

RESOLUTION NO. 2020-31276

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ESTABLISHING THE "RESTAURANT RECOVERY OUTDOOR SEATING PILOT PROGRAM," AS SET FORTH IN EXHIBIT "A" TO THIS RESOLUTION, TO TEMPORARILY ALLOW RESTAURANTS TO EXPAND SIDEWALK CAFÉ SEATING AREAS ONTO PUBLIC RIGHTS-OF-WAY, OR OTHER OUTDOOR SEATING AREAS ON PRIVATE PROPERTY, VIA SPECIAL EVENT PERMITS ISSUED PURSUANT TO SECTION 12-5 OF THE CITY CODE, WITH ANY SUCH PERMITS SUBJECT TO EACH RESTAURANT OPERATOR'S COMPLIANCE WITH (1) APPLICABLE PROVISIONS OF THE CITY'S SIDEWALK CAFÉ ORDINANCE, AS SET FORTH IN CHAPTER 82, ARTICLE IV, DIVISION 5 OF THE CITY CODE; AND (2) SOCIAL DISTANCING AND SANITATION REQUIREMENTS OR GUIDELINES IMPOSED BY THE STATE OF FLORIDA, MIAMI-DADE COUNTY, AND CITY OF MIAMI BEACH UNDER ANY APPLICABLE EMERGENCY ORDER; AND PROVIDED, FURTHER, THAT THE PROGRAM SHALL TERMINATE ON SEPTEMBER 30, 2020, UNLESS OTHERWISE EXTENDED BY THE CITY COMMISSION.

WHEREAS, coronavirus disease 2019 ("COVID-19"), a severe acute respiratory illness caused by the SARS-CoV-2 virus that can spread rapidly from person to person and cause serious illness or death, constitutes a clear and present threat to the lives, health, welfare and safety of the people of the City of Miami Beach; and

WHEREAS, on March 9, 2020, Governor Ron DeSantis issued Executive Order 20-52, declaring a state of emergency for the entire State of Florida as a result of COVID-19; and

WHEREAS, on March 11, 2020, the World Health Organization declared the rapidly spreading coronavirus outbreak a pandemic; and

WHEREAS, on March 12, 2020, Miami-Dade County Mayor Carlos Gimenez declared a State of Emergency for all of Miami-Dade County due to the threats associated with COVID-19; and

WHEREAS, on March 12, 2020, City Manager for the City of Miami Beach declared a State of Emergency for the City of Miami Beach, as COVID-19 poses a health risk to the City's residents; and

WHEREAS, subsequently, both the County and the City issued various Emergency Orders temporarily closing public and private facilities, including the temporary closure of all non-essential retail and commercial establishments, and the closure of all restaurants for in-person dining; and

WHEREAS, the foregoing closures have greatly limited economic activity in the City of Miami Beach, and continue to adversely impact City businesses, including restaurants; and

WHEREAS, on April 29, 2020, based on data showing a downward trajectory of hospitalizations for influenza-like illness and COVID-19-like syndromic cases, a decrease in percent positive test results, and a significant increase in hospital capacity, Governor DeSantis issued Executive Order 20-112 initiating Phase 1 of the Safe. Smart. Step-by-Step. Plan for Florida's Recovery; and

WHEREAS, pursuant to Executive Order 20-112, restaurants and food establishments (excluding restaurants in Palm Beach County, Broward County and Miami-Dade County) may allow on-premises consumption of food and beverage, so long as they adopt appropriate social distancing measures and limit their indoor occupancy to no more than 25% of their building capacity, and in addition thereto, outdoor seating is permissible with appropriate social distancing of a minimum of six (6) feet between parties; and

WHEREAS, Executive Order 20-112 does not immediately provide for restaurants and food establishments to reopen in Miami-Dade County; however, the City Commission desires to create a regulatory framework to expand outdoor seating onto public rights-of-way and other property once the State of Florida and Miami-Dade County permit restaurants to reopen, provided that each restaurant's then-existing total seating capacity (including indoor and outdoor seating) is not exceeded; and

WHEREAS, the path to re-opening businesses in the City must promote business operation and economic recovery while safeguarding the public's health and safety; and

WHEREAS, significant reductions to indoor occupancy will likely place financial strain on many restaurants in the City; and

WHEREAS, as such, it is the intent of the Mayor and City Commission to establish a Restaurant Recovery Outdoor Seating Pilot Program (the "Program") to create opportunities for restaurants to expand their footprint to mitigate the loss of seating associated with implementing social distancing requirements, in compliance with the Governor's Executive Order 20-112 and any future State, County or City Emergency Order, provided that each restaurant's then-existing total seating capacity is not exceeded; and

WHEREAS, the Program will temporarily allow restaurants to expand sidewalk café seating areas onto public rights-of-way, or other outdoor seating areas on private property, subject to the Administration's review and approval of the proposed site plan for the expanded area(s) to ensure all public safety and public access issues are appropriately addressed, and further subject to the restaurant operator's compliance with (1) applicable provisions of the Sidewalk Café Ordinance (set forth in Chapter 82, Article IV, Division 5 of the City Code); and (2) social distancing and sanitation guidelines or requirements imposed by the State of Florida, Miami-Dade County, and City of Miami Beach in any emergency order issued to prevent the further spread of COVID-19; and

WHEREAS, the terms of the Program are set forth in Exhibit "A" to this Resolution, and incorporated by reference herein.

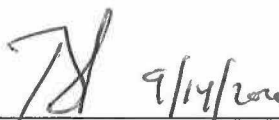
NOW, THEREFORE, BE IT DULY RESOLVED THAT THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby establish the "Restaurant Recovery Outdoor Seating Pilot Program," as set forth in Exhibit "A" to this Resolution, to temporarily allow restaurants to expand sidewalk café seating areas onto public rights-of-way, or other outdoor seating areas on private property, via special event permits issued pursuant to Section 12-5 of the City Code, with any such permits subject to each restaurant operator's compliance with (1) applicable provisions of the Sidewalk Café Ordinance, as set forth in Chapter 82, Article IV, Division 5 of the City Code; and (2) social distancing and sanitation guidelines imposed by the State of Florida, Miami-Dade County, and the City of Miami Beach; and provided, further, that the Program shall terminate on September 30, 2020, unless otherwise extended by the City Commission.

PASSED and ADOPTED this 13th day of May, 2020.

ATTEST:



Dan Gelber, Mayor


9/14/2020
Rafael E. Granado, City Clerk



APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION


 8/27/20
City Attorney NK Date

EXHIBIT "A"

RESTAURANT RECOVERY OUTDOOR SEATING PILOT PROGRAM

1. **Pilot program.** The Restaurant Recovery Outdoor Seating Pilot Program (the "Program") shall be implemented via special event permits pursuant to Section 12-5 of the City Code. Permits under the Program shall be separate from, and shall not otherwise alter or amend the terms of, any existing sidewalk café permits issued pursuant to Chapter 82, Article IV, Division 5 of the City Code (the "Sidewalk Café Ordinance"). The permit shall authorize a restaurant to expand sidewalk café seating areas onto approved public rights-of-way, or other outdoor seating areas on private property, provided the restaurant's then-existing total seating capacity (including indoor and outdoor seating) is not exceeded. The purpose of this Program is to mitigate the loss of revenue-generating seating associated with implementing social distancing requirements.
2. **Duration of permit and periodic review.** Each special event permit issued pursuant to the Program shall terminate no later than September 30, 2020, unless the Program is extended by the City Commission. At the expiration of the initial three-month period, the City Manager shall present a written report to the City Commission tracking the implementation of this Program, and the City Commission may, in its discretion, extend the term or otherwise modify the provisions of this Program.
3. **Application.** Applicants wishing to participate in the Program must submit a completed special event permit application to the Public Works Director. Each application must be accompanied by a sworn affidavit, signed by the applicant, acknowledging and agreeing to comply with all applicable provisions of the City Code, of this Resolution, and any Federal, State, County, or City law or emergency order (including without limitation Miami-Dade County Emergency Order 23-20 ["County EO 23-20"], and including the Handbook attached to County EO 23-20 as Exhibit A). As to requests for expansion on private property, the owner of the property shall be required to sign the application as a co-applicant.
4. **Waiver of fees.** No special event application fee or permit fee shall be required to operate expanded outdoor seating areas pursuant to the Program.
5. **Occupancy.** In no event shall any expansion of a restaurant's seating capacity exceed its then-existing total aggregate capacity for indoor and outdoor seating.
6. **Social distancing and sanitation guidelines.** Permittees shall at all times comply with social distancing and sanitation guidelines or requirements imposed by the State of Florida, Miami-Dade County, or City of Miami Beach in any Emergency Order, including County EO 23-20, and including the Handbook attached to County EO 23-20 as Exhibit A.
7. **Site plan review.**
 - a. Each applicant shall be required to submit a proposed site plan showing the layout and dimensions of the proposed seating

area(s); proposed location, size, and number of tables, chairs, and any other furniture; any ramps, paths, pedestrian push buttons, fixtures, or any other features required by any applicable accessibility codes including, without limitation, the Americans with Disabilities Act ("ADA") or State code provisions addressing accessibility for building construction; and location of doorways, steps, trees and/or landscaped areas, fountains, parking meters, fire hydrants, bus shelters, directory/kiosks, public benches, trash receptacles, and any other existing fixtures, furnishings and/or other obstruction(s) within the proposed expanded outdoor seating area.

- b. The site plan shall be subject to the approval of the Public Works Director prior to the issuance of a permit, to ensure that any site-specific conditions or issues are appropriately addressed, and that the expansion will not compromise public safety, pedestrian and vehicular traffic, or any required public access. The permit shall be specifically limited to the subject area shown on the approved site plan.
 - c. With respect to any site plan requesting a street or lane closure, the City Manager (or designee) shall have the sole and absolute discretion (subject to County approval, if required) to determine whether and which parts of public rights-of-way may be closed to pedestrian or vehicular traffic, or parking, in order to accommodate outdoor seating areas pursuant to this Program.
8. **Compliance with Sidewalk Café Ordinance.** Permittees shall at all times abide by applicable provisions of the City's Sidewalk Café Ordinance, subject to the following exceptions:
- a. Sidewalk café furniture, as defined in Section 82-366, shall be limited to tables, chairs, umbrellas (with a base of weights rated to resist winds of up to 35 miles per hour) and planters **only**. No other furniture will be allowed.
 - b. Notwithstanding the provisions of Section 82-385(r) of the City Code, the use of floor fans and extension cords on the public right-of-way shall be prohibited. Any lighting on the public right-of-way shall be cordless and battery-operated.
9. **Compliance with all other applicable laws.** Permittees shall at all times comply fully with all applicable Federal, State, County, or City laws (including the Land Development Regulations of the City Code).
10. **Indemnification.** Permittees shall be required to indemnify, defend, save, and hold harmless the City from any and all claims, liability, lawsuits, damages, and causes of action which may arise out of the permit or the permittee's activities on public rights-of-way or in expanded outdoor seating areas on private property.
11. **Insurance.** Permittees shall be required to maintain, for the entire term of the permit, certain insurance requirements (subject to the approval of the

City's Public Works Director and/or Risk Manager), and shall additionally be required to list the City as an additional insured party.

12. **Enforcement / Termination of the Permit.** In addition to the enforcement and penalty provisions set forth in Section 12-5 of the City Code and/or the Sidewalk Café Ordinance, the Permit shall be revocable and terminable at any time if the City Manager determines it is in the public interest to do so.