

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 1 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "GENERAL PROVISIONS," BY AMENDING SECTION 1-14 THEREOF, ENTITLED "GENERAL PENALTY; CONTINUING VIOLATIONS," TO ESTABLISH PROBATION AS A POTENTIAL PENALTY THAT MAY BE IMPOSED FOR ANY CRIMINAL VIOLATION OF THE CITY CODE; 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 continually contends with many quality of life criminal offenses being committed within its jurisdictional bounds; and

WHEREAS, the commission of misdemeanor and municipal ordinance offenses adversely impacts residents' quality of life and tourists' vacation experience, and continues to generate an inordinate number of issues and complaints from the City's residents, visitors, and business establishments; 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, on March 9, 2022, 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, on October 27, 2022, the Mayor and City Commission adopted Ordinance No. 2022-4520 which created a specific offense against municipal law for the same acts that constitute the State law misdemeanor offense of disorderly conduct / breach of the peace; and

WHEREAS, presently, section 1-14 of the City of Miami Beach Code of Laws and Ordinances provides that any violation(s) of the City's criminal ordinances shall be punished by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment; and

WHEREAS, Florida Statute 948.01 provides that if a defendant is found guilty of a nonfelony offense as the result of a trial or entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld, the court may place the defendant on probation; and

WHEREAS, a probationary sentence enables the Court to impose certain mandatory conditions of the defendant's probation including, but not limited to, stay away orders and restitution; and

WHEREAS, the Mayor and City Commission hereby desire to adopt the following amendment in order to establish a probation as a potential punishment for those defendants found to be in violation any City criminal ordinance.

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

SECTION 1. Section 1-14 of Chapter 1 of the Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 1
GENERAL PROVISIONS**

* * *

Sec. 1-14. Definitions.

Sec. 1-14. General penalty; continuing violations.

- (a) Whenever in this Code or in any other ordinance of the city or in any rule, regulation or order promulgated by any officer or agency of the city under authority duly vested in him such authority or if any act is prohibited or is made or declared to be unlawful or an offense, or the doing of any act is required or the failure to do any act is declared to be unlawful or an offense, where no specific penalty is provided therefor, the violation of any such provision of this Code or other ordinance, rule, regulation or order shall be punished by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment. Notwithstanding the foregoing, the trial court in its discretion may, in any case (including cases when adjudication is withheld), place a defendant on probation in accordance with Chapter 948 of the Florida Statutes.
- (b) In addition to the penalties provided in subsection (a), any condition caused or permitted to exist in violation of any of the provisions of this Code or other ordinance, rule, regulation or order shall be deemed a public nuisance and may be abated by the city as provided by law; and each day that such condition continues shall be regarded as a new and separate offense.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

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 a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered 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 _____.

PASSED and **ADOPTED** this ____ day of _____, 2023.

ATTEST:

Dan Gelber
Mayor

Rafael E. Granado
City Clerk

(Sponsored by Commissioner Steven Meiner)

Underline denotes additions
~~Strikethrough~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney
MAF

5-9-23

Date