

Alcohol Hours of Sale Outdoors – Alton Road and West Avenue

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 AMEND PERMITTED HOURS FOR THE OUTDOOR SALE, SERVICE, AND CONSUMPTION OF ALCOHOLIC BEVERAGES AT 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, INCLUDING ANY NECESSARY AMENDMENTS TO EXISTING EXCEPTIONS; 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 and CD-2 districts, which, absent mitigation, could be incompatible with adjacent residential uses in the West Avenue neighborhood; 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 surrounding 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 May 11, 2016, the City Commission adopted Ordinance No. 2016-4014 which, in pertinent part, limited the hours of sale of alcoholic beverages at alcoholic beverage establishments along the Alton Road and West Avenue corridors, with certain exceptions, to 2:00 a.m. each night; and

WHEREAS, Ordinance No. 2016-4014 also adopted earlier termination times for alcohol service *outdoors*; 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 outdoor termination times 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

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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. Additionally, alcoholic beverages shall not be offered for sale or consumed on premises in outdoor or open-air areas of alcoholic beverage establishments between the hours of 12:00 a.m. and 8:00 a.m. each night.

(3) Commercial uses on rooftops shall be limited to restaurants only, shall cease operations alcohol service 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)(1) 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 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. Additionally, alcoholic beverages shall not be offered for sale or consumed on premises in outdoor or open-air areas of alcoholic beverage establishments between the hours of 12:00 a.m. and 8:00 a.m. each night.
- (3) Commercial uses on rooftops shall be limited to restaurants only, shall cease operations alcohol service 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)(1) 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, 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 subsection (a).

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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