

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: City Attorney Ricardo J. Dopico

DATE: November 20, 2024 First Reading

TITLE: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING APPENDIX A OF THE CITY CODE TO ESTABLISH NEW RATES FOR ARTIST VENDOR FEES AND AMENDING CHAPTER 18 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "BUSINESS," BY AMENDING ARTICLE XV, ENTITLED "STREET PERFORMERS AND ART VENDORS," BY AMENDING SECTION 18-903, ENTITLED "ARTIST VENDOR CERTIFICATE REQUIREMENTS AND RULES," BY AMENDING SUBSECTION (3)(F) TO PROVIDE THAT ARTIST VENDOR CERTIFICATE FEES SHALL BE SET FORTH IN APPENDIX A TO THE CITY CODE AND BY CREATING SUBSECTION (5) THEREOF, TO INCLUDE A LIMITATION ON THE ISSUANCE OF ARTIST VENDOR CERTIFICATES FOR NONEXPRESSIVE PRODUCTS; BY AMENDING SECTION 18-905 ENTITLED "PERMIT APPLICATION AND RULES" BY AMENDING SUBSECTION (7) TO CLARIFY THAT ARTIST VENDOR PERMIT FEES ARE SET FORTH IN APPENDIX A TO THE CITY CODE; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

### **RECOMMENDATION**

### **BACKGROUND/HISTORY**

### **ANALYSIS**

The City of Miami Beach issues Artist Vendor Certificates that allow certificate holders to sell handmade products, as defined in Sec.18-903 of the City Code, on public property in various locations throughout the City.

The First Amendment to the United States Constitution protects the right of artists whose proposed product is inherently communicative and has nominal utility apart from its expression to sell their art on public property. However, the First Amendment does not protect the right of vendors whose product is predominantly nonexpressive in nature to sell their products on public property. Although an item may have some expressive purpose, it will be deemed to be predominantly nonexpressive in nature if it has a common and dominant nonexpressive purpose, i.e., has more than nominal utility apart from its expression. A nonexclusive list of examples of items that have more than nominal utility apart from their expression are housewares, appliances, articles of clothing, sunglasses, auto parts, oils, incense, perfumes, lotions, candles, jewelry, toys and stuffed animals.

The City has seen a proliferation of Artist Vendor Certificate holders selling products that are predominantly nonexpressive in nature on public property.

If enacted, the proposed ordinance provides that products that are fully protected by the First Amendment may be sold on public property pursuant to a validly issued Artist Vendor Certificate, but further provides that the number of unprotected products sold pursuant to Artist Vendor Certificates issued by the City should be limited in number to five (5) vendors operating Citywide at any one time.

If enacted, the proposed ordinance further provides that all fees related to the Artist Vendor program shall be set forth in Appendix A and said fees shall be adjusted to adequately reimburse the City funds expended annually to administer the program and enforce the rules set forth in the City Code for Artist Vendors.

### **FISCAL IMPACT STATEMENT**

The proposed ordinance would potentially have a positive fiscal impact on the City by raising fees collected from Artist Vendors, but could potentially have a negative fiscal impact if the number of Artist Vendors is decreased.

**Does this Ordinance require a Business Impact Estimate?** No  
(FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on:  
See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notice/>

### **FINANCIAL INFORMATION**

### **CONCLUSION**

#### **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)**

Commissioner David Suarez

**Co-sponsor(s)**

**Condensed Title**

1st Rdg, Limit Non-Art Artist Vendors and Raise Fees to Cover City Costs. (Suarez) CA