

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," SUBDIVISION 1, "GENERALLY," SECTION 82-382 THEREOF, ENTITLED "APPLICATION," TO AUTHORIZE A SIDEWALK CAFE PERMIT APPLICANT LOCATED IN THE AREA NORTH OF 63RD STREET AND SOUTH OF THE CITY LIMITS ON 87TH TERRACE, PROPOSING TO OPERATE A SIDEWALK CAFE, HAVING NO MORE THAN TWO (2) TABLES AND EIGHT (8) SEATS, TO SATISFY THE SITE PLAN REQUIREMENT OF SECTION 82-382(b)(6)(i) BY APPLYING FOR AND OBTAINING A SITE PLAN DESIGNED BY THE PUBLIC WORKS DEPARTMENT; TO AUTHORIZE THE PUBLIC WORKS DEPARTMENT TO IMPOSE A FEE FOR SUCH SITE PLAN; AND TO PROVIDE THAT THE PROVISIONS OF THIS ORDINANCE SHALL ONLY APPLY TO THE OPERATION OF SIDEWALK CAFES THROUGH AND INCLUDING SEPTEMBER 30, 2020; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, in prior years, and pursuant to Ordinance Nos. 98-3146, 2000-3237, 2003-3397, 2013-3824, and 2015-3968, the City Commission has waived or abated square footage fees for sidewalk cafes in the North Beach area of the City; and

WHEREAS, most recently, on October 18, 2017, the Mayor and City Commission adopted Ordinance No. 2017-4144, abating sidewalk cafe fees for businesses located north of 63rd Street for a period of approximately two years, through and including September 30, 2019; and

WHEREAS, City Code Section 82-382(b)(6) requires sidewalk cafe permit applicants to submit a "site plan signed and sealed by a duly licensed architect or engineer," which accurately depicts the proposed sidewalk cafe operation; and

WHEREAS, the cost of hiring an architect to develop architectural plans disproportionately burdens small business owners seeking to operate small-scale sidewalk cafes; and

WHEREAS, the City Commission desires to further incentivize economic development in the North Beach area by allowing applicants for small-scale sidewalk cafe operations to obtain a site plan from the City's Public Works Department at a reduced cost, in lieu of obtaining signed and sealed architectural drawings from private architects.

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**

* * *

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. 82-382. Application.

- (a) A sidewalk cafe permit shall be effective for one year, from October 1 until September 30 of the following year.
- (b) Application for a permit to operate a sidewalk cafe shall include, but not be limited to, the following information:
 - (1) The name, address and telephone number of the applicant/permittee.
 - (2) The name and address of the business establishment seeking a permit to operate the sidewalk cafe (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 cafe 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 cafe 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 cafe will be operating.
 - (5) Copies of current certificates of insurance in the amounts and categories required by section 82-386.
 - (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 cafe 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 cafe area. The sidewalk cafe site plan shall be approved by the city manager prior to the issuance of a sidewalk cafe 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 cafes 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 cafe permit applicant proposing to operate a sidewalk cafe, having no more than two (2) tables and eight (8) 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

cafe 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 cafe 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 cafe furniture related to the operation of the sidewalk cafe. Tables, chairs, umbrellas, and any and all other sidewalk cafe furniture shall be approved by the city manager prior to the issuance of a sidewalk cafe permit.
- (8) A copy of the approved sidewalk cafe site plan, shall be maintained on the permittee's premises and shall be available for inspection by city personnel at all times.
- (9) The annual application shall be accompanied by a non-refundable base application fee as set forth in appendix A. However, the non-refundable base application fee shall not be required for sidewalk cafe permit applications submitted to the city in conjunction with the Washington Avenue Pilot Parklet Program, which program shall terminate on March 31, 2019. Additionally, the non-refundable base application fee shall not be required for sidewalk cafe permit applications submitted to the city for businesses on Washington Avenue from 6th Street to Lincoln Road, for the period ending on September 30, 2019.
- (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 cafe 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 cafe permit will not be issued until all outstanding debts to the city are paid in full.
- (12) No sidewalk cafe 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 cafe permit may not be transferred and/or otherwise assigned. A new owner and/or operator of a restaurant and/or business establishment with a sidewalk cafe 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 cafes 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 cafe to display or disclose prices for food and drink menu item(s), or display or disclose those prices for any food and drink menu special(s). The sample menu must display or disclose food or drink menu item(s) or 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.
- (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).
- (18) Any applicant for a sidewalk cafe permit (including any sidewalk cafe permittee applying to renew a sidewalk cafe permit) on Ocean Drive between 5th Street and 15th Street must submit an affidavit (in a form approved by the city manager) certifying that:
 - (i) Every manager and every employee assigned to work in the sidewalk cafe permit area has successfully completed a hospitality training program that has been previously approved by resolution of the mayor and city commission;
 - (ii) Within one year of completing such program and each year thereafter, every manager and every employee assigned to work in the sidewalk cafe permit area shall complete an abbreviated version of the same hospitality training program; and
 - (iii) Any newly hired manager or employee assigned to work in the sidewalk cafe permit area must successfully complete such a hospitality training program.
- (c) Renewals. As provided in subsection 82-371(b), 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 the following two consecutive permit years.

* * *

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 _____, 2018.

PASSED AND ADOPTED this ___ day of _____, 2018.

ATTEST:

Dan Gelber
Mayor

Rafael E. Granado
City Clerk

Underline denotes additions
~~Strikethrough~~ denotes deletions

(Sponsored by Commissioner John Elizabeth Alemán)

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

J. J. O'Neil
City Attorney

3-28-18
Date

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