

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 REPEALING SUBSECTION (b) THEREOF, WHICH PROVIDES CIVIL PENALTIES FOR THE POSSESSION OF CANNABIS (MARIJUANA) IN AN AMOUNT OF 20 GRAMS OR LESS AND POSSESSION OF DRUG PARAPHERNALIA; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

**WHEREAS**, the Charter of City of Miami Beach grants the Mayor and City Commission with home rule power to enact an Ordinance that does not conflict with State law; and

**WHEREAS**, the City has adopted section 70-1(a), which makes any act that is or shall be recognized by the laws of the State of Florida as a misdemeanor, thereby being criminally prohibited throughout the City; and

**WHEREAS**, a person convicted for commission of an act defined as a misdemeanor pursuant to section 70-1(a), may be punished imprisonment up to 364 days in jail or by a fine of up to \$500 (or both) for a first-degree misdemeanor, and up to 60 days in jail or by a fine of up to \$500 (or both) for a second-degree misdemeanor; and

**WHEREAS**, in 2015, the Mayor and City Commission adopted Ordinance No. 2015-3950 (the "Ordinance"), which established a civil enforcement option for the State misdemeanor offenses of possession of cannabis in the amount of 20 grams or less, and the possession of drug paraphernalia, as codified in Section 701(b) of the City Code.; and

**WHEREAS**, under the Ordinance, the Miami Beach Police Department has the discretion to issue a civil citation, pursuant to Section 70-1(b), in lieu of arresting a person for the commission of those two (2) State law misdemeanor offenses; and

**WHEREAS**, since the Ordinance's enactment approximately eight (8) years ago, the MBPD has only issued approximately nine (9) such civil citations instead of effectuating an arrest; and

**WHEREAS**, in 2018, the City Commission established the City's own Municipal Prosecution Program, which is the only of its kind in Miami-Dade County; and

**WHEREAS**, subsequent City Commissions have expanded the staffing and scope of the City's Municipal Prosecution Program by adding more municipal prosecutors, more legal assistants, and additional criminal offenses that may be charged and prosecuted by the City's Municipal Prosecution Team; and

**WHEREAS**, repealing the Ordinance (and consequently, Section 70-1(b)) is appropriate and sensible considering MBPD's limited usage of the civil citation option provided by the Ordinance, in conjunction with the overall policy shift of the City Commission towards more robustly enforcing and prosecuting quality of life offenses in the City.

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

SECTION 1. That Article I, entitled "In General," of Chapter 70, entitled "Miscellaneous Offenses," of the Code of the City of Miami Beach, Florida is hereby amended as follows:

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) ~~Repealed.~~ 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 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.

**SECTION 2. REPEALER.**

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

**SECTION 3. SEVERABILITY.**

If any section, subsection, clause, or provision of this Ordinance is held invalid, the remainder shall 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 Code of the City of Miami Beach, Florida. 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 tenth (10<sup>th</sup>) day following its adoption.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

**ATTEST:**

\_\_\_\_\_  
Mayor Steven Weiner

\_\_\_\_\_  
Rafael E. Granado, City Clerk

Underline denotes additions.  
~~Strikethrough~~ denotes deletions.

(Sponsored by Commissioner Alex J. Fernandez)

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

*MAF*

1-20-24  
\_\_\_\_\_  
Date