

ORDINANCE NO. _____

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.

WHEREAS, sidewalk cafes have been established throughout the City of Miami Beach in order to provide a unique environment for relaxation and food and/or beverage consumption; and

WHEREAS, the approval, issuance and continued operation of a sidewalk cafe permit is recognized by the City to be a privilege that is conditional at all times, which neither establishes nor creates any legal rights upon the permittee; and

WHEREAS, the operation of a sidewalk cafe is subject to certain identifiable requirements, permit conditions and other safety standards that must be satisfied by the permittee, which will facilitate and ensure a safe environment for residents and visitors at sidewalk cafes; and

WHEREAS, the City Manager must have authority to regulate the hours, manner and circumstances under which these sidewalk cafes are permitted to operate upon the City's property; and

WHEREAS, sidewalk cafes encourage additional pedestrian traffic to these areas, which may cause the congregation of numerous individuals at these locations, and may disturb the quiet enjoyment of the community, cause undesirable noise, result in physical disputes amongst patrons and passers-by, and generally contribute to litter, noxious odors, and the degradation of the City brand; and

WHEREAS, the City Manager must have the authority to impose immediate conditions, which may include the termination, suspension, closure, removal, relocation and/or storage of all or part of a sidewalk cafe operation(s), for those circumstances in which the City Manager determines it reasonably necessary for the protection of the public health, safety, and welfare.

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

SECTION 1. That Section 82-381 of Subdivision II, of Division 5, of Article IV, of Chapter 82 of the Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 82
PUBLIC PROPERTY**

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ARTICLE IV. USES IN PUBLIC RIGHTS-OF-WAY

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DIVISION 5. SIDEWALK CAFES

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Sec. 82-381. Permitted areas; condition permit; city manager's right to remove sidewalk cafes; requirement disclosures on menus, bills, and receipts.

- (a) Sidewalk cafes shall only be located where permitted by the city's zoning ordinance and land development regulations, as same may be amended from time to time.
- (b) The operation of a sidewalk cafe is considered to be a privilege, and not a right, and the issuance of a sidewalk cafe permit neither establishes nor creates any legal rights for the permittee. The approval, and-issuance and continued operation of a sidewalk cafe permit is subject to the city manager's discretion, which is deemed conditional at all times.
- (c) It shall be unlawful for any person to operate a sidewalk cafe without a valid permit as required by this division.
- (d) The city manager shall have the right to immediately remove, after 24-hours written and/or verbal notice to the permittee, any sidewalk cafe furniture used in connection with a sidewalk café which is operating without a valid permit.
- (e) The city manager may cause the immediate termination, suspension, closure, removal, relocation, and/or storage of all or part of a sidewalk cafe operation and/or sidewalk cafe furniture in emergency situations those circumstances where the city manager determines it reasonably necessary for the protection of the public health, safety, or welfare. or for public safety considerations. The city manager is further expressly authorized to restrict the operating hours of any sidewalk cafe including, without limitation, during high impact events, as defined in Section 82-443(a) of the City Code, or any other circumstances that are reasonably necessary for the protection of the public health, safety, or welfare. In those instances where the city manager determines that termination, suspension, closure, removal, relocation, and/or storage of all or part of a sidewalk cafe is necessary, pursuant to this subsection, the city manager shall provide prompt, written notice to the Mayor and City Commission setting forth the sidewalk cafe location, the action(s) taken pursuant to this subsection and the reason(s) therefor, and the duration of time for such action.
 - i. High Impact Periods. The city manager may, upon declaration of a high impact period, as provided in Section 82-443 of the City Code, order the immediate suspension and closure of all or part of sidewalk cafe operation(s) (including, without limitation, the removal of all or any sidewalk cafe furniture) within a High Impact Zone, as such area is defined in Section 82-443 of the City Code; provided however, that the manager shall first comply with the noticing requirements set forth in Section 82-443(c) of the City Code, and such measures shall only be instituted by the manager for a maximum period of 72 consecutive hours without the further approval of the City Commission to extend such periods.
- (f) The city manager may require the temporary removal and/or relocation of all or part of a sidewalk cafe when street, sidewalk, or utility repairs, or other public construction, necessitates such action. If such temporary removal exceeds 15 days, the city manager shall pro-rate the remaining permit fee for each additional day the sidewalk cafe (or portion thereof)

is removed and apply a credit toward the following year's permit fee or, upon written request by the permittee, refund the remaining fee to the permittee.

- (g) Upon written and/or verbal notification by the city manager of a hurricane or other major weather event, or the issuance of a hurricane warning by Miami-Dade County, whichever occurs first, the permittee shall, within no more than four hours of same, remove and place indoors all tables, chairs and any other sidewalk cafe furniture located on the right-of-way. The notification by the city manager of a hurricane or other major weather event, or the issuance of a hurricane warning, shall constitute a public emergency situation as referenced in this division. The city manager may remove, relocate, and/or store any sidewalk cafe furniture found on the right-of-way that has otherwise not been removed by the permittee pursuant to this subsection. Any and all costs incurred by the city for removal, relocation and/or storage of sidewalk cafe furniture shall be the responsibility of the permittee. Sidewalk cafes will not re-open for business following a hurricane or other major weather event until notified by the city manager. Violation of this subsection (g) shall result in the issuance of an immediate \$1,000.00 fine, and/or suspension, for up to 30 days, of the sidewalk cafe permit.
- (h) Each sidewalk cafe menu shall comply with the requirements of this subsection (h). The city commission may adopt, by resolution, sidewalk cafe menu design guidelines consistent with the intent and purpose of this subsection (h), in which case each sidewalk cafe menu shall additionally comply with such guidelines. A sidewalk cafe must display or disclose, in writing, actual prices for food and drink menu item(s), or display or disclose, in writing, actual prices and accurate terms and conditions for any food and drink menu special(s). The displayed price for the food or drink menu item(s) or food and drink menu special(s) (and, if applicable, the terms and conditions for any food and drink menu special(s)) must be in a size (font) and typeface, which is at least as large as the name of the menu item. Such prices (and, if applicable, terms and conditions) must be displayed adjacent to the name, description, photograph, and/or image of each menu item or menu special, except as may be expressly authorized pursuant to the sidewalk cafe menu design guidelines. All menu prices must be displayed in numeric format. A sidewalk cafe may not charge a price that is greater than the price displayed or disclosed for any food or drink menu item(s) or food or drink menu special(s). In the event that a sidewalk cafe patron makes a unique or special request for a food or drink menu item not listed on the menu, the sidewalk cafe must disclose, to the patron, the price of the unique or specially requested food or drink menu item, prior to agreeing to prepare the food or drink menu item. A menu that prominently displays the name of the sidewalk cafe operator; actual prices for food and drink menu item(s) and for food and drink menu special(s); and, if applicable, accurate terms and conditions for any food and drink menu special(s) must be provided to each sidewalk cafe patron.
- (i) A sidewalk cafe that automatically includes a gratuity or service charge, either, in the price of the meal or drink or separately imposed for all items ordered, must display the actual amount of such gratuity or service charge on the menu and on the face of the customer's bill. This disclosure serves to provide the customer notification that an automatic gratuity or service charge is being included by the sidewalk cafe operator. The disclosure of the gratuity or service charge within the menu must not be smaller than 14-point font, and the disclosure within the bill must not be smaller than 12-point font.
- (j) A sidewalk cafe operator that includes a gratuity or tip as a charge must separately itemize and state the actual amount of this charge on the face of the customer's bill and receipt, and such gratuity or tip must only be calculated based on the pre-tax sale amount of the food or drinks. A sidewalk cafe operator that includes a service charge, minimum charge, corkage fee, set up fee, sharing fee or charge, or any other similar charge, must itemize and

separately state the actual amount of such charges on the face of the customer's bill and receipt. Service charges, minimum charges, corkage fees, set up fees, sharing fees or charges, or other similar charges imposed by a sidewalk cafe operator as part of the charges for furnishing, serving, or preparing food products must be subject to sales tax and surtax. A sidewalk cafe operator must state the total combined percentage and amount of city, county, and state taxes on the face of the customer's bill and receipt, and must label such taxes accurately.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. SEVERABILITY.

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

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, 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, Florida. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the ____ day of _____, 2019.

PASSED AND ADOPTED this ____ day of _____, 2019.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions

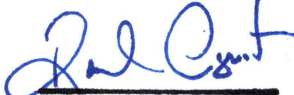
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Double underline denotes additions made after First Reading

~~Double strikethrough~~ denotes deletions made after First Reading

(Sponsored by Mayor Dan Gelber)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

5-1-19

Date