

**ALCOHOL HOURS OF SALE - OUTDOORS
WEST AVENUE**

(SPONSORED BY COMMISSIONER DAVID RICHARDSON)

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, FLORIDA, ENTITLED "ALCOHOLIC BEVERAGES," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 6-3 THEREOF, ENTITLED "HOURS OF SALE/VIOLATIONS," TO ADOPT UNIFORM HOURS FOR THE OUTDOOR SALE AND SERVICE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION AND CONSUMPTION AT SIDEWALK CAFES AT ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED ALONG WEST AVENUE, BETWEEN 5TH STREET AND LINCOLN ROAD (INCLUDING SIDE STREETS), AND CREATE A VESTED RIGHTS PROCEDURE; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the West Avenue neighborhood is primarily residential in character; and

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, 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 along West Avenue; 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, 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 Supreme Court has upheld the constitutionality of Section 562.14, Florida Statutes (*See Wednesday Night, Inc. v. City of Fort Lauderdale*, 272 So. 2d 502 (Fla. 1972) (recognizing the statutory authority of a municipality to "prescribe by ordinance different hours of liquor sales from those fixed by other cities")); and

WHEREAS, Florida Courts have recognized, as a lawful exercise of the police power, a municipality's authority to change hours of sale for alcoholic beverages; municipalities have the statutory authority under Section 562.14, Florida Statutes, to restrict the hours when alcohol may be sold; and a municipal ordinance regulating alcohol hours of sale 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, 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 (Op. Att'y Gen. Fla. 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. 50-288 (1950)); 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.*, 80 So. 3d 433 (Fla. 4th DCA 2012); *Other Place of Miami, Inc. v. City of Hialeah Gardens* (Fla. 3d DCA 1978)); and

WHEREAS, injunctive relief is not available 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) (rejecting argument that alcohol hours ordinance "[took] away a vested property right")); 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 state licensure-On-premises consumption only, may make sales of alcohol between the hours of 8:00 a.m. and 5:00 a.m.
- 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 a/so 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)~~, 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.

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.

- E. West Avenue - outdoors. Notwithstanding the provisions of subsections (a)(3)(A) through (C) and (a)(5), alcoholic beverages shall not be offered for sale or on-premises consumption outdoors between the hours of 2:00 a.m. and 8:00 a.m. each night at alcoholic beverage establishments located between Biscayne Bay on the west, the eastern boundary line of properties fronting West Avenue on the east, the 5th Street right-of-way on the south, and the Lincoln Road right-of-way on the north.

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.

F. Determination of vested rights. The owner or operator of any alcoholic beverage establishment which, as of February 22, 2023, has a valid business tax receipt for hours greater than the hours permitted under subsection (a)(3)(E), and which is claiming a vested right to conduct alcohol sales for on-premises consumption outdoors for hours greater than the hours permitted under subsection (a)(3)(E), 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 March 31, 2024.

(iii) Standard for finding of a vested right. A vested right to conduct alcohol sales for on-premises consumption outdoors 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 outdoors 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.

* * *

- (5) Private clubs. Consideration of a request for a private club conditional use permit, including the hours of operation, shall be pursuant to the conditional use procedures and review guidelines as listed in section 118-191, et seq. A private club, either as a permitted main or accessory use, shall only offer alcoholic beverages for sale or on-premises consumption if the private club, in accordance with subsection 6-2(a), secures a license for the distribution or sale of any alcoholic beverages from the division of alcoholic beverages and tobacco of the department of business and professional regulation of the state. Private clubs licensed as alcoholic beverage establishments, either as permitted main or accessory uses, shall, only offer alcoholic beverages for sale or on-premises consumption between the hours of 8:00 a.m. and 5:00 a.m., on any day of the week, provided that service is made only to members and guests of members pursuant to Florida Statutes. However, any private club permitted to remain open after 2:00 a.m. shall purchase an extra-hours license and must provide for security in its premises by hiring private security guards or off-duty police officers between the hours of 2:00 a.m. and 5:00 a.m. each day.

Private clubs securing a license from the state division of alcoholic beverages and tobacco by complying with the requirements of F.S. § 561.20 for racquetball, tennis, or golf course facilities may admit members at any time for use of such facilities, but may not serve alcoholic beverages after 2:00 a.m. each day unless such private club is the holder of an extra-hours license and complies with the above requirements.

* * *

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 _____, 2023.

ATTEST:

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION



City Attorney NK

2-13-23

Date

(Sponsored by Commissioner David Richardson)

Underline denotes new language
~~Strikethrough~~ denotes removed language

First Reading: May 4, 2022
Second Reading: February 22, 2023