

R5 F AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 18 OF THE CITY CODE, ENTITLED "BUSINESSES," BY CREATING ARTICLE XX, ENTITLED "POLICE COST RECOVERY," BY CREATING SECTION 18-950 THEREOF, ENTITLED "RECOVERY OF COSTS FOR FAILURE OF RESPONSIBLE PERSON TO APPEAR ON BEHALF OF BUSINESS," BY AUTHORIZING THE RECOVERY OF ALL COSTS, OR A MINIMUM SERVICE FEE IN LIEU OF THE RECOVERY OF ALL COSTS, INCURRED BY THE CITY'S POLICE DEPARTMENT UNDER CIRCUMSTANCES IN WHICH A CRIMINAL PROSECUTION IS NOLLE PROSSED, ABANDONED, DISMISSED, OR OTHERWISE UNSUCCESSFUL AS A DIRECT RESULT OF THE FAILURE OF A RESPONSIBLE PERSON TO APPEAR IN COURT PROCEEDINGS ON BEHALF OF THE OWNER OR OPERATOR OF A BUSINESS ESTABLISHMENT; 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: July 23, 2025 9:45 a.m. First Reading Public Hearing

TITLE: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 18 OF THE CITY CODE, ENTITLED "BUSINESSES," BY CREATING ARTICLE XX, ENTITLED "POLICE COST RECOVERY," BY CREATING SECTION 18-950 THEREOF, ENTITLED "RECOVERY OF COSTS FOR FAILURE OF RESPONSIBLE PERSON TO APPEAR ON BEHALF OF BUSINESS," BY AUTHORIZING THE RECOVERY OF ALL COSTS, OR A MINIMUM SERVICE FEE IN LIEU OF THE RECOVERY OF ALL COSTS, INCURRED BY THE CITY'S POLICE DEPARTMENT UNDER CIRCUMSTANCES IN WHICH A CRIMINAL PROSECUTION IS NOLLE PROSSED, ABANDONED, DISMISSED, OR OTHERWISE UNSUCCESSFUL AS A DIRECT RESULT OF THE FAILURE OF A RESPONSIBLE PERSON TO APPEAR IN COURT PROCEEDINGS ON BEHALF OF THE OWNER OR OPERATOR OF A BUSINESS ESTABLISHMENT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

BACKGROUND/HISTORY

ANALYSIS

The proposed Ordinance, sponsored by Commissioner Tanya K. Bhatt, has been submitted for consideration by the Mayor and City Commission.

The Miami Beach Police Department ("Police Department") frequently responds to reports of retail theft, assault, battery, and other criminal incidents involving, or occurring on the premises of, various business establishments in the City. In many such cases, the Police Department conducts investigations, makes arrests, and prepares criminal cases for prosecution, incurring valuable Police Department time and resources.

Nonetheless, successful prosecution of these cases often requires the cooperation and court appearance by a responsible person or authorized representative of the business establishment to testify or provide necessary documentation. However, it is a recurring problem that some business establishments fail to ensure the appearance of a responsible person in court proceedings, resulting in the nolle prosequing, abandonment, dismissal, or otherwise unsuccessful prosecution of these criminal cases. Regrettably, such failures undermine the City's law enforcement efforts and lead to the waste of public resources, demoralize MBPD officers, and frustrate the City's ability to ensure accountability for criminal activity.

Accordingly, the proposed Ordinance would authorize the recovery of all costs incurred by the Police Department in connection with such unsuccessful prosecutions or, in the alternative, impose a minimum service fee of \$250, in order to offset the public burden caused by the non-cooperation of businesses. This measure is a reasonable and necessary exercise of the City's home rule authority, preserves limited public resources, and is in the best interest of the health, safety, and welfare of the residents and visitors of the City of Miami Beach.

FISCAL IMPACT STATEMENT

Cost recovery for police services shall be assessed against any business that fails to send a responsible person to Court proceedings and, as a direct result, the criminal case is nolle prossed, abandoned, dismissed, or otherwise unsuccessful due to no such person appearing to represent the business in the Court proceedings.

Does this Ordinance require a Business Impact Estimate? Yes
(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 Tanya K. Bhatt

Co-sponsor(s)

Condensed Title

9:45 a.m. 1st Rdg PH, Police Cost Recovery for Business Failure to Appear. (Bhatt) CA

Previous Action (For City Clerk Use Only)

Continued from 6/25/2025 - R5 AD

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 18 OF THE CITY CODE, ENTITLED "BUSINESSES," BY CREATING ARTICLE XX, ENTITLED "POLICE COST RECOVERY," BY CREATING SECTION 18-950 THEREOF, ENTITLED "RECOVERY OF COSTS FOR FAILURE OF RESPONSIBLE PERSON TO APPEAR ON BEHALF OF BUSINESS," BY AUTHORIZING THE RECOVERY OF ALL COSTS, OR A MINIMUM SERVICE FEE IN LIEU OF THE RECOVERY OF ALL COSTS, INCURRED BY THE CITY'S POLICE DEPARTMENT UNDER CIRCUMSTANCES IN WHICH A CRIMINAL PROSECUTION IS NOLLE PROSSED, ABANDONED, DISMISSED, OR OTHERWISE UNSUCCESSFUL AS A DIRECT RESULT OF THE FAILURE OF A RESPONSIBLE PERSON TO APPEAR IN COURT PROCEEDINGS ON BEHALF OF THE OWNER OR OPERATOR OF A BUSINESS ESTABLISHMENT; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach ("City") is committed to public safety and the effective enforcement of criminal laws, including crimes committed against retail establishments; and

WHEREAS, the Miami Beach Police Department frequently responds to reports of retail theft, assault, battery, and other criminal incidents involving, or occurring on the premises of, various business establishments in the City; and

WHEREAS, in many such cases, the Police Department conducts investigations, makes arrests, and prepares criminal cases for prosecution, incurring valuable Police Department time and resources; and

WHEREAS, successful prosecution of these cases often requires the cooperation and court appearance by a responsible person or authorized representative of the business establishment to testify or provide necessary documentation; and

WHEREAS, it is a recurring problem that some business establishments fail to ensure the appearance of a responsible person in court proceedings, resulting in the nolle prosequing, abandonment, dismissal, or otherwise unsuccessful prosecution of criminal cases; and

WHEREAS, such failures undermine the City's law enforcement efforts and lead to the waste of public resources, demoralize MBPD officers, and frustrate the City's ability to ensure accountability for criminal activity; and

WHEREAS, the City finds it necessary and appropriate to authorize the recovery of all costs incurred by the Police Department in connection with such unsuccessful prosecutions or, in the alternative, impose a minimum service fee in order to offset the public burden caused by the non-cooperation of businesses; and

WHEREAS, the City Commission finds that such a measure is a reasonable and necessary exercise of its home rule authority, preserves limited public resources, and is in the best interest of the health, safety, and welfare of the residents and visitors of the City of Miami Beach.

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

SECTION 1. That Section 18-950 of Article XX of Chapter 18 of the Miami Beach City Code is hereby amended as follows:

CHAPTER 18

BUSINESSES

* * *

Article XX. Police Cost Recovery

Sec. 18-950. Recovery of costs for failure of responsible person to appear on behalf of business.

(a) Definitions.

Business owner or operator: The owner or operator of a business establishment that is operating within the City or that holds a local business tax receipt issued by the City, which business is the complainant or reporter of the suspected commission of criminal activity or transactions occurring at such business, and which activity or transaction is within the jurisdiction of the City Police Department, and who, as a business owner or operator, may be liable for costs incurred upon a responsible person's failure to appear as provided by this section.

City: The Florida municipal corporation situated within Miami-Dade County, Florida, and known as the City of Miami Beach, Florida.

Costs incurred: Any and all monetary costs directly incurred by the City in relation to the investigation, enforcement and/or prosecution of suspected criminal activities or transactions which have been complained of, witnessed or reported by a responsible person or concerning which a responsible person is required to appear at court proceedings.

Court proceedings: Any law enforcement, prosecutorial or judicial proceedings related to the reporting, filing, initiation or maintenance of a complaint or charge concerning a criminal prosecution, including but not limited to State Attorney intake and pre-filing proceedings, filing of criminal proceedings, depositions, or court appearances.

Criminal charge is nolle prossed, abandoned, dismissed or otherwise unsuccessful: When a criminal complaint, case, or charge is nolle prossed, abandoned, declined to be filed or further prosecuted by the State Attorney or Municipal Prosecutor, or is dismissed by the State Attorney, Municipal Prosecutor, or by the court, or a verdict of "not guilty" is made or directed by the court, directly upon the basis of the failure to appear of a responsible person.

Failure to appear: The failure of a responsible person to appear in court proceedings or to comply with the requirements of this section, under circumstances in which the criminal charge is nolle prossed, abandoned, dismissed or otherwise unsuccessful.

Municipal Prosecutor: Any of the prosecuting attorneys for the City of Miami Beach assigned to prosecute criminal municipal ordinance violations on behalf of the City.

Person: Any natural person, individual, firm, partnership, association, or corporation.

Responsible person: The person who, as a business owner or operator, or who, as an employee, officer or agent of a business owner or operator, furnished information to police, initiates a report or files a complaint upon or concerning suspected criminal activities or

transactions on behalf of any business owner or operator or concerning an incident in which it is reported by such person that criminal activities or transactions within the police jurisdiction of the City may have occurred at or concerning the place of business or in connection with the activities or transactions of the business establishment. The term "responsible person" includes, but is not limited to, victims and witnesses.

State Attorney: The regular or specially assigned prosecuting attorney for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

- (b) Service charge imposed. Pursuant to the City's authority under its constitutional home rule powers, as codified in Section 166.021, Florida Statutes, and as also authorized by Section 166.201, Florida Statutes, a service charge in the full amount of the City's costs incurred is hereby imposed upon the business owner or operator, in the event that a criminal charge is nolle prossed, abandoned, dismissed or otherwise unsuccessful as a direct result of a responsible person's failure to appear in court proceedings. The identity of each responsible person may be noted in the applicable offense report or in a supplemental report. A written certification by the State Attorney, Court Administrator or the City's Police Chief that a criminal charge is nolle prossed, abandoned, dismissed or otherwise unsuccessful as a direct result of the failure to appear of a responsible person shall be prima facie evidence that the costs incurred are the obligation of the business owner or operator pursuant to this section. In lieu of imposing a service charge for the full amount of the City's costs, the Police Chief may, at his or her discretion, determine that a service charge of \$250.00 shall be imposed based on the amount of time involved in the case or other mitigating conduct of the responsible person or business owner or operator.
- (c) Computation of costs. If the service charge is based upon the full amount of the City's costs (the "Full Cost Formula"), the City's Chief Financial Officer shall calculate the costs incurred by the City's Police Department, based upon pertinent information provided in writing by the Police Chief or his/her designee.
- (d) Appeal of determination. Any person aggrieved by a decision of the Chief Financial Officer concerning the calculation of costs incurred under the Full Cost Formula or aggrieved by a determination of the Police Chief to impose the above described \$250.00 service charge as respectively provided by this section, may appeal the matter to the City Manager. The aggrieved person shall have 10 days from receiving the respective written decision of the City's Chief Financial Officer or Police Chief to file a written appeal to the City Manager. The written appeal shall specify as to whether review is sought as to the liability of the business owner or operator and/or as to the calculation of the costs incurred. The City Manager may accept, reject, or modify the decision of the City's Chief Financial Officer or Police Chief, based upon the scope of review requested and upon a review of the information provided to the City Manager and his or her findings as to whether or not the business owner or operator is, pursuant to the intent, purposes and requirements of this section, liable for the costs incurred and as to whether the amount of the costs incurred has been correctly calculated. The City Manager shall find that the business owner or operator is not liable for the costs incurred in the event that the business owner or operator affirmatively demonstrates that: (1) the responsible person no longer served as an employee, agent or servant of the business owner or operator at the time of the failure to appear; or (2) the responsible person's failure to appear occurred solely because the responsible person did not receive a notice or subpoena to appear at court proceedings, if such notice or subpoena was required by law; or (3) the responsible person's failure to appear was not caused by the negligent, reckless or intentionally wrongful conduct of the responsible person and was unavoidable. Any person aggrieved by a decision of the City Manager may timely seek judicial review of the matter in a court of competent jurisdiction to the extent and manner authorized by applicable law.

(e) Liability; collections. Each business owner and operator on whose behalf a responsible person has failed to appear as required by this section, shall be jointly and severally liable to the City for the costs incurred as outlined herein as a result of such failure to appear. Costs incurred pursuant to this section may be collected by the City pursuant to the following procedure:

(1) The service charge imposed by the City for the costs incurred shall be due and payable not later than 30 days after the date of the mailing or hand delivery of the City's invoice to the business owner or operator for cost recovery and said due date shall be indicated upon the invoice of the City.

(2) If such service charges are not fully paid by the business owner or operator on or before the past due date, a late fee of 5 percent shall be imposed by City and shall be added to the outstanding invoice. Unpaid balances of business owners or operators for such service charges and late fees shall be subject to an interest charge at the rate of 1% per month in accordance with the provisions of paragraph (3) below. Imposition of said interest charge shall commence for any delinquency existing 30 days after the past due date of the invoice and shall continue to accrue until all service charges, late fees and interest charges are paid.

(3) Service charges and late fees, together with any interest charges, shall be debts due and owing to the City and such debts shall be recoverable by the City or its assignee in any court of competent jurisdiction, and any such unpaid debt may result in the denial of the renewal of the business establishment's business tax receipt pursuant to section 102-372 and/or section 102-381 of the City Code.

(f) Implementation. The City Manager and Police Chief, with any necessary assistance from the City Attorney, are authorized to develop and implement forms for the efficient administration and implementation of this section, including forms for the determination of the applicable service charges.

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, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

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 a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered 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 the _____ day of _____, 2025.

ATTEST:

Steven Meiner, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions.

(Sponsored by Commissioner Tanya K. Bhatt)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

6/16/2025
Date

MAK