MIAMIBEACH

OFFICE OF THE CITY MANAGER

NO. LTC # **365-2016**

LETTER TO COMMISSION

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: September 2, 2016

SUBJECT: Ocean Drive Proposals

The purpose of this Letter to Commission is to present a Ten Point Plan that Commissioner Ricky Arriola has prepared in conjunction with several business owners on Ocean Drive. Commissioner Arriola had been asked at the July 20, 2016 City Commission meeting to work with business and other stakeholders to negotiate a comprehensive proposal for improvements to Ocean Drive. Attached please find a cover memorandum and the 10 Point Proposal for discussion at the City Commission on September 14, 2016.

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jimmy Morales, City Manager
FROM: Ricky Arriola, Commissioner
DATE: September 2, 2016
SUBJECT: 10 Point Proposal for Ocean Drive

Please find attached a 10 Point Proposal that recommends several significant measures that the City and the Ocean Drive businesses should consider adopting. As the Proposal states, it was prepared by myself as well as several Ocean Drive hotel and restaurant owners and their legal counsel. I also worked and consulted with our City staff including – our police, code enforcement, planning, legal and City Manager departments. We also took into account the past recommendations of the Ocean Drive Task force and recent recommendations from the City's Historic Preservation Board.

To highlight some of the major proposals that the team is recommending include – (1) removal of the "gauntlet" along Ocean Drive; (2) significant reduction in music and loud noise; (3) increased safety measures, including the installation of lights along the alleys on Ocean Court; (4) restricting/prohibiting certain types of businesses on Ocean Drive and the MXE district; (5) increased police and security presence; and (6) the creation of an Ocean Drive BID, among other measures. The attached document has more details.

Our team spent hundreds of hours over the past 7 weeks working on this Proposal. We are eager to disseminate this to my colleagues on the Commission and to City residents for their consideration. It is our hope that the Proposal will be discussed and considered for adoption by the City Commission at our next meeting on September 14th.

Best,
Ricky Arriola
Commissioner, City of Miami Beach

September 2, 2016

TEN POINT PLAN FOR OCEAN DRIVE

Introduction

At the July 20th Commission meeting, Mayor Levine asked Commissioner Arriola to meet with Ocean Drive businesses and other stakeholders to negotiate a comprehensive proposal for changes to Ocean Drive that would reinvigorate and improve numerous aspects of this critically important and iconic street. Over the past several weeks, Commissioner Arriola has had many discussions with residents, neighborhood groups, business owners, the Police Chief, City Manager, City Attorney and other City Staff.[1] Therefore, this work product is the result of careful deliberation with and collaboration among key stakeholders. The proposal contained in this document (the "Proposal") aims to balance the vision of City leaders with the interests of residents, private property owners and businesses in order to create a more welcoming and safer environment for residents and tourists visiting Ocean Drive. Ultimately, all parties desire to re-create the charm and glamour of Ocean Drive.

Many of the issues addressed here have, over the last 12 months, been the subject of extensive analysis by the Mayor's Ocean Drive Task Force. The Task Force received substantial public comment and testimony on these issues. This document incorporates many of those same Task Force recommendations, which previously were approved by the City Commission and referred to City Staff for implementation.

This Proposal takes aim at the major elements that must be addressed in a comprehensive plan – police/security; noise; safety; sanitation; aesthetics; code of conduct; allowable businesses and other related matters.

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[1] Commissioner Arriola also has had many meetings with Jonathan Plutzik, Chairman of the Ocean Drive Task Force. Further, the Commissioner met with Mike Palma, Executive Vice President of Brio Destinations, which owns The Clevelander Hotel; and Alexander Tachmes, Partner at Shutts & Bowen LLP and the Clevelander's counsel. In July of this year, the Clevelander had submitted a proposal to the Mayor and City Commission proposing changes to Ocean Drive.

Recommendations

1. Immediate additional police, security and sanitation workers for Ocean Drive

A. Patrolling public areas. In its FY 2016/17 budget, the City allocated funds for an additional 12 new officers dedicated solely to the City's Mixed Use Entertainment District ("MXE"), which includes Ocean Drive from 5th to 15th Streets and Collins Avenue from 5th to 16th Streets. Due to training and other hiring protocols, some of these 12 new officers are expected to begin patrolling in early 2017 with the remainder commencing in the summer of 2017. Although the presence of these additional 12 officers will definitely provide safety benefits for the area, as indicated above, the officers will not be dedicated solely to Ocean Drive (5 officers will be dedicated to Ocean Drive) and it will be some time before the officers commence work.

Many believe that the need to improve the safety of Ocean Drive is one of the most urgent issues facing the street. Due to the *immediate* need for additional security dedicated exclusively to Ocean Drive, between now and the date that additional police officers are physically present on Ocean Drive, the City and/or Ocean Drive businesses will pay a private security company to have 2 security guards stationed on every other block of Ocean Drive between 5th and 15th Streets, 7 days per week (with the number of hours per day to be determined). The issue of who will pay for the additional security and/or what percentages of the overall cost will be paid by which party will be discussed between the City and Ocean Drive property owners. Once the additional police officers begin patrolling in the summer of 2017, the City and Ocean Drive businesses will re-evaluate whether to decrease or maintain the private security presence.

B. Police and Park Rangers. At the discretion of the Commission and Police Chief, Miami Beach police officers and park rangers may be shifted from other areas to Ocean Drive. Off-duty Miami Beach police officers and off-duty police officers from neighboring municipalities may be contracted to patrol Ocean Drive (although finding sufficient officers who want to perform this off-duty work remains a major challenge). Off-duty officers will not be allowed to be assigned to specific bars or restaurants. To the extent that Miami Beach Police, off-duty police and Park Rangers can be allocated to Ocean Drive, the need for private security will decrease.

C. Open Containers. Police officers will continue to enforce open container laws and conduct undercover operations to identify those businesses that allow patrons to leave their establishments with open containers. Additional enforcement and self-regulation of open container laws also will be responsibilities of Ocean Drive businesses as stated in this Proposal.

D. Security to Patrol Private Property. All bars and restaurants on Ocean Drive shall be required to hire private security. Private security guards will be required to receive

professional training for their work at that particular business. Businesses whose private security personnel do not comply with security standards specified by the City Code shall be subject to fines and other penalties.

E. Sanitation. Another key and widespread concern regarding Ocean Drive is the cleanliness of the street. The City will allocate additional sanitation personnel dedicated exclusively to Ocean Drive. As with the additional police officers referenced above, if delay is expected in allocating additional City sanitation workers due to City hiring processes or other matters, then the City and/or Ocean Drive businesses will hire a private sanitation company so that such additional services can start immediately. Once the additional City workers have been allocated to the street, the City and Ocean Drive businesses will re-evaluate whether to decrease or maintain the private sanitation presence. The issue of who will pay for the additional sanitation and/or what percentages of the overall cost will be paid by which party will be discussed between the City and Ocean Drive property owners.

F. Alley Lighting. It is well-known that there is a greater incidence of criminal behavior in dark, unlit public areas. In order to reduce crime, each Ocean Drive property owner will be required to install lights facing and illuminating the Ocean Court alley behind its property and to install lights on the sides of its property to the extent the side of the property does not front a street. The costs of such lighting may be reimbursed if a Business Improvement District is formed.

THE NEED FOR ADDITIONAL POLICE IS SUPPORTED BY OCEAN DRIVE TASK FORCE AND THE CONCEPT OF ADDITIONAL POLICE FOR OCEAN DRIVE WAS ALREADY APPROVED BY CITY COMMISSION

2. *Business Improvement District ("BID")*

Several items in this Ocean Drive proposal contemplate the expenditure of funds. For example, the hiring of private security will have a cost. Because it is unlikely that the City Commission will agree to fund 100% of all the cost items in this proposal, the City needs to create a mechanism for contribution by property owners of a portion of the costs. In that regard, the City Commission will authorize the formation of a BID for Ocean Drive and direct the City Administration and City Attorney's office to commence the formation process. Key goals of the BID will be to contribute to the costs of the following items: off-duty police or private security officers to be dedicated only to the area of 5th to 15th Streets on Ocean Drive; the salary of a BID Executive Director who will oversee BID day-to-day operations and ensure compliance by businesses with the City Code; hiring additional sanitation personnel exclusively for Ocean Drive; and implementing coordinated marketing for Ocean Drive. Ocean Drive businesses will maintain the cleanliness of their café areas, the sidewalks adjacent to café areas and their valet stands and curb areas, during hours of operation.

Whether a BID is ultimately formed will be up to the Ocean Drive property owners. A BID requires a 51% affirmative vote of the property owners whose properties are located within

the BID boundaries. Moreover, if a BID is formed, the members of the BID will be responsible for establishing an annual budget, which will be paid, at least in part, by property owners.

If a BID is formed, an Executive Director will be appointed to ensure that all Ocean Drive businesses are operating consistent with City Code and the BID mission statement and other relevant guidelines. This Executive Director will be in constant communication with the City and the BID board of directors, consisting of Ocean Drive businesses. The Executive Director will be the main point of contact between Ocean Drive businesses and the City. The above protocol, which is consistent with other BIDs, will provide very important "self-policing" benefits and other great improvements to Ocean Drive.

The process to form a BID is estimated to take at least 9 months. Therefore, to address the window of time between now and the date of BID formation, the Ocean Drive Association and its members have agreed to hire (at their sole cost) an Interim Street Manager who will be in charge of ensuring that businesses comply with new Code provisions and otherwise take all appropriate steps to enhance existing operations. The Interim Street Manager will report to the Ocean Drive Association board and interface regularly with Miami Beach Police, Code Enforcement and City leadership. If a BID is formed, this position can be converted to the BID Executive Director. However, it is important that a manager be appointed now to drive change and compliance on the street.

SUPPORTED BY OCEAN DRIVE TASK FORCE AND ALREADY APPROVED BY CITY COMMISSION

3. ***Umbrellas, Furniture and Fixtures***

The Ocean Drive Task Force voted in favor of moving furniture to the west part of the sidewalk in order to provide a clear pedestrian pathway and remove the "gauntlet" or "tunnel" effect that currently exists on the street.

The Historic Preservation Board ("HPB") recommended at its August meeting that furniture be moved to the west part of the sidewalk and certain trees be relocated to enhance the visibility of the beautiful, historic facades of the hotels on Ocean Drive. However, the HPB acknowledged that moving furniture to the west would not be feasible for certain properties due to the layout of the particular property and related factors. In those cases where it is not feasible, the HPB determined that furniture would not need to be moved to the west as long an alternate plan for that area of the sidewalk is approved by the Planning Department and a clear 5 foot path for pedestrians is maintained.

A. New Guidelines. All umbrellas, furniture and fixtures on the Ocean Drive sidewalk must adhere to the Umbrella, Furniture and Fixtures Design Guidelines approved by Resolution of the HPB at its meeting of August 9, 2016, as supplemented or amended by this Proposal (collectively, the "Design Guidelines"). (At its meeting, the HPB reviewed the Planning Department Design Guidelines and approved those guidelines with changes.) Within seven (7) days of the Commission's approval of this Proposal,

the Planning Department will draft the final Design Guidelines consisting of the HPB Resolution, as supplemented or amended by this Proposal. To the extent some of the Design Guidelines conflict with existing City Code, the Planning Department will recommend appropriate Code amendments for adoption and implementation.

MANY OF THE PLANNING DEPARTMENT GUIDELINES WERE ALREADY SUPPORTED BY OCEAN DRIVE TASK FORCE AND APPROVED BY CITY COMMISSION

B. Table and Chairs Footprint. Except as provided below, all sidewalk café tables must be moved to the west part of the sidewalk, abutting each respective hotel. There must be at least an unobstructed 5 foot path for pedestrians between the eastern edge of the sidewalk and the tables/chairs. To the extent that moving furniture to the west would not be feasible due to the layout of a particular property or related factors, furniture does not need to be moved to the west as long an alternate plan for that area of the sidewalk is approved by the Planning Department and a clear 5 foot path for pedestrians is maintained.

ACTION ITEM: Each sidewalk café business will have 30 days to implement after the Commission approves by resolution. Each sidewalk café business will submit to the Planning Department a modification to its sidewalk café permit containing a plan that shows the new footprint that will be allowed for such cafes' tables and chairs. Any sidewalk café business whose modified plan has not been approved by the Planning Department (and/or any such business not complying with the modified plan) within 30 days of the Commission resolution will have its sidewalk café permit revoked until compliance is achieved unless the date is extended by the City Manager for good cause shown.

C. Trees. The City shall relocate certain trees in order to provide for an unimpeded 5 foot pedestrian walkway clearance and to improve the visibility of the historic, architecturally significant building facades. In those cases where trees are relocated, the City will fill with concrete the area where the tree formerly stood in order to match the existing sidewalk plan.

D. Width of Umbrellas and Awnings. The maximum width of umbrellas and awnings on the sidewalk shall be the width of the west sidewalk minus 5 feet for an unobstructed pedestrian path.

E. Height of Umbrellas and Awnings. The maximum height of umbrellas and awnings on the sidewalk shall be 9 feet. It is important to ensure that umbrellas and awnings are not so tall that they obstruct the stunning, historic facades of our Art Deco hotels. The minimum height of umbrellas and awnings shall remain at 6 feet, 8 inches.

F. Width of Tables. The maximum width of tables shall be the width of the west sidewalk minus 7 feet. There will be no limit on the tables' length (although

obviously the tables can be located only in the area directly east of the applicable upland hotel or property).

G. Securing Umbrellas into the Sidewalk. Sidewalk café umbrellas will be allowed to be bolted into the sidewalk in order to address safety, sanitation and space concerns. First, due to the heavy wind gusts that come off the ocean, there is a concern that umbrellas could become projectiles and cause damage to persons and property. Therefore, the ability to secure umbrellas into the sidewalk is important from a public safety standpoint. Second, having umbrella bases held down by bricks and weights creates sanitation and insect problems. And third, bolting umbrellas is the most space efficient approach to securing the umbrellas. Space efficiency is significant especially because sidewalk expansion is not contemplated by this proposal.

H. Lighting. Strong illumination at sidewalk cafes in the evening is preferred and does not need to be limited to battery operated votive candles. Illumination is needed from a practical standpoint so patrons can read their menus and see their food and beverages. Meaningful sidewalk and street illumination is also helpful in promoting crime reduction as it facilitates better police observation of all public areas. Proper illumination creates a safe environment for both consumers who are walking on Ocean Drive and employees who work there.

I. Umbrella Zippers. Umbrellas will be able to be zipped together with gutters provided that no more than three (3) umbrellas can be zipped together. Because rain rarely falls perpendicular to the street, diners are likely to get wet if there is space between umbrellas. The ability to fasten umbrellas together is important to protect diners from rain and can be done in an inconspicuous manner.

J. Roll-Down Tarp. Umbrellas will be allowed to have roll-down transparent tarp to be rolled down only during rain or wind events.

ACTION ITEM: Sidewalk café permits are subject to renewal by October 1 of each year. According to City Code Section 82-385(b), the City Manager has discretion to allow sidewalk cafes to deviate temporarily from sidewalk café Code provisions and regulations. Such temporary deviation will be allowed from the period of October 1 until the dates referenced below.

Each sidewalk café business will have 90 days from the date of the Commission resolution to adhere to the new Design Guidelines, including purchasing new umbrellas/furniture/fixtures as necessary. The renewal date of sidewalk café permits for 2016-17 will be the 90 day date referenced above. Any business not in compliance by this renewal date will have to cease operating its sidewalk café business until its permit is approved unless the date extended by the City Manager for good cause shown. Per Commissioner Aleman's comment, each sidewalk café business will have to submit written documentation to the Planning Department within 30 days of the Commission resolution showing proof that the business has placed its order with an umbrella company for new umbrellas.

K. Awnings. Retractable awnings will be allowed in place of umbrellas as long as the awnings are consistent with Planning Department guidelines for awnings on Ocean Drive.

ACTION ITEM: Planning Department to come up with awning standards within 30 days of Commission resolution.

L. Street Lighting. The City should install uniform lighting for the full length of Ocean Drive from 5th to 15th Streets.

SUPPORTED BY OCEAN DRIVE TASK FORCE AND ALREADY APPROVED BY CITY COMMISSION

4. ***Prohibition on Formula Restaurants and Retail and Other Limits on Retail (Note: The actual language of the ordinance is being drafted by the City's legal department. The ordinance is being modeled after similar successful ordinances from other jurisdictions across the country. Those other jurisdictions have sought to avoid an influx of "chain" establishments that decrease the uniqueness of historic districts such as Ocean Drive.)***

A. "Chain" Retail. "Chain" restaurants and other retail establishments will be prohibited on Ocean Drive. Any "chain" restaurant or retail establishment having a valid business tax receipt as of the date that "zoning in progress" commences will be "grandfathered" and deemed legally nonconforming. In order to try to prevent "chain" businesses from rushing to get licenses before this new legislation gets adopted, the City Commission should declare "zoning in progress" at the earliest possible date. This action would have the practical impact of preventing the issuance of any new licenses while the legislative process takes its course.

B. Size of Retail. The original vision for Ocean Drive in the 1980's was an American Riviera of boutique, Art Deco hotels with charming sidewalk cafes. This original vision never contemplated the transformation of Ocean Drive into a retail destination for souvenirs and T-shirts. In order to maintain this original vision, the Code today limits the size of retail establishments on Ocean Drive. However, based on the current situation, further tightening of the size and characteristics of retail establishments is needed.

Currently, the Code provides that hotels may have accessory retail, limited to 75 sq. ft. per hotel unit and apartment buildings may have accessory retail limited to 25% of the floor area of the subterranean or ground floor. For example, if a hotel has 30 rooms, then the hotel can have retail space up to 2,250 square feet, which is quite large. An apartment building with a 10,000 square foot first floor could have retail up to 2,500 square feet. Again, the number is not small. Further, under the current Code, businesses can apply for variances to exceed these maximum sizes.

Going forward, the Planning Department will propose further limitations on the size of retail on Ocean Drive. Variances to exceed the maximum size will be prohibited.

Any retail store that has a business tax receipt as of the date of zoning in progress will be grandfathered (legally nonconforming) regarding the legislation encompassed in this Section 4(B).

C. Certain Stores. Liquor stores, tattoo shops, pawn shops and check cashing stores will be prohibited for those properties fronting on Ocean Drive or one of the streets perpendicular to Ocean Drive west to Collins Avenue. (The Planning Board recently voted to recommend in favor of legislation prohibiting package liquor sales in MXE.) These kinds of retail establishments chase away more desirable and upscale restaurants and other retailers and ultimately lead to blight along city streets and neighborhoods.

D. Food Displays. Real and artificial food and beverage displays, including but not limited to "ghost drinks" placed on tables to attract attention of patrons, will be prohibited on public property and will be prohibited on private property to the extent such displays are visible from a public sidewalk or street.

SUPPORTED BY OCEAN DRIVE TASK FORCE AND ALREADY APPROVED BY CITY COMMISSION

E. "Bait and Switch." There is a major concern that some food and beverage businesses on Ocean Drive are not being transparent with their customers on what they are being charged and, as a result, proper disclosures are not being made. This lack of transparency and disclosure has led to many negative comments about Ocean Drive on travel websites. Therefore, it is essential that we address this issue and prevent "bait and switch" problems.

All food and beverages and their prices must be listed in a conspicuous manner on the menu for the establishment. To the extent that the establishment is adding an automatic gratuity or service charge to the bill, the gratuity/service charge must be noted in a conspicuous manner on the menu, the bill and the credit card charge slip. Moreover, if an automatic gratuity/service charge is being added, patrons also must be notified verbally by restaurant staff prior to or simultaneously with the provision of the bill.

F. Hospitality Training. Ocean Drive café employees will be required to undergo third party hospitality training within thirty (30) days of commencing work at any sidewalk café venue on Ocean Drive and to undergo refresher third party training annually. The company or person providing the training must be approved by the Ocean Drive Association. Proof of such training must be presented to the City as a condition of the business obtaining and/or retaining its sidewalk café license.

THIS CONCEPT IS SUPPORTED BY OCEAN DRIVE TASK FORCE AND ALREADY APPROVED IN CONCEPT BY CITY COMMISSION

G. Adult Entertainment. Food and beverage venues shall not be permitted to have, as part of their business, pole dancing, adult entertainment or nude dancing, as defined in Section 142-1271 of the City Code.

5. ***"Hawking" by Bar and Restaurant Personnel Prohibited***

"Hawking" or aggressive solicitation by bar and restaurant personnel on Ocean Drive sidewalks is a serious problem and is frequently cited by tourists and locals alike as causing an unpleasant and unwelcoming atmosphere on Ocean Drive. "Hawking" brings bad publicity to Ocean Drive in the form of negative tourist reviews on travel websites and in other ways.

The City Code currently prohibits solicitation on Ocean Drive sidewalks. However, the solicitation problem has not been solved and is acute at this point. To address this issue, the penalties for solicitation will increase substantially.

Current First Offense Fine: $50; New Fine Amount: $1,000
Current Second Offense Fine: $100; New Fine Amount: $2,000
Current Third and Subsequent Fine: $250; New Fine Amount: $5,000

For each offense, both the actual person doing the solicitation and the applicable business will be fined.

6. ***Street Vendors and Promoters Prohibited***

Street vendors and promoters detract from the visitor experience – they clog the sidewalks, harass tourists, deal drugs, litter the streets and block entrances to businesses. Accordingly, they should be banned from Ocean Drive.

A. Prohibition. On the Ocean Drive sidewalk, it will be illegal for any person (a) to offer to another person the sale of a product or service or a free sample of such product or service or (b) to give or offer, whether for free or not, to another person a flyer, ticket, wristband, candy bar, magnet, cosmetics product or any other product or type of communication, relating to a for-profit business.

B. Fines. The fines for violating the above provisions will be the same as the new solicitation fine schedule in item 5 above regarding "hawking."

C. Enforcement. The Ocean Drive Interim Street Manager and future BID Executive Director will serve to monitor these issues and report violations to Code Compliance for swift enforcement.

7. ***Music or other noise being produced by golf carts or other open-air commercial vehicles shall be prohibited.***

SUPPORTED BY OCEAN DRIVE TASK FORCE AND ALREADY APPROVED BY CITY COMMISSION

8. ***Music Heard on Sidewalks and Lummus Park***

There is a need to thoughtfully mitigate the volume of music projected on Ocean Drive sidewalks so that the pedestrian experience is enhanced.

A. Food and beverage establishments. Food and beverage establishments on Ocean Drive will be prohibited from having east facing speakers within 20 feet of the property's east boundary, unless music is being played at ambient levels.

B. Retail stores. A substantial number of storefronts have speakers bolted to the outside of their premises and music is blasting day and night. This music substantially increases the amount of noise and the "party atmosphere" along Ocean Drive. There is no reason for T-shirt and other clothing stores, souvenir shops, liquor stores and similar establishments to have music playing like they are nightclubs. Therefore, this Proposal recommends elimination of all such outside speakers and a prohibition on any music from such establishments being able to be heard outside their premises.

C. Other legislation. In view of the above recommendations regarding east traveling music, the agenda items discussed during the July, 2016 Commission meeting regarding the same topic will be withdrawn.

9. ***Lummus Park should be activated with art/sculpture installations and cultural programming. The area between the serpentine walkway and the beach west of the dunes should be activated with additional recreational amenities. In order to minimize food consumption in Lummus Park, urban appropriate picnic tables should be considered for this same underutilized area between the serpentine walkway and the dunes. The City's Department of Tourism and Cultural Affairs should be responsible to create a regular schedule of cultural programming and recreational activities for these areas.***

SUPPORTED BY OCEAN DRIVE TASK FORCE AND ALREADY APPROVED BY CITY COMMISSION

10. ***No person or business is allowed to sell, buy, dispense, use or otherwise possess marijuana in Miami Beach. This Proposal underscores this point for the area of Ocean Drive. No person or business will be allowed to sell, buy, dispense, use or otherwise possess marijuana on Ocean Drive, including but not limited to on the sidewalks, street, Lummus Park, Ocean Court alley or other public areas in the vicinity of Ocean Drive, or in any private property fronting Ocean Drive or a street perpendicular to Ocean Drive west to Collins Avenue. With regard to medical marijuana, if that becomes legal in Miami Beach, medical marijuana dispensaries will be banned in properties fronting Ocean Drive***

as well as any properties that front a street perpendicular to Ocean Drive west to Collins Avenue.

Subject to the vote of the City Commission, the City Commission will revoke the 2am straw ballot question that is presently on the November 2016 election ballot.