


# MIAMI BEACH

OFFICE OF THE CITY ATTORNEY

RAUL AGUILA, CITY ATTORNEY

## COMMISSION MEMORANDUM

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

FROM: RAUL J. AGUILA, CITY ATTORNEY 

DATE: MAY 8, 2019

SUBJECT: AN ORDINANCE OF THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 82-1 THEREOF, ENTITLED "CONDUCTING BUSINESS ON STREETS, PARKS, OR OTHER PUBLIC PROPERTY; ENFORCEMENT; PENALTIES; UNPAID FINES TO CONSTITUTE LIENS," BY PROVIDING FOR CRIMINAL PENALTY PROVISIONS IN LIEU OF CIVIL PENALTIES FOR VIOLATIONS OF THIS SECTION AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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Commissioner Samuelian has sponsored the amendment(s) to Section 82-1 of the City Code, which was initially heard by the Mayor and City Commission on first reading at the April 10, 2019 City Commission meeting, and that was subsequently passed with limited modifications to the proposed amendment(s) to the Ordinance.

In response to the discussion that occurred at the April 10, 2019 City Commission meeting, the proposed Ordinance, which establishes criminal penalties for those individuals conducting business on the City's public property, has been subsequently clarified in certain respects, as well as narrowed in others, in order to unmistakably address those concerns expressed by the City Commission at the first reading.

Specifically, the proposed amendments to those provisions of the Ordinance, which have either now been modified, deleted, or otherwise altered for second reading, are as follows:

1. The prescribed unlawful activity set forth in Section 82-1(a) was definitively clarified to firmly establish those categories of conduct which are prohibited on public property. The terms "article, commodity or service" has been stricken-through, and have been replaced with the terms "merchandise, product, goods, or service."
2. In Section 82-1(b), the prohibition on engaging in any service that sells or rents merchandise, products or goods was modified to include a prohibition on engaging in any service that sells

or rents merchandise, products, goods or services. Additionally, the Subsection was further modified to include the phrase “without limitation,” which is required to enhance the express prohibition that presently exists for those commercial operators that utilize the City’s property in furtherance of their business of transporting passengers.

3. Section 82-1(c)(3) was clarified by striking-through the words “concession agreement approved by the city commission,” and subsequently replaced with the phrase “written agreement with the city” to undoubtedly articulate the various mechanisms (e.g., concession agreements, management agreements, lease agreements, etc.) under which the City may authorize an individual or entity to conduct its business operation(s) upon the City’s public property.
4. Section 82-1(c)(5) is a new exemption, which has been established in order to address those circumstances in which a person(s) is providing personal training exercise services or providing lessons in sports related activities in a city park. This exemption would not subject those individual(s) to the criminal penalties set forth in the proposed amendment to the Ordinance, provided the services being rendered only have a minimal impact upon the public’s use and enjoyment of the park. Furthermore, the inclusion of this additional exemption should alleviate the concerns identified at the City Commission meeting, and also will harmonize the proposed amendment(s) to the Ordinance, with the already-existing exemption that is delineated within Section 82-1(c)(2) and Section 82-96 of the City Code.
5. The “Enforcement” subsection, within the Section entitled “Penalties and Enforcement,” has been renumbered from 82-1(d)(2) to 82-1(d)(3) in order to accurately reflect the enumerated provisions of subsection 82-1(d).
6. Section 82-1(d)(3)g has been renumbered to 82-1(d)(4)g, and provides the special master no discretion to alter any of the monetary penalties set forth in Section 82-1(d)(2).

The second reading of the Ordinance is scheduled for the May 8, 2019 City Commission Meeting. The Administration supports criminalizing those violation(s) committed pursuant to Section 82-1 of the City Code, and further supports the creation of the new exemption for personal training exercise services or lessons in sports related activities, which is consistent with the commercial outdoor fee based activity permit set forth in Section 82-96 of the City Code.

RA/AB/sp