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COMMISSION MEMORANDUM

**TO: MAYOR DAN GELBER
MEMBERS OF THE CITY COMMISSION**

FROM: RAFAEL A. PAZ, ACTING CITY ATTORNEY 

DATE: JUNE 23, 2021

**SUBJECT: DISCUSSION ITEM RE SIDEWALK CAFÉ MARKET RATE FEE AND
INCENTIVE PROGRAM**

Mayor Dan Gelber has placed an item on the agenda for discussion regarding the current market rate for sidewalk cafés, a proposal to increase the fee that the City charges for sidewalk café space on the City's rights-of-way to better reflect current market prices, and a proposal to offer a substantial subsidy from the City to sidewalk cafes that voluntarily elect to receive it by agreeing to abide by certain standards that otherwise may be subject to challenge on state and federal constitutional grounds, including but not limited to, preemption and the First Amendment. Initially, those additional voluntary standards are proposed to be for participants to (1) voluntarily agree not to serve any alcoholic beverages larger than 22 ounces; (2) voluntarily agree not to allow hookah smoking on the premises; and (3) voluntarily agree to require uniforms for staff of participants.

The City currently charges \$27 per square foot annually for sidewalk café space using a cost-recovery model. The City currently increases the square footage fee for sidewalk cafes annually by reference to the change in the consumer price index for the Miami-Fort Lauderdale-West Palm Beach, Florida area, as published by the Bureau of Labor Statistics of the United States Department of Labor. (CPI) for each year. However, research has revealed that the asking price to rent inside space on the City's main sidewalk café corridors, Lincoln Road and Ocean Drive, is currently averaging \$110 per square foot annually for Lincoln Road and \$140 per square foot annually for Ocean Drive bar and restaurant space.¹ The mayor proposes to convert to a revenue generation model for sidewalk café pricing. It is the mayor's position that outdoor sidewalk café space is significantly more valuable to sidewalk cafe operators than inside space because the sidewalk café area is 100% revenue generating, requires no kitchen or other buildout expense, and is not subject to an obligation to pay for a leased premises (but can be abandoned without penalty each year). For these reasons, Mayor Gelber proposes to increase the square footage fee for sidewalk cafes to the current minimum market rate of \$110 per square foot. From those operators that choose to pay the market rate fee, the City would realize substantially increased

¹ This is the current going rate for bar and restaurant space on Ocean Drive. The 2019 pre-Covid going rate was an average of \$207 per square foot annually. We can expect rates to increase to pre-Covid levels soon.

revenue that could be allocated to better police and manage the City's sidewalk café program (or to whatever purpose that the Commission directed).

Mayor Gelber also proposes to offer a cash subsidy from the City to those sidewalk café operators that voluntarily request the incentive and agree to abide by additional standards designed to enhance the outdoor dining experience of the City's residents and visitors, thereby advancing the City's stated interest in establishing the sidewalk café program. Mayor Gelber proposes, for discussion, a voluntary City subsidy payment to participating operators of an amount equal to \$90 per square foot, which would reduce the net sidewalk café square footage fee to \$20 per square foot (a discount from the current rate of \$27 per square foot and a substantial discount from the market rate of \$110 per square foot). Operators that do not wish to participate in the voluntary subsidy incentive program can elect not to do so, pay the market rate fee, and obtain a sidewalk café program permit as usual.

Finally, the Mayor proposes to initially condition eligibility for the subsidy incentive program on three new standards for participating operators: (1) voluntarily agree not to serve any alcoholic beverages larger than 22 ounces; (2) voluntarily agree not to allow hookah smoking on the premises; and (3) voluntarily agree to require uniforms for staff of participants. The standards for participation in the program could be updated and revised by resolution each permit year if desired by the City Commission, or the City Manager could be authorized to impose conditions that she deemed helpful each year at her own discretion.

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