

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-22370-CIV-COOKE

MIAMI DIVISION

FLAVA WORKS, INC., etc., et al.,

Plaintiffs/Petitioners,

vs.

CITY OF MIAMI, FLORIDA, etc.,
et al.,

Defendants/Respondents.

**NOTICE OF FILING MIAMI ORDINANCE 13048;
SUGGESTION OF MOOTNESS**

The Defendants, the CITY OF MIAMI and CITY OF MIAMI CODE ENFORCEMENT BOARD, hereby give notice to the Court and to Counsel of the Filing of Miami Ordinance 13048, passed into law on December 11, 2008 (a certified copy is attached as Exhibit "1").

The Defendants suggest that this new ordinance moots: (a) Counts I and II of Plaintiffs' Complaint; and (b) Plaintiffs Motion to Strike Document 31-2 [D.E. 39].

To remedy the alleged defects in procedure in adopting Ordinance 13027, raised by the Plaintiffs in their Motion to Strike Document 31-2, on December 11, 2008, the Miami City Commission, after due advertisement and passage on two readings (November 13, 2008 and December 11, 2008), enacted Ordinance 13048, which re-enacted and amended the adult entertainment provisions of the Miami Zoning Ordinance to: (a) eliminate the Special Permit requirement for an adult entertainment use; and (2) to specify the evidence the City relied upon, and reasonably believed to be relevant, to the

NOTICE OF FILING MIAMI ORDINANCE 13048;
SUGGESTION OF MOOTNESS
CASE NO. 07-22370-CIV-COOKE

method chosen by the City to remedy the negative and adverse secondary effects of adult entertainment, consistent with *City of Renton v. Playtime Theatres*, 475 U.S. 41, 51-52, 106 S.Ct. 925, 931, 89 L.Ed.2d 29 (1986).

“Adult Entertainment” is now a “Permitted Principle Use” in Industrial Districts, without the need for a Special Permit, and there is now explicit pre-enactment evidence of what the CITY relied upon, and reasonably believed to be relevant, to address the problem of adverse secondary effects of adult entertainment.

As the challenged features of the former “adult entertainment” regulations have been removed and/or cured by subsequent legislation, Counts I & II are now moot, and should be dismissed. *Coalition for the Abolishment of Marijuana Prohibition v. City of Atlanta*, 219 F.3d 1301, 1310 (11th Cir. 2000)(“[W]hen an ordinance is repealed by the enactment of a superseding statute, then the ‘superseding statute or regulation moots a case ... to the extent that it removes challenged features of the prior law.’”).

JULIE O. BRU, CITY ATTORNEY
WARREN BITTNER, Deputy City Attorney
VICTORIA MENDEZ, Asst. City Attorney
JOHN A. GRECO, Asst. City Attorney
Attorneys for the **Defendants**
Miami Riverside Center
444 S. W. 2nd Avenue, Suite 945
Miami, FL 33130-1910
Tel.: (305) 416-1800
Fax.: (305) 416-1801

By: s/Warren Bittner
WARREN BITTNER
Deputy City Attorney
Fla. Bar #370959

**NOTICE OF FILING MIAMI ORDINANCE 13048;
SUGGESTION OF MOOTNESS
CASE NO. 07-22370-CIV-COOKE**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of December, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/Warren Bittner
WARREN BITTNER
Deputy City Attorney
Fla. Bar #370959

**NOTICE OF FILING MIAMI ORDINANCE 13048;
SUGGESTION OF MOOTNESS
CASE NO. 07-22370-CIV-COOKE**

SERVICE LIST

James S. Benjamin, Esq.
Daniel A. Aaronson, Esq.
Benjamin & Aaronson PA
1 Financial Plaza, Suite 1615
Fort Lauderdale, Florida 33394-0005
Tel: (954) 779-1700
Fax: (954) 779-1771

Warren Bittner, Asst. City Atty.
Victoria Mendez, Asst. City Atty.
Office of the City Attorney
Miami Riverside Center, Suite 945
444 S.W. 2nd Avenue
Miami, FL 33130-1910
Fax: (305) 416-1801