



OFFICE OF THE CITY ATTORNEY

RAUL AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

TO: MAYOR DAN GELBER
MEMBERS OF THE CITY COMMISSION SECOND READING
JIMMY L. MORALES, CITY MANAGER

FROM: RAUL J. AGUILA, CITY ATTORNEY 

DATE: MAY 8, 2019

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE IV, ENTITLED "USES IN PUBLIC RIGHTS-OF-WAY," BY AMENDING DIVISION 5, ENTITLED "SIDEWALK CAFES," BY AMENDING SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-381 THEREOF, ENTITLED "PERMITTED AREAS; CONDITION PERMIT; CITY MANAGER'S RIGHT TO REMOVE SIDEWALK CAFES; REQUIREMENT DISCLOSURES ON MENUS, BILLS, AND RECEIPTS," BY CLARIFYING A SIDEWALK CAFE'S STATUS UPON THE CITY'S PROPERTY, AND ESTABLISHING THE CITY MANAGER'S AUTHORITY TO TERMINATE OR SUSPEND SIDEWALK CAFE OPERATIONS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

The Administration has requested those remedial amendments to Section 82-381 of the City Code, which proposed amendment(s) to the Ordinance, are being sponsored by Mayor Dan Gelber. The proposed amendment to the Ordinance was heard on first reading at the April 10, 2019 City Commission meeting, and was passed with minimal modifications to those proposed amendment(s) to the Ordinance.

These proposed amendment(s) to Section 82-381 of the City Code seek to unmistakably delineate the legal status of a sidewalk café's operation upon the City's public property, and to further identify the City Managers authority to terminate or suspend the operations of a sidewalk cafe, provided such administrative action is reasonably necessary to protect the public health, safety, or welfare.

Specifically, and in response to the Mayor and City Commission's discussion on those proposed amendment(s) to the Ordinance at first reading, the following changes have been made:

1. The City Manager will be required to issue a prompt, written notification to the Mayor and City Commission, once he has determined that there exist those circumstances, in which it is reasonably necessary for the City Manager to immediately terminate, suspend, close, remove, or relocate a sidewalk cafe operation.

2. Additionally, Subsection 82-381(e) has been further amended to establish a provision that delineates the express circumstances under which the City Manager is authorized to initiate the immediate suspension and closure of a sidewalk cafe operation **based upon the declaration of a High Impact Period pursuant to Section 82-443 of the City Code.** The City Manager will be required to comply with the noticing requirements of Section 82-443, and any such immediate suspension or closure of a sidewalk cafe that is directly located within a High Impact Zone would be limited to a maximum period of 72 consecutive hours.

The inclusion of this new provision within Section 82-381(e) will serve to minimize the adverse impacts from the City Manager's declaration of a High Impact Period, and will require the City Commission to authorize any extension of the suspension or closure period for those sidewalk cafes located within a High Impact Zone beyond the initial 72 hour period.

The second reading of the Ordinance is scheduled for the May 8, 2019 City Commission Meeting. The Administration supports the amendment(s) to Section 82-381 of the City Code, and further supports the creation of the new limitations for those sidewalk café operators located within a High Impact Zone, which is consistent with the provisions set forth in Section 82-443 of the City Code.

RA/AB/sp