

ORDINANCE NO. 2021-4434

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE MIAMI BEACH CITY CODE, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE V, ENTITLED "BEACHES," TO CREATE DIVISION 4 THEREOF, TO BE ENTITLED "BEACH AND DUNE PROTECTION," RELATING TO PROTECTION OF THE CITY'S BEACHES AND DUNES; ESTABLISHING THE PURPOSE AND INTENT OF THE ARTICLE, CREATING DEFINITIONS, PROHIBITING CERTAIN ACTIVITIES IN ORDER TO PROTECT THE CITY'S DUNE SYSTEM, IDENTIFY PERMITTED ACTIVITIES, AND PROVIDING FOR ENFORCEMENT AND PENALTIES; AND PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, climate change, sea level rise, and beach erosion all threaten Miami Beach's coastal protection; and

WHEREAS, beaches and dunes are a strategic aspect of the City of Miami Beach's ("City") green infrastructure, which safeguard upland properties from the effects of storm surge during storm events; and

WHEREAS, in 1975, the United States Army Corps of Engineers, in coordination with the Florida Department of Environmental Protection ("FDEP"), built a non-vegetated levee for storm protection as part of the 50-year Miami-Dade County Beach Erosion Control and Hurricane Protection Project; and

WHEREAS, due to high pedestrian and vehicular traffic, the levee degraded quickly and was deemed ineffective; and

WHEREAS, in the mid-1980s, under a state grant, the FDEP rebuilt the levee and fortified it with dune vegetation; and

WHEREAS, in 2016, the Mayor and City Commission adopted Resolution No. 2016-29296, approving the City's Beachfront Management Plan, which includes the Dune Management Plan; and

WHEREAS, the FDEP Acquisition and Restoration Council approved the City's Beachfront Management Plan on August 19, 2016 pursuant to Management Agreement No. 750-0006; and

WHEREAS, the Beachfront Management Plan provides a guide for operation, maintenance, and management of the City's beach and dune system to protect existing natural resources, and improve public access; and

WHEREAS, the Dune Management Plan outlines the framework and specifications that the City will use to foster and maintain a healthy, stable, and natural dune system; and

WHEREAS, additionally, the Dune Management Plan emphasizes preserving the structural integrity of the dune, and protecting dune vegetation from human impacts; and

WHEREAS, Section 161.053(2)(a), Florida Statutes, in pertinent part, prohibits any person, firm, corporation, or governmental agency from “mak[ing] any excavation, remov[ing] any beach material, or otherwise alter[ing] existing ground elevations; driv[ing] any vehicle on, over, or across any sand dune; or damage[ing] . . . such sand dune or the vegetation growing thereon”; and

WHEREAS, the City Commission desires to adopt regulations that protect the City’s dune system, and prohibit unauthorized or disturbing activities that may lead to the degradation of the natural or restored dune resources.

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

SECTION 1. That Division 4 of Article V of Chapter 82 of the Code of the City Miami Beach is hereby created as follows:

CHAPTER 82
PUBLIC PROPERTY
* * *

Article V. BEACHES
* * *

DIVISION 4. DUNE PROTECTION

Sec. 82-479. Purpose and Intent.

The purpose of this division is to establish reasonable regulations that will protect the public investment in the beaches and dunes, protect public and private infrastructure, and minimize expenditure of public funds for costly storm recovery projects due to adverse impacts associated with storm surge or wave action resulting from impairment of, or damage to, protective dune resources. The regulations are intended to encourage the growth, expansion, and vitality of the dune system, preserve endangered and threatened wildlife, prevent harm or degradation to the valuable and protective vegetative sand dune resources from unauthorized foot or vehicular traffic, unauthorized digging, mining or other unnatural alteration of the dunes, unauthorized staging of construction materials or other unauthorized construction activity, installation of vegetation inconsistent with sand dune systems, pet activity, or other unauthorized or disturbing activities that may lead to the gradual, immediate, or cumulative degradation of the natural or restored dune resources. This article is intended to achieve these purposes by:

- (1) Prohibiting unauthorized activities in the dunes that threaten the integrity of the dune system; and
- (2) Identifying and mitigating damaging, unacceptable, and detrimental activities within the dune system.

Sec. 82-480. Scope.

This division applies to all areas of the dune within the City of Miami Beach from Government Cut to the City Boundary at 87th Terrace.

Sec. 82-481. Definitions.

The following words, terms, and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Authorized Vehicular Traffic means use of personal vehicles, equipment, or utility terrain vehicles ("UTVs") that have been approved for use on the beach, including government marked vehicles, public safety vehicles, and vehicles permitted for temporary access under a concession agreement or special event permit.

Beach Equipment means any man-made apparatus or paraphernalia designed or manufactured for use, or actually used on the beach, or in the adjacent tidal waters, including but not limited to chairs and lounges, umbrellas, sailing vessels up to 16 feet in length, personal watercraft, canoes, kayaks, paddles vessels, sailboards, surfboards, fishing gear, sporting equipment, floatable devices, tents and bicycles.

Department means the City of Miami Beach Environment and Sustainability Department.

Dune means the vegetated areas east of the beachwalk system to the easternmost limit of existing vegetation. In areas where a beachwalk system has not yet been constructed or is constructed within the dune system, the dune system shall constitute the continuously vegetated area bound by the Erosion Control Line ("ECL") to the west and by rope and post and/or sand fencing to the east. Where the dune is adjacent to public parks or areas designated as conservation areas, the dune shall also include areas of native dune vegetation west of the ECL enclosed by rope and post and/or sand fencing.

Dune crossover means the path intersecting the dune system which is designated by the City of Miami Beach for beach access.

Excavation means the removal or alteration of dunes and dune vegetation and scraping, grading, or dredging a site.

Green Infrastructure means both the natural environment and engineered systems to provide clean water, conserve ecosystem values and functions, and provide a wide array of benefits to people and wildlife.

Person means any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.

Regular maintenance activities includes but it not limited to mowing, edging, line trimming, irrigation system operation maintenance/repair, litter retrieval and waste disposal, pruning, mulching, weeding, landscape maintenance, pesticide and fertilizer applications, replacement of

plants as required, and rope and post maintenance, as conducted by City of Miami Beach contractors and employees. All routine landscape maintenance services for the dune should follow the guidelines set in the City of Miami Beach Dune Management Plan.

Restoration means the full removal and off-site disposal of non-native invasive, and/or pest plant species.

Staging or staging area means a location where people, vehicles, equipment, and materials are assembled before use.

Substantial improvement means the creation of vehicular or pedestrian trails, landscape work that adversely affects dunes or dune vegetation, and increases the size of any structure.

Wildlife means those native species who live and grow in the dune system, including birds, reptiles, mammals, insects that are found in a natural dune ecosystem throughout South Florida.

Sec. 82-482. Prohibited activities.

- (a) It shall be unlawful and prohibited for any person to conduct or permit to be conducted any of the following activities upon the dune:
- (1) Harass, molest, or disturb wildlife and plant vegetation;
 - (2) Maintain a dump of, or discard of, sand, rock, or other debris;
 - (3) Leave human or animal waste;
 - (4) Discard or abandon animals;
 - (5) Excavate, mine and remove, or haul sand or soil from the beach or dune;
 - (6) Plant vegetation, except as (i) permitted under the Beachfront Management Plan (which includes the Dune Management Plan), and (ii) approved by the Department Director;
 - (7) Relocate or remove vegetation, except as (i) permitted under the Dune Management Plan, and (ii) approved by the Department Director;
 - (8) Store beach equipment, tents, or other materials in the vegetated dune area.
 - (9) Destroy, mutilate, break, move, tear up, carry away, harvest, traverse upon, or alter in any manner any dune and/or beach vegetation, fencing, rope and post, public access structures, public beach structures, or fixtures occurring naturally or planted or erected by the City or its agents;
 - (10) Walk or traverse in the dune;
 - (11) Drive or operate a motor vehicle;
 - (12) Stage or place any material or equipment, including for construction activities;
 - (13) Light or maintain any open fire.

Sec. 82-483. Permitted activities

- (a) Foot (pedestrian) traffic and vehicular traffic authorized under the Beachfront Management Plan are permitted in designated dune crossovers or other designated beach access points.
- (b) Organized volunteer dune restoration and planting events may be permitted and are subject to the approval of the Department Director.

- (c) All work in the dune must comply with the City of Miami Beach Beachfront Management Plan (including the Dune Management Plan).
- (d) Any work conducted in the dune as required by FDEP through the Coastal Construction Control Line Permit Program shall require the prior written approval of the Department Director. A City right-of-way permit shall be required prior to the commencement of any work in the dune. Any work conducted in the dune shall be required to comply with the City's Beachfront Management Plan (including the Dune Management Plan).
- (e) Maintenance pruning may be requested by adjacent upland properties. Such request shall be made to the Department Director and will be reviewed and approved on a case-by-case basis. Maintenance pruning work may only be conducted by City staff or its contractors, unless otherwise approved by the Department Director.
- (f) City of Miami Beach contractors and employees are permitted in the dunes to conduct regular maintenance activities associated with vegetative maintenance pursuant to the City's Dune Management Plan and regular cleanliness management.

Sec. 82-484. Enforcement and penalties.

- (a) Fines collected under this division shall be (i) deposited in the Sustainability and Resiliency Fund, established in Sec. 133-8, and (ii) used by the City for the administration and enforcement of, and public outreach relating to, this division, and for improvements that protect and enhance the City's dune system.
- (b) If a Code Compliance Officer finds a violation of this article, the Code Compliance Officer shall 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.
- (c) A violator who has been served with a notice of violation must elect to either
 - 1. pay the following civil fine:
 - (a) First violation within a 12-month period.....\$1000.00;
 - (b) Second violation within a 12-month period..... \$2000.00;
 - (c) Third or subsequent violation within a 12-month period....\$3000.00;
 - Or
 - 2. 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. 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.

- (d) Failure to pay the civil fine, or to timely request an administrative hearing before a special master, 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. Unpaid fines shall accrue interest at the highest legal limit authorized by law.
- (e) 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. After three months following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien for the amount of the lien, plus accrued interest, collection costs, and attorneys' fees.
- (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. The special master shall not have discretion to alter the penalties prescribed in this article. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- (g) The violator shall pay for any fines being assessed to the City as a result of violation of this article.
- (h) The violator is responsible for reimbursement to the City of all investigative and restoration costs incurred by the City. Costs shall include, but are not limited to, cost of equipment operation and maintenance associated with the investigation or restoration, cost of materials used in the investigation, personnel cost of contract services, re-planting costs, and labor costs. The City shall submit an itemized invoice with all the reimbursable costs to the violator.

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 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 7 day of August, 2021.

PASSED AND ADOPTED this 29 day of July, 2021.

ATTEST:

RA 8/2/2021

Rafael E. Granado, City Clerk

(sponsored by Commissioner Micky Steinberg)

Dan Gelber, Mayor



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

MA
City Attorney *MA*

6-15-21
Date