

MIAMI BEACH

OFFICE OF THE CITY ATTORNEY
RAUL J. AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

To: Mayor Philip Levine
Members of the City Commission
Jimmy L. Morales, City Manager

cc: Rafael Granado, City Clerk

From: Raul J. Aguila, City Attorney



Date: June 28, 2017

Subject: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, REPEALING RESOLUTION NO. 2017-29907 AND CALLING FOR A SPECIAL ELECTION ON NOVEMBER 7, 2017, FOR THE PURPOSE OF SUBMITTING TO THE ELECTORATE OF THE CITY OF MIAMI BEACH, FLORIDA A BALLOT QUESTION ASKING WHETHER THE CITY COMMISSION SHALL ADOPT AN ORDINANCE CHANGING THE CURRENT 5:00 A.M. TERMINATION TIME TO 2:00 A.M. FOR THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES ON PRIVATE PROPERTY AT ALCOHOLIC BEVERAGE ESTABLISHMENTS LOCATED ON OCEAN DRIVE FROM 5TH TO 15TH STREETS, EXEMPTING FROM THIS TIME CHANGE THOSE INDOOR PORTIONS OF ALCOHOLIC BEVERAGE ESTABLISHMENTS THAT ARE COMPLETELY ENCLOSED AND LOCATED ENTIRELY WITHIN HOTELS.

On June 7, 2017, the Mayor and City Commission adopted Resolution No. 2017-29907, calling for a special election on November 7, 2017, for the purpose of submitting to the electorate of the City of Miami Beach, Florida, a ballot question asking whether the City Commission shall adopt an Ordinance terminating at 2:00 a.m. (instead of 5:00 a.m.) the sale and consumption of alcoholic beverages at alcoholic beverage establishments located on Ocean Drive between 5th and 15th Streets, exempting indoor portions of alcoholic beverage establishments that are completely enclosed and located entirely within hotels, and requiring a 5/7ths vote of the City Commission to amend or repeal the Ordinance.

The adoption of the attached Resolution repealing Resolution No. 2017-29907 and calling for a special election is necessary to correct a scrivener's error and to clarify that the ballot measure proposed therein is not a straw ballot. Additionally, after further research, the City Attorney has revised the text, without altering the substance, of the ballot question.

The Office of the City Attorney hereby requests that the Mayor and City Commission adopt the Resolution.

The text of the proposed ballot question is as follows:

City law currently allows the sale and consumption of alcoholic beverages on private property at alcoholic beverage establishments located on Ocean Drive from 5th to 15th Streets from 8:00 a.m. until 5:00 a.m. the following day. Shall an Ordinance be adopted changing this current 5:00 a.m. termination time to 2:00 a.m., exempting from this time change those indoor portions of alcoholic beverage establishments that are completely enclosed and located entirely within hotels?

Notably, the ballot question exempts from the 2:00 a.m. time change those indoor portions of alcoholic beverage establishments that are completely enclosed and located entirely within hotels.

By limiting the operation of alcoholic beverage establishments to certain indoor areas between the hours of 2:00 a.m. and 5:00 a.m., the proposed Ordinance would remove opportunities for interaction between (i) patrons of alcoholic beverage establishments and (ii) individuals congregating on the sidewalks or cruising in vehicles for purposes of disturbing the community and engaging in criminal mischief. Additionally, restricting the operation of certain alcoholic beverage establishments to indoor areas will reduce the incidence of excessive noise and other nuisances in the surrounding neighborhood.

More specifically, the exemption for indoor areas of alcoholic beverage establishments within hotels is supported by the fact that hotels, with enclosed lobbies, are far more likely to operate less intense and less boisterous alcoholic beverage establishments than standalone operations, in order to minimize disturbances to hotel guests. When the MXE district was created in the mid-1980s, the intent was to promote sidewalk cafes located on the exterior areas of architecturally significant hotels, not to promote 5:00 a.m. drinking establishments on outdoor terraces. Limiting late-night drinking establishments to fully enclosed hotels is consistent with the policies supporting the creation of the MXE district.