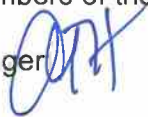


MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Alina T. Hudak, City Manager 
DATE: October 27, 2021

SUBJECT: **DISCUSSION TO CONSIDER THE DURATION OF THE "RESTAURANT RECOVERY OUTDOOR SEATING PILOT PROGRAM," AS ESTABLISHED BY RESOLUTION NO. 2020-31276.**

RECOMMENDATION

The Restaurant Recovery Outdoor Seating Program (the "Program") was initiated as a direct response to the economic impacts associated with the SARS-CoV-2 pandemic. This initiative provided businesses an expedited way of expanding or creating outdoor seating immediately after the partial reopening of the economy.

While the Program has been successful in helping restaurants re-open, recent trends noted by our Public Safety departments indicate that some participants are not safely maintaining their areas of operation. It also appears that some businesses that have opted *not* to participate in the Program are using some of the designated outdoor areas and attracting undesirable behavior requiring an increase in response by Police and Code Enforcement.

Although we believe that outdoor dining is still a desirable option, based on the challenges noted above the Administration does not recommend extending the Program.

Instead, the Administration recommends the use of the City's codified Sidewalk Cafe and Parklet programs, should restaurants choose to continue to provide outdoor seating. Under the Sidewalk café Ordinance, sidewalk cafe permits are available Citywide. Additionally, pursuant to Ordinance No. 2021-4427 which was recently adopted by the City Commission on July 28, 2021, restaurants on Washington Avenue, from 6th Street to Lincoln Road, and restaurants in the Sunset Harbour Neighborhood are eligible to apply for parklet

permits. These parklet permits will be issued in accordance to the Parklet Design Guidelines adopted by the City Commission under Resolution No. 2021-31803 on July 28, 2021. The Administration will also be reviewing additional locations citywide that may be eligible for parklets.

BACKGROUND/HISTORY

On March 11, 2020, the World Health Organization declared the rapidly spreading novel coronavirus ("COVID- 19") a pandemic, acknowledging what seemed clear — the virus would likely spread to all countries on the globe.

The rate of infection throughout the world and in the US accelerated rapidly, grinding most markets and businesses around the globe to a halt. In order to limit the spread of the novel coronavirus ("COVID- 19"), subsequently, both Miami- Dade County and the City issued various Emergency Orders temporarily, closing public and private facilities, including the temporary closure of all nonessential retail and commercial establishments, and the closure of all restaurants for in person dining.

The foregoing closures had greatly limited economic activity in the City of Miami Beach, and continued to adversely impact City businesses, including restaurants.

ANALYSIS

On May 13, 2020, the City Commission adopted Resolution No. 2020-31276, establishing the Restaurant Recovery Outdoor Seating Pilot Program (the "Program").

This Program created opportunities for restaurants to expand their footprint and mitigate the loss of seating associated with social distancing requirements, in compliance with all applicable State, County, and City Emergency Orders.

Since its inception, the Restaurant Recovery Outdoor Seating Pilot Program has been extended pursuant to Resolution Nos. 2020-31406, 2020-31522 and 2021-31632 through September 30, 2021.

On September 17, 2021, the City Commission approved an additional extension of the Program citywide, through October 31, 2021, pursuant to Resolution No. 2021-31867, with the exception of the MXE Mixed-Use Entertainment District.

At the September 23, 2021 City Commission Workshop relating to Transportation/Ocean Drive and Washington Avenue, the Mayor and City Commission provided direction to the Administration regarding the configuration of Ocean Drive for pedestrian and vehicular purposes, and in view of the ongoing work, directed the Administration to bring an agenda item for consideration at the September 30, 2021 City Commission meeting, to consider extending the scope of the Program to all restaurants with sidewalk café seating areas located within the City of Miami Beach, including the restaurants located within the MXE Mixed-Use Entertainment District.

On September 30, 2021, the City Commission approved an additional extension of the Program citywide, through November 30, 2021, including the MXE Mixed-Use Entertainment District.

The Restaurant Recovery Outdoor Seating Pilot Program is set to expire on November 30, 2021, unless extended by the City Commission.

SUPPORTING SURVEY DATA

Results from the 2019 Resident Survey regarding Satisfaction with Perceptions of the City show that 79% of residents rated quality of life in the City as very satisfied/satisfied.

FINANCIAL INFORMATION

Amount(s)/Account(s):

N/A

CONCLUSION

The Restaurant Recovery Outdoor Seating Program (the "Program") was initiated as a direct response to the economic impacts associated with the SARS-CoV-2 pandemic. This program has been a success. The Administration believes that outdoor dining is still a desirable option. However, the Administration recommends the use of the City's codified Sidewalk Cafe and Parklet programs, should restaurants choose to continue to provide outdoor seating. Under the Sidewalk café Ordinance, sidewalk cafe permits are available Citywide. Additionally, pursuant to Ordinance No. 2021-4427 which was recently adopted by the City Commission on July 28, 2021, restaurants on Washington Avenue, from 6th Street to Lincoln Road, and restaurants in the Sunset Harbour Neighborhood are eligible to apply for parklet permits. These parklet permits will be issued in accordance to the Parklet Design Guidelines adopted by the City Commission under Resolution No. 2021-31803 on July 28, 2021. The Administration will also be reviewing additional locations citywide that may be eligible for parklets.

Therefore, except for the Ocean Drive area, the Administration does not recommend extending the Program as originally approved.

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?

Yes

Does this item utilize G.O. Bond Funds?

No

Strategic Connection

Prosperity - Market and promote Miami Beach as a world class arts, culture, and quality entertainment destination.

Legislative Tracking

Public Works

ATTACHMENTS:

Description

- ▯ [Resolution 2020-31276](#)
- ▯ [Ordinance 2021-4427](#)

ATH/LS/JLG

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:




Rafael E. Granado, City Clerk



Dan Gelber, Mayor



APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION

 8/27/20

City Attorney NK Date

ORDINANCE NO. 2021-4427

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," ARTICLE IV, ENTITLED "USES IN PUBLIC RIGHTS-OF-WAY," DIVISION 5, ENTITLED "SIDEWALK CAFES," SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-382, ENTITLED "APPLICATION," AND SECTION 82-383, ENTITLED "PERMIT FEE; PENALTIES FOR LATE PAYMENT; REVIEW OF FEE; EXCEPTION," TO REPEAL OUTDATED PROVISIONS; AND BY CREATING SECTION 82-390 THEREOF, ENTITLED "PARKLET PROGRAM," TO CREATE A SIDEWALK CAFÉ PARKLET PROGRAM, ESTABLISH THE SCOPE OF THE PROGRAM, PROVIDE FOR DESIGN GUIDELINES, IDENTIFY PERMITTED PARKLET AREAS, PROVIDE FOR AN APPLICATION, SITE PLAN, AND FEES, INCORPORATE THE PROVISIONS OF THE SIDEWALK CAFÉ ORDINANCE, AND PROVIDE FOR REMOVAL; AND AMENDING APPENDIX "A" TO THE CITY CODE, ENTITLED "FEE SCHEDULE," TO ESTABLISH A BASE PARKLET APPLICATION FEE AND AN ANNUAL ~~PER-SQUARE-FOOT PER-PARKING SPACE~~ PARKLET FEE; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, a parklet is a small park, plaza, or creative public space that is physically installed or constructed in an on-street parking space; and

WHEREAS, the Mayor and City Commission desire to amend the Sidewalk Café Ordinance, set forth in Chapter 82, Article IV, Division 5 of the City Code, to permit sidewalk cafés to operate in parklets on City rights-of-way along Washington Avenue, between 6th Street and Lincoln Road, and in the Sunset Harbour neighborhood (generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south).

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

SECTION 1. Chapter 82 of the City Code is hereby amended as follows:

CHAPTER 82
PUBLIC PROPERTY

* * *
ARTICLE IV, USES IN PUBLIC RIGHT OF WAY

* * *
DIVISION 5. SIDEWALK CAFES

* * *
Subdivision II. Permit

Sec. 82-382. Application.

- * * *
- (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,~~ Notwithstanding the foregoing, 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.
- * * *

Sec. 82-383. Permit fee; penalties for late payment; review of fee; exception.

- (a) The annual permit fee for operation of a sidewalk café shall be as set forth in appendix A hereof, and shall be based on a per square foot calculation of permitted sidewalk area (including the area between the tables and chairs).
- * * *

- (2) ~~No square footage fee as required by this section shall be required for the operation of sidewalk cafés in conjunction with the Washington Avenue Pilot Parklet Program, which program shall terminate on March 31, 2021. Additionally, no~~ No square footage fee as required by this section shall be required for the operation of sidewalk cafés on Washington Avenue, from 5th Street to Lincoln Road, for the period ending on September 30, 2021.
- * * *

Sec. 82-390. Parklet Program.

- (a) Definition. The term *parklet* shall mean a sidewalk café (as defined in this division) that is physically installed in an on-street parking space or, as may be approved by the public works director within the director's sole discretion, in a portion of a street.
- (b) Scope of program. Eligibility to apply for and obtain a parklet permit shall be limited to restaurants located (i) along Washington Avenue, between 6th Street and Lincoln Road, and (ii) in the Sunset Harbour neighborhood (generally bounded by Purdy Avenue to the west, 20th Street and the waterway to the north, Alton Road to the east, and Dade Boulevard to the south). An applicant is not required to hold an existing sidewalk café permit under this division in order to apply or be eligible for a parklet permit.
- (c) Design guidelines. The operation of a parklet shall at all times be consistent with the City's Parklet Design Guidelines, as may be adopted or amended by resolution of the City Commission.
- (d) Permitted parklet area. The area of each parklet shall be limited to a maximum of two on-street parking spaces fronting the permittee's restaurant business, as depicted on the permit application, subject to the requirements set forth in the Parklet Design Guidelines. Parklets shall be restricted to restaurant frontages where on-street parking spaces exist

along the curb line; and any other portion of a street, as may be approved by the public works director. Applications for parklets in angled parking spaces shall be evaluated by the public works director on a case-by-case basis.

(e) *Application and site plan.* In addition to the sidewalk café permit application requirements set forth in section 82-382, each parklet permit application shall include a site plan signed and sealed by a duly licensed architect or engineer which accurately depicts the layout and dimensions of the parklet area including buffers and barriers; the proposed location, size, and number of tables, chairs, umbrellas, and any other furniture; the location of doorways, steps, trees, and/or landscaped areas, fountains, parking meters, fire hydrants, utility infrastructure, bus shelters, directory/kiosks, public benches, trash receptacles, and any other existing public fixtures, furnishings and/or other obstruction(s) within the proposed parklet area. The site plan shall be approved by the city manager prior to the issuance of a parklet permit and shall be consistent with the Parklet Design Guidelines, and the permit shall be specifically limited to the area shown on the approved site plan. Each parklet shall be installed on a raised platform, flush with the adjacent sidewalk.

(f) *Fees.*

(1) *Application fee.* Each parklet application, which must be submitted each year, shall be accompanied by a nonrefundable base application fee as set forth in appendix A to this Code.

(2) *Annual permit fee.* The annual permit fee for operation of a parklet shall be as set forth in appendix A and shall be based on a ~~per-square-foot~~ per-parking space calculation for each ~~parking-space~~ parklet.

(g) *Applicability of Sidewalk Café Ordinance.* Except as otherwise provided in this section, each parklet permittee shall at all times abide by the provisions of this division, including without limitation, the sidewalk café code of conduct (set forth in section 82-389), all enforcement and penalty provisions, and the criteria for permit renewal, all of which shall be incorporated by reference in each parklet permit.

(h) *Hurricanes and major weather events.* In addition to the provisions of section 82-381, upon written and/or verbal notification by the city manager of a hurricane or other major weather event, or the issuance of a hurricane warning by Miami-Dade County, whichever occurs first, the permittee shall, within no more than four hours, promptly secure each parklet platform pursuant to the permittee's Hurricane Preparedness Plan submitted as part of the parklet application, as approved by the public works director, unless such platform was designed, constructed, and installed to withstand hurricane-force winds (as approved by the public works director).

(i) *Removal.* As a condition of obtaining a parklet permit, each permittee shall agree in writing that the city manager may cause the immediate termination, suspension, closure, removal, relocation and/or storage of all or part of a parklet operation and/or parklet furniture in those circumstances where the city manager determines it reasonably necessary for the protection of the public health, safety, or welfare.

SECTION 2.

Appendix A to the City Code, entitled "Fee Schedule," is hereby amended as set forth in "Exhibit A" to this Ordinance.

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. 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 5. 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 6. EFFECTIVE DATE.

This Ordinance shall take effect the 7 day August 2021.


PASSED and ADOPTED this 28 day of July, 2021.

ATTEST:


8/2/2021
Rafael E. Granado, City Clerk


Dan Gelber, Mayor

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION


City Attorney NK 7-12-21 Date



Underline denotes additions
~~Strikethrough denotes deletions~~
Double underline denotes additions after First Reading
~~Double strikethrough denotes deletions after First Reading~~

(Sponsored by: Commissioner Ricky Arriola)

EXHIBIT "A"
AMENDMENTS TO FEE SCHEDULE

* * *			
	Chapter 82. Public Property		
* * *			
	Article III. Use of Public Property		
* * *			
	Division 5. Sidewalk Cafes		
* * *			
82-390	Base parklet application fee	750.00	[A]
82-390	Annual parklet fee, per square foot of total number of parking spaces, per day	27.00	[A]
		34.00	
* * *			