

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ENTITLED "MARINE STRUCTURES, FACILITIES AND VEHICLES," BY AMENDING THE CHAPTER TITLE AND BY DELETING OBSOLETE AND OUTDATED PROVISIONS AND BY AMENDING TERMINOLOGY IN ARTICLE I, ENTITLED "IN GENERAL," ARTICLE III, ENTITLED "PIERS, DOCKS AND BOAT RAMPS," ARTICLE IV, ENTITLED "VESSELS," ARTICLE V, ENTITLED "REGATTAS AND BOAT RACES," AND IN ARTICLE VI, ENTITLED "VESSELS ABANDONED ON PUBLIC AND PRIVATE PROPERTY"; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, at the March 14, 2017 meeting of the Marine and Waterfront Protection Authority, a discussion was held regarding the continued relevance of Sections 66-7 and 66-153 of the City Code regarding commercial bait boats and identification requirements for employees of boat and dock operations; and

WHEREAS, following its discussion of the provisions, the Marine and Waterfront Protection Authority approved a motion recommending that Sections 66-7 and 66-153 of Chapter 66 of the City Code be repealed as they are outdated and not in accord with current applicable marine standards utilized and approved by the U.S. Coast Guard, Miami-Dade County, and State law; and

WHEREAS, pursuant to further review of all of the provisions throughout Chapter 66 of the City Code, entitled "Marine Structures, Facilities, and Vehicles," other language and provisions therein were found to be obsolete or outdated and should also be deleted or amended.

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

SECTION 1.

That Chapter 66 of the Code of City of Miami Beach is hereby amended as follows:

Chapter 66

MARINE STRUCTURES, FACILITIES AND VEHICLES VESSELS

ARTICLE I. IN GENERAL

Sec. 66-1. Findings.

(a) The city commission finds and declares that it is the policy of the city to:

- (1) Promote safety for persons and property in and connected with the operation and equipment of vessels in the city.
- (2) Promote standards and the regulation of all waterways in the city, marine facilities, marinas, charter craft, sightseeing craft, excursion boats, commercial craft, docks, piers, skiing, water sports, regattas, ~~marine sewage, marine pollution, marine sewage disposal facilities,~~ boat regulation and licensing, licensing of all marinas, and marine facilities.
- ~~(3) Establish a marine authority, which would set guidelines and regulate the use of all the waterways of the city and all provisions of this chapter and to have such marine authority hear appeals, and to promote uniformity of laws relating thereto.~~

(b) The city commission further finds that there are presently conditions existing in the city as to unregistered and dangerous vessels, marine facilities, marinas, docks, piers, and sewage facilities kept in such a manner as to constitute a hazard to navigation, life and property, and pollution of the waterways within the city. It is further found and declared that the existence of such conditions and factors, if not remedied, will create obstructions to navigation, hazard to life and property, and that any area within the city where these conditions exist will experience a deterioration of water quality, a curtailment of investment, and tax revenues and impairment of economic values, social values, as well as the aesthetic beauty and life style characteristic of the city.

(c) It is further found and declared that the establishment and maintenance of marine regulations, ~~together with the establishment of a marine authority,~~ are is essential to the prevention of navigational obstruction, decay and pollution on and in the waterways of the city and the safeguard of public health, safety, morals and welfare of the citizens of the city.

Sec. 66-2. Purpose of chapter.

(a) The intent and purpose of this chapter is to promote and attain:

- (1) The full use and enjoyment of the waters of the city.
- (2) The safety of persons and the protection of property as related to the use of the waters.
- ~~(3) A uniformity of laws and regulations regarding the use of the waters.~~
- (4) Conformity with and implementation of state and federal laws and requirements.

- (b) It is further the intent and purpose of this chapter to protect the public health, safety, morals and welfare of all the people of the city by establishing minimum standards governing the condition, occupancy and maintenance of all waterways, vessels and marine facilities in the city and establishing minimum standards governing the waterways, vessels and marine facilities in the city and other physical components and conditions essential to make such waterways, vessels and marine facilities safe, sanitary and fit to be used and occupied. This chapter fixes certain responsibilities and duties for the owners, operators, agents and occupants of any real property, vessel or marine facility in the city. This chapter establishes procedures for the inspection of such and the condemnation and vacation of those vessels or marine facilities found unsafe and further fixes penalties for the violations of the provisions of this chapter. This chapter is hereby declared to be remedial and essential to the public interest, and it is intended that this chapter be liberally construed to effectuate the purposes as stated above.

Sec. 66-3. Applicability of chapter; conflict with other laws, codes or regulations.

The provisions of this chapter shall be applicable as the minimum marine standards in the city. Every vessel, marine facility or marina shall comply with the provisions of this chapter, irrespective of when such shall have been constructed, altered or repaired, and irrespective of any permits or licenses that shall have been issued for the use, alteration, repair or occupancy of any vessel, marine facility or marina, on or prior to December 17, 1975. This chapter is intended and shall be construed as establishing retrospective minimum standards for all vessels, watercraft, docks, piers, bulkheads, marine facilities and marinas existing in the city. This chapter is not intended to replace, modify, supersede or diminish or conflict with any standard established for the construction or repair or alteration of any vessel established by the state or the government of the United States and their agencies. If any provision of this chapter is found to be in conflict with a material and controlling provision of the ~~comprehensive zoning ordinance~~ land development regulations of the city, the ~~comprehensive zoning ordinance~~ land development regulations of the city shall prevail. If any provision of this chapter is found to be in conflict with a material and controlling provision of a statute or regulation established by the state, metropolitan Miami-Dade County, the city, or the federal government, the statute or regulation establishing the highest standard shall prevail. All municipal departments, officials and employees who have the duty, responsibility or authority to issue permits or licenses regarding the use and occupancy of vessels, marine facilities or marinas shall conform to the provisions of this chapter, as a minimum standard. It shall be the duty and responsibility of municipal departments, officials and employees to enforce the minimum standards prescribed by the provisions of this chapter.

Sec. 66-4. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All terms shall be construed liberally. The following definitions when in conflict shall supersede and modify the definitions contained in F.S. ch. 371.

Approved means approved by the ~~marine authority~~ City of Miami Beach or its authorized representatives.

Boat livery means the business of holding out vessels for rent, lease or charter.

Code compliance officer means the persons described in section 30-3.

Federal laws and regulations means all statutes, rules and regulations, and other laws of the United States, that may be applicable to any and all subject matters of this chapter and to the rules and regulations adopted and promulgated pursuant to this chapter.

Finance director means the city finance director or the city chief financial officer and his or her assistants.

Garbage means any waste or refuse of all types, compositions and description not including sewage.

~~*Head of enforcement agency* means the chairman of the marine authority.~~

Housebarge means a residence floating on water, usually permanently moored, not manufactured with a system of propulsion.

Length means the measurement of a vessel from end to end over the deck.

Live bait receivers means an object for confining live bait, which is afloat in the waters of the city harbor or the ocean or is either moored to a pier, bulkhead or seawall, or moored by means of an anchor or other weight to the bottom of the harbor or ocean; however, a live bait receiver shall not be deemed to be a premises within the meaning of this chapter.

Marina means any installation operated for profit which exclusively provides any accommodations or facilities for watercraft, including mooring, docking, storing, leasing, sale or servicing of watercraft, located in the waters of the city.

Marine facility means any device, structure, building or component of a marina.

~~*Marine inspector* means the code compliance officer and assistants.~~

Marine structure means any device or structure built or constructed, erected, driven or installed in, over or adjacent to any of the waters of the city. The term shall include but not be limited to docks, seawalls, piles, davits, hoists and similar structures. The term shall be construed to include the words "or part thereof."

Mooring means any appliance used to secure a vessel to a dock or pier, which may or may not be carried aboard such vessel as regular equipment when under way; also the attaching of a vessel to a permanent or floating structure or other vessel.

Occupant means any person using or having actual possession of any vessel, marina or marine facility.

Occupied means any vessel, marina or marine facility used or intended to be used by persons.

Operate means to navigate or otherwise use a vessel on or in the waters of the city.

Operator means any person who has charge, care or control of a vessel, marina or marine facility.

Owner means any person who individually or jointly or severally with another, holds the legal or beneficial title to any vessel, marina, marine facility, equipment or premises subject to the provisions of this chapter. The terms shall include the owner's duly authorized agent, a purchaser, devisee, fiduciary, property holder or any other person having a vested or contingent interest or in the case of a leased premises, the legal holder of the lease, or his legal representative. It is intended that this term shall be construed as applicable to the person responsible for the construction, maintenance and operation of the vessel, marina, marine facility or premises involved.

Passengers for hire means the carriage of any person by a vessel for a valuable consideration, whether direct or indirect, flowing to the owner, charterer, operator, agent, or any other person interested in the vessel.

Pier means any fixed or floating structure for securing vessels, loading or unloading persons or property or providing access to the water, and including any wharf, dock, float or any other loading facility.

Premises means any occupied or unoccupied vessel, marina, marine facility, accessory structure, dock or pier, lot or parcel of land or any part thereof, used or intended to be used on or in conjunction with the waterways of the city.

Sewage means all human body wastes.

Vessel includes every description of watercraft used or capable of being used as a means of transportation on water. The term shall mean any watercraft, and all vessels shall belong to one of the following classes:

- (1) *Commercial vessel* means and includes every vessel used or operated for commercial purposes on the navigable waters of the city; that is either carrying passengers, carrying freight, towing, or for any other use; for which a compensation is received, either directly or where provided as an accommodation, advantage, facility or privilege at any place or public accommodation, resort or amusement.
- (2) *Pleasure vessel* means and includes every vessel not within the classification of commercial vessel. The provisions of this chapter shall apply to rowboats, canoes, sailboats, except as otherwise expressly provided. The term shall not include a crew racing shell, which means any shell, gig, barge or other boat designed primarily for the practice of racing conducted by a private or public educational institution, school, academy, college, university or association of any of the preceding, or by an amateur sports club or association or by the United States or International Olympics Committee, and shall not include

canoes, rowboats or lifeboats. The term "vessel" and "boat" are interchangeable for the purpose of this chapter.

Watercraft means any contrivance used or capable of being used for navigation upon water whether or not capable of self-propulsion.

Waterways means all waters within the city city's corporate boundaries included as set forth in its Charter, ~~as defined by state law, the state constitution, and the federal constitution and acts of congress.~~

Zoning ordinance means the ~~comprehensive zoning ordinance~~ land development regulations of the city printed as set forth in chapter 142 or chapter 114, et seq. of this code.

Whenever the term "vessel," "marine facility," "boat," "marina," "pier," "dock," "wharf," or any other terms used in this chapter are expressed in any article in this chapter, they shall be construed as though they were followed by the words "or any part thereof."

Sec. 66-5. ~~Pollution of waters prohibited; controls permitted~~ Reserved.

- (a) ~~It shall be unlawful for any person to throw, discharge, deposit, drain or run into any waters of the city, or to cause, permit, or allow to be thrown, discharged, deposited, drained or run into such water any organic or inorganic matter that may cause or tend to cause water pollution. Specifically, no person, including the owner, operator or other responsible person, shall throw, discharge, deposit or permit to fall from any vessel, housebarge, watercraft, land or any other source any noxious or deleterious matter into the waters, including oil, spirits, or flammable liquid, sewage or waste matter, including food, excrement or other wet garbage, trash, debris or refuse, industrial wastes, contaminated cooling water, soil, vegetation, tree limbs, grass clippings and like yard maintenance debris, or other similar substances.~~
- (b) ~~Every vessel or watercraft in the city shall comply with subsection (a) of this section when one or more of the following exists:~~
- ~~(1) The vessel or watercraft is connected to city sewage facilities.~~
 - ~~(2) The vessel or watercraft is equipped with a holding tank that is emptied into a city sewage facility.~~
 - ~~(3) The vessel or watercraft is equipped with a U.S. Coast Guard certified or approved flowthrough device or another U.S. Coast Guard certified or approved method or device that prevents marine pollution in the waters of the city.~~

Sec. 66-6. Discharge of flammable materials, offensive articles.

No person shall pump or discharge from any vessel or tank into the waters of the city oil, spirits, or any flammable liquid, or deposit any rubbish, refuse matter, garbage,

sewage or articles of any offensive character therein or upon any pier or street leading to such facility.

Sec. 66-7. Commercial activities Reserved.

- ~~(a) *Commercial bait boats.* All boats used to catch or furnish live bait shall, at all times, have aboard a covered receptacle in which shall be placed all dead bait. Bait tanks on such boats when containing bait shall be covered at all times when in the city waters by a cover that fits closely over the top except while bait is actually being transferred to or from the tank.~~
- ~~(b) *Sale of bait.* No person shall sell live bait at retail from a vessel within the limits of the city.~~

Sec. 66-8. Limitations on anchoring or mooring within city limits Reserved.

- ~~(a) *Purpose.* This section is adopted for the following purposes and reasons:~~
 - ~~(1) The city commission finds and declares that the proliferation of watercraft in use for residential purposes or otherwise stored in the waters of Biscayne Bay within the boundaries of the city have had and have a deleterious effect upon the health, safety and welfare of the residents of the city in that they potentially serve as a source for pollution and contamination through discharge of human waste as well as garbage, refuse, debris, oil and other obnoxious products; constitute aesthetic pollution, being unsightly and interfering with views and enjoyment by the public of the beautiful vistas of Biscayne Bay; constitute nuisance and invasions of the privacy of homeowners and other residents of property adjacent or proximate to the bay; constitute a threat to the safety, health and welfare of residents of the city through unregulated activity upon and aboard such watercraft; and numerous other problems and disadvantages which adversely affect the quality of life of the residents and visitors to the city; and~~
 - ~~(2) It is the intent of the city to mitigate the adverse impact of anchored or moored watercraft, recognizing that the State of Florida has established a preemption of certain functions under F.S. § 327.60 and the Florida Administrative Code 68D-23.101(3), which address vessels in navigation but permit local regulation of vessels not "in navigation;" and~~
 - ~~(3) The city has conducted studies and observed the advent of vessels not in navigation and of vessels upon which persons are residing.~~
 - ~~(4) The attorney general has opined, AGO 85-45, that "vessels which are used as a person's primary residence may be 'live aboard vessels' for purposes of municipal regulation permitted by F.S. § 327.60(2), even though they are not used solely as a residence but are also used for recreational purposes, if such vessels are represented as such person's 'legal residence' pursuant to F.S. §~~

~~327.02(16)(b), and that the determination of whether such vessels are represented as a person's legal residence may be based on a combination of the person's subjective intent and objective facts."~~

~~(5) The city has determined that vessels anchored or moored within the jurisdictional waters of the city on which persons are residing as their primary residence or for more than seven consecutive or cumulative days within a 30-day period constitutes a legal residence for purposes of this section, and such vessels are "live-aboards" within the jurisdiction of the city to regulate.~~

~~(6) The city has determined that evidence that vessels anchored or moored within the jurisdictional waters of the city for more than seven consecutive or cumulative days within a 30-day period constitutes prima facie evidence that such vessels are no longer exercising rights of navigation, and within the jurisdiction of the city to regulate.~~

~~(b) *Definitions.* For purposes of this section, the following definitions shall apply:~~

~~(1) A vessel not "in navigation," or "not engaged in the exercise of the rights of navigation," is defined as one that evidences, through a case-by-case review of applicable factors, an abandonment, either temporary or permanent, of the exercise of rights of navigation. Factors to consider as evidence of such abandonment include but are not limited to, how long a vessel has been anchored within the boundaries of the city within a 30-day period, or whether a vessel has a current registration as required by applicable law, or whether a vessel is being anchored or stored on the water to avoid dockage or storage fees, sometimes evidenced for example by a sailboat that has removed its sails. A vessel anchored or moored within the jurisdictional waters of the city for more than seven consecutive or cumulative days within a 30-day period, constitutes prima facie evidence that such vessel is not "in navigation" or is "not engaged in the exercise of the rights of navigation."~~

~~(2) A "non-live-aboard vessel" shall be a vessel that does not fall within the definition of live-aboard vessel as set forth in F.S. § 327.02(16), namely: "live-aboard vessel" means any vessel used solely as a residence or any vessel represented as a place of business, a professional or other commercial enterprise, or a legal residence. A commercial fishing boat is expressly excluded from the term "live-aboard vessel."~~

~~(3) The fact of whether a vessel is a person's or persons' "legal residence," and therefore a "live-aboard vessel" under this section may be established by evidence that the person is or persons are using the vessel as his, her or their primary residence, including evidence of a combination of the person's or persons' subjective intent and objective facts, including the fact that the vessel on which the person is or persons are residing has been anchored or moored within city limits for seven consecutive or cumulative days within a 30-day period, or that the person has or persons have no other arrangements for residence in the area beyond the seven-day period.~~

- ~~(c) *Prohibited vessels.* The following vessels are prohibited from anchoring or mooring within the boundaries of the city, except as hereinbefore and hereinafter provided:~~
- ~~(1) Non-live-aboard vessels not in navigation, or not engaged in the exercise of the rights of navigation; and~~
 - ~~(2) Live-aboard vessels being used as a person's legal residence more than seven consecutive or cumulative days within a 30-day period.~~
- ~~(d) *Exemptions.* This section shall not apply to non-live-aboard vessels exercising rights of navigation, or vessels (whether non-live-aboard or live-aboard):~~
- ~~(1) Responding to a bona fide emergency on their vessel, such as failure of the vehicle to operate, or injury or illness suffered by the vessel's operator, or during the period when a hurricane watch or warning or other dangerous weather condition is in effect, either in the city, or in the next immediate destination of the vessel, or the route thereto;~~
 - ~~(2) Located within designated anchoring and mooring areas;~~
 - ~~(3) Moored to or docked at private property with the consent of the property owner, whether or not also anchored to secure the vessel; or~~
 - ~~(4) Anchored immediately adjacent to upland property owned or leased by the owner of the vessel, due to an inability to moor to the upland property.~~
- ~~(e) *Emergencies.* In the event of an emergency, or dangerous weather condition in effect in the city or the next immediate destination of the vessel, or the route thereto, as provided for in subsection (d) above, the owner or occupant of the vessel shall immediately contact the city's marine patrol, and inform them of the nature of the emergency or weather condition, and the amount of time required to remedy the situation. Upon the abatement of the emergency or weather condition, compliance with this section is required.~~
- ~~(f) *Designation of public anchoring and mooring areas.* The city commission, or designee, may designate public anchoring and mooring areas, subject to rules, regulations and permitting procedures by the city manager and such other local, state or federal agencies with jurisdiction.~~
- ~~(g) *Violations and penalties.*~~
- ~~(1) Any violation of the provisions of this section shall be a violation of the City Code as well as F.S. ch. 327. Any person who owns, operates or is otherwise in control of a vessel and who violates any of the provisions of this section, or the provisions of F.S. ch. 327, may be charged with a noncriminal (civil) infraction and shall be subject to the enforcement and penalty provisions and procedure of Code chapter 30 as well as F.S. ch. 327. Any vessel that is in violation of this law may also be subject to the provisions of Code sections 66-221 through 66-229.~~
 - ~~(2) In addition, any vessel violating this section shall be subject to removal and impoundment, and operators of such vessels may be charged with a noncriminal (civil) infraction pursuant to F.S. § 327.73, by any law enforcement~~

~~agency with jurisdiction to enforce this ordinance (enforcing agency). The city's marine patrol will regularly document the arrival and location of vessels, at which time it will provide the vessel operator with written notice about this section. If no vessel operator is located on or about the vessel at the time of documenting its arrival and location, the marine patrol will post such notice on the vessel, and send notice by certified mail to the last registered owner of the vessel, if reasonably obtainable, informing such owner of the seven-day limitation and 48-hour warning period prior to impounding. Failure to provide this arrival notice by posting or mail shall not affect enforcement proceedings. Forty-eight hours prior to removal and impoundment the enforcing agency shall post notice of violation on the vessel to be impounded, to afford the owner or operator the opportunity to move the vessel from city limits or to a lawful location. Within five days following removal, the enforcing agency shall provide written notice by certified or registered mail return receipt requested to the registered or documented owner at his, her or its address of record as to where and how the vessel can be recovered. If the vessel is not repossessed by the owner within 20 days after mailing of such notice, the vessel shall be disposed of in the manner and under the provisions of sections 66-223 through 66-227, or other applicable law. The owner of the vessel shall be responsible for all costs for removal and impoundment of the vessel, which shall become a lien upon and against the vessel and which shall be paid prior to release of the vessel to the owner or agent.~~

- ~~(3) Nothing herein shall be deemed to abrogate the handling of derelict vessels as provided by sections 66-228 and 66-229 of the Code.~~

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ARTICLE III. PIERS, DOCKS AND BOAT RAMPS

Sec. 66-106. Defective pier repairs, warning barriers.

- (a) Upon learning that any pier is in a defective or dangerous condition, ~~the marine inspector~~ a code compliance officer shall immediately so notify the owner or other person having charge of the pier ~~in writing pursuant to chapter 30~~, requiring such person to immediately repair it or to put up barriers to prevent persons from going ~~upon it accessing the pier~~. If such person shall fail or neglect to do so, ~~the marine inspector~~ code compliance officer may place barriers as necessary for the protection of the public and charge the cost thereof to such person; ~~and it shall be a violation of this chapter for any person to interfere with, damage or remove any such barrier.~~
- (b) If any pier, any portion thereof, or any material on such pier shall fall into the waters of the city, it shall be the duty of the owner, agent or lessee of the pier to ~~forthwith~~ remove the same from the waters of the city. ~~If they shall fail to do so, the city or the marine inspector may do so; The failure to remedy this condition within 24 hours will~~

permit the city to take corrective action, and the cost thereof may be recovered from the owner, agent or lessee of such pier as provided in this chapter.

Sec. 66-107. Maintenance of public piers.

Public piers and other facilities may be maintained by the city for the purpose of loading and unloading passengers, supplies and boating gear and for similar purposes. It is the policy of the city to maintain such facilities in a manner that will permit the greatest public use and avoid continuous occupancy, congestion or blocking thereof. Where necessary to achieve public use and avoid extended occupancy, congestion or blocking thereof, ~~the marine inspector~~ the City Manager is authorized and directed to post signs limiting the time during which a vessel may be docked or supplies or gear may be placed at or on any such pier or facility to 20 minutes. ~~When such sign is in place giving notice of such time limit, no~~ A person shall not dock a vessel at any such facility for a period of time longer than 20 minutes, or permit any public pier or such other supplies or gear to remain ~~on such facility~~ for a period of time longer than 20 minutes.

Sec. 66-108. Obstruction of facilities.

No person shall intentionally obstruct the free access to, and departure from, any portion of any public pier or public boat ramp.

Sec. 66-109. ~~Automobiles and vehicles~~ Reserved.

~~No person shall drive any motor vehicle upon any public pier or boat ramp except to discharge or load supplies or passengers to or from a vessel or permit any motor vehicle to remain upon any public pier or boat ramp except when actually engaged in discharging or loading such supplies or passengers. Vehicles ready to load shall have preference over those ready to discharge, and no person shall park or stop a vehicle where it blocks the approach to any public pier.~~

Sec. 66-110. ~~License to conduct business on pier, etc.~~ Reserved.

~~Notwithstanding the provisions of section 66-109, any person having a license from the city to conduct a business on a public pier or boat ramp may park a vehicle on such pier or boat ramp if he obtains written permission to do so from the marine authority or if such parking is provided for in a written contract with the city.~~

**Sec. 66-111. ~~Permission required to dock or to make fast to other vessel~~
Reserved.**

~~No person shall make fast any vessel to any other vessel already occupying any pier, either public or private, without first obtaining permission from the owner, city or operator for a temporary mooring only.~~

Sec. 66-112. Tying up vessel.

Every vessel lying at any pier or dock in the city shall be fastened thereto with such lines, at least from both bow and stern, and in such a manner as to assure the security of such vessel.

Sec. 66-113. Limitation on projection of structures; public hearing.

- (a) Boat slips, docks, wharves, dolphin poles, mooring piles or structures of any kind shall not be constructed or erected that extend into any canal or waterway in the city more than ten percent of the width of such canal or waterway at a specific location measured from the seawall or property as shown by recorded plat line if no seawall exists; but if a canal or waterway is more than 100 feet in width, the structure may extend into such canal or waterway a distance not greater than 15 percent of the width of such canal or waterway at that specific location, but not to exceed a distance greater than 40 feet. However, subject to the review and approval of the applicable state and county authorities, a dock, wharf, dolphin pole, mooring pile or other structure may extend from a lot zoned for residential use into any part of Biscayne Bay or other waterway in excess of 1,000 feet in width, a distance no greater than 125 feet and may extend from a lot zoned for business use into Biscayne Bay or other waterways a distance not greater than 250 feet. It is further provided that any boat, ship or vessel of any kind shall not be docked or moored so that its projection into the waterway would be beyond the permissible projections for such docks, wharves, dolphin poles, mooring piles or other structures, and the mooring of any type of vessel or watercraft shall be prohibited along either side of the walkway leading from the seawall to a boat dock. Notwithstanding the foregoing, in the event any dock, wharf, dolphin pole, mooring pile or other structure is proposed to extend greater than 40 feet from a seawall adjacent to, or abutting the WD-1 or WD-2 district, conditional use approval from the planning board, in accordance with chapter 118, article IV of the City Code, shall also be required.
- (b) Permits for erection of any of the above ~~facilities~~ structures must be obtained from the building ~~division~~ department, the state internal improvement fund, or any other government agency having jurisdiction over the construction of these structures, if necessary, and if abutting navigable streams, the approval of the U.S. Army Corps of Engineers must be secured.

Sec. 66-114. Fee schedule for examination of plans, reinspections and special projects.

- (a) *Up-front processing fee.* When the building permit application for a marine structure is received by the city, the applicant shall pay an up-front processing fee as specified in appendix A. This processing fee is not refundable, but shall be credited toward the final permit fee. This fee is in addition to fees which are required pursuant to chapter 14 and 98 of this Code and relates to examination of plans and inspections by the marine inspector to determine compliance with this chapter.
- (b) *Reinspection fees.*
 - (1) With respect to inspections, if the city finds it necessary, in order to enforce compliance with state statutes, the Florida Building Code, and the city's land development regulations to conduct an inspection, after an initial inspection and one subsequent reinspection, of any project or activity for the same code violation specifically and continuously noted in each rejection, including, but not limited to, egress, fire protection, structural stability, energy, accessibility, lighting, ventilation, electrical, mechanical, plumbing, and gas systems, or other requirements identified by the rule of the Florida Building Commission, state statutes or the city's land development regulations, a fee of four times the cost of initial inspection or first reinspection, whichever is greater, for each subsequent reinspection shall be paid. The inspection cost is determined by multiplying the actual time spent by the inspector by the inspection fee hourly rate, as defined in subsection 14-61(c)(1) and as specified in appendix A of this code.
 - (2) Payment of the reinspection fee shall be required before any subsequent permits will be issued to the person or entity owing same. Further inspections SHALL be withheld until payment of reinspection fees has been made.

Sec. 66-115. Demolition; periodic inspection.

- (a) All docks and piers described in this article that have become derelict or in disrepair by reason of disintegration to the extent of more than 50 percent of original dimensions of its members shall be replaced, removed or reconstructed ~~in no later than 90 days pursuant to those requirements set forth within the permit.~~ If such deterioration results in the structure's being below the surface of the water at mean high tide, removal or reconstruction shall be done in ~~in no later than~~ within ten days; however, this provision shall not apply to that portion of Pelican Island lying south of the Julia Tuttle Causeway and north of the Venetian Causeway.
- (b) Any docks or piers authorized hereby extending into the city's waterway 20 feet or more shall have sufficient lighting at the extremity thereof, which shall be lighted from dusk to dawn and visible from all water approaches. All other structures hereby authorized shall have affixed thereto reflector signals visible from all approaches, which shall not be less than three inches in their smallest dimension.

- (c) Periodic inspection of all docks, private, municipal and commercial, under the jurisdiction of the city shall be made by the code compliance officer to ensure that all docks are maintained in good condition. If any dock is found in an unsafe or unsatisfactory condition, the owner shall be notified in writing giving a period of 30 days to correct the condition pursuant to chapter 30. If the condition has not been corrected in 30 days, the city shall have the power to remove the dock or cause it to be repaired and the owner assessed for the cost of such removal or repair under the procedures set out in chapter 30.
- (d) All seawalls must be maintained in good repair so that upland soil, sand, grass or like substance may not escape into any waters within the city.
- (e) It is unlawful for any tree, vegetation or any other organic matter to protrude over any seawall in such a way as to obstruct navigation in any way.

Secs. 66-116—66-150. Reserved.

ARTICLE IV. VESSELS

Sec. 66-151. Launching, hauling and docking at public seawall, etc., prohibited—Unauthorized vessels; enforcement.

- (a) No person shall launch, dock, or remove any vessel from the waters of the city over any public seawall, sidewalk, street end, or public property except at locations where a regular business of launching, docking and hauling vessels is conducted, which has the necessary equipment to do such work, or in areas designated and posted for such purpose by the city. Any vessel that is docked along a city seawall shall be considered an unauthorized vessel.
- (b) Docking of unauthorized vessels at public seawalls in residential neighborhoods prohibited.
 - (1) No person shall dock or otherwise secure any vessel, or embark or disembark any passengers or charter parties, at any municipal or public seawall, wharf, dock, or bulkhead, in a residential neighborhood, except in case of emergency involving safety to life or property.
 - (2) Enforcement and penalties.
 - a. *Civil fine for violators.* The following civil fines shall be imposed for a violation of this section:
 - 1. First offense within a 12-month period a fine of \$100.00;
 - 2. Second offense within a 12-month period a fine of \$250.00;
 - 3. Third or fourth offenses within a 12-month period a fine of \$500.00; and
 - 4. Fifth offense within a 12-month period a fine of \$1,000.00; and

5. Sixth offense and subsequent offenses within a 12-month period a fine of \$2,500.00.
- b. ~~[Option.]~~ In addition, ~~the~~ City may also elect to have the unauthorized vessel towed pursuant to subsection c.2. below.
- c. *Enforcement.*
 1. The Code Compliance Department or the Miami Beach Police Department shall enforce the provisions of this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If an enforcing officer finds a violation of this section, the officer shall issue a notice of violation to the violator. The notice of violation 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, notice that the violation may be appealed by requesting an administrative hearing within ten days after service of the notice of violation, and that failure to appeal the violation within the ten days shall constitute an admission of the violation and a waiver of the right to a hearing.
 2. The City shall post the following notice on all public seawalls ~~the following notice:~~

"TOW-AWAY ZONE. 24 HOURS; 7 DAYS. UNAUTHORIZED VESSELS WILL BE TOWED AWAY AT OWNER'S RISK AND EXPENSE. [TELEPHONE NUMBER AND NAME OF TOWING COMPANY TO BE INSERTED]"

In order to establish a tow-away zone to remove unauthorized vessels from being docked at or along the city's seawall, the city must provide the above notice. The notice must be prominently placed along the seawall, with not less than one sign for each 25 feet of frontage. The notice must clearly indicate, in not less than two (2) inch high, light-reflective letters on a contrasting background that unauthorized vessels will be towed away at the owner's expense. The words "tow-away zone" must be included on the sign in not less than four (4) inch high letters. The notice must also provide the name and current telephone number of the person or firm towing or removing the vessels. The sign structure containing the required notice must be permanently installed with the words "tow-away zone" not less than three (3) feet and not more than six (6) feet above ground level and must be continuously maintained for not less than 24 hours prior to the towing or removal of any unauthorized vessels.
- d. *Rights of violators as to fines; payment of fine; right to appear; failure to pay civil fine or to appeal.*
 1. A violator who has been served with a notice of violation as identified in subsection (a) shall elect either to:

- 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 within ten days of the issuance of the notice of violation.
2. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73.
3. 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 shall be informed of such failure by report from the officer. Failure of the named violator to appeal the decision of the officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special master, and be treated as an admission of the violation, and fines and penalties may be assessed accordingly.
4. 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 real or 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 which remains unpaid, the city may foreclose or otherwise execute upon the lien.
5. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
6. The special master shall be prohibited from hearing the merits of the notice of violation or consideration of the timeliness of the request for an administrative hearing if the violator has failed to request an administrative hearing within ten days of the issuance of the notice of violation.

Sec. 66-152. Suspension or revocation of licenses and permits; ~~appeal from decisions of marine authority.~~

Any violation, permit or license issued pursuant to the provisions of this chapter may at any time be either suspended or revoked after notice and hearing before the ~~marine authority~~ special master upon presentation of evidence of violations of this chapter, or of the rules and regulations issued under this chapter. ~~Any person whose application has been denied or whose license or permit has been suspended or revoked may appeal from the decision of the authority to the city commission, who after a review of the evidence submitted may either uphold or reverse the decision of the authority.~~

Sec. 66-153. ~~Employees of boat and dock operators to be fingerprinted, photographed, identified~~ Reserved.

~~It shall be unlawful for any person to employ in or about the operation of docking facilities, boats and occupations licensed or permitted under this article any person who has not, previous to his employment at his own expense, been fingerprinted, photographed and identified by the bureau of identification of the police department.~~

Sec. 66-154. Docking at unlicensed dock prohibited.

It shall be unlawful for any person to knowingly dock or otherwise secure any boat or to knowingly embark or disembark any passengers, or charter parties at any wharf, dock, bulkhead or mooring required to be licensed under this article where the owner or operator of the wharf, dock, bulkhead or mooring has not obtained such a license, except in the case of emergency involving safety to life or property.

Secs. 66-155—66-185. Reserved.

ARTICLE V. REGATTAS AND BOAT RACES

Sec. 66-186. Permit; conditions.

The marine authority city manager may, when it deems the occasion warrants, grant a special event permit to hold a regatta or boat race in the city or make temporary use of a designated area in the city for a special event or activity in which unmuffled engines may be used, speed limits may be exceeded, and normal traffic interrupted. A permit for boat races shall not exceed ten days and shall be limited to the hours between 8:00 a.m. and sunset. No permit shall authorize interference with normal harbor traffic for a period exceeding eight hours in any 24-hour period. As a condition for granting such permit, the city ~~commission~~ manager shall require the permittee to provide liability insurance for the full period of time for which the permit is granted in an amount of not less than ~~\$100,000.00~~ \$1,000,000.000 for bodily injury to one person, and those other amounts of insurance mandated by the city's risk manager, ~~\$500,000.00 for bodily injury in any one accident, and \$100,000.00 for property damage in any one accident.~~ The policy providing such insurance must name the city as an additional insured. A certificate evidencing that such insurance is in force and will remain in force for the period of such permit shall be filed with the ~~insurance division~~ city's finance department and risk manager in a form approved by the city attorney before any such permit shall be effective. The ~~marine authority~~ city manager or his/her designee may impose additional conditions as deemed necessary to protect persons and property and to assure that the activity will not create a nuisance or interfere with the reasonable use of

the waters of the city by other vessels. No such permit shall be effective until it has been granted by the ~~marine authority~~ city manager.

Sec. 66-187. Safety restrictions.

For such time as necessary preceding, during and after any race, regatta, parade or other event held on the waters of the city, harbor, or at any other time when the ~~marine authority~~ city manager deems it necessary for the safety of persons, vessels or other property, the ~~marine authority~~ city manager shall have authority to restrict or prohibit waterborne traffic in the harbor; and it shall be unlawful to willfully fail or refuse to comply with any order, signal or direction of the ~~marine authority, its deputies or agents~~ the Miami Beach Police Department or other law enforcement agencies.

Secs. 66-188—66-220. Reserved.

ARTICLE VI. VESSELS ABANDONED ON PUBLIC AND PRIVATE PROPERTY

Sec. 66-221. Disposition by city of certain abandoned vessels.

Any vessel that has been left unattended and not securely moored ~~for a continuous period of more than two days, and is within the waters of the city, and creates a danger or hazard to navigation or is on private property without authorization of the owner or occupant of the property may be caused by the~~ may be removed by a code compliance officer ~~to be taken into custody and disposed of pursuant to this article, and Florida law.~~

Sec. 66-222. Notice to owner.

Upon ~~taking custody of~~ removing any vessel as prescribed in section 66-221, a written notice shall immediately be posted on the vessel and a duplicate original sent by registered or certified mail, with a return receipt, to the registered owner of the vessel at his the owner's last known address and to all lienholders shown on the records of the state. The notice shall contain a brief description of the vessel, the location of custody, and the intended disposition of the vessel if not repossessed ~~within 20 days~~ after the mailing of the notice. A notice need not be sent to any purported owner or any other person whose interest in the vessel is not recorded with the department of transportation.

Sec. 66-223. Public auction of unrepossessed vessels Reserved.

~~If a vessel is not repossessed within 20 days after the mailing of the notice specified in section 66-222, the vessel shall be disposed of by public auction after public~~

~~advertisement has been made once in a newspaper of general circulation; but the public auction shall not be held less than five days after the publication of the advertisement. Where no bid is received, the vessel may be sold by negotiation, disposed of as junk, or donated to any governmental agency.~~

Sec. 66-224. Possession by interested party prior to auction Reserved.

~~Any person having an interest in an abandoned vessel may take possession of the vessel prior to the date of public auction authorized by section 66-223 upon payment to the city of all use fees, towing, handling, storage, appraisal, advertising and any other expenses incurred by the city in connection with the vessel. If the person taking possession of the vessel is not the registered owner, he shall, prior to taking possession of the vessel, pay the foregoing expenses and post adequate security, which shall not exceed the value of the vessel. Such security, if not forfeited, shall be returned one year after receipt.~~

Sec. 66-225. When public auction not required Reserved.

~~Public auction shall not be required when the appraised value of any abandoned vessel, as determined by an independent appraiser who has had at least one year of experience in the sale or purchase of vessels, is less than \$100.00. Upon that determination, and after public advertisement has been made for one month in a newspaper of general circulation, the code compliance officer may sell the vessel by negotiation, dispose of it as junk, or donate the vessel to any governmental agency.~~

Sec. 66-226. Effect of sale Reserved.

~~The transfer of interest by sale under this article shall be evidenced by a bill of sale from the city, shall be considered a transfer by operation of law, and shall be governed by provisions applicable thereto.~~

Sec. 66-227. Disposition of proceeds of sale Reserved.

~~The city shall retain out of the proceeds of the sale of a vessel under this article the use fees, the expenses of the auction, and any other expense incurred by the city in taking the vessel into custody. The balance, if any, shall be deposited into the general fund of the city. The owner may recover any such balance from the city only if he files a claim therefor with the city's finance department within one year after the execution of the bill of sale. A lienholder shall receive priority of payment from the balance to the extent of his lien on the vessel. The city may file a claim for lien as provided in this article within the same period against the registered owner or person with an interest to~~

~~the extent that towing and other related fees and the expenses of sale exceed the proceeds of sale.~~

* * *

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 _____, 2017.

PASSED AND ADOPTED this ____ day of _____, 2017.

ATTEST:

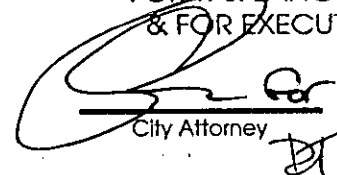
Philip Levine, Mayor

Rafael E. Granado, City Clerk

Underline denotes additions
~~Strikethrough~~ denotes deletions

(Sponsored by Commissioner John Elizabeth Alemán)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

5/31/17
Date