

MIAMI BEACH

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

TO: Mayor Dan Gelber 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 70 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "MISCELLANEOUS OFFENSES," BY AMENDING ARTICLE 1, 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 ACTS THAT CONSTITUTE SUCH OFFENSES AGAINST STATE LAW; 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. A 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



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

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 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 ACTS THAT CONSTITUTE SUCH OFFENSES 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, 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 acts that constitutes the State law misdemeanor offense of breach of the peace / disorderly conduct; and

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

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 judgement 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 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 F.S. § 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 F.S. § 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 F.S. § 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 F.S. § 877.03.
- (g) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor assault, as such offense is set forth in F.S. § 784.011.
- (h) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor loitering or prowling, as such offense is set forth in F.S. § 856.021.
- (i) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor disorderly conduct on the premises of an establishment, as such offense is set forth in F.S. § 509.143.

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 _____, 2023.

PASSED AND ADOPTED this ____ day of _____, 2023.

ATTEST:

Steven Meiner, Mayor

Rafael E. Granado, City Clerk

(Sponsored by Mayor Steven Meiner and Co-Sponsored by Alex J. Fernandez)

Underline denotes additions
~~Strikethrough~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney
MAF

11-29-23
Date