

**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, FLORIDA, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE IV, ENTITLED "USES IN PUBLIC RIGHTS-OF-WAY," BY AMENDING DIVISION 5, ENTITLED "SIDEWALK CAFES," BY AMENDING SUBDIVISION I, ENTITLED "GENERALLY", BY AMENDING SECTION 82-371 THEREOF, ENTITLED "CIVIL FINES AND PENALTIES; DENIAL OF FUTURE PERMITS TO REPEAT VIOLATORS; ENHANCED PENALTIES," BY SETTING FORTH ADDITIONAL ENHANCED PENALTIES TO BE IMPOSED FOR VIOLATIONS OF THE SIDEWALK CAFÉ CODE OF CONDUCT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach ("City") has authorized the establishment of sidewalk cafés in order to provide a unique environment for its residents and visitors, which allows these individuals to relax and enjoy the consumption of food and/or beverage(s) amongst the City's tropical and vibrant scenery; and

**WHEREAS**, 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**, 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**, those business establishments seeking to operate sidewalk cafés are also subject to certain identifiable standards, criteria, requirements, and conditions; and

**WHEREAS**, the City Commission has 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; and

**WHEREAS**, as part of its periodic, continuous review of the Sidewalk Café Ordinance, the Administration has determined that certain modifications to those enhanced penalties provisions, as delineated in Section 82-371(b), and applicable to the Sidewalk Code of Conduct, are necessary; and

**WHEREAS**, the amendments set forth below are necessary to accomplish the objectives identified above.

**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 Section 82-371 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. 82-371. 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 are authorized:

- (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 permittee incurred the aforesaid violations.
- (2) For life safety violations of this division and site plan violations, 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; has occurred.

- (3) For life safety violations of this division, the city manager shall be authorized to commence proceedings, pursuant to Section 102-381 or 102-383 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 has occurred.
- (4) For violations of the Sidewalk Café Code of Conduct, as set forth in Section 82-389, the following suspension and revocation penalties shall be imposed:
  - (a) Second violation within the preceding 12 months: Suspension of the sidewalk café permit for 24 hours and, upon reopening, the sidewalk café shall cease all sidewalk café business operations at midnight each day until the city manager approves an operation plan, which the permittee shall submit detailing how the violation(s) will be corrected.
  - (b) Third violation within the preceding 12 months: Suspension of the sidewalk café permit for one weekend (Saturday and Sunday) -A-and, upon reopening, the sidewalk café shall cease all sidewalk café business operations at 10:00 p.m. each day until the city manager approves an operation plan, which the permittee shall submit detailing how the violation(s) will be corrected.
  - (c) Fourth violation within the preceding 12 months: Revocation of the sidewalk café permit for the remaining portion of the permit year.
- (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 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.

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### **SECTION 3. REPEALER.**

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

### **SECTION 4. SEVERABILITY.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

### **SECTION 5. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made 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 6. EFFECTIVE DATE.**

This Ordinance shall take effect on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**ATTEST:**

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

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

(Sponsored by Mayor Dan Gelber)

Underline denotes additions  
~~Strikethrough~~ denotes deletions

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

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

\_\_\_\_\_  
Date

11/10/20