

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 12 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ARTS, CULTURE AND ENTERTAINMENT," BY AMENDING ARTICLE II, ENTITLED "SPECIAL EVENTS," BY CREATING SECTION 12-6, ENTITLED "AMBIENT ENTERTAINMENT PERMIT PROGRAM"; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (the "City"), is an international arts and culture destination; and

WHEREAS, the City Code broadly defines an "entertainment establishment" as "a commercial establishment with any live or recorded, amplified or nonamplified performance, (excepting television, radio and/or recorded background music, played at a volume that does not interfere with normal conversation, and indoor movie theater operations)"; and

WHEREAS, the City's Land Development Regulations identify "entertainment" as either a permitted, conditional, or prohibited use in various City zoning districts; and

WHEREAS, in districts where entertainment is listed as a conditional use, applicants are required to obtain a conditional use permit for "entertainment" from the Planning Board, even if the applicant is only proposing to conduct a performance at a volume that does not interfere with normal conversation (hereinafter, at an "ambient volume level"); and

WHEREAS, performances conducted at an ambient volume level are unlikely to cause a nuisance to neighboring residents, businesses, or property owners; and

WHEREAS, in order to incentivize small businesses to conduct live or recorded performances at an ambient volume level, without creating a vested right to conduct entertainment, the Mayor and City Commission desire to establish an ambient entertainment permit program, subject to the conditions specified herein.

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

SECTION 1.

That Chapter 12 of the Code of the City of Miami Beach is hereby amended as follows:

CHAPTER 12
ARTS, CULTURE, AND ENTERTAINMENT

* * *
ARTICLE II. SPECIAL EVENTS
* * *

Sec. 12-6. Ambient entertainment permit program.

The city's tourism and culture director shall have the authority to issue, modify, or revoke permits for ambient entertainment performances, in accordance with criteria set forth in this section.

(a) Definitions. For purposes of this section, the following definitions shall apply:

(1) Ambient entertainment shall mean any live or recorded, amplified or nonamplified performance played or conducted at a volume that does not interfere with normal conversation (excepting television, radio and/or recorded background music, played at a volume that does not interfere with normal conversation, and indoor movie theater operations).

(2) Permit shall mean an ambient entertainment permit issued pursuant to this section, which permit shall authorize a permittee to conduct ambient entertainment, subject to the conditions set forth in this section. The granting of a permit is a privilege and not a right, and the approval, issuance, and continued operation of a permit is conditional, and subject to revocation by the city manager, at all times.

(3) Permittee shall mean the recipient of an ambient entertainment performance permit issued pursuant to this section.

(b) Eligible establishments. Only restaurants (i) with an occupant content of 299 or fewer persons, and (ii) that are located in zoning districts where entertainment is a permitted or conditional use, shall be eligible to apply for and obtain a permit pursuant to this section. Notwithstanding the foregoing, an establishment with a conditional use permit for entertainment shall not be eligible to apply for a permit under this section. During the one (1) year period prior to the date of the submittal of an application, an applicant shall not have received an adjudication of a violation of this section, or of any of the following City Code provisions: chapter 6 (alcoholic beverages); section 12-5 (special events); or chapter 46, article IV (noise).

(c) Application. Applicants wishing to conduct ambient entertainment must submit a completed permit application to the tourism and culture director, in a form prescribed by the city manager. All requirements of this section must be fully satisfied, including payment of an application fee, in the amount of \$ _____, before an application will be reviewed. Each application must be accompanied by a sworn affidavit, signed by the

applicant, acknowledging and agreeing to comply with all applicable provisions of the City Code, including this section.

- (d) Annual permit. Each permit issued pursuant to this section shall have a term of one year, from October 1 until September 30 of the following year. Each permittee shall pay an annual permit fee, in the amount of \$ _____, which shall be due and payable on October 1 of each year. The fee shall be collected by the tourism and culture department or by such other department as may be designated by the city manager. A permittee with no violations of this section shall be eligible to renew a permit for additional one-year terms. Notice of the amount due and instructions for payment shall be provided to permittees at least 60 days prior to October 1 of each year.
- (e) Notice. Copies of submitted permit applications must be provided to the corresponding neighborhood or business association in the neighborhood where the applicant's business establishment is located.
- (f) Minimum standards, criteria, and conditions.
- (1) The granting of a permit is a privilege and not a right, and the approval, issuance, and continued operation of a permit is conditional, and subject to revocation by the city manager, at all times.
 - (2) All permits shall be revocable at the sole discretion of the city manager, which revocation may be without cause and for convenience, upon seven (7) days' prior written notice to the permittee.
 - (3) At no point shall an ambient performance conducted pursuant to this section be conducted at a volume that exceeds an ambient volume level (i.e. at a level that interferes with normal conversation). Additionally, in order to ensure compliance with this requirement, permittees shall use all best efforts to ensure that doors and windows remain closed while performances are taking place.
 - (4) Ambient entertainment performances conducted pursuant to a permit may only take place indoors, and shall be inaudible from the exterior of the premises.
 - (5) Ambient entertainment performances may only occur between the hours of 10:00 a.m. and midnight each day.
 - (6) The permittee shall recognize, agree, and acknowledge that, upon a finding of a violation pursuant to subsection (h), the permit shall be subject to immediate revocation by order of the city manager, in the city manager's sole discretion. Additionally, the permittee shall expressly waive any right to seek any administrative or judicial review of a revocation order issued by the city manager.

- (7) The permittee shall acknowledge and agree to provide unobstructed and immediate access to the permittee's business establishment for inspection by the City's tourism and culture department and/or code compliance department, in order to ensure the permittee's compliance with the provisions of this section and all applicable city, county, state, and federal laws.
- (8) Each permittee shall agree to indemnify, defend, save, and hold harmless the city, its officers, and employees from any and all claims, liability, lawsuits, damages and causes of action which may arise out of any activities conducted pursuant to the permittee's permit, including, without limitation, the permittee's agreement to allow the city access to inspect the premises for compliance with this section.
- (9) Permittees shall at all times comply fully with all applicable city, county, state, and federal laws.
- (g) Maximum number of permits. Permits issued pursuant to this section shall be issued on a first-come, first-served basis. The city manager shall, in consultation with the tourism and culture director and code compliance director, establish (and, from time to time, revise) a maximum number of permits for each of the following areas of the city:
- (1) South Beach (between 6th Street and 23rd Street);
 - (2) Mid-Beach (between 23rd Street and 63rd Street); and
 - (3) North Beach (north of 63rd Street).
- (h) Enforcement and penalties.
- (1) The city manager shall be authorized to issue a revocation order of the permit where it is determined by the city manager, or the city manager's designee, in their sole discretion, that a violation of the permit or of the provisions of this section has occurred. In the event of such a violation, the city manager shall be authorized to issue an immediate order revoking the permit and suspending any activities conducted in furtherance thereof, and the permittee must cease any such activities. The issuance of an order revoking the permit shall not be subject to any subsequent review, and will be deemed administratively as a final action.
 - (2) If the city manager or the city manager's designee believes that a permittee has engaged or is engaged in conduct warranting the revocation of a permit, the city manager shall serve the permittee by certified mail or hand delivery, at the permittee's business address as disclosed in the permit application.
- (i) Reporting. The city manager, or the city manager's designee, shall, on an annual basis, present the city commission with a written report detailing the city's permitting and

enforcement activities relating to the provisions of this section. The report shall include statistics relating to the number of permits issued, number of active permits in good standing, number of complaints received, and number of permits revoked.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

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 part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered 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 on the _____ day of _____, 2019.

PASSED AND ADOPTED this _____ day of _____, 2019.

ATTEST:

Dan Gelber
Mayor

Rafael E. Granado
City Clerk

Underline denotes additions
~~Strikethrough~~ denotes deletions

(Sponsored by Commissioner John Elizabeth Alemán)