

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Planning Board

TO: Chairperson and Members
Planning Board

DATE: November 15, 2016

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **Ordinance Amendment**
17th Street South Alcoholic Beverage Establishment Regulations

REQUEST

PB 16-0068. 17TH STREET SOUTH ALCOHOLIC BEVERAGE ESTABLISHMENT REGULATIONS. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," AT DIVISION 6, "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," SECTION 142-332, "MAIN PERMITTED USES"; TO AMEND THE OPERATION, LOCATION, AND USE RESTRICTIONS FOR ENTERTAINMENT, DANCE HALL AND ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED SOUTH OF 17TH STREET, BETWEEN LENOX AVENUE AND MERIDIAN AVENUE, AND PROPERTIES WITH A LOT LINE ADJOINING LINCOLN ROAD, FROM COLLINS AVENUE TO ALTON ROAD; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

RECOMMENDATION

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

HISTORY

At the February 10, 2016 City Commission meeting, while discussing item R5F, concerning the consolidation ordinance for alcoholic beverages, the Commission referred a discussion item to the Land Use and Development Committee (LUDC) pertaining to separate alcohol regulations for Alton Road and 17th Street. This proposal was sponsored by Commissioner Joy Malakoff.

On February 17, 2016, the LUDC discussed the item and continued the matter to March 30, 2016. Staff was instructed to prepare a draft ordinance in accordance with the discussion, for review on March 30, 2016. On March 30, 2016, the Land Use Committee reviewed the proposed ordinance and transmitted it to the City Commission with a favorable recommendation.

Initially the proposed modifications were to be located in Chapter 6 of the City Code. Subsequent to the recommendation of the Land Use Committee, it was determined that the modifications needed to be in Chapter 142 of the Land Development Regulations, so that all regulations regarding alcohol hours of operation and conditional use criteria be located within

the same chapter.

On April 13, 2016, the City Commission approved the proposed ordinance at First Reading and set a Second Reading Hearing for May 11, 2016. The City Commission also referred the item to the Planning Board, prior to Second Reading. Additionally, the City Commission requested that the Planning Board further study the 17th Street portion of the legislation, particularly as it pertains to a 100-foot distance separation from single family uses.

On April 19, 2016, the Planning Board reviewed the proposed Ordinance and took the following action:

1. The Alton Road portion of the ordinance was transmitted with a favorable recommendation (6-1).
2. The 17th Street portion of the ordinance was transmitted with an unfavorable recommendation (7-0) and the Board further recommended that this portion of the legislation be bi-fricated for further study.

On May 11, 2016, the City Commission approved the Alton Road portion of the legislation, and referred the 17th Street part back to the Land Use Committee for further study. On May 18, 2016, the Land Use Committee continued this item to June 15, 2016. On June 15, 2016 the Land Use Committee discussed the item and directed staff to revise the ordinance to amend Sec 142-332, and to require that entertainment establishments in the affected area also include full kitchens. The matter was continued to the July 20, 2016 meeting of the LUDC.

On July 20, 2016 the Land Use Committee endorsed the proposal, and recommended that the proposed new language in Sec. 142-332 only be applicable to 'dance halls'. Additionally, the Committee recommended that both dance halls and entertainment establishments in the affected areas be required to have double door vestibules from all sidewalk access points. These changes have been incorporated into the draft Ordinance for referral.

On September 14, 2016, at the request of Commissioner Joy Malakoff, the City Commission referred the subject Ordinance to the Planning Board (Item C4 D).

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 uses proposed modifications are 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.

Not Applicable – The proposed Ordinance will not modify the scale of development.

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

Consistent – The proposed will not modify the intensity of development.

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

Not Applicable – The existing boundaries are not proposed to be modified by the proposed Ordinance.

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

Consistent – The need to protect the residential areas from the impacts of entertainment uses makes the proposed change necessary.

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

Consistent – The proposed change will not adversely affect living conditions in the neighborhood, and is intended to safeguard residential areas from potential impacts of currently permitted uses.

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 impact the levels of service set forth in the Comprehensive Plan.

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

Consistent – The proposal does not modify the scale of development and 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 proposal will not be a deterrent to the improvement or development of adjacent property.

- 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.

ANALYSIS

The south side of 17th Street, between Meridian Avenue and Lenox Avenue, is zoned commercial high-intensity (CD-3). This area is directly across the street from residential uses (RM-1 and RS-4) in the Palm View Historic District, which is comprised of low-rise apartment buildings and single family homes. Residents from Palm View have expressed a strong desire for operational restrictions on eating and drinking establishments to the south of 17th Street, particularly with regard to the hours of operation, outdoor areas, and entertainment uses.

Certain operational standards and regulations exist in the zoning code for the other parts of the City (e.g. North Beach, South of Fifth, and Sunset Harbor) that have a mixture of residential uses and destination eating and drinking establishments. However, new establishments proposed to be located along 17th Street do not currently have the same type of regulations.

Currently, alcoholic beverage and entertainment establishments not exceeding specified occupational load thresholds do not require Conditional Use review by the Planning Board in the commercial zoning districts along 17th Street. These thresholds are an occupational load of 300 or more persons for eating and drinking establishments without entertainment and an occupational load of 200 or more persons for establishments with entertainment; the occupational load is determined by the Fire Marshall. Additionally, 5:00 am liquor licenses are permitted.

At the direction of the City Commission on May 11, 2016, staff drafted a revised ordinance, specific to the 17th Street area. The previous draft legislation had proposed operational requirements and hours restrictions on alcoholic beverage establishments and outdoor areas for properties south of 17th Street, from Meridian to Lenox Avenues.

These initial draft requirements applied to establishments where the entrance door of which was located within 100 feet of a single family residential use. However, the 100-foot distance separation proposed under the prior ordinance draft would have only affected a very limited number of properties. Pursuant to the direction of the Land Use Committee, the attached ordinance has been revised and updated to include the following revision to sec 142-332:

For properties located south of 17th Street, between Lenox Avenue and Meridian Avenue, and properties with a lot line adjoining Lincoln Road, from Collins Avenue to Alton Road, dance halls (as defined in section 114-1 of this Code) licensed as alcoholic beverage establishments shall only operate as restaurants with full kitchens and serving full meals. Additionally, such dance halls, as well as entertainment establishments, on properties located south of 17th Street, between Lenox Avenue and Meridian Avenue,

and properties with a lot line adjoining Lincoln Road, from Collins Avenue to Alton Road, shall be required to install a double door vestibule at all access points from the sidewalk, with the exception of emergency exits.

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/RAM

**17TH STREET SOUTH
ALCOHOLIC BEVERAGE ESTABLISHMENT REGULATIONS**

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," AT DIVISION 6, "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," SECTION 142-332, "MAIN PERMITTED USES"; TO AMEND THE OPERATION, LOCATION, AND USE RESTRICTIONS FOR ENTERTAINMENT, DANCE HALL AND ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED SOUTH OF 17TH STREET, BETWEEN LENOX AVENUE AND MERIDIAN AVENUE, AND PROPERTIES WITH A LOT LINE ADJOINING LINCOLN ROAD, FROM COLLINS AVENUE TO ALTON ROAD; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the 17th Street corridor has historically been composed of low intensity retail, service and retail establishments, which primarily serve City residents; and

WHEREAS, alcoholic beverage establishments in Miami Beach have been historically concentrated in the commercial and mixed-use entertainment districts along Washington Avenue, Collins Avenue, and Ocean Drive; and

WHEREAS, the Palm View neighborhood, located to the north of 17th Street and to the south of the Collins Canal, is comprised of mainly single family residential uses and is divided by 17th Street from a CD-3 commercial high intensity district; and

WHEREAS, the City Code allows certain uses within the CD-3 district, which, absent mitigation, could be incompatible with adjacent residential uses in the Palm View neighborhood; and

WHEREAS, stand-alone bars, entertainment establishments, and dance halls can sometimes be incompatible with the low scale character and quality of life of adjacent residential neighborhoods if not regulated; and

WHEREAS, the Mayor and City Commission desire to encourage uses that are compatible with the low-scale character of the neighborhood; and

WHEREAS, pursuant to Section 562.14, Florida Statutes, a municipality may, by ordinance, establish hours of sale for alcoholic beverages; and

WHEREAS, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (*See Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); 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, in *Makos v. Prince* (Fla. 1953), the Florida Supreme Court recognized that a county may establish separate zones for the hours of sale of alcoholic beverages, and that the regulation of hours need not be uniform throughout the county as a whole; and

WHEREAS, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages (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 1978)); and

WHEREAS, Chapter 1, of the Land Use Element, Objective 2, “Land Use Compatibility,” of the City’s 2025 Comprehensive Plan (hereinafter “Plan”), specifies that the City’s land development regulations will be used to address the location, type, size and intensity of land uses and to ensure adequate land use compatibility between residential and non-residential land uses; and

WHEREAS, Policy 2.1 of the Plan provides that the land development regulations shall continue to address the location and extent of nonresidential land uses in accordance with the Future Land Use map and the policies and descriptions of types, sizes and intensities of land uses contained in [the Future Land Use] Element; and

WHEREAS, Policy 2.2 of the Plan provides that development in land use categories which permit both residential and non-residential uses shall be regulated by formalized land development regulations which are designed to ensure adequate land use compatibility; and

WHEREAS, compatibility shall be achieved by one or more of the following: (1) enumeration of special land uses which may be particularly incompatible with residential uses and may be prohibited in specified areas or zoning districts; (2) enumeration of special land use administrative procedures such as Conditional Use approval, which require public hearings prior to special land use approval; (3) enumeration of special land use criteria such as minimum required distance separations from residential districts or uses or allowable hours of operation, to ensure that non-residential special land uses are properly located with respect to any residential uses to which they may be incompatible; and (4) the vertical separation of residential and non-residential uses within mixed use buildings through the use of land use regulations on accessory uses within residential buildings, and the identification of those types of commercial uses which are particularly incompatible with residential uses and which shall therefore NOT be permitted in mixed use buildings; and,

WHEREAS, in determining incompatibility, consideration shall be given to noise, lighting, shadows, access, traffic, parking, height, bulk, landscaping, hours of operation, buffering and any other criteria that may be important to ensure that necessary safeguards are provided for the protection of surrounding property, persons, and neighborhood values; and

WHEREAS, in accordance with Chapter 1, Objective 2, Policies 2.1 and 2.2 of the Plan, it is desirable to encourage uses in commercial districts that are properly balanced and compatible with the scale, character and context of adjacent residential neighborhoods; 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. Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 6, "CD-3, Commercial, High Intensity District," is hereby amended as follows:

DIVISION 6. - CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT

* * *

Sec. 142-332. - Main permitted uses.

The main permitted uses in the CD-3 commercial, high intensity district are commercial uses; apartments; apartment/hotels; hotels, alcoholic beverage establishments pursuant to the regulations set forth in Chapter 6, and religious institutions with occupancy of 199 persons or less. Offices are prohibited on the ground floor on that portion of Lincoln Road which is closed to traffic, unless the office area is located in a mezzanine, or at least 75 feet back from the storefront; also apartments, apartment/hotels and hotels located on that portion of Lincoln Road shall comply with section 142-335. For properties located south of 17th Street, between Lenox Avenue and Meridian Avenue, and properties with a lot line adjoining Lincoln Road, from Collins Avenue to Alton Road, dance halls (as defined in section 114-1 of this Code) licensed as alcoholic beverage establishments shall only operate as restaurants with full kitchens and serving full meals. Additionally, such dance halls, as well as entertainment establishments, on properties located south of 17th Street, between Lenox Avenue and Meridian Avenue, and properties with a lot line adjoining Lincoln Road, from Collins Avenue to Alton Road, shall be required to install a double door vestibule at all access points from the sidewalk, with the exception of emergency exits. ~~For Dance halls (as defined in section 114-1 of this Code) not also operating as restaurants with full kitchens and serving full meals and licensed as alcoholic beverage establishments are prohibited on properties having a lot line adjoining Lincoln Road, from the Atlantic Ocean to Biscayne Bay, unless the dance hall is located within a hotel with a minimum of 100 hotel units.~~

SECTION 2. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

SECTION 3. CODIFICATION.

It is the intention of the City Commission, 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, as amended; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish

such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 4. SEVERABILITY.

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

SECTION 5. EXCEPTIONS.

This ordinance shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR).

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this ____ day of _____, 2016.

Philip Levine
Mayor

ATTEST:

Rafael E. Granado
City Clerk

First Reading: _____, 2016

Second Reading: _____, 2016

Verified By: _____
Thomas R. Mooney, AICP
Planning Director

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