



ALEX J. FERNANDEZ  
COMMISSIONER

## MEMORANDUM

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**To:** Honorable Mayor and Members of the City Commission  
**Date:** May 2, 2022

**From:** Alex J. Fernandez, Commissioner  
*Alex J. Fernandez*  
**Subject:** Alcohol Rollback Legislation - R5Q and R5T

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### **Background:**

The City Commission has been engaged in its most recent discussions regarding the hours of sale of alcoholic beverages for on-premises consumption for over one year. Almost one-year ago to the date, on May 12, 2021, an ordinance was adopted by the City Commission restricting the hours for on-premise alcoholic beverage consumption within the MXE entertainment district south of 16<sup>th</sup> street. The presumption of the ordinance was that the sale and consumption of alcoholic beverages during the early morning hours can disturb the quiet enjoyment of the community, cause undesirable noise, and result in increased calls for service to the Police and Fire Department. During the same meeting, the City Commission adopted an ordinance repealing eastbound noise exemptions.

Almost immediately upon the adoption of these ordinances, the City was challenged by the Clevelander claiming entitlement to certain rights relating to their business operations obtained through their conditional use permit. Notwithstanding the City's ability to regulate through Chapter 6 of the City Code the location, size, hours of operation, and minimum patron age for uses that permit the sale and consumption of alcoholic beverages, Judge Betty Butchko ruled in the Clevelander's favor finding that the alcohol sales rollback ordinance should have been enacted with a supermajority vote. Judge Butchko further enjoined the repeal of the noise exemption finding that the Clevelander had a vested right through its conditional use permit. The City promptly appealed to the Third District Court of Appeals which on March 2, 2022, upheld the temporary injunctive relief granted to the Clevelander as it pertained to the City's enforcement of the noise ordinance, however, the Third DCA did not opine on Judge Butchko's ruling regarding the rollback of alcohol sales as the ordinance had already expired.

In addition to the above, the City Attorney has repeatedly advised the City Commission that 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.

Notwithstanding the likelihood of legal challenges, the City Commission should continue its efforts to craft policy that will enact the will of the voters who on November 2, 2021, supported changing the termination time for sale and consumption of alcoholic beverages from 5:00 a.m. to 2:00 a.m. throughout the City, with specific locations and related restrictions and exceptions, to be determined by City Commission.

Listening closely to my colleagues, the community, stakeholders, our legal team, and administration over the past several months, our individual ordinances are going in many different directions. Over a

dozen proposals have been requested from the City Attorney's Office some of which contradict each other. These include:

1. April 6, 2022, First Reading Ordinance: Alcoholic Beverages - Modifications and Exceptions to Hours of Sale for On Premise Consumption (Mayor Dan Gelber)
2. April 6, 2022, First Reading Ordinance: Expanded Art Deco Cultural District – Option A 2:00 p.m. No Exceptions (Commissioner Mark Samuelian)
3. April 6, 2022, First Reading Ordinance: Alcohol Hours of Sale West Avenue and Alton Road (Commissioner Mark Samuelian)
4. April 6, 2022, First Reading Ordinance: South of Fifth Alcoholic Beverage Establishment Regulations (Commissioner Mark Samuelian)
5. April 6, 2022, First Reading Ordinance: Alton Road and West Avenue Alcoholic Beverage Establishment Regulations (Commissioner Mark Samuelian)
6. April 6, 2022, First Reading Ordinance: 41st Street Alcoholic Beverage Establishment Regulations (Commissioner Alex Fernandez)
7. April 6, 2022, First Reading Ordinance: Alcohol Hours of Sales – 2:00 a.m. Citywide (Commissioner Mark Samuelian)
8. April 6, 2022, First Reading Ordinance: Alcohol Hours of Sales – Eligibility limited to existing 5:00 a.m. establishments; and 5/7 waiver by the City Commission (Commissioner Kristen Rosen Gonzalez)
9. April 6, 2022, Referral to the Land Use Committee: Development incentives, including FAR, for the conversion of existing hotels and applicable accessory uses to residential or office buildings for properties on the on the east side of Collins Avenue and Ocean Drive, within the MXE district south of 15th Street. (Commissioner David Richardson)
10. May 4, 2022, First Reading Ordinance: Alcohol Hours of Sales – Expanded Art Deco Cultural District (Commissioner Alex Fernandez)
11. May 4, 2022, First Reading Ordinance: Equitable Estoppel and Nonconformance Provisions – Alcohol Hours of Sales (Commissioner Mark Samuelian)
12. May 4, 2022, First Reading Ordinance: Alcohol Hours of Sale – Outdoors West Avenue and Alton Road (Commissioner Mark Samuelian)
13. May 4, 2022, First Reading Ordinance: Alcohol Hours of Sale – 2:00 a.m. outdoors citywide and 12:00 a.m. outdoors along West Avenue (Commissioner Alex Fernandez)
14. May 4, 2022, Referral to the Planning Board: South of Fifth 12:00 a.m. outdoors only; not impact the ability of establishments, existing as of 2016, to serve alcohol until 5:00 a.m. indoors. (Commissioner David Richardson)
15. May 4, 2022, Referral to the Planning Board: amending CD-1 and CD-2 district regulations for properties along the Alton Road and West Avenue corridors: terminate outdoor at 12:00 a.m.; rooftops at 11:00 p.m. on weekdays (Commissioner Mark Samuelian)

Borrowing from other ordinances and discussions held at the City Commission by my colleagues, I respectfully present for consideration legislation which reflect ideas which I believe could get us to five votes.

#### **Outdoor Citywide Rollback**

Item R5T proposes a citywide 2:00 a.m. outdoor rollback for the sale and consumption at alcoholic beverage establishments and a more restrictive 12:00 a.m. outdoor rollback for properties along West Avenue from 5th Street to the Collins Canal.

#### **Extended Hours Approval Ordinance**

On February 9, 2022, the City Commission adopted at first reading Mayor Dan Gelber's ordinance creating a uniform, citywide prohibition on the sale of alcoholic beverages for consumption on premises

from 2:00 a.m. to 8:00 a.m., 7 days a week. Additionally, the ordinance proposes a process for extended hours of sale of alcohol (not past 5:00 a.m.) and contains two primary components:

1. The establishment of specific geographic areas of the city for which extended hours for the sale of alcohol may occur.
2. The creation of performance standards and operational criteria for all establishments seeking extended hours of alcohol sales for on premise consumption.

Item R5Q builds upon Mayor Gelber's ordinance by incorporating ideas raised by other members of the City Commission, including:

1. Allowing establishments that operate until 5:00 a.m. with a conditional use permit for neighborhood impact establishment to apply for extended hours. Before second reading I would like to work with staff to ensure that the proposed performance measures and operational criteria are sufficiently robust to prevent the approval of establishments with recurring public safety concerns and code violations.
2. Maintaining geographic areas in which new alcoholic beverage establishments may be approved. Before second reading I would like to explore the feasibility of establishing a cap on the maximum number of alcoholic beverage establishments allowed in the City.
3. Prohibiting extended hour approvals in the Expanded Art Deco Cultural District that includes Washington Avenue with limited exceptions for larger establishments that meet performance standards or currently operate with a CUP.

### **Effective Date**

I want to encourage a discussion regarding the effective date of these ordinances. Delaying the effective date will allow the City Commission time to engage the community and stakeholders to discuss the feasibility of offering incentives to properties within narrowly defined geographic areas (such as West Avenue) that voluntarily agree to abandon nuisance uses to residential quality of life such as hotel uses, extended alcohol hours, or all alcohol uses and to convert to residential or office uses. In addition to making it more appealing for these properties to abandon uses that impact the residential quality of life, a voluntary incentive program may help reduce the City's risk with its more litigious stakeholders. A potential incentive could be similar to the initiative sponsored by Commissioner Mark Samuelian which seeks voter approval for floor area ration incentives to convert remaining apartment hotel uses to residential use in the RPS1 and RPS2 zoning districts. Other incentives such as height could help encourage the abandonment of a use that may no longer be desired by the community.

### **Major Event Days**

Our biggest challenges occur when our city is not programmed with positive activity. By contrast, our city shines during programmed major events including city sponsored activities such as Gay Pride and Formula 1 and when large bookings occur at the Miami Beach Convention Center such as Art Basel, the Boat Show, the Bitcoin Conference, and others. Currently, the City Code allows for extended hours during certain major event days and weekends selected by the City Commission. As such, I would like for the City Commission to discuss as part of my two ordinances a possible future amendment to the City Code to allow extended hours during major bookings at the Miami Beach Convention Center and during important city sponsored activities.

### **Conclusion**

Ordinances R5Q and R5T reflect ideas presented by my colleagues in the hopes of unifying the City Commission around ordinances which may not be perfect but advance the will of the voters.