MIAMI BEACH
PLANNING DEPARTMENT

Staff Report & Recommendation — PLANNING BOARD

TO: Chairperson and Members
Planning Board

DATE: February 22, 2022

FROM: Thomas R. Mooney, AICP
Planning Director

SUBJECT: **PB22-0485 - Repeal exceptions to 2:00 A.M. closing time for CD-1 and CD-2 on Alton Road and West Ave.**

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

HISTORY
On January 20, 2022, the City Commission discussed the proposed ordinance referral and continued it to the February 9, 2022, meeting (Item C4 AI). The City Commission directed the Administration to pre-notice the item for the February 22, 2022, Planning Board meeting. Commissioner Mark Samuelian is the sponsor of the proposed ordinance.

On February 9, 2022, the City Commission referred the ordinance to the Planning Board for review and recommendation (Item R9 F). The City Commission also requested that the Planning Board provide any additional recommendations that they may have regarding the subject matter.

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.**

   Consistent – The proposed amendment does not create an isolated district unrelated to adjacent or nearby districts.

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

or the city.

Consistent - The proposed ordinance amendment does not affect the scale of development within the affected 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 as the maximum floor area ratio (FAR) is not modified.

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 in light of increasing negative impacts related to the consumption of alcoholic beverages in the early morning 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 by stopping the sale and consumption of alcohol in the early morning hours which creates nuisances for surrounding neighbors.

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, as the FAR is not being modified by this ordinance and the intensity of uses is not proposed to be increased.

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

Consistent – The proposed change does not modify height or setback limits and would not reduce light and air to adjacent areas beyond what is currently allowed.

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.

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

BACKGROUND

On May 11, 2016, the City Commission adopted Ordinance No. 2016-4014, amending the hours of operation, and location and use restrictions for alcoholic beverage establishments located along the west side of Alton Road and east of Alton Court, from 6th Street to the Collins Canal, and along the east side of West Avenue, from Lincoln Road to 17th Street. The Ordinance provided that alcoholic beverage establishments shall cease operations no later than 2:00 A.M. each night within this area. The City Commission included an applicability clause, exempting from the 2:00 A.M. termination time any alcoholic beverage establishment with a valid business tax receipt (BTR) or land use board approval issued prior to May 21, 2016.

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?

The ballot question was approved by 56.52% of the voters.

On January 12, 2022, a Special City Commission meeting was held to discuss the results of the straw ballot referendum and consider different options to implement the will of the voters.

ANALYSIS

The West Avenue neighborhood is composed primarily of low intensity to high intensity multifamily residential buildings. The neighborhood is adjacent to the Alton Road Commercial corridor which consists of "CD-1 Commercial, Low Intensity" and "CD-2 Commercial, Medium Intensity" zoning districts. Within this neighborhood, residential uses are divided only by an alley from the commercial districts.

The City Code permits certain nightlife uses within the CD-1 and CD-2 zoning districts, which, absent mitigation and appropriate regulation, could be incompatible with adjacent residential uses in the West Avenue neighborhood. Specifically, this includes large restaurants, stand-alone bars, outdoor food and beverage service, entertainment establishments, and dance halls, where alcoholic beverages are sold and consumed. The sale and consumption of alcoholic beverages during the early morning hours can be disruptive to residents, as related impacts generate undesirable noise, and results in increased calls for service to the Police and Fire Departments. These impacts particularly burden the residents of the West Avenue neighborhood that are adjacent to such establishments.

As mentioned in the background section of this report, in order to limit the potential impacts on residential uses, on May 11, 2016, the City adopted Ordinance No. 2016-4014, which limited the hours of operation of alcoholic beverage establishments along the west side of Alton Road corridor between 5th Street and Collins Canal (See map attached to this report), with certain exceptions, to 2:00 A.M. Previously, establishments were permitted to remain open until 5:00 A.M. The exceptions included any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that (i) was in application status prior to April 14, 2016; or (ii) issued prior to May 21, 2016; or (iii) to an establishment that had obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order was active and had not expired, prior to May 21, 2016.

Due to the impacts 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. Specifically, the proposed Ordinance amends the CD-1 and CD-2 district regulations for properties along the west side of Alton Road, in order to repeal the existing exemption from the 2:00 A.M. termination time for alcoholic beverage establishments with a BTR or land use board order issued prior to May 21, 2016. The proposed ordinance also clarifies that the 2:00 A.M. restriction is for sale and consumption of alcoholic beverages and repeals other exemptions to limitations that were adopted in Ordinance No. 2016-4014.

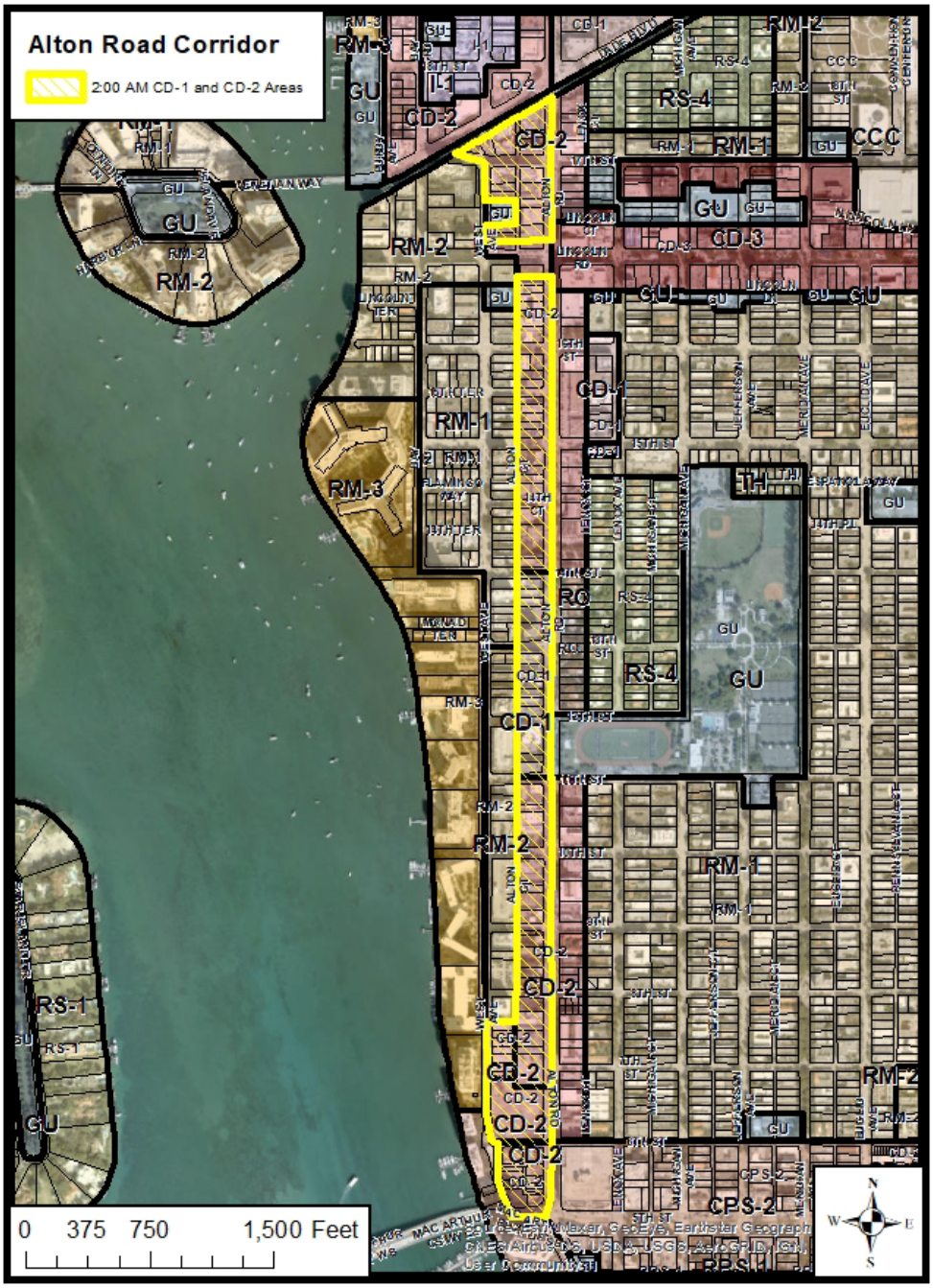
Florida law grants municipalities broad authority to regulate the sale of alcoholic beverages. In the exercise of that authority, municipalities may prohibit the sale of alcohol within certain hours and/or within certain zoning districts. Specifically, Section 562.14, Florida Statutes, authorizes municipalities, 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).*


Alton Road Corridor
2:00 AM CD-1 and CD-2 Areas
0 375 750 1,500 Feet
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W

ALTON ROAD AND WEST AVENUE
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," AT DIVISION 4, "CD-1 COMMERCIAL, LOW INTENSITY DISTRICT," SECTION 142-279, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS"; AND AT DIVISION 5, "CD-2 COMMERCIAL MEDIUM INTENSITY DISTRICT," SECTION 142-310, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS," TO ELIMINATE EXISTING EXCEPTIONS TO THE 2:00 A.M. CLOSING TIME FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED ON (i) THE WEST SIDE OF ALTON ROAD AND EAST OF ALTON COURT, FROM 6TH STREET TO COLLINS CANAL, AND (ii) ON THE EAST SIDE OF WEST AVENUE, FROM LINCOLN ROAD TO 17TH STREET; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Alton Road and West Avenue corridors have historically been composed of low-intensity service and retail establishments, which primarily serve City residents; and

WHEREAS, the West Avenue neighborhood is comprised mainly of residential uses and is divided only by an alley from the CD-1 and CD-2 commercial zoning districts on Alton Road; and

WHEREAS, the City Code allows certain uses within the CD-1, CD-2, and CD-3 districts, which, absent mitigation, could be incompatible with adjacent residential uses in the West Avenue 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, 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, on May 11, 2016, the City Commission adopted Ordinance No. 2016-4014 which, in pertinent part, limited the hours of operation of alcoholic beverage establishments in the Alton Road and West Avenue corridors, with certain exceptions, to 2:00 a.m.; and

WHEREAS, even though alcoholic beverage establishments are not vested as to alcohol hours of sale, the City Commission elected, at its discretion, to exclude existing operators from the 2:00 a.m. termination time; and

WHEREAS, the Mayor and City Commission now desire to eliminate any exceptions to the 2:00 a.m. termination time set forth in the City Code; 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 4, "CD-1 Commercial, Low Intensity District," at Section 142-279, "Special regulations for alcohol beverage establishments," is hereby amended as follows:

CHAPTER 142
ZONING DISTRICTS AND REGULATIONS

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 4. - CD-1 COMMERCIAL, LOW INTENSITY DISTRICT

* * *

Sec. 142-279. Special regulations for alcohol beverage establishments.

* * *

(a) The following additional regulations shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located on the west side of Alton Road and east of Alton Court, between 11th Street and 14th Street:

(1) ~~Operations shall cease no later than 2:00 a.m.~~ Alcoholic beverages shall not be offered for sale or consumed on-premises at alcoholic beverage establishments between the hours of 2:00 a.m. and 8:00 a.m. each night.

(2) Establishments with sidewalk café permits shall only serve alcoholic beverages at sidewalk cafés during hours when food is served in the restaurant, shall cease sidewalk café operations at 12:00 a.m., and shall not be permitted to have outdoor speakers.

(3) Commercial uses on rooftops shall be limited to restaurants only, shall cease operations no later than 11:00 p.m. on weekdays and 12:00 a.m. on weekends, and shall only be permitted to have ambient, background music.

(4) Entertainment establishments shall be required to obtain conditional use approval from the planning board, in accordance with the requirements and procedures of chapter 118, article IV. Additionally, if approved as a conditional use, entertainment establishments shall be required to install a double door vestibule at all access points from the sidewalk, with the exception of emergency exits.

(5) Outdoor bar counters shall be prohibited.

(6) No special event permits shall be issued.

~~(7) This subsection (a) shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that (i) is in application status prior to April 14, 2016; or (ii) issued prior to May 21, 2016; or (iii) 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 May 21, 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 5, "CD-2 Commercial, Medium Intensity District," at Section 142-310, "Special regulations for alcohol beverage establishments." is hereby amended as follows:

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

* * *

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

(a) Alton Road corridor. The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located on the west side of Alton Road and east of Alton Court, between 5th Street and 11th Street, and between 14th Street and Collins Canal; and properties on the east side of West Avenue, between Lincoln Road and 17th Street, except alcoholic beverage establishments fronting Lincoln Road between West Avenue and Alton Road:

(1) ~~Operations shall cease no later than 2:00 a.m.~~ Alcoholic beverages shall not be offered for sale or consumed on-premises at alcoholic beverage establishments between the hours of 2:00 a.m. and 8:00 a.m. each night.

(2) Establishments with sidewalk cafe permits shall only serve alcoholic beverages at sidewalk cafes during hours when food is served in the restaurant, shall cease sidewalk cafe operations at 12:00 a.m., and shall not be permitted to have outdoor

speakers.

(3) Commercial uses on rooftops shall be limited to restaurants only, shall cease operations no later than 11:00 p.m. on weekdays and 12:00 a.m. on weekends, and shall only be permitted to have ambient, background music.

(4) Entertainment establishments shall be required to obtain conditional use approval from the planning board, in accordance with the requirements and procedures of chapter 118, article IV. Additionally, if approved as a conditional use, entertainment establishments shall be required to install a double door vestibule at all access points from the sidewalk, with the exception of emergency exits.

(5) Outdoor bar counters shall be prohibited.

(6) No special event permits shall be issued.

~~(7) This subsection (a) above shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that (i) is in application status prior to April 14, 2015; or (ii) issued prior to May 21, 2015; or (iii) 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 May 21, 2015. Any increase to the approved hours of operation shall meet the requirements of this subsection (a).~~

* * *

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 _____, 2022.

Attest:

Dan Gelber
Mayor

Rafael E. Granado
City Clerk

(Sponsored by Commissioner Mark Samuelian)

Underline denotes additions
~~Strike through~~ denotes deletions

First Reading:
Second Reading:

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

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

City Attorney Date