

**SUNSET HARBOUR
ALCOHOLIC BEVERAGE ESTABLISHMENT REGULATIONS**

ORDINANCE NO. 2016-4046

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," (1) AT DIVISION 5, "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT," SECTION 142-302, "MAIN PERMITTED USES," SECTION 142-303, "CONDITIONAL USES," SECTION 142-304, "ACCESSORY USES," AND SECTION 142-310, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS"; AND (2) AT DIVISION 11, "I-1 LIGHT INDUSTRIAL DISTRICT," SECTION 142-482, "MAIN PERMITTED USES," SECTION 142-483, "CONDITIONAL USES," SECTION 142-484, "ACCESSORY USES," AND SECTION 142-488, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS," TO CLARIFY PROHIBITED ENTERTAINMENT USES, AND AMEND THE HOURS OF OPERATION, LOCATION AND USE RESTRICTIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS IN THE SUNSET HARBOUR NEIGHBORHOOD, GENERALLY BOUNDED BY PURDY AVENUE, 20TH STREET, ALTON ROAD, AND DADE BOULEVARD; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Sunset Harbour neighborhood is composed of a mixture of residential, light industrial, and low intensity service, restaurant and retail uses, which primarily serve City residents; and

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

WHEREAS, residential uses in the Sunset Harbour neighborhood are divided only by the width of a street from the CD-2 commercial, medium intensity and the I-1 light industrial zoning districts; and

WHEREAS, the City Code permits certain uses within the CD-2 and I-1 zoning districts, which, absent mitigation, could be incompatible with adjacent residential uses in the Sunset Harbour neighborhood; and

WHEREAS, large restaurants, stand-alone bars, outdoor food and beverage service, entertainment establishments, and dance halls can, if not regulated, be incompatible with the scale, character, and quality of life of adjacent residential neighborhoods; and

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

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

WHEREAS, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (See *Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); and

WHEREAS, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that “[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones”; and

WHEREAS, in *Makos v. Prince* (Fla. 1953), the Florida Supreme Court recognized that a county may establish separate zones for the hours of sale of alcoholic beverages, and that the regulation of hours need not be uniform throughout the county as a whole; and

WHEREAS, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages (See *Village of North Palm Beach v. S & H Foster's, Inc.* (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1978)); and

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

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

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

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

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

WHEREAS, in accordance with Chapter 1, Objective 2, Policies 2.1 and 2.2 of the Plan, is it is desirable to encourage uses in commercial districts that are properly balanced and compatible with the scale, character and context of adjacent residential neighborhoods; and

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

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

SECTION 1. Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 5, "CD-2 Commercial, Medium Intensity District," is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 5. - CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT

* * *

Sec. 142-302. - Main permitted uses.

The main permitted uses in the CD-2 commercial, medium intensity district are commercial uses; apartments; apartment/hotels; hotels; religious institutions with an occupancy of 199 persons or less and alcoholic beverages establishments pursuant to the regulations set forth in Chapter 6. Alcoholic beverage establishments located in the following geographic areas within the CD-2 commercial, medium intensity district shall be subject to the additional requirements set forth in section 142-310:

- (a) Alton Road corridor. on Properties on the west side of Alton Road and east of Alton Court, between 6th Street and 11th Street, and between 14th Street and Collins Canal; and properties on the east side of West Avenue, between Lincoln Road and 17th Street, except alcoholic beverage establishments fronting Lincoln Road between West Avenue and Alton Road, ~~shall be subject to the additional requirements set forth in section 142-310.~~

- (b) Sunset Harbour neighborhood. The geographic area generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south.

Sec. 142-303. - Conditional uses.

(a) {Generally.} The conditional uses in the CD-2 commercial, medium intensity district include the following:

- (1) Adult congregate living facilities;
- (2) Funeral home;
- (3) Nursing homes;
- (4) Religious institutions;
- (5) Pawnshops;
- (6) Video game arcades;
- (7) Public and private institutions;
- (8) Schools;
- (9) Any use selling gasoline;
- (10) New construction of structures 50,000 square feet and over (even when divided by a district boundary line), which review shall be the first step in the process before the review by any of the other land development boards;
- (11) Outdoor entertainment establishment;
- (12) Neighborhood impact establishment;
- (13) Open air entertainment establishment; and
- (14) Storage and/or parking of commercial vehicles on a site other than the site at which the associated commerce, trade or business is located. See section 142-1103.

(b) Sunset Harbour Neighborhood neighborhood. All conditional uses shall comply with the conditional use criteria in section 118-192(a). The conditional uses for the Sunset Harbour neighborhood, generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south, shall include those conditional uses listed at section 142-303(a), but shall exclude

subsection 142-303 (a)(11) outdoor entertainment establishments,
subsection 142-303 (a)(12) neighborhood impact establishments, and
subsection 142-303 (a)(13) open air entertainment establishments.

as these specific uses are prohibited in the Sunset Harbour neighborhood pursuant to section 142-305. The following additional uses shall require conditional use approval in the Sunset Harbour neighborhood: In addition to the conditional uses specified in section 142-303(a), and subject to the conditional use criteria in section 118-192(a), conditional uses in the CD-2 commercial medium intensity district in the Sunset Harbour neighborhood, generally bounded by Purdy Avenue, 20th Street, Alton Road and Dade Boulevard shall also include the following:

- (1) Main use parking garages; and
- (2) Restaurants with alcoholic beverage licenses (alcoholic beverage establishments) with more than 100 seats or an occupancy content (as determined by the fire marshal) in excess of 125, but less than 199 persons and a floor area in excess of 3,500 square feet.

(c) North Beach Neighborhood neighborhood. All conditional uses shall comply with the conditional use criteria in section 118-192(a). The conditional uses for the North Beach neighborhood (located north of 65th Street) shall include those listed at section In addition to the conditional uses specified in section 142-303(a), and subject to the conditional use criteria in

~~section 118-192(a), conditional uses in the CD-2 commercial medium intensity district in the North Beach neighborhood (located north of 65th Street), and shall also include the following:~~

- (1) Alcoholic beverage establishments (not also operating as a full restaurant with a full kitchen, serving full meals);
- (2) Dance halls; and
- (3) Entertainment establishments.

~~(d) South Alton Road Corridor corridor. All conditional uses shall comply with the conditional use criteria in section 118-192(a). The conditional uses for the South Alton Road corridor, which includes properties located along Alton Road between 6th and 11th Street, shall include those listed at section 142-303(a), and in addition to the conditional uses specified in section 142-303(a), and subject to the conditional use criteria in section 118-192(a), conditional uses in the CD-2 commercial medium intensity district in the South Alton Road Corridor, which includes properties located along Alton Road between 6th and 11th Street, shall also include the following:~~

- (1) Self storage warehouse, provided the minimum distance separation between self storage warehouses shall be 300 feet and self storage warehouses shall follow the development regulations for "self storage warehouse" in section 142-305 and setback requirements in section 142-307.

~~(e) Alcoholic beverage establishments located in the following geographic areas within the CD-2 commercial, medium intensity district shall be subject to the additional requirements set forth in section 142-310:~~

- (1) Alton Road corridor. ~~on Properties on the west side of Alton Road and east of Alton Court, between 6th Street and 11th Street, and between 14th Street and Collins Canal; and properties on the east side of West Avenue, between Lincoln Road and 17th Street, except alcoholic beverage establishments fronting Lincoln Road between West Avenue and Alton Road, shall be subject to the additional requirements set forth in section 142-310.~~
- (2) Sunset Harbour neighborhood. ~~The geographic area generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south.~~

Sec. 142-304. - Accessory uses.

The accessory uses in the CD-2 commercial, medium intensity district are as required in article IV, division 2 of this chapter; and accessory outdoor bar counters, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m. Alcoholic beverage establishments located in the following geographic areas within the CD-2 commercial, medium intensity district shall be subject to the additional requirements set forth in section 142-310:

(a) Alton Road corridor. ~~on Properties on~~ the west side of Alton Road and east of Alton Court, between 6th Street and 11th Street, and between 14th Street and Collins Canal; and properties on the east side of West Avenue, between Lincoln Road and 17th Street, except alcoholic beverage establishments fronting Lincoln Road between West Avenue and Alton Road, ~~shall be subject to the additional requirements set forth in section 142-310.~~

(b) Sunset Harbour neighborhood. The geographic area generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south.

* * *

Sec. 142-310. Special regulations for alcohol beverage establishments.

(a) Alton Road corridor. The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located on the west side of Alton Road and east of Alton Court, between 6th Street and 11th Street, and between 14th Street and Collins Canal; and properties on the east side of West Avenue, between Lincoln Road and 17th Street, except alcoholic beverage establishments fronting Lincoln Road between West Avenue and Alton Road:

1. Operations shall cease no later than 2:00 a.m.
2. Establishments with sidewalk café permits shall only serve alcoholic beverages at sidewalk cafés during hours when food is served in the restaurant, shall cease sidewalk café operations at 12:00 a.m., and shall not be permitted to have outdoor speakers.
3. Commercial uses on rooftops shall be limited to restaurants only, shall cease operations no later than 11:00 p.m. on weekdays and 12:00 a.m. on weekends, and shall only be permitted to have ambient, background music.
4. Entertainment establishments shall be required to obtain conditional use approval from the planning board, in accordance with the requirements and procedures of chapter 118, article IV. Additionally, if approved as a conditional use, entertainment establishments shall be required to install a double door vestibule at all access points from the sidewalk, with the exception of emergency exits.
5. Outdoor bar counters shall be prohibited.
6. No special event permits shall be issued.

(b) 7. This section (a) above shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that (i) is in application status prior to April 14, 2016; or (ii) issued prior to May 21, 2016; or (iii) to an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired, prior to May 21, 2016. Any increase to the approved hours of operation shall meet the requirements of this section (a).

- (b) Sunset Harbour neighborhood. The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located in the Sunset Harbour neighborhood, which is generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south.
1. Operations shall cease no later than 2:00 a.m., except that outdoor operations (including sidewalk cafe operations) shall cease no later than 12:00 a.m.
 2. Alcoholic beverage establishments may not operate any outside dining areas or accessory bar counters above the ground floor of the building in which they are located; however, outdoor restaurant seating, associated with indoor venues, not exceeding 40 seats, may be permitted above the ground floor until 8:00 p.m.
 3. Except as may be required by any applicable fire prevention code or building code, outdoor speakers shall not be permitted.
 4. Special events shall not be permitted in any alcoholic beverage establishment.
 5. This section (b) shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that was issued prior to August 23, 2016, or to a proposed establishment that has submitted a completed application for an alcoholic beverage establishment to a land use board prior to August 23, 2016, or to an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired, prior to August 23, 2016. Any increase to the approved hours of operation shall meet the requirements of this section.

SECTION 2. Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 11, "I-1 Light Industrial District," is hereby amended as follows:

DIVISION 11. – I-1 LIGHT INDUSTRIAL DISTRICT

* * *

Sec. 142- 482. - Main permitted uses.

The main permitted uses in the I-1 urban light industrial district are those uses that are consistent with the district purpose including the following:

* * *

- (13) Commercial uses that provide support services to the light industrial uses and to the adjacent RM-3 residents, including, but not limited to, retail sales, photocopying, coffee shops, video rentals, banks, restaurants, and alcoholic beverage establishments pursuant to the regulations set forth in Chapter 6, ~~video rental, bank,~~ Alcoholic beverage establishments located in the Sunset Harbour neighborhood, which is generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south, shall be subject to the additional requirements set forth in section 142-488.

Sec. 142-483. - Conditional uses.

The conditional uses in the 1-1 urban light industrial district are any use that includes the retail sale of gasoline; new construction of structures, as defined in section 114-1, of 50,000 square feet and over, which review shall be the first step in the process before the review by any of the other land development boards; recycling receiving stations; ~~outdoor entertainment establishment; neighborhood impact establishment; open air entertainment establishment;~~ and religious institutions with an occupancy greater than 199 persons. Restaurants with alcoholic beverage licenses (alcoholic beverage establishments) located in the Sunset Harbour neighborhood, which is generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south, shall be subject to the additional requirements set forth in section 142-488 and restaurants with alcoholic beverage licenses (alcoholic beverage establishments) with more than 100 seats or an occupancy content (as determined by the fire marshal) in excess of 125, but less than 199 persons, and a floor area in excess of 3,500 square feet, shall be subject to the conditional use procedures in section 118-193.

Sec. 142-484. - Accessory uses.

The accessory uses in the I-1 urban light industrial district are as follows: Those uses customarily associated with the district purpose. (See article IV, division 2 of this chapter). Alcoholic beverage establishments located in the Sunset Harbour neighborhood, which is generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south, shall be subject to the additional requirements set forth in section 142-488.

Sec. 142-485. - Prohibited uses.

The prohibited uses in the I-1 urban light industrial district are accessory outdoor bar counters, bars, dance halls, or entertainment establishments (as defined in section 114-1 of this Code), outdoor entertainment establishments, neighborhood impact establishments, open air entertainment establishments, and residential uses, except as provided for in subsection 142-483(10).

* * *

Sec. 142-488. Special regulations for alcohol beverage establishments.

(a) Sunset Harbour neighborhood. The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located in the Sunset Harbour neighborhood, which is generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south.

1. Operations shall cease no later than 2:00 a.m., except that outdoor operations (including sidewalk cafe operations) shall cease no later than 12:00 a.m.
2. Alcoholic beverage establishments may not operate any outside dining areas or accessory bar counters above the ground floor of the building in which they are located; however, outdoor restaurant seating, associated with indoor venues, not

exceeding 40 seats, may be permitted above the ground floor until 8:00 p.m.

3. Except as may be required by any applicable fire prevention code or building code, outdoor speakers shall not be permitted.
4. Special events shall not be permitted in any alcoholic beverage establishment.
5. This section shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that was issued prior to August 23, 2016, or to a proposed establishment that has submitted a completed application for an alcoholic beverage establishment to a land use board prior to August 23, 2016, or to an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired, prior to August 23, 2016. Any increase to the approved hours of operation shall meet the requirements of this section.

SECTION 3. REPEALER.

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

SECTION 4. CODIFICATION.

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

SECTION 5. SEVERABILITY.

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

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this 19 day of October, 2016.

Attest:




Rafael E. Granado
City Clerk

(Sponsored by Commissioner Michael Greco)



Philip Levine
Mayor

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

8/24/16

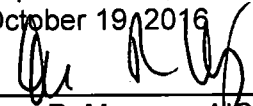
Date

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Underline denotes additions
~~Strike through~~ denotes deletions

First Reading: September 14, 2016

Second Reading: October 19, 2016

Verified By: 
Thomas R. Mooney, ACP
Planning Director

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MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Jimmy L. Morales, City Manager
DATE: October 19, 2016

11:00 a.m. Second Reading Public Hearing

SUBJECT: SUNSET HARBOUR ALCOHOLIC BEVERAGE ESTABLISHMENT REGULATIONS:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," (1) AT DIVISION 5, "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT," SECTION 142-302, "MAIN PERMITTED USES," SECTION 142-303, "CONDITIONAL USES," SECTION 142-304, "ACCESSORY USES," AND SECTION 142-310, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS"; AND (2) AT DIVISION 11, "I-1 LIGHT INDUSTRIAL DISTRICT," SECTION 142-482, "MAIN PERMITTED USES," SECTION 142-483, "CONDITIONAL USES," SECTION 142-484, "ACCESSORY USES," AND SECTION 142-488, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS," TO CLARIFY PROHIBITED ENTERTAINMENT USES, AND AMEND THE HOURS OF OPERATION, LOCATION AND USE RESTRICTIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS IN THE SUNSET HARBOUR NEIGHBORHOOD, GENERALLY BOUNDED BY PURDY AVENUE, 20TH STREET, ALTON ROAD, AND DADE BOULEVARD; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

RECOMMENDATION

The Administration recommends that the City Commission adopt the Ordinance.

ANALYSIS

HISTORY/BACKGROUND

On April 13, 2016, the Mayor and the City Commission referred a discussion regarding future rooftop and deck accessory bar uses in the Sunset Harbour neighborhood to the Land Use and Development Committee (LUDC). The referral was sponsored by Commissioner Michael Grieco (item C4B).

On April 20, 2016, the Land Use Committee continued the item to the May 18, 2016 LUDC meeting. On May 18, 2016, the LUDC discussed the item and directed staff to bring back a draft ordinance on June 15, 2016.

On June 15, 2016, the LUDC discussed the item and recommended that the City Commission

refer the ordinance to the Planning Board, with the following revisions:

1. The roof-top portion of the regulations comport with the requirements in place for the area south of Fifth Street;
2. Outdoor speakers be permitted to play ambient, background music;
3. An exceptions clause to be added to the legislation.

On July 13, 2016, the Mayor and the City Commission referred the item to the Planning Board. The referral was sponsored by Commissioner Michael Grieco (item C4G). The item was referred with the following revisions:

1. The sidewalk cafe hours shall be moved to Chapter 82; specifically Sec 82-388. Additionally, references to Chapter 82 shall be included in the district regulations.
2. Wherever entertainment establishments are listed as a conditional use, they shall be noted in the conditional use sections – not in the “special regulations for alcoholic beverage establishments.” All conditional uses will be listed in one place and can include the double-door vestibule requirement, as applicable, in the conditional use section.

ANALYSIS

Regulations specific to alcoholic beverage establishments in specified neighborhoods exist for the South of Fifth neighborhood and other parts of the City including North Beach, Sunset Harbour and the recently adopted legislation for the west side of Alton Road (ORD 2016-4014). These areas of the City have a mixture of residential developments and destination eating and drinking establishments.

The Sunset Harbour neighborhood is generally bounded by Purdy Avenue, 20th Street, Alton Road and Dade Boulevard, and has existing regulations that require a Conditional Use permit for large restaurants. Additionally, standalone bars, neighborhood impact establishments (NIE's), as well as dance and entertainment establishments are prohibited. Residents of the Sunset Harbour neighborhood have requested changes to the allowable hours of operation and to prohibit above ground alcohol establishments, as well as accessory outdoor bar counters.

As a point of clarification, the proposed regulations would only apply to new establishments or any existing establishment that applied to expand its hours or location for seating. Similar operational regulations exist in the South of Fifth neighborhood and in the Alton Road/West Avenue corridor.

The following is a summary of the proposed changes, as referred by the City Commission on July 13, 2016:

- Establishments serving alcohol shall close no later than 2:00 a.m.
- Outdoor establishment (including sidewalk cafe operations) shall close no later than 12:00 a.m.
- Alcoholic beverage establishments may not operate any outside dining areas or accessory bar counters above the ground floor of the building in which they are located; however, outdoor restaurant seating, associated with indoor venues, not exceeding 40 seats, may be permitted above the ground floor until 8:00 p.m.

- Outdoor speakers shall only be permitted to play ambient, background music.
- Special events shall not be permitted in any alcoholic beverage establishment.
- An applicability section, for any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that was issued prior to August 23, 2016, or an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired, prior to August 23, 2016. However, any increase to the approved hours of operation shall meet the requirements of this section.

Staff also identified inconsistencies in the I-1 conditional and prohibited use sections of the code. In this regard, Section 142-483 lists 'outdoor entertainment establishment', 'open air entertainment establishment' and 'neighborhood impact establishments' as conditional uses in the I-1 district. However, these uses would not be permitted, if proposed, as Section 142-485 lists 'entertainment establishments' as a prohibited use in the I-1 district and large restaurants between 125 and 199 occupants have previously been made a conditional use in Section 142-483. In order to provide consistency, 'outdoor entertainment establishment', 'open air entertainment establishment', and 'neighborhood impact establishments' have been listed in the prohibited uses. The prohibition on NIE's in the Sunset Harbour I-1 district also makes it consistent with the Sunset Harbour CD-2 regulations, Section 142-303 (b).

Since the prohibited uses in a particular zoning district supersede the conditional use section, outdoor entertainment and open air entertainment establishments are not permitted in the I-1 and NIE's are not allowed in the Sunset Harbour portion of the I-1 district. When the prohibition on entertainment establishments was adopted in 2012, the 'conditional use' subsection should have been modified to be consistent. To correct this inconsistency, Section 142-485 is proposed to be revised to clarify that 'outdoor entertainment establishment' 'neighborhood impact establishment' and 'open air entertainment establishment' are prohibited uses.

PLANNING BOARD REVIEW

On August 23, 2016, the Planning Board (by a 6-0 vote) transmitted the proposed ordinance amendment to the City Commission with a favorable recommendation. The Planning Board recommended the following modifications, which have been included in the attached ordinance for First Reading:

1. Except as may be required by any applicable fire prevention code or building code, outdoor speakers shall not be permitted.
2. The applicability section was expanded to include proposed establishments that submitted a completed application for an alcoholic beverage establishment to a land use board prior to August 23, 2016.

In the version of the ordinance referred by the City Commission, outdoor speakers were permitted, but only to play ambient, background music. At the request of neighborhood residents, the Planning Board recommended that outdoor speakers be prohibited.

UPDATE

On September 14, 2016, the City Commission approved the subject ordinance at First Reading. As indicated previously, the Administration has no objections to the modifications proposed by the Planning Board, and they were included in the version of the ordinance approved at First Reading.

CONCLUSION

The Administration recommends that the City Commission adopt the Ordinance.

FINANCIAL INFORMATION

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action. The proposed Ordinance is not expected to have a negative fiscal impact upon the City.

Legislative Tracking

Planning

Sponsor

Vice-Mayor Michael Grieco

ATTACHMENTS:

Description

- Form Approved Ordinance - First Reading