

Condensed Title:

An Ordinance Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Restricting Or Prohibiting Commercial Rooftop Venues South Of 5th Street.

Key Intended Outcome Supported:

Satisfaction with neighborhood character and quality of life.

Supporting Data (Surveys, Environmental Scan, etc

Satisfaction with neighborhood character and quality of life.

Issue:

Should the City Commission adopt the proposed ordinance restriction or prohibition of rooftop venues south of 5th Street.

Item Summary/Recommendation:

SECOND READING PUBLIC HEARING

The proposed ordinance would prohibit alcoholic beverage establishments, or restaurants, to be licensed as a main permitted or accessory use in any open area above the ground floor (any area that is not included in the FAR calculations) located south of 5th Street, except GU, Government Use properties. The presence of large numbers of patrons at outdoor venues during late hours can cause negative noise impacts on nearby neighbors. Additionally, the proposed ordinance would not allow commercial activity in the areas described between the hours of 8:00 p.m. and 10:00 a.m. Variances from this section of the City Code are not be permitted; and special events would not be permitted as well.

The Administration recommends that the City Commission adopt the proposed ordinance.

Advisory Board Recommendation:

At the April 21, 2009 meeting the Planning Board by a vote of 6-0 (one member absent) recommended adoption of the proposed ordinance.

Financial Information:

Source of Funds:		Amount	Account
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	2		
	3		
	Total		


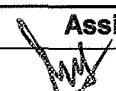

Financial Impact Summary:

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 evaluated the long term economic impact (at least 5 years) of this proposed legislative action and determined that the proposed Ordinance may slightly affect the fees collected via Business Tax Receipt as the ordinance will prohibit the use of any open area above the ground floor (any area that is not included in the FAR calculations) south of 5th Street.

City Clerk's Office Legislative Tracking:

Jorge Gomez or Mercy Lamazares

Sign-Offs:

Department Director	Assistant City Manager	City Manager
		

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MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 9, 2009


Second Reading Public Hearing

SUBJECT: **Commercial Rooftop Venues South of 5th Street**

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II "DISTRICT REGULATIONS," DIVISION 18 "PS PERFORMANCE STANDARD DISTRICT," AMENDING SECTION 142-693 "PERMITTED USES," BY RESTRICTING OR PROHIBITING COMMERCIAL ROOFTOP VENUES SOUTH OF 5TH STREET; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission adopt the proposed ordinance.

BACKGROUND

At the January 28, 2009 meeting, the City Commission referred to the Planning Board for its consideration and recommendation, an ordinance that either bans rooftop venues south of 5th Street, or bans rooftop venues from at least 8 p.m. until 8 a.m.

ANALYSIS

The area south of Fifth Street consists of a number of different residential and commercial zoning districts. Restaurants, bars, and lounges are permitted as stand-alone main permitted uses in all the commercial districts (CPS-1, 2, 3 and 4). They are prohibited in the residential districts (RPS-1, 2, 3, and 4) except with certain limitations as accessory to hotel uses in the RPS-3 and RPS-4 districts.

It should be noted that areas south of 5th Street that are zoned GU, "Government Use," are governed by the development regulations contained in Section 142-425 of the City Code which partially states that in the GU government use district the regulations are the average of the requirements contained in the surrounding zoning districts as determined by the Planning Director, and must be approved by the City Commission. There are several areas south of 5th Street that are zoned GU and currently have licensed alcoholic beverage establishments that could potentially be affected by the proposed ordinance;

i.e. South Pointe Park, where Smith and Wollensky is located. This location is adjacent to R-PS4 and C-PS3. The Marina, facing Government Cut, where Monty's is located is adjacent to C-PS4; and Penrod's on Ocean Drive, is adjacent to R-PS4. The map attached to the last page of this report demonstrates graphically the zoning districts south of 5th Street and which of those are affected, or potentially affected by the proposed ordinance.

The Code defines outdoor food and beverage uses as "outdoor cafés", but makes no regulatory distinction between indoor and outdoor seating areas. Rather, the regulatory focus on outdoor venues has been through the regulation of "accessory outdoor bar counters", which are defined as the actual bar counter at or behind which alcoholic beverages are prepared and/or served. Accessory outdoor bar counters are permitted in the commercial districts south of Fifth Street, but only until midnight, or until 8:00 p.m. if the property is next to a residential unit. They are also permitted in oceanfront hotels with at least 100 hotel units in the R-PS4 district subject to the same limitation on hours of operation. In either case they may not be visible from the right of way. Variances to waive the restrictive hours for outdoor bar counters have in the past been applied for and in some cases approved by the Board of Adjustment.

Regulating only the "bar counter" leaves the problem of outdoor alcoholic beverage establishments that are served from enclosed areas, thereby avoiding the restrictions on outdoor bar counters. It is clear from the pattern of neighborhood complaints that the sheer presence of large numbers of patrons at outdoor venues during late hours can cause negative noise impacts on nearby neighbors, whether or not the actual bar counter is outdoors or enclosed.

A limitation on rooftop outdoor alcoholic beverage establishments south of Fifth Street could help to control the proliferation of unwanted land use conflicts between residents and commercial establishments. This type of regulation could be in the form of outright prohibition, or perhaps on a limitation on hours similar to those currently in place for outdoor bar counters.

LAND USE AND DEVELOPMENT COMMITTEE

The Land Use and Development Committee reviewed the proposed ordinance at its January 12, 2009 meeting and recommended the referral to the Planning Board for its input and recommendation.

PLANNING BOARD ACTION

At the March 24, 2009 meeting the Planning Board continued the proposed ordinance to the April meeting requesting that staff include definitions for rooftop and commercial use. At the April 21, 2009 meeting, the Planning Board recommended for adoption by the City Commission an amended version of the proposed ordinance. A definition for "rooftop" was complicated to articulate during the discussions at the Planning Board hearing. Would it be defined as the unclosed top level of a building? Or could it be defined as the roof deck of the pedestal of a building? In order to avoid confusions, the final decision of the Planning Board members was that no alcoholic beverage establishment, or restaurant, may be licensed as a main permitted or accessory use in any open area above the ground floor (any area that is not included in the FAR calculations) located south of 5th Street, except GU, Government Use properties. This allows residents of a

multifamily (apartment or condominium) building or hotel guests to use these areas, which may include a pool or other recreational amenities, for their individual, personal use. No variances from this section would be permitted. This was approved by a vote of 5-0 (two members absent).

CITY COMMISSION ACTION

At the July 15, 2009 meeting, the City Commission approved the proposed ordinance on first reading with the following amendments:

- Include in section 142-693(h): “....may be licensed or operated as a main permitted, conditional or accessory ...”
- Add language regarding no commercial activity on the rooftop between 8 pm. and 10 am.
- Add language no variances or special events permitted

These amendments have been incorporated in the proposed ordinance.

FISCAL IMPACT

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 evaluated the long term economic impact (at least 5 years) of this proposed legislative action and determined that the proposed Ordinance may slightly affect the potential fees collected via Business Tax Receipt as the ordinance will prohibit the use of any open area above the ground floor (any area that is not included in the FAR calculations) south of 5th Street.

CONCLUSION

The Administration recommends that the City Commission adopt the proposed ordinance.

Pursuant to Section 118-164(2) of the City Code, (2) when the proposed amendment changes the actual list of permitted, conditional or prohibited uses within a zoning category, the City Commission shall hold two advertised public hearings on the proposed ordinance. At least one hearing shall be held after 5:00 p.m. on a weekday. The first public hearing shall be held at least seven days after the day that the first advertisement is published. The second public hearing shall be held at least ten days after the first hearing and shall be advertised at least five days prior to the public hearing.

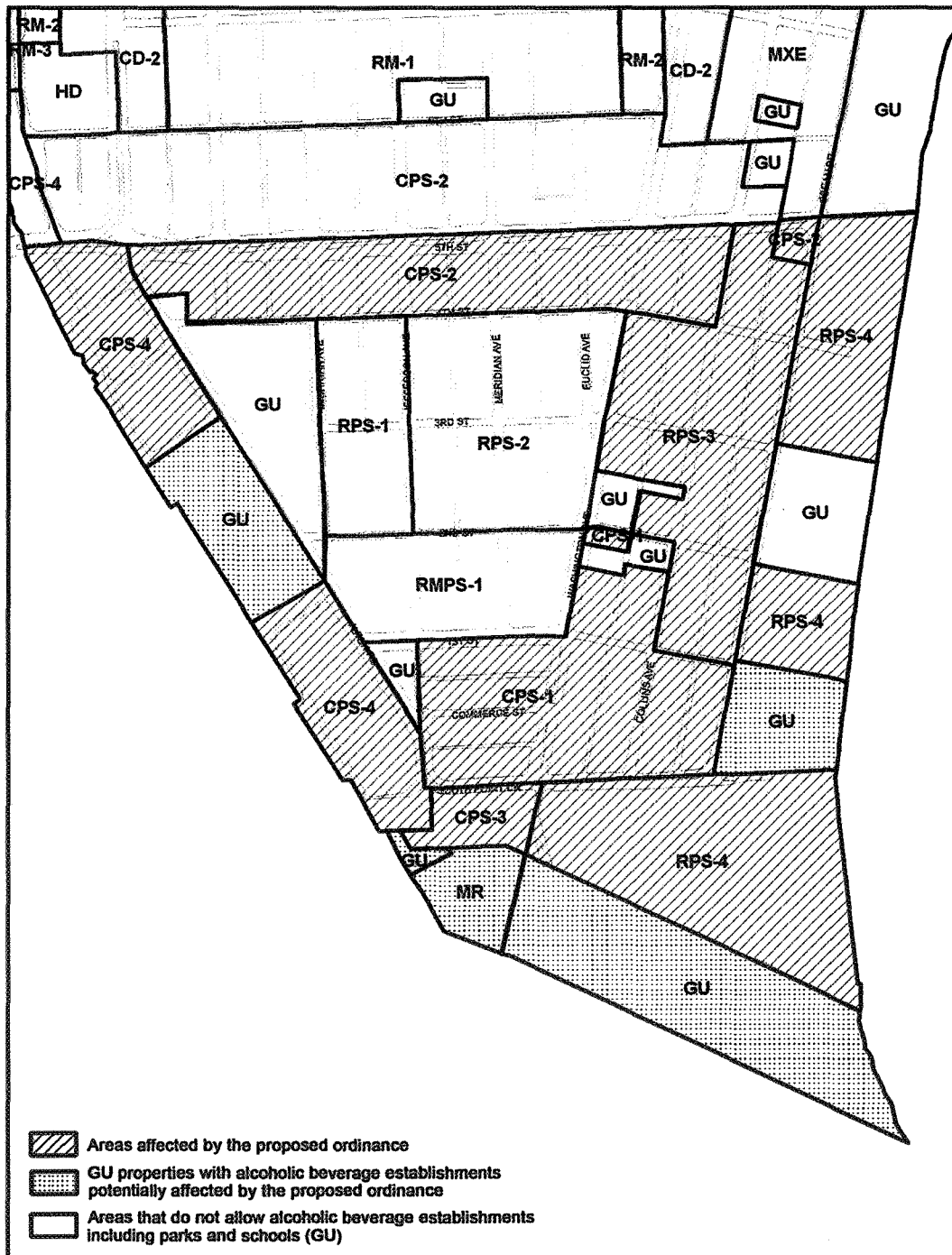
The required advertisements shall be no less than two columns wide by ten inches long in a standard size or tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall be placed in a newspaper of general paid circulation in the city and of general interest and readership in the city, not one of limited subject matter.

Immediately following the public hearing at the second reading, the City Commission may adopt the ordinance. An affirmative vote of five-sevenths of all members of the City Commission shall be necessary in order to enact any amendment to the Land Development Regulations.

JMG/TH/JGG/ML

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Zoning map showing areas affected by the proposed ordinance



ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II "DISTRICT REGULATIONS," DIVISION 18 "PS PERFORMANCE STANDARD DISTRICT," AMENDING SECTION 142-693 "PERMITTED USES," BY RESTRICTING OR PROHIBITING COMMERCIAL ROOFTOP VENUES SOUTH OF 5TH STREET; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach Land Development Regulations contain regulations that permit restaurants and bars as an accessory use to hotels and apartment buildings; and

WHEREAS, the City Commission is concerned about the proliferation of unwanted land use conflicts between residents and commercial establishments in the area south of 5th Street; and

WHEREAS, the noise that emanates from rooftops may be the source of the noise pollution and is one of the major influences in the diminishing quality of life of residents in that area of the City; and

WHEREAS, the residents of the area known as the "PS Performance Standards District," have petitioned the City Commission to take affirmative action in restoring their quality of life; and

WHEREAS, the City Commission finds that this amendment is necessary in order to accomplish the above.

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

SECTION 1.

That Section 142-693, "Permitted Uses," of the Land Development Regulations of the Code of the City of Miami Beach, Florida is hereby amended as follows:

Section 142-693. Permitted uses

(a) The following uses are permitted in the performance standard district:

General Use Category	R-PS 1, 2	R-PS 3, 4	C-PS 1, 2, 3, 4	RM-PS1
Single-family; townhome; apartment; apartment/hotel	P	P	P	P Apartment/hotel not permitted
Hotel	N	P	P	N

General Use Category	R-PS 1, 2	R-PS 3, 4	C-PS 1, 2, 3, 4	RM-PS1
Commercial	N	N	P	P 8% of floor area
Institutional	C	C	C	C 1.25% of floor area
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.	N	However, accessory outdoor bar counters are permitted in oceanfront hotels with at least 100 hotel units in the R-PS4 district*	P*	N
Outdoor entertainment establishments and open air entertainment establishments	N	N	N	N
Neighborhood impact establishments	N	N However, in the R-PS4 district, this use is permitted, as an accessory use in oceanfront hotels with 250 or more hotel units, as a Conditional Use. Access to the establishment shall be only from the interior lobby of the hotel and not from the street.	C	N
Accessory	P*	P*	P*	P*

P--Main permitted use; C--Conditional use; N--Not permitted

* -- Accessory use only

Floor area in the RM-PS1 district refers to total floor area in project. Commercial uses in RM-PS1 limited to stores and restaurants.

- (b) For purposes of this section, a car wash, filling station and any use that sells gasoline, automobiles or automotive or related repair uses are considered as industrial uses and are not permitted in the redevelopment area.
- (c) For purposes of this section, pawnshops and dance halls and entertainment establishments are not permitted as a main permitted or accessory use south of Fifth Street; however, in the C-PS3 and C-PS4 districts dance halls and entertainment establishments shall be permitted as an accessory use within a hotel of 250 rooms or more with access to the dance hall or entertainment establishment only from the interior lobby and not from the street.
- (d) In the R-PS1, 2, 3 and 4 districts, the number of seats for accessory restaurants or bars that serve alcohol shall be limited to a maximum of 1.25 seats per hotel or apartment unit for the entire site. The patron occupant load, as determined by the Planning Director or designee, for all accessory restaurants and bars that serve alcohol on the entire site shall not exceed 1.5 persons per hotel and/or apartment unit. For a hotel or apartment property of twenty (20) units or more, but less than thirty two (32) units, the restaurant or bar may have a maximum of forty (40) seats in the aggregate on the site. The number of units shall be those that result after any renovation.
- (e) Commercial and noncommercial parking lots and garages shall be considered as a conditional use in the R-PS1, 2, 3 and 4 districts.
- (f) Video game arcades shall be considered as a conditional use in the C-PS1, C-PS2, C-PS3, and C-PS4 districts.
- (g) New construction of structures 50,000 square feet and over in the C-PS1, 2, 3, and 4 districts (even when divided by a district boundary line) shall be considered as a conditional use, which review shall be the first step in the process before the review by any of the other land development boards.
- (h) Notwithstanding the uses permitted in (a) and (d) above, no alcoholic beverage establishment, or restaurant, may be licensed as a main permitted or accessory use in any open area above the ground floor (any area that is not included in the FAR calculations) located south of 5th Street, except properties in GU, Government Use, districts; except that residents of a multifamily (apartment or condominium) building or hotel guests may use these areas, which may include a pool or other recreational amenities, for their individual, personal use. No variances from this section shall be permitted.

SECTION 2. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, 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, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 3. REPEALER.

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

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 _____, 2009.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

First Reading:
Second Reading:

David R. [Signature] 6/24/09
City Attorney Date

Verified by: _____
Jorge G. Gomez, AICP, Planning Director

Underscore denotes new language
~~Strikethrough~~ denotes deleted language



MIAMI BEACH

CITY OF MIAMI BEACH NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY given that second readings and public hearings will be held by the Mayor and City Commission, of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, September 9, 2009**, to consider the following:

10:20 a.m.

An Ordinance Amending Chapter 10 Of The Miami Beach City Code Entitled "Animals," By Amending Section 10-10, Entitled "Animals Prohibited In Public Parks And On Beaches" By Providing That The City Commission May Designate Dog Parks In Public Park Areas; Amending Section 10-11, Entitled "Running At Large Prohibited" By Providing That The City Commission May Designate Specific Off-Leash Areas For Dogs In Public Parks.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

11:15 a.m.

An Ordinance Amending Chapter 30, Entitled "Code Enforcement," By Amending Article III Thereof, Entitled "Enforcement Procedure," By Amending Section 30-74, Entitled "Fine," By Amending The Provisions Relating To The Mitigation Of Fines; By Amending Section 30-76, Entitled "Rehearings; Mitigation," By Increasing The Time Period For The Jurisdiction Of The Special Master For The Mitigation Of Fines To Three Years And Providing Criteria Relative To Fine Mitigation.

Inquiries may be directed to the City Manager's Office at (305) 673-7010.

3:00 p.m.

An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Section 2-458 Thereof Entitled "Supplemental Abstention And Disclosure Requirements" By Requiring Public Officers To Disclose Compensation Received By Public Officer And/Or Public Officer's Employer Or Firm Related To Subject Conflicting Relationship, Said Disclosures To Be Made From Three Years Preceding Original Date Of Election/Appointment Of Public Officer.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

3:00 p.m.

An Ordinance Amending In Part Miami Beach City Code Chapter 2, Article VII, Division 5 Entitled "Campaign Finance Reform," Sections 2-487 Through And Including 2-490, By Prohibiting "Vendors" And "Real Estate Developers" From Soliciting Campaign Contributions For Candidates For The Office Of Mayor Or Commissioner, Expanding Upon The Definitions Of "Vendor" And "Real Estate Developer" And Conforming As Housekeeping Matter Certain Language To Existing Text.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

3:00 p.m.

An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 5 Entitled "Campaign Finance Reform," By Adding Thereto Section 2-491 Entitled "Prohibited Lobbying By Campaign Consultants," Prohibiting Campaign Consultants And Certain Affiliated Persons Or Entities From Lobbying City Commission For 12 Months Subsequent To Swearing In Of Subject Elected Official(s), Establishing Definitions, Limited Exemption And Disclosure/Abstention Requirements.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

3:00 p.m.

An Ordinance Amending Miami Beach City Code Chapter 2, Article IV, Division 1, Section 2-194 Thereof Entitled "Removal From Office", By Limiting Grounds For Suspension/Removal To Those "Specified Offenses" Set Forth Within Florida Statute Section 112.3173 (As Amended), And Establishing Procedure Prior To Suspension/Removal.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

3:00 p.m.

An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 2, Section 2-458 Thereof Entitled "Supplemental Abstention And Disclosure Requirements", Establishing Additional Disclosure Requirements For Public Officials Of Any Family Or Business Relationship With Party Who Is Directly Benefitted By Agency Vote.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

3:00 p.m.

An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 2, Section 2-450 Thereof Entitled "Disclosure Of Interest In/Relationship With Business Entity," By Requiring Elected Official's Disclosure Of Certain Business Relationships Established Within 24 Months After Contracting Party's Appearance Before City Commission.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

3:00 p.m.

An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 2 Thereof By Creating Section 2-462 Entitled "Prohibiting Elected Officials From Having Certain Post-Service Contracts With City", Prohibiting Former City Elected Officials From City Employment Or Contracts On Matters In Which City Commission Approval Is Required.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

3:00 p.m.

An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 2 Thereof By Creating Section 2-463 Entitled "Prohibition Of Certain Post-Service/Employment Relationships", Prohibiting Certain Post-Service/Employment Activity Of City Elected Officials And City Employees For A Period Of Two Years After Leaving City Service/Employment.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

3:00 p.m.

An Ordinance Amending In Part Miami Beach City Code Chapter 2, Article VII, Division 5 Thereof Entitled "Campaign Finance Reform," Sections 2-487 "Prohibited Campaign Contributions By Vendors," 2-488 "Prohibited Campaign Contributions By Lobbyists On Procurement Issues," 2-489 "Prohibited Campaign Contributions By Real Estate Developers," And 2-490 "Prohibited Campaign Contributions By Lobbyists On Real Estate Development Issues," By Prohibiting Campaign Contributions From Vendors, Real Estate Developers And Their Respective Lobbyists To Candidate/Incumbent Members Of The City Commission Seeking Any Non-Federal Elected Office.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

5:10 p.m.

An Ordinance Amending The Land Development Regulations Of The Code Of The City Of Miami Beach, By Amending Chapter 142, "Zoning Districts And Regulations," Article II "District Regulations," Division 18 "PS Performance Standard District," Amending Section 142-693 "Permitted Uses," By Restricting Or Prohibiting Commercial Rooftop Venues South Of 5th Street.

Inquiries may be directed to the Planning Department at (305) 673-7550.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at this meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact (305) 604-2489 (voice), (305) 673-7218 (TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Ad #553

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