

**ALTON ROAD WEST AND 17TH STREET SOUTH
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 MEDIUM INTENSITY DISTRICT," SECTION 142-272, "MAIN PERMITTED USES;" (2) SECTION 142-273, "CONDITIONAL USES;" (3) SECTION 142-274, "ACCESSORY USES;" (4) SECTION 142-279, "ADDITIONAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS;" (5) AT DIVISION 5, "CD-2 COMMERCIAL MEDIUM INTENSITY DISTRICT," SECTION 142-302, "MAIN PERMITTED USES;" (6) SECTION 142-303, "CONDITIONAL USES;" (7) SECTION 142-304, "ACCESSORY USES;" (8) SECTION 142-310, "ADDITIONAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS;" AND (9) AT DIVISION 6, "CD-3 COMMERCIAL MEDIUM INTENSITY DISTRICT," SECTION 142-332, "MAIN PERMITTED USES;" (10) SECTION 142-333, "CONDITIONAL USES;" AND (11) SECTION 142-334, "ACCESSORY USES;" AND (12) SECTION 142-340, "ADDITIONAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS;" TO AMEND THE HOURS OF OPERATION, LOCATION AND USE RESTRICTIONS FOR (A) PROPERTIES ON THE WEST SIDE OF ALTON ROAD AND EAST OF ALTON COURT, FROM 6TH STREET TO COLLINS CANAL, (B) PROPERTIES ON THE EAST SIDE OF WEST AVENUE FROM LINCOLN ROAD TO 17TH STREET, AND (C) PROPERTIES WITHIN 100 FEET TO THE SOUTH OF 17TH STREET, BETWEEN LENOX AVENUE AND MERIDIAN AVENUE; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the Alton Road and 17th Street corridors have historically been composed of low intensity retail, service and retail establishments, which primarily serve City residents; and

WHEREAS, alcoholic beverage establishments in Miami Beach have been historically concentrated in the commercial and mixed-use entertainment districts along Washington Avenue, Collins Avenue, and Ocean Drive; 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 Palm View neighborhood, located to the north of 17th Street and to the south of the Collins Canal, is comprised of mainly single family residential uses and is divided by 17th Street from a CD-3 commercial high intensity district; and

WHEREAS, the City Code allows certain uses within the CD-1, CD-2, and CD-3 districts, which, absent mitigation, could be incompatible with adjacent residential uses in the West Avenue and Palm View neighborhoods; and

WHEREAS, large restaurants, stand-alone bars, entertainment establishments, and dance halls can sometimes be incompatible with the low scale character and quality of life of adjacent residential neighborhoods if not regulated; and

WHEREAS, the Mayor and City Commission desire to encourage uses that are compatible with the low-scale 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, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (*See Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); 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, Chapter 1, of the Land Use Element, Objective 2, “Land Use Compatibility,” of the City’s 2025 Comprehensive Plan (hereinafter “Plan”), specifies that the City’s land development regulations will be used to address the location, type, size and intensity of land uses and to ensure adequate land use compatibility between residential and non-residential land uses; and

WHEREAS, Policy 2.1 of the Plan provides that the land development regulations shall continue to address the location and extent of nonresidential land uses in accordance with the Future Land Use map and the policies and descriptions of types, sizes and intensities of land uses contained in [the Future Land Use] Element; and

WHEREAS, Policy 2.2 of the Plan provides that development in land use categories which permit both residential and non-residential uses shall be regulated by formalized land development regulations which are designed to ensure adequate land use compatibility; and

WHEREAS, compatibility shall be achieved by one or more of the following: (1) enumeration of special land uses which may be particularly incompatible with residential uses and may be prohibited in specified areas or zoning districts; (2) enumeration of special land use administrative procedures such as Conditional Use approval, which require public hearings prior to special land use approval; (3) enumeration of special land use criteria such as minimum required distance separations from residential districts or uses or allowable hours of operation, to ensure that non-residential special land uses are properly located with respect to any residential uses to which they may be incompatible; and (4) the vertical separation of residential and non-residential uses within mixed use buildings through the use of land use regulations on accessory uses within residential buildings, and the identification of those types of commercial uses which are particularly incompatible with residential uses and which shall therefore NOT be permitted in mixed use buildings; and,

WHEREAS, in determining incompatibility, consideration shall be given to noise, lighting, shadows, access, traffic, parking, height, bulk, landscaping, hours of operation, buffering and any other criteria that may be important to ensure that necessary safeguards are provided for the protection of surrounding property, persons, and neighborhood values; and

WHEREAS, in accordance with Chapter 1, Objective 2, Policies 2.1 and 2.2 of the Plan, it is desirable to encourage uses in commercial districts that are properly balanced and compatible with the scale, character and context of adjacent residential neighborhoods; 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,” is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 4. – COMMERCIAL, LOW INTENSITY DISTRICT

* * *

Sec. 142-272. - Main permitted uses.

The main permitted uses in the CD-1 commercial, low intensity district are commercial uses; apartments; bed and breakfast inn (pursuant to Section 142-1401); religious institutions with an occupancy of 199 persons or less, and alcoholic beverages establishments pursuant to the regulations set forth in Chapter 6. Alcoholic beverage establishments located on the west side of Alton Road and east of Alton Court, between 11th Street and 14th Street, shall be subject to the additional requirements set forth in section 142-279.

Sec. 142-273. - Conditional Uses.

The conditional uses in the CD-1 commercial, low intensity district are adult congregate living facilities; nursing homes; religious institutions with an occupancy greater than 199 persons; public and private institutions; schools; day care facility; pawnshops; video game arcades; warehouses; any use selling gasoline; new construction of structures 50,000 square feet and over (even when divided by a district boundary line), which review shall be the first step in the process before the review by any of the other land development boards; neighborhood impact establishment; and storage and/or parking of commercial vehicles on a site other than the site at which the associated commerce, trade or business is located. See section 142-1103. Alcoholic beverage establishments located on the west side of Alton Road and east of Alton Court, between 11th Street and 14th Street, shall be subject to the additional requirements set forth in section 142-279.

Sec. 142-274. - Accessory uses.

The accessory uses in the CD-1 commercial, low intensity district are as required in article IV, division 2 of this chapter. Alcoholic beverage establishments located on the west side of Alton Road and east of Alton Court, between 11th Street and 14th Street, shall be subject to the additional requirements set forth in section 142-279.

* * *

Sec. 142-279. - Special regulations for alcoholic 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.
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.
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.

(b) 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 is in application status prior to April 14, 2016 or issued prior to May 21, 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 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," is hereby amended as follows:

DIVISION 5. - CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT

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Sec. 142-302. - Main permitted uses.

The main permitted uses in the CD-2 commercial, medium intensity district are commercial uses; apartments; apartment/hotels; hotels; religious institutions with an occupancy of 199 persons or less and alcoholic beverage establishments pursuant to the regulations set forth in Chapter 6. Alcoholic beverage establishments located on the west side of Alton Road and east of Alton Court, between 6th 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, shall be subject to the additional requirements set forth in section 142-310.

Sec. 142-303. - Conditional uses.

(a) [Generally.] The conditional uses in the CD-2 commercial, medium intensity district include the following:

- (1) Adult congregate living facilities;
- (2) Funeral home;
- (3) Nursing homes;
- (4) Religious institutions;
- (5) Pawnshops;
- (6) Video game arcades;
- (7) Public and private institutions;
- (8) Schools;
- (9) Any use selling gasoline;
- (10) New construction of structures 50,000 square feet and over (even when divided by a district boundary line), which review shall be the first step in the process before the review by any of the other land development boards;
- (11) Outdoor entertainment establishment;

- (12) Neighborhood impact establishment;
- (13) Open air entertainment establishment; and
- (14) Storage and/or parking of commercial vehicles on a site other than the site at which the associated commerce, trade or business is located. See section 142-1103.

(b) *Sunset Harbour Neighborhood.* In addition to the conditional uses specified in section 142-303(a), and subject to the conditional use criteria in section 118-192(a), conditional uses in the CD-2 commercial medium intensity district in the Sunset Harbour neighborhood, generally bounded by Purdy Avenue, 20th Street, Alton Road and Dade Boulevard shall also include the following:

- (1) Main use parking garages;
- (2) Restaurants with alcoholic beverage licenses (alcoholic beverage establishments) with more than 100 seats or an occupancy content (as determined by the fire marshal) in excess of 125, but less than 199 persons and a floor area in excess of 3,500 square feet.

(c) *North Beach Neighborhood.* In addition to the conditional uses specified in section 142-303(a), and subject to the conditional use criteria in section 118-192(a), conditional uses in the CD-2 commercial medium intensity district in the North Beach neighborhood (located north of 65th Street), shall also include the following:

- (1) Alcoholic beverage establishments (not also operating as a full restaurant with a full kitchen, serving full meals);
- (2) Dance halls;
- (3) Entertainment establishments.

(d) *South Alton Road Corridor.* In addition to the conditional uses specified in section 142-303(a), and subject to the conditional use criteria in section 118-192(a), conditional uses in the CD-2 commercial medium intensity district in the South Alton Road Corridor, which includes properties located along Alton Road between 6th and 11th Street, shall also include the following:

- (1) Self storage warehouse, provided the minimum distance separation between self storage warehouses shall be 300 feet and self storage warehouses shall follow the development regulations for "self storage warehouse" in section 142-305 and setback requirements in section 142-307.

(e) Alcoholic beverage establishments located on the west side of Alton Road and east of Alton Court, between 6th 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, shall be subject to the additional requirements set forth in section 142-310.

* * *

Sec. 142-304. - Accessory uses.

The accessory uses in the CD-2 commercial, medium intensity district are as required in article IV, division 2 of this chapter; and accessory outdoor bar counters, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, for an

accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m. Alcoholic beverage establishments located on the west side of Alton Road and east of Alton Court, between 6th 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, shall be subject to the additional requirements set forth in section 142-310.

* * *

Sec. 142-310. Special regulations for alcohol beverage establishments.

(a) 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 6th 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:

1. Operations shall cease no later than 2:00 a.m.
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.
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.

(b) 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 is in application status prior to April 14, 2016 or issued prior to May 21, 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 May 21, 2016. Any increase to the approved hours of operation shall meet the requirements of this section.

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SECTION 3. Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 6, "CD-3, Commercial, High Intensity District," is hereby amended as follows:

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

* * *

Sec. 142-332. - Main permitted uses.

The main permitted uses in the CD-3 commercial, high intensity district are commercial uses; apartments; apartment/hotels; hotels, alcoholic beverage establishments pursuant to the regulations set forth in Chapter 6, and religious institutions with occupancy of 199 persons or less. Offices are prohibited on the ground floor on that portion of Lincoln Road which is closed to traffic, unless the office area is located in a mezzanine, or at least 75 feet back from the storefront; also apartments, apartment/hotels and hotels located on that portion of Lincoln Road shall comply with section 142-335. Dance halls (as defined in section 114-1 of this Code) not also operating as restaurants with full kitchens and serving full meals and licensed as alcoholic beverage establishments are prohibited on properties having a lot line adjoining Lincoln Road, from the Atlantic Ocean to Biscayne Bay, unless the dance hall is located within a hotel with a minimum of 100 hotel units. Alcoholic beverage establishments located within 100 feet of the south side of 17th Street, between Lenox Avenue and Meridian Avenue, shall be subject to the additional requirements set forth in section 142-340.

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Sec. 142-333. - Conditional uses.

The conditional uses in the CD-3 commercial, high intensity district are adult living congregate facilities; new construction of structures 50,000 square feet and over (even when divided by a district boundary line), which review shall be the first step in the process before the review by any of the other land development boards; outdoor entertainment establishment, neighborhood impact establishment, open air entertainment establishment, nursing homes; religious institutions with an occupancy greater than 199 persons; video game arcades; public and private institutions; schools and major cultural dormitory facilities as specified in section 142-1332; and storage and/or parking of commercial vehicles on a site other than the site at which the associated commerce, trade or business is located, except such storage and/or parking of commercial vehicles shall not be permitted on lots with frontage on Lincoln Road, Collins Avenue, 41st Street and 71st Street. See subsection 142-1103(c). When located on that portion of Lincoln Road that is closed to traffic, these uses shall comply with section 142-335. Alcoholic beverage establishments located within 100 feet of the south side of 17th Street, between Lenox Avenue and Meridian Avenue, shall be subject to the additional requirements set forth in section 142-340.

Sec. 142-334. - Accessory uses.

The accessory uses in the CD-3 commercial, high intensity district are as follows:

- (1) Those uses permitted in article IV, division 2 of this chapter.
- (2) Accessory outdoor bar counters, provided that the accessory outdoor bar counter is not

operated or utilized between midnight and 8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.

- (3) Alcoholic beverage establishments located within 100 feet of the south side of 17th Street, between Lenox Avenue and Meridian Avenue, shall be subject to the additional requirements set forth in section 142-340.

* * *

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

- (a) The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located within 100 feet of the south side of 17th Street, between Lenox Avenue and Meridian Avenue:

1. Operations shall cease no later than 2:00 a.m.
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.
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.

- (b) 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 is in application status prior to April 14, 2016 or issued prior to May 21, 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 May 21, 2016. Any increase to the approved hours of operation shall meet the requirements of this section.

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SECTION 4. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

SECTION 5. 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 6. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this ____ day of _____, 2016.

Philip Levine
Mayor

ATTEST:

Rafael E. Granado
City Clerk

First Reading: April 13, 2016
Second Reading: _____, 2016

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