

ZONING AMENDMENTS (INCLUDING JULY 29, 2020 COMMISSION REFERRALS)

DRAFT AMENDMENTS TO CHAPTER 6 AND 46 OF THE CITY CODE AND CHAPTER 142 OF THE LAND DEVELOPMENT REGULATIONS (REFERRED BY THE CITY COMMISSION ON JULY 29, 2020)

The attached draft amendments include revisions to Chapter 6, pertaining to alcoholic beverages, Chapter 46, pertaining to noise exemptions on Ocean Drive, and the MXE development regulations in Chapter 142. The following is a general summary of each of these amendments:

Chapter 6 – Alcoholic Beverage Establishment Regulations

The proposed amendments to Chapter 6 establish a new set of criteria for the sale of alcoholic beverages in the MXE district.¹ The following is a general summary of the proposed amendments:

- Roll back the closing time for package liquor stores in the district from the current time of 8:00 pm to the new time of 5:00 pm.
- Terminate sales of alcoholic beverages for on-premises consumption at 12:00 am each night, at all alcoholic beverage establishments (existing and future) in the MXE district. (Package liquor stores and other retail sales would be required to comply with current restrictions).

Note: Section 562.14, Florida Statutes, expressly permits the City to establish hours of sale for alcoholic beverages by Ordinance. Additionally, Florida courts have consistently held that alcoholic beverage establishments are not entitled to “grandfather” status as to hours of sale for alcoholic beverages.² Accordingly, the City has the authority to adopt legislation that “rolls back” the closing time for alcohol sales at alcoholic beverage establishments.³

As a separate matter, the City has the sole and absolute discretion to amend hours of sale for alcoholic beverages at sidewalk cafes, which are located on public property.

- Establish a process for alcoholic beverage establishments (except for package stores and retail sales, which would be required to comply with current restrictions) to seek approval from a newly created Alcoholic Beverage and Operation Board (to be codified in Chapter

¹ The proposed scope of applicability of these amendments is as follows: the MXE district in South Beach, generally bounded by Collins Court on the west, Ocean Drive on the east, 5th Street on the south, and 16th Street on the north.

² See *Village of North Palm Beach v. S & H Foster's, Inc.* (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1976).

³ As stated above, the City's legal position is that there are no “vested rights” with regard to an operator's entitlement to hours of sale for alcoholic beverages. Notwithstanding the City's legal position, which we are confident is defensible, the City has been placed on notice that this position may be subject to challenge by certain alcoholic beverage establishments located within the district. These establishments allege that certain development approvals (including, but not limited to, conditional use permits) may entitle them to certain rights relating to their business operations. See Attached Letter from Alexander I. Tachmes, Esq., dated August 20, 2020.

- 6 of the City Code) to serve liquor for on-premises consumption after 12:00 am each night.
- This new board process would be similar to the Planning Board's conditional use permit (CUP) process, as it would have regulatory authority to review individual requests for extended hours on a case-by-case basis. Applicants would be required to submit pertinent material for review, and satisfy specific criteria on which the board's decision would be based. Such material would include, but not be limited to, operational and circulation plans, sound studies, and proposed crowd control measures. These plans would also be subject to an applicant-subsidized peer review.
 - The board would have authority to require periodic progress reports; and modify, suspend, or revoke a previously approved extension of hours, based upon violations of the City Code, or a failure to operate in accordance with an approved extension.
 - The board would consist of 5 members who would be appointed by the City Manager, and subject to confirmation by the City Commission
 - In order to expedite the board's review of new applications, the board would meet multiple times per month. Meetings would be subject to lesser notice requirements than the requirements for the City's land use boards.
 - Each approved extension of hours would have a fixed duration (e.g., 1 year). The approval would need to be renewed periodically (e.g., each year thereafter). If, at the time of renewal, an operator has been issued no violations of the City Code (including the Sidewalk Café Ordinance) or the previously approved extension, the renewal would be expedited and could be approved by staff.

OPERATIONAL AND FISCAL IMPACT:

The Administration has studied the operational and fiscal impacts of the above proposed regulations. Depending on the administrative procedures that are ultimately adopted, and the level of review required, implementation of these regulations could create the need for one or two additional positions. This impact could be partially offset through the use of application and review fees.

Chapter 46 - Noise

The proposed revision to Chapter 46 would remove the current exemption from the Noise Ordinance for live or amplified sound projecting eastward between 9th and 11th Streets, along Ocean Drive. The purpose of this amendment is to make noise regulations consistent for properties along the entirety of Ocean Drive. Additionally, the amendment is intended to re-direct the activities of alcoholic beverage establishments, venues to be substantially contained within private property and not spill onto the public street and sidewalks. This, in turn, will allow for a better activation of the street, as well as safe, unencumbered movement.

Chapter 142 – MXE Development and Use Regulations

Most of the revisions proposed in the attached draft amendment to chapter 142 are for clarification and clean-up purposes. The following substantive changes are proposed:

- *Prohibit future stand-alone bars / drinking uses* – In order to minimize the negative impacts created by alcoholic beverage establishments, the proposed amendment limits these uses to serving as accessory to a restaurant use, wherever possible. An exception to this would be interior hotel lobby bars.

Action Needed: Update to the proposed amendments in Chapter 142, or a City Commission referral of an LDR Ordinance Amendment to the Land Use Committee and the Planning Board.

Timeline: 4-6 months

- *Rooftop uses* – Commercial rooftop uses shall be limited to restaurant use. This shall not preclude the use of the roof top for hotel guest amenities. Commercial roof top use shall only be permitted if the following are satisfied:
 - Minimum hotel standard and operational benchmarks;
 - The building shall be fully renovated including all guest rooms;
 - The building shall have central air conditioning or flush-mounted wall units; however, no air conditioning equipment may face a street;
 - All non-impact resistant windows and doors and doors shall be replaced with impact resistant windows and doors;
 - Any contributing building shall be renovated in accordance with the Secretary of Interior's Standards for Rehabilitation, including public interior spaces.

Action Needed: Update to the proposed amendments in Chapter 142, or a City Commission referral of an LDR Ordinance Amendment to the Land Use Committee and the Planning Board.

Timeline: 4-6 months

Additional companion amendments to Chapter 82, pertaining to sidewalk cafes, may be required, in order to ensure that regulations pertaining to seating in the public right-of-way is consistent with the aforementioned draft amendments.

MEDIUM- AND LONG-TERM ZONING AMENDMENTS

- *Multi-Story Additions on Collins Avenue* - Currently, the Land Development Regulations limit habitable rooftop additions to existing buildings located within the MXE along Collins Avenue to 1-story with a maximum floor to ceiling height of 12'-0". Since the maximum permitted height within this portion of Collins Avenue is 50'-0", this regulation has had the unintended consequence of requiring additional demolition of contributing buildings in order to accommodate 4 and 5-story new rear additions.

In order to incentivize hotel additions, as well as a high caliber of hotel operation, some latitude in the distribution of allowable FAR within properties along Collins Avenue is suggested. In this regard, the ability to build more than a one-story addition would be predicated upon meeting certain hotel standards and definable, operational benchmarks. If this proposal moves forward, these standards and benchmarks would be developed and included in the amending legislation.

The proposed amendment would give the Historic Preservation Board (HPB) the authority to approve multi-story rooftop additions for existing buildings on Collins Avenue. This would likely encourage the retention and restoration of portions of contributing buildings that may otherwise be proposed for demolition. The HPB would evaluate each individual proposal in accordance with the Certificate of Appropriateness criteria and the following: (i) the addition enhances the architectural contextual balance of the surrounding area; (ii) the addition is appropriate to the scale and architecture of the existing building; (iii) the addition maintains the architectural character of the existing building in an appropriate

manner; and (iv) the addition minimizes the impact of existing mechanical equipment or other rooftop elements. Additionally, any multi-story rooftop addition for a property located along of Collins Avenue would not be permitted to be visible when viewed from the east side of Ocean Drive.

It is important to note that the ground floor elevation of many contributing buildings along Collins Avenue are below the currently required base flood elevation plus freeboard. As such, ground floors may be converted to non-habitable or accessory commercial uses. This amendment would allow for additional building height, up to a maximum of 65'-0", for a multi-story rooftop addition when a contributing building is being retained and a multi-story roof top addition is proposed for the purpose of introducing additional hotel units. This will further incentivize the retention and restoration of contributing buildings.

Action Needed: City Commission referral of an LDR Ordinance Amendment to the Land Use Committee and the Planning Board.

Approximate Timeline: 4-6 months

- *Parking Incentives* – Additions to buildings are subject to the high parking requirements of Parking District No. 1. Since most sites in the area contain contributing structures, they do not have the ability to provide required parking on-site. As a result, developing any additions to buildings requires the payment of a fee-in-lieu of required parking. Currently the fee is \$40,000 per space. Due to the high parking requirements, the fee can become prohibitively expensive and inhibit the development of beneficial additions. Parking reductions or fee reductions could facilitate the development of additions which could help fund building restorations or improved operations.

Action Needed: City Commission referral of an LDR Ordinance Amendment to the Land Use Committee and the Planning Board.

Approximate Timeline: 4-6 months

- *Streamline Procedure for Alley Connectivity Across Ocean Court* – Recently, aerial connections have been approved over Collins Court to connect hotels on Ocean Drive and Collins Avenue. Examples include the connection between the Betsy and Carlton Hotels, and between the Clevelander and Essex House Hotels. These connections have allowed those hotels to provide an improved experience for guests by increasing the availability of amenities, improving site access, and allowing for better room configurations. This has also led to improvements and aesthetic enhancements to Ocean Court. The process for achieving these connections can be cumbersome, so creating a play book and streamlining these processes could encourage additional aerial connections to improve the hotel operations for both Ocean Drive and Collins Avenue.

Action Needed: City Commission referral of an LDR Ordinance Amendment to the Land Use Committee and the Planning Board and referral of an amendment to Chapter 98 of the City Code.

Approximate Timeline: 4-6 months

Inter-Department Coordination: Public Works

- *Allowing Artisanal Retail, Experiential Retail, and Similar uses* – With rapid changes occurring in the retail sector, many people are seeking out new and interesting

experiences when they visit an area that they cannot find locally. This especially includes seeking unique, locally produced goods at the source. In order to allow for this, there would need to be a blending of retail with low intensity industrial production, known as artisanal retail. Microbreweries are the most popular form of artisanal retail; however, there are others which produce consumer-oriented goods, food, works of art, clothing, personal care items, and others. In such establishments the goods are produced and sold on-site to retail customers. Such uses may create a new and exciting attraction for Ocean Drive, while creating jobs. People are also seeking unique experiences related to art and interactivity as part of the retail experience. This can include people interacting with art, multimedia, incorporating lessons and lectures, and many other creative features. Due to the methods of construction of some of the historic buildings, it may be difficult for them to be retrofit to accommodate such uses in certain buildings; however, where they can be accommodated, they would provide a great attraction for the area.

Action Needed: City Commission referral of an LDR Ordinance Amendment to the Land Use Committee and the Planning Board.

Approximate Timeline: 4-6 months

Inter-Department Coordination: Economic Development

- *FAR incentives for back-of-house/operational needs* - In order to facilitate high-quality, full-service restaurant use, sufficient back-of-house space including commercial kitchens, air-conditioned trash rooms, and staff amenities will be required. The vast majority of contributing buildings within the MXE district lack this necessary area. Exempting back-of-house and service areas from a building's FAR calculations would serve to attract higher-quality restaurant tenants.

Action Needed: City Commission referral of an LDR Ordinance Amendment to the Land Use Committee and the Planning Board and a corresponding ballot question for voter approval.

Timeline: 12-24 months (Depending upon the date of the election)

Medium- and Long-Term Zoning Incentives

- *Expedited Permitting and Reduced Fee for Defined Properties and/or Uses* – In order to incentivize specific properties to make improvements, the City could reduce permitting fees for specific purposes. Additionally, it may be possible to prioritize certain permits, however, this may lead to delays in reviewing other permits. Additional analysis as to how this would impact the review of other permits that are submitted to the City would be necessary.

Action Needed: Referral of an ordinance establishing to amend fees in Appendix A for specific purposes, and adoption of a Resolution establishing the conditions for prioritization of permitting.

Timeline: 4-6 months

Inter-Department Coordination: Building, Fire and Public Works

TIF District to drive operational improvements in the District - A tax increment financing district for the Municipal portion of property tax revenue could be created to ensure that a portion of the additional tax revenue generated as property values rise remains in the

area. This revenue can be used to further enhance the area and to create incentives for businesses to improve their operations. Such a district could provide certainty to investors that the City is serious about improving the area, making them more willing to make investments in the historic buildings. As municipal TIF districts, just like CRAs established pursuant to Ch. 163 of the Florida Statutes, would necessarily reduce the tax revenues allocated to the General Fund (in order to dedicate incremental tax revenues for the benefit of the district), the City Commission may wish to evaluate the fiscal impacts to the General Fund associated with creation of a TIF District for Ocean Drive, particularly given the possibility of the creation of a North Beach CRA, which may also impact the General Fund in the coming years. Finally, in the event the City Commission desires to explore a TIF District further, the Finance Department and City Attorney's Office would need to consult with its Financial Advisor and bond counsel as to the feasibility of issuing bonds pledging City TIF district revenues, as municipal TIF districts are uncommon and may present unique requirements and/or additional costs, such as the costs of a bond validation proceeding to ensure the validity and marketability of the bonds.

Action Needed: Referral of an ordinance establishing the TIF district with terms and conditions.

Timeline: 4-6 months

Inter-Department Coordination: Public Works and Economic Development

Note: If the City Commission recommends in favor of creating a TIF mechanism, it is expected that this would be handled by Economic Development.