

**SOUTH OF FIFTH  
ALCOHOLIC BEVERAGE ESTABLISHMENT OPERATIONAL REGULATIONS**

**OPTION B  
(AS REQUESTED BY THE CITY COMMISSION,  
WITHOUT "LEGAL CONFORMING USE" PROVISIONS)**

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

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF  
THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER  
142, "ZONING DISTRICTS AND REGULATIONS", ARTICLE II,  
"DISTRICT REGULATIONS," DIVISION 18, "PS  
PERFORMANCE STANDARD DISTRICT," SECTION 142-693,  
"PERMITTED USES," TO AMEND THE HOURS OF  
OPERATION, LOCATION AND USE RESTRICTIONS FOR  
PROPERTIES SOUTH OF FIFTH STREET; PROVIDING THAT  
EXISTING ALCOHOLIC BEVERAGE ESTABLISHMENTS  
SHALL BE DEEMED LEGAL CONFORMING USES; AND  
PROVIDING FOR CODIFICATION, REPEALER,  
SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, the South of Fifth Street area has historically been composed of mixed use residential, hotel, retail, recreational and alcohol beverage establishments, which primarily serve City residents and tourists; and

**WHEREAS**, alcoholic beverage establishments in Miami Beach have been historically concentrated in the commercial and mixed-use entertainment districts along Washington Avenue, Collins Avenue, and Ocean Drive; and

**WHEREAS**, alcoholic beverage establishments in the South of Fifth neighborhood are in close proximity to residential uses; and

**WHEREAS**, the City Code allows certain uses within the zoning districts south of Fifth Street, which, absent mitigation, could be incompatible with adjacent residential uses; and

**WHEREAS**, large restaurants, stand-alone bars, outdoor seating areas and sidewalk cafés can sometimes be incompatible with the quality of life of adjacent residential neighborhoods if not regulated; and

**WHEREAS**, the Mayor and City Commission desire to encourage uses that are compatible with the character of the neighborhood; 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**, 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**, Chapter 1, of the Land Use Element, Objective 2, “Land Use Compatibility,” of the City’s 2025 Comprehensive Plan (hereinafter “Plan”), specifies that the City’s land development regulations will be used to address the location, type, size and intensity of land uses and to ensure adequate land use compatibility between residential and non-residential land uses; and

**WHEREAS**, Policy 2.1 of the Plan provides that the land development regulations shall continue to address the location and extent of nonresidential land uses in accordance with the Future Land Use map and the policies and descriptions of types, sizes and intensities of land uses contained in [the Future Land Use] Element; and

**WHEREAS**, Policy 2.2 of the Plan provides that development in land use categories which permit both residential and non-residential uses shall be regulated by formalized land development regulations which are designed to ensure adequate land use compatibility; and

**WHEREAS**, compatibility shall be achieved by one or more of the following: (1) enumeration of special land uses which may be particularly incompatible with residential uses and may be prohibited in specified areas or zoning districts; (2) enumeration of special land use administrative procedures such as Conditional Use approval, which require public hearings prior to special land use approval; (3) enumeration of special land use criteria such as minimum required distance separations from residential districts or uses or allowable hours of operation, to ensure that non-residential special land uses are properly located with respect to any residential uses to which they may be incompatible; and (4) the vertical separation of residential and non-residential uses within mixed use buildings through the use of land use regulations on accessory uses within residential buildings, and the identification of those types of commercial uses which are particularly incompatible with residential uses and which shall therefore NOT be permitted in mixed use buildings; and,

**WHEREAS**, in determining incompatibility, consideration shall be given to noise, lighting, shadows, access, traffic, parking, height, bulk, landscaping, hours of operation, buffering and any other criteria that may be important to ensure that necessary safeguards are provided for the protection of surrounding property, persons, and neighborhood values; and



**WHEREAS**, in accordance with Chapter 1, Objective 2, Policies 2.1 and 2.2 of the Plan, is it is desirable to encourage uses in commercial districts that are properly balanced and compatible with the scale, character and context of adjacent residential neighborhoods; 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.** Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 18," PS Performance Standard District" is hereby amended as follows:

**CHAPTER 142.  
ZONING DISTRICTS AND REGULATIONS**

\* \* \*

**ARTICLE II. DISTRICT REGULATIONS**

\* \* \*

**DIVISION 18. PS PERFORMANCE STANDARD DISTRICT**

\* \* \*

**Sec. 142-693. Permitted uses.**

\* \* \*

(a) The following uses are permitted in the performance standard districts:

\* \* \*

<i>General Use Category</i>	<i>R-PS 1,2</i>	<i>R-PS 3,4</i>	<i>C-PS 1,2,3,4</i>	<i>RM-PS1</i>
* * *	* * *	* * *	* * *	* * *
Accessory outdoor bar counters, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, for an accessory outdoor bar counter which is adjacent to a property with an apartment unit, the accessory outdoor bar counter may not be operated or utilized between 8:00 p.m. and 8:00 a.m.	N	N <del>However, accessory outdoor bar counters are permitted in oceanfront hotels with at least 100 hotel units in the R-PS4 district*.</del>	P* <u>North of 5<sup>th</sup> Street only.</u>	N
* * *	* * *	* * *	* * *	* * *

\* \* \*

(i) Additional regulations for alcoholic beverage establishments located south of 5th Street.

(1) The following additional regulations shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located south of 5th Street:

(i) Operations shall cease no later than 2:00 a.m., except as otherwise provided herein.

(ii) Operations in outdoor or open air areas of an alcoholic beverage establishment shall cease no later than 12:00 a.m., except as otherwise provided herein.

(iii) Alcoholic beverage establishments with sidewalk café permits shall only serve alcoholic beverages at sidewalk cafes during hours when food is served, shall cease sidewalk café operations no later than 12:00 a.m. (except as otherwise provided herein), and shall not be permitted to have outdoor speakers.

(iv) Outdoor bar counters shall be prohibited.

(v) No special events permits shall be issued.

(vi) The provisions of this subsection (i)(1) shall not apply, to the extent the requirements of this subsection are more restrictive, to an alcoholic beverage establishment with a valid business tax receipt that is in application status or issued prior to June 28, 2016; or an establishment that has obtained approval for an alcoholic beverage establishment from a land use board, and which land use board order is active and has not expired prior to June 28, 2016. ~~Any such alcoholic beverage establishment shall be deemed a "legal conforming use," and may retain all and apply for new expansions and modifications to permitted, conditional, and/or accessory uses permitted as of June 28, 2016, and apply for building permits to add, improve, and/or expand existing structures, or construct new structures for permitted, conditional, and/or accessory uses permitted as of June 28, 2016.~~

A. Existing sidewalk cafes issued a sidewalk cafe permit as of June 28, 2016, for alcoholic beverage sales after 12:00 a.m., with food service, may continue to be renewed, but shall not serve alcoholic beverages later than 1:30 a.m., and alcoholic beverages may not be consumed at sidewalk cafes after 2:00 a.m.

B. Should an alcoholic beverage establishment with a sidewalk cafe permit under (A), above, be delinquent in a payment obligation to the City, and/or receive two (2) final adjudications of violations of section 12-5 (special event permit), section 46-152 (noise ordinance), or chapter 82, article IV, division 5



(sidewalk cafe ordinance), that alcoholic beverage establishment shall only be allowed to serve alcoholic beverages at its sidewalk cafe until 12:00 a.m. for a twelve (12) month period.

(2) Notwithstanding the uses permitted in (a) and (d) above, in all districts except GU, ~~government use district~~ Government Use District, no alcoholic beverage establishment, or restaurant, may be licensed or operated as a main permitted, conditional, or accessory use in any open area above the ground floor (any area that is not included in the FAR calculations) located south of 5th Street. Except that:

(1) (i) Outdoor restaurant seating above the ground floor, not exceeding 40 seats, associated with indoor venues (except as provided under (iii) below) may be permitted ~~in the areas described in this subsection (i)~~ until 8:00 p.m. ~~with no background music (amplified or nonamplified).~~

(2) (ii) Outdoor music, whether amplified or non-amplified, and television sets shall be prohibited.

(iii) *Oceanfront hotels in the R-PS4 district.*

For purposes of this subsection (iii), eastward-facing oceanfront portions of an open-air seating area shall be limited to the open area 50 feet west of the eastern boundary of the above-ground structure.

A. Oceanfront hotels in the R-PS4 district with at least 200 hotel units may have no more than 100 outdoor restaurant seats in open-air seating areas on one level that are located above the ground floor, of which at least half shall be located on eastward-facing oceanfront portions of an open-air seating area, at which patrons shall be seated no later than 12:00 a.m., and the seating area shall be closed to the public no later than 1:30 a.m. Patrons shall not be seated in the remainder of any open-air seating areas in a particular hotel later than 11:00 p.m., and such seating areas shall be closed to the public no later than 12:00 a.m. Other than the foregoing, rooftop seating on the main roof shall not be permitted under any circumstances.

B. Oceanfront hotels in the R-PS4 district with at least 100 hotel units, but less than 200 hotel units, may have no more than ~~400~~ 50 outdoor restaurant seats in eastward-facing oceanfront portions of open-air seating areas that are located on one level above the ground floor, at which patrons shall be seated no later than 12:00 a.m., and the seating area shall be closed to the public no later than 1:30 a.m. Other than the foregoing, rooftop seating on the main roof shall not be permitted under any circumstances.

- (2) (iv) Other than as permitted in subsection (i)(2)(iii), no commercial activity may be permitted on areas as described in this subsection (i)(2) between the hours of 8:00 p.m. and 10:00 a.m.
- (3) (v) Nothing herein shall prohibit residents of a multifamily (apartment or condominium) building, or hotel guests and their invitees to use these areas as described in this subsection (i)(2), which may include a pool or other recreational amenities, for their individual, personal use.
- (3) Any increase to an alcoholic beverage establishment's approved hours of operation shall meet the requirements of this section.
- (4) Variances from this subsection (i) shall not be permitted. Special events shall not be permitted in the areas described in this subsection (i).

## **SECTION 2. REPEALER.**

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith are hereby repealed.

## **SECTION 3. CODIFICATION.**

It is the intention of the City Commission, 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, as amended; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

## **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

Verified By: \_\_\_\_\_

\_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

(Sponsored by Commissioner Michael Grieco)

Underline denotes new language

~~Strikethrough~~ denotes removed language

Double underline denotes language added after review by the Planning Board

~~Double-strikethrough~~ denotes language removed after review by the Planning Board

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APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

\_\_\_\_\_  
City Attorney  
Date  
NK