MIAMIBEACH

OFFICE OF THE CITY ATTORNEY
RAUL AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

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

FROM: **RAUL J. AGUILA, CITY ATTORNEY**

DATE: **February 12, 2020**

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 62 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED, "HUMAN RELATIONS," BY AMENDING ARTICLE II, ENTITLED "DISCRIMINATION," BY AMENDING SECTION 62-86 ENTITLED "DISCRIMINATION IN EMPLOYMENT," TO EXTEND EMPLOYMENT PROTECTIONS TO INDEPENDENT CONTRACTORS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

Pursuant to the request of Commissioner Steven Meiner, the above-referenced Ordinance is submitted on First Reading for consideration by the Mayor and City Commission at the February 12, 2020 City Commission meeting.

The United States is in the middle of an independent labor explosion. As of 2016, the Bureau of Labor Statistics estimates that there are 15 million independent workers in the United States, and that number has been on a mostly steady growth track since 2000. In 2017, Fiverr, an online marketplace for freelance services, conducted a study analyzing the growth of businesses without any payroll among tech, artistic and professional service occupations, including lawyers with private practices, solo contractors like plumbers, or software engineers, and artists. Fiverr found that between 2011 and 2015, the number of these solo businesses grew 11 percent across the 15 major metro areas measured.

In the Miami metropolitan area, which includes Broward and Palm Beach counties, this group zoomed ahead 23 percent—and their revenues grew even faster, at a rate of 32 percent. This workforce now comprises 2.13 percent of the Miami's economy in 2016, the most for any major metro. Additionally, Miami metropolitan area ranked as the fourth biggest market for independent professionals in the country.

However, despite their rapidly growing numbers, independent workers also face unique challenges, such as limited legal protections. Legal protection for self-employed professionals varies wildly across the United States depending on whether they are independent contractors or run their own corporations. For example, under federal law, a contract worker lacks the right to sue for sexual harassment or gender discrimination, for example, because workplace civil rights laws do not apply. Currently, only New York City, California, Washington and Pennsylvania extend other workplace protections to contractors.

Currently, Section 62-86 of the City Code prohibits employers from discriminating against any individuals on any basis articulated in Section 62-33 of the City Code, with respect to that individual's compensation, terms, conditions or privileges of employment because of such individual's actual or perceived classification category. However, Section 62-86 does not explicitly provide for protections for independent contractors.

The City of Miami Beach prides itself on being a diverse community, and a leader in adopting policies of inclusiveness, and has demonstrated a long history of opposing discrimination based on gender. As such, the City has an important government interest in protecting independent contractors and providing them with legal protections under the City Code.

This amendment will not significantly impact the City. There could potentially be new claims by independent contractors against the City for discrimination, but the City already follows a policy for not discriminating on the basis of protected characteristics. As such, any potential uptick is expected to be negligible. In addition, there may be new complaints by independent contractors filed with the City against private employers, requiring City staff to investigate these additional complaints.

Notwithstanding the amendments to Sections 62-31 and 62-86, the entire Human Rights Ordinance has been included for your review and reference.

RA/RR/FA/ps