

**ALCOHOL HOURS OF SALE**  
**MARCH 2024 – OPTION B: SOUTH OF 23<sup>RD</sup> STREET / DADE BOULEVARD**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 7 OF THE MIAMI BEACH RESILIENCY CODE, ENTITLED “ZONING DISTRICTS AND REGULATIONS,” ARTICLE 5, ENTITLED “SUPPLEMENTARY DISTRICT REGULATIONS,” BY AMENDING DIVISION 5, ENTITLED “SPECIALIZED USE REGULATIONS,” BY CREATING SUBDIVISION 9, ENTITLED “ALCOHOLIC BEVERAGE ESTABLISHMENTS,” BY CREATING SECTION 7.5.5.9 THEREOF, ENTITLED “SPECIAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS DURING SPECIFIED DATES IN MARCH OF 2024,” TO ESTABLISH HOURS FOR THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES AT ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED SOUTH OF 23<sup>RD</sup> STREET / DADE BOULEVARD DURING SPECIFIED DATES IN MARCH OF 2024, CREATE A PROCEDURE TO DETERMINE AN ESTABLISHMENT’S VESTED RIGHTS, AND PROVIDE FOR SUNSET AND AUTOMATIC REPEALER; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach (the “City”) is both a vibrant residential community and an internationally renowned tourist destination that is famous for its beautiful beaches, world-class shopping, entertainment, fine dining, and vast array of artistic and cultural events; and

**WHEREAS**, in recent years, the City has seen an increasingly large number of visitors during the March high impact period, which has posed significant challenges including, but not limited to, extreme traffic and congestion, and severe impacts to the City’s Police, Fire, Sanitation, and Code Compliance resources; and

**WHEREAS**, many of the visitors to the City during high impact periods are under the influence of alcoholic beverages and have demonstrated a blatant disregard for the rule of law; and

**WHEREAS**, the sale and consumption of alcoholic beverages late at night contributes to undesirable noise, traffic, disorderly conduct, violence, and other criminal activity during the March high impact period; and

**WHEREAS**, accordingly, the Mayor and City Commission hereby determine that it is in the best interest of the City’s residents, businesses, and visitors to limit the hours of sale and consumption of alcoholic beverages during the March 2024 high impact period; and

**WHEREAS**, the Mayor and City Commission have tailored this Ordinance as narrowly as possible, to focus on the specific dates within the March 2024 high impact period when the largest number of visitors (and, thus, the most significant impacts to residents’ quality of life) are expected, and exempt and therefore reduce the burden on establishments that are less likely to disturb surrounding residents; and

**WHEREAS**, the Ordinance does not apply to alcoholic beverage establishments that are fully enclosed and located entirely within hotels of a certain size, with no direct access to the street, on the basis that (1) restaurants, bars, and nightclubs within larger hotels can use larger lobbies and other common areas to accommodate queuing of patrons indoors (and not on the street or sidewalk), (2) larger hotels are designed to prevent noise from disturbing overnight guests, and (3) on-site hotel management and security personnel can monitor restaurants, bars, and nightclubs proactively and, if necessary, promptly contact the Police or Fire Departments in the event of an emergency or other threat to public safety; 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., 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**, 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.** Chapter 7 of the Resiliency Code, entitled “Zoning Districts and Regulations,” is hereby amended as follows:

**CHAPTER 7**  
**ZONING DISTRICTS AND REGULATIONS**  
\* \* \*  
**ARTICLE 5. SUPPLEMENTARY DISTRICT REGULATIONS**  
\* \* \*  
**DIVISION 5. SPECIALIZED USE REGULATIONS**  
\* \* \*  
**SUBDIVISION 9. ALCOHOLIC BEVERAGE ESTABLISHMENTS**

**Section 7.5.5.9. Special regulations for alcoholic beverage establishments during specified dates in March of 2024.**

(a) Alcohol hours of sale during specified dates in March of 2024. Notwithstanding any other provision of this Code, alcoholic beverages shall not be offered for sale or on-premises consumption at any alcoholic beverage establishments located south of Dade Boulevard/23rd Street between the hours of 12:01 a.m. and 8:00 a.m. each night during the period commencing on Friday, March 8, 2024, at 12:01 a.m. through Monday, March 18, 2024, at 8:00 a.m. This paragraph shall not apply to alcoholic beverage establishments that (i) are fully enclosed and located entirely within hotels with 200 or more rooms, and (ii) have no direct access to the street.

(b) 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 subsection (a) may so operate only after applying for a determination of its vested right(s) and having those rights confirmed by the chief special magistrate as follows:

(1) Appointment; qualifications; term. The chief special magistrate shall adjudicate applications for determinations of vested rights under this subsection (b). 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.

(2) 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 December 31, 2023.

(3) Standard for finding of a vested right. A vested right to conduct alcohol sales for on-premises consumption later than the hours prescribed in subsection (a) shall be found to exist only where:

(i) 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;

- (ii) 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
- (iii) 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 chief special magistrate shall dismiss any application that relies solely upon a previously enacted ordinance of the city commission.

(4) 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:

- (i) Applications for a vested rights determination shall be made in writing and filed with the city manager, city attorney, and city clerk.
- (ii) At a minimum, applications shall:
  - A. Identify all prior orders from which the alleged vested right arises;
  - B. Include a copy of each such prior order;
  - C. Specify how the adoption of this ordinance adversely affected the alleged vested right including how the standard in subsection (b)(3) is satisfied;
  - D. Specify the applicant's requested relief; and
  - E. Be sworn to by the applicant.
- (iii) 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 chief special magistrate shall make such findings in writing and deny the application.
- (iv) The 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 chief special magistrate.

(v) 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.

(5) 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.

(c) Sunset and automatic repealer. The provisions of this section shall sunset and stand automatically repealed on Tuesday, March 19, 2024.

## **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:**

\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

(Sponsored by Mayor Dan Gelber)

Underline denotes new language  
~~Strike through~~ denotes removed language

First Reading:  
Second Reading: