

MIAMI BEACH

PLANNING DEPARTMENT

Staff Report & Recommendation

PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: January 28, 2020

FROM: Thomas R. Mooney, AICP
Planning Director



SUBJECT: **PB 19-0337. Sunset Harbor alcoholic beverage establishment regulations.**

REQUEST

PB 19-0337. Sunset Harbor alcoholic beverage establishment regulations. AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," (1) AT DIVISION 5, "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT," SECTION 142-310, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS"; AND (2) AT DIVISION 11, "I-1 LIGHT INDUSTRIAL DISTRICT," SECTION 142-488, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS," TO ELIMINATE EXISTING EXCEPTIONS TO THE 2:00 A.M. CLOSING TIME FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS IN THE SUNSET HARBOUR NEIGHBORHOOD, WHICH IS GENERALLY BOUNDED BY PURDY AVENUE, 20TH STREET, ALTON ROAD, AND DADE BOULEVARD; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

RECOMMENDATION

Transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

HISTORY

On December 11, 2019, at the request of Commissioner Mark Samuelian and Co-Sponsored by Commissioner Ricky Arriola, the City Commission referred the item to the Planning Board for review and recommendation (item C4 J).

REVIEW CRITERIA

Pursuant to Section 118-163 of the City Code, in reviewing a request for an amendment to these land development regulations, the board shall consider the following when applicable:

1. **Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.**

Consistent – The proposed ordinance is consistent with the goals, objectives, and policies of the Comprehensive Plan.

2. **Whether the proposed change would create an isolated district unrelated to**

adjacent or nearby districts.

Not applicable – The proposed amendment does not modify district boundaries.

3. **Whether the change suggested is out of scale with the needs of the neighborhood or the city.**

Consistent - The proposed ordinance amendment is not out of scale with the surrounding neighborhood.

4. **Whether the proposed change would tax the existing load on public facilities and infrastructure.**

Consistent – The proposed ordinance will not affect the load on public facilities and infrastructure.

5. **Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.**

Not applicable. – The proposed amendment does not modify district boundaries.

6. **Whether changed or changing conditions make the passage of the proposed change necessary.**

Consistent – The need to ensure that the quality of life of residents in the neighborhood is maintained makes passage of the proposed change necessary.

7. **Whether the proposed change will adversely influence living conditions in the neighborhood.**

Consistent – The proposed ordinance amendment will improve living conditions in the neighborhood.

8. **Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.**

Consistent – The proposed change will not create or increase traffic congestion from what is currently permitted.

9. **Whether the proposed change will seriously reduce light and air to adjacent areas.**

Consistent – The proposed change will not seriously reduce light and air to adjacent areas.

10. **Whether the proposed change will adversely affect property values in the adjacent area.**

Consistent – The proposed change should not adversely affect property values in the adjacent areas.

11. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.

Consistent – The proposed change should not be a deterrent to the improvement or development of properties in the City.

12. Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.

Not applicable.

13. Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.

Not applicable.

COMPLIANCE WITH SEA LEVEL RISE AND RESILIENCY REVIEW CRITERIA

Section 133-50(b) of the Land Development Regulations establishes the following review criteria when considering ordinances, adopting resolutions, or making recommendations:

(1) Whether the proposal affects an area that is vulnerable to the impacts of sea level rise, pursuant to adopted projections.

Partially Consistent – The proposal does affect areas that are vulnerable to the impacts of sea level rise in the long term.

(2) Whether the proposal will increase the resiliency of the City with respect to sea level rise.

Consistent – The proposal will not affect the resiliency of the City with respect to sea level rise.

(3) Whether the proposal is compatible with the City's sea level rise mitigation and resiliency efforts.

Consistent – The proposal does not diminish and is compatible with the City's sea level rise mitigation and resiliency efforts.

ANALYSIS

Miami Beach's nightlife areas have historically been concentrated in the commercial and mixed-use entertainment districts along Washington Avenue, Collins Avenue, and Ocean Drive. In contrast, the Sunset Harbour neighborhood is composed of a mixture of residential, light industrial, and low intensity personal service, restaurant, and retail uses, which primarily serve neighborhood residents. Within this neighborhood, residential uses are divided only by the width of a street from commercial and industrial districts.

The City Code permits certain nightlife uses within the CD-2 and I-1 zoning districts, which, absent mitigation and appropriate regulation, could be incompatible with adjacent residential uses in the Sunset Harbour neighborhood. Specifically, this includes large restaurants, stand-alone bars, outdoor food and beverage service, entertainment establishments, and dance halls.

In order to limit the potential impacts on residential uses, on October 19, 2016, the City adopted Ordinance No. 2016-4046, which limited the hours of operation of alcoholic beverage establishments in Sunset Harbour, with certain exceptions, to 2:00 a.m. Previously, establishments were permitted to remain open until 5:00 a.m. The exceptions included establishments that had existed or obtained land use board approval prior to August 23, 2016.

Due to negative impacts that have continued to occur from pre-existing alcoholic beverage establishments, it is now recommended that the exemption be removed so that all alcoholic beverage establishments would be required to close by 2:00 a.m. Florida law grants municipalities broad authority to regulate the sale of alcoholic beverages. In the exercise of that authority, municipalities may prohibit the sale of alcohol within certain hours and/or within certain zoning districts. Specifically, Section 562.14, Florida Statutes, authorizes municipalities, by ordinance, to establish hours of sale for alcoholic beverages.

Florida courts have consistently held that alcoholic beverage establishments are not entitled to "grandfather" status as to hours of sale for alcoholic beverages.¹ Accordingly, the City has the authority to adopt the proposed legislation.

RECOMMENDATION

In view of the foregoing analysis, staff recommends that the Planning Board transmit the proposed ordinance amendment to the City Commission with a favorable recommendation.

¹ See *Village of North Palm Beach v. S & H Foster's, Inc.* (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1978).

**SUNSET HARBOUR
ALCOHOLIC BEVERAGE ESTABLISHMENT REGULATIONS**

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," (1) AT DIVISION 5, "CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT," SECTION 142-310, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS"; AND (2) AT DIVISION 11, "I-1 LIGHT INDUSTRIAL DISTRICT," SECTION 142-488, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS," TO ELIMINATE EXISTING EXCEPTIONS TO THE 2:00 A.M. CLOSING TIME FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS IN THE SUNSET HARBOUR NEIGHBORHOOD, WHICH IS GENERALLY BOUNDED BY PURDY AVENUE, 20TH STREET, ALTON ROAD, AND DADE BOULEVARD; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Sunset Harbour neighborhood is composed of a mixture of residential, light industrial, and low intensity personal service, restaurant, and retail uses, which primarily serve neighborhood residents; and

WHEREAS, alcoholic beverage establishments in Miami Beach have historically been concentrated in the commercial and mixed-use entertainment districts along Washington Avenue, Collins Avenue, and Ocean Drive; and

WHEREAS, residential uses in the Sunset Harbour neighborhood are divided only by the width of a street from the CD-2 commercial, medium intensity and the I-1 light industrial zoning districts; and

WHEREAS, the City Code permits certain uses within the CD-2 and I-1 zoning districts, which, absent mitigation, could be incompatible with adjacent residential uses in the Sunset Harbour neighborhood; and

WHEREAS, large restaurants, stand-alone bars, outdoor food and beverage service, entertainment establishments, and dance halls can, if not regulated, be incompatible with the scale, character, and quality of life of adjacent residential neighborhoods; and

WHEREAS, the Mayor and City Commission desire to encourage uses that are compatible with the scale and character of the neighborhood; and

WHEREAS, pursuant to Section 562.14, Florida Statutes, a municipality may, by ordinance, establish hours of sale for alcoholic beverages; and

WHEREAS, on October 19, 2016, the City adopted Ordinance No. 2016-4046, which limited the hours of operation of alcoholic beverage establishments in Sunset Harbour, with certain exceptions, to 2:00 a.m.; and

WHEREAS, the Mayor and City Commission now desire to eliminate any exceptions to the 2:00 a.m. closing time set forth in the City Code; and

WHEREAS, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that “[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones”; and

WHEREAS, in *Makos v. Prince* (Fla. 1953), the Florida Supreme Court recognized that a county may establish separate zones for the hours of sale of alcoholic beverages, and that the regulation of hours need not be uniform throughout the county as a whole; and

WHEREAS, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages (See *Village of North Palm Beach v. S & H Foster's, Inc.* (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1978)); and

WHEREAS, Chapter 1, of the Land Use Element, Objective 2, “Land Use Compatibility,” of the City’s 2025 Comprehensive Plan (hereinafter “Plan”), specifies that the City’s land development regulations will be used to address the location, type, size and intensity of land uses and to ensure adequate land use compatibility between residential and non-residential land uses; and

WHEREAS, Policy 2.1 of the Plan provides that the land development regulations shall continue to address the location and extent of nonresidential land uses in accordance with the Future Land Use map and the policies and descriptions of types, sizes and intensities of land uses contained in the Future Land Use Element; and

WHEREAS, Policy 2.2 of the Plan provides that development in land use categories which permit both residential and non-residential uses shall be regulated by formalized land development regulations which are designed to ensure adequate land use compatibility; and

WHEREAS, in determining incompatibility, consideration shall be given to noise, lighting, shadows, access, traffic, parking, height, bulk, landscaping, hours of operation, buffering and any other criteria that may be important to ensure that necessary safeguards are provided for the protection of surrounding property, persons, and neighborhood values; and

WHEREAS, based upon neighborhood compatibility concerns and the negative impacts associated with existing alcoholic beverage establishments, the Mayor and City Commission now desire to eliminate any exceptions to the 2:00 a.m. closing time set forth in the City Code; and

WHEREAS, in accordance with Chapter 1, Objective 2, Policies 2.1 and 2.2 of the Plan, is it is desirable to encourage uses in commercial districts that are properly balanced and compatible with the scale, character and context of adjacent residential neighborhoods; and

WHEREAS, the amendments set forth below are necessary to accomplish all of the above objectives.

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

SECTION 1. Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 5, "CD-2 Commercial, Medium Intensity District," at Section 142-310, "Special regulations for alcohol beverage establishments," is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 5. - CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT

* * *

Sec. 142-310. Special regulations for alcohol beverage establishments.

* * *

(b) *Sunset Harbour neighborhood.* The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located in the Sunset Harbour neighborhood, which is generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south.

- (1) Operations shall cease no later than 2:00 a.m., except that outdoor operations (including sidewalk cafe operations) shall cease no later than 12:00 a.m.
- (2) Alcoholic beverage establishments may not operate any outside dining areas or accessory bar counters above the ground floor of the building in which they are located; however, outdoor restaurant seating, associated with indoor venues, not exceeding 40 seats, may be permitted above the ground floor until 8:00 p.m.
- (3) Except as may be required by any applicable fire prevention code or building code, outdoor speakers shall not be permitted.
- (4) Special events shall not be permitted in any alcoholic beverage establishment.

~~(5) This section (b) shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that was issued prior to August 23, 2016, or to a proposed establishment that has submitted a completed application for an alcoholic beverage establishment to a land use board prior to August 23, 2016, or to an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired, prior to August 23, 2016. Any increase to the approved hours of operation shall meet the requirements of this section.~~

* * *

SECTION 2. Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 11, "I-1 Light Industrial District," at Section 142-488, "Special regulations for alcohol beverage establishments." is hereby amended as follows:

* * *

Sec. 142-488. Special regulations for alcohol beverage establishments.

- (a) *Sunset Harbour neighborhood.* The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located in the Sunset Harbour neighborhood, which is generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south.
- (1) Operations shall cease no later than 2:00 a.m., except that outdoor operations (including sidewalk cafe operations) shall cease no later than 12:00 a.m.
 - (2) Alcoholic beverage establishments may not operate any outside dining areas or accessory bar counters above the ground floor of the building in which they are located; however, outdoor restaurant seating, associated with indoor venues, not exceeding 40 seats, may be permitted above the ground floor until 8:00 p.m.
 - (3) Except as may be required by any applicable fire prevention code or building code, outdoor speakers shall not be permitted.
 - (4) Special events shall not be permitted in any alcoholic beverage establishment.
 - ~~(5) This section shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that was issued prior to August 23, 2016, or to a proposed establishment that has submitted a completed application for an alcoholic beverage establishment to a land use board prior to August 23, 2016, or to an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired, prior to August 23, 2016. Any increase to the approved hours of operation shall meet the requirements of this section.~~

SECTION 3. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

SECTION 4. CODIFICATION.

It is the intention of the City Commission, 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, as amended; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 5. SEVERABILITY.

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

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this ____ day of _____, 2020.

Attest:

Dan Gelber
Mayor

Rafael E. Granado
City Clerk

(Sponsored by Commissioner Mark Samuelian and Co-sponsored by Commissioner Ricky Arriola)

Underline denotes additions
~~Strike through~~ denotes deletions

First Reading:
Second Reading:

Verified By: _____
Thomas R. Mooney, AICP
Planning Director