ORDINANCE NO. 2020-4334

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 62 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED, "HUMAN RELATIONS," BY AMENDING ARTICLE II, ENTITLED "DISCRIMINATION," BY AMENDING SECTION 62-86 ENTITLED "DISCRIMINATION IN EMPLOYMENT," TO EXTEND EMPLOYMENT PROTECTIONS TO INDEPENDENT CONTRACTORS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the United States is in the middle of an independent labor explosion. As of 2016, the Bureau of Labor Statistics estimates that there are 15 million independent workers in the United States, and that number has been on a mostly steady growth track since 2000; and

WHEREAS, according to a 2017 study conducted by Fiverr, an online marketplace for freelance services, Miami metropolitan area ranks as the fourth biggest market for independent professionals in the country and has the largest share of independent workers in the country when viewed as a share of contribution to metro GDP; and

WHEREAS, however, despite their rapidly growing numbers, independent workers also face unique challenges, such as limited legal protections; and

WHEREAS, legal protection for self-employed professionals varies wildly across the United States depending on whether they are independent contractors or run their own corporations; and

WHEREAS, under federal law, a contract worker lacks the right to sue for sexual harassment or gender discrimination, for example, because workplace civil rights laws do not apply; and

WHEREAS, currently, only New York City, California, Washington and Pennsylvania extend other workplace protections to contractors; and

WHEREAS, Section 62-86 of the City Code prohibits employers from discriminating against any individuals on any basis articulated in Section 62-33 of the City Code, with respect to that individual's compensation, terms, conditions or privileges of employment because of such individual's actual or perceived classification category; and

WHEREAS, the City of Miami Beach prides itself on being a diverse community, and a leader in adopting policies of inclusiveness, and has demonstrated a long history of opposing discrimination based on gender; and

WHEREAS, as such, the City has an important government interest in protecting independent contractors and providing them with legal protections under the City Code; and

WHEREAS, it is the desire of the Miami Beach City Commission to prohibit employers from discrimination against independent workers and contractors on any basis articulated in Section 62-33.

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

SECTION 1. That Sections 62-31 and 62-86 of Chapter 62 of the City Code is hereby amended as follows, with additional provisions provided for references purposes:

Chapter 62

HUMAN RELATIONS

* * *

ARTICLE II. DISCRIMINATION

DIVISION 1. GENERALLY

Sec. 62-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrator means that person appointed pursuant to subsection 62-56(a).

Age means the chronological age of any individual who is 18 years or older.

Ancestry means a person's family or ethnic descent or the origin and background surrounding a person's genealogical lineage.

Classification category means each category by which discrimination is prohibited as set forth within section 62-33. These categories are as follows: race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, disability, marital and familial status, age, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, and political affiliation.

Committee means the City of Miami Beach Human Rights Committee.

Disability. Disabled persons are persons who:

(1) Have a physical or mental impairment that substantially limits one or more of such person's major life activities.

a. Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

b. Qualified, with respect to employment, means such individual can perform the essential functions of the job in question with reasonable accommodations, and with respect to public services means an individual who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the city.

c. Substantially limited means likely to experience difficulty in securing, retaining or advancing in employment because of a disability.

Discriminatory practice means an intentional act that is unlawful and prohibited.

Domestic partnership status means the presence or absence of a domestic partnership and include the state of being in a domestic partnership, separated, or not in a domestic partner relationship. In this context, the term "separated" includes persons who have previously been a part of a domestic partnership.

Employee means a person employed by or seeking employment from an employer. It does not include any person employed by parents, a spouse or child.

Employer means any person who has five or more employees, in each of four or more calendar weeks in the current calendar year, and any agent of such person.

Entity includes "employee," "employer," and "person."

Familial situation means the state of a person's being raised by, or currently living with, a certain number of biological parents, or by a non-biological parent or parents, or without parents, or by any individual or group of individuals who is protected by this chapter.

Familial status means one or more individuals who have not attained the age of 18 years being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having custody, with the written permission of such parent or other person.

Family means one or more individuals living as a single housekeeping unit.

Gender identity includes actual or perceived sex, and shall also include a person's gender identity, self-image, appearance, expression or behavior, whether or not that gender identity, self-image, appearance, expression or behavior is different from that traditionally associated with the sex assigned to that person at birth.

Height means a numerical measurement from base to top of a human person, but includes an expression of that measurement in relation to weight, or an individual's unique physical composition through body size, shape, and proportions.

Housing or *housing accommodations* means any building, structure or portion thereof, or other facility occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof, mobile home, trailer or other facility. However, nothing in this article shall apply to rooms or units in housing containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

Independent contractor or worker means a person or entity contracted to perform work for—or provide services to—another entity as a nonemployee.

Interested party means the person filing a complaint or the person against whom a complaint has been filed.

Intersexuality means the condition of either having both male and female gonadal tissue in one individual or of having the gonads of one sex and external genitalia that is of the other sex or is ambiguous.

Labor organization membership means the presence or absence of a person's status either as a member or non-member, regarding any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for

the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Marital status means the presence or absence of a marital relationship and includes the state of being married, separated, or unmarried. The term "unmarried" includes persons who are single, divorced or widowed.

Mediation agreement means a written agreement entered into between a complainant and respondent setting forth the resolution of the issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the complainant, the respondent, and the mediator.

Mediator means that person appointed pursuant to section 62-63.

National origin means the origin of an ancestor, the country of origin of a person's forbearer, naturally, by marriage or by adoption.

Owner means any person, including, but not limited to, a lessee, sublessee, assignee, manager or agent, and also including the city and its departments or other subunits, having the right of ownership or possession or the authority to sell or lease any real property.

Person means one or more individuals, partnerships, associations, political subdivisions, labor unions, organizations, cooperatives, mutual companies, joint-stock companies, unincorporated organizations, trusts, trustees, or receivers, legal representatives, for-profit and not-for-profit associations and corporations, and business associations of whatever kind including, without limitation, general partnerships, limited liability partnerships, corporations, limited liability companies, business trusts, and joint ventures.

Political affiliation means ideological support of or opposition to, membership in, or donation of value to an organization or person which is engaged in supporting or opposing candidates for public office or influencing or lobbying any incumbent holder of public office on any single or number of issues which may be before any governmental branch.

Public accommodations means any retail establishment, an inn, hotel, motel or other establishment providing lodging to transient guests, other than an establishment located within a building containing not more than five rooms for rent or hire and is actually occupied by the proprietor of such establishment as his residence; any restaurant, cafeteria, lunchroom, lunch counter, soda fountain or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station; any bar, lounge, nightclub or other facility principally engaged in selling alcoholic beverages for consumption on the premises or any facility principally engaged in selling both food and alcoholic beverages for consumption on the premises; any motion picture house, theater, concert hall, convention hall, or other place of exhibition of entertainment; and any establishment physically located within the premises of any establishment otherwise covered by this article or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

Public services means services, programs, or activities of the city.

Real property means any land, buildings, fixtures, and all other improvements to land. The terms "land", "real estate," "realty" and "real property" may be used interchangeably.

Rent means to lease, sublease, assign, let or otherwise grant for a consideration the right to occupy premises not owned by the occupant.

Respondent means any person against whom a complaint is filed pursuant to this article.

Sale includes any contract to sell, exchange, convey, transfer or assign legal or equitable title to, or a beneficial interest in, real property.

Sex means male or female gender, and includes pregnancy, child birth, or medical conditions related to pregnancy or child birth.

Sexual orientation means actual or perceived heterosexuality, homosexuality, or bisexuality.

Weight means a numerical measurement of a human body's relative mass or the quantity of matter contained by it, giving rise to downward force, or an individual's unique physical composition through body size, shape, and proportions, and may be influenced by another person's impression of that individual as fat or thin, regardless of the numerical measurement.

Sec. 62-32. City of Miami Beach Human Rights Ordinance.

This article shall be known and may be cited as the "City of Miami Beach Human Rights Ordinance."

Sec. 62-33. Purpose; declaration of policy.

In the city, with its cosmopolitan population consisting of people of every race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, and age, some of them who are disabled as defined under section 62-31 hereof, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of prejudice against one another and antagonistic to each other because of actual or perceived differences of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation. The city finds and declares that prejudice, intolerance, bigotry and discrimination and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the very institutions, foundations and bedrock of a free, democratic society.

The general purpose of this article and the policy of the city, in keeping with the laws of the United States of America and the spirit of the state constitution, is to promote through fair, orderly and lawful procedure the opportunity for each person so desiring to obtain employment, housing and public accommodations of the person's choice in the city without regard to actual or perceived differences of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partnership status, labor organization membership, familial situation, or political affiliation, and, to that end, to prohibit discrimination in employment, housing and public accommodations by any person.

Sec. 62-34. Human Rights Committee established.

Effective April 15, 2010, there shall be established a Human Rights Committee, with shall be a standing committee of the city.

Sec. 62-35. Membership.

(a) The committee shall consist of a minimum of five and a maximum of 11 members, with one out of every five members to be a direct appointment by the mayor, and with the remaining members to be at large appointments of the city commission.

(b) The members of the committee shall reflect, as nearly as possible, the diversity of individuals protected under the city's human rights ordinance. In keeping with this policy,

not less than two months prior to making appointments or re-appointments to the committee, the city manager shall solicit nominations from as many public service groups and other sources, which he/she deems appropriate, as possible.

(c) At least one of the committee members shall possess, in addition to the general qualifications set forth herein for members, a license to practice law in the State of Florida; be an active member of and in good standing with the Florida Bar; and have experience in civil rights law.

(d) Members shall serve without compensation.

Sec. 62-36. Meetings; conduct of business.

(a) Regular meetings of the committee shall be held at least monthly.

(b) The city manager shall provide such adequate and competent administrative, technical and clerical personnel as may be reasonably required for the proper performance of the committee's duties.

Sec. 62-37. Duties and powers.

The committee shall have the following advisory duties, functions, powers, and responsibilities:

(a) To study, advise, and make recommendations to the city manager and city commission for:

(1) Legislation on policies, procedures, and practices which would further the purposes of this article;

(2) Developing human relations plans and policies for the city to consider and making investigations and studies appropriate to effectuate the purposes of this article;

(b) To inform persons of the rights assured and remedies provided under this article, and to promote goodwill, and minimize or eliminate actual or perceived discrimination because of race, color, national origin, religion, sex, intersexuality, sexual orientation, gender identity, disability, marital and familial status, age, ancestry height, weight, domestic partnership status, labor organization membership, familial situation, or political affiliation;

(c) To call conferences of persons in the industries of housing, public accommodations, and employment in the city to acquaint them with the requirements of this article and, without limitation, the City of Miami Beach Human Rights Ordinance, and to endeavor with their advice to develop programs of voluntary compliance and enforcement; and

(d) To hear appeals from the city manager's determination of no probable cause, where appropriate and necessary; and designate committee members to hear, in an advisory capacity to the hearing examiner, complaints alleging unlawful discrimination practices; and provide the hearing examiner (through the designated committee members) with a non-binding advisory recommendation prior to final disposition of the complaint.

The city's adoption of any committee recommendations (pursuant to those powers and duties which may be exercised by the committee under subsections (a) through (d) above, including, without limitation, recommendations that the city enact any legislation; plans, policies and procedures; call for studies and/or investigations; call for conferences; enact any programs; and/or distribute educational/informational materials, all with the purpose of furthering and effectuating the mission of the City of Miami Beach Human Rights Ordinance and this article), shall be subject to prior approval of the city commission, and such approval (if given at all) shall be further subject to funding availability.

DIVISION 2. ADMINISTRATION

Sec. 62-56. Administrative authority; powers and duties.

(a) The provisions of this article shall be administered and enforced by the city manager or his/her designee. The city manager or his/her designee shall hereinafter be referred to as the "administrator".

(b) The administrator's powers and duties include the following:

(1) Receive written complaints as provided by this article relative to alleged unlawful discriminatory practices, and transmit those complaints for proper handling;

(2) Establish, administer or review programs at the request of the city commission and make reports on such programs to the city commission;

(3) Render to the city commission annual written reports of activities under the provisions of this article, along with such comments and recommendations as the administrator may choose to make;

(4) Cooperate with and render technical assistance to federal, state, local and other public and private agencies, organizations and institutions that are formulating or carrying on programs to prevent or eliminate the unlawful discriminatory practices covered by the provisions of this article; and

(5) Conduct educational and public information activities at the request of the city commission that are designed to promote the policy of this article.

Sec. 62-57. Religious organizations.

The provisions in this article relating to sexual orientation shall not apply to any religious organization, association, society or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

Sec. 62-58. Filing of a complaint and time limit.

(a) Any person alleging that an unlawful discriminatory practice has occurred must file a verified, written complaint with the administrator within 180 days after the alleged unlawful discriminatory practice occurred.

(b) The complaint may be filed by personal delivery, ordinary mail, registered mail or certified mail, addressed to the office of the city manager.

Sec. 62-59. Information on complaint.

(a) A complaint of an unlawful discriminatory practice must be in writing, either on a form promulgated by the city administration (and approved by the administrator) or on any paper suitable for a complaint. The complaint shall be signed by the person making the complaint (hereinafter, the "complainant"); shall be sworn to or affirmed; and, at a minimum, shall state the full name and address, of the complainant; the full name and address of each respondent against whom the complaint is made, and who are alleged to have committed the unlawful discriminatory practice; the facts upon which the complaint is based; the classification category or categories of discrimination upon which the complaint is based; and other such information as may be required by the administrator.

(b) A complaint shall not be within the jurisdiction of the City of Miami Beach Human Rights Ordinance if:

(1) The complaint has been filed more than 180 days after the alleged unlawful discriminatory practice occurred;

(2) The complainant has previously initiated, or initiates, a civil action in a court of competent jurisdiction alleging an unlawful discriminatory practice with respect to the same grievance which is the subject of the complaint under this article; or

(3) The complainant has previously filed, or files, an action or proceeding before any administrative agency under any other law of the state, county, or city (including, without limitation, an agency with duties and powers similar to those prescribed in this article) alleging an unlawful discriminatory practice with respect to the same grievance which is the subject of the complaint under this article, and the administrative agency is either proceeding with its own investigation of the complaint or final determination has been made thereon.

Sec. 62-60. Notification of respondent; answer.

(a) The administrator shall, within 45 days after the filing of a verified, written complaint of an unlawful discriminatory practice, serve on the respondent, by certified mail or personal delivery, a copy of the complaint and a notice identifying the alleged unlawful discriminatory practice and advising respondent of the procedural rights and obligations of respondent under this article.

(b) Within 45 days after a copy of the complaint is served upon the respondent by the administrator, the respondent may file an answer thereto. If an answer is filed, the administrator shall cause a copy of such answer to be served upon the complainant. If an answer is filed, the answer shall be in writing and contain, at a minimum, a separate and specific response to each and every particular of the complaint or a denial of any knowledge or information thereof sufficient to form a belief. Any allegation in the complaint which is not denied shall be deemed admitted. If the respondent elects not to answer the complaint, and an answer to the complaint is not filed, then the hearing shall proceed on the evidence in support of the complaint.

Sec. 62-61. Amending complaints or answers.

A complaint of an unlawful discriminatory practice, or answer (if filed), may be amended in writing at any time when it would be fair and reasonable to do so, so long as the administrator will have adequate time to investigate any additional allegations and the parties will have adequate time to present the administrator, mediator, or hearing examiner (as the case may be) with evidence concerning such allegations before the issuance of findings of fact and a determination. The administrator shall furnish a copy of each amended complaint or answer to the respondent or complainant, respectively, as promptly as practicable. For jurisdictional purposes, such amendments shall be related back to the date the original complaint was first filed.

Sec. 62-62. Investigation of complaints.

(a) Whenever a verified, written complaint is filed pursuant to this article, the administrator, at his or her sole option and election, shall either designate a member of his/her administrative staff, or retain an outside consultant/investigator, who shall make a full and prompt investigation in connection therewith (including a prompt and full investigation of the alleged unlawful discriminatory practice), and forward to the administrator a written summary of the

investigation. In the event that the administrator retains an outside investigator, he/she shall first report same to the city commissioners through the "letter to commission" (LTC) process, indicating the name, qualifications and other curriculum vitae of the investigator; and the proposed fee for the investigation. Any city commissioner may place the administrator's proposed retention of an outside investigator for discussion by the full city commission; provided that the item must be placed on the agenda of the next city commission meeting immediately following the administrator's issuance of the LTC.

(b) The administrator may determine, upon conclusion of the investigation and review of the written summary, that:

(1) The complaint has no validity;

(2) The respondent charged in the complaint has not engaged in or is not engaging in the alleged unlawful discriminatory practice; and/or

(3) The complaint is not within the jurisdiction of the City of Miami Beach Human Rights Ordinance.

Such determination shall be issued in writing. With respect to the written determination, "issued" shall be defined as the date signed by administrator. Upon issuance, the administrator's findings of fact, determination and order may not be amended or withdrawn except upon the agreement of the parties or, by the administrator, in response to an appeal taken pursuant to subsection 62-62(d) below; provided, however, that the administrator may correct clerical mistakes or errors arising from oversight or omission.

(c) If, upon conclusion of the investigation and review of the written summary, the administrator finds that probable cause exists for the allegations made in the complaint, such determination shall also be made in writing. Upon issuance, the written determination shall be furnished promptly to the complainant and respondent.

(d) Determination of no probable cause; appeal from and dismissal. If a determination is made by the administrator that no probable cause exists for the allegations made in the complaint, the complainant shall have the right to appeal such determination to the committee within 30 days of the issuance of the written determination, by filing a written statement of appeal with the committee. The committee shall promptly deliver a copy of the statement to the administrator and the respondent, and shall, at a duly noticed meeting of the committee, promptly consider and act upon such appeal by either:

(1) Affirming the administrator's determination, or

(2) Remanding it to the administrator with appropriate instructions.

In the event no appeal is taken or such appeal results in affirmance, or if remanded on appeal (and on remand), the administrator still determines that no probable cause exists, the determination of the administrator shall be final; the complaint shall be closed with a ministerial finding of no probable cause or no jurisdiction; the complainant and the respondent shall be promptly notified, in writing; and the complaint shall be dismissed.

Sec. 62-63. Mediation.

(a) If a determination is made by the administrator that probable cause exists to believe that an unlawful discriminatory practice has occurred, or is occurring, the administrator shall first endeavor to resolve the complaint by mediation. At his or her election, the administrator may serve as the mediator, or (in consultation with the city attorney) the administrator may appoint an independent mediator to act as a neutral third person to encourage and facilitate the resolution of the complaint. The independent mediator shall be an individual who shall

have been determined by the administrator and city attorney to have the knowledge, skills, and abilities to perform in such capacity as mediator. In the event that the administrator appoints an independent mediator, the costs for mediation shall be shared equally by the complainant and the respondent.

(b) The mediator shall attempt to mediate the dispute and to report to the administrator and the city attorney on the results of the mediation efforts within 120 days of commencement of mediation.

(c) The terms of the mediation shall be reduced to writing in the form approved by the mediator, and must be signed and verified by the complainant and respondent, and approved by the mediator. The mediation agreement shall constitute an agreement between the complainant and respondent; shall be for mediation purposes only; and shall not constitute an admission by any party that the law has been violated.

(d) If the respondent complies with the recommendations under the mediation agreement, the matter shall be deemed settled and terminated and no further proceedings with regard to the complaint need be taken.

Sec. 62-64. Proceeding before hearing examiner; decision and order.

(a) In the event mediation fails to resolve a complaint, or after 120 days have passed from commencement of mediation, the administrator shall refer the complaint to the city attorney. The city attorney shall prosecute the complaint before a hearing examiner. The hearing shall be conducted pursuant to the procedures set forth in section 30-72; provided, however, that if the city attorney determines that there is no legal basis for a complaint to be filed, or for the proceedings to continue, the complaint shall be dismissed, and a statement of the reasons therefor shall be filed with the administrator, with copies furnished to the complainant and respondent. The city attorney's determination shall be final.

(b) For purposes of this article, the hearing examiner shall be selected by the city's chief special master, and shall have the knowledge, skills and abilities to perform in such capacity as special master with regard to hearing the particular complaint. At his or her election, the chief special master may either select one of the city's sitting special masters, or a hearing examiner pro tempore, appointed by the chief special master from a list approved by the city commission (and having the knowledge, skills and abilities to perform in the capacity of special master with regard to hearing the particular complaint).

(c) The committee, after notice of the date of hearing from the hearing examiner, shall, appoint two members of the committee who have not otherwise been involved in the charge, investigation, fact-finding, or other resolution and proceedings on the merits of the case, who have not formed an opinion on the merits of the case, and who have no pecuniary, private or personal interest or bias in the matter, to hear the case with the hearing examiner. The committee designated representatives, shall act in an advisory capacity to the hearing examiner. The hearing examiner shall preside over the hearing, serve as the chair, and make all evidentiary rulings; provided, however, that following conclusion of the hearing but prior to the hearing examiner's ruling on the case, as provided in subsection 62-64(d) below, the designated committee members shall issue their non-binding advisory recommendation to the hearing examiner as to whether, based on the evidence presented, a violation of this article has occurred.

(d) Within ten days of the conclusion of the hearing, the hearing examiner shall issue written findings of fact and conclusions of law, and a determination as to whether a violation of this

article has occurred. Copies shall be sent by certified mail to the complainant and the respondent, with copies also sent to the administrator, city attorney, and the committee.

Sec. 62-65. Penalties; compliance investigation.

(a) Any person(s) found in violation of this article shall be subject to the following penalties:

(1) For a first finding of an unlawful discriminatory practice within a five-year period, up to $1,000.00;

(2) For a subsequent finding of an unlawful discriminatory practice within a five-year period, up to $5,000.00; and

(3) Notwithstanding subparagraphs (1) and (2), for a finding of an unlawful discriminatory practice which is irreparable or irreversible in nature, up to $15,000.00.

(b) In determining the amount of the fine, the hearing examiner shall consider the following factors:

(1) The gravity of the violation;

(2) Any actions taken by the violator to correct the violation; and

(3) Any previous violations committed by the violator.

(c) In addition to the fines which may be imposed in subsection (a), the following penalties may also be applied:

(1) In the event of a finding of discrimination in either public accommodations, housing, or employment, a letter may be sent asking that the alleged offender desist from the actions complained of.

(2) In the event of a finding of discrimination in public accommodations where the alleged offender holds a license to sell alcoholic beverages, the hearing examiner may request that the administrator refer the violation to the appropriate state agency to determine whether due cause exists under applicable state law to revoke such license.

(3) In the event of a finding of discrimination in either public accommodations, housing, or employment where the alleged offender holds an occupational license issued by the city or is doing business with the city pursuant to a contract, the hearing examiner may request that the administrator direct the appropriate city department to conduct an investigation to determine whether due cause exists to revoke such license or contract.

(4) In the event of a finding of discrimination in either public accommodations, housing, or employment, the hearing examiner may request that the administrator direct the appropriate city department to conduct an investigation to determine whether the alleged offender has violated any other city ordinance which applies to the alleged discriminatory conduct.

(5) In the event of a finding of discrimination in either public accommodations, housing, or employment, the hearing examiner may request that the administrator refer the alleged discriminatory practice to the appropriate and applicable state and/or federal agency(ies) for further investigation, action, and handling (including, without limitation, determination by such appropriate/applicable agency(ies) as to whether the alleged offender has violated any state or federal law which applies to the alleged discriminatory conduct).

(d) The hearing examiner may reduce a fine imposed pursuant to this article in accordance with the procedures contained in chapter 30 of this Code.

(e) Compliance investigation. Not later than one year from the date of a mediation agreement or findings after hearing, and at any other times (in his or her discretion) the administrator shall investigate, or may direct the committee to investigate, whether the respondent is complying with the terms of such agreement or recommendations.

Sec. 62-66. Additional remedies.

The procedures prescribed by this article do not constitute an administrative prerequisite to another action or remedy available under other law. Further, nothing in this article shall be deemed to modify, impair, diminish, limit or otherwise affect any right or remedy conferred by local, state or federal law.

DIVISION 3. REGULATIONS

Sec. 62-86. Discrimination in employment.

It is an unlawful discriminatory practice for an employer to fail to hire or refuse to hire or to discharge any ~~individual~~ applicant, employee, or independent contractor, or otherwise to discriminate against any individual with respect to that individual's compensation, terms, conditions or privileges of employment because of such individual's actual or perceived classification category.

Sec. 62-87. Discrimination in public accommodations.

(a) It is an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement because of the actual or perceived classification category of any person directly or indirectly to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, that are afforded the other customers, or directly or indirectly to publish, circulate, issue, display, place, maintain, post or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of actual or perceived membership in any classification category or that the patronage of any person actually or perceived as belonging to any particular classification category is unwelcome, objectionable or not acceptable, desired or solicited.

(b) The production of or proof of the display or maintenance of any such written or printed notice or advertisement purporting to relate to any place of public accommodation shall be presumptive evidence that such display or maintenance was authorized by the person maintaining and operating such place of public accommodation.

Sec. 62-88. Discrimination in housing.

(a) *Because of actual or perceived classification category.* In connection with any of the transactions set forth in this section affecting a housing accommodation, it shall be unlawful for any person, owner, financial institution, real estate broker or any representative of the above to engage in any of the following acts because of the actual or perceived classification category of a prospective buyer, renter, lessee or any person associated therewith:

(1) To refuse to sell, purchase, rent, lease, finance, negotiate or withhold any housing accommodation or to evict a person;

(2) To discriminate against a person in the terms, conditions or privileges of the sale, purchase, rental or lease of any housing accommodation, or in the furnishing of facilities or services in connection therewith;

(3) To refuse to receive or transmit a bona fide offer to sell, purchase, rent or lease any housing accommodation;

(4) To represent to a person that any housing accommodation is not available for inspection, sale, purchase, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any housing accommodation;

(5) To refuse to lend money, whether or not secured by mortgage, or otherwise refuse to make funds available for the purchase, acquisition, construction, alteration, improvement, repair or maintenance of any housing accommodation or to impose different terms or conditions of such financing or refuse to provide title or insurance relating to the ownership or use of any interest in any housing accommodation;

(6) To make, publish, print, circulate, post, mail or cause to be made, published, printed, circulated, posted or mailed any notice, statement or advertisement, or to announce a policy, or to sign or to use a form of application for the sale, purchase, rental, lease or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation that indicates any discrimination or any intent to discriminate;

(7) To discriminate in any financial transaction involving real property because of its location, i.e., to "red-line";

(8) To offer, solicit, accept or use a listing of any housing accommodation for sale, purchase, rental or lease with the understanding that a person may be subjected to discrimination in connection with such sale, purchase, rental, lease, or the furnishing of facilities or services in connection therewith;

(9) To induce directly or indirectly, or attempt to induce directly or indirectly, the sale, purchase, rental, lease or the listing for any of the above, of any housing accommodation by representing that the presence or anticipated presence of a person actually or perceived to be a member of a particular classification category will or may result in:

a. The lowering of property values in the area;

b. An increase in criminal or antisocial behavior in the area; or

c. A decline in the quality of the schools serving in the area;

(10) To make any representations concerning the listing for sale, purchase, rental or lease, or the anticipated listing for sale, purchase, rental or lease of any housing accommodation for the purpose of inducing or attempting to induce any such listing for any of the above transactions;

(11) To engage in or hire to be done, or to conspire with others to commit acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest, or create or play upon fear with the purpose of either discouraging or inducing or attempting to induce the sale, purchase, rental, lease or listing of any housing accommodation on any basis prohibited by this article;

(12) To aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this article, or to obstruct or prevent any person from complying with the provisions of this article or any order issued hereunder;

(13) To resist, prevent, impede or interfere with the mediator in the lawful performance of his duties under this article;

(14) To canvass to commit any unlawful practice prohibited by this article;

(15) To deny or withhold any housing accommodation from a person on any basis prohibited by this article; or

(16) To deny any qualified person access to or membership in or participation in any multiple-listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership or participation on any basis prohibited by this article.

(b) *Because of disability.*

(1) In connection with the design and construction of covered multifamily dwellings submitted for building permit on or after March 1, 1990, and first occupied after March 13, 1991, it shall be unlawful to fail to design and construct those housing accommodations in such a manner that:

a. The public use and common use portions of such dwelling are readily accessible to and usable by handicapped persons;

b. All the doors designed to allow passage into and within all premises within such housing accommodations are sufficiently wide to allow passage by persons in wheelchairs; and

c. All premises within such accommodations contain the following features of an adaptive design:

1. An accessible route into and throughout the dwelling;

2. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;

3. Reinforcements in the bathroom walls to allow later installation of grab bars; and

4. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(2) As used in this subsection, "covered multifamily dwelling" means:

a. A building that consists of four or more housing units and has an elevator; or

b. The ground floor units of a building that consists of four or more housing units and does not have an elevator.

(3) Conformance with the appropriate specifications of the American National Standards Institute for buildings and facilities providing accessibility and usability for physically handicapped persons, commonly cited as ANSI A117.1 (1986), suffices to satisfy the requirements of subsection (1)a. through c. of this section.

Sec. 62-88.1. Discrimination in public services.

No individual shall, by reason of actual or perceived race, color, national origin, religion, sex, intersexuality, sexual orientation, gender identity, marital and familial status, age, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation, nor any qualified individual with a disability shall, by reason of disability, be

excluded from participation in or be denied the benefits of the public services of the city, or be subjected to discrimination by the city.

Sec. 62-89. Retaliation, coercion, interference, obstruction or prevention of compliance with this article.

It is an unlawful discriminatory practice for a person to conspire to:

(1) Retaliate or discriminate against a person because such person has opposed a discriminatory practice or because such person has made a charge, filed a complaint, testified, assisted or participated in an investigation, proceeding or hearing under this article;

(2) Aid, abet, incite or coerce a person to engage in an unlawful discriminatory practice;

(3) Willfully interfere with the performance of a duty or the exercise of a power by the administrator, board or one of its staff members or representatives; or

(4) Willfully obstruct or prevent a person from complying with the provisions of this article or an order issued under this article.

Sec. 62-90. Use of municipal facilities.

The use of municipal facilities in the city shall be regulated pursuant to the provisions of this section. The purpose and intent of this section is to establish legislative and administrative policies for the nondiscriminatory use of municipal facilities, which shall be defined as any and all city-owned and operated facilities including buildings, parks, fields, and any other facility now or in the future owned, controlled, leased, or operated by the city. All organizations, clubs, and individuals wishing to obtain any fee waiver to use municipal facilities shall confirm in writing as follows:

> I [name of organization, club, or person] the [title] of [name of organization or club], certify that I/my organization or club does not discriminate in its membership or policies based on actual or perceived race, color, national origin, religion, sex, intersexuality, sexual orientation, gender identity, familial and marital status, age, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, political affiliation, or disability.

Sec. 62-91. Municipal funds.

Municipal funding of organizations or clubs shall be regulated pursuant to this section. The purpose and intent of this section is to establish legislative and administrative polices for the award of municipal funds to organizations or clubs that do not discriminate in their membership or policies. All organizations or clubs wishing to obtain municipal funding shall confirm in writing as follows:

> I [name of organization or club] the [title] of [name of organization or club], certify that my organization/club does not discriminate in its membership or policies based on actual or perceived race, color, national origin, religion, sex, intersexuality, sexual orientation, gender identity, familial and marital status, age, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, political affiliation, or disability.

Sec. 62-92. Posting.

(a) Every person being the owner, lessee, sub-lessee, assignee, or managing agent of a public accommodation subject to the Miami Beach Human Rights Ordinance shall post and maintain at such public accommodation, in a conspicuously and easily accessible and well-lighted place where it may be readily observed by those seeking or visiting such public accommodation, a notice furnished by the City of Miami Beach indicating the substantive provisions of the Human Rights Ordinance relative to public accommodations, the place where complaints may be filed, and such other information as the City of Miami Beach deems pertinent.

(b) Every employer subject to the Miami Beach Human Rights Ordinance shall post and maintain at its offices, places of employment or employment training centers, in a conspicuously and easily accessible and well-lighted place customarily frequented by employees and applicants for employment, notices furnished by the City of Miami Beach indicating the substantive provisions of the Human Rights Ordinance relative to employment, the place where complaints may be filed and such other information as the City of Miami Beach deems pertinent.

(c) Every person, owner, financial institution, real estate broker or any representative of the above who interacts with prospective buyers, renters, or lessees of housing or housing accommodations, or any person associated therewith, shall post and maintain in a conspicuously and easily accessible and well-lighted place where it may be readily observed by those seeking or visiting the housing unit or business establishment, a notice furnished by the City of Miami Beach indicating the substantive provisions of the Human Rights Ordinance relative to housing and housing accommodations, the place where complaints may be filed, and such other information as the City of Miami Beach deems pertinent.

(d) Every department or facility of the City of Miami Beach where City employees provide services or access shall post and maintain at such department or facility, in a conspicuously and easily accessible and well-lighted place where it may be readily observed by those seeking or visiting such department or facility, a notice furnished by the City of Miami Beach indicating the substantive provisions of the Human Rights Ordinance relative to public benefits and services, the place where complaints may be filed, and such other information as the City of Miami Beach deems pertinent.

(e) Posting of the notices required in this section is deemed to be an important educational tool to provide residents of and visitors to Miami Beach with vital information concerning their rights under the City's Human Rights Ordinance, so the Administrator is authorized and directed to enforce its provisions. For a period of one year following the effective date of this section, violators of its requirements shall be issued one warning by City of Miami Beach Code Compliance officers or by the Administrator upon complaint, or upon recommendation by a majority vote of the Miami Beach Human Rights Committee. Subsequent violations shall be punished, if not remedied within five calendar days, by fine as described in Section 62-92(f).

(f) One year after the effective date of this section, penalties for violations of subsections 62-92(a) and 62-92(b) shall [be] assessed (except against the City of Miami Beach) by City of Miami Beach Code Compliance officers or by the Administrator upon complaint, or upon recommendation by a majority vote of the Miami Beach Human Rights Committee as follows:

(1) For the first violation: A fine of $50.00.

(2) For the second violation: A fine of $100.00.

(3) For the third violation: A fine of $150.00.

(4) For the fourth and any subsequent violation: A fine of $200.00.

(g) Penalties shall be assessed by service of a notice of violation, served personally or by certified mail upon the property owner, business owner, or upon a manager present at the premises.

(h) Any person receiving a notice of violation pursuant to this section may request, within 15 days of receipt of the notice, an administrative hearing before a special master, appointed as provided in article II of chapter 30, to appeal the decision of the city inspector or the Administrator resulting in the issuance of the notice. The special master shall hold a hearing and shall hear testimony and evidence from the code inspector or the Administrator and the alleged violator. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern said proceedings. At the conclusion of the hearing, the special master shall issue findings of fact based on evidence and conclusions of law and shall issue an order affording the proper relief consistent with the powers granted in Section 30-72. Failure to appeal within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and fines and penalties may be assessed accordingly.

(i) Timely filing of a notice of appeal pursuant to this section shall toll the imposition of collection procedures until 30 days after the issuance of a written determination by the special master. Any costs or penalty amounts due the city pursuant to such determination must be received by the city within 30 days after the issuance of the determination, or collection procedures may be commenced, as provided by this chapter or under state law.

DIVISION 4. EXCEPTIONS

Sec. 62-111. Employment.

(a) Notwithstanding any other provision of this article:

(1) It is not an unlawful discriminatory practice for an employer to hire and employ employees on the basis of that individual's actual or perceived classification category in those certain instances where such actual or perceived classification category is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

(2) It is not an unlawful discriminatory practice for a school, college, university or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society or if the curriculum of such school, college, university or other educational institution or institution of learning is directed toward the propagation of a particular religion. However, this exception will not apply if such institution restricts membership in its organization on the basis of race, color or national origin.

(b) Notwithstanding any other provision of this article:

(1) It is not an unlawful discriminatory practice for any employer to apply different standards of compensation, or different terms, conditions or privileges of employment

pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of one's actual or perceived classification category;

(2) It is not an unlawful discriminatory practice for an employer to give and to act upon the results of any professionally developed ability test, provided that such test, its administration or action upon the results, is not designed, intended or used to discriminate because of one's actual or perceived classification category.

(c) Nothing contained in this article shall be interpreted to require any employer to grant preferential treatment to any individual or to any group because of the actual or perceived classification category of such individual or group, on account of an imbalance that may exist with respect to the total number or percentage of persons of any actual or perceived classification category employed by any employer in comparison with the total number of percentage of persons of such actual or perceived classification category in any community, state, section or any other area, or in the available work force in any community, state, section or other area.

(d) This article shall not apply to a religious corporation or association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.

(e) Notwithstanding any other provisions of this article, it is not an unlawful discriminatory practice for an employer to consider an individual's religion when making a decision concerning that individual if the employer demonstrates that the reason for considering that individual's religion is that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

Sec. 62-112. Housing

(a) Nothing in this article shall prohibit a religious organization, association, society or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society from limiting or from advertising the sale, rental or occupancy of housing it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such persons. However, this exception shall not apply if such religious organization, association, society or any nonprofit, charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization restricts membership in its organization on the basis of actual or perceived race, color or national origin; nor shall anything in this article prohibit a private club not in fact opened to the public, which as an incident to its preliminary purpose provides lodgings it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b) No provision in this article regarding familial status shall apply to housing for older persons.

(1) As used in this subsection, "housing for older persons" means housing:

a. Provided under any local, state or federal program that the administrator determines is specifically designed and operated to assist elderly persons as defined in the local, state or federal program;

b. Intended for and solely occupied by persons 62 years of age or older; or

c. Intended for and occupied by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the administrator shall develop regulations that require at least the following factors:

1. The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons or, if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons;

2. That at least 80 percent of the housing is occupied by at least one person 55 years of age or older per unit; and

3. The publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(2) Housing shall not fail to be considered housing for older persons if:

a. A person who resides in such housing on or after the effective date of the ordinance from which this article is derived does not meet the age requirements of this subsection, provided that any new occupant meets such age requirements; or

b. One or more units are unoccupied, provided that any unoccupied units are reserved for occupancy by persons who meet the age requirements of this subsection.

(c) Nothing contained in this article shall preclude the seller, developer, condominium association, lessor, property owner, or that person's authorized agent from setting forth reasonable rules, regulations, terms and conditions pertaining to the sale, lease or disposal of that person's property provided such rules, regulations, terms and conditions are not based on actual or perceived race, color, religion, sex, intersexuality, sexual orientation, gender identity, national origin, age, disability, familial status, marital status, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation, and provided there is no conflict with the affirmative provisions set forth in this article. Furthermore, nothing in this article shall preclude reasonable rules, regulations, or terms and conditions pertaining to the safe and prudent use by minors of facilities and amenities provided in conjunction with real property.

Sec. 62-113. Public accommodations.

(a) Nothing in this article shall be applied to a religious organization, association or society or any nonprofit institution or organization operating, supervised or controlled by or in conjunction with a religious organization, association or society from limiting facilities and accommodations it owns or operates for other than a commercial purpose to persons of the same religious organization or from giving preference to such persons. However, this exception shall not apply if such religious organization, association, society or any nonprofit, charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization restricts membership in its organization on the basis of race, color or national origin.

(b) Nothing in this article shall prohibit the limiting of the use of kindergartens, nurseries, day care centers, theaters and motion picture houses to persons of a particular age group.

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 the 23 day of May, 2020.

PASSED AND ADOPTED this 13 day of May, 2020.

ATTEST:

Dan Gelber, Mayor

5/21/2020

Rafael E. Granado, City Clerk

(Sponsored by Commissioner Steven Meiner)

Underlines denote additions
~~Strikethrough~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

2-4-2020

City Attorney Date

MIAMIBEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Raul J. Aguila, City Attorney
DATE: May 13, 2020

9:05 a.m. Second Reading Public Hearing

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 62 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED, "HUMAN RELATIONS," BY AMENDING ARTICLE II, ENTITLED "DISCRIMINATION," BY AMENDING SECTION 62-86 ENTITLED "DISCRIMINATION IN EMPLOYMENT," TO EXTEND EMPLOYMENT PROTECTIONS TO INDEPENDENT CONTRACTORS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

On February 15, 2020, at the City Commission meeting, the above-referenced Ordinance passed on First Reading with no revisions. The Ordinance is now submitted for consideration by the Mayor and City Commission for Second Reading/Public Hearing.

Applicable Area

Not Applicable

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?	Does this item utilize G.O. Bond Funds?
No	No

Legislative Tracking

Office of the City Attorney/Office of the City Manager

Sponsor

Commissioner Steven Meiner

ATTACHMENTS:

Description

- Memorandum
- 1st Rdg. Ord.

MIAMI BEACH

OFFICE OF THE CITY ATTORNEY
RAUL AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

TO: **MAYOR DAN GELBER**
MEMBERS OF THE CITY COMMISSION
JIMMY L. MORALES, CITY MANAGER

FIRST READING

FROM: **RAUL J. AGUILA, CITY ATTORNEY**

DATE: **February 12, 2020**

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 62 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED, "HUMAN RELATIONS," BY AMENDING ARTICLE II, ENTITLED "DISCRIMINATION," BY AMENDING SECTION 62-86 ENTITLED "DISCRIMINATION IN EMPLOYMENT," TO EXTEND EMPLOYMENT PROTECTIONS TO INDEPENDENT CONTRACTORS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

Pursuant to the request of Commissioner Steven Meiner, the above-referenced Ordinance is submitted on First Reading for consideration by the Mayor and City Commission at the February 12, 2020 City Commission meeting.

The United States is in the middle of an independent labor explosion. As of 2016, the Bureau of Labor Statistics estimates that there are 15 million independent workers in the United States, and that number has been on a mostly steady growth track since 2000. In 2017, Fiverr, an online marketplace for freelance services, conducted a study analyzing the growth of businesses without any payroll among tech, artistic and professional service occupations, including lawyers with private practices, solo contractors like plumbers, or software engineers, and artists. Fiverr found that between 2011 and 2015, the number of these solo businesses grew 11 percent across the 15 major metro areas measured.

In the Miami metropolitan area, which includes Broward and Palm Beach counties, this group zoomed ahead 23 percent—and their revenues grew even faster, at a rate of 32 percent. This workforce now comprises 2.13 percent of the Miami's economy in 2016, the most for any major metro. Additionally, Miami metropolitan area ranked as the fourth biggest market for independent professionals in the country.

However, despite their rapidly growing numbers, independent workers also face unique challenges, such as limited legal protections. Legal protection for self-employed professionals varies wildly across the United States depending on whether they are independent contractors or run their own corporations. For example, under federal law, a contract worker lacks the right to sue for sexual harassment or gender discrimination, for example, because workplace civil rights laws do not apply. Currently, only New York City, California, Washington and Pennsylvania extend other workplace protections to contractors.

Currently, Section 62-86 of the City Code prohibits employers from discriminating against any individuals on any basis articulated in Section 62-33 of the City Code, with respect to that individual's compensation, terms, conditions or privileges of employment because of such individual's actual or perceived classification category. However, Section 62-86 does not explicitly provide for protections for independent contractors.

The City of Miami Beach prides itself on being a diverse community, and a leader in adopting policies of inclusiveness, and has demonstrated a long history of opposing discrimination based on gender. As such, the City has an important government interest in protecting independent contractors and providing them with legal protections under the City Code.

This amendment will not significantly impact the City. There could potentially be new claims by independent contractors against the City for discrimination, but the City already follows a policy for not discriminating on the basis of protected characteristics. As such, any potential uptick is expected to be negligible. In addition, there may be new complaints by independent contractors filed with the City against private employers, requiring City staff to investigate these additional complaints.

Notwithstanding the amendments to Sections 62-31 and 62-86, the entire Human Rights Ordinance has been included for your review and reference.

RA/RR/FA/ps