

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, FLORIDA, 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 82-389 THEREOF, ENTITLED "SIDEWALK CAFÉ CODE OF CONDUCT," TO EXTEND THOSE PROHIBITIONS PERTAINING TO THE SOLICITATION OF PEDESTRIANS ON THE PUBLIC RIGHT OF WAY, AS SET FORTH IN SECTION 82-389(j) HEREIN, TO LINCOLN ROAD AND ESPAÑOLA WAY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach permits the operation of sidewalk cafés on designated areas of its public property and right of ways, finding that such amenities provide a unique experience and environment for the City's residents and visitors to relax and enjoy the consumption of food and/or beverage(s) in the City's unique, vibrant, tropical atmosphere; and

WHEREAS, in order to ensure that sidewalk cafés in the City are operated and maintained at the highest levels of quality and service, befitting an internationally renowned, world class resort destination like the City of Miami Beach, the permitting, operation, and maintenance of sidewalk cafes on public property are governed by the City's Sidewalk Café Ordinance, which is codified in Sections 82-366 through 82-389 of the City Code; and

WHEREAS, a sidewalk café permit is a privilege and not a right, and the approval, issuance and continued operation of a permitted sidewalk café is conditional at all times; and

WHEREAS, because the City has found that aesthetically pleasing and properly operated and maintained sidewalk cafés can serve to enhance and complement residents' and visitors' experience and enjoyment of the City's historic (and other recognized commercial and entertainment) districts/neighborhoods, the City's sidewalk café permit fees (that is, the fee charged to private business establishments/restaurants for the privilege of operating and maintaining a sidewalk café on the City's public right of ways) have always been at a rate substantially less than fair market value for such space; and

WHEREAS, the City Commission has also found that the highest possible standards, criteria, and conditions pertaining to the operation of sidewalk cafés are critical, not only toward maintaining excellent levels of quality and service, but (among other things) to: (i) preserve the aesthetic character of the City's right of ways by helping to diminish the proliferation of unsightly food displays, street furniture, signage and other visual and physical clutter; (ii) reduce potential nuisances including, without limitation, excessively loud music; hawking from restaurant/sidewalk café operators and their employees to passing pedestrians and overcrowding of the right of way; and (iii) aid in the prevention of deceptive, misleading, or bait and switch tactics by sidewalk café operators; and

WHEREAS, as part of its periodic, continuous review of the Sidewalk Café Ordinance and, specifically, in continuing to find new and innovative ways to maintain the level of excellence that the City expects from sidewalk cafes on public property, the Mayor and City Commission, at their regular meeting on September 11, 2019, adopted and implemented a Sidewalk Café Code

of Conduct (as set forth in Section 82-389 of the City Code) pursuant to Ordinance No. 2019-4294, which governs various critical aspects of those permitted sidewalk café operations in the City, and, accordingly, provides enhanced penalties for violation of such provisions; and

WHEREAS, those prohibitions concerning the solicitation of pedestrians on the public right of way, as delineated in Section 82-389(j) herein, presently only pertain to those sidewalk café operators on Ocean Drive, between 5th Street and 15th Street; and

WHEREAS, upon reviewing an abundance of objective evidence including, but not limited to: written declarations from Lincoln Road and Española Way stakeholders and other interested persons; feedback from City of Miami Beach residents on the City's social media platforms; and a plethora of online reviews concerning diners' experience(s) after patronizing various sidewalk cafés on Lincoln Road and Española Way, the Administration recommends extending the solicitation prohibitions, as set forth in subsection 82-389(j), to those sidewalk café operators located on Lincoln Road, between Washington Avenue and Alton Road, and on Española Way, between Washington Avenue and Drexel Avenue.

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

SECTION 1. That those Sections of the City's Sidewalk Café Ordinance, as such Ordinance is codified in Section 82-389 of the City Code, be amended as follows and as hereinafter set forth below:

CHAPTER 82

PUBLIC PROPERTY

* * *

ARTICLE IV. USES IN PUBLIC RIGHTS-OF-WAY

* * *

DIVISION 5. SIDEWALK CAFES

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SUBDIVISION II. Permit

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Secs. 82-389. Sidewalk Café Code of Conduct

Sidewalk café permittees must comply with those requirements set forth below in the Sidewalk Café Code of Conduct, which is supplemental to, and in addition to, all other standards, criteria and conditions herein regulating sidewalk cafes, and is not intended to amend, repeal or replace any other provision of Chapter 82, Article IV, Division 5. A sidewalk café operator that fails to comply with any provision(s) of the Sidewalk Café Code of Conduct, as set forth herein, may be prohibited from operating pursuant to those enhanced penalties identified within subsection 82-371(b).

- (a) A sidewalk cafe must display or disclose, in writing, actual prices for food and drink menu item(s), and 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.
- (b) 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, must display the actual amount of each such gratuity, charge, and fee on the menu and on the face of the customer's bill. This disclosure serves to provide the customer notification that an automatic gratuity, charge, and/or fee is being included by the sidewalk cafe operator. The disclosure of each gratuity, charge, and fee 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.
- (c) A sidewalk cafe 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.
- (d) There shall be no live entertainment or speakers placed in the sidewalk café permit area unless expressly permitted as a special event issued by the city's events office.
- (e) 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 this subsection 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.

- (f) Single-use carry out plastic bags shall not be allowed in the right-of-way and shall not be provided to sidewalk café patrons.
- (g) No food display(s) shall be permitted on the public right-of-way, nor shall any food and/or beverage display(s) be maintained within the restaurant/business establishment's premises in such a way that the placement of such display(s) is/are clearly visible from the sidewalk café permit area and/or the public right-of-way.
- (h) Except as provided in Subsection 82-385(n)(1), specials board(s) shall be prohibited in all sidewalk café permit areas and any other portion of the public right-of-way, and no food or drink special(s) may be displayed, disclosed, or posted on any menu board or sandwich board sign, pursuant to Section 82-385(n). Nor shall any food or drink special(s) be displayed, disclosed or posted within the restaurant/business establishment's premises in such a way that the placement of such display, disclosure, or posting is clearly visible from the sidewalk café permit area and/or the public right-of-way.
- (i) Sidewalk café permittees on Ocean Drive, between 5th Street and 15th Street, including 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 (i), and
 - (2) Submit to the city manager, on an annual basis, the affidavit specified in Section 82-382(b)(18).
- (j) Sidewalk café operators located on Ocean Drive, between 5th Street and 15th Street; on Lincoln Road between Washington Avenue and Alton Road; and on Española Way between Washington Avenue and Drexel Avenue, shall not:
 - (1) Solicit any pedestrian(s) located on the sidewalk abutting ~~the~~ a sidewalk café permit area, or on the right of way within twenty (20) feet of the outer perimeter of ~~the~~ a sidewalk café permit area, for the purpose of inducing such pedestrian to patronize any business establishment or sidewalk café, or purchase any food, beverage, product, or service, unless the pedestrian first affirmatively communicates a desire to receive information about the sidewalk cafe's food, beverages, products, or services;

- (2) Distribute any commercial handbill(s) to any pedestrian(s) located on the sidewalk abutting ~~the~~ a sidewalk café permit area, or on the right of way within twenty (20) feet of the outer perimeter of ~~the~~ a sidewalk café permit area, unless the pedestrian first affirmatively communicates a desire to receive information about the sidewalk café's food, beverages, products, or services; and/or
- (3) Hold or display any commercial handbill(s) in such a way that impedes, hinders, delays, or obstructs any pedestrian's(s') gait or path of travel.

Secs. 82-390 — 82-410. Reserved.

SECTION 2. REPEALER.

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

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

(Sponsored by Commissioners Joy Malakoff, John Elizabeth Alemán and Micky Steinberg)

Underline denotes additions
~~Strikethrough~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney
MAF

9/18/19
Date