



# 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: Kathie G. Brooks, Interim City Manager  
Jose Smith, City Attorney

DATE: February 6, 2013

SUBJECT: **Request for referral of an amendment to the Land Development Regulations to regulate religious institutions in multi-family residential, commercial and industrial districts in the same manner as other assembly uses with similar occupancy.**

### RECOMMENDATION

The City Manager and City Attorney recommend that the City Commission approve the referral of an ordinance, first to the Land Use and Development Committee, and thereafter to the Planning Board, amending the Land Development Regulations to regulate religious institutions in the same manner as other permitted or accessory uses, such as restaurants, clubs or dining rooms. Presently, religious institutions, where permitted, are only allowed as a conditional use, if approved after a public hearing. The amendment would regulate religious institutions like similar assembly uses, where permitted in multifamily, commercial and industrial zoning districts, without a public hearing. Such equal treatment is required by federal law.

### BACKGROUND

The federal Religious Land Use and Institutionalized Persons Act (RLUIPA), among other things, requires the equal treatment of religious uses with other similar uses. Specifically, section 42 USC 2000 (b)(1); the Equal Terms provision states: "No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution."

A review of the City Code reveals that while entertainment uses of 200 or more occupancy require conditional use approval, such uses below that occupancy do not. Section 142-1361 defines a Neighborhood Impact Establishment as: "An alcoholic beverage establishment or restaurant, which is also operating as an entertainment establishment or dance hall (as defined in section 114-1), with an occupant content of 200 or more persons as determined by the chief fire marshal."

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That section also defines "Entertainment" as "any live show or live performance or music amplified or nonamplified. Exceptions: Indoor movie theater; big screen television and/or background music, amplified or nonamplified, played at a volume that does not interfere with normal conversation."

Further, the Code permits certain assembly uses as accessory uses in multifamily zoning districts, such as dining rooms limited to the residents of a building. The Code should be amended to provide equal treatment for such accessory uses as well.

It is reasonable to interpret RLUIPA to require the Code to treat religious institutions equally with these entertainment uses. The amendment would allow religious institutions up to 199 person occupancy to be permitted as of right in zoning districts that also allow other assembly uses such as restaurants and entertainment establishments up to that occupancy that are also permitted as of right.

#### **CONCLUSION**

The City Manager and City Attorney recommend that the City Commission approve the requested referral to the Land Use and Development Committee and thereafter to the Planning Board for the amendment as proposed above.



KGB/JS/RGL/GH

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