

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF THE MIAMI BEACH, FLORIDA, DIRECTING THE CITY ATTORNEY TO RESEARCH AND IDENTIFY THE MOST LEGALLY DEFENSIBLE LEGISLATIVE APPROACHES TO ROLL BACK ALCOHOL HOURS THAT WOULD, TO THE MAXIMUM EXTENT POSSIBLE, LIMIT THE CITY'S LEGAL EXPOSURE AND RISK OF AN ADVERSE COURT RULING; FURTHER, DIRECTING THE CITY MANAGER TO PRESENT A POLICY RECOMMENDATION ON THE ROLLBACK OF ALCOHOL HOURS UTILIZING THE LEGISLATIVE APPROACHES IDENTIFIED BY THE CITY ATTORNEY; DEFERRING ALL LEGISLATION ON THE FEBRUARY 22, 2023 CITY COMMISSION MEETING AGENDA PERTAINING TO ALCOHOL HOURS OF SALE UNTIL SUCH TIME THAT THE CITY ATTORNEY AND CITY MANAGER HAVE REPORTED BACK TO THE CITY COMMISSION; AGREEING TO LIMIT THE SCOPE OF THE CITY COMMISSION'S LEGISLATIVE DEBATE ON ALCOHOL HOURS OF SALE TO INCLUDE ONLY THOSE ORDINANCES IDENTIFIED BY THE CITY ATTORNEY AS PRESENTING THE LOWEST LITIGATION RISK, IN AN EFFORT TO AVOID THE EXCESSIVE RISK AND COST ASSOCIATED WITH YEARS OF LITIGATION, WHICH COULD CREATE ADVERSE PRECEDENT LIMITING THE AUTHORITY OF THE CITY OF MIAMI BEACH AND OTHER LOCAL GOVERNMENTS THROUGHOUT THE STATE OF FLORIDA TO REGULATE ALCOHOL HOURS OF SALE; AND REQUESTING THAT THE CITY ATTORNEY AND CITY MANAGER PRESENT THEIR RECOMMENDATIONS AT A FUTURE CITY COMMISSION MEETING.

**WHEREAS**, notwithstanding the City's statutory authority to regulate alcohol hours of sale pursuant to Section 562.14, Florida Statutes, and the substantial body of case law that businesses are not vested as to alcohol hours of sale, the Circuit Court has enjoined the City from enforcing two separate alcohol ordinances in the case of *Cleveland Ocean LP v. City of Miami Beach* (Fla. 11th Jud. Cir. Ct. Case No. 2021-11642-CA-01); and

**WHEREAS**, since the November 2021 straw ballot referendum, at least 13 ordinances relating to alcohol hours of sale have been sponsored by the Mayor and Members of the City Commission; and

**WHEREAS**, as of the drafting of this Resolution, 6 ordinances at various stages of approval have been placed on the February 22, 2023 City Commission meeting agenda; and

**WHEREAS**, over the past year, an inordinate amount of City resources has been dedicated to drafting, research, analysis, discussion, and litigation relating to alcohol hours of sale, in some instances taking priority over other policy matters important to the City Commission and the City's residents; and

**WHEREAS**, the City Commission, Public Safety and Neighborhood Quality of Life Committee, and Planning Board have all held numerous, lengthy discussions and public hearings regarding this matter; and

**WHEREAS**, in view of the extensive resources already expended by the City, and in order to more efficiently approach the important policy questions associated with alcohol hours of sale, the City Commission now desires to postpone consideration of alcohol legislation on the February 22, 2023 meeting agenda to a later date, and direct the City Attorney to research and identify the legislative approaches that would, to the maximum extent possible, limit the City's legal exposure to claims by alcoholic beverage establishments, and risk of an adverse court ruling; and

**WHEREAS**, the City Commission does not wish to delegate its policymaking role to the City Attorney; however, the significant legal exposure that could arise from a rollback of alcohol hours warrants a measure of deference to the City Attorney's recommendations as to litigation risk.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission hereby direct the City Attorney to research and identify the most legally defensible legislative approaches to roll back alcohol hours that would, to the maximum extent possible, limit the City's legal exposure and risk of an adverse court ruling; further, direct the City Manager to present a policy recommendation on the rollback of alcohol hours utilizing the legislative approaches identified by the City Attorney; defer all legislation on the February 22, 2023 City Commission meeting agenda pertaining to alcohol hours of sale until such time that the City Attorney and City Manager have reported back to the City Commission; agree to limit the scope of the City Commission's legislative debate on alcohol hours of sale to include only those Ordinances identified by the City Attorney as presenting the lowest litigation risk, in an effort to avoid the excessive risk and cost associated with years of litigation, which could create adverse precedent limiting the authority of the City of Miami Beach and other local governments throughout the State of Florida to regulate alcohol hours of sale; and request that the City Attorney and City Manager present their recommendations at a future City Commission meeting.

**PASSED and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2023.

**ATTEST:**

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Rafael E. Granado, City Clerk

(Sponsored by Commissioner Alex J. Fernandez)

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Dan Gelber, Mayor

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney NK

2-13-23  
\_\_\_\_\_  
Date