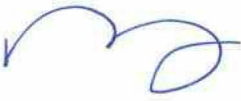


MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Rafael A. Paz, City Attorney 

DATE: April 6, 2022

SUBJECT: ALCOHOL HOURS OF SALE - ELIGIBILITY LIMITED TO EXISTING 5:00 AM ESTABLISHMENTS; AND 5/7THS WAIVER BY CITY COMMISSION

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," BY AMENDING SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE/VIOLATIONS," TO AMEND THE HOURS OF SALE OF ALCOHOL FOR ON-PREMISES CONSUMPTION AT ALCOHOLIC BEVERAGE ESTABLISHMENTS; ESTABLISH CERTAIN EXEMPTIONS FOR EXTENDED HOURS OF SERVICE FOR EXISTING 5:00 A.M. BUSINESSES AND BUSINESSES THAT RECEIVE CITY COMMISSION APPROVAL; ESTABLISH A PROCEDURE TO APPLY FOR EXTENDED HOURS OF SERVICE; IDENTIFY ELIGIBLE ESTABLISHMENTS; CREATE APPLICATION REQUIREMENTS; PROVIDE FOR RENEWALS; ESTABLISH MINIMUM PERFORMANCE STANDARDS, CRITERIA, AND CONDITIONS; PROVIDE FOR PENALTIES, ENFORCEMENT, AND APPEALS; AND CREATE A REPORTING REQUIREMENT; BY CREATING SECTION 6-3.1, ENTITLED "RESPONSIBLE VENDOR QUALIFICATION," TO ESTABLISH CRITERIA FOR AN ALCOHOLIC BEVERAGE ESTABLISHMENT TO QUALIFY AS A RESPONSIBLE VENDOR; AND AMENDING SECTION 6-4, ENTITLED "LOCATION AND USE RESTRICTIONS," TO ESTABLISH MINIMUM DISTANCE SEPARATION REQUIREMENTS FOR ESTABLISHMENTS HOLDING APPROVAL TO SERVE ALCOHOLIC BEVERAGES AFTER 2:00 A.M.; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

BACKGROUND

At the request of Commissioner Kristen Rosen Gonzalez, the attached Ordinance has been placed on the April 6, 2022 City Commission meeting agenda for First Reading. The Ordinance amends the hours of sale for alcoholic beverage establishments set forth in Chapter 6 of the City Code. Specifically, the Ordinance:

- (i) adopts a **Citywide 2:00 a.m. termination time** for the sale and service of alcoholic beverages for on-premises consumption;
- (ii) provides that **alcoholic beverage establishments with a BTR issued prior to May 25, 2022**, allowing alcoholic beverage consumption until 5:00 a.m., and **which operate pursuant to a conditional use permit (CUP) for a**

- neighborhood impact establishment**, may offer alcoholic beverages for sale or on-premises consumption until 5:00 a.m.;
- (iii) provides that **other alcoholic beverage establishments with a BTR issued prior to May 25, 2022**, allowing alcoholic beverage consumption until 5:00 a.m., **may apply for extended hours approval**, subject to the extended hours application process and performance criteria in the Ordinance; and
- (iv) **authorizes the City Commission to grant extended hours approval to individual establishments by a five-sevenths vote.**

ANALYSIS

Florida law grants municipalities broad authority to regulate the sale of alcoholic beverages. Specifically, Section 562.14, Florida Statutes, expressly authorizes municipalities to establish hours of sale for alcoholic beverages by ordinance:

562.14 Regulating the time for sale of alcoholic and intoxicating beverages; prohibiting use of licensed premises.—

(1) Except as otherwise provided by county or municipal ordinance, no alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed in any place holding a license under the division between the hours of midnight and 7 a.m. of the following day. [. . .]

Under State Law, the termination time for the sale and service of alcoholic beverages for on-premises consumption is 12:00 midnight, **except as otherwise provided by local Ordinance**. The City has, within its express authority to set alcohol hours of sale that are different from State Law, adopted a 5:00 a.m. termination time for the sale of alcoholic beverages for on-premises consumption. This 5:00 a.m. termination time is set forth in Chapter 6 of the City Code.

In addition to the City's express statutory authority, relevant case law supports the City Commission's legislative discretion to modify alcohol hours of sale:

- Florida courts have determined that it is within the police power for a municipality to change the hours of sale of alcoholic beverages, because municipalities have the statutory authority under Section 562.14, Florida Statutes, to restrict the sale of alcohol. *Village of North Palm Beach v. S & H Foster's, Inc.*, 80 So. 3d 433 (Fla. 4th DCA 2012).
- In *State ex rel. Floyd v. Noel*, 124 Fla. 852 (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.”

- The Florida Attorney General has opined that a municipality may regulate (1) the hours of sale, (2) 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. Op. Att’y Gen. Fla. 59-73 (1959).
- In fact, the Florida Attorney General has opined that different hours may be provided for different areas in a local ordinance, provided there is reasonable relation to the health, safety, and morals of the community. Op. Att’y Gen. Fla. 50-288 (1950).
- Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfather status as to hours of sale for alcoholic beverages. See *S & H Foster’s, Inc.; Other Place of Miami, Inc. v. City of Hialeah Gardens*, 353 So. 2d 861 (Fla. 3d DCA 1978).
- Courts have denied injunctive relief 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).
- The vast majority of Florida courts have also 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).

CONCLUSION

If the City Commission adopts the attached Ordinance at First Reading, we recommend that Second Reading be scheduled on May 25, 2022, consistent with Second Reading of all alcohol hours legislation pending before the City Commission.

RAP/NK/ag