

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, ENTITLED "PUBLIC PROPERTY," ARTICLE IV, "USES IN PUBLIC RIGHTS-OF-WAY, DIVISION 5, "SIDEWALK CAFES," TO AMEND THE DISCLOSURE REQUIREMENTS FOR SIDEWALK CAFE OPERATORS, AND TO FURTHER PROVIDE SUPPLEMENTAL PENALTY PROVISIONS FOR SPECIFIED VIOLATIONS OF THIS DIVISION; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Ordinance Nos. 2015-3982 and 2017-4082, and in order to prevent deceptive or misleading business practices in the operation of the City's sidewalk cafes, the Mayor and City Commission have amended the City's Sidewalk Cafe Ordinance, codified in Chapter 82, Article IV, Division 5 of the City Code, to require that sidewalk cafes display or disclose (i) prices for food and drink menu items or menu specials; (ii) any automatic gratuity or service charges; and (iii) the amount of all applicable City, County, and State taxes; and

**WHEREAS**, in order to further promote transparency and reduce the incidence of deceptive or misleading business practices by sidewalk cafe operators, the Mayor and City Commission now desire to adopt the additional disclosure requirements set forth herein; and

**WHEREAS**, in the interest of protecting the City's residents and visitors from consumer fraud, the Mayor and City Commission deem it necessary to require sidewalk cafe operators to provide sidewalk cafe patrons with written notice (on each sidewalk cafe table) of the disclosure requirements set forth in the Sidewalk Cafe Ordinance, and to advise patrons that violations may be reported to the City's Code Compliance Department.

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

**SECTION 1.** Chapter 82, entitled "Public Property," is hereby amended as follows:

**CHAPTER 82  
PUBLIC PROPERTY**

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**ARTICLE IV. USES IN PUBLIC RIGHTS-OF-WAY**

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**DIVISION 5. SIDEWALK CAFES**

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**Subdivision I. Generally**

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**Sec. 82-371. Civil fines and penalties; denial of future permits to repeat violators; enhanced penalties.**

- (a) *{Civil fines and penalties.}* The following civil fines and penalties shall be imposed for violations of this division:
- (1) First violation: \$500.00.
  - (2) Second violation within the preceding 12 months: \$750.00.
  - (3) Third violation within the preceding 12 months: Suspension of the sidewalk cafe permit for one weekend (Saturday and Sunday) and \$1,000.00.
  - (4) Fourth violation within the preceding 12 months: Revocation of the sidewalk cafe permit for the remaining portion of the permit year and \$1,250.00.
  - (5) Failure to apply for permit: Termination of sidewalk cafe operations until a permit is applied for and obtained.
  - (6) Failure to renew permit: Suspension of sidewalk cafe operations until the permit is renewed.
- (b) *Enhanced penalties.* The following enhanced penalties must be imposed by the city manager:
- (1) A permittee who has been issued more than four violations pursuant to this division within a permit year shall be prohibited from applying for and obtaining a sidewalk cafe permit for a period of two permit years, following the permit year in which the applicant/permittee incurred the aforesaid violations.
  - (2) For life safety violations of this division, site plan violations, and violations of subsection 82-385(v), (w), or (x), or (z), the city manager shall be authorized to issue an immediate order suspending the sidewalk cafe permit and operation, and the sidewalk cafe operator must cease operations for at least 24 hours, and until the city manager finds that the violation(s) have been corrected and withdraws the suspension order. The issuance of a notice of violation or an order suspending the sidewalk cafe permit shall raise a rebuttable presumption that a life safety violation, site plan violation, or violation of subsection 82-385(v), (w), or (x), or (z) has occurred.
  - (3) For life safety violations of this division, site plan violations, and violations of subsection 82-385(v), (w), (x), or (z), the city manager shall also be authorized to commence proceedings, pursuant to section 102-381 of this Code, to suspend or revoke the sidewalk cafe operator's business tax receipt. The issuance of a notice of violation pursuant to this paragraph shall raise a rebuttable presumption that a life safety violation, site plan violation, or violation of subsection 82-385(v), (w), (x), or (z) has occurred.
  - (4) Reporting requirement. The city manager, or the city manager's designee, shall, on a quarterly basis, present the city commission with a written report detailing the city's enforcement activities relating to life safety violations of this division, site plan violations, and violations of subsections 82-385(v), (w), (x), and (z). The report shall include statistics relating to the number of enforcement actions taken against each sidewalk cafe operator, and the outcome of each enforcement action.

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## Subdivision II. Permit

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### Sec. 82-381. Permitted areas; condition permit; city manager's right to remove sidewalk cafes; requirement disclosures on menus, bills, and receipts.

\* \* \*

- (h) A sidewalk cafe must display or disclose, in writing, actual prices for food and drink menu item(s), or display or disclose, in writing, these actual prices and accurate terms and conditions for any food and drink menu special(s). The displayed price for the food or drink menu item(s) or food and drink menu special(s) (and, if applicable, the terms and conditions for any food and drink menu special(s)) must be in a size (font) and typeface, which is at least as large as the name of the menu item, and such price (and, if applicable, terms and conditions) must be displayed adjacent to the name and/or description of each menu item or menu special. A sidewalk cafe may not charge a price that is greater than the price displayed or disclosed for any food or drink menu item(s) or food or drink menu special(s). A copy of the menu (including actual prices for food and drink menu item(s) and for food and drink menu special(s), and accurate terms and conditions for any food and drink menu special(s)) must be provided to each sidewalk cafe patron.
- (i) A sidewalk cafe that automatically includes a gratuity or service charge, either, in the price of the meal or drink or separately imposed for all items ordered, must be displayed the actual amount of such gratuity or service charge on the menu and on the face of the customer's bill. This disclosure serves to provide the customer notification that an automatic gratuity or service charge is being included by the sidewalk cafe operator. The disclosure of the gratuity or service charge within the menu or bill must not be smaller than 12-point font.
- (j) A sidewalk cafe operator that includes a gratuity or tip as a charge must separately itemize and state the actual amount of this charge on the face of the customer's bill and receipt, and such gratuity or tip must only be calculated based on the pre-tax sale amount of the food or drinks. A sidewalk cafe operator that includes a service charge, minimum charges, corkage fees, set up fees, sharing fees or charges, or any other similar charges, must itemize and separately state the actual amount of such charges on the face of the customer's bill and receipt. Service charges, minimum charges, corkage fees, set up fees, sharing fees or charges, or other similar charges imposed by a sidewalk cafe operator as part of the charges for furnishing, serving, or preparing food products are subject to sales tax and surtax. A sidewalk cafe operator must state the total combined percentage and amount of city, county, and state taxes on the face of the customer's bill and receipt.

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### Sec. 82-382. - Application.

\* \* \*

- (b) Application for a permit to operate a sidewalk cafe shall include, but not be limited to, the following information:

\* \* \*

- (16) A sample menu that will be used by the sidewalk cafe to display or disclose actual prices for food and drink menu item(s), or display or disclose these 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 and/or description of each menu item or menu special.

- (17) An affidavit by the sidewalk cafe 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 82-381(i) and (j).

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**Sec. 82-385. Minimum standards, criteria, and conditions for operation of sidewalk cafes.**

\* \* \*

- (v) A sidewalk cafe shall be prohibited from continuing its operation until such time that it displays or discloses, in writing, actual prices for food and drink menu item(s), or displays or discloses, in writing, those actual prices and accurate terms and conditions for any food and drink menu special(s), consistent with those requirements set forth in Section 82-381(h) and 82-382(16). A sidewalk cafe may not charge a price that is greater than the price displayed or disclosed for any food or drink menu item(s) or food or drink menu special(s). A copy of the menu (including actual prices for food and drink menu item(s) and food and drink menu special(s) and, if applicable, accurate terms and conditions for any food and drink menu special(s)) must be provided to each sidewalk cafe patron.
- (w) A sidewalk cafe that automatically includes a gratuity, or service charge, minimum charge, corkage fee, set up fee, sharing fee or charge, or other similar charge, either in the price of the meal or drink or separately imposed for all items ordered, and fails to properly notify the customer of the automatic gratuity or service charge, is prohibited from operating on the city's property. The notification must be consistent with those requirements set forth in sections 82-381(i) and 82-382(b)(17).
- (x) A sidewalk cafe that fails to separately itemize and state the actual amount of the following:
- (1) Gratuities or tips;
  - (2) Service charges, minimum charges, corkage fees, set up fees, sharing fees or charges, or similar charges; or
  - (3) The total combined percentage and amount of city, county, and state taxes, on the face of the customer's bill and receipt,
- is prohibited from operating on the city's property. The notification must be consistent with those requirements set forth in subsections 82-381(i) and 82-382(b)(17).

\* \* \*



(z) A notice meeting the following requirements, copies of which must be obtained from the city's department of public works, shall be prominently displayed on every sidewalk café table at all times when the sidewalk café is open for business:

(1) The notice must advise sidewalk café patrons of the disclosure requirements set forth in section 82-385(v), (w), (x), and (z), as well as the phone number for the city's code compliance department, so that any violations may be reported.

(2) The notice shall be printed in a font no smaller than 14 point, on a sheet of paper no smaller than five-and-one-half (5½) inches by four-and-one-quarter (4¼) inches.

## **SECTION 2. REPEALER.**

All ordinances or parts of ordinances in conflict herewith 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 \_\_\_\_\_, 2017.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2017.

**ATTEST:**

\_\_\_\_\_  
Rafael E. Granado, City Clerk

Underline denotes additions  
Strikethrough denotes deletions

(Sponsored by Commissioner Mark Samuelian)

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\_\_\_\_\_  
Dan Gelber, Mayor

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

                      
City Attorney

1/11/18  
Date

NK