

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 66 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "MARINE STRUCTURES, FACILITIES AND VEHICLES," BY AMENDING ARTICLE IV, ENTITLED "VESSELS," BY CREATING SECTION 66-155 THEREOF TO BE ENTITLED "PROHIBITION OF ADVERTISING SIGNS ON VESSELS," WHICH PROHIBITS THE OPERATION OF AN ADVERTISING VESSEL UPON THE TERRITORIAL JURISDICTIONAL WATERS OF THE CITY; BY ESTABLISHING PENALTIES; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City has identified a common practice for vessels to be operated within the waters and waterways of the City for the principle purpose of conducting general advertising; and

WHEREAS, the Mayor and City Commission have an obligation to provide proper regulations surrounding this type of conduct that will be in the best interest of the health, safety, welfare and aesthetics of the City and its residents; and

WHEREAS, this Ordinance will establish practical regulations for the proper and effective enforcement of vessels which are primarily used to conduct general advertising; and

WHEREAS, the Mayor and City Commission have determined that this Ordinance will create the proper balance between those private property rights, and the immediate negative impacts to the residential properties that are located upon the City's jurisdictional waters and waterways; and

WHEREAS, the Mayor and City Commission recognize that the adoption of this Ordinance will protect property values, the local economy and the quality of life for its residents by preserving and enhancing the true identities, residential character and nature of the City's neighborhoods; and

WHEREAS, the Ordinance includes objective standards which could be utilized by the City's enforcement personnel to provide the appropriate guidance on determining which vessel is designed or used for general advertising; and

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

SECTION 1. That Chapter 66 entitled "Marine Structures, Facilities and Vehicles," Article IV entitled "Vessels," of the Code of the City Miami Beach is hereby amended to create Section 66-155 to be entitled "Prohibition of advertising signs on Vessels," as follows:

CHAPTER 66

MARINE STRUCTURES, FACILITIES AND VEHICLES

* * *

Article IV. Vessels.

Secs. 66-155—66-185. Reserved. Prohibition of advertising signs on Vessels.

(A) It shall be unlawful for any person to operate, or cause to be operated, any vessel that is displaying general advertisements upon any waters, waterways, marine area or public place within the jurisdiction of the city in which the public has a right to travel.

(B) At least one (1) of the following conditions must exist in order for a determination to be made that the purpose of a vessel is for the display of general advertisements:

1. The vessel contains general advertisements for one or more different business entities;
2. The vessel contains general advertisements for a business entity which is not the owner of the vessel;
3. The vessel is operated continuously without stopping while displaying some form of general advertisement;
4. The vessel is driven in a repetitive pattern;
5. The vessel is capable of automatically changing the general advertisements displayed without stopping; or
6. The vessel lacks the ability to serve any purpose other than advertising.

(C) This section shall not apply to:

1. Any vessel which displays an advertisement or business notice of its owner, so long as such vessel is engaged in the usual business or regular work of the owner, and not used merely, mainly or primarily to display advertisements;
2. Any vessel that operates within those waters of the Atlantic Ocean and that such operation is located directly east of the City's Erosion Control Line.

(D) Definitions

1. *Advertising vessel* means any vessel designed or used for the primary purpose of displaying advertisements.
2. *Vessel* means any boat, watercrafts, motorboat, sailboat, rowboat, dingy, canoe, airboat, houseboat, barge, floating structure, floating home or any contrivance of any nature whatsoever which is waterborne, whether or not the same is capable of moving under its own power or by sail.

(E) Penalties and enforcement.

1. A violation of this Section 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 \$1,000.00;
 - b. If the violation is the second violation within the preceding six months, a person or business shall receive a civil fine of \$2,000.00;
 - c. If the violation is the third violation within the preceding six months, a person or business shall receive a civil fine of \$3,000.00; 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 \$5,000.00.
2. Enforcement. The Miami Beach Police Department and 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. 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 (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.
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:
 - 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 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 enforcement officer. The failure of the named violator to appeal the decision of the 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 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 in subsection C(1).

Secs. 66-156—66-185. Reserved.

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 a 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 ten (10) days following adoption.

PASSED AND ADOPTED this _____ day of _____, 2017.


ATTEST:

Mayor Philip Levine

Rafael E. Granado, City Clerk

Underline denotes new language
(Sponsored by Commissioner Michael Grieco)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

11/6/17
Date