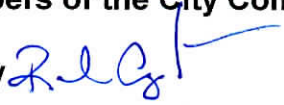




City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMISSION MEMORANDUM

**TO:** Honorable Mayor and Members of the City Commission

**FROM:** Raul J. Aguila, City Attorney 

**DATE:** July 17, 2019

**SUBJECT:** AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING PORTIONS OF THE CITY'S SIDEWALK CAFÉ ORDINANCE, AS CODIFIED IN SECTIONS 82-366 THROUGH 82-388 OF THE CITY CODE; SUCH AMENDMENTS PROVIDING, IN PART, FOR THE CREATION OF A NEW SECTION, 82-389, ENTITLED "SIDEWALK CAFÉ CODE OF CONDUCT," WHICH SECTION CONTAINS CERTAIN TERMS AND CONDITIONS FOR COMPLIANCE WITH A SIDEWALK CAFÉ PERMIT THAT WOULD BE SUBJECT TO ENHANCED PENALTIES FOR VIOLATION, (WHICH PENALTIES ARE SET FORTH IN SECTION 82-371(b)); FURTHER AMENDING THE SIDEWALK CAFÉ PERMIT APPLICATION REQUIREMENTS BY REQUIRING PERMITTEES TO EXECUTE AN AFFIDAVIT EVIDENCING RECEIPT OF THE CODE OF CONDUCT, AND PERMITTEES' AGREEMENT TO BE BOUND BY SAME; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

---

Mayor Dan Gelber has previously been the sponsor of several amendments to the City's sidewalk café ordinance, as codified in Sections 82-366 through 82-388 of the City Code, and is presently sponsoring an amendment which, in pertinent part, creates a Sidewalk Café "Code of Conduct", for those sidewalk cafés operating within the City. The proposed amendment also mandates that all applicants for a sidewalk café permit shall be required to execute an affidavit evidencing receipt of the Sidewalk Café Code of Conduct, and agreement to be bound by same, with any violation(s) of the Code of Conduct subject to those enhanced penalties set forth in Section 82-371(b) of the City Code.

The proposed Ordinance is submitted for first reading at the July 17, 2019 meeting of the City Commission.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING PORTIONS OF THE CITY'S SIDEWALK CAFÉ ORDINANCE, AS CODIFIED IN SECTIONS 82-366 THROUGH 82-388 OF THE CITY CODE; SUCH AMENDMENTS PROVIDING, IN PART, FOR THE CREATION OF A NEW SECTION, 82-389, ENTITLED "SIDEWALK CAFÉ CODE OF CONDUCT," WHICH SECTION CONTAINS CERTAIN TERMS AND CONDITIONS FOR COMPLIANCE WITH A SIDEWALK CAFÉ PERMIT THAT WOULD BE SUBJECT TO ENHANCED PENALTIES FOR VIOLATION, (WHICH PENALTIES ARE SET FORTH IN SECTION 82-371(b)); FURTHER AMENDING THE SIDEWALK CAFÉ PERMIT APPLICATION REQUIREMENTS BY REQUIRING PERMITTEES TO EXECUTE AN AFFIDAVIT EVIDENCING RECEIPT OF THE CODE OF CONDUCT, AND PERMITTEES' AGREEMENT TO BE BOUND BY SAME; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

**WHEREAS**, the City of Miami Beach permits the operation of sidewalk cafés on designated areas of its public property and right of ways, finding that such amenities provide a unique experience and environment for the City's residents and visitors to relax and enjoy the consumption of food and/or beverage(s) in the City's unique, vibrant, tropical atmosphere; and

**WHEREAS**, however, 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, world class 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**, the City's Sidewalk Café Ordinance is periodically reviewed and updated to ensure that the City's sidewalk cafés continue to operate at the highest possible standards (again, commensurate with those standards expected by residents and visitors to a world class destination like Miami Beach); and

**WHEREAS**, the City Administration undergoes an annual review of applications for sidewalk café permits (including renewals thereof) and, in its sole discretion, determines whether such applications shall be approved for a sidewalk café permit to be issued; and

**WHEREAS**, if approved, sidewalk café permits are issued annually for a one year period, from October 1<sup>st</sup> to September 30<sup>th</sup>; and

**WHEREAS**, a sidewalk café permit is a privilege and not a right, and the approval, issuance and continued operation of a permitted sidewalk café is conditional at all times; and

**WHEREAS**, because the City has found that aesthetically pleasing and properly operated and maintained sidewalk cafés can serve to enhance and complement residents and visitors' experience and enjoyment of the City's historic (and other recognized commercial and entertainment) districts/neighborhoods, the City's sidewalk café permit fees (that is, the fee charged to private business establishments/restaurants for the privilege of operating and maintaining a sidewalk café on the City's public right of ways) have always been at a rate substantially less than fair market value for such space; and



**WHEREAS**, the City Commission has also found that the highest possible standards, criteria, and conditions pertaining to 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 restaurant/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;

**WHEREAS**, as part of its periodic, continuous review of the Sidewalk Café Ordinance and, specifically, in continuing to find new and innovative ways to maintain the level of excellence that the City expects from sidewalk cafes on public property, the Mayor and City Commission desire to adopt and implement a Sidewalk Café Code of Conduct, which shall govern various critical aspects of those permitted sidewalk café operations in the City, and, accordingly, provide enhanced penalties for violation of such provisions; and

**WHEREAS**, every sidewalk café permit applicant will be legally required to execute and remit to the City a Sidewalk Café Code of Conduct Affidavit with its application, as a condition precedent to the City's undertaking the review and (if approved) the issuance of any sidewalk café permit.

**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 Sections 82-366 through 82-389 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 I. Generally**

## Sec. 82-366. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*City manager* means the city manager or the city manager's designee.

*Commercial handbill* means any handbill intended to promote or advertise any food, beverage, product, or service provided by a sidewalk café or a sidewalk café operator.

*Code compliance officer* means the code compliance officers, fire inspectors, or any other authorized agent or employee of the city whose duty it is to assure code compliance.

*Expanded polystyrene* means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene).

*Expanded polystyrene food service articles* means plates, bowls, cups, containers, lids, trays, coolers, ice chests, and all similar articles that consist of expanded polystyrene.

*Handbill* means any menu, coupon, flyer, paper, document, dodger, circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice or other written, printed or painted matter or object provided by a sidewalk café or a sidewalk café operator.

*Menu board* means a board allowing for the posting of a restaurant's complete menu, and fabricated in such a manner so as not to constitute a form of general advertising or establishment identification. The location, size, design, materials, and color of the menu board shall be approved by the city manager and shown on the sidewalk cafe site plan (as hereinafter defined in Section 82-382(b)(6) hereof). Menu boards shall be no larger than six square feet; may not be internally illuminated; and the top of the board shall not exceed five feet, six inches from grade. The menu board shall not be a sandwich board sign (as defined herein) or a specials board (as defined herein).

*Permittee* means the recipient of a sidewalk cafe permit, which shall at all times be subject to and conditioned upon permittee's compliance and adherence to ~~under~~ the terms and provisions of this division.

*Polystyrene* means a thermoplastic polymer or copolymer comprised of at least 80 percent styrene or paramethylstyrene by weight.

*Restaurant* for purposes of this division only, means a food service establishment that is maintained and operated as a place where food and/or beverages are prepared and/or served and sold for consumption within the premises, or a business establishment which has, as an ancillary or secondary use, a part thereof where food and/or beverages are prepared and/or served and sold for consumption within the premises. 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.

*Right-of-way* means land in which the ~~s~~State, the ~~state~~Florida ~~d~~Department of ~~t~~Transportation, the ~~Miami-Dade~~ ~~e~~County, or the city owns the fee or has an easement devoted to or required for use as a transportation facility or street.

*Sandwich board sign* means a freestanding, A-frame structure located on a sidewalk ~~or street~~ which may be affixed in position or is collapsible and which contains a sign (as defined in



§Section 114-1 hereof). The sandwich board sign shall not be a menu board (as defined herein) or a specials board (as defined herein).

*Sidewalk* means that portion of the right-of-way which is located between the curb line or the lateral line of a street and the adjacent property line, and which is intended for use by pedestrians; provided that on Lincoln Road Mall, a sidewalk shall mean a right-of-way as defined in this section, but shall only refer to that area between the property line and the centerline of the right-of-way, exclusive of landscaped areas and a 12-foot-wide clear path for emergency and maintenance vehicular access.

*Sidewalk cafe* means a use, approved and permitted by the City pursuant to this division, which is further subject to and conditioned upon compliance and adherence to the terms and provisions of this division. Sidewalk cafes shall be located on a sidewalk or right-of-way; which is must be associated with a restaurant; and is are primarily characterized by tables and chairs; (which may be shaded by awnings, canopies or umbrellas;) and but may also include such other sidewalk cafe furniture, (as hereinafter defined, and as permitted and/or approved pursuant to this division). The sidewalk café area in which the sidewalk café is permitted to operate is at all times owned by the City in its proprietary capacity, and is permitted to the sidewalk café permittee for the purpose of advancing the City's legitimate governmental interest, as set forth in this division including, without limitation, Section 82-367 herein. The sidewalk café permit area shall not be considered a public right of way, a public forum, or a limited public forum, for purposes of First Amendment analysis.

*Sidewalk cafe furniture* means those nonpermanent fixtures, furnishings and equipment associated with the operation of a sidewalk cafe and approved pursuant to this division including, without limitation, tables, chairs, umbrellas, planters, heaters, fans, rolling service stations, service carts, bussing stations, and menus, sandwich boards, and/or specials menu boards.

*Sidewalk café operator* means any permittee including, but not limited to, any owner, manager, employee, contractor, agent, officer, director, representative, or any other individual or entity acting for, by, through or on behalf of any of the foregoing.

*Sidewalk cafe site map* means a city-approved map detailing the location of the pedestrian pathway as it relates to a sidewalk cafe.

*Sign* shall have the same meaning as provided for in §Section 114-1 hereof.

*Single-use carry out plastic bag* means a bag provided by a sidewalk cafe permittee to a sidewalk cafe patron, for the purpose of transporting purchases or goods, including, but not limited to, food and beverages, which is made predominantly of plastic derived from petroleum or a biologically-based source. A single-use carry out plastic bag does not include a compostable carry out bag that:

- (1) Conforms to current ASTM D6400 standards;
- (2) Is certified and labeled as meeting ASTM D6400 standard specifications by a recognized verification entity; and
- (3) Must be capable of undergoing biological decomposition in a compost site such that the material breaks down into carbon dioxide, water, inorganic compounds, and biomass at a rate consistent with known compostable materials.

*Solicit* means any direct person-to-person verbal communication designed to induce a pedestrian on the sidewalk abutting any sidewalk café permit area to stop and patronize the sidewalk café.



*Specials board* means a board allowing for the posting of a restaurant's daily food and/or drink specials.

*Street* means that portion of a right-of-way improved, designed or ordinarily used for vehicular traffic and/or parking.

**Sec. 82-367. Declaration of necessity and intent.**

It is hereby found and declared that:

- (1) ~~There exists the need for outdoor eating establishments (sidewalk cafes)~~ in certain designated areas of the city to provide a unique environment for relaxation and food and/or beverage consumption.
- (2) ~~The existence of sidewalk cafes encourages additional pedestrian traffic to these areas.~~ The operation and maintenance of sidewalk cafes on the City's property (where designated and allowed) enhance the residents and visitors' experience and enjoyment of the City's vibrant, tropical and diverse (historic and other recognized commercial and entertainment) districts/neighborhoods.
- (3) The City provides a unique benefit and advantage to private business establishments/restaurants by permitting the use of the City's property for sidewalk café operations, at a permit fee rate that has always been substantially below fair market value for the use of such space.
- (4) ~~The presence of sidewalk cafes may thus impede the free and safe flow of pedestrian traffic.~~ It is imperative, however, that sidewalk cafes be operated and maintained in accordance with the highest levels of service and quality, befitting the status of a recognized world class, international resort destination like the City of Miami Beach.
- (5) The granting of a permit for the operation of a sidewalk café on public property is a privilege and not a right, and the approval, issuance and continued operation of a sidewalk café is conditional at all times.
- (6) In order to maintain the highest standards of service and quality, there is a need for regulations and standards for the approval, permitting, existence and operation, of and maintenance of sidewalk cafes to facilitate and ensure a safe environment in these areas.
- (7) The establishment of permit conditions and, safety standards, and for criteria, and conditions for operation and maintenance of sidewalk cafes on the public right of way is also necessary to protect and promote the general health, safety and welfare of the residents and visitors of the City.

**Sec. 82-368. Removal and storage fees; disposition of property.**

If, pursuant to this division, the city removes, relocates, and/or stores any sidewalk cafe furniture, the permittee shall be responsible for the reasonable expenses incurred by the city for the removal, relocation, and/or storage of all such sidewalk cafe furniture. The city manager shall promulgate and review, as needed, regulations regarding the storage and disposition of sidewalk cafe furniture under this division. The city, and including its officers and employees, shall not be responsible for any damage to, or loss of, any sidewalk cafe furniture, removed, relocated and/or stored pursuant to this division.



**Sec. 82-369. Appeals from the decision of the city manager.**

Appeals from decisions of the city manager made pursuant to this division shall be to the special master in accordance with the procedures set forth in ~~s~~Sections 30-72 and 30-73 hereof. Appeals from the decisions of the special master shall be to a court of competent jurisdiction by petition for writ of certiorari.

**Sec. 82-370. Notice of violation.**

- (a) Life safety violations and/or sidewalk cafe site plan violations shall be corrected immediately. Life safety violations are defined as those conditions which, in the reasonable determination and judgment of the city manager, involve serious danger and/or risk to the public health, safety or welfare (including, without limitation, blocking pedestrian pathways and violations of the ~~s~~State accessibility code for building construction). Site plan violations are defined to include those instances where the permittee is operating outside of the permitted sidewalk cafe area (as approved pursuant to subsection 82-382(b)(6)), and Violations shall include, without limitation, a table or tables set up outside the approved boundaries of the sidewalk cafe site plan, and/or umbrellas, heaters, fans, bussing stations and other sidewalk cafe furniture found to be outside the approved site plan; but shall not be deemed to include instances where a chair or chairs are moved outside the approved boundaries of a site plan by a sidewalk cafe patron(s).
- (b) If a code compliance officer finds a violation of this division, such code compliance officer shall issue a notice of violation to the violator. The notice shall inform the violator of the nature of the violation, amount of fine for which the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days of the date printed on the notice of violation, and that the failure to appeal the violation within ten (10) days of the date printed on the notice of violation shall constitute an admission of the violation and a waiver of the right to a hearing.

**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 ~~and~~, site plan violations, ~~and violations of subsection 82-385(v), (w), or (x),~~ 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, ~~or site plan violation, or violation of subsection 82-385(v), (w), or (x),~~ has occurred.
- (3) For life safety violations of this division, ~~and violations of subsection 82-385(v), (w), or (x),~~ the city manager shall be authorized to commence proceedings, pursuant to ~~s~~Section 102-381 or 102-383 of this Code hereof, 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, ~~or violation of subsections 82-389, 5(v), (w), or (x),~~ has occurred.
- (4) For violations of the Sidewalk Café Code of Conduct, as set forth in Section 82-389, the city manager shall be authorized to issue an immediate order suspending the sidewalk café 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 city manager shall also be authorized to commence proceedings, pursuant to Section 102-381 or 102-383 hereof, to suspend or revoke the sidewalk café operator's business tax receipt. The issuance of a notice of violation pursuant to this paragraph, or an order suspending the sidewalk café permit, shall raise a rebuttable presumption that a violation of the Sidewalk Café Code of Conduct has occurred.
- (5) 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 ~~sub~~Sections 82-385(v), (w), ~~and (x)~~ 82-389. 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.

**Sec. 82-372. Rights; payment of fine; right to appeal; failure to pay civil fine or to appeal.**

- (a) A violator who has been served with a notice of violation shall elect either to:
  - (1) Pay the civil fine (as set forth in ~~sub~~Section 82-371(a)) in the manner indicated on the notice; or
  - (2) Request an administrative hearing before a special master, to appeal the decision of the code compliance officer which resulted in the issuance of the notice of violation, which hearing must be requested within ten (10) days of the date printed on the notice of violation.
- (b) The procedures for appeal shall be as set forth in ~~s~~Sections 30-72 and 30-73 hereof. Applications for hearings must be accompanied by a fee (as approved by a resolution of the city commission) which shall be refunded if the violator prevails in the appeal.
- (c) Failure of the named violator to pay the civil fine, or to timely request an administrative hearing before a special master, shall constitute a waiver of the violator's right to



administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.

- (d) The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the date printed on the notice of violation. The special master shall not have discretion to alter the penalties prescribed in this article.
- (e) Any party aggrieved by the decision of a special master may appeal that decision to a court of competent jurisdiction by petition for writ of certiorari.

**Sec. 82-373. Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.**

- (a) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.
- (b) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator, and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two months from the filing of any such lien which remains unpaid, the city may foreclose or otherwise execute on the lien for the amount of the lien plus accrued interest.

**Secs. 82-374—82-380. Reserved.**

**SUBDIVISION II. Permit**

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

- (a) Sidewalk cafes shall only be located where permitted by the city's zoning ordinance and land development regulations, as same may be amended from time to time.
- (b) The operation of a sidewalk cafe is considered to be a privilege, and not a right, and the issuance of a sidewalk cafe permit neither establishes nor creates any legal rights for the permittee. The approval, issuance and continued operation of a sidewalk cafe permit is subject to the city manager's discretion, which is deemed conditional at all times.
- (c) It shall be unlawful for any person to operate a sidewalk cafe without a valid permit as required by this division.
- (d) The city manager shall have the right to immediately remove, after 24-hours written and/or verbal notice to the permittee, any sidewalk cafe furniture used in connection with a sidewalk café which is operating without a valid permit.
- (e) The city manager may cause the immediate termination, suspension, closure, removal, relocation and/or storage of all or part of a sidewalk cafe operation and/or sidewalk cafe furniture in those circumstances where the city manager determines it reasonably necessary for the protection of the public health, safety, or welfare. In those instances where the city manager determines that termination, suspension, closure, removal, relocation, and/or storage of all or part of a sidewalk cafe is necessary, pursuant to this subsection, the city manager shall provide prompt, written notice to the Mayor and City



Commission setting forth the sidewalk cafe location, the action(s) taken pursuant to this subsection and the reason(s) therefor, and the duration of time for such action.

- i. *High Impact Periods.* The city manager may, upon declaration of a high impact period, as provided in Section 82-443 of the City Code, order the immediate suspension and closure of all or part of sidewalk cafe operation(s) (including, without limitation, the removal of all or any sidewalk cafe furniture) within a High Impact Zone, as such area is defined in Section 82-443 of the City Code; provided however, that the manager shall first comply with the noticing requirements set forth in Section 82-443(c) of the City Code, and such measures shall only be instituted by the manager for a maximum period of 72 consecutive hours without the further approval of the City Commission to extend such periods.
- (f) The city manager may require the temporary removal and/or relocation of all or part of a sidewalk cafe when street, sidewalk, or utility repairs, or other public construction, necessitates such action. If such temporary removal exceeds 15 days, the city manager shall pro-rate the remaining permit fee for each additional day the sidewalk cafe (or portion thereof) is removed and apply a credit toward the following year's permit fee or, upon written request by the permittee, refund the remaining fee to the permittee.
- (g) 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 of notice same, remove and place indoors all tables, chairs, and any other sidewalk cafe furniture located on the right-of-way. The notification by the city manager of a hurricane or other major weather event, or the issuance of a hurricane warning, shall constitute an public emergency situation as referenced in subsection (e) hereof ~~this division~~. The city manager may remove, relocate, and/or store any sidewalk cafe furniture found on the right-of-way that has otherwise not been removed by the permittee pursuant to this subsection. Any and all costs incurred by the city for removal, relocation and/or storage of sidewalk cafe furniture shall be the responsibility of the permittee. Sidewalk cafes will not re-open for business following a hurricane or other major weather event until notified by the city manager. Violation of this subsection (g) shall result in the issuance of an immediate \$1,000.00 fine, and/or suspension, for up to 30 days, of the sidewalk cafe permit.
- ~~(h) Each sidewalk cafe menu shall comply with the requirements of this subsection (h). The city commission may adopt, where adopted, by resolution, sidewalk cafe menu design guidelines consistent with the intent and purpose of this subsection (h), in which case each sidewalk cafe menu shall additionally comply with such guidelines. A sidewalk cafe must display or disclose, in writing, actual prices for food and drink menu item(s), or display or disclose, in writing, 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. Such prices (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 cafe menu design guidelines. All menu prices must be displayed in numeric format. 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). In the event that a sidewalk cafe patron makes a unique or special request for a food or drink menu item not listed on the menu, the sidewalk cafe must disclose, to the patron, the price of the unique or specially requested~~



~~food or drink menu item, prior to agreeing to prepare the food or drink menu item. A menu that prominently displays the name of the sidewalk cafe operator; actual prices for food and drink menu item(s) and for 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.~~

- ~~(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 display 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 must not be smaller than 14-point font, and the disclosure within the bill must not be smaller than 12-point font.~~
- ~~(ii) 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 charge, corkage fee, set up fee, sharing fee or charge, or any other similar charge, 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 must be 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, and must label such taxes accurately.~~

#### **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) An 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/restaurant 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 sSection 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 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, 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 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 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 non-refundable base application fee as set forth in appendix A hereof. ~~However,~~
  - (i) ~~§~~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.
  - (ii) 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, ~~s~~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~~ business



establishment/restaurant 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, eCounty, and/or sState law.
- (15) Sidewalk cafes shall comply with all applicable accessibility codes including, without limitation, the Americans with Disabilities Act (ADA), and sState 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 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 cafe menu design guidelines adopted by the city commission pursuant to ~~section 82-381(h)~~. All menu prices must be displayed in numeric format. The name of the ~~sidewalk cafe operator~~ restaurant must be prominently displayed on the menu. Each sidewalk cafe 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 cafe 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, eCounty, and sState 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, eCounty, and sState taxes are being included consistent with, and pursuant to, those requirement(s) set forth in ~~subsections 82-381(i) and (j)~~ 82-389(b) and (c).
- (18) ~~Any applicant for a sidewalk cafe permit (including any sidewalk cafe permittee applying to renew a sidewalk cafe permit)~~ 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 ~~(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.

(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 Section 82-371(b) herein.

- (c) Renewals. As provided in ~~sub~~Section 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.

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

- (a) The annual permit fee for operation of a sidewalk cafe 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).
  - (1) ~~Notwithstanding any other paragraphs or provisions of this article, n~~No square footage fee as required by this section shall be required for the operation of sidewalk cafes north of 63rd Street, through and including September 30, 2019. The abatement of sidewalk cafe square footage fees for businesses north of 63rd Street shall be the subject of a budget analysis and review by the city administration by September 30, 2019. However, a permit must be obtained and the annual base application fee required by subsection 82-382(b)(9) shall be paid for the operation of sidewalk cafes north of 63rd Street.
  - (2) No square footage fee as required by this section shall be required for the operation of sidewalk cafes in conjunction with the Washington Avenue Pilot Parklet Program, which program shall terminate on March 31, 2019. Additionally, no square footage fee as required by this section shall be required for the operation of sidewalk cafes on Washington Avenue, from 5th Street to Lincoln Road, for the period ending on September 30, 2019.
  - (3) No square footage fee as required by this section shall be required for the operation of Ssidewalk cafes that contain up to 30 seats within the Collins Park Arts District Overlay, as defined in sSection 142-584 hereof ~~are exempt from paying the square foot fee identified herein.~~
- (b) The city manager, in his reasonable discretion and judgment, may suspend or prorate the annual permit fee in cases of public construction or public emergency situations.
- (c) The permit fee shall be paid on or before October 1, and shall cover the time period from October 1 through September 30 of the following calendar year (permit year). No permit shall be issued for any portion of a year, but any person/entity operating a sidewalk cafe for a period beginning after the commencement date of the full permit year (October 1) may obtain a permit for the remaining portion of that permit year upon payment of a pro-rated



portion of the permit fee calculated from the first day of the month of issuance of the permit to the end of the permit year. Except as expressly provided in this division, no refund of the permit fee shall be granted.

- (d) Late payments for permit fees shall accrue at the rate of ten percent per annum for the first 30 days. If the permit fee is not paid within 60 days after it is due, the permit shall terminate automatically. Any continued operation of a sidewalk cafe after termination of a permit shall be construed as operating a sidewalk cafe without a valid permit, and the city manager shall have the right to remove, upon 24 hours' written and/or verbal notice to the permittee, any and all sidewalk cafe furniture used in connection with the sidewalk cafe.
- (e) The City Commission may A review of the annual permit fee ~~will be required~~ whenever the change in the Consumer Price Index (CPI), between the latest CPI and the date of the CPI used for the last fee adjustment, is one and one-half percent or greater.

**Sec. 82-384. Permitted sidewalk cafe frontage; requests for expansions.**

- (a) Sidewalk cafes are restricted to the sidewalk frontage of the restaurant to which the permit is issued or, if the restaurant is an ancillary and/or secondary use to another type of business establishment, the sidewalk cafe shall be restricted to the sidewalk frontage of the building (or portion thereof) of the "primary" business establishment (within which the restaurant is located). Only a restaurant whose premises are on a ground floor adjacent to and fronting the sidewalk may be issued a sidewalk cafe permit. Sidewalk cafes may be extended into a loading zone fronting a restaurant as provided in subsection (d) below.
- (b) An applicant for a sidewalk cafe permit may be permitted, upon prior written request by the permittee to the city manager, to extend by a maximum total of 50 feet in the right-of-way on one side and/or the other side of the restaurant to which the permit is issued (of the business establishment where the restaurant is located); the permittee shall make written application to the city manager setting forth the reason(s) for the proposed expansion and provide a site plan showing the proposed expansion. All requests for expansions pursuant to this subsection (b) shall be reviewed by the city manager on a case by case basis. In reviewing such requests, the city manager, in making his determination to approve or deny, shall consider the following:
  - (1) Pedestrian access.
  - (2) Visibility of the front of the adjacent owner's business.
  - (3) Obstructions.
  - (4) Accessibility to the adjacent owner's business by patrons.
  - (5) The city manager, shall solicit input from businesses and property owners on the same block including, without limitation, the immediately adjacent (i.e., next door) business and property owners.
  - (6) The city manager shall provide written notice to the adjacent business establishment (tenant) and property owner on to whose frontage the sidewalk cafe proposes to expand. The notification shall include the following information: the name and address of the permittee/business establishment requesting the expansion; the approximate location and size of the area requested; and the name and address of the city official and/or employee to forward comments to, and the time period within which to forward said comments (which time period shall be no less than 14 days). Said notice shall be sent, as to the adjacent business establishment (tenant), to the name and address on file with the city for the establishment's occupational license and, for the property



owner, to the name and address identified in the records of the Miami-Dade County Property Tax Appraiser's Office. Any objections not submitted and received by the city within the date provided in the notice shall be deemed waived.

- (7) The city manager may also consider any history of violations and/or warnings pursuant to Section 82-371.

In the event of approval by the city manager to expand a sidewalk cafe pursuant to this subsection (b), the additional square footage will be computed into the new permit fee.

Notwithstanding the city manager's approval of a sidewalk cafe expansion pursuant to this subsection (b), in the event that the adjacent business establishment and/or property owner (on to which a sidewalk cafe has expanded) subsequently elects to apply for a sidewalk cafe permit to operate a cafe in front of its premises, that new applicant/permittee shall provide the city manager with notice of such intent stating the applicant's name; the property address; the name of the business establishment and/or the restaurant (of which the cafe is a part of); and the anticipated opening date. The city will provide the business establishment (tenant) and property owner which is currently expanding into the proposed new applicant/permittee's frontage with a courtesy copy of the notice. Following receipt of said written notice by the city, and provided that the new applicant/permittee obtains a sidewalk cafe permit, as well as any other required permits and/or licenses for operation of the business establishment and/or restaurant associated with the proposed new sidewalk cafe, then the city manager's prior consent for expansion shall terminate, and the city shall provide written notice to the adjacent sidewalk cafe permittee advising it of such termination, and providing a termination date therefore. The city's notice shall provide the adjacent property owner with at least seven calendar days' notice prior to the effective date of termination of the expansion. Upon the termination date of the city's consent to expansion, the sidewalk cafe permit and the permit fee will be adjusted accordingly.

- (c) In the case of sidewalk cafes on Lincoln Road, an expansion of a sidewalk cafe across the centerline of Lincoln Road Mall may also be permitted. The permittee shall make written application to the city manager setting forth the reason for the proposed expansion and provide a site plan showing the proposed expansion. Requests for expansions pursuant to this subsection (c) shall be reviewed by the city manager on a case by case basis. In reviewing such requests, the city manager shall consider the following:

- (1) The applicant/permittee would otherwise be significantly deprived of the use of the right-of-way for which the sidewalk cafe permit is sought;
- (2) There are special circumstances and conditions that exist, which were not self-created by the applicant/permittee, and are peculiar to that portion of the right-of-way, and are not generally applicable to other rights-of-way in the immediate area;
- (3) The granting of the expansion is the minimum that will allow the applicant/permittee's reasonable use of the area for its sidewalk cafe operations; and
- (4) The granting of the expansion will not significantly impair the ability of pedestrians on that particular portion of Lincoln Road Mall to walk comfortably from one side of the mall to the other.

In the event of approval by the city manager to expand a sidewalk cafe pursuant to this subsection (c), the additional square footage will be computed into the new permit fee.

- (d) Loading zones in front of a ground floor restaurant use with sidewalk frontage and a sidewalk cafe permit may be used as part of an expanded sidewalk cafe permit area when the street on which the loading zone is located is closed to traffic, provided that the loading



zone is within a street area that is regularly closed to traffic during certain days or hours, a minimum of five days each week. All platforms, tables and chairs in the loading zone shall be removed at the close of business each night. A permit modification will be required before use of a loading zone may commence, subject to suspension or revocation at the discretion of the public works director. The fee for the temporary expanded sidewalk cafe permit area shall be as provided in ~~Section 82-383 hereof, of the City Code.~~

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

- (a) The permittee shall take any and all actions to assure that its use of the public right-of-way in no way interferes with ~~patrons of other sidewalk cafes, or pedestrians utilizing the right-of-way and in no way~~ limits their free, unobstructed passage thereto.
- (b) Sidewalk cafes shall be located in such a manner that a distance of not less than five feet is maintained at all times as a clear and unobstructed five-foot pedestrian path around public amenities and areas such as, by way of example, fountains, landscaped areas (excluding city planters), and seating/shade structures. A five-foot pedestrian path shall also be required and established where the city manager, in his reasonable judgment and discretion, determines that the operation of a sidewalk cafe inhibits pedestrian access to an adjacent business establishment or adversely affects the visibility of an adjacent storefront. Notwithstanding the preceding, the city manager, in his reasonable judgment and discretion, and on a case-by-case basis, may approve and allow for a pedestrian path of less than five feet where an applicant/permittee's sidewalk cafe operation would be significantly impacted. In considering such cases, and in determining whether an applicant/permittee is "significantly impacted," the city manager may apply the criteria set forth in ~~subsections 82-384(c)(1)–(4) herein.~~ A five-foot pedestrian path shall also be required and established where the city manager, in his reasonable judgment and discretion, determines that the operation of a sidewalk cafe inhibits pedestrian access to an adjacent business establishment or adversely affects the visibility of an adjacent storefront.
- (c) No tables, chairs, umbrellas, or other sidewalk cafe furniture shall be permitted within ten feet of a bus bench and/or bus shelter. A distance of five feet shall be maintained from taxi stands, fire hydrants, bike racks, directory signage/kiosks, and/or other similar public street furniture and/or fixtures.
- (d) No tables, chairs, umbrellas or other sidewalk cafe furniture shall be permitted within five feet of an alley, pedestrian crosswalk, or corner curb cut.
- (e) The pedestrian path for Lincoln Road shall be a 12-foot clear path for emergency and maintenance vehicles. The exact location of the path on each block shall be determined by the city manager, in his reasonable judgment and discretion, and shall be incorporated into the sidewalk cafe site map of Lincoln Road.
- (f) No object shall be permitted around the perimeter of an area occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the free use of the tables and chairs by the public, or, (in the case of Lincoln Road), which would have the effect of obstructing the pedestrian path or public access between the north and south sides of Lincoln Road.
- (g) The area covered by a sidewalk cafe permit, and the sidewalk and street immediately adjacent to it, shall be maintained in a clean, neat and orderly appearance at all times by the permittee. The area of the sidewalk, curb and gutter immediately adjacent to the sidewalk cafe shall be cleared of all debris during hours of operation, and again at the close of each business day, or as may otherwise be determined by the city manager. The



permittee shall be responsible for pressure cleaning the floor surface on which the sidewalk cafe is located at the close of each business day. The city shall pressure wash the right-of-way from time to time in accordance with such schedule as shall be established in the reasonable judgment and discretion of the city manager. In establishing said schedule, the city manager shall use reasonable efforts to assure that the city's pressure cleaning of the public right-of-way occurs at such times as will cause the least disruption to sidewalk cafe operations.

- (h) Tables, chairs, umbrellas, and any other sidewalk cafe furniture shall be maintained in a clean, attractive, and orderly appearance, and shall be maintained and kept in good repair at all times.
- (i) All sidewalk cafe furniture shall be of high quality, design, materials, and workmanship so as to ensure the safety, comfort, and convenience of the public.
- (j) Only the sidewalk cafe furniture specifically shown on the approved sidewalk cafe site plan shall be allowed in the permit area.
- (k) ~~(4)~~ All tables, chairs, umbrellas, and any other sidewalk cafe furniture shall be readily removable, and shall not be physically attached, chained, or in any other manner affixed to any public structure, street furniture, signage, and/or other public fixture, or to a curb and/or public right-of-way.

~~(2)(i)~~ Notwithstanding the provisions of subsection (k)~~(4)~~above, on the west sidewalk on Ocean Drive, between 5th Street and 15th Street, umbrellas may be affixed to the sidewalk with an in-ground mount system that is flush with the sidewalk or with a bolted metal plate not to exceed nine inches by nine inches in size. A detailed engineering design, and a structural analysis of either the mount system or metal plate, shall be submitted to the department of public works for review and approval. If permitted, such mount system or metal plate must be easily removable (as determined by the city) to provide a smooth ADA-compatible surface when the mount system or metal plate is removed. In the event that a particular sidewalk cafe is no longer a permitted use, the umbrellas and entire mount system or metal plates shall be removed and a standard concrete sidewalk shall be re-installed, subject to the review and approval of the department of public works.

- (l) The stacking or piling up of chairs shall be prohibited on the right-of-way.
  - (i) Notwithstanding subsection (l), ~~On Lincoln Road Mall~~, tables, chairs and closed-up umbrellas may only remain on the right-of-way (within the permit area) as long as they are placed in an orderly manner. ~~Notwithstanding the foregoing, on Lincoln Road Mall~~ tables, chairs and closed-up umbrellas may remain on the right-of-way as long as 80 percent of the restaurants on Lincoln Road Mall are open for lunch beginning at 11:00 a.m. The city will make this determination on two separate times during each permit year. The first determination shall be made on October 1, with the second determination being made on April 1 of each year. The phrase "open for lunch" shall be defined by the serving of meals to patrons during the lunch hour. If the city determines that less than 80 percent of the restaurants on Lincoln Road Mall are open for lunch on either October 1 or April 1 of a permit year, then the following regulation shall apply to all restaurants on Lincoln Road Mall.
  - (ii) Any and all other sidewalk cafe furniture including, without limitation, rolling service stations, service carts, and bussing stations, may only be maintained in the permit area during hours of operation; provided however, that planters that cannot be readily removed may remain within the permit area subject to the provisions of subsection (s)



hereof. On Lincoln Road Mall, rolling service stations, service carts, and bussing stations shall not be permitted to be placed within five feet of the walls, columns, or posts of the Lapidus structures, city planters, or in front of other storefronts and/or business establishments.

Notwithstanding anything contained in this subsection (l), the city manager may require a permittee to store its tables, chairs and/or umbrellas off of the right-of-way if, in his reasonable judgment and discretion, the city manager determines that the sidewalk café permit area and immediately adjacent public right-of-way are not being adequately maintained in accordance with this division.

(m) No storage of dishes, silverware, or other similar sidewalk café equipment shall be allowed in the permit area, or in any other portion of the public right-of-way, or outside the structural confines of the building in which the restaurant is located, during non-business hours.

~~(n) There shall be no live entertainment or speakers placed in the permit area unless expressly permitted as a special event issued by the city's specified special events office. Conditions such as hours and days of operation and audio levels will be regulated by the city's special events office, and these may vary during the year.~~

(~~en~~) One menu board shall be permitted, per sidewalk café, for every 50 feet of frontage. No food or drink special(s) may be displayed, disclosed, or posted on any menu board or sandwich board sign. Specials board(s) are prohibited in all sidewalk café permit areas and any other portion of the public rights-of-way.

~~(1)(i)~~ *Exception.* As applicable only to those sidewalk cafés located north of 63<sup>rd</sup> Street, the provision in subsection (~~en~~) that pertains to the prohibition on ~~Specials board(s)~~ in sidewalk café permit areas and public rights-of-way shall not take effect until July 27, 2020.

~~(p) No food preparation, food storage, expanded polystyrene food service articles, single-use plastic beverage straws, single-use plastic stirrers, refrigeration apparatus or equipment, or fire apparatus or equipment, shall be allowed on the right-of-way. In addition, expanded polystyrene food service articles, single-use plastic beverage straws, and single-use plastic stirrers shall not be provided to sidewalk café patrons.~~

~~(1)(i)~~ *Exception.* The provisions in subsection (p) that pertain to single-use plastic beverage straws and single-use plastic stirrers shall not restrict a sidewalk café operator from providing a beverage with, or offering the use of, a single-use plastic beverage straw or single-use plastic stirrer to an individual with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer.

~~(qo)~~ No food displays shall be permitted on the public right-of-way. No advertising signs or business identification signs shall be permitted on the public right-of-way except that the restaurant name and/or its logo may be permitted on umbrellas but such logos and/or lettering may not exceed six inches in height.

(~~fp~~) ~~(1)~~ Umbrellas shall be fire-retardant, pressure-treated or manufactured of fire-resistant material. No portion of an umbrella shall be less than six feet eight inches above the right-of-way. Two or more umbrellas may not be clipped, zipped or otherwise fastened together in order to form a tent-like structure. Clear plastics or other materials may not be fastened, rolled or otherwise be attached to umbrella edges in order to create an enclosure.



(2) (i) Notwithstanding the provisions of subsection (f)(1)(p), and subject to planning department review and approval, the following provisions shall apply to sidewalk cafes located on the west sidewalk on Ocean Drive, between 5th Street and 15th Street:

- a. A maximum of three umbrellas may be zipped together;
- b. Rain gutters may be installed between zipped umbrellas; and
- c. Colorless and transparent roll-down tarps may be permitted to be attached to umbrellas, provided that the tarps are only utilized during periods of strong wind or rainfall. Within one hour of the cessation of such wind and/or rainfall, the roll-down tarp shall be removed from the umbrella/awning system and stored on private property.

(sg) The city manager may permit the use of planters manufactured of terra-cotta or polymer materials, with the number and size to be reviewed at time of application. Placement of planters within sidewalk cafe areas shall be five feet apart or greater. It shall be the permittee's responsibility to immediately remove planters, upon written and/or verbal notice from the city manager, in case of emergency or other circumstances, as provided in this division. Maximum size of planters shall not exceed the following:

- (1) Rectangular planters: 30 inches long, by 15 inches wide by 20 inches high.
- (2) Round planters: 24 inches diameter by 24 inches high.
- (3) Planters 20 inches or higher shall be on rollers or on rolling bases.
- (4) The combination of planters and plant height should not exceed a table height of 34 inches.

Plants shall be properly maintained. Distressed plants shall be promptly replaced. Plant fertilizers which contain material that can stain the sidewalks shall not be allowed. Water drainage from any plants onto the sidewalk shall not be allowed. Potted plants shall have saucers or other suitable systems to retain seepage.

(tr) Permittees may make written request to the city manager to use city electricity for powering floor fans during the summer months. Summer months are defined as the period beginning on May 1, and ending on September 30. The city manager will make electrical outlets operable upon payment of a flat fee, which fee shall be determined, and may be adjusted from time to time, in the reasonable judgment and discretion of the city manager, for each of the calendar days during the summer months. City electrical outlets will be restricted to powering floor fans only. Using the electrical outlets for powering lights, menu board lighting, and any other electrical device is strictly prohibited. Permittees violating this restriction will have the electrical boxes deactivated and forfeit any monies paid for electrical use. Fans must be UL approved for outdoor use. Extension cords are not allowed.

(us) No permit shall be granted on Lincoln Road in an area designated in the sidewalk cafe site map as restricted for special and cultural events; provided however, that the city manager may approve temporary use of such area(s), on a case by case basis, and only for a defined, limited period of time.

~~(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, 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(b)(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 menu~~



~~that prominently displays the name of the sidewalk cafe operator; actual prices for food and drink menu item(s) and for 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, 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;~~

~~It 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).~~

~~(y) As applicable to sidewalk cafe permittees on Ocean Drive between 5th Street and 15th Street, every manager and every employee assigned to work in the sidewalk cafe permit area must successfully complete a hospitality training program that has been previously approved by resolution of the mayor and city commission. 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. Sidewalk cafe permittees shall:~~

~~(1) Maintain records on premises evidencing compliance with this subsection (y), and~~

~~(2) Submit to the city manager, on an annual basis, the affidavit specified in subsection 82-382(b)(18).~~

~~(z) Single use carry out plastic bags shall not be allowed in the right-of-way and shall not be provided to sidewalk cafe patrons.~~

#### **Sec. 82-386. Indemnification and insurance.**

(a) The permittee agrees to indemnify, defend, save and hold harmless the city, its officers and employees, from any and all claims, liability, lawsuits, damages and causes of action which may arise out of the permit or the permittee's activity on the public right-of-way.

(b) The permittee agrees to meet and maintain for the entire permit period, at its own expense, the following requirements:

(1) Commercial general liability insurance, in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage. The city City of Miami Beach, Florida, must be named as an additional insured on this policy, and an endorsement must be issued as part of the policy reflecting compliance with this requirement.



- (2) For sidewalk cafes which serve alcoholic beverages, liquor liability insurance, in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage. The city City of Miami Beach, Florida, must be named as an additional insured on this policy, and an endorsement must be issued as part of the policy reflecting compliance with this requirement.
- (3) Workers' compensation and employers' liability as required by the sState of Florida.
- (c) All policies must be issued by companies authorized to do business in the state and rated B+:VI or better per Best's Key Rating Guide, latest edition.
- (d) The city must receive 30 days' written notice prior to any cancellation, non-renewal or material change in the coverage provided.
- (e) The permittee must provide and have approved by the city an original certificate of insurance as evidence that the requirements set forth in this section have been met prior to commencing operations.
- (f) Failure to comply with these requirements at any time ~~shall be deemed to be operating without a valid permit~~ and shall cause an immediate suspension or revocation of the permit.

**Sec. 82-387. Prohibited "no table" zones.**

- (a) There shall be no sidewalk cafes permitted and/or placed within a section of the 1100 block of Lincoln Road Mall, between Lenox Avenue and Alton Road; said section as more specifically defined by the following description:

Land description:

A portion of Lincoln Road lying between Alton Road and Lenox Avenue, as shown on "Commercial Subdivision," according to the plat thereof, as recorded in Plat Book 6, at Page 5 of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Commence at the southwest corner of Lot 6, Block 39 of said "Commercial Subdivision;" thence south 89°08;deg;55" west along the south line of Block 39 of said "Commercial Subdivision," a distance of 11.20 feet; thence south 00°51;deg;05" east, a distance of 25.00 feet to the point of beginning; thence continue south 00°51;deg;05" east, a distance of 50.00 feet; thence south 89°08;deg;55" west along a line 25.00 feet north and parallel with the south right-of-way line of said Lincoln Road, a distance of 190.08 feet; thence north 00°51;deg;05 west, a distance of 50.00 feet; thence north 89°08;deg;55" east along a line 25.00 feet south and parallel with the north right-of-way line of said Lincoln Road, a distance of 190.08 feet to the point of beginning.

Said land situate, lying and being in the City of Miami Beach, Miami/Dade County, Florida; containing 9,504 square feet, more or less.

- (b) There shall be no personalty [property] or equipment relating to the operation of a restaurant, including, without limitation, sidewalk cafe furniture, garbage receptacles, storage containers, back-of-house operation, equipment or supplies, or any other similar item permitted and/or placed within the improved section of Euclid Avenue, between Lincoln Road and Lincoln Lane South, which section is more particularly described as follows:



Land description:

A portion of Euclid Avenue right-of-way as shown on the plat of "Second Commercial Subdivision of the Alton Beach Realty Company", according to the plat thereof, as recorded in Book 6, at Page 33, and the plat of "Lincoln Subdivision" according to the plat thereof, as recorded in Plat Book 9, at Page 69, both recorded in Public Records of Miami-Dade County, Florida; bounded on the north by the extension of the south right-of-way line of Lincoln Road; bounded on the south by the extension of the north right-of-way line of Lincoln Lane South; bounded on the east by the east right-of-way line of Euclid Avenue and bounded on the west by the west right-of-way line of Euclid Avenue, less the northerly 30 feet.

Said land situate, lying and being the City of Miami Beach, Miami-Dade County, Florida; containing 8,400 square feet, more or less.

**Sec. 82-388. Hours of sale of alcoholic beverages; exceptions; enforcement.**

- (a) Alcoholic beverages shall not be offered for sale or consumption at sidewalk cafes between the hours of 1:30 a.m. and 8:00 a.m., and shall not be consumed at sidewalk cafes between the hours of 2:00 a.m. and 8:00 a.m. Compliance with this section shall be a condition of maintaining a sidewalk cafe permit.
- (b) Notwithstanding subsection (a), alcoholic beverages may be offered for sale or consumption and may be consumed at sidewalk cafes located on Ocean Drive, between 5th Street and 15th Street, at such additional times as provided in sSection 6-3 of this Code.
- (c) A violation of this section shall be enforced and penalties shall be imposed in accordance with sSection 6-3(8) of this Code.

**Secs. 82-389. Sidewalk Café Code of Conduct**

Sidewalk café permittees must comply with those requirements set forth below in the Sidewalk Café Code of Conduct, which is supplemental to, and in addition to, all other standards, criteria and conditions herein regulating sidewalk cafes, and is not intended to amend, repeal or replace any other provision of Chapter 82, Article IV, Division 5. A sidewalk café operator that fails to comply with any provision(s) of the Sidewalk Café Code of Conduct, as set forth herein, may be prohibited from operating pursuant to those enhanced penalties identified within subsection 82-371(b).

- a) A sidewalk cafe must display or disclose, in writing, actual prices for food and drink menu item(s), and display or disclose, in writing, 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. Such prices (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 cafe menu design guidelines. All menu prices must be displayed in numeric format. 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). In the event that a sidewalk cafe patron makes a unique or special request for a food or drink menu item not listed on the menu, the sidewalk cafe must disclose, to the patron, the price of the unique or specially requested food or drink menu item, prior to agreeing to prepare the food or drink menu item. A menu that prominently displays the name of the sidewalk cafe operator; actual prices for food and drink menu item(s) and for 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.

- b) A sidewalk cafe that automatically includes a gratuity, 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, must display the actual amount of each such gratuity, charge, and fee on the menu and on the face of the customer's bill. This disclosure serves to provide the customer notification that an automatic gratuity, charge, and/or fee is being included by the sidewalk cafe operator. The disclosure of each gratuity, charge, and fee within the menu must not be smaller than 14-point font, and the disclosure within the bill must not be smaller than 12-point font.
- c) A sidewalk cafe 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 charge, corkage fee, set up fee, sharing fee or charge, or any other similar charge, 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 must be 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, and must label such taxes accurately.
- d) There shall be no live entertainment or speakers placed in the sidewalk café permit area unless expressly permitted as a special event issued by the city's events office.
- e) No food preparation, food storage, expanded polystyrene food service articles, single-use plastic beverage straws, single-use plastic stirrers, refrigeration apparatus or equipment, or fire apparatus or equipment, shall be allowed on the right-of-way. In addition, expanded polystyrene food service articles, single-use plastic beverage straws, and single-use plastic stirrers shall not be provided to sidewalk cafe patrons.

  - (i) Exception. The provisions in this subsection shall not restrict a sidewalk cafe operator from providing a beverage with, or offering the use of, a single-use plastic beverage straw or single-use plastic stirrer to an individual with a disability or medical condition that impairs the consumption of beverages without a single-use plastic beverage straw or single-use plastic stirrer.



- f) Single-use carry plastic bags shall not be allowed in the right-of-way and shall not be provided to sidewalk café patrons.
- g) No food display(s) shall be permitted on the public right-of-way, nor shall any food and/or beverage display(s) be maintained within the restaurant/business establishment's premises in such a way that the placement of such display(s) is/are clearly visible from the sidewalk café permit and/or the public right-of-way.
- h) As applicable to sSidewalk café permittees on Ocean Drive, between 5th Street and 15th Street, including every manager and every employee assigned to work in the sidewalk cafe permit area, must successfully complete a hospitality training program that has been previously approved by resolution of the mayor and city commission. 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. Sidewalk cafe permittees shall:
  - (1) Maintain records on premises evidencing compliance with this subsection (h), and
  - (2) Submit to the city manager, on an annual basis, the affidavit specified in subSection 82-382(b)(18).
- i) Sidewalk café operators located on Ocean Drive, between 5<sup>th</sup> Street and 15<sup>th</sup> Street, shall not:
  - (1) Solicit any pedestrian(s) located on the sidewalk abutting the sidewalk café permit area, or on the right of way within twenty (20) feet of the outer perimeter of the sidewalk café permit area, for the purpose of inducing such pedestrian to patronize any business establishment or sidewalk café, or purchase any food, beverage, or product, or service, unless the pedestrian first affirmatively communicates a desire to receive information about the sidewalk cafe's food, beverages, products, or services;
  - (2) Distribute any commercial handbill(s) to any pedestrian(s) located on the sidewalk abutting the sidewalk café permit area, or on the right of way within twenty (20) feet of the outer perimeter of the sidewalk café permit area, unless the pedestrian first affirmatively communicates a desire to receive information about the sidewalk café's food, beverages, products, or services; and/or
  - (3) Hold or display any commercial handbill(s) in such a way that impedes, hinders, delays, or obstructs any pedestrian's(s') gait or path of travel.

**Secs. 82-390 — 82-410. Reserved.**

## **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 \_\_\_\_\_, 2019.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2019.


**ATTEST:**

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

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

Underline denotes additions  
~~Strikethrough~~ denotes deletions  
(Sponsored by Mayor Dan Gelber)

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

7/10/19  
\_\_\_\_\_  
Date