

R5 O 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.

Applicable Area:



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

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, 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.

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, due in part to its reputation as an internationally renowned tourist destination and the constant heavy influx of tourists and other visitors, the City continues to contend with many criminal, 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 continue to generate an inordinate number of issues and 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, and breach of the peace / disorderly conduct; and

WHEREAS, in order to acquire greater control and discretion regarding the prosecution of those identified 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 of those specified State law misdemeanor offenses (excluding domestic battery cases); 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 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

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

WHEREAS, 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.

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

SECTION 1. That Article I of Chapter 70 of the Code of the City Miami Beach is hereby amended as follows:

CHAPTER 70
MISCELLANEOUS OFFENSES

* * *

ARTICLE I. In General

* * *

Sec. 70-1.1. Habitual municipal ordinance violation offenders.

(1) As used in this section, the term:

- (a) "Convicted" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.
- (b) "Habitual municipal ordinance violation offender" means a defendant who is before the court for sentencing for a specified municipal ordinance violation offense and who has previously been convicted, as an adult, of four or more specified municipal ordinance violation offenses which meet the following criteria:
 - 1. The offenses, in relation to each other and the municipal ordinance violation before the court for sentencing, are separate offenses that are not part of the same criminal transaction or episode.
 - 2. The offenses were committed within 1 year of the date that the municipal ordinance violation before the court for sentencing was committed.
- (c) "Specified municipal ordinance violation offense" means those municipal ordinance violation offenses described in the City Code of the City of Miami Beach sections 70-1(c)("misdemeanor battery" as such offense is set forth in F.S. § 784.03); 70-1(d)("misdemeanor criminal mischief" as such offense is set forth in F.S. § 806.13); 70-1(e)("misdemeanor exposure of sexual organs (indecent exposure)" as such offense is set forth in F.S. § 800.03); 70-1(g)("misdemeanor assault" as such offense is set forth in F.S. § 784.011); and 70-1(h)("misdemeanor loitering or prowling" as such offense is set forth in F.S. 856 021).
- (d) "Imprisonment" means incarceration in a county jail operated by the county or a private vendor.

(2) If the court finds that a defendant before the court for sentencing for a municipal ordinance violation is a habitual municipal ordinance violation offender, the court shall, unless the court makes a finding that an alternative disposition is in the best interests of the community and defendant, sentence the defendant as a habitual municipal ordinance violation offender and impose one of the following sentences:

- (a) A term of imprisonment of not less than 30 days, but not to exceed 60 days; or
- (b) If the habitual municipal ordinance violation offender agrees and the court finds cause, commitment to a residential treatment program for not less than 60 days, provided that the treatment program is operated by the county or a private vendor with which the county has contracted to operate such program, or by a private vendor under contract with the state or licensed by the state to operate such program, and provided that any referral to a residential treatment facility is in accordance with the assessment criteria for residential treatment established by the Department of Children and Families, and that residential treatment beds are available or other community-based treatment program or a combination of residential and community-based program; or
- (c) If the habitual municipal ordinance violation offender agrees and the court finds cause, detention for not less than 30 days, but not to exceed 60 days, to a

designated residence, if the detention is supervised or monitored by the county or by a private vendor with which the county has contracted to supervise or monitor the detention.

SECTION 2. REPEALER.

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

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2024.

PASSED AND ADOPTED this _____ day of _____, 2024.

ATTEST:


Rafael E. Granado, City Clerk

(Sponsored by Mayor Steven Meiner)

Underline denotes additions
~~Strike through~~ denotes deletions

Steven Meiner, Mayor

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

 6/17/2024
City Attorney Date

