



OFFICE OF THE CITY ATTORNEY

RAFAEL PAZ, CITY ATTORNEY

## COMMISSION MEMORANDUM

**TO:** Mayor Dan Gelber and Members of the City Commission  
Alina T. Hudak, City Manager

**FROM:** Rafael A. Paz, City Attorney

**SECOND READING**

**DATE:** SEPTEMBER 14, 2022

**SUBJECT:** AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE MIAMI BEACH CITY CODE, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE 1, ENTITLED "IN GENERAL," BY CREATING SECTION 82-9 THEREOF, ENTITLED "SMOKING IN PARKS AND ON THE BEACHES IS PROHIBITED," TO PROHIBIT SMOKING IN THE CITY'S PARKS AND ON THE CITY'S PUBLIC BEACHES, WITH THE EXCEPTION OF UNFILTERED CIGARS; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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The attached Ordinance was prepared at the request of Vice-Mayor Alex J. Fernandez. The Mayor and City Commission approved the Ordinance on first reading at the July 20, 2022 City Commission meeting.

On June 17, 2022, Governor Ron DeSantis signed a House Bill 105 ("HB 105"), which amended the Florida Clean Indoor Air Act (FCIAA) to allow cities and counties to restrict smoking at beaches and City and County-owned public parks, subject to certain exceptions. Specifically, HB 105 authorizes counties and municipalities to restrict smoking within the boundaries of any public beaches and public parks they own or that are owned by the county, and within a city's jurisdiction, unless such restriction conflicts with county ordinance.

Cigarette butts are by far the most common item polluting our parks, beaches and waterways. According to research from Ocean Conservancy, cigarette butts are a top item left behind on beaches for the past 31 during the International Coastal Cleanup. Small and notoriously difficult to clean up, cigarette butts contain plastic filters, toxic chemicals and microplastics that adversely affect the environment.

The only changes made between First and Second Readings relate to the penalty provisions of the Ordinance. The sponsor now proposes the following penalties:

- a. First offense within a 12-month period: \$100.00 civil fine, or as a criminal municipal ordinance violation, punishable in accordance with section 1-14 of the City Code.
- b. Second offense within a 12-month period: \$200.00 civil fine, or as a criminal municipal ordinance violation, punishable in accordance with section 1-14 of the City Code.
- c. Third or subsequent offense within a 12-month period shall only be punishable as a criminal municipal ordinance violation, in accordance with section 1-14 of the City Code.

Prohibiting smoking on the City's public beaches is in the best interest of the City, its residents and visitors, and the environment. The proposed Ordinance seeks to prohibit smoking in public parks or on public beaches, with the exception of unfiltered cigars, as permitted by the new Florida law.

RAP/FA/ag