




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 First Reading

FROM: Raul J. Aguila, City Attorney 

DATE: December 11, 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, 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 I, ENTITLED "GENERALLY", BY AMENDING SECTION 82-371 THEREOF, ENTITLED "CIVIL FINES AND PENALTIES; DENIAL OF FUTURE PERMITS TO REPEAT VIOLATORS; ENHANCED PENALTIES," BY SPECIFYING THOSE ENHANCED PENALTIES TO BE IMPOSED FOR VIOLATIONS OF THE SIDEWALK CAFÉ CODE OF CONDUCT; AND BY AMENDING SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-383 THEREOF, ENTITLED "PERMIT FEE; PENALTIES FOR LATE PAYMENT; REVIEW OF FEE; EXCEPTION," BY AUTHORIZING SIDEWALK CAFÉ PERMIT FEES TO BE PAID IN SEMIANNUAL INSTALLMENTS AND ASSESSING AN ADMINISTRATIVE FEE; AND BY AMENDING SECTION 82-389 THEREOF, ENTITLED "SIDEWALK CAFÉ CODE OF CONDUCT," BY CLARIFYING THOSE PROHIBITIONS PERTAINING TO FOOD AND BEVERAGE DISPLAYS, AND FOOD AND DRINK MENU SPECIALS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

The proposed Ordinance, which is sponsored by Mayor Dan Gelber, is submitted for first reading at the December 11, 2019 meeting of the City Commission.

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 and vibrant scenery.

It is also important to recognize that 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. However, as identified in the proposed Ordinance, the City acknowledges that certain sidewalk café operators may need, or desire, to remit the annual sidewalk café permit fee to the City in two (2) installment payments, rather than in a single lump sum.

Furthermore, those business establishments seeking to operate sidewalk cafés are also subject to certain identifiable standards, criteria, requirements, and conditions. To that effect, the proposed Ordinance clarifies the prohibition forbidding food and beverage menu specials and displays in the sidewalk café permit areas and public rights-of-way, which will further reduce the proliferation of unsightly and tacky signage and displays, that have become abundant throughout certain areas of the City, and will supply more space on the City's sidewalks for pedestrian access and proper utilization.

The City Commission has also previously 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.

Accordingly, as part of its periodic, continuous review of the Sidewalk Café Ordinance, the City Administration has determined that certain modifications to those enhanced penalties provisions, as delineated in Section 82-371(b), and applicable to the Sidewalk Code of Conduct, are necessary.

Therefore, upon consideration at first reading, it is recommended that the Mayor and City Commission pass the Ordinance to aid in ensuring that sidewalk cafés in the City operate at the highest possible standards, befitting of the City of Miami Beach, and further provide sidewalk café operators with the option to remit their sidewalk café permit fees to the City in installment payments.