

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber
Members of the City Commission
Jimmy L. Morales, City Manager Second Reading

FROM: Raul J. Aguila, City Attorney *Raul Aguila*

DATE: September 11, 2019

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING PORTIONS OF THE CITY'S SIDEWALK CAFÉ ORDINANCE, AS CODIFIED IN SECTIONS 82-366 THROUGH 82-388 OF THE CITY CODE; SUCH AMENDMENTS PROVIDING, IN PART, FOR THE CREATION OF A NEW SECTION, 82-389, ENTITLED "SIDEWALK CAFÉ CODE OF CONDUCT," WHICH SECTION CONTAINS CERTAIN TERMS AND CONDITIONS FOR COMPLIANCE WITH A SIDEWALK CAFÉ PERMIT THAT WOULD BE SUBJECT TO ENHANCED PENALTIES FOR VIOLATION, (WHICH PENALTIES ARE SET FORTH IN SECTION 82-371(b)); FURTHER AMENDING THE SIDEWALK CAFÉ PERMIT APPLICATION REQUIREMENTS BY REQUIRING PERMITTEES TO EXECUTE AN AFFIDAVIT EVIDENCING RECEIPT OF THE CODE OF CONDUCT, AND PERMITTEES' AGREEMENT TO BE BOUND BY SAME; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

On July 17, 2019, the City Commission adopted the above-referenced Ordinance (the "Ordinance"), which is sponsored by Mayor Dan Gelber, at first reading.

The Ordinance, which proposes certain amendments to the City's sidewalk café ordinance, as codified in Sections 82-366 through 82-388 of the City Code, includes the creation of a Sidewalk Café Code of Conduct (as set forth in Section 82-389) which shall govern those sidewalk cafés operating within the City and ensure that the purposes of the City's sidewalk café program are advanced, and not diminished, by each sidewalk café operator.

Additionally, the Ordinance mandates that all applicants for a sidewalk café permit shall be required to execute an affidavit acknowledging receipt of the Sidewalk Café Code of Conduct, and agreement to be bound by same, with any violation(s) of the Code of

Conduct subject to those enhanced penalties set forth in Section 82-371(b) of the City Code.

Since first reading, the only significant modification to the Ordinance has been the inclusion of the prohibition on specials boards, as provided in subsection 82-385(n), to the Sidewalk Café Code of Conduct, as delineated in subsection 82-389(h).

Moreover, in conjunction with its adoption at first reading, the Ordinance was concomitantly referred to the Neighborhoods and Community Affairs Committee, with direction that the Committee review the Ordinance and the Sidewalk Café Code of Conduct between first and second readings.

The Neighborhoods and Community Affairs Committee (the "NCAC") heard the item at its July 23, 2019 meeting and, at that time, were provided an abundance of objective evidence supporting the enactment of the Ordinance. The evidentiary record provided to the NCAC included, among other record evidence, the following data and information:

- (i) Sworn testimony from five (5) Ocean Drive stakeholders;
- (ii) Written declarations from various sidewalk café stakeholders;
- (iii) Investigative reports regarding a "secret shopper" program conducted in July 2019;
- (iv) Surveys completed and remitted to the City by Ocean Drive sidewalk café operators; and
- (v) A plethora of online reviews concerning diners' experience(s) after patronizing various sidewalk cafés in the City.

Upon conclusion of the presentation of the evidentiary record, the NCAC identified the compelling need to address the fraudulent behavior, solicitation and deceptive business practices which have plagued sidewalk cafés in the City, in order to restore the unique dining experience which allows the City's residents and visitors to relax and enjoy the consumption of food and/or beverage(s) at sidewalk cafés amongst the City's vibrant, tropical scenery. The NCAC also determined that such unacceptable and substandard conduct by sidewalk café operators must be strictly regulated, as set forth and specified within the Sidewalk Café Code of Conduct, to curtail the negative impact that such behavior has had upon the City, its reputation, and its residents and visitors, and to keep the City's sidewalks free of visual and physical clutter, and open to, and for the use of, the public.

As such, the Neighborhoods and Community Affairs Committee unanimously determined that the Ordinance should proceed forward with a favorable recommendation for review and approval by the Mayor and City Commission. Accordingly, the Ordinance has been placed on the September 11, 2019 City Commission meeting agenda, and is accompanied by this Commission Memorandum, a transcript of the evidentiary record as presented at the July 23, 2019 NCAC meeting, and the Declaration of John Woodruff, Chief Financial Officer for the City, which establishes that the City provides the valuable subsidy of a rate substantially below market value to those sidewalk cafés operating on

City property pursuant to the City's sidewalk café program.

Therefore, upon consideration at second reading/public hearing, the City Administration and I recommend that the Mayor and City Commission adopt the Ordinance on second and final reading.