

**41st STREET
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," (1) AT DIVISION 4, "CD-1 COMMERCIAL, LOW INTENSITY DISTRICT," SECTION 142-279, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS"; AND (2) AT DIVISION 6, "CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT," SECTION 142-340, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS," TO ELIMINATE EXISTING EXCEPTIONS TO THE 2:00 A.M. CLOSING TIME FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS IN THE 41ST STREET CORRIDOR, WHICH IS GENERALLY BOUNDED BY 40TH STREET TO THE SOUTH AND 42ND STREET TO THE NORTH, BETWEEN ALTON ROAD AND THE INDIAN CREEK WATERWAY; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the 41st Street corridor has historically been composed of low intensity retail and service establishments, which primarily serve City residents; and

WHEREAS, surrounding the 41st Street corridor is a neighborhood comprised mainly of single-family homes and residential uses that are only divided by the distance of a street from the CD-1, low intensity and CD-3, high intensity commercial zoning districts; and

WHEREAS, the City Code allows certain uses within the CD-1 and CD-3 districts, which, absent mitigation, could be incompatible with adjacent residential uses in surrounding neighborhoods; 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 November 9, 2016, the City adopted Ordinance No. 2016-4052 which, in pertinent part, limited the hours of operation of alcoholic beverage establishments in the 41st Street corridor, 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 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.

* * *

(b) The following additional regulations shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located in areas adjacent to the CD-3 zoning district along the 41st Street corridor, between 40th Street and 41st Street, and between Alton Road and the Indian Creek waterway:

(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) Alcoholic beverage 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 in 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 to alcoholic beverage establishments.
- (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.~~

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SECTION 2. Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 6, "CD-3 Commercial, High Intensity District," at Section 142-340, "Special regulations for alcohol beverage establishments." is hereby amended as follows:

DIVISION 6. – CD-3 COMMERCIAL, HIGH INTENSITY DISTRICT

* * *

Sec. 142-340. Special regulations for alcohol beverage establishments.

The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located in the area generally bounded by 40th Street to the south, 42nd Street to the north, Alton Road to the west, and the Indian Creek waterway to the east:

- (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) Alcoholic beverage 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 to alcoholic beverage establishments.
- (7) ~~The provisions of this section shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that was issued prior to August 23, 2016, or 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 August 23, 2016. Any increase to the approved hours of operation shall meet the requirements of this section.~~

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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 Alex J. Fernandez)

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

 2-26-22

Date