

CITY OF MIAMI, FLORIDA

INTER-OFFICE MEMORANDUM

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TO : Ben John Fernandez  
Attorney at Law

DATE : December 27, 2010

FILE :

SUBJECT :  
Zoning Interpretation  
2010-0002

FROM : Barnaby L. Min  
Zoning Administrator

REFERENCES :

ENCLOSURES:

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This Zoning Interpretation is issued to address the conflict between Article 4, Table 3 of Miami21, the Zoning Ordinance ("Miami21"), and Chapter 4 of the City of Miami Code ("Code") as it relates to Alcoholic Beverage Service Establishments ("Alcohol Establishments").

Miami21 details that Alcohol Establishments are allowed in T4-L, T4-O, T5-L, T5-O, T6-L, T6-O, CI-HD, D1, D2, and D3 Transect Zones by process of Exception only. Alcohol Establishments are strictly prohibited in all other Transect Zones. Miami21 does not state any other regulations as it relates to Alcohol Establishments or what criteria are to be considered when determining whether Alcohol Establishments should be allowed during the Exception process.

The Code details specific criteria, including the process of public hearings, concerning Alcohol Establishments. Specifically, the Code details hours of service and distance requirements. The Code further describes what criteria are to be considered during the Exception process (i.e. operational/business plan, parking plan, capacity issues, sanitation plan, distance issues, and noise issues).

A conflict arises when a proposed Alcohol Establishment complies with all the requirements of the Code and the Code specifically states that a public hearing is not necessary but Miami21 states that an Exception is required. As a specific example, a supper club in the Midtown area does not require a public hearing pursuant to Section 4-3.2 of the Code ("Notwithstanding the requirements set forth above, PZAB and City Commission approval shall *not* be required for such establishments when located in the Midtown area") even though Miami21 indicates that an Exception is required. The question that results is whether an Exception is actually required.

It is my official interpretation that in such a situation when an Alcohol Establishment fully complies with the Code and the Code specifically states that a public hearing is not required, the Code shall preempt any requirements of Miami21. To support this interpretation, I rely upon the amendment to Miami21 that was adopted by the City Commission on November 18, 2010. The amendment to Miami21 amended Article 4, Table 3 by adding a footnote to the table that specifically states "see City Code Chapter 4 for regulations related to Alcoholic Beverage Service Estab." Although not explicitly stated in the amendment, the intent of the amendment was to clarify that the Exception process required by Miami21 is specifically detailed in the Code and the requirements of the Code are what to be followed in determining whether an Alcohol Establishment is allowed. Accordingly, if the Code is complied with, no further requirements are required from Miami21.

This interpretation should clarify that when Miami21 indicates that an Exception is required, the requirements of the Code must be complied with. Once the requirements of the Code are complied with, the requirements of Miami21 will also be complied with as a result. This interpretation further clarifies that anytime there is a conflict between the City Code, whether Chapter 4 or any other Chapter, and Miami21, the City Code shall be binding.

This Zoning Interpretation shall be binding unless either Miami21 or the Code are amended or this Interpretation is reversed on appeal. Pursuant Article 7.1.2.3(b) of Miami21, an appeal of this Interpretation must be presented to the Planning, Zoning and Appeals Board within fifteen (15) days and filed with the Office of Hearing Boards.

cc: Francisco Garcia, Director of Planning  
Haydee Wheeler, Director of NET