

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING RESOLUTION NO. 2022-32205 (WHICH AUTHORIZED THE CITY MANAGER TO ENTER INTO CONCESSIONAIRE AGREEMENTS WITH SELECTED RESTAURANTEURS TO PROVIDE OUTDOOR FOOD AND BEVERAGE SERVICE ON CITY RIGHTS-OF-WAY), TO AUTHORIZE THE CITY MANAGER, AT HER SOLE DISCRETION, TO AMEND PARAGRAPH EIGHTY-SIX (86) OF THE APPROVED TEMPLATE CONCESSION AGREEMENT (“SMOKING”), WITHOUT FURTHER CITY COMMISSION APPROVAL, IN AGREEMENTS FOR EXISTING LINCOLN ROAD RESTAURANTEURS THAT OFFERED HOOKAH PRODUCTS AT THEIR SIDEWALK CAFES ON SEPTEMBER 30, 2022, IN ORDER TO PHASE-OUT THE USE OF HOOKAHS WITHIN A PERIOD OF THREE YEARS, CONTINGENT UPON THE AGREEMENT OF THE RESTAURANTEUR TO GRADUALLY PHASE OUT HOOKAH OFFERINGS OVER THE THREE-YEAR PERIOD AND TO EXECUTE A GENERAL RELEASE AND COVENANT NOT TO SUE THE CITY DURING OR FOLLOWING THE PHASE-OUT PERIOD.

WHEREAS, the City Commission, at its June 9, 2022 meeting, passed Resolution No. 2022-32205 and created, solely in the City’s proprietary capacity and not in furtherance of any regulatory function, a concession agreement program for selected restaurants with brick-and-mortar facilities and inside seating to offer food and beverage services on the rights-of-way abutting the physical establishment; and

WHEREAS, the Program was created to serve the valid public purpose of promoting the quality of the City’s iconic brand by establishing high quality outdoor food and beverage service on City property, and positively represent 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; and

WHEREAS, the concessionaires in this concession agreement program include only the best restaurants in the City, chosen at the City Manager’s sole discretion, to sell food and beverages for dining at outdoor cafés on the public rights-of way abutting a restaurant’s indoor establishment; and

WHEREAS, the City Commission, in Resolution No. 2022-32205, delegated to the City Manager, or her designee, the authority to execute, at her discretion, all concession agreements, consistent with the terms of the Resolution and the template agreement attached thereto; and

WHEREAS, the City Commission, in Resolution No. 2022-32205, authorized the City Manager to negotiate, at her sole discretion, concession agreements with terms materially different from the approved template, with the approval of such changes subject to approval by the City Commission; and

WHEREAS, paragraph eighty-six (86) of the template agreement approved in Resolution No. 2022-32205 requires the concessionaire “not to allow smoking of any vapor-

generating devices, including, but not limited to hookah smoking, within the Concession area”; and

WHEREAS, the Mayor and City Commission recognize that enforcing an immediate prohibition of hookah products at outdoor dining concessions may have the unintended consequence of forcing some hookah-reliant restaurants on Lincoln Road to close, creating unwanted vacancies along the City’s premiere shopping attraction; and

WHEREAS, the Mayor and City Commission hereby reaffirm the City’s decision and commitment to end the consumption of hookah products at outdoor dining concessions on City property, and resolve to allow the City Manager, at her sole discretion, to amend paragraph 86 of the outdoor dining concession agreement template approved in Resolution No. 2022-32205 to phase-out hookah offerings over a three year period for restaurants that offered hookah products on Lincoln Road on September 30, 2023, which permission should be conditioned upon an agreement with each restaurateur setting forth exactly how the restaurateur will amend its business model and business practices over the three-year period to allow the restaurateur to successfully transition to a hookah-free business model by the end of the three-year phase-out period and upon each participating restaurateur executing a general release in favor of the City and a covenant not to sue the City during or following the phase-out period for any claim arising out of participation in the outdoor dining concession program and/or the hookah phase-out period; and

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and the City Commission hereby amend Resolution No. 2022-32205 (which authorized the City Manager to enter into concessionaire agreements with selected restaurateurs to provide outdoor food and beverage service on city rights-of-way), to authorize the City Manager, at her sole discretion, to amend paragraph eighty-six (86) of the approved template concession agreement (“SMOKING”) without further City Commission approval, in agreements for existing Lincoln Road restaurateurs that offered hookah products at their sidewalk cafes on September 30, 2022, in order to phase-out the use of hookahs within a period of three years, contingent upon the agreement of the restaurateur to gradually phase out hookah offerings over the three-year period and to execute a general release and covenant not to sue the city during or following the phase-out period.

PASSED AND ADOPTED this ____ day of February, 2023.

ATTEST:

Mayor Dan Gelber

Rafael E. Granado, City Clerk

(Sponsored by Commissioner Alex Fernandez)

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

Dan R. Gelber

City Attorney
RAP
DL

Date
1-31-23