

## COMMISSION MEMORANDUM

**TO:** Mayor Steven Meiner and Members of the City Commission

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



**SECOND READING**

**DATE:** March 13, 2024

**SUBJECT: 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 II, ENTITLED "PUBLIC PLACES," BY AMENDING DIVISION I ENTITLED "GENERALLY," BY CREATING SECTION 70-46 THEREOF, ENTITLED "OBSTRUCTING OF PEDESTRIAN AND VEHICULAR TRAFFIC PROHIBITED"; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

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At the request of the sponsor, Commissioner Alex J. Fernandez, this proposed ordinance is presented to the Mayor and City Commission for your consideration on second reading. The proposed ordinance was approved at first reading at the City Commission meeting on February 21, 2024. Between first and second reading, subsection (a) of the proposed ordinance has been amended to clarify a few minor points as set forth below.

The City of Miami Beach has a strong interest in protecting the health, safety and welfare of the general public, by providing residents and visitors the right and ability to move freely and safely through the City. Sidewalks, streets, alleys, beach walks, and beach entrances play a vital role in city life as conduits for pedestrian movement and access, enhancing connectivity and promoting walking throughout the City. Safe, accessible, and well-maintained sidewalks, streets, alleys, beach walks, and beach entrances are a fundamental and necessary foundation for cities, and have been found to enhance general public health and maximize social capital. When an individual's path is blocked on the sidewalks, streets, alleys, beach walks, and beach entrances it can force them onto the street or other dangerous terrain where there is a risk of death or injury. Pedestrians killed while walking along the roadway account for many incidents of traffic fatalities resulting from collisions between motor vehicles and pedestrians.

In order to advance the foregoing objectives, the proposed ordinance creates new City Code Section 70-46 and mandates that any person who, stands, sits, lies, or places an object in such manner as to block passage by another person or to require another person to take evasive action to avoid physical contact, or who, after being ordered to move by law enforcement officers, remains in or on any public sidewalk, street, alley, beach walk,

or beach entrance in such a manner as to block or impair movement of vehicles or pedestrians shall be guilty, pursuant to this Section, of the offense of Obstructing of Pedestrian and Vehicular Traffic.

Between first and second reading, the subsection (a) was amended slightly to make more clear that blocking or impairing pedestrian or vehicular traffic by a person or by an object placed on a public sidewalk, street, alley, beach walk, or beach entrance by a person violates the ordinance.

The proposed Ordinance also contains express constitutional protections, at subsection (b), providing that acts authorized as an exercise of one's First Amendment right to demonstrate, picket or to legally protest shall not constitute Obstructing of Pedestrian and Vehicular Traffic unless a nearby adequate and available alternative forum is offered and provided, to which the subject or subjects refuse to move.

As an illustration only, a person or persons blocking or impairing movement of vehicles or pedestrians on any public sidewalk, street, alley, beach walk, or beach entrance while exercising their First Amendment right to protest demonstrate, picket or to legally protest should be offered access to an adjacent or nearby public park, if one exists and is available, where they can exercise their First Amendment rights without blocking or impairing movement of vehicles or pedestrians. Only if those person or persons refuse to move to such a park or other offered forum where their activities will not block or impair movement of vehicles or pedestrians on any public sidewalk, street, alley, beach walk, or beach entrance may an arrest be made.

The proposed Ordinance also provides, at subsection (c), that anyone performing acts with a valid permit are allowed.

Finally, the proposed Ordinance establishes, at subsection (d), that violations are punishable by a maximum of 60 days in jail and/or a maximum \$500 fine. However, if the subject identifies themselves as homeless, the opportunity to enter a homeless shelter, or other immediate housing, must be offered and refused before an arrest may be effectuated.

RAP/RFR/mmm