

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING SUBPART B OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "LAND DEVELOPMENT REGULATIONS," CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS," ARTICLE II, "DISTRICT REGULATIONS," DIVISION 13, "MXE MIXED USE ENTERTAINMENT DISTRICT," TO CREATE SECTION 142-551 THEREOF, ENTITLED "ADDITIONAL REGULATIONS FOR ALCOHOLIC BEVERAGE ESTABLISHMENTS," TO TERMINATE THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES AT ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED ON OCEAN DRIVE AT 2:00 A.M. EVERY NIGHT, EXCEPT FOR INDOOR PORTIONS OF ALCOHOLIC BEVERAGE ESTABLISHMENTS THAT ARE COMPLETELY ENCLOSED AND LOCATED ENTIRELY WITHIN HOTELS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach ("City") regulates the location, size and hours of operation, and patron age of uses that permit the sale and consumption of alcoholic beverages in Chapter 6 of the City Code, entitled "Alcoholic Beverages," except as otherwise provided in the City's land development regulations; and

WHEREAS, 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 require that alcoholic beverage establishments located on Ocean Drive terminate the sale and consumption of alcoholic beverages at 2:00 a.m. every night, because the sale and consumption of alcoholic beverages during the early morning hours along this vibrant corridor can disturb the quiet enjoyment of the community, cause undesirable noise, and contribute to litter and noxious odors in the City; and

WHEREAS, the Miami Beach Police Department has requested that the City limit the hours during which alcoholic beverages may be sold or consumed at alcoholic beverage establishments on Ocean Drive, because the sale and consumption of alcoholic beverages during early morning hours implicates the safety of the City's residents and visitors and places demands on public safety resources; and

WHEREAS, on July 20, 2016, and as sponsored by Mayor Philip Levine, the Mayor and City Commission adopted Resolution No. 2016-29522, calling for a special election to submit an advisory, non-binding straw ballot question to the City's voters asking whether the Mayor and City Commission should adopt an Ordinance stopping the sale and consumption of alcoholic beverages at 2:00 a.m. instead of 5:00 a.m., for alcoholic beverage establishments located on Ocean Drive between 5th and 15th Streets, except for indoor portions of alcoholic beverage establishments that are completely enclosed and located entirely within hotels; and

WHEREAS, on September 27, 2016, and pursuant to Resolution No. 2016-29590, the Mayor and City Commission adopted the Ten Point Plan for Ocean Drive in order to balance the vision of City leaders with the interests of residents, private property owners, and businesses in order to create a more welcoming and safer environment for residents and tourists visiting Ocean Drive; and

WHEREAS, accordingly, on September 27, 2016, the Mayor and City Commission adopted Resolution No. 2016-29589, repealing the Resolution calling for a special election; and

WHEREAS, notwithstanding the City's withdrawal of the advisory, non-binding straw ballot question, the ballots were nonetheless tabulated, and 55.15% of the City's electors voted in favor of stopping the sale of alcoholic beverages on Ocean Drive at 2:00 a.m.; and

WHEREAS, the State 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, no alcoholic beverages may be sold, consumed, served, or permitted to be served or consumed in any place licensed to sell alcoholic beverages between the hours of midnight and 7:00 a.m., unless a municipality elects to establish its own regulations for the time for sale of alcoholic or intoxicating beverages; and

WHEREAS, in *Wednesday Night, Inc. v. City of Fort Lauderdale*, 272 So. 2d 502 (Fla. 1972), the Florida Supreme Court upheld Section 562.14, Florida Statutes, holding that the statute, which relates to state, municipal, and county regulations of the time for sale of alcoholic and intoxicating beverages (1) does not contravene Federal and State constitutional guarantees of due process and equal protection of the laws; (2) does not constitute an unlawful delegation of the powers of the legislature; and (3) does not contravene any of the prohibitions against special laws or general laws of local application appearing in Section 11 of Article III of the Florida Constitution; 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, Florida courts have held that a municipality exercising its inherent powers may reasonably regulate the sale of intoxicating liquors and, in providing such reasonable regulations, may prohibit sale of such liquors within certain zones. *State ex rel. Floyd v. Noel*, 169 So. 549 (Fla. 1936); 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 City may regulate the hours of sale of alcoholic beverages at sidewalk cafes, provided the regulations are not exercised in an arbitrary or discriminatory manner, and are grounded upon some reasonable basis of classification with reference to the subject matter to be regulated. *Makos v. Prince*, 64 So. 2d 670 (1953); and

WHEREAS, such regulations may establish separate zones and do not require that regulation of hours be uniform throughout the jurisdictional limits. *Id.*; and

WHEREAS, in fact, 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, a business is neither entitled to "grandfathered" status nor entitled to enjoin enforcement of an ordinance regulating the times during which liquor may be sold. *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*, 353 So. 2d 861 (Fla. 3d DCA 1977); 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 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. Chapter 142 of the City Code is hereby amended as follows:

**CHAPTER 142
ZONING DISTRICTS AND REGULATIONS**

* * *

ARTICLE II. – DISTRICT REGULATIONS

* * *

DIVISION 13. – MXE MIXED USE ENTERTAINMENT DISTRICT

* * *

Sec. 142-551. Additional regulations for alcoholic beverage establishments.

(a) Hours of sale. Notwithstanding the regulations set forth in section 6-3, alcoholic beverages shall not be offered for sale or consumption between the hours of 2:00 a.m. and 8:00 a.m. at alcoholic beverage establishments located between Ocean Court to the west, Ocean Drive to the east, 5th Street to the south, and 15th Street to the north.

(b) Exceptions. Notwithstanding subsection (a), and only as applicable to indoor portions of alcoholic beverage establishments that are completely enclosed and located entirely within hotels located between Ocean Court to the west, Ocean Drive to the east, 5th Street to the south, and 15th Street to the north, alcoholic beverages shall not be offered for sale or consumption between the hours of 5:00 a.m. and 8:00 a.m.

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 _____, 2017.

ATTEST:

Rafael E. Granado, City Clerk
(Sponsored by Mayor Philip Levine)

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

Philip Levine, Mayor

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Paul Benit 5-30-17

City Attorney Date

NK