

R5 U 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 I, ENTITLED "IN GENERAL," BY AMENDING SECTION 70-1 THEREOF, ENTITLED "STATE MISDEMEANORS," BY ADOPTING, THROUGH SPECIFIC REFERENCE, THE STATE LAW MISDEMEANOR OFFENSES OF TRESPASS IN STRUCTURE OR CONVEYANCE AND TRESPASS ON PROPERTY OTHER THAN A STRUCTURE OR CONVEYANCE, TO AFFIRMATIVELY ESTABLISH OFFENSES AGAINST MUNICIPAL LAW FOR THE SAME ACTS THAT CONSTITUTE SUCH OFFENSES AGAINST STATE LAW; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Applicable Area:

# MIAMI BEACH

## COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: City Attorney Ricardo J. Dopico

DATE: November 20, 2024 11:00 a.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, FLORIDA, ENTITLED "MISCELLANEOUS OFFENSES," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 70-1 THEREOF, ENTITLED "STATE MISDEMEANORS," BY ADOPTING, THROUGH SPECIFIC REFERENCE, THE STATE LAW MISDEMEANOR OFFENSES OF TRESPASS IN STRUCTURE OR CONVEYANCE AND TRESPASS ON PROPERTY OTHER THAN A STRUCTURE OR CONVEYANCE, TO AFFIRMATIVELY ESTABLISH OFFENSES AGAINST MUNICIPAL LAW FOR THE SAME ACTS THAT CONSTITUTE SUCH OFFENSES AGAINST STATE LAW; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

### **RECOMMENDATION**

### **BACKGROUND/HISTORY**

#### **ANALYSIS**

The proposed Ordinance was approved on first reading. No changes have been made between first and second reading.

The proposed Ordinance, sponsored by Vice Mayor Alex Fernandez, seeks to adopt, by specific reference, the state law misdemeanor offenses of trespassing in a structure or conveyance and trespassing on property other than a structure or conveyance. The Ordinance would affirmatively make the conduct underlying these crimes offenses against municipal law for the same acts that constitute such offenses against State law, and thereby permit the City's Municipal Prosecution Team to prosecute such criminal violations under City law.

On September 25, 2017, the Mayor and City Commission adopted Resolution No. 2017-30023, which authorized the City Attorney's Office to commence the in-house prosecution, by and through a City municipal prosecution team, of those individuals exclusively charged with violating the City's criminal ordinances. However, the Miami-Dade State Attorney's Office (the "Miami-Dade SAO") remained the prosecutorial entity responsible for the prosecution of persons arrested for the commission of all felony, misdemeanor, and/or County ordinance violations committed in Miami-Dade County.

Although statistical data reflects a downward trend in crime within the City largely due to the efforts of law enforcement and the successful municipal prosecution program, the City continues to contend with certain quality of life offenses being committed within its jurisdictional bounds. The commission of misdemeanor and municipal ordinance offenses in the City adversely impact

residents' quality of life and tourists' vacation experience, and continues to generate complaints from the City's residents, visitors, and business establishments.

Some of those misdemeanor offenses which most adversely affect the City's residents, visitors, and businesses include battery, indecent exposure, criminal mischief, and trespassing. In order to acquire greater control and discretion regarding the prosecution of certain misdemeanor offenses occurring within the City, and to relieve the Miami-Dade SAO of some of its prosecutorial burden, the City desires to become the primary entity responsible for the prosecution, as criminal municipal ordinance violations, of the same conduct that would otherwise constitute the State law criminal offenses of trespassing in a structure or conveyance and trespassing on property other than a structure or conveyance. Accordingly, on March 9, 2022, 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).

Then, 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 act(s) that constitute the State law misdemeanor offense of breach of the peace / disorderly conduct.

Most recently, on February 10, 2024, the Mayor and City Commission adopted Ordinance No. 2024-4588 which created specific 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

The proposed Ordinance would create, through specific reference, offenses against municipal law for the same acts that constitute the State law misdemeanor offenses of trespassing in a structure or conveyance (Fla. Stat. 810.08) and trespassing on property other than a structure or conveyance (Fla. Stat. 810.09), respectively. Florida caselaw has established that a municipality may enact ordinances which create offenses against municipal law for the same acts that constitutes offenses against State law. Under Florida law, a municipality may, by ordinance, 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.

## **FISCAL IMPACT STATEMENT**

N/A.

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

If applicable, the Business Impact Estimate (BIE) was published on: 10/11/2024  
See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

## **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 Alex Fernandez

**Co-sponsor(s)**

Commissioner David Suarez  
Commissioner Joseph Magazine  
Mayor Steven Meiner

**Condensed Title**

11:00 a.m. 2<sup>nd</sup> Rdg, Ch. 70, Specifically Adopting State Law Trespass Misdemeanors.  
(Fernandez/Suarez/Magazine/Meiner) CA

ORDINANCE NO. \_\_\_\_\_

**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 I, ENTITLED "IN GENERAL," BY AMENDING SECTION 70-1 THEREOF, ENTITLED "STATE MISDEMEANORS," BY ADOPTING, THROUGH SPECIFIC REFERENCE, THE STATE LAW MISDEMEANOR OFFENSES OF TRESPASS IN STRUCTURE OR CONVEYANCE AND TRESPASS ON PROPERTY OTHER THAN A STRUCTURE OR CONVEYANCE, TO AFFIRMATIVELY ESTABLISH OFFENSES AGAINST MUNICIPAL LAW FOR THE SAME ACTS THAT CONSTITUTE SUCH OFFENSES AGAINST STATE LAW; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, on September 25, 2017, the Mayor and City Commission adopted Resolution No. 2017-30023, which authorized the City Attorney's Office to commence the in-house prosecution, by and through a City municipal prosecution team, of those individuals exclusively charged with violating the City's criminal ordinances; and

**WHEREAS**, the Miami-Dade State Attorney's Office (the "Miami-Dade SAO") continues to be the prosecutorial entity responsible for the prosecution of those offenders arrested for the commission of all felony, misdemeanor, and/or County ordinance violations committed in Miami-Dade County; and

**WHEREAS**, although statistical data reflects a downward trend in crime within the City largely due to the efforts of law enforcement and the successful municipal prosecution program, the City continues to contend with certain quality of life offenses being committed within its jurisdictional bounds; and

**WHEREAS**, the commission of misdemeanor and municipal ordinance offenses adversely impact residents' quality of life and tourists' vacation experience, and continues to generate complaints from the City's residents, visitors, and business establishments; and

**WHEREAS**, some of those misdemeanor offenses which most adversely affect the City's residents, visitors, and businesses include battery, indecent exposure, criminal mischief, breach of the peace / disorderly conduct, and trespassing; and

**WHEREAS**, in order to acquire greater control and discretion regarding the prosecution of certain misdemeanor offenses occurring in the City, and to relieve the Miami-Dade SAO of some of its prosecutorial burden, the City desires to become the entity responsible for the prosecution, as criminal municipal ordinance violations, of the same conduct that would otherwise constitute the State law criminal offenses of trespassing in a structure or conveyance and trespassing on property other than a structure or conveyance; and

**WHEREAS**, 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

**WHEREAS**, 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

**WHEREAS**, 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

**WHEREAS**, 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

**WHEREAS**, 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

**WHEREAS**, 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

**WHEREAS**, on February 10, 2024, the Mayor and City Commission adopted Ordinance No. 2024-4588 which created specific 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

**WHEREAS**, the Mayor and City Commission hereby desire to adopt the following amendments 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 trespass in a structure or conveyance and trespass on property other than a structure or conveyance.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:**

**SECTION 1.** That the section of the City Code creating offenses against municipal law for the same acts that constitute misdemeanor offenses against State law, as such Ordinance is codified in section 70-1 of the City Code, be amended as follows and as hereinafter set forth below:

**CHAPTER 70**  
**MISCELLANEOUS OFFENSES**

\* \* \*

**ARTICLE I. IN GENERAL**

\* \* \*

**Sec. 70-1. State misdemeanors.**

- (a) It shall be 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 the commission of such acts is hereby forbidden.
- (b) Repealed.
- (c) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor battery, as such offense is set forth in F.S. § 784.03.
- (d) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor criminal mischief, as such offense is set forth in F.S. § 806.13.
- (e) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor exposure of sexual organs (indecent exposure), as such offense is set forth in F.S. § 800.03.
- (f) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor breach of the peace/disorderly conduct, as such offense is set forth in F.S. § 877.03.
- (g) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor assault, as such offense is set forth in F.S. § 784.011.
- (h) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor loitering or prowling, as such offense is set forth in F.S. § 856.021.
- (i) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor disorderly conduct on the premises of an establishment, as such offense is set forth in F.S. § 509.143.
- (j) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor trespass in a structure or conveyance, as such offense is set forth in F.S. § 810.08.
- (k) It shall be unlawful for any person to commit, within the city, any act that is or shall be recognized as a misdemeanor trespass on property other than a structure or conveyance, as such offense is set forth in F.S. § 810.09.

**SECTION 2. REPEALER.**

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

