

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Member of the City Council

FROM: Interim City Manager Rickelle Williams

DATE: July 24, 2024 2:10 p.m. Second Reading Public Hearing

TITLE: MANDATORY PROGRESS REPORTS FOR CUP
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 2, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE V, ENTITLED "REZONINGS AND DEVELOPMENT APPROVALS," TO ESTABLISH MANDATORY PROGRESS REPORT REQUIREMENTS FOR CONDITIONAL USE PERMITS ISSUED FOR NEIGHBORHOOD IMPACT ESTABLISHMENTS; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

RECOMMENDATION

The Administration recommends that the Mayor and City Commission adopt the ordinance.

BACKGROUND/HISTORY

On December 13, 2023, at the request of Commissioner Alex Fernandez, the City Commission referred a discussion item (C4 P) pertaining to conditional use permit applications for neighborhood impact establishments to the Land Use and Sustainability Committee (LUSC). Commissioner Tanya K. Bhatt is the co-sponsor of the proposal.

On February 26, 2024, the LUSC discussed the item and recommended an amendment to the Land Development Regulations of the City Code (LDRs) be referred to the Planning Board to effectuate the following new requirements for future conditional use permits issued for neighborhood impact establishments:

1. A mandatory progress report shall be required within six (6) months of the issuance of a certificate of use (CU) for the establishment.
2. A yearly progress report shall be required, regardless of whether any violations may have occurred.

On April 3, 2024, at the request of Commissioner Alex Fernandez, the City Commission referred the proposed amendment to the LDRs to the Planning Board to require mandatory progress reports for neighborhood impact establishments (item C4 A).

ANALYSIS

A neighborhood impact establishment (NIE) is defined in the LDR's as follows:

- An alcoholic beverage establishment or restaurant (without entertainment) with an occupant content of 300 or more persons.

- An alcoholic beverage establishment or restaurant (with entertainment) with an occupant content of 200 or more persons.
- An alcoholic beverage establishment or restaurant located on a rooftop within 200 feet of a residential property.

A conditional use permit (CUP), issued by the Planning Board, is required to operate any NIE in the City.

Currently, CUPs are issued in perpetuity and if the use does not cease operations for more than 180 days, the business can continue operating pursuant to the conditions in the approved Planning Board order. Generally, the Planning Board requires progress reports for a CUP, and the most typical requirement is for a progress report to occur 90 days after the business begins operating. If the business operates in accordance with the conditions of the CUP and does not create nuisances for neighbors, the business will likely not be called back to the Planning Board.

The existing process is intended to ensure that NIEs do not negatively impact surrounding residents. When a business does not comply with the conditions of approval, the Code Compliance Department can issue violations. The Planning Department is notified of those violations, and in most instances will issue a cure letter and set a progress report before the Planning Board. If the issue is not corrected, the Planning Board generally schedules a noticed revocation/modification hearing, where the conditions of approval can be modified, or the CUP can be revoked.

The attached draft ordinance includes the following LUSC recommendations for mandatory progress reports:

1. Within 6 months of the issuance of a certificate of use (CU) for an establishment that received a CUP that includes an NIE, the applicant shall provide a progress report to the Board.
2. The applicant shall be required to provide annual progress reports to Board, in perpetuity. In addition to all enforcement provisions herein, the Board reserves the right to schedule a modification / revocation hearing if determined necessary when reviewing any annual progress report.

The Planning Board routinely requires a progress report within 6 months of an establishment approved for an NIE obtaining a CU. The proposed requirement for mandatory progress reports on an annual basis, after an establishment with an approved NIE begins operating, is intended to reinforce the conditions of approval and ensure that the business is abiding by those conditions.

It is anticipated that the number of new CUP approvals will increase in the future, resulting in an increase in the number of mandatory annual progress reports. As such, both staff and the Planning Board will likely need to develop future strategies to manage additional progress reports.

One option for reducing the potential number of future annual progress reports would be to require that all applicants approved for an NIE provide a letter to the Planning Department, on an annual basis, attesting to full compliance with all conditions of their CUP. This would ensure an annual update on all establishments approved for an NIE. If a certified letter is not provided it would be considered a violation of the conditions of the CUP and a progress report would be scheduled. The following is draft text, in **bold double underscore**, for this option, if the City Commission wishes to consider it:

2.5.2.5 Compliance with conditions; revocation or modification

* * *

c. The following mandatory **updates and** progress reports shall apply to any application that includes approval for a Neighborhood Impact Establishment (NIE):

1. Within 6 months of the issuance of a certificate of use (CU) for an establishment that received a CUP that includes an NIE, the applicant shall provide a progress report to the Board.
2. The applicant shall be required to provide **a letter to the Planning Department, on an annual basis, attesting to full compliance with all conditions of the CUP. Failure to provide such letter on an annual basis shall constitute a violation of the CUP and a progress report scheduled** annual progress reports to Board, in perpetuity. In addition to all enforcement provisions herein, the Board reserves the right to schedule a modification / revocation hearing if determined necessary when reviewing any annual progress report.

PLANNING BOARD REVIEW

On May 28, 2024, the Planning Board held a public hearing and transmitted the proposed ordinance to the City Commission with a favorable recommendation (6-0). The Planning Board also recommended that the mandatory requirement for annual progress reports be removed.

UPDATE

The subject ordinance was approved at First Reading on June 26, 2024, with no changes.

FISCAL IMPACT STATEMENT

No Fiscal Impact Expected.

Does this Ordinance require a Business Impact Estimate? No
(FOR ORDINANCES ONLY)

The Business Impact Estimate (BIE) was published on 7/5/2024. See BIE at:
<https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notice/>

FINANCIAL INFORMATION

CONCLUSION

The Administration recommends that the Mayor and City Commission adopt the ordinance.

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 Alex Fernandez

Co-sponsor(s)

Commissioner Tanya K. Bhatt
Commissioner David Suarez