

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO: _____

BEACH BLITZ CO., a Florida
Corporation d/b/a OCEAN 9 LIQUOR, and
d/b/a as OCEAN 11 MARKET,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,
a municipal corporation of the State of Florida,
PHILIP LEVINE, an individual, JIMMY
MORALES, an individual, MICKEY
STEINBERG, an individual, RICKY ARRIOLA,
an individual, MICHAEL GREICO, an individual,
JOY MALAKOFF, an individual, KRISTEN
ROSEN GONZALEZ, an individual,
JOHN ELIZABETH ALEMAN, an individual,
RAUL J. AGUILA, an individual, and
ALEKSANDR BOKSNER, an individual

Defendants.

_____ /

COMPLAINT

Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, through undersigned counsel, sues Defendants, CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, PHILIP LEVINE, an individual, JIMMY MORALES, an individual, MICKEY STEINBERG, an individual, RICKY ARRIOLA, an individual, MICHAEL GREICO, an individual, JOY MALAKOFF, an individual, KRISTEN ROSEN GONZALEZ, an individual, JOHN ELIZABETH ALEMAN, an individual, RAUL J. AGUILA, an individual and ALEKSANDR BOKSNER, an individual, and alleges:

INTRODUCTION AND NATURE OF ACTION

Approximately two years ago, principally through the actions of Mayor Philip Levine and

Commissioner Ricky Arriola, the City of Miami Beach, commenced coordinate process to address the chronic crime problem on Miami Beach and in particular the area known worldwide as South Beach. South Beach has been an entertainment and party mecca known internationally for over thirty (30) years. That reputation has created hundreds of millions, if not billions of dollars in revenue for the State of Florida and most particularly, Miami-Dade County and the City of Miami Beach. South Beach remains a worldwide go to party destination to this day.

Allegedly based upon the complaints of citizens of Miami Beach¹, a series of meetings occurred internally within the City that included various commissioners, the Mayor, the City Manager, the City Attorney, the Chief of Police, code enforcement officials, and other relevant participants and stakeholders. The result of those meetings includes a targeted plan to materially restrict liquor sales within the MXE district, the heart of South Beach, as well as the CD-2 district which is immediately adjacent to and west of the MXE district.²

Unfortunately, what started as a legislatively legitimate attempt to control crime (albeit through a process not directly related to controlling crime, but to severely restrict the sale of alcohol) has resulted in an intentional, malicious and now illegal campaign against certain specific establishments that sell liquor including targeted clubs and all four package stores in the MXE district.

In fact, Mayor Philip Levine was quoted by the Miami Herald in the Opinion published by the Herald on October 26, 2017, calling certain businesses on South Beach that sell liquor “malignant tumors.” The Mayor’s malicious intent is clear. The Herald recognized that maliciousness in its Opinion, without directly saying so, opining that the advocates for alcohol sales restrictions (the Mayor and the Commissioners) were overreaching and the effect was “legally shaky”. In fact, the Herald recommended that the citizens of Miami Beach vote against a referendum arranged by Mayor Levine and Commissioner Arriola, to reduce the hours of

¹ Relatively few actual citizens live in South Beach as the area is primarily a venue for businesses, *e.g.* hotels, restaurants, entertainment venues and retail stores.

² See Definition of MXE district at ¶¶19-21, below.

operation of outdoor café components of nightclubs from 5:00 a.m. to 2:00 a.m. A copy of the Herald's Opinion is attached as Exhibit "A".

In addition to the referendum directed to Mayor Levine's "malignant tumors", the Mayor and certain commissioners along with staff,³ have internally targeted four package liquor stores within the MXE district and peppered those stores with improper code enforcement violations, intentional police blockades restricting access to certain of those stores, and most recently an egregious forced closing of one of those stores, Plaintiff's Ocean 9 Liquor, without due process. The cessation of operations by Ocean 9 Liquor was accomplished by overt threat by two Miami Beach police officers and one code enforcement officer, to place the owner of the store in jail if he did not voluntarily close his store because of an alleged dispute over a several hundred dollar Business Tax Receipt ("**BTR**"), otherwise known as an occupational license fee. That store remains closed today – 24 days later.

Over 15 employees are left without jobs and the City has no defense or excuse other than Ocean 9 Liquor was allegedly a few months delinquent in paying a few hundred dollar occupational license fee the City itself affirmatively prevented from being paid because of the pendency of a special master proceeding dealing with the very violation and thereafter, an inability to timely update its "system". After preventing payment, the City refused to issue a current BTR even though that very violation was resolved through the City's special master process. Plaintiff attempted on multiple occasions to obtain the BTR, once having resolved all pending violations. In spite of a valid and binding resolution of the BTR issue and others by Agreed Order dated September 28, 2017, Plaintiff's principal was physically prevented from obtaining a BTR until he was threatened with jail if he did not close the store at 865 Collins Ave on Friday, October 6, 2017.

Even more telling, the closure was one day after a meeting by Plaintiff's counsel with a Deputy City Attorney to voice objection to the ongoing, systematic reduction of business hours

³ Staff includes all employees of the City which are not elected.

for the sale of the alcohol by package stores in the MXE district. According to Deputy City Attorney Boksner, the closure that Friday was not likely coincidental. An interesting admission.

Mayor Levine's overzealous campaign, countenanced to date by the Commission cannot be allowed. The result as applied to Plaintiff is in violation of federal and state laws and results in an improper taking without due process and other intentional, malicious and irreparably harmful acts as more fully set forth herein below. As such, Plaintiff files the instant complaint seeking redress (1) for the City's wrongful and unconstitutional closing of one of Plaintiff's locations and (2) to declare invalid and enjoin the City's arbitrary, capricious and unreasonable ordinances designed to bankrupt the four package stores in the MXE district.

JURISDICTION AND VENUE

1. This is an action for declaratory and injunctive relief and damages, pursuant to the Fourteenth Amendment of the United States Constitution and 42 U.S.C §1983.

2. This Court has original jurisdiction pursuant to 28 U.S.C. 1331 and 1343 over Plaintiff's causes of action under the Constitution of the United States, 42 U.S.C. §1983 and Declaratory Judgment Act, 28 U.S.C §2201 and 2202.

3. This Court has personal jurisdiction over Defendants in that they are located and/or reside in the Southern District of Florida

4. Venue is proper in the Southern District of Florida pursuant to 28. U.S.C. 1391(a) in that Defendants are subject to personal jurisdiction within the Southern District of Florida and the events which give rise to this action occurred within the Southern District of Florida.

THE PARTIES

5. Plaintiff, BEACH BLITZ CO., is a Florida corporation with its principal place of business in Miami Beach, Florida. Plaintiff does business as OCEAN 9 LIQUOR and OCEAN 11 MARKET and services South Beach, Florida, with a wide variety of packaged beer, wine, liquor, and related supplies. Plaintiff's locations are at 865 Collins Avenue and 1100 Collins Avenue. Plaintiff offers free delivery to the surrounding area of hotels, residences, and the beach. In addition OCEAN 9 LIQUOR maintains a live disc jockey on the premises and has at

all times relevant been licenses to so. Plaintiff is a package store⁴ providing sales of packaged liquor. Plaintiff has been operated at its locations since approximately 2003 pursuant to written lease agreements which require the operation of a retail liquor store. Doron Doar is Plaintiff's principal and was threatened with imprisonment if he refused to close the store located at 865 Collins Avenue on October 6, 2017.

6. Defendant, CITY OF MIAMI BEACH, FLORIDA (the “City”) is a municipal corporation organized under the laws of the State of Florida. It is governed by the laws and constitution of the United States of America, the laws and constitution of the State of Florida and by its municipal Charter and Code. Pursuant to applicable law, the City regulates the location, size, hours of operation, and minimum patron age for alcoholic beverage establishments within its borders.

7. Defendant, PHILIP LEVINE, is an adult individual, the Mayor of the City, and otherwise *sui juris*. Mayor Levine is a principal leader in the City's goal to terminate the sale of alcohol in the MXE district and other parts of the City. The City's goal appears to be limitless as it includes putting small businesses (“malignant tumors”) out of business.

8. JIMMY MORALES is an adult individual, the City Manager, and otherwise *sui juris*.

9. Defendant, MICKEY STEINBERG is an adult individual, a Commissioner for the City and otherwise *sui juris*.

10. Defendant, RICKY ARRIOLA is an adult individual, a Commissioner for the City and otherwise *sui juris*.

11. Defendant, MICHAEL GREICO is an adult individual, a Commissioner for the City and otherwise *sui juris*. Commissioner Greico recently resigned his commission set but was a Commissioner at all times relevant.

12. Defendant JOY MALAKOFF is an adult individual, a Commissioner for the City

⁴ The City defines a package store as any store primarily engaged in the business of selling alcoholic beverages for off-premises consumption and that has a license for package sales from the State Division of Beverages and Tobacco in the classification of 1-APS, 2-APS, or PS.

and otherwise *sui juris*.

13. Defendant KRISTEN ROSEN GONZALEZ is an adult individual, a Commissioner for the City and otherwise *sui juris*.

14. Defendant JOHN ELIZABETH ALEMAN is an adult individual, a Commissioner for the City and otherwise *sui juris*.

15. Defendant RAUL J. AGUILA is an adult individual, the City Attorney for the City and otherwise *sui juris*.

16. Defendant, ALEKSANDR BOKSNER, is an adult individual, a Chief Deputy City Attorney for the City and otherwise *sui juris*. Mr. Boksner is a principal player in the actions resulting in the unlawful closure of Plaintiff's store at 865 Collins Avenue.

17. At all relevant times described herein, the Commission as an expression of municipal policy and on behalf of the City adopted the Code Sections and Ordinances discussed below acting through its duly authorized agents, Mayor Levine, Manager Morales and the Commissioner Defendants, and Alek Boksner.

18. At all times alleged herein, the City and its officials, employees and agents were acting under color of state and local law.

GENERAL ALLEGATIONS

A. The MXE District

19. The MXE Mixed Use Entertainment ("MXE") district is characterized by a variety of uses, ranging in intensity from apartment buildings and retail stores to restaurants and entertainment establishments, which attract a large volume of pedestrians and vehicular traffic. Comparatively, few actual citizens of Miami Beach reside in the MXE district.

20. The MXE district was designed by the City to encourage the substantial restoration of existing structures, allow for new construction and the coexistence of multiple private businesses and entertainment uses.

21. The MXE district is composed of the area between Ocean Drive to Washington Avenue on the east and west side and 5th Street to 15th Street on the north and south side. Said

otherwise, the MXE district is the heart of South Beach as it is known worldwide. See Exhibit B.

22. Plaintiff operates 2 package stores within the MXE district.

23. There are 2 other package stores in the MXE district, other than Plaintiff's stores.

B. Ocean 9 and the Neighborhood

24. Plaintiff's store at 865 Collins Avenue is located directly across the street from the residence of Mitch Novick, a principal in a well-known, vocal opponent of the sale of liquor on South Beach. Mr. Novick and Mayor Levine are well-known to one another.

25. Upon information and belief, Mr. Novick has made at least 6 unsubstantiated noise complaints with respect to Plaintiff's business from the period of May 2016 to September 2017, and numerous "informal" complaints directly to some of the Defendants and the City police department.

26. Access to Plaintiff's store at 865 Collins Avenue is routinely impaired by the City and its officers, agents and employees. Specifically, 9th street between Collins Avenue and Ocean Drive is routinely shut down not allowing vehicle or pedestrian traffic. The shutdown occurs without explanation and is only affected on 9th street, the street coincidentally which Mr. Novick's residence overlooks. No other streets are routinely barricaded.

C. The City's Action Plan against Liquor Stores and Sales

27. Beginning in 2016, the City commenced a campaign to limit and/or severely curtail the sale of alcohol in the MXE district. According to the City, the package sales of alcoholic beverages in the MXE district encourage individuals to consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks. The alleged basis for the proposed restrictions was to reduce crime in the MXE district and South Beach in general.

28. Regulation of the sale of alcoholic beverages is a legitimate legislative province so long as any such ordinance is not arbitrary or capricious and is reasonable in the context of its implementation and effect. Cities may only regulate certain aspects of the sale of alcohol and said regulation may not otherwise impair state law on the sale of alcohol.

29. The City apparently concluded that the consumption of open containers of

alcoholic beverages in public places disturbs the quiet enjoyment of the community, causes undesirable noise, and contributes to litter, noxious odors, and the general degradation of the City. There is no direct finding that the four package stores in the MXE district are a causal link to any crime in that district. Nor is there actual support that eliminating one or such packages stores will improve the crime problem. None of those package stores are in violation of any law that would impair their right to operate.

30. The City concluded it was in its best interest and to serve the health, safety, and welfare of its residents and visitors, to prohibit package stores and package sales of alcoholic beverages in the MXE district. As such, the Commission passed an ordinance that determined that going forward from the effective date of Ordinance No. 2016-4047 no new package stores would be allowed in the MXE district. The 4 existing stores were unaffected, including Plaintiff's stores.

31. Little did Plaintiff or the other package store owners know at that time that a trap was being set.

32. Further forward with the plan against alcohol sales, the City concluded that it was in its best interest and to serve the health, safety, and welfare of its residents and visitors, to substantially reduce the allowable time periods during which alcohol could be sold. Thus, began the systematic passage of a series of overreaching, unreasonable ordinances designed to bankrupt the four package stores by systematically reducing their legal hours of sale. In less than a year, the proposed reduction will be a reduction from a 16 hour period to a 10 hour period. Most hours being eliminated are at peak sale time.

D. The City's Code Relative to the Business Tax Receipt

33. All business owners operating within City are required to obtain a Business Tax Receipt (formerly known as an Occupational License) (a "BTR"). A BTR license is essentially a tax on the operation of a business.

34. A BTR license is valid from October 1st to September 30th of the following year and must be renewed prior to the commencement of the new fiscal year on October 1, 2017.

35. The Code provides penalties for failure to obtain a valid BTR license, including routine fines. There are enhanced penalties for multiple violations regarding operating without a valid BTR that include incarceration and/or proceedings to enjoin operation of the business.⁵ Section 102.377, Miami Beach City Code.

36. The Code also states that the City may prevent a business from operating until the required tax receipt is obtained.

37. On or before October 1, 2015, Plaintiff applied for and obtained a BTR license identified as RL-10005692 for the store located at 865 Collins Avenue.

38. Since approximately June 2017, when Plaintiff discovered it needed to renew its BTR license, Plaintiff has been attempting to renew the BTR for the store on 865 Collins Avenue.

39. Plaintiff has been intentionally thwarted by the City from doing so as more fully described below.

40. The City has intentionally, unilaterally and arbitrarily refused to renew Plaintiff's BTR license for its store at 865 Collins Avenue, despite accepting and retaining all fees relative to same. The City continued to cite Plaintiff for not having its BTR license for the store located at 865 Collins Avenue even after Plaintiff tendered payment of the licensee fee and penalties for being tardy.

41. That refusal is now the basis for the City's position that Plaintiff may never reopen because his "new" proposed use as a package store is a non-conforming use pursuant to 2016 Ordinance No. 2016-4047. The trap is sprung. One store down; three to go.

42. The City intentionally prevented Plaintiff from updating his license yet now says that because Plaintiff didn't timely update its license it is barred from future operation. Those actions are not only unlawful and in bad faith, they are unconstitutional on their face. It is a well-known principal of law that a party may not relay on a failed legal condition when that

⁵ Such actions, of course, would require Constitutional due process.

party caused the very failure relief upon.

E. The City's Code relative to the Sale of Alcohol

43. Chapter 6 of the City Code establishes minimum regulations for the sale and consumption of alcoholic beverages throughout the City, and district-specific alcoholic beverage regulations are set forth in Chapter 142.

44. In its current form, the Code allows package stores to sell alcoholic beverages, whether as a permitted main or accessory use, for off-premises consumption between the hours of 9:00 a.m. and 10:00 p.m.⁶ Section 6-3 City Code.

45. As more fully discussed below the time periods during which package stores may sell alcoholic beverages has changed at least over 3 times in the course of six months

F. The Ordinances Designed to Restrict the Sale of Alcohol⁷

46. On October 19, 2016, the Mayor and the City Commission adopted Ordinance No. 2016-4047, which altered the allowed uses within the MXE district. Specifically, Ordinance No. 2016-4047 prohibits package stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment with in the MXE district.⁸ Additionally, the Ordinance prohibits entertainment in package stores.⁹ See Exhibit C.

47. 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. See Exhibit D.

⁶ These restrictions appear not apply to big chain stores such as Walgreens which operates in the MXE district and the MXE district seems to specifically change direction to exclude another Walgreens location.

⁷ The ordinances discussed in this section are collectively referred to as "Ordinances".

⁸ All legal package stores in operation at the time the Ordinance was passed were grandfathered in as a matter of law.

⁹ Plaintiff's store at 865 Collins Avenue operated on that date and lawfully provided entertainment in that store as it was licensed by the City to do.

48. On March 1, 2017, the City Commission reviewed a prior version of this Ordinance, which proposed to prohibit package liquor sales before 9:00 a.m. However, following discussion on this item, the City Commission directed staff to revise the proposed Ordinance to prohibit package liquor sales before 8:00 a.m.

49. On April 26, 2017, the Mayor and City Commission reviewed the revised ordinance and directed the City Attorney's Office to prepare a revised draft ordinance that further restricted the hours of package liquor sales in the MXE district and citywide between 10:00 a.m. and 10:00 p.m.

50. On June 7 2017, Ordinance No. 2017-4101 was enacted again changing the hours of package liquor sales in the MXE district and specifically differentiating the rights of persons in the MXE district when compared to those in other districts. There is no rational nexus between the ordinance and the problem sought to be solved, crime.

51. Specifically Ordinance No. 2017-4101 provided that retail package stores could sell alcohol between the hours of 8:00 a.m. and midnight. See Exhibit E.

52. However, Ordinance No. 2017-4101 specifically stated that notwithstanding the citywide hours, package stores within the MXE district would only be permitted to sell alcoholic beverages between the hours 10:00 a.m. and 10:00 p.m. Id.

53. Approximately 3 months later, the City passed Ordinance No. 2017-4131 which further restricted the sale of alcohol by package stores in the MXE district. See Exhibit F. Ordinance No. 2017-4131 now set the time period as the hours between 9:00 am. and 10:00 p.m.

54. Apparently unhappy with the restrictions, in September 2017, Defendants proposed again attempted to change the hours of package liquor sales in the MXE district. See Exhibit G. Specifically, the September Ordinance proposed that package stores within the MXE district would only be permitted to sell alcoholic beverages between the hours 10:00 a.m. and 8:00 p.m.

55. A first reading of the September Ordinance was held on September 13, 2017.

56. A second reading of the September Ordinance is currently scheduled for October

31, 2017. If passed, the hours of package liquor sales in the MXE district will be restricted to between 10:00 a.m. and 8 p.m.

57. If passed, the September Ordinance would be the 4th change to the hours of package liquor sales in the MXE district in the span of 10 months

G. The Alleged Code Violations by Plaintiff Giving Rise to Closure of Plaintiff's Store

a. December 2016

58. On Wednesday, December 21, 2016 at 8:39 a.m. a Code Compliance officer presented Plaintiff with a notice of violation alleging a violation of Section 6-3(1)(A) of the City Code. In the notice, the City Code Compliance officer states that the violation was based upon Plaintiff's sale of alcoholic beverages between the hours of midnight and 10:00 a.m. The violation was identified as Case Number 2016-11719. See Exhibit H.

59. Subsequently, Plaintiff was provided a different sheet of paper for the December violation. See Exhibit I. This paper identified the Case Number as CC2016-01704 but maintained a violation of Section 6-3(1)(A) of the City Code. Id.

60. In this notice, the violation stated that Section 6-3(1)(A) of the City Code provides that retail stores in the MXE district for package sales only may make sales of alcohol for off-premises consumption between the hours of 8:00 a.m. and midnight.

61. The violation was issued at 8:39 a.m. – thus within the then existing lawful time periods for sale.

62. As more fully discussed below, Plaintiff appealed the December violation, invoking the jurisdiction of the Special Master.

b. June 2017

63. On Sunday, June 25, 2017 at 11:30 p.m., a Code Compliance Officer presented the following notices of violation to Plaintiff:

- Violation identified as Code Case Number CC2017-03102. This violation alleged that Plaintiff had violated . See Exhibit J.
- Violation identified as Code Case Number CC2017-03103. This

violation alleged that Plaintiff had violated Article V, Section 102-377 of the City Code by failing to obtain a Business Tax Receipt. See Exhibit K.

64. The June BTR notice provided that it was a 1st offense and carried a fine (and other monetary charges) of \$1,000.00. Id.

65. The June BTR notice further set forth the following penalties:

- a 1st violation – a civil fine of \$1000.00
- enhanced enforcement pursuant to subsection 102-377(d)¹⁰
- imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both if the violation continued for a period of thirty (30) days or more.

Id.

66. Significantly, the June notices set forth that “failure to comply will result in your prosecution before the City of Miami Beach Special Master. The Special Master may impose fines of up to \$1,000 per day for noncompliance and up to \$5,000 per day for recurring violations. Failure to pay imposed fines will lead to placement of liens upon the real and personal property of violators which will be foreclosed on otherwise collected as provided the City code.” Id.

67. The June notice provides that “fines and/or violations may be appealed within ten (10) days of receipt of the notice of violation. To appeal a fine and/or violation submit a written request for an appeal to the Clerk of the Special Master....”

68. The June notice does not provide that failure to comply will result in the immediate closing of the package store by the City Code Compliance Officer. Id.

i. Plaintiff appeals the fines and/or violations of the December and June notices

69. Consistent with the Code and as set forth in the violation notices, Plaintiff

¹⁰ Subsection 102-377(d) of the City Code provides “In addition to the above, a continued violation of subsection 102-377(a) for a period of 30 days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.”

appealed the December and June violations to the Special Master. The Special Master accepted jurisdiction and proceeded in the ordinary course.

70. A hearing was held on the appeal to the Special Master on August 28, 2017. At that time, the parties advised the Special Master that they had reached an agreement which would resolve the violations. The agreement required Plaintiff to pay a fine in the sum of One Thousand (\$1,000.00) Dollars. The Special Master approved the agreement.

71. As a result, on the very same day, Plaintiff issued Check No. 2738 in the sum of \$1,000.00. However, because a written order had not been issued by the Special Master, the City would not accept the payment as an order had not been submitted and entered into the “system”. This entry into the “system” is necessary to lift the restriction on tendering payment to, *inter alia*, renew the BTR license.

72. On Thursday, September 28, 2017, a full month after reaching an agreement, the Special Master issued an agreed order affirming Citations CC2016-01704, CC2017-03102 and CC2017-03103. See Exhibit L.

73. In its agreed order the Special Master assed a fine in the amount of One Thousand (\$1,000.00) Dollars against Plaintiff. Id. The order required Plaintiff to pay the fine within thirty (30) days of the entry of the agreed order – to wit: October 28, 2017. Id.

74. From Thursday, September 28, 2017 through and including Wednesday, October 4, 2017, Plaintiff repeatedly presented payment to the City to comply with the Special Master’s order and to obtain its BTR.

75. From Thursday, September 28, 2017 through and including Wednesday, October 4, 2017, the City provided a series of reasons of why payment could not be accepted. For example, the City claimed that it could not accept payment because the Special Master’s order had not yet been put into the system.

76. Finally, on Wednesday, October 4, 2017, the City accepted Plaintiff’s payment of the \$1,000 fine.

77. The City also accepted late fees relative to the BTR; however it refused to accept

the payment to renew the BTR.

78. This fact is confirmed by the on-line registry which shows that violations CC2017-03102 and CC2017-03103 were closed on October 4, 2017. See Exhibit M.

79. Significantly, although paid the same day as the other violations, the on-line registry shows that violation CC2016-01704 was closed on October 13, 2017 (9 days after the City accepted Plaintiff's check, 16 days after the Special Master's order and 46 days after the parties had agreed to a resolution of the issues raised by the 3 violations). See Exhibit N.

80. Despite accepting the payment which was in compliance with the Special Master's order, the City has refused to allow the issuance of Plaintiff's BTR that Plaintiff had been trying to obtain since notice of the violation in June 2017.

c. October 2017

81. On Friday, October 6, 2017 at 5:00 p.m., quite remarkably, a Code Compliance Officer again presented a notice of violation to Plaintiff alleging that Plaintiff had violated Article V, Section 102-377 of the City Code by failing to obtain a Business Tax Receipt. See Exhibit O. The Code Case Number was set forth at CC2017-03686.

82. The October notice provided that it was 2nd offense and carried a fine (and other monetary charges) of \$500.00. Id.

83. The October notice further set forth the following penalties:

- a 1st violation – a civil fine of \$1000.00
- enhanced enforcement pursuant to subsection 102-377(d)¹¹
- imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both if the violation continued for a period of thirty (30) days or more.

84. Significantly, the October notice sets forth that “failure to comply will result in your prosecution before the City of Miami Beach Special Master. The Special Master may

¹¹ Subsection 102-377(d) provides “In addition to the above, a continued violation of subsection 102-377(a) for a period of 30 days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.”

impose fines of up to \$1,000 per day for noncompliance and up to \$5,000 per day for recurring violations. Failure to pay imposed fines will lead to placement of liens upon the real and personal property of violators which will be foreclosed on otherwise collected as provided the City code.”

85. The October notice does not provide that failure to comply will result in the immediate closing of the package store by the City Code Compliance Officer.

86. The October notice was issued during the period allowed for payment of the Special Master’s fine relative to, in part, a violation of Article V, Section 102-377 of the City Code (failing to obtain a Business Tax Receipt) and after Plaintiff had made the payment required by the Special Master to resolve three violations, one of which was failure to obtain a Business Tax Receipt.

G. Plaintiff is Closed Down by Code Enforcement for Failing to Have a BTR License

87. On Friday, October 6, 2017 (the very same day the October notice was issued to Plaintiff), Code enforcement¹² coerced Plaintiff’s principal, Doron Doar, by threat of immediate imprisonment, to close Plaintiff’s business due to Plaintiff’s alleged failure to obtain a BTR.

88. The City did not serve Plaintiff with a written administrative complaint prior to closing Plaintiff’s business due to its alleged failure to obtain a BTR. Such written, administrative complaint is required by Section 102-383.

89. The City did not set a hearing or hold a hearing prior to closing down Plaintiff’s business. As such, Plaintiff was given no due process for the closure and taking of his business.

90. Since that time, the City has refused to allow Plaintiff to obtain a BTR, stating that, pursuant to Ordinance No. 2016-4047, package stores and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment within the MXE district are prohibited.

H. Plaintiff’s plight with respect to its package store at 865 Collins Avenue

¹² At that time, the Code enforcement office was accompanied by two City police officers.

91. Plaintiff has been operating Ocean 9 Liquor as a liquor store at its location on 865 Collins Avenue (half a block from Ocean Drive on 9th Street) since 2011.

92. The entrance to this package store is approximately 50 feet from the entrance to Mangos, a well-known and popular night club on South Beach.¹³

93. Plaintiff retained the undersigned law firm in late August or early September, 2017, relative to recent passage of ordinances restricting the sale of liquor by package stores within the MXE district.

94. At that time, Plaintiff had recently become aware of the reduction in hours for sales by package stores. The allowed period had been changed from 8:00 am to midnight to, 10:00 a.m. to 10:00 p.m., by virtue of Ordinance No. 2017-4101 becoming effective on June 7, 2017

95. Shortly after being retained, the undersigned firm, through primarily the efforts of Miguel Diaz de la Portilla, a lawyer and well-known lobbyist, it became apparent that a second ordinance was in process designed to further restrict the hours from 10:00 a.m. to 8:00 p.m.

96. Such a reduction would be catastrophic for the four package stores in the MXE district as it would effectively reduce their hours of operation by approximately 28% and lead to the likely reduction in revenue of approximately 50%.

97. Mr. Diaz de la Portilla quickly arranged meetings with the City Manager, Deputy City Attorney, Commissioner Arriola (the sponsor of the subject ordinances) and other commissioners.

98. A meeting with Deputy City Attorney, Eve A. Boutsis, was scheduled for Thursday, October 5, 2017 at 1:00 p.m., and a call with Commissioner Arriola¹⁴ was scheduled, for Friday, October 6, 2017 at 2:00 p.m.

¹³ Upon information, Plaintiff believes Mangos is one of the so-called “malignant tumors” referred to by Mayor Levine.

¹⁴ Commissioner Arriola chose not to have an in-person meeting.

99. The meeting with Deputy City Attorney Boutsis occurred and lasted for approximately an hour. The meeting was positive and allowed Mr. Diaz de la Portilla to gain further information about the City's concerns. Mr. Diaz de la Portilla advised the Deputy City Attorney that Plaintiff would be happy to meet with all of the individuals and stakeholders within the City over the course of the next 60 days to discuss how Plaintiff could assist the City in its crime prevention efforts without the passage of the more restrictive hour of operation which it was argued, were arbitrary, capricious, unreasonable and designed to force the package stores out of business in the MXE district.

100. On Friday, October 6th at 1:45 p.m., fifteen minutes before the scheduled call with Commissioner Arriola, the Commissioner's office called and abruptly canceled the call without explanation and without making provision for a further meeting. The writing was on the wall.

101. Approximately an hour later, the undersigned received a call from Plaintiff's principal indicating that a City code compliance officer and two policemen came to Plaintiff's store at 865 Collins Avenue and threatened to imprison Plaintiff's principal if he did not close the store immediately. Plaintiff also advised that it was cited for failure to have a BTR.

102. Mr. Diaz de la Portilla called Deputy City Attorney Boksner on the following Monday. Deputy City Attorney Boksner advised that the City's actions of the past few days were not likely coincidental and a long time coming. Evidence of the scheme and its perpetrators begins to emerge.

103. As of October 6, 2017, the City once again prohibited both Plaintiff and its agents from paying the BTR until the Special Master process (which took over 6 months) was concluded and in the system.¹⁵ Had the City allowed payments as tendered multiple times before October 6, no violation could have been issued and Plaintiff would be operating today.

¹⁵ As previously discussed, the Agreed Order was not executed by the Special Master until Thursday, September 28, 2017. The Order was not recorded in the City's system until late the following week, effectively giving Plaintiff no time to pay the fees/fines before being closed on October 6, 2017. The Agreed Order allowed Plaintiff 30 days to pay the fees/fines. See Exhibit L.

104. On October 11, 2017, for the first time since being cited for a BTR violation, Plaintiff was actually able to pay¹⁶ the appropriate fines and the fees for its BTR.

105. Those amounts remain paid to date and have not been refunded. Yet, the City refuses to issue Plaintiff a BTR now suggesting that it no longer has a conforming use because in 2016, the City passed Ordinance No. 2016-4047 prohibiting package stores from selling alcohol in the MXE district. The City reasons that since there was no “current” BTR, it cannot renew the BTR because of the conforming use ordinance. Clearly, the City dithered on allowing Plaintiff to renew his BTR for fiscal year 2016-2017 to get past the date necessary to spring its trap.

106. Said otherwise, the City intentionally ambushed Plaintiff as it was a specific target of the City, the Mayor, Commissioner Arriola and certain citizens, including Mitchell Novick who owns the building directly across the street and lives directly across the street from the entrance to Plaintiff’s store at 865 Collins Avenue.

107. All conditions precedent to the commencement and maintenance of this action have been satisfied, performed, waived, or otherwise discharged.

108. Plaintiff has retained the undersigned counsel as its attorney in this matter and is obligated to pay them a reasonable fee for their services.

COUNT I
DECLARATORY JUDGMENT/INJUNCTIVE RELIEF
(Wrongful Closure)

109. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

110. On October 6, 2017, Defendants wrongfully threatened and wrongfully coerced through the threat of imprisonment, Doron Doer, Plaintiff’s principal to shut down Plaintiff’s business operations at 865 Collins Avenue.

111. Said threats and resulting closure are inconsistent with federal, state and local laws and ordinances.

¹⁶ Plaintiff made such payment through the City’s online system.

112. Said threats and resulting closure are unconstitutional and lacking due process.

113. Said threats and resulting closure are all part of Defendants' targeted plan to eliminate the Ocean 9 Liquor store at 865 Collins Avenue specifically and ultimately all package stores on South Beach.

114. The resulting closure was caused by the City's intentional failure to allow Plaintiff to obtain a BTR for over 6 months.

115. Said actions are inconsistent with Section 102.3-377(b)(2) which sets forth the City's rights and remedies relative to the BTR.

116. Moreover, said actions are inconsistent with the City's failure to allow Plaintiff to pay any associated fines and to renew or otherwise update its BTR subsequent to the Special Master's Agreed Order dated September 28, 2017.

117. The City specifically refused to allow Plaintiff or any its representative to pay the fines relative to the BTR violation within the jurisdiction of a Special Master proceeding which ended on September 28, 2017 and wrongfully closed the package store less than one week later based on the very violations dealt with in the Special Master order which had not yet been entered in the City system and which prevented Plaintiff from otherwise doing that which the City now complains about.

118. The City's actions were intentional, targeted, and clearly directed to ambush Plaintiff and allow the City to take the position that because of the conforming use change that had occurred a year early, Plaintiff could no longer obtain a new BTR and operate its package store going forward.

119. Therefore, Plaintiff is entitled to declaratory and injunctive relief.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the City's actions relative to the closing of Plaintiff's store at 865 Collins Avenue to be improper, unconstitutional, discriminatory and intentionally designed to ambush Plaintiff;

2. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring that Plaintiff is and was at all times in compliance with appropriate law as it had initiated the appeals with the Special Master, complying with the Agreed Order issued by the Special Master, and was prevented from paying the fines and fees necessary to continuously operate and to otherwise avoid the City's now bad faith argument that it can no longer obtain a BTR;

3. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring for purposes of all relevant periods that Plaintiff's store at 865 Collins Avenue had been operating legally and uninterrupted through its wrongful closer on October 6, 2017;

4. Immediate issuance of mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants;

5. An award of attorney's fees and costs; and

6. Ordering such further relief deemed just and proper.

COUNT II
VIOLATION OF 42 U.S.C. §1983

120. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

121. Plaintiff maintains this cause of action pursuant to 42 U.S.C. §1983 and seeks monetary damages and attorneys' fees (pursuant to 42 U.S.C. §1988) for the deprivation of its property and liberty interests, as more particularly set forth herein.

122. As more particularly described herein, Defendants have established a custom, policy, pattern and practice of unlawfully targeting package stores in the MXE district in an unconstitutional and illegal fashion, not reasonably related to any legitimate result, but only designed to remove the "malignant tumors" all of which are lawfully operating small businesses.

123. Defendants have intentionally created a policy that unlawfully targets the package stores, clubs and restaurants in the MXE district.

124. This unlawful targeting is evident in the Ordinances and in the Defendants' unilateral suspension of Plaintiff's BTR without even the most minimal compliance with Code Section 102-383.

125. Defendants subjected Plaintiff to conduct that occurred under color of state law.

126. Defendants' conduct deprived Plaintiff of rights, privileges, or immunities guaranteed under federal law and the U.S. Constitution and is by definition discriminatory.

127. The Ordinances restricting the period in which alcohol may be sold by package stores constitutes irreparable harm.

128. Therefore, Plaintiff is entitled to declaratory and injunctive relief and damages.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the City's actions relative to the closing of Plaintiff's store at 865 Collins Avenue to be improper, unconstitutional, and intentionally designed to ambush Plaintiff without justification of law;

2. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring that Plaintiff is and was at all times in compliance with appropriate law as it had initiated the appeal with the Special Master, complying with the Agreed Order issued by the Special Master, and was prevented from paying the fines and fees necessary to continuously operate and to otherwise avoid the City's now bad faith argument that it can no longer obtain a BTR;

3. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring for purposes of all relevant periods that Plaintiff's store at 865 Collins Avenue had been operating legally and uninterrupted through its wrongful closer on October 6, 2017;

4. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring Ordinance Nos. 2016-4047, 2016-4058 and 2017-4101 unconstitutional as applied to Plaintiff because they violate numerous provision of the federal Constitution as set forth herein;

5. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the proposed September Ordinance unconstitutional as applied to Plaintiff because it violates

numerous provision of the federal Constitution as set forth herein;

6. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants;

7. For damages in its favor and against Defendants, CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, PHILIP LEVINE, an individual, JIMMY MORALES, an individual, MICKEY STEINBERG, an individual, RICKY ARRIOLA, an individual, MICHAEL GREICO, an individual, JOY MALAKOFF, an individual, KRISTEN ROSEN GONZALEZ, an individual, JOHN ELIZABETH ALEMAN, an individual, RAUL J. AGUILA, an individual, and ALEKSANDR BOKSNER, and individual, jointly and severally;

8. An award of attorney's fees and costs; and

9. Ordering such further relief deemed just and proper.

COUNT III
VIOLATION OF THE 14th AMENDMENT – SUBSTANTIVE
DUE PROCESS AND TAKINGS CLAIM

125. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

126. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits the City from depriving any person of life, liber or process without due process of law.

127. Plaintiff has a liberty and/or property interest in conducting its lawful business of selling alcohol from its package store and receiving income from said sale.

128. The City's unilateral and arbitrary suspension of Plaintiff's BTR license and resulting closure of its business is without due process of law, *to wit*: notice and opportunity to be heard.

129. Further, the City's suspension of Plaintiff's BTR license under the Code and Ordinance No. 2016-4047 deprives Plaintiff of the liberty and/or property interest in retaining

such license, conduct sales of alcohol and/or receive income from said sales without any hearing or proceedings before such suspension and deprivation occurred.

130. In addition, the Ordinances and the City's actions in limiting the sale of alcoholic beverages by package stores in the MXE district is unreasonable and unconstitutional taking as it deprives Plaintiff of his business and the income from sales of alcoholic beverage without a legitimate and established purpose other than to put package liquor stores out of business.

131. The City's actions relative to the closing of Plaintiff's store at 865 Collins Avenue have no reasonable relation to any legitimate local government purpose. The City does not have any compelling state interest or rational basis for its actions, especially since they are limited to a 15 block perimeter between Ocean Drive and Collins Avenue and ignore the reality that alcoholic beverages may be purchased outside that perimeter (a block away) from 8:00 am to midnight. Neither has the City demonstrated the crime problem alleged to be the basis for the actions will be impacted in any fashion once these businesses are destroyed.

132. As a result, the City's actions, on their face and/or as applied are unreasonably discriminatory and violate the Due Process Clause of the Fourteenth Amendment.

133. Defendants' closing of Plaintiff's business and the Ordinances restricting the period during which alcohol may be sold constitute irreparable harm.

134. Therefore, Plaintiff is entitled to declaratory and injunctive relief and damages.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the City's actions relative to the closing of Plaintiff's store at 865 Collins Avenue to be improper, unconstitutional, and intentionally designed to ambush Plaintiff;

2. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring that Plaintiff is and was at all times in compliance with appropriate law as it had initiated the appeals with the Special Master, complying with the Agreed Order issued by the Special Master, and was prevented from paying the fines and fees necessary to continuously operate and to otherwise

avoid the City's now bad faith argument that it can no longer obtain a BTR;

3. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring Ordinance Nos. 2016-4047, 2016-4058 and 2017-4101 unconstitutional as applied to Plaintiff because they violate numerous provision of the federal Constitution as set forth herein;

4. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the proposed September Ordinance unconstitutional as applied to Plaintiff because it violates numerous provision of the federal Constitution as set forth herein;

5. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring for purposes of all relevant periods that Plaintiff's store at 865 Collins Avenue had been operating legally and uninterrupted through its wrongful closer on October 6, 2017;

6. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants;

7. For damages in its favor and against Defendants, CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, PHILIP LEVINE, an individual, JIMMY MORALES, an individual, MICKEY STEINBERG, an individual, RICKY ARRIOLA, an individual, MICHAEL GREICO, an individual, JOY MALAKOFF, an individual, KRISTEN ROSEN GONZALEZ, an individual, JOHN ELIZABETH ALEMAN, an individual, RAUL J. AGUILA, an individual, and ALEKSANDR BOKSNER, and individual, jointly and severally;

8. An award of attorney's fees and costs; and

9. Ordering such further relief deemed just and proper.

COUNT IV
VIOLATION OF 42 U.S.C. §1983
(Retaliation for First Amendment Expression)

135. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

136. Plaintiff maintains this cause of action pursuant to 42 U.S.C. §1983 and seeks

monetary damages and attorneys' fees (pursuant to 42 U.S.C. §1988) for Defendants actions' against Plaintiff for Plaintiff's protected First Amendment Conduct.

137. Specifically, on or about October 5, 2017, Plaintiff, through his counsel met with Deputy City Attorney Boksner to discuss Plaintiffs' concerns regarding the ongoing changes to the hours in which a package store could sell alcohol.

138. At that time, Plaintiff explained that Defendant's ongoing changes to the hours were severely impacting Plaintiff's business income and that as a result Plaintiff would oppose any further reductions to the hours of operation.

139. Plaintiff's speech to Defendants is constitutionally protected.

140. In response to Plaintiff's speech, on the very next day - October 6, 2017, Code enforcement and two City police officers ordered the immediate closing of Plaintiff's store (865 Collins Avenue) or suffer imprisonment.

141. Deputy City Attorney Boksner essentially suggested that the City's actions were intentional targeted toward Plaintiff.

142. Defendants' closing of Plaintiff's business constitutes irreparable harm.

143. Therefore, Plaintiff is entitled to declaratory and injunctive relief and damages.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the City's actions relative to the closing of Plaintiff's store at 865 Collins Avenue to be improper, unconstitutional, and intentionally designed to ambush Plaintiff;

2. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring that Plaintiff is and was at all times in compliance with appropriate law as it had initiated the appeals with the Special Master, complying with the Agreed Order issued by the Special Master, and was prevented from paying the fines and fees necessary to continuously operate and to otherwise avoid the City's now bad faith argument that it can no longer obtain a BTR;

3. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring

Ordinance Nos. 2016-4047, 2016-4058 and 2017-4101 unconstitutional as applied to Plaintiff because they violate numerous provision of the federal Constitution as set forth herein;

4. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the proposed September Ordinance unconstitutional as applied to Plaintiff because it violates numerous provision of the federal Constitution as set forth herein;

5. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring for purposes of all relevant periods that Plaintiff's store at 865 Collins Avenue had been operating legally and uninterrupted through its wrongful closer on October 6, 2017

6. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants;

7. For damages in its favor and against Defendants, CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, PHILIP LEVINE, an individual, JIMMY MORALES, an individual, MICKEY STEINBERG, an individual, RICKY ARRIOLA, an individual, MICHAEL GREICO, an individual, JOY MALAKOFF, an individual, KRISTEN ROSEN GONZALEZ, an individual, JOHN ELIZABETH ALEMAN, an individual, RAUL J. AGUILA, an individual, and ALEKSANDR BOKSNER, and individual, jointly and severally;

8. An award of attorney's fees and costs; and

9. Ordering such further relief deemed just and proper.

COUNT V
DECLARATORY JUDGMENT/INJUNCTIVE RELIEF
(Section 102-377(e) of the Code)

144. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

145. Section 102-377(e) of the City Code suggests the city may prevent a business from operating until the required BTR is obtained.

146. Said subsection is directly inconsistent with Section 102-377(b)(2) which states that a person who violates the BTR requirements may be subject to “suit for injunctive relief to enjoin operation of the business.”

147. Said inconsistency renders the Section 102-377 of the City Code vague.

148. Further, the City Code’s authorization to prevent a business from operating until the required BTR is obtained without requiring due process, violates the United States Constitution.

149. Defendants’ closing of Plaintiff’s business constitutes irreparable harm.

150. Therefore, Plaintiff is entitled to declaratory and injunctive relief.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring Section 102-377 of the City Code unconstitutional as it violates the U.S. Constitution as set forth herein;

2. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants; and

3. Ordering such further relief deemed just and proper.

COUNT VI
DECLARATORY JUDGMENT/INJUNCTIVE RELIEF
(The Ordinances)

151. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if

fully set forth herein.

152. Ordinance Nos. 2016-4047, 2016-4058, 2017-4101, 2017-4131 and the proposed September Ordinance violate Fla. Stat. 562.45 by overly restricting the lawful sale of alcohol.

153. Therefore, Plaintiff is entitled to declaratory and injunctive relief.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring Ordinance Nos. 2016-4047, 2016-4058 and 2017-4101 unconstitutional as applied to Plaintiff because they violate numerous provision of the federal Constitution as set forth herein;

2. Declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202 declaring the proposed September Ordinance unconstitutional as applied to Plaintiff because it violates numerous provision of the federal Constitution as set forth herein;

3. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants; and

4. Ordering such further relief deemed just and proper.

COUNT VII
BREACH OF FLA. STAT. 562.45
(The Ordinances)

149. Plaintiff realleges and reincorporates by reference paragraphs 1 through 108 as if fully set forth herein.

150. The State of Florida issued Plaintiff a license to sell alcohol.

151. At all times relevant, Plaintiff has held a valid license to sell alcohol.

152. Defendants' actions in passing Ordinance Nos. 2016-4047, 2016-4058, 2017-4101, 2017-4131 and proposing the September Ordinance breach Fla. Stat. 562.45 by overly restricting the lawful sale of alcohol and essentially restricting the rights afforded to Plaintiff by Fla. Stat. 562.45.

153. Defendants' actions exceed the authority delegated to Defendants' by Fla. Stat. 562.45 and is therefore, unconstitutional and void *ab initio*.

154. Defendants' closing of Plaintiff's business constitutes irreparable harm.

155. Defendants' actions have caused and continue to cause Plaintiff damages.

WHEREFORE Plaintiff, BEACH BLITZ CO., a Florida corporation d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET, respectfully requests the following:

1. Entry of damages in its favor and against Defendants, CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, PHILIP LEVINE, an individual, JIMMY MORALES, an individual, MICKEY STEINBERG, an individual, RICKY ARRIOLA, an individual, MICHAEL GREICO, an individual, JOY MALAKOFF, an individual, KRISTEN ROSEN GONZALEZ, an individual, JOHN ELIZABETH ALEMAN, an individual, RAUL J. AGUILA, an individual, and ALEKSANDR BOKSNER, and individual, jointly and severally;

2. Immediate issuance of a mandatory temporary restraining order, preliminary and permanent mandatory injunction pursuant to Fed.R.Civ. P. 65, ordering the City, its officers, agents and employees to issue Plaintiff a BTR license and allow Plaintiff to re-open its business at 865 Collins Avenue without interference from Defendants; and

3. Ordering such further relief deemed just and proper.

Dated: October 30, 2017

SAUL EWING ARNSTEIN & LEHR LLP

Counsel for Plaintiff

200 S. Biscayne Blvd., Suite 3600
Miami, Florida 33131

Telephone: 305-374-3330

Facsimile: 305-374-4744

E-Mail: phil.hudson@saul.com

E-Mail: hilda.piloto@saul.com

E-Mail: ana.sharp@saul.com

E-Mail: mia-ctdocs@saul.com

By: /s/ Phillip M. Hudson III

Phillip M. Hudson III
Florida Bar No. 518743
Hilda Piloto
Florida Bar No. 0154120

EXHIBIT A



EDITORIALS

On Miami Beach ballot: No to 2 a.m. stop to liquor sales; Yes to North Beach development plan

MIAMI HERALD EDITORIAL BOARD

OCTOBER 25, 2017 10:36 PM

Two items on the Miami Beach ballot seek to improve residents' quality of life at each end of the city. The first one is a misguided effort to stem rowdiness and crime in South Beach. The second could represent a hard-won victory for the residents of North Beach.

Alcohol sales

A long-standing controversial issue — how late should some bars along Ocean Drive be allowed to serve liquor — is being kicked to the voters.

They are being asked to decide the future of Ocean Drive's late-night party atmosphere by considering whether the city should require certain bars to stop selling alcohol at 2 a.m. instead of the current 5 a.m.

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If the measure is approved, all establishments on Ocean Drive between 5th and 15th streets, except indoor portions of bars that are completely enclosed and located entirely within hotels, are affected. Truth be told, however, the referendum is largely aimed at ending the partying at three bars/nightclub/hotels on the storied street: Mangos, the Clevelander, and Wet Willie's.

At the core is the chagrin of nearby residents who have to endure the hooting, hollering, and crime of rowdy tourists and partygoers. Miami Beach Mayor Philip Levine is on their side. He has gotten an earful of complaints and has had a contentious public exchanges with owners of the establishments.

The Editorial Board agrees with the mayor that the prickly issue should have been handled by the City Commission, but Levine says he's been unable to get a consensus there, largely because of the hefty campaign contributions the bar owners make to commissioners. Scaled-back alcohol hours in the name of public safety "is just the right thing to do," Levine told the Editorial Board.

The business owners who would be affected say the move is heavy-handed and will hurt business and employees.

"This is not punitive. ... The three locations we are focusing on are the malignant tumors, and we want to eradicate the cancer," the mayor said. Strong words.

We agree that something must be done for residents held hostage by partyers. However, this legally shaky, narrowly targeted question isn't the right course. In addition, though drinking, rowdiness and public safety are concerns, the initiative fails to address that carousers can amble over to Collins Avenue — or go to an indoor bar — to keep their party going.

On the question of a 2 a.m. end to alcohol sales on Ocean Drive, the Herald recommends **NO**.

North Beach

After years of contention over the best way to turn South Beach's neglected stepsister of North Beach into a more-vibrant economic force, this referendum has preservationists, developers and, for the most part, residents on the same page. We commend these once-warring factions for coming up with a responsible, more-comprehensive redevelopment plan to create a "town center" where now there are underused, dated buildings, vacant land, and a few commercial enterprises, including a few restaurants and banks. The words "sleepy" and "tired" get used a lot.

The referendum asks if a 10-block district on either side of the main corridor of 71st Street should be "upzoned;" that is, increase floor-area ratio — FAR — which would allow for larger mixed-use buildings to draw more foot traffic, residents, and visitors.

The beauty of this proposal is that it is predicated on creating local historic districts that will protect the area's wealth of Miami Modern apartment buildings. This is key to maintaining the unique character of the low-rise residential areas, and helped bring preservationists on board. "It's really a lesson in working together, preservationist and former commissioner Nancy Liebman told the Editorial Board. "If we just continue to argue about preservation and height and development, we will go nowhere." Voters should get on board, too.

On the question to increase the FAR to create a Town Center in North Beach, the Herald recommends **YES**.

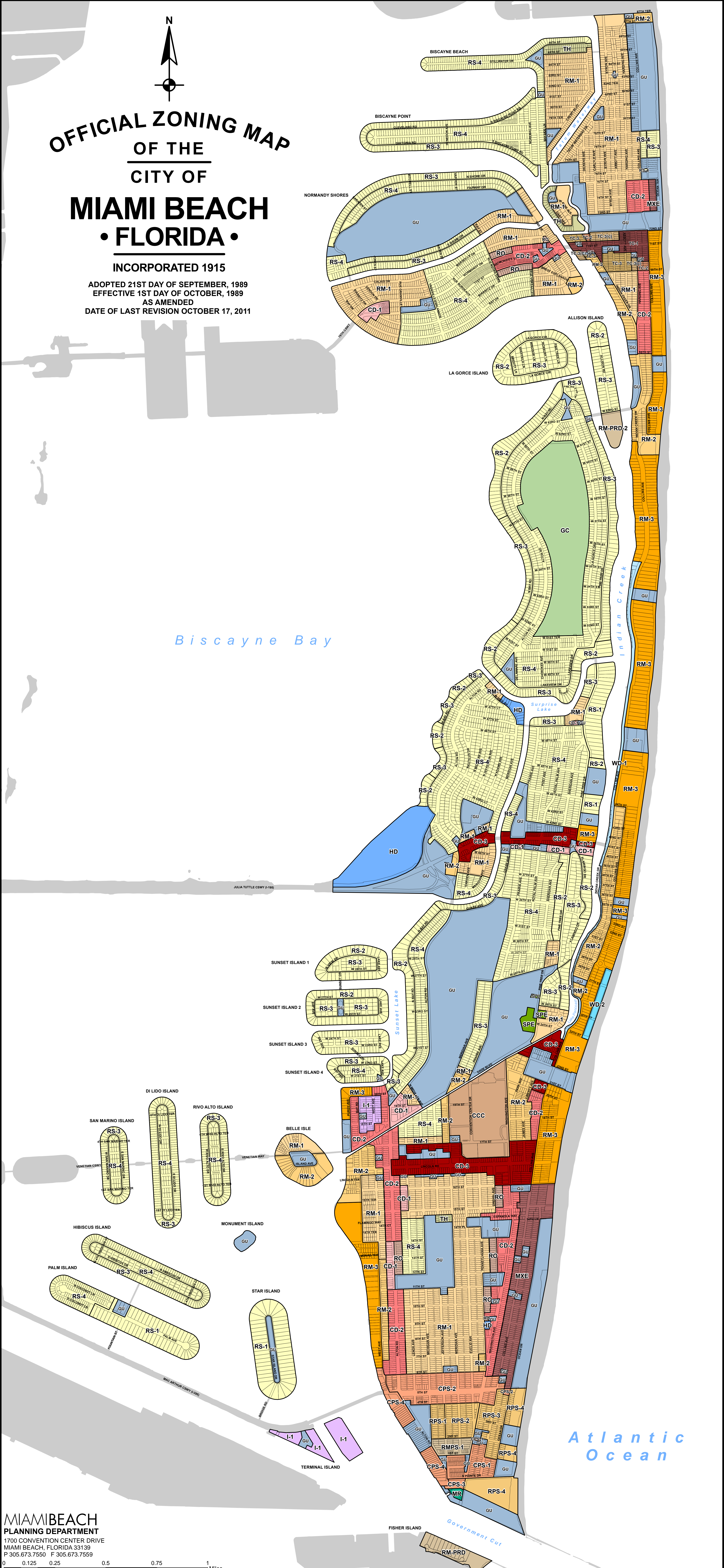
Never miss a local story.

EXHIBIT B

OFFICIAL ZONING MAP
OF THE
CITY OF
MIAMI BEACH
• FLORIDA •

INCORPORATED 1915

ADOPTED 21ST DAY OF SEPTEMBER, 1989
EFFECTIVE 1ST DAY OF OCTOBER, 1989
AS AMENDED
DATE OF LAST REVISION OCTOBER 17, 2011



MIAMI BEACH
PLANNING DEPARTMENT
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
P 305.673.7550 F 305.673.7559

0 0.125 0.25 0.5 0.75 1 Miles

THE PLANNING DEPARTMENT HAS STRIVED TO PROVIDE AS ACCURATE A MAP AS POSSIBLE; HOWEVER, THIS MAP IS NOT TO BE CONSTRUED AS A SURVEY INSTRUMENT. THE CITY OF MIAMI BEACH MAKES NO REPRESENTATIONS OR WARRANTIES, NOR ASSUMES ANY LIABILITY, ARISING FROM THE USE OF THIS MAP FOR AN OFFICIAL ZONING DETERMINATION. PLEASE CONTACT THE PLANNING DEPARTMENT.

ZONING DISTRICTS		
RS-1 Single family residential	CD-3 Commercial, high intensity	WD-2 Waterway district
RS-2 Single family residential	I-1 Urban light industrial	RO Residential office
RS-3 Single family residential	MXE Mixed use entertainment	GC Golf course
RS-4 Single family residential	HD Hospital district	RPS-1 Residential performance standard, medium-low density
TH Townhome residential	MR Marine recreational	RPS-2 Residential performance standard, medium density
RM-1 Residential multifamily, low intensity	GU Civic and government use	RPS-3 Residential performance standard, medium-high density
RM-2 Residential multifamily, medium intensity	CCC Convention center district	RPS-4 Residential performance standard, high density
RM-3 Residential multifamily, high intensity	RM-PRD Multifamily, planned residential development district	CPS-1 Commercial performance standard, limited mixed use
CD-1 Commercial, low intensity	WD-1 Waterway district	CPS-2 Commercial performance standard, general mixed use
CD-2 Commercial, medium intensity		CPS-3 Commercial performance standard, intensive mixed use
		CPS-4 Commercial performance standard, intensive phased bayside
		RMPS-1 Residential mixed use performance standard
		SPE Special public facilities educational district
		TC-1 North Beach Town Center core
		TC-2 North Beach Town Center mixed use
		TC-3 North Beach Town Center residential/office
		TC-3(c) North Beach Town Center residential/office with conditional neighborhood commercial

FOR AN OFFICIAL ZONING DETERMINATION
PLEASE CONTACT THE PLANNING DEPARTMENT.

EXHIBIT C

MXE PACKAGE STORE PROHIBITION

ORDINANCE NO. 2016-4047

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, "DEFINITIONS," TO DEFINE PACKAGE STORES; AND AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-544 THEREOF, ENTITLED "PROHIBITED USES," TO PROHIBIT PACKAGE STORES, PACKAGE SALES OF ALCOHOLIC BEVERAGES, AND ENTERTAINMENT USES IN PACKAGE STORES IN THE MXE DISTRICT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (the "City") regulates the location, size, hours of operation, and minimum patron age for alcoholic beverage establishments; and

WHEREAS, Chapter 6 of the City Code establishes minimum regulations for the sale and consumption of alcoholic beverages throughout the City, and district-specific alcoholic beverage regulations are set forth in Chapter 142; and

WHEREAS, the Mixed Use Entertainment ("MXE") district, which is the City's entertainment district, is characterized by a variety of uses, ranging in intensity from apartment buildings and retail stores to restaurants and entertainment establishments, which attract a large volume of pedestrians and vehicular traffic; and

WHEREAS, package sales of alcoholic beverages in the MXE district encourage individuals to consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks; and

WHEREAS, the consumption of open containers of alcoholic beverages in public places disturbs the quiet enjoyment of the community, causes undesirable noise, and contributes to litter, noxious odors, and the general degradation of the City; and

WHEREAS, additionally, the consumption of open containers of alcoholic beverages in public places is a violation of Section 70-87 of the City Code; and

WHEREAS, it is therefore 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 stores and package sales of alcoholic beverages in the MXE district; 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, 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. Section 114-1 of Chapter 114 of the City Code is hereby amended as follows:

**CHAPTER 114
GENERAL PROVISIONS**

Sec. 114-1. – Definitions

The following words, terms and phrases when used in this subpart B, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

Overlay district means ~~constitutes~~ a set of regulations which are superimposed upon and supplement, but do not replace, the underlying zoning district and regulations otherwise applicable to the designated areas.

Package store means any store primarily engaged in the business of selling alcoholic beverages for off-premises consumption and that has a license for package sales from the State Division of Beverages and Tobacco in the classification of 1-APS, 2-APS, or PS.

* * *

SECTION 2. Section 142-554 of Chapter 142 of the City Code is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 13. – MXE MIXED USE ENTERTAINMENT DISTRICT

* * *

Sec. 142-544. – Prohibited uses.

The prohibited uses in the MXE mixed use entertainment district are accessory outdoor bar counters, except as provided in this chapter; package stores; and package sales of alcoholic beverages by any retail store or alcoholic beverage establishment. Additionally, entertainment uses shall be prohibited in package stores.

SECTION 3. 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 4. REPEALER.

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

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.

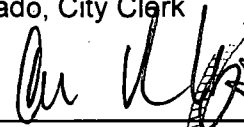
PASSED and ADOPTED this 19 day of October, 2016.

ATTEST:

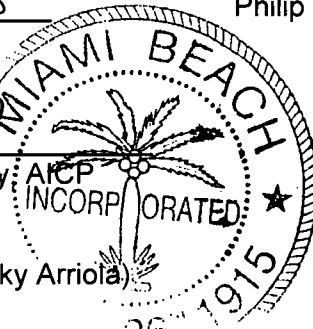

Rafael E. Granado, City Clerk


Philip Levine, Mayor

Verified By:


Thomas R. Mooney
Planning Director

(Sponsored by Commissioner Ricky Arriola)



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney

10/5/16
Date

Underline denotes new language

~~Strikethrough~~ denotes removed language

Double underline denotes language added after First Reading

~~Double strikethrough~~ denotes language removed after First Reading

Ordinances - R5 O

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Jimmy L. Morales, City Manager
DATE: October 19, 2016

11:10 a.m. Second Reading Public Hearing

SUBJECT: MXE PACKAGE STORE PROHIBITION:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 114 OF THE CITY CODE, ENTITLED "GENERAL PROVISIONS," SECTION 114-1, "DEFINITIONS," TO DEFINE PACKAGE STORES; AND AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE - MIXED USE ENTERTAINMENT DISTRICT," BY AMENDING SECTION 142-544 THEREOF, ENTITLED "PROHIBITED USES," TO PROHIBIT PACKAGE STORES, PACKAGE SALES OF ALCOHOLIC BEVERAGES, AND ENTERTAINMENT USES IN PACKAGE STORES IN THE MXE DISTRICT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

The Administration recommends that the City Commission adopt the Ordinance.

ANALYSIS

BACKGROUND

On July 13, 2016, the Mayor and City Commission approved a dual referral pertaining to an LDR Amendment prohibiting package liquor stores in the MXE district to the Planning Board and the Land Use & Development Committee (LUDC). The referral was sponsored by Commissioner Ricky Arriola (item C4I).

On July 20, 2016, the LUDC discussed the item and continued it to September 21, 2016 meeting. On September 21, 2016, the Land Use Committee recommended that the proposed ordinance be adopted at Second Reading.

ANALYSIS

Package stores are retail uses that primarily sell alcoholic beverages and package sales are alcoholic beverages for take-out and off premises consumption. In general, the City Code allows for package stores and package sales in any area that allows retail sales. The hours and locations (distance separation) are regulated in Chapter 6 of the City Code.

The Mixed Use Entertainment ("MXE") district is characterized by a variety of uses, including hotel, bars, restaurants, entertainment establishments, apartment buildings, and retail stores which attract a large volume of pedestrians and vehicular traffic. The consumption of alcohol and the high volume of people together are sometimes problematic and were identified as issues by the Mayor's Blue Ribbon Panel on Ocean Drive and the City Commission.

Package sales of alcoholic beverages may encourage patrons to walk around with alcoholic beverages and consume alcoholic beverages in the City's parks, and on the City's streets and sidewalks. The consumption of open containers of alcoholic beverages in public places may cause undesirable noise, as well as contribute to litter and noxious odors. Also, the consumption of open containers of alcoholic beverages in public places is a violation of Section 70-87 of the City Code.

The attached ordinance creates a definition for package store in Section 114.1, the definition section of the Land Use Development Regulations (LDR's). Additionally, both package stores and package sales of alcoholic beverages are listed as a prohibited use in Section 142-544, under the MXE district regulations. Additionally, because entertainment is allowed in retail stores city wide, the following ordinance clarifies that, in the MXE district, package stores are prohibited from having entertainment.

PLANNING BOARD REVIEW

On August 23, 2016, the Planning Board (by a 6-0 vote) transmitted the proposed ordinance amendment to the City Commission with a favorable recommendation.

UPDATE/SUMMARY

As indicated previously, the Administration believes that the proposed ordinance amendment is a step in the right direction in terms of addressing tangible quality of life issues for residents and visitors alike. The subject Ordinance was approved at First Reading on September 14, 2016 and subsequently endorsed by the Land Use and Development Committee on September 21, 2016.

At the request of the item sponsor, the ordinance has been updated to include a prohibition on the package sales of alcoholic beverages by any retail store, in addition to the previous prohibition of package sales in alcoholic beverage establishment. This will prohibit the package sale of alcoholic beverages (beer, wine, liquor) in retail establishments in the MXE district.

CONCLUSION

The Administration recommends that the City Commission adopt the Ordinance.

FINANCIAL INFORMATION

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action. The proposed Ordinance is not expected to have a negative fiscal impact upon the City.

Legislative Tracking

Planning

Sponsor

Commissioner Ricky Arriola and Co-sponsored by Commissioner Joy Malakoff

ATTACHMENTS:

Description

- ▯ Ordinance

EXHIBIT D

CHAPTER 6 – ALCOHOLIC BEVERAGES

ORDINANCE NO. 2016-4058

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, FLORIDA, 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 BEFORE 10:00 A.M. EACH DAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, in Chapter 6 of the City Code, entitled “Alcoholic Beverages,” 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; and

WHEREAS, the City’s Committee on the Homeless (“Committee”) has recommended that package liquor sales be restricted by two additional hours each morning; and

WHEREAS, pursuant to the Committee’s recommendation, package liquor sales should begin at 10:00 a.m. instead of 8:00 a.m. as currently authorized by the City Code; and

WHEREAS, 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 10:00 a.m. each day, because the availability of alcoholic beverages for sale and consumption early in the morning discourages the acceptance of services to end homelessness; 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, ~~except as may be otherwise provided pursuant to subsection (6):~~
- (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.~~ 10:00 a.m. and midnight.
 - (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.~~ 10:00 a.m. and midnight.
 - (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. 10:00 a.m. and midnight.
- (5) *Private clubs.* Consideration of a request for a private club conditional use permit, including the hours of operation, shall be pursuant to the conditional use Procedures and Review Guidelines as listed in section 118-191, et seq. A private club, either as a permitted main or accessory use, shall only offer alcoholic beverages for sale or on-premises consumption if the private club, in accordance with section 6-2(a), secures a license for the distribution or sale of any alcoholic beverages from the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state. Private clubs licensed as alcoholic beverage establishments, either as permitted main or accessory uses, shall, only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 5:00 a.m., on any day of the week, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club permitted to remain open after 2:00 a.m. shall purchase an extra-hours license and must provide for security in its premises by hiring private security guards or off-duty police officers between the hours of 2:00 a.m. and 5:00 a.m. each day.

Private clubs securing a license from the state division of alcoholic beverages and tobacco by complying with the requirements of F.S. § 561.20 for racquetball, tennis, or golf course facilities may admit members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless such private club is the holder of an extra-hours license and complies with the above requirements.

- (6) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe (i) until 7:00 a.m. on January 1 (New Year's Day) or, if January 1 is on a Sunday, until 7:00 a.m. on Monday if the day that is observed as a national holiday for New Year's Day is on Monday, and (ii) until 7:00 a.m. during certain major event days or weekends as may be designated by the city commission or as may be designated by the city manager following approval by the city commission, under the following conditions:
- (a) The police department and the code compliance department of the city must be notified by a letter, received no later than 15 business days prior to either: (a) January 1, or (b) the day on which alcohol sales are to be extended, stating that the alcoholic beverage establishment intends to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe until 7:00 a.m.;
 - (b) If deemed reasonably necessary by the police chief, or the police chief's designee, off-duty police officers must be provided at the alcoholic beverage establishment until 7:00 a.m.;
 - (c) There are no pending City Code violations against the alcoholic beverage establishment;
 - (d) No delinquent or past due monies are owed to the city;
 - (e) Outdoor entertainment or open-air entertainment is not allowed;

- (f) No violation of the city's noise ordinance shall be permitted;
 - (g) No violation of the approved fire code occupancy load shall be permitted;
 - (h) All required city permits and licenses are current;
 - (i) The State License is current; and
 - (j) Any other conditions required by the city manager in order to protect the public health, safety, or welfare.
- (7) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages until 6:00 a.m. on the first day of daylight savings time in the spring.
- (8) The city manager may suspend the provisions of subsection (6) at any time to protect the public health, safety, or welfare.
- (9) *Penalties and enforcement.*
- (a) The following penalties shall be imposed for a violation of this section:
 - i. The penalty for the first violation by a person or entity within a 12-month period shall be a civil fine of \$1,000.00;
 - ii. The penalty for the second violation by a person or entity within a 12-month period shall be a civil fine of \$5,000.00;
 - iii. The penalty for the third violation by a person or entity within a 12-month period shall be a civil fine of \$10,000.00;
 - iv. Upon a finding by the special master that four (4) or more violations by a person or entity have occurred within a 12-month period, the city may initiate proceedings to revoke the certificate of use, business tax receipt, or certificate of occupancy of the violator.
 - v. A sidewalk cafe permittee that has been issued four (4) or more violations pursuant to this section or section 82-388 within a permit year shall be prohibited from applying for and obtaining a sidewalk cafe permit for a period of two (2) permit years following the permit year in which the sidewalk cafe permittee incurred the violations.
 - (b) Enhanced penalty. The following enhanced penalty shall be imposed, in addition to any mandatory fines set forth in subsection ~~(8)(a)~~ (9)(a) above, for violations of this section:
 - i. The sale of alcoholic beverages in violation of this section must be immediately terminated, upon confirmation by the code compliance department that a violation has occurred.
 - (c) Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this section, the code compliance officer shall issue a notice of violation in the manner prescribed in chapter 30 of this Code. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation

may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

- (d) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
 - i. A violator who has been served with a notice of violation must elect to either:
 - A. Pay the civil fine in the manner indicated on the notice of violation; or
 - B. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.
 - ii. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
 - iii. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the officer. The failure of the named violator to appeal the decision of the officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation. for which fines and penalties shall be assessed accordingly.
 - iv. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.
 - v. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
 - vi. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.
 - vii. The special master shall not have discretion to alter the penalties prescribed in subsection ~~(8)(a) or (8)(b)~~ (9)(a) or (9)(b).

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.

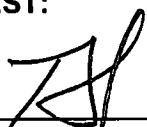
If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this 9 day of November, 2016.

ATTEST:

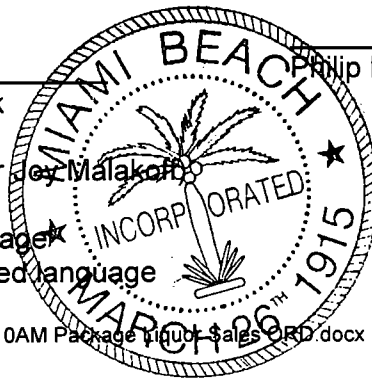
 11/28/16
Rafael E. Granado, City Clerk

(Sponsored by Commissioner ~~Joe~~ Malakoff)

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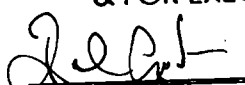
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Philip Levine, Mayor

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

 10/11/16
City Attorney Date

NK

Ordinances - R5 I

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Jimmy L. Morales, City Manager
DATE: November 9, 2016

10:40 a.m. Second Reading Public Hearing

SUBJECT: CHAPTER 6 - ALCOHOLIC BEVERAGES:

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, FLORIDA, 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 BEFORE 10:00 A.M. EACH DAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

Approve the ordinance.

ANALYSIS

At its April 20, 2016 meeting, the Committee on the Homeless passed a resolution urging the Mayor and Commission to push back package liquor sales by two hours, from the current 8:00 a.m. to 10:00 a.m. This recommendation was specifically limited to package sales and not restaurant/bar sales. The Committee reasoned that alcohol abuse was an influencing factor in homelessness in our community and served as an impediment to engaging the homeless to accept services.

On June 8, 2016, the City Commission, at the request of Commissioner Joy Malakoff, referred the proposed ordinance to the Land Use and Development Committee at the recommendation of the Committee on the Homeless. On June 15, 2016, the Land Use Committee initially discussed the item and directed the Administration to prepare an ordinance that would be applicable to all retail stores. Pursuant to direction from the Committee, the attached ordinance was drafted. The specific revisions to Chapter 6 include the following:

- For retail package sales only (off-premises consumption), sales would only be permitted between the hours of 10:00 a.m. and midnight.
- For retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages, the sale of beer and wine (off-premises consumption) would only be permitted between the hours of 10:00 a.m. and midnight.

The Land Use Committee approved the revised ordinance at its September 21, 2016 meeting and subsequently referred it to Commission for consideration. The Commission held the first reading for the ordinance on October 19, 2016.

In unanimously passing the ordinance at first reading, the Commission requested that the Administration return in six months with a report on the ordinance's impact. In addition, the Commission requested that a letter be sent to the Chief Executive Officers of the major retail chains in the City that permit single-serve alcohol sales asking that they follow the lead of Walgreens and voluntarily agree to prohibit these sales.

CONCLUSION

The Administration recommends that the City Commission approve the ordinance as proposed as a means of discouraging alcohol use among the homeless during morning early hours in hopes that they can be successfully engaged to accept services and end their personal homelessness.

KEY INTENDED OUTCOMES SUPPORTED

Enhance Beauty And Vibrancy Of Urban And Residential Neighborhoods; Focusing On Cleanliness, Historic Assets, In Select Neighborhoods And Redevelopment Areas

Legislative Tracking

Housing and Community Services

Sponsor

Vice-Mayor Joy Malakoff

ATTACHMENTS:

Description

- ▯ Ordinance

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

OFFICE OF THE CITY MANAGER
Tel: 305.673.7010, Fax: 305.673.7782

November 4, 2016

Publix Super Markets
Attn: Corporate Sales/Marketing Dept.
PO Box 407
Lakeland, FL 33802-0407

Dear Corporate Sales/Marketing Dept.:

As you may be aware, at the October 19, 2016 City Commission meeting the Mayor and City Commission adopted an Ordinance on first reading 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 before 10:00 A.M. each day. The second reading/public hearing of this Ordinance is scheduled for November 9, 2016.

While the City is pre-empted by the State in banning single beer container sales, certain retail establishments in the City have already volunteered to no longer sell these items. As such, the Mayor and City Commission respectfully request your cooperation in joining other retail establishments by voluntarily halting the sale of individual beer cans/bottles at your establishments within the borders of the City of Miami Beach.

Sincerely,



Jimmy L. Morales
City Manager

Attachment:
Proposed Ordinance

JLM/SMT/HDC/SKS/RFM

Granado, Rafael

From: MacBride, Randi
Sent: Tuesday, November 08, 2016 2:26 PM
To: Granado, Rafael
Cc: Hatfield, Liliam; Cardillo, Lilia; Cardeno, Hernan; Torriente, Susanne; De Pinedo, Naima
Subject: RE: • Send a letter to Publix and all other major retailers asking them to stop selling individual beer cans in Miami Beach. Susanne M. Torriente to handle.
Attachments: Letter Request Stop Selling Indiv Beer Containers.pdf

Good afternoon Ralph,

As requested, please see the attached example of the letter. The letters were sent to corporate and to the Store Managers of each location on Miami Beach. They went to Publix, CVS, Walgreens, Total Wine, The Fresh Market, and Whole Foods.

If you need something further please let me know.

Thanks,
Randi

MIAMIBEACH

Randi F. MacBride, Office Associate V
CODE COMPLIANCE DEPARTMENT
555 17th Street, Miami Beach, FL 33139
Tel: 305-673-7000 Ext. 6169 / Fax: 786-394-4632 / www.miamibeachfl.gov
randimacbride@miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

From: De Pinedo, Naima
Sent: Tuesday, November 08, 2016 2:19 PM
To: MacBride, Randi
Cc: Hatfield, Liliam; Cardillo, Lilia; Cardeno, Hernan; Torriente, Susanne; Granado, Rafael
Subject: RE: • Send a letter to Publix and all other major retailers asking them to stop selling individual beer cans in Miami Beach. Susanne M. Torriente to handle.

Randi,

Please provide to Ralph.

Thanks.

MIAMIBEACH

Naima De Pinedo, Office Manager
OFFICE OF THE CITY MANAGER
1700 Convention Center Drive, Miami Beach, FL 33139
Tel: 305-673-7010 / Fax: 305-673-7782 / www.miamibeachfl.gov

We are committed to providing excellent public service to all who live, work and play in our vibrant, tropical, historic community.

From: Torriente, Susanne
Sent: Tuesday, November 08, 2016 2:10 PM

To: Granado, Rafael

Cc: De Pinedo, Naima; Hatfield, Liliam; Cardillo, Lilia; Cardeno, Hernan

Subject: RE: • Send a letter to Publix and all other major retailers asking them to stop selling individual beer cans in Miami Beach. Susanne M. Torriente to handle.

HI – will do.

Naima or Hernan – can you forward to the Clerk's Office?

Thanks

MIAMIBEACH

Susanne M. Torriente

Assistant City Manager/Chief Resiliency Officer

Office of the City Manager

1700 Convention Center Drive

Miami Beach, FL 33139

305-673-7000 x6486

susytorriente@miamibeachfl.gov

From: Granado, Rafael

Sent: Tuesday, November 8, 2016 1:46 PM

To: Torriente, Susanne <SusanneTorriente@miamibeachfl.gov>

Cc: Granado, Rafael <RafaelGranado@miamibeachfl.gov>; De Pinedo, Naima <NaimadePinedo@miamibeachfl.gov>;

Hatfield, Liliam <LiliamHatfield@miamibeachfl.gov>; Cardillo, Lilia <LiliaCardillo@miamibeachfl.gov>

Subject: • Send a letter to Publix and all other major retailers asking them to stop selling individual beer cans in Miami Beach. Susanne M. Torriente to handle.

Good afternoon Susy,

See below after-action.

Please provide us with a copy of the letter that is sent regarding the sale of individual sale of cans of beer, so we may attach it to the after action.

Regards,

9:53:00 a.m.

R5 AB 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, FLORIDA, 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 BEFORE 10:00 A.M. EACH DAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

First Reading

Housing and Community Services

Commissioner Joy Malakoff
and Co-Sponsored by Vice-Mayor Grieco

ACTION: Title of the Ordinance read into the record. **Ordinance adopted on first reading.** Motion made by Commissioner Malakoff; seconded by Vice-Mayor Grieco. Ballot vote: 7-0. Second reading, Public Hearing scheduled for **November 9, 2016**. Rafael E. Granado to notice. Lilia Cardillo to place on the Commission Agenda, if received. **Maria Ruiz to handle.**

TO DO:

- Revisit the item six months after approved on second reading. **Maria Ruiz to handle.**
- Send a letter to Publix and all other major retailers asking them to stop selling individual beer cans in Miami Beach. **Susanne M. Torriente to handle.**

MIAMIBEACH

Rafael E. Granado, Esq., City Clerk

OFFICE OF THE CITY CLERK

1700 Convention Center Drive, Miami Beach, FL 33139

Tel: 305-673-7411 rafaelgranado@miamibeachfl.gov

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

EXHIBIT E

CHAPTER 6 – ALCOHOLIC BEVERAGES

ORDINANCE NO. 2017-4101

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 BEFORE 8:00 A.M. EACH DAY AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS AND, AS APPLICABLE TO THE MXE MIXED USE ENTERTAINMENT DISTRICT, TO AUTHORIZE PACKAGE LIQUOR SALES AT SUCH ESTABLISHMENTS BETWEEN THE HOURS OF 10:00 A.M. AND 10:00 P.M. ONLY; 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 desire to restrict package liquor sales in the MXE district from the hours of 10:00 a.m. until 10:00 p.m. only; 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 ~~10:00 a.m.~~ 8:00 a.m. and midnight.

A. Notwithstanding subsection (a)(1), vendors located in the MXE mixed use entertainment district may make sales of alcohol only for off-premises consumption between the hours of 10:00 a.m. and 10:00 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.~~ 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 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 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 ~~10:00 a.m.~~ 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 shall be permitted only between the hours of 10:00 a.m. and 10:00 p.m.

- (5) *Private clubs.* Consideration of a request for a private club conditional use permit, including the hours of operation, shall be pursuant to the conditional use Procedures and Review Guidelines as listed in section 118-191, et seq. A private club, either as a permitted main or accessory use, shall only offer alcoholic beverages for sale or on-premises consumption if the private club, in accordance with section 6-2(a), secures a license for the distribution or sale of any alcoholic beverages from the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state. Private clubs licensed as alcoholic beverage establishments, either as permitted main or accessory uses, shall, only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 5:00 a.m., on any day of the week, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club permitted to remain open after 2:00 a.m. shall purchase an extra-hours license and must provide for security in its premises by hiring private security guards or off-duty police officers between the hours of 2:00 a.m. and 5:00 a.m. each day.

Private clubs securing a license from the state division of alcoholic beverages and tobacco by complying with the requirements of F.S. § 561.20 for racquetball, tennis, or golf course facilities may admit members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless such private club is the holder of an extra-hours license and complies with the above requirements.

- (6) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe (i) until 7:00 a.m. on January 1 (New Year's Day) or, if January 1 is on a Sunday, until 7:00 a.m. on Monday if the day that is observed as a national holiday for New Year's Day is on Monday, and

- (ii) until 7:00 a.m. during certain major event days or weekends as may be designated by the city commission or as may be designated by the city manager following approval by the city commission, under the following conditions:
 - (a) The police department and the code compliance department of the city must be notified by a letter, received no later than 15 business days prior to either: (a) January 1, or (b) the day on which alcohol sales are to be extended, stating that the alcoholic beverage establishment intends to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe until 7:00 a.m.;
 - (b) If deemed reasonably necessary by the police chief, or the police chief's designee, off-duty police officers must be provided at the alcoholic beverage establishment until 7:00 a.m.;
 - (c) There are no pending City Code violations against the alcoholic beverage establishment;
 - (d) No delinquent or past due monies are owed to the city;
 - (e) Outdoor entertainment or open-air entertainment is not allowed;
 - (f) No violation of the city's noise ordinance shall be permitted;
 - (g) No violation of the approved fire code occupancy load shall be permitted;
 - (h) All required city permits and licenses are current;
 - (i) The State License is current; and
 - (j) Any other conditions required by the city manager in order to protect the public health, safety, or welfare.
- (7) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages until 6:00 a.m. on the first day of daylight savings time in the spring.
- (8) The city manager may suspend the provisions of subsection (6) at any time to protect the public health, safety, or welfare.
- (9) *Penalties and enforcement.*
 - (a) The following penalties shall be imposed for a violation of this section:
 - i. The penalty for the first violation by a person or entity within a 12-month period shall be a civil fine of \$1,000.00;
 - ii. The penalty for the second violation by a person or entity within a 12-month period shall be a civil fine of \$5,000.00;
 - iii. The penalty for the third violation by a person or entity within a 12-month period shall be a civil fine of \$10,000.00;
 - iv. Upon a finding by the special master that four (4) or more violations by a person or entity have occurred within a 12-month period, the city may initiate proceedings to revoke the certificate of use, business tax receipt, or certificate of occupancy of the violator.

- v. A sidewalk cafe permittee that has been issued four (4) or more violations pursuant to this section or section 82-388 within a permit year shall be prohibited from applying for and obtaining a sidewalk cafe permit for a period of two (2) permit years following the permit year in which the sidewalk cafe permittee incurred the violations.
- (b) Enhanced penalty. The following enhanced penalty shall be imposed, in addition to any mandatory fines set forth in subsection (9)(a) above, for violations of this section:
 - i. The sale of alcoholic beverages in violation of this section must be immediately terminated, upon confirmation by the code compliance department that a violation has occurred.
- (c) Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this section, the code compliance officer shall issue a notice of violation in the manner prescribed in chapter 30 of this Code. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.
- (d) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
 - i. A violator who has been served with a notice of violation must elect to either:
 - A. Pay the civil fine in the manner indicated on the notice of violation; or
 - B. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.
 - ii. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
 - iii. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the officer. The failure of the named violator to appeal the decision of the officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation. for which fines and penalties shall be assessed accordingly.
 - iv. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as

a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.

- v. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- vi. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.
- vii. The special master shall not have discretion to alter the penalties prescribed in subsection (9)(a) or (9)(b).

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.

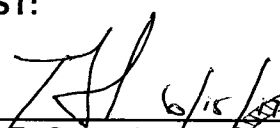
If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

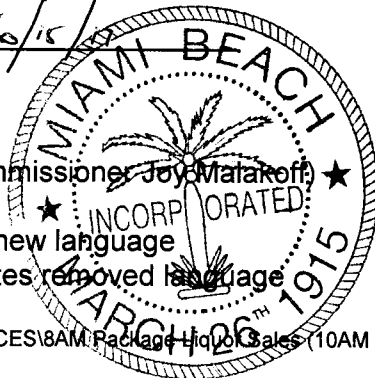
PASSED and ADOPTED this 7 day of June, 2017.

ATTEST:


Rafael E. Granado
City Clerk

(Sponsored by Commissioner Joy Malakoff)

Underline denotes new language
Strikethrough denotes removed language




Philip Levine
Mayor

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**


City Attorney

5/8/17
Date

F:\ATTOIKAL\ORDINANCES\8AM Package Liquor Sales (10AM MXE) ORD third first reading.docx

NK

Ordinances - R5 G

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Raul J. Aguila, City Attorney
DATE: June 7, 2017

10:15 a.m. Second Reading Public Hearing

SUBJECT: ALCOHOLIC BEVERAGES:

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 BEFORE 8:00 A.M. EACH DAY AT RETAIL STORES (INCLUDING PACKAGE, GROCERY, CONVENIENCE, AND ANY OTHER RETAIL STORES, AS WELL AS GASOLINE STATIONS/SERVICE STATIONS) AND ALCOHOLIC BEVERAGE ESTABLISHMENTS AND, AS APPLICABLE TO THE MXE MIXED USE ENTERTAINMENT DISTRICT, TO AUTHORIZE PACKAGE LIQUOR SALES AT SUCH ESTABLISHMENTS BETWEEN THE HOURS OF 10:00 A.M. AND 10:00 P.M. ONLY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

ANALYSIS

The attached Ordinance, sponsored by Commissioner Joy Malakoff and Commissioner Ricky Arriola, is hereby submitted for consideration by the Mayor and City Commission.

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.

On March 1, 2017, the City Commission reviewed a prior version of this Ordinance, which proposed to prohibit package liquor sales before 9:00 a.m. However, following a discussion on the item, the City Commission directed staff to revise the proposed Ordinance to prohibit package liquor sales before 8:00 a.m. This revision required a new first reading.

On April 26, 2017, the Mayor and City Commission reviewed the revised draft, and directed the City Attorney's Office to prepare a revised draft Ordinance that further restricted the hours of package liquor sales in the MXE district.

The attached Ordinance amends City Code Section 6-3 to prohibit package liquor sales Citywide

before 8:00 a.m. (instead of 10:00 a.m.) each day at retail stores (including package, grocery, convenience, and any other retail stores, as well as gasoline stations/service stations) and alcoholic beverage establishments. Notwithstanding the above, the attached Ordinance restricts package liquor sales in the MXE district between the hours of 10:00 a.m. and 10:00 p.m. only.

Legislative Tracking

Office of the City Attorney

Sponsor

Commissioners Joy Malakoff and Ricky Arriola

ATTACHMENTS:

Description

- Ordinance

EXHIBIT F

CHAPTER 6 – ALCOHOLIC BEVERAGES

ORDINANCE NO. 2017-4131

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 CHANGE THE HOURS OF 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 CD-2, COMMERCIAL DISTRICT ON WASHINGTON AVENUE AND PENNSYLVANIA AVENUE, BETWEEN 5TH AND 15TH STREET; 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, there is an elementary school, located in the CD-2 district with retail stores that would be able to sell alcohol at 8:00 a.m., which is the time the minor children are arriving to school; and

WHEREAS, one of the biggest issues over hour of sales arose in a retail store adjacent to the public elementary school; and

WHEREAS, the minor children should be protected from the effects of persons buying and imbibing alcohol at 8:00 a.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 ~~10:00 a.m.~~ 8:00 a.m. and midnight.
- A. Notwithstanding subsection (a)(1), vendors located in the MXE mixed use entertainment district and the CD-2, commercial medium intensity district, between Washington Avenue and Pennsylvania Avenue, from 5th Street to 16th Street, may make sales of alcohol only for off-premises consumption between the hours of ~~10:00~~ 9:00 a.m. and 10:00 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.~~ 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 CD-2, commercial mixed use 2 district, on Washington Avenue and Pennsylvania Avenue, between 5th Street and 15th Street, 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 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 ~~4:00 a.m.~~ 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 CD-2, commercial district 2, on Washington Avenue and Pennsylvania Avenue, between 5th Street and 15th Street, shall be permitted only between the hours of 10:00 a.m. and 10:00 p.m.
- (5) *Private clubs.* Consideration of a request for a private club conditional use permit, including the hours of operation, shall be pursuant to the conditional use Procedures and Review Guidelines as listed in section 118-191, et seq. A private club, either as a permitted main or accessory use, shall only offer alcoholic beverages for sale or on-premises consumption if the private club, in accordance with section 6-2(a), secures a license for the distribution or sale of any alcoholic beverages from the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state. Private clubs licensed as alcoholic beverage establishments, either as permitted main or accessory uses, shall, only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 5:00 a.m., on any day of the week, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club permitted to remain open after 2:00 a.m. shall purchase an extra-hours license and must provide for security in its premises by hiring private security guards or off-duty police officers between the hours of 2:00 a.m. and 5:00 a.m. each day.

Private clubs securing a license from the state division of alcoholic beverages and tobacco by complying with the requirements of F.S. § 561.20 for racquetball, tennis, or golf course facilities may admit members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless such private club is the holder of an extra-hours license and complies with the above requirements.

- (6) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe (i) until 7:00 a.m. on January 1 (New Year's Day) or, if January 1 is on a Sunday, until 7:00 a.m. on Monday if the day that is observed as a national holiday for New Year's Day is on Monday, and (ii) until 7:00 a.m. during certain major event days or weekends as may be designated by the city commission or as may be designated by the city manager following approval by the city commission, under the following conditions:
 - (a) The police department and the code compliance department of the city must be notified by a letter, received no later than 15 business days prior to either: (a) January 1, or (b) the day on which alcohol sales are to be extended, stating that the alcoholic beverage establishment intends to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe until 7:00 a.m.;
 - (b) If deemed reasonably necessary by the police chief, or the police chief's designee, off-duty police officers must be provided at the alcoholic beverage establishment until 7:00 a.m.;
 - (c) There are no pending City Code violations against the alcoholic beverage establishment;
 - (d) No delinquent or past due monies are owed to the city;
 - (e) Outdoor entertainment or open-air entertainment is not allowed;
 - (f) No violation of the city's noise ordinance shall be permitted;
 - (g) No violation of the approved fire code occupancy load shall be permitted;
 - (h) All required city permits and licenses are current;
 - (i) The State License is current; and
 - (j) Any other conditions required by the city manager in order to protect the public health, safety, or welfare.
- (7) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages until 6:00 a.m. on the first day of daylight savings time in the spring.
- (8) The city manager may suspend the provisions of subsection (6) at any time to protect the public health, safety, or welfare.
- (9) *Penalties and enforcement.*
 - (a) The following penalties shall be imposed for a violation of this section:

- i. The penalty for the first violation by a person or entity within a 12-month period shall be a civil fine of \$1,000.00;
 - ii. The penalty for the second violation by a person or entity within a 12-month period shall be a civil fine of \$5,000.00;
 - iii. The penalty for the third violation by a person or entity within a 12-month period shall be a civil fine of \$10,000.00;
 - iv. Upon a finding by the special master that four (4) or more violations by a person or entity have occurred within a 12-month period, the city may initiate proceedings to revoke the certificate of use, business tax receipt, or certificate of occupancy of the violator.
 - v. A sidewalk cafe permittee that has been issued four (4) or more violations pursuant to this section or section 82-388 within a permit year shall be prohibited from applying for and obtaining a sidewalk cafe permit for a period of two (2) permit years following the permit year in which the sidewalk cafe permittee incurred the violations.
- (b) Enhanced penalty. The following enhanced penalty shall be imposed, in addition to any mandatory fines set forth in subsection (9)(a) above, for violations of this section:
- i. The sale of alcoholic beverages in violation of this section must be immediately terminated, upon confirmation by the code compliance department that a violation has occurred.
- (c) Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If a code compliance officer (which, as defined in section 70-66, includes a police officer) finds a violation of this section, the code compliance officer shall issue a notice of violation in the manner prescribed in chapter 30 of this Code. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.
- (d) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
- i. A violator who has been served with a notice of violation must elect to either:
 - A. Pay the civil fine in the manner indicated on the notice of violation; or
 - B. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.
 - ii. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.

- iii. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the officer. The failure of the named violator to appeal the decision of the officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation. for which fines and penalties shall be assessed accordingly.
- iv. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.
- v. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- vi. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.
- vii. The special master shall not have discretion to alter the penalties prescribed in subsection (9)(a) or (9)(b).

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.

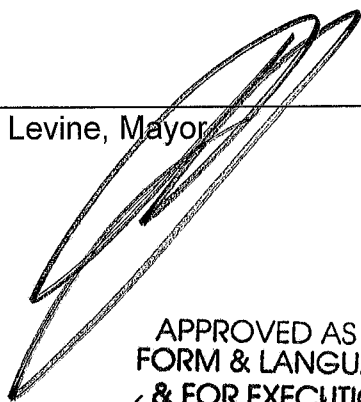
If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this 25 day of September, 2017.

ATTEST:

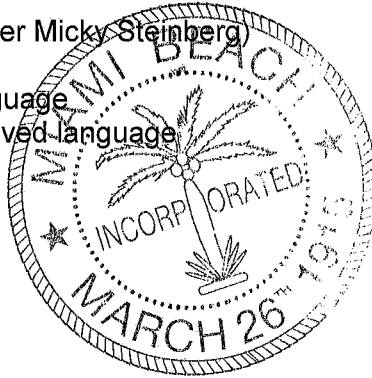

Philip Levine, Mayor


Rafael E. Granado, City Clerk

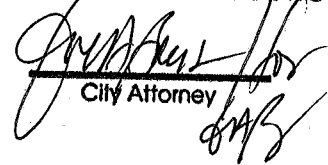
(Sponsored by Commissioner Micky Steinberg)

Underline denotes new language

~~Strikethrough~~ denotes removed language



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney

7/18/17
Date

Ordinances - R5 L

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Raul J. Aguila, City Attorney
DATE: September 13, 2017

10:55 a.m. Second Reading Public Hearing

SUBJECT: 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 CHANGE THE HOURS OF 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 CD-2, COMMERCIAL DISTRICT ON WASHINGTON AVENUE AND PENNSYLVANIA AVENUE, BETWEEN 5TH AND 15TH STREET; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

Please see the attached Memorandum and Ordinance.

ANALYSIS

Legislative Tracking

Office of the City Attorney

Sponsor

Commissioner Micky Steinberg

ATTACHMENTS:

Description

- ☐ Memo
- ☐ Ordinance

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,
www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and
Members of the City Commission
Jimmy L. Morales, City Manager

FROM: Raul Aguila, City Attorney

DATE: September 13, 2017

SUBJECT: **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 CHANGE THE HOURS OF 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 CD-2, COMMERCIAL DISTRICT ON WASHINGTON AVENUE AND PENNSYLVANIA AVENUE, BETWEEN 5TH AND 15TH STREET; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

ANALYSIS

The attached Ordinance, sponsored by Commissioner Micky Steinberg, is hereby submitted for consideration by the Mayor and City Commission.

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.

On March 1, 2017, the City Commission reviewed a prior version of this Ordinance, which proposed to prohibit package liquor sales before 9:00 a.m. However, following a discussion on this item, the City Commission directed staff to revise the proposed Ordinance to prohibit package liquor sales before 8:00 a.m.

Memorandum on Alcohol Sales 10 a.m. to 10 p.m. in CD-2
September 13, 2017
Page 2 of 2

On April 26, 2017, the Mayor and City Commission reviewed the revised Ordinance, and directed the City Attorney's Office to prepare a revised drafted Ordinance that further restricted the hours of package liquor sales in the MXE district, citywide between 10:00 a.m. and 10:00 p.m. This ordinance was enacted on June 28, 2017.

The attached ordinance would extend the prohibition of 10:00 a.m. to 10:00 p.m. to the CD-2, Commercial District 2, between Washington Avenue and Pennsylvania Avenue between 5th and 15th Streets. First Reading was held on July 26, 2017 and was moved without modification.

RECOMMENDATION

Enact the attached ordinance at Second Reading, Public Hearing.

EXHIBIT G



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139,
www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and
Members of the City Commission
Jimmy L. Morales, City Manager

FROM: Raul Aguila, City Attorney

DATE: October 18, 2107 Second Reading

SUBJECT: **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 MXE MIXED USE ENTERTAINMENT DISTRICT TO CHANGE THE HOUR AT WHICH TO CEASE SELLING ALCOHOL; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

ANALYSIS

The attached Ordinance, sponsored by Vice Mayor Ricky Arriola, is hereby submitted for consideration by the Mayor and City Commission.

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.

On March 1, 2017, the City Commission reviewed a prior version of this Ordinance, which proposed to prohibit package liquor sales before 9:00 a.m. However, following a discussion on this item, the City Commission directed staff to revise the proposed Ordinance to prohibit package liquor sales before 8:00 a.m.

Memorandum on Alcohol Sales 8 p.m. in MXE
October 18, 2017
Page 2 of 2

On April 26, 2017, the Mayor and City Commission reviewed the revised Ordinance, and directed the City Attorney's Office to prepare a revised drafted Ordinance that further restricted the hours of package liquor sales in the MXE district, citywide between 10:00 a.m. and 10:00 p.m. This ordinance was enacted on June 28, 2017.

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. 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.

As there remain issues in the MXE district, and as it appears the sale of alcohol from retail establishments in the MXE district, at night, often causes problems on Ocean Drive, Collins Avenue and Washington Avenue, the attached ordinance proposes to cease alcohol sales at 8:00 p.m.

On September 13, 2017, the City Commission approved this ordinance at first reading.

RECOMMENDATION

Approve at Second Reading, Public Hearing.

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 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

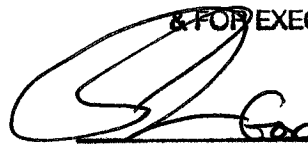
(Sponsored by Vice-Mayor Ricky Arriola and co-sponsored by Mayor Philip Levine)

Underline denotes new language

~~Strikethrough~~ denotes removed language

F:\ATTO\KALN\ORDINANCES\Package liquor sales - 8PM in MXE and CD2.docx

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

10/13/17

Date

NK

EXHIBIT H

SE #CASE #

**CITY OF MIAMI BEACH
CODE COMPLIANCE DEPARTMENT**

555 17th Street
Miami Beach, FL 33139
PHONE (305) 673-7555 FAX (305) 678-7012

NOTICE OF CITY CODE VIOLATION AND FINE

ITE SITE ADDRESS: 865 Collins ave D
VIOLATION ISSUE DATE: 12/21/16 TIME: 8:39 AM.
SSI ISSUED TO: Beach Blitz CO.
MAIL MAILING ADDRESS: 865 Collins ave D Miami Beach

DAY OF THE WEEK: SU M T W TH F S

INSPECTION OF THE ABOVE PREMISES ON THIS DATE
REVEALED YOU ARE IN VIOLATION OF SECTION:

6-3(a)(1)

O OF THE MIAMI BEACH CITY CODE BY:

	FINE
<u>offering alcoholic beverages</u>	() \$25.00
<u>in a retail establishment for</u>	() \$50.00
<u>package sales between</u>	() \$75.00
<u>the hours of midnight</u>	() \$100.00
<u>and 10:00am on any</u>	() \$150.00
<u>day of the week.</u>	() \$200.00
<u>You can comply by ceasing</u>	() \$250.00
<u>immediately illegal alcoholic</u>	() \$350.00
<u>beverage sales upon receipt</u>	(X) \$1000.00
<u>of this notice and paying</u>	() \$
<u>a civil fine of:</u>	

TOTAL FINES 1000

COMMENTS: 1st offense

Tax# RL-10005692

CODE COMPLIANCE OFFICER (SIGN)

Ofc. Negrón #1020

CODE COMPLIANCE OFFICER (PRINT)

@miamibeachfl.gov

RECEIVED BY (Signature): [Signature]

RECEIVED BY (Print Name): NATASHA MUCERIWA

DATE: 12/21/16 TIME: 8:39 AM.

IMPORTANT APPEAL AND ADA INFORMATION ON BACK

NOTICE OF CITY CODE VIOLATION AND FINE

FINE(S) MUST BE PAID WITHIN 72 HOURS:

**BY CHECK OR MONEY ORDER
MAKE CHECKS & MONEY ORDERS PAYABLE TO THE
CITY OF MIAMI BEACH.**

MAILED TO:

**CITY OF MIAMI BEACH
CODE COMPLIANCE DEPARTMENT
555 17TH STREET
MIAMI BEACH, FL. 33139**

CASH PAYMENTS ACCEPTED IN PERSON ONLY:

**AT MIAMI BEACH CITY HALL
1700 CONVENTION CENTER DRIVE, 1ST FLOOR
MIAMI BEACH, FL 33139**

APPEAL PROCESS:

FINES MAY BE APPEALED WITHIN TWENTY (20) DAYS
OF RECEIPT OF THIS NOTICE BY A WRITTEN
REQUEST TO THE CLERK OF THE SPECIAL MASTER
AT THE ABOVE ADDRESS. A \$100.00 CHECK TO
COVER THE COST OF THE HEARING MUST BE
INCLUDED.

FAILURE TO PAY THE FINE OR APPEAL IN THE
MANNER INDICATED ABOVE SHALL CONSTITUTE A
WAIVER OF THE VIOLATOR'S RIGHT TO CONTEST
THE CITATION AND SHALL BE TREATED AS AN
ADMISSION OF THE VIOLATION.

THE CITY MAY INSTITUTE PROCEEDINGS IN A COURT
OF COMPETENT JURISDICTION TO COMPEL
PAYMENT OF CIVIL FINES.

THE CERTIFIED COPY OF THE ORDER IMPOSING CIVIL
FINES MAY BE RECORDED IN THE PUBLIC RECORDS
AND THEREAFTER SHALL CONSTITUTE A LIEN UPON
ANY REAL OR PERSONAL PROPERTY OWNED BY THE
VIOLATOR.

ADA INFORMATION

To request this material in accessible format, sign
language interpreters, information on access for
persons with disabilities, and/or any
accommodation to review any document or
participate in any city-sponsored proceeding,
please contact 305 604-2489 or 1-800-955-8770
(voice), 305 673-7524 (fax), 305 673-7218 or 1-
800-955-8771 (TTY), 1-877-955-5334 (STS), 1-
877-955-8773 (Spanish) five days in advance to
initiate your request. TTY users may also call 711
(Florida Relay Service).

EXHIBIT I

Notice of Violation

Violation Notice Date:	Date 12/21/2016	Time 08:39 AM	Case Number CC2016-01704
Address of Violation:	865 COLLINS AVE		Unit D
Parcel Number:	0242032580040		
Legal Description:	THE SKYLARK CONDO UNIT D UNDIV 3.167% INT IN COMMON ELEMENTS OFF REC 20580-1711		
Violator Name:	BEACH BLITZ CO.		
Mailing Address:	13441 NW 5TH CT	City and State PLANTATION, FL	Zip Code 33325

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Treisa Smith has found there to be a violation(s) of the City Code, which is/are:

Section 6-3(1): Retail stores for package sales only may make sales of alcohol only for off-premises consumption between the hours of 8:00 a.m. and midnight.

You can comply by ceasing immediately illegal alcoholic beverage sales upon receipt of this notice and paying a civil fine of:

1st Offense \$1,000.00 within a (12) twelve month period.

2nd Offense \$5,000.00 within a (12) twelve month period

3rd Offense \$10,000.00 within a (12) twelve month period

4th Offense upon a finding by the Special Master that four (4) or more violations by a person or entity have occurred within a twelve month period, the City may initiate proceedings to revoke the Certificate of Use, Business Tax Receipt or the Certificate of Occupancy of the violator.

Fine(s) must be paid within 72 hours of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

Section 6-3(1): Retail stores for package sales only may make sales of alcohol only for off-premises consumption between the hours of 8:00 a.m. and midnight.

You can comply by ceasing immediately illegal alcoholic beverage sales upon receipt of this notice and paying a civil fine of:

1st Offense \$1,000.00 within a (12) twelve month period.

2nd Offense \$5,000.00 within a (12) twelve month period

3rd Offense \$10,000.00 within a (12) twelve month period

4th Offense upon a finding by the Special Master that four (4) or more violations by a person or entity have occurred within a twelve month period, the City may initiate proceedings to revoke the Certificate of Use, Business Tax Receipt or the Certificate of Occupancy of the violator.

EXHIBIT J

SE #

0-1017-08102

CITY OF MIAMI BEACH
CODE COMPLIANCE DIVISION
 555 47th Street
 Miami Beach, FL 33139
 (305) 673-7555 FAX (305) 673-7012

NOTICE OF CITY CODE VIOLATION AND FINE

SITE ADDRESS: 805 Collins

VIOLATION ISSUE DATE: 6/2/17 TIME: 10:50

ISSUED

TO: Beach, FL 112, 11/11/17

Mailing Address: 12441 NW 5th Ave, Suite 100
 Plantation, FL 33324

DAY OF THE WEEK: S U M T W T H F S

INSPECTION OF THE ABOVE PREMISES THIS DATE
 REVEALED YOU ARE IN VIOLATION OF SECTION:

106 (b) (1)(a)

OF THE MIAMI BEACH CITY CODE BY:

	FINE
106 (b) (1)(a) - 1st offense	() \$25.00
106 (b) (1)(a) - 2nd offense	() \$50.00
106 (b) (1)(a) - 3rd offense	() \$75.00
106 (b) (1)(a) - 4th offense	() \$100.00
106 (b) (1)(a) - 5th offense	() \$150.00
106 (b) (1)(a) - 6th offense	() \$200.00
106 (b) (1)(a) - 7th offense	() \$250.00
106 (b) (1)(a) - 8th offense	() \$350.00
106 (b) (1)(a) - 9th offense	() \$500.00
106 (b) (1)(a) - 10th offense	(X) \$1000.00
	()

TOTAL FINES

1100.00

COMMENTS:

Area of concern is not marked with

CODE COMPLIANCE OFFICER (SIGN)

Frank Valdes

CODE COMPLIANCE OFFICER (PRINT)

RECEIVED BY (Signature):

RECEIVED BY (Print Name):

DATE:

6/2/17

TIME:

11:00

IMPORTANT: APPEAL AND ADR INFORMATION

EXHIBIT K

Code Compliance Department

555 - 17th Street

Miami Beach, Florida 33139

Tele: 305.673.7555

Fax: 305.673.7012

Notice of Violation

Violation Notice Date:	Date 6/25/2017	Time 11:30PM	Case Number CC2017-03103
Address of Violation:	865 COLLINS AVE		Unit D
Parcel Number:	0242032580001		
Legal Description:			
Violator Name:	BEACH BLITZ CO. % DOAR, DORON		
Mailing Address:	13441 NW 5TH CT	City and State PLANTATION, FL	Zip Code 33325

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Enock Valerus has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

Reference: Failure to obtain Business Tax Receipt

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense, which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

Fine(s) must be paid within 72 hours of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within **Ten (10)** days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

Issuing Code Compliance Officer	Name:	Enock Valerus	Badge #	740	Phone and Extension:	(305) 673-7555
	Email:	EnockValerus@miamibeachfl.gov				
Received By	Compliance Date	Received Date	Received Time			
Other	06/26/2017	06/25/2017	11:30PM			

Code Compliance Department

555 - 17th Street

Miami Beach, Florida 33139

Tele: 305.673.7555

Fax: 305.673.7012

Notice of Violation

Violation Notice Date:	Date 6/25/2017	Time 11:30PM	Case Number CC2017-03103
Address of Violation:	865 COLLINS AVE		Unit D
Parcel Number:	0242032580001		
Legal Description:			
Violator Name:	BEACH BLITZ CO. % DOAR, DORON		
Mailing Address:	13441 NW 5TH CT	City and State PLANTATION, FL	Zip Code 33325

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 1st offense, and this Notice of Violation carries a fine (and other monetary charges) of \$1,000.00. Specifically, Code Compliance Officer Enock Valerus has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

Reference: Failure to obtain Business Tax Receipt

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense, which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt, shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

Fine(s) must be paid within 72 hours of receipt of the violation. A copy of the violation must accompany the payment. Please make checks or money orders payable to: City of Miami Beach. Payment can be mailed or taken in person to: The Finance Department (Cashier), 1700 Convention Center Drive, 1st floor, Miami Beach, FL 33139.

Fine(s) and/or violations may be appealed within **Ten (10)** days of receipt of the notice of violation. To appeal a fine and/or violation, submit a written request for an appeal hearing to the Clerk of the Special Master - 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Failure to pay the fine or request an appeal hearing in the manner indicated above shall constitute a waiver of the violator's right to contest the citation and shall be treated as an admission of the violation.

The City may institute proceedings in a court of competent jurisdiction to compile payment of civil fine(s). The certified copy of the order imposing civil fine(s) may be recorded in the public records and thereafter shall constitute a lien upon any real or personal property owned by the violator.

Issuing Code Compliance Officer	Name:	Enock Valerus	Badge #	740	Phone and Extension:	(305) 673-7555
	Email:	EnockValerus@miamibeachfl.gov				
Received By	Compliance Date	Received Date	Received Time			
Other	06/26/2017	06/25/2017	11:30PM			

EXHIBIT L

IN AND BEFORE THE SPECIAL MASTER OF
THE CITY OF MIAMI BEACH

CODE VIOLATION CASE NOS. CC2016-01704
CC2017-03102
CC2017-03103

BEACH BLITZ, CO. c/o
DOAR, DORON,

Petitioner,

vs.

CITY OF MIAMI BEACH,

Respondent.

AGREED ORDER

This cause came before the Special Master of the City of Miami Beach, upon stipulation and agreement of Harold Rosen, Esquire, on behalf of Beach Blitz, Co. c/o Doar, Doron, 865 Collins Avenue, #D, Miami Beach (hereinafter referenced as the "Petitioner"), and Deputy City Attorney, Aleksandr Boksner, counsel to Respondent, the City of Miami Beach (hereinafter referenced as the "City"), regarding the above-styled appeal before the Special Master of certain violation(s) against the real property which is located at 865 Collins Avenue, #D, Miami Beach, Florida (the "Property") and the Code Enforcement matter referenced below in this Agreed Order. Respective counsel to City and the Petitioner having agreed to the terms of this Order,

IT IS HEREBY ORDERED AND ADJUDGED as follows:


1. Petitioner, Beach Blitz Co. c/o Doron Doar admit to the legitimacy of the violation charged under Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103, and recognize that the violation was properly issued by the City of Miami Beach.

Beach Blitz, Co. and Doron Doar vs. City of Miami Beach
Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103
Agreed Order
Page 2 of 2

2. Citation/Violation Nos. CC2016-01704, CC2017-03102 and CC2017-03103 are hereby AFFIRMED. The Parties stipulate that a factual basis exists to establish this offense violation by the appropriate legal standard for this proceeding, and the City shall not need to establish the legitimacy.

3. The Petitioner shall be assessed a fine in the amount of One Thousand (\$1,000.00) Dollars, which shall be due within thirty (30) days of the entry of this Agreed Order.

DONE AND ORDERED by the Special Master of the City of Miami Beach, this 28th day of September, 2017.



SPECIAL MASTER
As Special Master for the City of Miami Beach

Copies furnished to:

Aleksandr Boksner, First Assistant City Attorney at sandracaba@miamibeachfl.gov
Harold Rosen, 407 Lincoln Road, Suite 2A, Miami Beach, Florida 33139

8.22.17
PAID
CH # 2238
1000.00

EXHIBIT M



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Search Results

Case Number	Address	Type	Status	District	Opened	Closed	Project
CC2017-03102	865 COLLINS AVE	City Code Violation	Closed	MXE	06/25/2017	10/04/2017	

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Case Number	Address	Type	Status	District	Opened	Closed	Project
CC2017-03103	865 COLLINS AVE	City Code Violation	Closed	MXE	06/25/2017	10/04/2017	

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EXHIBIT N



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Search Results

Case Number	Address	Type	Status	District	Opened	Closed	Project
CC2016-01704	865 COLLINS AVE	City Code Violation	Fine Paid	MXE	12/22/2016	10/13/2017	

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Displaying items 1 - 1 of 1

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EXHIBIT O

Code Compliance Department
555 - 17th Street
Miami Beach, Florida 33139
Tele: 305.673.7555
Fax: 305.673.7012

Notice of Violation

Violation Notice Date:	Date 10/6/2017	Time 5:00 PM	Case Number CC2017-03686
Address of Violation:	865 COLLINS AVE		
Parcel Number:	0242032560040		
Legal Description:	THE SKYLARK CONDO UNIT D UNDIV 3 167% INT IN COMMON ELEMENTS OFF REC 20580-1711		
Violator Name:	Beach Blitz Co. DSA Ocean 9 Liquor O/O Doron Dear		
Mailing Address:	13441 NW 5th Court	City and State Ft. Lauderdale, FL	Zip Code 33325

The City of Miami Beach Code Compliance Department has determined that the above Property has violated the Miami Beach Code of Laws and Ordinances (the "City Code"). This violation is the 2nd offense, and this Notice of Violation carries a fine (and other monetary charges) of \$500.00. Specifically, Code Compliance Officer Manny Bastos has found there to be a violation(s) of the City Code, which is/are:

Article V, Section 102-377. Any person failing to obtain a Business Tax Receipt as required by this article.

Reference: Failing to obtain Business Tax Receipt, 2nd Offense

Cease immediately until you obtain a Business Tax Receipt from the City of Miami Beach.

A Violation of this Section shall be subject to the following fines:

Any person who shall carry on or conduct any business for which a tax receipt is required by this article without first obtaining such tax receipt shall be issued a violation for the first offense which shall have a civil fine of \$1000.00. The enhanced enforcement for this violation shall be pursuant to subsection 102-377(d).

In addition to the above a continued violation of subsection 102-377(a) for a period of thirty (30) days or more without first obtaining a tax receipt shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

Failure to comply will result in your prosecution before the City of Miami Beach Special Master. The Special Master may impose fines of up to \$1,000.00 per day for noncompliance and up to \$5,000.00 per day for recurring violations. Failure to pay imposed fines will lead to placement of liens upon the real and personal property of violators which will be foreclosed upon or otherwise collected as provided by this code.

If you are aggrieved by the decision of the Code Inspector in issuing this notice of violation, you may appeal. To appeal the violations submit an application for appeal within **Ten (10)** days of receipt of this notice of violation to the appropriate board or the Office of the Special Master 1700 Convention Center Dr., Miami Beach, FL 33139. A check for \$100 (administrative charges) must accompany the request along with the case number.

Issuing Code Compliance Officer	Name Manny Bastos	Badge # 704	Phone and Extension (305) 673-7555 ext. 6803
	E-mail EmmanuelBastos@miamibeachfl.gov		
Received By:	Compliance Date 10/06/2017	Received Date	Received Time 5:00 PM

ADA Information

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceeding, please contact 305.604.2489 (voice), 305.673.7524 (fax) or 305.673.7218 (TTY) five (5) days in advance to initiate your request. TTY users may also call 711 (Florida Relay Services).

Manny Bastos

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BEACH BLITZ CO., d/b/a OCEAN 9 LIQUOR and d/b/a as OCEAN 11 MARKET

(b) County of Residence of First Listed Plaintiff Miami-Dade
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Phillip M. Hudson III, Saul Ewing Arnstein & Lehr LLP, 200 S. Biscayne Blvd., Suite 3600, Miami, FL 33131 Tel: 305-428-4500

DEFENDANTS

CITY OF MIAMI BEACH, et al.

County of Residence of First Listed Defendant Miami-Dade
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input checked="" type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC 1983; 28 USC 2201 and 2202

Brief description of cause:

Action for declaratory and injunctive relief and damages pursuant to the 14th Amendment of the United States

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/30/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Phillip M. Hudson III

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

CLERK OF COURT

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CLERK OF COURT

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
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_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

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☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

for the

BEACH BLITZ CO., a Florida Corporation d/b/a
OCEAN 9 LIQUOR and d/b/a as
OCEAN 11 MARKET

V.

CITY OF MIAMI BEACH, FLORIDA et al.,

Defendant(s)

Civil Action No.

To: *(Defendant's name and address)* RICKY ARRIOLA
1700 Convention Center Drive
4th Floor
Miami Beach, FL 33139

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

PHILLIP M. HUDSON III
SAUL EWING ARNSTEIN & LEHR LLP
200 S. BISCAYNE BLVD., SUITE 3600
MIAMI, FLORIDA 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CLERK OF COURT

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

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_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
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☐ Other *(specify)*: _____

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

for the

BEACH BLITZ CO., a Florida Corporation d/b/a
OCEAN 9 LIQUOR and d/b/a as
OCEAN 11 MARKET

Plaintiff(s)

V.

CITY OF MIAMI BEACH, FLORIDA et al.,

Defendant(s)

Civil Action No.

To: *(Defendant's name and address)* KRISTEN ROSEN GONZALEZ
1700 Convention Center Drive
4th Floor
Miami Beach, FL 33139

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

PHILLIP M. HUDSON III
SAUL EWING ARNSTEIN & LEHR LLP
200 S. BISCAYNE BLVD., SUITE 3600
MIAMI, FLORIDA 33131

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

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Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CLERK OF COURT

Civil Action No. _____

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Printed name and title

Server's address

Additional information regarding attempted service, etc:

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 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
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☐ I returned the summons unexecuted because _____ ; or

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