

ALCOHOL HOURS OF SALE
2:00 A.M. OUTDOORS CITYWIDE

(SPONSORED BY COMMISSIONER ALEX J. FERNANDEZ)

ORDINANCE NO. _____

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 PERMITTED HOURS FOR THE OUTDOOR SALE AND SERVICE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION AND CONSUMPTION AT SIDEWALK CAFES, AND CREATE A VESTED RIGHTS PROCEDURE; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach ("City") regulates the location, size, hours of operation, and minimum patron age for uses that permit the sale and consumption of alcoholic beverages in Chapter 6 of the City Code, entitled "Alcoholic Beverages"; and

WHEREAS, 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?

WHEREAS, the ballot question was approved by 56.52% of the voters; and

WHEREAS, the Mayor and City Commission have determined that it is in the best interest of the City, and it serves the health, safety, and welfare of the City's residents and visitors, to limit the hours for outdoor sales, service, and consumption of alcoholic beverages at alcoholic beverage establishments; 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 determined that it is within the police power and authority for a municipality to change the hours of regulation of alcoholic beverages, because municipalities have the statutory authority under Section 562.14, Florida Statutes, to restrict the sale of alcohol; additionally, a municipal ordinance regulating the hours of sale of alcoholic beverages may be applied to a property incorporated later into the municipality by annexation (*Village of North Palm Beach v. S & H Foster's, Inc.*, 80 So. 3d 433 (Fla. 4th DCA 2012)); and

WHEREAS, in *State ex rel. Floyd v. Noel*, 124 Fla 852, 854 (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, 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, the Florida Attorney General has opined that different hours may be provided for in a municipal ordinance, provided there is reasonable relation to the health, safety, and morals of the community (Op. Att’y Gen. Fla., p. 497 (1950)); and

WHEREAS, Florida courts have consistently held that alcoholic beverage establishments are not entitled to grandfathered 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, courts have declined to grant 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 the 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 the objectives identified above.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Section 6-3, entitled “Hours of Sale,” of Article I, of Chapter 6, of the City Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 6
ALCOHOLIC BEVERAGES**

ARTICLE I. In General

* * *

Sec. 6-3. Hours of sale/violations.

(a) The hours of sale of alcoholic beverages, whether as a permitted main or accessory use, shall require a state license, and shall be according to the following schedule:

* * *

(3) Alcoholic beverage establishments. All alcoholic beverage establishments with licensed by the state licensure for on-premises consumption only, may only make sales of alcohol between the hours of 8:00 a.m. and 5:00 a.m., except as provided below:

A. *Restaurants not operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, but not operating as dance halls or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m.

B. *Restaurants also operating as dance halls or entertainment establishments.* Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments, and also operating as dance halls, or entertainment establishments, may remain open 24 hours a day; however, alcoholic beverages may not be offered for sale or on-premises consumption between the hours of 5:00 a.m. and 8:00 a.m., and dancing and entertainment shall not be conducted between the hours of 5:00 a.m. and 8:00 a.m.

C. *Other alcoholic beverage establishments.* Other alcoholic beverage establishments, not containing restaurants with full kitchen facilities, shall close at 5:00 a.m. and remain closed. No patron or other persons, other than those employed by the vendor, may remain on the premises between the hours of 5:00 a.m. and 8:00 a.m.

D. *Sidewalk cafes.* Notwithstanding the provisions of subsections (a)(3)(A) through (C), and except as provided in subsection (a)(3)(E)(iii), alcoholic beverages shall not be offered for sale or consumption at sidewalk cafes, as defined in section 82-366 of this Code and as otherwise permitted by the city in accordance with chapter 82, article IV, division 5, subdivision II of this Code (as may be amended from time to time), between the hours of 1:30 a.m. and 8:00 a.m., and shall not be consumed at sidewalk cafes between the hours of 2:00 a.m. and 8:00 a.m. No variances may be granted from the provisions of this subsection 6-3(3)(d) as to the hours of sale or consumption of alcoholic beverages at sidewalk cafes.

E. *Outdoor sale and service of alcoholic beverages at alcoholic beverage establishments for on-premises consumption.*

(i) *Hours.* Except as otherwise provided in this Code, alcoholic beverages shall not be offered outdoors for sale or on-premises consumption at alcoholic beverage establishments between the hours of 2:00 a.m. and 8:00 a.m. each night.

- (ii) Definition. For purposes of this section, the term “outdoors” shall mean any area of an alcoholic beverage establishment that is not completely enclosed and located entirely within a building. Any operable windows or doors shall remain closed at all times, except for purposes of ingress and egress. However, the term “outdoors” shall specifically exclude open-air courtyards that are accessed only from the interior of a building, and other outdoor courtyards, patios, or terraces that (i) are accessed only from the interior of a building, (ii) serve as a necessary corridor to access the interior of another building on the property, (iii) are bounded by a wall or fence on all sides and not visible from the right-of-way, and (iv) are not directly accessible from the right-of-way, except for any required fire exits.
- (iii) West Avenue residential neighborhood. Notwithstanding the foregoing, alcoholic beverages shall not be offered outdoors for sale or on-premises consumption between the hours of 12:00 a.m. and 8:00 a.m. at alcoholic beverage establishments located along West Avenue, between 5th Street on the south and Collins Canal on the north.

Note: For purposes of this section, full kitchen facilities shall mean having commercial grade burners, ovens, and refrigeration units of sufficient size and quantity to accommodate the occupancy content of the establishment. Full kitchen facilities must contain grease trap interceptors, and meet all applicable city, county, and state codes.

F. Determination of vested rights. The owner or operator of any alcoholic beverage establishment claiming a vested right to conduct alcohol sales for on-premises consumption for hours greater than the hours permitted under subsections (a)(3)(A), (B), or (C), or (a)(5), may so operate only after applying for a determination of its vested right(s) and having those rights confirmed by an alcohol hours special magistrate as follows:

- (i) Appointment; qualifications; term. The city commission shall appoint a special magistrate for the specific purpose of adjudicating applications for determinations of vested rights under this subsection (a)(3)(F). The special magistrate shall be an attorney in good standing with the Florida Bar, with expertise in the areas of local government law, business licensing, vested rights, and/or property law. The special magistrate shall serve a term of one year. Compensation for the special magistrate shall be determined by the city commission.
- (ii) Filing period. Any application for a determination of vested rights must be filed with the city manager, city attorney, and city clerk within 12 months after May 25, 2022.
- (iii) Standard for finding of a vested right. A vested right to conduct alcohol sales for on-premises consumption later than the hours prescribed in this section 6-3 shall be found to exist only where:
 - (a) An active order of the Planning Board, an active order of the Board of Adjustment, or other active development order issued by the City,

expressly authorizes the alcoholic beverage establishment to conduct alcohol sales for on-premises consumption during specified hours;

(b) In good faith reliance upon such prior order, the applicant has made a substantial change in position or incurred extensive contractual obligations and financial expenses; and

(c) It would be highly inequitable to interfere with the acquired right.

In accordance with Florida law, no right to conduct alcohol sales at certain hours may be determined to have vested as a result of the adoption of an ordinance by the city commission. The special magistrate shall dismiss any application that relies solely upon a previously enacted ordinance of the city commission.

(iv) Procedure. Applications for vested rights determinations shall be heard in accordance with the procedures for hearings before the special magistrate specified in Chapter 30 except that:

a. Applications for a vested rights determination shall be made in writing and filed with the city manager, city attorney, and city clerk.

b. At a minimum, applications shall:

i. Identify all prior orders from which the alleged vested right arises;

ii. Include a copy of each such prior order;

iii. Specify how the adoption of this ordinance adversely affected the alleged vested right including how the standard in subsection (a)(3)(F)(iii) is satisfied;

iv. Specify the applicant's requested relief; and

v. Be sworn to by the applicant.

c. The signature of the applicant or the applicant's attorney shall constitute a certificate that the person signing has read the applicant's written submissions and, to the best of their knowledge, the application is made in good faith and not for purposes of delay. The applicant or its attorney shall have a continuing obligation to correct any statement or representation found to have been incurred when made or which becomes incorrect by virtue of changed circumstances. If a claim of taking or abrogation of vested rights is: (1) based upon facts that the claimant or the attorney for the claimant knew or should have known were not true; or (2) frivolous or filed solely for the purpose of delay, the alcohol hours special magistrate shall make such findings in writing and deny the application.

d. The city manager, city attorney, and city clerk shall acknowledge receipt of an application for vested rights within three business days of receipt of the application, and shall promptly schedule a hearing before the special magistrate.

e. Effect of filing application for vested rights determination. During the pendency of an application for a vested rights determination, the applicant shall comply with all requirements of this section. The filing of an application shall not be construed to stay enforcement of this section against the applicant.

(v) Appeals. An aggrieved party, including the city administration, may appeal a final administrative order of the special magistrate to the circuit court by petition for writ of certiorari, pursuant to the Florida Rules of Appellate Procedure.

* * *

(6) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe (i) until 7:00 a.m. on January 1 (New Year's Day) or, if January 1 is on a Sunday, until 7:00 a.m. on Monday if the day that is observed as a national holiday for New Year's Day is on Monday, and (ii) until 7:00 a.m. during certain major event days or weekends as may be designated by the city commission or as may be designated by the city manager following approval by the city commission, under the following conditions:

A. The police department and the code compliance department of the city must be notified by a letter, received no later than 15 business days prior to either: 1. January 1, or 2. the day on which alcohol sales are to be extended, stating that the alcoholic beverage establishment intends to serve alcoholic beverages for on-premises consumption and, if the alcoholic beverage establishment is located on Ocean Drive between 5th Street and 15th Street, for consumption at the establishment's sidewalk cafe until 7:00 a.m.;

B. If deemed reasonably necessary by the police chief, or the police chief's designee, off-duty police officers must be provided at the alcoholic beverage establishment until 7:00 a.m.;

C. There are no pending city Code violations against the alcoholic beverage establishment and the alcoholic beverage establishment has not had more than one adjudicated city Code violation per year within the prior 24 months; notwithstanding the foregoing, the conditions in this subsection (6)C. may be waived by a four-sevenths vote of the city commission;

D. No delinquent or past due monies are owed to the city;

- E. Outdoor entertainment or open-air entertainment is not allowed;
- F. No violation of the city's noise ordinance shall be permitted;
- G. No violation of the approved fire code occupancy load shall be permitted;
- H. All required city permits and licenses are current;
- I. The state license is current; and
- J. The alcoholic beverage establishment has been in continuous operation for the prior 24 months in the city, is licensed as an alcoholic beverage establishment set forth in subsections (3) and (5), and is permitted to serve alcoholic beverages for on-premises consumption until 5:00 a.m.
- K. Any other conditions required by the city manager in order to protect the public health, safety, or welfare.

* * *

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 _____, 2022.

ATTEST:

Rafael E. Granado, City Clerk

(Sponsored by Commissioner Alex J. Fernandez)

First Reading: May 4, 2022

Second Reading: _____

Dan Gelber, Mayor

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION



City Attorney NK

4-29-22
Date