

**ORDINANCE NO. 96-3050**

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING COMPREHENSIVE ZONING ORDINANCE NO. 89-2665, BY:

1. AMENDING SECTION 3, ENTITLED "DEFINITIONS", AMENDING SUBSECTION 3-2, ENTITLED "TERMS DEFINED" BY MODIFYING THE DEFINITION OF OUTDOOR CAFE, CLARIFYING THAT AN OUTDOOR BAR COUNTER IS CONSIDERED AN ACCESSORY USE AND BY ADDING A DEFINITION FOR "ACCESSORY OUTDOOR BAR COUNTER"; AND BY,
  
2. AMENDING SECTION 6, ENTITLED "SCHEDULE OF DISTRICT REGULATIONS", AMENDING SUBSECTION 6-3, ENTITLED "RM-2 RESIDENTIAL MULTI FAMILY, MEDIUM INTENSITY DISTRICT" BY LISTING ACCESSORY OUTDOOR BAR COUNTERS AS A PROHIBITED USE, AMENDING SUBSECTION 6-4, ENTITLED "RM-3 RESIDENTIAL MULTI FAMILY HIGH INTENSITY" BY LISTING ACCESSORY OUTDOOR BAR COUNTERS, PROVIDED THAT THEY ARE NOT OPERATED OR UTILIZED BETWEEN MIDNIGHT AND 8:00 A.M. AS AN ACCESSORY USE, LISTING ACCESSORY OUTDOOR BAR COUNTERS AT THE REAR YARD OF OCEANFRONT HOTELS OF 100 UNITS OR MORE AS ACCESSORY USES AND ESTABLISHING A SETBACK REQUIREMENT FROM THE PROPERTY LINE, AND PROHIBITING ALL OTHER ACCESSORY OUTDOOR BAR COUNTERS; AMENDING SUBSECTION 6-6, ENTITLED "CD-1 COMMERCIAL LOW INTENSITY" BY LISTING ACCESSORY OUTDOOR BAR COUNTERS, OUTDOOR ENTERTAINMENT ESTABLISHMENTS AND OPEN AIR ENTERTAINMENT ESTABLISHMENTS AS PROHIBITED USES; AMENDING SUBSECTION 6-7, ENTITLED "CD-2 COMMERCIAL MEDIUM INTENSITY" BY LISTING ACCESSORY OUTDOOR BAR COUNTERS THAT ARE NOT OPERATED OR UTILIZED BETWEEN MIDNIGHT AND 8:00 A.M. AS AN ACCESSORY USE AND PROHIBITING ALL OTHER ACCESSORY OUTDOOR BAR COUNTERS; AMENDING SUBSECTION 6-8, ENTITLED "CD-3 COMMERCIAL HIGH INTENSITY" BY LISTING ACCESSORY OUTDOOR BAR COUNTERS THAT ARE NOT OPERATED OR UTILIZED BETWEEN MIDNIGHT AND 8:00 A.M. AS AN ACCESSORY USE, LISTING ACCESSORY OUTDOOR BAR COUNTERS AT THE REAR YARD OF OCEANFRONT HOTELS OF 100 UNITS OR MORE AS ACCESSORY USES AND ESTABLISHING A SETBACK REQUIREMENT FROM THE PROPERTY LINE, AND PROHIBITING ALL OTHER ACCESSORY OUTDOOR BAR COUNTERS; AMENDING SUBSECTION 6-14, ENTITLED "I-1 LIGHT INDUSTRIAL" BY LISTING ACCESSORY OUTDOOR BAR COUNTERS THAT ARE NOT OPERATED OR UTILIZED BETWEEN MIDNIGHT AND 8:00 A.M. AS AN ACCESSORY USE, AND PROHIBITING ALL OTHER ACCESSORY OUTDOOR BAR COUNTERS; AMENDING SUBSECTION 6-16, ENTITLED "MXE MIXED USE ENTERTAINMENT" BY LISTING ACCESSORY OUTDOOR BAR COUNTERS THAT ARE NOT OPERATED OR UTILIZED BETWEEN MIDNIGHT AND 8:00 A.M. AS AN ACCESSORY USE, LISTING ACCESSORY OUTDOOR BAR COUNTERS AT THE REAR YARD OF OCEANFRONT HOTELS OF 100 UNITS OR MORE AS ACCESSORY USES AND ESTABLISHING A SETBACK REQUIREMENT FROM THE PROPERTY LINE, LISTING ACCESSORY OUTDOOR BAR COUNTERS LOCATED IN THE CABARET OVERLAY DISTRICT AS ACCESSORY USES, AND PROHIBITING ALL OTHER ACCESSORY OUTDOOR BAR COUNTERS; AND BY,

3. AMENDING SECTION 20, ENTITLED "PS PERFORMANCE STANDARD DISTRICT", AMENDING SUBSECTION 20-3, ENTITLED "USE REGULATIONS" BY NOT PERMITTING ACCESSORY OUTDOOR BAR COUNTERS IN THE R-PS1, MEDIUM-LOW DENSITY, R-PS2, MEDIUM DENSITY, R-PS3 MEDIUM HIGH DENSITY, RMPS-1 RESIDENTIAL MIXED USE DISTRICTS AND THE R-PS4 HIGH DENSITY DISTRICT, EXCEPT THAT AN ACCESSORY OUTDOOR BAR COUNTER IS PERMITTED AS AN ACCESSORY USE IN OCEANFRONT HOTELS OF 100 UNITS OR MORE IN THE R-PS4 HIGH DENSITY DISTRICT, AND LISTING ACCESSORY OUTDOOR BAR COUNTERS OPERATED UNTIL MIDNIGHT ONLY AS PERMITTED USES IN THE FOLLOWING DISTRICTS: C-PS1 COMMERCIAL LIMITED MIXED USE; C-PS2 COMMERCIAL GENERAL MIXED USE; C-PS3 COMMERCIAL INTENSIVE MIXED USE; C-PS4 COMMERCIAL INTENSIVE PHASED BAYSIDE DISTRICTS, AND BY NOT PERMITTING OUTDOOR ENTERTAINMENT ESTABLISHMENTS, OPEN AIR ENTERTAINMENT ESTABLISHMENTS OR NEIGHBORHOOD IMPACT ESTABLISHMENTS IN THE R-PS1, MEDIUM-LOW DENSITY, R-PS2, MEDIUM DENSITY, R-PS3 MEDIUM HIGH DENSITY, RMPS-1 RESIDENTIAL MIXED USE DISTRICTS AND THE R-PS4 HIGH DENSITY DISTRICT, EXCEPT THAT OUTDOOR ENTERTAINMENT ESTABLISHMENTS, OPEN AIR ENTERTAINMENT ESTABLISHMENTS AND NEIGHBORHOOD IMPACT ESTABLISHMENTS ARE PERMITTED AS ACCESSORY USES IN OCEANFRONT HOTELS WITH 250 OR MORE HOTEL UNITS WHEN LOCATED IN THE R-PS4 HIGH DENSITY DISTRICT, AND LISTING OUTDOOR ENTERTAINMENT ESTABLISHMENTS, OPEN AIR ENTERTAINMENT ESTABLISHMENTS AND NEIGHBORHOOD IMPACT ESTABLISHMENTS AS CONDITIONAL USES IN THE FOLLOWING DISTRICTS: C-PS1 COMMERCIAL LIMITED MIXED USE; C-PS2 COMMERCIAL GENERAL MIXED USE; C-PS3 COMMERCIAL INTENSIVE MIXED USE AND C-PS4 COMMERCIAL INTENSIVE PHASED BAYSIDE DISTRICTS.

PROVIDING FOR INCLUSION IN THE ZONING ORDINANCE; PROVIDING FOR REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

**WHEREAS**, the City believes outdoor bar counters, which are open to the public and operate in the evening and night time hours, should be regulated to ensure the safety and general welfare of the surrounding community, and.

**WHEREAS**, the certain outdoor entertainment and large alcoholic beverage establishments, if left unregulated in the South Pointe Redevelopment Area, may have an adverse effect on the health, safety and general welfare of the surrounding community, and

**WHEREAS**, the amendments set forth below are necessary to ensure the above objectives.

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

**SECTION 1.** That Subsection 3-2, entitled "Terms Defined" of Section 3, entitled "Definitions" of Zoning Ordinance 89-2665 of the City of Miami Beach, Florida is hereby amended as follows:

3-2 TERMS DEFINED

A. For the Purpose of this Ordinance, certain terms and words are hereby defined.

\* \* \*

31. CAFE, OUTDOOR: A Use characterized by outdoor table service of food and beverages prepared for service in an adjacent or attached main Structure for consumption on the Premises. This definition does not include an Accessory Outdoor Bar Counter, which is considered to be a separate Accessory Use to an Outdoor Cafe or a Hotel pool deck, as described herein.

\* \* \*

19. BAR COUNTER, ACCESSORY OUTDOOR: An accessory freestanding or substantially unenclosed counter or similar device either stationary or mobile at or behind which alcoholic beverages may be prepared and served. Accessory Outdoor Bar Counters shall be prohibited as a main permitted use and shall only be permitted as an Accessory Use to an Outdoor Cafe with a minimum of 30 chairs or as an Accessory Use to a Hotel pool deck. Accessory Outdoor Bar Counters shall not be visible from any point along the property line adjacent to a public right-of-way.

\* \* \*

**SECTION 2.** That Subsections 6-3, 6-4, 6-6, 6-7, 6-8, 6-14 and 6-16 entitled "RM-2 Residential Multi Family, Medium Intensity", "RM-3 Residential Multi Family, High Intensity", "CD-1 Commercial, Low Intensity", "CD-2 Commercial, Medium Intensity", "CD-3 Commercial, High Intensity", "I-1 Light Industrial District" and "MXE Mixed Use Entertainment District", respectively, of Section 6, entitled "Schedule of District Regulations" of Zoning Ordinance 89-2665 of the City of Miami Beach, Florida are hereby amended as follows:

6-3 RM-2 RESIDENTIAL MULTI FAMILY, MEDIUM INTENSITY.

**A. Purpose and Uses**

1. District Purpose	2. Main Permitted Uses	3. Conditional Uses	4. Accessory Uses	5. Prohibited Uses
This district is designed for medium intensity multiple family residences.	Single Family detached Dwelling; Townhomes; Apartments; Apartment-Hotels; Hotels.	Adult Congregate Living Facility; Day Care Facility; Nursing Home; Religious Institutions; Private and Public Institutions; Schools; Commercial or non-commercial Parking Lots and Garages; Accessory Neighborhood Impact Establishment as set forth in Section 12-B.	See Section 6-21. Uses that serve Alcoholic Beverages as listed in Section 12 (Alcoholic Beverages).	Accessory Outdoor Entertainment Establishment; Accessory Open Air Entertainment Establishment as set forth in Section 12-B; <u>Accessory Outdoor Bar Counter.</u>

\* \* \*

6-4 RM-3 RESIDENTIAL MULTI FAMILY, HIGH INTENSITY.

**A. Purpose and Uses**

1. District Purpose	2. Main Permitted Uses	3. Conditional Uses	4. Accessory Uses	5. Prohibited Uses
<p>This district is designed for high intensity multiple Family residences and Hotels.</p>	<p>Single Family detached Dwelling; Townhomes; Apartments; Apartment-Hotels; Hotels.</p>	<p>Adult Congregate Living Facility; Day Care Facility; Nursing Home; Religious Institutions; Private and Public Institutions; Schools; Commercial or non-commercial Parking Lots and Garages; Accessory Outdoor Entertainment Establishment; Accessory Neighborhood Impact Establishment; Accessory Open Air Entertainment Establishment as set forth in Section 12-B.</p>	<p>See Section 6-21. Uses that serve Alcoholic Beverages as listed in Section 12 (Alcoholic Beverages).</p> <p><u>Accessory Outdoor Bar Counters, provided that the Accessory Outdoor Bar Counter is not operated or utilized between midnight and 8:00 a.m.; however, for an Accessory Outdoor Bar Counter which is adjacent to a property with an Apartment Unit, the Accessory Outdoor Bar Counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.</u></p> <p><u>Oceanfront Hotels with at least 100 Hotel Units may operate and utilize an Accessory Outdoor Bar Counter, notwithstanding the above restriction on the hours of operation, provided the Accessory Outdoor Bar Counter is (a) located in the Rear Yard, and (b) setback 20% of the Lot Width (50 feet minimum) from any property line adjacent to a property with an Apartment Unit thereon.</u></p>	<p><u>Accessory Outdoor Bar Counter, except as provided herein.</u></p>

\* \* \*

6-6 CD-1 COMMERCIAL, LOW INTENSITY.

A. Purpose and Uses

1. District Purpose	2. Main Permitted Uses	3. Conditional Uses	4. Accessory Uses	5. Prohibited Uses
This is a retail sales, Personal Services, shopping district, designed to provide service to surrounding residential neighborhoods.	Commercial Uses; Apartments; Bed & Breakfast Inn (pursuant to Section 6-22,H). Uses that serve Alcoholic Beverages as listed in Section 12 (Alcoholic Beverages).	Adult Congregate Living Facilities; Nursing Homes; Religious Institution; Public and Private Institutions; Schools; Day Care Facility; Pawn shops; Warehouses; and any Use selling gasoline; <del>Outdoor Entertainment Establishment;</del> Neighborhood Impact Establishment; <del>Open Air Entertainment Establishment.</del>	See Section 6-21.	<u>Accessory Outdoor Bar Counter, Outdoor Entertainment Establishment; Open Air Entertainment Establishment.</u>

\* \* \*

6-7 CD-2 COMMERCIAL, MEDIUM INTENSITY.

A. Purpose and Uses

1. District Purpose	2. Main Permitted Uses	3. Conditional Uses	4. Accessory Uses	5. Prohibited Uses
This district provides for commercial activities, services, offices and related activities which serve the entire City.	Commercial Uses; Apartments; Apartment/Hotels. Uses that serve Alcoholic Beverages as listed in Section 12 (Alcoholic Beverages).	Adult Congregate Living Facilities; Funeral Home; Nursing Homes; Religious Institution; Pawn shops; Public and Private Institutions; Schools; and any Use selling gasoline; Outdoor Entertainment Establishment; Neighborhood Impact Establishment; Open Air Entertainment Establishment.	See Section 6-21. <u>Accessory Outdoor Bar Counters, provided that the Accessory Outdoor Bar Counter is not operated or utilized between midnight and 8:00 a.m.; however, for an Accessory Outdoor Bar Counter which is adjacent to a property with an Apartment Unit, the Accessory Outdoor Bar Counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.</u>	<u>Accessory Outdoor Bar Counter, except as provided herein.</u>

\* \* \*

**A. Purpose and Uses**

1. District Purpose	2. Main Permitted Uses	3. Conditional Uses	4. Accessory Uses	5. Prohibited Uses <sup>124</sup>
<p>This district is designed to accommodate a highly concentrated business core in which activities serving the entire City are located.</p>	<p>Commercial Uses; Apartments; Apartment/Hotels; Hotels. Oceanfront properties in the Architectural District shall not be permitted to have new retail and/or office areas totaling more than 250 sq. ft. unless the Building is rehabilitated according to the South Florida Building Code, the Miami Beach Property Maintenance Standards, and Fire Prevention and Safety Codes and if it is a Historic Structure the U.S. Secretary of the Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Structures. 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 ft. back from the storefront; also Apartments, Apartment/Hotels and Hotels located on that portion of Lincoln Road shall comply with Sec. 6-8,A.5.</p>	<p>Adult Living Congregate Facilities; Outdoor Entertainment Establishment; Neighborhood Impact Establishment; Open Air Entertainment Establishment; Nursing Homes; religious Institution; public and private Institutions; Schools and Major Cultural Dormitory Facilities as specified in Section 10A-2. When located on that portion of Lincoln Road that is closed to traffic, these uses shall comply with Sec. 6-8,A.5.</p>	<p>See Section 6-21.</p> <p><u>Accessory Outdoor Bar Counters, provided that the Accessory Outdoor Bar Counter is not operated or utilized between midnight and 8:00 a.m.; however, for an Accessory Outdoor Bar Counter which is adjacent to a property with an Apartment Unit, the Accessory Outdoor Bar Counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.</u></p> <p><u>Oceanfront Hotels with at least 100 Hotel Units may operate and utilize an Accessory Outdoor Bar Counter, notwithstanding the above restriction on the hours of operation, provided the Accessory Outdoor Bar Counter is (a) located in the Rear Yard, and (b) setback 20% of the Lot Width (50 feet minimum) from any property line adjacent to a property with an Apartment Unit thereon.</u></p>	<p>Pawn Shops; <u>Accessory Outdoor Bar Counter, except as provided herein.</u></p>

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6-14 I-1 LIGHT INDUSTRIAL DISTRICT.

**A. Purpose and Uses**

1. District Purpose	2. Main Permitted Uses	3. Conditional Uses	4. Accessory Uses	5. Prohibited Uses
<p>This is a utilitarian district characterized by sales, storage, processing, wholesaling, motor vehicles repairs and towing services. This district shall not include any residential Uses.</p>	<p>Those Uses that are consistent with the district purpose.</p>	<p>Any Use which includes the retail sale of gasoline, Recycling Receiving Stations; Outdoor Entertainment Establishment; Neighborhood Impact Establishment; Open Air Entertainment Establishment.</p>	<p>Those Uses customarily associated with the District Purpose. (See Section 6-21).</p> <p><u>Accessory Outdoor Bar Counters, provided that the Accessory Outdoor Bar Counter is not operated or utilized between midnight and 8:00 a.m.; however, for an Accessory Outdoor Bar Counter which is adjacent to a property with an Apartment Unit, the Accessory Outdoor Bar Counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.</u></p>	<p><u>Accessory Outdoor Bar Counter, except as provided herein.</u></p>

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6-16 MXE MIXED USE ENTERTAINMENT DISTRICT

**A. Purpose and Uses**

1. District Purpose	2. Main Permitted Uses	3. Conditional Uses	4. Accessory Uses	5. Prohibited Uses
<p>These regulations are designed to encourage the substantial restoration of existing Structures and allow for new construction.</p>	<p>Apartments; Apartment-Hotels; Hotels; Commercial Development as specified in Section 6-16,C.</p>	<p>Major Cultural Dormitory Facilities as specified in Section 10A-2; Outdoor Entertainment Establishment; Neighborhood Impact Establishment; Open Air Entertainment Establishment.</p>	<p>See Section 6-21. Uses that serve Alcoholic Beverages as listed in Section 12</p> <p><u>Accessory Outdoor Bar Counters, provided that the Accessory Outdoor Bar Counter is not operated or utilized between midnight and 8:00 a.m.; however, for an Accessory Outdoor Bar Counter which is adjacent to a property with an Apartment Unit, the Accessory Outdoor Bar Counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.</u></p> <p><u>Accessory Outdoor Bar Counter located in the Cabaret Overlay District.</u></p> <p><u>Oceanfront Hotels with at least 100 Hotel Units may operate and utilize an Accessory Outdoor Bar Counter, notwithstanding the above restriction on the hours of operation, provided the Accessory Outdoor Bar Counter is (a) located in the Rear Yard, and (b) setback 20% of the Lot Width (50 feet minimum) from any property line adjacent to a property with an Apartment Unit thereon.</u></p>	<p><u>Accessory Outdoor Bar Counter, except as provided herein.</u></p>

\* \* \*

**SECTION 3.** That Subsection 20-3, entitled "Use Regulation" of Section 20, entitled "PS Performance Standard District" of Zoning Ordinance 89-2665 is hereby amended as follows:

20-3 USE REGULATIONS

\* \* \*

B. Table of Permitted Uses

General Use Category	R-PS 1,2	R-PS 3,4	C-PS 1,2,3,4	RM-PS 1
Single Family; Townhome; Apartment; Apt/Hotel	P	P	P	P Apt/Hotel not permitted
Hotel	N	P	P	N
Commercial	N	N	P	P 8% of Floor Area
Institutional	C	C	C	C 1.25% of Floor Area
<u>Accessory Outdoor Bar Counters, provided that the Accessory Outdoor Bar Counter is not operated or utilized between midnight and 8:00 a.m.; however, for an Accessory Outdoor Bar Counter which is adjacent to a property with an Apartment Unit, the Accessory Outdoor Bar Counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.</u>	<u>N</u>	<u>N</u> <u>However, Accessory Outdoor Bar Counters are permitted in oceanfront Hotels with at least 100 Hotel Units in the R-PS4 District *</u>	<u>P*</u>	<u>N</u>
<u>Outdoor Entertainment Establishments, Open Air Entertainment Establishments, Neighborhood Impact Establishments</u>	<u>N</u>	<u>N</u> However, in the R-PS4 District, these Uses are permitted as Accessory Uses in oceanfront Hotels with 250 or more Hotel Units with access to the Establishment only from the interior lobby and not from the street*	<u>C*</u>	<u>N</u>
Accessory	<u>P*</u>	<u>P*</u>	<u>P*</u>	<u>P*</u>

P - Main Permitted Use

C - Conditional Use

N - Not Permitted

\* - Accessory Use only



Floor Area in the RM-PS 1 District refers to total Floor Area in project. Commercial Uses in RM-PS1 limited to stores and restaurants.

For purposes of this Section, a Car Wash, Filling Station and any Use that sells gasoline, automobiles or automotive or related repair Uses are considered as industrial Uses and are not permitted in the Redevelopment Area.

\*For purposes of this Section, Pawn shops and Nightclubs are not permitted as a Main Permitted or Accessory Uses in the Redevelopment Area; however, in the C-PS3 and C-PS4 Districts a Nightclub shall be permitted as an Accessory Use within a hotel of 250 rooms or more with access to the Nightclub only from the interior lobby and not from the street.

Commercial and non-commercial Parking Lots and Garages shall be considered as a Conditional Use in the R-PS1,2,3 and 4 Districts.

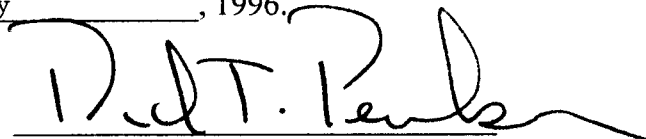
**SECTION 4. INCLUSION IN ZONING ORDINANCE NO. 89-2665.** It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the City of Miami Beach Zoning Ordinance No. 89-2665 as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

**SECTION 5. REPEALER.** That all Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

**SECTION 6. SEVERABILITY.** If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 7. EFFECTIVE DATE.** This Ordinance shall take effect on the 27th day of July, 1996.

PASSED and ADOPTED this 17th day of July, 1996.

  
VICE MAYOR

ATTEST:



CITY CLERK

1st reading 6/5/96

2nd reading 7/17/96

Underlined = new language

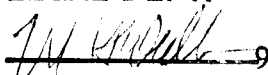
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DJG/JGG

January 2, 1996  
March 6, 1996  
March 21, 1996  
March 28, 1996  
June 25, 1996  
July 17, 1996

FORM APPROVED

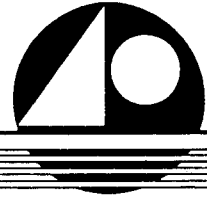
LEGAL DEPT.

By 

Date 7/19/96

# CITY OF MIAMI BEACH

CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH FLORIDA 33139



COMMISSION MEMORANDUM NO. 445-96

**TO:** Mayor Seymour Gelber and  
Members of the City Commission

**DATE:** July 17, 1996

**FROM:** Jose Garcia-Pedrosa  
City Manager

**SUBJECT:** Second Reading Public Hearing - An Ordinance Amending Zoning Ordinance  
No. 89-2665 by:

1. Amending Section 3, Entitled "Definitions", Amending Subsection 3-2, Entitled "Terms Defined" by Modifying the Definition of Outdoor Cafe, Clarifying That an Outdoor Bar Counter Is Considered an Accessory Use and by Adding a Definition for "Accessory Outdoor Bar Counter"; and by,
2. Amending Section 6, Entitled "Schedule of District Regulations", Amending Subsection 6-3, Entitled "RM-2 Residential Multi Family, Medium Intensity District" by Listing Accessory Outdoor Bar Counters as a Prohibited Use, Amending Subsection 6-4, Entitled "RM-3 Residential Multi Family High Intensity" by Listing Accessory Outdoor Bar Counters, Provided That They Are Not Operated or Utilized Between Midnight and 8:00 a.m. As an Accessory Use, Listing Accessory Outdoor Bar Counters at the Rear Yard of Oceanfront Hotels of 100 Units or More as Accessory Uses and Establishing a Setback Requirement from the Property Line, and Prohibiting All Other Accessory Outdoor Bar Counters; Amending Subsection 6-6, Entitled "CD-1 Commercial Low Intensity" by Listing Accessory Outdoor Bar Counters, Outdoor Entertainment Establishments and Open Air Entertainment Establishments as Prohibited Uses; Amending Subsection 6-7, Entitled "CD-2 Commercial Medium Intensity" by Listing Accessory Outdoor Bar Counters That Are Not Operated or Utilized Between Midnight and 8:00 a.m. As an Accessory Use and Prohibiting All Other Accessory Outdoor Bar Counters; Amending Subsection 6-8, Entitled "CD-3 Commercial High Intensity" by Listing Accessory Outdoor Bar Counters That Are Not Operated or Utilized Between Midnight and 8:00 a.m. As an Accessory Use, Listing Accessory Outdoor Bar Counters at the Rear Yard of Oceanfront Hotels of 100

AGENDA ITEM R5E  
DATE 7-17-96

**Units or More as Accessory Uses and Establishing a Setback Requirement from the Property Line, and Prohibiting All Other Accessory Outdoor Bar Counters; Amending Subsection 6-14, Entitled "I-1 Light Industrial" by Listing Accessory Outdoor Bar Counters That Are Not Operated or Utilized Between Midnight and 8:00 a.m. As an Accessory Use, and Prohibiting All Other Accessory Outdoor Bar Counters; Amending Subsection 6-16, Entitled "MXE Mixed Use Entertainment" by Listing Accessory Outdoor Bar Counters That Are Not Operated or Utilized Between Midnight and 8:00 a.m. As an Accessory Use, Listing Accessory Outdoor Bar Counters at the Rear Yard of Oceanfront Hotels of 100 Units or More as Accessory Uses and Establishing a Setback Requirement from the Property Line, Listing Accessory Outdoor Bar Counters Located in the Cabaret Overlay District as Accessory Uses, and Prohibiting All Other Accessory Outdoor Bar Counters; and by,**

- 3. Amending Section 20, Entitled "PS Performance Standard District", Amending Subsection 20-3, Entitled "Use Regulations" by Not Permitting Accessory Outdoor Bar Counters in the R-PS1, Medium-Low Density, R-PS2, Medium Density, R-PS3 Medium High Density, RMPS-1 Residential Mixed Use Districts and the R-PS4 High Density District, Except That an Accessory Outdoor Bar Counter Is Permitted as an Accessory Use in Oceanfront Hotels of 100 Units or More in the R-PS4 High Density District, and Listing Accessory Outdoor Bar Counters Operated until Midnight Only as Permitted Uses in the Following Districts: C-PS1 Commercial Limited Mixed Use; C-PS2 Commercial General Mixed Use; C-PS3 Commercial Intensive Mixed Use; C-PS4 Commercial Intensive Phased Bayside Districts, and by Not Permitting Outdoor Entertainment Establishments, Open Air Entertainment Establishments or Neighborhood Impact Establishments in the R-PS1, Medium-Low Density, R-PS2, Medium Density, R-PS3 Medium High Density, RMPS-1 Residential Mixed Use Districts and the R-PS4 High Density District, Except That Outdoor Entertainment Establishments, Open Air Entertainment Establishments and Neighborhood Impact Establishments Are Permitted as Accessory Uses in Oceanfront Hotels with 250 or More Hotel Units When Located in the R-PS4 High Density District, and Listing Outdoor Entertainment Establishments, Open Air Entertainment Establishments and Neighborhood Impact Establishments as Conditional Uses in the Following Districts: C-PS1 Commercial Limited Mixed Use; C-PS2 Commercial General Mixed Use; C-PS3 Commercial Intensive Mixed Use and C-PS4 Commercial Intensive Phased Bayside Districts.**

**Providing for Inclusion in the Zoning Ordinance; Providing for Repealer, Severability and an Effective Date.**

**RECOMMENDATION**

The Administration recommends that the City Commission, upon holding a public hearing, adopt on second reading this amendment regarding the regulation of outdoor bar counters, along with the regulations for Outdoor Entertainment, Open Air Entertainment and Neighborhood Impact Establishments in the Performance Standards Districts within the South Pointe Redevelopment Area.

**BACKGROUND**

The subject amendment, regarding outdoor bar counters was part of a previous proposed amending ordinance heard by the Commission that also addressed the issues of the MXE regulations and citywide height restrictions. On January 24, 1996 the City Commission instructed staff to bifurcate that amendment into two individual amendments in order to address the items separately and remanded the amendments back to the Planning Board for further review and study.

The outdoor bar regulations were the topic of discussion at a workshop held by the Planning Board on August 2, 1995 and a public hearing on October 24, 1995. At that workshop, the original amending ordinance was substantially changed to address outdoor bar counters on a citywide basis, not just within the MXE District.

At the first reading public hearing on December 20, 1995 the Commission requested that the amendment be reviewed by the Historic Preservation Board, Design Review Board and the South Pointe Advisory Committee for comments prior to the second reading public hearing that had been tentatively set for January 24, 1996. Subsequently, due to comments and concerns from these municipal boards, the Commission remanded the amending ordinance back to the Planning Board for further study and recommendations regarding the regulations pertaining to outdoor bar counters on a citywide basis, as well as, within the South Pointe Redevelopment Area. Also, as a condition of that remandment, the Board was instructed to examine Outdoor Entertainment Establishments, Open Air Entertainment Establishments and Neighborhood Impact Establishments in the South Pointe Redevelopment Area. At the March 26, 1996 regular meeting of the Planning Board, the Board discussed the items at length and thus the new regulations, as set forth, herein. On April 23, 1996 the Planning Board held a public hearing and voted 5-0 (2 absentees) in favor of recommending adoption of the amending ordinance, as revised.

On June 5, 1996, the City Commission adopted on first reading, with some modifications, the attached Ordinance (the revised language as modified by the City Commissions concerns appears as shaded text). The modifications establish a visibility requirement for Accessory Outdoor Bar

Counters, and a setback requirement when Accessory Outdoor Bar Counters are adjacent to properties with apartment units.

## **OVERVIEW**

The definitions for outdoor cafe and outdoor bar were included in the original version of the amendment which prohibited these types of uses in the MXE District only. The attached amendment, as now modified, expands the regulations to allow these uses as accessory uses only, when permitted, and with other restrictions as provided, therein. Accessory outdoor bar counters would be prohibited to operate anywhere in the City between the hours of twelve midnight and 8:00 a.m., except in the RM-3, CD-3 and MXE Districts when said outdoor bar counter is an accessory use to an oceanfront hotel with at least 100 hotel units the time limitation would not be in effect. Also, within the Cabaret Overlay District in the MXE District (between 9th and 11th on Ocean Drive), the time constraint would not apply to an accessory outdoor bar counter. However, the regulations pertaining to the serving or offering for sale of alcoholic beverages as otherwise permitted in outdoor cafes and restaurants, bars and nightclubs would not be changed by this amending ordinance (see analysis below).

## **ANALYSIS**

What follows is a section by section analysis of the proposed amending ordinance.

### **Section 1.**

This section of the proposed ordinance clarifies the definition for "Cafe, Outdoor" and provides a definition for "Bar Counter, Accessory Outdoor", by specifically excluding Accessory Outdoor Bar Counters as a main permitted use. An outdoor bar counter would only be permitted as an accessory use to an outdoor cafe, as newly defined, with a minimum of 30 chairs, except when the outdoor bar counter is associated with a hotel pool deck there would be no minimum seating requirement. The definition also requires that an Accessory Outdoor Bar Counter shall not be visible from any property line adjacent to a public right-of-way.

### **Section 2.**

This section of the proposed amendment includes the newly defined "Accessory Out Door Bar Counter" as a prohibited use in the RM-2 and CD-1 Districts; prohibited use in the RM-3, CD-2, CD-3, I-1 and MXE Districts except for accessory outdoor bar counters operated between 8:00 a.m. and 12 midnight. In the RM-3, CD-3 and MXE Districts, the amendment further provides that an accessory outdoor bar counter would not be restricted by the time limitation (closed between 12

midnight and 8:00 a.m.) when said use is an accessory use at the rear of oceanfront hotels with at least 100 hotel units and is setback 20% of the lot width (50 feet minimum) from any property line adjacent to a property with an apartment unit thereon or in the MXE District when said accessory use would not be restricted by the time limitation within the Cabaret District (9th to 11th Streets, on the west side of Ocean Drive). These exceptions do not imply that alcoholic beverages are permitted to be served/sold 24 hours a day. Section 12 of the Zoning Ordinance further provides that restaurants, bars and nightclubs cannot serve or offer for sale alcoholic beverages between the hours of 5:00 a.m. and 8:00 a.m. Also, the amendment removes Outdoor Entertainment and Open Air Entertainment Establishments from the Conditional Use Category in the CD-1 District and lists these uses as prohibited. This change is in keeping with the residential character of the surrounding residential neighborhoods which could be negatively effected by said outdoor uses.

### Section 3.

This section of the amendment provides new regulations concerning the newly defined accessory outdoor bar counter within the South Pointe Redevelopment Area. This section also addresses regulations for Outdoor Entertainment, Neighborhood Impact and Open Air Establishments. As shown in the table of permitted uses on page 8 of the amendment, accessory outdoor bar counters would be prohibited in the R-PS 1,2,3 Districts; permitted in the R-PS4 District as accessory uses to hotels with at least 100 hotel units when operated between 8:00 a.m. and 12 midnight and permitted in the C-PS1,2,3,4 Districts, provided the use is not operated between the hours of 12 midnight and 8:00 a.m. The amendment further provides that Outdoor Entertainment, Open Air Entertainment and Neighborhood Impact Establishments would be prohibited in the R-PS 1,2,3 Districts; permitted in the R-PS4 District as accessory uses in oceanfront hotels with at least 250 or more hotel rooms with access to the establishment only from the interior lobby and not from the street and as Conditional Uses in the C-PS 1,2,3,4 Districts. All of these uses would be prohibited in the RM-PS1 District (Courts of South Beach).

The last sections of the amendment provide for inclusion in the Zoning Ordinance, repealer, severability and an effective date.

In reviewing a request for an amendment to the Zoning Ordinance or a change in land use, the City Commission shall consider the following:

1. Whether the proposed change is consistent and compatible with the Comprehensive Plan and any applicable neighborhood or Redevelopment Plans;

Consistent - The amendment does not contravene any policies within the Comprehensive Plan, the South Shore Revitalization Strategy, the Ocean Drive\Collins Avenue Design Strategy Plan or any other Neighborhood Plan.

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

Consistent - The amendment would not change the underlying zoning district for any areas within the City.

3. Whether the change suggested is out of scale with the needs of the neighborhood or the City;

Consistent - The amendment is in scale with the overall need of the City to control outdoor uses that may have a negative effect on neighboring properties unless properly regulated.

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

Consistent - The LOS for the area public facilities and infrastructure should not be negatively affected, if at all, by the proposed amending ordinance.

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

Not Applicable - This review criteria is not applicable to this Zoning Ordinance amendment.

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

Consistent - The operating of outdoor bars, past midnight, as well as outdoor entertainment activities within the City, has the potential to negatively effect the surrounding land uses; particularly with regard to the right to expect peaceful and orderly conduct at said establishments.

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

Consistent - The proposed change should not negatively effect living conditions or the Quality of Life for the surrounding properties. Indeed, the control of outdoor bar counters and outdoor entertainment uses should help improve the Quality of Life for neighboring properties where such uses are permitted; by their limitation and regulation.

8. Whether the proposed change will create or excessively increase traffic congestion beyond the Level Of Service as set forth in the Comprehensive Plan or otherwise affect public safety;

Not Applicable - This review criteria is not applicable to this Zoning Ordinance amendment.

9. Whether the proposed change will seriously reduce light and air to adjacent properties;

Not Applicable - This review criteria is not applicable to this Zoning Ordinance amendment.

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

Consistent - We believe that property values would not be negatively affected by the proposed amendment; indeed, values should be protected by the proposed measures.

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 amendment will not change the development regulations for adjacent sites which must comply with their own site specific development regulations. Furthermore, the proposed ordinance should not affect the ability for an adjacent property to be developed in accordance with said regulations.

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

Not Applicable - The proposed amendment does not change the underlying zoning district for any property.

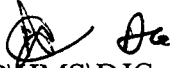
13. Whether it is impossible to find other adequate Sites in the City for the proposed Use in a district already permitting such Use;

Not Applicable - This review criteria is not applicable to this Zoning Ordinance amendment.



**CONCLUSION**

Based on the foregoing, the Administration has concluded that the City Commission should adopt on second and final reading the attached amendment, upon holding a public hearing.

Handwritten signature in black ink, appearing to be 'JGP' followed by a flourish.

JGP\HMS\DJG

F:\PLAN\ALL\CC\_MEMOS\1260CMS2.96

PLANNING BOARD HEARING

HELD AT:

1700 Convention Center Drive

Miami Beach, FL 33139

July 17, 1996

Transcribed by ELAINE CRANDALL, Registered  
Professional Reporter and Notary Public in and for  
the State of Florida at Large.

1                   (Thereupon, the following proceedings  
2 were had.)

3                   THE MAYOR: We'll move to R5E.

4                   COMMISSIONER: I move to open the public  
5 hearing.

6                   THE MAYOR: Well, wait a minute. Let  
7 him read it.

8                   THE CLERK: This is the second and final  
9 hearing.

10                  COMMISSIONER: Oh, yeah. Okay.

11                  THE MAYOR: Please go ahead.

12                  THE CLERK: An ordinance of variance to  
13 the City Commission of the City of Miami  
14 Beach, Florida, amending Comprehensive Voting  
15 Ordinance Number 89-2665 by, 1: Amending  
16 Section 3 entitled "Definition of Vending,"  
17 Section 3-2, entitled, "Terms Defined" by  
18 modifying the definitions of outdoor cafe;  
19 clarifying that an outdoor bar counter is  
20 considered an accessory use and by adding a  
21 definition for accessory outdoor bar  
22 counters.

23                  And by, 2: Amending Section 6 entitled  
24 "Schedule of District Regulations;" amending  
25 Subsection 6-3 entitled "RM-2," Residential

1 Multi-Family, Medium Intensity District, by  
2 listing accessory outdoor bar counters as a  
3 prohibited use.

4 Amending Subsection 6-4 entitled "RM-3,"  
5 Residential Multi-Family, High Intensity, by  
6 listing accessory outdoor bar counters,  
7 provided that they are not operated or  
8 utilized between midnight and 8:00 a.m as an  
9 accessory use.

10 Listing accessory outdoor bar counters  
11 at the rear yard of oceanfront hotels of 100  
12 units or more as an accessory use and  
13 establishing a setback requirement from the  
14 property line. And prohibiting all other  
15 accessory outdoor bar counters.

16 Amending Subsection 6-6, entitled  
17 "CD-1," Commercial Low Intensity, by listing  
18 accessory outdoor bar counters, outdoor  
19 entertainment establishments and open air  
20 entertainment establishments with prohibited  
21 uses.

22 Amending Subsection 6-7 entitled "CD-2,"  
23 Commercial Medium Intensity, by listing  
24 accessory outdoor bar counters that are not  
25 operated or utilized between midnight and

1           8:00 a.m. as an accessory use and prohibiting  
2           all other accessory outdoor bar counters.

3           Amending Subsection 6-8 entitled,  
4           "CD-3," Commercial High Intensity, by listing  
5           accessory outdoor bar counters that are not  
6           operated or utilized between midnight and  
7           8:00 a.m. as an accessory use.

8           Listing accessory outdoor bar counters  
9           at the rear yard of oceanfront hotels of 100  
10          units or more as accessory use and  
11          establishing a setback requirement for the  
12          property line. And prohibiting all other  
13          accessory outdoor bar counters.

14          Amending Subsection 6-14 entitled "I-1,"  
15          Light Industrial, by listing accessory  
16          outdoor bar counters that are not operated  
17          and utilized between midnight and 8:00 a.m.  
18          as an accessory use. And prohibiting all  
19          other accessory outdoor bar counters.

20          Amending Subsection 6-16 entitled "MXE,"  
21          Mixed Use Entertainment, by listing accessory  
22          outdoor bar counters that are not operated or  
23          utilized between midnight and 8:00 a.m. as an  
24          accessory use.

25          Listing accessory outdoor bar counters

1 at the rear yard of oceanfront hotels of 100  
2 units or more as accessory use. And  
3 establishing a setback requirement from its  
4 operating line.

5 Listing accessory outdoor bar counters  
6 located in the Cabaret Overlay District as  
7 accessory use and prohibiting all other  
8 accessory outdoor bar counters.

9 And by, 3: Amending Section 20  
10 entitled: "PS Performance Standard  
11 Districts," amending Subsection 20-3,  
12 entitled: "Use Regulations" by not permitting  
13 accessory outdoor bar counters in the R-PS1  
14 Medium Low Density; R-PS2, Medium Density;  
15 R-PS3, Medium High Density; R-PS1,  
16 Residential Mixed Use District, and the  
17 R-PS4, High Density District, except that an  
18 accessory outdoor bar counter is permitted as  
19 an accessory use in the oceanfront hotel --  
20 hotels of 100 units or more in the R-PS4 High  
21 Density District and listing accessory  
22 outdoor bar counters operated until midnight  
23 only as permitted use in the following  
24 districts: C-PS1, Commercial Limited Mixed  
25 Use; C-PS2, Commercial General Mixed Use;

1 C-PS3, Commercial Intensive Mixed Use; C-PS4  
2 Commercial Intensive Phase, Bayside District;  
3 and by not permitting outdoor entertainment  
4 establishments, open air entertainment  
5 establishments or neighborhood impact  
6 establishments in the R-PS1, Medium Low  
7 Density; R-PS2, Medium Density; R-PS3, Medium  
8 High Density; R-PS1, Residential Mixed Use  
9 Districts; and the R-PS4, High Density  
10 District, except that outdoor entertainment  
11 establishments, open air entertainment  
12 establishments and neighborhood impact  
13 establishments are permitted as accessory use  
14 in oceanfront hotels with 250 or more hotel  
15 units when located in the R-PS4, High Density  
16 District, and listing outdoor entertainment  
17 establishments, open air entertainment  
18 establishments and neighborhood impact  
19 establishments as conditional use of the  
20 following districts: C-PS1, Commercial  
21 Limited Mixed Use; C-PS2, Commercial General  
22 Mixed Use; C-PS3, Commercial Intensive Mixed  
23 Use; and C-PS4, Commercial Intensive Phase  
24 Bayside Districts.

25 Providing for inclusion in the zoning

1 ordinance. Providing for repeal and  
2 severability and an effective date.

3 COMMISSIONER: I missed the third line  
4 in the third paragraph.

5 (Laughter in the room.)

6 THE MAYOR: Is there a motion on the  
7 floor?

8 COMMISSIONER: I move for the motion.

9 COMMISSIONER: Second.

10 THE MAYOR: Any citizen wishing to be  
11 heard, please come forward.

12 COMMISSIONER: Who came up with this  
13 ordinance anyway?

14 THE MAYOR: You wish to be heard? Come  
15 on.

16 COMMISSIONER: It's your turn. You  
17 might not have realized it after that lengthy  
18 introduction.

19 MR. GOLDEN: Thank you, Mr. Mayor.  
20 Sidney Golden, 5415 Collins Avenue.

21 Mayor, Commissioners, on June the 5th,  
22 at the June 5th Commission Meeting,  
23 Commissioner Gottlieb read my letter relaying  
24 the concerns of the residents of our building  
25 with outdoor bar counters that are



1 immediately adjacent to residential  
2 buildings.

3 The Commission heard those concerns and  
4 Commissioner Liebman had some specific  
5 concerns dealing with desire for the amount  
6 of linear footage for an outdoor bar counter,  
7 again, to a residential area.

8 The Commission directed the Planning  
9 Department to please look into the  
10 possibility of addressing those concerns in a  
11 reasonable way.

12 And I'm pleased to tell you that that  
13 was done and, I think, appropriately.

14 I -- I, once again, got exposed to city  
15 government and realizing the in-depth  
16 analysis that the Planning Department has to  
17 go through in making the slightest revision  
18 because it affects so many people.

19 And I want to tell you that I've watched  
20 that analysis over the last month and have  
21 been able to participate in it. And I -- I  
22 want to personally thank Dean Grandon  
23 (phonetic) and certainly Jorge Gomez; they  
24 have really been super with their time and  
25 their explanations.

1           And I have to thank Mr. Alavera  
2           (phonetic) for keeping me on track of what  
3           the law is and not what the emotional aspects  
4           of my concerns were with this.

5           I would urge you to adopt the  
6           recommendations of the Planning Department.

7           And, again, I bring to your attention  
8           that it's a job well done.

9           THE MAYOR: Thank you.

10          COMMISSIONER: Thank you.

11          THE MAYOR: Any other citizens wishing  
12          to be heard?

13          If not, we'll close the public hearing.

14          COMMISSIONER: We can close the public  
15          hearing; I just have a question, Dean.

16          Would you explain how this ordinance  
17          works, as it relates within the Ocean Drive  
18          Special District?

19          SPEAKER DEAN: (Unidentified last name).

20          Before I do that, Commissioner, I would  
21          like to also explain the handout that I  
22          provided to you.

23          You have an annotated version that has  
24          blue highlighting in it and the additional  
25          language that we're proposing addresses

1 Mr. Golden's concerns relative to the  
2 operations of these outdoor bar counters  
3 where they're adjacent to a residential area,  
4 a residential apartment.

5 The one thing that I would like you to  
6 consider, as a matter of policy, is that we  
7 have proposed that this language be included  
8 for the RM-3 District, the City-2 District,  
9 the City-3 District, the I-1 District, the  
10 MXE District, the RPS-3 -- 3 and 4 -- and  
11 CPS-1 through 4 Districts.

12 It's conceivable that you, as a matter  
13 of policy, may not want to restrict the hours  
14 of operation on these outdoor bars in the MXE  
15 District and perhaps the I-1 District on the  
16 basis of the character of those districts is  
17 different than it is on R-3 and CD-3 and the  
18 MXE-3 District is our Mixed Use Entertainment  
19 District.

20 To answer your question, again, in the  
21 Cabaret Overlay District, from 9th to 11th on  
22 Ocean Drive, you can have an outdoor bar  
23 operating past midnight.

24 Anywhere else on Ocean Drive, under this  
25 ordinance, you'd be allowed to operate up to

1           12:00 unless -- and, again, this is the  
2           additional language that has been provided  
3           here -- unless that bar is in a property that  
4           is adjacent to another property that has a  
5           residential unit. Then they would only be  
6           able to operate until 8:00 p.m.

7           And, again, that's your choice as to  
8           whether or not you want to extend that also  
9           to 12:00 in the MXE District.

10          And I think that's a critical policy  
11          decision that this Commission needs to make.  
12          But that's how it would work on Ocean Drive,  
13          for instance.

14          COMMISSIONER: Dean -- Dean, how many --  
15          have you done an analysis on how many  
16          apartment buildings and bars, you know, in  
17          this situation, in the Ocean Drive district  
18          will be affected.

19          SPEAKER DEAN: Well, most of the outdoor  
20          bars in Ocean Drive, fortunately, are in the  
21          9th to 11th Street area so they are -- they  
22          are covered by this --

23          COMMISSIONER: Right. The overlay.

24          SPEAKER DEAN: Right.

25          And the other bars that are out there,

1           some of them have not ever been approved.  
2           They have never been permitted. As far as  
3           the City is concerned, they're not legal and  
4           they would be restricted to whatever this  
5           ordinance puts in place, relative to their  
6           hours of operation: Be it 8:00 p.m., as  
7           proposed this afternoon or, if you want, to  
8           leave that section in, then they will be  
9           eligible to be operating until midnight.

10           But, again, there are very few -- there  
11           are none on Ocean Drive, outside of the  
12           Cabaret Overlay District, that are bona fide  
13           outdoor bars.

14           COMMISSIONER: It just seems to me, as a  
15           Commission, that this has been an issue of  
16           the MXE district and of other areas where we  
17           have apartments.

18           This is Miami Beach. And this is a  
19           problem that is ongoing.

20           But, frankly, I think we're addressing  
21           it in a very fair way. It's -- we cannot  
22           have a continual battle between the people  
23           who live here and the people who do business  
24           here. And I think it's not an unfair and  
25           unreasonable request to say from 8:00 p.m.

1           you know, to 8:00 a.m. I don't think that  
2           that's unfair.

3                   SPEAKER DEAN: Even in the MXE District?

4                   COMMISSIONER: Well, th MXE District had  
5           the major problem. And that's why we created  
6           the Overlay District, with the noise  
7           ordinance and all the other things we tried  
8           to do, so that the residents and the  
9           businesses would be able to coexist.

10                   And, frankly, to the best of my  
11           knowledge, it's been a pretty peaceful  
12           situation since we've done that.

13                   It's not always been that way but it's  
14           better than it was. I don't want to now open  
15           up the door to create another whole set of  
16           problems.

17                   Twelve o' clock at night we'd have to  
18           say probably on Friday and Saturday but not  
19           Monday through Friday because these people  
20           work. And then we're starting to dictate  
21           lives, to the point that I think it's a big  
22           problem.

23                   I'd rather leave it alone and see what  
24           happens.

25                   COMMISSIONER: Dean, that Cabaret

1 District is just Ocean Drive because there is  
2 some outdoor bar operating on 11th Street  
3 that has become a neighborhood nuisance.

4 COMMISSIONER: That's right.

5 COMMISSIONER: I wondered if it's part  
6 of the Cabaret District and not, therefore,  
7 entitled, or is it one of the illegal outdoor  
8 bars?

9 It looks like The Tutor we've gotten  
10 complaints.

11 SPEAKER DEAN: The Tutor? The Tutor  
12 would actually, under this ordinance, have to  
13 shut down at 8:00 p.m.

14 COMMISSIONER: That's fine. Is there  
15 going to be some due diligence by the  
16 administration now that we're doing this?

17 And it's a long time in coming. How  
18 many years have you been working on this one?

19 SPEAKER DEAN: This one has been in the  
20 process now for almost a year.

21 COMMISSIONER: So it's time now that we  
22 pass it. If we pass it, to really enforce  
23 it.

24 Do we have the capability of enforcing  
25 it?

1           CODE ENFORCEMENT MALE SPEAKER: Yes, we  
2 do. I'm a little bit concerned about the  
3 implications of this in the MXE District  
4 because I -- if I understand you correctly,  
5 this is the first time that we're proposing  
6 reducing the hours and bringing them back to  
7 8:00 p.m., right, from twelve?

8           COMMISSIONER: Only -- only for those  
9 units -- the bars that are adjacent to  
10 apartment buildings.

11          SPEAKER DEAN: Right. And if I could  
12 add: This does not affect outdoor cafes.  
13 Only outdoor bars, which there is only one,  
14 to my knowledge.

15          COMMISSIONER: That's the next question,  
16 would be: How do you -- what's the  
17 difference between a bar that has hamburgers  
18 or finger food or a restaurant that also  
19 sells alcohol?

20          SPEAKER DEAN: Well, again, this relates  
21 specifically to outdoor bars which are either  
22 outdoors or substantially unenclosed.

23          COMMISSIONER: Okay, but I have a liquor  
24 license. And I also have a kitchen and I  
25 have a Board of Health permit to run my



1 kitchen and I'm licensed and certified and I  
2 have a restaurant license.

3 SPEAKER DEAN: Right.

4 COMMISSIONER: But I also am licensed to  
5 sell alcoholic beverages. Am I a bar or am I  
6 a restaurant?

7 SPEAKER DEAN: Well, you must be -- you  
8 have to have a restaurant first in order to  
9 qualify for an outdoor cafe, part of which  
10 would be an outdoor bar.

11 COMMISSIONER: Okay. What I'm really  
12 saying is: Are we -- are we creating a  
13 loophole when we say "bar" when, in fact,  
14 someone says, "I'm not a bar, I'm a  
15 restaurant?"

16 SPEAKER DEAN: You have to look at the  
17 definition of outdoor bar counter. It's an  
18 accessory freestanding or substantially  
19 unenclosed counter or similar device, either  
20 stationary or mobile, at or behind which  
21 alcoholic beverages may be prepared and  
22 served.

23 COMMISSIONER: David, it's a bar  
24 counter, not a bar.

25 SPEAKER DEAN: Right.

1           COMMISSIONER: Well, I understand that.  
2           But I've also seen on Ocean Drive vending  
3           from those counters, food vending.

4           SPEAKER DEAN: Those have been cited as  
5           illegal.

6           COMMISSIONER: Illegal.

7           SPEAKER DEAN: And those are a different  
8           issue. And they're being treated  
9           differently.

10          COMMISSIONER: Okay.

11          COMMISSIONER: I'm sorry to interrupt.

12          How would the outdoor bar counter on  
13          Ocean Drive be more disturbing to an  
14          adjoining apartment unit than what is  
15          otherwise going on in that property? A  
16          restaurant or a club or, you know, whatever.

17          SPEAKER DEAN: Well, that's a good  
18          question, Commissioner. And it really came  
19          down to identifying outdoor bar counters as  
20          being probably the most -- if ever there were  
21          to be an intense activity, in terms of noise  
22          and joviality, because people are standing  
23          around, it's at these outdoor bars.

24          And we've identified the outdoor bars as  
25          probably the most problematic component of

1 all outdoor activities.

2 Outdoor cafes certainly had their  
3 problems. Outdoor containment had their  
4 problems. We've addressed those by  
5 Commission's approval of the outdoor  
6 entertainment provisions of the ordinance.

7 But outdoor bars, as they stand alone,  
8 are something that are a unique problem and  
9 we think by regulating them and requiring  
10 that they either shut down at an early hour  
11 or that they have to meet other standards,  
12 will help resolve that issue in the future.

13 COMMISSIONER: Uh-huh.

14 THE MAYOR: Any other questions?

15 COMMISSIONER: Did we close? Did we  
16 close the public hearing? Did we close --

17 THE MAYOR: We closed it.

18 COMMISSIONER: I move it.

19 COMMISSIONER: Second.

20 THE MAYOR: We moved it. There was a  
21 second. We had discussion.

22 Call the roll.

23 THE CLERK: Commissioner Kasden; absent.  
24 Commissioner Liebman?

25 COMMISSIONER LIEBMAN. Yes.

1 THE CLERK: Commissioner Shapiro?

2 COMMISSIONER SHAPIRO: Yes.

3 THE CLERK: Commissioner Gottlieb?

4 COMMISSIONER GOTTLIEB: Yes.

5 THE CLERK: Commissioner Eisenberg?

6 COMMISSIONER EISENBERG: Yes.

7 THE CLERK: Vice Mayor Pearlman?

8 VICE MAYOR PEARLMAN: Yes.

9 THE CLERK: Mayor Gelbman?

10 MAYOR GELBMAN: Yes.

11 THE CLERK: Six in favor. One absent.

12 Motion carries.

13 COMMISSIONER: One more thing. Can I  
14 have from the administration a report on the  
15 status of the particular bar and the  
16 structure that was built illegally that we --  
17 I guess it was June the 5th -- that we  
18 discussed?

19 I don't know the status of whether it's  
20 been -- it's still there. I just don't know  
21 what -- whether we closed it down; unless you  
22 know that.

23 SPEAKER DEAN: I can tell you that that  
24 structure is not operating right now. In  
25 fact, the hotel is not operating.

1           We're still investigating whether there  
2           is a permit. It's not clear whether or not  
3           it's even a bar.

4           But, again, under this proposed  
5           ordinance, if they were to come in and be  
6           permitted tomorrow, they could operate but  
7           only to 8:00 p.m.

8           COMMISSIONER: Well, let's be vigilant.  
9           And I'd like to know what the status is.

10          CODE ENFORCEMENT SPEAKER SERGIO:  
11          (Unidentified last name) We can check on  
12          that. I think it was -- he was correct.  
13          Because when I was walking there at night,  
14          somebody came to thank me for that particular  
15          property.

16          COMMISSIONER: I know we did the right  
17          thing. I just want to be sure that they  
18          don't somehow open again.

19          CODE ENFORCEMENT SPEAKER SERGIO: We'll  
20          advise you.

21          COMMISSIONER: Sergio? I just want to  
22          ask Sergio: I -- you kept mentioning that  
23          there is only one bar that is licensed,  
24          permitted and permissible. All of the rest  
25          of them will be notified? They're not going

1 to be grandfathered in just because they're  
2 there.

3 CODE ENFORCEMENT SPEAKER SERGIO: If  
4 they were not properly, legally with permit  
5 before, they're not grandfathered in.

6 COMMISSIONER: So there is only one that  
7 has been permitted?

8 SPEAKER DEAN: To my knowledge,  
9 Commissioner, the only one that was permitted  
10 is The Tutor bar.

11 (Thereupon, the proceedings  
12 concluded.)

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CERTIFICATE OF REPORTER

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STATE OF FLORIDA :  
: SS.  
COUNTY OF MIAMI-DADE :

I, ELAINE CRANDALL, Registered Professional Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I transcribed the foregoing cassette tape recording requested and that the foregoing pages, numbered from 1 to 19 inclusive, constitute a true and correct transcription of my shorthand notes of the proceedings held.

I further certify that I am not an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

WITNESS my hand and official seal in the City of Miami, County of Miami-Dade, State of Florida, this 25th day of January, 2017.



ELAINE CRANDALL, R.P.R.