Memorandum

MIAMI-DADE COUNTY

Date: May 12, 2009

To: Honorable Chairman Dennis C. Moss and Members
Board of County Commissioners

From: George M. Burgess
County Manager

BPS
Agenda Item No.
1(F)3

Subject: Ordinance pertaining to zoning; amending Sections 33-13, 33-238, and 33-259 to permit outdoor dining as an ancillary use in business and industrial zones

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Recommendation
It is recommended that this proposed ordinance pertaining to zoning, amending Sections 33-13, 33-238, and 33-259 to permit ancillary outdoor dining be adopted.

Scope
This ordinance would pertain to all Commission Districts for property in unincorporated Miami-Dade County.

Fiscal Impact/Funding Source
This ordinance will have no fiscal impact on Miami-Dade County.

Tract Record/Monitor
Not applicable.

Background
The County's current zoning code provides that outdoor dining facilities can only be permitted after the approval at a public hearing of an "unusual use" application. For years the food and service industry has requested that the County revisit these regulations in order to reflect local and national trends. The ordinance, which contains regulatory language similar to that used by the Cities of Miami and Miami Beach among others, proposes to allow outdoor dining as an ancillary use to a facility where the primary use is the preparation of food for consumption on premises. This proposed ordinance removes the public hearing requirement for outdoor dining in business and industrial districts and conditions the new ancillary use to the following criteria:

- The outdoor dining area shall be managed, operated and maintained as an integral part of the food service business.
- The outdoor dining area shall not reduce the amount of required parking or landscaping for the site.
- The outdoor seating area shall be included in the calculations for required parking.
- There shall be no outdoor cooking or food preparation.
- No outdoor dining area shall obstruct or impede pedestrian traffic.
- The outdoor dining area shall comply with handicapped accessibility requirements.
- No outside public address system shall be permitted. Un-amplified music shall be permitted in the outdoor dining area, subject to compliance with Section 21-28 of this code.
- The outdoor dining area may be operated between the hours of 7 a.m. and 11 p.m.
- No signage shall be permitted on any outdoor furniture, umbrellas or fixtures.

- Blinking and flashing type lighting shall be prohibited.
- Alcoholic beverages may be served where such service is strictly incidental to the service of food and is from a service bar only, subject to compliance with the regulations specified in Article X (Alcoholic Beverages) of this chapter.
- The use shall be subject to plan review and approval through the building permit review process. The plans for such use shall include all furniture, umbrellas, lighting, and other related services and functions associated with the proposed use, together with all required and provided parking calculations.
- The use shall require a Certificate of Use which shall be renewed annually and shall be subject to revocation upon violation of any applicable regulation, or when a continuation of the permit would constitute a hazard or nuisance.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: April 7, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 4(H)

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bid waiver requiring County Mayor's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 4(H)

4-7-09

ORDINANCE NO. _____

ORDINANCE PERTAINING TO ZONING; AMENDING SECTIONS 33-13, 33-238 AND 33-259 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AMENDING UNUSUAL USES; PERMITTING ANCILLARY OUTDOOR DINING USE SUBJECT TO CONDITIONS; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 33-13 of the Code of Miami-Dade County is hereby amended as follows:[1]

* * *

(e) *Unusual and new uses.* Unless approved upon public hearing, the following unusual uses or uses similar thereto shall not be permitted in any district save and except in those districts that permit such uses without a public hearing: Airport; airplane crop dusting field; all zoning applications by State and municipal entities and agencies; amusement rides and enterprises; amusement center (except in BU-1A Zone in which such use is permitted); archery ranges; art galleries and museums (educational and philanthropic) in districts more restrictive than RU-4; auction sales; auto, truck, machinery salvage yards; bathing beach; boat salvage; bombing field, canal excavation, where not a part of C. & S. F. F. C. D. and County secondary canal system; carnivals, circuses; convalescent homes; day camp, day nursery in zone more restrictive than RU-3; dog kennel, dog training track; electric substation; electric power plant; frog farm; garbage and waste dumps; gas distribution system and plant; golf course except in RU-1 and other Districts where the same is a permitted use; golf course clubhouse and incidental uses in all districts more restrictive than the BU-1 District; golf driving range; gypsy camp; heliports; homes of the aged (except group homes and community residential homes where same is a permitted use); homes for dependent children (except group homes and community residential homes where same is a permitted use); hospitals (not animal hospital) in district more restrictive than RU-4; incinerators; Indian village; institutions for handicapped persons (except group homes and community residential homes where same is a permitted use), including but not limited to incidental related facilities such as workshops,

[1] Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

sales of products fabricated therein, residential quarters, educational training facilities; infirmary, commissary, or any one (1) or combination of such related incidental facilities; junkyard; kindergarten in zones more restrictive than RU-3; lake excavation and asphalt plant, concrete batching plant, concrete block plant, prestressed and precast concrete products plant, rock crushing and screening plant ancillary thereto or in connection with lake excavation(s), excluding those uses expressly allowed in the "Rockmining Overlay Zoning Area" as defined in Section 33-152; landing field; movie (open air) except as provided in BU-1A Zone; nightclub in BU-2 or more liberal districts; nursing homes; oil and gas well drilling and essential, incidental uses thereto, such as minimum storage facilities; in AU and GU Districts subject to conformance to all applicable Florida State statutes and rules and regulations of the State Board of Conservation and other applicable state rules and regulations; outdoor display; outdoor paint testing laboratory; outdoor patios and table service in connection with restaurants >>in zones more restrictive than BU-1 and IU-1<<; palmist and psychic readers; parking (noncommercial parking in zones more restrictive than in which the use it serves is located); pistol ranges; pony rings; private club in RU-3B and RU-3 and more restrictive districts, including but not limited to AU and GU Districts; private playgrounds and recreational area; except for those allowed pursuant to Section 33-199; public and private utility facilities such as electricity, gas, water, telephone, telegraph, cable TV., and including work centers (repair and storage areas for trucks, heavy equipment, pipe, meters, valves, cable, poles) as accessory uses, and including sewage treatment plants and lift stations and water treatment plants and pumping stations, excluding temporary package water and sewage treatment plants approved by the Environmental Quality Control Board and until December 31, 2008, excluding any telecommunications antenna owned and operated by a telecommunications company providing services to the public for hire attached to any pole or H-frame or lattice structure owned by a utility which is used in and is part of the utility's network for the provision of electric services, provided that (a) equipment appurtenant to the antenna is maintained on the utility pole or structure, (b) the utility pole or structure does not exceed 125 feet in height above ground unless the utility pole or structure is located in an easement or right-of-way which is greater than fifty (50) feet in width or, if less than fifty (50) feet in width, such easement or right-of-way is adjacent to and parallel with road right-of-way which is one hundred (100) feet or greater in width, and (c) the antenna was attached to the utility pole or structure prior to January 1, 1997; race tracks; retirement villages, including as an accessory use commercial facilities of the BU-1 type; rifle range; rock pits (filling of); rock quarries; shopping center promotional activities; skeet range; subdivision entrance gates and entrance features not conforming to regulations; testing laboratory or plant; tourist attractions; radio and TV transmitting stations; trailer as watchman's quarters; trailers or tourist camp; trap range; water tank and tower; water treatment plant; water use facilities; Wireless Supported Service Facilities except as provided for in Section 33-63.2 and 33-63.3; wood burning barbecue (commercial); zoo (except in public park).

* * *

Section 2. Section 33-238 of the Code of Miami-Dade County is hereby amended as follows:

Sec. 33-238. Uses permitted.

No land, body of water or structure shall be used or permitted to be used and no structure shall be hereafter erected, constructed, moved, reconstructed or structurally altered or maintained in any BU-1 District, which is designed, arranged or intended to be used or occupied for any purpose, except for one (1) or more of the following uses:

* * *

>>(25.1) Outdoor dining as an ancillary use in conjunction with restaurants, snack shops and other food service facilities where the primary use is the preparation of food for consumption on premises shall be permitted, subject to the following restrictions:

(a) The outdoor dining area shall be managed, operated and maintained as an integral part of the immediately adjacent food service facility; and

(b) The outdoor dining area shall not reduce required parking or landscaping for the site; and

(c) The outdoor seating area shall be included in the calculations for required parking; and

(d) There shall be no outdoor cooking or food preparation; and

(e) No outdoor dining area shall obstruct or impede pedestrian traffic; and

(f) The outdoor dining area shall comply with handicapped accessibility requirements; and

(g) No outside public address system shall be permitted. Un-amplified music shall be permitted in the outdoor dining area, subject to compliance with Section 21-28 of this code; and

(h) The outdoor dining area may be operated between the hours of 7 a.m. and 11 p.m; and

(i) No signage shall be permitted on any outdoor furniture, umbrellas or fixtures; and

(j) Blinking and flashing type lighting shall be prohibited; and

(k) Alcoholic beverages may be served where such service is strictly incidental to the service of food and is from a service bar only, subject to compliance with the regulations specified in Article X (Alcoholic Beverages) of this chapter; and

(l) The use shall be subject to plan review and approval through the building permit review process. The plans for such use shall include all furniture, umbrellas, lighting, and other related services and functions associated with the proposed use, together with all required and provided parking calculations; and

(m) The use shall require a Certificate of Use which shall be renewed annually and shall be subject to revocation upon violation of any applicable regulation, or when a continuation of the permit would constitute a hazard or nuisance.<<

* * *

Section 3. Section 33-259 of the Code of Miami-Dade County is hereby amended as follows:

Section 33-259. Uses permitted.

No land, body of water or structure shall be used or permitted to be used and no structure shall be erected, constructed, moved or reconstructed, structurally altered, or maintained, which is designed, arranged or intended to be used or occupied for any purpose, unless otherwise provided herein, in IU-1 District, excepting for one (1) or more of the following:

* * *

>>(56.1) Outdoor dining as an ancillary use in conjunction with restaurants, snack shops and other food service facilities where the primary use is the preparation of food for consumption on premises, shall be permitted subject to the following restrictions:

(a) The outdoor dining area shall be managed, operated and maintained as an integral part of the immediately adjacent food service facility; and

(b) The outdoor dining area shall not reduce required parking or landscaping for the site; and

(c) The outdoor seating area shall be included in the calculations for required parking; and

(d) There shall be no outdoor cooking or food preparation; and

(e) No outdoor dining area shall obstruct or impede pedestrian traffic; and

(f) The outdoor dining area shall comply with handicapped accessibility requirements; and

(g) No outside public address system shall be permitted. Un-amplified music shall be permitted in the outdoor dining area, subject to compliance with Section 21-28 of this code; and

(h) The outdoor dining area may be operated between the hours of 7 a.m. and 11 p.m; and

(i) No signage shall be permitted on any outdoor furniture, umbrellas or fixtures; and

(j) Blinking and flashing type lighting shall be prohibited; and

(k) Alcoholic beverages may be served where such service is strictly incidental to the service of food and is from a service bar only, subject to compliance with the regulations specified in Article X (Alcoholic Beverages) of this chapter; and

(l) The use shall be subject to plan review and approval through the building permit review process. The plans for such use shall include all furniture, umbrellas, lighting, and other related services and functions associated with the proposed use, together with all required and provided parking calculations; and

(m) The use shall require a Certificate of Use which shall be renewed annually and shall be subject to revocation upon violation of any applicable regulation, or when a continuation of the permit would constitute a hazard or nuisance.<<

* * *

Section 4. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 5. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 6. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as to form and legal sufficiency: APW

Prepared by: APB

Andrew Boese