


MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber
Members of the City Commission
Raul J. Aguila, Interim City Manager First Reading

FROM: Rafael A. Paz, Acting City Attorney 

DATE: January 13, 2021

SUBJECT: 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 MODIFYING THOSE PENALTIES TO BE IMPOSED FOR VIOLATIONS OF THIS DIVISION; AND BY AMENDING SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-382 THEREOF, ENTITLED "APPLICATION," BY FURTHER ENHANCING THE PROHIBITION FOR PERMITTEES THAT REPEATEDLY VIOLATE THIS DIVISION; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

The proposed Ordinance, which is sponsored by Mayor Dan Gelber and Commissioner Mark Samuelian, is submitted for first reading at the January 13, 2021 meeting of the City Commission.

The City of Miami Beach (the "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.

Nonetheless, it is imperative to recognize that 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. Moreover, those business establishments seeking to operate sidewalk cafés are also subject to certain identifiable standards, criteria, requirements and conditions.

The City Commission has also previously 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 rights-of-way 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 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.

Accordingly, as part of its periodic, continuous review of the Sidewalk Café Ordinance, the City Administration has determined that certain modifications to those penalty provisions, as delineated in Sections 82-371 and 82-382 of the City Code, are necessary due to the continued complaints pertaining to the business practices and conduct of sidewalk café operators, in conjunction with the number of violations issued to such operators by the City for behavior inconsistent with the City Code.

Therefore, upon consideration at first reading, the City Administration recommends that the Mayor and City Commission adopt such amendments and approve the Ordinance to aid in ensuring that sidewalk cafés in the City operate at the highest possible standards, befitting of the City of Miami Beach, and further protect the public health, safety and welfare, and continue to enhance the experience of sidewalk café patrons throughout the City.

Note: In the event that the Mayor and City Commission pass and adopt this Ordinance upon second reading, the City Administration would "reset" all sidewalk café permittees' outstanding violations (and the "preceding 12 month" enforcement period set forth in the Ordinance would commence anew beginning upon the effective date of the Ordinance), in order to provide all sidewalk café permittees the benefit and opportunity to implement any additional training, staffing or other modifications necessary to further ensure compliance with the provisions of the City Code pertaining to the operational standards, criteria and conditions for sidewalk cafés in the City.