

**Alcohol Hours of Sale Outdoors
PS Districts South of Fifth Street**

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 AMEND PERMITTED HOURS FOR THE OUTDOOR SALE, SERVICE, AND CONSUMPTION OF ALCOHOLIC BEVERAGES AT ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED SOUTH OF FIFTH STREET, INCLUDING ANY NECESSARY AMENDMENTS TO EXISTING EXCEPTIONS; 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, the sale, service, and consumption of alcoholic beverages outdoors, if not regulated, can be incompatible with the character and quality of life of residential neighborhoods; 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 sale of alcoholic beverages at alcoholic beverage

establishments in the South of Fifth neighborhood, with certain exceptions, to 2:00 a.m. each night; and

WHEREAS, Ordinance No. 2016-4054 also imposed a 12:00 termination time for outdoor and open-air portions of alcoholic beverage establishments, and at sidewalk cafes; and

WHEREAS, even though alcoholic beverage establishments are not vested as to alcohol hours of sale, in 2016 the City Commission elected, at its discretion, to exclude existing operators from these termination times; and

WHEREAS, based upon the negative impacts of the outdoor sale, service, and consumption of alcoholic beverages late at night, the Mayor and City Commission now desire to eliminate any exceptions to the 12:00 a.m. outdoor 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 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~~ Notwithstanding the foregoing, alcoholic beverages shall not be offered for sale or consumed on premises in outdoor or open air areas of an alcoholic

beverage establishment ~~shall cease no later than~~ between the hours of 12:00 a.m. and 8:00 a.m. each night, ~~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)(i) 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.~~

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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

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION



City Attorney NK

6-6-22

Date

First Reading: June 22, 2022
Second Reading: July 8, 2022

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