

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 II, ENTITLED "PERMIT," BY AMENDING SECTION 82-382 THEREOF, ENTITLED "APPLICATION," BY ESTABLISHING CRITERIA TO BE UTILIZED IN THE DETERMINATION OF WHETHER AN APPLICATION, SEEKING ISSUANCE OR RENEWAL OF A SIDEWALK CAFÉ PERMIT, SHOULD BE APPROVED OR DENIED; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, 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, which allows such 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 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, those business establishments seeking to operate, or continue operating, sidewalk cafés on the City's property are subject to certain identifiable standards, criteria and conditions; and

WHEREAS, the City Commission has previously found that the highest possible standards, criteria and conditions governing 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 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, despite merely seeking compliance with those standards, criteria and conditions required (and expected) of sidewalk café operators, the City continues to expend significant resources (in terms of both staff time and monetary expenditures) struggling to gain compliance with, and enforcement of, those regulations pertaining to sidewalk cafés; and

WHEREAS, it is imperative to remain cognizant of the fact that a sidewalk café permit is a privilege and not a right, and the approval, issuance and continued operation of a sidewalk café is conditional at all times; and

WHEREAS, even though the City continually grapples with all too many sidewalk café operators that fail to abide by the standards, criteria and conditions governing sidewalk cafés, the

City has routinely and perfunctorily permitted virtually all business establishments that submit a new application, or seek renewal thereof, to make use of its governmental property (at a rate far below market value) for their sidewalk café operations and private gain; and

WHEREAS, as part of its periodic, continuous review of the Sidewalk Café Ordinance, the City Administration has determined that the addition of identifiable criteria to those provisions pertaining to the application and renewal of sidewalk café permits, as delineated in Section 82-382 of the City Code, are necessary to more thoroughly review and evaluate both initial sidewalk café applications and sidewalk café permit renewals; and

WHEREAS, at its September 15, 2020 meeting, the Police/Citizens Relations Committee approved a motion that:

- i.) expressed its concern regarding the alarming findings of the Sidewalk Café Index Pilot Phase I (as presented in LTC 170-2020), which reported recurring instances of overcharging, menu items offered with no price, and aggressive hawking; and
- ii.) urged the City Commission to enhance the review process surrounding sidewalk café permit applications (and renewals) to ensure that the routine issuance of such permits ceases; and
- iii.) request that sidewalk café permits and renewals are issued only to those business establishments operating consistent with the City Code and all other applicable regulations and standards of conduct; and

WHEREAS, after discussion at its meeting on December 16, 2020 meeting, the Neighborhood and Quality of Life Committee (the "NQLC") and City Administration directed the establishment of certain criteria, which shall be utilized in considering whether an application (or renewal) of a sidewalk café permit should be issued; and

WHEREAS, at its January 28, 2021, the NQLC unanimously approved the Ordinance, which sets forth identifiable criteria which shall be considered by the city manager, or designee, prior to making the determination to approve or deny the issuance of a sidewalk café permit (or renewal thereof); 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 82-382 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

* * *

Sec. 82-382. Application.

- (a) A sidewalk café permit shall be effective for one year, from October 1 until September 30 of the following year.
- (b) An application for a permit to operate a sidewalk café shall include, but not be limited to, the following:
 - (1) The name, address and telephone number of the applicant/permittee.
 - (2) The name and address of the business establishment/restaurant seeking a permit to operate the sidewalk café (including the name and address of the restaurant).
 - (3) A copy of a valid city occupational license to operate the restaurant in front of which the proposed sidewalk café will be operating. The total count of chairs to be utilized for the restaurant must include the number of chairs used in conjunction with the sidewalk café and the number of chairs inside the restaurant, as authorized by the license.
 - (4) A copy of a valid certificate of use for the restaurant in front of which the proposed sidewalk café will be operating.
 - (5) Copies of current certificates of insurance in the amounts and categories required by section 82-386 hereof.
 - (6) A site plan signed and sealed by a duly licensed architect or engineer which accurately depicts the layout and dimensions of the existing sidewalk area and adjacent private property; proposed location, size and number of tables, chairs, umbrellas, and any other sidewalk café furniture; 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 public fixtures, furnishings and/or other obstruction(s) within the proposed sidewalk café area. The sidewalk café site plan shall be approved by the city manager prior to the issuance of a sidewalk café permit, and the permit shall be specifically limited to the subject area shown on the approved site plan.
- (i) ~~Notwithstanding the site plan requirement in subsection (b)(6), and only as applicable to the operation of sidewalk cafés located in the area north of 63rd Street and south of the city limits on 87th Terrace, through and including September 30, 2020, a sidewalk café having no more than two tables and eight chairs, may satisfy the requirement of subsection (b)(6) by applying for and obtaining a site plan designed by the public works department for a fee of \$250.00. A sidewalk café permit applicant may only be eligible to apply for a site plan pursuant to this subsection (b)(6)(i) if the operation of the proposed sidewalk café will result in no net increase~~

~~to the applicant's total number of restaurant seats. The provisions of this subsection 82-382(b)(6)(i) shall stand automatically repealed on September 30, 2020.~~

- (7) Photographs, drawings or manufacturer's brochures fully describing the appearance and dimensions of all proposed tables, chairs, umbrellas, and any other sidewalk café furniture related to the operation of the sidewalk café. Tables, chairs, umbrellas, and any other sidewalk café furniture shall be approved by the city manager prior to the issuance of a sidewalk café permit.
- (8) A copy of the approved sidewalk café site plan, shall be maintained on the premises of the business establishment/restaurant with the sidewalk café permit, and shall be available for inspection by city personnel at all times.
- (9) The annual application shall be accompanied by a nonrefundable base application fee as set forth in appendix A hereof. The nonrefundable base application fee shall not be required for sidewalk café permit applications submitted to the city in conjunction with the Washington Avenue Pilot Parklet Program, which program shall terminate on March 31, 2021. Additionally, the nonrefundable base application fee shall not be required for sidewalk café permit applications submitted to the city for businesses on Washington Avenue from 6th Street to Lincoln Road, for the period ending on September 30, 2021.
- (10) Applications shall be reviewed for compliance with applicable city, state and federal laws, and must be reviewed and approved by the city's public works department; fire department; office of risk management; finance department; planning and zoning department; and building department.
- (11) Prior to issuance of a sidewalk café permit, the city's chief financial officer shall certify that there are no outstanding fines, monies, fees, taxes or other charges owed to the city by the applicant/permittee and/or the business establishment/restaurant. A sidewalk café permit will not be issued until all outstanding debts to the city are paid in full.
- (12) No sidewalk café permit shall be issued to a restaurant whose occupational license or certificate of use is limited to take-out service and does not have inside seating.
- (13) A sidewalk café permit may not be transferred and/or otherwise assigned. A new owner and/or operator of a business establishment/restaurant with a sidewalk café permit will be required to apply for and obtain a new permit.
- (14) The permit covers only the public right-of-way. Tables and chairs on private property will be governed by other applicable regulations. No outdoor seating authorized pursuant to this division shall be used for calculating seating requirements pertaining to location of, applications for, or issuance of, a liquor license; nor shall the outdoor seating be used as the basis for computing required seating for restaurants, or as grounds for claiming exemption from such requirements under the provisions of any applicable city, county, and/or state law.
- (15) Sidewalk cafés shall comply with all applicable accessibility codes including, without limitation, the Americans with Disabilities Act (ADA), and state code provisions addressing accessibility for building construction, as same may be amended from time to time.
- (16) A sample menu that will be used by the sidewalk café to display or disclose actual prices for food and drink menu item(s), or display or disclose actual prices and accurate terms and conditions for any food and drink menu special(s). The sample menu must display or disclose the actual price for food or drink menu item(s) or food and drink menu special(s) (and, if applicable, the accurate terms and conditions for any food and drink

menu special(s)) in a size (font) and typeface that is at least as large as the name of the menu or food item, and such price (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 café menu design guidelines adopted by the city commission. All menu prices must be displayed in numeric format. The name of the restaurant must be prominently displayed on the menu. Each sidewalk café operator shall submit a sample menu to the city each year, which must be expressly approved by the city manager prior to each renewal of the operator's sidewalk café permit.

- (17) An affidavit by the sidewalk café applicant that the inclusion of an automatic gratuity or service charge, either in the price of the meal or drink or separately imposed for all items ordered, will be disclosed on the menu and the face of the customer's bill and receipt, and that the total combined percentage and amount of the city, county, and state taxes will also be stated on the face of the customer's bill and receipt. The affidavit must state that the notification to the customer of an automatic gratuity or service charge and the statement of the total combined percentage and amount of city, county, and state taxes are being included consistent with, and pursuant to, those requirement(s) set forth in subsections 82-389(b) and (c).
 - (18) Those applicants for a sidewalk café permit (or renewal of a sidewalk café permit) on Ocean Drive, between 5th Street and 15th Street, must submit an affidavit certifying that:
 - a. Every manager and every employee assigned to work in the sidewalk café permit area has successfully completed a hospitality training program that has been previously approved by resolution of the mayor and city commission;
 - b. 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; and
 - c. Any newly hired manager or employee assigned to work in the sidewalk café permit area must successfully complete such a hospitality training program.
 - (19) A fully executed, original sidewalk café code of conduct affidavit, which shall be signed (and duly notarized under oath by a licensed Florida notary) by an individual who is legally authorized and empowered to contractually bind the sidewalk café permittee and the business establishment/restaurant operating the sidewalk café. Such affidavit will acknowledge that the sidewalk café permittee has agreed to be bound by the sidewalk café code of conduct, as set forth in section 82-389, including the enhanced penalties for violation of same, as set forth in subsection 82-371(b) herein.
- (c) ~~Renewal~~. Criteria to be considered for applications (or renewals) of sidewalk café permits.
- (1) In addition to the application requirements under Section 82-382 hereof, the following criteria (which shall supplement, but not supersede any other provision of the city code) shall also be considered by the city manager, or designee, in the determination as to whether an initial application for a sidewalk café permit, or the renewal thereof, will be approved or denied:
 - a. Violations of the city code issued to the applicant/permittee and/or the business establishment/sidewalk café.
 - b. Violations of federal, state or county law which may be attributable to the business establishment or sidewalk café.

- c. Whether any corporate officer or principal, owning 10% or more of the sidewalk café, previously served as a corporate officer or principal of a business that was issued sidewalk café violation(s), or any change to the corporate entity, its structure, corporate officers or corporate ownership indicating an attempt to conceal or evade prior unlawful or improper conduct.
 - d. Any favorable or unfavorable reviews pertaining to the business establishment or sidewalk café operation or its business practices, which support either an approval or denial of the sidewalk café permit (or the renewal thereof) which may include, but not be limited to, those reviews found on online web-based platforms, social networking sites or online review sites such as Yelp, Google or Trip Advisor.
 - e. Any verifiable complaints pertaining to the business establishment or sidewalk café operation.
 - f. Any other information which the city manager, or designee, deems to be relevant, applicable or essential to such determination.
- (2) The city manager, or designee, shall provide each applicant, in writing, with the rationale which formed the basis for the denial of a sidewalk café permit (or the renewal thereof), pursuant to the criteria set forth in subsection (c)(1) herein.
- (3) Except as provided in subsection (c)(4) herein, no determination by the city manager, or designee, to deny an application for a sidewalk café permit (or the renewal thereof) shall prohibit such applicant from reapplying for a sidewalk café permit in the permit year immediately following such denial.
- (4) As provided in subsection 82-371(b), a Any permittee who has been issued four or more violations pursuant to this division within the preceding 12 months shall be prohibited from applying for and obtaining a sidewalk café permit for a period of two consecutive permit years following the permit year in which the permittee incurred its most recent violation.
- (5) A determination by the city manager, or designee, regarding those criteria, as set forth herein, shall not be subject to appeal pursuant to Section 82-369 or any other provision of the city code.

* * *

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, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

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 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 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2021.

PASSED AND ADOPTED this _____ day of _____, 2021.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

(Sponsored by Commissioner Mark Samuelian and Vice Mayor Steven Meiner)

Underline denotes additions

~~Strikethrough~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

MAF

3-3-21
Date