

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

TO: Mayor Steven Meiner and Members of the City Commission

FROM: Alina T. Hudak, City Manager 

MEETING DATE: January 31, 2024

SUBJECT: BUSINESS IMPACT ESTIMATE FOR:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE III, ENTITLED "USE OF PUBLIC PROPERTY," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY CREATING SECTION 82-73 THEREOF, ENTITLED "BALLOONS PROHIBITED AT PUBLIC MARINAS, MARINE FACILITIES, PARKS AND BEACHES," TO PROHIBIT THE POSSESSION OR USE OF BALLOONS AT ALL PUBLIC MARINAS, MARINE FACILITIES, PARKS, AND BEACHES; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Is a Business Impact Estimate Required?

☒ **Yes** ☐ **No** (If no, please check one of the boxes below)

If one or more boxes are checked below, this means the City of Miami Beach has determined that a Business Impact Estimate for the above-referenced Ordinance is not required by State law.

- ☐ The proposed Ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed Ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed Ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed Ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the City;
- ☐ The proposed Ordinance is an emergency ordinance;
- ☐ The Ordinance relates to procurement; or
- ☐ The proposed Ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
 - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
 - d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

If none of the above exceptions apply, this Business Impact Estimate is hereby provided in accordance with Section 166.041(4), Florida Statutes.

1. The summary of the proposed Ordinance and its purpose is more fully set forth in the Commission Memorandum accompanying the Ordinance, as well as in the recitals to the Ordinance itself, which are attached hereto.

2. The City of Miami Beach estimates that the proposed Ordinance will have no direct economic impact on private, for-profit businesses in the City of Miami Beach, that the proposed Ordinance will have no direct compliance costs that businesses may reasonably incur; that the proposed Ordinance will not impose any new charge or fee for which businesses will be financially responsible, and that the proposed Ordinance will not impact the City of Miami Beach's regulatory costs and will not generate any revenue from new charges or fees.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed Ordinance:

The City of Miami Beach estimates that no businesses are likely to be impacted by the proposed Ordinance.

4. Additional comments: None

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  Second Reading/Public Hearing

DATE: January 31, 2024

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE III, ENTITLED "USE OF PUBLIC PROPERTY," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY CREATING SECTION 82-73 THEREOF, ENTITLED "BALLOONS PROHIBITED AT PUBLIC MARINAS, MARINE FACILITIES, PARKS AND BEACHES," TO PROHIBIT THE POSSESSION OR USE OF BALLOONS AT ALL PUBLIC MARINAS, MARINE FACILITIES, PARKS, AND BEACHES; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

The proposed Ordinance (the "Ordinance"), sponsored by Commissioner David Suarez, is submitted for second reading/public hearing at the January 31, 2024 City Commission meeting after being unanimously approved, as amended, at first reading on December 13, 2023.

The City of Miami Beach is committed to the preservation and protection of the environment. It is well-established that balloons released into the environment pose a threat to marine life, birds, and other wildlife, as ingestion or entanglement in balloon debris can result in harm to marine life or other wildlife. Moreover, studies have shown that balloons, particularly those made of non-biodegradable materials such as mylar, can persist in the environment for extended periods of time, contributing to pollution and ecological disruption.

The State of Florida has recognized the harm and pollution that balloons, or balloon debris, can cause to the environment. As such, pursuant to Fla. Stat. 379.233, the State of Florida has already prohibited the release of 10 or more balloons inflated with a gas that is lighter than air within any 24-hour period by making such offense a noncriminal infraction. Pursuant to Fla. Stat. 403.161 of Chapter 403, entitled "Environmental Control," the State of Florida has also prohibited any person from causing any pollution so as to harm or injure human health or welfare, animal, plant or aquatic life or property, which statute has been utilized to enforce against balloon debris being discarded into the waters of the State by irresponsible persons.

Accordingly, the proposed Ordinance, which would prohibit the use or possession of balloons at any public marina, public marine facility, public park, or public beach, would serve to prevent environmental pollution and litter, avert the unnecessary obstruction of waterways, and avoid

denigrating the aesthetics of the waterways and the public marinas, marine facilities, parks, and beaches.

As directed by the City Commission, the Ordinance has been amended to include a provision authorizing enforcement officers (from the City's Police Department and the Code Compliance Department) to issue written warnings, in lieu of issuing notices of violation, to violators who haven't been previously issued a written warning in the preceding twelve (12) months. Upon issuance of a written warning, the violator must immediately correct the violation within ten (10) minutes by either immediately popping and disposing of the balloons or by removing all of the balloons from any public marina, public marine facility, public park, or public beach. The failure to appropriately correct the violation within ten (10) minutes shall result in the issuance of a notice of violation pursuant to the Ordinance.

RAP/ MAF/bhs

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE III, ENTITLED "USE OF PUBLIC PROPERTY," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY CREATING SECTION 82-73 THEREOF, ENTITLED "BALLOONS PROHIBITED AT PUBLIC MARINAS, MARINE FACILITIES, PARKS AND BEACHES," TO PROHIBIT THE POSSESSION OR USE OF BALLOONS AT ALL PUBLIC MARINAS, MARINE FACILITIES, PARKS, AND BEACHES; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach is committed to the preservation and protection of its marine environment; and

WHEREAS, balloons that are released into the environment pose a threat to marine life, birds, and other wildlife; and

WHEREAS, the City acknowledges the potential risk of balloons causing environmental pollution, obstructing waterways, and compromising the aesthetic appeal of the marinas, marine facilities, and the waterways (including Biscayne Bay); and

WHEREAS, studies have shown that balloons, particularly those made of non-biodegradable materials such as mylar, can persist in the environment for extended periods of time, contributing to pollution and ecological disruption; and

WHEREAS, the City recognizes the importance of fostering public awareness regarding the detrimental effects of balloon use in marine areas and endeavors to encourage responsible practice; and

WHEREAS, pursuant to Fla. Stat. 379.233, the State of Florida has already prohibited the release of 10 or more balloons inflated with a gas that is lighter than air within any 24-hour period; and

WHEREAS, pursuant to Fla. Stat. 403.161 of Chapter 403, entitled "Environmental Control," the State of Florida has also prohibited any person from causing any pollution so as to harm or injure human health or welfare, animal, plant or aquatic life or property; and

WHEREAS, the Mayor and City Commission desire to create the following section to be included within the City Code of Laws and Ordinances in order to prevent environmental pollution, avert the unnecessary obstruction of waterways, and avoid denigrating the aesthetics of the waterways and its marinas, marine facilities, parks, and beaches.

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

SECTION 1. That Section 82-73 of the City Code shall be created as follows:

CHAPTER 82
PUBLIC PROPERTY

* * *

ARTICLE I. IN GENERAL

* * *

Sec. 82-73. Balloons Prohibited at Public Marinas, Marine Facilities, Parks, and Beaches.

(a) Purpose. This Ordinance is enacted to protect the marine environment, wildlife, aesthetics, and public safety by prohibiting the possession or use of balloons at all public marinas, public marine facilities, and public parks and beaches in the city.

(b) Definitions. The following words, terms, and phrases, when used in this section, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Balloon means an inflatable object made of any material that can be filled with gas or air, and is typically sealed at the neck and tethered, but shall not include inflatable items commonly used in the water, or at the park or beach, such as rafts, toys, or balls.

Marina means any installation which provides any accommodations or facilities for watercraft, including mooring, docking, storing, leasing, sale, rental, or servicing of watercraft, located in the waters of the city.

Marine facility means any device, structure, building or component of a marina.

(c) Prohibition:

(1) No person or entity shall possess or use a balloon at any public marina, public marine facility, public park, or public beach.

(2) This prohibition applies to all types of balloons including, but not limited to, those made of latex, mylar or any other material.

(d) Enforcement and Penalties.

(1) Notice of violation. If a code compliance officer (which term specifically includes all law enforcement officers) ~~finds~~ observes a violation of this section, the officer shall 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.

(2) *Written warnings.* Unless a written warning has been previously issued to the violator in the preceding 12 months, a code inspector may, in lieu of issuing a notice of violation, first issue a written warning to the violator to cease the violation by either:

- a. Immediately popping and disposing of all balloons being possessed or used on the prohibited public property in an appropriate trash receptacle; or
- b. Immediately removing all balloons being possessed or used on the prohibited public property from any public marina, public marine facility, public park or public beach.

The written warning shall be substantially in the same form as the notice of violation as set forth in subsection 82-73(d)(1) above. The failure to correct the violation within 10 minutes following the issuance of a written warning shall result in the issuance of a notice of violation pursuant to this section.

(3) A violator who has been served with a notice of violation must elect to either:

a. Pay the following civil fine:

- 1. First violation by a person or entity within a 12-month period shall be a civil fine of \$100 for each balloon up to a maximum total fine of \$1,000;
- 2. Second violation by a person or entity within a 12-month period shall be a civil fine of \$250 for each balloon up to a maximum total fine of \$2,500;
- 3. Third violation by a person or entity within a 12-month period shall be a civil fine of \$500 for each balloon up to a maximum total fine of \$5,000;
- 4. Fourth or subsequent violation by a person or entity within a 12-month period shall be a civil fine of \$1,000 for each balloon up to a maximum total fine of \$5,000.

b. 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. 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.

(4) Failure to pay the civil fine, or to timely request an administrative hearing before a special magistrate, 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.

(5) 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. After three months following the recording of any such lien that remains unpaid, the city may foreclose or otherwise execute upon the lien for the amount of the lien plus accrued interest.

(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. The special magistrate shall not have discretion to alter the penalties prescribed in this article. Any party aggrieved by a decision of a special magistrate may appeal that decision to a court of competent jurisdiction.

(e) *Public Awareness.* The City shall undertake a public awareness campaign to inform residents, businesses, and visitors about the prohibition on balloon possession or use at public marinas, public marine facilities, public parks, and public beaches.

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 _____, 2024.

ATTEST:

Steven Meiner
Mayor

Rafael E. Granado
City Clerk

(Sponsored by Commissioner David Suarez and Co-sponsored by Commissioner Joseph Magazine)

Underline denotes additions.

~~Strikethrough~~ denotes deletions.

Double underline denotes additions after first reading.

~~Double strikethrough~~ denotes deletions after first reading.

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

1-17-24

Date

