MIAMIBEACH

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

FROM: Rafael A. Paz, City Attorney **Second Reading/Public Hearing**

DATE: September 14, 2022

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 III, ENTITLED "GRAFFITI," BY AMENDING DIVISION I, ENTITLED "GENERALLY," BY AMENDING SECTION 70-125 THEREOF, ENTITLED "RESPONSIBILITY OF PROPERTY OWNER(S) TO ABATE GRAFFITI; GRAFFITI ABATEMENT AND NOTICE; ENFORCEMENT," BY AMENDING THE RESPONSIBILITIES OF PROPERTY OWNERS WITH REGARD TO THE ABATEMENT OF GRAFFITI, THE TIMEFRAME IN WHICH SUCH ABATEMENT MUST BE ACCOMPLISHED, AND THE NOTICE PROVISION THEREIN; BY AMENDING SECTION 70-126 THEREOF, ENTITLED "APPEAL," BY MODIFYING CERTAIN TERMS CONTAINED THEREIN; AND BY AMENDING SECTION 70-127 THEREOF, ENTITLED "COST OF GRAFFITI REMOVAL AS LIEN ON PROPERTY; COLLECTION, FORECLOSURE AND SALE," BY AMENDING THE CITY'S ABILITY TO REMEDY UNABATED GRAFFITI AND RECOVER THOSE COSTS INCURRED IN REMEDYING SUCH UNABATED GRAFFITI; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

The proposed Ordinance (the "Ordinance"), which is sponsored by Commissioner Steven Meiner, is submitted for second reading/public hearing at the September 14, 2022 City Commission meeting. The Ordinance, which passed at first reading on July 20, 2022, remains unchanged between first and second readings.

The occurrence of graffiti in the City has been previously declared a nuisance pursuant to Section 70-121 of the City Code and is a blight on the City, that also depreciates the value of the defaced property as well as the surrounding neighborhood. Section 70-121 establishes that the creation or maintenance of the unauthorized application of paint, ink, chalk, dye, felt tip or indelible marker, or any non-water soluble substance, or the applying or affixing of other inscribed or engraved materials, including posters, placards, and flyers of any size and type, on public or private structures, located on publicly or privately-owned real property in the City, shall be declared a nuisance. Moreover, the presence of graffiti etching acid, on surfaces which

come into contact with the public, poses a health and safety risk. In addition, the prompt removal of graffiti is the most effective deterrent to its reoccurrence.

Based on the foregoing, the abatement of graffiti is important to preserve the City's aesthetic beauty and protect the City's image and quality of life for its residents and visitors.

The proposed Ordinance would impose more stringent measures with regard to graffiti remediation by requiring noncommercial and commercial properties to abate graffiti within 48 hours after receipt of notice from the City (reduced from 7 and 10 business days, respectively), and by requiring that etched graffiti be completely concealed from public view within 48 hours and abated within 10 business days from receipt of the notice by both noncommercial and commercial properties (reduced from 20 and 30 business days, respectively).

The proposed Ordinance also strengthens the notice requirements by mandating that the City must provide the required notice by certified mail or hand delivery, and by the conspicuous posting of such notice at the property (whereas the *existing* Ordinance merely requires that the notice be sent by certified mail or hand delivery, without requiring any notice to be posted at the property).

Moreover, upon the failure of the property owner to timely comply with the graffiti abatement provisions of the City Code, the *existing* Ordinance allows the City (or its agent) to proceed to remedy such condition and have all costs incurred (if such costs remain unpaid by the property owner) become a lien against the property 30 days after notice of completion of the work by the City. However, the proposed Ordinance would add the additional protection for the property owner by authorizing such unpaid costs to become a lien against the property 30 days after notice of completion of the work by the City or the date the City prevails in any appeal against the property owner, whichever is later.

Additionally, based upon concerns raised at first reading, it is important to clarify that the Ordinance is in no way intended to limit a property owner from obtaining the appropriate permits or other approvals (such as Design Review Board or Historic Preservation Board) to paint, draw, post or display any sign, message or design on one's own property, in accordance with the City Code. Rather, the Ordinance is only intended to impact the unauthorized acts of vandals who deface (or damage by acid etching) the real property of others, irrespective of the content or message conveyed in such graffiti.

It is anticipated that these modifications to the graffiti ordinance would serve to preserve the integrity and aesthetic appearance of the City's commercial and residential neighborhoods, including its historically designated districts, and also protect the health, safety and welfare of the general public from hazards posed by etching acid.

RAP/MAF/bhs