

CHAPTER 6 – ALCOHOLIC BEVERAGES

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED “ALCOHOLIC BEVERAGES,” ARTICLE I, ENTITLED “IN GENERAL,” SECTION 6-3 THEREOF, ENTITLED “HOURS OF SALE,” TO PROHIBIT PACKAGE LIQUOR SALES AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS WITHIN THE OCEAN TERRACE OVERLAY DISTRICT, WHICH DISTRICT CONSISTS OF THE FOLLOWING ZONING DISTRICT CLASSIFICATIONS: MXE (MIXED USE ENTERTAINMENT) AND CD-2 (COMMERCIAL DISTRICT 2) BETWEEN COLLINS AND OCEAN TERRACE, AND BETWEEN 73 AND 75<sup>TH</sup> STREETS; IN ORDER TO REDUCE THE HOURS OF OPERATION OF SAID TYPES OF ESTABLISHMENTS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach (“City”) regulates the location, size, hours of operation, and minimum patron age for uses that permit the sale and consumption of alcoholic beverages in Chapter 6 of the City Code, entitled “Alcoholic Beverages”; and

**WHEREAS**, on November 9, 2016, the Mayor and City Commission adopted Ordinance No. 2016-4058, which prohibited package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments before 10:00 a.m. (instead of 8:00 a.m.) each day; and

**WHEREAS**, since the enactment of Ordinance No. 2016-4058, the Mayor and City Commission have determined that it is in the best interest of the City, and it serves the health, safety, and welfare of the City’s residents and visitors, to prohibit package liquor sales at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline service/filling stations) and alcoholic beverage establishments before 8:00 a.m. (instead of 10:00 a.m.) each day; and

**WHEREAS**, notwithstanding the above, the Mayor and City Commission approved an Ordinance on June 7, 2017, restricting package liquor sales in the MXE district from the hours of 10:00 a.m. until 10:00 p.m., only; and

**WHEREAS**, on October 18, 2017, the Mayor and City Commission shall entertain a second reading, public hearing, to reduce the hours of operation to 8:00 p.m. from 10:00 p.m. within the MXE district; and

**WHEREAS**, as there remain issues with alcohol package sales, and as it appears the sale of alcohol from retail establishments within the Ocean Terrace Overlay, the City Commission recommends that these alcohol sales cease at 8:00 p.m.; and

**WHEREAS**, this Ordinance strikes a balance between (i) the public safety concerns associated with the sale of alcoholic beverages, on the one hand, and (ii) the convenience of the City’s residents and visitors who desire to purchase alcoholic beverages, as well as the economic

vitality of the City's retail stores, on the other hand; and

**WHEREAS**, State law expressly grants the City the authority to establish its own regulations for the time for sale of alcoholic or intoxicating beverages; 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**, Florida Courts have determined that it is within the police power and authority for a municipality to change the hours of regulation of alcoholic beverages, because municipalities have the statutory authority under Section 562.14, Florida Statutes, to restrict the sale of alcohol; additionally, a municipal ordinance regulating the hours of sale of alcoholic beverages may be applied to a property incorporated later into the municipality by annexation. *Village of North Palm Beach v. S & H Foster's, Inc.*, 80 So. 3d 433 (Fla. 4th DCA 2012); 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**, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); and

**WHEREAS**, in fact, the Florida Attorney General has opined that different hours may be provided for in a municipal ordinance, provided there is reasonable relation to the health, safety, and morals of the community. Op. Att'y Gen. Fla., p. 497 (1950); 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**, injunctive relief is not available against the enforcement of a municipal ordinance regulating the time at which alcoholic beverages may be sold, because municipalities have the statutory authority to set times for sale of alcoholic beverages. *Id.*; *Playpen S., Inc. v. City of Oakland Park*, 396 So. 2d 830 (Fla. 4th DCA 1981); and

**WHEREAS**, Florida Courts have ruled that hours of operation are not a property right. *S. Daytona Rests., Inc. v. City of S. Daytona*, 186 So. 2d 78 (Fla. 1st DCA 1966); and

**WHEREAS**, the amendments set forth below are necessary to accomplish the objectives identified above.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1.** That Section 6-3, entitled “Hours of Sale,” of Article I, of Chapter 6, of the City Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 6**  
**ALCOHOLIC BEVERAGES**  
**ARTICLE I. In General**

\* \* \*

**Sec. 6-3. Hours of sale/violations.**

- (a) The hours of sale of alcoholic beverages, whether as a permitted main or accessory use, shall require a State License, and shall be according to the following schedule:
  - (1) *Retail stores for package sales only—Off-premises consumption.* Vendors may make sales of alcohol only for off-premises consumption between the hours of 8:00 a.m. and midnight.
    - A. Notwithstanding subsection (a)(1), vendors located in the MXE mixed use entertainment district and within the Ocean Terrace Overlay District may make sales of alcohol only for off-premises consumption between the hours of 10:00 a.m. and 8:00 p.m.
  - (2) *Retail stores, including grocery, convenience stores, and gasoline service/filling stations.* Retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only for off-premises consumption between the hours of 10:00 a.m. and midnight.
    - A. Notwithstanding subsection (a)(2), retail stores, including grocery, convenience stores, and gasoline service/filling stations, that are located in the MXE, Mixed use Entertainment District, and the Ocean Terrace Overlay District, and which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only between the hours of 10:00 a.m. and 8:00 p.m.

\* \* \*

- (4) *Off-premises package sales by alcoholic beverage establishments.* Off-premises package sales associated with alcoholic beverage establishments other than retail stores shall be permitted between the hours of 8:00 a.m. and midnight.
  - A. Notwithstanding subsection (a)(4), off-premises package sales associated with alcoholic beverage establishments, other than retail stores, that are located in the MXE, Mixed Use Entertainment District, and the Ocean Terrace Overlay District shall be permitted only between the hours of 10:00 a.m. and 8:00 p.m.

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**SECTION 2. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, 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, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and, the word “ordinance” may be changed to “section,” “article,” or other appropriate word.

**SECTION 3. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 4. SEVERABILITY.**

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

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

ATTEST:

\_\_\_\_\_  
Philip Levine, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

(Sponsored by Mayor Philip Levine)

Underline denotes new language  
~~Strikethrough~~ denotes removed language

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

[Signature] 10-9-17  
City Attorney Date