

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ALCOHOLIC BEVERAGES," ARTICLE I, ENTITLED "IN GENERAL," SECTION 6-5 THEREOF, ENTITLED "PATRON AGE RESTRICTIONS," BY AMENDING THE ENFORCEMENT AND PENALTIES PROVISIONS FOR THOSE VIOLATIONS ISSUED PURSUANT TO SECTION 6-5(a) OF THE CITY CODE; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach regulates the location, size, hours of operation, and minimum patron age for uses that permit the sale and consumption of alcoholic beverages in Chapter 6 of the City Code, entitled "Alcoholic Beverages"; and

WHEREAS, the Mayor and City Commission have determined that during certain holiday periods and high impact events, a substantial influx of tourists and visitors descend upon the City to partake in the celebration of these recognized periods; and

WHEREAS, due to the celebratory nature of these holiday periods and high impact events, tourists and visitors engage in the prolonged consumption of alcohol and other alcoholic or intoxicating beverages, resulting in excessive consumption of alcohol, which creates volatile and dangerous situations throughout the City, that directly leads to criminal activity, conduct, or other quality of life offenses; and

WHEREAS, the City has previously adopted amendments to its City Code to impose restrictions on the age of persons able to gain admission to alcoholic beverage establishments; and

WHEREAS, following the adoption of such amendments, numerous incidents have occurred whereby persons under the age of 21 have been admitted to alcoholic beverage establishments within the City, and have been served or otherwise obtained alcoholic beverages in violation of State law, and contrary to the public health, safety, and welfare of the City; and

WHEREAS, the Mayor and City Commission have determined that it is in the best interest of the City, and serves to protect the health, safety, and welfare of the City's residents and visitors, to limit the circumstances in which a patron has access to alcoholic beverage(s).

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Section 6-5, entitled "Patron age restrictions," of Article I, of Chapter 6, of the City Code of the City of Miami Beach is hereby amended as follows:

CHAPTER 6
ALCOHOLIC BEVERAGES
ARTICLE I. In General

* * *

Sec. 6-5. Patron age restrictions.

- (a) It shall be unlawful for persons under the age of 21 to patronize, visit, loiter, be admitted or allowed access, in any alcoholic beverage establishment, as defined in section 114-1 of this Code, except as hereinafter provided. This restriction shall not apply to:
- (1) Persons employed by or at the alcoholic beverage establishments;
 - (2) Persons accompanied by either of their parents (natural, adoptive, or stepparent) or legal guardian (appointed by a court);
 - (3) Alcoholic beverage establishments also licensed and operating as restaurants, containing a full kitchen of appropriate size to serve the occupancy load of the establishment, serving full meals at all times. In the case of hotels and other similar multiuse establishments, this restriction applies only to those areas of the establishment operating primarily as an alcoholic beverage establishment, and not also operating as a restaurant; and
 - (4) Alcoholic beverage establishments also licensed and operating as motion picture theaters, subject to compliance with subsection 6-4(a)(4).
- (b) Any person(s) under the age of 21 shall be required to leave the premises pursuant to the prohibition set forth in this section. The failure of the person(s) to leave the premises will subject the violator to criminal penalties authorized by Florida law. Any person(s) under the age of 21 who gained access to the alcoholic beverage establishment by presenting fraudulent identification shall be subject to prosecution pursuant to Section 322.212 of the Florida Statutes.

~~Enforcement and penalties:~~

- ~~(1) An offense of this section by an alcohol beverage establishment shall be defined as one or more persons under the permitted patron age discovered on the business premises during a 24-hour period in violation of this section. Hearings on notices of violation shall be conducted by the special master, who may impose penalties, including fines and suspension, as provided for in chapter 30 of this Code, with appeal by certiorari to the circuit court, Appellate Division.~~
- ~~(2) It shall be a defense to alleged violations of this section that the person under the age of 21 obtained access despite the owner's reasonable efforts to prevent such access, or through a fraudulent identification, and the business used reasonable efforts to prevent the use of fraudulent identifications. "Reasonable efforts" shall include, but not be limited to, use of employees properly checking identification cards at the entrance to the subject establishment. Presentation of a proposed business security plan to prevent future violations may be considered as a mitigating factor in the suspension hearing or appeal process. For purposes of this section, "identification cards" are defined as official Federal, state or local government issued identification cards.~~

- (3) ~~A warning shall be given for the first offense; a fine of \$500.00 shall be imposed for the second offense; a fine of \$1,000.00 shall be imposed for the third offense; a fine of \$3,000.00 shall be imposed for the fourth offense; the special master may impose a fine and/or a suspension of the business's occupational license for further offenses, in successively escalating suspension periods of: one weekend, seven days, 30 days, six months or may revoke the business's occupational license. For purposes of determining the appropriate penalty this section, violations shall accrue only for the preceding 12-month period.~~
- (4) ~~An offense of this section by persons under the age of 21 shall be addressed as follows: Persons found in violation of this section shall be asked by, the business establishment, the department of code compliance, or certified law enforcement officers, to leave the premises subject to this section. Failure to leave the premises will subject the violator to, criminal penalties as provided by Florida law. Additionally, persons under the age of 21 who gained access to the alcoholic beverage establishment by presenting fraudulent identification shall be subject to prosecution for violation of F.S. § 322.212, or comparable provision.~~

(c) Penalties and enforcement.

(1) The following penalties shall be imposed for a violation of this section:

- a. If the violation is the first offense, a person or business shall receive a civil fine of \$5,000.00;
- b. If the violation is the second violation within the preceding six months, a person or business shall receive a civil fine of \$10,000.00;
- c. If the violation is the third violation within the preceding six months, a person or business shall receive a civil fine of \$20,000.00; and
- d. If the violation is the fourth or subsequent violation within the preceding six months, a person or business shall receive a civil fine of \$30,000.00 and the business tax receipt must be revoked.

(2) Enforcement. The police department and code compliance department shall enforce this section. This shall not preclude other law enforcement agencies from any action to assure compliance with this section and all applicable laws. If a violation of this section is observed, the enforcement officer will be authorized to issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten days after service of the notice of violation, and that the failure to appeal the violation within ten days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

(3) An offense of this section by an alcohol beverage establishment shall be defined as one or more persons under the permitted patron age discovered on the business premises during a 24-hour period.

(4) It shall be a defense to alleged violation(s) of this section that the person under the age of 21 obtained access despite the owner's reasonable efforts to prevent such access.

or through a fraudulent identification, and the business used reasonable efforts to prevent the use of fraudulent identifications. "Reasonable efforts" shall include, but not be limited to, use of employees properly checking identification cards at the entrance to the subject establishment. Presentation of a proposed business security plan to prevent future violations may be considered as a mitigating factor in the suspension hearing or appeal process. For purposes of this section, "identification cards" are defined as official Federal, state or local government issued identification cards.

(5) *Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.*

- a. A violator who has been served with a notice of violation must elect to either:
 - i. Pay the civil fine in the manner indicated on the notice of violation; or
 - ii. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten days of the service of the notice of violation.
- b. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this City Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission.
- c. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the police officer or code compliance officer. The failure of the named violator to appeal the decision of the police officer or code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.
- d. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the 61st day following the recording of any such lien that remains unpaid, the city may foreclose or otherwise execute upon the lien.
- e. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- f. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten days of the service of the notice of violation.

- g. The special master shall not have discretion to alter the penalties prescribed in subsection (c)(1).
- (d) Enhanced penalties. The following enhanced penalties must be imposed, in addition to any mandatory fines set forth in subsection 6-5(c)(1) above, for violations of section 6-5:
 - (1) Enhanced penalties for this section:
 - a. The operation of the alcoholic beverage establishment must be immediately terminated, upon confirmation that a violation has occurred, by the Miami Beach Police Department.
 - b. If the offense is a second offense within the preceding six-month period of time, in addition to the fine set forth in subsection 6-5(c)(1), the City Manager may suspend the Business Tax Receipt and prohibit the property owner, company or business entity from operating the alcoholic beverage establishment for a one-month period of time.
 - c. If the offense is a third offense, in addition to any fine set forth in subsection 6-5(c)(1), the property owner, company or business entity must be deemed a habitual offender, and the city manager may revoke the business tax receipt or the certificate of use issued to such person, company or business entity that have been deemed habitual offenders pursuant to this section for a period not to exceed one year.

SECTION 2. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and, the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. SEVERABILITY.

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

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this _____ day of _____, 2019.

ATTEST:

Rafael E. Granado
City Clerk

Dan Gelber
Mayor

(Sponsored by Mayor Dan Gelber)

Underline denotes new language
~~Strikethrough~~ denotes removed language

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Ral C. Guitierrez 4/4/19
City Attorney AB Date