

Here is a FAQ-type document written by the City Attorney that addresses and answers many questions regarding what the city can do - and can not do - regarding regulating alcohol, rental units, rental slingshots/golfcarts/scooters, taxes on hotels, restrictions on hotels regarding occupancy or rates, enforcement of noise on water from party-boats, hours of operations for bars, etc. Many times residents suggest regulations to address quality of life issues that can not be enacted per Florida law. This document would answer and address future ideas that residents generate to address different issues.

# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMISSION MEMORANDUM

**TO:** Mayor Dan Gelber and Members of the City Commission  
**FROM:** Rafael A. Paz, Acting City Attorney   
**DATE:** April 21, 2021  
**SUBJECT:** DISCUSSION REGARDING VICE MAYOR MICHAEL GÓNGORA'S EIGHTEEN POINTS ON THE ENTERTAINMENT DISTRICT.

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This memorandum has been prepared in response to the below questions pertaining to the MXE mixed use entertainment district (also known as the "Entertainment District"), which were submitted by Vice Mayor Góngora to the Acting City Attorney and City Administration. These responses are consistent with, and are intended to supplement, prior research and analysis provided by the City Attorney's Office and City Administration.

### ALCOHOL HOURS OF SALE

1. **What do most other cities in Florida do as far as closing hours? Ft. Lauderdale? Other?**

Cities throughout the State have adopted a range of closing hours, set forth below:

**Ft. Lauderdale:**

- 2:00 a.m. Sunday to Thursday and 3:00 a.m. Friday and Saturday, citywide.
- 4:00 a.m. last call is only within special entertainment districts, which is their downtown regional activity center.

**Orlando:** 2:00 a.m.

**Jacksonville:** 2:00 a.m.

**Tallahassee:** 2:00 a.m. with consumption allowed until 3:00 a.m.

**Daytona:**

- 12:00 a.m. as of right.
- 2:30 a.m., with consumption allowed until 3:00 a.m., pursuant to a special extended hours permit.

**Sarasota:** 2:30 a.m.

**Tampa:** 3:00 a.m.

**St. Petersburg:** 3:00 a.m.

**Pensacola:** 3:00 a.m.

**Clearwater:** 3:00 a.m. (with all alcoholic beverage establishments subject to conditional use approval)

**West Palm Beach:** 3:00 a.m. Sunday to Thursday and 4:00 am Friday and Saturday. Extended hours permit required to remain open until 4:00 a.m. in the Downtown area. Without the permit, alcohol sales are only allowed until midnight in the Downtown area.

**Key West:** 4:00 a.m.

**Panama City Beach:** 4:00 a.m.

**Miami:**

- 5:00 a.m./24 hours for 11<sup>th</sup> Street District in Downtown
- 3:00 a.m. Wynwood, Coconut Grove, Little Havana

Miami's last call varies by neighborhood, but is never earlier than 3:00 a.m., including Coconut Grove. Throughout the City, an exception is required (Conditional Use approved by the Planning, Zoning & Appeals Board (PZAB)) to remain open until 5:00 a.m., unless a business is located in a specialty district or entertainment district that allows a 5:00 a.m. last call; requesting such an exception is prohibited in Coconut Grove and districts with an earlier last call. In the entertainment and specialty districts a warrant is required, which is essentially an administrative conditional use permit, to remain open until a later time as specified in the City Code. The City may also limit the number of establishments in each district.

## **ACTION ITEMS SPECIFIC TO THE MXE DISTRICT**

### **2. *Can the City limit, suspend or terminate the restaurant outdoor expansions in MXE?***

**The City Commission may, by Resolution, exclude certain streets from the Restaurant Recovery Outdoor Seating Program (the "Program"). We would also note that, under Resolution No. 2020-31276 (creating the Program), the City Manager has broad discretion to terminate a restaurant's expanded seating permit at any time.**

Resolution No. 2020-31276 gives the City Manager the discretion to determine "whether and which parts of public rights-of-way may be closed to pedestrian or vehicular traffic, or parking, in order to accommodate outdoor seating areas pursuant to the Program." The City Commission may, however, amend the Resolution to exclude certain streets or areas from the Program.

The Program is currently scheduled to terminate on September 30, 2021 (pursuant to Resolution No. 2021-31632, which was adopted by the City Commission on March 17, 2021).

**3. Can traffic on Ocean Drive be reduced to one lane?**

**The City Commission may by resolution direct that Ocean Drive be reopened to one lane of traffic.**

The City's Transportation Department is currently evaluating the impacts associated with reintroduction of a single lane of traffic on Ocean Drive. However, given the adjacent Lummus Park and expansive greenspace for crowds to gather in the area, reintroducing traffic may not meaningfully disperse crowds.

**4. What can we do about outdoor bars in the MXE district? Can we limit hours?**

**Currently, at sidewalk cafes, alcohol sales/service must terminate by 1:30 a.m., and consumption must terminate by 2:00 a.m. The City Commission may amend the Sidewalk Café Ordinance to provide for an earlier "last call" at sidewalk cafes.**

**The Commission may also adopt an earlier termination time, by Ordinance, for alcoholic beverage establishments (i.e. on private property) on a district-by-district or Citywide basis.**

As a general rule, the City Commission has broad legislative discretion to change hours of sale for alcoholic beverages. See Section 562.14, Florida Statutes. Currently, the City Code establishes different hours of sale for alcoholic beverages in different zoning districts. For example, "last call" is at 2:00 a.m. in the South of Fifth and Sunset Harbour neighborhoods, and along 41st Street and the west side of Alton Road (between 5th Street and the Collins Canal). Even within the same zoning district, the Code establishes different hours for different alcohol uses (e.g., in the MXE district, the sale of alcohol for on-premises consumption is permitted until 5:00 a.m., but package liquor sales must terminate by 8:00 p.m.)

We can most effectively control alcohol consumption outdoors by restricting hours at sidewalk cafes, since most outdoor seating is located at sidewalk cafes. However, the City Commission may also, by Ordinance, adopt an earlier termination time for outdoor bars (vs. indoor bars) on private property. We believe the additional noise, litter, and pedestrian and vehicular traffic associated with outdoor alcohol consumption (vs. at indoor alcoholic beverage establishments which are contained within a building) would support an earlier cutoff for outdoor bars.

We would want to clarify whether the earlier termination applies to (i) outdoor bars only, or (ii) outdoor bars *in addition to* outdoor seating associated with indoor bars. Further research may be required, but the record could support one cutoff time for all outdoor seating areas—i.e. both outdoor bars and outdoor seating associated with indoor bars.

We are also aware of noise complaints arising from people gathering on hotel porches. While every property is different, some hotels may be legal non-conforming (i.e. "vested") as to outdoor seating areas on front porches, if the seating was approved under an HPB order.

## **EXOTIC VEHICLES**

### **5. Can we stop all the gadget rentals, including "Slingshots" and other exotic vehicles on the street creating nuisances on City streets?**

- a. The Florida Uniform Traffic Control Law (the "Florida Traffic Law") restricts the City from enacting an outright ban on lawfully operated motor vehicles (including autocycles).**

The City lacks the legal authority to adopt or implement an outright prohibition on certain motor vehicles such as autocycles (slingshots). To that effect, the Florida Traffic Law, as codified in Chapter 316 of the Florida Statutes, sets forth numerous provisions which govern the operation of motor vehicles (including autocycles) within the State in order to achieve uniformity of those traffic laws and ordinances applicable to drivers (and riders) throughout the State of Florida.

Chapter 316 of the Florida Statutes contains two (2) broad preemption provisions: the first is set forth within Fla. Stat. 316.002, which prohibits municipalities and localities from enacting ordinances that conflict with state traffic laws; and the second, which is set forth in Fla. Stat. 316.007, prohibits municipalities and localities from enacting ordinances on any matters covered by Chapter 316, absent express authorization. The Florida Traffic Law enumerates, within Section 316.008, several identified areas in which municipalities *may* control certain traffic movement or parking within their respective jurisdictions. However, there is no pertinent provision which can be reasonably construed to provide the City with the legal authority to completely ban autocycles or other motor vehicles from its jurisdiction. Finally, the Florida Traffic Law expressly declares that, "[i]t is unlawful for any local authority to pass or to attempt to enforce any ordinance in conflict with the provisions of this Chapter."

In addition, many of the streets and roadways within the City of Miami Beach are owned by either the State or the County, which makes any prohibition on autocycles (or other motor vehicles) within the City even more problematic. Consequently, the City lacks the legal authority to entirely ban autocycles (or other motor vehicles) from operating within the City.

- b. Pending before the City Commission is an Ordinance which would expand the City Manager's authority, during High Impact Periods, to order the immediate suspension and closure of business entities renting or leasing certain vehicles, to include golf carts, low-speed vehicles, autocycles, and motorized scooters.**

On March 17, 2021, the City Commission approved, on First Reading, an Ordinance amending Section 70-70.1 of the City Code (sponsored by Commissioner Richardson, and co-sponsored by Mayor Gelber and Commissioner Samuelian), which would expand the City Manager's authority to order the immediate suspension and closure of those business entities renting or leasing certain vehicles – ***including golf carts, low-speed vehicles, autocycles or motorized scooters*** -- upon the City Manager's declaration of a High Impact Period.

Presently, Section 70-70.1 of the City Code only provides the City Manager with the authority to suspend or close those business entities renting or leasing mopeds, motorcycles powered by motors of 50 cc or less, and motorized bicycles, upon declaration of a High Impact Period.

The foregoing legislation does not conflict with the preemption set forth in the Florida Traffic Law because the regulation relates to business entities renting or leasing vehicles in the City of Miami

Beach, and not to the operation of the vehicles themselves, as permitted by the Florida Traffic Law.

**c. Pending before the Neighborhood & Quality of Life Committee and the Planning Board is an Ordinance amending the Land Development Regulations to prohibit businesses engaging in the rental or lease of motor vehicles (including autocycles) in all zoning categories in the City**

On March 17, 2021, the City Commission approved the dual referral (to the Neighborhood & Quality of Life Committee and the Planning Board) of an Ordinance (sponsored by Commissioner Richardson) which would amend Section 142-3 of the City Code to prohibit all persons and business entities from engaging in the rental or lease of motor vehicles in all zoning categories in the City.

Presently, the Land Development Regulations only prohibit business entities that engage in the rental or lease of mopeds, motorcycles powered by a motor with a displacement of 50 cubic centimeters or less, and motorized bicycles, so the adoption of this Ordinance would serve to further address and remediate some of those issues presented by the various gadgets (and, in particular, their rental drivers/riders) which have continued to plague the City with their reckless, illegal, dangerous and nuisance conduct and operation.

If the Ordinance amendment is adopted, any existing business establishments lawfully engaged in the rental or lease of motor vehicles in the City would be deemed to be legal non-conforming and, as such, could continue to conduct their motor vehicle rental/lease business operations. However, the Ordinance would curtail the proliferation of additional rental establishments.

The foregoing legislation does not conflict with the preemption set forth in the Florida Traffic Law because the Ordinance is a land development regulation relating to business entities renting or leasing vehicles in the City of Miami Beach, and not to the operation of the vehicles themselves, as permitted by the Florida Traffic Law.

## **CHARTER BOATS**

### **6. Can we enforce capacity limits on party boats?**

**The United States Coast Guard has jurisdiction and enforces capacity limits on different vessels.** Vessels should have a placard/plate/sticker containing information which specifies the maximum persons capacity and/or maximum weight capacity for such vessel (or, if no such sticker or placard is located, such determination should be calculated as provided in 33 C.F.R. part 183, subparts C and D).

Currently, the City only has three (3) Police Department Marine Patrol boats. Although the City's Code Compliance Department has been citing many party boats and/or charters operating on City property (i.e. the Miami Beach Marina) by issuing notices of violation for failure to obtain the business tax receipt required pursuant to Section 102-357 of the City Code, the Marine Patrol's on-the-water enforcement ability is hindered by its limited number of available vessels.

To the extent the above question related to whether the City could adopt a "cap" on the total number of charter vessels or "party" boats, any ordinance adopted which establishes a "cap" on the total number of party boats would present jurisdictional issues. Specifically, any City

legislation would not extend to any vessels which commence sailings from Miami (or any other geographic location besides the City of Miami Beach).

**Notwithstanding the foregoing, the City is presently discussing (with the Miami Beach Marina operator) the negotiation of a lease amendment which would serve to limit the total number of landing agreements and/or boat slips to be allotted to party boat/charter rentals.**

**7. Can we pass an "On the Water" noise ordinance to limit party boat noise?**

**Charter boats and private boats are already required to comply with the City and County Noise Ordinances.**

In order to address loud music emanating from vessels on the water, the City of Miami Beach has two (2) primary tools at its disposal.

First, enforcement is viable by utilizing the City's own noise ordinance, which is codified in Section 46-152 of the City Code, and provides that:

"It shall be unlawful for any person to make, continue or cause to be made or continued any unreasonably loud, excessive, unnecessary or unusual noise. The following acts, among others, are declared to be unreasonably loud, excessive, unnecessary or unusual noises in violation of this section, but this enumeration shall not be deemed to be exclusive."

Subsection 46-152(b) further provides as follows:

*"Radios, televisions, phonographs, etc.* The using, operating, or permitting to be played, used or operated any radio receiving set, television set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such manner as to be plainly audible at a distance of 100 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section."

Upon witnessing a violation, a written warning to immediately cease the violation must occur prior to issuing a notice of violation (unless one written warning has been issued in the 12 months preceding the date of violation). If the excessive noise isn't eliminated within 15 minutes following the issuance of such written warning, a notice of violation shall be issued. Furthermore, if a notice of violation is issued, the following fines shall apply: 1<sup>st</sup> violation - \$250; 2<sup>nd</sup> violation - \$1,000; 3<sup>rd</sup> violation - \$2,000; 4<sup>th</sup> violation - \$3,000; and 5<sup>th</sup> violation - \$5,000.

Second, and alternatively, more punitive enforcement of loud music emanating from vessels on the water may be accomplished by utilizing the Miami-Dade County Noise ordinance, as set forth in Section 21-28 of the Miami-Dade County Code.

Subsection 21-28(b) of the County Code has identical language to subsection 46-152(b) of the City Code, as set forth above. However, Miami-Dade County Code Section 21-28 specifically authorizes an arrest (and the imposition of up to sixty (60) days in jail and/or a \$500 fine) for an

individual found to be in violation of such provision. Nonetheless, in lieu of a custodial arrest, an MBPD Officer may issue a Notice to Appear (a/k/a Promise to Appear) if the elements identified in Rule 3.125 of the Florida Rules of Criminal Procedure are satisfied.

And while enforcement may be challenging, due in large part to the City's limited Marine Patrol resources (and also in part to the offending vessel decreasing the volume level of music upon spotting an oncoming Marine Patrol boat), the City adopting an additional Ordinance to limit party boat noise will likely not mitigate such enforcement challenges.

## **SHORT-TERM RENTALS AND HOTELS**

### **8. What do we do to police occupancy in hotel rooms?**

**The City does not police occupancy in hotel rooms, unless there is a disturbance or a registered complaint, which would be investigated and subject to enforcement by Police or Code Compliance. The City does not currently have a uniform occupancy limit for hotel rooms, because Section 509.032(7)(a) of the Florida Statutes broadly restricts the City from regulating hotel establishments. However, the Land Development Regulations require new hotels, suite hotels, apartment hotels, and hostels to comply with certain occupancy limits in connection with their development approvals.**

Except for inspections under the Florida Building Code and Florida Fire Prevention Code, Chapter 509 of the Florida Statutes reserves the regulation of hotel establishments to the State of Florida Department of Business and Professional Regulation, as the sole regulatory authority. The Fire Department is currently researching whether a hotel's occupancy limits can be enforced based upon egress from individual rooms and the overall building. Additionally, the Florida Building Code may provide the Building Official with the authority to take enforcement action to ensure compliance with room occupancy limitations.

That said, the City's Police and Code Compliance Departments have full authority to investigate and enforce many of the issues that arise from overcrowding in hotels, such as excess noise or criminal activity.

Notwithstanding the preemption, the City has the ability to enact zoning regulations, which regulate the use of property (as opposed to the operation of a business). Currently, the Land Development Regulations establish minimum development requirements for hotels, including occupancy limits based on the size of each hotel room. See Section 142-1105 of the City Code. These limits, however, only apply prospectively to developments seeking zoning approvals. As with any other provisions of the Land Development Regulations, these requirements can be enforced by Code Compliance.

The Land Development Regulations may be also be amended to identify the districts in which hotels are permitted, conditional, or prohibited uses.

### **9. Can we impose minimum prices or fees on hotels so we don't see these very low hotel rates?**

**Chapter 125 of the Florida Statutes broadly prohibits municipalities from establishing price controls upon any lawful business activity.**

Under Section 125.0103(1)(a) of the Florida Statutes, no City "shall adopt or maintain in effect an ordinance or a rule which has the effect of imposing price controls upon a lawful business activity which is not franchised by, owned by, or under contract with, the governmental agency, unless specifically provided by general law." In addition, the prohibition on price controls would extend to any price controls "on rents for any accommodation used or offered for residential purposes as a seasonal or tourist unit." Fla. Stat. 125.0103(4).

**10. Can we only allow those 25 and over to rent rooms during high impact periods?**

**No. The City's Human Rights Ordinance broadly prohibits discrimination in public accommodations on the basis of age, and Section 509.032, Florida Statutes, preempts the regulation of public lodging establishments to the State.**

We believe that a minimum age restriction may implicate the City's Human Rights Ordinance, at Section 62-87 of the City Code, which prohibits places of public accommodation (including hotels) from refusing service to any person on the basis of age.

In addition, the imposition of a minimum age limit during High Impact Periods would otherwise be preempted to the State of Florida Department of Business and Professional Regulation, as the sole regulatory authority, pursuant to Section 509.032 of the Florida Statutes.

**11. Can we tax hotels?**

**No; the City cannot impose a new tax that would apply only to hotels, or any other new tax, without express authorization of the Florida Legislature.**

As a general matter, under Article VII of the Florida Constitution, a tax cannot be authorized by county or municipal ordinance, unless the tax is levied pursuant to a law enacted by the Florida Legislature. Accordingly, all of the taxes currently levied by the City are subject to express statutory authority and constitutional constraints, including, without limitation, ad valorem taxes, resort taxes, and business tax receipts.

With respect to the City's 4% tax on transient rentals permitted by Florida law (i.e., the "Hotel Bed Tax"), the City already charges the maximum Hotel Bed Tax rate permitted by law.<sup>1</sup>

If the City Commission desires to pursue any additional tax on hotels as a legislative priority, it may direct its lobbyists to pursue the matter further. In the current legislative environment, any such action is highly unlikely.

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<sup>1</sup> See Chapter 67-930, Laws of Florida (authorizing 2% tax on transient rentals and 2% tax on food, beverages and alcoholic beverages for on-premises consumption in hotels and motels); as amended by Chapter 82-142, L.O.F. (authorizing increase of tax on transient rentals to the rate of 3%) and Chapter 82-363, L.O.F. (authorizing increase of tax on transient rentals to the rate of 4%); and Fla. Stat. 125.0104(3)(b) (recognizing and continuing the municipal resort tax authorizations provided in Chapter 67-930).

**12. If we cannot regulate hotel establishments, what can we do?**

**Although the City is preempted from enacting a regulation with occupancy or rate restrictions for hotels, the City could establish an incentive program, grant program or other similar program to offer incentives to hotels meeting specified City criteria.**

In the basic “carrot or stick” paradigm, state law may prohibit the City from utilizing the stick, but it does not prohibit the City from utilizing the carrot. Accordingly, given the paramount public purposes associated with addressing the health, safety and welfare issues created during the recent High Impact Period, the strain on the City’s police and code compliance resources, and the potential damage to the City’s tourism brand, the City Commission has the discretion to create an incentive program or grant program that is tied to the objectives the City wants to achieve – such as minimum rates or maximum occupancy restrictions -- with the TBD incentives available to hotels who voluntarily elect to participate in the program and adhere to City’s standards as a matter of contract.

The potential incentive package for hotels could include monetary incentives or other incentives which may be just as valuable to participating hotels, such as expedited permitting reviews, extended hours of operation (during periods other than High Impact periods) for ancillary uses, etc. If the City Commission was interested in exploring this approach, the Administration could research the issues further, conduct outreach with hotels to assess hotel interest and/or needs, and develop a potential program for the City Commission’s consideration.

**13. How can we regulate short term rentals?**

**Short-term rentals are subject to a number of requirements in the City Code and Land Development Regulations, as described below. However, Section 509.032 of the Florida Statutes restricts local governments from enacting regulations after June 1, 2011 which prohibit vacation rentals or regulate the duration or frequency of vacation rentals.**

**Notwithstanding the foregoing, depending on the outcome of a current bill under consideration in the Florida Legislature, the City may be able to adopt legislation imposing additional requirements relating to short-term rentals, including with respect to maximum occupancy, noise, parking, and compliance with other code requirements.**

The City is currently “grandfathered” with legislation adopted prior to June 1, 2011 which prohibits short-term rentals in most residential zoning districts of the City. However, short-term rentals are permitted in certain commercial districts, historic districts, and the entertainment district.

With respect to “legal” short-term rentals, initially, a property owner would be legally required to obtain the appropriate licensure from the State of Florida (DBPR), prior to engaging in the lawful transient rental of a residential property or unit. Furthermore, any such owner of the residential property or unit would be required to comply with Section 102-386 of the City Code. Specifically, the individual would need to obtain a business tax receipt (BTR) and resort tax registration certificate (RTRC) prior to advertising the property for short-term rental. In order to obtain a BTR and RTRC, the property owner must:

- a. Submit an affidavit to the City for each residential property or unit.
- b. Confirm that the City’s LDRs applicable to the unit(s) permit short-term rentals.

- c. Confirm compliance with ADA Regulations, Fire Prevention Code and Florida Building Code, if applicable.
- d. Obtain written authorization from the condominium association that expressly authorizes short-term rental.
- e. Disclose the compliance with Section 102-386 within any advertisement for the property.
- f. Conspicuously display the city-issued business tax receipt number and the resort tax certificate number.
- g. Disclose within the affidavit that each prospective guest receives written notification that the unit(s) is/are not affiliated with the primary hotel operator at the property, if applicable.

The City's lobbyists are currently monitoring a bill under consideration in the Florida Legislature, SB 522, which would provide expanded preemption authority to the State with respect to the regulation of short-term rentals, and further limit the scope of permissible municipal regulation. In the most recent amendment to SB 522, some of the more problematic preemption language has been removed, although the most recent version of the bill would preempt to the State the regulation of advertising platforms.

Once the dust settles in connection with SB 522 in the Florida Legislature, the Administration will have better visibility as to the scope of regulation which could be considered by the City Commission.

However, depending on the outcome of SB 522, the City could adopt legislation providing for certain vacation rental standards and imposing additional requirements, including with respect to maximum occupancy, noise, parking, and compliance with other code requirements. For its part, Miami-Dade County has adopted similar legislation regulating short-term rentals, set forth in Section 33-28 of the Miami-Dade County Code.

#### **OTHER ESTABLISHMENTS**

#### **14. Can we limit / revoke licenses for tattoo parlors, 7/11 type shops, package liquor stores, drug paraphernalia smoke shops & fast-food places?**

- a. These uses are already prohibited in many zoning districts in the City. However, a number of the existing establishments are legal non-conforming (i.e. "vested").**

In recent years, the City Commission has amended the Land Development Regulations to prohibit tattoo studios, convenience stores, package liquor stores, and smoke/vape shops in a number of zoning districts. With regard to tattoo studios, the Eleventh Circuit Court of Appeal has recognized that tattooing constitutes artistic expression protected by the First Amendment. Prohibiting new formula retail establishments or formula restaurants may implicate the Dormant Commerce Clause of the U.S. Constitution, which prohibits discrimination by state and local governments against out-of-state businesses. If the City Commission desires to regulate either of these uses, we recommend that the Commission first refer a discussion to the LUSC, so the Administration and City Attorney's Office can study the issue and develop the appropriate record.

- b. A business tax receipt ("BTR") may only be suspended or revoked under certain extraordinary circumstances.**

The City does not possess the requisite legal authority to revoke the BTR or the certificate of use ("CU") of a business establishment without just cause. In that regard, Sections 102-381 and 14-

404 of the City Code delineate those specific grounds which may form the basis for the revocation, suspension or denial of a BTR or CU, respectively. Of course, any determination by the City Manager to revoke, suspend or deny a BTR and/or CU would be subject to review at a hearing in front of the Special Master (which ruling may then be appealed to a court of competent jurisdiction).

### **CAUSEWAY ACTIONS / TOLLING**

#### **15. Can we create a resident decal or identification program or other means for residents enter the city quicker?**

The City could implement a resident decal system to facilitate providing City residents with access into the City during a state of emergency or other period when access into the City across the causeways is otherwise curtailed ("Resident Decal"). The Resident Decal could be accomplished via an amendment to Chapter 106 of the City Code, which governs traffic and vehicles, with any Resident Decal fees to be included in Appendix A of the City Code.

As there are operational and logistical details associated with a Resident Decal program, the City Commission may wish to first adopt a Resolution to formally direct the Administration to develop the proposed Resident Decal program to, among other things, determine if any technologies exist which could assist the City in implementing the Resident Decal program.

At the request of Commissioner Steven Meiner, a separate item has been placed on the April 21, 2021 City Commission meeting agenda to approve, in concept, the creation of a resident decal program during emergency and high-impact periods, and direct the Administration to develop the details of the program.

#### **16. Can we charge a fee or a toll to use the MacArthur or Julia Tuttle Causeway?**

The City does not have the legal authority to impose a toll on the MacArthur Causeway, Julia Tuttle Causeway, or other state roads owned by FDOT and which form part of the State Highway System (the "Proposed Toll Roads").<sup>2</sup>

The City would need to request transfer of ownership of the Proposed Toll Roads in order to impose a toll, pursuant to the road transfer process outlined in Florida Statute 335.0415. The statute requires mutual agreement of FDOT and the City to transfer roads.

City ownership of the Proposed Toll Roads would also obligate the City to provide for and fund the maintenance of the roadways (all of which are currently maintained by FDOT). It is assumed that the toll revenues will be sufficient to fund those maintenance operations.

Some of the Proposed Toll Roads, i.e. the MacArthur Causeway, are currently classified as a "Federal Aid Road." The Administration would need to research this issue further to determine whether any federal approvals for tolling are also required from the Federal Highway Administration. The first step, however, is to determine if FDOT would be amenable to tolling and/or a transfer of ownership of the Proposed Toll Roads.

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<sup>2</sup> With respect to the Venetian Causeway, Miami-Dade County owns the Venetian Causeway and has jurisdiction to establish its toll program for the causeway.

## **PROGRAMMING**

### **17. Start plans for programming other types of activities for next year during Spring Break (e.g., conventions in the Miami Beach Convention Center, or a music festival).**

The City previously engaged Tom Bercu to provide programming for Spring Break, but due to the COVID-19 pandemic, this programming was cancelled for 2021. Tom Bercu is developing programming for Spring Break 2022.

## **SPRING BREAK IN FORT LAUDERDALE**

### **18. What specific steps did Ft. Lauderdale take to end their Spring Break crowds?**

The City of Fort Lauderdale's response to increasingly large crowds visiting the city each year during Spring Break is summarized in the attached article, entitled "Time to grow up: The rise and fall of spring break in Fort Lauderdale," by James Joseph Schiltz of Iowa State University (See Exhibit A). The article is also available at the following link: <https://lib.dr.iastate.edu/cgi/viewcontent.cgi?article=4335&context=etd>.

## **CONCLUSION**

The above responses have been prepared for informational purposes in response to questions submitted by Vice Mayor Góngora. Should the Mayor or a member of the City Commission have any questions regarding any of the matters addressed in this Memorandum or any other matter relating to the Entertainment District, please do not hesitate to contact me or the Interim City Manager.