

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission  
FROM: Alina T. Hudak, City Manager  
DATE: January 12, 2022

SUBJECT: DISCUSS THE 2:00 A.M. TERMINATION OF SALE/CONSUMPTION OF ALCOHOLIC BEVERAGES POLICY.

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### **RECOMMENDATION**

The Administration recommends that the City Commission discuss the various options herein and provide policy direction.

### **BACKGROUND/HISTORY**

On November 2, 2021, pursuant to Resolution No. 2021-31824, the following ballot question was submitted to the City's voters:

#### **Non-Binding, Straw Ballot Question: Citywide - Changing Alcoholic Beverage Establishments Sales/Consumption Termination Time**

City law allows, subject to exceptions, the sale and consumption of alcoholic beverages at Alcoholic Beverage Establishments throughout the City, from 8:00 a.m. until 5:00 a.m. the following day.

Would you support changing this 5:00 a.m. termination time to 2:00 a.m. throughout the City, with specific locations and related restrictions and exceptions, to be determined by City Commission by Ordinance?

The ballot question was approved by 56.52% (7,302) of the City's voters.

### **ANALYSIS**

#### **CURRENT LEGAL CHALLENGE AND IMPACT ON FUTURE LEGISLATION**

On May 12, 2021, the City Commission adopted Ordinance No. 2021-4413, which modified the hours for the sale and on-premises consumption of alcoholic beverages in the MXE district south of 16th Street. Specifically, the Ordinance changed the termination time for the sale and on-premises consumption from 5:00 a.m. to 2:00 a.m. each night. **The provisions of Ordinance No. 2021-4413 automatically sunsetted on December 8, 2021.**

On May 17, 2021, Clevelander Ocean, LP (the "Clevelander") filed a complaint in Circuit Court

which, among other things, challenged the alcohol rollback set forth in the Ordinance. On June 21, 2021, the Circuit Court granted, in part, Cleveland's Motion for Temporary Injunction, and enjoined the City from enforcing the Ordinance. The City promptly appealed, and the case remains pending before the 3<sup>rd</sup> District Court of Appeal (Third DCA). At issue on appeal is whether alcohol hours of sale for a specified area of the City may be regulated within Chapter 6 of the City Code or must instead be adopted within Chapter 142 (i.e. as an amendment to the Land Development Regulations).

On December 6, 2021, the Clevelander filed a suggestion of mootness on the basis that the Ordinance was scheduled to expire on its own terms on December 8, 2021. While we cannot predict how the Third DCA will rule, now that the Ordinance has expired, the court may decline to rule on the merits, in light of the suggestion of mootness.

The Administration and the City Attorney's Office recommend that any proposed City-wide legislation relating to hours of sale for alcoholic beverages be consolidated within Chapter 6 of the City Code. This would allow for better consistency in the application of hours of operation for all types of alcoholic beverage establishments. Additionally, the City's legal position is that there are no "vested rights" with regard to an operator's entitlement to hours of sale for alcoholic beverages. Notwithstanding the City's position, any new alcohol legislation will likely be subject to challenge by existing operators, some of which, like the Clevelander, may allege that certain development approvals (including, but not limited to, conditional use permits) entitle them to certain rights relating to their business operations.

Amendments to Chapter 6 of the City Code require four (4) affirmative votes, while amendments to the Land Development Regulations (LDRs) require five (5) affirmative votes. However, in order to consolidate all of the regulations pertaining to hours, some modifications to the LDRs will likely be required (on a 5/7ths vote).

**In view of the pendency of the appellate court's ruling, the Administration and the City Attorney's Office do not recommend that the City Commission adopt any Ordinance pertaining to alcohol hours of sale until the Third DCA either (i) rules on the City's appeal, or (ii) determines that the issue is moot. Any ruling on the merits is likely to impact the manner in which future alcohol legislation is adopted.**

### **OPTIONS FOR DISCUSSION**

Currently, there are approximately 140 establishments authorized to sell alcoholic beverages until 5:00 a.m. citywide. The Administration has developed draft options for alcoholic beverage sales for consumption on premises, in order to facilitate a discussion and obtain policy direction. The draft options herein are predicated upon a full rollback to 2:00 a.m. for all establishments Citywide.

The below options contemplate exceptions to the 2:00 a.m. closure rule, all of which are measurable, objective and limited exclusively to fully indoor areas. The options are organized by degree of potential neighborhood impact, with option 1 having the lowest impact and options 3 and 4 having the highest impact on the surrounding community:

#### **Option 1 - Fully enclosed venues within oceanfront hotels.**

There are approximately 20 existing hotels within the City that would meet the criteria for option 1, based upon a minimum threshold of 200 hotel rooms. This threshold could, potentially, be increased, which would reduce the number of eligible hotels. These establishments are large, fully contained,

and able to control traffic, noise, litter, and pedestrian queuing in a more manageable way than smaller hotels or standalone alcoholic beverage establishments. The following are the minimum benchmarks for eligible establishments under option 1:

1. The hotel shall have a minimum of 200 rooms.
2. Only fully enclosed areas of the building shall be permitted to serve alcohol until 5:00 a.m.
3. ALL outdoor areas would be required to stop the sale and consumption of alcoholic beverages by 2:00 a.m.; however, food service would still be permitted.
4. All fully enclosed, indoor venues within the hotel, including lobby bars, that are permitted to serve alcohol until 5:00 a.m. shall not have direct access to the street.

**Option 2 – In addition to option 1, fully enclosed restaurants within commercial districts.**

There are approximately 74 existing establishments within the City that currently meet the criteria for option 2, in addition to the establishments eligible under option 1. These establishments are more limited in terms of impact, as they are primarily dining and food service establishments. The following are the minimum benchmarks for eligible establishments under option 2:

1. Only fully enclosed areas of the building shall be permitted to serve alcohol until 5:00 a.m.
2. ALL outdoor areas would be required to stop the sale and consumption of alcoholic beverages by 2:00 a.m.; however, food service would still be permitted.
3. The restaurant shall contain a full kitchen that meets clearly defined, minimum criteria. The kitchen shall remain open, and a full menu of food shall be available during all hours in which alcohol is served.
4. Entertainment would not be permitted after 2:00 a.m.; or
5. If entertainment is permitted after 2:00 a.m. in the restaurant, the following shall apply:
  - a. The establishment shall demonstrate that it has soundproof glass.
  - b. The establishment shall have a double-door vestibule.
  - c. The establishment shall provide a security plan.
  - d. There shall be no queuing on the sidewalk.

**Option 3 – In addition to options 1 and 2, fully enclosed bars, dance halls, and entertainment establishments:**

There are approximately 38 existing establishments within the City that currently meet the criteria for option 3, in addition to the establishments eligible under options 1 and 2. These establishments are more impactful, as they are primarily entertainment establishments catering to a 5:00 a.m. clientele, with less emphasis on dining and food service. The following are the minimum benchmarks for eligible establishments under option 3:

1. Only fully enclosed areas of the building shall be permitted to serve alcohol until 5:00 a.m.
2. ALL outdoor areas would be required to stop the sale and consumption of alcoholic beverages by 2:00 a.m.; however, food service would still be permitted.
3. If entertainment is permitted the following shall apply:
  - a. The establishment shall demonstrate that it has soundproof glass.
  - b. The establishment shall have a double-door vestibule.
  - c. The establishment shall provide a security plan.
  - d. There shall be no queuing on the sidewalk.

4. Some additional considerations which the City may wish to explore for this category include:
  - a. Requiring that the street frontage be limited to the access vestibule.
  - b. Incorporating a minimum distance separation requirement between 5:00 a.m. establishments, which would apply in full to any new establishment (establishments created after a set date, such as November 2, 2021). Existing, legally established 5:00 a.m. venues (e.g., those venues legally established as of November 2, 2021) could remain but may be deemed legal non-conforming.

**Option 4 – In addition to option 1, fully enclosed restaurants, bars, dance halls, and entertainment establishments in specified areas.**

There are approximately 23 existing establishments within the City that currently meet the criteria for option 4, in addition to the establishments eligible under option 1. By virtue of their location, the establishments within option 4 are more limited in terms of impact, as they are better insulated from residential districts. The following are the minimum benchmarks for eligible establishments under option 4:

1. The establishment is located within a CD-2 district and on a property fronting Washington Avenue.
2. The establishment is located within a CD-2 district and on a property fronting Normandy Drive or 71<sup>st</sup> Street.
3. The establishment is located within a CD-3 district north of 20<sup>th</sup> Street and south of 24<sup>th</sup> Street.
4. Only fully enclosed areas of the building shall be permitted to serve alcohol until 5:00 a.m.
5. ALL outdoor areas would be required to stop the sale and consumption of alcoholic beverages by 2:00 a.m.; however, food service would still be permitted.
6. If entertainment is permitted the following shall apply:
  - a. The establishment shall demonstrate that it has soundproof glass.
  - b. The establishment shall have a double-door vestibule.
  - c. The establishment shall provide a security plan.
  - d. There shall be no queuing on the sidewalk.
7. Some additional considerations which the City may wish to explore for this category include:
  - a. Requiring that the street frontage be limited to the access vestibule.
  - b. Incorporating a minimum distance separation requirement between 5:00 a.m. establishments, which would apply in full to any new establishment (establishments created after November 2, 2021). Existing, legally established 5:00 a.m. venues (e.g., those venues legally established as of November 2, 2021) could remain but may be deemed legal non-conforming.

**Option 5 – Performance Based Standards**

Either as a **potential alternative** to options 1-4 above, or as an **additional component** which could be implemented in conjunction with one or more of options 1-4, the City Attorney's office has researched performance standards used by other cities in Florida to address impacts on residents' quality of life.

In this regard, the City Attorney engaged special counsel to prepare, for the Commission's consideration, the attached **Survey of Regulatory Requirements for Operation of Extended Hours**, which includes a detailed chart summarizing the most relevant criteria used by municipalities

throughout Florida to approve extended alcohol hours. This “menu” of options is intended merely to serve as a starting point for the City Commission’s discussions of performance-based criteria.

If the City Commission desires to adopt performance criteria for extended hours, the Commission will need to determine, as a policy matter, (1) the categories of establishments will be eligible for extended hours (e.g., by type of establishment, as referenced in options 1-4 above; and/or by geographic area), (2) the specific criteria it elects to adopt; and (3) the procedures for the issuance, suspension or revocation of any permit or other license for extended hours. The Commission may also wish to consider whether or to what extent existing 5:00 a.m. establishments will be eligible to obtain approval for extended hours.

**SUPPORTING SURVEY DATA**

Improving Residents Quality of Life

**CONCLUSION**

The Administration recommends that the City Commission discuss the draft options provided herein and provide appropriate policy direction.

**Applicable Area**

Citywide

**Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?**

Yes

**Does this item utilize G.O. Bond Funds?**

No

**Legislative Tracking**

Planning

**Sponsor**

City Manager

**ATTACHMENTS:**

**Description**

- Performance Chart - Florida Localities