

# MIAMIBEACH

OFFICE OF THE CITY ATTORNEY  
RAUL J. AGUILA, CITY ATTORNEY

## COMMISSION MEMORANDUM

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**To:** Mayor Dan Gelber  
Members of the City Commission

**Date:** December 12, 2018

**cc:** Jimmy L. Morales, City Manager  
Rafael E. Granado, City Clerk

**From:** Raul J. Aguila, City Attorney

**Subject:** A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, URGING THE FLORIDA LEGISLATURE AND THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION TO ENACT STRICTER RESTRICTIONS ON THE FISHING AND HARVESTING OF SHARK AND ALLIGATOR SPECIES AND, IF APPLICABLE, TO ENFORCE EXISTING RESTRICTIONS ON THE SALE OF SHARK AND ALLIGATOR SPECIES THAT ARE ILLEGAL TO HARVEST OR SELL.

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Pursuant to the request of Commissioner Mark Samuelian, the above-referenced Resolution is submitted for consideration by the Mayor and City Commission at the December 12, 2018 Commission meeting.

Vice-Mayor Michael Góngora is a co-sponsor for this item.

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, URGING THE FLORIDA LEGISLATURE AND THE FLORIDA FISH AND WILDLIFE CONSERVATION COMMISSION TO ENACT STRICTER RESTRICTIONS ON THE FISHING AND HARVESTING OF SHARK AND ALLIGATOR SPECIES AND, IF APPLICABLE, TO ENFORCE EXISTING RESTRICTIONS ON THE SALE OF SHARK AND ALLIGATOR SPECIES THAT ARE ILLEGAL TO HARVEST OR SELL.**

**WHEREAS**, the City of Miami Beach (the "City") has been advised that certain retail stores, including souvenir stores, are engaged in the sale of souvenir items containing or consisting of dead shark and alligator specimens; and

**WHEREAS**, the City has also been advised that some of these souvenir items containing dead shark specimens are labeled with the name "Miami Beach"; and

**WHEREAS**, the Mayor and City Commission hereby determine that the sale of such products, especially those products labeled with the name of the City, is injurious to the Miami Beach brand; and

**WHEREAS**, Article IV, Section 9 of the Florida Constitution provides that the Fish and Wildlife Conservation Commission (the "FWC") "shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life, and shall also exercise regulatory and executive powers of the state with respect to marine life, except that all license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission shall be prescribed by general law"; and

**WHEREAS**, Section 379.2412, Florida Statutes, provides that "[t]he power to regulate the taking or possession of saltwater fish . . . is expressly reserved to the state"; and

**WHEREAS**, Rule 68-1.005 of the Florida Administrative Code recognizes that "[t]he power to regulate the taking or possession of marine life, as assigned to the Fish and Wildlife Conservation Commission by Article IV, Section 9 of the Florida Constitution, is expressly reserved to the Commission"; and

**WHEREAS**, pursuant to such authority, the FWC has adopted rules establishing bag, possession, and size limits, and restricting methods of taking wildlife, freshwater fish, and saltwater fish, as well as prohibitions on the harvest, possession, landing, purchase, sale, or exchange of certain enumerated species; and

**WHEREAS**, the FWC has not imposed any size restrictions on the harvesting of smooth dogfish, a species of shark believed to be used in certain souvenir items containing dead shark specimens; and

**WHEREAS**, the adoption of size restrictions on the harvesting of smooth dogfish would help prevent the sale of such souvenir items; and

**WHEREAS**, additionally, pursuant to Article IV, Section 9 of the Florida Constitution, the FWC has adopted regulations on the taking, possession, and sale of reptiles, including American alligators; and

**WHEREAS**, to the extent that existing restrictions apply to shark and alligator species used for souvenir items, the Mayor and City Commission hereby urge the FWC, and any other appropriate law enforcement agency, to investigate the sale of the subject souvenir items in the City of Miami Beach; and

**WHEREAS**, to the extent that existing restrictions are not applicable, the Mayor and City Commission hereby urge the Florida Legislature and the FWC to enact appropriate restrictions on the fishing and harvesting of shark and alligator species, in order to prevent the sale of souvenir items containing or consisting of such animal species.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission hereby urge the Florida Legislature and the Florida Fish and Wildlife Conservation Commission to enact stricter restrictions on the fishing and harvesting of shark and alligator species and, if applicable, to enforce existing restrictions on the sale of shark and alligator species that are illegal to harvest or sell.

**PASSED and ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**ATTEST:**

\_\_\_\_\_  
Rafael E. Granado  
City Clerk

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Dan Gelber  
Mayor

(Sponsored by Commissioner Mark Samuelian)  
(Co-sponsored by Vice-Mayor Michael Góngora)

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney

12/7/18  
\_\_\_\_\_  
Date

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