

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/VIOLATIONS," TO AMEND THE HOURS OF PACKAGE SALES OF ALCOHOLIC BEVERAGES (WHICH INCLUDE SALES OF ALCOHOL FOR OFF-PREMISES CONSUMPTION) IN THE MXE MIXED USE ENTERTAINMENT DISTRICT, AND IN THE ADJOINING CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT; 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**, 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 sales of alcoholic beverages (which include sales of alcohol for off-premises consumption) after 8 00 p m. each day, in the MXE district; along Washington Avenue in the CD-2 commercial, medium intensity district adjoining the MXE district; and along the east side of Collins Avenue (between 73rd and 75th Streets) in the CD-2 commercial, medium intensity district adjoining the MXE district; 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.** Section 6-3, entitled “Hours of sale/violations,” 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 the that portion of the CD-2, commercial, medium intensity district adjoining the MXE district between along Washington Avenue and Pennsylvania Avenue, from between 5th Street to and 16th Street, and that portion of the CD-2 district adjoining the MXE district along the east side of Collins Avenue (between 73rd and 75th Streets)~~ may make sales of alcohol only for off-premises consumption between the hours of 9:00 10.00 a.m and 10:00 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 8 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 that portion of the CD-2 commercial, mixed use-2 medium intensity district adjoining the MXE district, on along Washington Avenue and Pennsylvania Avenue, between 5th Street and 15th 16th Street, and that portion of the CD-2 district adjoining the MXE district along the east side of Collins Avenue (between 73rd and 75th Streets),~~ 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 ~~10:00 8.00~~ 8.00 p.m.
- (3) *Alcoholic beverage establishments.* All alcoholic beverage establishments with state licensure—On-premises consumption only, may make sales of alcohol between the hours of 8 00 a.m. and 5:00 a.m.
- (a) *Restaurants not operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, but not operating as dance halls or entertainment establishments, may remain open 24 hours a day, however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5 00 a m. and 8:00 a.m.
- (b) *Restaurants also operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, and also operating as dance halls, or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5 00 a m and 8 00 a m , and dancing and entertainment shall not be conducted between the hours of 5:00 a.m. and 10:00 a.m
- (c) *Other alcoholic beverage establishments.* Other alcoholic beverage establishments, not containing restaurants with full kitchen facilities, shall close at 5:00 a.m. and remain closed. No patron or other persons, other than those employed by the vendor may remain on the premises between the hours of 5 00 a.m. and 8:00 a.m
- (d) *Sidewalk cafes.* Notwithstanding the provisions of subsections (3)(a) through (c), alcoholic beverages shall not be offered for sale or consumption at sidewalk cafes, as defined in section 82-366 of this Code and as otherwise permitted by the City in accordance with chapter 82, article IV, division 5, subdivision II of this Code (as

may be amended from time to time), between the hours of 1 30 a.m. and 8 00 a m , and shall not be consumed at sidewalk cafes between the hours of 2:00 a.m and 8:00 a.m. No variances may be granted from the provisions of this section 6-3(3)(d) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes

Note: For purposes of this section, full kitchen facilities shall mean having commercial grade burners, ovens, and refrigeration units of sufficient size and quantity to accommodate the occupancy content of the establishment. Full kitchen facilities must contain grease trap interceptors, and meet all applicable city, county, and state codes

(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 that portion of the CD-2, commercial, medium intensity district 2, on adjoining the MXE district along Washington Avenue and Pennsylvania Avenue, between 5th Street and 15th 16th Street, and that portion of the CD-2 district adjoining the MXE district along the east side of Collins Avenue (between 73rd and 75th Streets)~~ shall be permitted only between the hours of 10 00 a m. and ~~40-00~~ 8:00 p.m.

\* \* \*

## **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:**

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

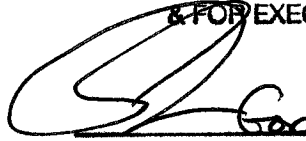
\_\_\_\_\_  
Philip Levine  
Mayor

(Sponsored by Vice-Mayor Ricky Arriola and co-sponsored by Mayor Philip Levine)

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

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APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

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

10/13/17  
\_\_\_\_\_  
Date

NK