

MIAMI BEACH

OFFICE OF THE CITY MANAGER

NO. LTC # 144-2022

LETTER TO COMMISSION

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Alina T. Hudak, City Manager *Eric Carpenter for*

DATE: April 13, 2022

SUBJECT: Sidewalk Café Report Fiscal Year 2021/22 Quarter 2 (January 1, 2022 - March 31, 2022)

This Letter to Commission constitutes the Sidewalk Café Report for Quarter 2 (January 1, 2022 - March 31, 2022) of Fiscal Year 2021/22. On April 11, 2018, the Mayor and City Commission adopted Ordinance 2018-4294 creating a quarterly reporting requirement for violations of the Sidewalk Café Ordinance specific to subsections 82-389. This subsection encompasses requirements for the Sidewalk Café Code of Conduct, including hawking/solicitation, menu price requirements, automatic gratuity and other charges, and receipt itemization of charges and taxes. See attachment A for full details.

While the reporting requirement was adopted in April 2018, sidewalk café operators were given time to comply with the menu price requirements. The ordinance was to take effect on July 2, 2018, for the cafe's located in the MXE district and on January 1, 2019, citywide. In addition to this ordinance, menu design guidelines needed to be established which subsequently did not become effective in the MXE district until October 1, 2018, and citywide until January 1, 2019.

During the 2nd quarter (January 1, 2022 - March 31, 2022), 1214 sidewalk café inspections were conducted resulting in ten (10) violation issued, out of the ten seven (7) were violations related to the requirements of this report. All seven have been appealed. Of the 1204 sidewalk café inspections, two (2) complied immediately, 15 received courtesy notices then complied, and 1187 were proactive compliance inspections where no violation was occurring.

Should you have questions please contact Code Compliance Director Hernan Cardeno.

Attachments:

Attachment A: Section 82-389 Sidewalk Café Code of Conduct

Attachment B: Violations issued in FY 2021/22 Quarter 2 related to the requirements of this report

146-7c RT
AH/EC/HC/TC/RT

Attachment A

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 café 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 café menu design guidelines. All menu prices must be displayed in numeric format. A sidewalk café 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 café patron makes a unique or special request for a food or drink menu item not listed on the menu, the sidewalk café 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 café 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 café patron.

(b)

A sidewalk café 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 café 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 café 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 café operator as part of the charges for furnishing, serving, or preparing food products must be subject to sales tax

and surtax. A sidewalk café 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 café patrons.

(1)

Exception. The provisions in this subsection 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.

(f)

Single-use carry out plastic bags shall not be allowed in the right-of-way and shall not be provided to sidewalk café patrons.

(g)

No food and/or beverage display(s) shall be permitted in any sidewalk café permit area and/or 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 area and/or the public right-of-way.

(h)

Except as provided in subsection 82-385(n)(1), specials board(s) shall be prohibited in all sidewalk café permit areas and any other portion of the public right-of-way, and no food or drink special(s) may be displayed, disclosed, or posted on any menu board or sandwich board sign, pursuant to subsection 82-385(n). Food or drink menu special(s) shall not be displayed, disclosed, posted or permitted to remain in any sidewalk café permit area and/or the public right-of-way, except at a table presently occupied by a customer; nor shall any food or drink menu special(s) be displayed, disclosed or posted within the restaurant/business establishment's premises in such a way that the placement of such display, disclosure, or posting is clearly visible from the sidewalk café permit area and/or the public right-of-way.

(i)

Sidewalk café permittees on Ocean Drive, between 5th Street and 15th Street, including every manager and every employee assigned to work in the sidewalk café 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 café permit area shall complete an abbreviated version of the same hospitality training program. Sidewalk café permittees shall:

(1)

Maintain records on premises evidencing compliance with this subsection (i), and

(2)

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

(j)

Sidewalk café operators located on Ocean Drive, between 5 th Street and 15 th Street; on Lincoln Road between Washington Avenue and Alton Road; and on Española Way between Washington Avenue and Drexel Avenue, shall not:

(1)

Solicit any pedestrian(s) located on the sidewalk abutting a sidewalk café permit area, or on the right of way within 20 feet of the outer perimeter of a sidewalk café permit area, for the purpose of inducing such pedestrian to patronize any business establishment or sidewalk café, or purchase any food, beverage, 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 a sidewalk café permit area, or on the right-of-way within 20 feet of the outer perimeter of a sidewalk café permit area, unless the pedestrian first affirmatively communicates a desire to receive information about the sidewalk cafe'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.

(Ord. No. 2019-4294, § 1, 9-11-19; Ord. No. 2019-4300, § 1, 10-16-19; Ord. No. 2020-4323, § 3, 1-15-20)

Secs. 82-390—82-410. - Reserved.

Attachment B: Violations issued in FY 2021/22 Quarter 2 related to the requirements of this report

CC2022-12316	1236 OCEAN DR / IL GIARDINO. LLC	1/8/2022	Appeal	Violation of; Section 82-389 and 82-371. Failing to comply with the requirements in the Sidewalk Cafe? Code of Conduct. Ref; Ref; Hawking/Soliciting. 1st Offense \$ 500.00 Fine.
CC2022-12418	860 OCEAN DR / 860 OCEAN DRIVE LLC DBA ICON	1/27/2022	Appeal	Violation of; Section 82-389 and 82-371. Failing to comply with the requirements in the Sidewalk Cafe? Code of Conduct. Ref; Ref; Hawking/Soliciting. 2nd Offense \$ 750.00 Fine.
CC2022-12471	928 OCEAN DR / Decowalk Hotel & Golf Club, LLC. dba Voodoo Rooftop Lounge & Hookah	2/4/2022	Appeal	Violation of Section 82-389 and 82-371. Failing to comply with the requirements in the Sidewalk Cafe? Code of Conduct. Ref: Hawking/Soliciting. 1st Offense; \$500 Fine
CC2022-12469	1400 OCEAN DR / 1400 OCEAN DR, LLC D/B/A IL BOLOGNESE	2/4/2022	Appeal	Violation of Section 82-389 and 82-371. Failing to comply with the requirements in the Sidewalk Cafe? Code of Conduct. Ref: Hawking/Soliciting. 1st Offense

CC2022-12420	860 OCEAN DR / 860 OCEAN DRIVE LLC DBA ICON	1/27/2022	Appeal	Violation of; Section 82-389 and 82-371. Failing to comply with the requirements in the Sidewalk Cafe? Code of Conduct. Ref; Ref; Hawking/Soliciting. 3rd Offense \$1000.00 Fine.
CC2022-12657	524 OCEAN DR / 524 Ocean LLC DBA Cuba Libre	3/11/2022	Appeal	Ref: Soliciting/Hawking. Section 82-389 and 82-371. Failing to comply with the requirements in the Sidewalk Cafe? Code of Conduct. 1st Offense; \$500.00 Fine.
CC2022-12419	445 LINCOLN RD / SURI SOUTH BEACH, INC.	1/27/2022	Appeal	Section 82-389 and 82-371. Failing to comply with the requirements in the Sidewalk Cafe? Code of Conduct. RE: Hawking/ Soliciting 1st Offense Fine: \$500.00