

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 70-7, ENTITLED "RESERVED," BY CREATING DEFINITIONS AND THOSE REGULATIONS WHICH SHALL PROHIBIT THE SMOKING OF CANNABIS, MARIJUANA, OR HEMP ON PUBLIC PROPERTY; ESTABLISHING SIGNAGE REQUIREMENTS; PROVIDING PENALTIES AND ENFORCEMENT FOR VIOLATION; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach is a world-famous tourist destination which attracts numerous visitors annually, including families, groups and individual travelers, seeking to enjoy the City's vast cultural, retail, dining and recreational offerings; and

WHEREAS, providing a positive experience for both residents and visitors to the City is of paramount importance, and is vital to the City's economy and tourism industry; and

WHEREAS, the public usage of illegal substances will negatively impact the City's residents and visitors, and regrettably serve to tarnish the City's image; and

WHEREAS, cannabis and marijuana are both illegal substances under Federal and State law; and

WHEREAS, cannabis, marijuana and hemp may be derived from the same plant, Cannabis Sativa, and hemp has a nearly identical odor and appearance as marijuana and cannabis, making all these substances virtually indistinguishable from one another; and

WHEREAS, the burning of these plants and their components creates smoke which, in addition to any smoke exhaled by a user, produces secondhand cannabis, marijuana and hemp smoke; and

WHEREAS, secondhand smoke from these substances contains many of the same known carcinogens and toxins, such as ammonia arsenic, hydrogen cyanide and formaldehyde, which are found in secondhand tobacco smoke; and

WHEREAS, the smoke from these substances also has a distinctive and pungent odor, which is not appropriate or pleasing to many people, including children and families; and

WHEREAS, the Mayor and City Commission finds that it is in the best interest of its residents, businesses and visitors to adopt these regulations to protect the public health, safety, and welfare.

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

SECTION 1. That Section 70-7 of the City Code shall be created as follows, and as hereinafter set forth below:

CHAPTER 70
MISCELLANEOUS OFFENSES

* * *

ARTICLE I. IN GENERAL

* * *

Sec. 70-7. Reserved Smoking cannabis, marijuana or hemp on public property prohibited; warning signs required; enforcement; penalties.

(a) Definitions. For purposes of this section, the following definitions shall apply:

- (1) Cannabis or marijuana means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis.
- (2) Hemp means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers thereof, whether growing or not, that has a total delta-9-tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry-weight basis.
- (3) Public property means any public right-of-way, including any public street, avenue, road, alley or sidewalk in the city, or any pedestrian mall, park, playground, school, beach, seawall, beach access, golf course, marina, parking garage, walkway, boardwalk, beach walk, or other facility or public place which is owned, operated, leased or managed by the city.
- (4) Smoking or smoke means inhaling, exhaling, burning, carrying, igniting or possessing a lighted cannabis, marijuana or hemp product.

(b) Prohibitions.

- (1) It shall be unlawful for any person to smoke any cannabis, marijuana or hemp product on public property.
- (2) The owner or operator of any store or business establishment selling any smokable cannabis, marijuana or hemp product(s) shall prominently post a sign, with contrasting letters at least one-half inch tall, in a conspicuous location within such store or business establishment, stating the following:

IT IS UNLAWFUL FOR ANY PERSON TO SMOKE ANY CANNABIS, MARIJUANA OR HEMP PRODUCT ON PUBLIC PROPERTY INCLUDING, BUT NOT LIMITED TO, ANY STREET, ROAD, ALLEY, SIDEWALK, PARK, BEACH, PLAYGROUND OR OTHER SUCH PLACE WITHIN THE CITY OF MIAMI BEACH. VIOLATORS ARE SUBJECT TO CRIMINAL PROSECUTION.

Failure to post this sign shall be deemed a violation of this section. This sign shall be exempt from permit requirements of Chapter 138 of this Code.

(c) Penalties and enforcement.

(1) A violation of subsection (b)(1) herein, shall be punished in accordance with Section 1-14 of the City Code.

(2) A violation of subsection (b)(2) herein, shall be subject to the following fines:

- a. If the violation is the first offense, a person or business shall receive a civil fine of \$1,000.00;
- b. If the violation is the second offense within a 12-month period, a person or business shall receive a civil fine of \$2,000.00;
- c. If the violation is the third offense within a 12-month period, a person or business shall receive a civil fine of \$3,000.00;
- d. If the violation is the fourth offense within a 12-month period, a person or business shall receive a civil fine of \$5,000.00.

(3) Enforcement.

- a. The Miami Beach Police Department shall enforce the provisions of subsection (b)(1). This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section, and all applicable laws.
- b. The Miami Beach Police Department or the Code Compliance Department shall enforce the provisions of subsection (b)(2). This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section, and all applicable laws. If a violation of subsection (b)(2) is found, the enforcement officer shall 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.

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

- a. 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 master to appeal the notice of violation, which must be requested within ten days of the service of the notice of violation.
- b. 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.
- c. The failure to pay the civil fine, or to timely request an administrative hearing before a special master, 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.

- d. 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. Three months after the recording of any such lien which remains unpaid, the City may foreclose or otherwise execute upon the lien, for the amount of the lien plus accrued interest.
- e. 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.
- f. The special master shall not have discretion to alter the penalties prescribed in subsection (c)(2).
- g. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

Secs. 70-8 — 70-40. Reserved.

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 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 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 _____, 2019.

PASSED AND ADOPTED this _____ day of _____, 2019.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions

~~Strikethrough~~ denotes deletions

(Sponsored by Mayor Dan Gelber)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

22 Q. L.
City Attorney **MAF**

8/26/19
Date