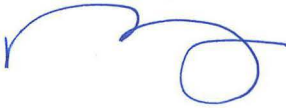


COMMISSION MEMORANDUM FIRST READING

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Rafael A. Paz, City Attorney 

DATE: May 4, 2022

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 REPEALING DIVISION 5, ENTITLED "SIDEWALK CAFES," IN ITS ENTIRETY AT THE END OF THE CURRENT PERMITTING CYCLE SEPTEMBER 30, 2022, BY DELETING SECTIONS 82-366 THROUGH 82-373, AND SECTIONS 82-381 THROUGH 82-391 THEREOF; AND PROVIDING REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE OF OCTOBER 1, 2022.

The proposed Ordinance (the "Ordinance"), which is sponsored by Mayor Dan Gelber, Commissioner Alex Fernandez, and Commissioner Mark Samuelian is submitted to the City Commission for first reading on May 4, 2022.

The City Commission created the sidewalk café program, as set forth in Sections 82-366 to 82-391 of the City Code ("the Sidewalk Café Ordinance"), for the valid public purpose of increasing the quality of the City's iconic brand by establishing high quality outdoor food and beverage service on City property, and positively representing the City's brand by providing a public space where residents and visitors can enjoy the City's world-renowned architecture and scenic sun-drenched vistas.

It was always the intention of the Mayor and City Commission to create a sidewalk café program (for outdoor food and beverage service and consumption on the City's rights-of-way) that allowed discretion for the City Manager to determine which sidewalk café operators were advancing the interests of the program and to approve, issue, renew, and revoke permits based upon the City Manager's judgment as to that consideration.

On December 29, 2021, a Miami-Dade County Circuit Court entered a preliminary order finding that the City's sidewalk café ordinance created a protectible property interest in the renewal of a sidewalk café permit by sidewalk café operators, contrary to the express intention of this Commission in creating the sidewalk café program, with which the City disagrees.

This Ordinance proposes to repeal the Sidewalk Café Ordinance effective at the end of the current permit year to allow for the consideration of a new paradigm (see draft proposed concession agreement, attached as Exhibit A) for outdoor dining on public property.