




# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMITTEE MEMORANDUM

TO: Members of the Land Use and Development Committee

FROM: Jorge M. Gonzalez, City Manager 

DATE: June 21, 2010

SUBJECT: **LAND USE AND DEVELOPMENT COMMITTEE MEETING OF JUNE 21, 2010**

A meeting of the Land Use and Development Committee has been scheduled for June 21, 2010 at 4:00 pm in City Manager's Large Conference Room, 4<sup>th</sup> Floor, City Hall.

### OLD BUSINESS:

1. **DISCUSSION - CONSULTANT REVIEW FEE ORDINANCE ADDITIONAL MODIFICATIONS.**
2. **OUTDOOR ENTERTAINMENT IN SIDEWALK CAFÉ AREAS ON OCEAN DRIVE. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY OF MIAMI BEACH CODE, BY AMENDING CHAPTER 82, PUBLIC PROPERTY, ARTICLE IV, USES IN PUBLIC RIGHTS-OF-WAY, DIVISION 5, SIDEWALK CAFES, SUBDIVISION II, PERMIT, SECTION 82-385, BY PROVIDING MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR ENTERTAINMENT IN SIDEWALK CAFÉ PERMIT AREAS ON OCEAN DRIVE BETWEEN 8TH AND 13TH STREETS, AND BY AMENDING CHAPTER 142, ZONING DISTRICTS AND REGULATIONS, ARTICLE V, SPECIALIZED USE REGULATIONS, DIVISION 6, ENTERTAINMENT ESTABLISHMENTS, SECTION 142-1361, DEFINITIONS, TO AMEND THE DEFINITION OF OUTDOOR ENTERTAINMENT TO INCLUDE SUCH SIDEWALK CAFÉ AREAS ON OCEAN DRIVE, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**



**ITEM  
ONE**



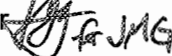


# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMITTEE MEMORANDUM

TO: Members of the Land Use and Development Committee

FROM: Jorge M. Gonzalez, City Manager 

DATE: June 21, 2010

SUBJECT: **DISCUSSION - CONSULTANT REVIEW FEE ORDINANCE  
ADDITIONAL MODIFICATIONS**

### BACKGROUND

During the City Commission adoption of the Consultant Review Fee Ordinance on March 10, 2010, a memo was submitted by Dr. Morris Sunshine, recommending several additional policies. The Commission, as a separate motion, referred to the Land Use and Development Committee and then to Planning Board three of the proposals.

At the April 28, 2010 meeting of the Land Use and Development Committee, the Committee directed staff to begin preparation of a second ordinance, to be brought back to the Committee. Attached is a draft ordinance incorporating those points.

### ANALYSIS

The Consultant Review Fee Ordinance now requires applicants to either have the required technical studies commissioned by the City, or, alternatively, require the applicant to pay for the cost of the City's independent expert review of the applicant's expert study.

The additional points raised to the LUDC are:

1. All expert reports, including those submitted as part of a progress report hearing, shall be in writing;
2. Expert reports shall be submitted to the planning department at least 10-days before the land use board meets to consider that case; and,
3. Authors of technical reports shall appear at hearings at which their technical reports are considered in order to answer questions from the members of the land use board, the city staff, or the public.

Although the Planning Department has found that generally all required expert reports submitted by applicants are in writing, staff has no objection to codifying this requirement. The ordinance is proposed to be amended as follows:

All required studies and/or reports shall be provided to the City in written format, supplemented with digital format when available.

Likewise, codifying a deadline for required reports to be submitted to the City is also simply formalizing the existing policies of the Planning Department and the Land Use Boards. Note that the proposed ordinance contains requirements for both applicant's reports and rebuttal reports. The text is proposed to read as follows:

Reports and/or studies shall be submitted to the City no later than 10 days prior to the public hearing at which they may be considered. Rebuttal reports submitted by opponents' consultants shall be submitted to the City no less than 5 days before the public hearing. Failure to meet these deadlines shall result in the subject report/study being deemed inadmissible for that public hearing, subject to a waiver of this inadmissibility by a 5/7 vote of the land use board.

Finally, the suggestion that was made to codify a requirement that all experts submitting written reports must personally appear before the Board articulates the goal of the Board and Planning Department staff to have professional staff and allied consultants available for testimony during Planning Board public hearings. However, as explained at the previous LUDC meeting, in practical terms this may be difficult to implement at all times, given the possibility of illness, vacation, travel difficulties, etc. In the past, the Boards have used their judgment and common sense to decide whether the proceedings should be postponed based on these circumstances, or, conversely, if the matter is able to be decided despite the physical absence of a staff member or consultant. Therefore the text of the proposed ordinance includes a waiver provision, as follows:

Consultants or experts submitting reports/studies for consideration at public hearings must appear at the public hearing in order to allow for questions from the Board and/or cross-examination. This provision may be waived by a 5/7 vote of the applicable board, authorizing the report/study to be sufficient for the purposes of the subject public hearing.

#### **RECOMMENDATION**

Staff recommends that the proposed ordinance be referred to the Planning Board for review and comment, prior to its being sent to the City Commission.

Planning Department staff also notes that the Consultant Fee Ordinance has only just been in effect for three months, and that implementation of the ordinance has been somewhat challenging. Staff would propose to review the details of implementation while bringing this proposed amendment through the Planning Board review process, and if deemed necessary, may propose additional policies and modifications to address such areas.

RGL  
JMG/JGG/RGL

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, BY AMENDING CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE 1, "IN GENERAL," SECTION 118-6, "USE OF, AND COST RECOVERY FOR, CONSULTANTS FOR APPLICATIONS FOR DEVELOPMENT APPROVAL," BY SPECIFYING REQUIREMENTS FOR REPORTS TO BE IN WRITING, TO BE SUBMITTED BY A SPECIFIED DEADLINE, AND FOR THE AUTHOR OF SAID REPORTS TO BE PRESENT AT PUBLIC HEARING; PROVIDING FOR REPEALER; CODIFICATION; SEVERABILITY; AND AN EFFECTIVE DATE.**

**WHEREAS**, the City Commission adopted the Consultant Fee Ordinance at its meeting of March 10, 2010; and,

**WHEREAS**, additional points have been raised regarding requirements for expert reports to be in writing, to be submitted by specified deadlines, and for the authors of such reports to be present at public hearings; and

**WHEREAS**, the Land Use and Development Committee considered this matter at its meeting of April 28, 2010, and requested that an ordinance be drafted to address these points;

**NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE MAYOR AND MEMBERS OF THE COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:**

**SECTION ONE.** Chapter 118 of the Land Development Regulations, Part II, of the Code of the City of Miami Beach, Section 118-6 is hereby amended as follows:

**Sec. 118-6. USE OF, AND COST RECOVERY FOR, CONSULTANTS FOR APPLICATIONS FOR DEVELOPMENT APPROVAL.**

(a) *Purpose and Summary.* The City Commission declares that new procedures are required to provide for preparation and review of traffic and other technical studies and/or reports to restore and instill confidence in the development approval process. Further, such new procedures are necessary to confirm that adverse effects of development are adequately evaluated for property owners, citizens, residents and taxpayers in the City of Miami Beach. The new procedures will provide for the creation and maintenance of an approved list of qualified consultants to provide impartial expertise for preparation and/or review of studies and reports required for assessment of impacts of applications for development approval, upon which applicants for development approval, affected citizens, and the City can rely.

(b) *Consultant list.* The City's Procurement Division shall maintain a list of approved consultants of various specialties available to prepare and/or review studies and reports required for applications for development approval.

(c) For purposes of this Section, "*Application for development approval*" shall mean any application for approval by a City land use board (Planning Board, Board of Adjustment, Historic Preservation Board, Design Review Board).

(d) *Requirements for selection of a City consultant and procedures for payment.* Prior to the applicant submitting an application for development approval, the applicant shall meet with City staff to determine the types of studies and/or reports required for the proposed project, as well as the methodology to be followed as part of the production of the study.

(i) When an applicant is required to submit, as part of an application for development approval, a traffic or any other technical study and/or report, the applicant may elect either:

A. to authorize the City to commission the study/report, to be prepared by a City-approved consultant, selected by City staff from the approved list maintained by the Procurement Division; or,

B. to prepare a required study/report using its own consultant.

(ii) If an applicant elects to prepare a required study/report using its own consultant, then the City shall review the study/report, and shall retain a consultant from the City's approved list having the necessary expertise to perform such review. The applicant shall be responsible for all costs associated with the City's consultant review, and shall pay for the costs associated with the City's consultant review prior to proceeding to approval of the application by the applicable land use board.

However, if the applicant elects to authorize the City to commission the study/report, to be prepared by a City-approved consultant, selected by City staff from the approved list maintained by the Procurement Division, then the applicant shall only be responsible for the costs associated with the consultant's preparation of the study/report; no additional consultant review fees shall be required.

(iii) If an applicant elects to authorize the City to retain a consultant from the City's approved list for the preparation of a required study and/or report, then the procedure shall be as follows:

A. City staff shall select a qualified consultant from the City's approved list (i.e. with the required knowledge, skill and/or expertise required for the particular study/report).

B. City staff shall obtain a quote from the selected consultant for the particular study/report and shall transmit same to applicant.

C. The quote shall be based on fair market value and include a "not to exceed" amount that is inclusive of all charges and fees, as required to prepare and complete the work.



- D. If applicant accepts the quote and elects to proceed with the work using the City's consultant then, prior to commencement of any work by the selected consultant, City staff shall require the applicant to deposit with the City an amount equal to the "not to exceed" amount of the quoted cost.
  - E. The City shall earn no additional fee as a result of applicant's use of the approved consultant.
  - F. Notwithstanding anything in this Section, the applicant shall be solely responsible for all costs and fees associated with the consultant's preparation of the required study/report (including, without limitation, the consultant's fee).
- (iv) If an applicant elects to prepare a required study/report using its own consultant, then the City shall retain a consultant from the City's approved list having the necessary expertise and time to review the study/report.
  - (v) The procedures for selection of, and payment for, a City consultant retained under subsection (iv) above shall be the same as those for selection/payment of a City consultant by an applicant, as set forth in subsection (d)(iii)(A)-(F), with the applicant being solely responsible for payment of any and all costs and fees associated with the City consultant's review (of applicant's study/report).
- e. In no event shall the City be held liable, whether to applicants and/or third parties, for any work and/or services rendered by any consultant on the City's approved list, and/or otherwise in connection with a consultant's preparation or review of any study and/or report contemplated herein.

f. *Expert Reports and Appearances*

- i. All required consultant or expert studies and/or reports shall be provided to the City in written form, supplemented with digital format when available.
- ii. Applicant's reports and/or studies shall be submitted to the City no later than 10 days prior to the public hearing at which they are to be considered. Rebuttal reports submitted by opponents' consultants shall be submitted to the City no less than 5 days before the public hearing. Failure to meet these deadlines shall result in the subject report/study being deemed inadmissible for that public hearing, subject to a waiver of this inadmissibility by a 5/7 vote of the land use board.
- iii. Consultants or experts submitting reports/studies for consideration at public hearings must appear at the public hearing in order to allow for questions from the Board and/or cross-examination. This provision may be waived by a 5/7 vote of the applicable board, authorizing the report/study to be sufficient for the purposes of the subject public hearing.

**SECTION TWO. REPEALER.**

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

**SECTION THREE. 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 FOUR. SEVERABILITY.**

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

**SECTION FIVE. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2010.

**ATTEST:**

\_\_\_\_\_  
**MAYOR**

\_\_\_\_\_  
**CITY CLERK**

First Reading:  
Second Reading:

**APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION**

Verified by:

\_\_\_\_\_  
Acting Planning Director

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

**I  
T  
E  
M  
  
T  
W  
O**






# MIAMIBEACH

## COMMITTEE MEMORANDUM

TO: Land Use and Development Committee

FROM: Jorge M. Gonzalez, City Manager 

DATE: June 21, 2010

SUBJECT: Ordinance – Entertainment in Sidewalk Café Areas on Ocean Dr.

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH CODE, BY AMENDING CHAPTER 82, PUBLIC PROPERTY, ARTICLE IV, USES IN PUBLIC RIGHTS-OF-WAY, DIVISION 5, SIDEWALK CAFES, SUBDIVISION II, PERMIT, SECTION 82-385, BY PROVIDING MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR ENTERTAINMENT IN SIDEWALK CAFÉ PERMIT AREAS ON OCEAN DRIVE BETWEEN 8<sup>TH</sup> AND 13<sup>TH</sup> STREETS, AND BY AMENDING CHAPTER 142, ZONING DISTRICTS AND REGULATIONS, ARTICLE V, SPECIALIZED USE REGULATIONS, DIVISION 6, ENTERTAINMENT ESTABLISHMENTS, SECTION 142-1361, DEFINITIONS, TO AMEND THE DEFINITION OF OUTDOOR ENTERTAINMENT TO INCLUDE SUCH SIDEWALK CAFÉ AREAS ON OCEAN DRIVE, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

### BACKGROUND

This matter dates back for over one year, and has been discussed several times by the Land Use and Development Committee and the Planning Board. Discussions have centered upon the appropriate boundaries of the permitted entertainment contemplated in the ordinance, either limiting the proposed entertainment to existing uses in the 1200 block of Ocean Drive, or expanding the proposed area from 8<sup>th</sup> Street to 13<sup>th</sup> Street. Although limiting the ordinance to only one block was seen as a way to minimize any potential negative impacts of permitting entertainment in sidewalk café areas on Ocean Drive, both the City Attorney's Office and the Administration had serious concerns over proposed legislation that could be deemed "site specific" to include only one existing establishment.

The Land Use and Development Committee of the City Commission again reviewed this issue on February 25, 2010, and determined that the concept of expanding the proposed area from 8<sup>th</sup> Street to 13<sup>th</sup> Street was the preferred policy option. The matter was referred to the Planning Board with this direction. On April 27, 2010, the Planning Board heard the matter and reviewed both versions of the proposed ordinance. The Board voted unanimously (6-0; Fryd absent) to recommend that the City Commission not adopt the ordinance, citing concerns of noise and the potential for disruption of pedestrian traffic along the sidewalk. At this time, the item is before the Land Use and Development Committee prior to its being sent to the full Commission.

Note also that since the last Land Use and Development meeting, the primary venue currently engaged in the subject activity, The Palace, at 1200 Ocean Drive, has continued to have

periodic problems with regard to noise and compliance with the previously approved Conditional Use conditions. Currently there remain three open violations for these issues.

### **ANALYSIS**

Currently Section 82-385 of the City Code, "Minimum Standards, Criteria, and Conditions for Operation of Sidewalk Cafes," does not permit live entertainment or speakers placed on the permit areas of sidewalk cafes. The proposed ordinance would allow outdoor entertainment only on Ocean Drive between 8<sup>th</sup> and 13<sup>th</sup> Street subject to Conditional Use approval by the Planning Board and subject to the following criteria:

1. must first be licensed as and operating an outdoor entertainment establishment;
2. only one sidewalk café per block shall be permitted to have live entertainment in the sidewalk area;
3. no amplification shall be allowed in the sidewalk area;
4. the performers must be employees or independent contractors of the permittee;
5. showtimes shall be periodic, not continuous, Thursday through Sunday evenings only;
6. the permittee shall be responsible for maintaining crowd control to allow a clear sidewalk path, such that passersby are not required to enter into the street to pass by the establishment; and
7. the performers may not solicit but may accept tips.
8. No variances shall be granted from the requirements of this subsection.

### **RECOMMENDATION**

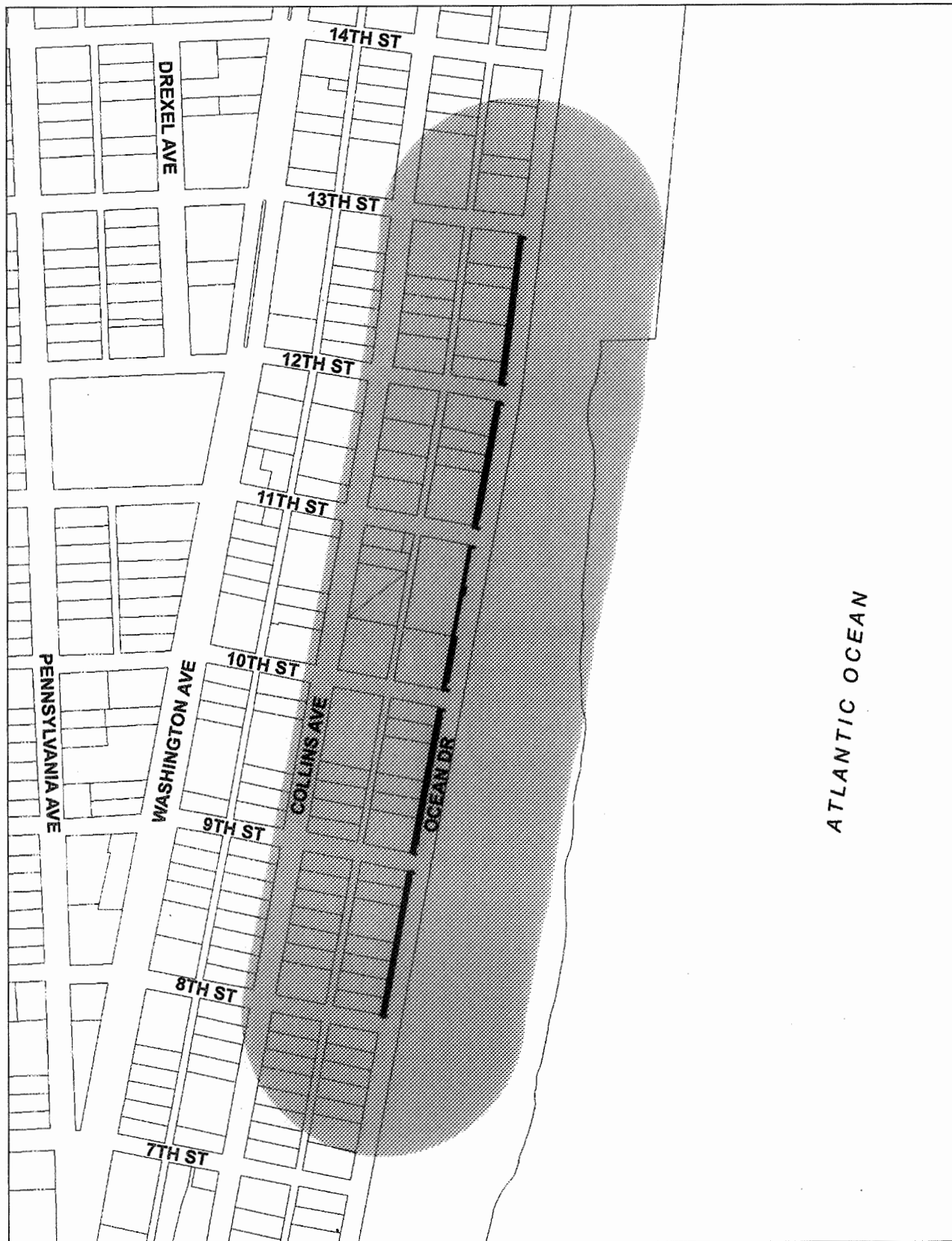
In view of the above analysis, the Administration recommends that the Land Use and Development Committee address the concerns expressed above, and then, if desired, send the ordinance on to the full Commission for first reading.

JMG/JGG/RGL <sup>RGL</sup>

attachments

c: Jorge G. Gomez, Assistant City Manager  
Raul Aguila, City Attorney's Office  
Gary Held, City Attorney's Office  
Richard G. Lorber, Acting Planning Director

# Proposed Outdoor Entertainment on Sidewalk Café Permit Areas on Ocean Drive and Properties Within a 375 Foot Radius



**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 CODE, BY AMENDING CHAPTER 82, PUBLIC PROPERTY, ARTICLE IV, USES IN PUBLIC RIGHTS-OF-WAY, DIVISION 5, SIDEWALK CAFES, SUBDIVISION II, PERMIT, SECTION 82-385, BY PROVIDING MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR ENTERTAINMENT IN SIDEWALK CAFÉ PERMIT AREAS ON OCEAN DRIVE BETWEEN 8<sup>TH</sup> AND 13<sup>TH</sup> STREETS, AND BY AMENDING CHAPTER 142, ZONING DISTRICTS AND REGULATIONS, ARTICLE V, SPECIALIZED USE REGULATIONS, DIVISION 6, ENTERTAINMENT ESTABLISHMENTS, SECTION 142-1361, DEFINITIONS, TO AMEND THE DEFINITION OF OUTDOOR ENTERTAINMENT TO INCLUDE SUCH SIDEWALK CAFÉ AREAS ON OCEAN DRIVE, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the Land Development Regulations allow for outdoor entertainment as conditional uses in certain zoning districts; and

**WHEREAS**, conditional uses are defined as uses that would not be appropriate generally or without restriction throughout a particular zoning district, but would be appropriate if controlled as to number, area, location, or relation to the neighborhood; and

**WHEREAS**, it has recently come to the attention of the City Commission that certain outdoor entertainment venues on Ocean Drive have become part of the fabric of that area's night life; and

**WHEREAS**, it has been determined that in order for such venues to continue amendments to the City Code are required; and

**WHEREAS**, these amendments provide for Planning Board approval as conditional uses limited outdoor entertainment uses on Ocean Drive between 8<sup>th</sup> and 13<sup>th</sup> Streets, with mandatory minimum standards, and such other appropriate conditions as the Planning Board determines necessary to impose through the conditional use process, as appropriate for the public health, safety and welfare.

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

**SECTION 1.** That Miami Beach City Code, Chapter 82, Public Property, Article IV, Uses in Public Rights-of-Way, Division 5, Sidewalk Cafes, Subdivision II, Permit,



Section 82-385, Minimum standards, criteria, and conditions for operation of sidewalk cafes, is hereby amended as follows:

**Sec. 82-385. Minimum standards, criteria, and conditions for operation of sidewalk cafes.**

\* \* \* \* \*

(n) There shall be no live entertainment or speakers placed in the permit area unless expressly permitted as a special event or if located on the west side of Ocean Drive between 8<sup>th</sup> and 13<sup>th</sup> Streets and the permittee operates an outdoor entertainment establishment approved as a conditional use by the Planning Board. As to special events, c c onditions such as hours and days of operation and audio levels will be regulated by the city's special events office, and these may vary during the year. As to outdoor entertainment establishments, in addition to such conditions as may be imposed by Planning Board, the following minimum standards shall apply:

(1) only one sidewalk café per block shall be permitted to have live entertainment;

(2) no amplification shall be allowed in the sidewalk area;

(3) the performers must be employees or independent contractors of the permittee;

(4) showtimes shall be periodic, not continuous, Thursday through Sunday evenings only;

(5) the permittee shall be responsible for maintaining crowd control to allow a clear sidewalk path, such that passersby are not required to enter into the street to pass by the establishment; and

(6) the performers may not solicit but may accept tips.

(7) No variances shall be granted from the requirements of this subsection.

**SECTION 2.** That Miami Beach City Code, Chapter 142, Zoning Districts and Regulations, Article V, Specialized Use Regulations, Division 6, Entertainment Establishments, Section 142-1361, Definitions, is hereby amended as follows:

**Sec. 142-1361. Definitions.**

For the purpose of this division, the following terms, phrases and words shall have the meaning given in this section:

\* \* \*

*Outdoor entertainment establishment* means a commercial establishment which provides outdoor entertainment as defined in this section, including in sidewalk café permit areas on Ocean Drive between 8<sup>th</sup> and 13<sup>th</sup> Streets as provided by section 82-385(n), subject to Planning Board review and approval.

**SECTION 3. REPEALER.**

All ordinances or parts of ordinances and all sections 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 renumbered or relettered 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 \_\_\_\_\_ day of \_\_\_\_\_ 2010.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM  
AND LANGUAGE & FOR EXECUTION

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date



