

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE MIAMI BEACH CITY CODE, ENTITLED “PUBLIC PROPERTY,” BY AMENDING ARTICLE V, ENTITLED “BEACHES,” TO CREATE DIVISION 4 THEREOF, TO BE ENTITLED “DUNE PROTECTION”, RELATING TO PROTECTION OF THE BEACHES AND DUNES; ESTABLISHING PURPOSE AND INTENT OF THE ARTICLE, PROVIDING FOR DEFINITIONS, PROHIBITING CERTAIN ACTIVITIES TO PROTECT THE DUNE SYSTEM, OUTLINING PERMITTED ACTIVITIES, PROVIDING FOR ENFORCEMENT AND PENALTIES; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, climate change, sea level rise, and beach erosion all threaten Miami Beach’s coastal protection; and

**WHEREAS**, beaches and dunes are a strategic aspect of the City of Miami Beach’s green infrastructure, which safeguard upland properties from the effects of storm surge during storm events; and

**WHEREAS**, in 1975, the United States Army Corps of Engineers, in coordination with the Florida Department of Environmental Protection (FDEP), built a non-vegetated levee for storm protection as part of the 50-year Miami-Dade County Beach Erosion Control and Hurricane Protection Project; and

**WHEREAS**, due to high pedestrian and vehicular traffic, the levee wore down quickly and was deemed ineffective; and

**WHEREAS**, In the mid-1980s, through the acquisition of a state grant, the FDEP rebuilt the levee and fortified it with dune vegetation; and

**WHEREAS**, in 2016, the Mayor and City Commission adopted the Beachfront Management Plan via Resolution 2016-29296, which provides a guide for operation, maintenance, and management of the City’s beach and dune system to protect existing natural resources, and improve public access in accordance with the City’s beachfront management agreement with the State; and

**WHEREAS**, the City adopted the Dune Management Plan as part of the Beachfront Management Plan, outlining the framework and specifications that the City will use to foster and maintain a healthy, stable, and natural dune system; and

**WHEREAS**, the Dune Management Plan emphasizes preserving the structural integrity of the dune, and protecting dune vegetation from human impacts; and

**WHEREAS**, Florida Statute Section 161.053(2)(a) prohibits any person, firm, corporation, or governmental agency from damaging sand dunes, or the vegetation growing on the dune system; and

**WHEREAS**, the City seeks to strengthen measures for dune protection, and prevent instances of destruction or modification of the dunes outside the scope of the Dune Management Plan and only by the City and its contractors; and

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

**SECTION 1.** That Division 4 of Article V of Chapter 82 of the Code of the City Miami Beach is hereby created as follows:

**Chapter 82**

**PUBLIC PROPERTY**

\* \* \*

**Article V. BEACHES**

**DIVISION 4. DUNE PROTECTION**

**Sec. 82-479. Purpose and Intent.**

The purpose of this article is to establish reasonable regulations that will protect the public investment in the beaches and dunes, protect public and private infrastructure, and minimize expenditure of public funds for costly storm recovery projects due to adverse impacts associated with storm surge or wave action resulting from impairment of or damage to protective dune resources. The regulations are intended to encourage the growth, expansion, and vitality of the dune system, preserve endangered and threatened wildlife, prevent harm or degradation to the valuable and protective vegetative sand dune resources from unauthorized foot or vehicular traffic, unauthorized digging, mining or other unnatural alteration of the dunes, unauthorized staging of construction materials or other unauthorized construction activity, installation of vegetation inconsistent with sand dune systems, pet activity, or other unauthorized or disturbing activities that may lead to the gradual, immediate, or cumulative degradation of the natural or restored dune resources. This article is intended to achieve these purposes by:

- (1) Prohibiting unauthorized activities in the dunes that threaten the integrity of the dune system.
- (2) Identifying and mitigating damaging, unacceptable, and detrimental activities within the dune systems.

**Sec. 82-480. Scope.**

This article applies to all areas of the dune within the City of Miami Beach from Government Cut to the City Boundary at 87<sup>th</sup> Terrace.

**Sec. 82-481. Definitions.**

*Authorized Vehicular Traffic* means use of personal vehicles, equipment, or UTVs that have been approved for use on the beach, including government marked vehicles, public safety vehicles, and vehicles permitted for temporary access through concessionaire agreements or special event permit.

*Beach Equipment* means any man-made apparatus or paraphernalia designed or manufactured for use, or actually used on the beach, or in the adjacent tidal waters, including but not limited to chairs and lounges, umbrellas, sailing vessels up to 16 feet in length, personal watercraft, canoes, kayaks, paddles vessels, sailboards, surfboards, fishing gear, sporting equipment, floatable devices, tents and bicycles.

*Beach nourishment* means the maintenance of a restored beach by the replacement of sand to mitigate erosion, often referred to as "beach renourishment."

*Construction* means causing or carrying out any building, bulkheading, filling, staging, clearing, excavation, or substantial improvement to land or the size of any structure.

*Dune* means the vegetated areas east of the beachwalk system to the easternmost limit of existing vegetation. In areas where a beachwalk system has not yet been constructed or is constructed within the dune system, the dune system shall constitute the continuously vegetated area bound by the Erosion Control Line ("ECL") to the west and by rope and post and/or sand fencing to the east. Where the dune is adjacent to public parks or areas designated as conservation areas, the dune shall also include areas of native dune vegetation west of the ECL enclosed by rope and post and/or sand fencing.

*Department* means the City of Miami Beach Environment and Sustainability Department.

*Dune crossover* means the path intersecting the dune system which is designated by the City of Miami Beach for beach access.

*Dune Management Plan* refers to the City of Miami Beach Dune Management Plan adopted in 2016 which outlines the framework and specification that the City will use to foster and maintain a healthy, stable, and natural dune system, as amended from time to time.

*Excavation* means the removal or alteration of dunes and dune vegetation and scraping, grading, or dredging a site.

*Filling* means the disposal of dredged materials.

*Green Infrastructure* means both the natural environment and engineered systems to provide clean water, conserve ecosystem values and functions, and provide a wide array of benefits to people and wildlife.

*Person* means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

Regular maintenance activities includes but it not limited to mowing, edging, line trimming, irrigation system operation maintenance/repair, litter retrieval and waste disposal, pruning, mulching, weeding, landscape maintenance, pesticide and fertilizer applications, replacement of plants as required, and rope and post maintenance, as conducted by City of Miami Beach contractors and employees. All routine landscape maintenance services for the dune should follow the guidelines set in the City of Miami Beach Dune Management Plan.

Restoration means the full removal and off-site disposal of non-native invasive, and/or pest plant species.

Staging or staging area means a location where people, vehicles, equipment, and materials are assembled before use.

Substantial improvement means the creation of vehicular or pedestrian trails, landscape work that adversely affects dunes or dune vegetation, and increasing the size of any structure.

Wildlife means those native species who live and grow in the dune system, including birds, reptiles, mammals, insects that are found in a natural dune ecosystem throughout South Florida.

Work means restoration, trimming, pruning, removing, or planting of vegetation in the dune system.

#### **Sec. 82-482. Prohibited activities.**

- (a) It is unlawful and prohibited for any person to conduct or permit any of the following activities upon the dune:
1. Harass molest, or disturb wildlife and plant vegetation;
  2. Maintain a dump of, or discard of, sand, rock, or other debris and litter as defined in section 46-92(a)(5) of the city code;
  3. Leave human or animal waste;
  4. Discard or abandon animals in the dune ecosystem;
  5. Excavate, mine and remove, or haul sand or soil from the beach or dune;
  6. Plant vegetation, except as conducted within the Dune Management Plan, and Beachfront Management Plan and approved by the Department;
  7. Relocate or remove vegetation, except as conducted within the Dune Management Plan and approved by the Department;
  8. Storage of beach equipment, tents, or other materials in the vegetated dune area.
  9. Destroy, mutilate, break, move, tear up, carry away, harvest, traverse upon, or alter in any manner dune and beach vegetation, fencing, rope and post, public access structures, public beach structures, or fixtures occurring naturally or planted or erected by the City or its agents;
  10. Walking or traversing in the dune;
  11. Vehicular traffic;
  12. Staging or equipment, including for construction activities;
  13. Light or maintain any open fire.

#### **Sec. 82-483. Permitted activities**

- (a) Foot (pedestrian) traffic and authorized vehicular traffic are permitted to use the designated dune crossovers or other designated beach access points.

- (b) No work can occur in the dunes without approval from the Environment and Sustainability Department, a Coastal Construction Control Line ("CCCL") permit from the Florida Department of Environmental Protection, and a City Right-of-Way permit. City and private contractors shall be responsible for providing a certificate of liability insurance listing the City as the additional insured, and for submitting a work plan that shows the project area, the scope of work, the access points to the site, the species disposition (to stay, to be removed, to be relocated), and what materials and equipment will be used. If a planting plan is required, it must be developed using the planting specifications described in the Dune Management Plan and provided to the City's Environment and Sustainability staff for approval. Once the Right-of-Way permit is executed and in-hand, contractors may begin the work approved in their permits.
- (c) Maintenance pruning may be requested by adjacent upland properties. Such request shall be made to the Environment and Sustainability Department and will be reviewed and approved on a case by case basis. All pruning must be conducted in accordance with *Section III. Strand Zone Pruning Specification* of the Dune Management Plan and conducted under the supervision of an arborist certified by the International Society of Arboriculture.
- (d) When the dune vegetation outgrows the rope and post and/or fencing limits, a request can be made to the Environment and Sustainability Department to review and determine if trimming is appropriate. Overgrown vegetation will be trimmed by in-house staff or landscaping maintenance contractor procured or approved by the Environment and Sustainability Department.
- (e) City of Miami Beach contractors and employees are permitted in the dunes to conduct regular maintenance activities associated with vegetative maintenance per the City's Dune Management Plan and regular cleanliness management.
- (f) Organized volunteer restoration and planting events are allowed as approved by the Environment and Sustainability Department.
- (g) All work in the dunes must comply with the City of Miami Beach Dune Management Plan.

**Sec. 82-484. Enforcement and penalties.**

- (a) Fines collected shall be deposited in the Miami Beach Sustainability and Resiliency Trust Fund, established in Sec. 133-8, dedicated to fulfilling the purposes of this section and protecting the health of the City of Miami Beach ecosystems. Funds generated by penalties imposed under this section shall be used by the City for the administration, education, and enforcement of the corresponding sections of Chapter 82, Article V, and to increase the resiliency of the City by the protection and enhancement of the dune system.
- (b) If a code compliance officer finds a violation of this article, the code compliance officer shall issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before

a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

(c) A violator who has been served with a notice of violation must elect to either

1. pay the following civil fine:

(a) First violation within a 12-month period.....\$1000.00;

(b) Second violation within a 12-month period.....\$2000.00;

(c) Third or subsequent violation within a 12-month period....\$3000.00;

Or

2. request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the City Commission, which shall be refunded if the named violator prevails in the appeal.

(d) Failure to pay the civil fine, or to timely request an administrative hearing before a special master, shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.

(e) A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After three months following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien for the amount of the lien plus accrued interest.

(f) The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation. The special master shall not have discretion to alter the penalties prescribed in this article. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

(g) The Violator shall pay for any fines being assessed to the City as a result of violation of this article.

(h) The Violator is responsible for reimbursement to the City of all investigative and restoration costs incurred by the City. Costs shall include, but are not limited to, cost of equipment operation and maintenance associated with the investigation or restoration, cost of materials used in the investigation, personnel cost of contract services, re-planting costs,

and labor costs. The City shall submit an itemized invoice with all the reimbursable costs to the Violator.

**SECTION 2. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 3. SEVERABILITY.**

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

**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 part of the Code of the City of Miami Beach, Florida. 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 5. EFFECTIVE DATE.**

This Ordinance shall take effect on the \_\_\_\_ day of \_\_\_\_\_, 2021.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2021.

**ATTEST:**

\_\_\_\_\_  
Dan Gelber, Mayor

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Rafael E. Granado, City Clerk

(sponsored by Commissioner Micky Steinberg)