

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 6-3 THEREOF, ENTITLED "HOURS OF SALE/VIOLATIONS," TO AMEND THE HOURS OF SALE FOR ALCOHOLIC BEVERAGES BY ALCOHOLIC BEVERAGE ESTABLISHMENTS IN SPECIFIED AREAS OF THE CITY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach ("City") 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 sale and consumption of alcoholic beverages during the early morning hours can disturb the quiet enjoyment of the community, cause undesirable noise, and result in increased calls for service to the Police and Fire Departments; and

**WHEREAS**, accordingly, the Mayor and City Commission have determined that it is in the best interest of the City, and it serves the health, safety, and welfare of the City's residents and visitors to restrict the hours of sale of alcoholic beverages for on-premises consumption in the MXE mixed use entertainment district south of 16th Street; and

**WHEREAS**, State law expressly grants the City the authority, by Ordinance, to establish hours of sale for alcoholic beverages (see Section 562.14, Florida Statutes); and

**WHEREAS**, the Florida Supreme Court has upheld Section 562.14, Florida Statutes, finding that the Statute is constitutional and enforceable, and a lawful delegation of the power of the Florida Legislature (see *Wednesday Night, Inc. v. City of Fort Lauderdale*, 272 So. 2d 502 (Fla. 1973)); and

**WHEREAS**, the Florida Supreme Court has also recognized that, "[t]here is no question that Section 562.14, Florida Statutes permits a municipality to reasonably regulate the hours of sale of alcoholic beverages, and the legislative body of a municipality has a full measure of proper legislative discretion in the enactment of such regulatory ordinances." *Pompano Beach v. Big Daddy's, Inc.*, 375 So. 2d 281, 282 (Fla. 1979) (citing *Other Place of Miami v. City of Hialeah Gardens*, 353 So. 2d 861, 863 (Fla. 3d DCA 1977), *cert. denied*, 364 So. 2d 889 (Fla. 1978)); 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**, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); and

**WHEREAS**, alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages, and that zoning case law does not apply (See *Village of North Palm Beach v. S & H Foster's, Inc.*, 80 So. 3d 433 (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1978)); and

**WHEREAS**, the amendments set forth below are necessary to accomplish the objectives identified above.

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

**SECTION 1.** That Section 6-3, entitled "Hours of Sale," 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. 6-3. Hours of sale/violations.**

- (a) The hours of sale of alcoholic beverages, whether as a permitted main or accessory use, shall require a state license, and shall be according to the following schedule:

\* \* \*

- (3) Alcoholic beverage establishments. All alcoholic beverage establishments ~~with licensed by the state license~~ for on-premises consumption only, may only make sales of alcohol between the hours of 8:00 a.m. and 5:00 a.m., except as provided below:

- A. *Restaurants not operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, but not operating as dance halls or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m.
- B. *Restaurants also operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, and also operating as dance halls, or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m., and dancing and entertainment shall not be conducted between the hours of 5:00 a.m. and 8:00 a.m.
- C. *Other alcoholic beverage establishments.* Other alcoholic beverage establishments, not containing restaurants with full kitchen facilities, shall close at 5:00 a.m. and remain closed. No patron or other persons, other than those employed by the vendor may remain on the premises between the hours of 5:00 a.m. and 8:00 a.m.
- D. *Sidewalk cafes.* Notwithstanding the provisions of subsections (a)(3)A. through C., alcoholic beverages shall not be offered for sale or consumption at sidewalk cafes,

as defined in section 82-366 of this Code and as otherwise permitted by the city in accordance with chapter 82, article IV, division 5, subdivision II of this Code (as may be amended from time to time), between the hours of 1:30 a.m. and 8:00 a.m., and shall not be consumed at sidewalk cafes between the hours of 2:00 a.m. and 8:00 a.m. No variances may be granted from the provisions of this subsection 6-3(a)(3)(d) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes.

E. MXE district south of 16th Street. Notwithstanding the provisions of this subsection (a)(3), ~~Alcoholic~~ alcoholic beverage establishments located in the MXE mixed use entertainment district south of 16th Street may only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 2:00 a.m.

Note: For purposes of this section, full kitchen facilities shall mean having commercial grade burners, ovens, and refrigeration units of sufficient size and quantity to accommodate the occupancy content of the establishment. Full kitchen facilities must contain grease trap interceptors, and meet all applicable city, county, and state codes.

\* \* \*

- (5) Private clubs. Consideration of a request for a private club conditional use permit, including the hours of operation, shall be pursuant to the conditional use procedures and review guidelines as listed in section 118-191, et seq. A private club, either as a permitted main or accessory use, shall only offer alcoholic beverages for sale or on-premises consumption if the private club, in accordance with subsection 6-2(a), secures a license for the distribution or sale of any alcoholic beverages from the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state. Private clubs licensed as alcoholic beverage establishments, either as permitted main or accessory uses, shall, only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 5:00 a.m., on any day of the week, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club permitted to remain open after 2:00 a.m. shall purchase an extra-hours license and must provide for security in its premises by hiring private security guards or off-duty police officers between the hours of 2:00 a.m. and 5:00 a.m. each day.

Private clubs securing a license from the state division of alcoholic beverages and tobacco by complying with the requirements of F.S. § 561.20 for racquetball, tennis, or golf course facilities may admit members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless such private club is the holder of an extra-hours license and complies with the above requirements.

A. Notwithstanding the foregoing, private clubs located in the MXE mixed use entertainment district south of 16th Street may only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 2:00 a.m.

- (6) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m., and alcoholic beverage establishments located in the MXE mixed use entertainment district south of 16th Street that are permitted to serve alcoholic beverages for on-premises consumption until 2:00 a.m. may continue to serve alcoholic beverages for on-

premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe (i) until 7:00 a.m. on January 1 (New Year's Day) or, if January 1 is on a Sunday, until 7:00 a.m. on Monday if the day that is observed as a national holiday for New Year's Day is on Monday, and (ii) until 7:00 a.m. during certain major event days or weekends as may be designated by the city commission or as may be designated by the city manager following approval by the city commission, under the following conditions:

- A. The police department and the code compliance department of the city must be notified by a letter, received no later than 15 business days prior to either: 1. January 1, or 2. the day on which alcohol sales are to be extended, stating that the alcoholic beverage establishment intends to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe until 7:00 a.m.;
- B. If deemed reasonably necessary by the police chief, or the police chief's designee, off-duty police officers must be provided at the alcoholic beverage establishment until 7:00 a.m.;
- C. There are no pending city Code violations against the alcoholic beverage establishment and the alcoholic beverage establishment has not had more than one adjudicated city Code violation per year within the prior 24 months; notwithstanding the foregoing, the conditions in this subsection (6)C. may be waived by a four-sevenths vote of the city commission;
- D. No delinquent or past due monies are owed to the city;
- E. Outdoor entertainment or open-air entertainment is not allowed;
- F. No violation of the city's noise ordinance shall be permitted;
- G. No violation of the approved fire code occupancy load shall be permitted;
- H. All required city permits and licenses are current;
- I. The state license is current; and
- J. The alcoholic beverage establishment has been in continuous operation for the prior 24 months in the city, is licensed as an alcoholic beverage establishment set forth in subsections (3) and (5), and (i) is permitted to serve alcoholic beverages for on-premises consumption until 5:00 a.m., or (ii) is located in the MXE mixed use entertainment district south of 16th Street and permitted to serve alcoholic beverages for on-premises consumption until 2:00 a.m.
- K. Any other conditions required by the city manager in order to protect the public health, safety, or welfare.

(7) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages until 6:00 a.m. on the first day of daylight savings time in the spring.

(8) Enhanced security requirement for alcoholic beverage establishments. Each alcoholic beverage establishment located on Ocean Drive, between 5th Street and 15th Street, possessing a license to sell and/or serve alcoholic beverages until ~~5 a.m.~~ 2:00 a.m. ("Alcohol License"), and selling and/or serving alcoholic beverages later than 12:00 a.m.,

for on- premises consumption only, shall retain the services of an off-duty police officer, from 12:00 a.m. until 30 minutes past the closing of the alcoholic beverage establishment for: (i) all Saturdays and Sundays; and (ii) during holiday weekends or City-sponsored events, on Saturday, Sunday, and Monday.

- A. An alcoholic beverage establishment shall be exempt from the requirement identified in this subsection (8) if:
    - i. All bars, and other areas from which alcoholic beverages are dispensed, are located, in their entirety, within the enclosed premises of a hotel, and such hotel and alcoholic beverage establishment are both owned by the same individual or entity; or
    - ii. All bars, and other areas from which alcoholic beverages are dispensed, are located, in their entirety, within the enclosed premises of a (i) restaurant with full kitchen facilities, and (ii) such restaurant serves full meals at all times, and (iii) such alcoholic beverage establishment closes and ceases all of its business operations by 2:00 a.m.
  - B. Two immediately abutting and adjacent alcoholic beverage establishments may satisfy the requirement set forth in this subsection (8) by sharing the services of one off-duty police officer, from 12:00 a.m. until 30 minutes past the closing of both such alcoholic beverage establishments, for those days in which alcoholic beverages are sold or served later than 12:00 a.m. at such establishments.
  - C. It shall be an affirmative defense to a violation issued pursuant to subsection (8) herein, if an alcoholic beverage establishment demonstrates that, solely due to the unavailability of any qualified police officer, such alcoholic beverage establishment was unable to retain the services of an off-duty police officer.
  - D. The Police Chief, or designee, shall present, on a quarterly basis for the first year subsequent to the enactment of subsection (a)(8), pertinent statistical and crime data information regarding the implementation and efficacy of this subsection (a)(8) in order to permit the mayor and city commission to review and evaluate the continued viability of these enhanced security requirements, and to explore any expansion of the geographic area identified therein.
- (9) The city manager may suspend the provisions of subsection (6) at any time to protect the public health, safety, or welfare.
- (10) ~~Notwithstanding the foregoing subsections (a)(1) through (a)(9), the sale and/or serving of any alcoholic beverage(s) shall be prohibited from 3:00 a.m. until 8:00 a.m. commencing March 13, 2020 and concluding March 19, 2020, by any alcoholic beverage establishment located in the following districts:~~
- ~~A. The MXE mixed use entertainment district, excluding that portion of the MXE district located between 73rd and 75th Streets; or~~
  - ~~B. That portion of the CD-2 commercial, medium intensity district located between Pennsylvania Avenue and Collins Court, from 5th Street to 16th Street.~~

~~The provisions in this subsection (10) shall automatically sunset and will be deemed repealed on March 19, 2020.~~

{11} Penalties and enforcement.

\* \* \*

**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 \_\_\_\_\_, 2021.

**ATTEST:**


\_\_\_\_\_  
Rafael E. Granado, City Clerk

\_\_\_\_\_  
Dan Gelber, Mayor

First Reading: April 21, 2021  
Second Reading: May 12, 2021

APPROVED AS TO FORM AND  
LANGUAGE AND FOR EXECUTION

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

 5-4-21  
\_\_\_\_\_  
City Attorney NK Date