

**ALCOHOL HOURS OF SALE OUTDOORS
PS DISTRICTS SOUTH OF FIFTH STREET**

(SPONSORED BY COMMISSIONER DAVID RICHARDSON)

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," DIVISION 18, "PS PERFORMANCE STANDARD DISTRICT," SECTION 142-693, "PERMITTED USES," TO AMEND PERMITTED HOURS FOR THE OUTDOOR SALE, SERVICE, AND CONSUMPTION OF ALCOHOLIC BEVERAGES AT ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED SOUTH OF FIFTH STREET, INCLUDING ANY NECESSARY AMENDMENTS TO EXISTING EXCEPTIONS; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the South of Fifth Street neighborhood is primarily residential in nature, and area retail, recreational, and alcoholic beverage establishments primarily serve City residents and visitors; and

WHEREAS, alcoholic beverage establishments in the South of Fifth neighborhood are in close proximity to residential uses; and

WHEREAS, the City Code allows certain uses within the zoning districts south of Fifth Street, which, absent mitigation, could be incompatible with adjacent residential uses; and

WHEREAS, the sale, service, and consumption of alcoholic beverages outdoors, if not regulated, can be incompatible with the character and quality of life of residential neighborhoods; and

WHEREAS, the Mayor and City Commission desire to adopt reasonable business regulations that are compatible with the residential 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*, 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., p. 497 (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, on November 9, 2016, the City adopted Ordinance No. 2016-4054 which, in pertinent part, limited the hours of operation of alcoholic beverage establishments in the South of Fifth neighborhood, with certain exceptions, to 2:00 a.m.; and

WHEREAS, Ordinance No. 2016-4054 also imposed a 12:00 termination time for outdoor and open-air portions of alcoholic beverage establishments, and at sidewalk cafes; and

WHEREAS, even though alcoholic beverage establishments are not vested as to alcohol hours of sale, in 2016 the City Commission elected, at its discretion, to exclude existing operators from these termination times; and

WHEREAS, based upon the negative impacts of the outdoor sale, service, and consumption of alcoholic beverages, late at night, on the surrounding residential neighborhood, the Mayor and City Commission now desire to modify the outdoor termination 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 18, "PS Performance Standard District," at Section 142-693, "Permitted Uses," is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

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ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 18. – PS PERFORMANCE STANDARD DISTRICT

* * *

Sec. 142-693. Permitted Uses.

* * *

- (i) Additional regulations for alcoholic beverage establishments located south of 5th Street.
 - (1) The following additional regulations shall apply to alcoholic beverage establishments, whether as a main use, conditional use, or accessory use, that are located south of 5th Street:
 - (i) ~~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.~~
 - (ii) ~~Operations Notwithstanding the foregoing, alcoholic beverages shall not be offered for sale or consumed on premises in outdoor or open air areas of an alcoholic beverage establishment shall cease no later than between the hours of 12:00 a.m. and 8:00 a.m. each night, except as otherwise provided herein.~~
 - (iii) Alcoholic beverage establishments with sidewalk cafe permits shall only serve alcoholic beverages at sidewalk cafes during hours when food is served, shall cease sidewalk cafe operations no later than 12:00 a.m. (except as otherwise provided herein), and shall not be permitted to have outdoor speakers.
 - (iv) Outdoor bar counters shall be prohibited.
 - (v) No special events permits shall be issued.
 - (vi) The provisions of this subsection (i)(1) shall not apply, to the extent the requirements of this subsection are more restrictive, to an alcoholic beverage establishment with a valid business tax receipt that is in application status or issued prior to June 28, 2016; or 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 June 28, 2016.
 - A. Existing sidewalk cafes issued a sidewalk cafe permit as of June 28, 2016, for alcoholic beverage sales after 12:00 a.m., with food service, may continue to be renewed, but shall not serve alcoholic beverages later than 1:30 a.m.,

and alcoholic beverages may not be consumed at sidewalk cafes after 2:00 a.m.

B. Should an alcoholic beverage establishment with a sidewalk cafe permit under (A), above, be delinquent in a payment obligation to the city, and/or receive two final adjudications of violations of section 12-5 (special event permit), section 46-152 (noise ordinance), or chapter 82, article IV, division 5 (sidewalk cafe ordinance), that alcoholic beverage establishment shall only be allowed to serve alcoholic beverages at its sidewalk cafe until 12:00 a.m. for a 12-month period.

C. Alcohol hours of sale, outdoors, at alcoholic beverage establishments existing prior to June 28, 2016. Notwithstanding any other provision in this section, and only as applicable to alcoholic beverage establishments with a valid business tax receipt issued prior to June 28, 2016, or establishments that obtained land use board approval prior to June 28, 2016, and which BTR or land use board approval is active and has not expired, alcoholic beverages shall not be offered for sale or consumed on premises in outdoor or open-air areas of the alcoholic beverage establishment between the hours of 2:00 a.m. and 8:00 a.m. each night.

(vii) 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 (i)(1)(vi)(C), and which is claiming a vested right to conduct alcohol sales for on-premises consumption for hours greater than the hours permitted under subsection (i)(1)(vi)(C) 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:

A. 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 (i)(1)(vii). 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.

B. Filing period. Any application for a determination of vested rights must be filed with the city manager, city attorney, and city clerk no later than March 31, 2024.

C. 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 (i)(1)(vi)(C) shall be found to exist only where:

(1) 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;

(2) 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

(3) 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.

D. 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:

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

(2) 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 (i)(1)(vii)(C) is satisfied;

iv. Specify the applicant's requested relief; and

v. Be sworn to by the applicant.

(3) 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.

(4) 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.

(5) 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.

E. 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.

* * *

SECTION 2. REPEALER.

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

SECTION 3. 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 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:

Dan Gelber
Mayor


Rafael E. Granado
City Clerk

(Sponsored by Commissioner David Richardson)

First Reading: February 22, 2023
Second Reading: March 27, 2023

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

Verified By: _____
Thomas R. Mooney, AICP
Planning Director



City Attorney
2-13-23

Date
NK