

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE III, ENTITLED "USE OF PUBLIC PROPERTY," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY CREATING SECTION 82-72 THEREOF, ENTITLED "COMMERCIAL VESSEL ACTIVITY HOURS OF OPERATION AT PUBLICLY-OWNED MARINAS," TO LIMIT THE HOURS OF OPERATION FOR COMMERCIAL VESSEL ACTIVITY AT PUBLICLY-OWNED MARINAS AND MARINE FACILITIES; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, in 1983, the Mayor and City Commission adopted Resolution No. 83-17385, approving and authorizing the execution of a Lease Agreement for the construction and management of the City's only public marina (the "Marina") in the South of Fifth neighborhood; and

WHEREAS, Miami Beach Marina Associates, Ltd., a wholly owned subsidiary of Suntex Marina Investors, LLC ("Suntex"), is the current operator and Lessee of the Marina; and

WHEREAS, the City has received numerous complaints from the South of Fifth Neighborhood Association and residents of the South of Fifth neighborhood, including members of the condominium associations at the ICON, Murano Grande, Murano Portofino, and Yacht Club at Portofino, regarding commercial charter vessel operations at the Marina, due to a significant increase in commercial vessel activity at the Marina in the last few years, particularly during the COVID-19 pandemic; and

WHEREAS, the quality-of-life complaints related to Commercial charter vessel activity include unruly commercial charter and boat rental patrons, and disturbances caused by public intoxication, engagement in excessively loud arguments, playing excessively loud music and public urination in and around the Marina facilities and parking garages; and

WHEREAS, elected officials, City staff and various representatives of Suntex, have participated in numerous meetings with residents and stakeholders concerning these issues; and

WHEREAS, commercial vessel hours of operation at the Marina were addressed at the February 28, 2023 Public Safety and Neighborhood Quality of Life Committee ("PSNQLC") meeting, and the PSNQLC favorably recommended adoption of an ordinance to limit the hours of operation for commercial vessels; and

WHEREAS, the Mayor and City Commission desire to adopt the following regulations in the City Code of Laws and Ordinances in order to address the concerns and complaints surrounding commercial vessels at the Marina, which are necessary for the protection of City residents' quality of life and which are consistent with, and further, the public health, safety and welfare of the City.

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

SECTION 1. That Section 82-72 of the City Code shall be created as follows:

CHAPTER 82

PUBLIC PROPERTY

* * *

ARTICLE III. USE OF PUBLIC PROPERTY

* * *

DIVISION 1. GENERALLY

* * *

Sec. 82-72. Commercial vessel activity hours of operation at public marinas.

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

Marina means any installation operated for profit which exclusively provides any accommodations or facilities for watercraft, including mooring, docking, storing, leasing, sale or servicing of watercraft, located in the waters of the city.

Marine facility means any device, structure, building or component of a marina.

Operate means to navigate or otherwise use a vessel on or in the waters of the city.

Premises means any occupied or unoccupied vessel, marina, marine facility, accessory structure, dock or pier, lot or parcel of land or any part thereof, used or intended to be used on or in conjunction with the waterways of the city.

Vessel includes every description of watercraft used or capable of being used as a means of transportation on water. The term shall mean any watercraft, and all vessels shall belong to one of the following classes:

- (1) Commercial vessel means and includes every vessel used or operated for commercial purposes on the navigable waters of the city; that is either carrying passengers (including, but not limited to, charters and rentals), carrying freight, towing, or for any other use; for which a compensation is received, either directly or where provided as an accommodation, advantage, facility or privilege at any place or public accommodation, resort or amusement.

(2) Pleasure vessel means and includes every vessel not within the classification of commercial vessel. The provisions of this chapter shall apply to rowboats, canoes, sailboats, except as otherwise expressly provided. The term shall not include a crew racing shell, which means any shell, gig, barge or other boat designed primarily for the practice of racing conducted by a private or public educational institution, school, academy, college, university or association of any of the preceding, or by an amateur sports club or association or by the United States or International Olympics Committee, and shall not include canoes, rowboats or lifeboats.

(b) All commercial vessel activity shall be prohibited at public marinas and public marine facilities each day from ~~4 p.m.~~ 9 p.m. until 7 a.m. the following day. Such prohibition shall include, but not be limited to, operating a commercial vessel, the queueing, ~~of passengers,~~ the embarkation or disembarkation of passengers, and the loading or unloading of any food, goods, equipment, fuel or supplies.

Notwithstanding the foregoing, all pleasure vessels, along with commercial fishing vessels, commercial diving vessels, and educational "eco" or nature tours that are properly registered with the marina operator as such, shall be exempt from the requirements of this section. It shall be the sole responsibility of any person owning, operating or utilizing a vessel for commercial activity to ensure that such vessel is properly and accurately registered with the marina operator for the purpose of claiming an exemption to the requirements of this section.

This section shall not be construed as to prohibit public marinas and public marine facilities from providing core marina functions including, but not limited to, utilities, dockage, storage, and other services typically provided by a marina.

(c) Civil penalties. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies from taking any action to assure compliance with this division and all applicable laws.

(1) If a violation is observed, the enforcement officer shall be authorized to issue a notice of violation to the commercial vessel. The notice will 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 magistrate within ten days after service of the notice of violation, and that the failure to appeal the violation within ten days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

(2) A violation of this section shall be subject to the following fines and penalties:

- a. If the violation is the first offense, a person or business shall receive a civil fine of \$500.00;
- b. If the violation is the second violation within the preceding six months, person or business shall receive a civil fine of \$1,000.00;
- c. If the violation is the third violation within the preceding six months, a person or business shall receive a civil fine of \$2,000.00; and

- d. If the violation is the fourth or subsequent violation within the preceding six months, a person or business shall receive a civil fine of \$5,000.00, and ~~any city permit issued pursuant to section 82-468(c)~~ and any city-issued business tax receipt shall be revoked.
- (3) A violator who has been served with a notice of violation must elect to either:
- a. Pay the civil fine in the manner indicated on the notice of violation; or
 - b. Request an administrative hearing before a special magistrate to appeal the notice of violation, which must be requested within ten days of the service of the notice of violation.
- (4) 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. A request for the administrative hearing 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.
- (5) If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special magistrate, the special magistrate may be informed of such failure by the code enforcement officer. The failure of the named violator to appeal the decision of the code enforcement officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special magistrate, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.
- (6) 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. On or after the 61st day following the recording of any such lien that remains unpaid, the city may foreclose or otherwise execute upon the lien.
- (7) Any party aggrieved by a decision of a special magistrate may appeal that decision to a court of competent jurisdiction.
- (8) The special magistrate 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 days of the service of the notice of violation.
- (9) The special magistrate shall not have discretion to alter the penalties prescribed in this subsection.

SECTION 2. REPEALER.

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

SECTION 3. SEVERABILITY.

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

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on _____.

PASSED and **ADOPTED** this _____ day of _____, 2023.

ATTEST:

Rafael E. Granado
City Clerk

Dan Gelber
Mayor

(Sponsored by Commissioner Steven Meiner)

Underline denotes additions.

~~Strikethrough~~ denotes deletions.

Double underline denotes additions after First Reading.

~~Double strikethrough~~ denotes deletions after First Reading.

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

MAF

4-19-23

Date