

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 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.

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 and vibrant scenery; 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, the City recognizes that sidewalk café operators may need, or desire, to remit sidewalk café permit fees to the City in installments, rather than in a single lump sum; and

WHEREAS, those business establishments seeking to operate sidewalk cafés are also subject to certain identifiable standards, criteria, requirements, and conditions; and

WHEREAS, the Administration has found that the forbidding of food and beverage menu specials and displays in the sidewalk café permit areas and rights-of-way will further reduce the proliferation of unsightly and tacky signage and displays, which 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; 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, the 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; and

WHEREAS, the amendments set forth below are necessary to accomplish the objectives identified above.

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 82-371 of the City Code, be amended as follows and as hereinafter set forth below:

CHAPTER 82

PUBLIC PROPERTY

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ARTICLE IV. USES IN PUBLIC RIGHTS-OF-WAY

* * *

DIVISION 5. SIDEWALK CAFES

* * *

SUBDIVISION I. Generally

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Sec. 82-371. Civil fines and penalties; denial of future permits to repeat violators; enhanced penalties.

- (a) *Civil fines and penalties.* The following civil fines and penalties shall be imposed for violations of this division:
- (1) First violation: \$500.00.
 - (2) Second violation within the preceding 12 months: \$750.00.
 - (3) Third violation within the preceding 12 months: Suspension of the sidewalk cafe permit for one weekend (Saturday and Sunday) and \$1,000.00.

- (4) Fourth violation within the preceding 12 months: Revocation of the sidewalk cafe permit for the remaining portion of the permit year and \$1,250.00.
 - (5) Failure to apply for permit: Termination of sidewalk cafe operations until a permit is applied for and obtained.
 - (6) Failure to renew permit: Suspension of sidewalk cafe operations until the permit is renewed.
- (b) *Enhanced penalties.* The following enhanced penalties ~~must be imposed by the city manager~~ are authorized:
- (1) A permittee who has been issued more than four violations pursuant to this division within a permit year shall be prohibited from applying for and obtaining a sidewalk cafe permit for a period of two permit years following the permit year in which the permittee incurred the aforesaid violations.
 - (2) For life safety violations of this division and site plan violations, the city manager shall be authorized to issue an immediate order suspending the sidewalk cafe permit and operation, and the sidewalk cafe operator must cease operations for at least 24 hours, and until the city manager finds that the violation(s) have been corrected and withdraws the suspension order. The issuance of a notice of violation or an order suspending the sidewalk cafe permit shall raise a rebuttable presumption that a life safety violation or site plan violation, has occurred.
 - (3) For life safety violations of this division, the city manager shall be authorized to commence proceedings, pursuant to Section 102-381 or 102-383 hereof, to suspend or revoke the sidewalk cafe operator's business tax receipt. The issuance of a notice of violation pursuant to this paragraph shall raise a rebuttable presumption that a life safety violation has occurred.
 - (4) For violations of the Sidewalk Café Code of Conduct, as set forth in Section 82-389, the ~~city manager shall be authorized to issue an immediate order suspending the sidewalk café permit and operation, and the sidewalk cafe operator must cease operations for at least 24 hours, and until the city manager finds that the violation(s) have been corrected and withdraws the suspension order. The city manager shall also be authorized to commence proceedings, pursuant to Section 102-381 or 102-383 hereof, to suspend or revoke the sidewalk café operator's business tax receipt.~~ following suspension and revocation penalties shall be imposed:
 - (a) Second violation within the preceding 12 months: Suspension of the sidewalk café permit for 24 hours.
 - (b) Third violation within the preceding 12 months: Suspension of the sidewalk café permit for one weekend (Saturday and Sunday).
 - (c) Fourth violation within the preceding 12 months: Revocation of the sidewalk café permit for the remaining portion of the permit year.

~~The issuance of a notice of violation pursuant to this paragraph, or an order suspending the sidewalk café permit, shall raise a rebuttable presumption that a violation of the Sidewalk Café Code of Conduct has occurred.~~

- (5) Reporting requirement. The city manager, or the city manager's designee, shall, on a quarterly basis, present the city commission with a written report detailing the city's enforcement activities relating to life safety violations of this division, site plan violations,

and violations of Sections 82-385(v), (w), and (x) 82-389. The report shall include statistics relating to the number of enforcement actions taken against each sidewalk cafe operator, and the outcome of each enforcement action.

* * *

SECTION 2. That those Sections of the City's Sidewalk Café Ordinance, as such Ordinance is codified in Sections 82-383 and 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

* * *

SUBDIVISION II. Permit

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Sec. 82-383. Permit fee; penalties for late payment; review of fee; exception.

- (a) The annual permit fee for operation of a sidewalk cafe shall be as set forth in appendix A hereof, and shall be based on a per square foot calculation of permitted sidewalk area (including the area between the tables and chairs).
 - (1) No square footage fee as required by this section shall be required for the operation of sidewalk cafes north of 63rd Street, through and including September 30, 2019. The abatement of sidewalk cafe square footage fees for businesses north of 63rd Street shall be the subject of a budget analysis and review by the city administration by September 30, 2019. However, a permit must be obtained and the annual base application fee required by subsection 82-382(b)(9) shall be paid for the operation of sidewalk cafes north of 63rd Street.
 - (2) No square footage fee as required by this section shall be required for the operation of sidewalk cafes in conjunction with the Washington Avenue Pilot Parklet Program, which program shall terminate on March 31, 2019. Additionally, no square footage fee as required by this section shall be required for the operation of sidewalk cafes on Washington Avenue, from 5th Street to Lincoln Road, for the period ending on September 30, 2019.
 - (3) No square footage fee as required by this section shall be required for the operation of sidewalk cafes that contain up to 30 seats within the Collins Park Arts District Overlay.

as defined in Section 142-584 hereof are exempt from paying the square foot fee identified herein.

- (b) The city manager, in his reasonable discretion and judgment, may suspend or prorate the annual permit fee in cases of public construction or public emergency situations.
- (c) The permit fee shall be paid on or before October 1, and shall cover the time period from October 1 through September 30 of the following calendar year (permit year). If the permit fee exceeds \$2,000.00, the fee may be paid in two, equal semiannual installments, with the first installment due on or before October 1, and the second installment due on or before April 1. An administrative fee, equaling 2% of the total permit fee, shall be assessed on all permit fees which are paid in semiannual installments, and such 2% administrative fee shall be paid in full at the time the first installment payment is made. No permit shall be issued for any portion of a year, but any person/entity operating a sidewalk cafe for a period beginning after the commencement date of the full permit year (October 1) may obtain a permit for the remaining portion of that permit year upon payment of a pro-rated portion of the permit fee calculated from the first day of the month of issuance of the permit to the end of the permit year. Except as expressly provided in this division, no refund of the permit fee shall be granted.
- (d) Late payments for permit fees shall accrue at the rate of ten percent per annum for the first 30 days. If the permit fee is not paid within 60 days after it is due, the permit shall terminate automatically. Any continued operation of a sidewalk cafe after termination of a permit shall be construed as operating a sidewalk cafe without a valid permit, and the city manager shall have the right to remove, upon 24 hours' written and/or verbal notice to the permittee, any and all sidewalk cafe furniture used in connection with the sidewalk cafe.
- (e) The City Commission may review the annual permit fee whenever the change in the Consumer Price Index (CPI), between the latest CPI and the date of the CPI used for the last fee adjustment, is one and one-half percent or greater.

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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 and/or beverage display(s) shall be permitted in any sidewalk café permit area and/or 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 menu special(s) shall not be displayed, disclosed, posted or permitted to remain in any sidewalk café permit area and/or the public right-of-way, except at a table presently occupied by a customer; nor shall any food or drink menu 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 café 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 café permit area shall complete an abbreviated version of the same hospitality training program. Sidewalk café 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 a sidewalk café permit area, or on the right of way within twenty (20) feet of the outer perimeter of 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 café's food, beverages, products, or services;
 - (2) Distribute any commercial handbill(s) to any pedestrian(s) located on the sidewalk abutting a sidewalk café permit area, or on the right of way within twenty (20) feet of the outer perimeter of 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.

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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.

SECTION 5. 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 6. 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 Mayor Dan Gelber)

Underline denotes additions
~~Strikethrough~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date