

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

# COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

Jose Smith, City Attorney
September 11, 2013 FROM:

September 11, 201/3 DATE:

SUBJECT: REFERRAL TO THE LAND USE AND DEVELOPMENT COMMITTEE -

PROPOSED AMENDMENT TO CHAPTER 6, ALCOHOLIC BEVERAGES, TO CORRECT SCRIVENER'S ERRORS REGARDING ON-PREMISES AND OFF-

PREMISES CONSUMPTION

## RECOMMENDATION

Refer this matter to the Land Use and Development Committee for consideration and recommendation on an ordinance amendment to correct these errors.

### **BACKGROUND/ANALYSIS**

The City Attorney's Office has noticed that Chapter 6, Article I, Section 6-3, was incorrectly amended, and inadvertently omitted language concerning on-premises consumption of alcoholic beverages, substituted instead with duplicated language concerning off-premises consumption.

Section 6-3(3) provides regulations for the permitted hours of on-premises consumption of alcoholic beverages in various types of alcoholic beverage establishments, as referenced in subsections a-c. Subsection 6-3(3), however, begins with the language: "Off-premises package sales shall be permitted between the hours of 8:00 a.m. and midnight, for all establishments licensed as alcoholic beverage establishments." This is a duplication of language already in subsection 6-3(4), which provides: "Off-premises package sales shall be permitted between the hours of 8:00 a.m. and 11:00 p.m., for all establishments licensed as alcoholic beverage establishments." This error was made in Ordinance 2003-3403, when subsection 6-3(4), intending to amend the closing hours for sale of alcoholic beverages for off-premises consumption was changed from 11:00 p.m. to midnight, instead amended subsection 6-3(3), and left subsection 6-3(4) with the old 11:00 p.m. closing time.

Thus, subsection 6-3(3) should commence with the following language (taken from the code as it existed prior to 2003: All establishments licensed as alcoholic beverage establishments (midnight to 5:00 a.m.), either as permitted main or accessory uses, shall only offer for sale the on-premises consumption of alcoholic beverages within the hours of 8:00 a.m. and 5:00 a.m. on any day of the week. And subsection (4) should be corrected to have the correct closing time for sales of alcoholic beverages for off-premises consumption, per the City Commission's last action on that subject: Off-premises package sales shall be permitted between the hours of 8:00 a.m. and 41:00 p.m. midnight, for all establishments licensed as alcoholic beverage establishments. The full section 6-3, with corrections proposed, is attached to this memo.

### CONCLUSION

The City Attorney recommends that the Mayor and the City Commission refer this matter to the Land Use and Development Committee for consideration and recommendation on an ordinance to correct these errors.

JS/GMH/s

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#### Sec. 6-3. Hours of sale.

The hours of sale of alcoholic beverages shall be according to the following schedule, except as may be otherwise provided pursuant to subsection (7):

- (1) Retail stores for package sales only, either as permitted main or accessory uses. Vendors having a license from the state division of alcoholic beverages and tobacco for the sale of liquor and other alcoholic beverages for consumption off the premises shall only offer for sale alcoholic beverages within the hours of 8:00 a.m. and midnight on any day of the week.
- (2) Retail stores, including grocery and convenience stores, and gasoline service/filling stations, either as permitted main or accessory uses, which primarily offer for sale products other than alcoholic beverages may make sales of beer and wine in sealed containers for consumption off the premises between the hours of 8:00 a.m. and midnight on any day of the week.
- (3) All establishments licensed as alcoholic beverage establishments (midnight to 5:00 a.m.), either as permitted main or accessory uses, shall only offer for sale the on-premises consumption of alcoholic beverages within the hours of 8:00 a.m. and 5:00 a.m. on any day of the week. Off-premises package sales shall be permitted between the hours of 8:00 a.m. and midnight, for all establishments licensed as alcoholic beverage establishments.
  - a. Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments (midnight to 5:00 a.m.), 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 onpremises consumption between the hours of 5:00 a.m. and 8:00 a.m. b. Restaurants with full kitchen facilities, serving full meals, licensed as alcoholic beverage establishments (midnight to 5:00 a.m.), 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 10:00 a.m.
  - c. Other alcoholic beverage establishments (midnight to 5:00 a.m.), not containing restaurants with full kitchen facilities, shall close at 5:00 a.m. and keep closed the place of business and not allow any patron or other persons, other than those employed by the vendor, to remain therein between the hours of 5:00 a.m. and 8:00 a.m.

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.

- (4) Off-premises package sales shall be permitted between the hours of 8:00 a.m. and 11:00 p.m. midnight, for all establishments licensed as alcoholic beverage establishments.
- (5) Private clubs, either as a permitted main or accessory use, shall be considered pursuant to subsection <u>6-2(a)</u>. Hours of operation and the consumption of alcoholic beverages will be considered between the hours of 8:00 a.m. and 5:00 a.m., Monday through Sunday, 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 extrahours license and complies with the above requirements.
- (6) Upon a finding by the special master that a violation of this section has occurred, the city may initiate proceedings to revoke the certificate of use, occupational license, or certificate of occupancy of the violator. In addition, this section may be enforced and violations may be punished as second degree misdemeanors, as provided in F.S. §§ 775.082 and 775.083.
- (7) Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages (i) until 7:00 a.m. on January 1 (New Year's Day) or, if January 1 is on a Sunday, until 7:00 a.m. on Monday if the day that is observed as a national holiday for New Year's Day is on Monday, and (ii) until 7:00 a.m. during certain major event days or weekends as may be designated by the city commission or as may be designated by the city manager following approval by the city commission, under the following conditions:
  - a. The police department and the code compliance division of the city must be notified by a letter, received no later than 15 business days prior to either (a) January 1 or (b) the day on which alcohol sales are to be extended, stating that the alcoholic beverage establishment intends to serve alcoholic beverages for on-premises consumption until 7:00 a.m.;
  - b. If deemed reasonably necessary by the police chief, or the police chief's designee, off-duty police officers must be provided at the alcoholic beverage establishment until 7:00 a.m.;
  - c. There are no pending city Code violations against the alcoholic beverage establishment:

- d. No delinquent or past due monies are owed to the city;
- e. Outdoor entertainment or open-air entertainment is not allowed;
- f. No violation of the city's noise ordinance shall be permitted;
- g. No violation of the approved fire code occupancy load shall be permitted;
- h. All required city permits and licenses are current;
- i. The State of Florida alcoholic beverage license is current; and
- j. Any other conditions required by the city manager in order to protect the public health, safety, or welfare.

Alcoholic beverage establishments set forth in subsections (3) and (5) permitted to remain open to serve alcoholic beverages for on-premises consumption until 5:00 a.m. may continue to serve alcoholic beverages until 6:00 a.m. on the first day of daylight savings time in the spring.

(8) The city manager may suspend the provisions of subsection (7) at any time to protect the public health, safety, or welfare.

(Ord. No. 89-2665, § 12-1C, eff. 10-1-89; Ord. No. 98-3132, §§ 1, 3, 7-15-98; Ord. No. 99-3222, § 1, 12-15-99; Ord. No. 2001-3286, § 1, 1-10-01; Ord. No. 2003-3403, § 1, 3-19-03; Ord. No. 2007-3556, § 1, 4-11-2007)