



## **City Commission Meeting**

### **ADDENDUM MATERIAL 3**

**City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive  
July 8, 2015**

Mayor Philip Levine  
Vice-Mayor Edward L. Tobin  
Commissioner Michael Grieco  
Commissioner Joy Malakoff  
Commissioner Micky Steinberg  
Commissioner Deede Weithorn  
Commissioner Jonah Wolfson

City Manager Jimmy L. Morales  
City Attorney Raul J. Aguila  
City Clerk Rafael E. Granado

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#### **ATTENTION ALL LOBBYISTS**

**Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.**

#### **ADDENDUM AGENDA**

##### **R9 - New Business and Commission Requests**

R9S Discussion Regarding Withdrawing The Proposed Ordinance Assigned File No(s): 2233, 2234, And 2235 (All Related To Alcohol Beverage Regulations) From The Planning Board's Jurisdiction, And Refer Them Back To Land Use & Development Committee For Further Discussion And Consideration.

(Sponsored by Commissioner Jonah Wolfson)

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# MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

To: JIMMY MORALES  
From: Jonah Wolfson, Commissioner  
Date: July 6, 2015  
Re: **Commission Agenda Discussion Item**

Please place on the July 8, 2015, Commission Agenda the following issue for discussion:

Discussion item to withdraw the proposed ordinances assigned File No(s): 2233, 2234 and 2235 (all related to alcohol beverage regulations ) from the Planning Board's jurisdiction, and refer them back to the LUDC for further discussion and consideration. Among other things, the consequences and adverse impacts on private property rights and duly licensed businesses were not made clear or understood by the Commission when these ordinances were referred to the Planning Board. The attached letter outlines some of issues with the proposed ordinances.

JW

**TERMINELLO & TERMINELLO, P.A.**

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ADMITTED IN:

\*FLORIDA

\*NEW YORK

\*WASHINGTON, D.C.

July 6, 2015

Planning Board Chair & Honorable Members  
c/o Thomas R. Mooney, Director  
Planning & Zoning Department  
1700 Convention Center Drive  
Miami Beach, Florida 33139

Re: New Alcoholic Beverage Establishment Regulations under Planning Board File  
No.'s 2233, 2234 and 2235

Dear Mr. Mooney:

Our law firm represents Commerce Street Properties, LLC, the owner of the property located at 850 Commerce Street, which contains a restaurant use with an outdoor/open area as its sole occupant. The bullet points herein below represent a summary characterization of the new restrictions sought to be imposed on alcoholic beverage establishments South of Fifth Street, and in some instances City-wide, under the proposed ordinances contained in Planning Board File No.'s 2233, 2234 and 2235. The items below are all new restrictions, not otherwise in effect at this time, and therefore present a wholesale change to the existing statutory scheme. These restrictions affect any property which does now, or may in the future, contain an outdoor/open area licensed to sell alcoholic beverages, including even a bona fide restaurant. They will, in many instances, create legally non-conforming uses, which is problematic because "[z]oning regulations, in providing for nonconforming structures and uses, look forward to the eventual elimination of all nonconforming structures and uses, by attrition, abandonment, and acts of God, as speedily as is consistent with proper safeguards for the rights of those persons affected." *7 Fla. Jur 2d Building, Zoning, and Land Controls* § 228. Although the potential adverse impacts are virtually limitless, these ordinances present the following two primary issues that create a real adverse impact on business and property values, and in turn, create an adverse impact on our City's hospitality-driven economy.

One, any property containing a business/use impacted by these restrictions that remains idle or unused for more than six (6) months or (18) eighteen months within a three (3) year

period, for *any* reason, loses its status as a "vested" use, and therefore would be required to comply with the new regulations, and in many instances, that loss of vesting would render the property no longer viable for that same use. There are a host of circumstances which could give rise to the loss of the vested use through no fault of the property owner, including a tenant in possession holding over or contesting eviction while the business remains closed. Further, the departure of an existing tenant, even a minor renovation, and subsequent licensure of a new tenant can take well over six months, which would be fatal to an otherwise innocent outdoor restaurant use impacted by these new restrictions.

Two, any property containing a business/use impacted by these restrictions would be prohibited from expanding the use, including adding additional square footage, seating and occupancy, no matter how de minimis. As such, these regulations would limit existing or future tenants from adding even one additional seat to an affected restaurant.

**New restrictions sought to be imposed on venues licensed to sell alcoholic beverages, including bona fide restaurants:**

*South of Fifth Street (within any Commercial or Residential Performance Standard District, absent conditional use approval) under proposed Section 6-3(a)(8):*

- Any open restaurant/bar area above the ground floor would be required to close at 8:00pm.

*South of Fifth Street (Residential Performance Standard District, absent conditional use approval) under proposed Section 6-3(a)(8):*

- Any ground floor outdoor or open restaurant/bar area would be required to close at 11:00pm (Sunday-Thursday); 12:00am (Friday-Saturday).
- Any restaurant's sidewalk café (ie. on city property) would be required to close at 8:00pm (Sunday-Thursday); 10:00pm (Friday-Saturday).

*South of Fifth Street (Commercial Performance Standard District, absent conditional use approval) under proposed Section 6-3(a)(8):*

- Any ground floor outdoor or open restaurant/bar area, within 100 feet of property with a residential use, would be required to close at 11:00pm (Sunday-Thursday); 12:00am (Friday-Saturday).
- Any ground floor outdoor or open restaurant/bar area, regardless of proximity to a residential use, would be required to close at 2:00am.
- Any restaurant's sidewalk café (ie. on city property) would be required to close at 8:00pm (Sunday-Thursday); 10:00pm (Friday-Saturday).

*City-wide restrictions on all uses licensed to sell alcoholic beverages under proposed Section 6-8(5):*

- No outdoor bar counters permitted within 100 feet of property with a residential use, unless approved as conditional use by public hearing before Planning Board.
- Where permitted, outdoor bar counters would be required to close at 12:00am if not within 100 feet of a residential use.
- Where permitted, outdoor bar counters would be required to close at 8:00am if within 100 feet of a residential use.
- No speakers permitted in any outdoor restaurant/bar area, unless approved as conditional use by public hearing before Planning Board.
- No outdoor bar counter permitted on a rooftop, regardless of proximity to a residential use, unless approved by public hearing before Historic Preservation or Design Review Board.
- No rooftop Food & Beverage operations past 8:00pm, unless approved by public hearing before Planning Board.
- No outdoor lounge-style seating, aside from traditional tables/chairs, unless approved by public hearing by the Planning, Historic Preservation or Design Review Board.

*South of Fifth Street (Commercial Performance Standard District) under proposed Section 142-693:*

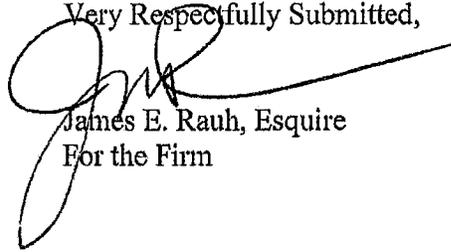
- No outdoor bar counters permitted on a property within 100 feet of a residential use.

In addition to the new restrictions set forth above, Section 114-1 (Definitions) is sought to be revised to create a broad definition of the term "Entertainment establishment" by including a restaurant with a mere "person who plays recorded music for an audience," ie. a DJ. This issue is relevant because many bona fide restaurants have now implemented a dining concept that includes a "person who plays recorded music for an audience" at a lower volume (background music) for atmosphere. Under the proposed new definition/restriction, that same restaurant with background music would be considered an "Entertainment establishment," which is a departure from past interpretations under the existing definition for entertainment, upon which many existing/licensed restaurants based their operational plan.

In summary, without sufficiently protective vesting language, making existing buildings/venues legally *conforming*, the new restrictions would have a substantially adverse impact on business and property values, since compliance would be fatal to some business operations. Further, many restaurant and other hospitality uses, whether existing or new, simply

could not operate an economically viable business under the new proposed restrictions. In light of the foregoing, we would request the Planning Board not make a favorable recommendation to the City Commission with respect to the amendments contained in the above referenced ordinances.

Very Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'J. Rauh', with a long horizontal line extending to the right.

James E. Rauh, Esquire  
For the Firm

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