

**ALTON ROAD AND WEST AVENUE  
ALCOHOLIC BEVERAGE ESTABLISHMENT REGULATIONS**

**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," AT DIVISION 4, "CD-1 COMMERCIAL, LOW INTENSITY DISTRICT," SECTION 142-279, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS"; AND AT DIVISION 5, "CD-2 COMMERCIAL MEDIUM INTENSITY DISTRICT," SECTION 142-310, "SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS," TO ELIMINATE EXISTING EXCEPTIONS TO THE 2:00 A.M. CLOSING TIME FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED ON (i) THE WEST SIDE OF ALTON ROAD AND EAST OF ALTON COURT, FROM 6TH STREET TO COLLINS CANAL, AND (ii) ON THE EAST SIDE OF WEST AVENUE, FROM LINCOLN ROAD TO 17TH STREET; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, the Alton Road and West Avenue corridors have historically been composed of low-intensity service and retail establishments, which primarily serve City residents; and

**WHEREAS**, the West Avenue neighborhood is comprised mainly of residential uses and is divided only by an alley from the CD-1 and CD-2 commercial zoning districts on Alton Road; and

**WHEREAS**, the City Code allows certain uses within the CD-1, CD-2, and CD-3 districts, which, absent mitigation, could be incompatible with adjacent residential uses in the West Avenue neighborhood; and

**WHEREAS**, large restaurants, stand-alone bars, outdoor food and beverage service, entertainment establishments, and dance halls can, if not regulated, be incompatible with the scale, character, and quality of life of adjacent residential neighborhoods; and

**WHEREAS**, the Mayor and City Commission desire to encourage uses that are compatible with the scale and 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**, 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**, on May 11, 2016, the City Commission adopted Ordinance No. 2016-4014 which, in pertinent part, limited the hours of operation of alcoholic beverage establishments in the Alton Road and West Avenue corridors, with certain exceptions, to 2:00 a.m.; and

**WHEREAS**, even though alcoholic beverage establishments are not vested as to alcohol hours of sale, the City Commission elected, at its discretion, to exclude existing operators from the 2:00 a.m. termination time; and

**WHEREAS**, based upon neighborhood compatibility concerns and the negative impacts associated with the sale and service of alcoholic beverages late at night, the Mayor and City Commission now desire to eliminate any exceptions to the 2:00 a.m. closing time set forth in the City Code; 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 4, "CD-1 Commercial, Low Intensity District," at Section 142-279, "Special regulations for alcohol beverage establishments," is hereby amended as follows:

**CHAPTER 142  
ZONING DISTRICTS AND REGULATIONS**

\* \* \*

**ARTICLE II. – DISTRICT REGULATIONS**

\* \* \*

**DIVISION 4. - CD-1 COMMERCIAL, LOW INTENSITY DISTRICT**

\* \* \*

**Sec. 142-279. Special regulations for alcohol beverage establishments.**

\* \* \*

(a) The following additional regulations shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located on the west side of Alton Road and east of Alton Court, between 11th Street and 14th Street:

(1) Operations shall cease no later than 2:00 a.m. Alcoholic beverages shall not be offered for sale or consumed on-premises at alcoholic beverage establishments between the hours of 2:00 a.m. and 8:00 a.m. each night.

(2) Establishments with sidewalk café permits shall only serve alcoholic beverages at sidewalk cafés during hours when food is served in the restaurant, shall cease sidewalk café operations at 12:00 a.m., and shall not be permitted to have outdoor speakers.

(3) Commercial uses on rooftops shall be limited to restaurants only, shall cease operations no later than 11:00 p.m. on weekdays and 12:00 a.m. on weekends, and shall only be permitted to have ambient, background music.

(4) Entertainment establishments shall be required to obtain conditional use approval from the planning board, in accordance with the requirements and procedures of chapter 118, article IV. Additionally, if approved as a conditional use, entertainment establishments shall be required to install a double door vestibule at all access points from the sidewalk, with the exception of emergency exits.

(5) Outdoor bar counters shall be prohibited.

(6) No special event permits shall be issued.

~~(7) This subsection (a) shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that (i) is in application status prior to April 14, 2016; or (ii) issued prior to May 21, 2016; or (iii) to 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 May 21, 2016. Any increase to the approved hours of operation shall meet the requirements of this section.~~

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**SECTION 2.** Chapter 142, "Zoning Districts and Regulations," Article II, "District Regulations," Division 5, "CD-2 Commercial, Medium Intensity District," at Section 142-310, "Special regulations for alcohol beverage establishments." is hereby amended as follows:

**DIVISION 5. – CD-2 COMMERCIAL, MEDIUM INTENSITY DISTRICT**

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**Sec. 142-310. Special regulations for alcohol beverage establishments.**

(a) Alton Road corridor. The following additional requirements shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located on the west side of Alton Road and east of Alton Court, between 5th Street and 11th Street, and between 14th Street and Collins Canal; and properties on the east side of West Avenue, between Lincoln Road and 17th Street, except alcoholic beverage establishments fronting Lincoln Road between West Avenue and Alton Road:

(1) Operations shall cease no later than 2:00 a.m. Alcoholic beverages shall not be offered for sale or consumed on-premises at alcoholic beverage establishments between the hours of 2:00 a.m. and 8:00 a.m. each night.

(2) Establishments with sidewalk cafe permits shall only serve alcoholic beverages at sidewalk cafes during hours when food is served in the restaurant, shall cease

sidewalk cafe operations at 12:00 a.m., and shall not be permitted to have outdoor speakers.

- (3) Commercial uses on rooftops shall be limited to restaurants only, shall cease operations no later than 11:00 p.m. on weekdays and 12:00 a.m. on weekends, and shall only be permitted to have ambient, background music.
- (4) Entertainment establishments shall be required to obtain conditional use approval from the planning board, in accordance with the requirements and procedures of chapter 118, article IV. Additionally, if approved as a conditional use, entertainment establishments shall be required to install a double door vestibule at all access points from the sidewalk, with the exception of emergency exits.
- (5) Outdoor bar counters shall be prohibited.
- (6) No special event permits shall be issued.
- (7) ~~This subsection (a) above shall not apply to any valid, pre-existing permitted use with a valid business tax receipt (BTR) for an alcoholic beverage establishment that (i) is in application status prior to April 14, 2015; or (ii) issued prior to May 21, 2015; or (iii) to 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 May 21, 2015. Any increase to the approved hours of operation shall meet the requirements of this subsection (a).~~

\* \* \*

### **SECTION 3. REPEALER.**

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

### **SECTION 4. 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 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 \_\_\_\_ day of \_\_\_\_\_, 2022.

Attest:

\_\_\_\_\_  
Dan Gelber  
Mayor

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

(Sponsored by Commissioner Mark Samuelian)

Underline denotes additions  
~~Strike through~~ denotes deletions

First Reading:  
Second Reading:

Verified By: \_\_\_\_\_  
Thomas R. Mooney, AICP  
Planning Director

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

  
\_\_\_\_\_  
City Attorney

2-26-22  
\_\_\_\_\_  
Date