

CITY OF MIAMI BEACH  
Office of the City Manager  
Letter to Commission No. 264-2004



To: Mayor David Dermer and  
Members of the City Commission

Date: October 7, 2004

From: Jorge M. Gonzalez  
City Manager

A handwritten signature in black ink, appearing to read "Jorge M. Gonzalez".

Subject: **SOFI LOUNGE - 423 WASHINGTON AVENUE**

This is in response to several questions concerning the licensing of the establishment located just south of 5<sup>th</sup> Street on the east side of Washington Avenue. The establishment at 423 Washington Avenue, Sofi Lounge, applied for a building permit on 11/14/2003, and was approved for "Change of Use Retail to Bar /Lounge. Interior Renovation /demo partitions/adding partitions/Mechanical-ductwork/Electrical-outlets/plumbing" on 02/09/2004 (building permit # B0400794).

Ordinance 2004-3445, which prohibits restaurants from becoming dance halls and/or entertainment establishments in the South Pointe and Sunset Harbour areas, was adopted by the City Commission on May 5, 2004. Zoning-in-progress began when the Planning Board recommended approval of the ordinance on February 24, 2004.

The attached list was part of the Commission package for the ordinance, and listed all those establishments in South Pointe that had restaurant licenses and dance/entertainment licenses. Throughout the process of adopting the ordinance prohibiting restaurants from having entertainment in the South Pointe and Sunset Harbour areas, it was stated on the record in response to specific questions from the Commission and Planning Board that establishments already having a valid license, or those with an approved building permit, would be grandfathered-in.

Sofi Lounge did not appear on the list, because it was not licensed as a restaurant at that time. However, Sofi Lounge had applied for and received approval for the conversion of the space from retail to restaurant/bar/lounge prior to the commencement of zoning in progress. The attached list did not take that into account.

The subject establishment relied upon the regulations in place, and spent a substantial amount of money to convert the space to a restaurant, on the basis that they would be permitted to have entertainment. Their situation conforms to the criteria of the equitable estoppel regulations contained in Section 118-168 (a)(1)(a) of the City Code (see attached), and accordingly, their request for entertainment license was approved.

The Department is not aware of any similar situations of this nature except for the upstairs space at 1766 Bay Road in the Sunset Harbour area. China Grill does not currently have an entertainment license, and would not be entitled to an entertainment license under the regulations in force today.

JMG\JGG\RGL  
Attachments

M:\\$CMB\TEMP\sofi lounge.ltc.doc

CITY CLERK'S OFFICE

04 OCT - 8 PM 4: 38

RECEIVED

## Restaurants and Bars in South Point Area

03/31/2004

LICENSE #	NAME	ADDRESS	LIC_STATUS	# of seats	DanceEnt
RL03002074	KOMAR INVESTMENTS INC	161 OCEAN DR	NEW	28	
RL95202943	BEACH MARKET	247 COLLINS AV	RENEWEDL	0	
RL00000905	NEAM'S GOURMENT.	300 ALTON RD	RENEWEDL	1	
RL03001640	d/b/a SUNSHINE & AJ FOOD WITH	747 4TH ST	RENEWED	9	
RL88120595	PENROD'S BEACH CLUB	1 OCEAN DR	RENEWED	300	Dance License
RL01000625	136 Collins Av LC-dba-Opium Ga	136 COLLINS AV	RENEWED	225	Dance License
RL03001232	PURE LOUNGE HOLDINGS LLC	150 OCEAN DR	RENEWED	60	Dance License
RL95213664	MONTY'S ON THE BEACH, LTD.	300 ALTON RD	RENEWEDL	700	Dance License
RL03001562	TAVERNA OPA OF SOUTH BEACH	36 OCEAN DR	RENEWEDL	199	Dance License
RL03001213	CLUB IBIZA INC DBA HARRISON'S	411 WASHINGTON AV	RENEWED	100	Dance License
RL00000422	L'ENTRECOTE DE PARIS	419 WASHINGTON AV	BILLED	49	Dance License
RL98000377	SMITH & WOLLENSKY	1 WASHINGTON AV	RENEWED	600	Possible Apps
RL95202596	NEMO	100 COLLINS AV	RENEWEDL	145	Possible Apps
RL01001078	SHOJI SUSHI	100 COLLINS AV	RENEWEDL	72	Possible Apps
RL03001173	THE ROOM, INC.	100 COLLINS AV	RENEWEDL	30	Possible Apps
RL02002438	LA PIAGGIA INC DBA LA PIAGGA B	1000 SOUTH POINTE	RENEWEDL	114	Possible Apps
RL96222191	GALBEN GROUP, INC. D/B/A BURGE	1100 5TH ST	RENEWEDL	70	Possible Apps
RL04002493	PRIME 112 , LLC	112 OCEAN DR	NEW	80	Possible Apps
RL98000961	SO FI HIDEAWAY	124 2ND ST	RENEWED	30	Possible Apps
RL03000872	LA FACTORIA, LLC	124 COLLINS AV	RENEWEDL	90	Possible Apps
RL03001060	d/b/a PURE LOUNGE/ JOIA RESTA	150 OCEAN DR	RENEWED	60	Possible Apps
RL96226730	BIG PINK	157 COLLINS AV	RENEWEDL	225	Possible Apps
RL01000072	MIAMI BEACH MARRIOTT @ SOUTH	161 OCEAN DR	RENEWEDL	160	Possible Apps
RL84001376	JOE'S STONE CRABS INC	227 BISCAYNE ST	RENEWEDL	512	Possible Apps
RL98000595	ODYSSEY	235 WASHINGTON AV	RENEWEDL	60	Possible Apps
RL99000874	GREEN COMET D/B/A THE WAVE	350 OCEAN DR	RENEWEDL	32	Possible Apps
RL04002103	M.G. GRANDE CORP	400 ALTON RD	APP-PEND	48	Possible Apps
RL95209553	CHINA GRILL SOBE INC.	404 WASHINGTON AV	RENEWEDL	486	Possible Apps
RL03001265	LA LOCANDA	413 WASHINGTON AV	RENEWEDL	30	Possible Apps
RL02002023	ARDEN SAVOY PARTNERS, LLC	425 OCEAN DR	RENEWED	200	Possible Apps
RL98000733	C6-431 PARTNERS, INC. DBA TUSC	433 WASHINGTON AV	RENEWEDL	123	Possible Apps
RL02001158	OCEAN FIVE BISTRO, LLC	444 OCEAN DR	RENEWEDL	70	Possible Apps
RL03001421	FLUTE CHAMPAGNE LOUNGE	500 SOUTH POINTE	RENEWED	60	Possible Apps
RL02001369	d/b/a OASIS	840 1ST ST	RENEWED	60	Possible Apps

**Sec. 118-168. Proposed land development regulation amendments; application of equitable estoppel to permits and approvals.**

(a) Amendments to these land development regulations shall be enforced against all applications and/or requests for project approval upon the earlier of the favorable recommendation by the planning board or the applicable effective date of the land development regulation amendment, as more particularly provided below. After submission of a completed application for a project approval, to the extent a proposed amendment to these land development regulations would, upon adoption, render the application nonconforming, then the following procedure shall apply to all applications considered by the city or any appropriate city board:

(1) In the event the applicant:

- a. Obtains (i) a design review approval, (ii) a certificate of appropriateness, (iii) a variance approval where no design review approval or certificate of appropriateness is required, or (iv) a full building permit as defined in section 114-1 where no design review approval, certificate of appropriateness or variance approval is required; and
- b. Satisfies subsection a., above, prior to a favorable recommendation by the planning board with respect to any land development regulation amendment that is adopted by the city commission within 90 days of the planning board's recommendation,

then the project shall be presumed to have received a favorable determination that equitable estoppel applies and the subject land development regulation amendment shall not be enforced against the application and/or project (hereinafter, a "favorable determination"), except as otherwise provided in subsection (b), below. If at any time before the expiration of the 90 days the proposed amendment fails before the city commission, then the project shall no longer be deemed nonconforming.

(2) In the event the applicant:

- a. Obtains (i) a design review approval, (ii) a certificate of appropriateness, (iii) a variance approval where no design review approval or certificate of appropriateness is required, or (iv) a full building permit as defined in section 114-1 where no design review approval, certificate of appropriateness or variance approval is required; and
- b. Satisfies subsection a., above, prior to the effective date of any land development regulation amendment where there was an unfavorable recommendation by the planning board with respect to the land development regulation amendment, or when the planning board recommends favorably, but the city commission fails to adopt the amendment within the specified 90 day period,

then the project shall be presumed to have received a favorable determination and the subject land development regulation amendment shall not be enforced against such application and/or project, except as otherwise provided in subsection (b), below.

(3) In the event an applicant does not qualify under subsections (1) or (2) of this

subsection (a) for a presumption of a favorable determination to avoid enforcement of adopted amendments against an application and/or project, then the applicant may seek a determination from a court of competent jurisdiction as to whether equitable estoppel otherwise exists. If, however, an applicant fails to seek a determination from the court, or if the court has made a determination unfavorable to the applicant, and such determination is not reversed on appeal, then the city shall fully enforce the adopted land development regulation amendment(s) against the applicant's application and/or project.

- (4) Any presumption of a favorable determination under subsections (1) and (2) of this subsection (a), or any favorable determination under subsection (3) of this subsection (a), shall lapse contemporaneously with the failure, denial, expiration, withdrawal, or substantial amendment of the application, approval, or permit relative to the project or application to which the favorable determination is applied.
  - (5) For purposes of this subsection (a), all references to obtaining design review approval, a certificate of appropriateness or variance approval, shall mean the meeting date at which the respective board approved such application or approved such application with conditions. For purposes of this subsection (a), "substantial amendment" shall mean an amendment or modification (or a proposed amendment or modification) to an application, approval or permit which, in the determination of the planning and zoning director, is sufficiently different from the original application or request that the amendment would require the submission of a new application/request for approval of same. All references to obtaining a building permit shall mean the date of issuance of the permit.
  - (6) After submission of a completed application for a project approval, to the extent a proposed amendment to the land development regulations would, upon adoption, render the application nonconforming, then the city or any appropriate city board shall not approve, process or consider an application unless and until (i) the project has cured the nonconformity or the applicant acknowledges that the city shall fully enforce the adopted land development regulation amendment(s) against the applicant's application and/or project; (ii) the project qualifies under subsections (1) or (2), and subject to subsection (4), of this subsection (a), above; or (iii) a favorable determination has been made by a court. Except as otherwise provided herein, any proceeding or determination by any city employee, department, agency or board after a project becomes nonconforming shall not be deemed a waiver of the city's right to enforce any adopted land development regulation amendments.
- (b) Subsections 118-168(a) and (b) shall not apply to proposed amendments to chapter 118, which would designate specific properties or districts as historic. The moratorium regulations applicable to such proposed amendments are set forth in chapter 118, article X, division 4.

(Ord. No. 89-2665, § 14-7, eff. 10-1-89; Ord. No. 92-2865, eff. 8-7-93; Ord. No. 94-2947, eff. 10-15-94; Ord. No. 98-3106, § 1, 1-7-98; Ord. No. 98-3130, § 1, 7-15-98; Ord. No. 2000-3253, § 1, 7-12-00)

Date: Tue, 05 Oct 2004 14:10:59 -0400  
To: Morry Sunshine<noisecontrol@the-beach.net>  
From: Frank DelVecchio <frankdelvecchio@att.net>  
Subject: Extending Entertainment Districts De Facto. Is China Grill Next?  
Cc: GaryKnight@aol.com

## IS A CHINA GRILL ENTERTAINMENT PERMIT NEXT?

At this morning's Tuesday Morning Breakfast Club session, Commissioner Richard Steinberg was the guest speaker. Marco Lerra, a unit owner in Murano Grande, on Alton Road, followed by John Cormier, the president of the Murano Grande condominium association board of directors, each asked if the entertainment district was being extended into South Pointe, and if China Grill might become a nightclub.

Commissioner Steinberg said he didn't know anything about this, because entertainment had been zoned out south of Fifth. He was asked about grandfathering and he asked me to confirm this, but he recollected it was Pearl Lounge, Opium, Monty's and Harrison Hotel. I said yes.

David Kelsey then said that the newly opened restaurant on the corner of Washington Ave. and Fifth Street (SE corner of the intersection), had just been granted a 5AM entertainment license because the Planning Department made the decision *since entertainment was in the restaurant's lease!* [Kelsey simply volunteered this.] At the same time, Kelsey stated his continuing position that South Pointe is in the "visitor area", and this block [4th to 5th, both sides of Washington Ave.] is all commercial/restaurant anyway.

I decided then to fill in everyone. I said that the Planning Department's report on Entertainment Districts, prepared for the September 28 Planning Board meeting, without saying in so many words, implicitly is making the case to further amend South Pointe zoning to exclude from the restriction on entertainment/clubs, the China Grill block (bounded by 4th Street, Euclid Ave., Fifth Street and Washington Ave.) and the facing block (4th St., Washington Ave., Fifth Street, Collins Court), since it is all commercial/restaurant. [As you know from my previous critique of that staff report, it is entertainment-district-expansion friendly, characterizing Washington Avenue as being in the entertainment district - (it isn't, it is CD-2), without comparing CD-2 with MXE, and also by taking a piecemeal approach to the proliferation of entertainment establishments in the RM-3 district, (east side of Collins Ave, northward from 16th Street) by saying each case should be taken on a conditional use by conditional use basis - when the policy should be clear: only bona fide hotel or condo accessory uses should be permitted in the RM-3 hotel/apartment district.]

Of course a private lease agreement cannot subvert a zoning restriction.

I haven't read the development controls covering the Portofino Companies' building in which the China Grill operates, but if lawyers for the restaurant across the street from it can obtain a city administration determination that zoning does not prohibit entertainment because of a lease, then the next shoe to drop will be China Grill, with far more powerful lawyers (or maybe it's the same lawyer setting a precedent first, to be followed by China Grill next).

It would be devastating for South Pointe quality of life, and the integrity of the zoning process, to permit more entertainment establishments south of Fifth Street, after the clearest possible community, Planning Board, and City Commission actions over the past year, to zone it out.

The collateral impacts of additional entertainment establishments in South Pointe would be severe, expanding the South Pointe club circuit from Nikki Beach and Opium Gardens up Washington Ave. and Collins Ave. to the China Grill and the Harrison Hotel block, with valets, cars, late night early AM patrons, trashing, shouting, etc., through South Pointe residential streets.