

## **City of Miami Commission Paves the Way Toward Alcohol Beverage Law Cleanup**

By [Miami Liquor License Attorney, Alcohol Law and Food Law Attorney Valerie Haber](#)

On October 26<sup>th</sup>, the City of Miami Commission voted on first reading to approve significant changes to City alcohol beverage laws. The Commission must now approve the proposed ordinance at a second reading in November. The City of Miami's alcohol beverage laws are set forth in the [chapter 4 of the City of Miami Code of Ordinances](#) ("Chapter 4"), and are currently confusing, ambiguous, and difficult to maneuver. Over the past few years, Valerie Haber of GrayRobinson P.A., alongside other industry stakeholders, worked with City staff and Commissioners to re-draft the laws, in an effort to make the process of obtaining a Miami liquor license, beer and wine license, or brewery license more straightforward. These proposed changes are intended to bring Chapter 4 into greater alignment with the stated purpose of Miami 21 -- to foster mixed-use communities wherein residents can find daily activities within a five minute walk (including schools, churches, and alcohol service establishments where deemed to be appropriate by the Commission).

As background, any applicant for a Florida liquor license, including a 4COP quota liquor license, 2COP beer and wine license, or a 4COP-SFS restaurant liquor license, has to go through a somewhat grueling approval process before even submitting a licensing application to the ultimate issuing authority, the Florida Division of Alcoholic Beverages and Tobacco (the "DABT"). This process includes seeking approval from the local municipal regulating authority; in the City of Miami this authority is the City's Planning and Zoning Department.

In reviewing an alcohol beverage application, the City determines whether the proposed use complies with the law. Currently, Chapter 4 requires that a business wanting to sell alcohol beverages for on-premise consumption, like a bar, nightclub, or certain restaurants, meet "distance separation requirements." Distance separation requirements mean that in order to open a business selling alcohol to the public for the customer to consume at your business (as opposed to merely selling packaged/sealed alcohol products), the business needs to be a certain number of feet away from any religious institutions, schools, or other businesses with an alcohol license. In the City of Miami, distance separation requirements mean that the proposed alcohol beverage business needs to be at least:

- 1,500 feet away from an existing licensed alcohol beverage business;
- 1,000 feet away from a public school; and
- 300 feet away from a religious institution.

The current City Code contains many exceptions to these general distance separation requirements, but the exceptions are confusing and ambiguous. For example, there are multiple specialty districts, including "entertainment districts" like the Brickell Village District, the Brickell Riverside District, the Park West District, the Media Entertainment District, and the Overtown Entertainment District. Each entertainment specialty district allows a limit number of nightclub, supper club or bar uses. Special hours of sale for alcoholic beverages apply in each of these districts. To further complicate matters, the City Code creates separate "cultural specialty" districts, including the Wynwood Café District, the SW 8th Street Cultural Specialty District, the Miami Modern (MiMo)/Biscayne Boulevard Historic Specialty District, the Osun Village

District, and the Orange Bowl District. Each of these districts has separate procedures to get approval to sell alcohol; some districts require that an applicant submit a “warrant” application with burdensome survey and site plan requirements, and others require that you show an undefined “cultural” aspect to your business.

Distance separation requirements are also currently waived for certain “bona fide” restaurants with incidental alcohol sales, but only large restaurants qualify; the restaurant has to be at least 4,000 square feet in size, and be capable of seating 200 or more patrons at tables. The restaurant also needs to have a full kitchen and serve full-course meals in order to qualify. These City square footage and seating requirements are outdated in that state law now requires only 2,500 square feet and the capability to seat 150 patrons at one time in order to qualify for a full-liquor restaurant (4COP-SFS) license.

In summary, the City distance separation requirements are broad and burdensome, and there is no way for the City to waive these requirements unless a proposed business meets one of the exceptions set forth in the Code. The proposed changes to the Code, approved on first reading by the City Commission, would allow the Commission to waive distance separation requirements by up to 50%. As an illustration, if a bar wanted to open up within 1,000 feet of an existing nightclub, the bar would currently have no option if it was not located within a specialty district. Because the proposed bar does not meet the required 1,500 foot distance, it would be out of luck, and have no way to get a liquor license. With the proposed revisions, the bar could apply for up to a 50% waiver from the City Commission, which would allow the bar to be located no less than 750 feet from an existing bar or nightclub.

Restaurants stand to benefit most from the proposed changes to the City alcohol ordinances. The threshold for restaurants serving spirits, wine and beer to be exempted from distance separation requirements would lower from 4,000 square feet/200 seats to 2,500 square feet/150 seats in order to align with state licensing requirements. Better yet, smaller restaurants not meeting this square footage/seat requirement could get zoning approval on their liquor licensing application if they get City Planning & Zoning Department approval in the form of a “Warrant.” A Warrant is a form of zoning approval issued directly by the Planning & Zoning Department, without the need for public hearing. Note that the Warrant process is somewhat cumbersome, although not impossible. At the very least, the “Warrant” process would afford smaller restaurant an opportunity to get a full liquor license, albeit through a potentially lengthy local zoning process.

While these proposed changes to Chapter 4 would clarify certain requirements, and would add a new avenue for smaller restaurants to apply for full liquor licenses, the language being considered by the Commission is still somewhat complicated. A multitude of specialty districts is proposed, although the boundaries of those districts are now more apparent. Despite the fact that many nuances and intricacies still plague the proposed alcohol ordinance, as a whole the changes would go a long way to help new alcohol beverage establishments enter the Miami market.

If you need help maneuvering the complexities of current or proposed City of Miami alcohol beverage regulations, please do not hesitate to reach out directly to Gray Robinson’s Alcohol Law Group.

### About the Author:

Valerie L. Haber is a Miami liquor license and alcohol beverage law attorney and is an associate in the firm's Alcohol Law and Food Law Practice Groups. She concentrates her practice on advising all three tiers of the alcohol beverage industry including wineries, breweries, and distilled spirits suppliers, distributors, and retailers. Valerie's practice includes counsel relating to federal, state, and local laws governing the sale, distribution, importation, manufacturing, and marketing of alcoholic beverages, including beer, wine, and spirits. Valerie works closely with national retailers, including restaurants, supermarkets, movie theater chains, and other on- and off-premise businesses, through all phases of development and licensing, including land use and zoning diligence and approvals. She also has experience drafting management and promotional contracts for alcohol industry members, including hotels and golf courses, and regularly advises clients on the legal risks associated with promotional activities. Valerie also assists clients with local liquor licensing, including restaurant, hotel, and occupational licensing.