

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: **PB22-0486 - Repeal exceptions to 2:00 A.M. closing time for South of Fifth PS Districts.**

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 AH). 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 E). 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 November 9, 2016, the City Commission adopted Ordinance No. 2016-4054, amending the hours of operation, locations, and use restrictions for alcoholic beverage establishments located south of Fifth Street. The Ordinance, in pertinent part, provided that alcoholic beverage establishments shall cease operations no later than 2:00 a.m. each night. 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 June 28, 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 South of Fifth neighborhood is composed of a mix of multifamily residential buildings of varying scales with commercial districts interspersed throughout. Within this neighborhood, residential uses are often immediately adjacent to commercial districts.

The City Code permits restaurant and bar uses within the PS Performance Standard zoning districts, which, absent mitigation and appropriate regulation, could be incompatible with adjacent residential uses in the South of Fifth neighborhood. Entertainment is prohibited in the South of Fifth neighborhood. Permitted uses, however, do include large restaurants, stand-alone bars, as well as outdoor food and beverage service, 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 South of Fifth 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 November 9, 2016, the City adopted Ordinance No. 2016-4054, which limited the hours of operation of alcoholic beverage establishments in PS Performance Standard Districts located south of 5th Street (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 alcoholic beverage establishment with a valid business tax receipt that was in application status or issued prior to June 28, 2016; or 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 June 28, 2016.

Due to negative impacts that have continued to occur 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 regulations for PS Districts located south of Fifth Street, 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. 2016-4054.

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).



**SOUTH OF FIFTH
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," DIVISION 18, "PS PERFORMANCE STANDARD DISTRICT," SECTION 142-693, "PERMITTED USES," TO ELIMINATE EXISTING EXCEPTIONS TO THE 2:00 A.M. CLOSING TIME FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED SOUTH OF FIFTH STREET; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the South of Fifth Street neighborhood has historically been composed of mixed-use residential, hotel, retail, recreational, and alcoholic beverage establishments, which primarily serve City residents and tourists; and

WHEREAS, alcoholic beverage establishments in the South of Fifth neighborhood are in close proximity to residential uses; and

WHEREAS, the City Code allows certain uses within the zoning districts south of Fifth Street, which, absent mitigation, could be incompatible with adjacent residential uses; 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 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 November 9, 2016, the City adopted Ordinance No. 2016-4054 which, in pertinent part, limited the hours of operation of alcoholic beverage establishments in the South of Fifth neighborhood, 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, based upon neighborhood compatibility concerns and the negative impacts associated with the sale and service of alcoholic beverages late at night, the Mayor and City Commission now desire to eliminate any exceptions to the 2:00 a.m. closing time set forth in the City Code; and

WHEREAS, 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 18, "PS Performance Standard District," at Section 142-693, "Permitted Uses," is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 18. – PS PERFORMANCE STANDARD DISTRICT

* * *

Sec. 142-693. Permitted Uses.

* * *

- (i) Additional regulations for alcoholic beverage establishments located south of 5th Street.
- (1) The following additional regulations shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located south of 5th Street:
 - (i) ~~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.~~
 - (ii) Operations in outdoor or open air areas of an alcoholic beverage establishment shall cease no later than 12:00 a.m., except as otherwise provided herein.
 - (iii) Alcoholic beverage establishments with sidewalk cafe permits shall only serve alcoholic beverages at sidewalk cafes during hours when food is served, shall

cease sidewalk cafe operations no later than 12:00 a.m. (except as otherwise provided herein), and shall not be permitted to have outdoor speakers.

(iv) Outdoor bar counters shall be prohibited.

(v) No special events permits shall be issued.

~~(vi) The provisions of this subsection (i)(1) shall not apply, to the extent the requirements of this subsection are more restrictive, to an alcoholic beverage establishment with a valid business tax receipt that is in application status or issued prior to June 28, 2016; or 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 June 28, 2016.~~

~~A. Existing sidewalk cafes issued a sidewalk cafe permit as of June 28, 2016, for alcoholic beverage sales after 12:00 a.m., with food service, may continue to be renewed, but shall not serve alcoholic beverages later than 1:30 a.m., and alcoholic beverages may not be consumed at sidewalk cafes after 2:00 a.m.~~

~~B. Should an alcoholic beverage establishment with a sidewalk cafe permit under (A), above, be delinquent in a payment obligation to the city, and/or receive two final adjudications of violations of section 12-5 (special event permit), section 46-152 (noise ordinance), or chapter 82, article IV, division 5 (sidewalk cafe ordinance), that alcoholic beverage establishment shall only be allowed to serve alcoholic beverages at its sidewalk cafe until 12:00 a.m. for a 12-month period.~~

* * *

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