

City of Coral Gables Planning Department Staff Report

To: Planning and Zoning Board Members

From: Planning Department

Date: August 26, 2009

Subject: **Zoning Code Text Amendment.** An Ordinance of the City of Coral Gables amending the Zoning Code to clarify the City's current nightclub provisions, providing severability, providing for codification thereof, and providing for an effective date.

Recommendation

The Planning Department recommends approval of the amendments to the Zoning Code to clarify the City's current nightclub provisions in the attached Ordinance (see Attachment A).

Background

The City Commission requested that City Staff review the Zoning Code's existing provisions regarding nightclubs and provide recommendations that would clarify their use within the City. The amendments proposed herein are the result of joint meetings and input from the Planning Department, Building and Zoning Department and the City Manager's Office.

Proposal

Currently, the Zoning Code references "nightclubs" within two sections of the Zoning Code, Article 4, Uses Prohibited and Article 8, Definitions. To insure uniform enforcement and clarity, staff is recommending changes to both sections.

At the present time, the Zoning Code regulates "nightclubs" 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.)

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

1. Not less than the lower limit (40%) per the “Definitions” section.
2. 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. The proposed amendments recommend that only an upper limit (49%) of total annual gross receipts from the sale of alcoholic beverages be cited in both provisions for consistency and enforcement purposes. 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.

Staff would also note that Section 3-6, “(C) CB-Use Districts” of the City’s Archived Zoning Code allowed nightclubs as an accessory use for restaurants. This was enacted pursuant to Ordinance No. 3257, adopted on 06.09.97 which included a provision prohibiting nightclubs that did not meet the requirement of the City’s Noise Ordinance (see Attachment B). The new Zoning Code does not include this requirement; therefore, these provisions have also been included in the amendments. The provisions adopted by Ordinance No. 3257 were as follows:

Sec. 3-6 (C) CB-Use Districts (Archived Zoning Code)

(d) Permitted Principal Uses and Structures

50. Restaurant, café, cafeteria and delicatessen. Retail liquor store licenses may be issued limiting the number of permitted licenses for sale of alcoholic beverages and intoxicating liquors subject to the following minimum conditions, restrictions and limitations.

- (f) Nightclub or lounge-type entertainment (as defined in Sec. 8-1, Uses Prohibited) or an accessory musical entertainment, live or reproduced, that does not meet the requirements specified in Article V Noises, Sec 16-141 as set forth in the “Code of the City of Coral Gables”.*

Specific Amendments

The specific amendments in ~~strike thru~~ / underline format are as follows:

Section 4-401. Uses prohibited.

The following uses shall not be permitted within the City:

- A. ~~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.*
- B. Crematory or furnace for cremation of human bodies.*
- C. Electronic video entertainment centers and machines.*
- D. Casinos.*

Article 8 – Definitions

Nightclubs ~~means a~~ is a commercial establishment that may include entertainment such a music, dancing and other similar social activities only as an accessory use to a primary restaurant use. The dispensing of alcoholic beverages shall only be for consumption on the premises, ~~where~~ and total alcoholic beverages and intoxicating liquors sales shall not exceed ~~forty~~ forty-nine (40% 49%)

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percent of the total annual gross sales receipts of the establishment primary restaurant use pursuant to State of Florida licensing requirements. (See Article 4, Division 4. 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. It shall be the responsibility of the restaurant to maintain total annual gross receipts for inspection upon request to demonstrate compliance with these requirements.

Casino is 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.

In summary, the proposed amendments provides for the following:

- Continues to allow nightclubs are a permitted use within the City, only as an accessory use to a restaurant.
- Clarifies that if a restaurant has alcohol sales in excess of 49% of the total gross sales receipts and the restaurant includes “nightclub” activities as identified within the definitions, those activities shall be prohibited.
- Requires all “nightclub entertainment” to be contained within the building. Not previously required.
- References all City Code requirements that are applicable towards regulating the use of a “nightclub”, as required in the following Chapters and Articles:
 - Chapter 6 – Alcoholic Beverages
 - Chapter 38, Article II – Noise
 - Chapter 34 - Nuisances
- Correctly references the State of Florida licensing requirements for restaurants serving alcoholic beverages.
- Requires the restaurant to maintain gross sales receipt records for annual City inspection to assure compliance with this maximum gross receipt requirement. These are the same records required by the State.
- Defines and prohibits “casinos” within the City.

Public Hearing Timeline

Upon recommendation from the Planning and Zoning Board, the proposed text amendments will be scheduled for public hearing consideration by the City Commission as follows:

City Commission, 1st Reading – September 8, 2009, 9:00 a.m.

City Commission, 2nd Reading – September 22, 2009, 9:00 a.m.

The above dates and times are subject to change.

Public Notification

The Planning and Zoning Board meeting agenda has been advertised and posted on the City web page. The staff report and attachments are also posted on the City web page.

Respectfully submitted,

Eric Riel, Jr.
Planning Director

Attachments:

- A. Draft Ordinance.
- B. Ordinance No. 3257 (Previously adopted Ordinance- no longer in effect).

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