

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 18 OF THE MIAMI BEACH CITY CODE, ENTITLED "BUSINESSES," BY AMENDING DIVISION 2, ENTITLED, "VALET PARKING PERMITS FOR USE OF PUBLIC PROPERTY," BY AMENDING SECTION 18-343, ENTITLED, "PENALTIES AND ENFORCEMENT; FINE SCHEDULE; RIGHT OF APPEAL"; BY MODIFYING THE FINE AMOUNTS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the amendment to the Ordinance would reduce the monetary fine for those first and second offense violations committed by valet operators throughout the City of Miami Beach; and

WHEREAS, the City Commission finds that a reduction of the monetary fine for those first and second violations is appropriate, and will minimize the financial impact to valet operators who receive a first and second offense violation.

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

SECTION 1. Article VIII of Division 2 of Chapter 18 of the Code of the City Miami Beach is hereby amended as follows:

**CHAPTER 18
BUSINESSES**

* * *

ARTICLE VIII. Parking Lot

* * *

DIVISION 2. Valet Parking Permits for Use of Public Property

* * *

SECTION 1. Article VIII of Division 2 of Chapter 18 of the Code of the City Miami Beach is hereby amended as follows:

Sec. 18-343. Penalties and enforcement; fine schedule; right of appeal.

(a) *Penalties and enforcement.*

- (1) A violation of article VIII, except as specifically set forth herein, shall be subject to the following fines:
 - i. If the violation is the first offense, there shall be a civil fine of ~~\$1,000.00~~ \$500.00;
 - ii. If the violation is the second violation within the preceding twelve months, there shall be a civil fine of ~~\$2,000.00~~ \$1,000.00;

- iii. If the violation is the third violation within the preceding twelve months, there shall be a civil fine of \$3,000.00;
 - iv. If the violation is the fourth or subsequent violation within the preceding twelve months, there shall be a civil fine of \$5,000.00.
- (2) A violation of section 18-340 shall be subject to the following fines:
- i. If the violation is the first offense, there shall be a civil fine of \$100.00;
 - ii. If the violation is the second violation within the preceding nine months, there shall be a civil fine of \$250.00;
 - iii. If the violation is the third violation within the preceding nine months, there shall be a civil fine of \$500.00;
 - iv. If the violation is the fourth or subsequent violation within the preceding nine months, there shall be a civil fine of \$1,000.00.
- (3) Enhanced penalties. The following enhanced penalties must be imposed, in addition to any mandatory fines set forth in subsection 18-343(a)(1) above, for violations of article VIII, except as to section 18-340:
- a. Enhanced penalties:
 - (i) If the offense is a third offense within the preceding 12-month period of time, in addition to the fine set forth in subsection 18-343(a)(1), the valet operator, valet permit holder, property owner, company or business entity must be prohibited from conducting the valet operation(s) for a period of 10 days.
 - (ii) If the offense is a fourth or subsequent offense, in addition to any fine set forth in subsection 18-343(a)(1), the valet operator, valet permit holder, property owner, company or business entity must be deemed a habitual offender, and the City Manager may revoke the business tax receipt or the certificate of use issued to such valet operator, valet permit holder, property owner, company or business entity that have been deemed a habitual offender(s) pursuant to this section for a period not to exceed one year.
- (4) Enforcement. The city's parking department and the Miami Beach Police Department shall enforce this article. This shall not preclude other law enforcement agencies from any action to assure compliance with this section and all applicable laws. If a parking enforcement officer or a police officer finds a violation of this article, the parking enforcement officer or the police officer will be authorized to 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.
- (5) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.
- a. A violator who has been served with a notice of violation must elect to either:
 - (i) pay the civil fine in the manner indicated on the notice of violation; or
 - (ii) 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.

- b. 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 appeal must be accompanied by a fee as approved by a resolution of the city commission.
 - c. 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 master, the special master may be informed of such failure by report from the police officer. The failure of the named violator to appeal the decision of the police officer within the prescribed time period 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.
 - d. 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 sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.
 - e. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
 - 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.
 - g. The special master shall not have discretion to alter the penalties prescribed herein.
- (6) The parking department, shall withhold issuance of any new valet permits and leased public on-street/curbside valet parking spaces, and suspend current valet permits until past due violations are paid in full. The parking department reserves the right to bring forward to the special master any party who has waived their right to appeal and has over three (3) outstanding violations.
- (7) Valet operator's responsibility for vehicles in their possession. Valet operators shall pay all fines and fees, including towing charges, arising in connection with a patron's vehicle which is in the possession of the valet operator at the time such charge is incurred. This does not preclude the valet operator from also being cited by the parking department for violations of this section article which resulted in the imposition of the fines and fee.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same 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 tenth (10th) day following its adoption.

PASSED AND ADOPTED this _____ day of _____, 2017.

ATTEST:

RAFAEL E. GRANADO, CITY CLERK

PHILIP LEVINE, MAYOR

(Sponsored by Commissioner Joy Malakoff)

Underline denotes additions
~~Strike through~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

James Tolbert
City Attorney

10/10/17
Date