

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 62 OF THE CITY CODE, ENTITLED "HUMAN RELATIONS," BY CREATING ARTICLE VI THEREOF, TO BE ENTITLED "PROTECTION OF HOSPITALITY EMPLOYEES FROM ASSAULT AND SEXUAL HARASSMENT," BY PROVIDING REGULATIONS REGARDING THE PERSONAL SAFETY OF HOSPITALITY EMPLOYEES; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, hotel and hostel employees are vital contributors to the community of the City of Miami Beach, and the hospitality industry is a profitable and important component of the City's economy that receives substantial taxpayer support; and

WHEREAS, due to the unique nature of their work, including work performed alone (or alone with a guest) in a guest room, certain hotel and hostel employees are subjected to a higher risk of harassment and violence on the job; and

WHEREAS, by adopting certain workplace safety protections, the hospitality industry can improve the personal safety and security of hotel and hostel employees; and

WHEREAS, as a vast majority of hotel and hostel employees are women, immigrants, and people of color, these hazards within the hospitality industry exacerbate existing structural inequalities experienced by these groups; and

WHEREAS, the City has determined that it is appropriate and necessary to protect employees in the hospitality industry from assault and sexual harassment; and

WHEREAS, the proposed regulations promote the public health, safety, and welfare of the City, and must be adopted to accomplish the above objectives.

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

SECTION 1. Chapter 62 of the Code of the City Miami Beach is hereby amended to create Article VI thereof, to be entitled "Protection of Hotel Employees from Assault and Sexual Harassment," as follows:

**CHAPTER 62
HUMAN RELATIONS**

* * *

Article VI. Protection of Hotel and Hostel Employees from Assault and Sexual Harassment.

Sec. 62-204. Legislative intent.

The legislative intent of this article is to protect hotel and hostel employees from violent assault, including sexual assault, and sexual harassment, and to enable employees to report

harassment or assault that occurs in the workplace. Hotel and hostel employees often work alone (or alone with a guest) in a guest room or restroom, placing the employees at risk of violent assault, including sexual assault, and sexual harassment.

Sec. 62-205. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Anti-sexual harassment policy” means the written policy required under subsection 62-206(b) of this section.

“Guest” means any invitee to a hotel or hostel, including registered guests, persons occupying guest rooms with registered guests, visitors invited to guest rooms by a registered guest or other occupant of a guest room, persons patronizing food or beverage facilities provided by the hotel or hostel, or any other person whose presence at the hotel or hostel is permitted by the hotel or hostel employer. The term “guest” does not include employees.

“Guest room” means any room made available by a hotel or hostel for overnight occupancy by guests.

“Hotel or hostel employer” means any person, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of any employee, and who owns, controls, and/or operates a hotel or hostel in the City of Miami Beach; or a person who employs or exercises control over the wages, hours, or working conditions of any person employed in conjunction with a hotel or hostel employer in furtherance of the provision of lodging and other related services for the public.

“Hotel or hostel employee” or “employee” means any natural person who works full-time or part-time at a hotel or hostel for or under the direction of the hotel or hostel employer, or any subcontractor of the hotel or hostel employer, for wages or salary or remuneration of any type under a contract or subcontract of employment, whether express or implied.

“Panic button” or “notification device” means a portable emergency contact device that is designed so that an employee can quickly and easily activate such button or device to effectively summon to the employee’s location prompt assistance by a hotel or hostel security officer, manager or other appropriate hotel or hostel staff member designated by the hotel or hostel employer.

“Person” means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

“Restroom” means any room equipped with toilets.

“Sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this

conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sec. 62-206. Legal duties.

Each hotel or hostel employer shall have a duty to perform the following obligations:

- (a) Provide a panic button or notification device to each Room Attendant, Housekeeping Attendant, Minibar Attendant, Room Service Server, and any other employee who is required to a guest room or restroom without other employees present. An employee may use the panic button or notification device if the employee reasonably believes there is an ongoing crime, harassment, or other emergency in the employee's presence. The hotel employee may cease work and leave the immediate area of perceived danger to await the arrival of assistance, and no adverse employment action may be taken against the employee for such action. It is recognized that because of the varying size and physical layout of each hotel, different devices may be appropriate for different hotels. Panic buttons and notification devices shall be provided by the hotel or hostel employer at no cost to the employee within one (1) year of the effective date of the Ordinance.
- (b) Develop, maintain, and comply with a written anti-sexual harassment policy to protect employees against sexual assault and sexual harassment by guests. Such policy shall:
 - (1) Encourage employees ("complaining employee") to immediately report to the hotel or hostel employer instances of alleged sexual assault and sexual harassment by guests ("offending guest");
 - (2) describe the procedures that the complaining employee and hotel or hostel employer shall follow in such cases;
 - (3) instruct the complaining employee to cease work and to leave the immediate area where danger is perceived until hotel security personnel or city police officers arrive to provide assistance;
 - (4) offer temporary work assignments to the complaining employee during the duration of the offending guest's stay at the hotel, which may include assigning the employee to work on a different floor or at a different station or work area away from the offending guest;
 - (5) provide the complaining employee with necessary paid time off to file a complaint with the city's police department against the offending guest, and testify as a witness at any legal proceeding that may ensue as a result of such complaint, if the complaining employee is still in the employ of the hotel or hostel employer at the time such legal proceeding occurs;
 - (6) inform the employee that the Florida Civil Rights Act, Miami Beach Human Rights Ordinance, and Title VII of the Civil Rights Act of 1964 provide additional protections against sexual harassment in the workplace; and

- (7) inform the employee that subsection 62-210(a) makes it illegal for an employer to retaliate against any employee who, in good faith, (i) reasonably uses a panic button or notification device; (ii) avails himself or herself of the remedies set forth in section 62-209; or (iii) discloses, reports, or testifies about any violation of this article or any rules promulgated thereunder.
- (8) Provide all employees with a current copy in English, Spanish, and French of the anti-sexual harassment policy, and post such policy in English, Spanish, and French in conspicuous places in areas of the hotel or hostel, such as supply rooms or employee lunch rooms, where employees can reasonably be expected to see it.

Sec. 62-207. Protection of hotel or hostel employees from violent or harassing guests.

- (a) A hotel or hostel employer must record any and all complaints that it receives that a guest has committed an act of violence, including assault, sexual assault, or sexual harassment, towards an employee. The hotel or hostel employer must determine and record the name of the guest; if the name of the guest cannot be determined, the employer must determine and record as much identifying information about the guest as is reasonably possible. The hotel or hostel employer shall compile and maintain a list of all guests so accused. The hotel or hostel employer shall retain a guest on the list for at least three years from the date of the most recent accusation against the guest, during which time the employer shall retain all written documents relating to such accusations.
- (b) If an accusation against a guest under subsection (a) herein involves assault, sexual assault, or sexual harassment, and is supported by a statement made under penalty of perjury or other evidence, the employer shall decline to allow the guest to return to the hotel or hostel for at least one year after the date of the incident. No employee may be required to provide such statement.
- (c) The hotel or hostel employer must (i) notify any hotel or hostel employee assigned to work in guest rooms without other employees present, prior to starting their scheduled work, of any guest who is named on the list established by subsection (a) herein who is staying at the hotel or hostel, (ii) identify the room assigned to the guest, and (iii) warn the employees to exercise caution when entering that room during the time the guest is staying in the hotel or hostel.

Sec. 62-208. Determent of assaults by notifying guests of employee protections.

Each hotel and hostel shall place a sign on the inside of each guest room door, written in a font size of no less than 18 points, that includes (i) the following heading: "City Law Protects Hotel and Hostel Housekeepers and Other Employees from Violent Assault and Sexual Harassment"; (ii) a reference to chapter 62, article VI of this Code; and (iii) a notice informing guests that the hotel or hostel is providing panic buttons or notification devices to its housekeepers, room servers, and other employees assigned to work in guest rooms or restrooms without other employees present, in compliance with this article.

Sec. 62-209. Protection of employees who report assault or sexual harassment.

An employee who brings to the attention of a hotel or hostel employer the occurrence of an act of violence, including assault and sexual assault, or sexual harassment by a guest shall be afforded the following rights:

- (a) Upon request, the employee shall be reassigned to a different floor or, if none is available for the employee's job classification, a different work area away from the guest for the entire duration of the guest's stay at the hotel or hostel;
- (b) The hotel or hostel employer shall immediately allow the employee sufficient paid time to contact the police to provide a statement and/or file a complaint, and to consult with a counselor or advisor of the employee's choosing; and
- (c) The hotel or hostel employer, with the consent of the employee, shall report any incident involving alleged criminal conduct by a guest to the law enforcement agency with jurisdiction over the matter, and shall cooperate with any investigation into the incident undertaken by the agency, and any attorney for the complaining employee.

Sec. 62-210. Enforcement

(a) Exercise of rights protected; retaliation prohibited.

- (1) It shall be a violation of this article for a hotel or hostel employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this article.
- (2) No person may discharge, reduce any part of the compensation of, or otherwise discriminate against an employee, in response to the enactment of this article, or in response to an employee who asserts any right(s) under this article. Such adverse actions are deemed to irreparably harm the public and the employees, and hence preliminary equitable relief and reinstatement shall be available to the affected employees, in addition to any other relief available.
- (3) It shall be a violation for a hotel or hostel employer to take any adverse action against any employee because the employee has exercised, in good faith, the rights protected under this article. Such rights include but are not limited to asserting any rights guaranteed pursuant to this article; the right to make inquiries about the rights protected under this article; the right to inform others about an employer's alleged violation of this article; the right to cooperate with the city in any investigation(s) of alleged violation(s) of this article; the right to oppose any policy, practice, or act that is unlawful under this article; the right to file an oral or written complaint with the city or to bring a civil action for an alleged violation of this article; the right to testify in a proceeding under or related to this article; and the right to refuse to participate in any activity that would result in a violation of city, state, or federal law.
- (4) There shall be a rebuttable presumption of retaliation if a hotel or hostel employer takes an adverse action against an employee within 90 days of the employee's exercise of any right protected pursuant to this article. The hotel or hostel employer may rebut the presumption with clear and convincing evidence that the

action was taken for a permissible purpose, and that the employee's exercise of rights protected in this article was not a motivating factor in the adverse action.

(5) When the presumption in subsection (a)(4) herein does not apply, proof of retaliation under this article shall be sufficient upon a showing that a hotel employer has taken an adverse action against an employee, and the employee's exercise of rights protected in this article was a motivating factor in the adverse action, unless the hotel employer can prove that the action would have been taken in the absence of such protected activity.

(6) The protections established in subsections (a)(2) and (a)(3) herein apply to any employee who mistakenly, but in good faith, alleges violations of this article.

(b) *Private enforcement action.* Any person claiming injury from a violation of this article shall be entitled to bring an action in any court of competent jurisdiction to enforce the provisions of this article, and shall be entitled to all remedies available at law or in equity, that are appropriate to remedy any violation, including but not limited to, lost compensation and other damages, reinstatement, declaratory or injunctive relief, prejudgment interest, exemplary damages equal to the amount of wages wrongfully withheld or not paid on the established regular pay day when those wages were due, and to seek an award of civil penalties as set forth in subsection (c) herein.

(1) Any person who prevails in any action to enforce this article shall be awarded costs, reasonable attorneys' fees, and expenses.

(2) An order issued by a court of competent jurisdiction in any private enforcement action arising out of a violation of this article, may include a requirement for a compliance report to be submitted by the hotel or hostel employer to the court and to the city.

(c) *Penalties and enforcement.*

(1) *Fines; license revocation.* Upon a finding by the appropriate administrative official or agency that a violation of this article has occurred, the city shall initiate the following proceedings against the hotel or hostel employer:

- i. If the violation is the first offense, a person or business shall receive a written warning;
- ii. If the violation is the second violation within the preceding six months, a person or business shall receive a civil fine of \$1,000.00;
- iii. If the violation is the third violation within the preceding six months, a person or business shall receive a civil fine of \$5,000; and
- iv. If the violation is the fourth or subsequent violation within the preceding six months, a person or business shall receive a civil fine of \$10,000.00, and the business tax receipt shall be revoked.

(2) Enforcement. The code compliance department shall enforce this article. This shall not preclude other law enforcement agencies from any action to assure compliance with this article and all applicable laws.

- i. If a violation of this section is observed, the enforcement 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 master 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.
- ii. A hotel or hostel shall be required to submit written verification to the City, with its Business Tax Receipt ("BTR") application or yearly renewal, confirming that the hotel or hostel is in full compliance with those provisions set forth within this Article.

(3) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.

- i. A violator who has been served with a notice of violation must elect to either:
 - A. Pay the civil fine in the manner indicated on the notice of violation; or
 - B. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten days of the service of the notice of violation.
- ii. 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. A request for the administrative hearing 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.
- iii. 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 master, the special master may be informed of such failure by the code enforcement officer. The failure of the named violator to appeal the decision of the code enforcement officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.

- iv. 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.
- v. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- vi. The special master 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.
- vii. The special master shall not have discretion to alter the penalties prescribed in subsection (c)(1) herein.

Sec. 62-211. Waiver prohibited.

- (a) The provisions of this article may not be waived by any agreement between an individual employee and a hotel employer.
- (b) Any purported waiver by a party to a collective bargaining relationship involving a hotel employer, of any provisions of this article, shall be deemed contrary to public policy and shall be void and unenforceable.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith 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 six (6) months following its adoption.

PASSED AND ADOPTED this _____ day of _____, 2018.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

(Sponsored by Commissioner Kristen Rosen Gonzalez)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

RL Gelber
City Attorney

2-22-18
Date