

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, "USES IN PUBLIC RIGHTS-OF-WAY," BY AMENDING DIVISION 5, "SIDEWALK CAFES," BY AMENDING SUBDIVISION II, "PERMIT," BY AMENDING SECTION 82-385, ENTITLED "MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFÉS," ESTABLISHING THE REQUIREMENT THAT SIDEWALK CAFÉ OPERATORS STACK AND SECURE SIDEWALK CAFÉ FURNITURE AT THE CLOSE OF BUSINESS EACH DAY; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, on June 6, 2019, the Mayor's Panel on Ocean Drive – Safety, Security and Infrastructure Subcommittee, passed a motion supporting a requirement that sidewalk café operators stack and secure sidewalk café furniture (which is left in the public right-of-way) during non-operational hours; and

**WHEREAS**, presently, sidewalk café operators are prohibited from stacking or piling up furniture on the public right-of-way pursuant to Section 82-385(l) of the City Code; and

**WHEREAS**, sidewalk café furniture which remains in place after the close of business, especially in areas of reduced foot traffic, serves as an attractive nuisance; and

**WHEREAS**, City staff has determined, through firsthand observations and conversations with various stakeholders, that a requirement regarding the stacking and securing of sidewalk café furniture at the close of business each day should be required; and

**WHEREAS**, on September 25, 2019, the Neighborhood and Community Affairs Committee (now known as the Neighborhood and Quality of Life Committee) discussed this matter and expressed concern about those persons who loiter on sidewalk café furniture after-hours, which creates safety issues and presents difficulties regarding early morning maintenance and cleaning; and

**WHEREAS**, the Committee unanimously recommended that sidewalk café operators be required to stack and secure all sidewalk café tables and chairs (which are left in the public right-of-way) at the close of business each day, and further recommended that the item be presented to the full City Commission for review and approval; and

**WHEREAS**, mandating that sidewalk café operators stack and secure sidewalk café furniture at the close of business each day will reduce the opportunity for individuals to loiter during sidewalk café non-operational hours; allow for a more thorough cleaning of the public right-of-way; and enhance visitors' dining experience at those times when the sidewalk cafés are operational.

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

**SECTION 1.** That Section 82-385 of the City Code of Miami Beach is hereby amended as follows:

**CHAPTER 82  
PUBLIC PROPERTY**

\* \* \*

**ARTICLE IV. - USES IN PUBLIC RIGHTS-OF-WAY**

\* \* \*

**DIVISION 5. - SIDEWALK CAFES**

\* \* \*

**Subdivision II. – Permit**

\* \* \*

**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 pedestrians utilizing the right-of-way and in no way 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. 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. 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 Sections 82-384(c)(1)—(4) herein.
- (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, comfort, 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) 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.
  - (1) Notwithstanding the provisions of subsection above, 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 sidewalk cafe is no longer a permitted, the umbrellas and entire mount system or metal plates shall be removed and a standard concrete sidewalk shall be re-installed, subject to the review and approval of the department of public works.
- ~~(l) The stacking or piling up of chairs shall be prohibited on the right-of-way.~~
  - ~~(1) Notwithstanding subsection (l), 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. 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.~~

- (2) ~~Any and all other s~~Sidewalk cafe furniture including, without limitation, rolling service stations, service carts, and bussing stations, may only be maintained in the sidewalk café permit area during hours of operation; provided however, that planters ~~that~~ which cannot be readily removed may remain within the permit area subject to the provisions of subsection (q) 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 the foregoing, sidewalk café tables, chairs and umbrellas may remain in the sidewalk café permit area after-hours. Sidewalk café operators shall neatly stack and secure all tables and chairs (and close-up all umbrellas) which remain in the sidewalk café permit area at the close of business each day, in order to prohibit the unauthorized use of such sidewalk café furniture during non-business hours.

Notwithstanding anything contained in this subsection (l), the city manager may require a sidewalk café permittee to store its tables, chairs and/or umbrellas off of the public right-of-way if, in his reasonable judgment and discretion, the city manager determines that the sidewalk café 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) One menu 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 any other portion of the public right-of-way.
- (1) Exception. As applicable only to those sidewalk cafés located north of 63<sup>rd</sup> Street, the provision in subsection (n) that pertains to the prohibition on specials board(s) in sidewalk café permit areas and public rights-of-way shall not take effect until July 27, 2020.
- (o) No advertising signs or other commercial signage 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.
- (p) 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.
- (1) Notwithstanding the provisions of subsection (p), 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; and
  - 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.
- (q) 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.

- (r) 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.
- (s) 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 period of time.

**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, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

**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 a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered 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 the \_\_\_\_\_ day \_\_\_\_\_, 2020.

**PASSED and ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**ATTEST:**

\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Rafael E. Granado, City Clerk

(Sponsored by: Commissioner Mark Samuelian)

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

MAF

1-6-20  
\_\_\_\_\_  
Date