

R5 AD 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, FLORIDA, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE III, ENTITLED "USE OF PUBLIC PROPERTY," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 82-72 THEREOF, ENTITLED "COMMERCIAL VESSEL ACTIVITY HOURS OF OPERATION AT PUBLICLY-OWNED MARINAS," TO MODIFY EXCEPTIONS TO THE PROHIBITED HOURS OF DEPARTURE FOR COMMERCIAL VESSELS AT PUBLICLY-OWNED MARINAS AND MARINE FACILITIES; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.
Applicable Area:

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission

FROM: City Attorney Ricardo J. Dopico

DATE: December 11, 2024 1:40 p.m. First Reading Public Hearing

TITLE: 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, FLORIDA, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE III, ENTITLED "USE OF PUBLIC PROPERTY," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 82-72 THEREOF, ENTITLED "COMMERCIAL VESSEL ACTIVITY HOURS OF OPERATION AT PUBLICLY-OWNED MARINAS," TO MODIFY EXCEPTIONS TO THE PROHIBITED HOURS OF DEPARTURE FOR COMMERCIAL VESSELS AT PUBLICLY-OWNED MARINAS AND MARINE FACILITIES; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

BACKGROUND/HISTORY

ANALYSIS

The attached ordinance is presented for the consideration of the Mayor and City Commission on first reading.

The City has seen a significant increase in commercial vessel activity in the last several years, particularly since the COVID-19 pandemic. The City has also experienced many quality-of-life complaints related to commercial charter vessel activity including unruly commercial charter and boat rental patrons, disturbances caused by public intoxication, people engaging in excessively loud arguments and playing excessively loud music, and public urination; and

On or about April 28, 2023, the City Commission approved Ordinance No. 2023-4550, that is codified in Section 82-72 of the City Code, which limited commercial vessel activity at public marinas and public marine facilities each day from 9 p.m. until 7 a.m. the following day.

As a result, the complaints and issues emanating from public marinas and marine facilities have been greatly reduced since Ordinance No. 2023-4550 went into effect. However, the City nonetheless has still experienced issues involving disturbances, noise, and arrests for illegal conduct, due to commercial vessel nighttime departures.

The City has experienced a recent increase in formerly purely commercial charter operations designating and characterizing themselves as educational "eco" or nature tours in order to evade the City's restrictions on nighttime departure of commercial vessels.

If adopted, the proposed ordinance would repeal the exception for educational "eco" or nature tours that allows these operators to operate outside of the normal business hours in the City Code.

FISCAL IMPACT STATEMENT

N/A

Does this Ordinance require a Business Impact Estimate? No
(FOR ORDINANCES ONLY)

If applicable, the Business Impact Estimate (BIE) was published on:
See BIE at: <https://www.miamibeachfl.gov/city-hall/city-clerk/meeting-notices/>

FINANCIAL INFORMATION

CONCLUSION

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-17?

No

Is this item related to a G.O. Bond Project?

No

Was this Agenda Item initially requested by a lobbyist which, as defined in Code Sec. 2-481, includes a principal engaged in lobbying? No

If so, specify the name of lobbyist(s) and principal(s):

Department

City Attorney

Sponsor(s)

Commissioner David Suarez

Co-sponsor(s)

Condensed Title

1:40 p.m. 1st Rdg PH, Remove Eco-Tours Exception to Marina Hours of Operation (Suarez) CA

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, FLORIDA, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE III, ENTITLED "USE OF PUBLIC PROPERTY," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 82-72 THEREOF, ENTITLED "COMMERCIAL VESSEL ACTIVITY HOURS OF OPERATION AT PUBLICLY-OWNED MARINAS," TO MODIFY EXCEPTIONS TO THE PROHIBITED HOURS OF DEPARTURE FOR COMMERCIAL VESSELS AT PUBLICLY-OWNED MARINAS AND MARINE FACILITIES; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City has seen a significant increase in commercial vessel activity in the last several years, particularly since the COVID-19 pandemic; and

WHEREAS, the City has also experienced many quality-of-life complaints related to commercial charter vessel activity including unruly commercial charter and boat rental patrons, disturbances caused by public intoxication, people engaging in excessively loud arguments and playing excessively loud music, and public urination; and

WHEREAS, on or about April 28, 2023, the City Commission approved Ordinance No. 2023-4550, that is codified in Section 82-72 of the City Code, which limits commercial vessel activity at public marinas and public marine facilities each day from 9 p.m. until 7 a.m. the following day; and

WHEREAS, the complaints and issues emanating from public marinas and marine facilities have been greatly reduced since Ordinance No. 2023-4550 went into effect; and

WHEREAS, the City nonetheless has still experienced issues involving disturbances, noise, and arrests for illegal conduct, due to commercial vessel nighttime departures; and

WHEREAS, the City has experienced a recent increase in formerly purely commercial charter operations designating and characterizing themselves as educational "eco" or nature tours in order to evade the City's restrictions on nighttime departure of commercial vessels; and

WHEREAS, the Mayor and City Commission desire to adopt the following regulations in the City Code of Laws and Ordinances in order to address the concerns surrounding the nighttime departure of commercial vessels, which are necessary for the protection of City residents' quality of life, and which are consistent with, and further, the public health, safety and welfare.

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

SECTION 1. That Sections 82-72 and 66-116 of the City Code shall be amended as follows:

CHAPTER 82

PUBLIC PROPERTY

* * *

ARTICLE III. USE OF PUBLIC PROPERTY

* * *

DIVISION 1. GENERALLY

* * *

Sec. 82-72. Commercial vessel activity hours of operation at public marinas.

(a) *Definitions.* The following words, terms, and phrases, when used in this section, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

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, dock, structure, building or component of a marina.

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

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.

Vessel means and 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 (including, but not limited to, charters and rentals), 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 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.

- (b) *Prohibitions.* Commercial vessels shall be prohibited from departing each day from 7:00 p.m. until 7:00 a.m. the following day. All other commercial vessel activity shall be prohibited at public marinas and public marine facilities each day from 9:00 p.m. until 7:00 a.m., the following day. Such prohibition shall include, but not be limited to, operating a commercial vessel, the queueing, embarkation or disembarkation of passengers, and the loading or unloading of any food, goods, equipment, fuel or supplies.

Notwithstanding the foregoing, all pleasure vessels, along with commercial fishing vessels, commercial diving vessels, and licensed towing vessels, ~~and educational "eco" or nature tours~~ that are properly registered with the marina operator as such, shall be exempt from the requirements of this section. It shall be the sole responsibility of any person owning, operating or utilizing a vessel for commercial activity to ensure that such vessel is properly and accurately registered with the marina operator for the purpose of claiming an exemption to the requirements of this section.

This section shall not be construed as to prohibit public marinas and public marine facilities from providing core marina functions including, but not limited to, utilities, dockage, storage, and other services typically provided by a marina.

- (c) *Civil penalties.* The code compliance department shall enforce this section. 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 to the commercial vessel. 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 magistrate 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 section 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 \$500.00;
- 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 \$2,000.00; 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, 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 magistrate 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 magistrate, the special magistrate 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 magistrate, 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 magistrate may appeal that decision to a court of competent jurisdiction.
- (8) The special magistrate 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 magistrate shall not have discretion to alter the penalties prescribed in this subsection.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

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 on _____.

PASSED and **ADOPTED** this _____ day of _____, 2024.

ATTEST:


Rafael E. Granado
City Clerk

Steven Meiner
Mayor

(Sponsored by Commissioner David Suarez)

Underline denotes additions.
~~Strikethrough~~ denotes deletions.

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

12/31/2024

Date

RR