

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, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE V, ENTITLED "BEACHES," BY AMENDING DIVISION 2, ENTITLED "RESTRICTED AREAS," BY AMENDING THE PROVISIONS IN SECTIONS 82-466 THROUGH 82-470 REGARDING DEFINITIONS, PROHIBITING WATERCRAFT IN RESTRICTED SWIM AREAS, PROHIBITING WATERCRAFT IN CERTAIN NON-RESTRICTED SWIM AREAS, PROVIDING EXCEPTIONS FOR THE LAUNCH AND USE OF CERTAIN WATERCRAFT IN PERMITTED AREAS, PROVIDING REQUIREMENTS REGARDING CERTIFICATIONS, SAFETY EQUIPMENT, AND DISTANCE, PROVIDING EXCEPTIONS REGARDING RESTRICTED AND NON-RESTRICTED SWIM AREAS, AND AMENDING THE PROVISIONS FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, various provisions in Chapter 82, Article V, Division 2 of the City Code, regarding watercraft and restricted areas on the City's beaches, are outdated and should be amended in the interest of the public health, safety, and welfare to address current beach conditions and the types of watercraft presently utilized by the City's residents and visitors.

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

SECTION 1.

That Chapter 82, Article V, Division 2 of the Code of the City of Miami Beach is hereby amended as follows:

Chapter 82

PUBLIC PROPERTY

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ARTICLE V. BEACHES

* * *

DIVISION 2. RESTRICTED AREAS

Sec. 82-466. Definitions.

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

Chase or emergency watercraft means watercraft available solely for the purpose of effecting a sea rescue in an emergency or for the purpose of ensuring compliance with federal or state law or city or county ordinances. The term does not include watercraft used for rental.

Corridor means a defined area within the restricted area leading from the shoreline to the ~~western~~-eastern boundary of the restricted area, in which watercraft may be used subject to conditions set forth in this subdivision.

Licensee means a person or business entity operating a watercraft rental business or providing watercraft lessons on a public beach located within the city pursuant to a concession agreement with the city.

Mechanically powered watercraft means a watercraft using an internal combustion engine or an electric motor as its primary source of motive propulsion. The term includes personal watercraft such as jet skis.

Personal watercraft means an inboard-powered vessel, such as a jet ski, under 16 feet in length, which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion and is designed to be operated by a person sitting, standing or kneeling on or being towed behind the vessel.

Restricted area means the area defined in section 82-467 ~~and described in attached appendix 1 to this article.~~

Watercraft means any contrivance or device used or capable of being used as a means of transportation on the water. The term shall include but shall not be limited to sun boards, ski boards, wind surfers, surfboards, kiteboards, sailboats, any wind-driven or non-propeller-driven watercraft, any personal watercraft, and any mechanically powered, jet-driven, and combustion-driven watercraft.

Watercraft operator means a person who is in actual physical control of or is steering a watercraft or who is exercising control over or steering any device being towed by a watercraft.

Sec. 82-467. Restricted swim areas.

The areas located on public beaches within the city as described in ~~appendix 1 to this article~~ that are between 400 feet to the north and 400 feet to the south of a lifeguard tower and 300 feet east into the ocean from the mean highwater mark shall be known as restricted swim areas and shall be governed by the provisions of sections 82-468 through 82-470. Such areas shall be marked by the use of buoys as described in ~~appendix 21~~ to this article and located 300 feet east into the ocean from the mean highwater mark.

Sec. 82-468. Watercraft prohibited in restricted swim areas and in certain non-restricted swim areas; permitted launch, ingress/egress, and use areas for kiteboards; requirements regarding safety equipment and distance.

- (a) Except as otherwise provided in ~~section 82-469~~ this division, it shall be unlawful for any licensee or watercraft operator to launch, ingress/egress, steer, propel, operate, cause to be operated, or use any watercraft within the restricted swim areas as set forth in section 82-467.
- (b) Kiteboard operators must launch, ingress, and egress kiteboards only in the following city-designated beach areas:
 - 1. The area extending 125' south of the northern boundary of 25th Street
 - 2. Non-restricted swim areas north of 29th Street, except as otherwise provided in subsection (b)(3).
 - 3. 76th Street shall only be utilized for kiteboarding lessons by city-approved concessionaires and their students.
- (c) All kiteboard operators, except for students engaged in kiteboarding lessons at 76th Street, must be currently certified by the International Kiteboarding Organization (IKO), the International Kiteboarding Association (IKA), or the Professional Air Sport Association (PASA) as a Level 3 kiteboarder, and ~~must~~ Beginning April 1, 2019, all kiteboard operators shall immediately provide a city-issued permit as proof of such certification upon request by any person authorized to enforce this division. Beginning April 1, 2019, a ~~A~~ permittee shall be required to submit written verification to the city, with its permit application or yearly renewal, confirming that the permittee is in full compliance with the provisions set forth in this section. Beginning April 1, 2019, a ~~All~~ kiteboarders must display a city-issued form of identification (i.e., streamer, etc.) on their kiteboard or kite at all times.
- (d) Persons operating watercraft must utilize appropriate safety equipment as required by law and are responsible for the safe operation of their watercraft.

- (e) All watercraft operators shall maintain a 300 foot distance from the mean highwater mark at all times, except as otherwise provided in Section 82-469 or when authorized to use the city-designated launch and ingress/egress areas set forth in subsection (b).
- (f) All watercraft operators shall maintain a distance of 50 feet away from bathers/swimmers at all times.
- (g) The providing of kiteboarding lessons by any person or entity other than as authorized by a concession agreement with the city, regardless of whether monetary or other form of compensation or consideration is received by such person or entity, is prohibited.

Sec. 82-469. Exceptions.

The following shall be exceptions to the restrictions set forth in sections 82-467 and 82-468:

- (1) Chase or emergency watercraft operated by federal, state, county, or city governments while engaged in law enforcement, rescue, or other necessary municipal or governmental tasks.
- (2) Watercraft operated by ~~the~~ federal government, state, county, or city governments while engaged in law enforcement or other necessary municipal or governmental tasks.
- (3) Watercraft operated within a corridor authorized by the city and clearly marked as such by use of buoys or other markers as approved by the city, ~~the state department of natural resources,~~ and such state and federal agencies whose approval is or may be required by law.
- (4) Surfboards, skim boards and sailboards are permitted in the restricted swim areas ~~1 and 2 as set forth on appendix 1 to this article between the Government Cut jetty and 1st Street.~~
- (5) Emergency beaching of watercraft when necessary to prevent loss of life, limb or property.
- (6) Watercraft concessions may be operated as authorized pursuant to a concession agreement with the city.
- (7) Kiteboards are permitted in restricted swim areas, but only during the hours when the beaches are open and lifeguards are not on duty, provided they are operated at least 200 feet east into the ocean from the mean highwater mark.

Sec. 82-470. Enforcement; penalties.

- (a) ~~The provisions of sections 82-467 through 82-469 shall be enforced by the city marine patrol and other state and federal authorities having jurisdiction over the waters located within the restricted area described in appendix 1 to this article.~~
- ~~(b) Any person convicted of a violation of this subdivision shall be punished by a fine not to exceed \$500.00 or by imprisonment in the county jail for not more than 30 days, or by both such fine and imprisonment.~~

Civil penalties. Except as otherwise provided in subsection (b), the code compliance department shall enforce this division. 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. 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.
2. A violation of this division, except as otherwise provided in subsection (b), 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;
 - 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; 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 master 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 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.
 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 master may appeal that decision to a court of competent jurisdiction.
 8. 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.
 9. The special master shall not have discretion to alter the penalties prescribed in subsection (a) herein.
- (b) *Criminal penalties:* The provisions in section 82-468(g) shall be enforced by the city's police department and any other state and federal authorities having jurisdiction over the city's beaches and the waters within the restricted and non-restricted swim areas of the city. Any person convicted of the violation of section 82-468(g) shall be punished by a fine not to exceed \$500 or by imprisonment in the county jail for not more than 30 days, or both such fine and imprisonment.

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APPENDIX 1. RESTRICTED SWIM AREAS

[NOTE TO CODIFIER: ALL DIAGRAMS IN APPENDIX 1 ARE TO BE DELETED]

APPENDIX 2.1. REGULATORY BUOY

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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

Double underline denotes additions at Second Reading

~~Double-strikethrough~~ denotes deletions at Second Reading

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Rafael Granado 10/9/18
City Attorney Date

(Sponsored by Vice-Mayor Mark Samuelian)