

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Philip Levine
Members of the City Commission

cc: Jimmy L. Morales
City Manager

FROM: Raul J. Aguila *Raul C. Aguila*
City Attorney

DATE: April 26, 2017

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, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE IV, "USES IN PUBLIC RIGHTS-OF-WAY," BY AMENDING DIVISION 5, "SIDEWALK CAFES," BY AMENDING SUBDIVISION II, "PERMIT," BY AMENDING SECTION 82-385, ENTITLED "MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFES," TO REQUIRE MANAGERS AND SIDEWALK CAFE EMPLOYEES OF SIDEWALK CAFE PERMITTEES ON OCEAN DRIVE BETWEEN 5TH STREET AND 15TH STREET TO SUCCESSFULLY COMPLETE A HOSPITALITY TRAINING PROGRAM THAT HAS BEEN PREVIOUSLY APPROVED BY RESOLUTION OF THE MAYOR AND CITY COMMISSION; AND AMENDING SECTION 82-382, ENTITLED "APPLICATION," TO REQUIRE APPLICANTS AND PERMITTEES FOR SIDEWALK CAFES ON OCEAN DRIVE BETWEEN 5TH STREET AND 15TH STREET TO SUBMIT, ON AN ANNUAL BASIS, AN AFFIDAVIT OF SATISFACTORY COMPLETION OF THE HOSPITALITY TRAINING REQUIREMENT SET FORTH HEREIN; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

1. Introduction

The attached Ordinance sponsored by Commissioner Ricky Arriola is hereby submitted for consideration by the Mayor and City Commission. On September 27, 2016, the Mayor and City Commission adopted Resolution No. 2016-29590, approving a 10-Point Plan for Ocean Drive. Point 4(F) of the 10-Point Plan requires Ocean Drive sidewalk cafe employees to undergo hospitality training. The attached proposed Ordinance amends the Sidewalk Cafe Ordinance to codify the hospitality training requirement proposed in the 10-Point Plan.

2. Proposed hospitality training requirement

The Ordinance amends City Code Section 82-385, entitled "Minimum standards, criteria, and conditions for operations of sidewalk cafes," to require every manager and every employee assigned to work in a sidewalk cafe on Ocean Drive to successfully complete a hospitality

training program that has been previously approved by Resolution of the Mayor and City Commission. Sidewalk cafe permittees must maintain records evidencing their compliance with this new requirement.

The Ordinance also amends the City's sidewalk cafe permit application requirements, set forth in City Code Section 82-382, to require that applicants for sidewalk cafe permits on Ocean Drive (including sidewalk cafe permittees applying to renew their permits) submit an affidavit certifying the following:

- (i) every manager and every employee assigned to work in the sidewalk cafe permit area has successfully completed a hospitality training program that has been previously approved by Resolution of the Mayor and City Commission; and
- (ii) any newly hired manager or employee assigned to work in the sidewalk cafe permit area must successfully complete such a hospitality training program.

3. Enforcement

The hospitality training requirement may be enforced against both (i) permit applicants, and (ii) existing permittees, once the Fiscal Year 2017 permits are issued. As to sidewalk cafe permit applicants, no permit shall issue until an applicant submits the required affidavit. As to existing permittees (once the Fiscal Year 2017 permits are issued), violations of the hospitality training requirement will be subject to the enforcement and penalty provisions in City Code Sections 82-369 through -373.

4. Amendments adopted at First Reading

On March 1, 2017, the City Commission adopted the Ordinance on First Reading, and adopted the following amendment: within one (1) year of completing an approved hospitality training program and each year thereafter, every manager and every employee assigned to work in the sidewalk cafe permit area shall complete an abbreviated version of the same hospitality training program.

5. Economic impact statement

This Ordinance is expected to have no more than a nominal impact on City resources.

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, "USES IN PUBLIC RIGHTS-OF-WAY," BY AMENDING DIVISION 5, "SIDEWALK CAFES," BY AMENDING SUBDIVISION II, "PERMIT," BY AMENDING SECTION 82-385, ENTITLED "MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFES," TO REQUIRE MANAGERS AND SIDEWALK CAFE EMPLOYEES OF SIDEWALK CAFE PERMITTEES ON OCEAN DRIVE BETWEEN 5TH STREET AND 15TH STREET TO SUCCESSFULLY COMPLETE A HOSPITALITY TRAINING PROGRAM THAT HAS BEEN PREVIOUSLY APPROVED BY RESOLUTION OF THE MAYOR AND CITY COMMISSION; AND AMENDING SECTION 82-382, ENTITLED "APPLICATION," TO REQUIRE APPLICANTS AND PERMITTEES FOR SIDEWALK CAFES ON OCEAN DRIVE BETWEEN 5TH STREET AND 15TH STREET TO SUBMIT, ON AN ANNUAL BASIS, AN AFFIDAVIT OF SATISFACTORY COMPLETION OF THE HOSPITALITY TRAINING REQUIREMENT SET FORTH HEREIN; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, Ocean Drive is a unique, historic, and highly significant promenade containing hotels, restaurants, and retail establishments, which serve tourists and residents alike; and

WHEREAS, on September 27, 2016, the Mayor and City Commission adopted Resolution No. 2016-29590, approving a 10-Point Plan for Ocean Drive; and

WHEREAS, the purpose of the 10-Point Plan is to "reinvigorate and improve numerous aspects of this critically important and iconic street," and to "balance the vision of City leaders with the interests of residents, private property owners and businesses in order to create a more welcoming and safer environment for residents and tourists visiting Ocean Drive"; and

WHEREAS, Point 3(F) of the 10-Point Plan requires Ocean Drive sidewalk cafe employees and managers to undergo and complete hospitality training; and

WHEREAS, this Ordinance codifies the hospitality training requirement of the 10-Point Plan; and

WHEREAS, Ocean Drive is the City's front porch. It attracts locals and worldwide visitors who boost our economy. The goal of this hospitality training requirement is to enhance the visitor experience, promote our image as a customer friendly destination, and therefore maintain and enhance our economic resilience.

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

SECTION 1. That Section 82-382 of Chapter 82 of the Miami Beach City Code is hereby amended as follows:

**CHAPTER 82
PUBLIC PROPERTY**

* * *

Article IV. Uses In Public Rights-Of-Way

* * *

Division 5. Sidewalk Cafes

* * *

Subdivision II. Permit

* * *

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:
 - (1) The name, address and telephone number of the applicant/permittee.
 - (2) The name and address of the business establishment seeking a permit to operate the sidewalk cafe (including the name and address of the restaurant).
 - (3) A copy of a valid city occupational license to operate the restaurant in front of which the proposed sidewalk cafe will be operating. The total count of chairs to be utilized for the restaurant must include the number of chairs used in conjunction with the sidewalk cafe and the number of chairs inside the restaurant, as authorized by the license.
 - (4) A copy of a valid certificate of use for the restaurant in front of which the proposed sidewalk cafe will be operating.
 - (5) Copies of current certificates of insurance in the amounts and categories required by section 82-386.
 - (6) A site plan signed and sealed by a duly licensed architect or engineer which accurately depicts the layout and dimensions of the existing sidewalk area and adjacent private property; proposed location, size and number of tables, chairs, umbrellas, and any other sidewalk cafe furniture; 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 public fixtures, furnishings and/or other obstruction(s), within the proposed sidewalk cafe area. The sidewalk cafe site plan shall be approved by the city manager prior to the issuance of a sidewalk cafe permit and the permit shall be specifically limited to the subject area shown on the approved site plan.

- (7) Photographs, drawings or manufacturer's brochures fully describing the appearance and dimensions of all proposed tables, chairs, umbrellas, and any other sidewalk cafe furniture related to the operation of the sidewalk cafe. Tables, chairs, umbrellas, and any and all other sidewalk cafe furniture shall be approved by the city manager prior to the issuance of a sidewalk cafe permit.
- (8) A copy of the approved sidewalk cafe site plan, shall be maintained on the permittee's premises and shall be available for inspection by city personnel at all times.
- (9) The annual application shall be accompanied by a non-refundable base application fee as set forth in appendix A. However, the non-refundable base application fee shall not be required for sidewalk cafe permit applications submitted to the City in conjunction with the Washington Avenue Pilot Parklet Program, which program shall terminate on March 31, 2019. Additionally, the non-refundable base application fee shall not be required for sidewalk cafe permit applications submitted to the City for businesses on Washington Avenue from 6th Street to Lincoln Road, for the period ending on September 30 2019.
- (10) Applications shall be reviewed for compliance with applicable city, state and federal laws, and must be reviewed and approved by the city's public works department; fire department; office of risk management; finance department; planning and zoning department; and building department.
- (11) Prior to issuance of a sidewalk cafe permit, the city's chief financial officer shall certify that there are no outstanding fines, monies, fees, taxes or other charges owed to the city by the applicant/permittee and/or the business establishment/restaurant. A sidewalk cafe permit will not be issued until all outstanding debts to the city are paid in full.
- (12) No sidewalk cafe permit shall be issued to a restaurant whose occupational license or certificate of use is limited to take-out service and does not have inside seating.
- (13) A sidewalk cafe permit may not be transferred and/or otherwise assigned. A new owner and/or operator of a restaurant and/or business establishment with a sidewalk cafe permit will be required to apply for and obtain a new permit.
- (14) The permit covers only the public right-of-way. Tables and chairs on private property will be governed by other applicable regulations. No outdoor seating authorized pursuant to this division shall be used for calculating seating requirements pertaining to location of, applications for, or issuance of, a liquor license; nor shall the outdoor seating be used as the basis for computing required seating for restaurants, or as grounds for claiming exemption from such requirements under the provisions of any applicable city, county, and/or state law.
- (15) Sidewalk cafes shall comply with all applicable accessibility codes including, without limitation, the Americans with Disabilities Act (ADA), and state code provisions addressing accessibility for building construction, as same may be amended from time to time.
- (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 stated on the face of the customer's bill and receipt. The affidavit must state that the notification to the customer of an automatic gratuity or service charge and the 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).

(18) Any applicant for a sidewalk café permit (including any sidewalk cafe permittee applying to renew a sidewalk cafe permit) on Ocean Drive between 5th Street and 15th Street must submit an affidavit (in a form approved by the city manager) certifying that (i) every manager and every employee assigned to work in the sidewalk cafe permit area has successfully completed a hospitality training program that has been previously approved by resolution of the mayor and city commission; (ii) within one (1) year of completing such program and each year thereafter, every manager and every employee assigned to work in the sidewalk cafe permit area shall complete an abbreviated version of the same hospitality training program; and (iii) any newly hired manager or employee assigned to work in the sidewalk cafe permit area must successfully complete such a hospitality training program.

(c) Renewals. As provided in subsection 82-371(b), a permittee who has been issued more than six violations pursuant to this division within a permit year, shall be prohibited from applying for and obtaining a sidewalk cafe permit for the following two consecutive permit years.

SECTION 2. That Section 82-385 of Chapter 82 of the Miami Beach City Code is hereby amended as follows:

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

* * *

(y) As applicable to sidewalk cafe permittees on Ocean Drive between 5th Street and 15th Street, every manager and every employee assigned to work in the sidewalk cafe permit area must successfully complete a hospitality training program that has been previously approved by resolution of the mayor and city commission. Within one (1) year of completing such program and each year thereafter, every manager and every employee assigned to work in the sidewalk cafe permit area shall complete an abbreviated version of the same hospitality training program. Sidewalk cafe permittees shall (i) maintain records on premises evidencing compliance with this paragraph (y), and (ii) submit to the city manager, on an annual basis, the affidavit specified in section 82-382(b)(18).

SECTION 3. REPEALER.

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

SECTION 4. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 5. 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 a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect the ____ day of _____, 2017.

PASSED and **ADOPTED** this ____ day of _____, 2017.

ATTEST:

Rafael E. Granado
City Clerk

Philip Levine
Mayor

(Sponsored by Commissioner Ricky Arriola)

Underline denotes additions

~~Strike-through~~ denotes deletions

Double underline denotes additions made at First Reading

~~Double strike-through~~ denotes deletions made at First Reading

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Reed 3-3-17
City Attorney Date

NK