

# MIAMI BEACH

Land Use and Development Committee Meeting  
City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive  
June 12, 2019 - 9:00 AM

Commissioner John Elizabeth Aleman, Chair  
Commissioner Micky Steinberg, Vice-Chair  
Commissioner Ricky Arriola, Member  
Commissioner Michael Gongora, Alternate

Thomas Mooney, Liaison  
Naima De Pinedo, Support Staff

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## LAND USE AND DEVELOPMENT COMMITTEE MEETING AGENDA COMMISSION CHAMBERS 1700 CONVENTION CENTER DRIVE 3RD FL.

Wednesday, June 12, 2019, 9:00 AM

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### ACTION ITEMS

1. Discussion – Proposed Ballot Question Pertaining to an Increase in FAR within Existing Parking Garages

City Manager  
May 8, 2019, C4 L

Updated June 11, 2019

2. Discussion – Proposed Ballot Question Pertaining to an Increase in Non-Conforming FAR within Existing Historic Buildings

Commissioners John Elizabeth Aleman and Ricky Arriola  
June 5, 2019 C4 O

Updated June 11, 2019

3. Discussion – Adopting A Land Use Amendment To Increase The Maximum Building Height To 200 Feet For Oceanfront Lots With A Contributing Building In The RM-3 District

Commissioner Ricky Arriola Co-Sponsored by Vice-Mayor Joy Malakoff and Commissioner John Aleman  
May 8, 2019, C4 O

Updated June 10, 2019

### DISCUSSION ITEMS

4. Discussion To Review The Role Of Land Use Boards In Neighborhood Improvement Projects

Commissioner Mark Samuelian  
April 11, 2018 C4 N (Deferred from May 22, 2019)

### VERBAL REPORTS

5. Proposed Amendments To The Comprehensive Plan As Part Of The Evaluation And Appraisal Report (EAR).

**Commissioner John Elizabeth Aleman**  
**February 13, 2019, C4 O (Continued from May 22, 2019)**

6. Discussion Regarding Incentivizing New Development To Include Units For Workforce And Affordable Housing Within New Developments That Seek Development, Height, And/Or Zoning Amendments From The City Of Miami Beach.

**Commissioner Michael Gongora**  
**May 8, 2019, C4 M**

**Item Deferred**

## SUPPLEMENTAL

7. Discussion Regarding Proposed Historic Designation of International Inn at 2301 Normandy Drive

**Commissioner Ricky Arriola**  
**July 25, 2018 C4 K (Deferred from February 20, 2019)**

**Updated June 10, 2019**

8. Discussion To Create Options For Indoor Ambient Entertainment

**Commissioner John Elizabeth Aleman**  
**January 16, 2019, C4 AD (Continued From March 6, 2019)**

**Updated June 10, 2019**

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City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

**Item 1.**  
**COMMITTEE MEMORANDUM**

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: June 12, 2019

**TITLE: DISCUSSION – PROPOSED BALLOT QUESTION PERTAINING TO AN INCREASE IN FAR WITHIN EXISTING PARKING GARAGES**

**HISTORY:**

On May 8, 2019, at the request of the City Manager, the City Commission referred the subject discussion item to the Land Use and Development Committee (Item C4 L).

**Analysis**

**BACKGROUND**

Under the current code, required parking that is enclosed within a structure is exempt from floor area ratio (FAR) calculations. The Administration has observed increasing instances where required parking, or portions of required parking, is no longer needed due to changes in use or intensity within a particular building. As such, if existing parking spaces within an enclosed structure are no longer 'required parking', these spaces could, potentially, be converted to other uses, provided the building site on which the spaces are located has available FAR. However, should the existing building site meet or exceed the maximum zoned FAR, the now excess (non-required) parking spaces would become legal non-conforming FAR.

Under Chapter 118, Article IX of the Land Development Regulations (LDRs) of the City Code, governing nonconformances, a nonconforming building or use cannot be expanded. Accordingly, when enclosed parking spaces within a structure become nonconforming FAR, because they are no longer needed but still per code 'required' parking spaces, those spaces cannot be converted, modified or expanded. This creates a situation where the building then has essentially abandoned underutilized space.

In order to allow enclosed parking spaces that are legal nonconforming as to FAR to be converted to another use, an amendment to Chapter 118, Article IX of the LDRs would be required. Pursuant to City Charter Section 1.03(c), such amendment would require the approval of the City's voters:

*The floor area ratio of any property or street end within the City of Miami Beach shall not be increased by zoning, transfer, or any other means from its current zoned floor area ratio . . . unless any such increase in zoned floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach.*

The amendment proposed would allow a property to convert, modify, or expand nonconforming FAR, which would result in an increase in zoned FAR “by zoning, transfer, or any other means” pursuant to City Charter Section 1.03(c).

### **PLANNING ANALYSIS**

Over the last five years, the data has shown that the demand for off-street parking in the City has steadily declined, both within public and private parking facilities. There are myriad reasons for this decline, including the proliferation of ride share services, such as Uber and Lyft, as well as an increase in the use of alternative modes of transportation, including busses, trolleys, bicycles and now electric scooters. Additionally, within urban areas such as Miami Beach, car ownership and usage has also declined, particularly among millennials.

In order to better utilize and adaptively re-use the increasing amount of vacant parking spaces within existing structures, the conversion of nonconforming FAR associated with non-required parking spaces is highly practical and desirable. This will allow more flexibility for existing buildings, particularly with regard to accessory uses.

### **SUMMARY**

The City Attorney’s Office is drafting a ballot question, which will be provided under separate cover prior to the June 12, 2019 Land Use Committee meeting. Pursuant to the direction of the City Commission at the time of referral on May 8, 2019, planning staff has researched the number of garages that would be affected by the proposed ballot question. Specifically, it is estimated that there are approximately 236 accessory garages attached to residential and hotel properties citywide. The following is a breakdown of the location of such accessory garages

<u>AREA</u>	<u>Number of buildings with garages (Hotel/Residential)</u>
South of 5th:	29
5th Street to 17th Street:	40
17th Street to 26th Street:	30
26th to 41st Street:	22
41st to 71st Street:	70
Normandy Isle:	11
71st Street up:	34

**Total: 236**

Additionally, in order to limit the scope of the proposal to those structures with surplus parking, the following additional qualifiers may be considered, as part of any enabling legislation:

- The regulations shall only apply to garages existing as of the effective date of the enabling ordinance, or the approval of the ballot question, whichever comes first.
- The regulations for adaptively re-using surplus spaces shall only apply to existing garages that are attached to or on the same property as a residential or hotel use.
- Establishing a maximum number of spaces that can be converted to enclosed FAR. A typical



parking space, including the abutting drive aisle, is approximately 400 square feet; converting 10 surplus spaces into enclosed FAR would result in an increase of 4,000 square feet.

- Establishing criteria to ensure that parking spaces converted to enclosed FAR will not result in the removal of existing parking for residents, employees, valet storage and guests. This could include a review of the parking distribution within a building, whether there is a single owner or a condominium, and what the existing mixes of uses are within the building.

From a policy standpoint, the administration is highly supportive of this proposal, as it will provide much needed flexibility for existing properties to adaptively re-use surplus and un-used parking spaces within buildings.

### **CONCLUSION:**

The Administration recommends that the Land Use and Development Committee forward a recommendation to the City Commission to place a question on the November 5, 2019 ballot.

### **ATTACHMENTS:**

Description	Type
 City Attorney's Draft	Memo

June 12, 2019 LUDC Agenda Item No. 1

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**Conversion / adaptive reuse of existing parking spaces  
In buildings with no available floor area**

Floor area ratio ("FAR") is the measure the City utilizes to regulate the overall size of a building.

Currently, surplus or nonrequired parking spaces in buildings with no available floor area may not be converted to another use, unless an FAR increase is approved by the City's voters, pursuant to Charter Section 1.03(c).

Shall City Commission adopt an Ordinance permitting the conversion or adaptive reuse of parking spaces in buildings with no available floor area?



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**Item 2.**  
**COMMITTEE MEMORANDUM**

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: June 12, 2019

**TITLE: DISCUSSION – PROPOSED BALLOT QUESTION PERTAINING TO AN INCREASE IN NON-CONFORMING FAR WITHIN EXISTING HISTORIC BUILDINGS**

**HISTORY:**

On June 5, 2019, at the request of Commissioner John Elizabeth Aleman and Ricky Arriola, the City Commission referred the subject discussion item to the June 12, 2019 meeting of the Land Use and Development Committee (Item C4 O).

**Analysis**

**BACKGROUND**

Under the current regulations of the city code, when an existing building exceeds the current maximum allowable floor area ratio (FAR), the excess FAR is considered legal non-conforming, and no additional FAR may be added. Specifically, under Chapter 118, Article IX of the Land Development Regulations (LDRs) of the City Code, governing nonconformances, a nonconforming building or use cannot be expanded.

In order to amend the code to allow for limited circumstances in which non-conforming FAR can either be introduced, or re-introduced, an amendment to Chapter 118, Article IX of the LDRs would be required. Pursuant to City Charter Section 1.03(c), such amendment would require the approval of the City's voters:

The floor area ratio of any property or street end within the City of Miami Beach shall not be increased by zoning, transfer, or any other means from its current zoned floor area ratio, unless any such increase in zoned floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach.

This discussion pertains to a potential ballot question for an amendment that would allow a property to add nonconforming FAR, which would result in an increase in zoned FAR “by zoning, transfer, or any other means” pursuant to City Charter Section 1.03(c).

**PLANNING ANALYSIS**

In order to better utilize and adaptively re-use volumetric spaces within existing, historic buildings, flexibility with regard to current FAR limitations is needed, for those buildings that are currently over

the maximum permitted FAR for the underlying zoning district. In this regard, there are limited instances in which the introduction, or in some cases the re-introduction, of non-conforming FAR makes sense from an historic preservation, land use planning and overall policy standpoint. Some of these limited examples include:

**New floor area within volumetric buildings such as historic theatres.**

In this instance, a number of historic theatres within the City are in need of adaptive re-purposing, such as a conversion to retail or food & dining establishments. However, if the building is legal non-conforming as to maximum FAR, there is no opportunity under the code to add additional floor plates within the structure, even though they will not be visible.

**Re-introducing original, historic floors to buildings where the floors may have been removed in years past.**

In this regard, if a hotel building had floors removed to create volumetric space, and they seek to re-introduce those floors, this would not be possible under the regulations of the code if the building or building site is legal non-conforming as to maximum FAR.

**SUMMARY**

The City Attorney's Office is drafting a ballot question, which will be provided under separate cover prior to the June 12, 2019 Land Use Committee meeting. In order to control the scope of the proposal, the following additional qualifiers may be considered, as part of any enabling legislation:

- The regulations shall only apply to existing structures that are classified as 'contributing' in the city's historic properties database, and which are located within a locally designated historic district or site.
- Establishing a maximum square footage on non-conforming FAR that can be added to a contributing building. This could be a fixed amount of square footage, or a percentage of the existing floor area.
- Establishing minimum criteria for restoration and substantial rehabilitation, as well as the long term protection of the structure.

From a policy standpoint, the administration is highly supportive of this proposal, as it will provide much needed flexibility for existing historic properties with excess volumetric space to adapt the spaces to emerging, modern trends in retail, mixed-use, office and food/beverage uses. Additionally, it will provide an additional income source for the retention and preservation of historic buildings, as well as the ability to better adapt the structures for long term sustainability.

**CONCLUSION:**

The Administration recommends that the Land Use and Development Committee forward a recommendation to the City Commission to place a question on the November 5, 2019 ballot.

**ATTACHMENTS:**

Description	Type
City Attorney's Draft	Memo

June 12, 2019 LUDC Agenda Item No. 2

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**Ordinance allowing new floor area  
within interior of historic buildings for adaptive reuse**

Floor area ratio ("FAR") is the measure the City utilizes to regulate the overall size of a building.

Currently, new floor area cannot be added to the interior of historic buildings that have no available floor area, unless an FAR increase is approved by the City's voters, pursuant to Charter Section 1.03(c).

Shall City Commission adopt an Ordinance authorizing the use of new floor area within historic buildings for the adaptive reuse of such buildings?



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**Item 3.**  
**COMMITTEE MEMORANDUM**

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: June 12, 2019

**TITLE: DISCUSSION – ADOPTING A LAND USE AMENDMENT TO INCREASE THE  
MAXIMUM BUILDING HEIGHT TO 200 FEET FOR OCEANFRONT LOTS WITH  
A CONTRIBUTING BUILDING IN THE RM-3 DISTRICT**

**HISTORY:**

On May 8, 2019, at the request of Commissioner Ricky Arriola, the City Commission referred the subject discussion item to the Land Use and Development Committee, the Planning Board, and the Historic Preservation Board (Item C4 O).

**Analysis**

**BACKGROUND**

The RM-3 zoned oceanfront properties from 16th – 21st Streets, which is the subject area of the proposed ordinance, are also located within the Miami Beach Architectural District (established in 1979) and within the Ocean Drive/Collins Avenue Local Historic District (established in 1986 and expanded in 1992 to include the subject area). The following is a summary of current and previous height limits for the area, as well as code changes, since 1998:

**Prior to 1998:**

Lots over 100,000 SF: 300 feet  
Oceanfront lots over 200,000 SF: 400 feet  
Otherwise: 250 feet

**1998 (Ord. 98-3150)**

New construction on vacant lots: 120 feet  
Ground level additions: 50 feet  
Roof-top additions: Prohibited

**2007 (Ord. 2007-3589) – proposed by the Seagull/Days Inn on 21st Street**

The height allowed for ground level additions was increased up to the height of an existing structure for the expansion of hotel units only, and only along an interior side yard.

**2012 (Ord. 2012-3784) – proposed by the South Seas Hotel (1751 Collins)**

This expanded upon the 2007 ordinance to allow an increase in height for ground level additions, up to the height of the existing building, for the purpose of relocating hotel rooms. This ordinance

contemplated demolishing interior portions of a lower building, while retaining the street and ocean front sides of the structures, and building a new, taller structure, in-between the two, up to the height of the taller existing building on a property. Additionally, no building greater than 25 feet shall be constructed on the eastern portion of the lot.

### **PLANNING ANALYSIS**

Attached is a proposed amendment to sec. 142-246(b) of the land development regulations of the city code. This amendment has been submitted on behalf of the real estate developer SHVO, who recently acquired the Raleigh, Richmond, and South Seas Hotels on Collins Avenue between 17th and 18th streets. The proposal would increase the maximum allowable height of ground level additions on oceanfront lots in the Architectural District from 50 feet to 200 feet for lots over 115,000 square feet.

As indicated above, in 1998, as part of the downzoning of the City, which included general height and FAR reductions citywide, heights within the subject RM-3 area were reduced to 120 feet for vacant lots and 50 feet for ground level additions to existing structures. These height limits were adopted to ensure that new construction was compatible with the scale and character of the surrounding historic district.

On the RM-3 zoned, oceanfront side of Collins Avenue within the Architectural District (between 16th and 21st Streets), the existing maximum building heights vary, as follows:

#### **16th Street to Lincoln Road:**

Loews Hotel: 18 stories / Approx. 200 feet  
Georgian Condominium: 10 stories / Approx. 100 feet  
Decolage Condominium: 16 stories / Approx. 170 feet

#### **Lincoln Road to 17th Street:**

Dildio/Ritz Carlton: 12 stories / Approx. 130 feet  
Sagamore Hotel: 6 stories / Approx. 65 feet  
National Hotel: 12 stories / Approx. 125 feet  
Delano Hotel: 13 stories / Approx. 135 feet

#### **17th Street to 18th Street:**

Ritz Plaza Hotel: 12 stories / Approx. 125 feet  
Surfcomber Hotel: 3 stories / Approx. 35 feet  
Marsielle Hotel: 8 stories / Approx. 85 feet  
South Seas Hotel: 8 stories / Approx. 85 feet  
Richmond Hotel: 7 stories / Approx. 75 feet  
Raleigh Hotel: 8 stories / Approx. 85 feet

#### **18th Street to 20th Street:**

Shelbourne: 14 stories / Approx. 150 feet  
Nautilus: 7 stories / Approx. 75 feet  
Shoreclub: 19 stories / Approx. 200 feet

#### **20th Street to 21st Street:**

Setal Hotel: 7 stories / Approx. 75 feet  
Setai Residential Condo: 37 stories / Approx. 400 feet  
Days Inn / Seagull: 7 stories / Approx. 75 feet

The overall heights noted above are generally consistent from Lincoln Road to 18th Street, with a small number of sites having lower overall heights. The properties to the south of Lincoln Road are generally taller, as are some of the sites north of 18th Street, most notably the Setai.

The proposal to increase the overall height of additions within the above noted boundaries of the Architectural District would only apply to development sites that are at least 115,000 square feet. Based upon current available FAR and site ownership, as of now, this threshold would apply to two development sites:

1. The proposer's site, which contains the Raleigh, Richmond and South Seas Hotels.
2. The Shoreclub parcel on the south side of 20th Street.

Other properties within the RM-3 district from 16th to 21st Streets could, potentially, be aggregated in the future and meet this 115,000 square foot threshold; this would allow such sites to be eligible for up to 200 feet of height. However, based upon the current ownership make-up of properties from 16th to 21st Street, as well as the availability of FAR, the number of properties that would be eligible via a future lot aggregation is limited. Also, any future properties that would become eligible would still need to meet the certificate of appropriateness criteria for building placement.

The administration does have some concerns with the impact that the proposed height increase may have on the existing, well-established and iconic historic context of the area, as viewed from the west along Collins Avenue, and the east along the beach walk. In order to ensure that the proposed increase in maximum allowable height for additions within this area does not compromise the architectural and historic integrity of the existing structures within a development site, the following additional safeguards are recommended for inclusion within the proposal:

1. Placement of the structure. the administration would recommend that it be located internal to a site, and not located on a street front, oceanfront, or street facing elevation of an existing building. Further, a limit of 25 feet for any structure located eastward of the primary building would be appropriate, and ensure that primary oceanfront elevations are not obscured.
2. Limits on the floorplate of additions exceeding 50 feet in height. The overall footprint of an addition in excess of 50 feet in height will need to be carefully considered in order to respect the independence of the original hotel structures, and ensure adequate light, air and some semblance of the original view corridors is maintained.
3. Any height for a proposed addition in excess of 50 feet would be at the discretion of the historic preservation board. This would ensure that any increase in height, as well as the placement of the structure, is not 'as of right' height, and the historic preservation board has clear authority to review height above 50 feet, and building placement, in addition to architecture and demolition.



## **SUMMARY**

The subject proposal was a tri-referral to the LUDC, Planning Board and Historic Preservation Board. The Planning Board is scheduled to review the proposed ordinance on June 25, 2019. The Historic Preservation Board is scheduled to review the proposed ordinance and provide recommendations on July 9, 2019.

The administration recognizes the challenges of redeveloping those oceanfront sites that contain short buildings whose length runs from the street to the rear pool deck. Such buildings, including those between 17th and 18th Streets, are at a competitive disadvantage to the taller, more narrow structures (such as the Raleigh and the Ritz Plaza), which afford ocean views to virtually every room. The longer buildings on narrow lots simply cannot provide the same views and amenities under the current code, particularly as it pertains to an allowable addition. This is an important discussion point, as most of these longer buildings on narrow sites were constructed during or right after the great depression, and were designed for working class tourists. Today's hotel market, however, has expanded and diversified significantly.

This is not to lessen the importance or significance of these structures, as they play a very important role in the historic context and architectural evolution of the area, and the city as a whole. However, on balance, the administration believes that it would be beneficial to allow for taller hotel additions to sites with contributing buildings, provided the safeguards noted above are included.

## **CONCLUSION:**

The administration recommends that the Land Use and Development Committee endorse the subject ordinance and recommend that the planning board transmit the item to the City Commission with a favorable recommendation. Additionally, the administration recommends that the following be added to the text of the ordinance:

### ***Sec. 142-246(b)***

#### ***Maximum Building Height (Feet)***

***Oceanfront lots located in the Architectural District may have a ground floor addition, whether attached or detached, above 50 feet in height, but not exceeding 200 feet in height, in accordance with all of the following:***

- 1. The subject site shall have a minimum lot area of 115,000 square feet and shall contain at least one contributing building.***
- 2. The ground floor addition shall be located internal to a site, and setback a minimum of 100 feet from the front property line, 75 feet from the street side property lines as well as setback a minimum of 100 feet from the rear (oceanfront) property line.***
- 3. The maximum floor plate size for the portion of an addition exceeding 50 feet in height building is 15,000 square feet, excluding projecting balconies, per floor. The historic preservation board may allow for an increase in this overall floor plate, up to a maximum of 20,000 square feet, excluding balconies, per floor, in accordance with the certificate of appropriateness criteria in chapter 118, article X of these land development regulations.***

***4. Building height in excess of 50 feet, as well as the placement and location of the proposed addition, shall be at the discretion of the historic preservation board, and in accordance with the certificate of appropriateness criteria in chapter 118, article X of these land development regulations.***

**ATTACHMENTS:**

Description	Type
□ Draft ORD	Memo
□ Letter	Memo

**RM-3 GROUND LEVEL HEIGHT INCREASE FOR LOTS >115,000 SF AND CONTAINING A CONTRIBUTING BUILDING**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, SUBPART B, ENTITLED "LAND DEVELOPMENT REGULATIONS," BY AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," DIVISION 3, ENTITLED "RESIDENTIAL MULTIFAMILY DISTRICTS," SUBDIVISION V, ENTITLED "RM-3 RESIDENTIAL MULTIFAMILY, HIGH INTENSITY," BY AMENDING SECTION 142-246, ENTITLED "DEVELOPMENT REGULATIONS AND AREA REQUIREMENTS," TO INCREASE THE HEIGHT LIMIT FOR GROUND FLOOR ADDITIONS MEETING CERTAIN REQUIREMENTS; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach has the authority to enact laws which promote the public health, safety and general welfare of its citizens; and

**WHEREAS**, the City of Miami Beach Land Development Regulations ("LDRs") provides for the regulation of land within the City; and

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

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

**SECTION 1.** Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 3, "Residential Multifamily Districts," Subdivision V, "RM-3 Residential multifamily, high intensity," is hereby amended as follows:

**CHAPTER 142 – ZONING DISTRICTS AND REGULATIONS**

\* \* \*

**ARTICLE II. – DISTRICT REGULATIONS**

\* \* \*

**DIVISION 3. - RESIDENTIAL MULTIFAMILY DISTRICTS**

\* \* \*

**SUBDIVISION V.- RM-3 RESIDENTIAL MULTIFAMILY, HIGH INTENSITY**

\* \* \*

**Sec. 142-246. - Development regulations and area requirements.**

(a) The development regulations in the RM-3 residential multifamily, high intensity district are as follows:

- (1) Max. FAR: Lot area equal to or less than 45,000 sq. ft.—2.25; lot area greater than 45,000 sq. ft.—2.75; oceanfront lots with lot area greater than 45,000 sq. ft.—3.0.

- (2) Notwithstanding the above, oceanfront lots in architectural district shall have a maximum FAR of 2.0.
- (3) Notwithstanding the above, lots which, as of the effective date of this ordinance (November 14, 1998), are oceanfront lots with a lot area greater than 100,000 sq. ft. with an existing building, shall have a maximum FAR of 3.0; however, additional FAR shall be available for the sole purpose of providing hotel amenities as follows: the lesser of 0.15 FAR or 20,000 sq. ft.
- (b) The lot area, lot width, unit size and building height requirements for the RM-3 residential multifamily, high intensity district are as follows:

Minimum Lot Area (Square Feet)	Minimum Lot Width (Feet)	Minimum Unit Size (Square Feet)	Average Unit Size (Square Feet)	Maximum Building Height (Feet)
7,000	50	<p>New construction—550 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400 Rehabilitated buildings—400</p> <p>Hotel units: 15%: 300—335 85%: 335+</p> <p>For contributing hotel structures, located within an individual historic site, a local historic district or a national register district, which are renovated in accordance with the Secretary of the Interior Standards and Guidelines for the Rehabilitation of Historic Structures as amended, retaining the existing room configuration and sizes of at least 200 square feet shall be permitted. Additionally, the existing room configurations for the above described hotel structures may be modified to address applicable life-</p>	<p>New construction—800 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400 Rehabilitated buildings—550 Hotel units—N/A</p>	<p>150</p> <p>Oceanfront lots—200 Architectural dist.: New construction—120; ground floor additions (whether attached or detached) to existing structures on oceanfront lots—50; <u>notwithstanding the above, oceanfront lots with a contributing building and with a lot area greater than 115,000 sq. ft. - 200 (except as provided in section 142-1161)</u></p>

		safety and accessibility regulations, provided the 200 square feet minimum unit size is maintained, and provided the maximum occupancy per hotel room does not exceed 4 persons.		
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(c) Notwithstanding the above, for oceanfront lots located within a locally designated historic district or site, but not within the architectural district, with less than 400 feet of lineal frontage along Collins Avenue and containing at least one contributing structure, the maximum building height for ground floor additions to existing structures, whether attached or detached, shall be as follows:

- (1) For existing structures greater than five stories in height, the maximum height shall be limited to ten stories or the height of the roof line of the main structure on site, whichever is less. At the discretion of the historic preservation board, the maximum height of the ground floor addition may exceed ten stories if the existing and surrounding structures are greater than five stories in height, provided the addition is consistent with the scale and massing of the existing structure.
- (2) For existing structures five stories or less in height, the maximum height shall be limited to five stories.

Additionally, the proposed addition shall not substantially reduce existing or established view corridors, nor impede the appearance or visibility of architecturally significant portions of an existing structure, as determined by the historic preservation board.

(d) Notwithstanding the above, for oceanfront lots located in the architectural district, the overall height of an attached addition may exceed five stories and 50 feet, but shall not exceed the height of the roof line of the structure attached to, provided all of the following conditions are satisfied:

- (1) The proposed addition shall consist of the expansion of existing hotel units only and shall not result in an increased number of units.
- (2) The proposed addition shall be for hotel units only. A restrictive covenant, running with the land, or other similar instrument enforceable against the owner(s), acceptable to and approved as to form by the city attorney, shall be required to ensure that the units remain as hotel units for a minimum of 30 years. If the applicant is unable to provide such a covenant, this requirement may be waived by the city manager if it is demonstrated that the project provides an extraordinary public benefit to the surrounding area.
- (3) The proposed addition shall not be attached to front, street side or oceanfront elevations, nor along any other principal elevations or facades, as determined by the historic preservation board.
- (4) The proposed addition shall not substantially reduce existing or established view corridors, nor impede the appearance or visibility of architecturally significant portions of an existing structure, as determined by the historic preservation board.

(e) A ground floor addition relocating existing hotel units shall also meet the following conditions, in addition to subsection (d)(2)—(4) above:

- (1) There shall be no neighborhood impact establishment, dancehall or entertainment use in the area of the proposed addition;

- (2) No new outdoor or open air entertainment establishment shall be created on the property. Outdoor or open air entertainment establishments existing as of the effective date of this subsection (November 24, 2012) may continue but shall not be expanded if a property avails itself of this provision.
- (3) Upon approval of the proposed addition by the historic preservation board, no building greater than two stories or 25 feet in height shall be constructed between the rear of the building and westward line of the dune overlay district. This provision shall not be subject to variance.
- (4) Notwithstanding the provisions in subsection 142-1161(d), if the building presently contains unoccupied but built spaces enclosed on at least three sides by existing walls of a height that would conceal a new roof, such as false parapets or storage rooms, those spaces may be further enclosed as habitable floor area, up to the permitted floor area; and
- (5) No new commercial uses shall be permitted on the rooftop or any open air decks of the existing structure or proposed addition.

**SECTION 2. REPEALER.**

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

**SECTION 3. CODIFICATION.**

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

**SECTION 4. SEVERABILITY.**

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

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2019.

**ATTEST:**

\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

First Reading:  
Second Reading:

Verified by: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

Underline denotes new language  
~~Strikethrough~~ denotes deleted language

[Sponsored by Commissioner ]

F:\PLAN\SPLB\2019\6-25-19\PB19-0302 - ORD - RM-3 Grnd lvl height increase larger lots\PB19-0302 RM-3 Grnd Lvl Height Increase larger lots ORD.docx

# SHVO

April 26, 2019

**VIA ELECTRONIC DELIVERY**

City of Miami Beach Mayor and Commission  
1700 Convention Center Drive  
Miami Beach, Florida 33139

**RE:** Request for support and referral for Text Amendment to allow height of 200' in the Architectural district for lots of 115,000 square feet and greater as part of RM-3 district.

Dear City of Miami Beach Mayor and Commissioners,

I am Michael Shvo, the Chairman and CEO of SHVO, and in February my partners and I acquired the Raleigh Hotel located at 1775 Collins Avenue located in the City of Miami Beach. With the acquisition of the Raleigh Hotel, we commenced planning the redevelopment of the Raleigh site in order to preserve and restore the historic building and pool area. During the process, a unique opportunity presented itself to combine the Raleigh Hotel site with the Richmond Hotel, located at 1757 Collins Avenue, and the South Seas Hotel, located at 1751 Collins Avenue, into one development site (the "Raleigh Master Plan").

The re-envisioning of the Raleigh Master Plan as one unique site would create a rare opportunity for a landmark project within the City, rather than development of the three independent sites. The Raleigh Hotel currently has approvals and building permits for the renovation of the historic portions of the building with the addition of two, 2-story pavilions to the East of the historic pool. Additionally, the South Seas Hotel has also obtained approval for the development of a long and linear 85' tower, with eastern promenade pavilions. The Richmond, similarly situated to the South Seas site, may apply to the Historic Preservation Board for comparable site approvals per the City of Miami Beach Land Development Regulations. For example, the Richmond and South Seas properties may each be developed with 85' linear buildings closer to the Collins Avenue public right of way. Therefore, developed as independent sites, it would create limited open space and limited public view corridors to the existing properties along Collins Avenue, thereby interrupting the side facades of both the Marseilles and Raleigh hotels and altering the pedestrian experience.



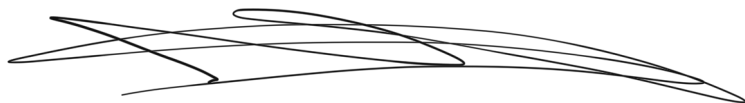
Alternatively, combining the three properties as one developable site under the purview of the proposed text amendment will allow for the opening of the site, first, reducing the total number of permitted pavilions down to a maximum of two cabanas, one on each end of the combined properties framing the view of the Raleigh oceanside elevation from the beach walk. The façades along Collins Avenue would be further enhanced by the preservation of the South façade views of the Raleigh, in addition to North façade views of the Marseilles and maintains the 4-story historic components of the South Seas and Richmond hotels as originally designed.

The Raleigh, along with the 4-story buildings of the Richmond and South Seas, will be operated as a luxury hotel with accessory uses and amenities centered around the historic pool. Additionally, the Raleigh Master Plan may be designed with a new 200' residential tower situated on the rear portion of the Richmond and South Seas properties, with a substantial buffer from the existing 4-story buildings.

With the potential of creating a truly significant hotel and residential project, within walking distance from the Miami Beach Convention Center, I am respectfully requesting your support for the adoption of the text amendment that would permit the development a 200' residential tower that would further the preservationist efforts and enhance the historic elements envisioned for these properties.

I would be happy to discuss further, if you have any questions please feel free to reach me and our team, Kobi Karp and Alfredo J. Gonzalez.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Michael Shvo', with a stylized, sweeping flourish extending to the right.

Michael Shvo, Chairman and CEO

Cc: Dan Gelber, Mayor  
Joy Malakoff, Vice Mayor  
Micky Steinberg, Group 1 Commissioner  
Mark Samuelian, Group 2 Commissioner  
Michael Góngora, Group 3 Commissioner  
Ricky Arriola, Group 5 Commissioner  
John Elizabeth Alemán, Group 6 Commissioner

**Item 4.**  
**COMMITTEE MEMORANDUM**

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: June 12, 2019

**TITLE: DISCUSSION TO REVIEW THE ROLE OF LAND USE BOARDS IN  
NEIGHBORHOOD IMPROVEMENT PROJECTS**

**HISTORY:**

On April 11, 2018, at the request of Commissioner Mark Samuelian, the City Commission referred the discussion item to the Land Use and Development Committee (Item C4N). On May 23, 2018, the LUDC discussed the item and continued it to a date certain of July 18, 2018, with direction to staff to look at different potential options. On July 18, 2018 the item was deferred to September 28, 2018.

On September 28, 2018 the item was deferred to the December 2018 LUDC meeting. Since the December 2018 LUDC was cancelled, the item was moved to the January 2019 LUDC agenda. The January 2019 LUDC agenda was moved to February 20, 2019.

On February 20, 2019, the item was deferred to the April 3, 2019 LUDC meeting. On April 3, 2019 the item was continued to the May 22, 2019 LUDC. On May 22, 2019 the item was deferred to the June 12, 2019 LUDC.

**Analysis**

Since this item was first discussed in May of 2018, staff has had internal discussions regarding potential options for public participation in the review of neighborhood projects. The Manager's READY Team discussed the proposal and concluded that the input of the recently appointed Master Design Consultant for Integrated Water Management, Jacobs Engineering, would be beneficial. Jacobs Engineering has a number of task orders, one of which includes roadway infrastructure projects. In this regard, Jacobs will be taking into account the totality of the City's water management efforts when evaluating proposals for roadway elevations.

Additionally, the City has initiated a comprehensive review of the development review process, including all staff and land use board processes. The consultant hired to conduct this analysis, the Matrix Group, presented their recommendations to the LUDC on May 22, 2019 and to the City Commission on June 5, 2019. The City Commission endorsed and accepted the recommendations of the Matrix Group.

The administration is also in the process of implementing an internal Development Review

Committee (DRC). This internal DRC will be evaluating all city infrastructure projects, including roadway elevation projects, from a multi-disciplinary standpoint, including input from the public works, environmental and planning departments.

In summary, since the elevation of roadways is primarily an engineering project, and the land use boards, particularly the Design Review Board (DRB), are structured to review above ground, exterior aesthetics, the administration would not recommend formalizing a process within the LDR's that mandates DRB review. In the event that a significant roadway elevation project, which may entail substantial above ground improvements such as landscaping, guard rails and differentiations in sidewalk, is proposed, the City Commission could always refer a discussion item, as needed, to the DRB, for more specific input and recommendations.

**CONCLUSION:**

In view of the foregoing, the administration recommends that the item be concluded and that the LUDC make a recommendation to the City Commission to refer future roadway elevation projects containing substantial above ground improvements to the DRB as needed for more specific input and recommendations.



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**Item 5.**  
**COMMITTEE MEMORANDUM**

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: June 12, 2019

**TITLE: PROPOSED AMENDMENTS TO THE COMPREHENSIVE PLAN AS PART OF THE EVALUATION AND APPRAISAL REPORT (EAR).**

**HISTORY:**

On February 13, 2019 at the request of Commissioner John Elizabeth Aleman, the City Commission referred the item to the Land Use and Development Committee and the Planning Board (Item C4 O). This is a status update of the process.

**Analysis**

The City of Miami Beach Comprehensive Plan is a state mandated document that guides the decisions of the city as it pertains to addressing the needs of existing and future residents and businesses. The plan provides general regulations for growth, development, infrastructure, housing, parks and recreation, and more. The goals, objectives, and policies of the comprehensive plan are then implemented through more detailed documents such as the land development regulations, city code, storm water master plan, and the resiliency strategy/strategic plan. The comprehensive plan and plan amendments are adopted by ordinance per Florida Statute 163, Part II. All ordinances adopted by the city must be consistent with the standards set within the comprehensive plan.

Presently the City of Miami Beach is undergoing an EAR process to update the comprehensive plan for consistency with state law and to address changing conditions and needs in the city. Such updates are required every seven years, pursuant to Section 163.3191, Florida statutes. As part of the EAR process, the city and our consultants have gathered data and performed analyses on existing conditions and trends in the City. Other plans and strategies that the city has formulated are being taken into account, including the storm water master plan, resiliency strategy / strategic plan (under development), the transportation master plan, and the urban land institute (ULI) report.

A public meeting took place on January 28, 2019 to solicit input from residents and stakeholders. The comments were primarily focused on issues related to sea level rise, the environment, and incentivizing workforce and affordable housing. Attached is a summary of the comments that were provided by residents. The information gathered at this meeting, as well as any subsequent feedback, will be utilized to determine best practices for policies to incorporate into the plan, while addressing the needs of residents and other stakeholders.

City staff, in conjunction with our consultants, is in the process of drafting specific goals, objectives,

and policies that address updates to state statutes and the changing conditions and needs of the city. It is expected that the draft amendments will proceed pursuant to the following schedule:

- June 12, 2019 - Land Use and Development Committee
- May 22, 2019 – Land Use and Development Committee (Continued)
- April 3, 2019 – Land Use and Development Committee (Continued)
- April 30, 2019 – Planning Board
- June 5, 2019 – City Commission 1st Reading/Transmittal to State Hearing
- June 7, 2019 - Amendments are transmitted to State Review Agencies
- September 11, 2019 – Adoption Hearing

#### **ATTACHMENTS:**

Description	Type
 Public Workshop Summary	Memo

## MEETING SUMMARY

**LOCATION:** City Commission Chambers

**DATE:** Monday, January 28, 2019

**TIME:** 6:00 P.M. – 8:00 P.M.

**SUBJECT:** City of Miami Beach Comprehensive Plan Update

**STAFF PRESENT:**

Heidi Siegel, AICP	Keith & Schnars – Planning
Erin Sita, AICP	Keith & Schnars – Planning
Kristen Nowicki, AICP	Keith & Schnars – Planning
Thomas Mooney, AICP	City of Miami Beach – Planning
Rogelio A. Madan, AICP	City of Miami Beach – Planning
Frank Arbelaez, AICP	City of Miami Beach – Planning

---

The community meeting held January 28, 2019 for the update of the Miami Beach Comprehensive Plan was an opportunity to gather public input.

### OPENING PRESENTATION:

Commissioner John Elizabeth Aleman provided a welcome to the attendees, and introduced Planning Director Tom Mooney to discuss the importance of the City's Comprehensive Plan, as well as the City's commitments to sustainability, multi-modal transportation, and historic preservation. A Power Point presentation was given by Heidi Siegel of K&S to provide a background on the Comprehensive Plan amendment process and the work that the City has done since the last Comprehensive Plan update.

There were approximately 28 attendees. Two members of the City Commission, Commissioner John Elizabeth Aleman and Commissioner Joy Malakoff, were also in attendance.

### DISCUSSION / KEY COMMENTS:

Many community members asked questions or provided comments about concerns in their neighborhoods and the City. The major takeaways are noted below:

- Additional consideration of the needs of single family neighborhoods
- Preservation of single family neighborhoods
- Concern regarding streets being raised causing pollution in Lake Surprise
- Resolving conflict between resiliency and single family neighborhoods
  - This subject was mostly in reference to addressing sea level rise without major impact to the character of the neighborhood
- Transfer of Development Rights to create more parks

- Need to identify appropriate areas to encourage redevelopment vs. preservation (focus on the more valuable contributing properties)
- A need for real incentives to get workforce housing units built
- A need for an “inclusive threshold” to ensure that the workforce housing incentive is to scale with the size of the project
- Inclusivity in regard to public amenity provision (such as benches, sun shelters).
- 41<sup>st</sup> Street Master Plan
- Resiliency & Sea Level Rise
- Business development on Washington Avenue
- Biscayne Bay – houseboats or housing at the marina to address future population growth
- Solar energy – incentives/promotion desired
- Ask Federal government for assistance to sea level rise issues
- Alternative energy sources, such as windmills
- Consider sound mitigation in the Intergovernmental Coordination Element to address the sounds from the new, taller, cruise ships docked at the Port of Miami
- Water pollution and seagrass decline
- Support for Citywide tree planting program
- Address seawall height and raising them for resiliency, citywide.
- Include PACE programs in the Comprehensive Plan, including seawalls, to support legislative agenda

## **NEXT STEPS:**

- Complete the amendments
- City of Miami Beach
  - Local Planning Agency (Planning Board) – Public Hearing
  - City Commission Transmittal Hearing – Public Hearing
    - Transmit to the Florida Department of Economic Opportunity
- State issues Objections, Recommendation and Comments Report (ORC)
- City of Miami Beach
  - City Commission Adoption Hearing– Public Hearing



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**Item 6.**  
**COMMITTEE MEMORANDUM**

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: June 12, 2019

**TITLE: DISCUSSION REGARDING INCENTIVIZING NEW DEVELOPMENT TO  
INCLUDE UNITS FOR WORKFORCE AND AFFORDABLE HOUSING WITHIN  
NEW DEVELOPMENTS THAT SEEK DEVELOPMENT, HEIGHT, AND/OR  
ZONING AMENDMENTS FROM THE CITY OF MIAMI BEACH.**

**ATTACHMENTS:**

Description	Type
 C4 M	Memo



# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Commissioner Michael Gongora  
DATE: May 8, 2019

SUBJECT: REFERRAL TO THE LAND USE AND DEVELOPMENT COMMITTEE -  
DISCUSSION REGARDING INCENTIVIZING NEW DEVELOPMENT TO  
INCLUDE UNITS FOR WORKFORCE AND AFFORDABLE HOUSING  
WITHIN NEW DEVELOPMENTS THAT SEEK DEVELOPMENT, HEIGHT,  
AND/OR ZONING AMENDMENTS FROM THE CITY OF MIAMI BEACH.

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### **ANALYSIS**

Please place on the May 8 Commission Meeting, a referral to Land Use and Development Committee on incentivizing new development to include units for workforce and affordable housing within new developments that seek development, height and/or zoning amendments from the City of Miami Beach. There is presently a bill pending in the State of Florida which would ban a requirement to include affordable housing but even if it passes I do not believe it would ban incentivizing inclusion of these units. Please feel free to contact my Aide Diana Fontani Martinez.

### **Legislative Tracking**

Commissioner Michael Gongora

### **ATTACHMENTS:**

#### **Description**

- ▯ Miami Herald Article - "Bill would ban affordable housing mandates in Florida "

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MIAMI-DADE COUNTY

# Florida House passes bill that could stop cities from requiring affordable housing

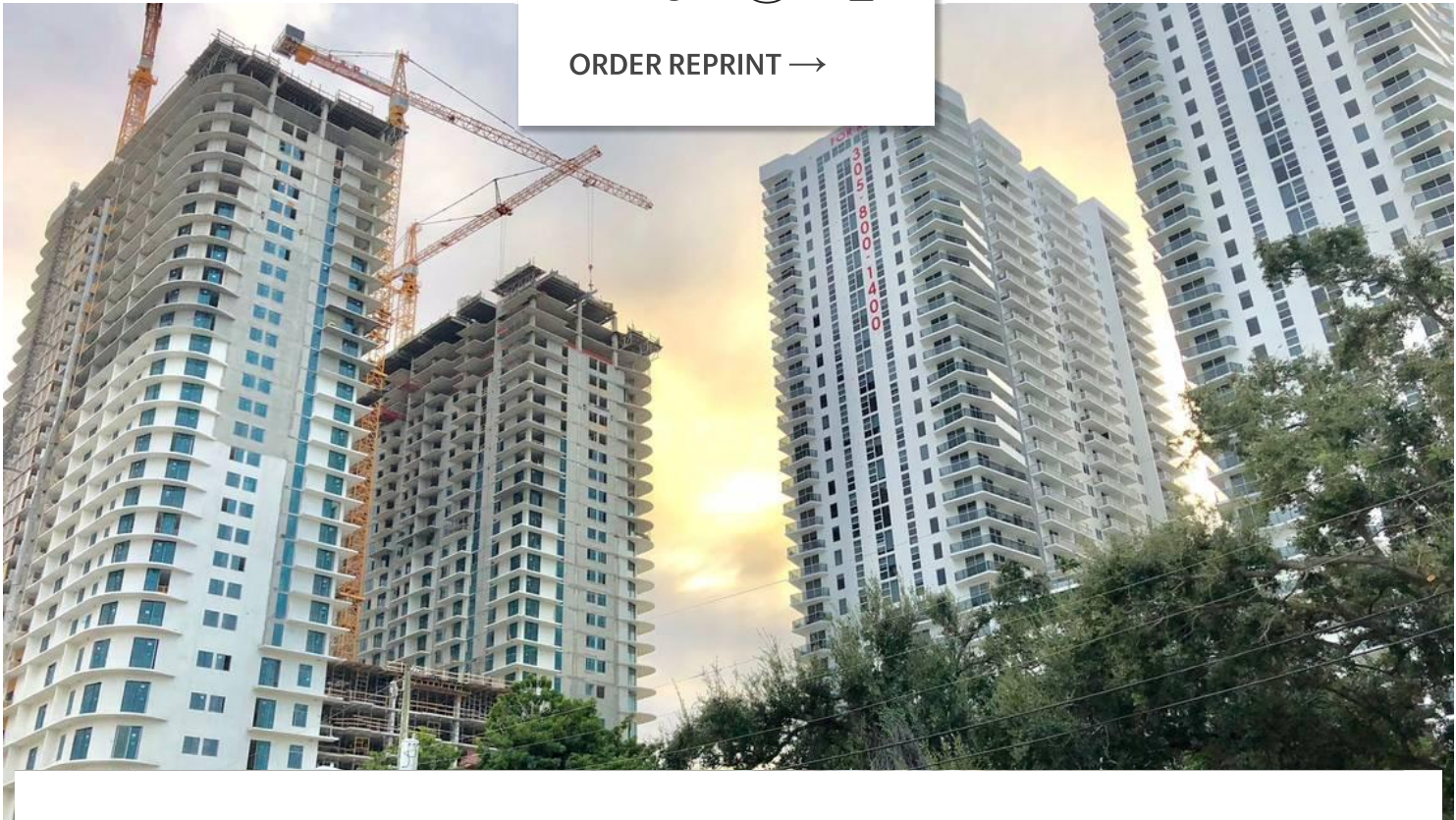
BY ELIZABETH KOH, RENE RODRIGUEZ, AND JOEY FLECHAS

APRIL 27, 2019 06:30 AM, UPDATED APRIL 29, 2019 08:45 AM



ORDER REPRINT →



In late 2018, Miami commissioners for the first time passed a ordinance that requires developers in a small 30-block area north of downtown to [set aside a percentage of units for residents with low incomes](#), a measure that was seen by advocates as a small but crucial step toward addressing Miami's housing affordability crisis.

The measure's sponsor, Commissioner Ken Russell, believes the concept could be expanded if successful on a small scale. But if a bill moving through the Florida Legislature passes, the city's first mandatory inclusionary zoning law might be its last.

House lawmakers voted largely on party lines Thursday to place limits on local governments' ability to set ceilings for rents or home sale prices, despite concerns from some Democrats that the move could imperil mandatory affordable housing requirements that counties and municipalities can enact now.

[HB 7103](#), which passed on a 72-37 vote, would preempt local governments from establishing their own rules on a number of development-related issues that could affect housing prices and cities' ability to spend building fees and shorten the window of time the public has to review new construction projects.

The bill's sponsor, Rep. Jason Fischer, R-Jacksonville, told Jacksonville radio station WJCT that he believes rent and price controls lead to higher prices, [making more housing unaffordable](#).

"The underlying belief though is that in the marketplace, people should be able to voluntary exchange and when you start having mandates and [the] state setting price controls, you create all kinds of distortions in the market," he told WJCT earlier this month.

Fischer's proposal is part of conservative lawmakers' broader focus on preempting local governments' powers, among the priorities of House Speaker Jose Oliva, R-Miami Lakes.

The bill would also prohibit local governments from establishing a maximum rent or sale price for homes as is done for affordable housing, and it adds a series of restrictions on a municipality's ability to mandate such price-controlled housing units be set aside for any particular group of people. The bill contains other provisions that would set restrictions on impact fees tied to building permits and reduce the time period departments have to review a permit application from 30 days to five.

A similar companion bill in the Senate has passed through all relevant committees but has not yet been scheduled for a floor vote.

Among a series of bills rapidly taken up by the House Thursday, the measure passed with little debate. Rep. Joe Geller, D-Aventura, urged other lawmakers to vote against the bill.

Some Democrats had raised questions on Wednesday night, when the bill was positioned for a House floor vote, about how the legislation might affect affordable funding.

Fischer cast the legislation as expanding cities' toolkits.

"What we are saying is [cities] can enter into voluntary agreements. They can provide incentives. They have a plethora of things," he said, in response to a question from Rep. Anna Eskamani, D-Orlando. "They just can't use the abusive power of government to mandate it."

Fischer returned repeatedly to the option of incentive programs, which are explicitly allowed under the bill.

In Miami, Russell pushed for the mandatory affordable units by giving developers more density to offset the lower revenue from units set aside for people in lower income categories. He argues the bill limits the menu of options for local governments to tackle the affordability problem.

"I see this legislation as an overreach of the state government trying to preempt home rule of municipalities and protect developers with a broad statewide blanket," Russell said. "Every city is different, and the crisis that is facing Miami should be dealt with by the municipal legislators who are elected locally and have the purview to change zoning laws."





Miami Commissioner Ken Russell Joey Flechas [JFLECHAS@MIAMIHERALD.COM](mailto:JFLECHAS@MIAMIHERALD.COM)

A spokesman for Miami said city administrators are tracking the bill and actively opposing it, though the city's planning and legal departments are still analyzing the bill's potential impacts. Planning Director Francisco Garcia said the city believes that under the proposed law, developers would still be able to voluntarily offer income-restricted units in exchange for more buildable density.

County officials are watching closely, too. Miami-Dade administrators think the law would eliminate a county program requiring below-market housing pricing on developments built on county property around Metrorail stations. Some county zoning laws require at least 12.5 percent of units in "rapid transit" zones be priced for "workforce housing" buyers — people making up to 140 percent of the median income for Miami-Dade.

"We're definitely tracking this legislation," Miami-Dade zoning director Nathan Kogon said Thursday.

#### Read Next

MIAMI-DADE

## You can now live at a Metrorail Station on South Dixie Highway. And it's just the start.

APRIL 15, 2019 6:41 PM

Alana Greer, an attorney and co-founder of the Community Justice Project, sees problems with the bill. She said the amended version that passed the House uses language so broad that it could hamper a range of affordable housing projects.

“The way this bill has been drafted would unintentionally bar almost all other efforts to produce affordable housing, including public land and public dollars,” said Greer, whose organization is a nonprofit group of lawyers working with grassroots groups in low-income communities of color.



Problems with a contractor performing renovations at the Civic Towers in Allapattah have led to delays and frustrated affordable housing tenants living in a construction zone.

By Emily Michot

As an example, Greer said that if the city solicited bids for affordable housing on city land, a development permit would theoretically trigger this law and invalidate the solicitation.

Some experts argue that inclusionary zoning laws have produced mixed results in other parts of the country. A study by the Economic Research Organization at the University of Hawaii concluded [that the mandatory regulations had a negative effect on Oahu](#) — another city struggling with a severe affordability crisis — resulting in fewer affordable housing units and raising the prices of market-rate units.

“The inclusionary zoning laws that this bill prohibits are perhaps well-intentioned,” said Matt Rieger, president and CEO of the Housing Trust Group, one of the largest affordable housing developers in Florida. “But practically speaking — as someone who is working every day to keep up with the tremendous demand in Florida for affordable housing — it’s not an effective tool for creating the volume of product we need to dig ourselves out of the current affordable housing crisis. Inclusionary zoning just does not move the needle much, if at all.”

Rieger echoed a lobbyist for the Florida Home Builders Association who testified in a House committee earlier this month.

“Mandated inclusionary zoning doesn’t work,” said lobbyist Kari Hebrank. Citing a Reason Foundation study of 13 cities in Southern California, she contended that such policies meant those areas actually ended up with less affordable housing because “it drives up the cost of market-ready housing.”

“People don’t move from their starter homes into their next homes, so the homes that would be affordable — the starter homes — don’t become available,” she said.

She added that local governments would also receive less property tax revenue with price controls in place: “Somebody has to pay for that. The costs get shifted, whether it’s the builder, the land developer or the local governments.”

Others argue that although inclusionary zoning requirements won’t solve the city’s affordability crisis on their own, there’s no harm in keeping them in play.



Annie Lord is executive director of Miami Homes for All. Photograph by Nick Garcia.

“Right now we’re at a crisis situation where we need all the tools we can possibly have,” said Annie Lord, executive director of Miami Homes For All, a nonprofit group that combats homelessness. “This bill takes one of those tools off the table. Inclusionary zoning is not a panacea. But in a lot of places, they can produce 200-300 units a year. That’s not nothing. There are strategic neighborhoods where the zoning could help with our housing needs.”

The bill would also impose a 30-day time limit for a county or municipality to review applications for developments or permit applications and issue procedures for addressing deficiencies. The bill reduces the time for building departments to review permit applications from 30 business days to five.

Housing advocates believe the shorter deadline would benefit developers of large real estate projects — at the cost of the communities surrounding them, who would have less time to scrutinize projects.



But some developers argue a speedier approval process reduces costs, which would translate to lower prices and rents.

“There are already time limits in the books that municipalities are supposed to adhere to,” said Jay Jacobson, president of Eden Multifamily, a real estate firm specializing in urban infill markets in South Florida. “You pay the building permit fees to the municipality. You pay a private provider to review your plan. You submit that plan and then the municipality sits on their ass and sends you a bunch of revisions on the last possible day. The longer it takes to get through the process, the more expensive the ultimate product costs.”

The bill also prohibits local governments from using funds generated by impact fees — pre-development costs used to improve roads, fire and police services, schools and parks services — on other projects or to pay off previous debts. Instead, the funds must be used directly toward the new construction.



Miami-Dade County and officials from Related Urban Development break ground during a ceremony to launch the redevelopment of the Liberty Square Rising project in Liberty City in May 2017. MATIAS J. OCNER

FOR THE MIAMI HERALD

Matt Allen, chief operating officer of The Related Group, Miami's biggest real estate developer, said he agrees that impact fees should be based on the "actual, direct impact" of the projects seeking permitting, and that legislation should work to increase funding and incentives for development of affordable and workforce housing.

"But any legislative action that supports this premise should also include concurrent efforts designed to increase funding and incentives for the development of affordable and workforce housing throughout the state," Allen said.

The bill had been opposed in committee stops by a host of groups representing local governments, including the League of Cities and the Florida Association of Counties. Groups representing home builders and community developers had indicated their support.

Some advocates believe laws and policies regarding housing should not be written at a state level. Henry Torres, president of the real estate development/management firm The Astor Companies, said Florida is a microcosm for the U.S., with prices varying so wildly from town to town that regulations need to be set by counties and municipalities.

"This kind of bill is detrimental to all the people who live in Florida, because something that works in Plant City, where you're going to pay \$1 per square foot in rent, won't work in Miami, where you're paying \$2.50-\$3 per square foot in rent," Torres said. "There are things we are required to do in Miami, like water and sewer improvements, that other cities may not require."

The House added three amendments, one technical, to the bill Wednesday and Thursday, including one that carved out an exception for the Florida Keys. Lawmakers also approved, with some debate, an amendment sponsored by Rep. Blaise Ingoglia, R-Spring Hill, that would bar local governments from charging for building inspections if a private provider is hired.

*Herald staff writer Douglas Hanks contributed to this report.*

 **COMMENTS** ▼



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**Item 7.**  
**COMMITTEE MEMORANDUM**

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: June 12, 2019

TITLE: **DISCUSSION REGARDING PROPOSED HISTORIC DESIGNATION OF  
INTERNATIONAL INN AT 2301 NORMANDY DRIVE**

**ATTACHMENTS:**

Description	Type
 International Inn	Memo

# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager



DATE: June 12, 2019

SUBJECT: **Discussion Regarding Proposed Historic Designation of International Inn at 2301 Normandy Drive**

### **HISTORY**

On July 25, 2018, at the request of Commissioner Ricky Arriola, the City Commission referred the subject item to the Land Use and Development Committee for discussion (item C4K). On September 28, 2018 the Land Use Committee deferred the item to October 31, 2018; the item was then deferred to February 20, 2019. At the February 20, 2019 meeting, the item was deferred to the April 3, 2019 meeting. At the April 3, 2019 meeting, the Committee deferred the discussion to the May 22, 2019 meeting. At the May meeting, the item was deferred to the June 12, 2019 meeting.

### **HISTORIC PRESERVATION BOARD ACTION**

On May 9, 2017, the Historic Preservation Board adopted a motion requesting that the Planning Department prepare a preliminary evaluation and recommendation report relative to the possible designation of the property located at 2301 Normandy Drive as a local historic site. On October 10, 2017, the Historic Preservation Board reviewed a preliminary evaluation and recommendation report relative to the possible designation of the International Inn historic site located at 2301 Normandy Drive and directed staff to prepare a formal designation report for the International Inn historic site.

Pursuant to Section 118-591 of the City Code, on October 12, 2017 the City Commission was advised of the action of the Historic Preservation Board via LTC 488-2017. No action was taken by the City Commission to modify the proposed designation; therefore, the request for designation moved forward as proposed by the Board.

On June 11, 2018, the Historic Preservation Board continued the proposed historic designation to a date certain of July 10, 2018, at the request of the property owner. On July 10, 2018, the Historic Preservation Board continued the proposed historic designation to a date certain of September 17, 2018. On September 17, 2018, the Planning Department presented the formal designation report for the proposed International Inn Historic Site and the Board continued the matter to a date certain of January 8, 2019.

On January 8, 2019, the Planning Department presented supplemental information regarding the public interior of the proposed International Inn Historic Site and the Board

continued the review of the Historic Designation Report to a date certain of March 11, 2019. On March 11, 2019, the Board discussed the application and continued the matter to the June 10, 2019 meeting. On June 10, 2019, the Board recommended in favor of the proposed designation.

### **PLANNING AND HISTORIC PRESERVATION ANALYSIS**

At the request of the Historic Preservation Board (HPB), the Planning Department filed an application for the proposed Historic Site Designation of the International Inn located at 2301 Normandy Drive. As noted above, the HPB has recommended that the designation of the historic site move forward. The property owner has studied redevelopment options for the subject site and has submitted a draft development agreement for review by the City Attorney, which includes a proposal for certain amendments to the Land Development Regulations; the following is a brief summary of the requested amendments (the "Proposed Amendments"):

1. Allowing for hotel as a main permitted use with accessory uses, for properties within the RM-1 located north of Normandy Drive that have a lot area greater than 30,000 square feet and are designated as local historic sites. Currently hotels are a prohibited use in the RM-1 zoning district.
2. Increase in allowable building height from 55'-0" to 80'-0".
3. A reduction in minimum parking requirements.
4. The elimination of required distance separation for establishments selling or offering alcoholic beverages for consumption on premises.

Pursuant to the draft development agreement, if the proposed amendments are adopted, the property owner would agree to voluntarily consent to and support the designation of the International Inn as an individual local historic site. The property owner has expressed a desire to have the historic site designation coincide with the review of the proposed amendments.

It is important to note that the recommendation of the HPB in favor of historic site designation is not final and does not, on its own, result in the final designation of the property as an historic site. Subsequent to the recommendation of the HPB, an application for an ordinance amendment will now be submitted to the Planning Board for review and a recommendation to the City Commission. Once this ordinance is transmitted to the City Commission, two separate readings will be required before the Commission.

It is the intention of staff to schedule the Planning Board hearing for the designation ordinance to coincide with the aforementioned proposed development agreement and LDR amendments. Designation would only become final after City Commission approval on second reading of the proposed historic site designation.

Drafts of the proposed development agreement and proposed amendments are attached to this memorandum.

### **CONCLUSION**

The Administration recommends that the Land Use and Development Committee endorse the draft Development Agreement and proposed amendments to the Land Development Regulations. It is further recommended that the items be transmitted to the full City Commission for referral to the Planning Board.

JLM/SMT/TRM/DJT

M:\\$CMB\CCUPDATES\Land Use and Development Committee\2019\May 22, 2019\Historic Designation of International Inn - MEMO May 22 2019 LUDC.docx

LUDC draft  
6/12/2019

This instrument was prepared by (record and return to):

Alexander I. Tachmes, Esq  
Shutts & Bowen LLP  
200 S. Biscayne Boulevard, Suite 4100  
Miami, Florida 33131

(Space reserved for Clerk)

Folio No. 02-3210-011-0620

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### DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2019, by and among the CITY OF MIAMI BEACH, a Florida municipal corporation (the "City"), and TSAY INTERNATIONAL, INC., a Florida corporation (the "Owner"). Hereinafter, City and Owner are collectively referred to as the "Parties."

#### WITNESSETH:

WHEREAS, the Owner is the owner of the property that is the subject of this Agreement, the legal description of which is attached hereto and made a part hereof as Exhibit "A" (the "Property"), and which currently has an address of 2301 Normandy Drive, Miami Beach, Florida;

WHEREAS, the Property has historically been developed and utilized for hotel use, and its current name is the "International Inn";

WHEREAS, on May 9, 2017, the City's Historic Preservation Board ("HPB") directed the City's Planning Department to prepare a Preliminary Evaluation and Recommendation Report ("Preliminary Designation Report") relative to the possible designation of the Property as an individual local historic site in accordance with Sections 118-591 through 118-593 of the Land Development Regulations of the City's Code of Ordinances (the "Code");

WHEREAS, on October 10, 2017, the HPB reviewed the Preliminary Designation Report and directed the City's Planning Department to prepare a Formal Designation Report for the Property;

WHEREAS, on September 17, 2018, the Planning Department presented the Formal Designation Report to the HPB, and the HPB has subsequently continued the matter to provide the Parties with the opportunity to discuss the terms of this Agreement;

WHEREAS, the Parties acknowledge that the designation of the Property as an individual local historic site in accordance with the Code will have significant implications on the future redevelopment of the Property;

WHEREAS, the Owner has clearly expressed its opposition to the designation of its Property as an individual local historic site without certain amendments to the City's Code, Land Development Regulations, and Comprehensive Plan first being adopted that would allow for the use of the Property as a legal conforming hotel and the ability to redevelop certain portions of the Property, as more fully provided herein;

WHEREAS, prior to proceeding further with the designation process, the City wishes to obtain from the Owner, and Owner is willing to grant, its voluntary consent to the designation of the Property as an individual local historic site, conditioned upon the terms and obligations of this Agreement first being satisfied as provided herein;

WHEREAS, this Agreement, among other things, is intended to and shall constitute a development agreement between the Parties pursuant to Sections 163.3220 through 163.3243, Florida Statutes, the "Florida Local Government Development Agreement Act" and Section 118-4 of the City's Code; and

WHEREAS, having fully considered this Agreement at two duly noticed public hearings in compliance with Section 163.3225 of the Act; having determined that this Agreement is in compliance with the City's Comprehensive Plan and Land Development Regulations as of the Effective Date; and having further determined that it is in the City's best interest to address the issues covered by this Agreement in a comprehensive manner, in compliance with all applicable laws, ordinances, plans, rules and regulations of the City, the City has agreed to enter into this Agreement with the Owner.

All capitalized terms used in the recitals are defined in Section 4 or elsewhere in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference. All exhibits to this Agreement are hereby deemed a part hereof.



2. Authority and Purpose. This Agreement is entered into pursuant to the authority and procedures provided by the Act, and the Parties intend for this Agreement to be construed and implemented so as to effectuate the purpose and intent of the Act.

3. Mutual Consideration. The Parties agree that the consideration and obligations recited and provided for under this Agreement collectively constitute substantial benefits to both Parties and are, therefore, adequate consideration for this Agreement.

4. Definitions. All capitalized terms in this Agreement shall have the definitions set forth in this Section unless such terms are defined elsewhere in the body of this Agreement.

a. "Act" shall mean the Florida Local Government Development Agreement Act (Sections 163.3220 - 163.3243, Florida Statutes (2018)).

b. "Comprehensive Plan" shall mean the comprehensive plan which the City has adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163 Part II, of the Florida Statutes.

c. "Development Order" means any order granting, denying, or granting with conditions an application for a Development Permit.

d. "Development Permit" shall have the meaning set forth in Section 163.3221(5), Florida Statutes (2018).

e. "Effective Date" is the date when the City records the executed Agreement in the Public Records of Miami-Dade County, as provided in Section 163.3239, Florida Statutes (2018), and Section 12 of this Agreement.

f. "Execution Date" is the date the last of the required Parties executes this Agreement.

g. "Land Development Regulations" shall have the meaning set forth in Section 163.3221(8), Florida Statutes (2018) and shall also include, without limitation, the definition of "land development regulations" in Section 114-1 of the City Code.

5. Proposed Amendments. The Parties acknowledge the importance of preserving and protecting historic hotels, the use of which may no longer be permitted in certain areas of the City under the applicable provisions of the Land Development Regulations. In order to incentivize the preservation and protection of such historic hotels, certain amendments to the City's Code, Land Development Regulations, and Comprehensive Plan are necessary. The proposed amendments, which are specifically described in Exhibit "B" attached hereto and made a part hereof, will generally allow hotel and hotel accessory uses within existing historic hotels to be considered permitted uses in the RM-1 residential multifamily, low density district in certain limited circumstances under both the Land Development Regulations and Comprehensive Plan, and also provide for certain other amendments that will enable such hotels to (i)

expand, including accessory uses, (ii) develop new structures with greater maximum building height, (iii) remove existing parking spaces, and (iv) eliminate parking requirements for new structures (collectively, the "Proposed Amendments").

Based upon the foregoing, and concurrent with the adoption and execution of this Agreement, the Parties hereby agree that the City shall promptly initiate and diligently process the Proposed Amendments. Unless and until the Proposed Amendments are adopted and are deemed to be final, non-appealable, and not otherwise subject to challenge in any judicial, administrative or other proceedings (the "Final Amendments"), the City agrees not to proceed further with any public hearing concerning the designation of the Property as an individual local historic site. As provided in Section 7 below, however, in the event that the Proposed Amendments do not become Final Amendments on or before a date that is twelve (12) months from the Effective Date of this Agreement (the "Outside Date"), unless extended by mutual written agreement of the Parties, this Agreement shall terminate and the Parties shall have no further obligations hereunder.

6. Designation of the Property as Local Historic Site. Upon adoption of the Proposed Amendments and the Parties agreeing that the Proposed Amendments are Final Amendments, the City shall notify the Owner in writing confirming same. Upon receipt of this written confirmation from the City, the Owner hereby agrees to voluntarily consent and support the designation of the Property as an individual local historic site in accordance with the Code, subject to the reservation of rights provided in Section 7 below.

7. Reservation of Rights. The Parties acknowledge and agree as follows:

a. In the event that the Proposed Amendments do not become Final Amendments by the Outside Date, this Agreement shall terminate and the Parties shall have no further obligations hereunder. Upon termination of this Agreement, the City may choose to proceed with the designation of the Property as an individual local historic site, and the Owner hereby reserves all rights to object or otherwise contest said designation; and

b. In the event that the City modifies the language of the Proposed Amendments, and such modified language is then adopted and such amendments become Final Amendments by the Outside Date, the Owner shall have the sole and absolute discretion to either accept the Final Amendments, as modified, or terminate this Agreement and reserve all rights to object or otherwise contest the designation of the Property as an individual local historic site; and

8. Permitted Uses and Height. Upon the effectiveness of the Final Amendments, such development regulations shall govern the redevelopment of the Property throughout the term of this Agreement, so that the Parties have certainty with respect to said redevelopment. Notwithstanding subsequent amendments to the Code, Land Development Regulations, and Comprehensive Plan, the Property shall be subject to the following provisions as more fully provided in Exhibit "B":

a. Hotels, apartments, apartment hotels, and suite hotels shall be permitted, plus all accessory uses that are customarily associated with the operation of a hotel, including but not limited to, bars, restaurants, and accessory outdoor bar counters;

b. Conditional uses shall be permitted for accessory outdoor entertainment, accessory neighborhood impact establishment, and accessory open air entertainment establishment;

c. The permitted height of any new structures in connection with the redevelopment on the Property shall be eighty (80) feet;

d. There shall be no parking requirement for hotel units and accessory uses. Further, all existing parking spaces may be removed and no fee in lieu payment shall be required for the removal of existing parking spaces in connection with the redevelopment of the Property; and

e. The Property and the uses thereon, including bars and restaurants, shall be exempt from distance separation requirements, including but not limited to, from educational facilities, places of worship, other alcoholic beverage establishments and other uses.

Nothing herein shall prohibit the applicability of subsequent amendments to the Code, Land Development Regulations, and/or Comprehensive Plan that would expand the uses and/or increase the intensity of redevelopment permitted on the Property, including amendments to the aforementioned development standards.

9. Intended Redevelopment Plan. Assuming the Owner desires to continue to operate a hotel on-site and in order to ensure the continued viability of the historic hotel structure on the Property upon designation as an individual local historic site, the Owner and/or its successors and assigns may redevelop certain portions of the Property with additional improvements and uses to complement the existing historic hotel structure. As provided above, the maximum height for such redevelopment shall be governed by this Agreement, including the Final Amendments provided herein, the Land Development Regulations, and the Comprehensive Plan. A conceptual massing study prepared by Shulman + Associates is attached hereto as Exhibit "C", which reflects an 8-story tower on the northern portion of the Property (the "Massing Study"). Owner agrees that the 2-story lobby at the southern portion of the Property will be restored at the time of the overall renovation of the Property in accordance with the preservation standards set forth by the Secretary of the Interior, and City staff conceptually supports the 8-story tower on the northern portion of the Property as reflected in the Massing Study. Notwithstanding the above, the Parties acknowledge that the Owner will be required to obtain a Certificate of Appropriateness from the HPB for the redevelopment of the Property in accordance with the City's Code and Land Development Regulations.

10. Cooperation; Expedited Permitting; and Time of Essence. The Parties agree to cooperate with each other to the fullest extent practicable pursuant to the terms and conditions of this Agreement. The Parties agree that time is of the essence for each and every provision hereof. The City shall use its best efforts to expedite the review and approval process of the Proposed Amendments and future applications regarding the redevelopment of the Property, including all applications necessary to proceed with the construction of the uses and improvements contemplated under the Intended Development Plan.

Notwithstanding the foregoing, the Parties acknowledge that this Agreement is not and shall not be construed as a Development Permit, approval or authorization to commence any development, fill, or other land modification, and the City shall not be obligated to issue any approval, including a Development Permit, to the extent that the application does not comply with this Agreement, the Land Development Regulations, the Comprehensive Plan, any applicable building codes, or any other applicable laws, rules, or regulations.

11. Police Power.

a. The Parties hereto recognize and agree that certain provisions of this Agreement require the City and its boards, departments or agencies, acting in their governmental capacity, to consider governmental actions, as set forth in this Agreement. All such considerations and actions shall be undertaken in accordance with established requirements of state statutes and municipal ordinances, in the exercise of the City's jurisdiction under the police power. Nothing contained in this Agreement shall entitle the Owner to compel the City to provide any governmental approvals under its police power save and except to timely process future applications regarding the redevelopment of the Property.

b. The Parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly in full accordance with law and with both procedural and substantive due process to be accorded the applicant and any member of the public. Nothing in this Agreement shall be construed to prohibit the City from duly acting under its police power to approve, approve with conditions, or reject any public hearing application dealing with the Property.

12. Consistency with the City's Comprehensive Plan. The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Agreement dealing with the Property are consistent with the City's Comprehensive Plan and Land Development Regulations (subject to all applicable requirements, permits and approvals).

13. Effective Date; Recordation.

Within fourteen (14) days following approval at two public hearings and execution by all Parties, the City shall record the Agreement in the Public Records of Miami-Dade County, upon which the Agreement will be in effect (the "Effective Date"). The Owner

shall submit a copy of the recorded Agreement to the State of Florida's land planning agency within fourteen (14) days after this Agreement is recorded. The Owner agrees that it shall be responsible for all recording fees and other related fees and costs related to the recording and delivery of this Agreement as described in this Section.

14. Events of Default; Remedies; and Litigation. In the event of any default by any Party, the non-defaulting Party shall have the right to pursue all remedies available at law and equity, including but not limited to injunctive relief and specific performance. In the event of default by the City subsequent to the designation of the Property as an individual local historic site, the Owner may elect to terminate the Agreement and the designation of the Property as such will automatically be deemed void without any further action by the City. In the event of any litigation between the Parties under this Agreement for a breach thereof, the prevailing Party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. BY ENTERING INTO THIS AGREEMENT THE CITY AND OWNER EXPRESSLY WAIVE ANY RIGHTS EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT. The terms of this Section 13 shall survive the termination of this Agreement.

15. Waiver. No waiver of any right or obligation of either Party shall occur unless the waiver is in writing and signed by both Parties. No failure by the City or Owner to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such Party by reason of the other Party's default hereunder shall constitute a waiver of any such right to insist upon performance or of such default.

16. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the City at: City of Miami Beach, City Hall  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: City Manager

With a copy to: City of Miami Beach, City Hall  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: City Attorney

If to Owner at: Tsay International, Inc.  
2301 Normandy Drive  
Miami Beach, FL 33141  
Attn: Belsa Tsay

With a copy to: Alexander I. Tachmes, Esq.  
Shutts & Bowen, LLP  
200 S. Biscayne Blvd.  
Suite 4100  
Miami, Florida 33131

Notices shall be deemed given on the date of receipt or refusal to accept receipt.

17. Governing Laws. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, without reference to principles of conflicts of laws. The Owner and the City agree that Miami-Dade County, Florida is the appropriate and exclusive state court venue, and that the U.S. District Court, Southern Division of Florida is the appropriate and exclusive federal court venue, in connection with any litigation between the Parties with respect to this Agreement.

18. Construction. Both Parties to this Agreement have participated fully in the negotiation and preparation hereof; and accordingly, this Agreement shall not be more strictly construed against either of the Parties hereto. In construing this Agreement, captions, and section and paragraph headings shall be disregarded and the use of any gender shall include every other and all genders.

19. Severability. In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

20. Entire Agreement; Modification. This Agreement, together with the documents referenced herein, constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein. Neither Party shall be bound by any agreement, condition, warranty nor representation other than as expressly stated in this Agreement. This Agreement may not be changed, altered or modified except by an instrument in writing signed by both Parties hereto, subject to the requirements for the amendment of development agreements in the Act.

21. Binding Effect. The obligations imposed pursuant to this Agreement upon the Owner and upon the Property shall run with and bind the Property as covenants running with the Property and shall be binding upon and enforceable by and against the Parties hereto, their personal representatives, heirs, successors, grantees and assigns for an initial term of thirty (30) years from the Effective Date, after which time it may be extended for a period of ten (10) years after approval by the City at a public hearing, unless an instrument has been recorded agreeing to release, amend, or modify this Agreement in whole, or in part, as provided herein.

22. No Third Party Beneficiaries. Nothing in this Agreement shall be deemed to create any right in any person not a party hereto, and nothing contained in this

instrument shall be construed in any respect to be an agreement in whole or in part for the benefit of any third party, other than the successors and permitted assigns of the Parties hereto.

23. Corporate Obligations. It is expressly understood that this Agreement and the obligations issued hereunder are solely corporate obligations, and that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, elected or appointed officials (including, without limitation, the Mayor and City Commissioner of the City) or employees, as such of Owner or City, and of any successor corporation or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any of all such rights and claims against, every such incorporator, stockholder, officer, director, elected or appointed official (including, without limitation, the Mayor and City Commissioner of the City) or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom are expressly waived and released as a condition of, and as consideration for, the execution of this Agreement.

24. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same agreement.

[SIGNATURE PAGES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as set forth below.

Signed, sealed and delivered  
in the presence of:

CITY OF MIAMI BEACH,  
a Florida municipal corporation

Print Name: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Name:  
Title:

Attest: \_\_\_\_\_  
City Clerk

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by \_\_\_\_\_, as \_\_\_\_\_ of the City of Miami Beach, a municipal corporation, on behalf of the Corporation. He is personally known to me or has produced \_\_\_\_\_ as identification and who did (did not) take an oath.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
Typed or Printed Name of Notary  
My Commission expires:  
Serial No., if any: \_\_\_\_\_



TSAY INTERNATIONAL, INC., a Florida corporation

By: \_\_\_\_\_  
Name: Belsa Tsay  
Title: President

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by Belsa Tsay, as President of TSAY INTERNATIONAL, INC., a Florida corporation on behalf of the company. She is personally known to me or has produced \_\_\_\_\_ as identification and who did/did not take an oath.

\_\_\_\_\_  
NOTARY PUBLIC  
Typed or printed Name of Notary  
My Commission expires:  
Serial No., if any \_\_\_\_\_

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF PROPERTY**

Lots 15, 16, 17 and 18, in Block 40, of Miami View Section of Isle of Normandy, Part 3, according to the Plat thereof, as recorded in Plat Book 40, at Page 33, of the Public Records of Miami-Dade County, Florida.

**EXHIBIT B**

**PROPOSED AMENDMENTS**

*Proposed Amendments to Land Development Regulations (LDRs)*

Section 142-152 – Purpose.

The RM-1 residential multifamily, low density district is designed for low intensity, low rise, single-family and multiple-family residences. On certain individually designated historic sites as provided herein, hotels, apartment hotels, and suite hotels are authorized. Along Harding Avenue or Collins Avenue, from the city line on the north, to 73<sup>rd</sup> Street on the south (pursuant to section 142-1105 of this chapter) properties shall be entitled to have suite hotels.

Section 142-152 - Main permitted and prohibited uses.

- (a) The main permitted uses in the RM-1 residential multifamily, low density district are:
- (1) single-family detached dwelling;
  - (2) townhomes;
  - (3) apartments;
  - (4) bed and breakfast inn (pursuant to article V, division 7 of this chapter);
  - (5) properties fronting Harding Avenue or Collins Avenue, from the city line on the north, to 73rd Street on the south (pursuant to section 142-1105 of this chapter) shall be entitled to have hotels, apartment hotels, and suite hotels; and
  - (6) properties located north of Normandy Drive having a lot area of greater than 30,000 square feet, which are individually designated historic sites, and which had a valid business tax receipt, occupational license or its equivalent for hotel use as of the date of the adoption of the ordinance from which this provision is derived (“Normandy Historic Hotel Sites”) shall be entitled to have hotels, apartment hotels, and suite hotels.
- (b) Alcoholic beverage establishments pursuant to the regulations set forth in chapter 6 of the City Code, are prohibited uses, unless otherwise specified. Moreover, all uses not listed as a main permitted or conditional use are also prohibited. Notwithstanding the foregoing, accessory uses that are customarily associated with the operation of a hotel, including but not limited to, bars and restaurants, are permitted as provided in section 142-154 of this chapter.

Section 142-153 – Conditional uses.

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- (d) For Normandy Historic Hotel Sites, additional conditional uses are accessory outdoor entertainment establishment; accessory neighborhood impact establishment; and accessory open air entertainment establishment as set forth in article V, division 6 of this chapter.

Section 142-154 - Accessory uses.

The accessory uses in the RM-1 residential multifamily, low density district are as required in article IV, division 2 of this chapter. Additionally, hotels located on Normandy Historic Hotel Sites are permitted to have all accessory uses that are customarily associated with the operation of a hotel, including but not limited to, bars, restaurants, and accessory outdoor bar counters, provided that an accessory outdoor bar counter is only permitted to be utilized during the hours of operation as the bar or restaurant of which it is a part.

Section 142-155. - Development regulations and area requirements.

Minimum Lot Area (Square Feet)	Minimum Lot Width (Feet)	Minimum Unit Size (Square Feet)	Average Unit Size (Square Feet)	Maximum Building Height (Feet)
5,600	50	<p>New construction—550 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400 Rehabilitated buildings—400 Hotel units: 15%: 300—335 85%: 335+ For contributing hotel structures, located within an individual historic site, a local historic district or a national register district, which are renovated in accordance with the Secretary of the Interior Standards and Guidelines for the Rehabilitation of Historic Structures as amended, retaining the existing room configuration and sizes of at least 200 square feet shall be permitted. Additionally, the existing room configurations for the above described hotel structures may be modified to address applicable life-safety and accessibility regulations, provided the 200 square feet minimum unit size is maintained, and provided the maximum occupancy per hotel room does not exceed 4 persons.</p>	<p>New construction—800 Non-elderly and elderly low and moderate income housing—400 Workforce housing—400 Rehabilitated buildings—550</p>	<p>Historic district—40 Flamingo Park Local Historic District—35 (except as provided in section 142-1161) Otherwise—50 For properties outside a local historic district with a ground level consisting of non-habitable parking and/or amenity uses—55 <a href="#">For Normandy Historic Hotel Sites—80 (for new hotel, apartment, apartment hotel and suite hotel structures and additions)</a></p>

Section 130-32(26) - *Hotel, suites hotel, motel, or motor lodge:*

One space per unit, except as follows:

<b>Properties located within a local historic district or National Register Historic District</b>	
New floor area for hotel rooms, associated with retaining, preserving and restoring a building or structure that is classified as "contributing" as of March 13, 2013, as defined below	.5 spaces per unit, up to a maximum of 100 units and 1
space per unit for all units in excess of 100 units	
Other (e.g., new construction or substantial demolition of contributing building)	1 space per unit
Properties bounded by 62nd Street on the south, 73rd	.5 spaces per unit, up to a maximum of 100 units and 1



Street on the north, Indian Creek on the west and the Atlantic Ocean on the east	
space per unit for all units in excess of 100 units	
Properties located south of Fifth Street and properties zoned residential and located south of 17th Street, west of Alton Court, east of Biscayne Bay and north of 6th Street	1 space per unit
<b>Individually designated local historic sites</b>	
Normandy Historic Hotel Sites as defined in Section 142-152(a)	There shall be no parking requirement for hotel units and accessory uses customary to a hotel, including bars and restaurants, within any new addition (attached or detached). In the event that parking is provided that would have otherwise been required absent this exception, such parking shall be excluded from the calculation of the floor area ratio.
<b>Properties not listed above:</b>	
Hotels, limited by covenant to no restaurants or pools open to the public, no outdoor bar counters, entertainment or special events, and located in a commercial zoning district within 1,000 feet of the boundary of an area that is (1) zoned CD-3 and (2) part of an historic district	.5 spaces per unit, up to a maximum of 100 units and 1 space per unit for all units in excess of 100 units, up to a maximum cap of 150 rooms total
Within 150 feet of a single-family district or RM-1 district, notwithstanding the above	1 space per unit
Other	1 space per unit

#### Section 130-132 – Fee Calculation.

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- (c) *Removal of existing parking spaces in a historic district.* Whenever an existing required parking space is removed or eliminated for any building that existed prior to October 1, 1993, which are located within the architectural district, a contributing building within a local historic district, or any individually designated historic building, a fee in lieu of providing parking shall be required if a replacement parking space is not provided pursuant to section 130-36. Such fee shall be satisfied as set forth in subsection (b), above. In no case shall the removal of parking spaces result in less than one parking space per residential unit or 50 percent of the required parking for commercial uses. This subsection shall not prohibit the removal of grade level parking spaces located within the front, side street or interior side yards of a lot, should those parking spaces be nonconforming. Notwithstanding the foregoing, an owner shall be permitted to remove parking spaces required for a building in the architectural district or a local historic district constructed after October 1, 1993, if a change in said building results in a net reduction of required parking spaces. No fee in lieu of providing parking or the replacement of parking spaces pursuant to section 130-36 shall be required to remove such spaces, unless the number of parking spaces being removed is greater than the net reduction of required parking spaces. Notwithstanding the foregoing, existing parking spaces, whether conforming or nonconforming, may be removed from Normandy Historic Hotel Sites as defined in Section 142-152(a), and no fee in lieu payment shall be required for such removal.

#### *Proposed Amendments to Code of Ordinances*

#### Section 6-4 - Location and use restrictions.

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- (d) Notwithstanding any other provision in this division, the sale or offering of alcoholic beverages for consumption on the premises of Normandy Historic Hotel Sites shall be exempt from all applicable minimum distance separation requirements pertaining to such sale or offering.

*Proposed Amendment to the Future Land Use Element of the Comprehensive Plan*

**Low Density Multi Family Residential Category (RM-1)**

Purpose: To provide development opportunities for and to enhance the desirability and quality of existing and/or new low density multi family residential areas.

Uses which may be permitted: Single family detached dwellings; single family attached dwellings, townhouse dwellings and multiple family dwellings, and hotels for properties fronting Harding Avenue or Collins Avenue from the City Line on the north to 73rd Street on the south.

Bed and breakfast inns are permitted in RM-1 only in the Flamingo Park Historic District and the West Avenue Bay Front Overlay District, both of which are described in the Land Development Regulations. Residential office and suite hotel uses are permitted in the West Avenue Bay Front Overlay District only. Hotels, apartment hotels, and suite hotels are permitted on Normandy Historic Hotel Sites as described in the Land Development Regulations.

Other uses which may be permitted are accessory uses specifically authorized in this land use category, as described in the Land Development Regulations, which are required to be subordinate to the main use; and conditional uses specifically authorized in this land use category, as described in the Land Development Regulations, which are required to go through a public hearing process as prescribed in the Land Development Regulations of the Code of the City of Miami Beach.

# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

**Item 8.**  
**COMMITTEE MEMORANDUM**

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: June 12, 2019

TITLE: **DISCUSSION TO CREATE OPTIONS FOR INDOOR AMBIENT ENTERTAINMENT**

**ATTACHMENTS:**

Description	Type
□ Indoor Ambient Entertainment	Memo



# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jimmy L. Morales, City Manager

DATE: June 12, 2019

SUBJECT: **DISCUSSION TO CREATE OPTIONS FOR INDOOR AMBIENT ENTERTAINMENT.**

### **HISTORY**

On January 16, 2019, at the request of Commissioner John Elizabeth Aleman, the City Commission referred the following discussion item to the Land Use and Development Committee (Item C4 AD) in order to create equity between the current entertainment exemption for recorded ambient music and ambient music performed by live musicians:

***DISCUSSION REGARDING AN ORDINANCE TO CREATE AN EXEMPTION FROM THE DEFINITION OF "ENTERTAINMENT ESTABLISHMENT" FOR PERFORMANCES CONDUCTED AT A VOLUME THAT DOES NOT INTERFERE WITH NORMAL CONVERSATION.***

On March 6, 2019, the Land Use and Development Committee (LUDC) discussed the item and recommended that the City Attorney's Office draft a revised ordinance for consideration. The LUDC continued the item to the April 3, 2019 meeting. On April 3, 2019, the item was continued to the June 12, 2019 meeting.

On May 28, 2019, city staff and the item sponsor met with affected stakeholders from the sunset harbor neighborhood to discuss potential options being developed by city staff. At this meeting, the issue of 'amplified' vs. 'non-amplified' music was addressed. Due to first amendment concerns, the primary focus of the discussion, and the future options being evaluated, focused on 'volume'.

On June 10, 2019, at the request of the item sponsor, the title of the item became:

***DISCUSSION TO CREATE OPTIONS FOR INDOOR AMBIENT ENTERTAINMENT.***

### **BACKGROUND**

Chapter 114 of the City Code provides the following definition for entertainment establishment:

***Entertainment establishment means a commercial establishment with any live or recorded, amplified or nonamplified performance, (excepting television, radio***

*and/or recorded background music, played at a volume that does not interfere with normal conversation, and indoor movie theater operations). Entertainment establishments may not operate between the hours of 5:00 a.m. and 10:00 a.m., except as provided for under subsection 6-3(3)(b).*

Under Chapter 142 of the City Code, myriad regulations exist regarding entertainment within eating and drinking establishments. The attached chart provides a grid outline of where entertainment is permitted as of right, where conditional use approval (CUP) is required and where entertainment is prohibited outright. These locations have also been identified in the attached map.

### **RESEARCH**

Staff reviewed the codes of several local governments, and summarized regulations that were relevant to regulating entertainment uses. The cities analyzed define entertainment differently when compared to Miami Beach, and generally, the cities reviewed in Florida do not regulate where and how music can be played. Instead they regulate where alcoholic beverage establishments and specific types of entertainment venues can locate, and primarily deal with noise-related concerns through noise ordinances. Coral Gables and Fort Lauderdale do provide some regulation on hours of operation when music can be, but playing music is permitted in all commercial districts of those cities.

Staff also reviewed the codes of Austin, Texas which is known for its nightlife. Austin does regulate where entertainment can take place; however, they make certain allowances for restaurants and bars, allowing live entertainment with strict noise limits. Issues related to entertainment are primarily dealt with through a noise ordinance which has a permitting process for exceeding base noise limits.

A summary of the applicable regulations for each of the cities analyzed is attached.

### **PLANNING AND LEGAL ANALYSIS**

Subsequent to the March 6, 2019 LUDC meeting, city staff discussed the feasibility and practicality of shifting to a decibel-based standard for noise enforcement. Based upon the reasons previously cited by the City Attorney's Office, as well as concern from Code Compliance regarding the objectivity of the use of decibel meters, the Administration does not recommend shifting from the current normal conversation standard to a decibel based standard.

Additionally, at the March 6, 2019 meeting, the LUDC directed the Administration and the City Attorney's office to explore other options to allow indoor restaurants to have ambient live performances, as the original proposal to exempt ambient performances from the definition of entertainment was met with community resistance due to concerns of excessive, unenforceable noise. In response, the following are three separate, potential options to address the proposal:

#### **Option 1: Revocable Permit for Ambient Entertainment**

As a pilot program, amend the City Code to authorize the City Manager to issue a revocable permit for ambient entertainment, with conditions (i.e. like a special event permit); the following would apply to this option:

- Sunset or revisit ordinance in one year;
- Identify districts where permitted;

- Limit to indoor restaurants only;
- Establish maximum occupancy and hours; and
- Establish a maximum number of permits issued by district.

**Option 2: Create a Separate Definition for Ambient Entertainment**

The following definition for “ambient entertainment”, as a new use, would be created and included in chapter 114 of the city code:

*Ambient entertainment establishment means a commercial establishment with any live or recorded, amplified or nonamplified performance played or conducted indoors at a volume that does not interfere with normal conversation (excepting television, radio and/or recorded background music, played at a volume that does not interfere with normal conversation, and indoor movie theater operations). Ambient entertainment establishments may not operate between the hours between the hours of midnight and 10:00 a.m., except as provided for under subsection 6-3(3)(b).*

For comparison purposes, the following is the definition for “entertainment establishment” in the city code:

*Entertainment establishment means a commercial establishment with any live or recorded, amplified or nonamplified performance, (excepting television, radio and/or recorded background music, played at a volume that does not interfere with normal conversation, and indoor movie theater operations). Entertainment establishments may not operate between the hours between the hours of 5:00 a.m. and 10:00 a.m., except as provided for under subsection 6-3(3)(b).*

Additionally, the following would apply to this option:

- Identify districts where ambient entertainment is a permitted use;
- Limit to indoor restaurants only;
- Establish maximum occupancy and hours; and
- Require a separate BTR / CU for ambient entertainment.

**Option 3: Original Proposal**

Amend the current definition of “entertainment” to exclude indoor performances played or conducted at ambient volume levels, as follows:

*Entertainment establishment means a commercial establishment with any live or recorded, amplified or nonamplified performance, (excepting television, radio and/or recorded background music, and any other indoor performance played or conducted at a volume that does not interfere with normal conversation, and indoor movie theater operations). Entertainment establishments may not operate between the hours between the hours of 5:00 a.m. and 10:00 a.m., except as provided for under subsection 6-3(3)(b).*

Options 1 and 2 both create equity between the current entertainment exemption for recorded ambient music, and ambient music performed live by musicians (or any other performance conducted at ambient volume levels). By creating a separate, defined category for ambient entertainment establishments, there would no longer be the need for an exception to the definition of entertainment establishment. Further, the revocation

of a revocable permit as outlined in option 1 and issuance of a violation and fine, for option 2, would penalize rogue or bad operators ultimately resulting in the loss of the permit or a business's ambient entertainment BTR in a relatively short period of time. These enforcement mechanisms would be separate and apart from the more severe measure of revoking the business's BTR and shutting the entire establishment down.

Finally, the item sponsor has indicated that an opt out for any of the options noted above will be considered for those areas of the city that currently prohibit entertainment. This can be done legislatively, by excluding the affected areas from the different options noted above. In order for those areas that currently allow for entertainment, but with a mandatory CUP review regardless of occupational content (eg the west side of Alton Road), additional legislative changes can be explored.

### **SUMMARY**

The administration recommends Option 1, with the different options proposed herein being discussed and evaluated by the LUDC. Pending the direction of the LUDC, the administration and the City Attorney's office will draft an ordinance for the next meeting that would further outline the operating conditions, fines and penalties, as well as compliance and revocation procedures.

### **CONCLUSION**

The administration recommends that the item be continued to the July 24, 2019 LUDC meeting, and that a revised draft ordinance incorporating option 1, herein be drafted by the administration and City Attorney office for discussion.

JLM/SMT/TRM

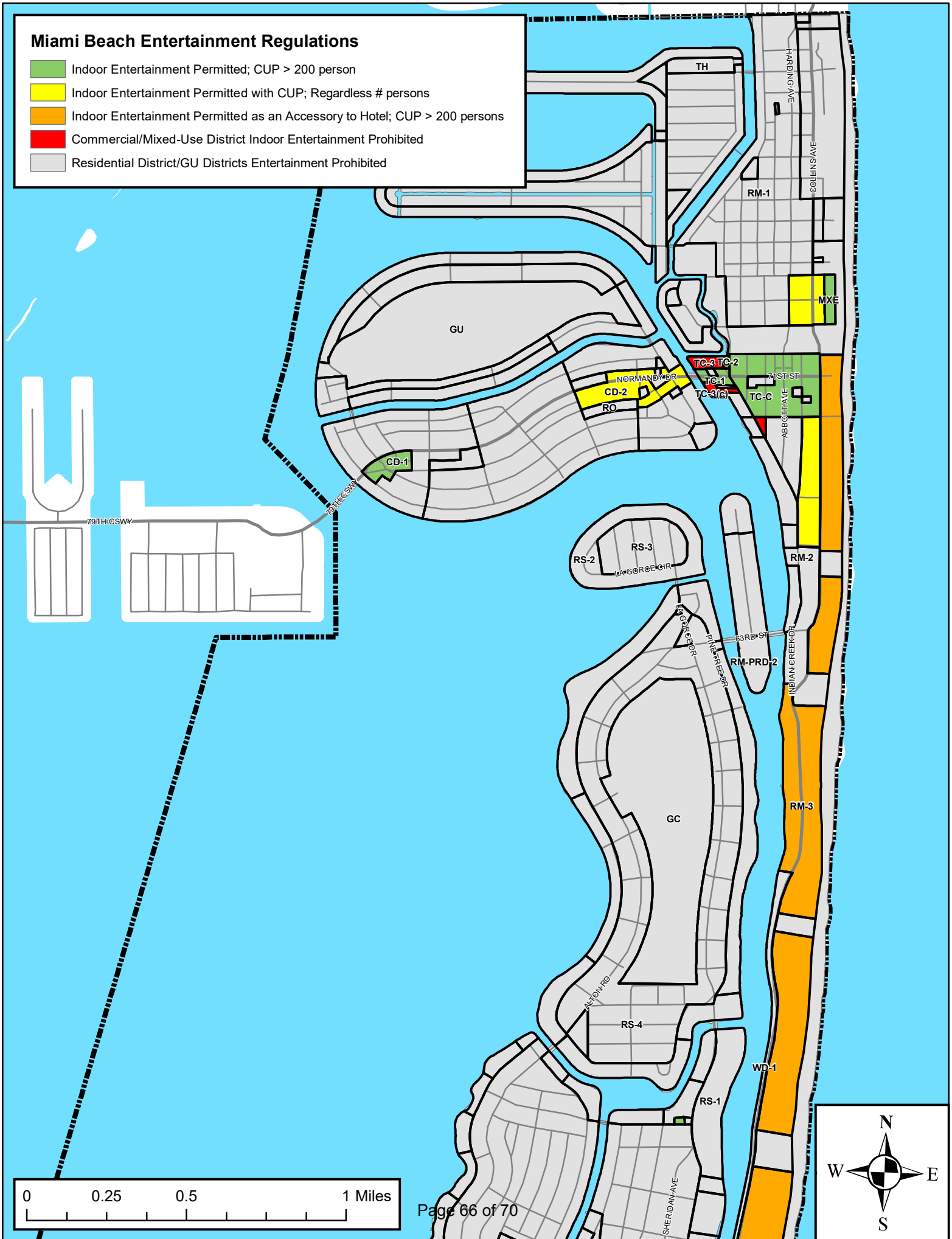
M:\\$CMB\CCUPDATES\Land Use and Development Committee\2019\June 12, 2019\DISCUSSION Ambient Entertainment - MEMO June 2019 LUDC.docx

## Indoor Entertainment - Current Regulations

Indoor Entertainment Permitted As of Right (No CUP)	Indoor Entertainment Permitted with CUP	Indoor Entertainment Prohibited (Regardless of Occupant Content)
All Commercial (CD), MXE and TC Districts (except TC-3), as well as accessory uses to a hotel in the RM-3 Districts (where hotels are permitted), when a venue serving alcohol has an occupant content of less than 200 persons;	All Commercial (CD), MXE and TC Districts(except TC-3), as well as accessory uses to a hotel in the RM-3 District (where hotels are permitted), when a venue serving alcohol has an occupant content over 199 persons;	All PS districts, south of 6 <sup>th</sup> street (South of Fifth);
Any commercial use not selling or serving alcohol, regardless of occupant content.	Regardless of occupant content: CD-3 district, along and adjacent to 41st Street;	All CD-2, I-1, and RM-3 districts in the Sunset Harbour area;
	Regardless of occupant content: CD-2 district, north of 65th Street	All RS, TH, TC-3, RM-2 and RM-1 districts city wide;
	Regardless of occupant content: CD-2 district on the west side of Alton Road from 6th Street to Collins Canal and on the east side of West Avenue between Lincoln Road and 17th Street.	In RM-3 districts ground floor additions for oceanfront lots located in the architectural district relocating existing hotel units;
		Package liquor stores in the MXE district which have been grandfathered.

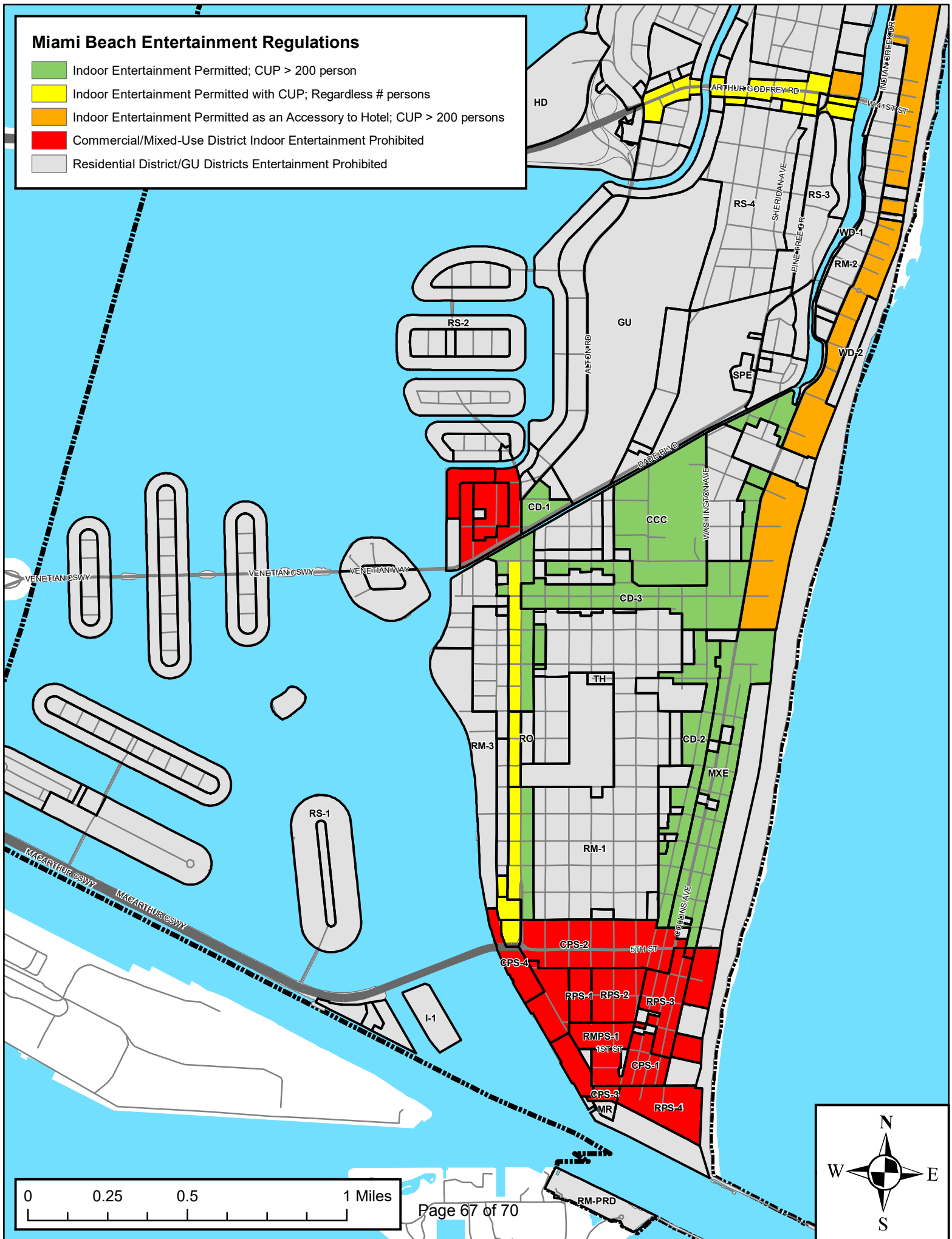
# Miami Beach Entertainment Regulations

- Indoor Entertainment Permitted; CUP > 200 person
- Indoor Entertainment Permitted with CUP; Regardless # persons
- Indoor Entertainment Permitted as an Accessory to Hotel; CUP > 200 persons
- Commercial/Mixed-Use District Indoor Entertainment Prohibited
- Residential District/GU Districts Entertainment Prohibited



# Miami Beach Entertainment Regulations

- Indoor Entertainment Permitted; CUP > 200 person
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## **Research Summary – Entertainment Regulations**

### ***City of Miami, Florida***

An entertainment establishment in the City of Miami is defined and includes a cinema, billiard parlor, teen club, dance hall, or video arcade. The zoning ordinance allows entertainment establishments by right in Commercial (T4-O, T5-O, and T6-O), High Density Limited Commercial (T6-L), Light Industrial (D1), and Industrial (D2) zoning districts, and by an administrative special permit in Medium Density Limited Commercial districts (T5-L). Alcoholic beverage establishments, not including restaurants, are also regulated and require the equivalent of a conditional use permit be approved by the City's Planning Board (Article 4, Table 3, Miami 21 Code), with certain exceptions. Food service establishments, which may serve alcoholic beverages, are permitted in all commercial and limited commercial districts.

The city code provides additional regulations for the location and distance separation of alcoholic service establishments, which excludes restaurants serving alcohol. Alcoholic service establishments are required to be a minimum of 1,500 feet from other establishments of the same type, in addition to separation from churches and schools. The code also establishes entertainment districts such as Wynwood, Little Havana, Brickell Village, Brickell Riverside, Park West, etc., Establishments located in these districts are approved administratively thru a conditional use permit and are not subject to distance separation requirements. The number of establishments within a district are capped and hours of operation and operating conditions apply (Chapter 4, Miami Code of Ordinances). Additionally, the administrative review for the conditional use permit requires that a noise attenuation plan addressing noise control be submitted for staff review.

The ability to have live music in other types of establishment is not regulated by the City. However, noise is regulated through the city's noise ordinance (Chapter 36, Miami Code of Ordinances). The ordinance provides that it is unlawful for noise or music to be "*plainly audible at a distance of 100 feet from the building, structure, vehicle or premises in which or from which it is produced.*" The city commission is authorized to provide exceptions from these provisions for special occasions by resolution.

### ***City of Fort Lauderdale, Florida***

The City of Fort Lauderdale Unified Land Development Code generally allows for bars, cocktail lounges and nightclubs as a permitted use in several of the city's commercial districts and as an accessory to hotels containing 100 or more rooms (Chapter 47, Article II, Fort Lauderdale Unified Land Development Code).

The code provides additional regulations regarding the sale of alcohol, including distance separation requirements. It also requires that no establishment, except nightclubs, allow, after 11:00 p.m., playing of instrumental music, singing or conduct other forms of entertainment, in any room where beer, wine, liquor or alcoholic beverages are sold or offered for sale, indoors or outdoors, unless such room or rooms are soundproofed, (Chapter 5, Article II, Fort Lauderdale Code of Ordinances). The code also allows for the establishment of special entertainment overlay Districts for areas of two acres or larger under common control. The overlays include operational criteria, but removes distance separation requirements and allows for music, singing and other forms of entertainment whether amplified or not to be played indoors at any time



that the business is open and for outdoor music until midnight on weekdays and 1 a.m. on weekends (Chapter 5, Article III, Fort Lauderdale Code of Ordinances).

While there are some limitations in hours for entertainment in alcoholic beverage establishment that aren't sound proofed, the City of Fort Lauderdale does not prohibit entertainment in other types of establishments. However, noise is regulated by the city's noise control ordinance (Chapter 17, Fort Lauderdale Code of Ordinances). The ordinance establishes decibel levels by types of sounds, during different hours, and by use. It also provides for greater decibel levels within a special entertainment district overlay.

#### ***City of Coral Gables, Florida***

The City of Coral of Coral Gables Zoning Code defines "*Entertainment Use*" as "*a commercial accessory use where entertainment, either passive or active, is provided for the pleasure of the patrons of the principal use, including but not limited to vocal and instrumental music, dancing, comedy, and theater, but not including an adult use.*" Nightclubs are also defined as an accessory use to a restaurant. Since entertainment use is an accessory to commercial uses, it is allowed in all districts where commercial uses are permitted. The zoning code provides specific conditions for the playing of music, including hours of operation and noise limitations subject to the city's general noise ordinance; however, entertainment use is not prohibited in any area, but accessory only to commercial uses.

Like other cities, Coral Gables regulates noise emanating from a property, and provides decibel limits for different types of sound emanating from different districts, along with hours in which sound can emanate (Chapter 34, Article VI, Coral Gables Code of Ordinances). The playing of music is subject to these limitations found therein.

#### ***City of West Palm Beach, Florida***

The City of West Palm Beach land development regulations do not define entertainment. The regulations do allow for bars, lounges, and related entertainment, as a permitted use in most commercial districts and with extra requirements in neighborhood commercial and office commercial districts. The code provides for operating hours and special requirements for such uses, along with modified hours for specific streets.

The code establishes requirements for the sale of alcoholic beverages and establishes separation requirements from other establishments and residential districts, hours of operation, and other requirements, along with providing specific exemptions and limitations for the downtown area, (Chapter 6, West Palm Beach Code of Ordinances).

The city has a noise control ordinance which establishes limits for sound citywide and also provides for specific areas where higher levels of noise are permitted, which include the city's downtown and entertainment areas (Chapter 34, Article II, West Palm Beach Code of Ordinances).

#### ***City of Austin, Texas***

The City of Austin Land Development Code establishes requirements for permitting entertainment uses within the city (Title 25, Article 1, Land Development Code of Austin). "*Indoor entertainment*" is a *conditional use, permitted use, or not permitted use* depending on the zoning district. "*Outdoor entertainment*" is a *conditional use or not permitted* depending on the zoning district. However, the code provides that live

entertainment is permitted at restaurants and cocktail lounges if the amplified sound does not exceed 70 decibels, measured at the property line of the licensed premises.

Additionally, the code provides additional regulations regarding noise and amplified sound and establishes decibel limits for sound at the property line. (Chapter 9-2, Code of Austin). For example, a business cannot operate equipment that produces sound in excess of 85 decibels between 10:00 a.m. and 2:00 a.m. and audible at the property line between 2:00 a.m. and 10:00 a.m. Any sound that exceeds the prescribed decibel levels requires a permit to operate sound equipment audible to the public. The ordinance also has separate requirements for “*outdoor music permits*” and outdoor “*live music permits*,” which have different standards depending on the specific neighborhood. Permits are issued administratively, however, they have specific criteria which must be considered before they can be issued.