

ORDINANCE NO. _____

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, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE IV, ENTITLED "USES IN PUBLIC RIGHTS-OF-WAY," BY AMENDING DIVISION 5, ENTITLED "SIDEWALK CAFES," BY AMENDING SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-381, ENTITLED "PERMITTED AREAS; CONDITIONAL PERMIT; CITY MANAGER'S RIGHT TO REMOVE SIDEWALK CAFES," BY AMENDING THE REQUIREMENTS FOR THE SEPARATE ITEMIZATION AND DISCLOSURE OF GRATUITIES, SERVICE CHARGES, AND TAXES ON CUSTOMERS' BILLS AND RECEIPTS; BY AMENDING SECTION 82-382, ENTITLED "APPLICATION," BY AMENDING THE APPLICATION REQUIREMENTS TO INCLUDE AN AFFIDAVIT STATEMENT OF COMPLIANCE WITH THE ITEMIZATION AND DISCLOSURE REQUIREMENTS REGARDING GRATUITIES, SERVICE CHARGES, AND TAXES; BY AMENDING SECTION 82-385, ENTITLED "MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFES," BY AMENDING THE CONDITIONS FOR THE OPERATION OF SIDEWALK CAFES TO INCLUDE THE ITEMIZATION AND DISCLOSURE OF GRATUITIES, SERVICE CHARGES, AND TAXES; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, in order to prevent deceptive or misleading practices in the operation of the City's sidewalk cafes relating to bills and receipts provided to tourists and residents that patronize such establishments, gratuities, tips, service charges, and taxes should be disclosed on customers' bills and receipts; and

WHEREAS, the itemized disclosure of gratuities, tips, service charges, and the disclosure of the combined percentage and amount of all City, County, and State taxes on the face of bills and receipts will foster greater transparency in the operation of sidewalk cafes.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That Section 82-381 of Subdivision II of Division 5 of Article IV of Chapter 82 of the Code of the City Miami Beach is hereby amended as follows:

CHAPTER 82

PUBLIC PROPERTY

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ARTICLE IV. Uses in Public Rights-of-Way

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DIVISION 5. Sidewalk Cafes

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SUBDIVISION II. Permit

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Sec. 82-381. Permitted areas; conditional permit; city manager's right to remove sidewalk cafes; required disclosures on menus, bills, and receipts.

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- (h) A sidewalk cafe must display or disclose prices for food and drink menu item(s), or display or disclose those prices 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) must be in a size (font) and typeface, which is at least as large as the name of the menu item.
- (i) A sidewalk cafe that automatically includes a gratuity or service charge, either in the price of the meal or drink or separately imposed for all items ordered, must be displayed on the menu and on the face of the customer's bill. This disclosure serves to provide the customer notification that an automatic gratuity or service charge is being included by the sidewalk cafe operator. The disclosure of the gratuity or service charge within the menu or bill must not be smaller than 12 {point} font.
- (j) A sidewalk cafe operator that includes a gratuity or tip as a charge must separately itemize and state the amount of this charge on the face of the customer's bill and receipt, and such gratuity or tip must only be calculated on the pre-tax sale amount of the food or drinks. A sidewalk cafe operator that includes a service charge, minimum charges, corkage fees, set up fees, or similar charges, must itemize and separately state such charges on the face of the customer's bill and receipt. A sidewalk cafe operator must itemize and separately state the total combined percentage and amount of City, County, and State taxes on the face of the customer's bill and receipt.

SECTION 2. That Section 82-382 of Subdivision II of Division 5 of Article IV of Chapter 82 of the Code of the City Miami Beach is hereby amended as follows:

CHAPTER 82

PUBLIC PROPERTY

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ARTICLE IV. Uses in Public Rights-of-Way

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DIVISION 5. Sidewalk Cafes

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SUBDIVISION II. Permit

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Sec. 82-382. Application.

- (a) A sidewalk cafe permit shall be effective for one year, from October 1 until September 30 of the following year.
- (b) Application for a permit to operate a sidewalk cafe shall include, but not be limited to, the following information:

* * *

- (16) A sample menu that will be used by the sidewalk cafe to display or disclose prices for food and drink menu item(s), or display or disclose those prices for any food and drink menu special(s). The sample menu must display or disclose food or drink menu item(s) or food and drink menu special(s) in a size (font) and typeface that is at least as large as the name of the menu or food item.
- (17) An affidavit by the sidewalk cafe that the inclusion of an automatic gratuity or service charge, either in the price of the meal or drink or separately imposed for all items ordered, will be disclosed on the menu and the face of the customer's bill and receipt, and that the total combined percentage and amount of City, County, and State taxes will also be separately itemized stated on the face of the customer's bill and receipt. The affidavit ~~shall~~ must state that the notification to the customer of an automatic gratuity or service charge and the itemization statement of the total combined percentage and amount of City, County, and State taxes, are being included consistent with, and pursuant to, those requirement(s) set forth in Sections 82-381(i) and (j).

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SECTION 3. That Section 82-385 of Subdivision II of Division 5 of Article IV of Chapter 82 of the Code of the City Miami Beach is hereby amended as follows:

**CHAPTER 82
PUBLIC PROPERTY**

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ARTICLE IV. Uses in Public Rights-of-Way

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DIVISION 5. Sidewalk Cafes

* * *

SUBDIVISION II. Permit

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Sec. 82-385. Minimum standards, criteria, and conditions for operation of sidewalk cafes.

* * *

- (w) A sidewalk cafe that automatically includes a gratuity or service charge, either in the price of the meal or drink or separately imposed for all items ordered, and fails to properly notify the customer of the automatic gratuity or service charge is prohibited from operating on the City's property. The notification must be consistent with those requirements set forth in Sections 82-381(i) and 82-382(17).
- (x) A sidewalk cafe that fails to separately itemize and state
- (1) gratuities or tips;
 - (2) service charges, minimum charges, corkage fees, set up fees, or similar charges, or
 - (3) the total combined percentage and amount of City, County, and State taxes

on the face of the customer's bill and receipt is prohibited from operating on the City's property. The notification must be consistent with those requirements set forth in Sections 82-381(j) and 82-382(17).

SECTION 4. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 6. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall take effect ten (10) days following adoption.

PASSED AND ADOPTED this ____ day of _____, 2017.

ATTEST:

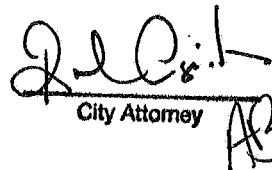
Mayor Philip Levine

Rafael E. Granado, City Clerk

Underline denotes additions
~~Strikethrough~~ denotes deletions

(Sponsored by Commissioner Michael Grieco)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

 2-22-17

City Attorney AB Date