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The Mayor and Commissioners of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33140

RE: Item C4 AD of January 16, 2019 Commission Meeting - Proposed Code Amendment to Definition of "Entertainment"

Dear Mayor and Commissioners:

We are writing in strong support of the code amendment being proposed by Commissioner Aleman to the definition of "entertainment." In our opinion, the current definition in your code of "entertainment" is likely unconstitutional and subject to challenge. The proposed amendment would cure the legal problem with the definition as discussed below.

If a business has "entertainment," as defined in the code, onerous requirements and restrictions are triggered. However, the code provides that recorded music played at a volume that doesn't interfere with normal conversation is exempt from the definition of "entertainment." The noise ordinance and zoning code understandably focus on the volume of the music being played because higher volumes can disturb neighbors. So, if the music is played low enough so that it doesn't interfere with normal conversation, then it is not "entertainment" and not deserving of stricter regulation.

The constitutional problem arises because the definition of "entertainment" in your code is arbitrary and treats music differently depending on its source, even if the music is all being played at the exact same decibel levels. For example, if a restaurant is playing a song on the radio at 50 decibels (assuming that decibel level doesn't interfere with normal conversation), then it is not "entertainment." However, under your current code, if the same exact song is being played at the same exact decibel level by a DJ or a live performer, it is "entertainment" and subject to heavy regulation. That disparate enforcement based on the source of the music is improper.

Assuming music is being played at exactly the same volume regardless of the source, then there is no rational basis to distinguish (a) recorded music from a radio from (b) music played by a DJ from (c) music being performed live. Given the strict review of free speech

The Mayor and Commissioners of Miami Beach
January 10, 2019
Page 2

restrictions under the Constitution, the above definition is very likely illegal as there is no rational or logical basis to treat the same music differently depending on its source.

The disparate enforcement based on the source of the music is also illogical. The code noise regulations are driven by the volume of music and nothing else. As long as the volume is acceptable, the music should be allowed regardless of the source.

We support the amendment and respectfully request its adoption. Thank you.

Sincerely,

Shutts & Bowen LLP



Alexander I. Tachmes, Esq.

AIT/sm

cc: Raul Aguila, City Attorney
Jimmy Morales, City Manager
Thomas Mooney, Planning Director