

ORDINANCE NO. 2022-4509

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE MIAMI BEACH CITY CODE, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE 1, ENTITLED "IN GENERAL," BY CREATING SECTION 82-9 THEREOF, ENTITLED "SMOKING IN PARKS AND ON THE BEACHES IS PROHIBITED," TO PROHIBIT SMOKING IN THE CITY'S PARKS AND ON THE CITY'S PUBLIC BEACHES, WITH THE EXCEPTION OF UNFILTERED CIGARS; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, cigarette butts are by far the most common item polluting our parks, beaches and waterways; and

WHEREAS, according to research from Ocean Conservancy, cigarette butts are a top item left behind on beaches for the past 31 during the International Coastal Cleanup; and

WHEREAS, small and notoriously difficult to clean up, cigarette butts contain toxic chemicals and microplastics that adversely impact the environment; and

WHEREAS, on June 17, 2022, Governor Ron DeSantis signed a House Bill 105 ("HB 105"), which amended the Florida Clean Indoor Air Act (FCIAA) to allow cities and counties to restrict smoking at beaches and parks, subject to certain exceptions; and

WHEREAS, specifically, HB 105 authorizes counties and municipalities to restrict smoking within the boundaries of any public beaches and public parks they own or that are County-owned but within a city's jurisdiction, unless such restriction conflicts with county ordinance; and

WHEREAS, however, under HB 105, counties and municipalities may not restrict the smoking of unfiltered cigars; and

WHEREAS, prohibiting smoking on the City's public beaches is in the best interest of the City, its residents and visitors, and the environment.

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

SECTION 1. Section 82-9 of Article I, of Chapter 82 of the City Code, entitled "Public Property," is hereby created as follows:

CHAPTER 82
PUBLIC PROPERTY
ARTICLE I. IN GENERAL

* * *

Sec. 82-9. Smoking in the parks and on the beaches is prohibited.

It shall be unlawful for any person to smoke in public parks or on public beaches.

"Smoking" means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product, with the exception of unfiltered cigars.

The following penalties shall be imposed for violations of this section:

- a. First offense within a 12-month period: punishable by a \$100.00 civil fine, or by imprisonment for a term not exceeding 60 days in accordance with section 1-14 of the City Code.
- b. Second offense within a 12-month period: punishable by a \$200.00 civil fine, or by imprisonment for a term not exceeding 60 days in accordance with section 1-14 of the City Code.
- c. Third or subsequent offense within a 12-month period: punishable by a \$500.00 civil fine, or by imprisonment for a term not exceeding 60 days in accordance with section 1-14 of the City Code.

* * *

SECTION 2. 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 Miami Beach City Code. 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 3. REPEALER

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

SECTION 4. SEVERABILITY

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

SECTION 5. EFFECTIVE DATE

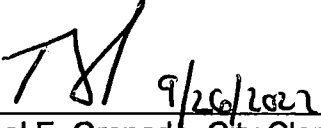
This Ordinance shall take effect on January 1, 2023.

PASSED AND ADOPTED this 14 day of September, 2022.

ATTEST:



Dan Gelber, Mayor

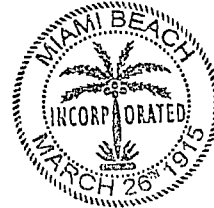


Rafael E. Granado, City Clerk

(Sponsored by Vice-Mayor Alex J. Fernandez)

Underlined denotes new additions

Doubleunderlined denotes new additions after First Reading



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



City Attorney 

9-15-22
Date

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Rafael A. Paz, City Attorney
DATE: September 14, 2022

10:25 a.m. Second Reading Public Hearing

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE MIAMI BEACH CITY CODE, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE 1, ENTITLED "IN GENERAL," BY CREATING SECTION 82-9 THEREOF, ENTITLED "SMOKING IN PARKS AND ON THE BEACHES IS PROHIBITED," TO PROHIBIT SMOKING IN THE CITY'S PARKS AND ON THE CITY'S PUBLIC BEACHES, WITH THE EXCEPTION OF UNFILTERED CIGARS; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

ANALYSIS

See attached Commission Memorandum.

SUPPORTING SURVEY DATA

N/A

FINANCIAL INFORMATION

N/A

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?

Yes

Does this item utilize G.O. Bond Funds?

No

Legislative Tracking

Office of the City Attorney

Sponsor

Vice-Mayor Alex Fernandez

ATTACHMENTS:

Description

- ▣ Commission Memorandum
- ▣ Ordinance

MIAMI BEACH

OFFICE OF THE CITY ATTORNEY
RAFAEL PAZ, CITY ATTORNEY

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission
Alina T. Hudak, City Manager

FROM: Rafael A. Paz, City Attorney

SECOND READING

DATE: SEPTEMBER 14, 2022

*Ref
Revised
for
RAP*

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE MIAMI BEACH CITY CODE, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE 1, ENTITLED "IN GENERAL," BY CREATING SECTION 82-9 THEREOF, ENTITLED "SMOKING IN PARKS AND ON THE BEACHES IS PROHIBITED," TO PROHIBIT SMOKING IN THE CITY'S PARKS AND ON THE CITY'S PUBLIC BEACHES, WITH THE EXCEPTION OF UNFILTERED CIGARS; AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

The attached Ordinance was prepared at the request of Vice-Mayor Alex J. Fernandez. The Mayor and City Commission approved the Ordinance on first reading at the July 20, 2022 City Commission meeting.

On June 17, 2022, Governor Ron DeSantis signed a House Bill 105 ("HB 105"), which amended the Florida Clean Indoor Air Act (FCIAA) to allow cities and counties to restrict smoking at beaches and City and County-owned public parks, subject to certain exceptions. Specifically, HB 105 authorizes counties and municipalities to restrict smoking within the boundaries of any public beaches and public parks they own or that are owned by the county, and within a city's jurisdiction, unless such restriction conflicts with county ordinance.

Cigarette butts are by far the most common item polluting our parks, beaches and waterways. According to research from Ocean Conservancy, cigarette butts are a top item left behind on beaches for the past 31 during the International Coastal Cleanup. Small and notoriously difficult to clean up, cigarette butts contain plastic filters, toxic chemicals and microplastics that adversely affect the environment.

The only changes made between First and Second Readings relate to the penalty provisions of the Ordinance. The sponsor now proposes the following penalties:

- a. First offense within a 12-month period: \$100.00 civil fine, or as a criminal municipal ordinance violation, punishable in accordance with section 1-14 of the City Code.
- b. Second offense within a 12-month period: \$200.00 civil fine, or as a criminal municipal ordinance violation, punishable in accordance with section 1-14 of the City Code.
- c. Third or subsequent offense within a 12-month period shall only be punishable as a criminal municipal ordinance violation, in accordance with section 1-14 of the City Code.

Prohibiting smoking on the City's public beaches is in the best interest of the City, its residents and visitors, and the environment. The proposed Ordinance seeks to prohibit smoking in public parks or on public beaches, with the exception of unfiltered cigars, as permitted by the new Florida law.

RAP/FA/ag