NORTH MIAMI
FLORIDA
776 N.E. 125 Street, North Miami, Florida 33161

Council Report

To: The Honorable Mayor and City Council

From: Maxine Calloway, Community Planning & Development Director

Date: ~~May 8, 2012~~ **May 22, 2012 (Second Reading)**

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 3 OF THE CODE OF ORDINANCES, ENTITLED "ALCOHOLIC BEVERAGES" SPECIFICALLY AT SECTION 3-2 ENTITLED "DEFINITIONS" TO INCLUDE A DEFINITION FOR ADULT ENTERTAINMENT BUSINESS, AND AT SECTION 3-3 ENTITLED "ALCOHOLIC BEVERAGES IN ADULT ENTERTAINMENT BUSINESSES PROHIBITED" TO REMOVE THE PROHIBITION OF ALCHOHOLIC BEVERAGES IN ADULT ENTERTAINMENT BUSINESSES AND AT SECTION 3-11 ENTITLED "DISTANCE REQUIREMENTS" TO ESTABLISH A DISTANCE SEPARATION REQUIREMENT FOR ADULT ENTERTAINMENT BUSINESSES; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

RECOMMENDATION

That the City Council vote on the proposed ordinance amending Chapter 3 of the Code of Ordinances in order to include a definition for adult entertainment business, remove the prohibition of alcoholic beverages in adult entertainment business and establish a distance separation requirement.

BACKGROUND

Section 3-3 of the City's Code of Ordinances prohibits the consumption, distribution, possession or sale of alcoholic beverages in Adult Entertainment Businesses, a use permitted only in the M-1 (industrial) zoned districts; However Sunny Isles Eatery (applicant) leased a property located at 2050 NE 151 Street (in the M-1 District) and proposes to establish an Adult Entertainment Business for a gentleman's club and wishes to sell and consume alcohol on the premises. As such, the applicant filed a request with the Community Planning and Development Department on March 26, 2012 that the City amend Chapter 3 of the Code of Ordinances to remove the prohibition restricting alcoholic beverages in Adult Entertainment

Businesses and also include a definition and distance separation requirements for such uses as part of Chapter 3 of the Code.

STAFF ANALSYSIS

Article 7 (Definitions) of the City's Land Development Regulations defines *Adult Entertainment Business as* " any premises within the city where members of the public, or any person for consideration, are offered any live or recorded performance, or any visual image tangibly fixed in any medium, which performance, image, or recording has as its primary or dominant theme subject matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, and which performance, recording, or visual image requires the exclusion of minors from the premises pursuant to F.S. Ch. 847. The current request seeks to also include the aforementioned definition in Chapter 3 of the City's Code of Ordinance to ensure consistent between the two regulatory documents.

Additionally, Section 3-2 of the City's Code of Ordinances defines Alcoholic Beverages as: "Distilled spirits and all beverages containing on-half of 1 percent or more by volume pursuant to F.S. 561.01." The City's code currently permits the following uses to sell and consume alcoholic beverages on site: Restaurants & Cafeterias; Bars, Lounges & Taverns; Night Clubs, Motels & Hotels; Banquet Halls; Civic, Fraternal & Veterans Organizations; Convenience Stores; and Package Stores Selling Alcoholic Beverages. **Said uses are all subject to a distance separation of 1500 feet from all schools, churches, parks, residential uses and similar uses.**

In the event a prospective business is unable to meet the distance separation requirement, the owner must file an application for a variance with the City's Board of Adjustment. It should be noted that Adult Entertainment Businesses are required to hold a 4COP License which are governed by Florida Beverage Laws under Chapters 561-569, Florida Statues.

Although Adult Entertainment Businesses are permitted in the City's M-1 (industrial) District, there is currently none in operation in North Miami and no similar use within 500 ft of the subject site. To that end, if approved the current request would allow for the sale of alcoholic beverages at the City's first adult entertainment business. In applying the 1500 feet distance separation requirement the subject site would impact several residential uses and as such would be required to apply for a variance through the City's Board of Adjustment (see attached map).

CONCLUSION

The applicant has expressed concerns that the City's prohibition on the sale of alcoholic beverages in adult entertainment businesses cripples the competitive advantage of their future business given the fact that several of the surrounding municipalities permit alcohol sales in adult entertainment businesses. Staff requests that the Mayor and Council review the applicant's request, considers staff's findings and render an approval on the proposed text amendment in the event the prohibition on sale and consumption of alcoholic beverages is lifted from Adult Entertainment Businesses.

Attachments

1) Ordinance
2) Map – 1500 Ft distance separation

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 3 OF THE CODE OF ORDINANCES ENTITLED, "ALCOHOLIC BEVERAGES" SPECIFICALLY AT SECTION 3-2 ENTITLED, "DEFINITIONS" TO INCLUDE A DEFINITION FOR ADULT ENTERTAINMENT BUSINESS, AT SECTION 3-3 ENTITLED, "ALCOHOLIC BEVERAGES IN ADULT ENTERTAINMENT BUSINESSES PROHIBITED" TO REMOVE THE PROHIBITION OF THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES IN ADULT ENTERTAINMENT BUSINESSES, AND AT SECTION 3-11 ENTITLED, "DISTANCE REQUIREMENTS" TO ESTABLISH A DISTANCE SEPARATION REQUIREMENT FOR ADULT ENTERTAINMENT BUSINESSES, IN ACCORDANCE WITH STATE LAW; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, on February 26, 2008, the Mayor and Council of the City of North Miami ("City"), adopted Ordinance Number 1251 repealing in its entirety Chapter 3, and substituted in lieu thereof, a new Chapter 3 entitled "Alcoholic Beverages", in order to provide clarity to the City's regulatory responsibilities concerning the sale and consumption of alcoholic beverages, in accordance with Florida Statutes ("Beverage Code"); and

WHEREAS, the Beverage Code prohibits the consumption, distribution, possession or sale of alcoholic beverages in Adult Entertainment Businesses, a use permitted only in the M-1 Industrial Zoning District ("Zoning District"); and

WHEREAS, Sunny Isles Eatery has leased a warehouse property within the Zoning District located at 2050 NE 151st Street, and proposes to establish an Adult Entertainment Business with the desire to provide alcoholic beverages for consumption on the premises to its patrons; and

WHEREAS, Sunny Isles Eatery filed an application with the Community Planning and Development Department on March 26, 2012, requesting that the City amend Chapter 3 of the Beverage Code to remove the prohibition restricting the sale and consumption of alcoholic beverages in Adult Entertainment Businesses; and

WHEREAS, the Mayor and City Council of the City of North Miami, have determined that the proposed amendment to the ordinance is in the best interest of the City, and does not adversely affect the health, safety, and welfare of its residents.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

Section 1. The Mayor and City Council of the City of North Miami, Florida, hereby amend Chapter 3 of the Code of Ordinances entitled, "Alcoholic Beverages" specifically at Section 3-2 entitled, "Definitions" to include a definition for Adult Entertainment Business, at Section 3-3 entitled, "Alcoholic Beverages in Adult Entertainment Businesses Prohibited" to remove the prohibition of the sale and consumption of alcoholic beverages in Adult Entertainment Businesses, and at Section 3-11 entitled, "Distance Requirements" to establish a distance separation requirement for Adult Entertainment Business, in accordance with state law as follows:

CHAPTER 3. ALCOHOLIC BEVERAGES

Sec. 3-1. Construction of chapter.

It is intended that the provisions of this chapter shall apply solely to those beverages constituting alcoholic beverages under the laws of the state. Every violation of the laws of the state relating to the sale of alcoholic beverages is hereby specifically made a violation of this chapter, with the same force and effect as if the provisions of such laws were fully set forth herein. Notwithstanding any provision of this chapter that may appear to be contrary, this chapter shall in each instance be construed within the lawful confines of the authority of the city and shall be effective to the fullest extent authorized by the beverage law.

Sec. 3-2. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult Entertainment Business shall mean any premises within the city where members of the public, or any person for consideration, are offered any live or recorded performance, or any visual image tangibly fixed in any medium, which performance, image, or recording has as its primary or dominant theme subject matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, and which performance, recording, or visual image requires the exclusion of minors from the premises pursuant to F.S. Chapter 847.

Alcoholic beverages shall mean distilled spirits and all beverages containing one-half of 1 percent or more by volume pursuant to F.S. § 561.01.

Bar, lounge or tavern shall mean any place of business where alcoholic beverages are sold or offered for sale for consumption on the premises and where the sale of food is incidental to the sale of such beverages or where no food is sold, and includes any establishment in receipt of a valid alcoholic beverage license from the state which permits the sale for consumption on the premises of alcoholic beverages as a principal use. Establishments where alcoholic beverages are permitted for consumption on the premises as an incidental or accessory use are not considered a bar.

Beer or malt beverage means all brewed alcoholic beverages containing malt.

Beverage law shall refer to F.S. Chapters 561, 562, 563, 564, 565, 567 and 568.

Bottle club means a commercial establishment wherein patrons consume alcoholic beverages which are brought onto the licensed premises and not sold or supplied to the patrons by the establishment, whether the patrons bring in and maintain custody of their own alcoholic beverages or surrender custody to the establishment for dispensing on the licensed premises. A bottle club can be a private club or a public business establishment in which the principal revenue would be derived from the sale of setups, mixers, ice and water, and charges for any entertainment provided. A bottle club does not include a civic, fraternal or veteran organization or association which only occasionally or intermittently provides facilities for on-premises consumption of alcoholic beverages by its members and their guests.

Civic, fraternal or veterans organizations or associations shall mean a vendor of alcoholic beverages whose character is that of a fraternal or social nature selling only to members and guests of the organization or association and which is not operated or maintained for profit.

Consumption off the premises or package sales permits only the sale of alcoholic beverages in their original sealed containers and consumption on the premises is not allowed.

Consumption on the premises or COP means consumption of alcoholic beverages on the licensed premises where such beverages were purchased or the right to sell by the drink, bottle or can, alcoholic beverages for consumption only on the licensed premises.

Convenience store means any retail business opened primarily for the sale of products other than alcoholic beverages and which may sell beer and wine in sealed containers only for consumption off the premises. Grocery stores and supermarkets are considered to be convenience stores for purposes of this chapter.

Corporation shall mean any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, professional association or any other public or private legal entity operated for profit or not for profit.

Licensed premises shall mean not only rooms where alcoholic beverages are stored, sold or dispensed by the licensee, but also all other rooms in the building which are so closely connected

therewith as to admit free passage from one room or area to another over which the licensee has dominion or control.

Licensee shall mean a corporation, person, or persons holding an alcoholic beverage license issued by the state.

Liquor shall include all spirituous beverages created by distillation and the blending of distilled beverages into a mixture.

Nightclub shall mean a restaurant, dining room or other establishment, which operates after 11:00 p.m., where food and/or alcoholic beverages are licensed to be sold and consumed on the premises, and where music, dance, floor shows or other forms of entertainment are provided for guests and patrons with or without an admission fee.

Package store means a vendor selling alcoholic beverages in sealed containers only for consumption off the premises.

Park or recreation area shall mean any lot, tract or parcel of land primarily devoted for the enjoyment of the public.

Public place shall mean streets, sidewalks, parkways, parks, playgrounds, ball fields, school buildings, school yards, and public buildings, facilities and stadiums owned or in the possession of the city, county or state, or other governmental agencies.

Restaurant or cafeteria means a business holding a current city business tax receipt with a restaurant license issued by the state and which is advertised and held out to the public to be a place where food is prepared for consumption. The primary operation of the restaurant shall be the serving of food and the sale of alcoholic beverages is entirely incidental to the principal use of selling food.

Sale and sell shall mean any transfer of an alcoholic beverage with or without a consideration, any gift of an alcoholic beverage in connection with, or as a part of, a transfer of property other than an alcoholic beverage, or the serving or dispensing of an alcoholic beverage by a licensee under the beverage law.

State alcoholic beverage retail licenses:

1-COP	Beer only, consumption on the premises.
2-COP	Beer and wine only, consumption on the premises.
4-COP	Beer, wine and liquor, consumption on the premises.
4-COP-SRX	Beer, wine and liquor, consumption on the premises, restaurant license.
1-APS	Beer only, consumption off the premises.
2-APS	Beer and wine only, consumption off the premises.
3-PS	Beer, wine and liquor, consumption off the premises.
11-C	Club license to sell to members and member's guests only.

Wine means all alcoholic beverages made from fruits, berries, or grapes, created either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States and further includes all vinous beverages such as sparkling wines, champagnes, vermouths and like products.

~~**Sec. 3-3. Alcoholic beverages in adult entertainment businesses prohibited.**~~

~~The consumption, distribution, possession or sale of alcoholic beverages is prohibited within any adult entertainment business, as defined in the city's zoning code of ordinances.~~

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Sec. 3-11. Distance requirements.

(a) Unless a variance is obtained from the board of adjustment, no alcoholic beverage application or business tax receipt shall be approved when the place of business designated in the application does not satisfy the following distance separation requirements of alcoholic beverage establishments from schools, houses of worship, city parks and recreational areas, residential uses and similar uses:

	Distances (in feet)			**Required License**
Type of Establishment	**Schools, House of Worship**	**Similar Uses**	**Residential District, Parks and Recreational Areas**	**State Beverage License Issued**
Restaurants or cafeterias	No distance requirement			2-COP or 4-COP-SRX
Bars, lounges or taverns	1,500	1,500	1,500	2 COP or 4 COP
Nightclubs	1,500	1,500	1,500	4 COP or 4 COP-SRX
Motels and hotels	1,500	1,500	1,500	2COP, 4 COP-SRX, or 4 COP
Banquet halls providing alcoholic beverages as part of event	No distance requirement			2 COP or 4 COP
Civic, fraternal or veterans organizations	No distance requirement			2-COP or 11C
Convenience stores	No distance requirement			1 APS or 2 APS
Package stores selling alcoholic beverages (excluding convenience stores selling beer and/or wine only)	1,500	1,500	1,500	3PS
Adult Entertainment Business	1,500	1,500	1,500	4 COP or 4 COP-SRX

(b) The distance limitations provided in this section for similar uses shall not apply to motels and hotels of not less than fifty (50) guestrooms which do not have any entrance from the street to the bar or room primarily devoted to the serving of alcoholic beverages and which do not exhibit any sign or display on the outside denoting that alcoholic beverages are sold or obtainable therein.

(c) The distance limitations provided in this section shall not apply to existing licensees and shall not be construed to prevent the renewal of a state alcoholic beverage license.

(d) The distance limitations provided in this section shall not apply to a licensee who had procured the beverage license prior to the establishment of a school, a house of worship, a city park or recreational area, or a residential use.

(e) The distances provided for in this section shall be measured in a straight line without regard to intervening structures or objects, from the nearest property line of the applicant's premises for which a state beverage license is sought to the nearest point of the lot, tract or parcel of land in use by an established house of worship, school, park or recreational area or other similarly licensed premises.

Sec. 3-12. Licensee moving to new location.

A licensee may move the licensed place of business and operate at a new location upon making application for such change of location to the city clerk and upon such application being approved as to zoning, distance and other city requirements. The transfer procedure will be the same as outlined in section 3-5 and section 3-6. Approval of the new location must be obtained prior to manufacturing, distributing or selling alcoholic beverages at the new business location.

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Section 2. **Repeal.** All ordinances or parts of ordinances in conflict or inconsistent are hereby repealed.

Section 3. **Conflicts.** In the event that the provisions of this Ordinance are in conflict with any other ordinance, rule or regulation, the provisions of this Ordinance shall prevail.

Section 4. **Severability.** The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. **Codification.** The provisions of this Ordinance may become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article" or any other appropriate word.

Section 6. **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this 8 day of May, 2012.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this _____ day of _____, 2012.

_____
ANDRE D. PIERRE, ESQ.
MAYOR

ATTEST:

_____
MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

_____
REGINE M. MONESTIME
CITY ATTORNEY

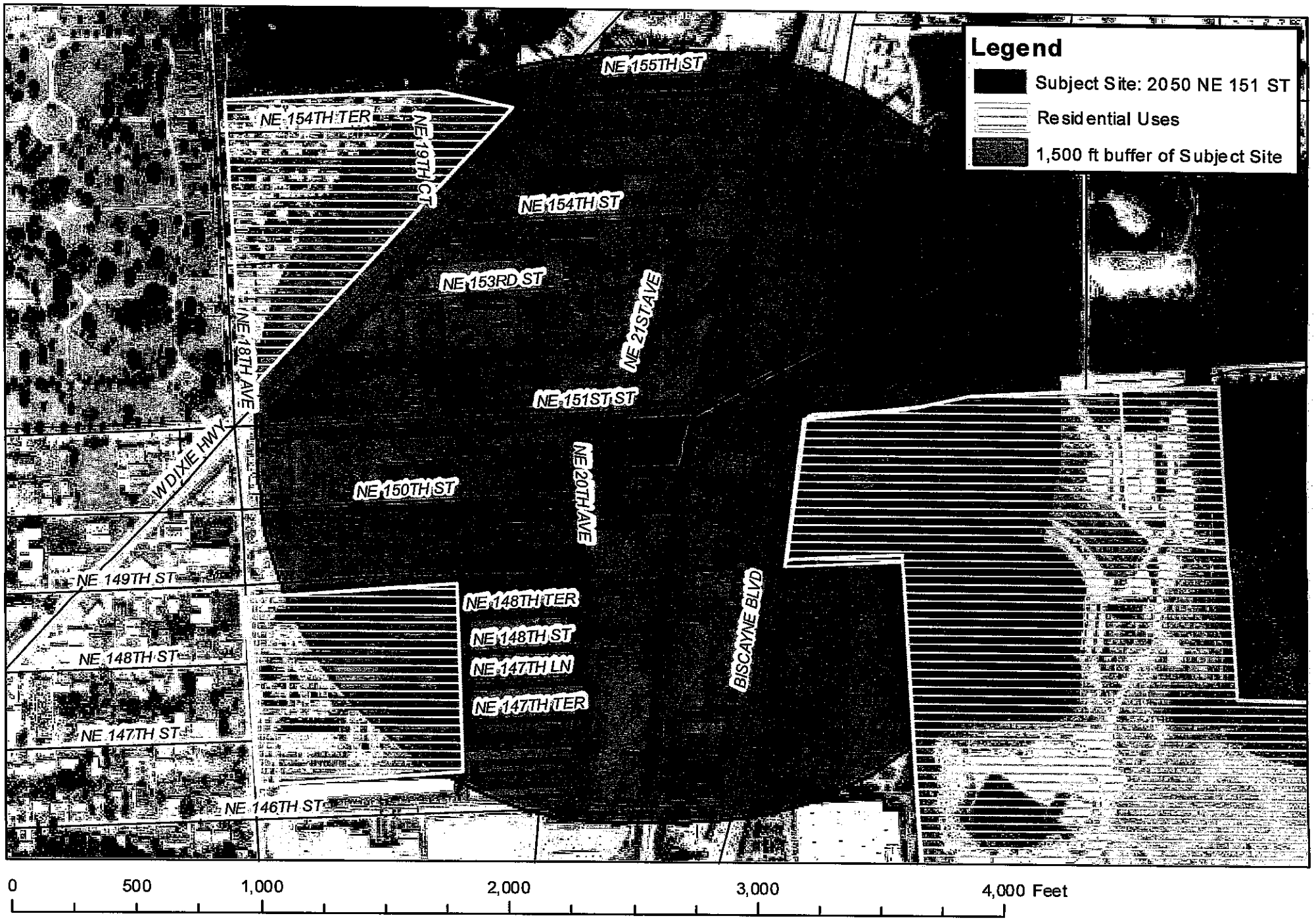
SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Andre D. Pierre, Esq.	_____ (Yes)	_____ (No)
Vice Mayor Jean R. Marcellus	_____ (Yes)	_____ (No)
Councilperson Michael R. Blynn, Esq.	_____ (Yes)	_____ (No)
Councilperson Scott Galvin	_____ (Yes)	_____ (No)
Councilperson Marie Erlande Steril	_____ (Yes)	_____ (No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.

1,500 Foot Buffer of Subject Site: 2050 NE 151 ST