ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 78 OF THE MIAMI BEACH CITY CODE, ENTITLED "PERSONNEL," BY CREATING ARTICLE IV THEREOF, ENTITLED "UNCLASSIFIED EMPLOYEES' LEAVE," TO CODIFY AS PART OF THE CITY CODE AND AMEND THE CITY'S EMPLOYEES' LEAVE ORDINANCE (NO. 1613) FOR CLARITY AND EASE OF REFERENCE, TO DELETE AND/OR REVISE OUTDATED PROVISIONS, AND TO MAKE SUBSTANTIVE AMENDMENTS TO THE FOLLOWING SECTIONS: SECTION 78-183, REGARDING ACCUMULATION OR FORFEITURE OF ANNUAL LEAVE AND SICK LEAVE, SECTION 78-184, REGARDING CONVERSION OF ANNUAL LEAVE AND SICK LEAVE, SECTION 78-189, REGARDING PAYMENT FOR ANNUAL LEAVE, SECTION 78-190, REGARDING OTHER LEAVES WITH COMPENSATION, SECTION 78-191, REGARDING WORKER'S COMPENSATION AND SUPPLEMENTAL INJURY PAY, AND SECTION 78-193, REGARDING DONATION OF ANNUAL LEAVE AND SICK LEAVE; AND FURTHER, CREATING THE FOLLOWING SECTIONS: SECTION 78-194, ENTITLED "PAID PARENTAL LEAVE," SECTION 78-195, ENTITLED "LEAVE SELLBACK," SECTION 78-196, ENTITLED "USE OF SICK LEAVE FOR RETIREE HEALTH SAVINGS ACCOUNT," AND SECTION 78-196, ENTITLED "CITY MANAGER'S AUTHORITY TO ADOPT ADMINISTRATIVE PROCEDURES AND REGULATIONS"; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach's Unclassified Employees' Leave Ordinance No. 1613 (the "Ordinance") was last amended on October 19, 2016; and

WHEREAS, the Mayor and City Commission wish to codify the Ordinance in Chapter 78 of the Miami Beach City Code; and

WHEREAS, Unclassified Leave Ordinance No. 1613 is hereby superseded and replaced by Article IV of Chapter 78 of the City Code, entitled "Unclassified Employees' Leave."

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

SECTION 1. Article IV of Chapter 78, entitled "Unclassified Employees' Leave" is hereby created as follows:

CHAPTER 78. PERSONNEL

* * *

ARTICLE IV. UNCLASSIFIED EMPLOYEES' LEAVE

Sec. 78-181. Definitions; amounts of leave.

(a) *Definitions:* For the purpose of this article, "unclassified employees" are hereby defined as all persons appointed to an unclassified position as enumerated in the compensation plan for the offices and positions in the unclassified service. All references to "employees" in this article shall refer to unclassified employees. For purposes of this article, the term "immediate family" shall include an employee's domestic partner as that term is defined in the city's domestic

partnership ordinance. The term "City Manager" shall mean the City Manager or the City Manager's designee.

(b) *Less than ten years of service:* Employees with less than ten years of service shall be granted 96 hours of annual leave and 96 hours of sick leave, prorated biweekly, each year. A year, for purposes of this chapter, is defined to mean from the first through the last pay period of each calendar year. For persons hired on or after October 1, 1978, no annual or sick leave may be used during the first six months of employment as an unclassified employee unless the employee held regular status in the classified service immediately preceding such appointment.

(c) *More than ten but less than 20 years of service:* Employees with more than ten but less than 20 years of service shall be granted 136 hours of annual leave and 96 hours of sick leave, prorated biweekly, per year upon completion of ten years of employment.

(d) *More than 20 years of service:* Employees with more than 20 years of service shall be granted 176 hours of annual leave per year and 96 hours of sick leave, prorated biweekly, per year upon completion of 20 years of employment.

(e) *In general.* Annual leave and sick leave shall be granted in hours on a pay period basis. Leave shall be reduced proportionally by any part of the pay period that such employee was absent without compensation. Service time in determining number of hours to be granted shall include all time spent as an employee in the classified or unclassified service regardless of status for which compensation has been paid, provided, however, that in the event an employee, absent from his duties because of service-connected injury for which worker's compensation is payable, is certified by a city authorized treating or examining physician to be physically able to return to his duties, and fails to do so, the period between such certification and the employee's actual return to his duties shall not be deemed to be service time within the meaning of this paragraph.

Sec. 78-182. Special provisions for employees on military leave.

All employees shall be entitled to military leave of absence from their respective duties in accordance with the provisions of, and subject to the conditions set forth in Chapter 115, Florida Statues. Unclassified employees who serve in the Armed Forces with military leave of absence from the city and who return to active employment with the city in accordance with the terms of the military leave of absence shall, upon such return to employment with the city, be granted leave in the same amount as if they had been working for the city. Upon return to active employment with the city, the employee shall be paid in cash for the vacation they would have been entitled to had they not been called into military service. Such payment will be at the rate of pay received upon return to employment with the city and such vacation pay shall be charged against adjusted annual leave credit.

Sec. 78-183. Accumulation or forfeiture of annual leave and sick leave.

At the end of each payroll year, all employees will be allowed no more than 500 annual leave hours to be accrued. Any hours of leave in excess of the above maximum will be forfeited on the last day of the last full pay period of the payroll year.

Sec. 78-184. Conversion of annual leave and sick leave.

Sick leave accrued in excess of 360 hours may be converted to annual leave at the rate of two days of sick leave to one day of annual leave; at the time of resignation, retirement, termination

or death, or at any other time as may be designated by the City Manager. Sick leave may be converted in this manner to reach a maximum of 620 hours of annual leave.

Sec. 78-185. Use of annual leave.

Vacation time will be charged to an employee's annual leave time. Sick leave can be charged to annual leave time if all sick leave time has been exhausted. Religious holidays and absences due to death or illness in the immediate family will be charged to annual leave if all sick time has been exhausted.

Sec. 78-186. Use of sick leave.

(a) Sick leave shall be used for absences because of sickness or injury, not service connected, for absences due to death or illness in the immediate family, and for religious holidays.

(b) Payment of leave for religious holidays shall be limited to high religious holidays, not otherwise provided for, and may not exceed three in any year.

(c) Unclassified employees shall be required to report absences from duty, not previously arranged, to their designated superior within one hour after the usual time of beginning work each day that such absence occurs, unless the cause of the absence is such that it may be expected to be of considerable duration, in which case, the absence shall be reported as specified the first day, together with a statement of the approximate length of time such absence is expected to continue.

Sec. 78-187. Charges against annual leave and sick leave.

(a) Charges shall be made against the employee's annual leave or sick leave credits for a minimum of six minutes that the employee is absent for sickness or injury, not service-connected, or because of the death or serious illness of a member of the employee's immediate family, for religious holidays, and for vacation.

(b) It shall be the duty of the immediate superior in recommending payment of annual leave or sick leave, to take into account the normal days off duty of the employee concerned and to report for use of sick leave or annual leave only that time that the employee is normally required to work. It shall be considered that all employees work a 40-hour week.

(c) *Holidays.* When holidays, designated as such by the city commission, fall within periods of sick leave or vacation with pay, no charge shall be made against the employee's leave credits for the holiday.

Sec. 78-188. Timing of vacation.

Vacations shall be granted at a time suitable to the immediate superior and convenient to the employee's work schedule as far as practicable.

Sec. 78-189. Payment for annual leave.

(a) *Retirement or death:* Any earned balance of annual leave and sick leave, including credits granted in 1939 when civil service was adopted, of an employee who dies while an employee of the city, or who retires under the terms of any city pension plan, shall be paid to the

beneficiary or employee respectively at the rate of compensation received by such employee at the time of his death or retirement.

(b) *Resignation or removal:*

(1) Any earned balance of annual leave and sick leave, deducting therefrom any credit granted in 1939 when civil service was adopted, of an employee who is removed or who resigns in good standing shall be paid to such employee at the rate of compensation received by such employee at the time of his removal or his resignation in good standing, provided that such payment shall not be made until such time as the resigned or removed employee, if they have regular civil service status in any classification, shall forfeit their right to re-employment either by time limitation or by written forfeiture of all civil service rights.

(2) Any employee who shall involuntarily be deprived of their employment with the City of Miami Beach, due to transfer of a function of their department to Miami-Dade County, or to any agency of the State of Florida, or other local government ("new employer"), shall be entitled to an option period of 30 days during which time they may elect to transfer to the new employer (subject to the new employer's approval) any part or the entire portion of their earned annual leave and sick leave balance without forfeiture of reemployment rights provided under civil service rules of the City of Miami Beach. However, if the employee elects to both transfer a portion of their earned annual and sick leave and receive payment for the balance from the City of Miami Beach, the combined maximum for transfer and payment for annual leave shall be up to the City's applicable annual cap, and the combined maximum for transfer and payment for sick leave shall be up to the City's applicable annual cap.

(c) *Maximum payments:*

(1) For employees hired before October 1, 1978, payment of annual leave and sick leave upon resignation, retirement, termination or death of an employee shall in no case exceed an amount equal to one year's compensation at the rate of pay received by such employees at the time of his retirement, death, termination or resignation.

(2) Upon resignation, retirement, termination, or death of an employee, the maximum annual leave for which an employee or his beneficiary may be paid is 620; and the maximum sick leave for which an employee or his beneficiary may be paid is 620 hours.

(d) *Computation of annual leave payments:*

(1) When a settlement is made for annual leave upon resignation, retirement, or death of an employee, payment shall be made upon the basis of the employee's hourly rate of pay for each hour of annual and sick leave credited to his account. Deduction shall be made from leave credits prior to settlement for any hours granted in advance and not actually earned as of the date of resignation, retirement or death.

(2) When an employee uses annual leave or sick leave, payment shall be made upon the basis of the employee's hourly rate of pay for each hour charged against their annual or sick leave account.

Sec. 78-190. Other leaves with compensation.

(a) Other leaves of absence with pay may be granted by the city manager in addition to regularly allowed leave when such is recommended by the immediate superior for the purpose of promoting efficiency or other good causes.

(b) All employees will be entitled to use bereavement leave as established by citywide procedure.

Sec. 78-191. Worker's compensation and Supplemental Injury Pay.

(a) The city's designated third-party administrator of the Worker's Compensation benefit (hereinafter referred to as "TPA") shall determine whether an employee is entitled to receive worker's compensation benefits in accordance with the Worker's Compensation Law of the State of Florida, rules and regulations promulgated thereunder, and such other applicable statutes and case law. Benefits shall be paid to an employee only after a determination of entitlement to benefits has been made. Such determination of the TPA is not intended to nor shall same abrogate an employee's rights under the laws governing worker's compensation in the State of Florida.

b) An employee who is absent from duty because of injury which is the direct result of his/her city duties and who has been determined to be entitled to worker's compensation benefits in accordance with the foregoing subsection (a) of this section, upon certification of the city physician and subject to the approval of the city manager, shall be entitled to receive supplemental injury pay for a twelve-week period. The initial period of entitlement shall commence with the first absence from duty as a result of the injury and shall continue during the period the employee remains absent from duty as a result of the injury, not to exceed 2 weeks. If the injured employee is still in a "no-work" status at the end of the 12-week period, after the advice and comments of the Risk Manager, the City Manager, at their sole discretion, may extend the above supplemental pay beyond the twelve (12) weeks.

(c) After an employee exhausts his/her benefits under this article and is receiving Workers' Compensation checks, the City shall access the employee's leave accruals to keep the employee whole. Deductions for such benefits such as health and dental insurance coverage and pension contributions will be made from the value of the accrued leave. Once an employee runs out of leave accruals and is still unable to return to work, the employee has an affirmative responsibility to contact the Human Resources Department, for further guidance.

Sec. 78-192. Use of annual leave for purchase of pension time.

Any annual leave and sick leave in excess of the total combined maximum of 96 hours may at the request of an employee, be used for the buying back of pension time creditable service which the employee is entitled to buy if budgeted and approved by the City Commission. Computation of the number of hours needed to purchase back pension time will be made on the basis of the employee's rate of pay as of the date he/she elects to make such transfer. In such cases, Human Resources Department will reduce the employee's balance of earned annual leave and sick leave by the number of hours required to equal the pension system contribution and will cause the

amount of money to be transferred from the reserve for annual leave settlements to the pension system employee contributions fund.

Sec. 78-193. Donation of annual leave and sick leave.

(a) Sick Leave Bank.

The Sick Leave Bank has been established for employees that wish to participate in the donation and distribution of leave following a serious personal or family illness or injury, once they have exhausted all appropriate leave available. Employees who are not a member of the Sick Leave Bank may be able to receive donated time outside of the Sick Leave Bank as a one-time hardship.

(b) Donation of annual leave and sick leave on the death of a co-worker.

In those instances where a regular employee dies while in the employ of the City, other City employees may donate a portion of their annual or sick leave to that employee's dependent and/or beneficiary.

Sec. 78-194. Paid Parental Leave.

Paid Parental Leave is established to support employees by allowing flexibility and time to bond with their new child, adjust to their new family situation, and balance their professional obligations. The leave shall occur concurrently with, count against, and not be added to periods of unpaid or job protected leave for which the employee may also be eligible, including Family and Medical Leave Act ("FMLA"), and/or any other unpaid leave offered by the City due to childbirth, adoption, or foster care placement.

Sec. 78-195. Leave Sellback.

Each fiscal year, the City Manager may grant to full-time unclassified employees the opportunity to sell, no more than one time per year, accrued leave, up to a specified amount and while maintaining a minimum balance as established by the City Manager. The City Manager may, in their sole discretion, pause or suspend the leave sellback program under this section, due to availability of funds, budgetary constraints, or for any other reason. The City Manager or their designee shall have the authority, at any time, to establish and amend administrative procedures implementing the leave sellback program under this section.

Section 78-196. Use of Sick Leave for Retiree Health Savings Account.

A Retiree Health Savings ("RHS") Program may be established for Unclassified employees covered in this group, with terms and conditions that govern the use of accrued sick leave to fund individual RHS accounts.

Sec. 78-196. City Manager's Authority to Adopt Administrative Procedures and Regulations.

The City Manager shall have the authority to establish and, from time to time, amend administrative procedures and regulations to implement the provisions of this article.

SECTION 2. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

SECTION 3. CODIFICATION.

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or re-lettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this ___ day of _____, 2022.

_____
Dan Gelber, Mayor

ATTEST:

_____
Rafael E. Granado, City Clerk

APPROVED AS TO FORM AND LANGUAGE AND FOR EXECUTION

Ricardo Dopico 9/9/2022
For City Attorney Date

(sponsored by Mayor Dan Gelber)