

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 26 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "CIVIL EMERGENCIES," BY AMENDING ARTICLE 2, ENTITLED "STATE OF EMERGENCY," BY AMENDING SECTION 26-31 THEREOF, ENTITLED "DECLARATION OF EMERGENCY," BY CLARIFYING AND UPDATING CERTAIN PROVISIONS CONTAINED THEREIN; AND BY AMENDING SECTION 26-33 THEREOF, ENTITLED "DISCRETIONARY EMERGENCY MEASURES," BY UPDATING CERTAIN TERMS CONTAINED THEREIN; AND BY AMENDING SECTION 26-34 THEREOF, ENTITLED "FILING AND PUBLICATION," TO PROVIDE FURTHER PUBLIC NOTIFICATION REQUIREMENTS PERTAINING TO THE DECLARATION OF A STATE OF EMERGENCY OR EMERGENCY MEASURES IMPLEMENTED PURSUANT THERETO; AND BY AMENDING SECTION 26-36 THEREOF, ENTITLED "VIOLATIONS," TO ESTABLISH SPECIFIED PENALTIES FOR THOSE BUSINESS ESTABLISHMENTS OPERATING IN VIOLATION OF AN IMPOSED CURFEW; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, it is the responsibility of the government of the City of Miami Beach (the "City") to ensure the public safety of its residents and visitors; and

WHEREAS, the City is geographically vulnerable to hurricanes, flooding and other natural disasters which may cause severe disruption of essential human services, and extensive damage to public roadways, utilities, buildings, parks and/or other government-owned facilities; and

WHEREAS, there is also an existing and continuing possibility of the occurrence of technological or civil emergencies, or other disasters (including, but not limited to, acts of terrorism, transportation accidents, pandemics, outbreaks, and large-scale hazardous material spills or leaks) which crises require potent and effective response; and

WHEREAS, in order to address any such natural disaster, or technological or civil emergency, the City is legally authorized and empowered, pursuant to Chapter 252 of the Florida Statutes, to make, amend and rescind such orders and rules as are necessary for emergency management purposes; and

WHEREAS, Chapter 162 of the Florida Statutes provides that a municipality may, by ordinance, adopt an alternate code enforcement system which provides the local governing body the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances; and

WHEREAS, the City has created, pursuant Chapter 162, Florida Statutes, an alternate code enforcement system that provides the authority to hold hearings and impose fines, liens and other noncriminal penalties against violators of the Miami Beach (or Miami-Dade County) Code of Laws and Ordinances; and

WHEREAS, those orders, rules and/or emergency measures promulgated or declared by the City of Miami Beach, by and through its City Manager, become effective when filed in the office of the city clerk and delivered to appropriate news media for dissemination; and

WHEREAS, when the City Manager implements emergency orders, rules or measures (or enforces those established by Miami-Dade County or the State of Florida) to address such disasters and emergency situations, compliance is imperative for the public safety and well-being; and

WHEREAS, pursuant to Sections 26-31 and 26-33 of the City Code, and Chapter 252 and Chapter 381, Florida Statutes, the City Manager is authorized to declare a state of emergency and order and promulgate discretionary emergency measures, with such limitations and conditions as the City Manager may deem appropriate; and

WHEREAS, the coronavirus disease 2019 ("Covid-19"), which is a severe acute respiratory illness caused by the SARS-CoV-2 virus that can spread rapidly from person to person and cause serious illness or death, emerged in 2019; and

WHEREAS, since its onset, Covid-19 has unequivocally constituted a clear and present threat to the life, health, welfare and safety of all persons and, to that effect, the World Health Organization declared the rapidly spreading coronavirus outbreak a global pandemic on March 11, 2020; and

WHEREAS, in an effort to mitigate spread of Covid-19, and pursuant to the authority granted by Chapter 252, Florida Statutes, and Section 8B-7(2) of the Miami-Dade County Code, Miami-Dade County has imposed a Countywide curfew which has been in effect since July 3, 2020; and

WHEREAS, since its inception, the Miami Beach City Manager has incorporated the Countywide curfew, and further established such curfew within the City, pursuant to Chapter 26 of the City Code, into the City's emergency measures; and

WHEREAS, the Miami-Dade County curfew has been upheld by the United States District Court for the Southern District of Florida in Case No. 20-25138, and by the Third District Court of Appeal in Case No. 3D20-1512; and

WHEREAS, the City Administration has found that, despite vigorous enforcement of the curfew, many businesses within the City have failed to abide by such emergency measure (which includes multiple repeat violators), and the City Administration has further found that the mere closure of a business found to be operating in violation of the curfew has been wholly inadequate in deterring such illegal and dangerous conduct; and

WHEREAS, the Mayor and City Commission desire to enact this Ordinance to provide a critical tool for the City Administration to address the ongoing Covid-19 health emergency and deter continuing violations of the curfew by business establishments in the City; and

WHEREAS, the amendments set forth below are necessary to accomplish the objectives identified above.

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

SECTION 1. That those Sections of the City's State of Emergency Ordinance, as such Ordinance is codified in Sections 26-31 through 26-36 of the City Code, be amended as follows and as

hereinafter set forth below:

CHAPTER 26
CIVIL EMERGENCIES

* * *

ARTICLE II. STATE OF EMERGENCY

* * *

Sec. 26-31. - Declaration of emergency.

Whenever the city manager determines that there has been an act of violence or a flagrant and substantial defiance of or resistance to a lawful exercise of public authority and that, on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the city; or whenever, during a declared State or local emergency pursuant to the provisions of Chapter 252 or Chapter 381, Florida Statutes, he the city manager may declare that a state of emergency exists within that the city's territorial jurisdiction.

Sec. 26-32. - Reserved.

Sec. 26-33. - Discretionary emergency measures.

- (a) Whenever the city manager declares that a state of emergency exists, pursuant to section 26-31, ~~he~~ the city manager may order and promulgate ~~all or any~~ or all of the following emergency measures, in whole or in part, with such limitations and conditions as ~~he~~ the city manager may deem appropriate (in addition to such powers and authorities vested in municipalities to promulgate such emergency measures as authorized under Chapter 252 and Chapter 381, Florida Statutes):
- (1) The establishment of curfews, including but not limited to the prohibition of or restrictions on pedestrian and vehicular movement, standing and parking, except for the provision of designated essential services such as fire, police and hospital services, including the transportation of patients thereto, utility emergency repairs, and emergency calls by physicians.
 - (2) The prohibition of the sale or distribution of any alcoholic beverage, with or without the payment or a consideration therefor.
 - (3) The prohibition of the possession on any person in a public place of any portable container containing any alcoholic beverage.
 - (4) The closing of places of public assemblage with designated exceptions.
 - (5) The prohibition of the sale or other transfer of possession, with or without consideration, of gasoline or any other flammable or combustible liquid altogether or except by delivery into a tank properly affixed to an operable motor-driven vehicle, bike, scooter, boat or airplane and necessary for the propulsion thereof.

- (6) The prohibition of the possession in a public place of any portable container containing gasoline or any other flammable or combustible liquid.
- (b) Any such emergency measure so ordered and promulgated shall be in effect during the period of emergency in the area or areas for which the emergency has been declared.

Sec. 26-34. - Filing and publication.

Any state of emergency or emergency measure declared or ordered and promulgated by virtue of the terms of sections 26-31—26-33 shall, as promptly as practicable, be filed in the office of the city clerk and delivered to appropriate news media for publication and to local radio and television stations for broadcast, as well as posted on the city's website. If practicable, such state of emergency declaration or emergency measure shall also be published by other means such as by posting and/or loudspeakers.

Sec. 26-35. - Duration and termination of emergency.

A state of emergency established under sections 26-31—26-34 shall commence upon the declaration thereof by the city manager and shall terminate at the end of a period of 72 consecutive hours thereafter unless, prior to the end of such 72-hour period, the city manager, the Governor, county commission, or city commission shall have terminated such state of emergency. Any extension of the 72-hour time limit must be accomplished by request from the city manager and the concurrence of the city commission by duly enacted ordinance or resolution in regular or special session.

Sec. 26-36. - Violations.

- (a) Any violation of a provision of sections 26-31—26-35, or of any emergency measure established pursuant thereto, shall be punishable as provided in section 1-14 of the City Code.
- (b) Civil fines. Notwithstanding subsection (a) herein, the following civil fines shall be imposed upon a business establishment operating in violation of any curfew created, established, ordered, adopted or promulgated pursuant to this Article, Chapter 252 of the Florida Statutes, or the Code of Miami-Dade County:
 - (1) First violation: \$250.00.
 - (2) Second (or subsequent) violation within the preceding 12 months: \$500.00.
- (c) Enhanced penalties. Notwithstanding subsection (a) herein, and in addition to those civil fines identified in subsection (b) herein, the following enhanced penalties shall be imposed upon a business establishment operating in violation of any curfew created, established, ordered, adopted or promulgated pursuant to this Article, Chapter 252 of the Florida Statutes, or the Code of Miami-Dade County:
 - (1) The offending business establishment must immediately cease all business operations and activities; and

- (2) The offending business establishment shall be prohibited from commencing any business operations or activities until the appropriate civil fine, as set forth in subsection (b) herein, has been received by the City; and
- (3) The offending business establishment has remitted an executed attestation of compliance demonstrating that such establishment has reviewed those emergency order(s) and measures promulgated pursuant to the declared state of emergency, and which attestation shall further specify that the business establishment has taken all required measures to prevent a future recurrence of such curfew violation.

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 _____, 2021.

PASSED AND ADOPTED this _____ day of _____, 2021.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

(Sponsored by Mayor Dan Gelber)

Underline denotes additions
~~Strikethrough~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

MAF

2-19-21
Date