

ORDINANCE NO. 2008-3601

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY'S SIDEWALK CAFÉ ORDINANCE, AS CODIFIED IN SECTIONS 82-366 THROUGH 82-385 OF THE CITY CODE; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

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

SECTION 1.

That Chapter 82, Article IV, Division 5, Sections 82-366 through 82-385, of the Code of the City of Miami Beach, Florida, is hereby amended as follows:

~~Subdivision I. Generally~~

Sec. 82-366. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City Manager - means the city manager or the city manager's designee.

Code Compliance Officer – means the code compliance officers, fire inspectors, or any other authorized agent or employee of the city whose duty it is to assure code compliance.

Menu board - means a board allowing for the posting of a restaurant's complete menu and fabricated in such a manner so as not to constitute a form of general advertising or establishment identification. The location, size, design, materials and color of the menu board shall be approved by the City Manager and shown on the sidewalk café site plan (as hereinafter defined). Menu boards and willshall be no larger than six (6) square feet; may not be internally illuminated; and the top of the menu board shall not exceed five feet, six inches (5'6") from grade. The menu board shall not be a sandwich board sign (as defined herein).

Permittee - means the recipient of a sidewalk cafe permit under the terms and provisions of this division.

Restaurant - for purposes of this division only, means a food service establishment that is maintained and operated as a place where food and/or beverages are prepared and/or served and sold for consumption within the premises, or a business establishment which has, as an ancillary or secondary use, a part thereof where food and/or beverages are prepared and/or served and sold for consumption within the premises. No sidewalk café 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.

Right-of-way - means land in which the state, the state department of transportation, the county or the city owns the fee or has an easement devoted to or required for use as a transportation facility or street.

Sandwich board sign - means a freestanding, A-frame structure located on a sidewalk or street which may be affixed in position or is collapsible and which contains a sign (as defined in Section 114-1).

Sidewalk - means that portion of the right-of-way which is located between the curb line or the lateral line of a street and the adjacent property line and which is intended for use by pedestrians; provided that on Lincoln Road Mall, a sidewalk shall mean a right-of-way as defined in this section, but shall only refer to that area between the property line and the centerline of the right-of-way, exclusive of landscaped areas and a twelve (12) foot-wide clear path for emergency and maintenance vehicular access.

Sidewalk café - means a use located on a right of way which is associated with a restaurant, and is primarily characterized by tables and chairs; may be shaded by awnings, canopies or umbrellas; and may include such other sidewalk café furniture (as hereinafter defined) as permitted and/or approved pursuant to this division.

Sidewalk Café Furniture - means those non-permanent fixtures, furnishings and equipment associated with the operation of a sidewalk café and approved pursuant to this division including, without limitation, tables, chairs, umbrellas, planters, heaters, fans, rolling service stations, service carts, bussing stations, and menus and/or specials boards.

Sidewalk cafe site map - means a city-approved map detailing the location of the pedestrian pathway as it relates to a sidewalk cafe.

Sign - shall have the same meaning as provided for in Section 114-1.

Specials board - means a board allowing for the posting of a restaurant's daily specials and fabricated in such a manner so as to not constitute a form of advertising or establishment identification. The location, size, design,

materials and color of the specials board shall be approved by the City Manager and shall be shown on the sidewalk café site plan. Specials boards
~~specials board shall be no larger than sixfour (46) square feet; may not be internally illuminated; and the top of the signboard shall not exceed five feet six inches (5'6") from grade. The specials board shall not be a sandwich board sign (as defined herein). The location, size, design, materials and color of a specials board shall be approved by the City Manager.~~

Street - means that portion of a right-of-way improved, designed or ordinarily used for vehicular traffic and/or parking.

~~*Usable sidewalk area* – means the frontage of the property times the width of the sidewalk, less five (5) feet.~~

Sec. 82-367. Declaration of necessity and intent.

It is hereby found and declared that:

- (a) There exists the need for outdoor eating establishments (sidewalk cafes) in certain areas of the city to provide a unique environment for relaxation and food and/or beverage consumption.
- (b) The existence of sidewalk cafes encourages additional pedestrian traffic to these areas.
- (c) The presence of sidewalk cafes may thus impede the free and safe flow of pedestrian traffic.
- (d) There is a need for regulations and standards for the existence and operation of sidewalk cafes to facilitate and ensure a safe environment in these areas.
- (e) The establishment of permit conditions and safety standards for sidewalk cafes is necessary to protect and promote the general health, safety and welfare of the residents of the city.

(Ord. No. 92-2808, § 1(39-28), 10-8-92; Ord. No. 97-3092, § 1(39-28), 9-10-97)

Sec. 82-368. Removal and storage fees; disposition of property.

If, pursuant to this division, the city removes, relocates, and/or stores any sidewalk café furniture, the permittee shall be responsible for the reasonable expenses incurred by the city for the removal, relocation, and/or storage of all such sidewalk café furniture. The City Manager shall promulgate and review, as needed, regulations regarding the storage and disposition of sidewalk café furniture under this division. The city and its officers and employees shall not be responsible for any damage to or loss of any sidewalk cafe furniture, removed, and/or relocated and/or stored pursuant to this division.

(Ord. No. 97-3092, § 1(39-36), 9-10-97)

Sec. 82-369. Appeals from the decision of the City Manager.

Appeals from decisions of the City Manager made pursuant to this division shall be to the special master in accordance with the procedures set forth in ~~chapter 30, article III~~ sections 30-72 and 30-73 hereof. Appeals from the decisions of the special master shall be to a court of competent jurisdiction by petition for writ of certiorari.

(Ord. No. 92-2808, § 1(39-38), 10-8-92; Ord. No. 97-3092, § 1(39-37), 9-10-97)

Sec. 82-370. Notice of violation.

- (a) Code compliance officers shall issue twenty four (24) hour warning notices for all non-life safety violations of this division.
- (b) No warning notices shall be required prior to the issuance of life safety violations and/or sidewalk café site plan violations, and such violations shall be corrected immediately. Life safety violations are defined as those conditions which, in the reasonable determination and judgment of the City Manager, involve serious danger and/or risk to the public health, safety or welfare (including, without limitation, blocking or ~~obstructions to~~ pedestrian pathways and violations of the state accessibility code for building construction). Site plan violations are defined to include those instances where the permittee ~~and/or sidewalk café operator~~ is operating outside of the permitted sidewalk café area (as approved pursuant to Section 82-382(~~ab~~ ab)(6)) and shall include: a table or tables set up outside the approved boundaries of the sidewalk café site plan; and/or umbrellas, heaters, fans, bussing stations and other sidewalk café furniture found to be outside the approved site plan; but shall not be deemed to include instances where a chair or chairs are moved outside the approved boundaries of an approved site plan by a sidewalk café patron(s).
- (c) If a code compliance officer finds a violation of this division, such code compliance officer shall issue a notice of violation to the violator, ~~as provided in chapter 30, article III,~~ as follows:
 - 1. For non-life safety violations of this division (where a 24-hour notice has been previously issued within the preceding sixty (60) days for the same violation) - a violation will be issued.
 - 2. For life safety violations of this division and for site plan violations - no 24-hour warning notice is required, and a violation may be issued at any time.

Sec. 82-371. Civil fines and penalties; ~~D~~denial of ~~F~~future ~~P~~permits to ~~R~~repeat ~~V~~violators.

(a) The following civil fines and penalties shall be imposed for violations of this division:

- (1) First Violation\$100.00
- (2) Second violation within the preceding twelve (12) months.....\$250.00
- (3) Third violation within the preceding twelve (12) months\$500.00
- (4) Fourth within the preceding twelve (12) months \$750.00
- (5) Fifth violation within the preceding twelve (12) months – a fine of \$1,000 and suspension of the sidewalk café permit for one weekend (Saturday and Sunday)
- (6) Sixth violation within the preceding twelve (12) months – a fine of \$1,000 and revocation of the sidewalk café permit for the remaining portion of the permit year
- (7) Failure to apply for permit - termination of sidewalk café operations
- (8) Failure to renew permit - suspension of sidewalk café operations

(b) A permittee who has been issued more than six (6) violations pursuant to this division within a permit year shall be prohibited from applying for and obtaining a sidewalk café permit for a period of two (2) consecutive permit years, following the permit year in which the applicant/permittee incurred the aforesated violations.

Sec. 82-372. Rights; payment of fine; right to appeal; failure to pay civil fine or to appeal.

(a) A violator who has been served with a notice of violation shall elect either to:

- (1) Pay the civil fine in the manner indicated on the notice; or
- (2) Request an administrative hearing before a special master, to appeal the decision of the code compliance officer which resulted in the issuance of the notice of violation. Warnings may not be appealed.

(b) The procedures for appeal shall be as set forth in ~~chapter 30, sections 30-72 and 30-73 hereof~~ article III.

(c) ~~If the named violator after notice fails to pay the civil fine or timely fails to request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code compliance officer. Failure of the named violator to appeal the decision of the code compliance officer within~~ ten (10) days after the date

printed on the notice of violation ~~the prescribed time period~~ shall constitute a waiver of the violator's right to administrative hearing. A waiver of the right to administrative hearing shall be treated as an admission of the violation, and penalties ~~may~~shall be assessed accordingly.

- (d) Any party aggrieved by the decision of a special master may appeal that decision to a court of competent jurisdiction by petition for writ of certioraris ~~provided in Section 162.11, Florida Statutes, as same may be amended from time to time.~~

(Ord. No. 92-2808, § 1(39-41), 10-8-92; Ord. No. 93-2897, § 2, 12-15-93; Ord. No. 97-3092, § 1(39-40), 9-10-97)

Sec. 82-373. Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.

- (a) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.
- (b) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator, and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two (2) months from the filing of any such lien which remains unpaid, the city may foreclose or otherwise execute on the lien.

(Ord. No. 92-2808, § 1(39-42), 10-8-92; Ord. No. 97-3092, § 1(39-41), 9-10-97)

Secs. 82-374--82-380. Reserved.

Subdivision II. Permit

Sec. 82-381. Required Action of City Manager upon failure to obtain Permitted areas; conditional permit; City Manager's right to remove sidewalk cafes.

- (a) Sidewalk cafes shall only be located where permitted by the city's zoning ordinance and land development regulations, as same may be amended from time to time.
- (ab) The approval and issuance of a sidewalk café permit is conditional at all times.
- (bc) It shall be unlawful for any person to operate a sidewalk cafe without first obtaining a valid permit as required by this division. ~~Sidewalk cafes~~

~~shall only be located where permitted by the city's zoning ordinance and land development regulations, as same may be amended from time to time.~~

- (ed) ~~The City Manager shall have the right to immediately remove, after 24-hours' written and/or verbal notice to the permittee, any sidewalk café furniture used in connection with a sidewalk cafe which is operating without a valid permit. The city and its officers and employees shall not be responsible for sidewalk cafe furniture, removed and/or relocated pursuant to this division.~~
- (e) The City Manager may cause the immediate removal, relocation and/or storage of all or part of a sidewalk café in emergency situations or for public safety considerations.
- (f) The City Manager may require the temporary removal and/or relocation of all or part of a sidewalk cafe when street, sidewalk, or utility repairs, or other public construction, necessitates such action. If such temporary removal exceeds fifteen (15) days, the City Manager shall pro-rate the remaining permit fee for each additional day the sidewalk café (or portion thereof) is removed and apply a credit toward the following year's permit fee or, upon written request by the permittee, refund the remaining fee to the permittee.
- (g) Upon written and/or verbal notification by the City Manager of a hurricane or other major weather event, or the issuance of a hurricane warning by Miami-Dade County, whichever occurs first, the permittee shall, within no more than four (4) hours of same, remove and place indoors all tables, chairs and any other sidewalk café furniture located on the right of way. The notification by the City Manager of a hurricane or other major weather event, or the issuance of a hurricane warning, shall constitute a public emergency situation as referenced in this division. The City Manager may remove, relocate, and/or store any sidewalk cafe furniture found on the right of way that has otherwise not been removed by the permittee pursuant to this subsection. Any and all costs incurred by the city for removal, relocation and/or storage of sidewalk cafe furniture shall be the responsibility of the permittee. Sidewalk cafés will not re-open for business following a hurricane or other major weather event until notified by the City Manager. Violation of this subsection (g) shall result in the issuance of an immediate \$1000.00 fine, and/or suspension, for up to thirty (30) days, of the sidewalk café permit.

Sec. 82-382. Application.

- (a) ~~Each~~ 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 café, ~~(and 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 café and the number of chairs inside the ~~restaurant~~ 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) ~~A copy~~ Copies of a current certificates of insurance, in the amounts and categories required by Section 82-3856.
 - (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 café furniture; and location(~~s~~) of doorways, steps, trees, and/or landscaped areas, fountains, parking meters, fire hydrants, bus shelters, directory/kiosks, sidewalk public benches, trash receptacles, and any other sidewalk existing public fixtures, furnishings and/or other obstruction(s), either existing or proposed, within the proposed sidewalk cafe area. The sidewalk café site plan shall be approved by the City Manager prior to the issuance of a sidewalk café permit and the A sidewalk cafe permit shall be specifically limited to the subject area shown on the approved site plan.
 - (7) Photographs, drawings or manufacturers' brochures fully describing the appearance and dimensions of all proposed tables, chairs, umbrellas, and any other sidewalk café furniture related to the operation of the sidewalk cafe. Tables, chairs, umbrellas, and any and all other sidewalk café furniture shall

be approved by the City Manager prior to the issuance of a sidewalk cafe permit.

- (78) A copy of the approved sidewalk café site plan, ~~as approved pursuant to Section 82-382(a)(6)~~, shall be maintained on the permittee's premises and shall be available for inspection by city personnel at all times.
- ~~(8) Photographs, drawings or manufacturers' brochures fully describing the appearance and dimensions of all proposed tables, chairs, umbrellas, and any other sidewalk café furniture related to the operation of the sidewalk cafe.~~
- (9) ~~Tables, chairs, umbrellas, and any and all other sidewalk café furniture, shall be approved by the City Manager prior to the issuance of a sidewalk cafe permit.~~
- (109) The annual application shall be accompanied by a non-refundable base application fee as set forth in appendix A.
- (110) 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 services 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 restaurant and/or 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 café 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 ordinance or state law.~~
- (15) Sidewalk cafés 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.

- (c) Renewals. As provided in Section 82-371(b), a permittee who has been issued more than six (6) violations pursuant to this division within a permit year, shall be prohibited from applying for and obtaining a sidewalk café permit for the following two (2) consecutive permit years.

Sec. 82-383. Permit Fee; renewal fee; penalties for late payments; review of fee. ~~for renewal fee; exception.~~

- (a) The annual permit fee for operation of a sidewalk cafe shall be as set forth in appendix A, and shall be based on a per square foot calculation of permitted sidewalk area (including the area between the tables and chairs).
- (b) The eCity mManager, in his reasonable discretion and judgment, may suspend or prorate the annual permit fee in cases of public construction or public emergency situations.
- (c) The permit fee shall be paid on or before October 1, and shall cover the time period from October 1 through September 30 of the following calendar year (permit year). If the permit fee exceeds \$2,000.00, the fee may be paid in two semi-annual installments, with the first installment due on October 1, and the second due on April 1. No permit shall be issued for any portion of a year, but any person/entity operating a sidewalk cafe for a period beginning after the commencement date of the full permit year (October 1) may obtain a permit for the remaining portion of that permit year upon payment of a pro-rated portion of the permit fee calculated from the first day of the month of issuance of the permit to the end of the permit year. Except as expressly provided in this division ~~Section 82-384(s)~~, no refund of the permit fee shall be granted.
- (d) Late payments for permit fees shall accrue at the rate of ten (10%) percent per annum for the first thirty (30) days. If the permit fee is not paid within sixty (60) days after it is due, the permit shall terminate automatically. Any continued operation of a sidewalk cafe after termination of a permit shall be construed as operating a sidewalk cafe without a valid permit, and the City Manager shall have the right to remove, upon 24-hour's written and/or verbal notice to the permittee, any ~~tables, chairs, umbrellas and any other~~ and all sidewalk café furniture used in connection with the sidewalk cafe.
- (e) As provided in Resolution No. 2003-25299, a review of the annual permit fee will be required whenever the change in the Consumer Price Index

(CPI), between the latest CPI and the date of the CPI used for the last fee adjustment, is five percent (5%) or greater.

Ord. No. 92-2808, § 1(39-30), 10-8-92; Ord. No. 95-2999, § 1, 6-21-95; Ord. No. 97-3092, § 1(39-31), 9-10-97; Ord. No. 98-3146, § 1, 10-21-98; Ord. No. 2000-3237, § 2, 4-12-00; Ord. No. 2003-3397, § 1, 2-26-03; Ord. No. 2003-3423, § 1, 7-30-03)

Editor's note: Ord. No. 2003-3397, § 1, adopted February 26, 2003, changed the title of § 82-383 from "Fee; renewal fee; penalties for late payments for renewal fee" to "Fee; renewal fee; penalties for late payments for renewal fee; exception."

Sec. 82-384. Permitted sidewalk café frontage; requests for expansions~~Standards, criteria and conditions.~~

(a) Sidewalk cafes are restricted to the sidewalk frontage of the restaurant to which the permit is issued or, if the restaurant is an ancillary and/or secondary use to another type of business establishment, the sidewalk café shall be restricted to the sidewalk frontage of the building (or portion thereof) of the "primary" business establishment (within which the restaurant is located). Only a restaurant whose premises are on a ground floor adjacent to and fronting the sidewalk may be issued a sidewalk café permit.~~The area of the permit may also extend by a maximum total of fifty (50) feet on one side and/or the other of the restaurant and/or the building (or portion thereof) of the business establishment (within which the restaurant is located), subject to the provisions of paragraph (b) of this section.~~

(b) An applicant for a sidewalk cafe permit may be permitted, upon prior written request by the permittee to the City Manager, to extend by a maximum total of fifty (50) feet in the right-of-way on one side and/or the other side of the restaurant to which the permit is issued ~~and/or the building, or portion thereof,~~ of the business establishment where the restaurant is located); the permittee shall make written application to the City Manager setting forth the reason(s) for the proposed expansion and provide a site plan showing the proposed expansion. All requests for expansions pursuant to this subsection (b) shall be reviewed by the City Manager on a case by case basis. In reviewing such requests, the City Manager, in making his determination to approve or deny, shall consider the following:

- (i) Pedestrian access
- (ii) Visibility of the front of the adjacent owner's business
- (iii) Obstructions
- (iv) Accessibility to the adjacent owner's business by patrons
- (v) The City Manager, shall solicit input from businesses and property owners on the same block including, without

limitation, the immediately adjacent (i.e. next door) business and property owners.

- (vi) The City Manager shall provide written notice to the adjacent business establishment (tenant) and property owner on to whose frontage the sidewalk café proposes to expand. The notification shall include the following information: the name and address of the permittee/business establishment requesting the expansion; the approximate location and size of the area requested; and the name and address of the city official and/or employee to forward comments to, and the time period within which to forward said comments (which time period shall be no less than fourteen (14) days). Said notice shall be sent, as to the adjacent business establishment (tenant), to the name and address on file with the city for the establishment's occupational license and, for the property owner, to the name and address identified in the records of the Miami-Dade County Property Tax Appraiser's Office. Any objections not submitted and received by the city within the date provided in the notice shall be deemed waived.
- (vii) The City Manager may also consider any history of violations and/or warnings pursuant to Section 82-371.

In the event of approval by the City Manager to expand a sidewalk café pursuant to this subsection (b), the additional square footage will be computed into the new permit fee.

Notwithstanding the City Manager's approval of a sidewalk café expansion pursuant to this subsection (b), in the event that the adjacent business establishment and/or property owner (on to which a sidewalk café has expanded) subsequently elects to apply for a sidewalk café permit to operate a café in front of its premises, that new applicant/permittee shall provide the City Manager with notice of such intent stating the applicant's name; the property address; the name of the business establishment and/or the restaurant (of which the café is a part of); and the anticipated opening date. The city will provide the business establishment (tenant) and property owner which is currently expanding into the proposed new applicant/permittee's frontage with a courtesy copy of the notice. Following receipt of said written notice by the city, and provided that the new applicant/permittee obtains a sidewalk café permit, as well as any other required permits and/or licenses for operation of the business establishment and/or restaurant associated with the proposed new sidewalk cafe, then the City Manager's prior consent for expansion shall terminate, and the City shall provide written notice to the adjacent sidewalk café permittee

advising it of such termination, and providing a termination date therefore. The city's notice shall provide the adjacent property owner with at least seven (7) calendar days prior to the effective date of termination of the expansion. Upon the termination date of the city's consent to expansion, the sidewalk café permit and the permit fee will be adjusted accordingly.

~~In the case of sidewalk cafes on Lincoln Road, an expansion of a sidewalk café across the centerline of Lincoln Road Mall will be allowed upon a determination by the City Manager that:~~

- ~~(i) the applicant/permittee would otherwise be significantly deprived of the use of the right of way for which the sidewalk café permit is sought;~~
- ~~(ii) there are special circumstances and conditions that exist, which were not self-created by the applicant/permittee, and are peculiar to that portion of the right of way, and are not generally applicable to other rights of way in the immediate area;~~
- ~~(iii) the granting of the expansion is the minimum that will allow the applicant/permittee's reasonable use of the area for its sidewalk café operations; and~~
- ~~(iv) the granting of the expansion will not significantly impair the ability of pedestrians on that particular portion of Lincoln Road Mall to walk comfortably from one side of the Mall to the other.~~

~~(1) In order for the sidewalk café permit area to extend into the portion of the right of way or across the centerline of Lincoln Road Mall pursuant to this subsection, the permittee must make written application to the City Manager setting forth the reason(s) for the proposed expansion and providing a site plan showing the proposed expansion.~~

~~(2) All requests shall be reviewed by the City Manager on a case by case basis. In reviewing such requests, the City Manager, in making his determination to approve or deny, shall consider the following:~~

- ~~(i) Pedestrian access;~~
- ~~(ii) Visibility of the front of the adjacent owner(s') business(es);~~
- ~~(iii) Obstructions;~~
- ~~(iv) Accessibility to the adjacent owner(s') business(es) by patrons;~~

- ~~(iv) The City Manager, shall solicit input from businesses and property owners on the same block;~~
- ~~(vi)(ii) The City Manager may also consider any history of violations and/or warnings pursuant to Section 82-371; and~~
- ~~(vii) In the case of a request to extend the permit area across the centerline of Lincoln Road Mall, the City Manager shall also consider the criteria as set forth in the first paragraph of subsection (b).~~

(c) In the case of sidewalk cafes on Lincoln Road, an expansion of a sidewalk café across the centerline of Lincoln Road Mall may also be permitted. The permittee shall make written application to the City Manager setting forth the reason for the proposed expansion and provide a site plan showing the proposed expansion. Requests for expansions pursuant to this subsection (c) shall be reviewed by the City Manager on a case by case basis. In reviewing such requests, the City Manager shall consider the following:

- (i) the applicant/permittee would otherwise be significantly deprived of the use of the right of way for which the sidewalk café permit is sought;
- (ii) there are special circumstances and conditions that exist, which were not self-created by the applicant/permittee, and are peculiar to that portion of the right of way, and are not generally applicable to other rights of way in the immediate area;
- (iii) the granting of the expansion is the minimum that will allow the applicant/permittee's reasonable use of the area for its sidewalk café operations; and
- (iv) the granting of the expansion will not significantly impair the ability of pedestrians on that particular portion of Lincoln Road Mall to walk comfortably from one side of the Mall to the other.

~~(e)~~ In the event of approval by the City Manager to expand a sidewalk café pursuant to this subsection (c), the additional square footage will be computed into the new permit fee.

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

~~(da)~~ The permittee shall take any and all actions to assure that its use of the public right of way in no way interferes with patrons of other sidewalk cafes, or limits their free, unobstructed passage thereto.

- (b) Sidewalk cafes shall be located in such a manner that a distance of not less than five (5) feet is maintained at all times as a clear and unobstructed five (5) foot pedestrian path around public amenities and areas such as, by way of example, fountains, landscaped areas (excluding city planters), and seating/shade structures. Notwithstanding the preceding, the City Manager, in his reasonable judgment and discretion, and on a case-by-case basis, may approve and allow for a pedestrian path of less than five (5) feet where an applicant/permittee's sidewalk café operation would be significantly impacted. In considering such cases, and in determining whether an applicant/permittee is "significantly impacted," the City Manager may apply the criteria set forth in Section 82-384 (c)(i)-(iv). A five (5) foot pedestrian path shall also be required and established where the City Manager, in his reasonable judgment and discretion, determines that the operation of a sidewalk café inhibits pedestrian access to an adjacent business establishment or adversely affects the visibility of an adjacent storefront.
- (c) No tables, chairs, umbrellas, or other sidewalk café furniture shall be permitted within ten (10) feet of a bus bench and/or bus shelter. A distance of five (5) feet shall be maintained from taxi stands, fire hydrants, bike racks, directory signage/kiosks, and/or other similar public street furniture and/or fixtures.
- (d) No tables, chairs, umbrellas or other sidewalk café furniture shall be permitted within five (5) feet of an alley, pedestrian crosswalk, or corner curb cut.
- (e) The pedestrian path for Lincoln Road shall be a twelve (12) foot, clear path for emergency and maintenance vehicles, The exact location of the path on each block shall be determined by the City Manager, in his reasonable judgment and discretion, and shall be incorporated into the sidewalk cafe site map of Lincoln Road.
- ~~(e) No tables, chairs, umbrellas, or other sidewalk café furniture shall be permitted within ten (10) feet of a bus stop bench. A distance of five (5) feet shall be maintained from taxi stands, fire hydrants, alleys, bike racks, or any type of street furniture and/or public fixtures.~~
- ~~(f) No tables, chairs, umbrellas or other sidewalk café furniture shall be permitted within five (5) feet of a pedestrian crosswalk or corner curb cut.~~
- ~~(g) Sidewalk cafes shall be located in such a manner that a distance of not less than five (5) feet is maintained at all times as a clear and~~

~~unobstructed five (5) foot pedestrian path around public amenities and areas including, without limitation, fountains, landscaped areas, and other similar public areas and/or amenities. For the purposes of the minimum clear path, parking meters, traffic signs, trees and all similar obstacles shall constitute and be considered obstructions. A five (5) foot pedestrian path shall also be required and established where the City Manager, in his reasonable judgment and discretion, determines that the operation of a sidewalk café inhibits pedestrian access to an adjacent business establishment or adversely affects the visibility of an adjacent storefront.~~

~~(h) The pedestrian path for Lincoln Road shall be a twelve (12) foot, clear path for emergency and maintenance vehicles, The exact location of the path on each block shall be determined by the City Manager, in his reasonable judgment and discretion and shall be incorporated into the sidewalk cafe site map of Lincoln Road.~~

~~(if) No object shall be permitted around the perimeter of an area occupied by tables and chairs which would have the effect of forming a physical or visual barrier discouraging the free use of the tables and chairs by the general public, or (in the case of Lincoln Road) which would have the effect of obstructing the pedestrian path or the public access between the north and south sides of Lincoln Road.~~

~~(j) The City Manager may cause the immediate removal or relocation of all or parts of a sidewalk café, in emergency situations or for public safety considerations.~~

~~(k) The City Manager may require the temporary removal of sidewalk cafes when street, sidewalk, or utility repairs, or other public construction, necessitates such action. If such temporary removal exceeds fifteen (15) days, the City Manager shall pro-rate the remaining permit fee for each additional day the sidewalk cafe is removed and apply a credit toward the following year's permit fee, or, upon written request by the permittee, refund the remaining fee to the permittee.~~

~~(l) The city and its officers and employees shall not be responsible for sidewalk cafe furniture, removed and/or relocated pursuant to this division.~~

~~(mg) The area covered by a sidewalk café permit, and the sidewalk and street immediately adjacent to it, shall be maintained in a clean, neat and orderly appearance at all times by the permittee. The area of the sidewalk, curb and gutter immediately adjacent to the sidewalk cafe shall be cleared of all debris during hours of operation, and again at~~

the close of each business day, or as may otherwise be determined by the City Manager. The permittee shall be responsible for pressure cleaning the floor surface on which the sidewalk cafe is located at the close of ~~business~~ each business day. The city shall pressure wash the right-of-way from time to time in accordance with such schedule as shall be established in the reasonable judgment and discretion of the City Manager. In establishing said schedule, the City Manager shall use reasonable efforts to assure that the ~~c~~City's pressure cleaning of the public right of way occurs at such times as will cause the least disruption to sidewalk café operations.

(~~h~~) Tables, chairs, umbrellas and any other sidewalk cafe furniture shall be maintained in a clean, attractive, and orderly appearance, and shall be maintained and kept in good repair at all times.

(~~e~~) All sidewalk café furniture shall be of high quality, design, materials, and workmanship so as to ensure the safety and convenience of the public.

(~~p~~) Only the sidewalk cafe furniture specifically shown on the approved sidewalk café site plan shall be allowed in the permit area.

(~~q~~) All tables, chairs, umbrellas, and any other sidewalk café furniture shall be readily removable, and shall not be physically attached, chained, or in any other manner affixed to any public structure, street furniture, signage, and/or tree, post, sign or other public fixture, or to a curb; and/or public right of way ~~within or near the permitted area~~.

(~~f~~) The stacking, or piling up, of chairs shall be prohibited on the right of way. Tables, chairs and closed-up umbrellas may remain on the right of way as long as they are placed in an orderly manner. Tables and chairs may remain set up for business on sidewalk cafes on Lincoln Road Mall that are set up and open for business before 11:00 AM. Any sidewalk cafes not set up and open for business before 11:00 AM shall remove all chairs, and all other sidewalk café furniture, at the close of each business day and store them inside the premises. The permittee may maintain ~~such~~approved sidewalk café furniture such as rolling service stations, service carts, and bussing stations in the permit area only during hours of operation, ~~subject to review and approval by the City Manager;~~ ~~P~~provided however, that planters that cannot be readily removed may remain within the permit area subject to the provisions of subsection (~~z~~s) hereof. On Lincoln Road Mall, rolling service stations, service carts, and bussing stations shall not be permitted to be placed within five (5) feet of the walls, columns, or posts of the Lapidus structures, ~~C~~city planters, or in front of other storefronts and/or business establishments. The City Manager may

require a permittee to store its tables, chairs and/or umbrellas off of the right of way if, in his reasonable judgment and discretion, the City Manager determines that the sidewalk café permit area and immediately adjacent public right of way are not being adequately maintained in accordance with this division.

(sm) No storage of dishes, silverware or other similar sidewalk cafe equipment shall be allowed in the permit area, or in any other portion of the public right-of-way, (or outside the structural confines of the building in which the restaurant is located,) during non-business hours.

~~(t) Sidewalk cafés shall comply with all applicable accessibility codes including, without limitation, the Americans with Disabilities Act (ADA) and state codes addressing accessibility for building construction, as same may be amended from time to time.~~

(un) There shall be no live entertainment or speakers placed in the permit area unless expressly permitted as a special event. Conditions such as hours and days of operation and audio levels will be regulated by the city's special events office, and these may vary during the year.

~~(vo) One menu board plus and one specials board shall be permitted, per sidewalk café, for every fifty (50) feet of frontage. The location, design, materials and color of the menu board and/or specials board shall be approved by the City Manager, and the menu board and/or specials board location shall be shown on the sidewalk café site plan. Menu boards will be no larger than six (6) square feet; may not be internally illuminated; and the top of the menu boards shall not exceed five feet, six inches (5'6") from grade. The menu board and/or specials board shall not be a sandwich board or A-frame sign.~~

(wp) No food preparation, food displays, food storage, or refrigeration apparatus or equipment, or fire or fire apparatus or equipment, shall be allowed on the right of way.

(xq) No food displays shall be permitted on the public right-of-way. No advertising signs or business identification signs shall be permitted in on the public right-of-way except that the restaurant name and/or its logo may be permitted on umbrellas but such logos and/or lettering may not exceed six (6") inches in height as permitted in subsection (y) of this section.

(yr) ~~Umbrellas and other similar sidewalk café furniture shall be fire-retardant, pressure-treated or manufactured of fire-resistant material. All umbrellas (including type, number and location of) shall be reviewed and approved by the City Manager. No portion of an umbrella~~

shall be less than six feet eight inches (6'8") above the right of way. ~~Signs are prohibited on umbrellas, as well as on chairs, tables and other sidewalk café furniture, except that the restaurant name and/or its logo may be permitted on umbrellas. Lettering and/or logos may not exceed six (6") inches in height. Two or more umbrellas may not be clipped, zipped or otherwise fastened together in order to form a tent-like structure. Clear plastics or other materials may not be fastened, rolled or otherwise be attached to umbrella edges in order to create an enclosure.~~

(zs) ~~The City Manager may permit the use of plant containers (planters) manufactured of terra-cotta or polymer materials, as decoration with, the number and size to be reviewed by the City Manager at time of application. Placement of planters within sidewalk cafe areas shall be five feet (5'-0") apart or greater. It shall be the permittee's responsibility to immediately remove said planters, upon written and/or verbal notice from the City Manager, in case of emergency or other special circumstances as provided in this division. Maximum size of planters shall not exceed the following:~~

- (1) Rectangular planters: 30 inches long, by 15 inches wide by 20 inches high.
- (2) Round planters: 24 inches diameter by 24 inches high.
- (3) Planters 20 inches or higher shall be on rollers or on rolling bases.
- (4) The combination of planters and plant height should not exceed a table height of 34 inches.

~~(4) Plants shall be properly maintained. Distressed plants shall be promptly replaced. Plant fertilizers which contain material that can stain the sidewalks shall not be allowed. Water drainage from any plants onto the sidewalk shall not be allowed. Potted plants shall have saucers or other suitable systems to retain seepage. The combination of planters and plant height should not exceed the table height of 34 inches.~~

(aat) Permittees may make written request to the City Manager to use City electricity for powering floor fans during the summer months. Summer months are defined as the period beginning on May 1st, and ending on September 30th. The City Manager will make electrical outlets operable upon payment of a flat fee, which fee shall be determined, and may be adjusted from time to time, in the reasonable judgment and discretion of the City Manager ~~of as determined and presented in the reasonable business judgment and discretion of the City Manager,~~ for each of the calendar days during the summer months. City electrical outlets will be restricted to powering floor fans only. Using

the electrical outlets for powering lights, menu board lighting, and any other electrical device is strictly prohibited. Permittees violating this restriction will have the electrical boxes deactivated and forfeit any monies paid for electrical use. Fans must be UL approved for outdoor use. Extension cords are not allowed.

(bbu) No permit shall be granted on Lincoln Road in an area designated in the sidewalk café site map as restricted for special and cultural events; provided however, that the City Manager may approve temporary use of such area(s), on a case by case basis, and only for a defined, limited time. ~~Area(s) restricted for special and cultural events shall be designated in the sidewalk café site map.~~

~~(cc) Upon written and/or verbal notification by the City Manager of a hurricane or other major weather event, or the issuance of a hurricane warning by Miami-Dade County whichever occurs first, the permittee shall, within four (4) hours of same, remove and place indoors all tables, chairs and any other sidewalk café furniture located on the right of way. The notification by the City Manager of a hurricane or other major weather event, or the issuance of a hurricane warning, shall constitute a public emergency situation as referenced in this division. The City Manager may remove any sidewalk café furniture found on the right of way that has otherwise not been removed by the permittee pursuant to this subsection. Any and all costs incurred by the city for removal or storage of sidewalk café furniture shall be the responsibility of the permittee. The city shall not be responsible for any damages to, or loss of, sidewalk café furniture which is removed and stored pursuant to this subsection. Sidewalk cafés will not re-open for business following a hurricane or other major weather event until notified by the City Manager. Violation of this subsection shall result in the issuance of an immediate \$1000.00 fine, and/or suspension, for up to thirty (30) days, of the sidewalk café permit.~~

Sec. 82-3856. Indemnification and insuranceLiability and insurance.

- (a) The permittee agrees to indemnify, defend, save and hold harmless the city, its officers and employees from any and all claims, liability, lawsuits, damages and causes of action which may arise out of the permit or the permittee's activity on the public right of way.
- (b) The permittee agrees to meet and maintain for the entire permit period, at its own expense, the following requirements:
 - (1) Commercial general liability insurance in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage. The city must be named as an additional insured on

this policy, and an endorsement must be issued as part of the policy reflecting compliance with this requirement.

- (2) For sidewalk cafes which serve alcoholic beverages, liquor liability insurance in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage. The city must be named as an additional insured on this policy, and an endorsement must be issued as part of the policy reflecting compliance with this requirement.
- (3) Workers' compensation and employers' liability as required by the state.

(4c) All policies must be issued by companies authorized to do business in the state and rated B+:VI or better per Best's Key Rating Guide, latest edition.

(5d) The city must receive 30 days' written notice prior to any cancellation, non-renewal or material change in the coverage provided.

(6e) The permittee must provide and have approved by the city an original a certificate of insurance as evidence that the requirements set forth in this §section have been met prior to commencing operations.

(f) Failure to comply with these requirements shall be deemed to be operating without a valid permit and shall cause an immediate suspension or revocation of the permit.

SECTION 2. REPEALER

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. 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 4. 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 relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect the 22nd day of March, 2008.

PASSED and ADOPTED this 12th day of March, 2008.

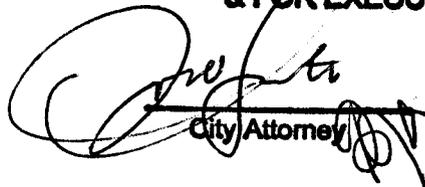
ATTEST:


Matti Herrera Bower **MAYOR**


CITY CLERK Robert Parcher

F:\atto\AGUR\RESOS-ORD\Sidewalk Cafe Ordinance (Second and Final Reading - Amendment to Ord. 2-27-08 - Version B).doc

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


City Attorney 3/4/08
Date

Condensed Title:

An Ordinance Of The Mayor And City Commission Of The City Of Miami Beach, Florida Amending The City's Sidewalk Café Ordinance, As Codified In Sections 82-366 Through 82-386 Of The City Code; Providing For Repealer, Codification, Severability, And An Effective Date.

Key Intended Outcome Supported:

Make City More Business Friendly. Increase Resident Satisfaction with Level of Code Enforcement.
Supporting Data (Surveys, Environmental Scan, etc.): 63% of businesses were either very satisfied or satisfied with the fairness and consistency of enforcement of zoning or ordinances by the City of Miami Beach government for businesses.

Issue:

Shall the Mayor and City Commission approve the Ordinance amendment?

Item Summary/Recommendation: SECOND READING PUBLIC HEARING

Second Reading -- The Ordinance regulating the administration and operation of sidewalk cafés was approved by the City Commission on December 12, 2007. Two items were referred to the Neighborhoods/ Community Affairs Committee, which met on January 30, 2008. Action on the storage of liquefied petroleum gas cylinders on the public Right-of-Way was deferred for future consideration after the Fire Marshal meets with a subcommittee of sidewalk café owners and operators to determine how to best deal with this issue. The second item, a discussion into changing the 12 feet pedestrian path into a 14 feet pedestrian path, was considered by the Committee, and it was decided to send the item for further discussion at the City Commission meeting on February 13, 2008.

The following amendments, proposed by Commissioner Tobin were also considered and approved by the Committee:

1. Amending Sec. 82-384(g) (now Section 82-385(b)), excluding planters from the 5 feet minimum pedestrian path requirement and authorizing the City Manager to approve a pedestrian path of less than 5 feet if an applicant/ permittee is significantly impacted.
2. Amending Sec. 82-384(b)(2)(6) (now Section 82-384(b)) regarding sidewalk café expansions. It requires the City Manager to provide written notice to tenants and property owners onto whose frontage a sidewalk café proposes to expand.
3. Amending Sec. 82-384(c) (now Section 82-384(b)) providing for notice of termination of a sidewalk café extension area when a permittee seeks to use the same area. It allows the City Manager to terminate the expansion in the event the adjacent business/ property owner subsequently elects to apply for a permit to operate a sidewalk café in front of its establishment.

The amended Ordinance also has been reorganized to place all similar subject items under the same sections of the Ordinance for better usability.

At the Commission meeting on February 13th, 2008 the Administration recommended retaining the existing 12 feet wide path for emergency and maintenance vehicles on Lincoln Road because there were about four (4) sidewalk cafes where a 14 feet path was not possible to create without decreasing their approved footprints. In addition, most sidewalk café owners and/ or operators were opposed to widening the existing 12 feet path to 14 feet because it would create operational problems.

The Sidewalk Café Ordinance was approved on First Reading with the following amendments:

1. Amend the proposed 14 feet-wide clear path to 12 feet-wide path (existing) for emergency and maintenance vehicles (see Sec. 82-385(e)).
2. Clarify in the Ordinance that at least the first floor must be a café or restaurant in order to take advantage of the sidewalk area (See Sec. 82-384(a)).

THE ADMINISTRATION RECOMMENDS APPROVAL OF THE ORDINANCE ON SECOND READING.

Advisory Board Recommendation:

N/A

Financial Information:

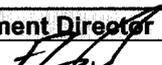
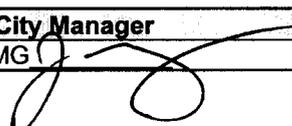
Source of Funds:		Amount	Account
	1		
	2		
OBPI	Total		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Fernando Vazquez, City Engineer ext 6399

Sign-Offs:

Department Director FHB 	Assistant City Manager RCM 	City Manager JMG 
--	---	---

T:\AGENDA\2008\February 13\Regular\Sidewalk Cafe Ordinance First Reading SUMM.doc



MIAMIBEACH

AGENDA ITEM R5C
 DATE 3-12-08



MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti H. Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

**SECOND READING
PUBLIC HEARING**

DATE: March 12, 2008

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY'S SIDEWALK CAFÉ ORDINANCE, AS CODIFIED IN SECTIONS 82-366 THROUGH 82-385 OF THE CITY CODE; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

Approve the Ordinance on Second Reading.

FUNDING

Non Applicable

BACKGROUND

The City's new Sidewalk Café Ordinance was approved on first reading on February 13, 2008. Prior to the February 2008 meeting, another version of the Sidewalk Café Ordinance was approved on second and final reading on December 12, 2007. At that time, the following items were referred to the Neighborhoods/Community Affairs Committee, which met on January 30, 2008:

1. **Storage of liquefied petroleum gas cylinders on the public Right-of-Way (ROW).**

A presentation was made by the Fire Marshal and the Public Works Director recommending against the storage of gas cylinders on the ROW (i.e. streets, sidewalks, alleys, or Lincoln Road Mall). After the Committee heard public comment from several café owners and operators, it was decided that the item should be deferred further, and re-considered following a meeting among the Fire Marshal and sidewalk café operators to find storage solutions that would meet the Fire Code and would be less disruptive to the owners/ operators.

2. **Discussion regarding extension of the twelve (12) feet pedestrian path on Lincoln Road Mall.**

The Administration presented block by block overlays of Lincoln Road Mall, depicting fourteen (14) feet and sixteen (16) feet pedestrian pathways which could replace the existing required twelve (12) feet pedestrian pathway. The Administration did not recommend the implementation of a sixteen (16) feet pedestrian pathway because it would prove disruptive to currently approved permittees, making it difficult to replace displaced tables and chairs to other areas of Lincoln Road Mall. The Administration recommended that a fourteen (14) feet pathway could be implemented with a potential of only 4 to 5 sidewalk cafes having to lose some tables and chairs. The Committee directed staff to work with the impacted sidewalk café owners, and to present a fourteen (14) foot pedestrian path as an amendment to the Ordinance, for further discussion by the City Commission on February 13, 2008.

Commission Memorandum
Sidewalk Café Ordinance Second Reading
March 12, 2008
Page 2 of 2

In addition to the aforesaid items (and subsequent to the adoption of the new Sidewalk Café Ordinance on December 12, 2008), Commissioner Tobin met with various sidewalk café operators, as well as with the Administration and City Attorney's Office, and proposed the following additional amendments to the Committee, which were also be presented to the City Commission on February 13, 2008:

1. Amending Section 82-384(g) (now referenced as Section 82-385(b) in the attached Ordinance) excluding City planters from the five (5) feet minimum pedestrian path requirement and authorizing the City Manager to approve a pedestrian path of less than five (5) feet if an applicant/permittee is "significantly impacted."
2. Amending Section 82-384(b)(2)(vi) (now referenced as Section 82-384(b) in the attached Ordinance) regarding sidewalk café expansions. It requires the City Manager to provide written notice to tenants and property owners onto whose frontage a sidewalk café proposes to expand. It provides the tenant and property owner with a time period of at least fourteen (14) days to provide comments. Any objections not submitted and received by the City by the date provided shall be deemed waived.
3. Amending Section 82-384(c) (now referenced as Section 82-384(b) in the attached Ordinance) providing for notice of termination of a sidewalk café expansions when a permittee seeks to use the same area. It allows the City Manager to terminate a sidewalk café expansion in the event the adjacent business/ property owner subsequently elects to apply for a permit to operate a sidewalk café in front of its establishment. The City shall provide at least a seven (7) calendar days notice to the affected owner prior to the effective date of termination of the expansion. The sidewalk café permit fee will be adjusted accordingly.

The Committee unanimously recommended the aforesaid amendments. Additionally, following the Committee meeting, Commissioner Tobin requested that the Administration and City Attorney's Office further review the Sidewalk Café Ordinance, with the specific purpose of eliminating repetitive language; clarifying certain provisions; and re-organizing and re-grouping sections of the Ordinance and organizing like issues by subject matter. Accordingly, in addition to the amendments considered and recommended by the Neighborhoods/Community Affairs Committee, the attached amended Sidewalk Café Ordinance has been re-organized into a more "user-friendly" version.

At the Commission meeting on February 13th, 2008 the Administration recommended retaining the existing 12 feet wide path for emergency and maintenance vehicles on Lincoln Road because there were about four (4) sidewalk cafes where a 14 feet path was not possible to create without decreasing their approved footprints. In addition, most sidewalk café owners and/ or operators were opposed to widening the existing 12 feet path to 14 feet because it would create operational problems.

The Sidewalk Café Ordinance was approved on First Reading with the following amendments:

1. Amend the proposed 14 feet-wide clear path to 12 feet-wide path (existing) for emergency and maintenance vehicles (see Sec. 82-385(e)).
2. Clarify in the Ordinance that at least the first floor must be a café or restaurant in order to take advantage of the sidewalk area (See Sec. 82-384(a)).

Conclusion:

The Administration recommends approval of the Ordinance on Second Reading.

JMG\RCM\FHB\IRTH

CITY OF MIAMI BEACH NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY given that a second reading and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, March 12, 2008**, to consider the following:

10:30 a.m.

An Ordinance Amending The Land Development Regulations Of The Code Of The City Of Miami Beach, By Amending Chapter 118, "Administration And Review Procedures," Article IV, "Conditional Use Procedure," By Amending Section 118-193 To Amend The Procedures For Obtaining An Extension Of Time; By Amending Article VI, "Design Review Procedures," By Amending Section 118-258 To Amend The Procedures For Obtaining An Extension Of Time; By Amending Article VIII, "Procedure For Variances And Administrative Appeals," By Amending Section 118-355 To Amend The Procedures For Obtaining An Extension Of Time; By Amending Article X, "Historic Preservation", By Amending Section 118-532 To Amend The Procedures For Obtaining An Extension Of Time And By Amending Section 118-564 To Amend The Procedures For Obtaining An Extension Of Time And To Clarify The Requirements And Procedures For Obtaining A Variance From The Historic Preservation Board.

Inquiries may be directed to the Planning Department at (305) 673-7550.

11:00 a.m.

An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 3 "Lobbyists," Section 2-482 Thereof Entitled "Registration" By Expanding Upon Lobbyists Registration Requirements To Include Disclosure Of Certain Contractual Relationships.

Inquiries may be directed to the Legal Department at (305) 673-7470.

11:30 a.m.

An Ordinance Amending The City's Sidewalk Café Ordinance, As Codified In Sections 82-366 Through 82-385 Of The City Code.

Inquiries may be directed to the Public Works Department at (305) 673-7080.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact (305) 604-2489 (voice), (305)673-7218(TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Ad #478



MIAMI BEACH