


MIAMIBEACH

OFFICE OF THE CITY ATTORNEY
RAUL J. AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

To: Mayor Dan Gelber
Members of the City Commission
Alina T. Hudak, City Manager

cc: Rafael Granado, City Clerk

From: Rafael A. Paz, City Attorney 

Date: February 9, 2022

Subject: **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, FLORIDA, ENTITLED "ALCOHOLIC BEVERAGES," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE/VIOLATIONS," TO UNIFORMLY PROHIBIT THE SALE AND SERVICE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION BETWEEN THE HOURS OF 2:00 A.M. AND 8:00 A.M. EACH NIGHT AT ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED ALONG WEST AVENUE AND ALTON ROAD, BETWEEN 5TH STREET AND COLLINS CANAL (INCLUDING SIDE STREETS); AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

Pursuant to the request of Commissioner Mark Samuelian, the attached Ordinance has been placed on the February 9, 2022 City Commission agenda for First Reading.

The Ordinance amends Section 6-3 of the City Code to provide that, at alcoholic beverage establishments along West Avenue and Alton Road, between 5th Street and Collins Canal (including side streets), the sale of alcoholic beverages for on-premises consumption shall terminate at 2:00 a.m. each night.

**ALCOHOL HOURS OF SALE
WEST AVENUE AND ALTON ROAD
(SPONSORED BY COMMISSIONER MARK SAMUELIAN)**

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, FLORIDA, ENTITLED "ALCOHOLIC BEVERAGES," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE/VIOLATIONS," TO UNIFORMLY PROHIBIT THE SALE AND SERVICE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION BETWEEN THE HOURS OF 2:00 A.M. AND 8:00 A.M. EACH NIGHT AT ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED ALONG WEST AVENUE AND ALTON ROAD, BETWEEN 5TH STREET AND COLLINS CANAL (INCLUDING SIDE STREETS); 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, on November 2, 2021, pursuant to Resolution No. 2021-31824, the following ballot question was submitted to the City's voters:

Non-Binding, Straw Ballot Question: Citywide - Changing Alcoholic Beverage Establishments Sales/Consumption Termination Time

City law allows, subject to exceptions, the sale and consumption of alcoholic beverages at Alcoholic Beverage Establishments throughout the City, from 8:00 a.m. until 5:00 a.m. the following day.

Would you support changing this 5:00 a.m. termination time to 2:00 a.m. throughout the City, with specific locations and related restrictions and exceptions, to be determined by City Commission by Ordinance?

WHEREAS, the ballot question was approved by 56.52% of the voters; and

WHEREAS, 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 conclude sales of alcoholic beverages for on-premises consumption no later than 2:00 a.m. each night, in specified areas of the City; and

WHEREAS, in other areas of the City, alcoholic beverages may be served until 5:00 a.m., subject to objective and measurable conditions and safeguards; and

WHEREAS, this Ordinance strikes a balance between (i) the public safety concerns associated with the sale of alcoholic beverages; (ii) the economic vitality of the City's food and beverage establishments; and (iii) the City's interest in enforcing uniform regulations throughout a particular neighborhood; and

WHEREAS, State law expressly grants the City the authority to establish its own regulations for the time for sale of alcoholic or intoxicating beverages; and

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

WHEREAS, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (*See Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); and

WHEREAS, Florida Courts have determined that it is within the police power and authority for a municipality to change the hours of regulation of alcoholic beverages, because municipalities have the statutory authority under Section 562.14, Florida Statutes, to restrict the sale of alcohol; additionally, a municipal ordinance regulating the hours of sale of alcoholic beverages may be applied to a property incorporated later into the municipality by annexation (*Village of North Palm Beach v. S & H Foster's, Inc.*, 80 So. 3d 433 (Fla. 4th DCA 2012)); and

WHEREAS, in *State ex rel. Floyd v. Noel*, 124 Fla 852, 854 (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, the Florida Attorney General has opined that different hours may be provided for in a municipal ordinance, provided there is reasonable relation to the health, safety, and morals of the community (Op. Att'y Gen. Fla., p. 497 (1950)); and

WHEREAS, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfathered 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, injunctive relief is not available against the enforcement of a municipal ordinance regulating the time at which alcoholic beverages may be sold because municipalities have the statutory authority to set times for the sale of alcoholic beverages (*Id.*; *Playpen S., Inc. v. City of Oakland Park*, 396 So. 2d 830 (Fla. 4th DCA 1981)); and

WHEREAS, Florida courts have ruled that hours of operation are not a property right (*S. Daytona Rests., Inc. v. City of S. Daytona*, 186 So. 2d 78 (Fla. 1st DCA 1966)); 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 state licensure-On-premises consumption only, may make sales of alcohol between the hours of 8:00 a.m. and 5:00 a.m.
 - 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 a/so 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 (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(3)(d) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes.

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.

E. West Avenue and Lower Alton Road. Notwithstanding the provisions of subsections (a)(3)(A) through (C) and (a)(5), alcoholic beverages shall not be offered for sale or on-premises consumption between the hours of 2:00 a.m. and 8:00 a.m. at alcoholic beverage establishments located along West Avenue and Alton Road, including side streets, between 5th Street and Collins Canal.

* * *

- (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.

* * *

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 _____, 2022.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

(Sponsored by Commissioner Mark Samuelian)

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

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION



City Attorney NK Date 2-4-22