

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

Planning Board

TO: Chairperson and Members
Planning Board

DATE: June 27, 2017

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 17-0127. CPS-2 Entertainment**

REQUEST

PB 17-0127. CPS-2 ENTERTAINMENT - AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 18, "PS PERFORMANCE STANDARD DISTRICT," SECTION 142-693, "PERMITTED USES," TO CLARIFY THAT ENTERTAINMENT IS NOT PERMITTED IN THE CITY'S PERFORMANCE STANDARD DISTRICTS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION:

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

HISTORY

On April 26, 2017, the Mayor and City Commission referred this Ordinance to the Land Use and Development Committee and the Planning Board.

On May 10, 2017, the Land Use and Development Committee held a public hearing, and considered the following documentary evidence and oral testimony, which is attached here and incorporated in the record of the Planning Board:

1. Committee Memorandum to Members of the Land Use and Development Committee
2. Ordinance 94-2908 (Exhibit A);
3. Ordinance 96-3050, Commission Memorandum No. 445-96, & Planning Board Hearing Transcript, July 17, 1996 (Exhibit B);
4. Ordinance 99-3222, Commission Memorandum No. 921-99, December 15, 1999 (Exhibit C);
5. Ordinance 2003-3417, Commission Meeting Memorandum, & City Commission Meeting Public Hearing on Restriction of Outdoor/Open Air Entertainment, May 21, 2003 (Exhibit D);

6. Ordinance 2004-3445, Commission Meeting Memorandum, & City Commission Meeting Public Hearing on Eliminating Dance Halls/ Entertainment Establishments in Certain Districts Transcript, May 5, 2004 (Exhibit E);
7. Entertainment Use SoFi Report by Ana Gelabert-Sanchez May 10, 2017 (Exhibit F);
8. Appendices to Entertainment Use in SoFi Report (Exhibit F2);
9. Ordinance 2015-3948, Commission Memorandum on Non-Amplified Instruments, & Commission Meeting Public Hearing on Entertainment Transcript, July 8, 2015 (Exhibit G);
10. 2025 Miami Beach Comprehensive Plan (Exhibit H);
11. Section 142-691, Code of the City of Miami Beach (Exhibit I);
12. Resolution 75-14624 (Exhibit J);
13. Resolution 77-15413 (Exhibit K);
14. Declaration of J. Florio (Exhibit L);
15. Declaration of A. Zamora (Exhibit M);
16. Declaration of J. Gonzalez (Exhibit N);
17. Declaration of J. Babcock (Exhibit O);
18. Declaration of A. Ventura (Exhibit P);
19. Declaration of M. Marquez (Exhibit Q);
20. Entertainment Map (Exhibit R);
21. Declaration of Frank Del Vecchio (Exhibit S);
22. Declaration of Marian Del Vecchio (Exhibit T);
23. Declaration of Morris Sunshine (Exhibit U);
24. Declaration of Bruce Backman (Exhibit V);
25. Declaration of Jo Manning (Exhibit W);
26. Declaration of Keith Marks (Exhibit X);
27. Declaration of Clare McCord (Exhibit Y);
28. Declaration of Gayle Durham (Exhibit Z);
29. Transcript of May 10, 2017 meeting of the Land Use and Development Committee (Exhibit AA).¹

On May 10, 2017, the Land Use and Development Committee recommended that the Planning Board transmit the ordinance to the City Commission with a favorable recommendation.

REVIEW CRITERIA

In accordance with Section 118-163 (3), when reviewing a request for an amendment to these land development regulations, the Board shall consider the following where applicable:

1. **Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

Consistent – The proposed modifications are consistent with the Goals, Objectives, and Policies of the Comprehensive Plan.

¹ Includes the live testimony of: Frank Del Vecchio, Marian Del Vecchio, Morris Sunshine, Bruce Backman, Jo Manning, Keith Marks, and Clare McCord.

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

Consistent – The proposed amendment does not modify district boundaries and ensures that the regulations regarding entertainment in the South of Fifth neighborhood are uniform.

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 change will not tax the existing load on public facilities and infrastructure.

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 incompatibility of entertainment uses with residential uses in the South of Fifth neighborhood makes passage of 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.

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 positively impact traffic congestion and public safety relevant.

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. It will ensure that the value of surrounding residential properties is protected.

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.

Consistent – Entertainment uses are permitted in several other parts of the City where such uses would be allowed.

ANALYSIS

I. Administration Recommendation

The Administration recommends that the Planning Board transmit this Ordinance to the City Commission with a favorable recommendation, consistent with the recommendation of the Land Use and Development Committee.

II. Background

On April 26, 2017, the Mayor and City Commission referred this Ordinance to the Land Use and Development Committee and the Planning Board. The Ordinance amends Section 142-693 of the Land Development Regulations to clarify that entertainment is not permitted in the City's Performance Standard districts. Currently, the City Code allows limited entertainment uses in the C-PS2 zoning district (on the south side of Fifth Street between Michigan Avenue and Alton Road) and in the C-PS3 and C-PS4 zoning districts. The Ordinance would remove these limited exceptions to the general prohibition on entertainment in the Performance Standard districts, which districts include the entirety of the South of Fifth Street Neighborhood. The use being prohibited is not currently being utilized and would be inconsistent with the multi-family residential-use structures constructed in the area.

III. Current regulations on entertainment establishments in the South of Fifth Street Neighborhood

Over the course of the last two decades, and pursuant to Ordinance Nos. 94-2908, 96-3050, 99-3222, 2003-3417, and 2004-3445, the Mayor and City Commission have adopted a series of incremental land development regulations in an attempt to ameliorate the harms associated with entertainment establishments located South of Fifth Street. Each incremental enforcement regulation has proven to be insufficient in combatting the negative effects that entertainment establishments cause in this residential neighborhood.

In 1994, the Mayor and City Commission adopted Ordinance No. 94-2908, which contained a wide range of amendments to the development regulations for the former South Pointe Redevelopment Area. The City contracted with the University of Miami School of Architecture to analyze the proposed amendments, which were drafted in an effort "to encourage new construction and rehabilitation of existing structures within the Performance Standards Districts which is more consistent and compatible with the character of the area comprising the South Pointe Redevelopment Area." Among other things, the Ordinance prohibited nightclubs in the South Pointe Redevelopment area; however, in the C-PS3 and C-PS4 districts, a nightclub was 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. See legislative history, attached as Exhibit A.

In 1996, after the previous scheme proved ineffective, the Mayor and City Commission adopted comprehensive regulations relating to outdoor bar counters, outdoor entertainment establishments, open air entertainment establishments, and neighborhood impact establishments pursuant to Ordinance No. 96-3050.² The City Commission found that "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." Specifically as to the Performance Standard districts, the Ordinance prohibited outdoor entertainment establishments, open air entertainment establishments, and neighborhood impact establishments in the RM-PS1, R-PS1, R-

² The City Code currently defines "outdoor entertainment establishment" as "a commercial establishment which provides outdoor entertainment as defined in this section" and "open air entertainment establishment" as "a commercial establishment which provides entertainment . . . indoors or in an enclosed courtyard or area which by its design is open to the outside, thereby enabling the entertainment to be audible outdoors." City Code Section 142-1361.

A "neighborhood impact establishment" is defined as an "alcoholic beverage establishment or restaurant, not also operating as an entertainment establishment or dance hall . . . with an occupant content of 300 or more persons . . ." or "an alcoholic beverage establishment or restaurant, which is also operating as an entertainment establishment or dance hall . . . with an occupant content of 200 or more . . ."

PS2, R-PS3, and R-PS4 zoning districts (with a limited exception for accessory uses to oceanfront hotels with 250 or more hotel units in the R-PS4 district), and listed these uses as conditional uses in the C-PS1, 2, 3, and 4 districts. This regulatory scheme did not solve the problem either. See legislative history, attached as Exhibit B.

In 1999, the Mayor and City Commission adopted Ordinance No. 99-3222, in order to, among other things, delete the definitions of nightclubs and supper clubs, create definitions for dance halls and entertainment establishments, amend the definitions of alcoholic beverage establishments, and amend regulations for entertainment uses in the Performance Standard districts. Specifically, the Ordinance prohibited dance halls and entertainment establishments not also operating as alcoholic beverage establishments and restaurants with full kitchens and serving full meals in the redevelopment area.³ The effect of this particular provision was to prohibit standalone entertainment uses and dance halls. This regulatory scheme did not solve the problem either. See legislative history, attached as Exhibit C.

In 2003, and pursuant to Ordinance No. 2003-3417, the Mayor and City Commission prohibited outdoor entertainment establishments and open air entertainment establishments in the R-PS4 and C-PS1, C-PS2, C-PS3, and C-PS4 districts. The Ordinance also listed neighborhood impact establishments as a conditional use, but only in oceanfront hotels with 250 or more hotel units, with access to the establishment only from the interior lobby of the hotel and not from the street.⁴ (Neighborhood impact establishments were already listed as a conditional use in the C-PS1, C-PS2, C-PS3, and C-PS4 districts.) This regulatory scheme did not solve the problem either. See legislative history, attached as Exhibit D.

Following lengthy public hearings in 2004, the Mayor and City Commission adopted Ordinance No. 2004-3445, which prohibited dance halls and entertainment establishments that also operated as alcoholic beverage establishments and restaurants with full kitchens (that served full meals) located south of Fifth Street. The effect of this was to restrict entertainment establishments to the many areas of the City where it is allowed outside of the South of Fifth Street Neighborhood. In reviewing the Ordinance, the Planning Board determined that restaurants (with accessory entertainment uses) that were located within districts that prohibited standalone dance

3 Ordinance No. 99-3222 clarified a provision allowing dance halls and entertainment establishments in the C-PS3 and C-PS4 districts within a hotel of 250 rooms or more with access to the dance hall or entertainment establishment only from the interior lobby and not from the street. The Ordinance proposed herein would delete this limited allowance for entertainment uses.

4 Previously, under Ordinance No. 96-3050, oceanfront hotels with 250 or more units were permitted to have (as an accessory use) an outdoor entertainment establishment, open air entertainment establishment, or neighborhood impact establishment. By requiring conditional use approval for such uses, Ordinance No. 2003-3417 therefore further restricted the entertainment uses that could be associated with an oceanfront hotel with 250 or more units.

halls and entertainment establishments had similar negative impacts on surrounding residential neighborhoods. Finally, this regulation successfully ameliorated the worst of the negative effects of entertainment establishments on the City. See legislative history, attached as Exhibit D, and Report of Ana Sanchez Gelabert, attached as Exhibit F.⁵

In 2015, and pursuant to Ordinance No. 2015-3948, the Mayor and City Commission adopted a limited allowance for entertainment uses in a portion of the C-PS2 district, on the south side of Fifth Street between Michigan Avenue and Alton Road. No business has ever opened taking advantage of this limited exception, and as detailed herein, it is inconsistent with the City's planning for a residential neighborhood. Therefore, we have considered how to amend the Ordinance to more consistently regulate this neighborhood. See legislative history, attached as Exhibit G.

Proposed Amendments

The proposed Ordinance would amend the City Code as follows, in order to clarify that entertainment is regulated to be allowed in many areas outside the Performance Standard districts:

Sec. 142-693. Permitted uses.

(a) The following uses are permitted in the performance standard districts:

General Use Category	R-PS 1, 2	R-PS 3, 4	C-PS 1, 2, 3, 4	RM-PS1
* * *				
Entertainment establishments, Outdoor outdoor entertainment establishments, and open air entertainment establishments	N	N	N	N
* * *				

P—Main permitted use C—Conditional use N—Not permitted

* * *

(c) For purposes of this section, pawnshops and dance halls and entertainment establishments are not permitted as a main permitted or accessory use south of Fifth Street; ~~however, in the C-PS3 and C-PS4 districts dance halls and entertainment establishments shall be permitted as an accessory use within a~~

⁵ The City hired Ana Gelabert-Sanchez, an expert city planner and Harvard University professor, to provide her expert opinion regarding the proposed Ordinance. She was tasked with reviewing the City's Comprehensive Plan, relevant land use and zoning regulations, public service data, and other alternative entertainment regulations, to determine whether the proposed Ordinance is the most appropriate regulation for the South of Fifth Street neighborhood.

~~hotel of 250 rooms or more with access to the dance hall or entertainment establishment only from the interior lobby and not from the street. Additionally, for restaurants located in the C-PS2 district, on the south side of Fifth Street between Michigan Avenue and Alton Road, non-amplified piano or string instruments, played at a volume that does not interfere with normal conversation, may be permitted as a conditional use within the interior of the premises, in accordance with the requirements of Chapter 118, Article IV, and only during periods in which full meals are being served, and no later than 2:00 am.~~

IV. Analysis

A. History of South of Fifth Street Neighborhood

The City of Miami Beach is one of the country's most popular tourist destinations, but it is also a residential community with thousands of permanent residents. In order to ensure their safety and tranquility, the City has enacted a series of comprehensive zoning regulations that, among other things, restricts what types of uses are permitted in residential communities. See 2025 Comprehensive Plan, attached as Exhibit H; Code of the City of Miami Beach §142-693, attached as Exhibit I.

Of particular relevance here, the City's South of Fifth Street Neighborhood is unique and as part of the former South Pointe Redevelopment Area represents the most successful community revitalization area in the United States. This is a result of careful planning to create a residential neighborhood where residents can live alongside light commercial businesses calibrated to support the residents' needs, while directing entertainment and tourism to the area just north of South of Fifth Neighborhood, in the City's Entertainment District (and much of the rest of the City).⁶

Dating to 1912, the South of Fifth Street Neighborhood was the first subdivision of Miami Beach to be developed. The neighborhood demonstrates the Art Deco style of architecture that has made the City famous across the globe, but after the Mariel boatlift in 1980, which disproportionately impacted the South of Fifth area, the area deteriorated into a slum characterized by blight, vagrancy, and crime. The area became known for drug dealing, and the streets were considered unsafe at night. It decayed into a zone of abandoned warehouses, seedy efficiency hotels and boarded-up properties. See Alexei Barrionuevo, *The Quick Change Artist*, N.Y. Times (February 14, 2013), <http://www.nytimes.com/2013/02/17/realestate/a-miami-beach-fla-neighborhood-rises-to-the-height-of-luxury-living-in-just-one-decade.html?emc=eta1> (last visited March 15, 2017).

⁶ The Entertainment District, where musical performances and other entertainment are encouraged, runs from Fifth to Fifteenth Street on Ocean Drive, Collins Avenue, and Washington Avenue. Musical performances and other entertainment are also allowed throughout much of the rest of the City.

In response to this blighted condition in the South of Fifth Street Neighborhood, the Miami Beach City Commission, pursuant to Fla. Stat §163.330 *et seq*, established the South Pointe Redevelopment Area, from 1973-2020, Florida's first community revitalization area ('CRA'). The CRA is authorized by State law to establish and implement a plan to rehabilitate a blighted area such as the former South of Fifth Street Neighborhood. The governmental interests advanced by a CRA include ameliorating the effect of tourism on a neighborhood, increasing property values, reducing crime, reducing traffic, solving parking problems, facilitating housing, and mitigating the "extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities" in previously blighted areas. Fla. Stat. §163.335(1)-(5). By resolution, the City Commission declared the South of Fifth Street Neighborhood blighted, and approved the redevelopment plan that adopted the interests stated in Fla. Stat. §163.335. See City of Miami Beach Resolutions 75-14624, attached as Exhibit J and 77-15413, attached as Exhibit K.

The City was joined in the 1990's by developers who shared the vision of a new residential neighborhood. City planners and preservationists stepped in to preserve the unique character and ambiance of the neighborhood created by the distinctive existing Art Deco architecture. These divergent interests collaborated over the next two plus decades to create what is now the neighborhood that allows residents to live near the entertainment district, but not in it. The results are demonstrable. While the area where entertainment establishments are allowed has higher vagrancy, more traffic, higher crime, more calls for police, fire rescue, and code compliance, more trash and litter, and requires more parking resources, the areas where entertainment is restricted, including the South of Fifth neighborhood, has flourished. See Alexei Barrionuevo, *The Quick Change Artist*, Feb. 13, 2014.

- B. Prior to enacting incrementally restrictive regulations on entertainment, the City attempted to address the negative impacts of entertainment uses through other means, none of which were as successful as the current Code.

The City has historically regulated entertainment uses to preserve the residential character of the South of Fifth Street Neighborhood. Over the past two decades, the City has adopted a series of land development regulations to initially restrict, and ultimately prohibit entertainment establishments in the South of Fifth Neighborhood.

The City originally relied on its Noise Ordinance to regulate entertainment in the South of Fifth Street Neighborhood. However, the Noise Ordinance proved to be difficult to enforce, and did not address the many other harms associated with entertainment establishments, such as, *inter alia*, increased litter and trash, increased traffic, parking problems, crime, and the drain on resources caused by this use. Therefore, the City enacted several, progressively more restrictive, regulations. Those too proved

ineffective. See Ordinance Nos. 94-2908, 96-3050, 99-3222, 2003-3417, and 2004-3445.

Only the 2004 ordinance allowing entertainment establishments outside of the South of Fifth Street Neighborhood has proven effective at regulating entertainment and its negative effects.

C. Entertainment Establishments threaten the residential character of the South of Fifth Street Neighborhood:

The City of Miami Beach has traditionally balanced the competing interests of the tourism-driven entertainment district with the residential character of the South of Fifth Street Neighborhood. The City, in its planning discretion, has designated specific areas where entertainment is not only allowed, but encouraged. The City is conscientious of the relevant role that entertainment plays in the City's economy and character. While the City promotes entertainment in some areas, the City also regulates entertainment in the South of Fifth Street Neighborhood. Although entertainment undoubtedly plays a large role in the City, with entertainment comes negative secondary effects, which would negatively affect a residential neighborhood such as the South of Fifth Street Neighborhood.

The City has hired a planning and zoning consultant (the "City's Consultant") to examine the Ordinance and the related impacts of entertainment uses on the South of Fifth Street Neighborhood. The Entertainment Use SoFi Report ("the Report") states that the uses in the Entertainment District have a pronounced impact on City resources as compared to the residential and low-intensity commercial uses in the South of Fifth Street Neighborhood. Ana Gelabert-Sanchez, Entertainment Use SoFi ("the Report"), page 26 (2017). Specifically, "in an area similar in size, the Entertainment District has over twice as many fire incidents⁷, seven times the sanitation costs⁸, four times the number of vehicle crashes⁹, fifteen times the number of traffic accidents, twice the number of burglary and larceny incidents¹⁰, and eight times the number of towing incidents¹¹." Report, at 23-26.¹²

7 See Declaration of Joseph Florio, attached as Exhibit L.

8 See Declaration of Alberto Zamora, attached as Exhibit M.

9 See Declaration of Jose R. Gonzalez, attached as Exhibit N.

10 See Declaration of John Babcock, attached as Exhibit O.

11 See Declaration of Alberto Ventura, attached as Exhibit P.

12 The Report also compared the business makeup of the two areas. The Report noted that there are only 4 dancehalls in the South of Fifth Street Neighborhood and 18 dancehalls in the Entertainment District. Further, the Finance Department provided data showing that there were several businesses in the South of Fifth Area with the potential to disturb the tranquil character of the area. See Declaration of Manny Marquez, attached as Exhibit Q.

As examined by the Report, the Entertainment District “has a pronounced impact on City resources as compared to the South of Fifth Neighborhood.” Report, at 23-26. The Report reviewed data provided by several City departments including the Police, Code Compliance, Fire, Sanitation, Parking, and Transportation Departments. The data revealed that an exponentially more significant amount of negative effects caused by entertainment establishments, and thus, a larger amount of resources is dedicated to the Entertainment District to combat them. For example, the Police Department has provided data showing that in the South of Fifth Street Neighborhood, there were 713 burglary and larceny cases in 2016, whereas in the Entertainment District there were 2,078 (an increase of 191%). Further, there were exponentially more calls for service in the Entertainment District than in the South of Fifth Street Neighborhood (an increase of 283%). Report, at 23-26.

Similarly, Code Compliance Department data revealed that there were more noise complaints in the Entertainment District than in the South of Fifth Street Neighborhood. For instance, in one week in December 2016, there were 4 noise complaints in the South of Fifth Street Neighborhood, and 18 noise complaints in the Entertainment District. The Sanitation Department provided a breakdown of resources spent in the South of Fifth Street Neighborhood and the Entertainment District. The Sanitation Department spends an annual total of \$321,500.00, and designates a crew of five (5) employees to work the area in the South of Fifth Street Neighborhood. Meanwhile, the Sanitation Department spends an annual \$2,370,500.00 in the Entertainment District, and designates a 33-person day crew and a 10-person night crew to the area. Report, at 23-26.

The Parking and Transportation Departments also provided data regarding the impacts of entertainment uses.¹³ As in all of the other data reports, both traffic and parking had an increase in services and problems in the Entertainment District. In the South of Fifth Street Neighborhood, due to less traffic, there were 1,406 accidents from 2010-2017. In the Entertainment District, there were 7,256 accidents in the same period (416% increase). Further, according to parking studies, in the Ocean Drive Entertainment District, the overall parking demand in the district is expected to reach deficit levels. “This indicates that the Entertainment District places the highest demand on parking availability of any other Zone in the City of Miami Beach [...].” Report, at 27.

Ultimately, the Report concluded that “together, the numbers in the charts above and the Walker parking studies, provide a strong indication that the character of the SoFi neighborhood would be adversely impacted by allowing Land Use changes that would encourage the formation of an Entertainment district in the SoFi neighborhood.” Report, at 26-28.

¹³ See Declaration of Alberto Ventura.

D. Evidence considered in support of the proposed Ordinance

After examining the City's Comprehensive Plan, prior Ordinances, data provided by several City departments, and other cities' land use regulations, the City's Consultant concluded that the City's restrictions on entertainment uses (including the Ordinance proposed herein) are the most appropriate approach to mitigating the negative impacts of entertainment uses in the City's South of Fifth Street Neighborhood, while promoting the goals and character of the City. The Report makes the following observations:

- The Ordinance is the most appropriate regulation given the issues that remained despite enacting the prior, less restrictive regulations; the City's planning goals, and the negative secondary impacts of entertainment on a residential neighborhood. Report, at 39.
- The City of Miami Beach's Comprehensive Plan, as well as its land development regulations exist to support the wellbeing of its citizens. Report, at 8.
- The City's longstanding planning goals include, but are not limited to: (1) ensuring that the character and location of land uses maximize economic potential while minimizing the threat to the health, safety, and welfare posed by hazards, nuisances, and incompatible land uses; (2) guaranteeing that residential neighborhoods are protected from unnecessary traffic intrusions; and (3) preventing an increase in residential density. Report, at 8-11.
- Based on the background of the Entertainment District and South of Fifth Street Neighborhood (and the respective historic districts), the two were created with markedly different intents. South of Fifth Neighborhood was created with the intent of preserving the character of residential neighborhoods; while the Entertainment District was created to enhance entertainment, tourism and business opportunities. Report, at 21-22.
- The Entertainment District has a noticeable impact on the City's resources in comparison to the South of Fifth Street Neighborhood. "In an area similar in size, the Entertainment District has over twice as many fire incidents, seven times the sanitation costs, four times the number of vehicle crashes, fifteen times the number of traffic incidents, twice the number of burglary and larceny incidents, and eight times the number of towing incidents." Report, at 23-26.
- The data collected from various departments demonstrates that the character of the South of Fifth Street Neighborhood would be adversely impacted by allowing regulations that would encourage the formation of an entertainment district in the South of Fifth Street Neighborhood. Report, at 26-28.
- The language in the City's Comprehensive Plan as well as other land use regulations supports the proposed amendment; and the proposed amendment is directly linked to the City's goal of preserving the residential community. Report, at 39.

- Previous attempts to regulate entertainment have proved to be unable to resolve the existing issues regarding entertainment. Report, at 3. The regulations assisted with incrementally mitigating the effects of entertainment, but did not completely resolve the issues.
- The Ordinance ensures land use compatibility between residential and entertainment uses. The amended ordinance ensures the preservation of the residential character in the South of Fifth Street Neighborhood and does not put a strain on commercial or entertainment in the City. Report, at 39.

Moreover, the City has received numerous complaints from City residents regarding the effects of entertainment on residential neighborhoods. Although the experiences of each of the residents is unique, they include, but are not limited to, the following observations:

- The City has regulated entertainment because of the strain on the quality of life for the City's residents.
- The residents do not want the South of Fifth Street Neighborhood to turn into an entertainment district due to the negative secondary impacts of entertainment. Some of the concerns are traffic, noise, violence, parking, sanitation and pedestrian safety. On one specific occasion, a resident's condominium building was struck with three bullets, from a gang fight that occurred at the intersection of Fifth Street and Ocean Drive.
- Before the City regulated entertainment in the South of Fifth Street Neighborhood, the residents suffered from the secondary effects of entertainment coming from restaurants that turned into nightclubs in the evening. The gradual increase in enforcement restrictions benefited the tranquility and residential character of the South of Fifth Street Neighborhood.

The evidence provided by the City departments, the Report, and the residents' declarations support enacting the Ordinance.

E. Alternative solutions for consideration

The Administration has considered several alternatives for resolving the problems associated with entertainment uses in the South of Fifth Street Neighborhood. The City tasked its expert with considering other planning regulations employed by other municipalities across the nation.

Other cities have regulated entertainment by imposing alcohol use restrictions and/or distance requirements between a specific use and other uses such as schools, churches, or residential districts or uses. The expert examined both alcohol restrictions and distance requirements to analyze whether the proposed Ordinance was the most appropriate means to accomplish the City's planning goals.

The expert analyzed the regulations of Jefferson Parish, LA, Orlando, FL, Roseville, CA, and San Francisco, CA; ultimately concluding that the proposed Ordinance is the most appropriate means to accomplish the City's legitimate governmental interests in the South of Fifth Street Neighborhood. Report, at 31-38.

Jefferson Parrish, Louisiana regulates entertainment by requiring a 200-foot distance between an entertainment establishment and any residential district. The planning department applied this hypothetical ordinance to the South of Fifth Neighborhood and produced a map to show where entertainment establishments would be allowed under this scheme. As the attached map shows, entertainment establishments would be prohibited under this scheme in almost the entirety of the neighborhood. Thus, the net effect would be almost identical. Additionally, our expert opined that this regulatory scheme would not be successful in South of Fifth Street Neighborhood because it would restrict entertainment but leave inconsistent and arbitrary slivers of land where entertainment establishments were allowed, resulting in conflicting land uses in one district. Report, at 31.

City of Orlando, Florida requires a 200-foot distance between an establishment serving alcohol and providing live entertainment and schools and churches, and a 1,000-foot distance requirement between establishments selling alcoholic beverages and schools and churches. We deem this regulatory scheme unacceptable because it does not regulate entertainment establishments near residential areas, thereby not serving the City's interests. Our planning consultant recommended the City's proposed ordinance over this solution because the City of Miami Beach treats entertainment establishments separately from alcoholic beverage establishments. The City of Miami Beach regulates the actual impact of the uses, and the compatibility with, nearby properties, thereby encouraging a range of commercial uses that serve the neighborhood such as restaurants that may serve alcohol. Report, at 32-35.

Roseville, California requires a 500-foot distance requirement between nightclubs and residential uses. The planning department created a map of the South of Fifth Neighborhood applying this rule and found that this regulatory scheme would prohibit all entertainment in the South of Fifth Street Neighborhood because all properties are within 500 feet of a residential area. So, while this regulation would have roughly the same regulatory impact as the proposed amendment, our planning consultant considers our proposed Ordinance superior because it is consistent with our comprehensive plan and speaks more clearly to the intent of protecting the residential nature of the neighborhood. Report, at 36-37.

City of San Francisco, California regulations for the Western SoMa Special Use District in San Francisco prohibit nighttime entertainment within 200 linear feet of any residential or mixed residential districts. Our planning consultant recommended against this regulatory scheme because it would result in conflicts between existing land uses. It

would in effect allow an entertainment use in areas where new and existing residential uses are present. Report, at 38.

Accordingly, based on our planning consultant's research and professional opinion, the Administration does not recommend any of the above referenced alternative solutions.

F. Maintaining or extending the currently existing regulations would be unworkable.

The Administration has also considered the viability of extending the current regulation, allowing for performances by piano and string instruments in a few areas directly on the Fifth Street artery to the entirety of the South of Fifth Street Neighborhood. Ultimately, this plan was rejected. The City's interest in protecting the residential character of the neighborhood by this regulation is not currently served because piano and string instrument performances can be equally disruptive. One challenge is that the regulation does not take into account the crowds that would be drawn by a popular performer such as YoYo Ma performing on cello, the late Liberace performing on piano, or Eddie Van Halen performing on the guitar in this residential neighborhood. The proposed Ordinance will most clearly clarify the City's intent to protect the neighborhood's residential character and to consistently zone the Performance Standard districts.

G. Entertainment is allowed throughout most of the rest of the City.

Tourism is the lifeblood of the City, and entertainment is a key component of the City's fame. Therefore, the City allows entertainment establishments to operate throughout most of the rest of the City. In addition to the Entertainment District, where entertainment is encouraged, it is allowed in almost the entirety of South Beach, and large portions of Mid-Beach and North Beach. See City Map, attached as Exhibit R.

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/EB/MAB/RAM

C-PS2 ENTERTAINMENT

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 18, "PS PERFORMANCE STANDARD DISTRICT," SECTION 142-693, "PERMITTED USES," TO CLARIFY THAT ENTERTAINMENT IS NOT PERMITTED IN THE CITY'S PERFORMANCE STANDARD DISTRICTS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, most of the South of Fifth Street neighborhood in Miami Beach is located within the City's "Performance Standard" zoning districts; and

WHEREAS, pursuant to Policy 1.2 of the Future Land Use Element of the City's 2025 Comprehensive Plan, the purpose of the City's "Performance Standard" future land use categories is "[t]o provide development opportunities for and to enhance the desirability and quality of existing and/or new residential areas which accommodate a mix of different residential types developed in accordance with flexible design standards"; and

WHEREAS, Objective 2 of the Land Use Element of the City's Comprehensive Plan provides that "[l]and 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, over the course of the last two decades, and pursuant to Ordinance Nos. 96-3050, 99-3222, 2003-3417, and 2004-3445, the Mayor and City Commission have adopted a series of land development regulations to restrict, and ultimately prohibit, entertainment uses located South of Fifth Street; and

WHEREAS, currently, the district regulations for the PS "Performance Standard District" allow for limited entertainment uses in the C-PS2 (on the south side of Fifth Street between Michigan Avenue and Alton Road), C-PS3, and C-PS4 zoning districts; and

WHEREAS, the Mayor and City Commission desire to repeal these limited exceptions in order to clarify that entertainment is not permitted in the City's performance standard districts, and to protect the residential character of the area; and

WHEREAS, this Ordinance is consistent with Policy 1.2 of the City's Comprehensive Plan, to the extent that it "enhance[s] the desirability and quality of existing and/or new residential areas which accommodate a mix of different residential types"; and

WHEREAS, the amendment set forth below is necessary to accomplish the objectives identified above.

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

SECTION 1. That Chapter 142, "Zoning Districts and Regulations," is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

Article II. – DISTRICT REGULATIONS

* * *

DIVISION 18. - PS PERFORMANCE STANDARD DISTRICT

* * *

Sec. 142-693. Permitted uses.

(a) The following uses are permitted in the performance standard districts:

General Use Category	R- PS 1, 2	R- PS 3, 4	C-PS 1, 2, 3, 4	RM- PS1
* * *				
<u>Entertainment establishments, Outdoor outdoor entertainment establishments, and open air entertainment establishments</u>	N	N	N	N
* * *				

P—Main permitted use C—Conditional use N—Not permitted

* * *

(c) For purposes of this section, pawnshops and dance halls and entertainment establishments are not permitted as a main permitted or accessory use south of Fifth Street; ~~however, in the C-PS3 and C-PS4 districts dance halls and entertainment establishments shall be permitted as an accessory use within a hotel of 250 rooms or more with access to the dance hall or entertainment establishment only from the interior lobby and not from the street. Additionally, for restaurants located in the C-PS2 district, on the south side of Fifth Street between Michigan Avenue and Alton Road, non-amplified piano or string instruments, played at a volume that does not interfere with normal conversation, may be permitted as a conditional use within the interior of the premises, in accordance with the requirements of Chapter 118, Article IV, and only during periods in which full meals are being served, and no later than 2:00 am.~~

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SECTION 2. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 3. REPEALER.

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

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. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this _____ day of _____, 2015.

Philip Levine
Mayor

Rafael E. Granado
City Clerk

Verified by: _____
Thomas Mooney, AICP
Planning Director

Underscore denotes new language
~~Strikethrough~~ denotes removed language

(Sponsored by Commissioner Michael Grieco)

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Realt
City Attorney

4/5/17
Date

NK