

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING RESOLUTION NO. 2021-31867, TO EXTEND THE DURATION OF THE "RESTAURANT RECOVERY OUTDOOR SEATING PILOT PROGRAM," AS ESTABLISHED BY RESOLUTION NO. 2020-31276, THROUGH NOVEMBER 30, 2021, WHICH PROGRAM TEMPORARILY ALLOWS RESTAURANTS THROUGHOUT THE CITY (INCLUDING THE MXE DISTRICT) TO EXPAND SIDEWALK CAFÉ SEATING AREAS ONTO PUBLIC RIGHTS-OF-WAY, OR OTHER OUTDOOR SEATING AREAS ON PRIVATE PROPERTY, VIA SPECIAL EVENT PERMITS ISSUED PURSUANT TO SECTION 12-5 OF THE CITY CODE, WITH ANY SUCH PERMITS SUBJECT TO EACH RESTAURANT OPERATOR'S COMPLIANCE WITH ALL APPLICABLE PROVISIONS OF THE CITY'S SIDEWALK CAFÉ ORDINANCE, AS SET FORTH IN CHAPTER 82, ARTICLE IV, DIVISION 5 OF THE CITY CODE.

WHEREAS, on March 11, 2020, the World Health Organization declared the rapidly spreading novel coronavirus ("COVID- 19") a pandemic, acknowledging what seemed clear — the virus would likely spread to all countries on the globe; and

WHEREAS, the rate of infection throughout the world and in the United States accelerated rapidly, grinding most markets and businesses around the globe to a halt; and

WHEREAS, in order to limit the spread of COVID-19, both Miami-Dade County and the City of Miami Beach (the "City") issued various Emergency Orders including restrictions, social distancing guidelines, and facial covering requirements on retail and commercial establishments, including restaurants; and

WHEREAS, on May 13, 2020, the City Commission adopted Resolution No. 2020-31276, establishing the Restaurant Recovery Outdoor Seating Pilot Program (the "Program"); and

WHEREAS, the Program temporarily allows restaurants to expand sidewalk café seating areas onto public rights-of-way, or other outdoor seating areas on private property, subject to the Administration's review and approval of a proposed site plan for the expanded area(s) to ensure all public safety and public access issues are appropriately addressed, and further subject to the restaurant operator's compliance with applicable provisions of the Sidewalk Café Ordinance (set forth in Chapter 82, Article IV, Division 5 of the City Code); and

WHEREAS, the Program has been extended through September 30, 2021 pursuant to Resolution Nos. 2020-31406, 2020-31522, and 2021-31632; and

WHEREAS, at the September 17, 2021 meeting, the Mayor and City Commission adopted Resolution No. 2021-31867, authorizing the extension of the Program through October 31, 2021, but only for those restaurants located outside MXE mixed use entertainment district; and

WHEREAS, at the September 23, 2021 City Commission Workshop relating to Transportation / Ocean Drive and Washington Avenue, the Mayor and City Commission provided direction to the Administration regarding the configuration of Ocean Drive for pedestrian and vehicular purposes, and in view of the ongoing work, directed the Administration to bring an agenda item for consideration at the September 30, 2021 City Commission meeting, to consider extending the scope of the Program to all restaurants with sidewalk café seating areas located

within the City of Miami Beach, including the restaurants located within the MXE mixed use entertainment district; and

WHEREAS, the terms of the Program are set forth in Exhibit "A" to this Resolution, and incorporated by reference herein.

NOW, THEREFORE, BE IT DULY RESOLVED THAT THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby amend Resolution No. 2021-31867, to extend the duration of the "Restaurant Recovery Outdoor Seating Pilot Program," as established by Resolution No. 2020-31276, through November 30, 2021, which Program temporarily allows restaurants throughout the City (including the MXE district) to expand sidewalk café seating areas onto public rights-of-way, or other outdoor seating areas on private property, via special event permits issued pursuant to Section 12-5 of the City Code, with any such permits subject to each restaurant operator's compliance with all applicable provisions of the Sidewalk Café Ordinance, as set forth in Chapter 82, Article IV, Division 5 of the City Code.

PASSED and ADOPTED this _____ day of _____, 2021.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney
GS

9-27-21

Date

EXHIBIT "A"

RESTAURANT RECOVERY OUTDOOR SEATING PILOT PROGRAM

1. **Pilot program.** The Restaurant Recovery Outdoor Seating Pilot Program (the "Program") shall be implemented via special event permits pursuant to Section 12-5 of the City Code. Permits under the Program shall be separate from, and shall not otherwise alter or amend the terms of, any existing sidewalk café permits issued pursuant to Chapter 82, Article IV, Division 5 of the City Code (the "Sidewalk Café Ordinance"). The permit shall authorize a restaurant to expand sidewalk café seating areas onto approved public rights-of-way, or other outdoor seating areas on private property, provided the restaurant's then-existing total seating capacity (including indoor and outdoor seating) is not exceeded. The purpose of this Program is to mitigate the loss of revenue-generating seating associated with implementing social distancing requirements and/or guidelines.
2. **Duration of permit and periodic review.** Each special event permit issued pursuant to the Program shall terminate no later than November 30, 2021, unless the Program is extended by the City Commission. At the expiration of the Program, the City Manager shall present a written report to the City Commission tracking the implementation of this Program, and the City Commission may, in its discretion, extend the term or otherwise modify the provisions of this Program.
3. **Application.** Applicants wishing to participate in the Program must submit a completed special event permit application to the Public Works Director. Each application must be accompanied by a sworn affidavit, signed by the applicant, acknowledging and agreeing to comply with all applicable provisions of the City Code and this Resolution. As to requests for expansion on private property, the owner of the property shall be required to sign the application as a co-applicant.
4. **Waiver of fees.** No special event application fee or permit fee shall be required to operate expanded outdoor seating areas pursuant to the Program.
5. **Occupancy.** In no event shall any expansion of a restaurant's seating capacity exceed its then-existing total aggregate capacity for indoor and outdoor seating.
6. **Deleted.**
7. **Site plan review.**
 - a. Each applicant shall be required to submit a proposed site plan showing the layout and dimensions of the proposed seating area(s); proposed location, size, and number of tables, chairs, and any other furniture; any ramps, paths, pedestrian push buttons, fixtures, or any other features required by any applicable accessibility codes including, without limitation, the Americans with Disabilities Act ("ADA") or State code provisions addressing accessibility for building construction; 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 fixtures, furnishings and/or other obstruction(s) within the proposed expanded outdoor seating area.
 - b. The site plan shall be subject to the approval of the Public Works Director prior to the issuance of a permit, to ensure that any site-specific conditions or issues are appropriately addressed, and that the expansion will not compromise public safety, pedestrian and

vehicular traffic, or any required public access. The permit shall be specifically limited to the subject area shown on the approved site plan.

- c. With respect to any site plan requesting a street or lane closure, the City Manager (or designee) shall have the sole and absolute discretion (subject to County approval, if required) to determine whether and which parts of public rights-of-way may be closed to pedestrian or vehicular traffic, or parking, in order to accommodate outdoor seating areas pursuant to this Program.
8. **Compliance with Sidewalk Café Ordinance.** Permittees shall at all times abide by applicable provisions of the City's Sidewalk Café Ordinance, subject to the following exceptions:
 - a. Sidewalk café furniture, as defined in Section 82-366, shall be limited to tables, chairs, umbrellas (with a base of weights rated to resist winds of up to 35 miles per hour) and planters **only**. No other furniture will be allowed.
 - b. Notwithstanding the provisions of Section 82-385(r) of the City Code, the use of floor fans and extension cords on the public right-of-way shall be prohibited. Any lighting on the public right-of-way shall be cordless and battery-operated.
 9. **Compliance with all other applicable laws.** Permittees shall at all times comply fully with all applicable Federal, State, County, or City laws (including the Land Development Regulations of the City Code).
 10. **Indemnification.** Permittees shall be required to indemnify, defend, save, and hold harmless the City from any and all claims, liability, lawsuits, damages, and causes of action which may arise out of the permit or the permittee's activities on public rights-of-way or in expanded outdoor seating areas on private property.
 11. **Insurance.** Permittees shall be required to maintain, for the entire term of the permit, certain insurance requirements (subject to the approval of the City's Public Works Director and/or Risk Manager), and shall additionally be required to list the City as an additional insured party.
 12. **Enforcement / Termination of the Permit.** In addition to the enforcement and penalty provisions set forth in Section 12-5 of the City Code and/or the Sidewalk Café Ordinance, the Permit shall be revocable and terminable at any time if the City Manager determines it is in the public interest to do so.