

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: Eric Carpenter, City Manager

DATE: September 11, 2024 10:35 a.m. First Reading Public Hearing

TITLE: ENTERTAINMENT AND SUPPER CLUB REGULATIONS

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 "MIAMI BEACH RESILIENCY CODE," CHAPTER 1, ENTITLED "GENERAL PROVISIONS," ARTICLE II, ENTITLED "DEFINITIONS," SECTION 1.2.2, ENTITLED "USE DEFINITIONS," AT SUBSECTION 1.2.2.4, ENTITLED "COMMERCIAL," BY CREATING A DEFINITION FOR RESTAURANT SUPPER CLUB; AND BY AMENDING CHAPTER 7, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, ENTITLED "DISTRICT REGULATIONS," SECTION 7.2.5, ENTITLED "RM-2 RESIDENTIAL MULTIFAMILY, MEDIUM INTENSITY" AT SUBSECTION 7.2.5.2, ENTITLED "USES (RM-2)," BY PROVIDING THAT ENTERTAINMENT USES SHALL BE SUBJECT TO THE ADDITIONAL REGULATIONS IN SECTION 7.5.5.4; BY AMENDING SECTION 7.2.6, ENTITLED "RM-3 RESIDENTIAL MULTIFAMILY, HIGH INTENSITY," AT SUBSECTION 7.2.6.2, ENTITLED "USES (RM-3)," BY PROVIDING THAT ENTERTAINMENT USES SHALL BE SUBJECT TO THE ADDITIONAL REGULATIONS IN SECTION 7.5.5.4; BY AMENDING SECTION 7.2.11, ENTITLED "CD-2 COMMERCIAL, MEDIUM INTENSITY," AT SUBSECTION 7.2.11.2, ENTITLED "USES (CD-2)," BY PROVIDING THAT ENTERTAINMENT USES SHALL BE SUBJECT TO THE ADDITIONAL REGULATIONS IN SECTION 7.5.5.4, AND BY AMENDING THE SUPPLEMENTAL CONDITIONAL USE REGULATIONS FOR THE DISTRICT; BY AMENDING SECTION 7.2.12, ENTITLED "CD-3 COMMERCIAL, HIGH INTENSITY," AT SUBSECTION 7.1.12.2, ENTITLED "USES (CD-3)," BY AMENDING THE SUPPLEMENTAL MAIN PERMITTED USES TO AMEND THE REQUIREMENTS FOR DANCE HALLS TO PROVIDE THAT ENTERTAINMENT USES SHALL BE SUBJECT TO THE ADDITIONAL REGULATIONS IN SECTION 7.5.5.4; BY AMENDING SECTION 7.2.14, ENTITLED "NORTH BEACH TOWN CENTER-CORE DISTRICT (TC)," AT SUBSECTION 7.2.14.2, ENTITLED "USES (TC-1, TC-2)," BY PROVIDING THAT ENTERTAINMENT USES SHALL BE SUBJECT TO THE ADDITIONAL REGULATIONS IN SECTION 7.5.5.4; BY AMENDING SECTION 7.2.14.6, ENTITLED "TOWN CENTER-CENTRAL CORE (TC-C) DISTRICT," BY AMENDING THE REQUIREMENTS FOR ENTERTAINMENT ESTABLISHMENTS AND BY PROVIDING THAT ENTERTAINMENT USES SHALL BE SUBJECT TO THE ADDITIONAL REGULATIONS IN SECTION 7.5.5.4; BY AMENDING SECTION 7.2.13, ENTITLED "MXE MIXED USE ENTERTAINMENT DISTRICT," AT SUBSECTION 7.2.13.2, ENTITLED "USES (MXE)," BY PROVIDING THAT ENTERTAINMENT USES SHALL BE SUBJECT TO THE ADDITIONAL REGULATIONS IN SECTION 7.5.5.4; AND BY AMENDING ARTICLE V, ENTITLED "SUPPLEMENTARY DISTRICT REGULATIONS," SECTION 7.5.5, ENTITLED "SPECIALIZED USE REGULATIONS," BY AMENDING AND EXPANDING SECTION 7.5.5.4, ENTITLED "ENTERTAINMENT ESTABLISHMENTS," BY REORGANIZING THE SECTION, ESTABLISHING DETAILED REQUIREMENTS FOR EACH ZONING DISTRICT INCLUDING LOCATION, OCCUPATIONAL CONTENT, HOURS OF OPERATION, SPECIFIC REQUIREMENTS FOR

ENTERTAINMENT USES AS MAIN PERMITTED AND ACCESSORY USES, STANDARDS FOR NON-CONFORMING USES, MINIMUM DISTANCE SEPARATION, AND THE DELETION OF SECTION 7.5.5.7, ENTITLED "DANCE HALLS"; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

RECOMMENDATION

The Administration recommends that the Mayor and City Commission ("City Commission") approve the subject ordinance at First Reading and schedule a Second Reading public hearing for October 30, 2024.

BACKGROUND/HISTORY

On April 3, 2024, at the request of Commissioner David Suarez, the City Commission referred two discussion items (C4 C and C4 D) regarding entertainment uses and supper clubs, to the Land Use and Sustainability Committee (LUSC) and the Planning Board. On May 1, 2024, the LUSC discussed and continued both items to the June 10, 2024, LUSC meeting.

Subsequent to the May 1, 2024 LUSC meeting, at the request of the item sponsor, both items were combined into a single ordinance. On June 10, 2024, the LUSC moved the proposed ordinance to the Planning Board with a recommendation to allow stand-alone entertainment establishments within fully enclosed hotels.

At present, entertainment and dance halls (which include nightclubs) are listed as a permitted or conditional use, either as a stand-alone use or as part of a restaurant, in the following zoning districts:

- CD-2 (Except for Sunset Harbor)
- CD-3 (Restaurants only on Lincoln Road)
- MXE
- RM-2 and RM-3 (Accessory Use Only)
- RM-1 (Site Specific – the International Inn in North Beach and the Woman's Club in South Beach)
- TC-1, TC-2 and TC-C (North Beach)

The following areas that are eligible for entertainment and dance halls have a 2:00 a.m. alcohol sale termination time:

- Alton Road from 5th Street to Dade Boulevard.
- 41st Street.

Additionally, entertainment and dance halls are permitted in a venue serving alcohol, in accordance with the following:

- Fully enclosed, indoor venues, including bars, nightclubs and restaurants, are permitted as of right, if the occupational content is less than 200 persons.
- Fully enclosed, indoor venues, including bars, nightclubs and restaurants, require conditional use approval from the Planning Board, if the occupational content exceeds 200 persons.
- Outdoor or open-air venues, regardless of occupational content, require conditional use approval from the Planning Board.

The minimum distance separation between dance halls and entertainment establishments not also operating as restaurants with full kitchens and serving full meals is 300 feet; requests for a distance separation variance are permitted. However, for dance halls and entertainment establishments also operating as a restaurant, there is no distance separation requirement between such uses. Additionally, the Code has the following minimum standards for a restaurant associated with a dance hall or entertainment establishment:

For purposes of this section, "full kitchens" shall mean having commercial grade burners, ovens and refrigeration units of sufficient size and quantity to accommodate the occupancy content of the establishment. Full kitchens must contain grease trap interceptors, and meet all applicable city, county and state codes.

ANALYSIS

The following is a summary of the attached LDR amendment:

Definitions

A definition for a "Restaurant Supper Club" has been added to section 1.2.2.4 as follows:

Restaurant Supper Club means a commercial establishment where food and drinks may be purchased by the public and which conducts the business of serving of food to be consumed on the premises, whose principal business is the preparation, serving, and selling of food, to the customer for consumed [consuming] on the premises. Food shall be continuously ready to be prepared, served, and sold during all business operational hours for a restaurant supper club use. Additionally, the following shall apply:

- a. The establishment shall be licensed as a restaurant and shall obtain all required restaurant licenses from the State and meet all requirements of the health department specific to restaurants.*
- b. The restaurant shall include a full kitchen, including the following minimum equipment requirements:
 - 1. Cook top and oven.*
 - 2. A hood exhaust system along with a fire system connected to the hood.*
 - 3. Dish washing apparatus, including a 3-compartment sink.*
 - 4. A walk-in refrigerator.*
 - 5. Grease trap interceptor (if required).**
- c. The establishment shall have minimum annual food sales of 40%.*

This new definition significantly increases the threshold for what constitutes a supper club restaurant use. Under the current definition of restaurant, it is easy for a venue to provide little more than snacks and bar bites, yet still be considered a restaurant.

Amendments to Applicable Zoning Districts

All districts that currently permit entertainment, in some form, have been modified to be consistent with proposed, comprehensive entertainment regulations in section 7.5.5.4.

Comprehensive Regulations for Entertainment

Section 7.5.5.4 has been significantly revised to include a comprehensive, and clear set of regulations for entertainment uses in all applicable zoning districts. These regulations apply to indoor entertainment establishment, outdoor entertainment establishment, open air entertainment establishment, neighborhood impact establishment, dance hall and after-hours dance hall. The following is a summary of the proposed changes:

RM-1 District:

- Clarifies that entertainment is not permitted in the RM-1 district, with the exception of the

International Inn and Miami Beach Women's Club sites, which have previously approved regulations.

RM-2 District:

- Existing limited areas and sites, including hotels on Washington Avenue between 6th and 7th Streets, Temple Emmanuel, the Collins Park Arts District Overlay and the FAENA District Overlay, retain previously approved regulations.

RM-3 District:

- Outdoor and open-air entertainment, regardless of occupational content, shall continue to require conditional use approval, and shall only be permitted as part of a restaurant supper club that is an accessory to a hotel use.
- Indoor entertainment shall only be permitted as an accessory use to a hotel, if a hotel use is permitted, and only as part of a restaurant supper club or as part of an indoor venue that does not serve alcohol past 2:00 a.m.
- Indoor entertainment may also be permitted in establishments not operating as a restaurant supper club serving alcohol past 2:00 a.m. that (i) are fully enclosed and located entirely within a hotel, if a hotel use is permitted, with 200 or more rooms, and (ii) have no direct access to or from the street and are only accessed from within the confines of the hotel.
- Indoor entertainment, regardless of occupational content, shall require conditional use approval.

CD-2, CD-3, T-CC, TC-1, TC-2 and MXE Districts:

- Outdoor and open-air entertainment, regardless of occupational content, shall continue to require conditional use approval, and shall only be permitted as part of a restaurant supper club.
- Indoor entertainment shall be permitted as part of a restaurant supper club or as part of an indoor venue that does not serve alcohol past 2:00 a.m.
- Except for the TC-C district, indoor entertainment may also be permitted in establishments not operating as a restaurant supper club serving alcohol past 2:00 a.m. that (i) are an accessory use to a hotel, if a hotel use is permitted, (ii) are fully enclosed and located entirely within a hotel with 200 or more rooms, and (iii) have no direct access to or from the street and are only accessed from within the confines of the hotel.
- Indoor entertainment, located within an establishment having an occupational content exceeding 125 persons, shall require conditional use approval.
- Existing limited areas and sites, including Washington Avenue, the Collins Park Arts District Overlay and the Ocean Terrace Overlay, retain previously approved regulations.

CCC and GU districts:

All entertainment continues to be subject to the approval of the City Commission.

Nonconforming Entertainment Establishments:

Provisions pertaining to legally established entertainment venues, including those with an active conditional use permit (CUP), have been included.

Minimum Distance Separation Requirements:

All existing minimum distance separation requirements have been retained and clarified, as follows:

- The minimum distance separation between entertainment establishments, including, but not limited to, outdoor entertainment establishment, open air entertainment establishment, dance hall or after-hours dance hall, which are licensed to sell alcoholic beverages and not also operating as restaurant supper clubs, shall be 300 feet.

- The minimum distance separation between dance halls not licensed to sell alcoholic beverages shall be 300 feet.

Variances:

Variances from any of the requirements of section 7.5.5.4 would now be prohibited.

PLANNING BOARD REVIEW

On July 24, 2024, the Planning Board held a public hearing and transmitted the proposed ordinance to the City Commission with a favorable recommendation (6-0). At the request of an affected property owner, the Planning Board also recommended that the following applicability provision be included:

Any existing business that by July 30, 2024, had a permit process number with the City of Miami Beach, for the expansion of seating or occupancy, shall be exempt from the limitations of enlargement and expansion listed in Section 7.5.5.4 hereof, and shall be permitted to enlarge or expand its occupancy and/or seating capacity consistent with all applicable regulations in place prior to July 30, 2024, as well as the permit application, and retain its legal nonconforming entertainment establishment status. If the permit is abandoned or becomes expired, for any reason, the business shall be subject to all the limitations and regulations enumerated herein.

This applicability provision has not been included in the attached ordinance for First Reading.

SUMMARY

The attached draft ordinance has been updated to clarify that in the RM-3 and applicable commercial districts outdoor and open-air entertainment shall only be permitted as part of a restaurant supper club.

APPLICATION FEE WAIVER

The subject amendment is proposed on a comprehensive, citywide basis, and not on behalf of a private applicant or third party. Pursuant to section 2.4.1.c of the Land Development Regulations of the City Code, amendments to the City Code require the payment of the applicable fees in section 2.2.3.5, 2.2.3.6, and appendix A to the City Code. These fees may be waived by a five-sevenths (5/7ths) vote of the City Commission, based upon one or more of the following circumstances:

1. The City Commission determines that the proposed amendment is necessary due to a change in federal or state law, or to implement best practices in urban planning, or based on circumstances unique to the proposed amendment.
2. Upon the written recommendation of the City Manager acknowledging a documented financial hardship of a property owner(s) or developer(s).
3. If requested, in writing, by a non-profit organization, neighborhood association, or homeowner's association for property owned by any such organization or association, so long as the request demonstrates that a public purpose is achieved by enacting the applicable amendment.

The Administration recommends that the City Commission waive the applicable fees based on circumstances unique to the proposed amendment.

FISCAL IMPACT STATEMENT

No Fiscal Impact Expected

Does this Ordinance require a Business Impact Estimate? Yes
(FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on: 8/14/2024.
See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notice/>

FINANCIAL INFORMATION

N/A

CONCLUSION

The Administration recommends the following:

1. The City Commission approve the subject ordinance at First Reading and schedule a Second Reading public hearing for October 30, 2024.
2. In accordance with section 2.4.1.c.1 of the Land Development Regulations of the City Code, the City Commission waive the applicable fees based on circumstances unique to the proposed amendment.

Applicable Area

Citywide

Is this a “Residents Right to Know” item, pursuant to City Code Section 2-17?

Yes

Is this item related to a G.O. Bond Project?

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

Planning

Sponsor(s)

Commissioner David Suarez

Co-sponsor(s)

Condensed Title

10:35 a.m. 1st Rdg PH, Entertainment and Supper Club Regulations. (Suarez) PL 5/7