

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber
Members of the City Commission

FROM: Rafael A. Paz, City Attorney



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 I, ENTITLED "IN GENERAL," BY AMENDING SECTION 70-1 THEREOF, ENTITLED "STATE MISDEMEANORS," BY ADOPTING, THROUGH SPECIFIC REFERENCE, THE STATE LAW MISDEMEANOR OFFENSE OF BREACH OF THE PEACE / DISORDERLY CONDUCT, TO AFFIRMATIVELY ESTABLISH AN OFFENSE AGAINST MUNICIPAL LAW FOR THE SAME ACT(S) THAT CONSTITUTE SUCH OFFENSE AGAINST STATE LAW; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

The proposed Ordinance, which is sponsored by Vice-Mayor Alex Fernandez, seeks to adopt, by specific reference, the state law misdemeanor offense of breach of the peace / disorderly conduct. The proposed Ordinance would affirmatively make the conduct underlying this crime an offense against municipal law for the same act(s) that constitute such offense against State law, and thereby permit the City to prosecute such criminal violations under City law.

On September 25, 2017, the Mayor and City Commission adopted Resolution No. 2017-30023, which authorized the City Attorney's Office to commence the in-house prosecution, by and through a City municipal prosecution team, of those individuals exclusively charged with violating the City's criminal ordinances. However, the Miami-Dade State Attorney's Office (the "Miami-Dade SAO") remained the prosecutorial entity responsible for the prosecution of persons arrested for the commission of all felony, misdemeanor, and/or County ordinance violations committed in Miami-Dade County.

No doubt due in part to its reputation as an internationally renowned tourist destination and the constant heavy influx of tourists and other visitors, the City continues to contend with many criminal, quality of life offenses being committed within its jurisdictional bounds. The commission of misdemeanor and municipal ordinance offenses in the City adversely impact residents' quality of life and tourists' vacation experience, and continue to generate an inordinate number of issues and complaints from the City's residents, visitors, and business establishments.

Some of those misdemeanor offenses which most adversely affect the City's residents, visitors, and businesses include battery, indecent exposure and criminal mischief. In order to acquire greater control and discretion regarding the prosecution of such offenses occurring within the City, and to relieve the Miami-Dade SAO of some of its prosecutorial burden, the City desired to

become the primary entity responsible for the prosecution of those specified State law misdemeanor offenses (excluding domestic battery cases).

As such, on January 20, 2022, the Mayor and City Commission adopted Resolution No. 2022-32020, which expanded the City's municipal prosecution program and directed that the City become the primary entity responsible for the prosecution of the State law misdemeanor offenses of battery (except domestic battery), criminal mischief, and indecent exposure.

Then, on March 9, 2022, pursuant to Resolution No. 2022-32020, the Mayor and City Commission adopted Ordinance No. 2022-4477, which created specific offenses against municipal law for the same acts that constitute the State law misdemeanor offenses of battery (non-domestic), criminal mischief and exposure of sexual organs (indecent exposure).

The proposed Ordinance would create, through specific reference, an offense against municipal law for the same act(s) that constitute the State law misdemeanor offense of breach of the peace / disorderly conduct, as such offense is set forth in Fla. Stat. 877.03.

Florida caselaw has established that a municipality may enact an ordinance which creates an offense against municipal law for the same act that constitutes an offense against State law. Florida law has further established that a municipality may, by ordinance, adopt State misdemeanor statutes by specific reference or by general reference, such as that contained in an ordinance making it unlawful to commit, within City limits, any act which is (or shall be) recognized by the laws of the State as a misdemeanor.

Now, by adopting the proposed Ordinance, the Mayor and City Commission will be enabling the City's municipal prosecution team to, most efficiently and effectively, become the primary entity responsible for the prosecution of the criminal municipal ordinance violation, which act(s) are recognized by State law as the misdemeanor offense of breach of the peace / disorderly conduct.

RAP/MAF/bhs