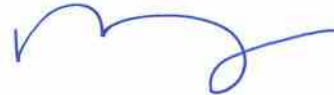


COMMISSION MEMORANDUM

**TO: Mayor Dan Gelber
Members of the City Commission**

FROM: Rafael A. Paz, City Attorney



DATE: July 26, 2023

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY CREATING SECTION 82-10 THEREOF, ENTITLED "LYING DOWN PROHIBITED ON LINCOLN ROAD," TO PROHIBIT ANY PERSON FROM LYING DOWN ON LINCOLN ROAD AND SURROUNDING AREAS; ESTABLISHING EXCEPTIONS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

The proposed Ordinance (the "Ordinance"), sponsored by Mayor Dan Gelber, Commissioner Alex Fernandez and Commissioner Steven Meiner, is submitted for first reading at the July 26, 2023 City Commission meeting.

Lincoln Road, one of the City's most popular shopping and dining promenades, is a largely pedestrianized area comprised of a myriad of shops, sidewalk cafes, businesses and entertainment venues. Unquestionably, Lincoln Road is one of the City's most frequented attractions for residents and visitors alike.

Lincoln Road is intended to enable pedestrians and vehicles (on the eastern and western ends of Lincoln Road) to move about safely and efficiently from place to place, and to provide the public with convenient access to visit its upscale stores and enjoy outdoor dining. However, due to its heavy usage by pedestrians and vehicles, and the significant presence of business establishments throughout Lincoln Road, it is incompatible with the normal and safe movement of pedestrian and vehicle traffic for individuals to be lying down upon or in any way obstructing the area.

Such conduct interferes with the primary purpose of allowing the public to safely and efficiently travel from place to place to enjoy its shopping and dining experience and, thus, deters people from frequenting the area and serves to undermine the economic vitality and viability of Lincoln Road.

Accordingly, the Ordinance would create Section 82-10 of the City Code, which would prohibit any person from lying down on Lincoln Road (including the intersecting side streets, Lincoln Lane North and Lincoln Lane South), while providing an exception for an individual experiencing a medical emergency requiring medical assistance. A violation of the Ordinance would be a criminal municipal ordinance violation which would be prosecuted by the City's Municipal Prosecution Team, and subject the offender to a maximum penalty of up to sixty (60) days in jail and/or a \$500 fine.

Importantly, however, the Ordinance provides that all persons be issued a warning (at least once in the previous 12 months) as to the prohibition on lying down *prior to* any enforcement action being taken. Moreover, the Ordinance also requires that any person without a home or other permanent shelter must be given an opportunity to enter a shelter or similar facility (if available) prior to any enforcement action being taken against the offender. If no such shelter or facility is available, enforcement action may not be taken, and an arrest may not be made.

RAP/MAF/bhs