

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 142 OF THE CITY CODE, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE MIXED USE ENTERTAINMENT DISTRICT," BY CREATING SECTION 142-551 THEREOF, ENTITLED "ADDITIONAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS," TO TERMINATE THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES AT ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED ON OCEAN DRIVE BETWEEN 5TH AND 15TH STREETS (EXCEPT FOR INDOOR PORTIONS OF ALCOHOLIC BEVERAGE ESTABLISHMENTS THAT ARE COMPLETELY ENCLOSED AND LOCATED ENTIRELY WITHIN HOTELS) AT 2:00 A.M.; 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 sale and consumption of alcoholic beverages after 2:00 a.m. along the Ocean Drive corridor can disturb the quiet enjoyment of the community, cause undesirable noise, result in physical disputes amongst patrons and passers-by, and contribute to litter, noxious odors, and the general degradation of the City; 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 require that alcoholic beverage establishments (except indoor portions of alcoholic beverage establishments that are completely enclosed and located entirely within hotels) terminate the sale and consumption of alcoholic beverages at 2:00 a.m.; and

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

WHEREAS, in *Makos v. Prince* (Fla. 1953), the Florida Supreme Court recognized that a county may establish separate zones for the hours of sale of alcoholic beverages, and that the regulation of hours need not be uniform throughout the county as a whole; and

WHEREAS, 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, 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, a business is neither entitled to “grandfathered” status nor entitled to enjoin enforcement of an ordinance regulating the times during which liquor may be sold. *Village of North Palm Beach v. S & H Foster’s Inc.*, 80 So. 3d 433 (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens*, 353 So. 2d 861 (Fla. 3d DCA 1977); 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 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 142-551 of Article II of Chapter 142 of the City Code is hereby created as follows:

CHAPTER 142
ZONING DISTRICTS AND REGULATIONS

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 13. – MXE MIXED USE ENTERTAINMENT DISTRICT

Sec. 142-551. Additional regulations for alcoholic beverage establishments.

- (a) Hours of sale. Notwithstanding the requirements set forth in section 6-3, alcoholic beverages shall not be offered for sale or consumption between the hours of 2:00 a.m. and 8:00 a.m. at alcoholic beverage establishments located in the area generally bounded by Ocean Court to the west, Ocean Drive to the east, 5th Street to the south, and 15th Street to the north.
- (b) Exceptions. This section shall not apply to any indoor portion of an alcoholic beverage establishment that is completely enclosed and located entirely within a hotel.

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 _____, 2016.

ATTEST:

Rafael E. Granado, City Clerk

Philip Levine, Mayor

(Sponsored by Mayor Philip Levine)

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

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Philip Levine - 8/10/16

City Attorney Date

NK