

R5 O MANDATORY PROGRESS REPORT REQUIREMENTS 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.

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Member of the City Council

FROM: Interim City Manager Rickelle Williams

DATE: June 26, 2024 First Reading

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 City Commission approve the subject ordinance at First Reading and schedule a Second Reading public hearing for July 24, 2024.

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.

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 . See BIE at:
<https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

FINANCIAL INFORMATION

CONCLUSION

The Administration recommends that the City Commission approve the subject ordinance at First Reading and schedule a Second Reading public hearing for July 24, 2024.

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

Mandatory Progress Report Requirements for CUP

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 "MIAMI BEACH RESILIENCY CODE," CHAPTER 2, ENTITLED "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE V, ENTITLED "REZONINGS AND DEVELOPMENT APPROVALS," SECTION 2.5.2, ENTITLED "CONDITIONAL USE," 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.

WHEREAS, the Mayor and City Commission desire to amend and enhance the current requirements in the City Code pertaining to Neighborhood Impact Establishments (NIE); and

WHEREAS, NIEs, if not properly regulated, can become a nuisance and negatively impact adjacent residential properties, the impacts of which can be difficult to control; and

WHEREAS, NIEs can negatively impact the character of neighborhoods and quality of life for surrounding residents and businesses; and

WHEREAS, mandatory progress reports for NIEs will promote the general health, safety and welfare of the residents of the City; 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 2 of the Miami Beach Resiliency Code, entitled "General Provisions," Article V, entitled "Rezoning and Development Approvals," is hereby amended as follows:

CHAPTER 2 ADMINISTRATION AND REVIEW PROCEDURES

* * *

ARTICLE V. REZONINGS AND DEVELOPMENT APPROVALS

* * *

2.5.2 Conditional Use.

* * *

2.5.2.5 Compliance with conditions; revocation or modification.

- a. No occupational license, certificate of use, certificate of occupancy, or certificate of completion shall be issued until all conditions of approval have been met. The establishment of a conditional use without complying with the conditions of approval shall constitute a violation of these land development regulations and shall be subject to enforcement procedures as set forth chapter 1, and as provided herein.
- b. Within a reasonable time after a conditional use application or amendment has been approved, the applicant shall record the planning board's action and conditions in the public records of the county. No building permit, certificate of use, certificate of occupancy, certificate of completion or occupational license shall be issued until compliance with this regulation has demonstrated.
- c. The following mandatory 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 be required to provide a progress report to the Board.
 2. The applicant shall be required to provide annual progress reports to the Board each year following the issuance of a CU for the establishment. At the time of a progress report, the Board may schedule a modification / revocation hearing pursuant to the requirements of section 2.5.2.5.
- d. The board may revoke or modify a conditional use approval pursuant to the following procedures:
 1. The planning director shall notify the applicant by certified mail of the failure to comply with the conditions of the approval;
 2. If, after expiration of a 15-day cure period commencing on the date of the notice, the applicant fails to comply with the conditions, or the applicant has exhibited repeated or intermittent noncompliance with the conditions prior to the cure period and the planning director is concerned about further repeated or intermittent noncompliance, the planning director shall advise the board at the next meeting and the board may consider setting a public hearing for the purpose of examining the noncompliance issues;
 3. If the board elects to set a public hearing, the planning director shall place the matter on the board's agenda in a timely manner and all notice requirements imposed for conditional use applications as set forth in subsection 2.2.4.1 shall be applicable, with the addition of notice to the applicant; and
 4. The board shall hold a public hearing to consider the issue of noncompliance and the possible revocation or modification of the approval, and, based on substantial competent evidence, the board may revoke the approval, modify the conditions thereof, or impose additional or supplemental conditions.
- e. In determining whether substantial competent evidence exists to support revocation, modification or the imposition of additional or supplemental conditions to the approval, intermittent noncompliance with the conditions, as well as the frequency, degree and adverse impact of such intermittent noncompliance, may be considered by the board.
- f. In the event the board takes any of the enforcement actions authorized in this subsection, the applicant shall reimburse the Planning Department for all monies expended to satisfy notice requirements and to copy, prepare or distribute materials in anticipation of the public hearing. The applicant shall not be permitted to submit a new application, for related or unrelated matters, nor shall an application be accepted affecting the subject property for related or unrelated matters, for consideration by the

board of adjustment, planning board, design review board, or historic preservation board, until repayment in full of all monies due and payable pursuant to the foregoing sentence.

- g. In addition to all other enforcement actions available to the board, based upon a board finding that the applicant has failed to comply with the conditions of the approval, the board may recommend that the code compliance director (or his successor in interest with respect to the issuance of occupational licenses and certificates of use), in his discretion, revoke or suspend the certificate of use for the subject property or the applicant's occupational license applicable to the business conducted at the subject property.

SECTION 2. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith 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 _____, 2024.

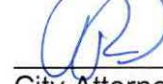
ATTEST:

Steven Meiner, Mayor

Rafael E. Granado, City Clerk

First Reading: June 26, 2024
Second Reading: July 24, 2024

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

 6/17/2024
City Attorney NK Date

Verified by: _____
Thomas R. Mooney, AICP
Planning Director