

ORDINANCE NO. 2020- _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 70 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "MISCELLANEOUS OFFENSES," BY AMENDING SECTION 70-70.1 THEREOF, ENTITLED "RESPONSIBILITIES OF PERSONS AND BUSINESS ENTITIES PROVIDING RENTALS OR LEASES OF MOPEDS, MOTORCYCLES, AND MOTORIZED BICYCLES," TO AMEND THE REGULATIONS APPLICABLE TO THE RENTAL OR LEASE OF MOPEDS, MOTORCYCLES, AND MOTORIZED BICYCLES BY REQUIRING THE INSTALLATION OF AN EMERGENCY POWER OFF (EPO) DEVICE ONTO EACH VEHICLE WITHIN A BUSINESS'S FLEET; AND BY REQUIRING ALL PERSONS THAT RENT OR LEASE MOPEDS, MOTORCYCLES, AND MOTORIZED BICYCLES TO RETURN SUCH VEHICLES PRIOR TO 7 PM EACH DAY; AND BY AMENDING SECTION 70-71 THEREOF, ENTITLED "ENFORCEMENT, PENALTIES," BY SETTING FORTH ADDITIONAL PENALTIES FOR VIOLATIONS OF SECTION 70-70.1; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND FOR AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach (the "City") is an internationally renowned tourist destination; and

WHEREAS, due to the City's domestic and international popularity as a resort destination, many events, both authorized by City permits and otherwise, occur on a regular and frequent basis; and

WHEREAS, the large influx of visitors places additional stress on the City's infrastructure, including the City's beaches, parks, roadways and sidewalks, and places increased demands on the City's police, fire, code compliance and sanitation resources; and

WHEREAS, these additional stressors include the large number of visitors who rent mopeds, motorcycles powered by motors with a displacement of 50 cubic centimeters or less, and motorized bicycles, largely in order to "joyride" around the City; and

WHEREAS, due to their small size, mopeds, motorcycles powered by motors with a displacement of 50 cubic centimeters or less, and motorized bicycles may be used to weave in and out of traffic, and on and off sidewalks and bicycle paths, thereby endangering pedestrians, cyclists, and operators of other motor vehicles; and

WHEREAS, on May 16, 2018, the Mayor and City Commission adopted Ordinance No. 2018-4196, amending Chapter 70 of the City Code, entitled "Miscellaneous Offenses," to establish regulations for the rental or lease of electric bicycles, mopeds, motorcycles, motorized bicycles, and motorized scooters; and prohibit the rental or lease

of a moped, a motorcycle that is powered by a motor with a displacement of 50 cubic centimeters or less, or a motorized bicycle, during specified dates each year; and

WHEREAS, on January 16, 2019, the Mayor and City Commission adopted Ordinance No. 2019-4232 amending Section 70-70.1 of the City Code, entitled "Responsibilities of persons and business entities providing rentals or leases of mopeds, motorcycles, and motorized bicycles," to remove the prohibition regarding the rental or lease of a moped, motorcycle or motorized bicycle during specified dates each year, and instead set forth certain requirements with which those persons and business entities that provide rentals or leases of mopeds, motorcycles powered by motors with a displacement of 50 cubic centimeters or less, and motorized bicycles must comply; and

WHEREAS, on September 16, 2020, the Mayor and City Commission passed and adopted an ordinance which once more amended Section 70-70.1 of the City Code, by limiting the total number of mopeds, motorcycles, and motorized bicycles which business entities may rent or lease; authorizing the city manager to prohibit the rental or lease of such vehicles upon a declaration of a high impact period; prohibiting the overnight rental or lease of such vehicles; mandating certain signage requirements regarding the prohibited hours of operating such vehicles (7 p.m. through 7 a.m.); and setting forth additional penalties for such violations; and

WHEREAS, the Mayor and City Commission, and the City Administration, continue to receive numerous complaints regarding the careless and illegal operation of these rented and leased mopeds, motorcycles that are powered by a motor with a displacement of 50 cubic centimeters or less, and motorized bicycles within the City; and

WHEREAS, City Police Department records demonstrate that the increased presence of businesses within the City that rent and lease mopeds, motorcycles that are powered by a motor with a displacement of 50 cubic centimeters or less, and motorized bicycles, continues to result in a large number of violations of State and local laws, and generate a great deal of complaints of dangerous and reckless conduct; and

WHEREAS, in light of the dangers posed by increased numbers of rented and leased mopeds, motorcycles that are powered by a motor with a displacement of 50 cubic centimeters or less, and motorized bicycles in the City, the Mayor and City Commission desire to adopt the amendments set forth herein, as necessary to promote the public safety of the City's residents and visitors.

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

SECTION 1. Division 2 of Article 11 of Chapter 70 of the Code of the City of Miami Beach is hereby amended as follows:

CHAPTER 70

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MISCELLANEOUS OFFENSES

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ARTICLE II. Public Places

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DIVISION 2. Bicycling, Skateboarding, Roller Skating, In -Line Skating, Motorized Means of Transportation, Electric Bicycling, Mopeds, Motorcycles, Motorized Bicycles, and Motorized Scooters

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Sec. 70-66. - Definitions.

The following definitions are applicable to this division:

Bicycle means every vehicle propelled solely by human power, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or a scooter or similar device. The term does not include non-motorized vehicles for hire as defined in section 106-463 of the city Code.

Bicycle path means any road, path or way that is open to bicycle travel which road, path, or way is physically separated from motorized vehicular traffic by an open space or by a barrier and is located either within the highway right-of-way or within an independent right-of-way, and as defined and authorized by state law and the city Code, and includes the city's coastal pathways, beachwalk, baywalk, and cutwalk that are within the Atlantic Greenway Network as set forth in appendix A.

Code compliance officer means a code inspector as defined in section 30-3 of the city Code and, for purposes of this division shall include without limitation police officers.

Electric bicycle means a bicycle propelled by an electric motor, having two tandem wheels, and including any device generally recognized as an electric bicycle though equipped with two front or two rear wheels.

Electric personal assistive mobility device means any self-balancing, two non-tandem wheeled device, designed to transport only one person, with an electric propulsion system, and includes the definition set forth in F.S. § 316.003(83), as may be amended.

Emergency Power Off (EPO) device means any safety mechanism which can be used by a business entity to shut off vehicles from a remote location, and prevent a driver from starting their vehicle.

Grinding means the process by which a skater or skateboarder attaches to a curb or rail and slides along the edge of the curb or rail.

High impact periods means those periods of time as annually designated by the city manager during which one or more of the following occur:

- (1) There is a designated major event period;
- (2) A maintenance of traffic plan is required (e.g., including, but not limited to, street closures, lane closures, shuttle service);
- (3) Hotel occupancy levels are anticipated to be greater than 75 percent;
- (4) Mutual aid or other assistance from outside agencies is required to provide for the safety and well-being of residents and visitors to the destinations; or
- (5) An event on public property is anticipated to result in more than 25,000 visitors to the destination.

Launching means using any angled or elevated surface which the skater, skateboarder, or cyclist can jump from in order to get airborne.

Moped means any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels, with a motor rated not in excess of two brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters.

Motorcycle means any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground {including those vehicles commonly known as motor scooters), but excluding a tractor or a moped.

Motorized means of transportation means any devices or means of transportation which are propelled other than solely by human power and includes, but is not limited to, electric personal assistive mobility devices, motorized skateboards, motorized skates, and any other motorized device not defined as a vehicle in F.S. § 316.003, as may be amended; but shall not include motorized devices and wheelchairs when used by disabled persons.

Motorized bicycle means a bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground, having two tandem wheels, and including any device generally recognized as a motorized bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or a scooter or similar device.

Motorized scooter means any vehicle not having a seat or saddle for the use of the rider, designed to travel on not more than three wheels, and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground.

Rail sliding means an activity similar to curb or edge grinding. Handrails are often used for rail sliding, in which the skater jumps to the top of the rail and slides down the decline.

Stalling means the process by which a skater or skateboarder attaches to a curb or edge in the space between the second and third wheel of the in-line skate or any part of the skateboard.

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Sec. 70-70.1. Responsibilities of persons and business entities providing rentals or leases of mopeds, motorcycles, and motorized bicycles.

- (a) Any person or business entity that engages in the rental or lease of mopeds, motorcycles that are powered by a motor with a displacement of 50 cubic centimeters or less, or motorized bicycles, must:
- (1) Provide a copy of the provisions of this section to each consumer prior to the consumer renting or leasing a moped, motorcycle that is powered by a motor with a displacement of 50 cubic centimeters or less, or motorized bicycle;
 - (2) Obtain an assigned alphabetical character from the city, which must be utilized exclusively by the person or business entity as the first character in each unique device ID number required pursuant to this section;
 - (3) Create a unique device ID number for each moped, motorcycle that is powered by a motor with a displacement of 50 cubic centimeters or less, and motorized bicycle that is leased or rented, and such unique device ID number must be comprised of a total of three alphanumeric characters, beginning with the alphabetical character assigned by the city, and followed by two numerical characters;
 - (4) Securely affix the unique device ID number, in a location not likely to be obscured by the body of the rider or passenger, to the front, left rear side and right rear side of each moped, motorcycle that is powered by a motor with a displacement of 50 cubic centimeters or less, and motorized bicycle that is

leased or rented, in lettering and numbering at least four inches in height and in a contrasting color to the background upon which it is affixed;

- (5) Securely affix the name and telephone number of the person or business entity that rents or leases such mopeds, motorcycles, or motorized bicycles, in a location not likely to be obscured by the body of the rider or passenger, to the left and right sides of each moped, motorcycle powered by a motor with a displacement of 50 cubic centimeters or less, and motorized bicycle that is leased or rented in lettering at least two inches in height and in a contrasting color to the background upon which it is affixed;
- (6) Install and maintain a fully operable global positioning system (GPS) tracking device and emergency power off (EPO) device onto each moped, motorcycle powered by a motor with a displacement of 50 cubic centimeters or less, and motorized bicycle that is leased or rented;
- (7) On an annual basis, provide the city manager with a written notice certifying that a fully operable GPS tracking device and EPO device have has been installed onto each moped, motorcycle powered by a displacement of 50 cubic centimeters or less, and motorized bicycle; and
- (8) On the first day of each month, unless the first day of the month falls on a Saturday, Sunday or a legal holiday, in which case the next business day, submit a certificate to the chief of police, or the chief's designee, identifying each moped, motorcycle powered by a motor with a displacement of 50 cubic centimeters or less, and motorized bicycle that is leased or rented. The certification must include:
 - a. The unique device ID number, along with the corresponding license plate number, for each moped, motorcycle powered by a motor with a displacement of 50 cubic centimeters or less, and motorized bicycle that is leased or rented; and
 - b. The date, time and location of each moped, motorcycle powered by a motor with a displacement of 50 cubic centimeters or less or motorized bicycle, that was disabled pursuant to a notification of improper operation for the preceding month.
- (9) Provide the city's police department and code compliance department with a phone number at which the person or business entity may be contacted 24 hours a day, seven days a week, regarding potential violations of this section.
- (10) On each occasion when the city attempts to contact the business entity at the phone number provided in subsection (a)(9) herein, a representative of the business entity must answer such telephone call; and shall disable any rented or leased vehicle, which is reported by the city to have been operated in violation of any state, county or city law, by activating the emergency power

off (EPO) device, immediately upon such vehicle(s) coming to a stop and the engine having been turned off.

- (b) Any person or business entity that engages in the rental or lease of mopeds, motorcycles that are powered by a motor with a displacement of 50 cubic centimeters or less, or motorized bicycles, shall only maintain a maximum of twenty-five (25) total such vehicles within its fleet.
- (c) The city manager may, upon declaration of a high impact period, as provided in section 82-443 of the City Code, order the immediate suspension and closure of any business entities providing rentals or leases of mopeds, motorcycles that are powered by a motor with a displacement of 50 cubic centimeters or less, or motorized bicycles.
- (d) Prohibition – No overnight rentals or leases
 - (1) No person or business entity shall rent or lease; or make available for rent or lease, or permit another to rent or lease, any moped, motorcycle that is powered by a motor with a displacement of 50 cubic centimeters or less, or motorized bicycle between 7 p.m. and 7 a.m. each day.
 - (2) Persons or business entities providing rentals or leases of mopeds, motorcycles that are powered by a motor with a displacement of 50 cubic centimeters or less, or motorized bicycles shall be responsible for ensuring that all such rented or leased vehicles are returned to the business premises prior to 7 p.m. each day.
 - a. The city shall be authorized to impound and confiscate any rented or leased moped(s), motorcycle(s) that are powered by a motor with a displacement of 50 cubic centimeters or less, or motorized bicycle(s) found to be on public property between the prohibited hours of 7 p.m. through 7 a.m.
 - (3) Persons or business entities providing rentals or leases of mopeds, motorcycles that are powered by a motor with a displacement of 50 cubic centimeters or less, or motorized bicycles shall:
 - a. Securely affix, in a location not likely to be obscured by the body of the rider or passenger, to the front, left rear side and right rear side of each vehicle, in clear and conspicuous lettering, that all such rented or leased vehicles shall be returned to the business premises prior to 7 p.m. each day; and
 - b. Require all persons who rent or lease any moped(s), motorcycle(s) that are powered by a motor with a displacement of 50 cubic centimeters or less, or motorized bicycle(s) to sign a written acknowledgement that: ~~any such rented or leased vehicles must be returned to the business premises prior to 7 p.m. each day, and are prohibited from being~~

operated in the City between the prohibited hours of 7 p.m. through 7 a.m.

i. Any such rented or leased vehicles must be returned to the business premises prior to 7 p.m. each day; and

ii. Any such rented or leased vehicles not returned to the business premises by 7 p.m. will be deactivated using the emergency power off (EPO) device; and

iii. Any such rented or leased vehicles are prohibited from being operated in the City between the prohibited hours of 7 p.m. through 7 a.m.

c. Activate the emergency power off (EPO) device of all moped(s), motorcycle(s) that are powered by a motor with a displacement of 50 cubic centimeters or less, and motorized bicycle(s) that have not been returned to the business premises prior to 7 p.m. each day, immediately upon such vehicle(s) coming to a stop and the engine having been turned off.

(e) Responsibilities of persons that rent or lease mopeds, motorcycles, and motorized bicycles

(1) All persons that rent or lease any moped(s), motorcycle(s) that are powered by a motor with a displacement of 50 cubic centimeters or less, or motorized bicycle(s) shall:

a. Return such rented or leased vehicles to the business premises prior to 7 p.m. each day; and

b. Be prohibited from operating any such vehicles in the City between the prohibited hours of 7 p.m. through 7 a.m.

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Sec. 70-71. - Enforcement, penalties.

(a) A violation of the provisions in subsections 70-67 and 70-69(a) and (c) by persons operating electric personal assistive mobility devices or engaged in bicycling, skateboarding, in-line skating, roller skating, or operating any motorized means of transportation, shall be enforced by a police officer and shall be deemed a noncriminal infraction as defined in F.S. § 318.13(3) and shall be subject to the penalties set forth in F.S. § 316.655, as may be amended.

(b) A violation of the provisions in sections 70-69(b), (d), or (e); 70-70; 70-70.1; or 70-70.2 shall be enforced by a code compliance officer (which, as defined in section 70-66, includes a police officer) in accordance with the following procedures and penalties:

- (1) If a code compliance officer finds a violation, the compliance officer shall issue a notice of violation to the violator as provided in chapter 30. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator may be liable, instructions and due date for paying the fine, notice that the violation may be appealed by requesting an administrative hearing within ten days after service of the notice of violation, and that failure to do so shall constitute an admission of the violation and waiver of the right to a hearing.
- (2) A violator who has been served with a notice of violation shall elect either to:
- a. Pay the civil-fine as follows for violations of sections 70-69(b), (d), and (e):
 - (i) First offense\$100.00;
 - (ii) Second offense\$250.00;
 - (iii) Third offense\$500.00;
 - (iv) Fourth and subsequent offenses\$1,000.00;
 - b. Pay the civil fine as follows for violations of sections 70-70(a) and (c)—(n); and 70-70.2:
 - (i) First offense\$250.00;
 - (ii) Second offense\$500.00;
 - (iii) Third offense\$1,000.00;
 - (iv) Fourth and subsequent offenses\$2,000.00;
 - c. Pay the civil fine as follow for violations of subsection 70-70(b):
 - (i) First offense\$1,000.00;
 - (ii) Second offense\$2,500.00;
 - (iii) Third and subsequent offenses\$5,000.00; or
 - d. Pay the civil fine and subject violator to such enhanced penalties as follows for violations of section 70-70.1(a) – (d):
 - (i) First offense: \$500.00;
 - (ii) Second offense within the preceding 12 months: \$750.00;
 - (iii) Third offense within the preceding 12 months: \$1,500.00 and suspension of the business tax receipt for 1 week (7 days);
 - (iv) Fourth offense within the preceding 12 months: \$3,000.00 and revocation of the business tax receipt and certificate of use;

e. Pay the civil fine and subject violator to such enhanced penalties as follows for violations of subsection 70-70.1(e):

(i) First offense\$100.00;

(ii) Second offense\$250.00;

(iii) Third and subsequent offensesthe violator shall be subject to the penalties provided for in section 1-14 of the Code;

e f. Request an administrative hearing within ten days before a special master appointed as provided in article II of chapter 30 to appeal the decision of the code compliance officer which resulted in the issuance of the notice of violation. If the offense is a violation of subsection 70-70(b), the operation of the business must cease until the required insurance is obtained.

- (3) If the offense is a fourth or subsequent offense of subsection 70-69(b), (d), or (e); subsections 70-70(a) or (c)—(n); or section 70-70.2, it shall also be considered an habitual offender offense and, in addition to the penalty set forth in subsections 70-71(b)(2)a(iv) and 70-71(b)(2)b(iv), the city manager may issue an administrative complaint for the suspension or revocation of a business tax receipt and certificate of use as provided in sections 102-383 through 102-385.
- (4) If the named violator, after notice, fails to pay the civil fine or fails to timely 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 decisions of the code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special master. A waiver of the right or an administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly. The special master shall be prohibited from hearing the merits of the notice of violation or consideration of the timeliness of the request for an administrative hearing if the violator has failed to request an administrative hearing within ten days of the issuance of the notice of violation.
- (5) Any party aggrieved by the decision of the special master may appeal the decision in accordance with law.
- (6) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.
- (7) 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 months from the filing of any such lien which remains unpaid, the city may foreclose or otherwise execute upon the lien.

- (8) The procedures for appeal of the notice of violation by administrative hearing shall be as set forth in sections 30-72 and 30-73.

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 re-lettered 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 ___ day of _____, 2020.

PASSED and ADOPTED this ___ day of _____, 2020.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions
~~Strikethrough~~ denotes deletions

(Sponsored by: Commissioner Steven Weiner)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney
10/6/2020
Date