

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### PLANNING BOARD

TO: Chairperson and Members  
Planning Board

DATE: Dec 18, 2018

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: **PB 18-0250. Ocean Drive Speaker amendments.**

#### **REQUEST**

**PB 18-0250. Ocean Drive Speaker amendments. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," OF CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," BY AMENDING ARTICLE II, ENTITLED "DISTRICT REGULATIONS," BY AMENDING DIVISION 13, ENTITLED "MXE MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-546, ENTITLED "ADDITIONAL RESTRICTIONS FOR LOTS FRONTING ON OCEAN DRIVE, OCEAN TERRACE AND COLLINS AVENUE," TO CLARIFY EXISTING PROVISIONS, AND TO ESTABLISH PENALTY AND ENFORCEMENT PROVISIONS APPLICABLE TO VIOLATIONS OF SECTION 142-546(b), PERTAINING TO SPEAKER REGULATIONS FOR LOTS FRONTING ON OCEAN DRIVE; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

#### **RECOMMENDATION**

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

#### **HISTORY/BACKGROUND**

On April 26, 2017, the Mayor and City Commission adopted Ordinance No. 2017-4085, amending City Code Section 142-546, to create regulations pertaining to exterior speakers on lots fronting Ocean Drive.

On July 25, 2018, at the request of Commissioner Ricky Arriola, the Mayor and City Commission referred the Ordinance to the Land Use and Development Committee and Planning Board (item C4J).

On November 28, 2018 the Land Use Committee recommended that the Planning Board transmit the attached Ordinance to the City Commission with a favorable recommendation.

#### **REVIEW CRITERIA**

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:

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

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

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

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

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

**Consistent** - The proposed ordinance amendment is not out of scale with the surrounding neighborhood.

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

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

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

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

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

**Consistent** – The proposed ordinance is necessary to clarify existing provisions and to establish penalties for violations of the Ocean Drive Speaker Ordinance.

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

**Consistent** – The proposed ordinance amendment will not adversely affect living conditions in the neighborhood.

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

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

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

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

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

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

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

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

12. **Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.**

**Not Applicable**

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

**Not applicable** – The proposed amendment does not affect permitted uses in the district.

**COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA**

Section 133-50(b) of the Land Development Regulations establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

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

**Not Applicable** – The proposal regarding speaker locations and fines is not applicable to sea level rise.

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

**Not Applicable** – The proposal will not affect the resiliency of the City with respect to sea level rise.

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

**Not Applicable** – The proposal regarding speaker locations and fines is not applicable to sea level rise.

**ANALYSIS**

The attached draft Ordinance amends City Code Section 142-546, in order to clarify existing provisions, and to establish penalties for violations of the Ocean Drive Speaker Ordinance. Specifically, the clarifications include prohibiting speakers outdoors for retail establishments, and requiring that any music played inside at retail establishments not be audible from the exterior of the premises. The inclusion of the proposed fine schedule is based on the penalty provisions applicable to violations of the City's Noise Ordinance, codified at Chapter 46 of the City Code, entitled "Environment," Article IV, "Noise."

**RECOMMENDATION**

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

TRM/MAB/AG

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," OF CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," BY AMENDING ARTICLE II, ENTITLED "DISTRICT REGULATIONS," BY AMENDING DIVISION 13, ENTITLED "MXE MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-546, ENTITLED "ADDITIONAL RESTRICTIONS FOR LOTS FRONTING ON OCEAN DRIVE, OCEAN TERRACE AND COLLINS AVENUE," TO CLARIFY EXISTING PROVISIONS, AND TO ESTABLISH PENALTY AND ENFORCEMENT PROVISIONS APPLICABLE TO VIOLATIONS OF SECTION 142-546(b), PERTAINING TO SPEAKER REGULATIONS FOR LOTS FRONTING ON OCEAN DRIVE; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

**WHEREAS**, Ocean Drive is a premier street in Miami Beach, providing residents and visitors with a unique cultural, retail, and dining experience; and

**WHEREAS**, sidewalk cafes, which are central to the economy of Ocean Drive, enhance the pedestrian experience and historic character of the street; and

**WHEREAS**, the City Commission desires to maintain the historic character of the City's neighborhoods, and promote the unique cultural, retail, and dining experiences that are vital to the City's economy; and

**WHEREAS**, on April 26, 2017, the Mayor and City Commission adopted Ordinance No. 2017-4085, creating regulations pertaining to exterior speakers on lots fronting Ocean Drive; and

**WHEREAS**, the Mayor and City Commission now desire to amend these regulations, in order to establish penalty and enforcement provisions; and

**WHEREAS**, the amendments set forth below are necessary to accomplish the objectives identified herein.

**NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:**

**SECTION 1.** That Division 13, entitled "MXE Mixed Use Entertainment District," of Article II, entitled "District Regulations," of Chapter 142, entitled "Zoning Districts and Regulations," of the Code of the City of Miami Beach, Florida is hereby amended as follows:

**Chapter 142**

**ZONING DISTRICTS AND REGULATIONS**

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**ARTICLE II. District Regulations**

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### DIVISION 13. MXE Mixed Use Entertainment District

\* \* \*

#### **Sec. 142-546. Additional restrictions for lots fronting on Ocean Drive, Ocean Terrace and Collins Avenue.**

- (a) In the MXE mixed use entertainment district permitted uses in existing buildings at the time of adoption of this section with two stories or less fronting on Ocean Drive or Ocean Terrace and any building fronting on Collins Avenue from Sixth Street to 16th Street shall comply with the following:
- (1) The entire building shall be substantially renovated and comply with the South Florida Building Code, fire prevention safety code and the property maintenance standards. If the building is a historic structure, the plans shall substantially comply with the Secretary of the Interior Standards and Guidelines for Rehabilitating Historic Structures, U.S. Department of the Interior (revised 1983), as amended.
  - (2) The buildings may contain offices, retail, food service establishments, alcoholic beverage establishments, and residential uses or any combination thereof. Medical and dental offices shall be prohibited uses in the MXE districts. Commercial uses located above the ground floor shall only have access from the interior of the building; no exterior access shall be permitted, unless a variance from this requirement is granted.
  - (3) Required parking may be satisfied through participation in the parking impact fee program as set forth in chapter 130, article V, where applicable under the regulations contained therein.
  - (4) No existing building shall be internally reconstructed to change the number of stories except that 20 percent of each floor plate may be removed to create an open area or atrium.
  - (5) For existing buildings with two stories or less fronting on Ocean Drive or Ocean Terrace, the addition of a story shall require that commercial uses comply with all provisions of section 142-904 for accessory uses. For purposes of example only, in buildings described in the foregoing sentence, the existence of commercial uses on the ground floor which exceed 25 percent of the floor area shall not, upon the addition of one story, be deemed grandfathered in, and the percentage of commercial uses on the ground floor, upon the addition of one story, must comply with the requirements of section 142-904, except if a variance is granted.
  - (6) No variances shall be granted from the requirements of this section 142-546, except as specified in subsection 142-546(2).
- (b) Speaker regulations for lots fronting on Ocean Drive.
- (1) Commercial establishments fronting Ocean Drive, ~~including, but not limited to, other than retail establishments, office, and eating and drinking venues,~~ shall be prohibited from ~~having placing or installing~~ speakers ~~outdoors,~~ within 20 feet of the property boundary facing Ocean Drive or a side street, ~~unless except speakers playing music is being played at ambient levels, or unless the establishment is fully enclosed.~~

- (2) Notwithstanding the foregoing as applicable to retail establishments, no speakers may be installed or placed outdoors, and Retail establishments fronting Ocean Drive shall be prohibited from placing or installing speakers outdoors. Any music played indoors at retail establishments fronting Ocean Drive must be inaudible from the exterior of the premises at all times.
- (3) No variances shall be granted from the requirements of this section 142-546(b).

(c) Penalties and enforcement.

- (1) A violation of subsection (b) shall be subject to the following civil fines and penalties:
- a. If the violation is the first violation, a person or business shall receive a written warning or a civil fine of \$250.00;
  - b. If the violation is the second violation within the preceding 12 months, a person or business shall receive a civil fine of \$1,000.00;
  - c. If the violation is the third violation within the preceding 12 months, a person or business shall receive a civil fine of \$2,000.00; and
  - d. If the violation is the fourth violation within the preceding 6 months, a person or business shall receive a civil fine of \$3,000.00; and
  - e. If the violation is the fifth or subsequent violation within the preceding 12 months, a person or business shall receive a civil fine of \$5,000.00, and the City shall suspend the business tax receipt.
- (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 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).

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## **SECTION 2. REPEALER.**

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

## **SECTION 3. SEVERABILITY.**

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

## **SECTION 4. 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 a 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 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**ATTEST:**

\_\_\_\_\_  
DAN GELBER, MAYOR

\_\_\_\_\_  
RAFAEL E. GRANADO, CITY CLERK

Underline denotes additions

~~Strikethrough~~ denotes deletions

(Sponsored by Commissioner Ricky Arriola)