

RESOLUTION NO. 20 23 - 32487

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXTEND THE DECLARATION OF A STATE OF EMERGENCY IN THE CITY OF MIAMI BEACH, DATED MARCH 19, 2023, THROUGH MONDAY, MARCH 27, 2023 AT 6:00 A.M. TO ADDRESS THE OVERWHELMINGLY LARGE CROWDS VISITING THE CITY DURING MARCH, 2023; FURTHER, AUTHORIZING THE CITY MANAGER TO IMPLEMENT THE EMERGENCY MEASURES REGARDING HOURS FOR THE SALE OR DISTRIBUTION OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION, ORIGINALLY IMPOSED PURSUANT TO EO NO. 2023-02, FROM MARCH 23, 2023 AT 6:00 PM. UNTIL MARCH 27, 2023 AT 6:00 A.M.; FURTHER, RECOGNIZING THAT THE CITY MANAGER HAS THE AUTHORITY, PURSUANT TO SECTION 26-33 OF THE CITY CODE AND CHAPTER 252 OF THE FLORIDA STATUTES, TO IMPOSE ADDITIONAL DISCRETIONARY EMERGENCY MEASURES AS MAY BE NECESSARY TO PROTECT PUBLIC WELFARE, HEALTH AND SAFETY; FURTHER, PROVIDING THAT NO EMERGENCY ACTION TAKEN BY THE CITY MANAGER SHALL BE BINDING ON THE CITY COMMISSION BEYOND THE PERIOD OF THE STATE OF EMERGENCY; AND FURTHER PROVIDING THAT THE SUBJECT DECLARATION OF EMERGENCY SHALL BE TERMINABLE BY THE CITY COMMISSION IN ACCORDANCE WITH THE PROVISIONS OF THIS RESOLUTION.

**WHEREAS**, the City of Miami Beach (the "City") is an internationally renowned tourist destination that is famous for its beautiful beaches, world-class shopping, entertainment, fine dining, and vast array of artistic and cultural events; and

**WHEREAS**, in recent years, the City has seen an increasingly large number of visitors during the Spring Break period, which has posed significant challenges including, but not limited to, extreme traffic and congestion, and severe impacts to the City's Police, Fire, Sanitation, and Code Compliance services; and

**WHEREAS**, however, in recent years, the City (which has a limited capacity for ingress and egress) has seen a tremendous number of visitors during the Spring Break period, which has posed significant challenges including, but not limited to, extreme traffic and congestion, and severe impacts to the City's Police, Fire, Sanitation, and Code Compliance services; and

**WHEREAS**, in 2021, similar unruly crowd control issues during Spring Break resulted in the imposition of emergency measures, including an 8:00 pm. curfew in the area between 5<sup>th</sup> Street and 16<sup>th</sup> Street, from Pennsylvania Avenue to Ocean Drive, while the remainder of the entire City was subject to a Miami-Dade County midnight (12:00 a.m.) curfew; and

**WHEREAS**, in March 2022, the City also experienced massive crowds and several shootings in a concentrated tourist area over a period of a few days, resulting in the declaration of a state of emergency and imposition of a weekend curfew for the last weekend of March, 2022; and

**WHEREAS**, many of the visitors to the City during high impact periods, such as Spring Break, are under the influence of alcoholic beverages and have demonstrated a blatant disregard for the rule of law; and

**WHEREAS**, in March 2023, there have been multiple fights, shootings, and various other incidents and police calls for service—for example, for the period between February 27, 2023 and March 18, 2023, there have been four (4) aggravated assault arrests, three (3) aggravated battery arrests, seven (7) robbery arrests, twenty (20) arrests for carrying a concealed firearm, thirty-seven (37) felony drug arrests, twelve (12) arrests for battery on a law enforcement officer, and eighty-two (82) arrests for other felonies; and

**WHEREAS**, such incidents include two (2) shootings that occurred the weekend of March 17<sup>th</sup>, which resulted in two (2) fatalities and injuries to others, and which also created stampedes that caused injuries to several people, including two (2) volunteer goodwill ambassadors, and all of which pose a danger to public safety and order in the public streets and rights-of-way; and

**WHEREAS**, the first deadly shooting, on March 17, 2023, occurred at approximately 10:45 p.m. on Ocean Drive near 7th Street, while police officers had been stationed half a block away at the 100 block of 7th Street, meaning that there was a police presence approximately 75–100 feet away from the shooting when it occurred; and

**WHEREAS**, the second deadly shooting, on March 19, 2023, occurred at approximately 3:00 a.m. on Ocean Drive near 11th Street, while police officers had been stationed nearby at the 100 block of 11th Street, meaning that there was a police presence approximately 100 feet away from the shooting when it occurred; and

**WHEREAS**, in response to each of the two (2) deadly shootings, officers were able to arrive on the scene within a matter of seconds, but nevertheless were unable to prevent the shootings; and

**WHEREAS**, if each of the shootings had occurred only moments earlier or later, police officers in the area could have been caught in cross-fire; and

**WHEREAS**, despite the vast and highly-visible police officer presence in the City, criminals and their illegal behavior continue undeterred; and

**WHEREAS**, the City’s police officers have been faced with unruly crowds and dangerous situations, and have been working additional shifts foregoing some of their days off during the pendency of Spring Break; and

**WHEREAS**, the Police Department and its law enforcement partners have impounded over seventy (70) firearms from February 27, 2023 – March 19, 2023; and

**WHEREAS**, in response to the illegal and unruly behavior exhibited by these large crowds during March 2023, and in order to provide for the health and safety of persons and property, the City deployed hundreds of law enforcement officers this past weekend, which included the assistance of police officers from various law enforcement agencies—including twenty-five (25) officers from the Miami-Dade Police Department’s Priority Response Team, twenty (20) officers from the Miami-Dade School Board, six (6) officers from the Coral Gables Police Department, two (2) mounted patrols from the City of Miami Police Department, and four (4) agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), —in an attempt to control the unruly crowds and maintain law and order in the City; and

**WHEREAS**, the City’s Police Department and its law enforcement partners have effectuated 322 arrests from February 27, 2023 through March 19, 2023; and

**WHEREAS**, the overwhelming majority of these incidents and arrests have taken place in the area bounded by 23<sup>rd</sup> Street and Dade Boulevard on the north, Government Cut on the south, Biscayne Bay on the west, and the Atlantic Ocean on the east; and

**WHEREAS**, regrettably, some of these disturbing incidents and arrests in the above-referenced area have garnered attention (including national attention) from various news outlets and media; and

**WHEREAS**, the City's Police and Fire Departments have notified the City Administration that the sheer volume and level of crowds have made it extremely difficult for Police and Fire emergency vehicles to get through portions of the area in order to adequately protect the health, safety and welfare of the public; and

**WHEREAS**, the City of Miami Beach Fraternal Order of Police's President, Robert Hernandez, has requested emergency relief for officer safety purposes; and

**WHEREAS**, comparing the time period of February 27, 2023 through March 19, 2023, to last year's equivalent time period of February 28, 2022 through March 20, 2022, felonies have increased by 27% this year, and homicides have increased by 200%; and

**WHEREAS**, the City has broad authority pursuant to its inherent police powers, and "cases have consistently held that it is a proper exercise of police power to respond to emergency situations with temporary curfews that might curtail the movement of persons who would otherwise enjoy freedom from restriction." See *7020 Entertainment, LLC v. Miami-Dade County*, Court Case No. 20-25138, U.S. District Court for the Southern District of Florida (citing *Smith v. Avino*, 91 F.3d 105, 109 (11<sup>th</sup> Cir. 1996)); and

**WHEREAS**, in *Smith*, the Court also held that, "governing authorities must be granted the proper deference and wide latitude necessary for dealing with the emergency." *Id.*; and

**WHEREAS**, pursuant to Section 26-31 of the City Code, if the City Manager determines that there has been an act of violence or a flagrant and substantial defiance of or resistance to a lawful exercise of public authority and that, on account thereof, there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order and to the general welfare of the City, the City Manager may declare that a state of emergency exists within the City's territorial jurisdiction; and

**WHEREAS**, the City Manager is authorized, pursuant to Section 26-33 of the City Code, to order and promulgate any (or all) of those discretionary emergency measures set forth therein, in whole or in part, with such limitations and conditions as the City Manager may deem appropriate; and

**WHEREAS**, pursuant to Section 26-35 of the City Code, the duration of such discretionary emergency measures is limited to a period of seventy-two (72) consecutive hours, unless an extension is authorized by the City Commission by duly enacted ordinance or resolution in a regular or special session; and

**WHEREAS**, pursuant to Chapter 252 of the Florida Statutes and, more specifically, Florida Statutes 252.38 and 252.46, the City also has the power and authority to declare a local state of emergency and promulgate emergency orders to protect the health and safety of persons and

property, and to make, amend and rescind such orders and rules as are necessary for such purposes; and

**WHEREAS**, Florida Statute 252.38 also requires that any such emergency order enacted by the City, pursuant to Chapter 252, must be narrowly tailored to serve a compelling public health or safety purpose, and must also be limited in duration (of no more than 7 days, except that an emergency order may be extended by a majority vote of the governing body of the political subdivision, as necessary, in 7-day increments for a total duration of not more than 42 days), applicability, and scope in order to reduce any infringement on individual rights or liberties to the greatest extent possible; and

**WHEREAS**, Alina T. Hudak, as the City Manager for the City of Miami Beach, has determined that, based upon the preceding recitals and pursuant to Section 26-31 of the City Code, a State of Emergency exists in the City; and

**WHEREAS**, on March 19, 2023, the City Manager has issued a Declaration of a State of Emergency pursuant to Section 26-35 of the City Code, for a period of 72 hours, commencing on Sunday, March 19, 2023 at 1:00 P.M., and continuing in full force and effect until Monday, March 20, 2023, at 6:00 A.M.; and

**WHEREAS**, E.O. 2023-01 also advised that a separate Declaration and Emergency Measures would be implemented from the period from Thursday, March 23, 2023 at 6:00 P.M. to Monday, March 27, 2023 at 6:00 A.M. (following action by the Mayor and City Commission); and

**WHEREAS**, the City reasonably anticipates that increased crowds and attendant chaos and criminal activity may continue or even increase based upon the recess schedules of colleges and universities, as well as high schools, and in light of the forthcoming Miami Music Week attractions; and

**WHEREAS**, the sale and distribution of alcoholic beverages for off-premises consumption fuels the reckless and illegal behavior exhibited by the throngs of unruly crowds on the City's streets, sidewalks and rights-of-way, increases the number of individuals drinking and driving, and greatly exacerbates crowd control issues during Spring Break; and

**WHEREAS**, as such, the City Manager requested that the Mayor and City Commission provide authorization to extend the Declaration of a State of Emergency for an additional period of time beyond the 72 hours authorized under Section 26-35 of the City Code (within the City Commission's authority to extend an emergency in a 7-day increment), so that the State of Emergency may continue in full force and effect through March 27, 2023 at 6:00 A.M.; and

**WHEREAS**, the Mayor and City Commission hereby acknowledge and consent to the aforesaid incremental extension through March 27, 2023 at 6:00 A.M.; and authorize the City Manager to implement the emergency measures regarding hours for the sale or distribution of alcoholic beverages for off-premises consumption, imposed pursuant to EO No. 2023-02; and

**WHEREAS**, the Mayor and City Commission hereby further recognize that the City Manager has the authority, pursuant to Section 26-33 of the City Code and Chapter 252 of the Florida Statutes, to impose additional measures as may be determined necessary to protect public welfare, health and safety; and

**WHEREAS**, further, no emergency action taken by the City Manager shall be binding on the City Commission beyond the period of the state of emergency at any duly-noticed regular or


special City Commission meeting, and the Mayor and City Commission may determine whether to terminate or continue to extend the Declaration of a State of Emergency in accordance with the provisions of this Resolution.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, as follows:**

1. The City Manager is hereby authorized to extend the Declaration of a State of Emergency in the City of Miami Beach to address the overwhelmingly large crowds visiting the City during the High Impact Period, with the State of Emergency continuing in full force and effect through March 27, 2023 at 6:00 A.M.
2. The City Manager is authorized to implement the emergency measures imposed pursuant to EO No. 2023-02, as may be amended (including measures regarding hours for sale and distribution of alcoholic beverages for off-premises consumption), commencing on Thursday, March 23, 2023 at 6:00 P.M., and ending on Monday, March 27, 2023 at 6:00 A.M., to provide for public health and safety and protect the general welfare of the City. Nothing herein shall limit the City Manager's authority, pursuant to Section 26-33 of the City Code and Chapter 252, Florida Statutes, to impose additional discretionary emergency measures as the City Manager determines are necessary.
3. The scope of any emergency measures imposed by the City Manager pursuant to the Declaration of a State of Emergency shall be limited to respond to immediate threats associated with large crowds during the High Impact Period. Further, no emergency action taken by the City Manager shall be binding on the City Commission beyond the period of the State of Emergency, or otherwise limit the ability of the City Commission to undo any action of the City Manager.
4. The City Commission may, at a duly-noticed City Commission meeting, determine whether the Declaration of a State of Emergency should be rescinded, or whether any further extensions will be granted as provided by applicable law.
5. The emergency measures imposed by the City Manager pursuant to the Declaration of a State of Emergency are in addition to, and separate from, any measures the City Manager is otherwise authorized to take under the City Code, including, without limitation, Section 82-443 of the City Code (the "High Impact Ordinance").

**PASSED and ADOPTED** this 20 day of March, 2023.

**ATTEST:**


  
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Rafael E. Granado, City Clerk

MAR 22 2023

  
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Dan Gelber, Mayor



APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney PAZ

3-21-23  
\_\_\_\_\_  
Date