

ORDINANCE NO. 2015-3950

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, ENTITLED "STATE MISDEMEANORS," BY CREATING SUBSECTION (C) WHICH PROVIDES CIVIL PENALTIES FOR THE POSSESSION OF CANNABIS (MARIJUANA) FOR AMOUNTS UNDER 20 GRAMS AND POSSESSION OF DRUG PARAPHERNALIA; AND SETTING FORTH PENALTIES AND ENFORCEMENT RESPONSIBILITIES FOR A VIOLATION OF SUBSECTION 70-1(C)(1) AND (2); PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, the Charter of City of Miami Beach grants the Mayor and City Commission with home rule power to enact an Ordinance that does not conflict with State law; and

WHEREAS, the City has adopted section 70-1(a), which makes any act that is or shall be recognized by the laws of the State of Florida as a misdemeanor, thereby being criminally prohibited throughout the City; and

WHEREAS, a person convicted for commission of an act defined as a misdemeanor pursuant to section 70-1(a), will be punished by a fine or imprisonment or both, but in no case shall the fine and/or or imprisonment imposed be greater than the maximum fine or penalty for the same offense under the Florida Statutes; and

WHEREAS, several states and localities have modified their drug laws to create civil violations for possession of de minimis amounts of marijuana, which is only enforceable by a monetary fine and does not subject that person to arrest or criminal prosecution; and

WHEREAS, this ordinance will provide an alternative and additional mechanism under the City's Code to enforce these violations that are based upon the commission of certain enumerated misdemeanors; and

WHEREAS, the Mayor and City Commission have an interest in enacting monetary civil penalties for certain violations of section 70-1(a), which civil penalties will act as an additional deterrent to such violations when encountering by the Miami Beach Police Department Officers for a misdemeanant who has committed the offense of possession of 20 grams or less of marijuana or paraphernalia; and

WHEREAS, the Miami Beach Police Department will have the discretion to issue a civil citation pursuant to this ordinance, or arrest or not arrest a person for the commission of a misdemeanor under State law.

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

SECTION 1. That Article I, entitled "In General," of Chapter 70, entitled "Miscellaneous Offenses," of the Code of the City of Miami Beach, Florida is hereby amended as follows:

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) Whoever shall violate the provisions of this section, upon conviction thereof, shall be punished by the same penalty as is provided by the laws of the state.
- (c) Notwithstanding subsection (a), the following misdemeanor(s) under State law are eligible to receive a civil violation notice, at the discretion of a law enforcement officer, provided that such violations are not charged in conjunction with any charge that is a felony, driving under the influence, incident involving domestic violence, or violent crime, as those terms are defined under State law:

- (1) Possession of Cannabis in an amount of 20 grams or less, as set forth in section 893.13(6)(b) of the Florida Statutes, as such may be amended from time to time; and/or
- (2) Possession of Drug Paraphernalia, as set forth in sections 893.146 and 893.147(1)(b) of the Florida Statutes, as such may be amended from time to time.

An individual issued a civil violation notice for a violation of subsection (c)(1) or (2) will be subject to the fine set forth herein.

(3) Penalties and enforcement.

- (a) A person violating subsection (c)(1) or (2) shall receive a civil fine of \$100.00.
- (b) Enforcement. The Miami Beach police department shall enforce this section. This shall not preclude other law enforcement agencies from any action to assure compliance with this section and all applicable laws. If a police officer finds a violation of (c)(1) or (c)(2), the police officer will be authorized to issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that

the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

(c) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.

a. A violator who has been served with a notice of violation must elect to either:

i. pay the civil fine in the manner indicated on the notice of violation; or

ii. request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.

b. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.

c. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the police officer. The failure of the named violator to appeal the decision of the police officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.

d. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.

e. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

- f. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.
- g. The special master shall not have discretion to alter the penalties prescribed in subsection (3)(a).

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith are 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.

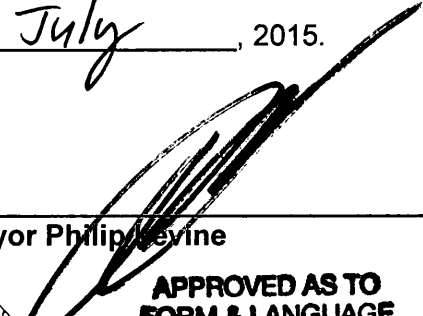
SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the tenth (10th) day following its adoption.

PASSED AND ADOPTED this 8 day of July, 2015.

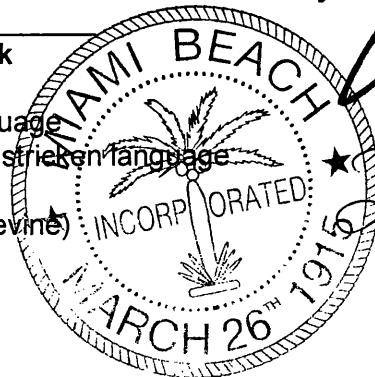
ATTEST:

Rafael E. Granado, City Clerk
RJ 7/9/15

Mayor Philip Levine


**APPROVED AS TO
 FORM & LANGUAGE
 & FOR EXECUTION**

Underscore denotes new language
~~Single Strike-through denotes stricken language~~
 (Sponsored by Mayor Philip Levine)



City Attorney
AB
6/4/15
 Date



OFFICE OF THE CITY ATTORNEY
RAUL J. AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

TO: Mayor Philip Levine
Members of the City Commission
City Manager Jimmy Morales

FROM: Raul J. Aguila, City Attorney *R. J. Aguila*

DATE: July 8, 2015

**SECOND READING
PUBLIC HEARING**

RE: 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, ENTITLED "STATE MISDEMEANORS," BY CREATING SUBSECTION (C) WHICH PROVIDES CIVIL PENALTIES FOR THE POSSESSION OF CANNABIS (MARIJUANA) FOR AMOUNTS UNDER 20 GRAMS AND POSSESSION OF DRUG PARAPHERNALIA; AND SETTING FORTH PENALTIES AND ENFORCEMENT RESPONSIBILITIES FOR A VIOLATION OF SUBSECTION 70-1(C)(1) AND (2); PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

BACKGROUND

Pursuant to the request of Mayor Philip Levine, the above-referenced Ordinance is submitted for approval on Second Reading by the City Commission. The Ordinance passed on First Reading at the June 10, 2015 City Commission meeting.

ANALYSIS

The attached Ordinance is similar to legislation that was passed on first reading on April 21, 2015 and adopted by the Miami-Dade County Board of County Commissioners on June 30, 2015. The County Ordinance makes the possession of cannabis (marijuana) in an amount of 20 grams or less and the possession of drug paraphernalia, among other offenses deemed misdemeanors under State law, eligible for prosecution as a civil violations under the County Code and punishable by a \$100 fine. The County Ordinance provides an alternative means of enforcement for certain State misdemeanor offenses by providing a civil code penalty instead of

Agenda Item RSD
Date 7-8-15

a criminal penalty.¹ The area of drug abuse control is not preempted to the State, thus local governments may enact ordinances on this subject provided that the local law does not conflict with State law. Edwards v. State, 422 So.2d 84 (Fla. 2d DCA 1982). A conflict would exist, for example, if an ordinance provided for a more severe penalty than prescribed by State law.

Like the County Ordinance, the proposed City Ordinance provides a civil enforcement option for the State misdemeanor offenses of possession of a minor amount of marijuana and the possession of drug paraphernalia. Both Ordinances set forth a penalty less severe than, and thus not in conflict with, State law. Moreover, the proposed City Ordinance would provide an additional deterrent to such violations and would give law enforcement officers an additional enforcement option when encountering these offenses. Under the proposed City Ordinance, law enforcement officers will have the discretion to issue a civil citation under the City Code or arrest, or not arrest, for the commission of a misdemeanor under State law.

FISCAL IMPACT

In accordance with Section 5.02 of the City Charter, the City shall consider the long term economic impact (at least 5 years) of proposed legislative actions. The fiscal impact statements from the Miami Beach Police Department and the Miami Beach Code Compliance Department are attached hereto as Exhibits A and B, respectively.

¹ Under Section 893.13(6)(b), Fla. Stat., the possession of 20 grams or less of cannabis is a first degree misdemeanor. Under State law, this offense is punishable as provided in Sections 775.082 and 775.083 of the Florida Statutes which provide for a definite term of imprisonment not exceeding 1 year, and up to a \$1,000 fine.

Miami Beach Police Department – Fiscal Impact of Proposed Cannabis Ordinance

**Miami Beach Police Department
Fiscal Impact Statement for Proposed Ordinance
Civil Citation for Marijuana Possession 20 grams or Less**

Estimated expenditures to process 1 civil case for the possession of Marijuana	Time	Cost
Citation processing	15 mins	\$ 8.00
Records processing	15 mins	\$ 5.46
PEU processing and storage	15 mins	\$ 5.97
Total expenditures to process 1 civil case	45 mins	\$ 19.43
Estimated expense for 400 cases per year	300 hrs	\$ 7,771.00
Estimated expenditures to process 1 arrest for the possession of Marijuana	Time	Cost
Arrest processing	90 mins	\$ 47.99
Prisoner transport	30 mins	\$ 16.00
PEU processing and storage	15 mins	\$ 5.97
Supervisor review	15 mins	\$ 10.20
Records processing	15 mins	\$ 5.46
Total expenditures to process 1 arrest	165 min	\$ 85.61
Estimated expense for 400 arrest per year	1,100 hrs	\$ 34,243.00
Expense for 1 case that may require court appearance	Time	Cost
Court attendance - (3.5 OT hrs minimum per contract)	210 mins	\$ 167.95
Estimated expenses to process approximately 80 court cases annually	280 hrs	\$ 13,435.80
Total expense to process 400 arrests including 80 court appearances	1380 hrs	\$ 47,678.80
Difference to make arrests (including court appearance) vs civil	1,080 hrs	\$ 39,907.80

*Total court appearance calculated at 20% of total arrests (80)

* Average salary ranges used for the calculations.

City of Miami Beach Code Compliance Department – Fiscal Impact of Proposed Cannabis Ordinance

Employment of one (1)Administrative Aide I		
Regular Expenditures		
	Salary	36,039
	OT	800
	Health and Life	5,000
	SS / Medicare	523
	Uniforms	400
Subtotal		\$ 42,762

One-Time Expenditures		
	Computer and Monitor	3,000.00
	Furniture and Fixtures	2,000.00
Subtotal		\$ 5,000.00

Total		\$ 47,762.00
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CITY OF MIAMI BEACH NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY given that the following public hearings will be held by the Mayor and City Commissioners of the City of Miami Beach, Florida, in the Commission Chambers, Third Floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **July 8, 2015**, at the times listed, or as soon thereafter as the matter can be heard:

10:35 a.m.

An Ordinance 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, Entitled "State Misdemeanors," By Creating Subsection (C) Which Provides Civil Penalties For The Possession Of Cannabis (Marijuana) For Amounts Under 20 Grams And Possession Of Drug Paraphernalia; And Setting Forth Penalties And Enforcement Responsibilities For A Violation Of Subsection 70-(1)(C)(1) And (2), Providing For Repealer, Severability, Codification; And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

10:40 a.m.

An Ordinance Amending Chapter 66, "Marine Structures, Facilities And Vehicles," Article IV, "Vessels," Section 66-151, "Launching And Hauling," To Authorize The Installation Of "Tow-Away Zone" Signs Along Public Seawalls And To Authorize Towing; Providing For Repealer, Codification; Severability And An Effective Date. *Inquiries may be directed to the Police Department at 305.673.7900.*

10:45 a.m.

An Ordinance Amending The Land Development Regulations (LDRs) Of The City Code, At Chapter 118, Entitled "Administrative And Review Procedures," Article VI "Design Review Procedures, By Modifying Section 118-252, Entitled "Applicability And Exemptions" To Exclude From Design Review Board Review City Applications Relating To Stormwater Pump Stations; Providing For Codification, Repealer, Severability And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

10:50 a.m.

An Ordinance Amending Chapter 70 Of The Code Of The City Of Miami Beach, Entitled "Miscellaneous Offenses," Article II, Entitled "Public Places," Division 3, Entitled "Alcoholic Beverages," By Amending Section 70-87 Thereof To (1) Clarify That The Consumption, Service, Sale, Or Possession Of Open Containers Of Alcoholic Beverages At Sidewalk Cafes Is Only Permitted During The Hours Set Forth In Chapter 6 Of The City Code, (2) Clarify That Alcoholic Beverage Establishments Shall Not Allow Any Person To Take From The Premises Any Opened Alcoholic Beverage Container Or Any Open Or Unsealed Container Of Alcoholic Beverages, And (3) Amend The Enforcement And Penalty Provisions; And Providing For Repealer, Severability, Codification, And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

10:55 a.m.

An Ordinance Amending Chapter 2 Of The Code Of The City Of Miami Beach, Entitled "Administration," By Amending Article II, Entitled "City Commission," By Amending Section 2-11, Entitled "Time Of Regular Meetings" And Section 2-12, Entitled "Meeting Agendas," By Amending The Requirements And Procedures Relating To City Commission Meetings And Agendas; Providing For Repealer, Codification, And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

11:00 a.m.

An Ordinance Amending Policy 1.2 Of The Future Land Use Element Of The Comprehensive Plan Pursuant To The Procedures In Section 163.3184(3), Florida Statutes, By Modifying The Medium Intensity Commercial Category (CD-2) And The Mixed Use Entertainment Category (MXE) To Establish The "Ocean Terrace Overlay" In Order To Allow For An F.A.R. Of 3.0 Within Its Boundaries; Providing For Repealer, Severability, Codification; And An Effective Date. *Inquiries may be directed to the Planning Department at 305.673.7550.*

11:00 a.m.

An Ordinance Amending The Land Development Regulations Of The Code Of The City Of Miami Beach, By Amending Chapter 142, "Zoning Districts And Regulations," Article III "Overlay Districts," Creating Division 10 "Ocean Terrace Overlay", To Modify The Applicable Setbacks And Allowable Encroachments, Increase The Allowable Height To 250 Feet For Residential Uses And 125 Feet For Hotel Uses, Increase The Allowable Floor Area To 3.0, To Limit The Maximum Floorplate Of The Tower Portion Of New Buildings, To Provide A Minimum Building Separation For The Tower Portion Of New Buildings, To Modify The Allowable Main, Conditional And Accessory Uses; Providing For Repealer, Severability, Codification; And An Effective Date. *Inquiries may be directed to the Planning Department at 305.673.7550.*

2:00 p.m.

A Resolution Of The Chairperson And Members Of The Miami Beach Redevelopment Agency (RDA), Accepting The Recommendation Of The City's Finance And Citywide Projects Committee, On First Reading Of This Resolution, And Approving, A Lease Agreement Between The RDA (Landlord) And Cubiche 105, LLC (Tenant), In Connection With The Use Of Suite Nos. 1-3 At The Anchor Shops, Located At 1555 Washington Avenue, Miami Beach, Florida (Premises), For A Term Of Nine (9) Years And Three Hundred And Sixty Four (364) Days From Rent Commencement, With Two (2) Renewal Options, For Five (5) Years Each; Further Waiving The Competitive Bidding Requirement In Section 82-39(a) Of The City Code, Finding Such Waiver To Be In The Best Interest Of The City/ROA; Referring The Proposed Lease To The Planning Board, For Review And Approval, As Required Pursuant To Section 1.03(b)(4) Of The City Charter, And Setting A Public Hearing, As Required Pursuant To Section 82-37(a)(2) Of The City Code, For Second (And Final) Reading And Public Hearing. *Inquiries may be directed to the Tourism, Culture and Economic Development Department at 305.673.7193.*

Dr. Stanley Sutnick Citizen's Forum – Pursuant to Resolution No. 2013-28440, the times for the Dr. Stanley Sutnick Citizen's Forum are **8:30 a.m.** and **1:00 p.m.**, or as soon as possible thereafter. Approximately thirty minutes will be allocated to each session, with individuals being limited to no more than three minutes or for a period established by the Mayor. No appointment or advance notification is needed in order to speak to the Commission during this Forum.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these items are available for public inspection during normal business hours in the Office of the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting, or any item herein, may be continued, and under such circumstances, additional legal notice need not be provided.

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in alternate format, sign language interpreter (five-day notice required), information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceedings, call 305.604.2489 and select 1 for English or 2 for Spanish, then option 6; TTY users may call via 711 (Florida Relay Service).

Rafael E. Granado, City Clerk
City of Miami Beach