



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

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber
Members of the City Commission
Alina T. Hudak, City Manager

Second Reading/Public Hearing

FROM: Rafael A. Paz, Acting City Attorney 

DATE: July 28, 2021

SUBJECT: 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 ARTICLE II, ENTITLED "PUBLIC PLACES," BY AMENDING DIVISION 2, ENTITLED "BICYCLING, SKATEBOARDING, ROLLER SKATING, IN-LINE SKATING, MOTORIZED MEANS OF TRANSPORTATION, ELECTRIC BICYCLES, MOPEDS, MOTORCYCLES, MOTORIZED BICYCLES, AND MOTORIZED SCOOTERS," BY AMENDING SECTION 70-66 THEREOF, ENTITLED "DEFINITIONS," BY ESTABLISHING AND MODIFYING CERTAIN DEFINITIONS SET FORTH THEREIN; AND BY CREATING SECTION 70-72, ENTITLED "PROHIBITION ON DELIVERING SPECIFIED MOTORIZED VEHICLES FOR RENTAL OR LEASE," WHICH SHALL SERVE TO PROHIBIT PERSONS AND BUSINESS ENTITIES FROM DELIVERING CERTAIN MOTORIZED VEHICLES, FOR RENTAL OR LEASE, IN THE CITY; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

SUPPLEMENTAL LEGAL MEMORANDUM:

This supplemental Commission Memorandum is intended to address the legal issues raised at first reading of the proposed Ordinance on June 23, 2021, and specifically, whether the proposed Ordinance would withstand a legal challenge based upon the Commerce Clause (Art. I, § 8 of the United States Constitution). Although our research has revealed no legal authority directly on point regarding a prohibition on the delivery of similar "toy" vehicles, analogous cases support the conclusion that the City has the requisite legal authority to enact this legislation, just like any other regulation of business activity.

A. Legal Analysis - Commerce Clause

The express provisions of the Commerce Clause have been interpreted as a grant of positive authority to the United States Congress to regulate interstate commerce. State and local authority is not explicitly addressed; however, the Commerce Clause has also been judicially construed as an *implied prohibition* of state or local laws that discriminate against interstate

Supplemental Commission Memorandum - Prohibiting the Delivery of Certain Motorized Vehicles in the City for Rental or Lease

July 28, 2021

Page 2

commerce by burdening out-of-state entities in favor of in-state entities that are similarly situated within a particular market. This judicially created rule, which would be the rule applied to analyze this Ordinance, is known as the “dormant” Commerce Clause.

Here, as there is no Congressional action, the explicit provisions of the Commerce Clause are obviously not at issue, and the focus of this memorandum is on the “dormant” Commerce Clause. In this regard, the proposed Ordinance likely does not implicate the “dormant” Commerce Clause because the proposed Ordinance does not discriminate between in-state and out-of-state businesses as it treats *all* persons and entities identically with respect to the prohibition on bringing or delivering the “toys” anywhere in the City for the purpose of rental or lease to the general public.

Two (2) analogous federal appellate decisions illustrate this point. First, in *Brown & Williamson Tobacco Corp. v. Pataki*, the appellate court upheld a state statute prohibiting cigarette sellers from deliveries of cigarettes directly to New York consumers because the statute evenhandedly regulated all direct shippers and transporters regardless of where they were located. 320 F.3d 200, 210-11 (2d Cir. 2003). The plaintiffs, cigarette sellers, failed to show a discriminatory effect on interstate commerce by alleging the difficulties they would face to continue selling cigarettes directly to New York consumers, and such de minimis effects on interstate commerce were not clearly excessive in relation to the local benefit of preventing cigarette sales to minors. *Id.* at 216-17; *see also Oltra, Inc. v. Pataki*, 273 F. Supp. 2d 265, 279 (W.D.N.Y. 2003) (holding that a state statute prohibiting shipment and transportation of cigarettes directly to New York consumers did not violate the dormant Commerce Clause where the law was enacted pursuant to state police powers to protect its citizens). In the second federal appellate decision, *Cherry Hill Vineyard, LLC v. Baldacci*, the appellate court upheld a statute banning the direct shipment of wine to consumers because the statute was a reasonable regulation that applied equally to in-state and out-of-state wineries to prevent the sale of alcoholic beverages to minors. 505 F.3d 28, 32 (1st Cir. 2007).

The prohibition established in the proposed Ordinance is analogous to the prohibition of directly shipping cigarettes to consumers in *Brown & Williamson Tobacco* and directly shipping wine to consumers in *Cherry Hill Vineyard* because the Ordinance is not discriminatory, as it does not favor any businesses within the state, and all businesses are subject to the same restriction. Moreover, any inconvenience that businesses renting or leasing these motorized vehicles may face in their operations following enactment of the Ordinance are not clearly excessive in relation to the local benefit of mitigating the traffic problems, and reckless and illegal conduct transpiring in the City due to the operation of these motorized “toys.”

B. Rational Basis Test for Enactment of Regulation of Business Activity

As specifically provided in s. 2(b), Art. VIII of the State Constitution and Fla. Stat. 166.021(1), the City has the governmental authority to exercise any power for municipal purposes, except when expressly prohibited by law. The proposed Ordinance is not expressly prohibited by

Supplemental Commission Memorandum - Prohibiting the Delivery of Certain Motorized Vehicles in the City for Rental or Lease

July 28, 2021

Page 3

law and, therefore, any inquiry must surround whether the Ordinance (if adopted) is rationally related to a "municipal purpose."

This analysis applies the rational basis test, which is the most deferential test of an ordinance's lawfulness. As the Florida Third District Court of Appeal has held, "a law regulating business or economic matters, which does not create a suspect class or infringe upon a fundamental right...must be upheld if it bears a rational basis to a legitimate government purpose." *Silvio Membreno v. City of Hialeah*, 188 So. 3d 13,19 (3rd DCA 2016). So long as there is "any reasonable relationship between the act and the furtherance of a valid governmental objective," the government action must be upheld. *Id.* at 25 (quoting *Haire v. Fla. Dep't. of Agriculture*, 870 So. 2d 774 at 781). "As such, it is the burden of the party challenging the law to prove that there is *no conceivable* factual predicate which would rationally support the law." *Id.* (quoting *Fla. High Sch. Activities Ass'n, Inc. v. Thomas*, 434 So.2d 306 at 308 (Fla.1983)).

In adopting the Ordinance, the City Commission would be making certain legislative factual findings as set forth in the recitals of the Ordinance. Such facts would identify that the joyriding of these vehicles has resulted in numerous violations of State and local laws, and continues to generate a great deal of complaints of dangerous and reckless conduct by their operators, and that some portion of these motorized "toys" are being delivered in the City for the express purpose of being rented or leased, which exacerbates the dangerous and reckless conduct. The City Commission may rely on this factual predicate to establish the City's legitimate governmental purpose in adopting the Ordinance, and its rational relationship in furtherance of such purpose.

Therefore, the City undoubtedly has a legitimate governmental interest in ensuring the health, safety and welfare of its residents and visitors alike, and is well within its legal authority to regulate activities which facilitate nuisance behavior and contribute to a diminution of quality of life for its residents.

RAP/AB/MAF/bhs