

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: City Attorney Ricardo J. Dopico

DATE: July 24, 2024 2:15 p.m. Second Reading Public Hearing

TITLE: 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, ENTITLED "MISCELLANEOUS OFFENSES," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY CREATING SECTION 70-1.1, ENTITLED "HABITUAL MUNICIPAL ORDINANCE VIOLATION OFFENDERS"; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

ANALYSIS

The proposed Ordinance is presented by the sponsor, Mayor Steven Meiner, to the City Commission for its consideration.

Florida caselaw has established that a municipality may enact an ordinance which creates an offense against municipal law for the same act that constitutes an offense against State law (see *Jaramillo v. City of Homestead*, 322 So.2d 496 (Fla. 1975)); and

Florida law has further established that a municipality, by ordinance, may adopt State misdemeanor statutes by specific reference or by general reference, such as that contained in an ordinance making it unlawful to commit, within City limits, any act which is (or shall be) recognized by the laws of the State as a misdemeanor (*Id.* at 498); and

The City previously established, pursuant to Section 70-1 of the City Code, that it is unlawful for any person to commit within the City any act that is (or shall be) recognized by the laws of the State as a misdemeanor and that the commission of such acts is forbidden; and

On January 20, 2022, the Mayor and City Commission adopted Resolution No. 2022-32020, which expanded the City's municipal prosecution program by directing that the City shall become the primary entity responsible for the prosecution of the State law misdemeanor offenses of battery (except domestic battery), criminal mischief, and indecent exposure; and

On March 9, 2022, pursuant to Resolution No. 2022-32020, the Mayor and City Commission adopted Ordinance No. 2022-4477, which created specific offenses against municipal law for the same acts that constitute the State law misdemeanor offenses of battery (non-domestic), criminal mischief and exposure of sexual organs (indecent exposure); and

On October 26, 2022 the Mayor and City Commission adopted Ordinance No. 2022-4520 which created a specific offense against municipal law for the same acts that constitutes the State law misdemeanor offense of breach of the peace / disorderly conduct; and

On January 31, 2024, the Mayor and City Commission adopted Ordinance No. 2024-4588 in order to further expand the City's municipal prosecution program by creating, through specific reference, offenses against municipal law for the same acts that constitute the State law

misdemeanor offenses of assault, loitering or prowling, and disorderly conduct on the premises of an establishment; and

Fla. Stat. Sec. 775.0837 ("Habitual misdemeanor offenders") sets forth enhanced penalties for misdemeanants who are convicted of four or more specified misdemeanor offenses within a twelve (12) month period; and

The City's adoption of certain misdemeanor offenses as chargeable municipal ordinance violations, five (5) of which appear on the State of Florida's list of misdemeanor crimes subject to enhancement for habitual offenders, makes it appropriate for the City to adopt a habitual offender ordinance similar to the State of Florida's that will provide similarly enhanced penalties for offenders who habitually commit those crimes that appear on the enumerated list of habitual offenses set forth in Fla. Stat. Sec. 775.0837 and that have been adopted as City municipal ordinance violations.

FISCAL IMPACT STATEMENT

N/A

Does this Ordinance require a Business Impact Estimate? Yes
(FOR ORDINANCES ONLY)

The Business Impact Estimate (BIE) was published on 7/5/2024. See BIE at:
<https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notice/>

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?

No

Is this item related to a G.O. Bond Project?

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

City Attorney

Sponsor(s)

Mayor Steven Meiner