

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 10 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "ANIMALS," BY AMENDING THE PROHIBITIONS, PENALTIES, AND ENFORCEMENT PROVISIONS REGARDING THE KEEPING, STABLING, HARBORING, OR MAINTAINING OF ANIMALS IN THE CITY; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the regulations in the City Code regarding "Animals" should be amended and strengthened to more fully address, and provide heightened penalties for, the keeping of livestock, and for the keeping of animals or vermin that are deleterious or harmful to the public health or perilous to public safety.

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

SECTION 1.

That Chapter 10 of the Code of City of Miami Beach is hereby amended as follows:

CHAPTER 10

ANIMALS

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Sec. 10-2. Fines for violations of animal control ordinances; unpaid fines to constitute lien and basis for revocation of city parking permits/decals.

(a) All violations of this chapter are civil infractions, except as otherwise provided in section 10-5. Each violation of this chapter shall constitute a separate offense. Violations of this chapter, except as otherwise provided in sections 10-9, 10-15, 10-17, and 10-18, or and section 10-19, within a 12-month period will be punished as follows:

- (1) For a first offense, a \$50.00 fine.
- (2) For a second offense within the preceding 12 months, a \$100.00 fine.
- (3) For each additional offense within the preceding 12 months, a \$200.00 fine.

For purposes of this section, an offense shall be deemed to have occurred on the date that the violation occurred. An offense occurring 12 months after the last offense shall be treated as a first offense for purposes of incurring new fines. However, any fines imposed in any prior 12-month period shall not be waived.

- (b) The failure of any person to pay the appropriate fine within the time allowed or to appeal the violation shall constitute a waiver of the right to an administrative hearing before the special master and fines may be assessed accordingly.
- (c) 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 and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two months from the recording of any such lien that which remains unpaid, the city may foreclose or otherwise execute upon the lien. In addition, any order of the special master imposing a fine for a violation of section 10-11 that remains unpaid two months after the date of the order shall be grounds for the revocation of any and all residential parking permits or decals issued to the violator by the city.

Sec. 10-3 Enforcement; adoption of portion of Miami-Dade County Code by reference.

- (a) Any officer who ~~observes~~ determines the existence of a violation of an animal control ordinance of the city or county shall issue a notice of violation to that person or a citation as provided in section 10-17.
- (b) Any person issued a notice of violation of this chapter, or a citation as provided in section 10-17, except as otherwise provided in section 10-5, shall be deemed to be charged with a civil infraction.
- (c) Any person issued a notice of violation under this chapter shall sign and accept the notice.
- (d) Any person charged with a civil infraction under this section may pay the civil fine, either by mail or in person, within ten days of the date of receiving the notice of violation and shall be deemed to have admitted the infraction and to have waived his or her right to a hearing on the issue of the commission of the violation.
- (e) Article II of chapter 5 of the Code of Miami-Dade County entitled "Dogs" is recognized as being in force in the city and is adopted by reference as if fully set forth herein.

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Sec. 10-9. Keeping animals or vermin deleterious or harmful to public health or perilous to public safety prohibited; exceptions; penalties and enforcement.

- (a) Prohibitions. It shall be prohibited for any person to keep, harbor or maintain any animal or vermin whose natural actions and presence are or may be deleterious or

harmful to the public health or that may imperil the public safety; provided, however, that this section shall not apply to circuses, carnivals or similar enterprises lawfully engaged in the exhibition of animals.

(b) Penalties and enforcement.

1. Penalties; Fines; license revocation. Upon a finding by the appropriate administrative official or agency that a violation of this section has occurred, the city shall initiate the following proceedings against the violator:
 - a. If the violation is the first offense, a person or business shall receive a written warning;
 - b. If the violation is the second violation within the preceding six months, a 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 \$5,000; 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 \$10,000.00, and the business tax receipt shall be revoked.
2. Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies from any action to assure compliance with this section and all applicable laws.
 - a. If a violation of this section is observed, the enforcement officer shall be authorized to issue a notice of violation. 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 master 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.
 - b. A business shall be required to submit written verification to the City, with its Business Tax Receipt ("BTR") application or yearly renewal, confirming that the business is in full compliance with the provisions set forth within this section.
3. 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:
 - 1. Pay the civil fine in the manner indicated on the notice of violation; or
 - 2. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten 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 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.
- 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 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 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 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 days of the service of the notice of violation.
- g. The special master shall not have discretion to alter the penalties prescribed in subsection (b)(1) herein.

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Sec. 10-15. Keeping livestock and certain animals prohibited, exceptions; penalties and enforcement.

(a) Prohibitions. It shall be prohibited for any person to keep, stable, harbor or maintain any horse, poultry, livestock or farm animals, regardless of whether said animal is domesticated or trained, in any zoning district in the City, inclusive of any commercial establishment, structure, or building in the City, and any public or private property, provided, however, that nothing herein contained shall be construed so as to prohibit the keeping, stabling, harboring or maintaining of any horse, poultry, livestock or farm animals referenced in this section in such districts for lawfully permitted public events such as circuses, shows and similar events, or in any special cases, for temporary periods of time, as expressly approved by the city manager or his/her designee, in writing through the issuance of a permit, in advance of such events.

(b) Penalties and enforcement.

1. Penalties; Fines; license revocation. Upon a finding by the appropriate administrative official or agency that a violation of this section has occurred, the city shall initiate the following proceedings against the violator:

- a. If the violation is the first offense, a person or business shall receive a written warning;
- b. If the violation is the second violation within the preceding six months, a 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 \$5,000; 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 \$10,000.00, and the business tax receipt shall be revoked.

2. Enforcement. The code compliance department shall enforce this section. This shall not preclude other law enforcement agencies from any action to assure compliance with this section and all applicable laws.

- a. If a violation of this section is observed, the enforcement officer shall be authorized to issue a notice of violation. 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

master 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.

- b. A business shall be required to submit written verification to the City, with its Business Tax Receipt ("BTR") application or yearly renewal, confirming that the business is in full compliance with the provisions set forth within this section.

3. *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:

- 1. Pay the civil fine in the manner indicated on the notice of violation; or
- 2. Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten 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 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.

- 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 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 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 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 days of the service of the notice of violation.
- g. The special master shall not have discretion to alter the penalties prescribed in subsection (b)(1) herein.

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 Miami Beach City Code. 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 _____, 2018.

PASSED and ADOPTED this ____ day of _____, 2018.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions
~~Strikethrough~~ denotes deletions

(Sponsored by Commissioner Micky Steinberg)
(Co-sponsored by Commissioner Michael Gongora)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

5/8/18
Date