

ORDINANCE NO. _____

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.

WHEREAS, 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; and

WHEREAS, the Miami-Dade State Attorney's Office (the "Miami-Dade SAO") continues to be the prosecutorial entity responsible for the prosecution of those offenders arrested for the commission of all felony, misdemeanor, and/or County ordinance violations committed in Miami-Dade County; and

WHEREAS, 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; and

WHEREAS, the commission of misdemeanor and municipal ordinance offenses 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; and

WHEREAS, some of those misdemeanor offenses which most adversely affect the City's residents, visitors, and businesses include battery, indecent exposure, criminal mischief, and breach of the peace / disorderly conduct; and

WHEREAS, in order to acquire greater control and discretion regarding the prosecution of those identified misdemeanor offenses occurring in the City, and to relieve the Miami-Dade SAO of some of its prosecutorial burden, the City desires to become the entity responsible for the prosecution of those specified State law misdemeanor offenses (excluding domestic battery cases); and

WHEREAS, 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 (see *Jaramillo v. City of Homestead*, 322 So.2d 496 (Fla. 1975)); and

WHEREAS, Florida law has further established that a municipality, by ordinance, may 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 (*Id.* at 498); and

WHEREAS, the City previously established, pursuant to Section 70-1 of the City Code, that it is unlawful for any person to commit within the City any act that is (or shall be) recognized by the laws of the State as a misdemeanor and that the commission of such acts is forbidden; and

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

WHEREAS, 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); and

WHEREAS, the Mayor and City Commission hereby desire to adopt the following amendment in order to further expand the City's municipal prosecution program by creating, 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.

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

SECTION 1. That the section of the City Code creating offenses against municipal law for the same acts that constitute misdemeanor offenses against State law, as such Ordinance is codified in section 70-1 of the City Code, be amended as follows and as hereinafter set forth below:

CHAPTER 70
MISCELLANEOUS OFFENSES

* * *

ARTICLE I. IN GENERAL

* * *

Sec. 70-1. State misdemeanors.

- (a) It shall be unlawful for any person to commit within the city any act that is or shall be recognized by the laws of the state as a misdemeanor, and the commission of such acts is hereby forbidden.
- (b) Notwithstanding subsection (a), the following misdemeanor(s) under state law are eligible to receive a civil violation notice, at the discretion of a law enforcement officer, provided that such violations are not charged in conjunction with any charge that is a felony, driving under

the influence, incident involving domestic violence, or violent crime, as those terms are defined under state law:

- (1) Possession of cannabis in an amount of 20 grams or less, as set forth in F.S. § 893.13(6)(b), as such may be amended from time to time; and/or
- (2) Possession of drug paraphernalia, as set forth in F.S. §§ 893.146 and 893.147(1)(b), as such may be amended from time to time.

An individual issued a civil violation notice for a violation of subsection (b)(1) or (2) will be subject to the fine set forth herein.

(3) Penalties and enforcement.

- a. *[Civil fine.]* A person violating subsection (b)(1) or (2) shall receive a civil fine of \$100.00.
- b. *Enforcement.* The Miami Beach police department shall enforce this section. This shall not preclude other law enforcement agencies from any action to assure compliance with this section and all applicable laws. If a police officer finds a violation of (b)(1) or (2), the police officer will be authorized to issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special magistrate within ten days after service of the notice of violation, and that the failure to appeal the violation within ten days of service shall constitute an admission of the violation and a waiver of the right to a hearing.
- c. *Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special magistrate.*
 1. A violator who has been served with a notice of violation must elect to either:
 - i. Pay the civil fine in the manner indicated on the notice of violation; or
 - ii. Request an administrative hearing before a special magistrate to appeal the notice of violation, which must be requested within ten days of the service of the notice of violation.
 2. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.
 3. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special magistrate, the special magistrate may be informed of such failure by report from the police officer. The failure of the named violator to appeal the decision of the police officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special magistrate, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.
 4. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal

property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the 61st day following the recording of any such lien that remains unpaid, the city may foreclose or otherwise execute upon the lien.

5. Any party aggrieved by a decision of a special ~~master~~ magistrate may appeal that decision to a court of competent jurisdiction.
 6. The special magistrate shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten days of the service of the notice of violation.
 7. The special magistrate shall not have discretion to alter the penalties prescribed in subsection (3)a.
- (c) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor battery, as such offense is set forth in Florida statute 784.03.
- (d) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor criminal mischief, as such offense is set forth in Florida statute 806.13.
- (e) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor exposure of sexual organs (indecent exposure), as such offense is set forth in Florida statute 800.03.
- (f) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor breach of the peace / disorderly conduct, as such offense is set forth in Florida statute 877.03.

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, subsection, clause or provision of this Ordinance is held invalid, the remaindershall not be affected by such invalidity.

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 part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered 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 on the _____ day of _____, 2022.

PASSED AND ADOPTED this _____ day of _____, 2022.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

(Sponsored by Vice-Mayor Alex J. Fernandez)

Underline denotes additions

~~Strikethrough~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date

9-1-22

MAF