

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 I, ENTITLED "GENERALLY," BY AMENDING SECTION 82-366 THEREOF, ENTITLED "DEFINITIONS," BY MODIFYING THE SPECIALS BOARD, MENU BOARD, AND SANDWICH BOARD SIGN DEFINITIONS; AND BY AMENDING SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-385 THEREOF, ENTITLED "MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFÉS," WHICH SHALL SERVE TO PROHIBIT A SIDEWALK CAFÉ FROM PLACING A SPECIALS BOARD UPON THE PUBLIC RIGHT OF WAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach ("City") has authorized the establishment of sidewalk cafés in order to provide a unique environment for its residents and visitors, which allows these individuals to relax and enjoy the consumption of food and/or beverage(s) amongst the City's tropical scenery; and

WHEREAS, a business establishment must obtain the permission of the City to operate its sidewalk café, or conduct any portion of its commercial business operation(s) upon the City's property; and

WHEREAS, the Mayor and City Commission recognize that, upon the City's issuance of a sidewalk café permit, a sidewalk café operation is a privilege and not a right, and is conditional at all times; and

WHEREAS, a business establishment seeking to operate a sidewalk café is subject to certain identifiable standards, criteria, requirements, and conditions; and

WHEREAS, food and drink menu specials offered at sidewalk cafés must be displayed or disclosed to patrons in a manner consistent with Sections 82-381(h) and 82-385(v) of the City Code, and as expressly approved by the City as part of such business establishment's annual sidewalk café permit application; and

WHEREAS, the Mayor and City Commission have determined that the prevention of deceptive, misleading, or bait and switch tactics relating to food and/or drink specials offered at sidewalk cafes is essential to ensuring positive customer dining experience(s) at sidewalk cafés in the City; and

WHEREAS, the City has previously authorized the use of specials boards at sidewalk cafés, which has caused certain sidewalk café operators to utilize these specials board(s) in a deceptive manner in order to entice patrons to dine at the business establishment's sidewalk café under false or misleading pretenses; and

WHEREAS, a prohibition on such specials board(s) at sidewalk cafés will further protect patrons by fostering greater transparency in the identification, pricing, and conditions surrounding a business establishment's daily food and/or drink specials, and provide the City's residents and visitors a more enjoyable and meaningful dining experience; and

WHEREAS, the Administration has found that the forbidding of specials board(s) at sidewalk cafés will further reduce the proliferation of unsightly signage, which has become abundant throughout certain areas of the City, and supply more space on the City's sidewalks for pedestrian access and proper utilization.

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

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

CHAPTER 82

PUBLIC PROPERTY

* * *

ARTICLE IV. USES IN PUBLIC RIGHTS-OF-WAY

* * *

DIVISION 5. SIDEWALK CAFES

SUBDIVISION I. Generally

Sec. 82-366. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City manager means the city manager or the city manager's designee.

Code compliance officer means the code compliance officers, fire inspectors, or any other authorized agent or employee of the city whose duty it is to assure code compliance.

Expanded polystyrene means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer

spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

Expanded polystyrene food service articles means plates, bowls, cups, containers, lids, trays, coolers, ice chests, and all similar articles that consist of expanded polystyrene.

Menu board means a board allowing for the posting of a restaurant's complete menu and fabricated in such a manner so as not to constitute a form of general advertising or establishment identification. The location, size, design, materials and color of the menu board shall be approved by the city manager and shown on the sidewalk cafe site plan (as hereinafter defined). Menu boards shall be no larger than six square feet; may not be internally illuminated; and the top of the board shall not exceed five feet, six inches from grade. The menu board shall not be a sandwich board sign (as defined herein) or a specials board (as defined herein).

Permittee means the recipient of a sidewalk cafe permit under the terms and provisions of this division.

Polystyrene means a thermoplastic polymer or copolymer comprised of at least 80 percent styrene or paramethylstyrene by weight.

Restaurant for purposes of this division only, means a food service establishment that is maintained and operated as a place where food and/or beverages are prepared and/or served and sold for consumption within the premises, or a business establishment which has, as an ancillary or secondary use, a part thereof where food and/or beverages are prepared and/or served and sold for consumption within the premises. No sidewalk cafe permit shall be issued to a restaurant whose occupational license or certificate of use is limited to take-out service and does not have inside seating.

Right-of-way means land in which the state, the state department of transportation, the county or the city owns the fee or has an easement devoted to or required for use as a transportation facility or street.

Sandwich board sign means a freestanding, A-frame structure located on a sidewalk or street which may be affixed in position or is collapsible and which contains a sign (as defined in section 114-1). The sandwich board sign shall not be a menu board (as defined herein) or a specials board (as defined herein).

Sidewalk means that portion of the right-of-way which is located between the curb line or the lateral line of a street and the adjacent property line and which is intended for use by pedestrians; provided that on Lincoln Road Mall, a sidewalk shall mean a right-of-way as defined in this section, but shall only refer to that area between the property line and the centerline of the right-of-way, exclusive of landscaped areas and a 12-foot-wide clear path for emergency and maintenance vehicular access.

Sidewalk cafe means a use located on a right-of-way which is associated with a restaurant and is primarily characterized by tables and chairs; may be shaded by awnings, canopies or umbrellas; and may include such other sidewalk cafe furniture (as hereinafter defined) as permitted and/or approved pursuant to this division.

Sidewalk cafe furniture means those nonpermanent fixtures, furnishings and equipment associated with the operation of a sidewalk cafe and approved pursuant to this division including, without limitation, tables, chairs, umbrellas, planters, heaters, fans, rolling service stations, service carts, bussing stations, and menus and/or specials boards.

Sidewalk cafe site map means a city-approved map detailing the location of the pedestrian pathway as it relates to a sidewalk cafe.

Sign shall have the same meaning as provided for in section 114-1.

Single-use carry out plastic bag means a bag provided by a sidewalk cafe permittee to a sidewalk cafe patron, for the purpose of transporting purchases or goods, including, but not limited to, food and beverages, which is made predominantly of plastic derived from petroleum or a biologically-based source. A single-use carry out plastic bag does not include a compostable carry out bag that:

- (1) Conforms to current ASTM D6400 standards;
- (2) Is certified and labeled as meeting ASTM D6400 standard specifications by a recognized verification entity; and
- (3) Must be capable of undergoing biological decomposition in a compost site such that the material breaks down into carbon dioxide, water, inorganic compounds, and biomass at a rate consistent with known compostable materials.

Specials board means a board allowing for the posting of a restaurant's daily food and/or drink specials, ~~and fabricated in such a manner so as to not constitute a form of advertising or establishment identification. The location, size, design, materials and color of the specials board shall be approved by the city manager and shall be shown on the sidewalk cafe site plan. Specials boards shall be no larger than six square feet; may not be internally illuminated; and the top of the board shall not exceed five feet six inches from grade. The specials board shall not be a sandwich board sign (as defined herein).~~

Street means that portion of a right-of-way improved, designed or ordinarily used for vehicular traffic and/or parking.

SECTION 2. That Division 5, of Article IV, of Chapter 82 of the Code of the City Miami Beach is hereby amended as follows:

CHAPTER 82

PUBLIC PROPERTY

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ARTICLE IV. USE IN PUBLIC RIGHT-OF-WAYS

* * *

DIVISION 5. SIDEWALK CAFES

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SUBDIVISION II. Permit

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Sec. 82-385. Minimum standards, criteria, and conditions for operation of sidewalk cafes.

- (a) The permittee shall take any and all actions to assure that its use of the public right-of-way in no way interferes with patrons of other sidewalk cafes, or limits their free, unobstructed passage thereto.
- (b) Sidewalk cafes shall be located in such a manner that a distance of not less than five feet is maintained at all times as a clear and unobstructed five-foot pedestrian path around public amenities and areas such as, by way of example, fountains, landscaped areas (excluding city planters), and seating/shade structures. Notwithstanding the preceding, the city manager, in his reasonable judgment and discretion, and on a case-by-case basis, may approve and allow for a pedestrian path of less than five feet where an applicant/permittee's sidewalk cafe operation would be significantly impacted. In considering such cases, and in determining whether an applicant/permittee is "significantly impacted," the city manager may apply the criteria set forth in subsections 82-384(c)(1)—(4). A five-foot pedestrian path shall also be required and established where the city manager, in his reasonable judgment and discretion, determines that the operation of a sidewalk cafe inhibits pedestrian access to an adjacent business establishment or adversely affects the visibility of an adjacent storefront.
- (c) No tables, chairs, umbrellas, or other sidewalk cafe furniture shall be permitted within ten feet of a bus bench and/or bus shelter. A distance of five feet shall be maintained from taxi stands, fire hydrants, bike racks, directory signage/kiosks, and/or other similar public street furniture and/or fixtures.
- (d) No tables, chairs, umbrellas or other sidewalk cafe furniture shall be permitted within five feet of an alley, pedestrian crosswalk, or corner curb cut.
- (e) The pedestrian path for Lincoln Road shall be a 12-foot clear path for emergency and maintenance vehicles. The exact location of the path on each block shall be determined by the city manager, in his reasonable judgment and discretion, and shall be incorporated into the sidewalk cafe site map of Lincoln Road.
- (f) No object shall be permitted around the perimeter of an area occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the free use of the tables and chairs by the public, or (in the case of Lincoln Road) which would have the effect of obstructing the pedestrian path or public access between the north and south sides of Lincoln Road.

- (g) The area covered by a sidewalk cafe permit, and the sidewalk and street immediately adjacent to it, shall be maintained in a clean, neat and orderly appearance at all times by the permittee. The area of the sidewalk, curb and gutter immediately adjacent to the sidewalk cafe shall be cleared of all debris during hours of operation, and again at the close of each business day, or as may otherwise be determined by the city manager. The permittee shall be responsible for pressure cleaning the floor surface on which the sidewalk cafe is located at the close of each business day. The city shall pressure wash the right-of-way from time to time in accordance with such schedule as shall be established in the reasonable judgment and discretion of the city manager. In establishing said schedule, the city manager shall use reasonable efforts to assure that the city's pressure cleaning of the public right-of-way occurs at such times as will cause the least disruption to sidewalk cafe operations.
- (h) Tables, chairs, umbrellas and any other sidewalk cafe furniture shall be maintained in a clean, attractive, and orderly appearance, and shall be maintained and kept in good repair at all times.
- (i) All sidewalk cafe furniture shall be of high quality, design, materials, and workmanship so as to ensure the safety and convenience of the public.
- (j) Only the sidewalk cafe furniture specifically shown on the approved sidewalk cafe site plan shall be allowed in the permit area.
- (k) (1) All tables, chairs, umbrellas, and any other sidewalk cafe furniture shall be readily removable, and shall not be physically attached, chained, or in any other manner affixed to any public structure, street furniture, signage, and/or other public fixture, or to a curb and/or public right-of-way.
(2) Notwithstanding the provisions of subsection (k)(1), on the west sidewalk on Ocean Drive between 5th Street and 15th Street, umbrellas may be affixed to the sidewalk with an in-ground mount system that is flush with the sidewalk or with a bolted metal plate not to exceed nine inches by nine inches in size. A detailed engineering design, and a structural analysis of either the mount system or metal plate, shall be submitted to the department of public works for review and approval. If permitted, such mount system or metal plate must be easily removable (as determined by the city) to provide a smooth ADA-compatible surface when the mount system or metal plate is removed. In the event that a particular sidewalk cafe is no longer a permitted use, the umbrellas and entire mount system or metal plates shall be removed and standard concrete sidewalk shall be re-installed, subject to the approval of the department of public works.
- (l) The stacking or piling up of chairs shall be prohibited on the right-of-way. On Lincoln Road Mall, tables, chairs and closed-up umbrellas may only remain on the right-of-way (within the permit area) as long as they are placed in an orderly manner. Notwithstanding the foregoing, on Lincoln Road Mall tables, chairs and closed-up umbrellas may remain on the right-of-way as long as 80 percent of the restaurants on Lincoln Road Mall are open for lunch beginning at 11:00 a.m. The city will make this determination on two separate times during each permit year. The

first determination shall be made on October 1, with the second determination being made on April 1 of each year. The phrase "open for lunch" shall be defined by the serving of meals to patrons during the lunch hour. If the city determines that less than 80 percent of the restaurants on Lincoln Road Mall are open for lunch on either October 1 or April 1 of a permit year, then the following regulation shall apply to all restaurants on Lincoln Road Mall. Any and all other sidewalk cafe furniture including without limitation, rolling service stations, service carts and bussing stations, may only be maintained in the permit area during hours of operation provided however, that planters that cannot be readily removed may remain within the permit area subject to the provisions of subsection (s) hereof. On Lincoln Road Mall, rolling service stations, service carts, and bussing stations shall not be permitted to be placed within five feet of the walls, columns, or posts of the Lapidus structures, city planters, or in front of other storefronts and/or business establishments. Notwithstanding anything contained in this subsection (l), the city manager may require a permittee to store its tables, chairs and/or umbrellas off of the right-of-way if, in his reasonable judgment and discretion, the city manager determines that the sidewalk cafe permit area and immediately adjacent public right-of-way are not being adequately maintained in accordance with this division.

- (m) No storage of dishes, silverware or other similar sidewalk cafe equipment shall be allowed in the permit area, or in any other portion of the public right-of-way, or outside the structural confines of the building in which the restaurant is located, during non-business hours.
- (n) There shall be no live entertainment or speakers placed in the permit area unless expressly permitted as a special event. Conditions such as hours and days of operation and audio levels will be regulated by the city's special events office, and these may vary during the year.
- (o) One menu board and ~~one specials board~~ shall be permitted, per sidewalk cafe, for every 50 feet of frontage. No food or drink special(s) may be displayed, disclosed, or posted on any menu board or sandwich board sign. Specials board(s) are prohibited in all sidewalk café permit areas and public rights-of-way.
- (p) No food preparation, food storage, expanded polystyrene food service articles, single-use plastic beverage straws, single-use plastic stirrers, refrigeration apparatus or equipment, or fire apparatus or equipment, shall be allowed on the right-of-way. In addition, expanded polystyrene food service articles, single-use plastic beverage straws, and single-use plastic stirrers shall not be provided to sidewalk cafe patrons.
 - (1) *Exception.* The provisions in subsection (p) that pertain to single-use plastic beverage straws and single-use plastic stirrers shall not restrict a sidewalk cafe operator from providing a beverage with, or offering the use of, a single-use plastic beverage straw or single-use plastic stirrer to an individual with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer.
- (2) ~~Effective dates. Notwithstanding the above:~~

- ~~a. Beginning on August 6, 2018, the city shall engage in public education efforts to inform the public of those provisions in this subsection (p) that pertain to single-use plastic beverage straws and single-use plastic stirrers, and to provide assistance with identifying alternatives to single-use plastic beverage straws and single-use plastic stirrers;~~
 - ~~b. Beginning on November 1, 2018, and continuing through January 31, 2019, the city shall provide for a warning period, during which the code compliance department shall issue written warnings for violations of those provisions in subsection (p) that pertain to single-use plastic beverage straws and single-use plastic stirrers; and~~
 - ~~c. Beginning on February 1, 2019, the code compliance department shall enforce the provisions in subsection (p) that pertain to single-use plastic beverage straws and single-use plastic stirrers.~~
- (q) No food displays shall be permitted on the public right-of-way. No advertising signs or business identification signs shall be permitted on the public right-of-way except that the restaurant name and/or its logo may be permitted on umbrellas but such logos and/or lettering may not exceed six inches in height.
- (r)
 - (1) Umbrellas shall be fire-retardant, pressure-treated or manufactured of fire-resistant material. No portion of an umbrella shall be less than six feet eight inches above the right-of-way. Two or more umbrellas may not be clipped, zipped or otherwise fastened together in order to form a tent-like structure. Clear plastics or other materials may not be fastened, rolled or otherwise be attached to umbrella edges in order to create an enclosure.
 - (2) Notwithstanding the provisions of subsection (r)(1), and subject to planning department review and approval, the following provisions shall apply to sidewalk cafes located on the west sidewalk on Ocean Drive between 5th Street and 15th Street:
 - a. A maximum of three umbrellas may be zipped together;
 - b. Rain gutters may be installed between zipped umbrellas;
 - c. Colorless and transparent roll-down tarps may be permitted to be attached to umbrellas, provided that the tarps are only utilized during periods of strong wind or rainfall. Within one hour of the cessation of such wind and/or rainfall, the roll-down tarp shall be removed from the umbrella/awning system and stored on private property.
- (s) The city manager may permit the use of planters manufactured of terra-cotta or polymer materials, with the number and size to be reviewed at time of application. Placement of planters within sidewalk cafe areas shall be five feet apart or greater. It shall be the permittee's responsibility to immediately remove planters, upon written and/or verbal notice from the city manager, in case of emergency or other circumstances as provided in this division. Maximum size of planters shall not exceed the following:
 - (1) Rectangular planters: 30 inches long, by 15 inches wide by 20 inches high.

- (2) Round planters: 24 inches diameter by 24 inches high.
- (3) Planters 20 inches or higher shall be on rollers or on rolling bases.
- (4) The combination of planters and plant height should not exceed a table height of 34 inches.

Plants shall be properly maintained. Distressed plants shall be promptly replaced. Plant fertilizers which contain material that can stain the sidewalks shall not be allowed. Water drainage from any plants onto the sidewalk shall not be allowed. Potted plants shall have saucers or other suitable systems to retain seepage.

- (t) Permittees may make written request to the city manager to use city electricity for powering floor fans during the summer months. Summer months are defined as the period beginning on May 1, and ending on September 30. The city manager will make electrical outlets operable upon payment of a flat fee, which fee shall be determined, and may be adjusted from time to time, in the reasonable judgment and discretion of the city manager, for each of the calendar days during the summer months. City electrical outlets will be restricted to powering floor fans only. Using the electrical outlets for powering lights, menu board lighting, and any other electrical device is strictly prohibited. Permittees violating this restriction will have the electrical boxes deactivated and forfeit any monies paid for electrical use. Fans must be UL approved for outdoor use. Extension cords are not allowed.
- (u) No permit shall be granted on Lincoln Road in an area designated in the sidewalk cafe site map as restricted for special and cultural events; provided however, that the city manager may approve temporary use of such area(s), on a case by case basis, and only for a defined, limited time.
- (v) A sidewalk cafe shall be prohibited from continuing its operation until such time that it displays or discloses, in writing, actual prices for food and drink menu item(s), or displays or discloses, in writing, actual prices and accurate terms and conditions for any food and drink menu special(s), consistent with those requirements set forth in section 82-381(h) and 82-382(b)(16). 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). 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.
- (w) A sidewalk cafe that automatically includes a gratuity, service charge, minimum charge, corkage fee, set up fee, sharing fee or charge, or other similar charge, either in the price of the meal or drink or separately imposed for all items ordered, and fails to properly notify the customer of the automatic gratuity or service charge, is prohibited from operating on the city's property. The notification must be consistent with those requirements set forth in sections 82-381(i) and 82-382(b)(17).
- (x) A sidewalk cafe that fails to separately itemize and state the actual amount of the following:
 - (1) Gratuities or tips;

- (2) Service charges, minimum charges, corkage fees, set up fees, sharing fees or charges, or similar charges; or
- (3) The total combined percentage and amount of city, county, and state taxes, on the face of the customer's bill and receipt;

Is prohibited from operating on the city's property. The notification must be consistent with those requirements set forth in subsections 82-381(i) and 82-382(b)(17).

- (y) As applicable to sidewalk cafe permittees on Ocean Drive between 5th Street and 15th Street, every manager and every employee assigned to work in the sidewalk cafe permit area must successfully complete a hospitality training program that has been previously approved by resolution of the mayor and city commission. Within one year of completing such program and each year thereafter, every manager and every employee assigned to work in the sidewalk cafe permit area shall complete an abbreviated version of the same hospitality training program. Sidewalk cafe permittees shall:

- (1) Maintain records on premises evidencing compliance with this subsection (y), and
- (2) Submit to the city manager, on an annual basis, the affidavit specified in subsection 82-382(b)(18).

- (z) Single-use carry out plastic bags shall not be allowed in the right-of-way and shall not be provided to sidewalk cafe patrons.

- ~~(1) Notwithstanding the above, beginning on August 6, 2018, the city shall engage in public education efforts to inform the public of the provisions in this subsection (z), and to provide assistance with identifying alternatives to single-use carry out plastic bags. Beginning November 1, 2018, and continuing through January 31, 2019, the city shall provide for a warning period, during which the code compliance department shall issue written warnings for violations of the provisions of subsection (z). Beginning on February 1, 2019, the code compliance department shall enforce the provisions in subsection (z) that pertain to single-use carry out plastic bags.~~

SECTION 3. REPEALER.

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

SECTION 4. SEVERABILITY.

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

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 Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

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

ATTEST:

Rafael E. Granado, City Clerk

Underline denotes additions
~~Strikethrough~~ denotes deletions

Paul C. Lysak 5-28-19
City Attorney Date
MAF

(Sponsored by Commissioner Mark Samuelian)