

**ALCOHOL HOURS OF SALE
SPRING BREAK HIGH IMPACT PERIOD 2022
(SPONSORED BY COMMISSIONER ALEX FERNANDEZ)**

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 1, ENTITLED "IN GENERAL," BY AMENDING SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE/VIOLATIONS," TO 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 SOUTH OF 16TH STREET, ON SPECIFIED DATES DURING THE SPRING BREAK HIGH IMPACT PERIOD IN MARCH OF 2022; 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, due to the City's domestic and international popularity as a resort destination, large events—including special events permitted by the City, as well as other events—are scheduled throughout the year; and

WHEREAS, in recent years, the City has seen an increasingly large number of visitors during the period when high schools, colleges, and universities across the country recess for Spring Break, which occurs primarily during the month of March; and

WHEREAS, the high volume of visitors who patronize alcoholic beverage establishments during this period generates increased calls for service, and places demands on the City's police, fire, code compliance, and sanitation resources; and

WHEREAS, accordingly, the Mayor and City Commission have determined that it is in the best interest of the City, and it serves the health, safety, and welfare of the City's residents and visitors, to terminate the sale and service of alcoholic beverages for on-premises consumption at 2:00 a.m. at alcoholic beverage establishments located south of 16th Street, on the dates set forth in this Ordinance; and

WHEREAS, this Ordinance strikes a balance between (i) the public safety concerns associated with late-night drinking establishments; (ii) the economic vitality of the City's food and beverage industry; and (iii) the City's interest in enforcing uniform alcoholic beverage regulations throughout geographic areas of the City; and

WHEREAS, the regulations herein have been drafted narrowly to address the period of time and geographic area that have, in recent years, generated the most calls for service; 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 determined that it is within the police power for a municipality to change the hours of sale of alcoholic beverages, because municipalities have the statutory authority under Section 562.14, Florida Statutes, to restrict the sale of alcohol. *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* (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, in fact, 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 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, 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 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 in this Ordinance are necessary to accomplish the above objectives.

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. Notwithstanding subsections (a)(3)(A) through (C) and (a)(5), and commencing at 12:01 a.m. on March 6 7, 2022, through 11:59 p.m. on March 31 21, 2022, alcoholic beverages shall not be offered for sale or on-premises consumption at any alcoholic beverage establishments located south of 16th Street in the City between the hours of 2:00 a.m. and 8:00 a.m. each night. Prior to May 31, 2022, the City Commission shall review the effectiveness of this subsection (a)(3)(E), and determine whether to adopt an ordinance extending the duration hereof for another year, or for such other period of time as determined by the city commission. The provisions of this subsection (a)(3)(E) shall sunset and stand automatically repealed on May 31, 2022.

* * *

- (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:

Rafael E. Granado, City Clerk

(Sponsored by Commissioner Alex J. Fernandez)

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

Dan Gelber, Mayor

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION



City Attorney

2-17-22
NK Date