

## COMMISSION MEMORANDUM

**TO:** Mayor Dan Gelber  
Members of the City Commission Second Reading/Public Hearing  
Raul J. Aguila, Interim City Manager

**FROM:** Rafael A. Paz, Acting City Attorney 

**DATE:** January 27, 2021

**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 MODIFYING THOSE PENALTIES TO BE IMPOSED FOR VIOLATIONS OF THIS DIVISION; AND BY AMENDING SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-382 THEREOF, ENTITLED "APPLICATION," BY FURTHER ENHANCING THE PROHIBITION FOR PERMITTEES THAT REPEATEDLY VIOLATE THIS DIVISION; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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### **BACKGROUND**

The proposed Ordinance, sponsored by Mayor Dan Gelber and Commissioner Mark Samuelian, amends the City's Sidewalk Café Ordinance (as codified in Sections 82-366 through 82-389), to provide for enhanced penalties for violations of the City's sidewalk café requirements, including violations of the Sidewalk Café Code of Conduct.

On January 13, 2021, the Mayor and City Commission approved the proposed Ordinance on first reading, with an additional amendment to clarify that once a permittee submits an operational plan detailing how a violation will be corrected, the City Manager or City Manager's designee must use reasonable efforts to approve or deny the permittee's proposed operational plan within five (5) business days.

### **ANALYSIS**

The City of Miami Beach (the "City") has authorized the establishment of sidewalk cafés in order to provide a unique environment for its residents and visitors to relax and enjoy the consumption of food and/or beverage(s) in an outdoor setting.

However, 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. In order to continue to avail themselves of the privilege of operating a sidewalk café on public property, City's permittees must satisfy City's various sidewalk café requirements, standards, criteria and conditions, as set forth in the Sidewalk Café Ordinance.

The City Commission has also previously determined 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 rights-of-way 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 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 penalty provisions, as delineated in Sections 82-371 and 82-382 of the City Code, are necessary due to the continued complaints pertaining to the business practices and conduct of sidewalk café operators, in conjunction with the number of violations issued to such operators by the City for behavior inconsistent with the City Code.

The City Administration has recommended that the Mayor and City Commission adopt the proposed amendments to 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 protect the public health, safety and welfare, and continue to enhance the experience of sidewalk café patrons throughout the City.

If adopted on second reading, the enhanced penalties in the proposed Ordinance would apply prospectively. Accordingly, after the effective date of the Ordinance, the next notice of violation issued to any permittee would count as the first violation for purposes of imposing the new enhanced penalties under the proposed Ordinance (without regard to prior violations issued to that permittee in the preceding rolling twelve month period). In short, the "penalty clock" would be reset for all permittees, for purposes of implementing the enhanced penalties.

Also, if adopted on second reading, the Interim City Manager shall direct the Code Compliance Department to ensure additional outreach and notice is provided to sidewalk café permittees regarding the enhanced penalties that will be imposed for violations of the City's Sidewalk Café Ordinance.

RAP/MAF/bs