



## AGENDA ITEM NO. \_\_\_\_\_

### City of Coral Gables CITY COMMISSION MEETING November 17, 2009

#### ITEM TITLE:

**Ordinance on First Reading.** An Ordinance of the City Commission of Coral Gables amending the Zoning Code, Section 4-401., Uses prohibited and Article 8., Definitions to clarify the City's current nightclub provisions, providing severability, providing for codification thereof, and providing for an effective date.

#### RECOMMENDATION OF THE CITY MANAGER:

Approval.

#### PLANNING DEPARTMENT RECOMMENDATION:

Recommend approval of the proposed Zoning Code text amendments. See Exhibit A – Ordinance.

#### PLANNING AND ZONING BOARD RECOMMENDATION:

The Planning and Zoning Board on 09.16.2009 recommended approval of the proposed Zoning Code text amendments (vote: 6-0) with modifications.

#### BRIEF HISTORY:

In May of 2009, the City Commission requested that City Staff examine and clarify the current nightclub provisions contained within the Zoning Code. This item was scheduled as a discussion item on 10.27.2009 to allow the City Commission to provide policy direction on the proposed amendments. The Commission endorsed the provisions presented and requested Staff return with a draft Ordinance for consideration on 1<sup>st</sup> Reading. Specifically, the Commission requested clarification relative to the definition of “gross receipts.”

Staff contacted the State Division of Alcoholic Beverages & Tobacco Bureau of Licensing, Regulatory Supervisor/Consultant. In summary, the State has specific requirements governing restaurants engaged in the service of food and alcoholic beverages. A summary of State Chapter 61A-3.0141(3) is as follows:

- Restaurants must maintain separate records of all purchases, including gross retail sales of food and non-alcoholic beverages and gross retail sales of alcoholic beverages.
- At least 51 % of total gross revenues must come from retail sale of food and non-alcoholic beverages. Proceeds of catering sales are not included in the calculation of total gross revenues. Catering sales include food or non-alcoholic beverage sales prepared by the licensee on the licensed premises for service by the licensee outside the licensed premises.
- Records are required to be maintained on a bi-monthly basis and available on the premises.
- The burden is on restaurant to demonstrate compliance with the requirements for the license, the records required to be kept shall be legible, clear, and in the English language.
- The required percentage shall be computed by adding all gross sales of food, non-alcoholic beverages, and alcoholic beverages and thereafter dividing that sum into the total of the gross sales of food plus non-alcoholic beverages.
- Restaurants issued licenses prior to April 18, 1972 but after September 1, 1969 shall be required to

derive at least 30 percent of gross revenues from the sale of food and non-alcoholic beverages.

- Restaurants holding special restaurant licenses issued prior to September 1, 1969 are not required to derive any fixed amount of gross revenue from the sale of food and non-alcoholic beverages but must operate as a bona fide restaurant and meet the other requirements of this rule.
- Full course meals must be available at all times when the restaurant is serving alcoholic beverages except alcoholic beverage service may continue until food service is completed to the final seating of restaurant patrons for full course meals.
- For purposes of determining required percentages, an alcoholic beverage means the retail price of a serving of beer, wine, straight distilled spirits, or a mixed drink.

A copy of the State Chapter 61A-3.0141 is attached (See Exhibit B - Page 82).

The proposed revisions quantify and clarify the current standards. The proposed changes mirror the State requirements. The provision provide for the following:

- Clarifies that nightclubs is an accessory use (versus a primary use) to a restaurant.
- Maintains the previously established upper limit (49%) of total bi-monthly gross revenues from the sale of alcoholic beverages. This maximum limitation is consistent with the State limitation that 51 % of total gross revenues must come from retail sale on the licensed premises of food and non-alcoholic beverages. The 49% assures that the sale of alcoholic beverages does not become the primary function of the establishment.
- Requires restaurants to maintain bi-monthly gross revenues data for inspection upon request to demonstrate compliance with the requirements.
- References and requires adherence with existing City Code and Zoning Code requirements related to noise, permitted hours of operation, nuisance provisions, etc.
- Provides for the dispensing of alcoholic beverages for consumption on the premises, specifically insuring that “nightclub” activities shall be entirely within the building(s).
- Clarifies the definition of casino and lists the use as a separate prohibited use.

Pursuant to Staff's research, Staff recommends minor amendments to the previously submitted language to be consistent with State terminology (double underline and ~~double knockout~~ format). The recommended provisions as modified are as follows:

#### **Section 4-401. *Uses prohibited.***

*The following uses shall not be permitted within the City:*

- A. Nightclubs as a primary use.
- B. Nightclubs or casino whenever where ~~alcoholic beverages exceed forty-nine (49%) percent of total annual bi-monthly gross sales receipts/revenues of a primary restaurant use pursuant to the State of Florida licensing requirements for restaurants.~~ See Definition of “Nightclub” in Article 8
- C. Crematory or furnace for cremation of human bodies.
- D. Electronic video entertainment centers and machines.
- E. Casinos.

#### **Article 8 – Definitions.**

*Nightclubs means-a is a commercial establishment that is an accessory use to a primary restaurant use that may includes entertainment such a music, dancing and other similar social activities. All permitted nightclubs within restaurants shall be subject to all of the following provisions:*

1. The dispensing of alcoholic beverages shall only be for consumption on the premises.
2. All nightclub entertainment shall be contained entirely within the building(s) and shall satisfy all other applicable City Code and Zoning Code requirements including but not limited to noise, permitted hours of operation, nuisance provisions, etc.
3. The restaurant shall maintain total annual bi-monthly gross sales receipts/revenues for inspection upon request to demonstrate compliance with these requirements.

See Section 4-401., "Uses prohibited," for further provisions.

~~only as an accessory use to a primary restaurant use, dispensing alcoholic beverages for consumption on the premises, where alcoholic beverages and intoxicating liquors sales exceed forty (40%) percent of the total gross receipts of the establishment.~~

Casino is a commercial establishment which provides gambling and gaming as either a primary or accessory source of revenue, which may include food and beverage sales for consumption on premises as a part of its business activity.

The item was forwarded to the Planning and Zoning Board for public hearing review at their 09.16.2009 meeting. The Board recommended approval of Staff's recommendation (6-0 vote) with the modification that the provisions be clarified that nightclubs as a primary use shall be prohibited. The 09.16.2009 Planning Department Staff report and meeting minutes are provided as Exhibits C and D.

#### **LEGISLATIVE ACTION:**

<b>Date:</b>	<b>Resolution/Ordinance No.</b>	<b>Comments</b>
10.27.2009	Discussion Item	Requested Staff return with Ordinance on 1 <sup>st</sup> Reading.

#### **OTHER ADVISORY BOARD/COMMITTEE RECOMMENDATION(S):**

<b>Date</b>	<b>Board/Committee</b>	<b>Comments (if any)</b>
09.16.2009	Planning and Zoning Board	Recommended approval (vote: 6-0) with modifications.

#### **PUBLIC NOTIFICATION(S):**

<b>Date</b>	<b>Form of Notification</b>
09.11.2009	Published Planning and Zoning Board Meeting Agenda in newspaper.
09.11.2009	Posted Staff report and all attachments on City web page.
10.23.2009	Posted City Commission discussion item memo and all attachments on City web page.
11.13.2009	Posted City Commission 1st Reading Ordinance memo and all attachments on City web page.

#### **APPROVED BY:**

<b>Department Director</b>	<b>City Attorney (If Applicable)</b>	<b>City Manager</b>
Eric Riel, Jr. Planning Director		

#### **EXHIBIT(S):**

- A. Ordinance – Zoning Code text amendment.
- B. State Administrative Code.
- C. 09.16.2009 Planning Department Staff report.
- D. 09.16.2009 Planning and Zoning Board meeting minutes.