

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 SPECIFIED AREAS OF THE CITY; 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 October 31, 2017, the Mayor and City Commission adopted Ordinance No. 2017-4151, amending the hours of package sales of alcoholic beverages in the MXE district and in the adjoining CD-2 commercial, medium intensity district, to terminate package liquor sales at 8:00 p.m. each day; 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 CPS-2 commercial performance standard, general mixed use district, between the east side of Euclid Avenue and Ocean Court, from 4th Street to 6th Street; and

WHEREAS, this Ordinance strikes a balance between (i) the public safety concerns associated with the sale of alcoholic beverages; (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; and (iii) the City's interest in enforcing uniform regulations throughout a particular neighborhood; and

WHEREAS, State law expressly grants the City the authority to establish its own regulations for the time for sale of alcoholic or intoxicating beverages; and

WHEREAS, pursuant to Section 562.14, Florida Statutes, a municipality may, by ordinance, establish hours of sale for alcoholic beverages; and

WHEREAS, Florida courts have rejected equal protection and due process challenges to Section 562.14, Florida Statutes (*See Wednesday Night, Inc. v. City of Fort Lauderdale* (Fla. 1973)); and

WHEREAS, Florida Courts have determined that it is within the police power and authority for a municipality to change the hours of regulation of alcoholic beverages, because municipalities have the statutory authority under Section 562.14, Florida Statutes, to restrict the sale of alcohol; additionally, a municipal ordinance regulating the hours of sale of alcoholic beverages may be applied to a property incorporated later into the municipality by annexation. *Village of North Palm Beach v. S & H Foster's, Inc.*, 80 So. 3d 433 (Fla. 4th DCA 2012); and

WHEREAS, in *State ex rel. Floyd v. Noel* (Fla. 1936), the Florida Supreme Court recognized that "[i]t is so well settled that no citation of authority is required to support the statement that a municipality exercising the powers inherent in municipal corporations may reasonably regulate the sale of intoxicating liquors and in providing such reasonable regulations may prohibit the sale of such liquors within certain hours, and also may prohibit the sale of liquors within certain zones"; and

WHEREAS, the Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) zoning of locations in which alcoholic beverages may be sold, and (3) the sanitary conditions under which alcoholic beverages may be dispensed or served to the public. Florida AGO 059-73 (1959); and

WHEREAS, in fact, the Florida Attorney General has opined that different hours may be provided for in a municipal ordinance, provided there is reasonable relation to the health, safety, and morals of the community. Op. Att'y Gen. Fla., p. 497 (1950); and

WHEREAS, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages (See *Village of North Palm Beach v. S & H Foster's, Inc.* (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1978)); and

WHEREAS, injunctive relief is not available against the enforcement of a municipal ordinance regulating the time at which alcoholic beverages may be sold, because municipalities have the statutory authority to set times for sale of alcoholic beverages. *Id.*; *Playpen S., Inc. v. City of Oakland Park*, 396 So. 2d 830 (Fla. 4th DCA 1981); and

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

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

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

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

CHAPTER 6

ALCOHOLIC BEVERAGES

ARTICLE I. In General

* * *

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

- (a) The hours of sale of alcoholic beverages, whether as a permitted main or accessory use, shall require a state license, and shall be according to the following schedule:
- (1) Retail stores for package sales only—Off-premises consumption. Vendors may make sales of alcohol only for off-premises consumption between the hours of 8:00 a.m. and midnight.
- A. Notwithstanding subsection (a)(1), vendors located in the following locations may make sales of alcohol only for off-premises consumption between the hours of 10:00 a.m. and 8:00 p.m.:
- i. MXE mixed use entertainment district;
 - ii. that portion of the CD-2 commercial, medium intensity district adjoining the MXE district along between Pennsylvania Avenue and Washington Avenue, between from 5th Street and to 16th Street;
 - iii. 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
 - iv. that portion of the CPS-2, commercial performance standard, general mixed use district, between the east side of Euclid Avenue and Ocean Court, from 4th Street to 6th Street, may make sales of alcohol only for off-premises consumption between the hours of 10:00 a.m. and 8:00 p.m.
- (2) Retail stores, including grocery, convenience stores, and gasoline service/filling stations. Retail stores, including grocery, convenience stores, and gasoline service/filling stations, which primarily offer for sale products other than alcoholic beverages may only make sales of beer and wine only for off-premises consumption between the hours of 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, that portion of the CD-2 commercial medium intensity district adjoining the MXE district along Washington Avenue, between 5th Street 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), and which primarily offer for sale products other than alcoholic beverages,~~ may only make sales of beer and wine only between the hours of 10:00 a.m. and 8:00 p.m. in the following locations:
- i. MXE mixed use entertainment district;
 - ii. that portion of the CD-2 commercial, medium intensity district between Pennsylvania Avenue and Washington Avenue, from 5th Street to 16th Street;
 - iii. that portion of the CD-2 district adjoining the MXE district along the east side of Collins Avenue (between 73rd and 75th Streets); and
 - iv. that portion of the CPS-2, commercial performance standard, general mixed use district, between the east side of Euclid Avenue and Ocean Court, from 4th Street to 6th Street.

(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 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 8:00 a.m. and midnight in the following locations:

i. MXE mixed use entertainment district;

ii. that portion of the CD-2 commercial, medium intensity district between Pennsylvania Avenue and Washington Avenue, from 5th Street to 16th Street;

iii. that portion of the CD-2 district adjoining the MXE district along the east side of Collins Avenue (between 73rd and 75th Streets); and

iv. that portion of the CPS-2, commercial performance standard, general mixed use district, between the east side of Euclid Avenue and Ocean Court, from 4th Street to 6th Street.

* * *

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 _____, 2018.

ATTEST:

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

(Sponsored by Commissioner Michael Góngora)

Underline denotes new language

~~Strikethrough~~ denotes removed language

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

10/9/18

Date

NK