

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND THE 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 I, ENTITLED "IN GENERAL," BY AMENDING SECTION 82-1 THEREOF, ENTITLED "CONDUCTING BUSINESS ON STREETS, PARKS, OR OTHER PUBLIC PROPERTY; ENFORCEMENT; PENALTIES; UNPAID FINES TO CONSTITUTE LIENS," BY PROVIDING FOR CRIMINAL PENALTY PROVISIONS IN LIEU OF CIVIL PENALTIES FOR VIOLATIONS OF THIS SECTION AND, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, currently, penalty provisions of Chapter 82, Article I, Section 82-1 impose civil penalties for conducting unauthorized business on any public street, avenue or alley, or any park, beach, structure, building, or other property or place owned, maintained, or operated by the City of Miami Beach for public use; and

**WHEREAS**, persons continue to engage in prohibited conduct on City's property in spite of existing civil penalties; and

**WHEREAS**, it is deemed in the best interest of the City that violations of the aforementioned section shall be classified as misdemeanor offenses and enforced by the City of Miami Beach Police Department in order to deter such behavior.

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

**SECTION 1.** That Section 82-1 of Article I of Chapter 82 of the Code of the City of Miami Beach is hereby amended as follows:

**CHAPTER 82**

**PUBLIC PROPERTY**

\* \* \*

**ARTICLE I. IN GENERAL**

**Section 82-1. Conducting business on streets, parks or other public property; enforcement; penalties; unpaid fines to constitute liens.**

- (a) It shall be unlawful for any person, while in or on any public street, avenue or alley, or any park, beach, structure, building or other property or place owned, maintained or operated by the city for public use, to sell, rent or offer for sale or rent to the public any article, commodity or service of any nature whatsoever, other than newspapers of general circulation duly entered in the United States Postal Service.

(b) It shall be unlawful for any commercial business operator, establishment, entity, organization or company that sells or rents merchandise, products, goods or services, or engages in any service that sells or rents merchandise, products or goods, including those commercial operators that transport passengers, from conducting any portion of the commercial transaction, activity or operation at any park, boat ramp, beach, structure, building or other property or place owned, maintained or operated by the city. A commercial transaction, activity or operation will be deemed to have occurred if any direct, indirect, or incidental portion of the commercial transaction, activity or operation takes place at, or uses, a city park, boat ramp, beach, structure, building or other property or place owned, maintained or operated by the city (including the Barry Kutun Boat Ramp that is located within the Maurice Gibb Memorial Park).

(c) Exemptions. This section shall not apply to:

- (1) Employees of the city acting for, and on behalf of, the city, as specifically authorized by the city manager; or
- (2) Persons authorized to render service to the public in any place set forth in subsection (a) and (b), by the city manager, provided the rendered service is a commercial outdoor fee based activity that has minimal impact to the city's public property; or
- (3) A commercial business operator, establishment, entity, organization or company is authorized to render service to the public pursuant to a concession agreement approved by the city commission.
- (4) Persons participating in any art show or exhibit held on all city properties under the specific authorization of the city commission and who are exhibiting paintings or objects of art produced or created by such persons.

(d) Penalties and enforcement.

(1) Any violation of subsections (a) and (b) of Section 82-1 shall be punished in accordance with Section 1-14 of the Code of the City of Miami Beach.

~~(1)~~ (2) Any violations of this ~~section~~ subsection (c) shall be subject to the following fines:

- a. If the violation is the first offense, a person or business shall receive a civil fine of \$250.00;
- b. If the violation is the second violation within the preceding six months, a person or business shall receive a civil fine of \$500.00;
- c. If the violation is the third violation within the preceding six months, a person or business shall receive a civil fine of \$1,000.00; 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 \$2,000.00.

(2) Enforcement.

(a) The Miami Beach Police Department, the code compliance department, or the parks and recreation department shall enforce ~~this section~~ subsection (c). This shall not preclude other law enforcement agencies from any action to assure compliance with this section and all applicable laws. If a violation of this section is observed, the enforcement 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 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) The Miami Beach Police Department shall enforce the provisions of subsections (a) and (b). This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section, and all applicable laws.

(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 for subsection (c) 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 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. Applications for hearings 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 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 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 (d)(1).

**SECTION 2. REPEALER.**

All ordinances or parts of ordinances in conflict herewith 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 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 the \_\_\_\_ day of \_\_\_\_\_, 2019.

**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2019.

**ATTEST:**

\_\_\_\_\_  
Dan Gelber, Mayor

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

Sponsored by Commissioner Mark Samuelian

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

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

3/22/19  
\_\_\_\_\_  
Date