MIAMIBEACH

OFFICE OF THE CITY ATTORNEY

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COMMISSION MEMORANDUM

TO: MAYOR DAN GELBER
MEMBERS OF THE CITY COMMISSION   **SECOND READING**
JIMMY L. MORALES, CITY MANAGER

FROM: RAUL J. AGUILA, CITY ATTORNEY

DATE: MAY 8, 2019

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 V, ENTITLED "BEACHES," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 82-443 THEREOF, ENTITLED "HIGH IMPACT EVENTS ON BEACH PROPERTY," IN ORDER TO EXPAND THE AUTHORITY OF THE CITY MANAGER TO IMPOSE ADDITIONAL IMMEDIATE MEASURES FOR HIGH IMPACT EVENTS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

On April 10, 2019, after extensive discussion and public comment, the City Commission adopted an Ordinance on first reading, sponsored by Mayor Dan Gelber, amending the City's existing legislation, as codified in Section 82-443 of the City Code, pertaining to High Impact Events occurring on public property.

The Ordinance was referred to the Neighborhoods and Community Affairs Committee between first and second reading, with the direction that the Committee review the definition and criteria for declaring a "high impact event," as well as to review the City Manager's prescribed authority with regard to the measures he could impose without City Commission approval during such periods.

The Neighborhoods and Community Affairs Committee heard the item at its April 24, 2019 meeting and, at that time, accepted recommended amendments proffered by Commissioner (and NCAC Chairperson) Michael Góngora and the City Attorney's Office. Those amendments were subsequently discussed with Mayor Gelber who, after reviewing same with the City Attorney's Office, has agreed to their inclusion into the Ordinance on second reading.

The proposed amendments are summarized as follows:

1. In Section 82-443(a), the term "Beach property" has been changed to "High Impact Zone." This is significant because the definition of such term has been substantially narrowed to comport with the direction provided by the City Commission and NCAC; that is, to capture

and encompass the most immediate areas within the City where these high impact events or periods are occurring. As drafted in the original legislation for Section 82-443 in 2016, the term "beach property" encapsulated the City's public beaches. The first reading version of the Ordinance on April 10, 2019, expanded the term to include not only the beaches, but all City/public property located within the municipal boundaries of the City of Miami Beach. The City Commission expressed the concern that this definition may have been overbroad. Now, the renamed and redefined term, "High Impact Zone," means only the beaches and the "Entertainment District" (i.e. those areas of concern in the South Beach area of the City where the most intense, large scale "high impact" events have historically occurred). The "Entertainment District" is generally defined as Ocean Drive, from 5th to 15th Streets; and Collins Avenue, from 5th to 16th Streets; and Washington Avenue, from 5th to 16th Streets.

2. The term "High Impact Event" in Section 82-443(a), has been renamed "High Impact Period" to encompass any event, activity or period of time occurring (or in progress) within a High Impact Zone.

3. The City Manager previously had eight (8) different criteria, the occurrence of any one (1) of which could be utilized to declare a "High Impact Event." Now, however, the criteria within which the City Manager can declare a High Impact Period is confined to:

    a. an unpermitted event, activity, or period of time, within a High Impact Zone, that in the prior year generated (or if there was no event in a prior year, is expected to generate) attendance by more than 10,000 people; or

    b. a specially permitted event, within a High Impact Zone, that is expected to result in attendance by more than 25,000 people.

4. With regard to the City Manager's authority to impose immediate measures for High Impact Periods within High Impact Zones, the first reading version of the Ordinance provided ten (10) measures which could be immediately implemented upon the City Manager's determination. For second reading, those measures (of which there are now nine (9)) have also been refined, and include the ability to suspend the issuance of business tax receipts to promoters, and suspend, or close, all or part of a sidewalk café. (These last two measures are presented in separate Ordinances which are also before the City Commission on second reading at the May 8, 2019 Commission meeting).

5. Finally, in Section 82-443(c), the City Manager is required to provide written notice to the Mayor and City Commission before declaring a High Impact Period, setting forth those measures he intends to take and their intended duration. Additionally, the City Manager is now only authorized to implement such measures for a maximum period of seventy-two (72) consecutive hours, and must call an emergency meeting of the City Commission to seek the Commission's approval to extend such measures (beyond 72 consecutive hours).

The amended Ordinance has been refined on second reading to:

(i)   provide for a narrower geographic area of applicability, by defining the term "High Impact Zone" to only include the City's beaches and the Entertainment District in South Beach;

(ii)   refine the criteria that defines a "High Impact Period";

(iii)   address the most immediate and necessary measures that the City Manager can take during a High Impact Period; and

(iv)   limit the City Manager's authority to a specific duration (i.e. 72 hours), after which City Commission approval would be required to continue any imposed measures.

The re-drafted Ordinance has resulted in a better, balanced version than the current version in the City Code, and the version presented on first reading, and I recommend that the City Commission adopt same on second and final reading.

RA/AB/sp