

Condensed Title:

An Ordinance Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Amending Chapter 46 Of The Miami Beach City Code, Entitled "Environment," Article III, Section 46-92 By Amending The Definition Of Litter And The Litter Prohibition Provisions In Subsections (A) And (B); Prohibiting Styrofoam Products And Plastic Straws On City Beaches; Re-Lettering And Renaming Existing Provisions In Subsections (A) Through (O) And Creating New Provisions In Subsection (G) To Provide Prohibitions On The Distribution Of Commercial Handbills: a) In The Art Deco Historic District During High Impact Periods In The City; b) Within 20 Feet Of Sidewalk Cafes; And c) On City Beaches East Of The Dunes, Providing Fines And Penalties For The Violation Of Subsection (G) In The Re-Lettered Subsection (H); And Providing For Repealer; Severability; Codification; And An Effective Date.

Key Intended Outcome Supported:

Improve cleanliness of Miami Beach rights of way, especially in business areas; Improve cleanliness of city beaches; Ensure compliance with code within reasonable time frame; Preserve our beaches; Enhance the environmental sustainability of the community

Supporting Data (Surveys, Environmental Scan, etc.): According to the 2009 Customer Satisfaction Survey, 73% of residents and 66% of businesses rated cleanliness of streets in business/commercial areas as excellent or good. Additionally, 83% of the City's residents and 85% of the City's businesses rated the overall appearance of beaches as excellent or good.

Issue:

Should the City Commission adopt the proposed Ordinance on first reading?

Item Summary/Recommendation:

FIRST READING At its August 31, 2010 meeting, the Neighborhood/Community Affairs Committee (NCAC) recommended the amendment of the City's Litter Ordinance to prohibit the presence of polystyrene (Styrofoam) products on our beaches. Subsequently, the City Commission, at its October 27, 2010 meeting, approved the Committee's recommendation. An ordinance amendment was being developed but was pending further discussion on other items relating to litter. At the request of Commissioner Libbin at the December 14, 2011 City Commission meeting, the City Commission referred an item regarding enforcement of litter laws, handbills, and sidewalk café regulations to the NCAC for further discussion. In addition, at the request of Commissioner Exposito at the February 8, 2012 City Commission meeting, the City Commission referred an item regarding the use of plastic straws on the beach to the NCAC for discussion.

Polystyrene Products: Research reflects that items made of polystyrene, also known as Styrofoam, are oftentimes carried away by the wind and they disintegrate into smaller pieces, posing a major a threat to the marine and coastal environment. The attached ordinance amendment will incorporate Styrofoam as a type of litter, and will prohibit any person form taking Styrofoam onto our beaches.

Plastic Straws: City's permitted beachfront concessionaires is prohibited in all of the City's beaches. The narrow shape of plastic straws makes it difficult for straws to be picked up by both the City and County's sand sifting machines or manual labor. While current beach concessionaires are prohibited from providing plastic straws when they sell beverages, hotels and condos with beachfront restaurants that provide service to persons on the beach are providing straws that are subsequently being littered. The proposed amendment to the litter ordinance would prohibit any business that services or delivers beverages to persons on the beach from providing plastic straws. Should this amendment not address this issue, further restrictions can be contemplated in the future.

Handbills: Unwanted commercial handbills are oftentimes left behind by patrons, littering our beaches. The Administration is proposing a ban on the distribution of commercial handbills from person to person on the beach, east of the dunes, and on the Boardwalk, Beachwalk, Baywalk and Cutwalk. Unsolicited commercial handbills are also commonplace in our sidewalk cafés, where patrons are approached by individuals passing out flyers. The Administration is proposing a ban on the distribution of commercial handbills within 20 feet of a sidewalk café. Lastly, and as discussed during the joint Finance and Citywide Projects Committee and Neighborhood/Community Affairs Committee meeting on January 19, 2012, the proliferation and accumulation of commercial handbills during certain high visitor volume periods found discarded in certain areas of the City has become a major litter issue and constitutes a public health hazard. The Administration proposed, and the Committees approved, moving forward with a ban on the distribution of commercial handbills in certain areas of the City during high impact periods such as New Year's Eve and Memorial Day Weekend. In an effort to address issues regarding litter on the beach and our City, the following amendments were recommended to the NCAC at its February 27, 2012 meeting: 1) Prohibit Styrofoam products on our beaches; 2) Prohibit Businesses that provide beverage services to persons on the beach from providing plastic straws; 3) Prohibit the distribution of commercial handbills on our beaches, east of the dune; 4) Prohibit the distribution of handbills within twenty (20) feet in any direction from the outside perimeter of a sidewalk café, and on the right-of-way within the approved sidewalk cafe; and 5) Prohibit the distribution of commercial handbills in certain portions of the Art Deco Historic District during High Impact Periods. **The NCAC recommended the adoption of the ordinance to the full City Commission. The Administration recommends that the City Commission adopt the proposed Ordinance.**

Advisory Board Recommendation:

Neighborhood/Community Affairs Committee and Finance and Citywide Projects Committee (Joint January 19, 2012 meeting; and February 27, 2012 Neighborhood / Community Affairs Committee).

Financial Information:

Source of Funds:		Amount	Account
	1		
OBPI	Total		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Sign-Offs:

Department Director	Assistant City Manager	City Manager
	<i>William Fernandez</i>	<i>Jerry</i>





OFFICE OF THE CITY MANAGER

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: March 21, 2012

FIRST READING

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE MIAMI BEACH CITY CODE, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE III THEREOF, ENTITLED "LITTER," BY AMENDING SECTION 46-92 TO PROVIDE COMPREHENSIVE AMENDMENTS THERETO BY AMENDING THE DEFINITION OF LITTER AND THE LITTER PROHIBITION PROVISIONS IN SUBSECTIONS (A) AND (B); PROHIBITING STYROFOAM PRODUCTS AND PLASTIC STRAWS ON CITY BEACHES; RE-LETTERING AND RENAMING EXISTING PROVISIONS IN SUBSECTIONS (A) THROUGH (O) FOR EASE OF REFERENCE AND CREATING NEW PROVISIONS IN SUBSECTION (G) TO PROVIDE PROHIBITIONS ON THE DISTRIBUTION OF COMMERCIAL HANDBILLS: A) IN THE ART DECO HISTORIC DISTRICT DURING HIGH IMPACT PERIODS IN THE CITY; B) WITHIN 20 FEET OF SIDEWALK CAFES; AND C) ON CITY BEACHES EAST OF THE DUNES, PROVIDING FINES AND PENALTIES FOR THE VIOLATION OF SUBSECTION (G) IN THE RE-LETTERED SUBSECTION (H); AND PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission adopt the proposed Ordinance.

BACKGROUND

At its August 31, 2010 meeting, the Neighborhood/Community Affairs Committee recommended the amendment of the City's Litter Ordinance to prohibit the presence of polystyrene (Styrofoam) products on our beaches. Subsequently, the City Commission, at its October 27, 2010 meeting, approved the Committee's recommendation. An ordinance amendment was being developed but was pending further discussion on other items relating to litter. At the request of Commissioner Libbin at the December 14, 2011 City Commission meeting, the City Commission referred an item regarding enforcement of litter laws, handbills, and sidewalk café regulations to the Neighborhood/Community Affairs Committee for further discussion. In addition, at the request of Commission Exposito at the February 8, 2012 City Commission meeting, the City Commission referred an item regarding the use of plastic straws on the beach to the Neighborhood/Community Affairs Committee for discussion.

ANALYSIS

The City of Miami Beach is known for its tropical setting, beaches, and cultural entertainment; and as our mission statement reflects, it is a vibrant, tropical, historic community. Thus, the ambience,

We are committed to providing excellent public service and safety to all who live, work, and play in our vibrant, tropical, historic community.

aesthetics, environment, and having a cleaner and safer community is not only part of the City's vision, but an intrinsic part of its value and a key component in being a world-class City. Both residents and visitors alike enjoy our beaches, restaurants and cafés; however, at times there are factors that adversely impact that enjoyment.

- A. **Polystyrene Products:** Research reflects that items made of polystyrene, also known as Styrofoam, are oftentimes carried away by the wind and they disintegrate into smaller pieces, posing a major threat to the marine and coastal environment. Once Styrofoam begins to break apart, the miniscule pieces become difficult to clean up, littering our beaches and posing a threat to marine life. Marine animals can mistake the foam as food, and if ingested, the foam can cause them to starve by blocking their digestive tract. Not only is Styrofoam an increasingly prolific pollutant in our oceans, but also toxic to produce, releasing a known carcinogen (styrene), which does not decompose and is not recyclable.

The attached ordinance amendment will incorporate Styrofoam as a type of litter, and will prohibit any person from taking Styrofoam onto our beaches.

- B. **Plastic Straws:** The use of plastic straws by the City's permitted beachfront concessionaires is prohibited in all of the City's beaches. In addition, the narrow shape of plastic straws makes it difficult for straws to be picked up by both the City and County's sand sifting machines or by manual labor.

The increased and prolific use of single-use/disposable plastics, such as plastic straws, is a major contributor to litter on our beaches. Most marine plastic pollution starts out on land as litter on beaches, streets and sidewalks. The very same qualities that make plastic products adaptable and durable also make plastic an environmental challenge. Plastic products are not biodegradable, instead they photo degrade - breaking down under exposure to the sun's ultraviolet rays, into smaller and smaller pieces. Consequently, nearly every piece of plastic that was ever made still exists in some shape or form.

A concern has been raised that while current beach concessionaires are prohibited from providing plastic straws when they sell beverages, hotels and condos with beachfront restaurants that provide service to persons on the beach are providing straws that are subsequently being littered. As such, the proposed amendment to the litter ordinance would prohibit any business that services or delivers beverages to persons on the beach from providing plastic straws. Should this amendment not address this issue, further restrictions can be contemplated in the future.

- C. **Handbills:** The passing of a commercial handbill from one person to another is currently allowed by our City Code. However, violations are issued for commercial handbills that are discarded or left on public property in such a manner that, more likely than not, they were thrown or placed there. Anyone seen throwing or discarding commercial handbills on public property may be subject to litter fines.

Aggressive marketing in the form of commercial handbills and/or flyer distribution can have a negative impact on our ecology, and the ability of our residents and visitors to enjoy our City. More specifically, unwanted commercial handbills are oftentimes left behind by patrons, littering our beaches. These commercial handbills distributed on our beaches can be carried by the wind and enter the marine environment where animals can mistake them for food; or flow into stormwater drainage systems and canal banks. Litter left on the beach creates unsanitary conditions and presents hazards to nesting sea turtles, hatchlings, and other marine life. Lastly, when these handbills get wet from humidity, salt spray, or rain showers, they begin to break down, making litter control difficult and causing chemicals in

the petroleum-based inks to leach toxic chemicals into the environment, and release volatile organic compounds (VOCs) into our beaches and atmosphere. As a result, the Administration is proposing a ban on the distribution of commercial handbills from person to person on the beach, east of the dunes.

Unsolicited commercial handbills are also commonplace in our sidewalk cafés, where patrons are approached by individuals passing out flyers. This passing out of unsolicited commercial handbills is intrusive and a nuisance to the sidewalk café patrons, as well as a disruption and annoyance to the business owners who must frequently pick up flyers left on their café tables, or blown onto their sidewalk areas. Often, the City receives complaints from individual restaurants and organizations, such as the Ocean Drive Business Association, requesting the intervention of Code Compliance. At this time, however, the City cannot stop the distribution of commercial handbills from person to person in Sidewalk Café areas. Thus, the Administration is proposing a ban on the distribution of commercial handbills within twenty (20) feet in any direction from the outside perimeter of a sidewalk café, and on the right-of-way within the approved sidewalk cafe.

Lastly, and as discussed during the joint Finance and Citywide Projects Committee and Neighborhood/Community Affairs Committee meeting on January 19, 2012, the proliferation and accumulation of commercial handbills during certain high visitor volume periods found discarded in certain areas of the City has become a major litter issue and constitutes a public health hazard. Improper disposal of commercial handbills on public property is a nuisance and an expense for the City, reducing the overall cleanliness and world-class image of the City. As such, the Administration proposed, and the Committees approved, moving forward with a ban on the distribution of commercial handbills in certain portions of the National Register Historic District (also referred to as the Art Deco Historic District) during high impact periods, such as New Year's Eve and Memorial Day Weekend. The attached proposed ordinance amendment reflects this prohibition.

In an effort to address issues regarding litter on the beach and our City, the following amendments were recommended to the Neighborhood/Community Affairs Committee at its February 27, 2012 meeting.

1. Prohibit Styrofoam products on our beaches;
2. Prohibit Businesses that provide beverage services to persons on the beach from providing plastic straws;
3. Prohibit the distribution of commercial handbills on our beaches, east of the dune;
4. Prohibit the distribution of handbills within twenty (20) feet of a sidewalk café; and
5. Prohibit the distribution of commercial handbills in certain portions of the Art Deco Historic District during High Impact Periods.

The Neighborhood/Community Affairs Committee recommended the adoption of the ordinance to the full City Commission.

CONCLUSION

The Administration recommends that the City Commission adopt the proposed Ordinance.

ORDINANCE _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE MIAMI BEACH CITY CODE, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE III THEREOF, ENTITLED "LITTER," BY AMENDING SECTION 46-92 TO PROVIDE COMPREHENSIVE AMENDMENTS THERETO BY AMENDING THE DEFINITION OF LITTER AND THE LITTER PROHIBITION PROVISIONS IN SUBSECTIONS (A) AND (B); PROHIBITING STYROFOAM PRODUCTS AND PLASTIC STRAWS ON CITY BEACHES; RE-LETTERING AND RENAMING EXISTING PROVISIONS IN SUBSECTIONS (A) THROUGH (O) FOR EASE OF REFERENCE AND CREATING NEW PROVISIONS IN SUBSECTION (G) TO PROVIDE PROHIBITIONS ON THE DISTRIBUTION OF COMMERCIAL HANDBILLS: A) IN THE ART DECO HISTORIC DISTRICT DURING HIGH IMPACT PERIODS IN THE CITY; B) WITHIN 20 FEET OF SIDEWALK CAFES; AND C) ON CITY BEACHES EAST OF THE DUNES, PROVIDING FINES AND PENALTIES FOR THE VIOLATION OF SUBSECTION (G) IN THE RE-LETTERED SUBSECTION (H); AND PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach ("City") declares that it is in the interest of the public health, safety, and welfare to reduce litter and pollutants on the land and the waters of the City which is a major and internationally recognized tourist destination; and

WHEREAS, polystyrene foam ("styrofoam"), a petroleum based by-product, and plastic straws are not readily recyclable, non-biodegradable, and take several decades to hundreds of years to deteriorate in the environment or in a landfill; and

WHEREAS, styrofoam is easily capable of breaking into small pieces that pose a health hazard to wildlife, including nesting turtles on the City's beaches, is difficult if not impossible to clean from the sand by sand cleaning equipment, and contributes to litter and pollution on the City's beaches; and

WHEREAS, plastic straws are similarly non-biodegradable and not able to be effectively removed from the City's sandy beaches by the daily cleaning efforts engaged in by Miami-Dade County; and

WHEREAS, it has come to the attention of the City that there is a proliferation of discarded plastic straws on the beach as a result of businesses providing plastic straws with beverage service on the beach; and

WHEREAS, in order to better protect the City's beaches, and to reduce the environmental impact of styrofoam and plastic straws on the City's beaches, styrofoam products should be prohibited on the City's beaches and businesses that provide beverage service on the beach should be prohibited from providing plastic straws with such service; and

WHEREAS, the distribution of commercial handbills on the heavily traveled pedestrian sidewalks on Ocean Drive, Lincoln Road, Washington Avenue, and Collins Avenue causes increased pedestrian congestion, harassment of tourists and residents who traverse these historically designated streets, and increased litter on sidewalks, streets, and in sidewalk café areas; and

WHEREAS, the harassing and excessive commercial handbill distribution on Ocean Drive, Lincoln Road, Washington Avenue, and Collins Avenue has resulted in significant complaints to the City, and to local business owners, from residents and tourists who seek a pleasant strolling and sightseeing experience and is an invasion of the privacy of pedestrians and a detrimental nuisance which adversely impacts the City's tourist industry, especially during high impact periods in the City; and

WHEREAS, excessive and harassing commercial handbill distribution on the public rights-of-way that are adjacent to and within permitted sidewalk café areas is also a detrimental nuisance which invades the privacy of café diners and adversely impacts the City's interests in preserving its aesthetic ambience, tourist industry, and image as a beautiful and enjoyable beachfront destination; and

WHEREAS, in addition, those residents and visitors in the City that seek to enjoy and relax on the City's world renowned beaches are similarly harassed by the nuisance of commercial handbill distribution, especially during high impact periods in the City, and such activity contributes to litter, visual blight, and negative environmental impacts on the City's beaches; and

WHEREAS, it is in the best interest of the City to preserve and enhance the attractiveness of its historic streets and world famous beaches by imposing restrictions on the distribution of commercial handbills within twenty (20) feet of all sidewalk cafés, on the heavily traveled pedestrian sidewalks on Ocean Drive, Washington Avenue, Collins Avenue, and Lincoln Road during high impact periods, and on the City's beaches east of the dunes.

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

SECTION 1. That Article III, entitled "Litter," of Chapter 46 of the Miami Beach City Code, entitled "Environment," is hereby amended as follows:

CHAPTER 46

ENVIRONMENT

* * *

ARTICLE III. LITTER

Division 1. Generally

* * *

Sec. 46-92. ~~Prohibitions on Litter; Definitions; Prohibitions on litter; Penalties for litter and commercial handbill violations; Commercial handbill regulations, fines, and possession of glass or metal containers on beaches unlawful; sweeping or throwing litter on public and private properties unlawful; garbage containers required for take out restaurants; rebuttable presumptions; civil fines for violations; seizure; and removal of litter by the city; definitions; enforcement; appeals; liens.~~

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

- (1) *Benefactor* means the owner of the business advertised in the commercial handbill whose agent, employee, contractor, promoter, or other representative did or caused the throwing, discarding, placing or depositing.
- (2) *Business* means any commercial or industrial activity, entity, or event in or for which any goods or services are made, sold or offered for sale or other consideration, pecuniary or otherwise.
- (3) *Handbill* means any handbill, flyer, paper, document, dodger, circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice or other written, printed or painted matter or object that conveys any information, except that "handbill" shall not include a newspaper or its contents.
- (4) *Commercial handbill* means any handbill that conveys any information about any good or service provided by a business.
- (5) *Litter* means any paper, handbill, commercial handbill, garbage, bottle caps, chewing gum, tobacco products, including, but not limited to, used and unused cigarettes, cigars, pipe or chewing tobacco, styrofoam or plastic products, or other waste, including, but not limited to, tree, plant, and grass cuttings, leaves, or other yard maintenance debris, that has been placed or deposited on a public sidewalk, street, road, avenue, beach, swale, median, building, fence, wall, boardwalk, beachwalk, baywalk, cutwalk, park, or in a gutter, drain, or sewer, or on any other public property, right-of-way or place, or on any object located on public property, or on the kneewall, window ledge or sill of any public or private building, or on a motor vehicle, or on any other type of private real or personal property. Handbills and commercial handbills attached to a trash receptacle, but not within the trash receptacle in the usual manner, shall also be considered litter.
- (6) *One day* means a 24-hour period from noon to noon.
- (7) *Person, benefactor, or owner* include, within their respective meanings, either an individual or an entity.

~~(a)~~(b) Litter prohibited. It shall be unlawful for any person or benefactor to throw, discard, place or deposit, or cause to be thrown, discarded, placed, or deposited, litter in any manner or amount whatsoever in or on any public highway, sidewalk, road, street, alley, thoroughfare, beach, park, baywalk, beachwalk, cutwalk, sidewalk café areas, or any other public place, except in containers or areas lawfully provided therefor. It shall be unlawful for any person to throw, discard, place or deposit any garbage, cans, bottles or containers in or on any freshwater lakes, rivers, streams, canals, or tidal or coastal waters within the city. In addition, it shall be unlawful for any person to throw, discard, place or deposit litter in any manner or amount whatsoever on any private real or personal property, including but not limited to sidewalk café furniture and fixtures, unless prior consent of the owner has been given and unless such litter will not cause a public nuisance or be in violation of any other state or local laws, rules or regulations.

~~(b)~~(c) Prohibitions on beaches. It shall be unlawful for any person to carry onto any beach within the city a glass or metal bottle or other glass or metal container. In addition, it shall be unlawful for any person to carry any styrofoam product onto any beach within the city or for any business to provide plastic straws with the service or delivery of any beverage to patrons on the beach.

~~(e)~~(d) Prohibitions on causing litter in sewers and on public and private property. It shall be unlawful for any person to use leaf blowers, or any other means, to sweep, cast or throw, or cause to be cast or thrown, or discarded into any of the gutters, drain, sewers, or public rights-of-way within the city, or upon any adjacent public or private real or personal property, any garbage, litter, paper, handbill, trash, tree, plant, or grass cuttings, leaves, yard maintenance debris, or other objects or substances.

~~(d)~~(e) Garbage container requirements for restaurants. All restaurants with take-out service shall have up to four garbage containers, as need requires, based on the determination of the city manager or his designee. The containers shall be located in front of and within 50 feet in each direction of the premises at locations approved by the city manager or his designee. These containers shall be kept in clean and sanitary condition at all times and shall be emptied daily or more frequently if necessary to prevent overflowing. The garbage containers required by this section are in addition to those required by chapter 90 of this Code.

~~(e)~~(f) Penalties for violations. The following civil fines shall be imposed for violations of this section except as provided in subsections (h) below:

- (1) First offense: \$50.00 fine.
- (2) Second offense: \$100.00 fine.
- (3) Third or subsequent offense: \$500.00 fine.

In lieu of a fine, the special master may accept voluntary community service removing litter in the city equivalent to one hour of community service for each \$5.00 of an imposed fine. If the community service is not completed within six months of an adjudication of guilt, the fine shall be reinstated.

(g) Prohibitions on commercial handbill distribution.

- (1) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
- (a) Art Deco Historic District means that area within the boundaries of the National Register Historic District (the Miami Beach Architectural District) as set forth in Appendix A.
 - (b) High Impact Periods mean those periods of time as annually designated by the City Manager during which one or more of the following occur: i) there is a designated major event period; ii) a maintenance of traffic plan is required (e.g., including, but not limited to, street closures, lane closures, shuttle service.); iii) hotel occupancy levels are anticipated to be greater than 75%; iv) mutual aid or other assistance from outside agencies is required to provide for the safety and wellbeing of residents and visitors to the destination; and, v) an event on public property is anticipated to result in more than 25,000 visitors to the destination.
 - (c) Right-of-Way means and includes, but is not limited to, any state, county, or city owned public street, sidewalk, street corner, curb, bicycle path, or pedestrian walkway.
- (2) Art Deco Historic District During High Impact Periods. Commercial handbills shall not be distributed in the Art Deco Historic District during high impact periods on Ocean Drive from 6th through 15th Streets, Washington Avenue from 6th through 17th Streets, Collins Avenue from 6th through 17th Streets, and on any portion of Lincoln Road.
- (3) Sidewalk Cafes. Commercial handbills shall not be distributed on the right-of-way a) within twenty (20) feet in any direction from the outside perimeter of any approved sidewalk café (as indicated in the approved site plan attached to the city issued permit) and b) on any right-of-way within the approved sidewalk café.
- (4) Beaches. Commercial handbills shall not be distributed on any City beach east of the dunes.

~~(f)~~(h) Penalties for commercial handbill violations. If a violation of this section resulted from the throwing, discarding, placing, or depositing, or causing to be thrown, discarded, placed, or deposited, of commercial handbills as litter in violation of subsection (b), or resulted from a violation of subsection (g), then the following civil fines shall be imposed. The special master shall not have discretion to alter these prescribed penalties except as to the per handbill fine of \$50.00 provided in subsection (f)(1).

- (1) If the offense is the first offense, \$100.00 fine, plus \$50.00 per handbill for a violation of subsection (b);

- (2) If the offense is the second offense within the preceding 12 months, \$500.00 fine, plus \$50.00 per handbill for a violation of subsection (b);
- (3) If the offense is the third or subsequent offense within the preceding 12 months, \$1,500.00 fine, plus \$50.00 per handbill for a violation of subsection (b);
- (4) Notwithstanding subsections ~~(f)~~(h)(1)-(3), no person or benefactor shall receive more than one offense within any one-day period, however, the \$50.00 per handbill fine shall apply to all littered handbills found during that one-day period for a violation of subsection (b).

~~(g)~~(i) Commercial handbill presumption. At any prosecution for violation of this section when the litter involved is a commercial handbill, if ten or more commercial handbills advertising the same business are found in plain view as litter under circumstances that make it more likely than not that the commercial handbills were placed there, or caused to be placed there, by an agent, employee, contractor, promoter, or other representative of the business advertised on the face of the commercial handbills, the special master shall apply a rebuttable presumption that the business advertised on the face of the handbills threw, discarded, placed or deposited the commercial handbills as litter.

~~(h)~~(i) Securing of commercial handbill litter by the city. If a person is found littering with commercial handbills, the code compliance officer is authorized to seize, for use as evidence in the prosecution of the violator before the special master, all commercial handbills in the possession of the violator.

~~(i)~~(k) Removal of litter by the city. The city may cause the removal, at the violator's expense, of all litter distributed or placed in violation of this section.

[Note: former subsection (j) has been moved to subsection (a)]

~~(k)~~(l) Enforcement by code compliance officers; notice of violation. If a code compliance officer finds a violation of this article, such code compliance officer shall issue a notice of violation to the violator as provided in chapter 30. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator may be liable, instructions and due date for paying the fine, notice that the violation may be appealed by requesting an administrative hearing within 20 days after service of the notice of violation, and that failure to do so shall constitute an admission of the violations and waiver of the right to a hearing.

~~(l)~~(m) Rights of violators; payment of fine; right to appeal; failure to pay civil fine or to appeal.

- (1) A violator who has been served with a notice of violation shall elect either to:
 - a. Pay the civil fine in the manner indicated on the notice; or
 - b. Request an administrative hearing before a special master appointed by the city commission upon recommendation of the city manager to appeal the decision of the code compliance officer which resulted in 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 102-384 and 102-385 of the City Code.
- (3) If the named violator after notice 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 code compliance officer. Failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly.
- (4) Any party aggrieved by the decision of the special master may appeal the decision in accordance with law.

~~(m)~~(n) *Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.*

- (1) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.
- (2) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other 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 personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two months from the filing of any such lien which remains unpaid, the city may foreclose or otherwise execute upon the lien.

~~(n)~~(o) *Planning Board authority.* Nothing in this article shall limit or restrict any condition or limitation imposed by the planning board.

~~(e)~~(p) *Injunctive relief.* As an additional means of enforcement, the city may seek injunctive relief and/or follow procedures to revoke a business tax receipt and/or certificate of use as set forth in chapters 14, 18 and 102 of the City Code when there are more than three offenses by the same violator within a calendar year.

SECTION 2. 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 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. Repealer.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 5. Effective Date.

This Ordinance shall take effect the _____ day of _____, 2012.

PASSED and ADOPTED this _____ day of _____, 2012.

ATTEST:

Matti Herrera Bower, Mayor

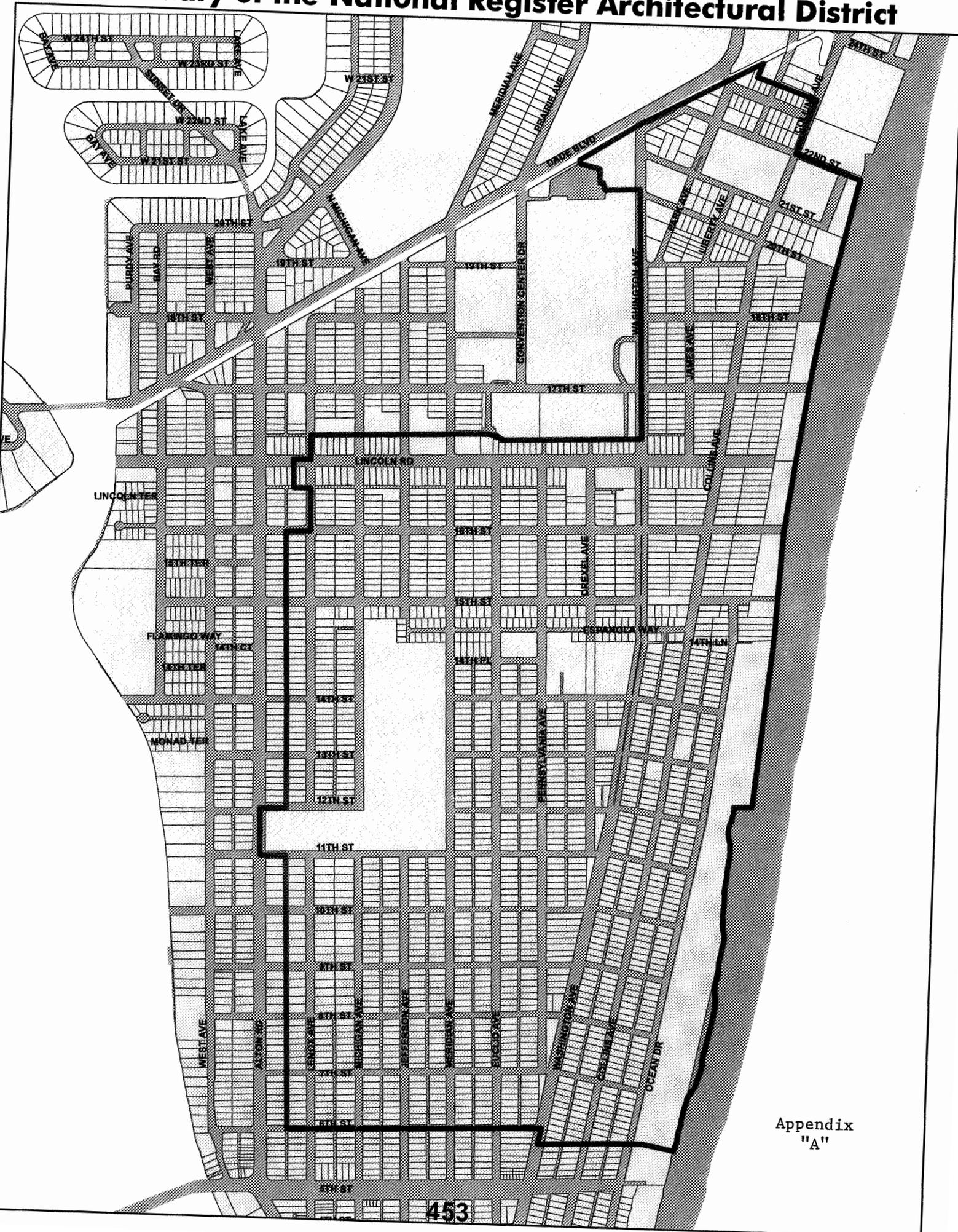
Robert Parcher, City Clerk

Underline denotes additions
~~Strikethrough~~ denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

CITY ATTORNEY 3/13/12
DATE

Boundary of the National Register Architectural District



Appendix
"A"