



**City of Coral Gables
CITY COMMISSION MEETING
October 27, 2009**

AGENDA ITEM NO. _____

ITEM TITLE:

Discussion Item. Amendment to the Zoning Code text to clarify the City's current nightclub provisions.

RECOMMENDATION OF THE CITY MANAGER:

Approval.

PLANNING DEPARTMENT RECOMMENDATION:

Recommend approval of the proposed Zoning Code text amendments to clarify the City's current nightclub provisions. Staff's recommended amendments are provided in the draft ordinance in ~~strike thru~~ / underline format for review.

PLANNING AND ZONING BOARD RECOMMENDATION:

The Planning and Zoning Board on 09.16.09 recommended approval of the proposed Zoning Code text amendment (vote: 6-0) with one modification.

BRIEF HISTORY:

The City Commission requested that City Staff examine and clarify the current nightclub provisions. This item is scheduled as a discussion item to allow the City Commission to provide policy direction on the proposed amendments. The current Zoning Code provisions regulating "nightclubs" are as follows:

Section 4-401. Uses prohibited.

The following uses shall not be permitted within the City:

- A. Nightclub or casino whenever alcoholic beverages exceed forty-nine (49%) percent of total gross receipts.*
- B. Crematory or furnace for cremation of human bodies.*
- C. Electronic video entertainment centers and machines.*

Article 8 – Definitions.

Nightclubs mean a commercial establishment dispensing alcoholic beverages for consumption on the premises, where alcoholic beverages and intoxicating liquors exceed forty (40%) percent of the total gross receipts of the establishment. (See Article 4, Division 4.)

Per the above provisions, the Building and Zoning Department interprets nightclubs as a "commercial establishment" which is an accessory use (versus a primary use) to a restaurant, based on the total annual gross receipts from sale of alcoholic beverages as follows:

- Not less than the lower limit (40%) per the "Definitions" section.
- Does not exceed an upper limit (49%) per the "Uses Prohibited" section.

Consistent with this interpretation, current nightclub activities within the City are operating as accessory uses to approved State and City (business) licensed restaurants. Staff's proposed amendments include the

following changes:

1. Only an upper limit (49%) of total annual gross receipts from the sale of alcoholic beverages is cited. The 49% maximum limitation is the same manner in which the State regulates the sale of alcoholic beverages in restaurants. This maximum limitation assures that the sale of alcoholic beverages does not become the primary function of the establishment. The 40% lower limit is an erroneous limitation. Staff has suggested other protections to regulate operations.
2. The updated provisions references and requires adherence with existing City Code and Zoning Code requirements related to noise, permitted hours of operation, nuisance provisions, etc.
3. Provides for additional protection/restrictions governing nightclubs within restaurants such as requiring dispensing of alcoholic beverages for consumption on the premises, activities shall be entirely within the building(s) and that the restaurant shall maintain total annual gross receipts for inspection to demonstrate compliance with these requirements below the 49%. These provisions are not presently required.
4. Clarifies the definition of casino and lists the use as a separate prohibited use.

The item was forwarded to the Planning and Zoning Board for public hearing review at their 09.16.09 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 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 gross sales receipts 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 gross receipts 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 Planning Department Staff Report and minutes are attached as Exhibits A and B.

OTHER ADVISORY BOARD/COMMITTEE RECOMMENDATION(S):

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

PUBLIC NOTIFICATION(S):

Date	Form of Notification
08.28.09	Published Planning and Zoning Board Meeting Agenda in newspaper.
10.16.09	Posted City Commission memo and all attachments on City web page.

APPROVED BY:

Department Director	City Attorney (If Applicable)	City Manager
Eric Riel, Jr. Planning Director		

EXHIBIT(S):

- A. 09.16.09 Planning Department Staff report.
B. 09.16.09 Planning and Zoning Board meeting minutes.