



# MIAMI BEACH

OFFICE OF THE MAYOR AND COMMISSION

## MEMORANDUM

TO: Members of the City Commission

CC: Jimmy Morales, City Manager  
Rafael Granado, City Clerk

FROM: Philip Levine, Mayor

DATE: February 25, 2014

SUBJECT: An Ordinance of the Mayor and City Commission of the City of Miami Beach, Florida; Amending the Code of the City of Miami Beach, Florida Amending Chapter 6, Entitled "Alcohol Beverages."

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Please place the aforementioned item on the March 5<sup>th</sup> City Commission Agenda for referral to the Planning Board. Ordinance language will be forthcoming. If there are any questions or concerns, please do not hesitate to contact Alex Miranda at [AlexMiranda@MiamiBeachFl.gov](mailto:AlexMiranda@MiamiBeachFl.gov).

**DRAFT**

**ORDINANCE NO.**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA; AMENDING THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 6, ENTITLED "ALCOHOL BEVERAGES," SECTION 6-4, ENTITLED "LOCATION AND USE RESTRICTIONS," BY PERMITTING ALCOHOLIC BEVERAGES TO BE SOLD IN MOTION PICTURE THEATERS SUBJECT TO CONDITIONAL USE APPROVAL; AMENDING CHAPTER 6, ENTITLED "ALCOHOL BEVERAGES," SECTION 6-5 ENTITLED "PATRON AGE RESTRICTIONS," BY ESTABLISHING AN EXEMPTION FOR MOTION PICTURE THEATERS FROM THE CODE'S PATRON AGE RESTRICTIONS; AMENDING CHAPTER 142, ENTITLED "ZONING DISTRICTS AND REGULATIONS," ARTICLE V, ENTITLED "SPECIALIZED USE REGULATIONS," DIVISION 4, ENTITLED "ALCOHOLIC BEVERAGES," SECTION 142-1301, ENTITLED "PERMITTED DISTRICTS," BY PERMITTING ALCOHOLIC BEVERAGES TO BE SOLD IN THE GU GOVERNMENT USE DISTRICT; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

**WHEREAS**, the Code of the City of Miami Beach specifies location and use restrictions on motion picture theaters located within the City; and

**WHEREAS**, the Code currently prohibits alcohol beverages from being sold or offered for consumption in motion picture theaters; and

**WHEREAS**, the City Commission deems it advisable to permit sales of alcoholic beverages within certain motion picture theaters, subject to Conditional Use approval by the Planning Board; and

**WHEREAS**, the City Commission deems it advisable to limit the applicability of this amended Sec. 6-4 (a)(4) to motion picture theaters containing, in their entirety, at least 300 auditorium seats and 15,000 sq. ft. in total floor area.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:**

**SECTION 1.** That Section 6-4, entitled "Location and use restrictions," of Chapter 6, entitled "Alcohol Beverages," of the Code of the City of Miami Beach, Florida is hereby amended to read as follows:

**Sec. 6-4. Location and use restrictions.**

\* \* \*

(a) Generally. The following location and use restrictions are applicable for facilities selling or offering alcohol beverages for consumption:

- (1) Educational facilities. No alcohol beverage shall be sold or offered for consumption in a commercial use within 300 feet of any property used as a public or private school operated for the instruction of minors in the common branches of learning. Except for uses in the civic and convention center (CCC) district, hospital (HD) district or within 300 feet of a marina.
- (2) Places of worship. No alcohol beverage shall be sold or offered for consumption in a commercial use, except in restaurants for consumption on the premises, within 300 feet of any property used as a place of worship.
- (3) Retail stores for off-premises consumption. The minimum distance separation between retail stores primarily selling alcohol beverages for consumption off the premises as a main permitted use shall be 300 feet.
- (4) Motion picture theater. No alcohol beverages shall be sold or offered for consumption in any motion picture theater or in any room opening directly or indirectly into or in connection with any motion picture theater, except alcohol beverages may be served in motion picture theaters of at least 15,000 square feet in total floor area and containing at least 300 permanent auditorium seats that are located in GU Government Use, and CD-3 Commercial, High Intensity Districts, subject to Conditional Use approval as provided for in Section 118, Article IV of this Code and subject to the review criteria listed in Section 142-1362(a) of the Land Development Regulations of the City Code. Motion picture theaters shall not be permitted to operate between the hours of 3:00 a.m. and 8:00 a.m., except that motion picture theaters may apply for up to three special event permits from the City per calendar year to operate during such hours. This section shall not relieve any person, entity or establishment from the restrictions contained in Chapter 6, Article II or the Land Development Regulations of the City Code.

Any Conditional Use approval granted pursuant to this section shall be subject to the following:

- i. The sale of alcoholic beverages for consumption off the premises is strictly prohibited.
- ii. A Minor Control Plan, setting forth conditions regarding hours of operation and alcohol sales, alcohol service and monitoring procedures, food service, and staff training, must be approved by the Planning Board.

iii. There may be special customer promotions that combine purchase of a motion picture theater ticket with purchase of food and an alcoholic beverage. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed.

- (5) Filling station. No liquor shall be sold or offered for consumption on or off the premises of any filling station.
- (6) Curb service sales. No alcohol beverages shall be sold or served to persons in a vehicle of any kind or from an exterior counter or any type of walk-up window. All sales are to be from the interior of the structure.
- (7) Off-premises consumption. All sales of alcohol beverages for consumption off the premises shall be in a sealed container.
- (8) Bottle clubs. There shall be no bottle clubs within 300 feet of any property used as a public or private school operated for the instruction of minors in the common branches of learning or place of worship.
- (9) Dance halls. The minimum distance separation between dance halls licensed to sell alcohol beverages, and not also operating as restaurants with full kitchens and serving full meals, shall be 300 feet.
- (10) Entertainment establishments. The minimum distance separation between entertainment establishments licensed to sell alcohol beverages, and not also operating as restaurants with full kitchens and serving full meals, shall be 300 feet. This section shall not apply to alcoholic beverage establishments, also licensed and operating as motion picture theaters, subject to compliance with Section 6-4(a)(4) of this Code.

(b) Determination of minimum distance separation.

- (1) For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the main entrance or exit in which the use associated with alcohol beverages occurs to the nearest point of the property used for a public or private school. In cases where a minimum distance is required between two uses associated with the alcohol beverages for consumption on or off the premises, the minimum requirement shall be determined by measuring a straight line between the principal means of entrance of each use.
- (2) When a distance separation is required, a scaled survey drawn by a registered land surveyor shall be submitted attesting to the separation of the uses in question. This requirement may be waived upon the written certification by the planning and zoning director that the minimum distance separation has been met.

(c) Variances. Variances to the provisions of this section may be granted pursuant to the procedure in section 118-351 et seq. except that no variances may be granted to the prohibitions and limitations prescribed herein on the sale or consumption of alcohol beverages in motion picture theaters.

**SECTION 2.** That Section 6-5, entitled "Patron age restrictions," of Chapter 6, entitled "Alcohol Beverages," of the Code of the City of Miami Beach, Florida is hereby amended to read as follows:

**Sec. 6-5. Patron age restrictions.**

(a) It shall be unlawful for persons under the age of 21 to patronize, visit, loiter, be admitted or allowed access, in any alcoholic beverage establishment, as defined in section 114-1 of this Code, except as hereinafter provided. This restriction shall not apply to:

- (1) Persons employed by or at the alcoholic beverage establishments;
- (2) Persons accompanied by either of their parents (natural, adoptive, or stepparent) or legal guardian (appointed by a court); and
- (3) Alcoholic beverage establishments also licensed and operating as restaurants, containing a full kitchen of an appropriate size to serve the occupancy load of the establishment, serving full meals at all times. In the case of hotels and other similar multiuse establishments, this restriction applies only to those areas of the establishment operating primarily as an alcoholic beverage establishment, and not also operating as a restaurant as described above; and
- (4) Alcoholic beverage establishments also licensed and operating as motion picture theaters, subject to compliance with Section 6-4(a)(4) of this Code.

(b) Enforcement and penalties:

- (1) An offense of this section by an alcohol beverage establishment shall be defined as one or more persons under the permitted patron age discovered on the business premises during a 24-hour period in violation of this section. Hearings on notices of violation shall be conducted by the special master, who may impose penalties, including fines and suspension, as provided for in chapter 30 of this Code, with appeal by certiorari to the circuit court, Appellate Division.
- (2) It shall be a defense to alleged violations of this section that the person under the age of 21 obtained access despite the owner's reasonable efforts to prevent such access, or through a fraudulent identification, and the business used reasonable efforts to prevent the use of fraudulent identifications. "Reasonable efforts" shall include, but not be limited to, use of employees properly checking identification cards at the entrance to

the subject establishment. Presentation of a proposed business security plan to prevent future violations may be considered as a mitigating factor in the suspension hearing or appeal process. For purposes of this section, "identification cards" are defined as official Federal, state or local government issued identification cards.

- (3) A warning shall be given for the first offense; a fine of \$500.00 shall be imposed for the second offense; a fine of \$1,000.00 shall be imposed for the third offense; a fine of \$3,000.00 shall be imposed for the fourth offense; the special master may impose a fine and/or a suspension of the business's occupational license for further offenses, in successively escalating suspension periods of: one weekend, seven days, 30 days, six months or may revoke the business's occupational license. For purposes of determining the appropriate penalty this section, violations shall accrue only for the preceding 12- month period.
- (4) An offense of this section by persons under the age of 21 shall be addressed as follows: Persons found in violation of this section shall be asked by the business establishment, the department of code compliance, or certified law enforcement officers, to leave the premises subject to this section. Failure to leave the premises will subject the violator to criminal penalties as provided by Florida law. Additionally, persons under the age of 21 who gained access to the alcoholic beverage establishment by presenting fraudulent identification shall be subject to prosecution for violation of F.S. § 322.212, or comparable provision.

**SECTION 3.** That Chapter 142, Article V, Division 4, Section 142-1301, entitled "Permitted Districts," of the Code of the City of Miami Beach, Florida is hereby amended to read as follows:

**Sec. 142-1301. Permitted districts.**

Vendors may be permitted to sell or distribute alcoholic beverages, either for consumption on or off the premises only in the following zoning districts:

- (1) RM-2 multiple-family, medium intensity.
- (2) RM-3 multiple-family, high intensity.
- (3) CD-1 commercial, low intensity.
- (4) CD-2 commercial, medium intensity.
- (5) CD-3 commercial, high intensity.
- (6) CCC convention center district.
- (7) GU government use district
- ~~(7)~~ (8) HD hospital district.
- ~~(8)~~ (9) I-1 industrial, light.
- ~~(9)~~ (10) MR marine recreational.
- ~~(10)~~ (11) MXE mixed use entertainment.
- ~~(11)~~ (12) WD-1 waterway district.
- ~~(12)~~ (13) WD-2 waterway district.

- ~~(13)~~ (14) R-PS2 residential medium density.
- ~~(14)~~ (15) R-PS3 residential medium-high density.
- ~~(15)~~ (16) R-PS4 residential high density.
- ~~(16)~~ (17) C-PS1 commercial limited mixed use.
- ~~(17)~~ (18) C-PS2 commercial general mixed use.
- ~~(18)~~ (19) C-PS3 commercial intensive mixed use.
- ~~(19)~~ (20) C-PS4 commercial intensive phased bayside.
- ~~(20)~~ (21) RM-PS1 residential limited mixed-use development.
- ~~(21)~~ (22) TC-1 North Beach Town Center core.
- ~~(22)~~ (23) TC-2 North Beach Town Center mixed-use.
- ~~(23)~~ (24) TC-3 North Beach Town Center residential/office.

#### **SECTION 4. REPEALER.**

All ordinances or parts of ordinances and all sections and parts of sections in conflict herewith be and the same are hereby repealed.

#### **SECTION 5. SEVERABILITY.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

#### **SECTION 6. 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 renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

**SECTION 7. EFFECTIVE DATE.**

This Ordinance shall take effect on the \_\_\_\_ day of \_\_\_\_\_,  
201\_.

**PASSED and ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

APPROVED AS TO  
FORM AND LANGUAGE  
& FOR EXECUTION

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date