

MIAMI BEACH

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, ENTITLED "ALCOHOLIC BEVERAGES," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE/VIOLATIONS," TO AMEND THE HOURS OF SALE OF ALCOHOL FOR ON-PREMISES CONSUMPTION AT ALCOHOLIC BEVERAGE ESTABLISHMENTS; ESTABLISH A UNIFORM PROCEDURE TO APPLY FOR EXTENDED HOURS OF SERVICE FOR EXISTING ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED WITHIN THE AREA GENERALLY BOUNDED BY EUCLID AVENUE ON THE WEST, THE ATLANTIC OCEAN ON THE EAST, 16TH STREET ON THE NORTH, AND 5TH STREET ON THE SOUTH; CREATE APPLICATION REQUIREMENTS; PROVIDE FOR RENEWALS; ESTABLISH MINIMUM PERFORMANCE STANDARDS, CRITERIA, AND CONDITIONS; PROVIDE FOR PENALTIES, ENFORCEMENT, AND APPEALS; AND CREATE A REPORTING REQUIREMENT; AND BY CREATING SECTION 6-3.1, ENTITLED "RESPONSIBLE VENDOR QUALIFICATION," TO ESTABLISH CRITERIA FOR AN ALCOHOLIC BEVERAGE ESTABLISHMENT TO QUALIFY AS A RESPONSIBLE VENDOR; AND PROVIDING FOR A SUNSET AND AUTOMATIC 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 would roll back hours of sale of alcoholic beverages for on-premises consumption in the Expanded Art Deco Cultural District **only**, with the geographic area covering Ocean Drive, Collins Avenue, Washington Avenue, and Espanola Way, in order to treat all alcoholic beverage establishments within this geographic area uniformly.

The Ordinance would allow existing alcoholic beverage establishments within the area to be eligible to apply for an extended hours approval for the sale of alcohol until 5:00 a.m., provided that eligibility and other requirements of the Ordinance are satisfied.

**ALCOHOL HOURS OF SALE
EXPANDED ART DECO CULTURAL DISTRICT
OPTION B: PERFORMANCE-BASED**

(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 AMEND THE HOURS OF SALE OF ALCOHOL FOR ON-PREMISES CONSUMPTION AT ALCOHOLIC BEVERAGE ESTABLISHMENTS; ESTABLISH A UNIFORM PROCEDURE TO APPLY FOR EXTENDED HOURS OF SERVICE FOR EXISTING ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED WITHIN THE AREA GENERALLY BOUNDED BY EUCLID AVENUE ON THE WEST, THE ATLANTIC OCEAN ON THE EAST, 16TH STREET ON THE NORTH, AND 5TH STREET ON THE SOUTH; CREATE APPLICATION REQUIREMENTS; PROVIDE FOR RENEWALS; ESTABLISH MINIMUM PERFORMANCE STANDARDS, CRITERIA, AND CONDITIONS; PROVIDE FOR PENALTIES, ENFORCEMENT, AND APPEALS; AND CREATE A REPORTING REQUIREMENT; AND BY CREATING SECTION 6-3.1, ENTITLED "RESPONSIBLE VENDOR QUALIFICATION," TO ESTABLISH CRITERIA FOR AN ALCOHOLIC BEVERAGE ESTABLISHMENT TO QUALIFY AS A RESPONSIBLE VENDOR; AND PROVIDING FOR A SUNSET AND AUTOMATIC 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:¹

**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 licensure 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.

¹ Text stricken through shall be deleted. Underlined text shall be added.

- 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 (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)~~ 6-3(a)(3)(D) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes.
- E. *Expanded Art Deco Cultural District.* Notwithstanding any other provision of this section, 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 between Euclid Avenue on the west, the Atlantic Ocean on the east, 16th Street on the north, and 5th Street on the south (the “Expanded Art Deco Cultural District”).
- (i) *Extended hours approval.* Notwithstanding the foregoing, alcoholic beverage establishments with a valid business tax receipt issued prior to March 19, 2022 that are licensed by the state for on-premises consumption may apply annually for approval to offer alcoholic beverages for sale or on-premises consumption until 5:00 a.m., for indoor service only (each, an “extended hours approval”), subject to the provisions of this subsection 6-3(a)(3)(E).
- (ii) *Application.* Each applicant shall submit a completed application for extended hours approval to the city manager or its designee, in a form prescribed by the city manager. For purposes of this section, the “city manager” shall be defined as the city manager or the city manager’s designee. All requirements of this section must be fully satisfied, including payment of an application fee, as prescribed in Appendix A, before an application may be reviewed and approved. Each application must be accompanied by a sworn affidavit, signed by the applicant, acknowledging and agreeing to comply with all applicable provisions of the City Code, including this subsection 6-3(a)(3)(E), and shall also include the following information and documentation:

- (a) Description of request. A description of the alcoholic beverage establishment's proposed hours of operation, and other operational characteristics pertinent to the application including but not limited to the nature of any entertainment offered.
- (b) Security plan. For alcoholic beverage establishments with a maximum occupancy of 150 persons or greater, and for those alcoholic beverage establishments also functioning as an entertainment establishment (regardless of occupancy), a security plan, subject to the review and approval of the police and fire departments, for the alcoholic beverage establishment which, at a minimum, shall include the following elements:
- (1) Crowd control plan. An indoor/outdoor crowd control plan that addresses how large groups of people seeking to gain entry into the alcoholic beverage establishment will queue and how those already on the premises will be controlled to ensure compliance with the property's maximum occupancy as established by the fire chief, and to otherwise ensure the health and safety of patrons as well as pedestrians on adjacent public rights of way.
 - (2) Security camera plan. A floor plan showing all security cameras which shall include, at a minimum, security cameras recording the interior and exterior of all entrances and exits, and throughout any on-premises parking facilities. Such floor plan shall also show the location of prominent signage visible to notify patrons of camera surveillance.
 - (3) Security camera recordings. Details on how security camera video recordings will be preserved including, at minimum, how long records will be preserved, the format in which they will be stored, and how law enforcement authorities can obtain a copy of such records to assist in offender identification in connection with any police investigation. Security camera video recordings must be preserved for at least 30 days.
 - (4) Security camera hours. Security plans must specify that all security cameras will operate during all hours of the establishment's operation.
 - (5) Private security / off-duty police requirement. The minimum number of private security personnel or off-duty police officers that will be on premises during extended hours and the location(s) where security personnel or off-duty police officers will be stationed. Commencing at 12:00 a.m. each night, the establishment shall, at a minimum, provide one security guard for every 150 occupants permitted. Entertainment establishments that have a maximum

occupancy under 150 persons are only required to provide one security guard. Private security personnel retained to satisfy this requirement shall, at a minimum, hold a Class "D" security officer license, issued by the Florida Department of Agriculture and Consumer Services. Regular employees engaged in food and beverage service including but not limited to bartenders, barbacks, wait staff, and hosts, shall not qualify as private security personnel under this paragraph. In lieu of private security personnel, an establishment may provide a minimum number of off-duty police officers, as determined by the chief of police.

- (6) A procedure for maintaining a list of the names and contact information for security personnel or off-duty police officers, including the dates and times of each shift, that work each night at the alcoholic beverage establishment, and how law enforcement authorities can obtain a copy of the list. Such lists must be preserved for at least 30 days.
 - (7) A statement that the alcoholic beverage establishment will comply with or exceed the enhanced security requirements listed in subsection 6-3(a)(8).
 - (8) A statement by the applicant agreeing to cooperate with law enforcement investigations including by making the security camera video recordings and lists of security personnel available to law enforcement upon request.
 - (9) For the purposes of this subsection 6-3(a)(3)(E), references to "law enforcement" shall include but not be limited to the Miami Beach police and code compliance departments, Miami-Dade County police, the Florida Department of Law Enforcement, the Florida Division of Alcoholic Beverages and Tobacco, and the Federal Bureau of Investigation.
- (c) Staff training. A sworn statement that the applicant qualifies as a responsible vendor under section 6-3.1 of this Code, which incorporates by reference the Florida Responsible Vendor Act (set forth in sections 561.703-706, Florida Statutes).
- (d) Record of compliance. A sworn statement by the applicant verifying that, within the preceding one-year period:
- (1) The applicant has not violated the requirements of this chapter, state laws and regulations related to alcohol service, or the conditions of any permit(s) or license(s) regulating alcohol service (collectively "alcohol regulations"), and

- (2) The applicant has not knowingly served alcohol to minors or permitted the use or sale of controlled substances in the establishment; and
- (3) The applicant has not been the subject of any administrative finding, adjudication, or other conviction for violating alcohol regulations, the service of alcohol to minors, or for permitting the use or sale of controlled substances.

An extended hours approval may be revoked if the city manager determines, in writing, that the applicant's sworn statement submitted under this paragraph was false.

(iii) Approval. Each application for extended hours approval shall be subject to the review and approval of the city manager. In reviewing applications, the city manager will:

- (a) Confirm that each application meets the minimum filing requirements listed in subsection 6-3(a)(3)(E)(ii) above;
- (b) Confirm that each analysis and plan submitted is based on accurate information and sound methodology; and
- (c) Confirm that the measures proposed in each plan can be reasonably expected to accomplish their intended purposes given the establishment's area, layout, design, maximum occupancy, and nature of entertainment offered at each establishment.

In addition to the foregoing, any applicant that has been the subject of a revocation of a prior extended hours approval must demonstrate, in writing, how the applicant will implement greater controls in order to mitigate or avoid the types of violations that were the basis of the applicant's prior revocation.

An extended hours approval issued pursuant to this subsection 6-3(a)(3)(E) shall only be issued to the applicant identified on the application, and the approval shall not be transferable to a new owner or operator.

(iv) Renewals. Each extended hours approval issued pursuant to this subsection 6-3(a)(3)(E) shall have a term of one year, from October 1 until September 30 of the following year. Each applicant shall pay an annual fee, as prescribed in Appendix A, which shall be due and payable on October 1 of each year. The fee shall be collected by the finance department or by such other department as may be designated by the city manager. An applicant shall be eligible to renew its extended hours approval for additional one-year terms provided the applicant demonstrates that:

- (a) It has continuously complied with the minimum performance standards, criteria, and conditions of subsection 6-3(a)(3)(E)(vi); and

- (b) Its extended hours approval is not in suspended or revoked status at the time renewal is requested.
- (v) Denials. If an application for a new extended hours approval or renewal is denied, the city manager shall provide the applicant with the reason(s) for denial in writing, and will notify the applicant of its right to appeal the denial. At its discretion, the city manager may also specify revisions to the application (such as improvements to the various plans submitted pursuant to subsection 6-3(a)(3)(E)(ii)) that would make the application compliant. The applicant may withdraw its request, modify its application materials and reapply, or may appeal the denial as described in subsection 6-3(a)(3)(E)(viii) below.
- (vi) Minimum performance standards, criteria, and conditions. Each extended hours approval shall at all times be subject to the following minimum performance standards, criteria, and conditions:
- (a) Indoor service only. Alcoholic beverages may only be served or consumed on premises after 2:00 a.m. within fully enclosed (air-conditioned) areas of a building. No alcoholic beverages may be sold or consumed after 2:00 a.m. within any open or outdoor areas of a building including, without limitation, patios, terraces, rooftops, courtyards, or any areas of a building or property with open windows, doors, or storefronts.
- (b) Entertainment establishments. If entertainment is proposed, soundproof glass windows and a double-door vestibule shall be required, and windows and doors must remain closed after 2:00 a.m. The requirements in this paragraph shall not apply to entertainment establishments located entirely within hotels, with no direct entrance from the street.
- (c) Inspections. As a condition of applying for an extended hours approval, the applicant shall agree to provide access to areas of a property subject to this approval (not including private residences or hotel rooms) for inspection by the City (including the City's Police, Code Compliance, Building, and Fire Departments) to ensure compliance with this subsection (a)(3)(E). Any refusal to provide access under this paragraph will be deemed a violation of this subsection 6-3(a)(3)(E).
- (d) Strict compliance with application documents and plans. Alcoholic beverage establishments operating pursuant to an extended hours approval shall at times strictly comply with the plans, statements, and commitments made in connection with the application. Any failure to so comply will be deemed a violation of this subsection 6-3(a)(3)(E).
- (e) Responsible vendor training requirement. The alcoholic beverage establishment shall qualify, and maintain its qualification, as a responsible vendor under section 6-3.1 of this Code, which

incorporates by reference the Florida Responsible Vendor Act (set forth in sections 561.703-706, Florida Statutes).

(f) Alcohol service to minors and the use or sale of controlled substances. No establishment shall knowingly permit either the service of alcohol to minors or the use or sale of controlled substances in the establishment. Knowingly permitting such service, use, and/or sales, shall be grounds for revocation of the extended hours approval.

(g) Verified law enforcement incidents. Establishments operating pursuant to an extended hours approval may not have three or more verified enforcement incidents during the preceding 6 months. For the purposes of this section, a “verified enforcement incident” shall mean:

(1) The issuance of a notice of violation by the code compliance department for a violation of this chapter 6 (including, without limitation, the patron age restrictions in section 6-5);
or

(2) A violation of section 562.111, Florida Statutes, prohibiting the possession of alcoholic beverages by persons under age 21; or

(3) The issuance of a notice of violation by the code compliance department for a violation of section 70-87(a)(3), pertaining to open containers of alcoholic beverages; or

(4) A violation of section 877.03, Florida Statutes, prohibiting a breach of the peace or disorderly conduct, involving an employee of the establishment; or

(5) The commission of a battery under chapter 784, Florida Statutes, involving an employee of the establishment.

(vii) Penalties. Notwithstanding the provisions of subsection (a)(10), the following penalties shall be imposed for a violation of this subsection (a)(3)(E).

(a) For establishments serving alcohol past 2:00 a.m. without having first been issued an extended hours approval, the penalty for the first violation shall be a civil penalty of \$1,000.00. The penalty for a second violation shall be a civil penalty of \$5,000.00 and, in addition, the city may initiate proceedings to revoke the certificate of use, business tax receipt, or certificate of occupancy of the violator. The penalty for a third or subsequent offense shall be a civil penalty of \$5,000.00 and, in addition, the city shall initiate proceedings to revoke the certificate of use, business tax receipt, or certificate of occupancy of the violator.

(b) The penalties for establishments with extended hours approvals that violate this subsection 6-3(a)(3)(E) or the terms of their approval are as follows:

(1) The penalty for a first violation shall be a civil penalty of \$1,000.00.

(2) The penalty for the second violation by a person or entity within the preceding six months shall be a weekend suspension of the extended hours approval as described in this paragraph, with the weekend suspension to be imposed within 21 days following the date of the violation. The suspension will have a duration of no less than three full weekend days. For the purposes of this paragraph, a "weekend day" means a Friday, Saturday, or Sunday.

(3) The penalty for the third or subsequent violation by a person or entity within the preceding six months shall be a 30-day suspension of the extended hours approval provided that such 30-day suspension may be reduced to a seven-day suspension if the violator amends the plan(s) required under subsection 6-3(a)(3)(E)(ii), and the city manager finds that the proposed amendment would make a repeat offense less likely and would better advance the purposes of the plan(s).

(4) If an establishment has been issued three or more violations during the preceding 12 months, and three or more of the violations have been adjudicated or otherwise upheld, the approval shall be revoked for 12 months.

(5) The penalty for a person or entity found to be serving alcohol past 2:00 a.m. while its extended hours approval is under suspension shall be a 12-month revocation.

(6) The penalty for a person or entity found to be serving alcohol past 2:00 a.m. while its extended hours approval is under revocation shall be an additional 12-month revocation. Additionally, the city may initiate proceedings to revoke the establishment's certificate of use, business, tax receipt, or certificate of occupancy of the violator.

(c) The penalties listed above shall not be considered exclusive. The city administration may pursue all other remedies available under the law including, but not limited to, filing suit for declaratory or injunctive relief.

(viii) Enforcement and Appeals.

(a) Enforcement and appeals under this section may be made in the same manner prescribed in subsections 6-3(a)(10)(C) and (D) except that:

(1) All appeals shall be assigned to the city's chief special magistrate.

(2) An aggrieved party, including the city administration, may appeal a final administrative order of the chief special magistrate to the circuit court. Such an appeal shall not be a hearing de novo, but shall be limited to, appellate review of the record created before the chief special magistrate. An appeal shall be filed with the circuit court within 30 days of the rendition of the order to be appealed.

(b) The holder of an extended hours approval may request a hearing before the chief special magistrate to request a stay of the suspension or revocation pending appeal under subsection (viii)(a), above, until the chief special magistrate has adjudicated the appeal of the violation on the merits. Said request must be filed with the city clerk with a copy to the city manager within three business days of the violator's receipt of the notice of suspension or revocation. A hearing before a special magistrate pursuant to chapter 30 of the city code shall then take place no later than seven business days following the establishment's request. If the hearing does not take place within seven business days following the establishment's request, then the request for a stay shall be deemed granted. The special magistrate will grant the request for a stay upon a showing by the establishment that continued operations will not present a probable danger to the health, safety, or welfare of the city, its residents, or its visitors, and furthermore that the establishment has taken appropriate measures to ensure compliance with alcohol regulations.

(c) These enforcement provisions shall not be considered exclusive. The city administration may pursue all other enforcement remedies available under the law including, but not limited to, filing suit for declaratory or injunctive relief.

(ix) Reporting. The city manager shall, on an annual basis, submit to the city commission (in the agenda materials for a regularly scheduled commission meeting) a written report detailing the city's approval and enforcement activities relating to the provisions of this subsection (a)(3)(E). The report shall include statistics relating to the number of approvals issued, number of approvals in good standing, and a summary of violations issued and penalties imposed.

- (x) Sunset and automatic repealer. The provisions of this subsection (a)(3)(E)(i) through (x) shall sunset and stand automatically repealed on September 30, 2024.

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.

- (4) Off-premises package sales by alcoholic beverage establishments. Off-premises package sales associated with alcoholic beverage establishments other than retail stores shall be permitted between the hours of 8:00 a.m. and midnight.
- A. Notwithstanding subsection (a)(4), off-premises package sales associated with alcoholic beverage establishments, other than retail stores, that are located in the MXE mixed use entertainment district, that portion of the CD-2 commercial, medium intensity district adjoining the MXE district along Washington Avenue, between 5th Street and 16th Street, and that portion of the CD-2 district adjoining the MXE district along the east side of Collins Avenue (between 73rd and 75th Streets) shall be permitted only between the hours of 10:00 a.m. and 8:00 p.m.
- (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~~ 2:00 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.

- (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. 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 is permitted to serve alcoholic beverages for on-premises consumption until 5:00 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 later than 12 ~~until 5~~ a.m. ("Alcohol License"), and selling and/or serving alcoholic beverages later than 12 a.m.,

for on-premises consumption only, shall retain the services of an off-duty police officer, from 12 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 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.

~~{44}~~ (10) Penalties and enforcement.

- A. The following penalties shall be imposed for a violation of this section, except for violations of subsection (a)(3)(E):
 - i. The penalty for the first violation by a person or entity within a 12-month period shall be a civil fine of \$1,000.00;
 - ii. The penalty for the second or subsequent violation by a person or entity within a 12-month period shall be a civil fine of \$5,000.00;

- iii. ~~The penalty for the third violation by a person or entity within a 12-month period shall be a civil fine of \$10,000.00;~~
 - iv. Upon a finding by the special master that four or more violations by a person or entity have occurred within a 12-month period, the city may initiate proceedings to revoke the certificate of use, business tax receipt, or certificate of occupancy of the violator.
 - iv. A sidewalk cafe permittee that has been issued four or more violations pursuant to this section or section 82-388 within a permit year shall be prohibited from applying for and obtaining a sidewalk cafe permit for a period of two permit years following the permit year in which the sidewalk cafe permittee incurred the violations.
- B. Enhanced penalty. The following enhanced penalty shall be imposed, in addition to any mandatory fines set forth in subsection (4410)A, above, for violations of this section:
- i. The sale of alcoholic beverages in violation of this section must be immediately terminated, upon confirmation by the code compliance department that a violation has occurred.
- C. Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this section (which shall include confirmation from the Police Department's Off-Duty Office prior to the issuance of any notice of violation pursuant to subsection (8) herein), the code compliance officer shall issue a notice of violation in the manner prescribed in chapter 30 of this Code. 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.
- D. Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
- i. A violator who has been served with a notice of violation must elect to either:
 - a. Pay the civil fine in the manner indicated on the notice of violation; or
 - b. 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.
 - ii. 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 Code. Applications for

hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.

- iii. 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 officer. The failure of the named violator to appeal the decision of the 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.
- iv. 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.
- v. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- vi. 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.

Sec. 6-3.1. Responsible vendor qualification.

To qualify as a responsible vendor under the provisions of this section and the Florida Responsible Vendor Act (set forth in sections 561.703-706, Florida Statutes), an alcoholic beverage establishment must:

- (a) Provide a course of instruction for its employees that must include subjects dealing with alcoholic beverages and may also include subjects dealing with controlled substances as follows:
 - (1) Laws covering the service of alcoholic beverages and the operation of establishments serving alcoholic beverages.
 - (2) Alcohol or controlled substances or both as a drug and its effects on the body and behavior, including its effects on a person operating a motor vehicle.
 - (3) Effects of alcohol in combination with commonly used drugs, both legal and illegal.
 - (4) Methods of recognizing and dealing with underaged customers.

- (5) Methods for dealing with customers, and for dealing with employees, who use or traffic in illegal drugs.
- (b) Provide an alcohol server management course for managers of the alcoholic beverage establishment. The course must include subjects on alcoholic beverages and may include subjects on controlled substances as follows:
 - (1) Laws governing the service of alcoholic beverages and the operation of establishments serving alcoholic beverages.
 - (2) Development of standard operating procedures for dealing with underaged customers.
 - (3) Development of standard operating procedures for dealing with customers, and for dealing with employees, who use or traffic in illegal drugs.
 - (4) Methods of assisting employees in dealing with underaged customers and in maintaining records that relate to such incidents.
- (c) Require each nonmanagerial employee who is employed to serve alcoholic beverages to complete the employee training course specified in subsection (a) within 30 days after commencing employment. The establishment must provide for the supervision of such an employee in the service of alcoholic beverages until the employee has received such training.
- (d) Require each managerial employee to complete the managerial training course specified in subsection (b) within 15 days after commencing employment.
- (e) Require all employees to attend one meeting every 4 months. Each meeting must include the dissemination of information covering the applicable subjects specified in this section and an explanation of the establishment's policies and procedures relating to those subjects.
- (f) Require each employee, as a condition of initial employment, to complete a written questionnaire providing the establishment the same information as is required by the Division of Alcoholic Beverages and Tobacco of the Florida Department of Business and Professional Regulation from persons who apply for alcoholic beverage licenses and to determine therefrom whether the employee is precluded by law from serving or selling alcoholic beverages; however, employees of establishments licensed under s. 563.02(1)(a) or s. 564.02(1)(a) shall not be subject to the requirements of this subsection.
- (g) Establish a written policy under which any employee who engages in the illegal use of controlled substances on the licensed premises will be immediately dismissed from employment and require each employee to acknowledge the policy in writing.
- (h) Maintain employment records of the applications, acknowledgments, and training of its employees required by this section and records of the establishment's enforcement of the policies requiring dismissal specified in subsection (g)
- (i) Post signs on the establishment's premises informing customers of the establishment's policy against serving alcoholic beverages to underaged persons and informing customers

that the purchase of alcoholic beverages by an underaged person or the illegal use of or trafficking in controlled substances will result in ejection from the premises and prosecution.

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.

Dan Gelber, Mayor

ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION



City Attorney

NK

2-4-22

Date

First Reading: February 9, 2022
Second Reading: _____, 2022

(Sponsored by Commissioner Mark Samuelian)