2016 violation in order to renew your BTR?

15 A. I understand that I cannot renew my BTR until I resolve my
16 violation. I don't know what it mean, but I assume it's not --
17 they don't mean that the other two because it was new. But I
18 assumed that it was maybe the other.

19 Q. You understood and assumed it was the December violation,
20 which you didn't appeal, right?

21 A. That I had a violation and I need to -- I didn't know
22 exactly which violation. They show you a paper all the time
23 with more than ten violations. And some violation close, some
24 violation open, some violation this. It's very hard for me to
25 read this paper when it's with a lot of violation. It's taking

1 time to understand what's going on. So I am going to a
2 professional people and I am trying to get explanation how it's
3 work. I don't know exactly how it's work because --

4 Q. Before you went to professionals, while you were still
5 sitting there, did you say to the clerk, I have my checkbook, I
6 am ready to pay for the December violation, I have the money,
7 where do I pay so can I renew my BTR? Did you do that?

8 A. I came to pay. I came to get my BTR.

9 Q. Did you do that? Did you ask?

10 A. Probably. I probably say it. I don't remember exactly
11 what it was I said, but probably I came to pay my BTR. What I
12 came for what? I came to finance to what? To find out about
13 my violation? To find out about my violation you go to the
14 code enforcement.

15 Q. Did you ask how much you owed for your BTR?

16 A. I think so.

17 Q. Okay. Turn to Defendants' Exhibit 15 in the black book.
18 The black book. That's the white one. The black one. Sir,
19 the other one. The Defendants' 15.

20 Are you there?

21 A. Yes.

22 Q. If you look in the upper right-hand corner, it's an Ocean 9
23 invoice. Correct?

24 A. Yes.

25 Q. It's dated June 27th, 2017, correct?

1 A. Yes.

2 Q. They handed this to you on June 27 when you were there
3 trying to renew your BTR license, didn't they?

4 A. Yes.

5 Q. And it has the \$570 late charge on it because your license
6 had been expired for nine months, correct?

7 First line. The very first line. Late fee, \$570.
8 Right?

9 A. Yes.

10 Q. And you had your checkbook with you, didn't you?

11 A. Always I have my checkbook with me.

12 Q. And you had plenty of money to pay the \$2,246 for this BTR
13 license, right?

14 A. Yes.

15 Q. And you had an extra thousand dollars to pay the December
16 invoice to resolve it, didn't you?

17 A. Yes.

18 Q. And you never paid the December 16 invoice?

19 A. They didn't accept my money.

20 Q. Did you try to pay?

21 A. I tried to pay. They told me that I need to resolve my
22 violation.

23 Q. I am talking about the violation, sir. Did you go and try
24 to pay the \$1,000 violation from December to resolve it?

25 A. I give it to my professional people. I give it to my

1 professional people to deal with that because I wasn't agree
2 about this violation.

3 This violation, this violation that they give me on
4 December, it was selling before 10:00 a.m., 8:33 or something
5 in the morning, which we didn't even know that this ordinance,
6 it's already in order.

7 Q. So on June 27th you voluntarily refused to pay the
8 outstanding December 2016 violation which you never appealed?

9 MR. HUDSON: Objection, your Honor. Mischaracterizes
10 his testimony.

11 THE COURT: Overruled.

12 BY MR. PAPPAS:

13 Q. You chose not to pay it at that time even though the clerk
14 said to you if you just paid the thousand dollars and resolved
15 the violation, we will give you your BTR for \$2,246.46, just
16 like it says on Defendants' Exhibit 15, right?

17 A. I don't remember exactly what was the situation with the
18 violation, but they told me that I need to resolve the
19 violation and either way in order to pay the BTR.

20 Q. And you knew when you --

21 A. I went to my professional people to see what we doing, and
22 we agreed that we need to appeal a violation of thousand
23 dollar, that it's not correct to give, it's not right to give
24 it to me if they create a new ordinance and it doesn't let us
25 know that we have a new ordinance and they just come and give

1 you a violation and you come and you just pay thousand dollar
2 like, like we make the thousand dollars in one second and just,
3 you know, for to pay the BTR.

4 I think the mind on the same moment was the violation
5 wasn't right and the other violation wasn't right and they
6 attacking me and they trap us and they tried to get us out of
7 business by giving us violation on violation on violation
8 without us to know anything, what's going on. They create a
9 new ordinance and changing the ordinance and nobody recognize
10 what is real and what is not and what to do right and what to
11 do wrong, and every move I had to go to professional people to
12 see if I am doing the right thing or not. This exactly what's
13 happening.

14 Q. And so on June 27, 2017 it was already six months after the
15 December 2016 citation had been issued to you, correct? Right?

16 A. Probably.

17 Q. You knew you couldn't file a written appeal like it says
18 right on the citation. You knew you waived your right to
19 appeal it, correct?

20 A. We appeal. I didn't waive the right to appeal. Maybe I
21 didn't appeal in the first 20 days because I didn't exactly
22 know the situation, but we didn't waive the right to appeal
23 because we appeal it after.

24 Q. Did you ever file a written notice of appeal for the
25 June 25, 2017 violations?

1 A. Excuse me again?

2 Q. I will rephrase it.

3 The June 25th violations were on the exact same ticket
4 form that the December violation was on, correct?

5 A. I am sorry. I am not --

6 Q. The tickets from June.

7 A. June 25.

8 Q. They were exactly the same form as the December tickets,
9 right?

10 A. Yes.

11 Q. You knew you had time to appeal them in writing just like
12 it says on the ticket, correct?

13 A. Yes. I brought it to the professional people.

14 Q. You never appealed in writing with the special master's
15 office just like it says on the ticket, correct?

16 A. Yes, correct.

17 You are talking about the December?

18 Q. And the June.

19 You never filed a written appeal?

20 A. We had filed an appeal and they didn't accept our appeal.

21 Q. Because it was too late?

22 A. Not because it was too late. Because they said -- not
23 because it was too late. Because they said that we send the
24 appeal to a wrong office in the Miami Beach. We send it to,
25 maybe to Miami Beach instead of to Miami City of Miami Beach,

1 maybe to the cashier instead of to -- I don't know exactly the
2 situation, but not the reason because of the 20 days.

3 Q. When you say "we," you are referring to some professional
4 that you hired? Not you personally, correct?

5 A. Yes.

6 Q. So the professional that you hired sent the notice of
7 appeal to the wrong office; is that what you are saying?

8 A. They sent the appeal and I don't know what is the reason it
9 didn't exactly accept it, but what I understand it was a wrong
10 address.

11 Q. Did you ever sign a written notice of appeal of the
12 June 25, 2017 violations within 20 days? Did you ever do that?

13 A. If I sign -- tell me again the question.

14 Q. You never --

15 A. I don't want to a make mistakes.

16 Q. You never filed a written appeal according to the City of
17 Miami Beach's procedures for the June 25th, 2017 violations,
18 correct?

19 A. We send appeal. We send appeal. I mean, Guy Shir send
20 appeal with a \$100 check. We send appeal. But they didn't --
21 for some reason it didn't work.

22 Q. When you say "we," you are talking about Ms. Malik?

23 A. Ms. Malik and Guy Shir, yeah.

24 Q. So your professionals that you hired, you claim took care
25 of it for you, and they sent the appeal to the wrong location,

1 correct?

2 A. The professional, all the professional that I hire, any
3 time that you come and try to do movement, they get some
4 problem, you know, to deal with my cases.

5 Q. Did you ever --

6 A. I don't understand what is that. The professional try and
7 try and try and all the time they have a problem and problem.
8 You are not talking about one professional, another one,
9 another one, another one. I did anything I can. Anything I
10 can to try to resolve the problem with the city.

11 The City set me up. The city trap me. The city set
12 me up not to get the license. That's what the city did. They
13 set me up not to get the license in order to take for me my
14 liquor store and destroy my business. That's exactly what's
15 happened.

16 Q. You said it just now. You did everything in your power,
17 right?

18 A. Everything in my power.

19 Q. When you were sitting with across from the clerk on
20 June 27th at the finance department did you say, look, I have
21 got my checkbook, how much do I owe you to get my BTR? Did you
22 ask that?

23 A. But you are talking about the violation from December and
24 then violation from June 25 and then another violation that
25 come and come and come. So when does it stop? When are you

1 going to stop with it? When are you going to let me work and
2 not attack me with all the violations? When you going to do
3 it?

4 Q. Sir, answer my question.

5 A. Why should I answer you?

6 Q. Answer my question, sir. When you were sitting in front of
7 that clerk on June 27th, did you say I have my checkbook right
8 here, how much do I owe you to get the BTR? You didn't do
9 that, did you, sir?

10 A. I answer you many time already.

11 Q. You didn't do it?

12 A. I don't have problem to pay any money. If any money, I
13 don't have problem to pay.

14 Q. You refused to pay the December 16, 2016 invoice, the
15 citation, you refused to pay it on June 27?

16 A. I appeal it because it was the wrong violation and I wasn't
17 agreeing with all these violations, that we getting attacked
18 from the city for no reasons. And changing ordinance from time
19 to time. You know, how many time you change the ordinance in
20 the city in the last year? Maybe four or five times. If you
21 ask any liquor store or any convenience store what time is the
22 hours right now, right now today, even the code enforcement
23 doesn't know when to open and when to close. Then you come
24 with the code enforcement and give violation, then you attack
25 me and what? Just pay the thousand dollars, just pay another

1 thousand dollars, and then it's \$5,000 and then \$10,000.

2 Q. The answer to my question is --

3 THE COURT: Let's move on to another area.

4 BY MR. PAPPAS:

5 Q. Sir, you were not present with Mr. Rosen --

6 A. Shame on you.

7 Q. You were in the presence -- excuse me? Excuse me, sir?

8 A. Sorry.

9 Q. What did you say?

10 THE COURT: He said shame on you. Let's go. Move
11 along.

12 BY MR. PAPPAS:

13 Q. You were not present with Mr. Rosen on August 28 when you
14 allegedly met with the special master, correct? You were not
15 there?

16 A. No.

17 Q. You have no idea what he did with the check, do you?

18 A. Who? Mr. Rosen?

19 Q. Yes.

20 A. He told us that he gave the check.

21 Q. You weren't there though, right?

22 A. I wasn't there.

23 Q. Were you in Miami in September?

24 A. Yes.

25 Q. Right. Do you remember what happened on the weekend of

1 September 9th and 10th?

2 A. No.

3 Q. Do you remember Hurricane Irma?

4 A. I remember Hurricane Irma.

5 Q. You remember the city shut down on a Thursday? The city
6 shut down I think even on Wednesday.

7 A. So what's happened before. Every Thursday you have the
8 special master. What happened before, the week before? You
9 move the computer from office to another office and then shut
10 down again.

11 Q. Right, sir. You know that the city was shut down on
12 September 7th, correct? Correct? That was the --

13 A. I didn't know exactly when the city shut down, when the
14 city opened.

15 Q. And you knew that the city remained shut down on
16 September 14th after Hurricane Irma, correct? Correct?

17 A. I am sorry. I need to drink some water. Can I?

18 Q. Yes, of course. Tell me when you are ready.

19 Are you all set?

20 A. Yes.

21 Q. You did not go down to the City of Miami Beach on
22 September 28th, Thursday, September 28th, 2017, correct?

23 A. What you mean?

24 Q. You didn't go in person on Thursday, September 28?

25 A. I went on 28, 29.

1 Q. You did?

2 A. I went. I don't remember the date exactly, you know, but I
3 went after they told me to sign the order and go pay your BTR.

4 Q. Right. And --

5 A. Harold told me go pay your BTR.

6 Q. Did you renew your Ocean 11 BTR on September 28?

7 A. They didn't allow me.

8 Q. Why not?

9 A. Because they told me that I have a violation.

10 Q. Did you have a violation on Ocean 11?

11 A. Some signed violation.

12 Q. Did you pay for the violation?

13 A. No. They dismiss the violation.

14 Q. When?

15 A. They dismiss it for some -- they dismiss the violation and
16 then I went Monday and I paid.

17 Q. Tuesday?

18 A. Actually, actually, I don't remember how it was working.

19 Q. So you had an open violation on September 28th on Ocean 11
20 and they wouldn't let you renew, correct?

21 A. Yeah, I think so.

22 Q. Right. Then when you had to pay -- then you renewed Ocean
23 11 on October 3?

24 A. On October 3.

25 Q. You went down in person with your checkbook. Now the

1 violation was resolved and you could pay your bill, right, just
2 like they told you for Ocean 9 back on June 27? Right?

3 A. The code enforcement dismiss the violation.

4 Q. It was resolved?

5 A. They dismiss the violation and then I went and pay, yeah.

6 And exactly like I tried to do on September 28th when the
7 violation, the three violation was resolved with the special
8 master, I went to pay and they didn't accept it.

9 Q. Right.

10 A. They didn't accept both of them.

11 Q. You went to the cashier, right?

12 A. On October 3, yeah.

13 Q. No. On September 28 you went to the cashier at the finance
14 department?

15 A. No. No.

16 Q. Did you go personally?

17 A. I went to finance, not to the cashier. It's two different
18 windows.

19 Q. Right, and they opened up your screen and still saw open
20 violations?

21 A. Yes.

22 Q. Did you have the agreed order with you? Did you have it
23 with you?

24 A. No, I didn't have it.

25 Q. Right. Was --

1 A. I didn't have that, the agreed order. I had it -- I had
2 agreed order. Rochelle -- I didn't have the agreed order with
3 me.

4 Q. You didn't?

5 A. I didn't have the agreed order with me. I didn't.

6 Q. You didn't have a copy of it?

7 A. I had a copy.

8 Q. You didn't have it with you?

9 A. I didn't have it with me.

10 Q. The clerk at the city finance department said I have no
11 evidence that you have an agreed order, correct?

12 A. So what did -- I don't understand. So I don't think that
13 you going to trick me another two days or something happen. I
14 just thought that I resolved the problem. I come to pay. They
15 tell me you can't pay because you still have the violations.
16 It doesn't -- to something like this, you think it's a matter
17 of one day, you know. So I went Friday -- I think Friday -- it
18 was Thursday or Friday, and then I went again on Tuesday.

19 Q. Sir --

20 A. I went every day. Almost every day I tried to pay.

21 Q. Your license was now over a year old at that point in time,
22 expired, correct?

23 A. After.

24 Q. Right. You had admitted the violations of the hours
25 problems at your stores, correct? You admitted that those

1 violations were valid, correct?

2 A. Yeah.

3 Q. And you never ever wrote a check for --

4 A. They never accept a check for me.

5 Q. My question is --

6 A. They never accept without result of violation. They never
7 accept the check. After September 28, when I was in the
8 finance, they never accept a check from Ocean 9 Liquor.

9 Q. On June 27 --

10 A. Back to June 27?

11 Q. From June 27 --

12 A. Okay.

13 Q. -- until October 6th, you never wrote a check for the
14 \$2,240 that they showed was owing for your BTR just like on the
15 invoice that they gave you on June 27 in person with the late
16 charge? You never, ever wrote that check and handed it to
17 them, did you?

18 A. They never let me hand it.

19 Q. My question is different. You never wrote the check like
20 you wrote the thousand dollar check, you never wrote the
21 2,200 --

22 A. Everybody leave me. The city, the city, the officer in the
23 city, everybody there, Rochelle Malik, Rosen, everybody leave
24 me that I need to resolve the violation in order to pay my BTR.
25 I never, technically I never did it. I never did it. I never

1 did it.

2 Q. Thank you.

3 A. I never did it because -- I never did it because nobody
4 allowed me to pay. Nobody allowed me to pay.

5 Q. I think you have answered my question.

6 A. This is the way, you know, the city set you up. So it's --

7 Q. You never appealed the October 6th, 2017 violation, did
8 you?

9 A. They told me -- no, I never appealed this September 6.

10 Q. October 6.

11 A. October 6 violation.

12 Q. The violation when they closed you down for not having a
13 BTR, you never appealed that according to the city's procedures
14 of filing a written notice of appeal; you never did that, did
15 you?

16 A. I never appealed it.

17 Q. Correct?

18 A. I never appeal it.

19 Q. Right.

20 A. I never appeal. I went to a lawsuit.

21 Q. You have never --

22 A. I went to a lawsuit.

23 Q. You have never --

24 A. I saw that I can't do anything, you know, without lawsuit,
25 without sitting with the city authority and talk to them and

1 try to resolve the problem.

2 Q. You have never filled out an application for a new BTR,
3 correct?

4 THE WITNESS: What shall I --

5 THE COURT: Just answer the question yes or no.

6 A. No.

7 BY MR. PAPPAS:

8 Q. You have never appealed from your claim that the city will
9 not issue you a new BTR, correct?

10 A. I never appeal if you mean on the October 6 violation, I
11 never appeal. I went to a lawsuit.

12 Q. And you have never gone to the city and said you have
13 wrongfully refused my BTR, I want to appeal, correct?

14 A. I had people, professional people, trying to deal with the
15 city every day, every day. Every day talking with the city
16 manager, talking with the city attorney, talking with anybody
17 possible.

18 Q. You have never had a hearing with the city manager
19 regarding your BTR license, correct?

20 A. What? Excuse me?

21 Q. I will rephrase it.

22 A. Okay.

23 Q. You have never had a meeting with the city manager,
24 regarding your BTR license for Ocean 9, 865 Collins Avenue,
25 correct?

1 A. I had a meeting with the city manager.

2 Q. You had a meeting with the city manager. Have you ever had
3 a hearing with the city manager?

4 A. I had a meeting with the city manager. We did
5 professional. We did Rochelle Malik. We tried to resolve the
6 problem to pay the BTR and they didn't accept it.

7 Q. And did you appeal the city manager's refusal to accept
8 your BTR? Did you appeal?

9 A. I didn't appeal. On the violation you are talking about or
10 not accept my payment for the BTR?

11 Q. Yes.

12 A. I don't understand what you are asking me.

13 Q. We are talking about your claim that the city refused --

14 A. What answer I can do? I had three lawyers working on it.

15 Q. Sir --

16 A. With a city manager, with a city attorney, with all the
17 people. You asked me if I didn't appeal.

18 Q. Yes.

19 A. It was obvious that I can't get anything. I can't get
20 anything. It over here that the city attorney order not to
21 issue me any license. It's over here. How can I -- what
22 appeal what? I went to lawsuit. What appeal? You ask me for
23 appeal.

24 Q. Did you ever file a lawsuit in the state court system
25 claiming --

1 THE COURT: You don't need to ask these questions.
2 It's uncontroverted that he never filed any lawsuit.

3 MR. PAPPAS: We don't know that.

4 THE COURT: Stipulate that -- excuse me, sir? Quiet.

5 THE WITNESS: I am sorry, your Honor.

6 THE COURT: Let me tell you something. You are in a
7 court of law. You answer a question when you are asked. This
8 isn't for you to stand on a podium and make announcements.

9 Do you understand?

10 THE WITNESS: Yes. I am sorry.

11 THE COURT: Do you stipulate there has not been a
12 state lawsuit filed in this matter?

13 MR. PAPPAS: Yes.

14 THE COURT: How much more do you have?

15 MR. PAPPAS: None.

16 THE COURT: Redirect.

17 MR. HUDSON: Nothing, your Honor.

18 THE COURT: You can step down, sir.

19 (Witness excused)

20 THE COURT: We are going to take a lunch break.

21 Is the plaintiff calling anybody else?

22 MR. HUDSON: No. We are done.

23 THE COURT: Defendants, who are you calling?

24 MR. ARANA: Manuel Marquez.

25 THE COURT: What about the second person?

1 MR. ARANA: No, your Honor.

2 THE COURT: I don't want 80 pages on this thing.

3 MR. HUDSON: No, I won't have time to do 80. We will
4 do ten good pages.

5 THE COURT: Thanks, everybody, for your hard work
6 today. I will try to get something out quickly.

7 Court is in recess.

8 Thank you, all. Have a good Thanksgiving.

9 MR. HUDSON: Thank you for giving us a quick hearing.
10 We appreciate it.

11 C E R T I F I C A T E

12
13 I hereby certify that the foregoing is an accurate
14 transcription of the proceedings in the above-entitled matter.

15
16
17 November 22, 2017 /s/ Jill M. Felicetti
18 Jill M. Felicetti, RPR, CRR, CSR
19 Official Court Reporter
20 400 N. Miami Avenue, Suite 08S27
21 Miami, Florida 33128
22 jill_felicetti@flsd.uscourts.gov
23
24
25

EXHIBIT 7

MXE PACKAGE STORE PROHIBITION

ORDINANCE NO. 2016-4047

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, "DEFINITIONS," TO DEFINE PACKAGE STORES; AND AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-544 THEREOF, ENTITLED "PROHIBITED USES," TO PROHIBIT PACKAGE STORES, PACKAGE SALES OF ALCOHOLIC BEVERAGES, AND ENTERTAINMENT USES IN PACKAGE STORES IN THE MXE DISTRICT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (the "City") regulates the location, size, hours of operation, and minimum patron age for alcoholic beverage establishments; and

WHEREAS, Chapter 6 of the City Code establishes minimum regulations for the sale and consumption of alcoholic beverages throughout the City, and district-specific alcoholic beverage regulations are set forth in Chapter 142; and

WHEREAS, the Mixed Use Entertainment ("MXE") district, which is the City's entertainment district, is characterized by a variety of uses, ranging in intensity from apartment buildings and retail stores to restaurants and entertainment establishments, which attract a large volume of pedestrians and vehicular traffic; and

WHEREAS, package sales of alcoholic beverages in the MXE district encourage individuals to consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks; and

WHEREAS, the consumption of open containers of alcoholic beverages in public places disturbs the quiet enjoyment of the community, causes undesirable noise, and contributes to litter, noxious odors, and the general degradation of the City; and

WHEREAS, additionally, the consumption of open containers of alcoholic beverages in public places is a violation of Section 70-87 of the City Code; and

WHEREAS, it is therefore in the best interest of the City, and it serves the health, safety, and welfare of the City's residents and visitors, to prohibit package stores and package sales of alcoholic beverages in the MXE district; and

WHEREAS, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that "[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations

may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones"; and

WHEREAS, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); 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. Section 114-1 of Chapter 114 of the City Code is hereby amended as follows:

**CHAPTER 114
GENERAL PROVISIONS**

Sec. 114-1. – Definitions

The following words, terms and phrases when used in this subpart B, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

Overlay district means ~~constitutes~~ a set of regulations which are superimposed upon and supplement, but do not replace, the underlying zoning district and regulations otherwise applicable to the designated areas.

Package store means any store primarily engaged in the business of selling alcoholic beverages for off-premises consumption and that has a license for package sales from the State Division of Beverages and Tobacco in the classification of 1-APS, 2-APS, or PS.

* * *

SECTION 2. Section 142-554 of Chapter 142 of the City Code is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 13. – MXE MIXED USE ENTERTAINMENT DISTRICT

* * *

Sec. 142-544. – Prohibited uses.

The prohibited uses in the MXE mixed use entertainment district are accessory outdoor bar counters, except as provided in this chapter; package stores; and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment. Additionally, entertainment uses shall be prohibited in package stores.

SECTION 3. 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 Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. SEVERABILITY.

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

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this 19 day of October, 2016.

ATTEST:


Rafael E. Granado, City Clerk


Philip Levine, Mayor

Verified By:


Thomas R. Mooney
Planning Director

(Sponsored by Commissioner Ricky Arriola)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney

10/5/16
Date

Underline denotes new language

~~Strikethrough~~ denotes removed language

Double underline denotes language added after First Reading

~~Double strikethrough~~ denotes language removed after First Reading

Ordinances - R5 O

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Jimmy L. Morales, City Manager
DATE: October 19, 2016

11:10 a.m. Second Reading Public Hearing

SUBJECT: MXE PACKAGE STORE PROHIBITION:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, "DEFINITIONS," TO DEFINE PACKAGE STORES; AND AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-544 THEREOF, ENTITLED "PROHIBITED USES," TO PROHIBIT PACKAGE STORES, PACKAGE SALES OF ALCOHOLIC BEVERAGES, AND ENTERTAINMENT USES IN PACKAGE STORES IN THE MXE DISTRICT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

The Administration recommends that the City Commission adopt the Ordinance.

ANALYSIS

BACKGROUND

On July 13, 2016, the Mayor and City Commission approved a dual referral pertaining to an LDR Amendment prohibiting package liquor stores in the MXE district to the Planning Board and the Land Use & Development Committee (LUDC). The referral was sponsored by Commissioner Ricky Arriola (item C4I).

On July 20, 2016, the LUDC discussed the item and continued it to September 21, 2016 meeting. On September 21, 2016, the Land Use Committee recommended that the proposed ordinance be adopted at Second Reading.

ANALYSIS

Package stores are retail uses that primarily sell alcoholic beverages and package sales are alcoholic beverages for take-out and off premises consumption. In general, the City Code allows for package stores and package sales in any area that allows retail sales. The hours and locations (distance separation) are regulated in Chapter 6 of the City Code.

The Mixed Use Entertainment ("MXE") district is characterized by a variety of uses, including hotel, bars, restaurants, entertainment establishments, apartment buildings, and retail stores which attract a large volume of pedestrians and vehicular traffic. The consumption of alcohol and the high volume of people together are sometimes problematic and were identified as issues by the Mayor's Blue Ribbon Panel on Ocean Drive and the City Commission.

Package sales of alcoholic beverages may encourage patrons to walk around with alcoholic beverages and consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks. The consumption of open containers of alcoholic beverages in public places may cause undesirable noise, as well as contribute to litter and noxious odors. Also, the consumption of open containers of alcoholic beverages in public places is a violation of Section 70-87 of the City Code.

The attached ordinance creates a definition for package store in Section 114.1, the definition section of the Land Use Development Regulations (LDR's). Additionally, both package stores and package sales of alcoholic beverages are listed as a prohibited use in Section 142-544, under the MXE district regulations. Additionally, because entertainment is allowed in retail stores city wide, the following ordinance clarifies that, in the MXE district, package stores are prohibited from having entertainment.

PLANNING BOARD REVIEW

On August 23, 2016, the Planning Board (by a 6-0 vote) transmitted the proposed ordinance amendment to the City Commission with a favorable recommendation.

UPDATE/SUMMARY

As indicated previously, the Administration believes that the proposed ordinance amendment is a step in the right direction in terms of addressing tangible quality of life issues for residents and visitors alike. The subject Ordinance was approved at First Reading on September 14, 2016 and subsequently endorsed by the Land Use and Development Committee on September 21, 2016.

At the request of the item sponsor, the ordinance has been updated to include a prohibition on the package sales of alcoholic beverages by any retail store, in addition to the previous prohibition of package sales in alcoholic beverage establishment. This will prohibit the package sale of alcoholic beverages (beer, wine, liquor) in retail establishments in the MXE district.

CONCLUSION

The Administration recommends that the City Commission adopt the Ordinance.

FINANCIAL INFORMATION

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action. The proposed Ordinance is not expected to have a negative fiscal impact upon the City.

Legislative Tracking

Planning

Sponsor

Commissioner Ricky Arriola and Co-sponsored by Commissioner Joy Malakoff

ATTACHMENTS:

Description

- ▯ Ordinance

EXHIBIT 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 17-CV-23958

BEACH BLITZ CO.,

Miami, Florida

Plaintiff(s),

November 17, 2017

vs.

CITY OF MIAMI BEACH, FLORIDA,

Volume 01

Defendant(s).

Pages 1- 173

PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION
BEFORE THE HONORABLE JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): PHILLIP M. HUDSON, III, ESQ.
Arnstein & Lehr, LLP
200 South Biscayne Boulevard, Suite 3600
Miami, Florida 33131
(305) 374-3330
pmhudson@arnstein.com

FOR THE DEFENDANT(S): ENRIQUE DANIEL ARANA, ESQ.
Carlton Fields Jorden Burt, P.A.
Miami Tower
100 S.E. Second Street
Suite 4200
Miami, Florida 33131
(305) 530-0050
earana@cfjblaw.com

- and -

SCOTT EVERETT BYERS, ESQ.
GARY PAPPAS, ESQ.

REPORTED BY: Jill M. Felicetti, RPR, CRR, CSR
Official Court Reporter
400 N. Miami Avenue, Suite 08S27
Miami, Florida 33128
jill_felicetti@flsd.uscourts.gov

1 Q. At any time from July of 2016 until September 30 of 2017,
2 Beach Blitz could have made an online payment for its BTR,
3 correct?

4 A. Correct. Yes, sir.

5 Q. If it had done that, then, when it's outstanding, its
6 outstanding violations were paid, the BTR would have issued?

7 A. We would have issued it, yes.

8 Q. That's the case even if the outstanding violations were
9 paid in October of 2017, correct?

10 A. Come again.

11 Q. The BTR would issue even if the outstanding violations were
12 not paid until early October?

13 A. Correct, yes.

14 Q. Because the payment was made during the fiscal year?

15 A. During the fiscal year, correct.

16 MR. ARANA: Thank you.

17 THE COURT: Sir, thank you. You may step down. You
18 are excused.

19 (Witness excused)

20 THE COURT: The defendants can call their next
21 witness, please.

22 HERNAN CARDENO,
23 having been first duly sworn on oath, was examined and
24 testified as follows:

25 THE WITNESS: Cardeno, C-A-R-D-E-N-O, Hernan,

1 H-E-R-N-A-N.

2 DIRECT EXAMINATION

3 BY MR. BYERS:

4 Q. Good afternoon. Could you please tell us what your
5 occupation is.

6 A. Director of the code compliance department for the City of
7 Miami Beach.

8 Q. And how long have you been at that position?

9 A. Since 2014.

10 Q. Does code enforcement issue BTRs?

11 A. No, they do not.

12 Q. Does code enforcement decide whether to issue a BTR?

13 A. No, they do not.

14 Q. And if you could go to the black book there. Those are
15 defendants' exhibits which already have been admitted by the
16 court.

17 Look to tab 2, which is Defendants' Exhibit 2.

18 Are you there?

19 A. Yes.

20 Q. Did you prepare an affidavit in this case?

21 A. Yes, I did.

22 Q. And is Exhibit 2 that affidavit?

23 A. Yes, it is.

24 Q. Is there anything you need to clarify or correct in that
25 affidavit?

1 A. Yes, there is. On page 2, paragraph 6.

2 Q. Can you explain what that clarification or correction is?

3 A. It says here: "Beach Blitz did not cease operations or
4 apply for or pay for a BTR license. Instead, Beach Blitz
5 appealed all three citations to the special master. On
6 September 28, 2017, the special master entered an agreed order
7 in which Beach Blitz admitted to the violations and agreed to
8 pay \$1,000 to resolve all three citations."

9 It's really just a matter of clarification. It still
10 is in appeal, but it wasn't a normal appeal through the regular
11 protocol or procedures. Meaning it didn't go through the
12 special master, clerk of the court. Rather, it was directly
13 with the city attorney's office, and then agreed order was
14 placed on the docket calendar for the special master to hear
15 and ratify.

16 Q. Is there anything else you need to correct or clarify in
17 that affidavit?

18 A. I don't believe so.

19 Q. If you could turn to Exhibit 10, which is also tab 10.

20 A. Yes.

21 Q. Do you recognize this document?

22 A. Yes, I do. This is a civil infraction code violation form.

23 Q. What is the violation for?

24 A. So this violation is dated December 21, 2016. The
25 violation is for selling alcoholic beverages outside of the

1 approved hours by ordinance.

2 Q. And was that a violation in the city code on December 21,
3 2016 to sell liquor before 10:00 a.m.?

4 A. Yes, it was.

5 Q. If we go to page 2 of that document. Is there a procedure
6 there for an appeal?

7 A. Yes. It says, "fines may be appealed within 20 days of
8 receipt of this notice."

9 Q. To your knowledge, did Beach Blitz appeal within 20 days of
10 that notice?

11 A. No.

12 Q. I want to move next to Exhibit 11.

13 A. Yes.

14 Q. Do you recognize this document?

15 A. Yes, I do.

16 Q. What is it?

17 A. This is another civil citation form issued by the code
18 compliance department for sales of alcohol outside of the
19 prescribed hours.

20 Q. Was that a violation of the city code on June 25, 2017?

21 A. Yes.

22 Q. And there's an appeal process listed on that citation as
23 well?

24 A. Yes, there is. Within ten days of receipt of the notice.

25 Q. Did Beach Blitz appeal, to your knowledge, within ten days

1 of the notice?

2 A. No.

3 Q. We now move to Exhibit 12.

4 Do you recognize this document?

5 A. Yes.

6 Q. What is it?

7 A. This is a notice of violation for failing to obtain a
8 business tax receipt.

9 Q. And to your knowledge, did Beach Blitz possess a business
10 tax receipt on June 25, 2017?

11 A. No, they did not.

12 Q. And the violation states that fines may be appealed within
13 ten days; is that correct?

14 A. Yes.

15 Q. And did Beach Blitz appeal within the ten days?

16 A. No, they did not.

17 Q. Now, I want to look at the notice of violation. Does this
18 notice of violation state "cease immediately until you obtain a
19 business tax receipt from the City of Miami Beach?"

20 A. Yes.

21 THE COURT: Where is that?

22 MR. BYERS: First line right underneath "reference,"
23 your Honor. Center of the page.

24 THE COURT: I see it. Okay.

25

1 BY MR. BYERS:

2 Q. When issuing these violations, does code enforcement expect
3 that the business will cease operations immediately and attempt
4 to obtain a BTR?

5 THE COURT: For the record, it says "cease." I
6 thought you said seize, as in take.

7 BY MR. BYERS:

8 Q. Cease operations immediately.

9 A. Yes, sir.

10 Q. I will ask that again.

11 When code enforcement issues these citations, does it
12 expect that the business will cease operations until it obtains
13 a BTR?

14 A. Yes.

15 Q. To your knowledge, did Beach Blitz cease operations?

16 A. No.

17 Q. To your knowledge, did Beach Blitz obtain a BTR for the
18 fiscal year of 2016/2017 at any time thereafter?

19 A. They did not.

20 Q. We now move to Exhibit 14, sir.

21 A. Yes.

22 Q. Do you recognize this document?

23 A. Yes. This is a notice of violation, issued on October 6,
24 2017, for failing to obtain a business tax receipt as required
25 by ordinance.

1 Q. And to your knowledge, on October 6, 2017 did Beach Blitz
2 have a BTR license?

3 A. No, they did not.

4 Q. Does this state they have an ability to appeal within ten
5 days of violation?

6 A. Yes.

7 Q. To your knowledge, did any appeal take place?

8 A. No, they did not.

9 Q. The notice again says, "cease immediately until you obtain
10 a business tax receipt from the City of Miami."

11 A. Yes.

12 Q. Did code enforcement close Beach Blitz's operations down on
13 October 6, 2017?

14 A. Yes.

15 Q. Why was it closed?

16 A. Well, because they still did not have a business tax
17 receipt to operate the business, and so they were closed until
18 they could obtain the business tax receipt.

19 Q. Did the City of Miami Beach code require that a business
20 have a BTR in order to operate in the City of Miami Beach?

21 A. Yes, they do.

22 MR. BYERS: No further questions.

23 THE COURT: Any cross?

24 Actually, I have a question for you. Maybe counsel
25 can help me out. Number 12. It says, "amendment, notice of

1 violation." Was there an initial violation that was
2 handwritten?

3 THE WITNESS: Usually, your Honor, there is a
4 handwritten violation that's written out in the field, and then
5 this is the computer-generated letter that is sent out.

6 THE COURT: This is mailed to the offender?

7 THE WITNESS: Sometimes it's mailed, sometimes it's
8 hand delivered.

9 THE COURT: Do you know what was the case with this
10 one?

11 THE WITNESS: I believe this one was hand delivered.

12 THE COURT: Why do you believe that?

13 THE WITNESS: Because it's signed by a manager at the
14 bottom.

15 THE COURT: That's a manager of the business; is that
16 what it is?

17 THE WITNESS: Yes.

18 THE COURT: I see. Okay. Good enough. Thanks.

19 CROSS-EXAMINATION

20 BY MR. HUDSON:

21 Q. Was it hand delivered by the two police officers, by the
22 code enforcement gentleman around 5:00 p.m. on October 6?

23 THE COURT: The one I was referring to was the one
24 issued on June 25. I think you are referring to Exhibit
25 14.

1 BY MR. HUDSON:

2 Q. Let me turn to Exhibit 14, please.

3 A. Yes, this one was also hand delivered.

4 Q. Okay. Was it hand delivered in this format or was there a
5 typical citation, handwritten citation?

6 A. It was this form itself, which is also signed in this
7 particular case by the business owner.

8 Q. This was prepared in advance by someone at the city?

9 A. Yes.

10 Q. Why did it happen this way as opposed to the standard
11 handwritten version?

12 A. They are both notices of violation. So if we don't have
13 anyone at the business that we contact, we send out the letter
14 certified return receipt requested. In this particular case
15 they went ahead and printed the notice of violation and hand
16 delivered it.

17 Q. Can you tell me from this document or any other knowledge
18 you have when this document was prepared?

19 A. I would say it was probably prepared on the same day,
20 October 6, 2017.

21 Q. But you don't know that for sure. Sir, do you know that
22 for sure?

23 A. I do not.

24 THE COURT: Do you mind if I ask some questions.

25 On this notice of violation and the other one it says

1 ten days, but on the handwritten one it says 20 days to appeal.
2 Is there a reason why there is a difference, or is there a
3 statute that allows for ten if it's a --

4 THE WITNESS: You know what, your Honor, it may be
5 because of the amendment to the ordinance for the appeal time.
6 So that may be why there is a difference.

7 THE COURT: What do you mean? An amendment to what
8 ordinance?

9 THE WITNESS: When the ordinance was amended where
10 business tax receipts could be appealed, the ten days' language
11 was included there.

12 THE COURT: Well, if we look at 12, the June 25 one,
13 that one says ten days. This is the amendment notice of
14 violation dated June 25th.

15 MR. BYERS: Your Honor, I can state that there was an
16 amendment in that time period between December and the next
17 citation in July -- I'm sorry, June 25, where it was moved from
18 20 days to ten days.

19 THE COURT: Where is the June 25 citation in here?

20 MR. BYERS: Exhibit 11.

21 THE COURT: Of which one?

22 MR. BYERS: Defendants' black book. And you will see
23 both citations on --

24 THE COURT: I see.

25 MR. BYERS: -- June 25. Both are ten days.

1 THE COURT: I got it. I was thinking 20 days. I
2 guess we had only discussed the old one. Okay. I got it. No
3 problem.

4 Go ahead, counsel. I'm sorry.

5 BY MR. HUDSON:

6 Q. Let's look at 14 again in the black book.

7 A. Yes.

8 Q. The business was open and operating at the time, correct?

9 A. Yes.

10 Q. So is there anywhere on this document where the person
11 receiving the violation was warned that their business could be
12 closed down immediately without further notice?

13 A. Well, it does say under the reference section "cease
14 immediately until you obtain a business tax receipt."

15 Q. But there's nothing that says if you don't cease
16 immediately we will come shut you down without further notice,
17 correct?

18 A. No.

19 Q. What was the authority of code enforcement and two Miami
20 Beach police officers that code enforcement relied on to shut
21 that gentleman's business down that afternoon at 5:00 p.m.?

22 A. That authority would be the City of Miami Beach Code of
23 Laws and Ordinances. I believe it's Section 102-377(e).

24 Q. I am going to read to you --

25 MR. HUDSON: May I read that statute, as I understand

1 it, into the record at the moment so that the witness can hear
2 it.

3 THE COURT: Yes. I know somebody filed a copy of the
4 code, I think.

5 MR. BYERS: It's Exhibit 16 of defendants' exhibits in
6 the black book. Go to page 35.

7 THE COURT: Page 35 of the document?

8 MR. BYERS: Of the document itself.

9 THE COURT: Page 35 of 69 you are talking about?

10 MR. BYERS: I am 36 of 69, your Honor.

11 BY MR. HUDSON:

12 Q. Sir, while we are all trying to find this, would your
13 department or you -- you are the head of the department, right?

14 A. Yes.

15 Q. Would you rely on your own interpretation of how to read
16 these statutes or would you have to go to the city attorney's
17 office on how to read these statutes if there was an issue?

18 A. The answer is it depends.

19 Q. Depends on what?

20 A. Well, there is several codes of laws and ordinances. Some
21 that we handle more frequently than others. So in those, in
22 those particular cases, we would confer with the city
23 attorney's office. On the more complex investigations, then of
24 course, yes, we would seek guidance from the city attorney's
25 office.

1 Q. So let me read this for the record. It's Section 102-377
2 of the Miami Beach Code of Ordinances, subsection (e), as in
3 Edward: "As an additional means of enforcement and
4 supplemental to the above, if any person carries on or conducts
5 any business for which a tax receipt is required by this
6 article without first obtaining such tax receipt, then the city
7 may prevent the business from operating until the required tax
8 receipt is obtained."

9 Do you see that?

10 A. Yes.

11 Q. So if you go back up to (b), as in boy, in the same
12 section, there are enforcement mechanisms for failure to pay a
13 BTR. But those mechanisms require notices and potential
14 hearings and so forth, correct?

15 A. Yes.

16 Q. In your view, can you just jump to (e) and rely on (e) or
17 do you have to go through the notices in (b) first?

18 MR. BYERS: Objection. First, this is a legal
19 argument.

20 THE COURT: Overruled.

21 A. So the way I am reading subsection (b), that applies to
22 violations of any other provision of this article, and so
23 because it's subsection (b), the only other section before it
24 of course is (a), which is a business who carries on operations
25 without first obtaining a business tax receipt.

1 Q. So let's go to (a). What are the procedural protections in
2 (a)?

3 MR. BYERS: Same objection. Legal conclusion.

4 THE COURT: Overruled.

5 A. Did you say procedural protections?

6 Q. Yes.

7 You have dealt with (a) before. I am sure you
8 probably deal with it on a daily basis, right?

9 A. Yes.

10 Q. So under (a), is it your understanding, or any of the
11 ordinances that are referenced in (a), aren't there notice
12 requirements before folks can be fined or bad things can happen
13 to them under the code?

14 A. Usually there is a notice of violation that will trigger
15 some type of process, whether that is a fine or some action
16 that the violator has to take to cure.

17 Q. Right. Typically the first step would be a notice. The
18 second step would be, sometimes alternative, that you can
19 either pay or you can elect a hearing or you can do that,
20 right? That's the way it normally works, correct?

21 A. Generally, yes.

22 Q. In this case what actions under either (a) or (b) did the
23 city take before it went to (e)?

24 A. In this particular case I believe the business had already
25 received at least one notice of violation for operating without

1 a business tax receipt.

2 Q. Turn to Exhibit 7 in the white binder. Do you see that?
3 Obviously you have seen that because the first thing your
4 counsel asked to you do was to clarify a statement in your
5 affidavit filed in this case under oath, right? So you have
6 seen this order?

7 A. Yes.

8 Q. And what was that clarification again?

9 A. The clarification was that under paragraph 6 of my
10 affidavit, that the way the word appeal is used is that it
11 wasn't the normal protocols, that it was appealed to the
12 special master, clerk of the court but, rather, they went to
13 the state, city attorney's office and then arrived at this
14 agreed order which was placed before the special master.

15 Q. So the City of Miami Beach, based on your testimony, agreed
16 to some sort of different process from the standard process,
17 right? Fair statement?

18 A. I wouldn't say it's standard because there is a lot of
19 stipulated agreements and agreed orders that are entered into
20 on violations. So --

21 Q. But it didn't go the normal way it would go, correct?

22 A. It didn't go the way through the special master, clerk's
23 office.

24 Q. But it did end up in a special master proceeding, didn't
25 it?

1 A. Yes.

2 Q. And the City of Miami Beach participated in that, didn't
3 it?

4 A. Yes.

5 Q. So the City of Miami Beach waived all of its other
6 procedural protections by doing the special process and
7 procedure, didn't it?

8 MR. BYERS: Objection, your Honor. Legal conclusion.

9 THE COURT: Sustained.

10 BY MR. HUDSON:

11 Q. Do know why the city attorney has a different path than the
12 normal path in this case?

13 MR. BYERS: I would suggest not to discuss any
14 attorney-client communications you may or may not have had with
15 the city attorney.

16 MR. HUDSON: I will amend the question to exclude any
17 conversations he's had with the city attorney or his defense
18 attorneys, your Honor.

19 THE COURT: All right.

20 A. So, your Honor, in my experience when we have stipulated
21 agreements or agreed orders, it's through a variety of
22 different forms that it comes to us. Sometimes, for example,
23 the special master will ask the violator to meet with the city
24 attorney's office and see if they can come to an agreement and
25 then later schedule it for another date with a stipulated or

1 agreed order. So there is different formats of how it could
2 have arrived at this agreed order.

3 BY MR. HUDSON:

4 Q. Have you had any conversations with Deputy City Attorney
5 Boxner prior to filing this lawsuit?

6 MR. BYERS: Objection.

7 THE COURT: I will allow you to answer whether or not
8 or require you to answer if you had conversations without
9 revealing the content of the conversation.

10 A. Regarding this lawsuit?

11 BY MR. HUDSON:

12 Q. No, about Beach Blitz 865(d) prior to the filing of this
13 lawsuit?

14 MR. BYERS: Same objection.

15 THE COURT: Overruled.

16 A. Yes.

17 BY MR. HUDSON:

18 Q. What were those conversations about?

19 MR. BYERS: Objection.

20 THE COURT: Sustained.

21 BY MR. HUDSON:

22 Q. When were those conversations?

23 MR. BYERS: Objection.

24 A. Probably --

25 THE COURT: That objection is overruled.

1 A. Probably around October 6th.

2 Q. That's the day that Beach Blitz was shut down, right?

3 A. Yes.

4 Q. Did the city attorney's office direct code enforcement to
5 shut Beach Blitz down?

6 MR. BYERS: Objection.

7 THE COURT: Sustained.

8 Your objection, by the way, is attorney-client
9 privilege, am I correct?

10 MR. BYERS: Yes, your Honor.

11 THE COURT: Okay. Sustained.

12 BY MR. HUDSON:

13 Q. See the blue piece of paper in front of you, blue and
14 white?

15 A. Yes.

16 Q. That's been marked as Plaintiff's 17. Take a look at that
17 and tell me, tell the court, if you can tell us what this is.

18 A. It looks to be some type of notes entered on our city
19 enterprise system.

20 Q. Read the first sentence that's contained in the white
21 rectangle in the center of the page.

22 MR. BYERS: Objection for lack of personal knowledge
23 of this document.

24 THE COURT: Overruled.

25 A. "As per city attorney's office, close BTR for nonpayment.

1 Entity cannot reapply for liquor sales and/or entertainment at
2 865 Collins Avenue."

3 Q. What system are we looking at, do you know? What's the
4 program that we are looking at here?

5 A. I believe this is the city's enterprise system, which is
6 known as EnerGov.

7 Q. Do you have access to this system?

8 A. I do have access to this system.

9 Q. Any idea what that note means?

10 A. No.

11 Q. Have you ever seen that note before?

12 A. No.

13 Q. Any idea why the city attorney would suggest that the BTR
14 be closed for nonpayment when it happened automatically?

15 MR. BYERS: Objection. Speculation.

16 THE COURT: Overruled.

17 BY MR. HUDSON:

18 Q. You can answer it, sir.

19 A. No.

20 Q. Had Beach Blitz applied for a new BTR for fiscal 17/18,
21 given this note in the system would it have been denied?

22 MR. BYERS: Objection. He testified that they don't
23 issue BTRs or deny them. We put on our other witness who was
24 from finance.

25 THE COURT: Overruled.

1 Answer, if you can.

2 A. Your Honor, just as a separation of checks and balances,
3 code compliance is really just the enforcement arm for several
4 departments. We don't do any permitting. That's different
5 entities.

6 Q. I understand. I asked if you know. If you don't, that's
7 fine.

8 Do you know?

9 A. No.

10 Q. How many other times do you recall the City of Miami Beach
11 sending police officers and code enforcement to a business for
12 shutting down for not having a BTR?

13 A. Several.

14 Q. How many a year?

15 A. It varies. I am not certain. More than four, more than
16 five.

17 Q. In a year. How many businesses are in Miami Beach?

18 A. Well --

19 Q. If you know.

20 A. I don't.

21 Q. That's fair.

22 THE COURT: And how many don't pay their BTR.

23 THE WITNESS: Well, licensed or unlicensed businesses,
24 I don't know. With the advent of the short-term rental
25 enforcements, you know, those are businesses that have no BTR

1 and those are shut down and vacated with police officers also.
2 So I couldn't be certain.

3 MR. HUDSON: Nothing further, your Honor.

4 THE COURT: Any redirect?

5 MR. BYERS: A couple.

6 REDIRECT EXAMINATION

7 BY MR. BYERS:

8 Q. To your knowledge, Beach Blitz was operating without a
9 license for more than 370 days; is that correct?

10 A. Yes.

11 Q. Opposing counsel talked to you about Section 102.377(e).
12 If you could turn to that again. That's Exhibit 16 and, again,
13 it's page 35 at the bottom and page 36 of 69 at the top.

14 A. Yes.

15 Q. It says that "As additional means of enforcement and
16 supplemental to the above, if a person carries on or conducts
17 any business for which a tax receipt is required by this
18 article without first obtaining such tax receipt, then the city
19 may prevent the business from operating until the required tax
20 receipt is obtained."

21 Did I read that correctly?

22 A. Yes.

23 Q. If a business is shut down for failure to have a BTR, does
24 code compliance tell them they need to go get a BTR?

25 A. Yes. That's the procedure. They usually tell the operator

1 or the violator how they can cure.

2 Q. And is that also stated in the notice of violations for
3 failure to have a BTR?

4 A. Yes.

5 Q. And if the said business were to obtain a BTR, they then
6 can open up and operate, correct?

7 A. Yes.

8 MR. BYERS: No further questions.

9 THE COURT: Thank you, sir. You can step down.

10 THE WITNESS: Thank you, your Honor.

11 THE COURT: This witness is excused, I take it. You
12 can go back to Miami Beach.

13 (Witness excused)

14 THE COURT: Defendants have any other witnesses?

15 MR. ARANA: No further witnesses.

16 THE COURT: Any further evidence?

17 MR. ARANA: No, your Honor.

18 MR. HUDSON: No.

19 THE COURT: Okay.

20 MR. ARANA: I'm sorry, your Honor. We have one
21 exhibit that we wanted to just introduce for the record.

22 THE COURT: What is that?

23 MR. ARANA: It is an ordinance.

24 THE COURT: Have you shown it to opposing counsel?

25 MR. ARANA: Yes.

1 MR. ARANA: No, your Honor.

2 THE COURT: I don't want 80 pages on this thing.

3 MR. HUDSON: No, I won't have time to do 80. We will
4 do ten good pages.

5 THE COURT: Thanks, everybody, for your hard work
6 today. I will try to get something out quickly.

7 Court is in recess.

8 Thank you, all. Have a good Thanksgiving.

9 MR. HUDSON: Thank you for giving us a quick hearing.
10 We appreciate it.

11 C E R T I F I C A T E
12

13 I hereby certify that the foregoing is an accurate
14 transcription of the proceedings in the above-entitled matter.
15
16

17 November 22, 2017 /s/ Jill M. Felicetti
18 Jill M. Felicetti, RPR, CRR, CSR
19 Official Court Reporter
20 400 N. Miami Avenue, Suite 08S27
21 Miami, Florida 33128
22 jill_felicetti@flsd.uscourts.gov
23
24
25

EXHIBIT 9

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 1:17-cv-23958-UU

BEACH BLITZ CO., a Florida
corporation d/b/a OCEAN 9 LIQUOR,
and d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,
a municipal corporation of the State of Florida,
PHILIP LEVINE, an individual,
JIMMY MORALES, an individual,
MICKEY STEINBERG, an individual,
RICKY ARRIOLA, an individual,
MICHAEL GREICO, an individual,
JOY MALAKOFF, an individual,
KRISTEN ROSEN GONZALEZ, an individual,
JOHN ELIZABETH ALEMAN, an individual,
RAUL J. AGUILA, an individual, and
ALEKSANDR BOKSNER, an individual,

Defendants.

_____ /

AFFIDAVIT OF HERNAN CARDENO

STATE OF FLORIDA)
) ss.
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, personally appeared Hernan Cardeno, who after being duly sworn, states:

1. My name is Hernan Cardeno and I am over the age of 21 and am competent to testify to the matters set forth in this Affidavit, which are based upon my personal knowledge,

including my knowledge of the business records of the City of Miami Beach, Florida (the “City”).

2. I currently serve as the Director of Code Compliance of the City of Miami Beach, and have held that position since 2014.

3. On December 21, 2016, a City police officer issued a citation to Beach Blitz Co. (“Beach Blitz”) for selling liquor before 10:00 a.m., which imposed a \$1,000 civil fine. *See* Exhibit 1 hereto.

4. On June 25, 2017, a City Code Enforcement officer issued a citation to Beach Blitz for selling liquor after 10:00 p.m., which imposed a \$1,000 civil fine. *See* Exhibit 2 hereto. At the time of issuance, the City Code Compliance officer discovered that Beach Blitz was operating without a Business Tax Receipt (“BTR license”).

5. Accordingly, the City Code Enforcement officer also issued to Beach Blitz a Notice of Violation of Section 102-377 for “failing to obtain a Business Tax Receipt,” which imposed a \$1,000 civil fine. *See* Exhibit 3 hereto. The Notice expressly directed Beach Blitz to “Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.”

6. Beach Blitz did not cease operations or apply for or pay for a BTR license. Instead, Beach Blitz appealed all three citations to the Special Master. On September 28, 2017, the Special Master entered an agreed order in which Beach Blitz admitted to the violations and agreed to pay \$1,000 to resolve all three citations. *See* Exhibit 4 hereto.

7. In early October 2017, Code Enforcement discovered that Beach Blitz had been operating without a BTR license for over a year. Code Enforcement conferred with the City Manager who determined that closing was the appropriate course of enforcement action.


8. On October 6, 2017, Code Enforcement again cited Beach Blitz for operating without a BTR license. *See* Exhibit 5 hereto. The Notice of Violation indicated it was Beach Blitz's second offense and again directed Beach Blitz to "Cease immediately until you obtain a business tax receipt." On the same date, Code Enforcement officials and two City police officers ordered Beach Blitz to cease operations for operating without a BTR license.

FURTHER AFFIANT SAYETH NAUGHT.



HERNAN CARDENO

Sworn to and subscribed before me this 13th
day of November, 2017.


Notary Public

My commission expires: 9-8-2020

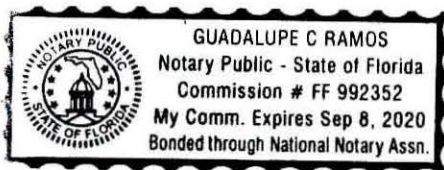


EXHIBIT 1

CITY OF MIAMI BEACH
CODE COMPLIANCE DEPARTMENT
555 17th Street
Miami Beach, FL 33139
PHONE (305) 673-7555 FAX (305) 673-7012

NOTICE OF CITY CODE VIOLATION AND FINE

SITE ADDRESS: 865 Collins Ave D
VIOLATION ISSUE DATE: 12/21/16 TIME: 8:39 AM
ISSUED TO: Beach Blitz CO
MAILING ADDRESS: 865 Collins Ave, D Miami Beach

DAY OF THE WEEK: SU M T W TH F S

INSPECTION OF THE ABOVE PREMISES ON THIS DATE
REVEALED YOU ARE IN VIOLATION OF SECTION:

6-3(a)(1)
OF THE MIAMI BEACH CITY CODE BY: CITY BILL FINE
Offering alcoholic beverages \$25.00
in a retail establishment for \$50.00
package sales between () \$75.00
the hours of midnight () \$100.00
and 10:00am on any () \$150.00
day of the week. () \$200.00
() \$250.00
You can comply by ceasing () \$350.00
immediately illegal alcoholic () \$500.00
beverage sales upon receipt () \$1000.00
of this notice and paying () \$
a civil fine of:

TOTAL FINES 1,000
COMMENTS: 1st offense
Tax# RL-10095692

CODE COMPLIANCE OFFICER (SIGN)

Ofc. Negrón #1020

CODE COMPLIANCE OFFICER (PRINT)

@miamibeachfl.gov

RECEIVED BY (Signature): [Signature]

RECEIVED BY (Print Name): NATASHA MURERWA

DATE: 12/21/16 TIME: 8:39 AM

IMPORTANT APPEAL AND ADA INFORMATION ON BACK

NOTICE OF CITY CODE VIOLATION AND FINE

FINE(S) MUST BE PAID WITHIN 72 HOURS:

**BY CHECK OR MONEY ORDER
MAKE CHECKS & MONEY ORDERS PAYABLE TO THE
CITY OF MIAMI BEACH.**

MAILED TO:

**CITY OF MIAMI BEACH
CODE COMPLIANCE DEPARTMENT
555 17TH STREET
MIAMI BEACH, FL. 33139**

CASH PAYMENTS ACCEPTED IN PERSON ONLY:

**AT MIAMI BEACH CITY HALL
1700 CONVENTION CENTER DRIVE, 1ST FLOOR
MIAMI BEACH, FL 33139**

APPEAL PROCESS:

**FINES MAY BE APPEALED WITHIN TWENTY (20) DAYS
OF RECEIPT OF THIS NOTICE BY A WRITTEN
REQUEST TO THE CLERK OF THE SPECIAL MASTER
AT THE ABOVE ADDRESS. A \$100.00 CHECK TO
COVER THE COST OF THE HEARING MUST BE
INCLUDED.**

**FAILURE TO PAY THE FINE OR APPEAL IN THE
MANNER INDICATED ABOVE SHALL CONSTITUTE A
WAIVER OF THE VIOLATOR'S RIGHT TO CONTEST
THE CITATION AND SHALL BE TREATED AS AN
ADMISSION OF THE VIOLATION.**

**THE CITY MAY INSTITUTE PROCEEDINGS IN A COURT
OF COMPETENT JURISDICTION TO COMPEL
PAYMENT OF CIVIL FINES.**

**THE CERTIFIED COPY OF THE ORDER IMPOSING CIVIL
FINES MAY BE RECORDED IN THE PUBLIC RECORDS
AND THEREAFTER SHALL CONSTITUTE A LIEN UPON
ANY REAL OR PERSONAL PROPERTY OWNED BY THE
VIOLATOR.**

ADA INFORMATION

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact 305 604-2489 or 1-800-955-8770 (voice), 305 673-7524 (fax), 305 673-7218 or 1-800-955-8771 (TTY), 1-877-955-5334 (STS), 1-877-955-8773 (Spanish) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

EXHIBIT 2

CASE #.

CC 2017-3102

CITY OF MIAMI BEACH
CODE COMPLIANCE DIVISION555 17th Street
Miami Beach, FL 33139
(305) 673-7555 FAX (305) 673-7012

NOTICE OF CITY CODE VIOLATION AND FINE

SITE ADDRESS:

865 Collins

VIOLATION ISSUE DATE:

6/25/17 TIME: 10:50

ISSUED TO:

BEACH BLTZ D/B/A Ocean 4

Mailing Address:

13441 NW 5th Ct
Plantation, FL 33325

DAY OF THE WEEK: (S) M T W T H F S

INSPECTION OF THE ABOVE PREMISES THIS DATE
REVEALED YOU ARE IN VIOLATION OF SECTION:

Sec 6-3(A)

OF THE MIAMI BEACH CITY CODE BY:

	FINE
Not withstanding Subsection	\$25.00
Vendors located in the	() \$50.00
MIXE mixed use	() \$75.00
entertainment district	() \$100.00
may make sale of	() \$150.00
alcohol only for on	() \$200.00
Premises Consumption	() \$250.00
between the hours of	() \$350.00
10:00 am and 10:00 pm	() \$500.00
	(X) \$1000.00
	()

TOTAL FINES

\$1,000

COMMENTS:

You could comply by cease
and desist of alcohol sales

CODE COMPLIANCE OFFICER (SIGN)

Enock VALERUS

CODE COMPLIANCE OFFICER (PRINT)

RECEIVED BY (Signature):

RECEIVED BY (Print Name):

Terin Blum

DATE:

6/25/17

TIME:

11:32 am

IMPORTANT APPEAL AND ADA INFORMATION ON BACK

IMPORTANT

APPEAL PROCESS & ADA ACCESS:

FINE(S) MUST BE PAID WITHIN 72 HOURS:

BY CHECK OR MONEY ORDER
IN PERSON, OR MAILED TO:CITY OF MIAMI BEACH
DIVISION OF CODE COMPLIANCE
505 17TH STREET
MIAMI BEACH, FL. 33139MAKE CHECKS & MONEY ORDERS PAYABLE TO THE
CITY OF MIAMI BEACH.

CASH PAYMENTS ACCEPTED IN PERSON ONLY:

AT MIAMI BEACH CITY HALL
1700 CONVENTION CENTER DRIVE, 1ST FLOOR
MIAMI BEACH, FL 33139FINES MAY BE APPEALED WITHIN TEN (10) DAYS OF
RECEIPT OF THIS NOTICE BY A WRITTEN REQUEST
TO THE CLERK OF THE SPECIAL MASTER AT THE
ABOVE ADDRESS. A \$100 CHECK TO COVER THE
COST OF THE HEARING MUST BE INCLUDED.FAILURE TO PAY THE FINE OR APPEAL IN THE
MANNER INDICATED ABOVE SHALL CONSTITUTE A
WAIVER OF THE VIOLATOR'S RIGHT TO CONTEST
THE CITATION AND SHALL BE TREATED AS AN
ADMISSION OF THE VIOLATION.THE CITY MAY INSTITUTE PROCEEDINGS IN A COURT
OR COMPETENT JURISDICTION TO COMPEL
PAYMENT OF CIVIL FINES.THE CERTIFIED COPY OF THE ORDER IMPOSING CIVIL
FINES MAY BE RECORDED IN THE PUBLIC RECORDS
AND THEREAFTER SHALL CONSTITUTE A LIEN UPON
ANY REAL OR PERSONAL PROPERTY OWNED BY THE
VIOLATOR.

ADA INFORMATION

TO REQUEST THIS MATERIAL IN ACCESSIBLE
FORMAT, SIGN LANGUAGE INTERPRETERS,
INFORMATION ON ACCESS FOR PERSONS WITH
DISABILITIES, AND/OR ANY ACCOMMODATION TO
REVIEW ANY DOCUMENT OR PARTICIPATE IN ANY
CITY-SPONSORED PROCEEDING, PLEASE CONTACT
305-604-2489 (VOICE), 305-673-7524 (FAX) OR 305-673-
7218 (TTY) FIVE DAYS IN ADVANCE TO INITIATE YOUR
REQUEST. TTY USERS MAY ALSO CALL 711 (FLORIDA
RELAY SERVICE).F:\CODES\ALL\FORMS\TICKETS AND VIOL\Form 1520-027 - City Code -
OPEN TICKET - FINES. - Rev. 03-11.doc

EXHIBIT 3

Code Compliance Department
 555 - 17th Street
 Miami Beach, Florida 33139
 Tele: 305.673.7555
 Fax: 305.673.7012

Amendment

Notice of Violation

Amendment

Violation Notice Date:	Date	6/25/2017	Time	11:30PM	Case Number	CC2017-03103
Address of Violation:	865 COLLINS AVE				Unit	D
Parcel Number:	0242032580001					
Legal Description:						
Violator Name:	BEACH BLITZ CO. % DOAR, DORON					
Mailing Address:	13441 NW 5TH CT	City and State	PLANTATION, FL	Zip Code	33325	

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Enock Valerus has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

Reference: Failure to obtain Business Tax Receipt

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense, which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

Fine(s) must be paid within 72 hours of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within Ten (10) days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

Issuing Code Compliance Officer	Name:	Enock Valerus	Badge #	740	Phone and Extension:	(305) 673-7555
	Email:	EnockValerus@miamibeachfl.gov				
Received By	Compliance Date	Received Date	Received Time			
Other	06/26/2017	06/25/2017	11:30PM			

Enock Valerus
 Manager
 6/26/17

ADA Information

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceeding, please contact 305.604.2489 (voice), 305.673.7524 (fax) or 305.673.7218 (TTY) five (5) days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Enock Valerus

EXHIBIT 4

IN AND BEFORE THE SPECIAL MASTER OF
THE CITY OF MIAMI BEACH

CODE VIOLATION CASE NOS. CC2016-01704
CC2017-03102
CC2017-03103

BEACH BLITZ, CO. c/o
DOAR, DORON,

Petitioner,

vs.

CITY OF MIAMI BEACH,

Respondent.

AGREED ORDER

This cause came before the Special Master of the City of Miami Beach, upon stipulation and agreement of Harold Rosen, Esquire, on behalf of Beach Blitz, Co. c/o Doar, Doron, 865 Collins Avenue, #D, Miami Beach (hereinafter referenced as the "Petitioner"), and Deputy City Attorney, Aleksandr Boksner, counsel to Respondent, the City of Miami Beach (hereinafter referenced as the "City"), regarding the above-styled appeal before the Special Master of certain violation(s) against the real property which is located at 865 Collins Avenue, #D, Miami Beach, Florida (the "Property") and the Code Enforcement matter referenced below in this Agreed Order. Respective counsel to City and the Petitioner having agreed to the terms of this Order,

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Petitioner, Beach Blitz Co. c/o Doron Doar admit to the legitimacy of the violation charged under Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103, and recognize that the violation was properly issued by the City of Miami Beach.

CC2017-03102
865 Collins
6-36-11 Alcohol

Beach Blitz, Co. and Doron Doar vs. City of Miami Beach
Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103
Agreed Order
Page 2 of 2

2. Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103 are hereby AFFIRMED. The Parties stipulate that a factual basis exists to establish this offense violation by the appropriate legal standard for this proceeding, and the City shall not need to establish the legitimacy.

3. The Petitioner shall be assessed a fine in the amount of One Thousand (\$1,000.00) Dollars, which shall be due within thirty (30) days of the entry of this Agreed Order.

DONE AND ORDERED by the Special Master of the City of Miami Beach, this 29th day of September, 2017.

CC
SPECIAL MASTER
As Special Master for the City of Miami Beach

Copies furnished to:

Aleksandr Boksner, First Assistant City Attorney at sandracaba@miamibeachfl.gov
Harold Rosen, 407 Lincoln Road, Suite 2A, Miami Beach, Florida 33139

EXHIBIT 5

Code Compliance Department

555 - 17th Street

Miami Beach, Florida 33139

Tele: 305.673.7555

Fax: 305.673.7012

Notice of Violation

Violation Notice Date:	Date 10/6/2017	Time 5:00 PM	Case Number CC2017-03686
Address of Violation:	865 COLLINS AVE		Unit D
Parcel Number:	0242032580040		
Legal Description:	THE SKYLARK CONDO UNIT D UNDIV 3.167% INT IN COMMON ELEMENTS OFF REC 20580-1711		
Violator Name:	Beach Blitz Co. DBA Ocean 9 Liquor C/O Doron Doar		
Mailing Address:	13441 NW 5th Court	City and State Ft. Lauderdale, FL	Zip Code 33325

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 2nd offense, and this Notice of Violation carries a fine (and other monetary charges) of \$500.00. Specifically, Code Compliance Officer Manny Bastos has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

Reference: Failing to obtain Business Tax Receipt. 2nd Offense.

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense, which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

Failure to comply will result in your prosecution before the City of Miami Beach Special Master. The Special Master may impose fines of up to \$1,000.00 per day for noncompliance and up to \$5,000.00 per day for recurring violations. Failure to pay imposed fines will lead to placement of liens upon the real and personal property of violators, which will be foreclosed upon or otherwise collected as provided by this code.

If you are aggrieved by the decision of the Code Inspector in issuing this notice of violation, you may appeal. To appeal the violations submit an application for appeal within Ten (10) days of receipt of this notice of violation to the appropriate board or the Office of the Special Master 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number

Issuing Code Compliance Officer	Name:	Manny Bastos	Badge #	704	Phone and Extension:	(305) 673-7555 ext 6803
	Email:	EmmanuelBastos@miamibeachfl.gov				
Received By	Compliance Date	10/06/2017	Received Date	Received Time		
				5:00 PM		

ADA Information

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceeding, please contact 305.604.2489 (voice), 305.673.7524 (fax) or 305.673.7218 (TTY) five (5) days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Doron Doar (Business owner)

x *[Signature]*

10/6/17 5:34pm

[Signature] BA

Manny Bastos

CC2017-03686
865 Collins
102-377 BTR

EXHIBIT 10

INVOICE (00065793)**BILLING CONTACT**

OCEAN 9 LIQUOR
BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR
865 Collins Ave, D
Miami Beach, FL 33139-5807

MIAMI BEACH

1700 Convention Center Drive
Miami Beach, Florida 33139
305.673.7000

INVOICE NUMBER	INVOICE DATE	INVOICE DUE DATE	INVOICE STATUS	INVOICE DESCRIPTION
00065793	06/27/2017	06/27/2017	Due	NONE

REFERENCE NUMBER	FEE NAME	TOTAL
RL-10005692	BTR Upcharge - Late Fee	\$570.96
	Mercantile Occupancies Classes A, B, and C	\$57.50
	Occ. Code 04007701 Fee	\$274.00
	Occ. Code 95003602 Fee	\$233.00
	Occ. Code 95007700 Fee	\$274.00
	Occ. Code 95012065 Fee	\$604.00
	Occ. Code 95240029 Fee	\$233.00
865 Collins Ave D Miami Beach, FL 33139-5807		SUB TOTAL \$2,246.46

TOTAL **\$2,246.46**

Any refund associated with this invoice will only be issued to the billing contact listed herein.

EXHIBIT 11

From: Caba, Sandra
Sent: Monday, September 25, 2017 11:12 AM
To: Satchell, Isabel
Cc: Boksner, Aleksandr
Subject: Agreed Order - 865 Collins Avenue, #D, Beach Blitz Co and Doar, Doron - CC2016-01704, CC2017-03102, CC2017-03103

Hi Isabel,

Also, the attached Agreed Order must be signed the earliest possible either on 9/27 or 9/28. If Harold Rosen passes by your office he will need a copy of the executed Agreed Order.

Thank you,
Sandra

MIAMIBEACH

Sandra Caba, *Legal Assistant to*
Aleksandr Boksner, Deputy City Attorney,
Gisela Nanson Torres, Senior Assistant City Attorney, and
Nicholas Kallergis, Assistant City Attorney I
OFFICE OF THE CITY ATTORNEY
1700 Convention Center Drive, 4th floor, Miami Beach, FL 33139
Tel: (305)673-7470 or (305)673-7000 ext. 6561 / Fax: (305)673-7002 /
SandraCaba@miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

Please note that Florida has a broad public records law and that any communication with the City of Miami Beach could be considered a public record. If you do not wish for your email address to become a public record, please do not send electronic communications to the City of Miami Beach.

From: Caba, Sandra
Sent: Monday, September 18, 2017 11:47 AM
To: Neves, Cynthia; Satchell, Isabel; Silva, Fernanda
Subject: RE: Agreed Order - 865 Collins Avenue, #D, Beach Blitz Co and Doar, Doron - CC2016-01704, CC2017-03102, CC2017-03103

Hi. Hope all is well.

Was this Agreed Order signed by the Special Master?

Please advise.

Thank you,
Sandra

MIAMIBEACH

Sandra Caba, *Legal Assistant to*
Aleksandr Boksner, Deputy City Attorney,
Gisela Nanson Torres, Senior Assistant City Attorney, and
Nicholas Kallergis, Assistant City Attorney I
OFFICE OF THE CITY ATTORNEY
1700 Convention Center Drive, 4th floor, Miami Beach, FL 33139
Tel: (305)673-7470 or (305)673-7000 ext. 6561 / Fax: (305)673-7002 /

SandraCaba@miamibeachfl.gov

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From: Caba, Sandra

Sent: Friday, September 01, 2017 2:31 PM

To: Neves, Cynthia; Satchell, Isabel; Silva, Fernanda

Cc: Boksner, Aleksandr

Subject: Agreed Order - 865 Collins Avenue, #D, Beach Blitz Co and Doar, Doron - CC2016-01704, CC2017-03102, CC2017-03103

Please see attached Agreed Order to be given to the first available Special Master to be executed. Kindly provide me with an executed copy

Thank you,
Sandra

MIAMIBEACH

Sandra Caba, *Legal Assistant to*
Aleksandr Boksner, Deputy City Attorney,
Gisela Nanson Torres, Senior Assistant City Attorney, and
Nicholas Kallergis, Assistant City Attorney I

OFFICE OF THE CITY ATTORNEY

1700 Convention Center Drive, 4th floor, Miami Beach, FL 33139

Tel: (305)673-7470 or (305)673-7000 ext. 6561 / Fax: (305)673-7002 /

SandraCaba@miamibeachfl.gov

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IN AND BEFORE THE SPECIAL MASTER OF
THE CITY OF MIAMI BEACH

CODE VIOLATION CASE NOS. CC2016-01704
CC2017-03102
CC2017-03103

BEACH BLITZ, CO. c/o
DOAR, DORON,

Petitioner,

vs.

CITY OF MIAMI BEACH,

Respondent.

AGREED ORDER

This cause came before the Special Master of the City of Miami Beach, upon stipulation and agreement of Harold Rosen, Esquire, on behalf of Beach Blitz, Co. c/o Doar, Doron, 865 Collins Avenue, #D, Miami Beach (hereinafter referenced as the "Petitioner"), and Deputy City Attorney, Aleksandr Boksner, counsel to Respondent, the City of Miami Beach (hereinafter referenced as the "City"), regarding the above-styled appeal before the Special Master of certain violation(s) against the real property which is located at 865 Collins Avenue, #D, Miami Beach, Florida (the "Property") and the Code Enforcement matter referenced below in this Agreed Order. Respective counsel to City and the Petitioner having agreed to the terms of this Order,

IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. Petitioner, Beach Blitz Co. c/o Doron Doar admit to the legitimacy of the violation charged under Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103, and recognize that the violation was properly issued by the City of Miami Beach.

2. Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103 are hereby AFFIRMED. The Parties stipulate that a factual basis exists to establish this offense violation by the appropriate legal standard for this proceeding, and the City shall not need to establish the legitimacy.

3. The Petitioner shall be assessed a fine in the amount of One Thousand (\$1,000.00) Dollars, which shall be due within thirty (30) days of the entry of this Agreed Order.

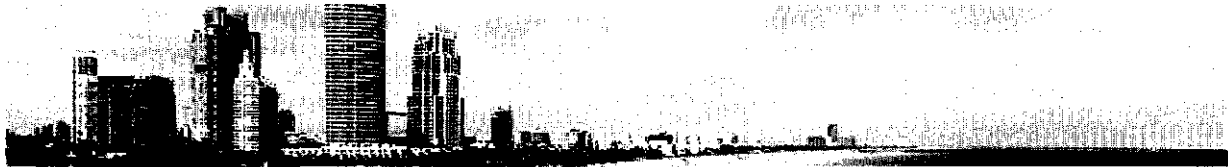



DONE AND ORDERED by the Special Master of the City of Miami Beach, this _____ day of _____, 2017.

SPECIAL MASTER
As Special Master for the City of Miami Beach

Copies furnished to:

Aleksandr Boksner, First Assistant City Attorney at sandracaba@miamibeachfl.gov
Harold Rosen, 407 Lincoln Road, Suite 2A, Miami Beach, Florida 33139

EXHIBIT 12

[Home](#)[Planning](#)[Permits](#)[Citizen Req.](#)[Code](#)[Business](#)[Other](#)Subscribe / Follow On:   Welcome Doron Doar! [[Log Off](#)] / [[Manage My Account](#)]

License Number: BTR003568-12-2017

[UnSubscribe](#)

Business Details

Company Name: BEACH BLITZ CO. D/B/A
OCEAN 9 LIQUOR

DBA Name: OCEAN 9 LIQUOR

Status: Active

License Details

License Type: Business License

District: CCC

Applied Date: 12/27/2017

Classification: BTR

Issued By:

Issued Date: None

Status: Applied

Account Number:

Expiration Date: None

Description: Retail sale of ... 

License Year: 2017

Last Renewal Date: None

Primary Address Details

Parcel:

Address: 865 COLLINS AVE

MIAMI BEACH, FL -
331396820

USA

Contacts

Type	Company	First Name	Last Name	Title
Owner	Beach Blitz	Doron	Doar	

1

Displaying items 1 - 1 of 1

Inspection Details

Details	Type	Status	Request Date	Sch
No records to display.				

1

Displaying items 0 - 0 of 0

License Fees

Fee Name	Status	Amount
No records to display.		

1

Displaying items 0 - 0 of 0

Business Types

Code Number	Code Name	Code Category
4007701	Liquor sales	Occupation

1

Displaying items 1 - 1 of 1

Attachment Details

File Name

No records to display.

Displaying items 0 - 0 of 0

ADDENDUM TO LEASE

This ADDENDUM TO LEASE is made this 4th Day of February, 2014 by and between PMJ HOLDING COMPANY, LLC a Florida limited liability company ("Landlord") and BEACH BLITZ CO. a Florida corporation ("Tenant").

WITNESSETH:

In reference to the Lease Agreement (the "Lease") dated January 26, 2004, for the premises located at 865 Collins Ave, Units D, F, and G, Miami Beach, FL 33139 (hereafter referred to as "Premises") and a Lease Renewal dated February 1, 2009 which expired on January 31, 2014.

Landlord and Tenant now desire to renew the Lease and make certain changes, all as more specifically set forth below.

NOW, THEREFORE, in consideration of the covenants of the parties herein and in the Lease, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **EFFECTIVE DATE OF ADDENDUM.** From and after the date of this Addendum to Lease (hereafter referred to as "Addendum"), the Lease shall be amended as set forth below.
2. **CAPITALIZED TERMS.** All capitalized terms in this Addendum shall have the same meanings as those in the Lease, unless specifically set forth otherwise herein.
3. **TERM.** This Lease shall be renewed as of February 1, 2014 (Lease Commencement Date) and shall expire on January 31, 2019.
4. **RENT.** The base rent beginning February 1, 2014 through April 30, 2014 shall be \$15,513.28, plus sales tax and operating expenses. Beginning May 1, 2014, the base rent will be increased to \$18,513.28, plus sales tax, followed by five percent (5%) increases on September 1, 2016 and February 1, 2018. Below is a complete rent schedule for the Premises for renewal term of the Lease:

Months	Increase	Base Rent	*Operating Expenses (aka CAM)	Sales Tax	Monthly Rent	Monthly Rent w/ Sales Tax
02/01/14 - 04/30/14	-----	\$15,513.28	\$1,942.67	\$1,085.93	\$18,541.88	\$19,839.81
05/01/14 - 01/31/15	-----	\$18,513.28	\$1,942.67	\$1,295.93	\$21,751.88	\$23,274.51
02/01/15 - 01/31/16	-----	\$18,513.28	\$1,942.67	\$1,295.93	\$21,751.88	\$23,274.51
02/01/16 - 08/31/16	-----	\$18,513.28	\$1,942.67	\$1,295.93	\$21,751.88	\$23,274.51
09/01/16 - 01/31/17	5%	\$19,438.94	\$1,942.67	\$1,360.73	\$22,742.34	\$24,334.30
02/01/17 - 01/31/18	-----	\$19,438.94	\$1,942.67	\$1,360.73	\$22,742.34	\$24,334.30
02/01/18 - 01/31/19	5%	\$20,410.89	\$1,942.67	\$1,428.76	\$23,782.32	\$25,447.09

**Operating expenses are subject to change*

5. **USE OF PREMISES.** Tenant is authorized to use the Premises as a retail store that's sells wine and spirits and other beverages, provided that the container size of other beverages are of a minimum size/volume of 1 liter. In addition, Tenant agrees to the following requirements of Landlord:
 - (a) The interior décor and design of Premises must meet Landlord's approval at all times. Interior décor and design includes and is not limited to shelving, displays, store front design, furniture, show cases, wall style and color, window treatments and signage. Any changes requested by Landlord in regard to design and décor, must begin within thirty (30) days from receipt of Landlord's notice.
 - (b) Tenant must store non-displayed inventory in a separate storage unit off the premises.

6. **OPTION TO RENEW LEASE.** At the expiration of the term stated in the Addendum to Lease, Tenant will have two (2) options to renew the Lease for an additional forty-eight (48) months each, provided that Tenant is not in default in the performance of this lease, beginning on the Lease Commencement Date.

(a) All of the terms and conditions of the Lease shall apply during the renewal term except: (i) the base rent during the option term will be the greater of market rent or a five percent (5%) increase of the previous base year's rent, plus sales tax and operating expenses, followed by a three percent (3%) annual increase on the anniversary of the Lease Commencement Date; (ii) any rent free periods, rental concessions, inducements, allowances and other similar items applicable during the initial lease term will not apply during any renewal term; (ii) Tenant will accept Premises in as is condition; (iii) Landlord shall have no obligation to perform any work in Premises. There shall be no further privilege of extension after the expiration of option period.

(b) This option must be agreed to by both Tenant and Landlord with an executed written agreement signed by both parties, not less than one hundred and eighty (180) days prior to the expiration of the initial lease term. If this agreement is not entered into within the stated time this option shall expire.

(c) Both Tenant and Landlord have the option to terminate the lease at any time and for any reason, provided that the terminating party gives the other a thirty (30) day written notice.

7. **TENANT AUTHORIZATION.** Tenant represents and warrants to Landlord that this Addendum has been validly authorized and is executed by an authorized officer of Tenant and that its terms are binding upon and enforceable against Tenant in accordance Herewith.

8. **TENANT REAFFIRMATION OF LEASE.** Tenant affirms that the Lease shall remain in full force and effect and only the specific terms stated in the Addendum to Lease shall override the Lease. This agreement shall be binding upon and shall inure to the benefit of the parties, their successors, assigns and personal representatives.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals the day and year written below.

LANDLORD: TENANT:

PMJ HOLDING COMPANY, LLC

BEACH BLITZ CO

A Florida Limited Liability Company

A Florida Corporation

By: Philip Saada, Manager

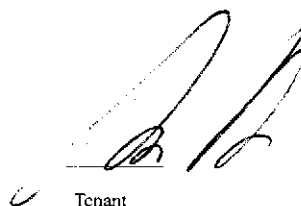
By: Doron Doar, President

Date: February , 2014

Date: February , 2014



Landlord



Tenant

[Florida Department of State](#)

DIVISION OF CORPORATIONS

[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Detail By Document Number](#) /

Detail by Entity Name

Florida Profit Corporation
BEACH BLITZ CO.

Filing Information

Document Number	P02000089651
FEI/EIN Number	02-0639801
Date Filed	08/16/2002
State	FL
Status	ACTIVE
Last Event	AMENDMENT
Event Date Filed	09/26/2016
Event Effective Date	NONE

Principal Address

13441 NW 5TH COURT
PLANTATION, FL 33325

Mailing Address

13441 NW 5TH COURT
PLANTATION, FL 33325

Registered Agent Name & Address

DOAR, DORON
13441 NW 5 COURT
FORT LAUDERDALE, FL 33325

Name Changed: 08/09/2012

Address Changed: 07/24/2003

Officer/Director Detail

Name & Address

Title PD

DOAR, DORON
13441 NW 5TH COURT
PLANTATION, FL 33325

Annual Reports

Report Year	Filed Date
2015	02/21/2015

2016 04/16/2016

2017 06/11/2017

Document Images

12/11/2017 -- Off/Dir Resignation	View image in PDF format
12/11/2017 -- Off/Dir Resignation	View image in PDF format
06/11/2017 -- ANNUAL REPORT	View image in PDF format
09/26/2016 -- Amendment	View image in PDF format
04/16/2016 -- ANNUAL REPORT	View image in PDF format
02/21/2015 -- ANNUAL REPORT	View image in PDF format
03/27/2014 -- ANNUAL REPORT	View image in PDF format
04/15/2013 -- ANNUAL REPORT	View image in PDF format
08/09/2012 -- Amendment	View image in PDF format
07/24/2012 -- REINSTATEMENT	View image in PDF format
01/17/2008 -- ANNUAL REPORT	View image in PDF format
05/17/2007 -- REINSTATEMENT	View image in PDF format
05/03/2004 -- ANNUAL REPORT	View image in PDF format
07/24/2003 -- ANNUAL REPORT	View image in PDF format
08/16/2002 -- Domestic Profit	View image in PDF format
08/16/2002 -- Off/Dir Resignation	View image in PDF format

Florida Department of State, Division of Corporations

[Florida Department of State](#)

DIVISION OF CORPORATIONS

[Previous on List](#)[Next on List](#)[Return to List](#)

Fictitious Name Search

[Filing History](#)

Submit

Fictitious Name Detail

Fictitious Name

OCEAN 9 LIQUOR

Filing Information

Registration Number G12000088585

Status ACTIVE

Filed Date 09/10/2012

Expiration Date 12/31/2022

Current Owners 1

County MIAMI-DADE

Total Pages 2

Events Filed 1

FEI/EIN Number NONE

Mailing Address

13441 NW 5TH COURT
PLANTATION, FL 33325

Owner Information

BEACH BLITZ CO.
13441 NW 5TH COURT
PLANTATION, FL 33325
FEI/EIN Number: 02-0639801
Document Number: P02000089651

Document Images

[09/10/2012 -- Fictitious Name Filing](#)

View image in PDF format

[12/05/2017 -- Fictitious Name Renewal Filing](#)

View image in PDF format

[Previous on List](#)[Next on List](#)[Return to List](#)

Fictitious Name Search

[Filing History](#)

Submit

Florida Department of State, Division of Corporations

3:11:35 PM 1/8/2018

Licensee Details

Licensee Information

Name: **BEACH BLITZ CO (Primary Name)**
OCEAN 9 LIQUOR (DBA Name)

Main Address: **13441 NW 5 CT**
PLANTATION Florida 33325

County: **BROWARD**

License Mailing:

LicenseLocation: **865 COLLINS AVENUE**
MIAMI BEACH FL 33139

County: **DADE**

License Information

License Type: **Retail Beverage**

Rank: **3PS**

License Number: **BEV2302831**

Status: **Current,Active**

Licensure Date: **09/07/2012**

Expires: **03/31/2018**

Special Qualifications	Qualification Effective
Invoice Sent	02/21/2013
No Sale	12/27/2017
Dual Beverage and Tobacco License	09/18/2015
Quota License	09/07/2012
Liens	
Over the Counter	09/18/2015

Alternate Names

[View Related License Information](#)

[View License Complaint](#)

2601 Blair Stone Road, Tallahassee FL 32399 :: Email: [Customer Contact Center](#) :: Customer Contact Center: 850.487.1395

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Under Florida law, email addresses are public records. If you do not want your email address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact the office by phone or by traditional mail. If you have any questions, please contact 850.487.1395. *Pursuant to Section 455.275(1), Florida Statutes, effective October 1, 2012, licensees licensed under Chapter 455, F.S. must provide the Department with an email address if they have one. The emails provided may be used for official communication with the licensee. However email addresses are public record. If you do not wish to supply a personal address, please provide the Department with an email address which can be made available to the public. Please see our Chapter 455 page to determine if you are affected by this change.

3:11:49 PM 1/8/2018

Licensee Details

Licensee Information

Name: **BEACH BLITZ CO (Primary Name)**
OCEAN 11 (DBA Name)

Main Address: **13441 NW 5TH COURT**
PLANTATION Florida 33325

County: **BROWARD**

License Mailing:

LicenseLocation: **1100 COLLINS AVENUE CU-7**
MIAMI BEACH FL 33139

County: **DADE**

License Information

License Type: **Retail Beverage**

Rank: **2APS**

License Number: **BEV2332190**

Status: **Current,Active**

Licensure Date: **06/13/2013**

Expires: **03/31/2018**

Special Qualifications	Qualification Effective
Invoice Sent	06/26/2013
Dual Beverage and Tobacco License	06/13/2013
Over the Counter	06/13/2013

Alternate Names

[View Related License Information](#)

[View License Complaint](#)

[2601 Blair Stone Road, Tallahassee FL 32399](#) :: Email: [Customer Contact Center](#) :: Customer Contact Center: 850.487.1395

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licensed under Chapter 455, F.S. must provide the Department with an email address if they have one. The emails provided may be used for official communication with the licensee. However email addresses are public record. If you do not wish to supply a personal address, please provide the Department with an email address which can be made available to the public. Please see our **Chapter 455** page to determine if you are affected by this change.

CITY OF MIAMI BEACH
CERTIFICATE OF USE, ANNUAL FIRE FEE, AND BUSINESS TAX RECEIPT

1700 Convention Center Drive
Miami Beach, Florida 33139-1819

TRADE NAME: BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR
IN CARE OF: DORAN DOAR
ADDRESS: 13441 NW 5 CT
PLANTATION, FL 33325

RECEIPT NUMBER: RL-10005692
Beginning: 10/01/2015
Expires: 09/30/2016
Parcel No: 0242032580040

A penalty is imposed for failure to keep this Business Tax Receipt exhibited conspicuously at your place of business.

A certificate of Use / Business Tax Receipt issued under this article does not waive or supersede other City laws, does not constitute City approval of a particular business activity and does not excuse the licensee from all other laws applicable to the licensee's business.

This Receipt may be transferred:

A. Within 30 days of a bonafide sale, otherwise a complete annual payment is due.

B. To another location within the City if proper approvals and the Receipt are obtained prior to the opening of the new location.

Additional Information

Storage Locations

TRADE ADDRESS: 865 COLLINS AVE, D

Code	Certificate of Use/Occupation
003602	AUTO TELLER MACHINES
007700	FOOD SALES
007701	LIQUOR SALES
012065	MERCHANTS SALES
240029	ENTERTAINMENT ESTABLISHMENT W/O DANCING

CERTIFICATE OF USE	300
SQUARE FOOTAGE	1800
RETAIL INVENTORY	\$ 15000
C_U # OF UNITS	1800
FOOD INVENTORY	\$ 500
LIQUOR INVENTORY	\$ 1000
# OF AUTOTELLER MACH	1
DANCE_ENT W_O ALCOH	Y

FROM: CITY OF MIAMI BEACH
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FL 33139-1819

PRESORTED
FIRST CLASS
U.S. POSTAGE
PAID
MIAMI BEACH, FL
PERMIT No 1525

BEACH BLITZ CO.
865 COLLINS AVE, D
MIAMI BEACH, FL 33139-5807



EXHIBIT 13

Planning Review

Workflow Details

Name: BTR/Planning Queue Description: BTR/Planning Queue

Status: Fail Action Priority Order: 0 Sort Order: 0

Received Date: 01/19/2018 Due Date: 01/19/2018 Complete Date: 01/19/2018

☒ Needs Resubmit ☒ Completed ☒ Auto Receive

Item Review Note

Drag a column header and drop it here to group by that column

Assigned User	Status	Assigned Date	Due Date	Completed Date	Priority	Not Required	Comments
Williams, Stever	Fail	01/19/2018	02/09/2018	01/19/2018	0	<input type="checkbox"/>	After further review Sect ...

EnerGov

After further review Section 142-544 of the City's Land development Regulations applies to the proposed use.

Sec. 142-544. - Prohibited uses.

The prohibited uses in the MXE mixed use entertainment district are package stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment. Additionally, entertainment uses shall be prohibited in package stores.

OK Cancel

Last changed by Service, EnerGov on Friday, January 19, 2018 5:17 PM

Business Tax Receipt

BTR003568-12-2017

Business Name: BEACH BLITZ CO. D/B/A OCEAN 9 LIQUOR DBA: OCEAN 9 LIQUOR

License Type: Business License District: CCC Applied Date: 12/27/2017

Classification: BTR Issued By: Issued Date: Enter date

Status: Denied Account Number: Expiration Date: Enter date

Description: Retail Alcoholic Beverage License

License Year: 2018

Parcels (30)

Drag a column header and drop it here to group by that column

Text
customer
Planning
After fu

EnerGov

After further review Section 142-544 of the City's Land development Regulations applies to the proposed use.

Sec. 142-544. - Prohibited uses.

The prohibited uses in the MXE mixed use entertainment district are package stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment. Additionally, entertainment uses shall be prohibited in package stores.

OK Cancel

12:30 PM
01:23 PM
17:33 PM

Last changed by Castor, Jeannie on Friday, January 19, 2018 5:18 PM

Markovich, Carlos

From: Markovich, Carlos
Sent: Tuesday, January 23, 2018 9:49 AM
To: 'Doron'
Subject: RE: Urgent!Reference #BTR003568-12-2017

Hi Mr. Doar,

Thank you for reaching out to our office. Per Section 142-544 (link below) the use that you have applied for is prohibited within your zoning district.

https://library.municode.com/fl/miami_beach/codes/code_of_ordinances?nodeId=SPBLADERE_CH142ZODIRE_ARTIIDIR_E_DIV13MXMIUSENDI_S142-544PRUS

I hope that helps clarify any confusion you may have.

Best,

MIAMIBEACH

Carlos A. Markovich

Senior Planner - Planning Department
1700 Convention Center Drive, Miami Beach, FL 33139
Tel: 305-673-7000 ext. 6539 / Fax: 305-673-7559 / www.miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

It's easy being Green! Please consider our environment before printing this email.

From: Doron [<mailto:ddoar@bellsouth.net>]
Sent: Monday, January 22, 2018 1:29 PM
To: Markovich, Carlos
Subject: Re: Urgent!Reference #BTR003568-12-2017

Mr markovich

On December 27 2017 I applied for BTR for a Liquor sale store for my company beach blitz co dba Ocean 9 Liquor. Your department- planning and zoning reviewed and investigated my request for 3 weeks and on 1/14/2018 approved my application and

EXHIBIT 14

**CITY OF MIAMI BEACH
BOARD OF ADJUSTMENT**

IN RE: Appeal of Administrative Decision to Board of Adjustment

APPLICANT: Beach Blitz Co., a Florida corporation d/b/a Ocean 9 Liquor

PROPERTY: 865 Collins Avenue, Unit D, Miami Beach, Florida 33139

FILE NO. ZBA18-0062

HEARING DATE: May 4, 2018 Board of Adjustment Meeting

**THE CITY’S RESPONSE IN OPPOSITION TO BEACH BLITZ’S
APPEAL FROM DENIAL OF BTR FOR 865 COLLINS AVENUE, UNIT D**

The City of Miami Beach and the City of Miami Beach Planning Department (the “City”) submit this Response in Opposition to Beach Blitz Co.’s appeal from a denial of its application for BTR.

INTRODUCTION

The Planning Department properly denied Beach Blitz’s request for a BTR to operate a package liquor store in the MXE District because package liquor stores are prohibited by Section 142-544 of the City’s Code of Ordinances:¹

Section 142-544. - Prohibited uses.

The prohibited uses in the MXE mixed use entertainment district are accessory outdoor bar counters, except as provided in this chapter; *package stores; and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment.*

¹ January 19, 2018 Planning Review and BTR screenshots; email from Carlos Markovich, Senior Planner, City of Miami Beach Planning Department, to Doron Doar, dated January 23, 2018, attached hereto as Composite Exhibit A. A copy of all exhibits are included in the Appendix of Exhibits submitted contemporaneously herewith.

Additionally, entertainment uses shall be prohibited in package stores.²

Beach Blitz's suggestion that it should qualify as a legal non-conforming use is not properly before the Board of Adjustment because the question was never presented to the Planning Department below. Even if it had been, the record is clear that Beach Blitz is not a legal non-conforming use because it (1) failed to continually operate the nonconforming use; and (2) failed to continually possess the necessary BTR license required for the operation of that use.

RELEVANT FACTS AND PROCEDURES

BTR Licenses

1. The City of Miami Beach Code of Ordinances requires every business operating in the City to pay a business tax "for the privilege of engaging in or managing any business, profession or occupation within the city's jurisdiction."³ Otherwise known as an occupational license fee, the Business Tax Receipt ("BTR license") is the "document that is issued by the city which bears the words 'Local Business Tax Receipt' and evidences that the person in whose name the document is issued has complied with the provisions of this article relating to business tax."⁴

2. Section 102-360 provides that a business tax receipt shall be valid for one year:

Each business tax receipt shall be valid for one year. Tax receipts shall be issued beginning October 1 of each year and shall expire on September 30 of the following year.⁵

² Sec. 142-544. All City Code provisions are attached hereto as Composite Exhibit B.

³ Sec. 102-356.

⁴ Sec. 102-356.

⁵ Sec. 102-360.

The Expiration of Beach Blitz's BTR

3. Beach Blitz owned and operated a package liquor store in the City's Mixed Use Environment ("MXE").⁶

4. Effective October 1, 2015, Beach Blitz applied for and renewed its BTR license for the 2015-2016 fiscal year.⁷

5. On or about July 1, 2016, the City mailed Beach Blitz a renewal notice, reminding the company to renew its BTR license for the 2016-2017 fiscal year by September 30, 2016.⁸ Beach Blitz did not pay its BTR license renewal fee by September 30, 2016.⁹

6. Beach Blitz's BTR license expired naturally on September 30, 2016 because Beach Blitz did not pay to renew it.¹⁰ Thus, as of October 1, 2016, Beach Blitz was operating unlawfully without a BTR license.¹¹

7. At no time during the 2016-2017 fiscal year, from October 1, 2016 through September 30, 2017, did Beach Blitz submit payment to the City to renew its BTR license.¹² While Beach Blitz contends it tried to pay for its BTR license several times, as the Magistrate's Report and Recommendation correctly concluded:

⁶ Affidavit of Manuel Marquez ("Marquez Aff.") ¶ 4, attached hereto as Exhibit C.

⁷ Testimony of Manuel Marquez at November 17, 2017 Hearing on Plaintiff's Emergency Motion for Preliminary Injunction ("Marquez Testimony") at 90-92, attached hereto as Exhibit D; Marquez Aff. ¶ 6 & Ex. 3, 2015-2016 Application and BTR.

⁸ Marquez Testimony at 93; Marquez Aff. ¶ 7 & Ex. 4, July 1, 2016 Invoice.

⁹ Marquez Testimony at 93-94.; Marquez Aff. ¶ 7 & Ex. 3, 2015-2016 Application and BTR.

¹⁰ Marquez Testimony at 92; Marquez Aff. ¶ 8; City Code Section 102-360.

¹¹ Marquez Testimony at 99-100; Marquez Aff. ¶ 8.

¹² Marquez Testimony at 99-100, 129; Marquez Aff. ¶ 9.

A business may pay the BTR renewal fee at City Hall, at the Customer Service Center, at the City's lockbox, at the City's satellite office in North Miami Beach or online. The online system does not prevent businesses from making an online payment for a BTR even if there are outstanding violations.

It is the City's practice to accept payments for BTRs. In instances where a business has outstanding fines or debts owed to the City, the City will withhold the BTR until the business pays the money owed. Once the debt is paid, the City will release the BTR. If a business has an outstanding code violation and that business presents evidence to the City of a proceeding before the Special Master challenging that code violation, the City will release the BTR. If however, a violation has been issued and the time to appeal that violation has passed, the debt becomes due to the City and the City expects the business to pay the debt owed before releasing the BTR. If a Special Master has adjudicated a business guilty and imposed a fine, that business would need to pay the fine before obtaining a BTR.¹³

The City Ordinances Regulating the Sale of Liquor in the City

8. On October 19, 2016, the City of Miami Beach adopted an ordinance which prohibits package liquor stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment within the MXE district (the "October 19 Ordinance").¹⁴ The Commission Memorandum supporting the Ordinance explained that: "Package sales of alcoholic beverages may encourage patrons to walk around with alcoholic beverages and consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks. The

¹³ Magistrate Judge John O'Sullivan's Report and Recommendation dated December 1, 2017 ("R&R") at 4, attached hereto as Exhibit E. In the absence of outstanding violations, a business owner may ordinarily obtain a new BTR license in the fiscal year following its expiration by paying the BTR renewal fee and applicable late fees. If a BTR license is not renewed during the fiscal year after its expiration, the BTR will be placed in "closed" status and that business will need to file an application to obtain a new BTR license. R&R at 4-5 ("If a business misses the time period for renewing its BTR, that business will need to file a new application to obtain another BTR."); Marquez Testimony at 100-01, 123.

¹⁴ October 19, 2016 Commission Memorandum and Ordinance, attached hereto as Exhibit F.

consumption of open containers of alcoholic beverages in public places may cause undesirable noise, as well as contribute to litter and noxious odors.”¹⁵

The Citations Issued to Beach Blitz

9. On December 21, 2016, a City Code Enforcement officer issued a citation to Beach Blitz for selling liquor before 10:00 a.m., which imposed a \$1,000 civil fine.¹⁶ The citation gave Beach Blitz 20 days to appeal the citation to the Special Master.¹⁷ Beach Blitz did not timely appeal the citation or pay it.¹⁸

10. On June 25, 2017, a City Code Enforcement officer issued a citation to Beach Blitz for selling liquor after 10:00 p.m., which imposed a \$1,000 civil fine.¹⁹ The citation

¹⁵ *Id.* at p. 926.

¹⁶ Testimony of Hernan Cardeno (“Cardeno Testimony”) at 131-32, attached hereto as Exhibit G; Affidavit of Hernan Cardeno (“Cardeno Aff.”) ¶ 3 & Ex. 1, Dec. 21, 2016 Notice of City Code Violation and Fine, attached hereto as Exhibit H.

¹⁷ Cardeno Testimony at 132 & Ex. 1, Dec. 21, 2016 Notice of City Code Violation and Fine.

¹⁸ Cardeno Testimony at 132. Beach Blitz’s Amended Letter of Intent claims that this citation was issued improperly because liquor sales at 8:39 a.m. were permitted after 8:30 a.m. on December 21, 2016. This is mistaken. Effective November 9, 2016, Section 6-3(a)(1) of the City Code was amended to prohibit package liquor sales in retail before 10:00 a.m. in the MXE District. *See* Ordinance No. 2016-4058, attached hereto as Exhibit I. The handwritten Notice of Code Violation properly noted that operations before 10:00 a.m. violated Section 6-3(a)(1) of the Code. Beach Blitz’s Amended Letter of Intent for Administrative Appeal dated February 20, 2018 (“Beach Blitz”) at Ex. A. The computer-generated Notice of Violation referenced the pre-amendment version of the Code because the system had not been updated to reflect the November 9 amendment. Beach Blitz Ex. B.

¹⁹ Cardeno Testimony at 132-33; Cardeno Aff. ¶ 4 & Ex. 2, June 25, 2017 Notice of City Code Violation and Fine.

provided Beach Blitz 10 days to appeal the citation to the Special Master.²⁰ Beach Blitz did not timely appeal the citation or pay it.²¹

11. At the time of issuance, the City Code Compliance officer discovered that Beach Blitz was operating without a BTR license.²² Accordingly, the City Code Enforcement officer also issued to Beach Blitz a Notice of Violation of Section 102-377 for “failing to obtain a Business Tax Receipt,” which imposed a \$1,000 civil fine. The Notice expressly directed Beach Blitz to “Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.”²³ The citation gave Beach Blitz 10 days to appeal the citation to the Special Master.²⁴ Beach Blitz did not timely appeal the citation or pay it.²⁵

Beach Blitz’s Failure to Pay for a New BTR

12. On June 27, 2017, Beach Blitz went to the City and obtained an invoice for \$2,246.46 for the cost of a new BTR license.²⁶ Beach Blitz could have obtained its BTR license that day if it had paid the invoice plus the \$1,000 six-month-old fine since the June 25, 2017

²⁰ Cardeno Testimony at 132-33; Cardeno Aff. Ex. 2, June 25, 2017 Notice of City Code Violation and Fine.

²¹ Cardeno Testimony at 132-33.

²² Cardeno Testimony at 133; Cardeno Aff. ¶ 4.

²³ Cardeno Testimony at 133-34; Cardeno Aff. Ex. 2, June 25, 2017 Notice of Violation re BTR; Cardeno Aff. ¶ 5.

²⁴ Cardeno Testimony at 133-34; Cardeno Aff. Ex. 2, June 25, 2017 Notice of Violation re BTR.

²⁵ Cardeno Testimony at 133-34.

²⁶ Marquez Testimony at 96-97; June 27, 2017 Invoice, attached hereto as Exhibit J.

citations were not yet due.²⁷ Beach Blitz chose not to pay for the BTR license or the six-month-old fine at that time because it was unhappy about the violation.²⁸

Beach Blitz's Untimely Challenge of Its Citation

13. Contrary to the representations made in the Amended Letter of Intent, Beach Blitz did not timely pay or appeal any of the violations to the Special Master as directed in the Notices of Violations.²⁹ Instead, Beach Blitz hired a lawyer to contact the City's attorney's office to challenge them.³⁰ Because the citations were not timely appealed, they were considered obligations due and owing to the City as of the date the time to appeal expired.³¹

14. On or about August 28, 2017, Beach Blitz reached an agreement regarding outstanding and unpaid fines with the City Attorney's Office to resolve all three citations for \$1,000.³² Contrary to the Beach Blitz's contention, there was no hearing before the Special

²⁷ Marquez Testimony at 97-98. R&R at 7 ("If Mr. Doar had paid this amount plus the \$1,000 fine for the outstanding December 21, 2016 violation, he would have received the BTR.").

²⁸ Testimony of Doron Doar ("Doar Testimony") at 71-72, 76-77, attached hereto as Exhibit K; R&R at 7 ("Mr. Doar did not believe the December 21, 2016 violation was merited. He wanted his "professional people" to deal with that violation and the other two outstanding violations.").

²⁹ Cardeno Testimony at 132-35; Doar Testimony at 63, 73.

³⁰ Doar Testimony at 29-30; R&R at 8 ("At the end of July 2017, Mr. Doar hired another attorney, Harold Rosen. Mr. Rosen was successful in obtaining an appeal. However, it was not an ordinary appeal process through the Special Master's office. It was initiated through the City Attorney's office and later, an agreed order was placed before the Special Master for a hearing and ratification.").

³¹ Marquez Testimony at 95.

³² R&R at 8.

Master on August 28, 2017.³³ Instead, on September 1, 2017, the City Attorney's Office sent a proposed agreed order with an email to the Special Master's attorney that stated as follows:³⁴

Please see attached Agreed Order to be given to the first available Special Master to be executed. Kindly provide me with an executed copy.

15. Due to the intervening Hurricane Irma, the Special Master's office did not execute the ordered until September 28, 2017.³⁵ On September 28, 2017, the Special Master entered an agreed order in which Beach Blitz admitted to the violations and agreed to pay \$1,000 to resolve all three citations.³⁶

16. On or about October 4, 2017, Beach Blitz paid a \$1,000 fine pursuant to the consent agreement with the City to resolve the three outstanding notices of violation.³⁷ Plaintiff did not submit a payment to the City for a BTR license on that date.³⁸

³³ See Doar Testimony at 31-32 (stating that on August 28, 2017 an agreement was made with the City, not the Special Master); Cardeno Testimony at 131 (Beach Blitz's appeal of the violations did not go through the normal Special Master protocol and procedures).

³⁴ See 9/01/17 Email to Special Master, attached hereto as Exhibit L.

³⁵ R&R at 8.

³⁶ Cardeno Aff. ¶ 6 & Ex. 4; R&R at 8 ("Under the terms of the Agreed Order, the plaintiff admitted to the violations being properly issued by the City and the plaintiff was assessed a fine of \$1,000. While the Agreed Order's \$1,000 fine resolved all outstanding debt due to the City, Ocean 9 would still need to pay an additional amount to obtain a BTR.").

³⁷ Marquez Aff. ¶ 12.

³⁸ *Id.* As noted above, while Plaintiff contends the City would not accept Plaintiff's BTR payment on September 28 and 29, 2017 because the computer system was not updated to reflect the payment, the City's policy is to accept BTR payments notwithstanding the existence of outstanding violations and the computer system does not prevent businesses from making an online payment for a BTR even if there are outstanding violations. Marquez Testimony at 94-97, 122-23, 128.

The Beach Blitz Closure

17. On October 6, 2017, the City issued Beach Blitz a citation for continuing to operate without a BTR license.³⁹ The citation again directed Beach Blitz to “Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.” The City also ordered Beach Blitz to close for operating without a BTR license.⁴⁰ The citation gave Beach Blitz 10 days to appeal the citation to the Special Master.⁴¹ Plaintiff neither appealed the citation nor paid it.⁴²

18. On October 11, 2017, over one year after Beach Blitz’s 2016-2017 BTR license expired, Beach Blitz submitted payment to the City for a BTR license.⁴³ Because Beach Blitz had not renewed its license in the fiscal year after its expiration, its license was placed in “closed” status, and a new BTR license application would need to be submitted pursuant to Section 102-371 of the City Code in order for the City to act on a request for a BTR license.⁴⁴

³⁹ Cardeno Testimony at 134-35; Cardeno Aff. ¶ 8 & Ex. 5, Oct. 6, 2017 Notice of Violation re BTR.

⁴⁰ Cardeno Testimony at 135; Cardeno Aff. ¶ 8 & Ex. 5, Oct. 6, 2017 Notice of Violation re BTR.

⁴¹ Cardeno Testimony at 135; Cardeno Aff. Ex. 5, Oct. 6, 2017 Notice of Violation re BTR.

⁴² Cardeno Testimony at 135.

⁴³ Marquez Aff. ¶ 13 & Ex. 6, Oct. 11, 2017 payment.

⁴⁴ Marquez Testimony at 99-100 (“Their time frame to renew and pay for the renewal has expired. In order for him to get a BTR for that location they would have to reapply.”); Marquez Aff. ¶ 13; R&R at 4-5.

Beach Blitz's Application for a New BTR

19. On or about December 27, 2017, nearly 15 months after its BTR expired for non-payment, Beach Blitz submitted an application for a new BTR.⁴⁵

20. On or about January 19, 2018, the Planning Department denied the application because package liquor stores have not been permitted in the MXE District since October 8, 2016. As the Planning Department explained to Beach Blitz, "Per Section 142-544 (link below) the use that you have applied for is prohibited within your zoning district."⁴⁶

ARGUMENT

I. THE PLANNING DEPARTMENT'S DECISION DENYING BEACH BLITZ'S BTR APPLICATION WAS ABSOLUTELY CORRECT

On December 27, 2017, Beach Blitz applied for a BTR license to operate a package store located at 865 Collins Avenue. On or about January 19, 2018, the BTR license application was denied because package stores are prohibited within that particular zoning district by Section 142-544 of the City of Miami Beach Code of Ordinances.⁴⁷ That Ordinance states:

Sec. 142-544. - Prohibited uses.

The prohibited uses in the MXE mixed use entertainment district are accessory outdoor bar counters, except as provided in this chapter; *package stores; and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment.* Additionally, entertainment uses shall be prohibited in package stores.

⁴⁵ See 12/27/17 BTR Application, attached hereto as Exhibit M.

⁴⁶ Exhibit A.

⁴⁷ Exhibit A.

Emphasis added.⁴⁸ Accordingly, because Beach Blitz was seeking a BTR for a use that is expressly prohibited within the zoning district, the Planning Department's decision denying the BTR application was undeniably correct and should be affirmed.

II. BEACH BLITZ'S SUGGESTION THAT IT SHOULD QUALIFY AS A LEGAL NONCONFORMING USE IS NOT PROPERLY BEFORE THE BOARD OF ADJUSTMENT IN THIS APPEAL

In Beach Blitz's Amended Letter of Intent for Administrative Appeal, it notes that:

Packaged liquor stores were legally permitted uses in the MXE District under the City's Zoning Code until the City changed its code on October 19, 2016. Upon the City changing its zoning code to prohibit packaged liquor stores in the MXE District, all existing package liquor stores operating in the MXE District, including Ocean 9, became legal non-conforming uses. Ocean 9 never voluntarily abandoned the use of its store as a package liquor store.

Amended Letter of Intent dated February 20, 2018 at 4. However, the question of whether Beach Blitz qualified as a legal nonconforming use is not properly before the Board of Adjustment in this appeal.⁴⁹

A nonconforming use generally refers to a use that does not comply with the City code. *See* Sec. 118-390(b), Code of Ordinances. However, a legally established nonconforming use is a use that, although impermissible under the current zoning restrictions, is allowed because the use conformed to the code at the time it was established. *See* Sec. 118-390(d)(3). To determine

⁴⁸ Exhibit B.

⁴⁹ Notably, Beach Blitz's original Letter of Intent, dated February 16, 2018, recognizes that it was not a legal nonconforming use. *See* Letter of Intent, dated 2/16/18. In particular, Beach Blitz's Letter notes that, because Beach Blitz did not have a BTR license, it was "not protected from the ramifications of Ordinance No. 2016-4047 [Code Sec. 142-544] which prohibits packages stores and package sales of alcoholic beverages" in the MXE district, thus rendering it "non-conforming under said Ordinance." Letter of Intent, dated 2/16/18, at 4, attached hereto as Exhibit N.

whether a particular use qualifies as a nonconforming use, a party is required to seek a determination from the Planning Department. Section 118-397 of the City Code provides:

- (a) *The planning and zoning director shall make a determination as to the existence of a nonconforming use* or building and in so doing may make use of affidavits and investigation in addition to the data presented on the city's building card, occupational license or any other official record of the city.
- (b) *The question as to whether a nonconforming use or building exists shall be a question of fact and in case of doubt or challenge raised to the determination made by the planning and zoning director, the question shall be decided by appeal to the board of adjustment pursuant to the requirements of section 118-9.* In making the determination the board may require certain improvements that are necessary to insure that the nonconforming use or building will not have a negative impact on the neighborhood.

Sec. 118-397, Code of Ordinances (emphasis added).

Beach Blitz never raised this issue with the Planning Department and never sought any determination as to whether it was a legally established nonconforming use following the expiration of its BTR license. Thus, there is no determination made by the planning and zoning director to be appealed to the Board of Adjustment. Accordingly, Beach Blitz has waived any argument that it is a legally established nonconforming use, and this issue is not properly before the Board in this appeal.

III. IN ANY EVENT, THE RECORD IS CLEAR THAT BEACH BLITZ IS NOT A LEGALLY ESTABLISHED NONCONFORMING USE

Even if Beach Blitz's status as a nonconforming use was before the Board of Adjustment, which it is not, the record is clear that Beach Blitz is not a legally established nonconforming use, and thus not exempt from the restrictions on package stores and package sales of alcoholic beverages in the MXE district.

City Code Section 118-394 makes clear that:

The planning director or designee shall evaluate the evidence of an intentional and voluntary abandonment of a nonconforming use and determine the status of the nonconforming use. ***In order for a nonconforming use to retain a nonconforming status, the evidence, collectively, shall at a minimum demonstrate at least one of the following:***

- (1) ***Continual operation of the use;***
- (2) ***Continual possession of any necessary and valid state and local permits, building permits, licenses, or active/pending application(s) for approval related to prolonging the existence of the use.***

Sec. 118-394(c), Code of Ordinances (emphasis added).

In this case, Beach Blitz did not retain any alleged nonconforming use status because it: (1) failed to continually operate the nonconforming use; and (2) failed to continually possess the necessary BTR license required for the operation of that use. Beach Blitz conceded as much in its original Letter of Intent.⁵⁰ In particular, Beach Blitz failed to possess a valid BTR license after it allowed the BTR to expire on September 30, 2016, and failed to continually operate the nonconforming use as it was ordered to close for operating without a BTR license for over a year.⁵¹ The Planning Department's denial of Beach Blitz's BTR license application was correct and should be affirmed.

⁵⁰ Letter of Intent, dated 2/19/18, at 4.

⁵¹ Beach Blitz contends that it entered the 2017-2018 fiscal year without a BTR license because the City failed to adhere to its policies and procedures. Am. Letter of Intent at 4. However, nothing could be further from the truth. The undisputed record demonstrates that Beach Blitz's BTR expired naturally on September 30, 2016 for failure to renew it, and Beach Blitz was cited nine months later for operating without a BTR license. At no point during the 2016-2017 fiscal year did Beach Blitz submit payment to the City for its BTR, pay its outstanding violations, timely appeal them, or otherwise provide evidence to the City that it was negotiating the violations with the City Attorney's office. Thus, the reason Beach Blitz entered the 2017-2018 fiscal year without a BTR license was because it – not the City – failed to follow
(footnote continued on next page)

CONCLUSION

For the foregoing reasons, Beach Blitz's appeal should be denied.

Dated: March 21, 2018

Respectfully submitted,



Richard J. Ovelmen (FBN 284904)
rovelmen@carltonfields.com
Enrique D. Arana (FBN 189316)
earana@carltonfields.com
Todd M. Fuller (FBN 666211)
tfuller@carltonfields.com
Scott E. Byers (FBN 68372)
sbyers@carltonfields.com
CARLTON FIELDS JORDEN BURT, P.A.
Miami Tower, Suite 4200
100 S.E. Second Street
Miami, Florida 33131
Telephone: (305) 530-0050
Facsimile: (305) 530-0055

*Attorneys for City of Miami Beach and
City of Miami Beach Planning Department*

applicable procedures for maintaining its BTR license. Beach Blitz has only itself to blame for the denial of its BTR application.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of March, 2018, 14 copies of the foregoing Response and Appendix were hand delivered to:

City of Miami Beach
Planning Department
2nd Floor
1700 Convention Center Drive
Miami Beach, Florida 33139

I also certify that a copy of the foregoing Response and Appendix were served by electronic mail and U.S. Mail on the following:

Phillip M. Hudson III, Esq.
phil.hudson@saul.com
Hilda Piloto, Esq.
hilda.piloto@saul.com
Saul Ewing Arnstein & Lehr LLP
Suite 3600
200 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 374-3330
Facsimile: (305) 374-4744



Enrique D. Arana

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EXHIBIT 15

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CITY OF MIAMI BEACH
BOARD OF ADJUSTMENT MEETING

May 4, 2018

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 For the Appellant:</p> <p>4 PHILLIP HUDSON, III, ESQUIRE</p> <p>5 MIGUEL DIAZ DE LA PORTILLA, ESQUIRE</p> <p>6 Saul Ewing Arnstein & Lehr, LLP</p> <p>7 200 South Biscayne Boulevard, Suite 3600</p> <p>8 Miami, Florida 33131</p> <p>9</p> <p>10 For the City of Miami Beach:</p> <p>11 ENRIQUE ARANA, ESQUIRE</p> <p>12 EVE BOUTSIS, ESQUIRE</p> <p>13 GARY PAPPAS, ESQUIRE</p> <p>14 SCOTT BYERS, ESQUIRE</p> <p>15 Carlton Fields Jorden Burt, P.A.</p> <p>16 100 Southeast 2nd Street, Suite 4200</p> <p>17 Miami, Florida 33131</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX</p> <p>2 Witness Direct Cross</p> <p>3 THOMAS MOONEY</p> <p>4 By Mr. Arana: 79</p> <p>5 MANNY MARQUEZ</p> <p>6 By Mr. Arana: 86</p> <p>7 By Mr. Hudson: 92</p> <p>8 SASHA GONZALEZ</p> <p>9 By Mr. Byers: 102</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 ALSO PRESENT:</p> <p>2 THOMAS MOONEY, PLANNING DIRECTOR</p> <p>3 BARTON GOLDBERG, BOARD MEMBER</p> <p>4 NOAH FOX, BOARD MEMBER</p> <p>5 RICHARD SEGAL, BOARD MEMBER</p> <p>6 RICHARD BARON, BOARD MEMBER</p> <p>7 JAMES ORLOWSKY</p> <p>8 ELSA URQUIZA</p> <p>9 DORON DOAR</p> <p>10 MR. HOWARD</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 THEREUPON:</p> <p>2 UNIDENTIFIED MALE SPEAKER: Ladies and</p> <p>3 gentlemen, we have our fifth member. So, we now</p> <p>4 have a quorum. We have approved the minutes.</p> <p>5 The City Attorney is going to -- oh, hello,</p> <p>6 Michael.</p> <p>7 MICHAEL: Hello.</p> <p>8 UNIDENTIFIED MALE SPEAKER: Good morning.</p> <p>9 The City Attorney will brief us on the</p> <p>10 procedures for today.</p> <p>11 MS. GONZALEZ: Yes, of course. Good</p> <p>12 morning, everyone, and it's great to be here</p> <p>13 with you today. We do have quorum. One board</p> <p>14 member is absent, and we have one vacant seat.</p> <p>15 So, today, we have an appeal, and the</p> <p>16 appeals to the Board of Adjustment are de novo,</p> <p>17 which means, and I'm going to actually read the</p> <p>18 language to you. Bear with me.</p> <p>19 Okay. I just lost the language. One</p> <p>20 second. Okay. The standard view. The appeal</p> <p>21 shall be de novo, meaning that the party</p> <p>22 appealing the administrative decision bears the</p> <p>23 burden of going forward with evidence and the</p> <p>24 persuasion at the Board of Adjustment</p> <p>25 Administrative Appeal Proceeding, and to that</p>

<p style="text-align: right;">Page 6</p> <p>1 end, the board shall have all the powers of the 2 office for which the appeal is taken. 3 Witnesses and testimony may be considered 4 during the hearing. The hearing is considered 5 quasi judicial in nature, and a public hearing 6 is required. So, this has been properly noticed 7 as a public hearing, and all the parties are 8 here. 9 I will be swearing in the parties. There 10 is counsel for the Planning Department and the 11 City, as well as the applicant -- sorry. Let me 12 get the names right. 865 Collins, and it would 13 be Doron Doar (phonetic). Did I pronounce that 14 right? PMJ Holding Company, LLC. 15 So, here, before we go on, let just say 16 this. Like anything that's quasi judicial, 17 there will be the two sides in this appeal. So, 18 you'll have the City's position, as well as the 19 applicant's position for the appeal, and the 20 applicant will go first. 21 I'll call it the Appellant, will go first, 22 and they can present their testimony. You have 23 all of the pleadings that they have filed, 24 which was the original petition, the City's 25 response, and the Appellant's reply brief, and</p>	<p style="text-align: right;">Page 8</p> <p>1 get everybody sworn in. 2 (Thereupon, the parties were duly sworn in 3 accordance with the law.) 4 MS. GONZALEZ: Now, one last thing. Unlike 5 a courtroom where you have separate daises and 6 a witness stand, the best way to do this is 7 there are two stations there. Let's say one for 8 the Appellant; one for the City's position, and 9 where the coffee pot is, the lower dais, we can 10 put the witness with the handheld microphone, 11 so that any questions can be asked from that 12 location if that's acceptable to you all. 13 UNIDENTIFIED MALE SPEAKER: Make sure with 14 your approval. I only listen to my attorney. 15 MS. GONZALEZ: Okay. So, the reality is 16 this: you're listening to the arguments. There 17 are five votes that are needed to reverse these 18 City's decision on this application. So, it 19 would need all five of your votes to reverse 20 the action of the City. 21 And, again, it's a de novo, which means 22 you hear it from the beginning. It's like a 23 mini trial, and you hear it, and take the 24 testimony. You're allowed to ask questions, and 25 then, deliberate and make a decision.</p>
<p style="text-align: right;">Page 7</p> <p>1 all of the documents that they have used to 2 support their position. 3 And, like with any quasi judicial 4 proceeding, there should be no ex parte 5 communications, meaning any communications with 6 either of you -- any of you from either side. 7 So, if there have been, we need to do those 8 disclosures now, so that there's due process. 9 Have you been contacted by either side on 10 this matter? 11 UNIDENTIFIED MALE SPEAKER: No, I said 12 hello to them. 13 MS. GONZALEZ: That's okay. 14 UNIDENTIFIED MALE SPEAKER: And asked them 15 to have patience. 16 MS. GONZALEZ: And, the one thing I -- you 17 know, we always read into the record is the 18 notice regarding lobbyist registration, but I 19 believe all the -- the two parties here have 20 registered. So, I don't have to go through 21 that, and I don't see anyone else in any other 22 matters before us today. 23 So, I don't have to worry about that 24 registration. Okay. So, I'm going to let the 25 Appellant introduce themselves, right after I</p>	<p style="text-align: right;">Page 9</p> <p>1 UNIDENTIFIED MALE SPEAKER: Let me just go 2 back a minute. It requires five votes to 3 reverse the City? 4 MS. GONZALEZ: Yes. 5 UNIDENTIFIED MALE SPEAKER: Okay. 6 MS. GONZALEZ: All right? 7 UNIDENTIFIED MALE SPEAKER: Which are the 8 five votes we have here today. 9 MS. GONZALEZ: Yes. I've advised the 10 Appellants, and I've asked if they would like 11 to continue, so that perhaps we can get the 12 last member of the board and/or at least have 13 six members, but they decided that they'd like 14 to proceed today. 15 UNIDENTIFIED MALE SPEAKER: I don't blame 16 them with all these pounds of stuff here. Might 17 as well try. 18 MS. GONZALEZ: All right. So, would you 19 like to proceed? 20 UNIDENTIFIED MALE SPEAKER: Go ahead. 21 MR. DIAZ DE LA PORTILLA: Thank you, and 22 good morning, Mr. Chairman, board members. My 23 name is Miguel Diaz De La Portilla. I'm an 24 attorney with Saul Ewing at 200 South Biscayne 25 Boulevard in Miami, Florida, and I'm here on</p>

<p style="text-align: right;">Page 10</p> <p>1 behalf of the Appellants.</p> <p>2 I'd like to first tell the board that</p> <p>3 Doron Doar is on his way here. He was delayed,</p> <p>4 because his infant son was having surgery this</p> <p>5 morning, but he should be here shortly, and</p> <p>6 I'll ask the City Attorney to swear him in at</p> <p>7 that time, because he will be giving testimony.</p> <p>8 I'm here joined by Phil Hudson, co-counsel</p> <p>9 on this matter. Phil is also a partner at Saul</p> <p>10 Ewing Arnstein & Lehr. He's one of my partners</p> <p>11 at 200 South Biscayne Boulevard, and I'm going</p> <p>12 to tell you what we're going to demonstrate to</p> <p>13 you today and what we're going to prove to you</p> <p>14 today through the documents that you have</p> <p>15 before you and the testimony that you'll hear.</p> <p>16 We're going to show you that on October</p> <p>17 19, 2016, the City of Miami Beach decided to</p> <p>18 change its zoning code, and in changing its</p> <p>19 zoning code, it prohibited packaged liquor</p> <p>20 stores in the MXC District.</p> <p>21 There were four operating package liquor</p> <p>22 stores in the MXC District at the time on</p> <p>23 October 19, 2016. One of them was a store known</p> <p>24 as Ocean 9 owned by Beach Blitz, our client.</p> <p>25 Beach Blitz, Ocean 9, had been operating</p>	<p style="text-align: right;">Page 12</p> <p>1 packaged liquor stores.</p> <p>2 There were several changes to the code to</p> <p>3 limit hours of operation. Four or five changes</p> <p>4 were made by the City and its code, limiting</p> <p>5 the hours of operation. On December 21, 2016,</p> <p>6 Ocean 9 was cited for operating at 8:39, and</p> <p>7 the citations in the record will show that</p> <p>8 first, they were told well, the hours of</p> <p>9 operation are from 10:00 to 8:00 p.m., but</p> <p>10 then, the second citation says no, the hours of</p> <p>11 operation are from 10:00 to 10:00.</p> <p>12 Nonetheless, there was a citation issued</p> <p>13 by Code Enforcement on the middle of Hanukah</p> <p>14 and Yom Kippur. I'm sorry, Hanukah and</p> <p>15 Christmas to Ocean 9.</p> <p>16 That citation had a \$1,000 fine. Fast</p> <p>17 forward to the summer of 2017, June 25, 2017.</p> <p>18 The City comes out again. Code Enforcement</p> <p>19 comes out again and cites Ocean 9 on another</p> <p>20 one of these hours of operation violation.</p> <p>21 Again, remember, you had multiple changes</p> <p>22 to the hours of operation. That ordinance came</p> <p>23 before the City Commission several times for</p> <p>24 changes during that nine month period, and for</p> <p>25 failure for the first time to have a BTR, a</p>
<p style="text-align: right;">Page 11</p> <p>1 legally at 865 Collins Avenue in Miami Beach</p> <p>2 since 2011, continuously since 2011.</p> <p>3 The City changed its code on October 19,</p> <p>4 2016, prohibiting stores making and rendering</p> <p>5 the four existing liquor stores, packaged</p> <p>6 liquor stores, including Ocean 9, legal</p> <p>7 non-conforming stores, legal non-conforming</p> <p>8 uses.</p> <p>9 What that means is, is that if a use is</p> <p>10 allowed under the zoning code, and then, the</p> <p>11 City changes (unintelligible) and says, hey, we</p> <p>12 don't want to allow this use anymore, those</p> <p>13 uses that are existing at the time are</p> <p>14 grandfathered in. They get to continue as legal</p> <p>15 non-conforming uses.</p> <p>16 So, the City's action on October 19, 2016</p> <p>17 rendered Ocean 9 a legal non-conforming use at</p> <p>18 865 Collins Avenue, and the other three</p> <p>19 packaged liquor stores in the MXC District, as</p> <p>20 well.</p> <p>21 The City, at that time, was wanting to</p> <p>22 shut down packaged liquor stores. There was a</p> <p>23 campaign and a referendum that all of us who</p> <p>24 follow the news, and those of you in the city,</p> <p>25 were aware to limit hours of operation for</p>	<p style="text-align: right;">Page 13</p> <p>1 business tax receipt.</p> <p>2 It used to be called an occupational</p> <p>3 license back in the old days. So, Doron Doar</p> <p>4 and Ocean 9 decided to hire Harold Rosen and</p> <p>5 Michelle Mallick to help them out with the</p> <p>6 three code violations, each carrying a \$1,000</p> <p>7 fine, and with the issuance of a BTR to obtain</p> <p>8 a BTR.</p> <p>9 They were able, Ocean 9, to obtain a</p> <p>10 hearing or obtain the jurisdiction, if you</p> <p>11 will, of the Special Master, and on August 29th</p> <p>12 of 2017, the Special Master and our clients</p> <p>13 entered into -- our client and the City entered</p> <p>14 an agreed order.</p> <p>15 The Special Master accepted it, allowing</p> <p>16 to settle all three violations for \$1,000 and</p> <p>17 giving a time period to pay that. On that very</p> <p>18 day, on August 28th, the date that the three</p> <p>19 violations were settled, Ocean 9 gave a check</p> <p>20 for \$1,000, a total settlement for the three</p> <p>21 violations, to an Assistant City Attorney,</p> <p>22 Mr. Boxner (phonetic).</p> <p>23 MS. GONZALEZ: Technically, he's the Chief</p> <p>24 Deputy now.</p> <p>25 MR. DIAZ DE LA PORTILLA: The Chief Deputy</p>

<p style="text-align: right;">Page 14</p> <p>1 took the check on the 28th and for some reason, 2 that check was not cashed by the City until 3 October 18th of 2017, a couple of months later. 4 It took the Special Master about a month, 5 exactly a month, until September 28, 2017 to 6 issue a written order, memorializing the 7 settlement of the three citations. That very 8 day, on the 28th, it was either on the 28th or 9 the 29th, and Yom Kippur was on the 29th, Doron 10 Doar came down to the City's Finance Department 11 to get his BTR, his business tax receipt. 12 He was told by the clerk in the Finance 13 Department we can't take your money. There are 14 violations showing in here. Doron Doar tried to 15 explain look, I've settled the violations. 16 I've settled this case. I'm here to pay. 17 They wouldn't take his money. Multiple times 18 between September 28th and October 4th, either 19 Doron Doar or Mr. Rosen, who was working for 20 him at the time, attempted to pay and get the 21 BTR for fiscal year 2016/2017. 22 Multiple times, they were prevented from 23 getting this BTR, and then, the most important 24 date here, October 6th. On October 6th of 2017, 25 two Code Enforcement officers, two Miami Beach</p>	<p style="text-align: right;">Page 16</p> <p>1 amortize his investments and phase out over a 2 period of time. There was no attrition here. 3 And, then, the third way that the law 4 tells us you can abandon the legal 5 non-conforming use is -- that you can lose a 6 legal non-conforming use is through 7 abandonment. Voluntary, intentional 8 abandonment. 9 You simply say I don't want to do this, 10 and you walk away and close your doors 11 voluntarily. Now, the City has taken the 12 position in its briefs and in its documents and 13 throughout this whole period that Ocean 9 did 14 not continuously operate as a business, and 15 that it failed to continually possess a BTR, 16 and that somehow, you need both of these in 17 order to maintain legal, non-conforming status. 18 MR. ARANA: I apologize. Could I make an 19 objection for the record? The issue on appeal 20 in this appeal is whether the BTR was properly 21 denied because the use that was applied for was 22 not permitted in the district. The Planning 23 Director below did not make a determination 24 about whether Beach Blitz was a legally 25 non-conforming use, and we would submit that's</p>
<p style="text-align: right;">Page 15</p> <p>1 Police officers show up at Mr. Doar's business 2 at Ocean 9 and say you need to close down and 3 close down immediately, or we'll arrest you in 4 the next five minutes. 5 And, under threat of arrest with four city 6 officials, two police officers and two Code 7 Enforcement officers, hovering over him, 8 Mr. Doar felt that he had no choice but to 9 close down or risk being arrested. 10 Now, let's talk a little bit about 11 non-conforming uses and how you lose legal 12 non-conforming status. How do you lose 13 grandfather status? Well, the law is real clear 14 on how you lose grandfather status, how you 15 lose legal non-conforming status. 16 It could be either through an act of God, 17 and although I'll submit to you that some of 18 the actions of the City here, you know, 19 indicate that maybe those City officials felt 20 they were God; they weren't. So, there was no 21 act of God. 22 It could be through attrition, meaning 23 when the City changes its mind and doesn't want 24 to allow use, it allows a period of time, 10 25 years, 15 years for that property owner to</p>	<p style="text-align: right;">Page 17</p> <p>1 not properly before the board. 2 MR. DIAZ DE LA PORTILLA: Let me address 3 that very briefly. So, we've established, so 4 far -- we proffered, and we'll further prove 5 that Beach Blitz was -- Beach Blitz, as a 6 company, but Ocean 9 was operating since 2011 7 at the same location. City changes its code; it 8 becomes a legal non-conforming use on October 9 19, 2016. 10 Ocean 9 continues to operate. There are 11 some code violation issues. They address them 12 in the proper way with the proper channel, 13 settle them on August 28, 2017. That's reduced 14 to a written order on September 28, 2017, and 15 then, when Ocean 9 comes down to the City to 16 try to get its BTR, it's repeatedly denied the 17 issuance of a BTR. 18 Fiscal year ends on September 30th, so 19 after that, the City claims, oh well, you know, 20 too bad. Fiscal year is over. So, the City 21 prevented Ocean 9 from getting a BTR, and then, 22 it says well, you don't have a BTR. 23 So, because you don't have a BTR, you lost 24 your legal non-conforming status. Now, the 25 objection that you just heard now from counsel</p>

<p style="text-align: right;">Page 18</p> <p>1 is -- and, this is their argument. First, they 2 tell you, well, this isn't properly before you, 3 because Ocean 9 never asked the Planning 4 Department for a determination of whether they 5 were a legal non-conforming use. 6 And, then, they cite Section 118.397 of 7 the code, and they say, well, you know, you're 8 required to ask. Well, that's not what Section 9 118.397 of the code says. Section 118.397 of 10 the code, and this goes directly to their 11 objection, actually says that the Planning and 12 Zoning Director shall make a determination as 13 to the existence of a non-conforming use. 14 It doesn't say that a property owner has 15 to ask the Planning Director, hey, let me know 16 if I'm a legal non-conforming use. It doesn't 17 say that. The code doesn't say that. The code 18 doesn't set out a process for a property owner 19 to petition and ask for a determination from 20 the Planning and Zoning Director. 21 It simply says the Planning and Zoning 22 Director will make that determination. That's 23 all the code says, and by the way, the City 24 wrote the code, and so, it's a well established 25 principle of law that if a document is drafted</p>	<p style="text-align: right;">Page 20</p> <p>1 the use, but rather forced, compelled by 2 government action to close under threat of 3 arrest, and as far as the second argument, 4 well, you didn't have a BTR. 5 Well, yeah, the City denied multiple times 6 to process an issue of BTR, but let's talk a 7 little bit about what the code does say as far 8 as abandonment, because the code also has 9 language on abandonment of a legal 10 non-conforming use. 11 And, this is what the code says: this is 12 118.394, Section 394 of the City of Miami Beach 13 code. It says in order for a non-conforming use 14 to retain non-conforming status, the evidence 15 collectively shall at a minimum demonstrate at 16 least one, at least one of the following two 17 things. 18 One, continued operation of the use, and 19 two, continual possession of any necessary and 20 valid state and local permits, building 21 permits, licenses, or active pending 22 applications for approval related to prolonging 23 the existence of the use. 24 So, let's put that in context. First of 25 all, the City, through their attorneys, are</p>
<p style="text-align: right;">Page 19</p> <p>1 by one party, any mistakes, you know, in that 2 document, they fall on the party that drafted 3 it. 4 So, that's what the code says. The code 5 doesn't require a property owner to file a 6 petition or request in any affirmative way nor 7 set out a process whether there was a legal 8 non-conforming use or not, and in fact, in this 9 case, the Planning and Zoning Director did make 10 that determination, because when he went to 11 apply again for a BTR later on in 2017, he was 12 told no, we're not going to give you one. 13 So, when you get a BTR or apply for a BTR, 14 the Zoning Department reviews that, and they've 15 made a de facto determination in their normal 16 course of business that you're not entitled to 17 a BTR. So, this argument is properly before 18 you. In fact, it's the only argument that 19 really is before you. 20 You have a legal non-conforming use. It 21 was rendered legal non-conforming by the City's 22 action. Doron Doar continued operation of his 23 business, was only closed not quite at 24 gunpoint, but close enough, not voluntarily, 25 not intentional closure or discontinuance of</p>	<p style="text-align: right;">Page 21</p> <p>1 arguing, erroneously, that you're required to 2 have continuous use and a BTR when the code 3 doesn't say that. The code says you're required 4 at least one of the following: continuous use 5 or all the licenses, which include a BTR, but 6 you could also have an application for a BTR, 7 which you had here, and it was not approved. 8 But, in any event, the code is very clear. 9 It's one, at least one, not both, and even if 10 you take the argument -- even if you take the 11 language and the code to read that you require 12 both continual use and every license included a 13 BTR -- even if you read it that way, and it's 14 not the way it's written; it's not what the 15 code says, and again, the City wrote the code. 16 We're just the people that have to live 17 with it, but they wrote it, and so, the City's 18 code says at least one of the following: 19 continual use or possession of all the licenses 20 or an application for those licenses. 21 And, by the way, that second instance of 22 possession of all the licenses, the reason 23 that's written that way, and the normal common 24 sense interpretation is because even if a use 25 were to stop on a property, but the property</p>

<p style="text-align: right;">Page 22</p> <p>1 owner or the business operator were to 2 continually maintain a liquor license as Doron 3 Doar did, apply for BTR's as Doron Doar did, or 4 do everything possible to maintain the ability 5 to run that use even if it isn't continuing, 6 even if it's temporarily halted, that is enough 7 to keep your grandfather status of your legal 8 non-conforming use. 9 I'll submit to you that in this case what 10 happened here was very, very, very simple. 11 Doron Doar continued his use and only stopped 12 his use when he was forced to by City action, 13 and Doron Doar applied for a BTR -- not that he 14 had to have both or do both under the City's 15 very own code, but he did apply, and multiple 16 times came down here, and this testimony has 17 been in Federal court, and Mr. Hudson will get 18 into that when he makes his presentation, and 19 Mr. Doar will testify to that, multiple times 20 to get a BTR, to pay for a BTR. 21 He was turned down by the City. So, now, 22 the City is using that as a pretext to shut a 23 business down, and that's what we're talking 24 about here. We're talking about a family 25 business that's been operating since 2011, and</p>	<p style="text-align: right;">Page 24</p> <p>1 You don't have to follow along with me at 2 this particular moment, but one of the things 3 that the case says -- the first thing the Lewis 4 case says, and again, cited 72 times, it's in 5 every major treatise on zoning and land use. 6 If you're a land use lawyer or a zoning 7 lawyer, and you're starting in this, you go to 8 American Juris Prudence; you go to Anderson on 9 zoning, these are the books. This is how zoning 10 law is taught, right? 11 And, so the case is cited there. The case 12 is cited multiple times in other cases, and so, 13 the first thing the case -- the Lewis case says 14 is that non-conforming uses may be eliminated 15 by attrition, abandonment, and acts of God, 16 just what I said, as speedily as is consistent 17 with proper safeguards, and the rights of those 18 persons affected. 19 The Lewis case goes on to say neither 20 attrition or abandonment occurs where a 21 non-conforming use has interrupted, interrupted 22 or discontinued involuntarily by compulsion of 23 governmental action, and so, I will submit to 24 you that other than having a gun held to your 25 held, having two police officers and two Code</p>
<p style="text-align: right;">Page 23</p> <p>1 the City is using this BTR pretext to shut him 2 down and keep him shut down, and they've been 3 shut down since October, losing revenue for his 4 family, losing an interest in the business and 5 property in the meantime because of the City's 6 action. 7 Now, let's talk a little bit about the 8 case law of abandonment, and as I said at the 9 very beginning, only three ways to lose your 10 grandfather status when there's a change in 11 code. Three ways: act of God, attrition, or 12 abandonment. 13 Those are the only three ways. For 14 abandonment to terminate your legal 15 non-conforming status, your grandfather status, 16 it has to be intention and voluntary, and I'll 17 cite a case that has been cited 72 times in the 18 State of Florida. 19 It's been around for 43 years. The case is 20 Lewis versus the City of Atlantic Beach, found 21 at 467 Southern 2nd 751. First DCA, 1985 case, 22 and there are copies in the file. We'll handle 23 additional copies to the clerk so that you can 24 follow along with me if you'd like or read a 25 little later if you'd like.</p>	<p style="text-align: right;">Page 25</p> <p>1 Enforcement officers show up at your business 2 and tell you shut down immediately, or we'll 3 arrest is compulsion. 4 And, by the way, it's compulsion whether 5 you're talking about Nazi Germany, Cuba, or 6 Venezuela where the government shows up at your 7 private property at your business and says give 8 me the keys; you're shutting down now, because 9 we say so. 10 That's compulsion, and the Lewis case says 11 you can't be deemed to have abandoned your 12 legal non-conforming use if you're forced to 13 close by government action, and this is very 14 clear and uncontroverted in this case. 15 Two cops, two Code Enforcement officers 16 shut down -- we'll shut you down, or we'll 17 arrest you. Now, Lewis goes on to say 18 involuntarily suspension of non-conforming use 19 does not constitute abandonment, and does not 20 terminate grandfathered status of such use. 21 It also says that temporarily cessation of 22 a non-conforming use does not operate to effect 23 abandonment of the non-conforming use. So, yes, 24 Doron Doar's business, Ocean 9, has been closed 25 by compulsion, by force, by threat of arrest,</p>

<p style="text-align: right;">Page 26</p> <p>1 by government action, by the City of Miami 2 Beach's action.</p> <p>3 Doron Doar has done everything in his 4 power to try to obtain his BTR, and in fact, 5 did, and the evidence will demonstrate that and 6 show that and has, actually, in Federal court. 7 There is sworn testimony, uncontroverted, in 8 Federal court that took place in November of 9 2017 to this effect, and Mr. Doar is going to 10 present that testimony, here again, that on 11 multiple occasions he came down to get his BTR. 12 So, now, imagine this. Put yourselves in 13 Mr. Doar's position. You invest in a business. 14 You open a business. You get a liquor license 15 from the State of Florida. You get all your 16 licenses locally, and you're operating, and 17 then, a smaller mission, a ministerial couple 18 thousand dollar fee isn't paid for an 19 occupational license or business tax receipt, 20 and the government, and you appeal it, and you 21 do everything in your power to obtain it, and 22 the City refuses to issue a BTR to you. 23 And, then, the City shows up at your 24 business and says give me the keys; we're 25 shutting it down, and if you don't do it right</p>	<p style="text-align: right;">Page 28</p> <p>1 tremendous damage to a family, to a small 2 business.</p> <p>3 The City's actions have done that, and so, 4 I submit to you that the case law is clear, and 5 the facts are clear. The facts are Doron Doar 6 never abandoned his use, never intended to 7 abandon his use, tried to do everything 8 possible to continue his use, including 9 applying for and trying to pay for a BTR, and 10 was thwarted and prevented at all turns by the 11 City, and then, forced to shut down by the City 12 under threat of arrest.</p> <p>13 And, so, what we're asking you do is very, 14 very simple. The Planning and Zoning Director 15 is wrong in his decision. This is a legal 16 non-conforming use. There was no abandonment.</p> <p>17 It continued and would have continued but 18 for the City's showing up and forcing him to 19 shut down, and but for the City refusing to 20 issue a BTR, and so, over this \$2,000 BTR 21 issue, the City has destroyed a family's 22 income, millions of dollars of property and 23 income damage, just because the City at that 24 point didn't like package liquor stores, and 25 was trying to do everything it could to get rid</p>
<p style="text-align: right;">Page 27</p> <p>1 now, we're arresting you, and just shuts down 2 your business, takes your business, refuses to 3 issue you a BTR, and then, uses that pretext to 4 say sorry; you didn't have a BTR.</p> <p>5 We didn't give you a BTR, and you don't 6 have a BTR, and so, because we didn't give you 7 one, and you don't have one, then, you can't 8 have one. That is circular reasoning of the 9 worst kind, but it's worse.</p> <p>10 It really is taking a person's property, 11 taking a person's business. That's not the way 12 governments should behave. That is not the way 13 governments should be have, but yet this 14 government has shut Ocean 9 down and has kept 15 them shut, and they did it by force, and now, 16 they're turning around and saying oh, sorry, 17 you didn't get a BTR because we kept you from 18 getting one, but you didn't get a BTR.</p> <p>19 So, therefore, you've lost your business. 20 You've lost your business. You have to come 21 now. We are here before the Board of 22 Adjustments. The adjustment, you have to get. 23 Said adjustments, I mean, adjustment, although 24 I could use an adjustment right now actually, 25 because this case has really, really done</p>	<p style="text-align: right;">Page 29</p> <p>1 of them.</p> <p>2 They found a pretext to try to do that to 3 Doron Doar, and what they did is wrong. It's 4 unjust. It's inequitable. It's illegal. It is 5 basically taking property, taking a business to 6 not allow Ocean 9 to open its doors again, and 7 so, Mr. Hudson will take it from here and call 8 Mr. Doron Doar to put a little bit more meat on 9 the bones, but you have what you need before 10 you.</p> <p>11 No abandonment, legal non-conforming use 12 continued, and the City's compulsion, the 13 City's threat, and the City's use of force to 14 close Doron Doar does not constitute 15 abandonment. Thank you.</p> <p>16 MS. GONZALEZ: Before we go on, I wanted 17 to maybe set some time tables for proceedings, 18 so we know how long we're going to be here. 19 There are documents from both sides before you. 20 So, they're both part of the record, those 21 documents.</p> <p>22 I wanted to make sure that was clear on 23 the record. The appeal before you, there's a 24 lot of talk about non-conforming, and I'll let 25 them make their arguments. I'm not going to</p>

<p style="text-align: right;">Page 30</p> <p>1 interfere with that in that sense, but the 2 appeal before you is not on non-conforming use; 3 it's on a BTR. 4 Okay? The failure for to issue the BTR. 5 So, I'll let you go on. 6 MR. HUDSON: Thank you. Good morning, 7 everyone. I've been a resident of Miami Beach 8 for 25 years, quite some time, and I've 9 generally been happy with City government. I 10 think the government has done a good job in 11 that 25 years. 12 Taxes are reasonable. Development is 13 reasonable, but in this case, and I want to 14 thank you each for your service, as well. I 15 know you're paid a lot for this, so, thank you. 16 In this case, I'm very disappointed. I'm 17 very disappointed in City government, but as an 18 advocate, disappointment isn't really relevant. 19 So, we're here today to right a wrong in our 20 view, and Miguel has told you most of the 21 story. 22 I'm here to just fill in the factual gaps. 23 I'm here to tell you what happened in the 24 Federal court case, what the Federal court 25 found as a matter of evidence. We're here today</p>	<p style="text-align: right;">Page 32</p> <p>1 as Miguel says, there was a citation for not 2 having a BTR. 3 Mr. Doron testified -- everything I'm 4 telling you is in your record, by the way. This 5 is all -- and, we included Mr. Doron's 6 testimony from the Federal court, and we've 7 included the court orders from Magistrate John 8 O'Sullivan and from Judge Ungaro, Federal Judge 9 Ungaro, finding everything that I'm telling you 10 now to be the truth and accurate. 11 If you have any questions about particular 12 testimony or where it is, we can go find that. 13 So, all of this is undisputed. He 14 continued to operate. Mr. Doron testified that 15 he was in Israel in June and found out that 16 there was a citation for lack of a BTR. He flew 17 back within a couple of days and immediately 18 started investigating, trying to figure out 19 what to do. 20 He hired Harold Rosen, as you heard. He 21 hired Michelle Mallick, as you've heard, and 22 over the course of the next couple of months, 23 also hired an attorney named Guy Sheer 24 (phonetic). All three of those folks tried to 25 resolve these issues.</p>
<p style="text-align: right;">Page 31</p> <p>1 to listen to some evidence. 2 You're here today to listen to some 3 evidence and, the evidence will show, as Miguel 4 has already said in his statement, very simply, 5 Mr. Doron owned a company called Beach Blitz, 6 still owns it today. 7 Beach Blitz owned a company called, or had 8 a DBA, Ocean 9 Liquors. Ocean 9 Liquors since 9 2012, has operated a package liquor store, full 10 service liquor, ATM, food, and they had an 11 entertainment license to have entertainment in 12 a liquor store, which is no longer legal, no 13 longer conforming in Miami Beach. Excuse me. 14 Undisputed, nobody disputes that. He did 15 so with BTRs, occupational licenses, through 16 fiscal 2015/2016, undisputed. 2016/2017 comes 17 along, and as you know, fiscal years begin 18 October 1, and you apply for a new BTR, and you 19 get it for the next fiscal year, and if you had 20 one the prior year, and there are no changes to 21 your uses, it's a renewal. 22 For whatever reason, Mr. Doron did not 23 know that he had not paid his 2016/2017 BTR for 24 Ocean 9 Liquor. He had another store, Ocean 11. 25 It was paid for. There was no issue. In June,</p>	<p style="text-align: right;">Page 33</p> <p>1 There were now three -- in June and July 2 of 2017, there were now three pending 3 violations, as Miguel had said. For technical 4 -- under the code, you have 10 days to appeal a 5 violation, and in the first instance from the 6 2016 violation that Miguel talked about, the 7 first citation relative to the violation of the 8 moving target of the hours, what time you could 9 open and what time you close, Mr. Doron and 10 Ocean 9 did not timely appeal that. 11 That's undisputed. We don't dispute that. 12 However, Mr. Rosen was successful in getting a 13 new Special Master Process to deal with the 14 three outstanding violations, undisputed. The 15 City acknowledges that there was process. The 16 City acknowledges that they participated in the 17 process, and in fact, Mr. Boxner, the now 18 Deputy City Attorney? 19 MS. GONZALEZ: Chief Deputy. 20 MR. HAROLD: Chief Deputy was involved in 21 those negotiations and discussions all the way. 22 August 28th, Mr. Rosen notifies Mr. Doron, 23 Mr. Doar, that we've settled. Instead of paying 24 \$3,000, pay \$1,000. Please bring me a check 25 over right away. I'll walk it over.</p>

<p style="text-align: right;">Page 34</p> <p>1 The check was delivered to Mr. Boxner 2 August 28th. All undisputed. Nobody disputes 3 any of that. Not disputed that the check was 4 cashed October 18th, I believe. Okay. 5 Sometimes, cities take a while to do things, 6 but note the fiscal year clicked over, 7 obviously, on October 1st. 8 Mr. Doron testified under oath, and that 9 testimony is undisputed, and if you read the 10 first page of our reply that's in this record, 11 the first page, the City tries to say in its 12 filings, in paragraph seven of their filings, 13 the undisputed fact is Mr. Doron never tried to 14 get his BTR, never tried to submit payment for 15 his BTR. 16 That's absolutely dead wrong. Judge Ungaro 17 spent two pages in an order specifically 18 refuting that statement when they made that 19 statement in front of her at the end of the 20 case, and that's -- if you read the first page 21 of my response, it -- I quote her. 22 And, she finds what they said 23 disingenuous, because it is. Mr. Doron 24 testified, she found, that he went down on 25 multiple occasions personally downstairs to</p>	<p style="text-align: right;">Page 36</p> <p>1 facts are. Okay? August 28th, there's a 2 settlement. August 28th, the money is tendered. 3 The order signed by the Special Master wasn't 4 signed until September 28th. 5 The City's position is well, there was a 6 hurricane, and that caused a month delay. Well, 7 yes, there was a hurricane, and I think the 8 City was shut down effectively for a week like 9 everybody else, and then, the City puts in 10 there, in their record a series of e-mails from 11 internal city folks that we believe is 12 incomplete, because it looks like, if you read 13 it, there's things that aren't there, that 14 we've never seen before, by the way, that say 15 that that order was tendered on September 1st 16 to the Special Master. 17 It wasn't signed for whatever reason, and 18 then, the same woman, on September 18th, which 19 was the Monday of that final week -- either the 20 Friday or the Monday of that week where the 21 fiscal year was going to click over, sends an 22 e-mail. We need you to enter this by the 28th 23 or 29th, latest. 24 Okay. The last business day of the fiscal 25 year, which was Yom Kippur, make sure it's done</p>
<p style="text-align: right;">Page 35</p> <p>1 finance and try to pay, and was refused. She 2 further found there is no evidence in the 3 record contrary to that. 4 Okay. Why is that important? It's 5 important for two reasons. We're here on one 6 today, and we're not here on the other, but I'm 7 going to tell you what they both are, so you 8 know. 9 It's important because had they accepted 10 his money, the City Assistant Finance Director 11 who testified at the same hearing under oath 12 testified had they taken the money in as soon 13 as those violations were cleared up, even if it 14 was after the fiscal year turning over, he 15 would have renewed his BTR; he did not need to 16 go through the new application process; we 17 wouldn't be standing here today. 18 It is our contention that for some reason 19 that we can't figure out, the City 20 intentionally dragged its feet until October 1 21 came. Uncontroverted that he, Harold Rosen, 22 Michelle Mallick, Guy Sheer, all four of them 23 tried to pay, and all four couldn't pay. 24 That's rather unusual that a City won't 25 take money, but that's what the undisputed</p>	<p style="text-align: right;">Page 37</p> <p>1 by that day, okay? It was signed on the 28th. 2 Mr. Doar was given a copy on the 28th, and he 3 went down either on the afternoon of the 28th 4 or 29th. 5 This is undisputed. He tried to pay again 6 downstairs. They said nope. We've got pending 7 violations here; you can't pay. What more can 8 he do? The weekend comes and goes. October 1st 9 is the next Monday. 10 There is, attached to our amended letter 11 of intent -- let met get to that because the 12 City has a technical objection on that. We 13 filed a letter of intent, which starts this 14 process, on Friday, February 16th, and we had 15 technically until -- because there was a 16 holiday, an intervening holiday, and we were 17 unsure whether we should have filed it on 18 Friday or Monday. 19 So, we called the City, and the City, 20 Mr. Calargys (phonetic), I believe, the 21 attorney, Mr. Calargys, City Attorney's Office 22 said we could file on the 20th. 23 So, we had filed one on the 16th, just to 24 make sure we were covered, and then, we amended 25 it, and we amended it and filed on the 20th,</p>

<p style="text-align: right;">Page 38</p> <p>1 the amended letter of intent, which we're 2 travelling under today, and that one more 3 narrowly focuses on the non-conforming use, 4 which we'll come back to in a moment. 5 So, one of the City's arguments is going 6 to be oh, well, your amendment isn't valid for 7 some reason. I don't know why. It was timely. 8 You can amend things. There's nothing that says 9 you can't. So, let's get that technical 10 argument out of the way. We're done with that. 11 You already heard about October 6th, and 12 the police officers and all of that stuff. One 13 of the exhibits that was put into evidence at 14 the trial was a screenshot from the City of 15 Miami Beach Finance Directors computer system. 16 It's undated. 17 So, we can't tell the date, but it looks 18 like it was prior to October 6th, and there's a 19 note in the file, and it says Ocean 9 Liquor 20 may not get a new BTR at this location going 21 forward, 865 Collins Avenue, Suite D, as in 22 David. 23 When I asked the Assistant Finance 24 Director under oath was that unusual? He said 25 absolutely. Not only was it unusual, it was</p>	<p style="text-align: right;">Page 40</p> <p>1 they're focusing on the 2017 BTR. Well, he 2 didn't get it. Well, when he found out in June, 3 he did everything he could get -- he could do 4 to get it. It's undisputed that he hired all of 5 those professionals. 6 It's undisputed that he went down there. 7 They tried to say the City policy is to accept 8 the money if it's tendered. Maybe it is, but 9 they didn't, and they can't -- they can't -- 10 there is no evidence suggesting that they 11 could. 12 So, let's get to why we're here today, and 13 the business at hand, and I'll move pretty 14 quickly. 15 118.390 of the code, which is in essence 16 the definition of non-conforming use, 17 conforming use. 118.390 essentially says 18 nothing in this code shall impact or impair a 19 legally established non-conforming use. 20 So, if I demonstrate to you by the facts 21 that are in this record, which, by the way, 22 Madame City Attorney, I move into the record to 23 the extent that I need to. I'm not sure if 24 that's necessary, but I'll move all of our 25 documents into the record at this moment.</p>
<p style="text-align: right;">Page 39</p> <p>1 unnecessary, because BTRs automatically -- it's 2 a State -- BTRs are State licenses. I mean, 3 local counties -- local counties municipalities 4 issue them locally, but it's a State process. 5 They automatically go away at, I guess, 6 12:01 on the 1st, and you have to have a new 7 one, and as we've alleged, we think that was 8 their goal. Now, that doesn't matter for 9 purposes of today, but we're telling you the 10 story, because we want to convey the unfairness 11 of what has happened, and we hope today, we can 12 right that wrong. 13 And, I'm going to tell you why I think you 14 have to right that wrong today in a few 15 minutes, but the reason we're giving you all 16 this background isn't to get totally to the 17 point, although I will come back and show you 18 why it is important. It's to show you when 19 Miguel talked about intentional and 20 involuntarily abandonment, involuntary 21 abandonment and the case law that we've given 22 you on that, it's very, very important to 23 understand this gentleman did everything he 24 could. 25 They will tell you he did nothing, and</p>	<p style="text-align: right;">Page 41</p> <p>1 MS. GONZALEZ: I thought I made it clear 2 that it's all part of the record, but yes, 3 yours and the City's. 4 MR. HAROLD: Thank you. So, legally 5 established non-conforming use. So, if I show 6 you the facts today, which are undisputed by 7 the way, on every single one for those -- 8 MR. ARANA: I apologize. I just want to 9 renew my objection. First of all, I don't know 10 if we've heard from the City Attorney about the 11 time that you want to give the parties, but 12 it's been going for quite some time, but 13 secondly, thank you -- 14 UNIDENTIFIED MALE SPEAKER: Some of this 15 is also -- so, I would like to know the 16 timeframe of it. 17 MS. GONZALEZ: Okay. So, I put the clock 18 on, although I was asking for the time, and I 19 never got to that, about 10 minutes into 20 Mr. Hudson's talking, I put the clock on for 15 21 minutes, and there is five minutes left in his 22 presentation under that clock. 23 You can extend it if you'd like, but right 24 now, it's at five minutes. Is that sufficient 25 for you, as a board?</p>

<p style="text-align: right;">Page 42</p> <p>1 UNIDENTIFIED MALE SPEAKER: Counsel, if 2 you could, just try not to cover, you know, 3 grounds already done. 4 MR. HOWARD: I will. I appreciate that. 5 Miguel went longer than I expected, and covered 6 more, so I will -- that's why I'm getting to 7 it. 8 MS. GONZALEZ: And, your objection -- 9 MR. ARANA: And, the second thing I just 10 wanted to renew the objection, that I think the 11 City Attorney ruled on and gave an instruction. 12 The Planning Director below has not been asked 13 to and did not make a determination about 14 whether Beach Blitz was a legally 15 non-conforming use, or whether that -- whether 16 any non-conforming use was abandoned. 17 There was no evidence presented to them on 18 that point. He didn't make that decision. This 19 court sits as a reviewing court, a court on 20 appeal. So, everything we're hearing about is 21 something that's not before this board, and 22 frankly, a waste of this board's time. 23 And, so, I just wanted to renew that 24 objection, because I understand the 25 instruction. That really is not before the</p>	<p style="text-align: right;">Page 44</p> <p>1 It was passed by every other group, 2 department within the City. Passed. It was 3 originally failed at Code Compliance, because 4 they felt there was an outstanding violation. 5 It wasn't. They realized it was cleared up. 6 It was failed by Finance for the same 7 reason. They felt that one violation hadn't 8 been paid. It had been paid. Everything passed 9 except Code Compliance. Code Compliance or 10 Planning and Zoning actually passed it on 11 January 8th, but then, on January 9th, they 12 reversed it. 13 Mr. Doron, Mr. Doar went down because he 14 was excited that he got all green lights, and 15 he went down and tried to pay, and they said 16 oh, wait a minute. They looked at something on 17 the computer, and they said wait a minute; let 18 me go see my supervisor. Oh, sorry. You can't 19 pay. You failed. You failed at Planning. 20 All right. This was going to be at the 21 end, but let's get to the end. 22 UNIDENTIFIED MALE SPEAKER: As in January 23 9th? 24 MR. HOWARD: There's an online system, as 25 you know. Mr. Doar's application was online,</p>
<p style="text-align: right;">Page 43</p> <p>1 board. 2 MS. GONZALEZ: One second. I've allowed 3 the parties to do their presentations. Clearly, 4 the City hasn't given their presentation yet. 5 So, but, I did instruct that, you know, the 6 appeal is of the failure to issue the BTR. 7 I have not heard any testimony by the City 8 or anyone representing on behalf of the 9 appellant that the City made that 10 determination. 11 MR. HOWARD: Okay. And, I'm going to 12 address that now. So, our position on that is 13 clear. This, in our view, is another technical 14 wrong. We'll get to why it's wrong. 15 This is another technical reason why the 16 City is trying to keep this guy shut down. We 17 don't get it. There are three other liquor 18 stores that are operating. They want him shut 19 down for what reason? Because he didn't pay a 20 \$2,000 fee that we all know that he ultimately 21 paid? 22 So, why do they keep doing this? I don't 23 know. We'll figure it out eventually. The City 24 Attorney has suggested that we're here on the 25 denial of a BTR. We are. The BTR was denied.</p>	<p style="text-align: right;">Page 45</p> <p>1 and you can also update -- you can go on and 2 see your updated status, and he did so, and in 3 the updated status, it showed pass/fail, 4 pass/fail, pass/fail, right? 5 So, as he saw the failures, he would 6 either go down and call, and we can get to this 7 -- could you swear Mr. Doar, since he wasn't 8 here? And, then, I can ask him some of these 9 questions, if you'd like. 10 (Thereupon, Mr. Doar was duly sworn in 11 accordance with the law.) 12 MR. HOWARD: So, Mr. Doar was watching 13 this, and then, as he would see an issue, he 14 would either call or he would e-mail the 15 appropriate person at the City, because their 16 e-mail is right there, and they resolved it. 17 Mr. Doar, is it true at some point when 18 you reviewed -- when you reviewed the City's -- 19 stand up. Is it true that at some point you 20 reviewed the City's application process of the 21 BTR that around January 8th of 2018, that the 22 Planning Department had passed you, shown that 23 you had passed? 24 MR. DOAR: Yes. 25 MR. HOWARD: Okay. Then --</p>

<p style="text-align: right;">Page 46</p> <p>1 UNIDENTIFIED MALE SPEAKER: Just a minute.</p> <p>2 Before he sits down, I want to ask a question.</p> <p>3 Do you operate another packaged store in the</p> <p>4 area, too?</p> <p>5 MR. DOAR: Excuse me?</p> <p>6 UNIDENTIFIED MALE SPEAKER: Do you operate</p> <p>7 another liquor packaged store in the area?</p> <p>8 MR. HOWARD: It's not a package store.</p> <p>9 It's a market.</p> <p>10 MR. DOAR: It's not a package. It's a</p> <p>11 convenience store with a partial liquor</p> <p>12 license.</p> <p>13 UNIDENTIFIED MALE SPEAKER: Partial? Where</p> <p>14 -- where is that in relationship to the -- to</p> <p>15 where we're talking about today?</p> <p>16 MR. DOAR: It's the same company, just</p> <p>17 different DBA.</p> <p>18 MR. HOWARD: Where is it?</p> <p>19 MR. DOAR: Oh, where is it? 1100 Collins</p> <p>20 Avenue.</p> <p>21 UNIDENTIFIED MALE SPEAKER: 1100?</p> <p>22 MR. DOAR: 1100 Collins Avenue.</p> <p>23 UNIDENTIFIED MALE SPEAKER: So, it's like,</p> <p>24 two blocks away?</p> <p>25 MR. DOAR: About, yeah.</p>	<p style="text-align: right;">Page 48</p> <p>1 a half left. So, I just wanted to give you</p> <p>2 that.</p> <p>3 UNIDENTIFIED MALE SPEAKER: Did you ever</p> <p>4 get an answer of why it was approved, and then,</p> <p>5 a day later not approved?</p> <p>6 MR. HOWARD: Yes. They ultimately sent an</p> <p>7 e-mail, which is consistent with Exhibit A to</p> <p>8 the City's -- in the City's package, which</p> <p>9 shows that they turned it down as a</p> <p>10 non-conforming use.</p> <p>11 Now, Miguel has already dealt with this,</p> <p>12 and I have short time. So, I really want to get</p> <p>13 to this, because it's important, and I don't</p> <p>14 mean to go over this ground, but it's</p> <p>15 important.</p> <p>16 They keep saying it's his responsibility</p> <p>17 to ask the Planning Director to make this</p> <p>18 decision. That's not what it says. You have the</p> <p>19 information. I'm not going to take my time and</p> <p>20 read the code.</p> <p>21 The code says they, the Planning Director,</p> <p>22 has a duty. So, now, with all of this smoke and</p> <p>23 stuff flying around this case, which everybody</p> <p>24 in the City knows about this case, a Federal</p> <p>25 court case pending, he files an application for</p>
<p style="text-align: right;">Page 47</p> <p>1 UNIDENTIFIED MALE SPEAKER: Two blocks</p> <p>2 away from the one.</p> <p>3 MR. HOWARD: And, it's a market. It's more</p> <p>4 beer and wine. There's no -- it's not a full</p> <p>5 service.</p> <p>6 UNIDENTIFIED MALE SPEAKER: Yeah, but he</p> <p>7 had to get a BTR for that, too.</p> <p>8 MR. HOWARD: Yes. And, he's current.</p> <p>9 UNIDENTIFIED MALE SPEAKER: So, he knew</p> <p>10 the BTR was necessary in both locations.</p> <p>11 MR. HOWARD: Absolutely.</p> <p>12 MR. DOAR: Yes.</p> <p>13 UNIDENTIFIED MALE SPEAKER: All right.</p> <p>14 Thank you.</p> <p>15 MR. HOWARD: In fact -- in fact, the</p> <p>16 evidence shows that he went down to pay some</p> <p>17 fines Ocean 11, and at that time, tried to pay</p> <p>18 for his BTR. That was corroborating evidence</p> <p>19 that he was physically down, and the City</p> <p>20 acknowledges that there's records that show he</p> <p>21 was down and paid at the counter on Ocean 11,</p> <p>22 as well.</p> <p>23 So, that's corroborating evidence that he</p> <p>24 was there.</p> <p>25 MS. GONZALEZ: You have about a minute and</p>	<p style="text-align: right;">Page 49</p> <p>1 a BTR.</p> <p>2 They say yes. They say no. They say yes.</p> <p>3 They say no. They -- yes, no. You've got the</p> <p>4 Exhibit 17, which is attached to my amended LOI</p> <p>5 where City Attorney Boxner put something in</p> <p>6 there saying don't do this.</p> <p>7 So, now it comes to planning, and you're</p> <p>8 telling me that planning can't figure out that</p> <p>9 this is a non-conforming use issue and doesn't</p> <p>10 do what it says -- the code says he shall do,</p> <p>11 and they're going to stand here and take the</p> <p>12 position today.</p> <p>13 Oh, there's nothing in the code that says</p> <p>14 this, but he should have said this. This is</p> <p>15 what's been going on in this case for a year</p> <p>16 now. The Planning Director had a duty to do it,</p> <p>17 and he didn't do it.</p> <p>18 As the City Attorney said, we're here on</p> <p>19 the BTR, right? They denied the BTR, because</p> <p>20 he's not a legally established non-conforming</p> <p>21 use. A legally established non-conforming use</p> <p>22 is a use that was legal when his business</p> <p>23 started.</p> <p>24 That's what the code says, right? We have</p> <p>25 four words. We have to figure out what they</p>

<p style="text-align: right;">Page 50</p> <p>1 mean. Legally established means under the code. 2 Sir, what time -- when did you open this 3 business? Ocean 9, when was it opened? 4 MR. DOAR: Ocean 9, 2012. October 2012. 5 MR. HOWARD: 2012. A full packaged liquor 6 store in 2012? 7 MR. DOAR: Full package, 2012, yes. 8 MR. HOWARD: Packaged liquor stores were 9 legal in 2012. I now have a legally established 10 non-conforming use. The only thing left for 11 this board to do is decide whether he 12 intentionally, involuntarily abandoned this. 13 Miguel has already given you the case law. 14 The case law says it's not abandoned, because a 15 State or a government takes something away from 16 you for a period of time. We win. 17 This is not an act of God. There's no 18 attrition left. Sir, did you intentionally or 19 voluntarily abandon Ocean 9 Liquor? 20 MR. DOAR: No way. 21 MR. HOWARD: Why did you close it? 22 MR. DOAR: I got forced to close it. 23 MR. HOWARD: How? 24 MR. DOAR: By police and Code Enforcement. 25 MR. HOWARD: What did they tell you was</p>	<p style="text-align: right;">Page 52</p> <p>1 amount of time. If we can, we'll make it 2 shorter. 3 MS. GONZALEZ: Okay. Because we started 4 around 9:30, and it's 10:30 now. So -- 5 MR. ARANA: Okay. Good morning, 6 Mr. Chairman and members of the board. My name 7 is Enrique Arana. I'm with the law firm of 8 Carlton Fields. I'm here with Gary Pappas and 9 Scott Byers, and we represent the City and the 10 Planning Department. 11 This appeal, and this is an appeal from a 12 decision that was made below, should be denied 13 for two fundamental reasons. The first is that 14 the use that the applicant, Beach Blitz, 15 applied for to sell packaged liquor in the MXC 16 District was properly denied, because the sale 17 of packaged liquor in the district is 18 prohibited by City Ordinance. 19 On December 27th of 2017, Beach Blitz 20 submitted an application to the City for a BTR, 21 and the BTR asked the City for a BTR so that it 22 could sell packaged liquor in the district. 23 Attached to this application were 11 pages. 24 It included the request for the BTR, its 25 lease, some business records, and that's it.</p>
<p style="text-align: right;">Page 51</p> <p>1 the reason they closed you down? 2 MR. DOAR: Because I have a violation 3 because I didn't pay my BTR. 4 MR. HOWARD: Okay. What more do we have to 5 show you? We didn't get the BTR. That's the 6 instruction you've been given, because the 7 Planning Director found we are a non-conforming 8 use. We are a non-conforming use, but we are a 9 legally established non-conforming use, and he 10 knows it, because there was no intentional or 11 voluntary abandonment. 12 That's all you have to decide today. If 13 you think he intentionally and voluntarily 14 abandoned this, vote against us, but I don't 15 know how you'd get there on these facts. Thank 16 you. 17 Questions? I'm happy to -- 18 UNIDENTIFIED MALE SPEAKER: Can we reserve 19 the questions after the -- 20 MS. GONZALEZ: Of course. Yes, you can. 21 So, I'm going -- let's see. It was about an 22 hour that you all spoke. Do you need about an 23 hour, or do you want a half an hour? What -- 24 I'm -- 25 MR. ARANA: I think we'd like the same</p>	<p style="text-align: right;">Page 53</p> <p>1 There was no request in that application or 2 otherwise for a determination either that Beach 3 Blitz was a legally non-conforming use or that 4 it hadn't abandoned that. 5 It simply asked, can I have a BTR to sell 6 packaged liquor in the district? Now, it's 7 undisputed that Section 142.544 of the code, 8 which has been in effect since October 19th of 9 2016 prohibits packaged liquor stores and the 10 sale of packaged liquor in the MXE District 11 where Beach Blitz is located. 12 So, on January 19th, the Planning 13 Department denied the application because, and 14 I quote, this is in Exhibit A of our materials, 15 Section 142.544 of the City's Land Development 16 Regulations applies to the proposed use. 17 It prohibits the proposed use, and there's 18 no dispute about that. We haven't heard 19 anything from Beach Blitz to the contrary. 20 There's no question that packaged liquor sales 21 are prohibited in the district, and by the way, 22 the application that Beach Blitz submitted is 23 at Exhibit M of our filing. 24 None of this record that's before you was 25 presented to the Planning Department, and</p>

<p style="text-align: right;">Page 54</p> <p>1 again, no request was made for a determination 2 that we should be exempt from this requirement, 3 that Beach Blitz should be exempt from the 4 requirement, because they're a legally 5 non-conforming use or because they didn't 6 abandon it. 7 So, second -- so, the second reason the 8 appeal should be denied is that the question 9 they are asking you to decide is not properly 10 before this board. This board sits as a court 11 of appeals, as a reviewer of the decision 12 below. 13 If the Planning Director were to make a 14 determination that Beach Blitz is or is not a 15 legally non-conformer in use or did or did not 16 abandon that use, that decision can be appealed 17 to you, and this board can sit as a reviewing 18 court and decide whether that was a correct 19 determination, but that hasn't been done here, 20 and I would cite to you Section 118.397 of the 21 City Code, which provides that the Planning and 22 Zoning Director shall make a determination as 23 the -- sorry, the existence of a non-conforming 24 use. 25 Subsection B says the question as to</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. ARANA: No. No. The only question 2 presented to the BTR was is the use allowed? 3 MR. HOWARD: And, the BTR wasn't issued 4 because of that. 5 MR. ARANA: Is the use allowed? Is the use 6 permitted in the district? And, the answer is 7 no. If -- if the applicant would like a 8 determination that, notwithstanding that it's 9 not allowed, it should be granted a BTR, 10 because it's a legally non-conforming use, 11 then, it needs to make that case to the 12 Department, and it didn't. 13 MR. DIAZ DE LA PORTILLA: We will, of 14 course, object, because there is no law that 15 says that. 16 MS. GONZALEZ: You need to be on the 17 microphone. 18 MR. DIAZ DE LA PORTILLA: We will of 19 course object to that, because there is no law 20 that says that. In fact, what he just read you 21 demonstrates what we said earlier. It's their 22 duty, just as you said. Didn't they do it? 23 Well, if they didn't do it, that's their 24 fault. It's their duty. He didn't -- there's 25 nothing about an applicant in 118.397.</p>
<p style="text-align: right;">Page 55</p> <p>1 whether a non-conforming use or a building 2 exists shall be a question of fact, and in case 3 of doubt or challenge raised to the 4 determination made by the Planning and Zoning 5 Director, the question shall be decided by 6 appeal to the Board of Adjustment. 7 That hasn't happened, and there's no 8 decision on that point for this court to 9 review. 10 MR. HOWARD: Forgive me for a moment but 11 -- 12 MR. ARANA: Sure. 13 MR. HOWARD: Wasn't that determination 14 made by the Planning Department when they 15 failed to issue the BTR? 16 MR. ARANA: It was not. It was not. The 17 only question raised on the BTR was is the use 18 permitted? The use is not permitted, and I 19 guess what I'd like to do on that point is, we 20 have the Planning Director, Mr. Mooney here. I 21 would like to call him at this point. 22 MR. HOWARD: But, you're taking the 23 position the use was not permitted because they 24 don't meet the legally non-conforming use, 25 correct?</p>	<p style="text-align: right;">Page 57</p> <p>1 UNIDENTIFIED MALE SPEAKER: I understand. 2 I mean, what do you say to that? I mean, you 3 just read it to us yourself. It seems to be 4 that the burden is on you guys to have made 5 that decision. Not upon him to ask for it. 6 MR. ARANA: Yes. The Planning Director 7 can't make a determination unless it's 8 presented with a question and the evidence 9 needed to decide it. It was simply presented 10 with a question: can we have a BTR to sell 11 package liquor in the district? The answer is 12 no. 13 UNIDENTIFIED MALE SPEAKER: I understand 14 the code, but there is certainly a 15 determination when an applicant for a BTR 16 presents an application for his business tax 17 receipt, and every single department checks the 18 box. 19 We've passed this test. We've passed this 20 test, and at some point, that planning division 21 made the determination that this applicant 22 didn't meet -- wasn't not a legal 23 non-conforming -- was, you know, not a legal 24 non-conforming use, and was not granted the 25 BTR, right?</p>

<p style="text-align: right;">Page 58</p> <p>1 MR. ARANA: It did not make that</p> <p>2 determination because the evidence wasn't put</p> <p>3 to --</p> <p>4 UNIDENTIFIED MALE SPEAKER: Then, why</p> <p>5 wasn't he given the BTR?</p> <p>6 MR. ARANA: Because the use that he</p> <p>7 applied for wasn't permitted.</p> <p>8 UNIDENTIFIED MALE SPEAKER: But, someone</p> <p>9 made that determination from the planning --</p> <p>10 that silo on the -- made someone from the</p> <p>11 Planning Department or someone made that</p> <p>12 determination. Certainly, not Mr. Mooney. No</p> <p>13 one has ever brought an application or sort of</p> <p>14 posed that question, but someone from the</p> <p>15 Planning Department must have checked the box</p> <p>16 yes or no, otherwise, the BTR would have been</p> <p>17 issued, no?</p> <p>18 MR. ARANA: The Planning Department</p> <p>19 concluded that the use that was being applied</p> <p>20 for was not permitted in the district.</p> <p>21 UNIDENTIFIED MALE SPEAKER: And, why was</p> <p>22 it not permitted?</p> <p>23 MR. ARANA: Because, the code says it's</p> <p>24 not permitted.</p> <p>25 UNIDENTIFIED MALE SPEAKER: But, that's</p>	<p style="text-align: right;">Page 60</p> <p>1 in continuing to operate. By not filing on time</p> <p>2 to get his BTR, at the time that the ordinance</p> <p>3 was passed, he was already in illegal use on</p> <p>4 the property.</p> <p>5 The minute the ordinance was passed by the</p> <p>6 City, if he didn't have a valid BTR at that</p> <p>7 time, in my opinion, he couldn't get one.</p> <p>8 MR. MOONEY: The BTR application that was</p> <p>9 made at the time was for a new BTR. It was not</p> <p>10 a renewal. It was a new BTR.</p> <p>11 UNIDENTIFIED MALE SPEAKER: Right, which</p> <p>12 comes under the new ordinance.</p> <p>13 MR. MOONEY: So, the staff person that</p> <p>14 reviewed it looked at it as a new BTR, and the</p> <p>15 use is not permitted, so it was appropriately</p> <p>16 denied. At that point, should an applicant had</p> <p>17 an issue with the status of any legal</p> <p>18 non-conformity, at that point, they would</p> <p>19 elevate it to the level of the Planning</p> <p>20 Director and say based upon this evidence, we</p> <p>21 believe it was legal non-conforming.</p> <p>22 Then, at that point, myself and my staff</p> <p>23 can evaluate that evidence and make an</p> <p>24 appropriate decision. That was never done. In</p> <p>25 this particular instance, the application was</p>
<p style="text-align: right;">Page 59</p> <p>1 ignoring the entire history. I mean, he's been</p> <p>2 there as a business owner in this community for</p> <p>3 a long time. I'd like to hear from Mr. Mooney,</p> <p>4 because he obviously has a lot of respect from</p> <p>5 all of us on this panel, but this seems a</p> <p>6 little bit odd, I mean, at first glance.</p> <p>7 MR. MOONEY: I think part of the confusion</p> <p>8 is the administrative process. Our department</p> <p>9 looks at a number of BTRs on a daily, weekly,</p> <p>10 yearly basis, and when an application for a BTR</p> <p>11 is made, our staff looks at it to determine</p> <p>12 whether or not that use is permitted in the</p> <p>13 Zoning District.</p> <p>14 If it's not permitted, it's denied. My</p> <p>15 staff does not start doing a lot of research to</p> <p>16 see what the external circumstances may or may</p> <p>17 not have been.</p> <p>18 UNIDENTIFIED MALE SPEAKER: Excuse me for</p> <p>19 interrupting, but it wasn't permitted at that</p> <p>20 time because Counsel had passed this new</p> <p>21 ordinance.</p> <p>22 MR. MOONEY: Exactly.</p> <p>23 UNIDENTIFIED MALE SPEAKER: All right. So,</p> <p>24 if in fact he had renewed his BTR prior to the</p> <p>25 time of the ordinance, he would have no problem</p>	<p style="text-align: right;">Page 61</p> <p>1 for a new BTR.</p> <p>2 MR. GOLDBERG: Excuse me for the</p> <p>3 interruption. But at that time, there was also</p> <p>4 a violation pending.</p> <p>5 MR. MOONEY: There was a violation</p> <p>6 pending?</p> <p>7 BOARD MEMBER GOLDBERG: There was a</p> <p>8 violation pending on the old BTR license.</p> <p>9 MR. MOONEY: I believe so.</p> <p>10 BOARD MEMBER GOLDBERG: You mentioned</p> <p>11 that. Both of you have mentioned that in your</p> <p>12 presentations.</p> <p>13 MR. ARANA: The BTR had been expired for</p> <p>14 over a year when the application was made.</p> <p>15 BOARD MEMBER GOLDBERG: Sure.</p> <p>16 MR. ARANA: But as Mr. Mooney pointed out,</p> <p>17 and as we pointed out, Mr. Mooney has not been</p> <p>18 presented with this record to make a</p> <p>19 determination as to whether one, Beach Blitz</p> <p>20 was legally non-conforming at the time of the</p> <p>21 ordinance.</p> <p>22 And, you make the correct point that at</p> <p>23 the time the ordinance was passed, the BTR was</p> <p>24 expired. Or, whether it was voluntarily</p> <p>25 abandoned because during the course of an</p>

<p style="text-align: right;">Page 62</p> <p>1 entire year, it was expired for over a year 2 before they applied again. 3 And, they were cited on June 25 for 4 operating without a license and they continued 5 to do. 6 BOARD MEMBER SEGAL: Am I understanding 7 the facts correctly, Counsel? 8 MR. HUDSON: That's simply untrue. 9 BOARD MEMBER SEGAL: That the owner met 10 with the Special Magistrate regarding these 11 violations. The violations were agreed upon and 12 there was a \$1,000 fine that needed to be paid. 13 That fine was paid that same day. For some 14 reason or another, the City did not cash it 15 until the next fiscal year. 16 For one reason or another, the City, for 17 some reason, the day before the fiscal year 18 placed something in a file saying not to issue 19 a BTR. 20 These facts just don't really seem like he 21 was getting a fair shake. 22 MR. ARANA: Well, I think that -- 23 BOARD MEMBER SEGAL: Explain to me why I'm 24 wrong. 25 MR. ARANA: We can go through the entire</p>	<p style="text-align: right;">Page 64</p> <p>1 resolve those violations out of time. 2 And, he worked on that. The City 3 ultimately worked with him. Beach Blitz agreed 4 to pay a reduced fine, admitted it was 5 operating without a license, admitted it was 6 operating outside the hours of operation. 7 But never, but did not renew his BTR and 8 did pay for its BTR during that entire year. 9 And, Mr. Marquez will testify not withstanding 10 what we've heard from the other side, the City 11 will always accept payment for a BTR. 12 And, you can pay online. You can pay by 13 mail. You can go down to the Clerk's Office. 14 And, if you have outstanding violations that 15 haven't been timely appealed, the City will 16 take that payment and withhold your BTR until 17 the outstanding violations are resolved. 18 MR. HUDSON: That is contrary to this 19 record. And, I point you to Judge Ungaro's 20 ruling -- 21 MR. ARANA: I object to the interruption. 22 MR. HUDSON: Well, when you're misstating 23 the record, I think it's important I state my 24 objection. By the way, I want to cross-examine 25 your witness when you're done.</p>
<p style="text-align: right;">Page 63</p> <p>1 history. And, I think it's important to focus 2 on that. The Beach Blitz really has 3 mischaracterized entirely what happened. 4 Beach Blitz BTR expired on September 30, 5 2016. It was not renewed. It wasn't paid. And, 6 Beach Blitz operated for over a year without 7 one. 8 On January, I'm sorry, on June 25th of 9 2017, Beach Blitz was cited for operating 10 without a license, without a BTR license. 11 You have 10 days to appeal that 12 determination, appeal it or pay it. He didn't 13 do either of those things. And, he had an 14 outstanding violation back from December for 15 selling liquor outside the prescribed hours. 16 He hadn't appealed or paid that one 17 either. And, on the day he was cited for 18 operating without a BTR in June, he was cited 19 again for operating outside the prescribed 20 hours of operation. 21 He didn't appeal or pay that violation 22 either. He didn't do either of those things. 23 Instead, at some point, he hired an attorney 24 who went and talked to the City Attorney's 25 Office sometime in August to see if he could</p>	<p style="text-align: right;">Page 65</p> <p>1 MR. ARANA: So, the bottom line is, the 2 reason Beach Blitz is where it is today is 3 because it was more concerned about fighting 4 its hours violations than keeping its BTR 5 enforced. 6 It operated for over a year without a BTR. 7 And, when it finally applied for a new BTR, the 8 use wasn't permitted in the district. 9 The Planning Department made a decision 10 that the use wasn't allowed. And, Beach Blitz 11 did not then approach the Planning Director and 12 say listen, I want a determination. I would 13 like a determination that I was illegally 14 non-conform use and I didn't abandon it. 15 And, that decision needs to be presented 16 to Mr. Mooney so that he can review the 17 evidence and make a decision. 18 And, if Beach Blitz doesn't like that 19 determination, it can then appeal it. But this 20 is a Board of Appeals. It doesn't make the 21 decision in the first instance. 22 And, Mr. Mooney has testified that 23 decision was never made. The evidence was never 24 presented to him. The Planning Department was 25 given 11 pages and a request to determine</p>

<p style="text-align: right;">Page 66</p> <p>1 whether the use was allowed.</p> <p>2 It clearly wasn't. And, that this exact</p> <p>3 case that they are making before you today, is</p> <p>4 the case that they should have made to the</p> <p>5 Planning Director under the rules.</p> <p>6 BOARD MEMBER BARON: Just a quick question</p> <p>7 to make sure I understand the timeline. So,</p> <p>8 July 1, 2016, a notice goes out saying your BTR</p> <p>9 is expiring, you have to renew it by September</p> <p>10 30th of 2016.</p> <p>11 So, if it had been renewed during that</p> <p>12 time, we wouldn't be here today? It would be</p> <p>13 valid. Subsequent to that -- so, that was not</p> <p>14 done, even though, I guess, another BTR for a</p> <p>15 related entity was done at the time.</p> <p>16 The violations came after that. So, when</p> <p>17 the violation notices arrived, had those, and</p> <p>18 now I guess maybe now the BTR was on the radar,</p> <p>19 had the violations just been paid, would the</p> <p>20 BTR had been renewable?</p> <p>21 We're dealing with a timeline where it's</p> <p>22 implied that the City is dragging its feet to</p> <p>23 run the clock. So, the violations just been</p> <p>24 paid, would the BTR had been renewable at that</p> <p>25 point?</p>	<p style="text-align: right;">Page 68</p> <p>1 has another entity. He knows he needs to renew</p> <p>2 his BTR every year. He let it expire and he</p> <p>3 didn't pay it.</p> <p>4 And, then when he received the notice of</p> <p>5 violation nine months later, he didn't pay it</p> <p>6 and he didn't get his BTR current.</p> <p>7 And, by the way, that notice of violation</p> <p>8 that was issued on June 25, says cease</p> <p>9 operating until you obtain a BTR. That's the</p> <p>10 instruction.</p> <p>11 MR. HUDSON: I'll refer to the record.</p> <p>12 And, I'm going to answer your question.</p> <p>13 MR. ARANA: Is this an objection?</p> <p>14 MR. HUDSON: Yes. It's an objection.</p> <p>15 You're mischaracterizing the record. The</p> <p>16 gentleman asked you a question. Sir, let me</p> <p>17 address it again. And, it's in the Federal</p> <p>18 Court transcripts and you have those in your</p> <p>19 record.</p> <p>20 Mr. Doar testified that he and multiple</p> <p>21 people, within days of finding out they didn't</p> <p>22 have a BTR which was in June of 2017, did</p> <p>23 everything consistent with code and law to get</p> <p>24 a new BTR.</p> <p>25 The City testified they should have</p>
<p style="text-align: right;">Page 67</p> <p>1 MR. ARANA: So, on June 25th of 2017, nine</p> <p>2 months after the BTR expired, Beach Blitz was</p> <p>3 cited for operating without one. He was fined</p> <p>4 \$1,000 for that.</p> <p>5 He also had a six month old violation for</p> <p>6 operating outside the prescribed hours. Two</p> <p>7 days later, on June 27, he went in to the city</p> <p>8 offices, to the Finance Department and he got</p> <p>9 an invoice for \$2,200 for the BTR.</p> <p>10 If he had paid that invoice along with the</p> <p>11 outstanding violation, he would have gotten his</p> <p>12 BTR right there. He would have gotten his BTR</p> <p>13 right there.</p> <p>14 But he chose not to because he wanted to</p> <p>15 embark on this process of trying to appeal the</p> <p>16 violations out of time.</p> <p>17 BOARD MEMBER BARON: This is being framed</p> <p>18 as some sort of grand project to sort of rid</p> <p>19 the city of this. But basically, had they just</p> <p>20 followed the rules, this wouldn't be here.</p> <p>21 MR. ARANA: That's correct. If he had</p> <p>22 renewed his BTR timely, and by the way, the</p> <p>23 City sends a notice out every to renew your</p> <p>24 BTR.</p> <p>25 As Mr. Goldberg pointed out, Beach Blitz</p>	<p style="text-align: right;">Page 69</p> <p>1 accepted his money. The City has put on no</p> <p>2 evidence, as Judge Ungaro found, that they</p> <p>3 didn't --</p> <p>4 MS. BOUTSIS: Mr. Hudson, I'm sorry. Just</p> <p>5 one thing. This is a speaking objection that</p> <p>6 has gone on really long and you've made your</p> <p>7 presentation in full the first time.</p> <p>8 But the reality is, this is a De Novo</p> <p>9 hearing. So, whatever happened at Judge Ungaro,</p> <p>10 we weren't there. It's part of the transcript</p> <p>11 for this hearing, but if they have testimony</p> <p>12 that they want to present on that point, they</p> <p>13 can do so today.</p> <p>14 MR. HUDSON: I agree. And, they should.</p> <p>15 MS. BOUTSIS: And, so, let them do their</p> <p>16 presentation.</p> <p>17 MR. HUDSON: But their lawyer is</p> <p>18 testifying and he's misrepresenting the record.</p> <p>19 If his witness wants to say that, I agree with</p> <p>20 you, Madam Attorney.</p> <p>21 MS. BOUTSIS: Let him finish then. Let him</p> <p>22 finish his presentation. Give him the</p> <p>23 opportunity to do so.</p> <p>24 BOARD MEMBER FOX: I have a quick question</p> <p>25 that's on the question about why we're really</p>

<p style="text-align: right;">Page 70</p> <p>1 here. What is the administrative decision that 2 you are appealing? Is it a decision that was 3 made by the Planning Director? Because that 4 didn't happen. 5 Or, is it an administrative decision that 6 was made by the Finance Department and the lack 7 of issuing the BTR. I'm having a hard time 8 understanding the administrative decision that 9 you're appealing. 10 MR. HUDSON: The denial of the BTR on the 11 basis that it was denied which is the Planning 12 Department's finding. This is a non-legal 13 non-conforming use as opposed to a legal 14 non-conforming which is legal and addresses 15 Mr. Goldberg's question earlier. 16 A legal non-conforming use is legal, is 17 grandfathered, and cannot be disturbed. 18 MR. GOLDBERG: It would be grandfather and 19 it would be legal if in fact the licenses were 20 current. At the time that the City Council -- 21 MR. HUDSON: That's -- 22 MR. GOLDBERG: Let me finish, please. At 23 the time that the City Council passed the 24 ordinance, he did not have a valid BTR. 25 MR. HUDSON: That is not the law, sir.</p>	<p style="text-align: right;">Page 72</p> <p>1 was passed, he did not have a legal license to 2 operate in the City of Miami Beach. It was not 3 a legal non-conforming use. 4 MR. HUDSON: Your Honor, sorry, I'm used 5 to being in court. 6 MR. GOLDBERG: I've been a judge at one 7 time, too. 8 MR. HUDSON: I'm sure more than once. The 9 code, number one, the code doesn't say that. 10 The code says what illegally established is and 11 we've read you that section. 12 So, respectfully, we disagree. 13 Furthermore, what Miguel said earlier was, and 14 he was also quoting from the code and from the 15 case that we provided you that if you have a 16 pending application, and he, at that point, 17 didn't know he didn't have a license which 18 means the process -- see, they want to focus on 19 process. 20 We did everything right. So, if we didn't 21 have a license, they at some point needed to 22 cite us, which they did nine months later. And, 23 then we have the right to fix it. And, we did. 24 That right alone grandfathers you in. 25 MR. GOLDBERG: So, Mr. Hudson, your client</p>
<p style="text-align: right;">Page 71</p> <p>1 MR. GOLDBERG: He was operating as an 2 illegal business at that time. So, you could 3 not be considered as a legal non-conforming use 4 because he was not operating legal, in my 5 opinion, at that time. 6 MR. HUDSON: With all due respect, that's 7 not the law, sir. I read to you the code on 8 what legally established means. 9 Legally established means at the date the 10 business started was illegal. The loss of the 11 license doesn't impact that. 12 BOARD MEMBER FOX: It sounds like you're 13 -- 14 MR. GOLDBERG: Well, I don't agree with 15 you on that at all. 16 BOARD MEMBER FOX: It also sounds like -- 17 MR. GOLDBERG: If you don't have an -- if 18 I don't have a license to practice law in the 19 City of Miami Beach, I'm operating illegal as a 20 lawyer. I must have a City of Miami Beach 21 license in order to practice law. 22 MR. HUDSON: Correct. 23 MR. GOLDBERG: He must have a City of 24 Miami Beach license in order to operate that 25 package store. At the time that the ordinance</p>	<p style="text-align: right;">Page 73</p> <p>1 testified that he had another location and he 2 got his BTR for that location. So, he knew he 3 needed a BTR for the other location. 4 MR. HUDSON: Correct. 5 MR. GOLDBERG: He just didn't get it. 6 MR. HUDSON: He didn't know he didn't have 7 it. 8 MR. GOLDBERG: I'm sure. The City sends 9 out automatic mailings on these things. 10 MR. HUDSON: They do. 11 MR. GOLDBERG: I can't believe that out of 12 all the businesses in this city, they didn't 13 send one to him. 14 MR. HUDSON: We're not suggesting they 15 didn't. 16 MR. GOLDBERG: So, he must have gotten it. 17 He just didn't follow through on it. 18 MR. HUDSON: No, sir. He testified and 19 it's in the Federal Court transcript, which is 20 evidence in this case. It's in the record in 21 this case and it's undisputed that he didn't 22 know and when he found out -- we acknowledge 23 that there's an automatic. 24 We're not suggesting the conspiracy goes 25 that far back. Let me be clear about that.</p>

<p style="text-align: right;">Page 74</p> <p>1 We're suggesting this all started sometime in 2 July or August when they saw the end of the 3 fiscal year coming. 4 So, with all due respect, he was a legally 5 established non-conforming use. And, is today 6 -- 7 BOARD MEMBER FOX: Sir, why did you not 8 then appeal to the Planning Director for 9 determination as to your conforming status? I 10 don't even know if this issue is right for this 11 tribunal, candidly. 12 MR. HUDSON: Well, I'd like to ask this 13 gentleman. He's testifying, so I have the right 14 to cross-examine him. There's no obligation. 15 BOARD MEMBER FOX: Forget what your 16 interpretation of the code is. From a practical 17 perspective, why was there no appeal to the 18 Planning Director to determine whether there 19 was a non-conforming illegal -- 20 MR. HUDSON: I understand your question, 21 sir. 22 BOARD MEMBER FOX: From a procedural 23 perspective, I want to understand -- 24 MR. HUDSON: There is absolutely, I'm 25 telling you, there is absolutely nothing that</p>	<p style="text-align: right;">Page 76</p> <p>1 their presentation. 2 All we've done is answer questions at this 3 point and get side tracked from their 4 presentation as well. So, there was about 14 5 minutes left on the clock, so I'm putting it at 6 40 minutes. 45 minutes. And, that will give you 7 your time. 8 MR. ARANA: Okay. Thank you. To answer 9 Mr. Fox's question, the determination that is 10 being appealed is that Exhibit A of our 11 materials. Okay? 12 It is a determination by the Planning 13 Board that after further review, section 142544 14 of the City's land development regulations 15 applies to the proposed use. 16 The proposed use. And, that regulation 17 says that packaged liquor stores are not 18 permitted. That was the determination. 19 That is what is up on appeal. And, 20 there's no dispute that those regulations 21 prohibit the use that was requested. 22 BOARD MEMBER BARON: So, basically we're 23 reviewing whether the decision based on this 24 December application for essentially a new BTR, 25 whether the decision to deny that application</p>
<p style="text-align: right;">Page 75</p> <p>1 would put anybody, a layman, a lawyer, anybody 2 on notice that affirmative obligation exists. 3 They are trying to put that on us. There 4 is nothing, rule, regulation, and I'm going to 5 ask the gentleman, if I may. And, I think you 6 should ask him that. 7 What written rule, what promulgated rule 8 in the City of Miami Beach, puts that burden on 9 us, sir? I'm cross-examining. 10 MR. ARANA: A question of decorum. I think 11 this has been an incredible interruption of our 12 presentation. 13 MS. BOUTSIS: You're absolutely right. It 14 is. 15 MR. ARANA: They went for an hour. So, I 16 think it's improper, number one. 17 MS. BOUTSIS: You can do it after. I'm 18 sorry. Procedurally, I need to get back into 19 control. I'm usually much better at control and 20 I've failed completely in this hearing. You do 21 cross-examination after they do their 22 presentation and case. 23 I'd ask that you both sit. You can get to 24 Mr. Mooney once their presentation is done. You 25 can have a time for rebuttal. But let them do</p>	<p style="text-align: right;">Page 77</p> <p>1 was the correct decision. 2 MR. ARANA: We would submit that's the 3 only thing before the Board. We would submit 4 that's the only thing before the Board and the 5 Appellant has not even made an argument to the 6 contrary because there's no dispute about that. 7 MR. GOLDBERG: And, at that time, the new 8 ordinance was in effect? 9 MR. ARANA: Correct. There's no question 10 about that. 11 BOARD MEMBER BARON: Just a quick question 12 about the timing of this. So, I know in October 13 of 2016, the change was made to the -- how long 14 prior to that had that been discussed? This 15 change that, you know, that was going forward 16 that would -- 17 MR. MOONEY: I'm sorry. What's the 18 question again? 19 BOARD MEMBER BARON: I know that October 20 19th of 2016, this passed, the new regulations 21 that would affect these types of businesses. 22 There had been numerous readings, probably 23 before, in the commission. There had been some 24 discussions leading up to this in the months 25 prior.</p>

<p style="text-align: right;">Page 78</p> <p>1 MR. MOONEY: The legislative timeframe was</p> <p>2 probably four to five months. I'd have to</p> <p>3 research it because this was an amendment to</p> <p>4 the land development regulations which required</p> <p>5 Planning Board review.</p> <p>6 It was likely reviewed by the Land Use</p> <p>7 Committee and required two hearings before the</p> <p>8 City Commission as well as a referral by the</p> <p>9 Commission. So, the legislature process was</p> <p>10 probably four to five months.</p> <p>11 BOARD MEMBER BARON: And, that's all</p> <p>12 public?</p> <p>13 MR. MOONEY: Yes. That's all public.</p> <p>14 BOARD MEMBER BARON: That's publicly</p> <p>15 noticed. Okay.</p> <p>16 MS. BOUTSIS: As I represent the Planning</p> <p>17 Board, the Land Use Boards, and write a lot of</p> <p>18 the ordinances, I can actually say that's</p> <p>19 probably a very correct statement.</p> <p>20 Usually what happens is there is a</p> <p>21 referral by the City Commission. That referral</p> <p>22 is noticed usually on a Consent Agenda. That</p> <p>23 then goes to a Land Use Committee.</p> <p>24 So, then the next month would be the Land</p> <p>25 Use Committee that would review it. Maybe</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Okay. Do you from time to time make those</p> <p>2 types of determinations?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. What is the process for considering</p> <p>5 that sort of request?</p> <p>6 A. A property owner or a tenant will approach</p> <p>7 my staff and then elevate it to myself regarding a</p> <p>8 potential legal non-conforming status.</p> <p>9 And, then they will present all of their</p> <p>10 evidence into exhibits that they believe establish</p> <p>11 the use as a legal non-conforming use. We will</p> <p>12 review that evidence and then make a determination.</p> <p>13 Q. Okay. And, again, you didn't make any such</p> <p>14 determination in this case with respect to Beach</p> <p>15 Blitz, correct?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. There was a question earlier about</p> <p>18 the fact that the initial reviewer had passed the</p> <p>19 request and then ultimately that was changed. Can</p> <p>20 you explain that, please?</p> <p>21 A. The initial reviewer had given it an</p> <p>22 approval. That was done so incorrectly. A person</p> <p>23 from the Finance Department saw that.</p> <p>24 I asked our department, specifically the</p> <p>25 supervisor, of the person that approved it, and the</p>
<p style="text-align: right;">Page 79</p> <p>1 there's a draft. Maybe it hasn't been drafted</p> <p>2 yet and there's discussion and it goes for</p> <p>3 another meeting.</p> <p>4 I don't know in this case whether that</p> <p>5 happened, but at least one meeting before the</p> <p>6 Land Use. Then it goes back to the City</p> <p>7 Commission with a recommendation on the draft.</p> <p>8 And, a request to send it to the Planning</p> <p>9 Board. So, that's another public meeting. Then</p> <p>10 it goes to the Planning Board where it is</p> <p>11 advertised and noticed for recommendation.</p> <p>12 And, then it's two readings to the City</p> <p>13 Commission. So, five to six months, four to</p> <p>14 five or six months is a reasonable time period.</p> <p>15 DIRECT EXAMINATION</p> <p>16 BY MR. ARANA:</p> <p>17 Q. Okay. Mr. Mooney, if I could ask you just</p> <p>18 a couple more questions. Did you make any</p> <p>19 determination, as Planning Director, regarding</p> <p>20 whether Beach Blitz was a legal non-conforming use</p> <p>21 or had abandoned any such use?</p> <p>22 A. No.</p> <p>23 Q. Okay. Were you presented any evidence from</p> <p>24 which you can make such a determination?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 81</p> <p>1 supervisor realized that it should not have been</p> <p>2 approved. And, then he changed it to a denial.</p> <p>3 Q. Okay. And, what was the basis for the</p> <p>4 denial?</p> <p>5 A. That it was not a permitted use in the</p> <p>6 zoning district.</p> <p>7 Q. Is that a correct decision in your mind</p> <p>8 A. Yes.</p> <p>9 Q. Okay. No further questions. Thank you.</p> <p>10 MR. HUDSON: May I?</p> <p>11 MS. BOUTSIS: Why don't you let them</p> <p>12 finish their presentation and at the end, you</p> <p>13 can do the rebuttal of any of the witnesses.</p> <p>14 MR. HUDSON: I want to cross.</p> <p>15 MS. BOUTSIS: I understand. You can do</p> <p>16 that at the end once they finish their</p> <p>17 presentation.</p> <p>18 MR. HUDSON: That's not typically how we</p> <p>19 do things.</p> <p>20 MS. BOUTSIS: You're interrupting their</p> <p>21 presentation at this time. You can do it at the</p> <p>22 end.</p> <p>23 MR. ARANA: So, the bottom line, is that</p> <p>24 the question of whether Beach Blitz was</p> <p>25 illegally non-conforming use or whether it</p>

<p style="text-align: right;">Page 82</p> <p>1 abandoned that use has not been presented to 2 the Director.</p> <p>3 No decision has been made. And, it's not, 4 it wouldn't be appropriate for this Court to 5 rule on that in the first instance.</p> <p>6 The only thing that is before the Board is 7 whether the BTR was properly denied because the 8 use is not permitted in the district.</p> <p>9 I do want to respond to some of the 10 allegations about what happened just so the 11 record is clear on that. Beach Blitz BTR 12 expired on September 30, 2006 and Beach Blitz 13 operated for over a year without a BTR.</p> <p>14 MS. BOUTSIS: 2016.</p> <p>15 MR. ARANA: I'm sorry, 2016. And, Beach 16 Blitz operated for over a year without a BTR. 17 On June 25th of 2016, Beach Blitz was cited for 18 operating without a BTR.</p> <p>19 And, two days later, it went into the 20 Finance Department. It was handed a bill. It 21 could have paid that bill along with a \$1,000 22 outstanding fine and obtained its BTR then.</p> <p>23 But it didn't appeal any of its citations 24 timely as required. It didn't cease operating 25 until it obtained a BTR. Instead, it embarked</p>	<p style="text-align: right;">Page 84</p> <p>1 Blitz filed a federal action against the City, 2 the mayor, the former mayor Phillip Lavine, 3 current and former City Commissioners, City 4 Attorney staff claiming due process violations, 5 claiming substantive due process violations, 6 claiming First Amendment retaliation.</p> <p>7 They went into court. They tried to get a 8 preliminary injunction and that was denied. 9 And, then the Federal Court dismissed the 10 action out of hand.</p> <p>11 And, it was only after all that happened 12 that Beach finally came back and applied for a 13 new BTR. So, you hear their presentation, you 14 might think that the Court ruled for them in 15 Federal Court.</p> <p>16 They were thrown out of court is what 17 happened. Now, the City pointed out in its 18 paper that Beach Blitz, in fact, never 19 submitted payment to the City for its BTR.</p> <p>20 And, that's a fact. They never wrote a 21 check. They never paid online. They never 22 mailed in a check. And, we pointed out in our 23 paper, that while Beach Blitz contends it tried 24 to pay for its BTR license several times, as 25 the Magistrates report and recommendation</p>
<p style="text-align: right;">Page 83</p> <p>1 on a process.</p> <p>2 Ultimately, on October 4, I'm sorry, 3 October 6, after Beach Blitz had been operating 4 for over a year without a BTR, code enforcement 5 officers cited Beach Blitz for operating 6 without a BTR and told them to stop operating 7 as they had told them six months before.</p> <p>8 You can't operate in the City without a 9 license. They flouted the order the first time 10 on June 25. And, finally the City said you 11 can't do it.</p> <p>12 But that is not before the panel because 13 the only thing before the Board now is the new 14 application that was filed. The new application 15 that was filed in December was properly denied.</p> <p>16 That's the only thing you're being asked 17 to review here. Counsel for Beach Blitz 18 suggested that the City mischaracterized the 19 testimony of the Federal Court.</p> <p>20 And, I think as the City Attorney pointed 21 out, of course, we're not in the Federal Court. 22 I would like to explain to the panel what 23 happened there.</p> <p>24 Rather than apply for a new BTR after 25 Beach Blitz was ordered to shut down, Beach</p>	<p style="text-align: right;">Page 85</p> <p>1 correctly concluded and would go on to explain 2 all the different that Beach Blitz could have 3 paid for its BTR.</p> <p>4 A business may pay the BTR renewal fee at 5 City Hall, at the Customer Service Center, at 6 the City's Lockbox, at the City's Customer 7 satellite office in North Miami Beach, or 8 online.</p> <p>9 The online system does not prevent 10 businesses from making online payment for a BTR 11 even if there are outstanding violations. If 12 you have an outstanding violation, you can go 13 online, and you can pay for your BTR.</p> <p>14 He didn't do that. Now, nevertheless, 15 Mr. Doar contends that he tried repeatedly to 16 pay even though he didn't use any of these 17 mechanisms.</p> <p>18 But he didn't pay online. He didn't put 19 his check in the mail. He doesn't remember who 20 he spoke to. He never actually wrote a check.</p> <p>21 If this argument were accepted, every 22 business owner who fails to pay for a BTR could 23 just say I tried to pay and they wouldn't let 24 me.</p> <p>25 And, Mr. Marquez has testified. His</p>

<p style="text-align: right;">Page 86</p> <p>1 testimony is in the record that staff working 2 in the Finance Department on the dates Mr. Doar 3 claims he tried to pay did not tell Mr. Doar 4 that they won't accept his money. 5 And, Mr. Marquez is here to testify to 6 that effect. Matter of fact, I'd like to call 7 Mr. Marquez for a few questions, please. 8 MR. MARQUEZ: Good morning, Mr. Chairman, 9 committee members. Manny Marquez, Assistant 10 Finance Director at the Finance Department. 11 DIRECT EXAMINATION 12 BY MR. ARANA: 13 Q. Good morning, Mr. Marquez. 14 A. Good morning. 15 Q. What is your position with the City? 16 A. Assistant Director of the Finance 17 Department. 18 Q. Okay. Can you describe briefly the process 19 an applicant must follow to apply for a new BTR? 20 A. An application for a new BTR is submitted 21 to the Finance Department. We obtain the paperwork. 22 We check that all the T's are crossed and all the 23 I's are dotted. 24 And, then we electronically route the 25 application to the Regulatory Department. The</p>	<p style="text-align: right;">Page 88</p> <p>1 an invoice was generated showing a total due for 2 the BTR of \$2,246? 3 A. Yes, I am. 4 Q. Okay. Is there any process or procedure in 5 your department which would have prevented Beach 6 Blitz from paying this invoice during the 2016 to 7 2017 fiscal year? 8 A. No. They could have paid, as you mentioned 9 earlier, they could have paid online. They could 10 have mailed a payment to our lockbox. 11 They could have paid at City Hall, at our 12 Customer Service Center, and our satellite office 13 in North Beach. 14 Q. Okay. Is there, what is the City's 15 practice or procedure with respect to issuing BTRs 16 when there are outstanding violations that haven't 17 been timely appealed? 18 A. If there is any outstanding violations, or 19 any monies owed to the City, the City per Chapter 20 102 of our code, can withhold someone's BTR. 21 We would accept payment for their BTR renewal 22 but we would withhold the BTR. We would tell the 23 customer thank you for your payment, but you have 24 these other outstanding issues that need to be 25 solved first before we issue a BTR.</p>
<p style="text-align: right;">Page 87</p> <p>1 typical Regulatory Department for an application 2 are the Building Department, the Planning 3 Department, the Fire Department, and Code 4 Compliance. 5 Q. Okay. Are you generally familiar with 6 Beach Blitz's BTR license history? 7 A. I am. 8 Q. Okay. Are you aware the last time Beach 9 Blitz obtained a BTR was for the 2015 to 2016 10 fiscal year? 11 A. I am. 12 Q. Okay. Does the City send BTR license 13 holders an invoice to renew their BTRs every year? 14 A. Yes. Every July of every year. 15 Q. Okay. Did the City send Beach Blitz a 16 renewal notice in July of 2016? 17 A. Yes. It sent Beach Blitz, both of the 18 businesses, a renewal notice in July of 2016. 19 Q. Okay. Are you aware that Beach Blitz was 20 cited on June 25, 2017 for operating without a BTR? 21 A. I am. 22 Q. Okay. And, that BTR expired the previous 23 September 30? 24 A. September 30, 2016 it expired. 25 Q. Okay. Are you aware that on June 27, 2017,</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. Okay. Now, what if there is an outstanding 2 violation that is timely appealed? 3 A. If there is a violation that is timely 4 appealed, we would release the BTR because the 5 business hasn't had their day in court yet. 6 Q. Okay. 7 A. So, they haven't been adjudicated guilty. 8 We would release the BTR under those circumstances. 9 Q. So, if Beach Blitz had appealed, timely 10 appealed, any of its citations, either the December 11 21, 2016 citation or the June 25th citations, then 12 while that was pending, he could have paid for and 13 actually obtained his BTR? 14 A. Yes. If there was no other monies owed to 15 the City, we would have released the BTR. 16 Q. Okay. Now, if a BTR is not renewed for an 17 entire fiscal year, does an applicant then need to 18 file a new application for a BTR? 19 A. Yes. That BTR would be considered expired. 20 And, then the entity would have to apply for a new 21 BTR. 22 Q. Okay. Is that what happened in this case? 23 A. Yes. 24 Q. Okay. Now, Counsel for Beach Blitz has 25 stated that his client tried to pay for his BTR at</p>

<p style="text-align: right;">Page 90</p> <p>1 the end of September. September 28, 29, and the 2 first couple days of October. And, that he was 3 refused. Did you hear that argument? 4 A. I've heard that argument. That's not part 5 of our business practice. If someone comes to our 6 cashiers' window with an invoice and they're ready 7 to make a payment, we'll accept, cash, credit card, 8 a check for that payment. Money order. 9 Q. Okay. And, Beach Blitz could have also 10 paid online or mailed in his check; is that right? 11 A. At any time, yes. At any time from July of 12 2016 all the way to September 30, which was the due 13 date and then from October 1, 2016 through 14 September 30th of 2017, they could have made a 15 payment online or at any of the locations I 16 mentioned. 17 Q. Okay. Have you had an opportunity to speak 18 with the clerks and cashiers who were working at 19 the City between September 28 and October 4? 20 A. Yes. I interviewed everybody that was 21 assigned to work at our cashiers' office and our 22 clerks that dealt with Beach Blitz or could have 23 seen Beach Blitz. 24 Q. Okay. And, did any of them tell you they 25 refused a check, or payment from Mr. Doar?</p>	<p style="text-align: right;">Page 92</p> <p>1 reason Beach Blitz was without a BTR was 2 because it let it expire. 3 It didn't pay for the renewal. When it was 4 cited for operating without a BTR, it didn't 5 pay the BTR. And, then in December of, not 6 until December of last year, after it filed an 7 unsuccessful Federal Court challenge, it 8 applied for a new BTR and that new BTR was 9 properly denied. If you have any questions, I'd 10 be happy to answer them. Thank you. 11 MS. BOUTSIS: So, can we give five minutes 12 for rebuttal and any cross-examination to the 13 applicant? 14 MR. HUDSON: I need a few more than that. 15 MS. BOUTSIS: That's up to the Board. The 16 amount of time is up to the Board, ultimately, 17 but I'm putting five minutes on the clock. Is 18 that acceptable to the Board? I'm sorry. Yes. 19 CROSS-EXAMINATION 20 BY MR. HUDSON: 21 Q. Sir, I had a pending question, but let me 22 ask it again. Is there anything in writing that 23 would show Mr. Doar or anybody else that they have 24 an affirmative duty to come to your department -- 25 MS. BOUTSIS: Can you get closer to the</p>
<p style="text-align: right;">Page 91</p> <p>1 A. No. None of them stated that they refused 2 payment for a BTR invoice. That's not part of our 3 business practice. That wouldn't be our normal 4 course of business. 5 Q. Okay. Thank you, Mr. Marquez. I appreciate 6 it. 7 A. You're welcome. 8 (Thereupon, the witness was excused.) 9 MR. ARANA: Ladies and gentlemen, this 10 appeal should be denied because the only issue 11 before you is whether the BTR was properly 12 denied because the use was not permitted in the 13 district. 14 There's no question that the BTR was 15 properly denied for that reason. The only other 16 argument before you is that Beach Blitz should 17 be considered illegally established 18 non-conforming use and that it didn't abandon 19 that use. 20 That argument is not properly before the 21 Board because it wasn't presented below it to 22 the Planning Director. There's no decision on 23 that point for you to review. 24 And, the factual record shows that the 25 City didn't do anything wrong and that the only</p>	<p style="text-align: right;">Page 93</p> <p>1 mic so we can hear it? 2 BY MR. HUDSON: 3 Q. I'm sorry. Is there any written policy, 4 procedure statute, code, anything, that would put 5 any citizen on notice, based on this fact scenario, 6 that they needed to come to your office and 7 affirmatively request such a finding? 8 A. In the code, there are specific 9 requirements for establishing for the Planning 10 Director to establish whether or not the use is 11 legal non-conforming. And, it's the duty of the 12 applicant to present those facts in evidence. 13 Q. Okay. Where in the code does it say it's 14 the duty of the applicant? 15 A. It doesn't say that specifically. 16 Q. I see. And, are you referring, when you 17 talk about the code, to 118397? 18 A. It's in Chapter 118. It's 118394 and 19 118397. 20 Q. Right. And, both of those place the 21 affirmative duty by using the word shall on the 22 Planning Director, do they not? 23 A. The responsibility for making that 24 determination shall rest with the Planning 25 Director.</p>

<p style="text-align: right;">Page 94</p> <p>1 Q. Okay. And, do either of those sections put 2 any specific duty on the applicant?</p> <p>3 A. In terms of providing the evidence, they 4 are the only ones that can provide the evidence.</p> <p>5 Q. Does the code, I have it here for you if 6 you'd like to take a look at it, does it put that 7 duty on the applicant?</p> <p>8 A. I believe that the code does put that duty 9 on the applicant because the applicant is the only 10 one that can provide that evidence.</p> <p>11 Q. Okay. And, I'm not going to waste your 12 time. You can look at the code. It clearly doesn't 13 do that. So, that's a matter of notice. It's a 14 matter of due process.</p> <p>15 You can't say oh, well, because he's the only 16 person that can show us. They have the evidence. 17 They have, sir, the building card in this case. 18 What is a building card?</p> <p>19 A. It's a record of development and building 20 approvals for a property.</p> <p>21 Q. Was there any doubt in the reviewers mind 22 that this business that was applying for the new 23 BTR was the same business that had been there since 24 2012?</p> <p>25 MS. BOUTSIS: He can't answer that. That's</p>	<p style="text-align: right;">Page 96</p> <p>1 prejudice. We had the right to amend those 2 claims. We had the right to do other things, 3 but we chose to come here to the City of Miami 4 Beach to try to solve our problem on an 5 informal basis.</p> <p>6 So, I take great objection with the 7 representations made by Counsel for the City. 8 So, I'm going to read this into the record. A 9 review of the hearing transcripts shows that 10 Mr. Doar's testimony was not controverted by 11 the record.</p> <p>12 Mr. Doar testified regarding his 13 experience dealing with an employee of the City 14 of Miami Beach Finance Department. The 15 defendants did not call that employee to 16 testify at the hearing to controvert Mr. Doar's 17 testimony, nor did they present sufficient 18 evidence to show that Mr. Doar's account or his 19 interaction with such employee was inaccurate.</p> <p>20 The defendants' argument that Mr. Doar's 21 account is false is solely based on what they 22 would expect an employee of the Finance 23 Department to say, not what such employee 24 actually did say to Mr. Doar.</p> <p>25 As such, the defendants claim that</p>
<p style="text-align: right;">Page 95</p> <p>1 speculation.</p> <p>2 MR. HUDSON: Madam Attorney, with all due 3 respect, there was so much hearsay here that 4 you didn't object to. I don't know that it's 5 your position to make these objections.</p> <p>6 MS. BOUTSIS: I've allowed a lot of 7 latitude to all of you. And, I've given you the 8 opportunity to do that. I'm just saying that, 9 in this case, if they have the person then the 10 person needs to speak. Tom, do you know the 11 answer?</p> <p>12 THE WITNESS: No. I don't know the mindset 13 of the reviewer. I couldn't answer that.</p> <p>14 MR. HUDSON: I'm going to object to that 15 entire process. I'll just move on. All right. 16 I've referred you to this document several 17 times but I'm going to read it this time. Sir, 18 you're excused. Thank you. 19 (Thereupon, the witness was excused.)</p> <p>20 MR. HUDSON: This is the first page of our 21 reply. And, this is a quote from Judge Ungaro. 22 This is a finding, a formal finding, by a 23 Federal Judge in the case. By the way, we 24 weren't thrown out of court.</p> <p>25 The Court dismissed our claims without</p>	<p style="text-align: right;">Page 97</p> <p>1 Mr. Doar's testimony is contrary to the 2 undisputed record is a gross overstatement and 3 unsupported by the record.</p> <p>4 December 22 order. Judge Ursula Ungaro. 5 They continue to stand here and tell you that 6 he didn't go. They can't prove that. They even 7 have, we showed you the corroborating evidence.</p> <p>8 They even admit he was down there and he 9 got an invoice. It is just amazing that they 10 sit here and tell you that. Why is that 11 relevant?</p> <p>12 Because all you have to do today is find 13 two things. Actually, I would like to ask the 14 gentleman one more question.</p> <p>15 BY MR. HUDSON:</p> <p>16 Q. Please, do you have Exhibit A, the Exhibit 17 A that you looked at earlier? Do you have it?</p> <p>18 A. Uh-huh.</p> <p>19 Q. All right. Read the first sentence, 20 please.</p> <p>21 A. After further review, section 142544 of 22 the City's Land Development and Regulations applies 23 to the proposed use, prohibited uses.</p> <p>24 Q. Okay. So, you acknowledge that initially 25 it was passed, right?</p>

<p style="text-align: right;">Page 98</p> <p>1 A. Yes.</p> <p>2 Q. And, then you said somebody in Finance</p> <p>3 noted there might be an issue and let your folks</p> <p>4 know, your department know, right?</p> <p>5 A. Correct.</p> <p>6 Q. How would Finance know there was an issue?</p> <p>7 A. That I don't know.</p> <p>8 Q. Wow. Interesting question, right? What</p> <p>9 does further review mean? After further review? I'm</p> <p>10 sorry?</p> <p>11 BOARD MEMBER SEGAL: (Unintelligible)</p> <p>12 normal procedure that Finance would catch</p> <p>13 something that the Planning Department may have</p> <p>14 oversaw thinking that things seemed out of</p> <p>15 order.</p> <p>16 THE WITNESS: We have checks and balances.</p> <p>17 And, on occasion sometimes, the Finance</p> <p>18 Department will notice something that may</p> <p>19 appear out of the ordinary and will ask either</p> <p>20 myself or my staff about that.</p> <p>21 MR. BYERS: Let me say, if you do want to</p> <p>22 hear testimony about that, we do have the</p> <p>23 person here that can explain the phone call and</p> <p>24 actually made the call.</p> <p>25 MR. HUDSON: Let me refer you to Exhibit</p>	<p style="text-align: right;">Page 100</p> <p>1 fiscal year for the other year had closed, is</p> <p>2 inaccurate.</p> <p>3 MR. HUDSON: That's not what the Court</p> <p>4 found actually. The Court found it looked like</p> <p>5 it could be October 6, but it is undated. You</p> <p>6 can look at it.</p> <p>7 It's in the record. You can look and see</p> <p>8 if you can find a date. Nobody else could. Now,</p> <p>9 they have the box and they have the system.</p> <p>10 Maybe they have gone back and looked. I</p> <p>11 certainly hope they did and they know the date.</p> <p>12 We don't know the date and the Court didn't</p> <p>13 know the date.</p> <p>14 MR. BYERS: It's a suggestion, otherwise.</p> <p>15 BY MR. HUDSON:</p> <p>16 Q. So, let's go back. What was the further</p> <p>17 review? Now that we realize that Finance caught the</p> <p>18 error of the Planning Department, it says further</p> <p>19 review. What was the further review that needed to</p> <p>20 be undertaken?</p> <p>21 A. To take a look at the use and whether or</p> <p>22 not it was a permitted use. And, the determination</p> <p>23 was made that it was not a permitted use.</p> <p>24 Q. And, who did that?</p> <p>25 A. From my staff?</p>
<p style="text-align: right;">Page 99</p> <p>1 17, which is attached to our amended -- it's</p> <p>2 not in the book. It's attached to our Amended</p> <p>3 Letter of Intent.</p> <p>4 There's only one exhibit. That's the</p> <p>5 Finance screenshot we told you about that was</p> <p>6 undated that had Attorney Botcher's (phonetic)</p> <p>7 note in it.</p> <p>8 That note comes back. It keeps coming</p> <p>9 back. That is probably what happened. We don't</p> <p>10 know yet. I haven't had a chance to take</p> <p>11 discovery.</p> <p>12 Finance sees a BTR with all green lights.</p> <p>13 He shows up to pay. How does Finance know there</p> <p>14 is a problem? Because there's a note in the</p> <p>15 record.</p> <p>16 MR. BYERS: I just want to object for the</p> <p>17 record. He keeps saying it's undated. It was</p> <p>18 decided in Federal Court the date was October</p> <p>19 6, 2017. It was not before that. It was a pull</p> <p>20 out box which was also testified to.</p> <p>21 So, the fact they're suggesting it's</p> <p>22 undated or that note came to the City</p> <p>23 Attorney's Office before the date in which</p> <p>24 Beach Blitz was closed down, somehow before the</p> <p>25 time that his BTR was over a year late and the</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. Yes.</p> <p>2 A. Steve Williams.</p> <p>3 Q. And, who would have, would that person</p> <p>4 have had access to the record that showed that</p> <p>5 business had been a package liquor store in the MXC</p> <p>6 since 2012?</p> <p>7 A. I don't believe so. His determination was</p> <p>8 based solely upon the current code.</p> <p>9 Q. So, tell me what he looked at. He looked</p> <p>10 at the application, right?</p> <p>11 A. Yes.</p> <p>12 Q. Everything that was attached to the</p> <p>13 application which was the lease and all the stuff</p> <p>14 that needs to be, liquor license, right?</p> <p>15 A. I don't know if he looked at all of that.</p> <p>16 He looked at what the current code prohibits and</p> <p>17 then made the determination based upon that.</p> <p>18 Q. Okay. And, he wouldn't have looked at the</p> <p>19 balance of the file?</p> <p>20 A. That I don't know.</p> <p>21 Q. Okay. I have no questions.</p> <p>22 MS. BOUTSIS: Did you want to hear from</p> <p>23 the Finance Department to answer your question?</p> <p>24 MR. HUDSON: Briefly.</p> <p>25 MS. BOUTSIS: City's Counsel, would you</p>

<p style="text-align: right;">Page 102</p> <p>1 like a minute to do that?</p> <p>2 MR. BYERS: Obviously, we'd like to handle</p> <p>3 any concerns Mr. Segal may have so I call up</p> <p>4 Ms. Sasha Gonzalez.</p> <p>5 MR. HUDSON: I'm not done yet with my</p> <p>6 turn. I'm almost done.</p> <p>7 MS. BOUTSIS: That's up to the, please</p> <p>8 don't take this the wrong way, but that's up to</p> <p>9 the Board. They gave you five minutes</p> <p>10 originally.</p> <p>11 They let you go over about two or three</p> <p>12 more minutes. If you want to hear from him</p> <p>13 again, you can, but you don't have to. You are</p> <p>14 in control of this meeting.</p> <p>15 DIRECT EXAMINATION</p> <p>16 BY MR. BYERS:</p> <p>17 Q. Good morning, Ms. Gonzalez. Can you state</p> <p>18 your name and your job title, please?</p> <p>19 A. Sasha Gonzalez. Customer service manager.</p> <p>20 Q. Okay.</p> <p>21 MR. GOLDBERG: Can you move the mic down?</p> <p>22 THE WITNESS: I'm sorry. Sasha Gonzalez.</p> <p>23 Customer service manager.</p> <p>24 BY MR. BYERS:</p> <p>25 Q. On January 19, 2018, were you working at</p>	<p style="text-align: right;">Page 104</p> <p>1 caught my attention was the package sales.</p> <p>2 Q. Okay. And, then you called who at the</p> <p>3 Planning Department?</p> <p>4 A. William Stevens.</p> <p>5 Q. Okay. And, what did you two talk about?</p> <p>6 A. We spoke. I asked him if it was -- I was</p> <p>7 double checking if it was approved. He said that it</p> <p>8 might have been approved in error and to please</p> <p>9 resubmit, which I did.</p> <p>10 Q. What does that mean, resubmit?</p> <p>11 A. Resubmit the plan for the Planning</p> <p>12 Department to review.</p> <p>13 Q. Okay. And, then what happened after that?</p> <p>14 A. I went to the customer. I informed him</p> <p>15 that the Planning Department was still reviewing</p> <p>16 the case and that unfortunately, if he had any</p> <p>17 questions, to go to the Planning Department.</p> <p>18 Q. I believe Mr. Segal's question was whether</p> <p>19 or not, does it happen from time to time where</p> <p>20 Finance would call another department?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. No further questions.</p> <p>23 MS. BOUTSIS: Do you have any questions?</p> <p>24 I'm sorry. Does the Board have any questions?</p> <p>25 I'm seeing none. Would you like to give the</p>
<p style="text-align: right;">Page 103</p> <p>1 the City's Finance Office?</p> <p>2 A. Yes.</p> <p>3 Q. And, on that day, did you speak to one of</p> <p>4 your clerks in the Finance Department regarding</p> <p>5 Beach Blitz?</p> <p>6 A. Yes.</p> <p>7 Q. How did they come about?</p> <p>8 A. They were questioning if the BTR needed to</p> <p>9 be back charged since the lease was dated prior to</p> <p>10 the current year.</p> <p>11 Q. Is that because there was a new</p> <p>12 application?</p> <p>13 A. It was a new application. Correct.</p> <p>14 Q. And, they were trying to determine whether</p> <p>15 or not they needed to back charge?</p> <p>16 A. To go back to the prior years and charge</p> <p>17 for operating without a BTR.</p> <p>18 Q. And, what did you do next?</p> <p>19 A. When I saw the application, I saw that it</p> <p>20 was for alcohol package, which it caught my</p> <p>21 attention. So, I contacted the Planning Department</p> <p>22 to see if, to double check, on the approval.</p> <p>23 Q. And, then you saw the term Beach Blitz.</p> <p>24 Did that come to your attention?</p> <p>25 A. I am aware of the lawsuit. But what really</p>	<p style="text-align: right;">Page 105</p> <p>1 appellant another minute? Sorry. That seems</p> <p>2 like a yes. Okay. One more minute.</p> <p>3 MR. HUDSON: Ladies and gentleman, this is</p> <p>4 simple. After all of this, it's a relatively</p> <p>5 simple determination for you to make.</p> <p>6 Are we illegally establishing</p> <p>7 non-conforming use? We are. I know,</p> <p>8 Mr. Goldberg, I know you struggle with that,</p> <p>9 but we are.</p> <p>10 We need all five of you to vote to give</p> <p>11 this man his business back. This business</p> <p>12 should not have been closed. The case, the</p> <p>13 Lewis case that we cite you, I think you</p> <p>14 should, you folks should read that.</p> <p>15 It basically is this case identically. The</p> <p>16 government took something away from the guy and</p> <p>17 then tried to say you don't comply because we</p> <p>18 took something away from you.</p> <p>19 There is no dispute. You just heard Judge</p> <p>20 Ungaro that he tried. And, that's the issue,</p> <p>21 intentional voluntarily abandonment.</p> <p>22 Did he do everything in his power just</p> <p>23 like it says in Lewis? It says the gentleman</p> <p>24 did everything in his power. The only other</p> <p>25 hurdle that you have today once you get to that</p>

<p style="text-align: right;">Page 106</p> <p>1 conclusion, and I think that is obvious, the</p> <p>2 only other hurdle is are we here on something</p> <p>3 because we didn't comply with some unwritten</p> <p>4 administrative policy that nobody knows about?</p> <p>5 That's not the law, folks. That's not the</p> <p>6 law of this state, this city, this county, this</p> <p>7 country. You have to tell people if they have</p> <p>8 to do something.</p> <p>9 Do you not think Mr. Doar would have been</p> <p>10 down there with reams of paper showing this if</p> <p>11 he had known? How much longer are they going to</p> <p>12 do this?</p> <p>13 Do we have to go file our State Court</p> <p>14 lawsuit now and spend tens of thousands or</p> <p>15 hundreds of thousands of dollars to right the</p> <p>16 wrong that you all know exists here?</p> <p>17 Just find that he didn't abandon it. Tell</p> <p>18 them to give us a BTR and let's move on.</p> <p>19 They've already restricted the liquor sales.</p> <p>20 Who knows how much longer these liquor stores</p> <p>21 are going to go.</p> <p>22 They used to be open from eight to</p> <p>23 midnight. They are now open 10 to 8. They're</p> <p>24 probably not going to make it anyway. He did</p> <p>25 everything he was supposed to do. The record is</p>	<p style="text-align: right;">Page 108</p> <p>1 month process.</p> <p>2 BOARD MEMBER BARON: Right. The ordinance</p> <p>3 is being discussed. I would assume, if I was</p> <p>4 one of the four existing businesses in this</p> <p>5 area, it would be on my radar.</p> <p>6 MR. HUDSON: Yes.</p> <p>7 BOARD MEMBER BARON: So, my ultimate point</p> <p>8 is, I don't think it's just an issue of a</p> <p>9 little reminder postcard getting lost in mail.</p> <p>10 So, this is being discussed for months. The</p> <p>11 renewal comes and goes.</p> <p>12 It isn't renewed. A violation notice</p> <p>13 comes. It doesn't trigger something to me</p> <p>14 saying, well, --</p> <p>15 MR. HUDSON: No, it did. And, then the</p> <p>16 June violation notice that said you don't have</p> <p>17 a BTR, he was in Israel, remember?</p> <p>18 BOARD MEMBER BARON: Right.</p> <p>19 MR. HUDSON: He immediately came. He</p> <p>20 immediately hired Hal Rosen, Rochelle Malik</p> <p>21 (phonetic), I think is her name.</p> <p>22 BOARD MEMBER BARON: So, all of these</p> <p>23 professionals aren't telling him just go online</p> <p>24 and pay it immediately, and let's make sure</p> <p>25 that this is taken care of right off the bat?</p>
<p style="text-align: right;">Page 107</p> <p>1 clear. Thank you.</p> <p>2 MS. BOUTSIS: Okay. Now, comes the hard</p> <p>3 part. So, you've heard the arguments of both</p> <p>4 Counsels. And, I think there's one thing that</p> <p>5 is not in dispute is that this is over whether</p> <p>6 the BTR should issue or not.</p> <p>7 That's what is written in their briefs.</p> <p>8 They've said that on the record and the City</p> <p>9 agrees whether it's about the BTR. So, is there</p> <p>10 a ruling?</p> <p>11 BOARD MEMBER BARON: Can we ask some</p> <p>12 questions?</p> <p>13 MS. BOUTSIS: You can ask questions. Of</p> <p>14 course.</p> <p>15 BOARD MEMBER BARON: Okay. I'm still</p> <p>16 struggling with this whole process going back</p> <p>17 to the original renewal. So, we've got this</p> <p>18 month long process where the City Commission</p> <p>19 and others are discussing dramatically changing</p> <p>20 the laws that would affect businesses like your</p> <p>21 clients from opening that's leading up to this</p> <p>22 renewal process.</p> <p>23 MR. HUDSON: The BTR renewal?</p> <p>24 BOARD MEMBER BARON: The original --</p> <p>25 MR. GOLDBERG: Actually a four to five</p>	<p style="text-align: right;">Page 109</p> <p>1 MR. HUDSON: I don't know what --</p> <p>2 BOARD MEMBER BARON: Do not risk your</p> <p>3 business because there are these ordinance</p> <p>4 changes going into effect.</p> <p>5 MR. HUDSON: I wasn't there. I don't know</p> <p>6 what they told him. I will tell you that we</p> <p>7 were retained to deal with those issues, not</p> <p>8 this issue.</p> <p>9 And, we had actually had a meeting with</p> <p>10 Ms. Boutsis and we were trying to resolve these</p> <p>11 issues. And, when they shut him down, I think</p> <p>12 we met with Ms. Boutsis on a Tuesday to try to</p> <p>13 figure out how to work with the City with some</p> <p>14 of the other owners of liquor stores and deal</p> <p>15 with the ordinances.</p> <p>16 That's how we originally got involved.</p> <p>17 And, then we find out on Friday that he was</p> <p>18 shut down. We were flabbergasted.</p> <p>19 BOARD MEMBER BARON: This is being framed</p> <p>20 as something done to him. But, is it not as</p> <p>21 simple as if he had gone online and paid these</p> <p>22 violations and BTR --</p> <p>23 MR. HUDSON: Let's be very clear about</p> <p>24 that, because that's one of their -- let's be</p> <p>25 very, very clear. He didn't know there was a --</p>

<p style="text-align: right;">Page 110</p> <p>1 we admit that he, and I said that in my 2 presentation, he blew the appellant deadline on 3 the late 2016 violation the hours violations. 4 He couldn't keep up because they kept -- 5 remember, when you pass an ordinance, it takes 6 in effect, there's a period of time where it 7 becomes effective. 8 I think it's 10 days or 15 days. And, they 9 passed like three in a row. So, he couldn't 10 keep up with what the latest was. So, there was 11 that first citation. 12 And, he wanted to. He doesn't think he 13 violated it, so he wanted to object to it. He 14 blew the deadline. We acknowledge that. 15 So, that violation was pending. In June, 16 he was cited for two more things that were a 17 total of three violations. He was cited for 18 another hours violation because they changed it 19 again. 20 They changed it three times in less than 21 12 months. And, we actually came to each of 22 those meetings as Counsel to make statements 23 about those. He immediately hired those folks. 24 And, Mr. Rosen, remember, Mr. Rosen was 25 actually successful and the City admits they</p>	<p style="text-align: right;">Page 112</p> <p>1 on appeal. I believe the first part of the 2 sentence that you posed to us is -- so, you 3 believe that we're supposed to step into the 4 mind of Mr. Williams when he made the 5 determination that the BTR was not valid for 6 this particular business? 7 MR. HUDSON: I think they are on in the 8 same. And, let me tell you why. We all agree on 9 the first part, the BTR, right? We all agree 10 that we are here because the BTR was denied. 11 The BTR was denied by the Planning 12 Department. The BTR was denied as an illegal 13 non-conforming use. We disagree and we believe 14 that the Planning Director either intentionally 15 came to that decision wrong, made a mistake, or 16 whatever. 17 Because, if we are illegally established 18 conforming use, which we are based on the facts 19 you've heard today, he made a mistake by saying 20 we were not, and therefore, the BTR should 21 issue. 22 BOARD MEMBER FOX: In my experience, the 23 Planning Department is an extremely helpful 24 department in this city. I'm just struggling 25 with why no one has appealed to the Planning</p>
<p style="text-align: right;">Page 111</p> <p>1 agreed to a new, unique process to deal with 2 this gentleman and these three violations. 3 So, when the City Finance Director says he 4 could have paid and if it's an appeal, you can 5 still pay. If you blow your appellant date, you 6 can't pay, right? 7 BOARD MEMBER BARON: Sure. 8 MR. HUDSON: It makes sense. Well, when 9 they opened that new process up, he could have 10 paid. And, we believe he tendered payment in 11 that period of time but they didn't accept it. 12 BOARD MEMBER FOX: What is the question 13 that we're hearing on appeal? Because you 14 framed it, a moment ago, as a very different 15 question. 16 You framed it as to whether this was a 17 legal non-conforming use and I don't believe 18 that this the question that we're listening to 19 on appeal. What is the question on appeal that 20 we're listening to? 21 MR. HUDSON: Whether the BTR was 22 wrongfully denied because of a finding of an 23 illegal non-conforming use. 24 BOARD MEMBER FOX: That second part of 25 that sentence, I don't believe is the question</p>	<p style="text-align: right;">Page 113</p> <p>1 Director to make the determination that this is 2 illegal non-conforming use. 3 MR. HUDSON: We're not obligated to. 4 BOARD MEMBER FOX: Forget the obligation. 5 From a practical perspective, I have a hard 6 time understanding why, if this gentleman is 7 going through all of this, jumping through all 8 of these obstacles to open his business, it's a 9 very simple sort of telephone call. 10 And, in my experience in the City of Miami 11 Beach, the Planning Department goes out of 12 their way to help businesses and citizens that 13 are looking to do business in the city. 14 I just don't -- you've gone to Federal 15 Court. You've filed an appeal in front of this 16 board. I have a hard time -- no one is able to 17 answer that practical question. 18 MR. HUDSON: So, let me -- 19 BOARD MEMBER FOX: Forget the obligation. 20 I understand your legal argument. I'm talking 21 about from a practical perspective. 22 MR. HUDSON: Let me answer with a very 23 practical because I'm a practical guy. And, my 24 client is a practical guy. And, I don't want to 25 stand on the law unless I have to.</p>

<p style="text-align: right;">Page 114</p> <p>1 I think the law is on my side and I think</p> <p>2 the facts are on my side. Let me put it back to</p> <p>3 you, sir. Why would that gentleman that has a</p> <p>4 several million dollar business not do</p> <p>5 everything in his power?</p> <p>6 Trust me, if he had known, you want to ask</p> <p>7 him the question yourself? He's under oath. If</p> <p>8 he had known, tell me how. I'll do it. He's</p> <p>9 done everything.</p> <p>10 BOARD MEMBER FOX: But why don't you go</p> <p>11 and do it right after this hearing?</p> <p>12 MR. GOLDBERG: This has been mentioned</p> <p>13 several times --</p> <p>14 BOARD MEMBER FOX: Hold on.</p> <p>15 MR. GOLDBERG: Hold on. I've seen no</p> <p>16 evidence. You keep talking about several</p> <p>17 million dollar business.</p> <p>18 MR. HUDSON: Uh-huh.</p> <p>19 MR. GOLDBERG: You mentioned that earlier.</p> <p>20 It's in one of the papers here. Where are the</p> <p>21 figures that he has a several million dollar</p> <p>22 business in a little package store on Collins</p> <p>23 Avenue and 9th Street?</p> <p>24 MS. BOUTSIS: I think that's a little bit</p> <p>25 out of our field and it's not relevant to this</p>	<p style="text-align: right;">Page 116</p> <p>1 MR. GOLDBERG: He voluntarily made a</p> <p>2 mistake.</p> <p>3 MR. HUDSON: He missed it. We all make</p> <p>4 mistakes, but that's when the City does --</p> <p>5 MR. GOLDBERG: You don't make mistake when</p> <p>6 you have a several million dollar business.</p> <p>7 MR. HUDSON: You have the right to fix</p> <p>8 this.</p> <p>9 MS. BOUTSIS: So, I think we're going back</p> <p>10 and forth here. And, I think it's time to wrap</p> <p>11 it up.</p> <p>12 MR. ARANA: Yes.</p> <p>13 BOARD MEMBER SEGAL: Can I get an answer,</p> <p>14 procedurally, though to that last question?</p> <p>15 And, maybe Madam City Attorney, you can explain</p> <p>16 that to us.</p> <p>17 Should we say today, if this is a limited</p> <p>18 appeal to just the BTR, and say we agree with</p> <p>19 the Planning Department, where does that leave</p> <p>20 the applicant and the business owner for being</p> <p>21 able to go to the Planning Department and</p> <p>22 simply say please review my application of</p> <p>23 whether or not I'm conforming or</p> <p>24 non-conforming?</p> <p>25 MS. BOUTSIS: They could have always done</p>
<p style="text-align: right;">Page 115</p> <p>1 matter.</p> <p>2 MR. GOLDBERG: No. It's not far field,</p> <p>3 because in my opinion, if he had that type of</p> <p>4 business, he would have acted differently.</p> <p>5 MS. BOUTSIS: Oh.</p> <p>6 MR. HUDSON: But that's my point, sir.</p> <p>7 With all due respect, he did everything. How</p> <p>8 many lawyers has he hired? You guys are all</p> <p>9 business people. You don't like to pay us.</p> <p>10 MR. GOLDBERG: No, he didn't. He</p> <p>11 completely ignored the first --</p> <p>12 MR. HUDSON: What did he ignore, sir?</p> <p>13 MR. GOLDBERG: The first renewal of the</p> <p>14 BTR. He took care of the BTR for his other</p> <p>15 business down the block, but he didn't take</p> <p>16 care of the BTR for this business.</p> <p>17 MR. HUDSON: Does that make sense? Does</p> <p>18 that make any sense to you?</p> <p>19 MR. GOLDBERG: It doesn't make any sense</p> <p>20 to me at all.</p> <p>21 MR. HUDSON: It makes no sense to any of</p> <p>22 us.</p> <p>23 MR. GOLDBERG: Of course, I just think he</p> <p>24 made a mistake.</p> <p>25 MR. HUDSON: He missed it.</p>	<p style="text-align: right;">Page 117</p> <p>1 that. They can still do that.</p> <p>2 BOARD MEMBER SEGAL: I'd like an answer to</p> <p>3 that question because you continuously say he's</p> <p>4 hired a lot of attorneys. It seems like - I'm</p> <p>5 an attorney myself. I practice in Federal</p> <p>6 Court, that's not an easy task.</p> <p>7 It's time consuming and probably consuming</p> <p>8 from a monetary perspective for him. How come</p> <p>9 no one has advised him to go have a meeting</p> <p>10 with Mr. Mooney and provide him with the</p> <p>11 evidence, and make this determination once and</p> <p>12 for all whether or not he meets the ordinance</p> <p>13 and is legally conforming or non-conforming?</p> <p>14 MR. HUDSON: I can't get into attorney</p> <p>15 client privilege. And, trust me, I don't want</p> <p>16 to hide behind that. There's a couple of</p> <p>17 answers. Some I can tell you and some I can't.</p> <p>18 You're a lawyer. Lawyers know -- and, he</p> <p>19 did this, by the way. When Code Enforcement</p> <p>20 gave him a red light, he called and fixed it.</p> <p>21 And, actually he did e-mail the Planning</p> <p>22 Board. He did speak with the Planning Board and</p> <p>23 say why. And, I believe there was an e-mail</p> <p>24 back saying you're in non-conforming use. And,</p> <p>25 I think Mr. Arana was involved in that</p>

<p style="text-align: right;">Page 118</p> <p>1 discussion.</p> <p>2 MS. BOUTSIS: There's no testimony to that</p> <p>3 effect.</p> <p>4 BOARD MEMBER SEGAL: Mr. Mooney testified</p> <p>5 that's never happened, that he's never been</p> <p>6 presented with this evidence, and his</p> <p>7 department has never been presented with the</p> <p>8 evidence to make that determination.</p> <p>9 MR. HUDSON: That's not what I said. What</p> <p>10 I said was, this gentleman did, when he saw</p> <p>11 each of the red lights, he did reach out.</p> <p>12 He did have conversations with each of the</p> <p>13 folks. And, the response that came back from</p> <p>14 Planning was Exhibit A.</p> <p>15 BOARD MEMBER SEGAL: Okay. But their</p> <p>16 position is that no one has presented them with</p> <p>17 the evidence to make this determination. It</p> <p>18 seems like this has been going on for many</p> <p>19 months. How come someone hasn't gone to them</p> <p>20 with the evidence and said please make the</p> <p>21 determination?</p> <p>22 MR. HUDSON: Well, because the first time</p> <p>23 that we found out that was their position was</p> <p>24 in this process. And, we disagree with them.</p> <p>25 And, you know what? We will go down tomorrow</p>	<p style="text-align: right;">Page 120</p> <p>1 are notes in the system. They know exactly what</p> <p>2 is going on. I am going to stand on the law</p> <p>3 now. The law says it is their duty.</p> <p>4 The law says we file an application. We</p> <p>5 filed an application. We attached everything we</p> <p>6 were required to do. So, if you rule against us</p> <p>7 today, we will go down tomorrow and we will</p> <p>8 make that.</p> <p>9 And, we will file another BTR and we will</p> <p>10 see where we are next time. But, you know what,</p> <p>11 how much longer do we have to go through this</p> <p>12 process until they just do what they should do?</p> <p>13 You can solve it now. Make a finding that</p> <p>14 it was part of his duty and responsibility and</p> <p>15 he either made that determination or he didn't,</p> <p>16 but this business owner should not be closed</p> <p>17 for another 30 days because of that.</p> <p>18 MS. BOUTSIS: Okay.</p> <p>19 MR. HUDSON: Solve the practical problem,</p> <p>20 please.</p> <p>21 MS. BOUTSIS: Any other testimony you need</p> <p>22 to hear? I'm seeing none. The public portion is</p> <p>23 closed. So, it's time for your deliberations.</p> <p>24 So, you can either affirm the decision on</p> <p>25 the BTR or you can reverse the decision on the</p>
<p style="text-align: right;">Page 119</p> <p>1 and do it.</p> <p>2 BOARD MEMBER FOX: Sir, you prepared for</p> <p>3 this presentation by citing the code and that</p> <p>4 there is no affirmative obligations. So, don't</p> <p>5 you think that you would have advised your</p> <p>6 client, perhaps as an alternative route, to go</p> <p>7 to the Planning Director and make that</p> <p>8 determination?</p> <p>9 It would have actually bolstered your</p> <p>10 argument on appeal because then you would have</p> <p>11 been appealing that particular decision of the</p> <p>12 illegal non-conforming use that you want to</p> <p>13 have this Board make a determination on.</p> <p>14 MR. HUDSON: Sir, everybody that's --</p> <p>15 MS. BOUTSIS: I think you've asked and</p> <p>16 answered it several times. And, you --</p> <p>17 MR. HUDSON: Would you like my response?</p> <p>18 May I respond? The gentleman asked me a</p> <p>19 question.</p> <p>20 MR. GOLDBERG: Go ahead.</p> <p>21 MR. HUDSON: Everybody in Miami Beach</p> <p>22 knows what is going on in this case. You heard</p> <p>23 that. The Finance people told the Planning</p> <p>24 people you made a mistake. Why?</p> <p>25 Because everybody knows and because there</p>	<p style="text-align: right;">Page 121</p> <p>1 BTR. If you are to reverse, you need all five</p> <p>2 of you to reverse. Is there a motion?</p> <p>3 MR. GOLDBERG: What's your motion?</p> <p>4 BOARD MEMBER SEGAL: Motion to affirm. I</p> <p>5 believe there has been very well arguing from</p> <p>6 both sides in what appears to be conflicted</p> <p>7 facts.</p> <p>8 However, it seems pretty obvious, at least</p> <p>9 to myself, that procedurally we are here today</p> <p>10 on a very limited issue of whether or not the</p> <p>11 BTR should have been granted. And, based on</p> <p>12 that sole limitation, I am voting that it</p> <p>13 should be affirmed.</p> <p>14 BOARD MEMBER FOX: I'll second.</p> <p>15 MS. BOUTSIS: All in favor?</p> <p>16 THE BOARD: Aye.</p> <p>17 MS. BOUTSIS: Any opposed? The appeal is</p> <p>18 done. Thank you.</p> <p>19 MR. GOLDBERG: Madam Attorney, I think we</p> <p>20 need to leave all these things here with you</p> <p>21 all, in case --</p> <p>22 MS. BOUTSIS: Sure. You can do so. Thank</p> <p>23 you.</p> <p>24 MR. GOLDBERG: Just leave all your stuff</p> <p>25 here for this case in case it comes up again.</p>


<p style="text-align: right;">Page 122</p> <p>1 MS. BOUTSIS: And, have a nice weekend, 2 everybody. The meeting is adjourned. 3 (Thereupon, the meeting was concluded.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	
<p style="text-align: right;">Page 123</p> <p>1 CERTIFICATE OF COURT REPORTER 2 3 THE STATE OF FLORIDA: 4 :ss. 5 COUNTY OF MIAMI-DADE: 6 7 I, CHARITY RIVERA-GARCIA, certify that I 8 was authorized to and did transcribe the foregoing 9 recorded events. 10 I do further certify that the foregoing 11 is a true and accurate transcript of the events as 12 provided to me on the CD taken at the time, place 13 and the date hereinabove set forth. 14 I do further certify that I am not an 15 attorney or counsel for any of the parties, nor 16 related to any of the parties, nor financially 17 interested in the action. 18 19 Dated this 22nd day of June, 2018 20 21 22 23 24 25</p> <div style="text-align: center;">  <hr style="width: 20%; margin: 0 auto;"/> CHARITY RIVERA-GARCIA TYPIST </div>	

EXHIBIT 16

From: Madan, Rogelio
Sent: Tuesday, August 07, 2018 4:24 PM
To: 'McLaughlin, Aida'; 'ddoar@bellsouth.net'; Hudson, Phillip M.; 'ddoar@bellsouth.net'
Cc: Boksner, Aleksandr; Kallergis, Nick; Perez, Sandra; Fons, Monique; Williams, Steven - Planning
Subject: RE: Letter to Doron Doar - Beach Blitz Co Re Administrative Appeal dated July 12, 2018

Good afternoon Mr. Doar,

We have received the revised affidavit. The application is now complete.

Best regards,

MIAMIBEACH

Rogelio A. Madan, AICP
Chief of Community Planning and Sustainability

PLANNING DEPARTMENT
1700 Convention Center Drive, Miami Beach, FL 33139
Tel: 305-673-7000 ext. # 6131 / Fax: 786-394-4285 / www.miamibeachfl.gov

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