

**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, 20<sup>TH</sup> 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**, the Resilient Land Use and Development Element of the City’s 2040 Comprehensive Plan (hereinafter “Plan”), at Objective RLU 1.3, 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 RLU 1.3.1 of the Plan provides that the land development regulations shall continue to address the location and extent of non-residential 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 Resilient Land Use and Development Element; and

**WHEREAS**, Policy RLU 1.3.2 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 Objective RLU 1.3 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:

**DIVISION 11. – I-1 LIGHT INDUSTRIAL DISTRICT**

\* \* \*

**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: February 12, 2020  
Second Reading: March 11, 2020

Verified By: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

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APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

Rafael Granado - 2/3/20  
City Attorney Date  
NK