



MIAMI BEACH

OFFICE OF THE CITY ATTORNEY

RAUL AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

TO: MAYOR PHILIP LEVINE FIRST READING
MEMBERS OF THE CITY COMMISSION
JIMMY L. MORALES, CITY MANAGER

FROM: RAUL J. AGUILA, CITY ATTORNEY *Raul Aguil*

DATE: SEPTEMBER 2, 2015

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 106 OF THE MIAMI BEACH CITY CODE, ENTITLED "TRAFFIC AND VEHICLES," BY AMENDING ARTICLE II, ENTITLED "METERED PARKING," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 106-47, ENTITLED "FREIGHT, COMMERCIAL, AND PASSENGER CURB LOADING ZONES; HOURS, DELIVERIES"; BY DELETING SUBSECTION (C), (D) AND (E); BY AMENDING SUBSECTION (B) TO REQUIRE PROPERTY OWNERS AND BUSINESSES TO CONFIRM COMPLIANCE WITH SUBSECTION (G) FOR COMMERCIAL MOTOR VEHICLES DELIVERIES AND SERVICES; BY PROHIBITING DELIVERIES OR SERVICES FOR COMMERCIAL MOTOR VEHICLES THAT FAIL TO COMPLY WITH SUBSECTIONS (F) THROUGH (N); BY CREATING A NEW SUBSECTION (D) AND (E), WHICH LIMITS THE AUTHORITY OF THE SPECIAL MASTER; BY AMENDING THE ENFORCEMENT AND PENALTY PROVISIONS FOR VIOLATIONS OF SUBSECTIONS (B); PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

Commissioner Michael Grieco has proposed an ordinance amendment that will require property owner(s) and business(es) to only accept services or deliveries from commercial motor vehicles that are in compliance with Section 106-47(g) of the City Code. These property owner(s) and businesses will have a legal obligation and responsibility to confirm that the operator/driver of the commercial motor vehicle has complied with those permit requirements set forth within Sections 106-47(f) through (n). A property owner or business that accepts services or deliveries from an operator/driver of a commercial motor vehicle that violates subsections (f) through (n), will result in the direct enforcement action against the property owner or business.

This Ordinance will serve to establish those requirements upon the property owner(s) and business(es) for the acceptance of services and deliveries from commercial motor vehicle operators/drivers violating the requirements of the city code, and to further prohibit the dangerous conditions created by commercial motor vehicles obstructing the vehicular lanes of traffic in violation of subsection (f) through (n).

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 106 OF THE MIAMI BEACH CITY CODE, ENTITLED "TRAFFIC AND VEHICLES," BY AMENDING ARTICLE II, ENTITLED "METERED PARKING," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 106-47, ENTITLED "FREIGHT, COMMERCIAL, AND PASSENGER CURB LOADING ZONES; HOURS, DELIVERIES"; BY DELETING SUBSECTION (C), (D) AND (E); BY AMENDING SUBSECTION (B) TO REQUIRE PROPERTY OWNERS AND BUSINESSES TO CONFIRM COMPLIANCE WITH SUBSECTION (G) FOR COMMERCIAL MOTOR VEHICLES DELIVERIES AND SERVICES; BY PROHIBITING DELIVERIES OR SERVICES FOR COMMERCIAL MOTOR VEHICLES THAT FAIL TO COMPLY WITH SUBSECTIONS (F) THROUGH (N); BY CREATING A NEW SUBSECTION (D) AND (E), WHICH LIMITS THE AUTHORITY OF THE SPECIAL MASTER; BY AMENDING THE ENFORCEMENT AND PENALTY PROVISIONS FOR VIOLATIONS OF SUBSECTIONS (B); PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and City Commission has held discussions related to commercial motor vehicles blocking lanes on Washington Avenue, Collins Avenue; Ocean Drive, West Avenue and other major corridors, which discussions included enforcement action and long term solutions; and

WHEREAS, the City has established commercial and freight loading zone regulations that provide opportunities for commercial motor vehicles to properly conduct their deliveries without impeding or destructing vehicular lanes of traffic throughout the City; and

WHEREAS, the Administration believes that property owner(s) or business(es) must ensure that the commercial motor vehicle operator(s) continue to comply with those permit requirements, restricted hours, and maximum time limits in order to protect the health, safety and welfare of the motoring public; and

WHEREAS, this amendment is necessary to ensure that property owner(s) and business(es) within these highly traveled corridors are not complacent, and are responsible for the obstruction of vehicular lanes by commercial motor vehicles during the acceptance of deliveries and services.

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

SECTION 1. That Chapter 106, "Traffic and Vehicles," Article II, "Metered Parking," Division 1, "Generally," Section 106-47, entitled, "Freight, Commercial, and Passenger Curb Loading Zones; Hours, Deliveries"; of the Code of the City of Miami Beach, Florida, is hereby established, as follows:

Chapter 106. Traffic and Vehicles

* * *

Article II. Metered Parking

Division. 1 Generally

* * *

Sec. 106-47. Freight, commercial, and passenger curb loading zones; hours, deliveries.

- (a) [Authorization.] The city manager or his designee is hereby authorized to designate any street freight, commercial, and passenger curb loading zones as permissible automobile parking areas during such hours as such officials, in their discretion, may direct.
- (b) [Enforcement against property owners and/or businesses.] Freight, commercial, and passenger curb loading zone regulations, including as posted by sign, may be enforced, in addition to the procedures provided in this chapter, against property owners and/or businesses which accept services or deliveries from commercial motor vehicles or vehicles violating such regulations.
 - (1) A property owner(s) or business that accepts services or deliveries from a commercial motor vehicle must confirm that the operator/driver of the commercial motor vehicle has complied with subsection (g).
 - (2) It is prohibited for a property owner(s) or business to accept any services or deliveries from the operator/driver of a commercial motor vehicle that is not in compliance with subsections (f) through (n).
- ~~(c) Civil fine for violators. The following civil fines shall be imposed for a violation of this section:
 - (1) ~~First offense: Warning~~
 - (2) ~~Second offense (within one year of the first offense): \$150.00~~
 - (3) ~~Third offense (within one year of the first offense): \$300.00~~
 - (4) ~~Fourth or more offenses (within one year of the first offense): \$600.00~~~~
- ~~(d) Enforcement. The code enforcement department or parking 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 a parking enforcement specialist or a code compliance officer finds a violation of this article, the parking enforcement specialist or the code compliance officer shall issue a notice of violation to the violator as provided in chapter 30 of this Code, as may be amended from time to time. 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, 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.~~
- ~~(e) Rights of violators; 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 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 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, and be treated as an admission of the violation, and fines and penalties may be assessed accordingly.~~
- ~~(4) Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.~~

(c) Penalties and enforcement.

1. A violation of subsection (b) shall be subject to the following fines:
 - a. If the violation is the first offense, a person shall receive a civil fine of \$1,000.00;
 - b. If the violation is the second violation within the preceding six months, a person shall receive a civil fine of \$2,000.00;
 - c. If the violation is the third violation within the preceding six months, a person shall receive a civil fine of \$3,000.00;
 - d. If the violation is the fourth or subsequent violation within the preceding 2 months, a person shall receive a civil fine of \$5,000.00.
2. Enforcement. The Miami Beach police department, the Parking Department or the Code Compliance Department shall enforce this section. This shall not preclude other enforcement agencies from any action to assure compliance with this section and all applicable laws. If a violation of (b) is observed, the lower case enforcement officer will be authorized to issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.
3. Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.

- a. A violator who has been served with a notice of violation must elect to either:
 - i. pay the civil fine in the manner indicated on the notice of violation; or
 - ii. request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.
 - b. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. 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.
 - c. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the violation is deemed valid. The failure of the named violator to appeal the decision of the police officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.
 - d. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.
 - e. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
- (d) 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.

(e) The special master shall not have discretion to alter the penalties prescribed in subsection (c)(1).

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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 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. REPEALER.

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

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this ____ day of _____, 2015.

ATTEST:

PHILIP LEVINE, MAYOR

RAFAEL GRANADO, CITY CLERK

Underscore denotes new language
~~Strike-through~~ denotes deleted language

(Sponsored by Commissioner Michael Grieco)

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

Rafael Granado 8-25-15
City Attorney Date
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