

MIAMI BEACH

Rafael A. Paz, City Attorney
City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Steven Meiner
Members of the City Commission

FROM: Rafael A. Paz, City Attorney



FIRST READING

DATE: December 13, 2023

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 OFFENSES OF ASSAULT, LOITERING OR PROWLING, AND DISORDERLY CONDUCT ON THE PREMISES OF AN ESTABLISHMENT, TO AFFIRMATIVELY ESTABLISH OFFENSES AGAINST MUNICIPAL LAW FOR THE SAME ACT(S) THAT CONSTITUTE SUCH OFFENSES AGAINST STATE LAW; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

The proposed Ordinance, sponsored by Mayor Steven Meiner, seeks to adopt, by specific reference, the state law misdemeanor offenses of **(1) assault, (2) loitering or prowling, and (3) disorderly conduct on the premises of an establishment**. The Ordinance would affirmatively make the conduct underlying these crimes offenses against municipal law for the same acts that constitute such offenses against State law, and thereby permit the City's Municipal Prosecution Team to prosecute such criminal violations under City law. The proposed Ordinance is scheduled for First Reading on December 13, 2023 and Second Reading in January 2024.

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). Accordingly, 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).

Most recently, on October 26, 2022, the Mayor and City Commission adopted Ordinance No. 2022-4520, which created a specific offense against municipal law for the same act(s) that constitute the State law misdemeanor offense of breach of the peace / disorderly conduct.

The proposed Ordinance would create, through specific reference, offenses against municipal law for the same acts that constitute the State law misdemeanor offenses of assault, loitering or prowling, and disorderly conduct on the premises of an establishment, as such offenses are set forth in Fla. Stat. 784.011, Fla. Stat. 856.021, and Fla. Stat. 509.143, respectively. 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. Under Florida law, 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.

The Florida Supreme Court has determined that Florida's loitering or prowling statute, as set forth in Fla. Stat. 856.021, is constitutional. See *State v. Ecker*, 311 So. 2d 104 (Fla. 1975). To mitigate vagueness concerns, the criminal offense of loitering requires that a person be in a place at a time or manner that is unusual for a law-abiding citizen, and further, that circumstances exist which warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity. Therefore, prior to effectuating any arrest for loitering, a police officer must be able to point to specific and articulable facts which, taken together with rational inferences therefrom, reasonably warrant a finding that a breach of the peace is imminent or public safety is threatened.

Fla. Stat. 856.021 also provides that unless flight by the person or other circumstance makes it impracticable, a law enforcement officer must, prior to effectuating any arrest for the offense of loitering, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct. Moreover, the loitering statute specifically states that no person shall be convicted of an offense under the statute if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern. These same protections would apply if the state misdemeanor criminal offense of loitering is specifically incorporated as a City criminal ordinance violation.

RAP/MAF/bhs