

Condensed Title:

1. An Ordinance Amending Chapter 50, Entitled "Fire Prevention And Protection", by Amending Section 50-4, Entitled "Enforcement By Fire Inspectors; Notice Of Violation To Add And Increase Fines Related To Fire Code Violations; By Amending Section 50-5 Thereof, Entitled "Annual Fire Prevention And Fire Safety Inspection Permit" To Include The Night Inspection Fee Previously Adopted Under Section 102.379 Of The City Code.
2. An Ordinance Amending Chapter 102, Entitled "Taxation", By Deleting Nightclub Fee in Section 102.379, Entitled "Schedule of taxes, effective October 1, 2009".

Key Intended Outcome Supported:

Ensure Compliance with code within reasonable time frame.
 Ensure safety and appearance of building structures and sites

Supporting Data (Surveys, Environmental Scan, etc.): Environmental Scan 2001-2011: The number of night inspections and overcrowding citations has decreased over the 10-year period due to changes made in the program; however, the average over the last five years is over 3,000 inspections. The number of inspection of existing buildings has decreased substantially over the 10-year period due to a reduction in staffing. The proposed fines will assist in obtaining compliance with the limited resources. The 2012 CMB Community Satisfaction Survey showed positive results with the fire inspections services. Some of the ratings are as follows: 89% of businesses surveyed said that they were very satisfied or satisfied with the fire inspections; 93% said that inspections were helpful in improving safety; 88% said that they agree that it was easy to get service for staff; and 93% said that they strongly agree or agree that staff was courteous and professional.

Item Summary/Recommendation:

SECOND READING

The ordinance proposes to increase the current fines for nightclub overcrowding conditions and establish new fines for other fire code violations. The current fine of \$200 for the first offense and \$500 for subsequent offenses established in 1997 are not providing enough incentive for code compliance among some establishments. The Fire Department presented the increased fines to the Night Life Industry Task Force during a public noticed meeting on February 25, 2013. The members present made some changes to the proposed fines, which have been incorporated into the ordinance. In addition, a new fine schedule is established for violations that need to be corrected immediately in lieu of proceeding with the Special Master process.

The City Code, Section 102, establishes a fee of \$3.00 per person charged to the dance hall entertainment establishments. The nightclub fee collected from 10/1/2011 to 9/30/2012 was a total of \$60,916.29. The current cost for nightclub inspections per year is roughly \$110,000. The Administration proposes increasing this fee to \$4.00 per person, which would generate \$81,221, using the same number of establishments in the last fiscal year. The remaining cost can be recovered with the increased fines proposed. **Ordinances approved on First Reading on September 11, 2013.**

Advisory Board Recommendation:

Neighborhood/Community Affairs Committee discussed this item on April 29, 2013. The Committee unanimously moved the recommendation by the Fire Department.

Financial Information:

Source of Funds	Amount	Account
1		
2		
Total		

Financial Impact Summary: The proposed new inspection fee and proposed fines would be able to cover 85% of the cost and the remainder would be supported by the general fund.

City Clerk's Office Legislative Tracking:

Javier Otero, Fire Chief

Sign-Offs:

Department Director	Assistant City Manager	City Manager
		

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MIAMIBEACH

AGENDA ITEM RSA
 DATE 9-30-13



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: Jimmy L. Morales, City Manager

DATE: September 30, 2013

SECOND READING

SUBJECT: **AMEND CHAPTER 50 AND CHAPTER 102**

1. **AN ORDINANCE AMENDING CHAPTER 50 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "FIRE PREVENTION AND PROTECTION," BY AMENDING SECTION 50-4 THEREOF, ENTITLED "ENFORCEMENT BY FIRE INSPECTORS; NOTICE OF VIOLATION," TO ADD CITATIONS AND IMPLEMENT NEW FINE SCHEDULE RELATED TO FIRE CODE VIOLATIONS; BY AMENDING SECTION 50-5 THEREOF, ENTITLED "ANNUAL FIRE PREVENTION AND FIRE SAFETY INSPECTION PERMIT" TO INCLUDE THE NIGHT INSPECTION FEE PREVIOUSLY ADOPTED UNDER SECTION 102.379 OF THE CITY CODE; PROVIDING FOR A REPEALER, SEVERABILITY, EFFECTIVE DATE, AND CODIFICATION.**
2. **AN ORDINANCE AMENDING CHAPTER 102 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "TAXATION," BY DELETING THE NIGHTCLUB FEE SET FORTH IN SECTION 102.379, ENTITLED "SCHEDULE OF TAXES, EFFECTIVE OCTOBER 1, 2009"; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE**

ADMINISTRATION RECOMMENDATION

The Administration recommends approving the both ordinances on second reading setting fine schedule for FY13/14.

KEY INTENDED OUTCOME SUPPORTED

Ensure Compliance with code within reasonable time frame.
Ensure safety and appearance of building structures and sites.

BACKGROUND

There are over 120 nightclubs and bar/lounges operating in the City of Miami Beach. In addition, there are hundreds more assembly occupancies such as restaurants, ballrooms, meeting rooms, performance halls, etc. The Florida Fire Prevention Code (FFPC), The Life Safety Code (NFPA 101), and the Miami Beach Code have specific requirements for the maximum number of occupants permitted in assembly occupancy as well as many other safety regulations. The requirements are mandated to prevent

fires and to ensure that occupants can evacuate safely in the event of an emergency.

The Fire Department continues to implement the Night Inspection Program since it started in the early 1990's. The night inspectors conduct random inspections of all the nightclubs and selected bar/lounges and restaurants. The main objective for the night inspections is to monitor that the establishment is not exceeding the maximum occupant load and exits are clear and accessible. The inspectors will issue a citation for these violations. The current fines are \$200.00 for the first offense and \$500.00 for the second and subsequent offenses. The current fines have not been increased since initial adoption in 1997.

The Administration proposes to increase the current fines to encourage compliance and promote safety among the City's entertainment industry. Ten years ago, the United States experienced one of the worst nightclub fires in recent history when over 100 people were killed in a Rhode Island nightclub fire. More recently, over 200 people were killed in a nightclub fire in Brazil.

The City of Miami Beach Fire Prevention Division enforces the Florida Fire Prevention Code-2007 as adopted by the State of Florida. The Florida Fire Prevention Code consists of NFPA 1 and NFPA 101, *The Life Safety Code*, and numerous other NFPA codes and standards.

The nightclub owner is responsible for complying with all the requirements as stated in the Florida Fire Prevention Code. Many of the deadly fires in recent history resulted due to one or several violations to fire code requirements. Please see list of fires below.

United States:

Rhythm Dance Hall, Natchez, MS	April 23, 1940	207 dead
Cocoanut Nightclub, Boston, MA	November 28, 1942	494 dead
Beverly Hills Supper Club, KY	May 28, 1977	165 dead
Happy Land Social Club, Bronx, NY	March 25, 1990	87 dead
The Station Nightclub, Warwick, RI	February 20, 2003	100 dead

Other countries:

Club Cinq, France	November 20, 1971	143 dead
Alcaha 20 Disco, Spain	December 17, 1983	81 dead
Weierkang Club, Taiwan	February 15, 1995	64 dead
Ozone Disco Club, Phillipines	March 18, 1996	160 dead
Disco Dance Hall, Sweden	October 28, 1998	63 dead
Disco Dance Hall, China	December 25, 2000	309 dead
Cromagnon Club, Argentina	December 30, 2004	194 dead
Santika Pub, Thailand	January 1, 2009	66 dead
Lame Horse Nightclub, Russia	December 4, 2009	154 dead
Kiss Club, Santa Maria, Brazil	January 28, 2013	239 dead

In addition, there were 21 deaths when patrons rushed to one exit after a fight broke out inside the E2 nightclub in Chicago on February 17, 2003. The club was overcrowded and had several code violations.

The nightclub owners and managers are responsible for fire safety in the establishment. In the Station fire above, the band manager pled guilty to 100 counts of involuntary manslaughter under a plea bargain with prosecutors facing up to 10 years in prison. Superior Court Judge sentenced him to 15 years in prison, with four to serve and 11 years suspended, plus three years probation, for his role in setting off the fire. The nightclub owners changed their pleas from "not guilty" to "no contest". One of the

owners was sentenced to 15 years in prison, with four to serve and 11 years suspended, plus three years probation. The second nightclub owner received a 10-year suspended sentence, three years probation, and 500 hours of community service.

As of August 2008, nearly \$175 million has been offered to the families of the victims of the fire by various defendants in settlement.

An assembly occupancy is generally defined as an occupancy used for a gathering of 50 or more persons for deliberation, entertainment, eating, drinking, amusement or similar uses. Assembly occupancies might include the following: auditoriums, theatres, assembly halls, nightclubs, dance halls, drinking establishments, and exhibition halls among others.

Fire in assembly occupancies have shown to be some of the most deadly when the proper features, systems, and construction materials are not present. Nightclubs, theaters and auditoriums differ from office buildings, for example, because they contain a large number of people in one main space. NFPA code provisions mandate that a considerable number of safety systems and features be present in order to keep everyone safe should a fire occur. The level of safety is achieved through the combination of multiple safeguards that are provided.

The NFPA 101, *The Life Safety Code*, is the primary source for the requirements for nightclub and bar lounges. A committee of experts has developed many of these requirements in response to investigations and analysis of actual incidents. The code book is divided into two chapters, Chapter 13 addresses requirements for existing assembly occupancies and Chapter 12 addresses requirements for new assembly occupancies (new is defined as newly constructed or renovated as of January 1, 2009). If a nightclub is issued a certificate of occupancy as of January 1, 2009, and complied with the new chapter, the owner cannot change or lessen the requirements down to the requirements in Chapter 13.

Among all structure fires, nightclub fires in the US are proportionately few in number. However, maximum or over-capacity crowds at popular nightclubs create the potential for high numbers of casualties in the event of a fire or other incident.

A common safety violation at nightclubs is locked, blocked or impeded exits. Management must make this a priority to ensure that the nightclub does not have this problem by inspecting all exit components prior to and routinely during operation.

The most common causes of fire at nightclubs and bars are incendiary, electrical, cooking, and smoking. Incendiary fires at nightclubs are nearly twice as frequent as those in all structures. (*Source- U.S. Fire Administration/Nightclub Fire in 2000*)

The highest deaths and casualties are often caused by lack of sufficient exits. Even if a sufficient number of exits are provided, human nature is that most patrons will attempt to leave out of the same door in which they entered, rather than looking for other exits. Therefore, the majority of the crowd may rush to the front entrance. Sometimes the patrons become packed so tightly near the front door that the firefighters cannot enter. In The Station nightclub, several people fell in a pile in the main doorway, trapping everyone behind them inside.

ANALYSIS

The following inspection data demonstrates that the current fines are not serving as a deterrent for some club owners. It will only take one fire in any nightclub to affect the entire nightlife industry in the City.

Calendar year	# of inspections	Overcrowding Tickets	Blocked Exit Tickets
1/1/2012 - 12/31/2012	1,931	9	10
1/1/2011 - 12/31/2011	2,769	3	7
1/1/2010 - 12/31/2010	3,294	15	22

From the time period of 10/1/2009 to 3/11/2013 (~ 3 ½ years)

42 establishments received a total of 82 tickets

19 of these establishments received more than one ticket

9 of these 19 establishments received more than two tickets

The result of a fire in any nightclub with overcrowding conditions or compromised exits will be tragic. The loss of life will be devastating to all involved - residents, business owners, and visitors. The economic impact will be substantial as our reputation would be tarnished for years after any incident as experienced by other cities.

COMPARISON TO OTHER CITATIONS IN CMB

The City of Miami Beach already has fines for some quality of life issues that carry a higher fine than the existing fire and life safety citations.

Noise violations fines (City Code, Section 46-159):

1 st offense	\$250.00
2 nd offense	\$1,000.00
3 rd offense	\$2,000.00
4 th offense	\$3,000.00
5 th offense	\$5,000.00

Handbill violations fines (City Code, Section 46-92):

1 st offense	\$100.00 plus \$50.00 per handbill
2 nd offense	\$500.00 plus \$50.00 per handbill

It is imperative that the City Administration implements a fair and equal code enforcement approach against violators of quality of life issues and life safety issues. The fire code violations are more significant and can result in injuries and/or death.

PROPOSED NEW CITATIONS WITH FINES

The proposed changes to the current city code pertaining to assembly occupancies are as follows:

Frequency	Type	Current Fine	New Fine
1 st offense	Minor Overcrowding	\$200.00	\$1,000.00
2 nd offense	Minor Overcrowding	\$500.00	\$2,000.00
3 rd offense & subsequent	Minor Overcrowding	\$500.00	\$3,000.00
1 st offense	Severe Overcrowding	\$200.00	\$2,500.00
2 nd offense	Severe Overcrowding	\$500.00	\$5,000.00
3 rd offense &	Severe Overcrowding	\$500.00	\$7,500.00

subsequent			
1 st offense	Locked Exits-Assembly	\$200.00	\$1,000.00
2 nd offense	Locked Exits-Assembly	\$500.00	\$2,500.00
3 rd offense & subsequent	Locked Exits-Assembly	\$500.00	\$5,000.00
1 st offense	Locked Exits-Others	\$200.00	\$750.00
2 nd offense	Locked Exits-Others	\$500.00	\$1,000.00
3 rd offense & subsequent	Locked Exits-Others	\$500.00	\$1,250.00
1 st offense	Blocked/Impeded Exits	\$200.00	\$500.00
2 nd offense	Blocked/Impeded Exits	\$500.00	\$750.00
3 rd offense & subsequent	Blocked/Impeded Exits	\$500.00	\$1,000.00

Minor Overcrowding and Severe Overcrowding definitions were established in 1997 after an agreement between the Fire Marshal's Office and the nightlife industry. Severe overcrowding is defined as a situation where the number of occupants inside the nightclub, exceed the approved maximum limit by 30% or more. Minor overcrowding is defined as a situation when the number of occupants inside the nightclub exceeds the approved maximum limit by less than 30%.

The proposed new citations for other common code violations are as follows:

<i>Frequency</i>	<i>Type</i>	<i>Current Fine</i>	<i>New Fine</i>
1 st offense & subsequent	Fire Watch	\$0	\$500.00
1 st offense & subsequent	Fire Protection System	\$0	\$250.00
1 st offense & subsequent	Life Safety Building Maintenance	\$0	\$50.00
1 st offense & subsequent	Flammable Liquids	\$0	\$100.00
1 st offense & subsequent	Fire Extinguishers	\$0	\$25.00
1 st offense & subsequent	Work without a permit	\$0	\$200.00
1 st offense & subsequent	Fire Alarm Runner service	\$0	\$75.00
1 st offense & subsequent	Cease and Desist Order	\$0	\$5,000

The fines above are comparable to the fines issued by Miami-Dade County Fire Marshal's Office for similar fire code violations.

NEW PROVISION FOR REPEAT OFFENDERS

The Administration proposes to add a suspension period for repeat violators for overcrowding conditions due to the significance of such violations. The current city code mandates that all establishments must obtain an annual fire safety permit and a

certificate of use in order to operate a business in the City of Miami Beach.

Through the Special Master process, the Fire Marshal would petition the Special Master to suspend the Certificate of Use and the Annual Fire Safety Permit as follows:

After two (2) severe overcrowding citations with a 12 month period, suspension shall be fourteen (14) consecutive days.

After three (3) severe overcrowding citations with a 12 month period, suspension shall be thirty (30) consecutive days.

After three (3) minor overcrowding citations within a 12 months period, the suspension shall be for seven (7) consecutive days; After four (4) minor overcrowding citations or combination of minor and severe citations, the suspension shall be for fourteen (14) days; After five (5) minor overcrowding citations, or combination of minor and severe citations, the suspension shall be for thirty (30) days.

After four (4) severe overcrowding citations, or after six (6) minor overcrowding citations, or combination of minor and severe citations, the Certificate of Use and Annual Fire Safety Permit shall be revoked.

The above provisions will encourage true compliance for repeat violators. The dollar amount of fines may be recovered during operating hours, but closure of the establishment will have a greater impact that will achieve compliance.

PUBLIC COMMENTS

The Fire Department presented the proposed fines to the Nightlife Industry Task Force (NITE) during a public noticed meeting on February 25, 2013. The members present offered a slight modification to the fine schedule to increase the locked exit fines for nightclubs and to separate the locked exit citations from impeded exit citations. The industry input has been implemented in the ordinance. Overall, the members present were in agreement that the higher fines must be implemented in order to protect the industry against safety hazards that could result in death, injury, and/or property damage.

FISCAL IMPACT

The City Code, Section 102, establishes a fee of \$3.00 per person charged to the dance hall entertainment establishments. The nightclub fee collected from 10/1/2011 to 9/30/2012 was a total of \$60,916.29.

The current cost for nightclub inspections per year is roughly \$110,000. The Fire Administration would like to propose increasing this fee to \$4.00 per person, which would generate \$81,221 using the same number of establishments in the last fiscal year. The remaining cost can be recovered with the increased fines proposed.

NEIGHBORHOOD/COMMUNITY AFFAIRS COMMITTEE

This proposed ordinance was discussed by the Neighborhood/Community Affairs Committee on April 29, 2013. Following discussion and comments from the public, the Committee unanimously moved the recommendation by the Fire Department.

CONCLUSION

The increase in fines for assembly (nightclubs and other venues) will encourage compliance at all times, but particularly when inspectors are not on duty. The higher fines will justify less frequent inspections and thus less cost to the City. The new fines for violators of common fire code requirements will achieve compliance at a faster pace and change behavior without going through the lengthy Special Master process.

The Ordinance amendments were approved on first reading on September 11, 2013. The Administration recommends approving the both ordinances on second reading setting fine schedule for FY13/14.

JLM/JO/SFM

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 50 OF THE CITY OF MIAMI BEACH CODE, ENTITLED "FIRE PREVENTION AND PROTECTION," BY AMENDING SECTION 50-4 THEREOF, ENTITLED "ENFORCEMENT BY FIRE INSPECTORS; NOTICE OF VIOLATION," TO ADD CITATIONS AND IMPLEMENT NEW FINE SCHEDULE RELATED TO FIRE CODE VIOLATIONS; BY AMENDING SECTION 50-5 THEREOF, ENTITLED "ANNUAL FIRE PREVENTION AND FIRE SAFETY INSPECTION PERMIT" TO INCLUDE THE NIGHT INSPECTION FEE PREVIOUSLY ADOPTED UNDER SECTION 102.379 OF THE CITY CODE; PROVIDING FOR REPEALER, SEVERABILITY, EFFECTIVE DATE, AND CODIFICATION.

WHEREAS, the current fine schedule for fire violations have not been modified since the inception of the fines in 1997; and

WHEREAS, the current fines for overcrowding conditions and locked exits are very low and have not proven to be a deterrent or to warrant corrective action from business owners; the Fire Marshal's office has issued ten (10) locked exit tickets and nine (9) overcrowding tickets during night inspections within the calendar year 2012, which indicates that the current fines have not been a deterrent for violators; and

WHEREAS, horrific fires in nightclubs in the United States (Rhode Island 2003) and other countries (Brazil 2013), where several hundred people have died, are an indication that more stringent enforcement is warranted to prevent a similar occurrence in the City of Miami Beach; and

WHEREAS, other infractions of quality of life issues in the City carry a higher fine than the fire code violations of overcrowding and locked exits which can result in severe injury or death; and

WHEREAS, the cost of performing night inspections can be offset partially by the higher fines listed in this ordinance and increasing the night inspection fee; and

WHEREAS, the Administration recommends that the City Commission adopt the following ordinance amending the City's Fire Prevention Code.

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

SECTION 1. That Chapter 50 "Fire Prevention and Protection", Section 50-4 "Enforcement by fire inspectors; notice of violation" is hereby amended as follows:

Sec. 50-4. - Enforcement by fire inspectors; ~~notice of violation.~~

~~(a) Notice of violation. If, upon inspection, a fire inspector finds either an overcrowded condition in~~

~~excess of permissible occupant load criteria as defined in the Florida Fire Prevention Code and National Fire Protection Association, entitled Life Safety Code 101, as amended from time to time, or a locked, blocked or impeded exit, a violation of this section shall exist. Upon the finding of such violation, the fire inspector shall:~~

- ~~(1) Inform the violator that the conditions causing the violation must immediately cease;~~
- ~~(2) Inform the violator that additional penalties will be imposed if the violation continues; and~~
- ~~(3) Issue a notice of violation to the violator as provided for in the Florida Fire Prevention Code.~~

~~The notice of violation shall also state, but not be limited to: the name of the violator, the date and time of the violation, address of the violation, amount of fine for which the violator may be liable, instructions and due date for paying the fine, notice that the violation may be appealed by requesting an administrative hearing within ten days after the date printed on the notice of violation issued by the fire inspector, that failure to timely appeal shall constitute an admission of the violation and waiver of the right to a hearing, that unpaid fines may result in the imposition of larger fines and may result in revocation of both the occupational license and certificate of use and/or the imposition of injunctive proceedings as provided by law.~~

~~(b) *Civil fines for violations; appeals.* The following civil fines shall be imposed for violation of this section:~~

- ~~(1) First offense: \$200.00.~~
- ~~(2) Second offense and each offense thereafter within 12 months of the most recent offense: \$500.00.~~

(a) Notice of Violation. If, upon inspection, a fire inspector finds that a fire code violation exists based on the Florida Fire Prevention Code, Miami-Dade County Fire Code, or the City of Miami Beach Code, as may be amended from time to time, the fire inspector shall document the list of violations using a Fire Department form. The Notice of Violation shall indicate the name of violator, address of establishment inspected, the date of the inspection, and the name of the inspector. The Notice of Violation shall describe the code requirement, which is not in compliance, and indicate timeframe within which to correct said violation(s).

- (1) The violator can appeal the interpretation of the code requirement to the inspector's supervisor and finally to the Fire Marshal of the City of Miami Beach after providing evidence that the condition present does not constitute a code violation. If the Fire Marshal affirms that the code violation does exist, then the violator can appeal a decision of the Fire Marshal to the Miami-Dade County Fire Safety and Prevention Board of Appeal as provided for in the Florida Fire Prevention Code, and as provided for in Chapter 14, Miami-Dade County Code.
- (2) If the violator does not correct the violation within the indicated time frame, the fire inspector, or designee of the Fire Marshal, shall follow enforcement proceedings through the Special Master process as provided in Chapter 30 of the City of Miami Beach Code.

(b) Citation. In lieu of a Notice of Violation, or in addition to a Notice of Violation, the fire inspector can issue a citation for the following offenses listed below. The citation shall state the name of the violator, the date and time of the violation, address of the violation, amount of fine for which the violator is liable, instructions, due date for paying the fine, and the appeal process.

- (1) Locked Exits. If, upon inspection, a fire inspector finds a locked exit as defined in the Florida Fire Prevention Code as a door requiring a key or special knowledge to open, then the fire inspector shall issue a citation with the penalties stated in Section 50-4(k).
- (2) Blocked or Impeded Exits. If, upon inspection, a fire inspector finds the means of egress blocked or impeded as defined in the Florida Fire Prevention Code, then the fire inspector shall issue a citation with the penalties stated in Section 50-4(k).
- (3) Overcrowding. If, upon inspection, a fire inspector finds an overcrowding condition in excess of the maximum number of occupants as approved by the Fire Marshal, then the inspector shall issue a citation as follows: a minor overcrowding citation when the number of occupants exceed the approved limit by less than 30%; a severe overcrowding citation when the number of occupants exceed the approved limit by 30% or more. The citation issued will carry the penalties stated in Section 50-4(k).
- (4) Fire Watch. If, upon inspection, a fire inspector finds that the owner or management of a property in the City has not complied with the requirements of an established fire watch mandated by the Fire Marshal's Office, then the inspector shall issue a citation with the penalties stated in Section 50-4(k).
- (5) Fire Protection System(s). If, upon inspection, a fire inspector finds that the automatic or manual fire protection system(s), fire detection system(s), and/or fire alarm system(s) have not been certified by a licensed contractor as required by the Florida Fire Prevention Code, then the fire inspector shall issue a citation with the penalties stated in Section 50-4(k).
- (6) Life Safety Building Maintenance. If, upon inspection, a fire inspector finds that maintenance of life safety building features have not been properly performed, then the fire inspector shall issue a citation with the penalties stated in Section 50-4(k).
- (7) Flammable liquids/gas. If, upon inspection, a fire inspector finds improper use and storage of flammable liquids and/or flammable gases, then the fire inspector shall issue a citation with the penalties stated in Section 50-4(k).
- (8) Fire Extinguishers. If, upon inspection, a fire inspector finds that the fire extinguishers are not properly certified, or fire extinguishers are not provided, then the fire inspector shall issue a citation with the penalties stated in Section 50-4(k).
- (9) Work Without a Permit. If upon inspection, a fire inspector finds that construction work is being performed or work has been performed on a fire protection/life safety system without the proper permits, then the fire inspector shall issue a citation with the penalties stated in Section 50-4(k).
- (10) Fire Alarm Runner Service Agreement. If upon inspection, a fire inspector finds that the owner or management fails to obtain and maintain the required fire alarm runner service agreement, then the fire inspector shall issue a citation with the penalties stated in Section 50-4(k).
- (11) Other Violations. Any other violation of the Florida Fire Prevention Code may result in a citation with the penalties stated in Section 50-4(k).

(c) "Offense" defined. For purposes of this section, "offense" shall mean a notice of violation, or citation which has not been appealed timely or a finding of violation by a special master. A person may receive a separate notice of violation, or citation, once every hour if a violation has occurred at

any time within that period. Each notice of violation, or citation, shall constitute a separate offense for which a separate fine may be imposed.

(d) Options upon notification issuance of a citation. A violator who has been served with a notice of violation issued a citation shall elect either to:

- (1) Pay the civil fine in the manner indicated on the notice of violation-citation; or
- (2) Request an administrative hearing before a special master to appeal the decision of the fire inspector which resulted in the issuance of the notice of violation-citation.

(e) Appeal of a citation. The violator may appeal the citation by requesting an administrative hearing within 10 days from the date of issuance. The procedures for appeal of the notice of violation-citation shall be as set forth in sections 102-384 and 102-385, as such subsections Chapter 30, as may be amended from time to time. A courtesy mail notice shall be provided the complainant of any hearing regarding the notice of violation, and the complainant may testify at such hearings. Failure to give such notice shall not be a cause for continuance or cancellation of any scheduled hearing of the matter. The appeal hearing must be heard no later than 120 days from the date the appeal was filed. The Special Master shall not have discretion to alter the prescribed penalties under Section 50-4(k) (1) - (3). Appeal of the Fire Marshal's code interpretation shall be filed with the Miami Dade County Fire Safety and Prevention Board of Appeals.

(f) Failure to appeal. Failure of the named violator to appeal the decision of the fire inspector citation within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and penalties may be assessed accordingly citation, and fines are owed to the City. Unpaid fines may result in the imposition of larger fines and/or further enforcement as set forth in this section.

(g) Appeal of special master's decision. Any party aggrieved by the decision of a special master may appeal that decision to a court of competent jurisdiction as provided in F.S. § 162.11. as provided by applicable Florida Statutes and Florida Rules of Appellate Procedure.

(h) Imposition of civil fines. The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines. A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator, and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two months from the filing of any such lien which remains unpaid, the city may institute proceedings to foreclose or otherwise execute on the lien.

(i) Cease and Desist Orders. The Fire Marshal of the City of Miami Beach has the authority to issue cease and desist orders as provided by Florida Statute 633.161 and the Florida Fire Prevention Code to mitigate any fire hazard or any violation posing an imminent danger to occupants. If the violator fails to comply with the Cease and Desist Order, then the violator shall receive a citation of \$5,000.00 for each offense. Any person who fails to comply with the Cease and Desist Order is guilty of a misdemeanor punishable as provided in Florida Statute 633.171.

(j) Revocation or suspension of license. As an alternative or additional means of enforcement, the city may institute proceedings to revoke or suspend an occupational license and/or certificate of use pursuant to chapter 102, article V. For purposes of enforcement under chapter 102, article V, any offenses as defined in subsection (e) of this section shall be deemed an "emergency condition"

~~involving serious danger to the public health, safety or welfare. Additionally, the city may seek injunctive relief as set forth in section 46-158. Furthermore, in cases of recurring violations, the code compliance officer may issue a citation for prosecution before the special master as provided in chapter 30~~

(j) *Suspension or Revocation of Certificate of Use and Annual Fire Safety Permit.* As an alternative or additional means of enforcement, the City may institute proceedings to suspend or revoke the Certificate of Use and Annual Fire Safety Permit pursuant to Chapter 102, Article V. The suspension of the Certificate of Use and Annual Fire Safety Permit constitutes the closure of the establishment and no occupancy for the period determined. Additionally, the City may seek injunctive relief as set forth in Section 46-158. Furthermore, in cases of recurring violations, the fire inspector may issue a notice of violation for prosecution before the Special Master as provided in Chapter 30. For citations involving serious danger to the public health, safety or welfare as stated in this section, the suspension of the Certificate of Use and Annual Fire Safety Permit shall be as stated in Section 50-4(k)(3).

(k) *Penalties and Fines.* The following civil fines and penalties shall be imposed for citations issued under this section.

(1) *Locked Exits.*

a. *Assembly occupancies:* first offense within a 12 month period, fine shall be \$1,000.00; second offense within a 12 month period, fine shall be \$2,500.00; third and subsequent offenses within a 12 month period, fine shall be \$5,000.00.

b. *For other occupancies,* the fines shall be as follows: first offense within a 12 month period, fine shall be \$750.00; second offense within a 12 month period, fine shall be \$1,000.00; third and subsequent offenses within a 12 month period, fine shall be \$1,250.00.

(2) *Blocked, or Impeded Exits.* First offense within a 12 month period, fine shall be \$500.00; second offense within a 12 month period, fine shall be \$750.00; third offense and subsequent offenses within a 12 month period, fine shall be \$1,000.00.

(3) *Overcrowding.*

a. *Minor overcrowding citation:* first offense within a 12 month period, fine shall be \$1,000.00; second offense within a 12 month period, fine shall be \$2,000.00; third offense and subsequent offenses within a 12 month period, fine shall be \$3,000.00;

b. *Severe overcrowding citation:* first offense within a 12 month period, fine shall be \$2,500.00; second offense within a 12 month period, fine shall be \$5,000.00; third and subsequent offenses within a 12 month period, fine shall be \$7,500.00.

c. *After two (2) severe overcrowding citations within a 12 month period, the suspension of the Certificate of Use and Annual Fire Safety Permit shall be for fourteen (14) consecutive days; After three (3) severe overcrowding citations within a 12 month period, the suspension of the Certificate of Use and Annual Fire Safety Permit shall be for thirty (30) days;*

d. *After three (3) minor overcrowding citations within a 12 month period, the suspension of the Certificate of Use and Annual Fire Safety Permit shall be for seven (7) consecutive days; After four (4) minor overcrowding citations or combination of*

minor and severe citations, the suspension of the Certificate of Use and Annual Fire Safety Permit shall be for fourteen (14) days; After five (5) minor overcrowding citations, or combination of minor and severe citations, the suspension of the Certificate of Use and Annual Fire Safety Permit shall be for thirty (30) days.

e. After four (4) severe overcrowding citations, or after six (6) minor overcrowding citations, or combination of minor and severe citations, within a 12 month period, the Certificate of Use and Annual Fire Safety Permit shall be revoked.

(4) Fire Watch. Fine shall be \$500.00 for each offense.

(5) Fire Protection System(s). Fine shall be \$250.00 for each system for each offense.

(6) Life Safety Building Maintenance. Fine shall be \$50.00 for each offense.

(7) Flammable liquids/gas. Fine shall be \$100.00 for each offense.

(8) Fire Extinguishers. Fine shall be \$25.00 for each offense.

(9) Work Without a Permit. Fine shall be \$200.00 for each offense.

(10) Fire Alarm Runner Service Agreement. Fine shall be \$75.00 for each offense.

(11) Other Violations. Fine shall be \$100.00 for each offense.

SECTION 2. That Chapter 50 "Fire Prevention and Protection", Section 50-5 "Annual fire prevention and fire safety inspection permit" is hereby amended as follows:

Sec. 50-5. – Annual Fire Prevention and Fire Safety Inspection Permit

* * *

(d) *Fees.* The fees for the issuance of the fire safety permit and the annual renewal thereof, as may be required, are herein fixed as follows. Occupancies are classified in accordance with ~~chapter 4~~ of the National Fire Protection Association (NFPA) 101 Life Safety Code, as may be amended and adopted by the city.

As provided in Res. No. _____, a review of the annual fee will be required whenever the change in the Consumer Price Index (CPI), between the latest CPI and the date of the CPI used for the last fee adjustment, is five percent or greater.

(1) Assembly occupancies. Those occupancies that include, but are not limited to, all buildings or portions of buildings used for gathering together 50 or more persons for such purposes as deliberation, worship, entertainment, eating, drinking, amusement or awaiting transportation. Assembly occupancies designated as dance hall/entertainment with or without alcohol and having an occupant load of 200 or more, a night inspection fee shall be charged of \$4.00 per person based on the approved maximum number of occupants designated by the Fire Marshal.

SECTION 3. REPEALER

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

SECTION 4. SEVERABILITY

If any section, subsection; sentence, clause, provision or phase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 5. 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 a 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 that the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 6. EFFECTIVE DATE

This Ordinance shall take effect on the _____ day of _____, 2013.

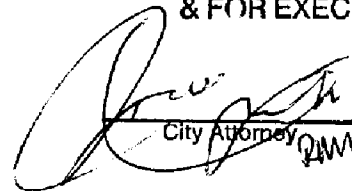
PASSED and ADOPTED this _____ day of _____, 2013.

**Matti Herrera Bower
MAYOR**

ATTEST:

**Rafael Granado
CITY CLERK**

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



City Attorney *QAWA* 9/3/13
Date

Underline denotes additions
~~Strikethrough~~ denotes deletions

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 102 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "TAXATION," BY DELETING THE NIGHTCLUB FEE SET FORTH IN SECTION 102.379, ENTITLED "SCHEDULE OF TAXES, EFFECTIVE OCTOBER 1, 2009"; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the current fines for fire violations have not been modified since the inception of the fines in 1997; and

WHEREAS, the current fines for overcrowding conditions and locked exits are very low and have not proven to be a deterrent or to warrant corrective action from the business owners; the Fire Marshal's office has issued ten (10) locked exit tickets and nine (9) overcrowding tickets during night inspections within the calendar year 2012, which indicates that the current fines have not been a deterrent for violators; and

WHEREAS, the horrific fires in nightclubs in the United States (Rhode Island 2003) and other countries (Brazil 2013), where several hundred people died, are an indication that more stringent enforcement is warranted to prevent a similar occurrence in the City of Miami Beach; and

WHEREAS, other infractions of quality of life issues in the City carry a higher fine than the fire code violations of overcrowding and locked exits which can result in severe injury or death; and

WHEREAS, the cost of performing night inspections can be offset partially by the higher fines and increasing the night inspection fee; and

WHEREAS, the nightclub inspection fee adopted under Section 102.379 of the City Code will be included in Chapter 50, "Fire Prevention and Protection", of the Code of the City of Miami Beach, and thus should be deleted from Section 102.379.

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

SECTION 1. That Section 102.379 of Chapter 102, entitled "Taxation," is hereby amended as follows:

Sec. 102-379. Schedule of taxes, effective October 1, 2009.

(a) Business taxes for the following businesses, occupations or professions are hereby levied and imposed as follows:

Occupation Code	Business Tax Category	Amount
	A	
95000200	Accountant, auditor; requires state license	221.00

* * *

	D	
	Dance hall/entertainment establishment; (for entertainment establishments without dancing, see entertainment establishments);	
95005800	1. Dance hall/entertainment establishment without alcohol (see Sec. 142-1362 (b) for after hours dance halls)	1,088.00
95005805	2. Dance hall/entertainment establishment with alcohol	191.00
03005825	Additionally, for occupancy loads of 200 or more, nightclub fee of \$3.00 per person occupant load, based upon max. occupant load from building/fire department.	\$3.00

SECTION 2. REPEALER

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

SECTION 3. SEVERABILITY

If any section, subsection, sentence, clause, provision or phase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. 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 a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and that the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect on the _____ day of _____, 2013.

PASSED and ADOPTED this _____ day of _____, 2013.

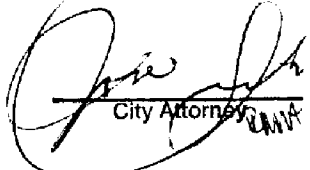
Matti Herrera Bower
MAYOR

ATTEST:

Rafael Granado
CITY CLERK

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

Underline denotes additions; Strikethrough denotes deletions
T:\AGENDA\2013\September 11\Fire Nightclub Fee Deletion CH 102 ordinance.doc



City Attorney

9/3/13

Date

MIAMIBEACH

CITY OF MIAMI BEACH

NOTICE OF A SPECIAL CITY COMMISSION MEETING AND PUBLIC HEARINGS

NOTICE IS HEREBY given that a Special Commission Meeting regarding the Second Public Hearings to consider the adoption of the Millage Rate and Budget for FY 2013/2014 will be held by the City Commission of the City of Miami Beach, Florida, on **Monday, September 30, 2013**, commencing at **5:00 p.m.**, in the Commission Chambers, 3rd Floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida to consider the following:

5:01 p.m.

A Resolution Adopting: 1) The Final Ad Valorem Millage Of 5.8909 Mills For General Operating Purposes, Which Is Six And Eight-Tenth Percent (6.8%) More Than The "Rolled-Back" Rate Of 5.5158 Mills; And 2) The Debt Service Millage Rate Of 0.2529 Mills for Fiscal Year (FY) 2013/14.

5:01 p.m.

A Resolution Adopting Final Budgets For The General, G.O. Debt Service, RDA Ad Valorem Taxes, Enterprise, And Internal Service Funds For Fiscal Year (FY) 2013/14.

5:02 p.m.

A Resolution Of The Board Of Directors Of The Normandy Shores Local Government Neighborhood Improvement District Adopting The Final Ad Valorem Millage Of 1.2687 Mills For Fiscal Year (FY) 2013/14 For The Normandy Shores Local Government District, Which Is Nineteen Percent (19.0%) More Than The "Rolled-Back" Rate Of 1.0664 Mills.

5:02 p.m.

A Resolution Of The Board Of Directors Of The Normandy Shores Local Government Neighborhood Improvement District Adopting The Final Operating Budget For Fiscal Year (FY) 2013/14.

5:03 p.m.

A Resolution Adopting The Final Capital Improvement Plan For Fiscal Years (FY) 2013/14-2017/18 And Adopting The Final Capital Budget For FY 2013/14.

5:03 p.m.

A Resolution Adopting Fiscal Year (FY) 2013/14 Final Budgets For Special Revenue Funds For Resort Tax; The 7th Street Parking Garage Operations; The 5th And Alton Parking Garage Operations; Art In Public Places (AIPP), Tourism And Hospitality Scholarship Program, Green/ Sustainability Funds, Waste Hauler Additional Services And Public Benefit Contribution Funds, Education Compact Funds, Red Light Camera Funds, And Emergency 911 Funds.

5:03 p.m.

A Resolution Adopting The Final Budget Of \$1,200,000 From Fiscal Year (FY) 2013/14 People's Transportation Plan (PTP) Funds And \$67,000 From (FY) 2013/14 South Beach Concurrency Mitigation Funds, To Fund The Final Operating Budget For The South Beach Local In Miami Beach; And Further Adopting The Final Budget Of \$301,000 From FY 2013/14 People's Transportation Plan Funds For Administrative And Technical Operating Expenditures, As Part Of The Five Percent (5%) Allowable For Administrative Assistance And Technical Assistance.

5:03 p.m.

A Resolution Authorizing The Adoption Of The Miami Beach Cultural Arts Council's Fiscal Year (FY) 2013/14 Final Budget In The Amount Of \$1,470,000.

5:03 p.m.

A Resolution Adopting The Fiscal Year (FY) 2013/14 Police Special Revenue Account Final Budget In The Amount Of \$75,000 For The Purchase Of Those Items Set Forth In Exhibit "A," And Such Account Funded By Unclaimed Evidence Currently Held In The Police Special Revenue Account.

5:03 p.m.

A Resolution Adopting The Police Confiscation Trust Fund Final Budget For Fiscal Year (FY) 2013/14 In The Amount Of \$724,000, To Be Funded From State Confiscated Funds In The Amount Of \$235,000 And Federal Justice Confiscated Funds In The Amount Of \$489,000, For The Appropriation And Expenditure Of Those Items Set Forth In Exhibit "A," Which Shall Be Funded Through The Police Confiscation Trust.

5:03 p.m.

A Resolution Adopting The Fiscal Year (FY) 2013/2014 Police Training & School Resources Fund Final Budget In The Amount Of \$35,000.

5:03 p.m.

Resolution Adopting The Second Amendment To The General Fund, Enterprise, Internal Service Fund, And Special Revenue Fund Budgets For Fiscal Year (FY) 2012/13.

5:03 p.m.

A Resolution Adopting And Appropriating The Fourth Amendment To The Police Confiscation Trust Budget For Fiscal Year 2012/2013 In The Amount Of \$10,000, To Be Funded From The Proceeds Of State Confiscated Funds, For The Appropriation And Expenditure Of Those Items Set Forth In Exhibit "A," Which Shall Be Funded Through The Police Confiscation Trust Fund.

5:04 p.m.

1. Ordinance Amending Chapter 50 Of The City Of Miami Beach Code, Entitled "Fire Prevention And Protection," By Amending Section 50-4 Thereof, Entitled "Enforcement By Fire Inspectors; Notice Of Violation," To Add Citations And Implement New Fine Schedule Related To Fire Code Violations; By Amending Section 50-5 Thereof, Entitled "Annual Fire Prevention And Fire Safety Inspection Permit" To Include The Night Inspection Fee Previously Adopted Under Section 102.379 Of The City Code.

2. Ordinance Amending Chapter 102 Of The Code Of The City Of Miami Beach, Entitled "Taxation," By Deleting The Nightclub Fee Set Forth In Section 102.379, Entitled "Schedule Of Taxes, Effective October 1, 2009".

5:04 p.m.

Ordinance Amending Chapter 50 Of The Code Of The City Of Miami Beach, Entitled "Fire Prevention And Protection," By Creating Section 50-8 Thereof, To Be Entitled "Fire Alarms, Regulations, Penalties, Enforcement" To Establish Requirements And Fines For False Fire Alarms.

5:04 p.m.

An Ordinance Amending Appendix A, Entitled "Fee Schedule" For Subsection (A) Of Section 110-168, Entitled "Sanitary Sewer Service Charge," Of Chapter 110 Of The Miami Beach City Code, Entitled "Utilities," Article IV, Entitled "Fees, Charges, Rates And Billing Procedure"; Division 2 Thereof, Entitled "Rates, Fees And Charges," To Increase The Sanitary Sewer Service Charge Imposed By The City.

5:04 p.m.

Ordinance Amending Part I, Subpart B, Article IX, Related Special Acts, Of The Miami Beach City Code Entitled "Pension System For Disability And Retirement Of Members Of Police And Fire Departments"; Implementing Provisions Of The 2012-2015 Collective Bargaining Agreements Between The City And Fire Fighters Of Miami Beach, IAFF Local 1510, And Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Amending Section 62 Entitled "Definitions"; Amending Section 63 Entitled "Source Of Monies For Fund; Computation Of Liability; Use And Investment Of Fund"; Amending Section 65 Entitled "Computation Of Creditable Service; Service Record"; Amending Section 66 Entitled "Service And Disability Benefits Generally"; Amending Section 67 Entitled "Cost Of Living Adjustment"; Amending Section 79 Entitled "Deferred Retirement Option Plan"; Amending Section 82 Entitled "Military Service"; Creating A New Section 88 Entitled "Benefits For Members Hired-On Or After September 30, 2013.