

ORDINANCE NO. C-13-52

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE AMENDING THE CODE OF ORDINANCES OF THE CITY OF FORT LAUDERDALE, CHAPTER 8, BOATS, DOCKS, BEACHES AND WATERWAYS, ARTICLE V, BOATS AND WATERWAYS, DIVISION 3, BEACH BOATING RESTRICTED AREA, BY PROVIDING FOR THE STATE WATERCRAFT CONCESSIONAIRE OF THE STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR HUGH TAYLOR BIRCH STATE PARK CONCESSION TO OPERATE A WATERCRAFT CONCESSION ON A PORTION OF THE PUBLIC BEACH OWNED BY THE STATE OF FLORIDA BY AMENDING CITY CODE SECTION 8-170, DEFINITIONS AND AMENDING CITY CODE SECTION 8-173 BY CREATING AN EXCEPTION TO THE BEACH BOATING RESTRICTED AREA REGULATIONS FOR A STATE WATERCRAFT CONCESSIONAIRE UNDER A CONCESSION AWARDED BY THE STATE OF FLORIDA, DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR HUGH TAYLOR BIRCH STATE PARK, SUBJECT TO CERTAIN TERMS AND CONDITIONS; AMENDING THE CONDITIONS APPLICABLE TO WATERCRAFT CONCESSION UNDER SECTION 8-174 TO INCLUDE A PERIOD OF TEMPORARY SUSPENSION OF THE OPERATION OF A WATERCRAFT CONCESSION IN ORDER TO PROTECT THE HEALTH, SAFETY AND WELFARE OF THE PUBLIC; AMENDING THE INSURANCE REQUIREMENTS FOR A WAIVER FOR WATERCRAFT CONCESSIONS; REPEALING ANY AND ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, by virtue of Special Warranty Deed dated December 31, 1941 from Hugh Taylor Birch, a widower to the Florida Board of Forestry and Parks, said Deed being recorded at Deed Book 403, Page 478 of the Public Records of Broward County, Florida, the State of Florida acquired fee simple title to a portion of the lands commonly known as Fort Lauderdale public beach; and

WHEREAS, fee simple title to the lands described in Deed Book 403, Page 478 above, ultimately descended by way of Deed Book 403, Page 478 and Deed Book 672, Page 71

CODING: Words, symbols, and letters ~~stricken~~ are deletions; words, symbols, and letters underlined are additions.

and Official Records Book 3709, Page 320 (all of the Public Records of Broward County, Florida) to the Trustees of the Internal Improvements Fund of the State of Florida, except as to that 400 feet lying North of a line 943.43 feet North of the Southern boundary of Section 31, Township 49 South, Range 43 East; and

WHEREAS, fee simple title to the foregoing lands is held subject to a “public beach easement rights” in favor of the City of Fort Lauderdale by virtue of that Easement Deed granted November 25, 1940 to the City of Fort Lauderdale, which Easement Deed is recorded at Deed Book 372, Page 356 of the Public Records of Broward County, Florida; and

WHEREAS, by virtue of the Deeds referenced above, the State of Florida owns four hundred (400) feet of Fort Lauderdale beach not encumbered by the City’s public beach purposes easement arising under Deed Book 372, Page 356, approximately 320 feet of which is North of the tunnel on Fort Lauderdale beach adjacent Beach Gate Breezeway Area A-1-A entrance to Hugh Taylor Birch State Park; and

WHEREAS, the State of Florida, Department of Environmental Protection has a concession agreement to supply a scope of services including bicycle rentals, Segway tours, canoes, kayaks, roller blades, beach chairs and umbrellas, the sale of food and miscellaneous concession items; and

WHEREAS, the State of Florida, Department of Environmental Projection is preparing to award a concession agreement for Hugh Taylor Birch State Park that would permit certain watercraft operations, including personal watercraft, within the four hundred (400) feet of Fort Lauderdale beach which is owned by the State of Florida; and

WHEREAS, pursuant to City Code Section 8-171, et seq. the City has a Beach Boating Restricted Area within which it is unlawful for a person to steer, propel, anchor, moor, operate or cause to be operated, any watercraft within the waters bounded by the mean high water mark of the Atlantic Ocean on the West, the corporate limits on the North, a line one hundred (100) yards East of the mean high water mark of the Atlantic Ocean on the East and on the South an extension of the South boundary line of Parcel “X” of the Point of Americas Plat, according to the Plat thereof, as recorded in Plat Book 69, Page 45 of the Public Records of Broward County, Florida; and

WHEREAS, the State of Florida, Department of Environmental Protection anticipates awarding a new concession agreement for Hugh Taylor Birch State Park which would amend the Beach Boating Restricted Area ordinances in such a manner as to permit a

CODING: Words, symbols, and letters ~~stricken~~ are deletions; words, symbols, and letters underlined are additions.

watercraft operation on that portion of Fort Lauderdale beach which is owned by the State of Florida; and

WHEREAS, City staff recommends amending provisions within the Beach Boating Restricted Area ordinances in such a manner that the person awarded a watercraft concession agreement for Hugh Taylor Birch State Park by the State of Florida, Department of Environmental Protection; and

WHEREAS, in reviewing the provisions within the Beach Boating Restricted Area, the City's Risk Manager has recommended certain amendments addressing the insurance requirements; and

WHEREAS, amending the Beach Boating Restricted Area ordinances in such a manner as to create an exception to the limitations of the Beach Boating Restricted Area ordinances which would permit watercraft concession operations awarded by the State of Florida, Department of Environmental Protection for Hugh Taylor Birch State Park within a limited launching corridor within the four hundred (400) feet of Fort Lauderdale beach which is owned by the State of Florida that takes protection of the bathing public into account serves a valid municipal purpose;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That Section 8-170, Definitions, of the Code of Ordinances of the City of Fort Lauderdale, Florida is hereby amended to read as follows:

Sec. 8-170. Definitions.

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

. . .

State Watercraft Concessionaire means the person awarded the State Watercraft Concession.

State Watercraft Concession means a concession awarded by the State of Florida, Department of Environmental Protection for Hugh Taylor Birch State Park for the operation and

CODING: Words, symbols, and letters ~~stricken~~ are deletions; words, symbols, and letters underlined are additions.

renting by the State Watercraft Concessionaire of manually powered watercraft, mechanically powered watercraft, sail powered watercraft less than twenty-five (25) feet in length or soft-sided watercraft during the term of such State Watercraft Concession, provided, however the term State Watercraft Concession shall be limited to a single State Watercraft Concession covering the same time period.

...

SECTION 2. That Section 8-173, Exceptions, of the Code of Ordinances of the City of Fort Lauderdale, Florida is hereby amended to read as follows:

Sec. 8-173. Exceptions.

Exceptions to the provisions of section 8-171 shall be limited to the following:

(1) Special events of short-term duration such as regattas, tournaments and events of a similar nature. Such special events shall be subject to all other requirements of this Code.

(2) Watercraft concessions may be operated through the restricted area only in a corridor, as authorized by a waiver granted under section 8-184.

(3) Any type of watercraft operated by a residential owner, including such residential owner's guests and invitees, in the restricted area seaward of such residential owner's property, where the operation of such watercraft is strictly accessory or incidental to the residential or recreational use of upland property. No commercial operation of watercraft shall be permitted under this subsection. Ingress to and egress from such residential owner's property and the eastward boundary of the restricted area shall be by the safest most direct route, with mechanically powered watercraft proceeding at slow down minimum wake speed, as defined in section 8-166 (b) (1), and sail powered watercraft proceeding at the minimum speed necessary to maintain safe steerage. Any watercraft allowed to operate under this exception may also anchor offshore of such property.

(4) The intrusion into the restricted area by any watercraft incapable of proper navigation due to safety threatening weather conditions or mechanical breakdown.

(5) Soft-sided and wave powered watercraft, except that such watercraft shall not operate in marked corridors.

CODING: Words, symbols, and letters ~~stricken~~ are deletions; words, symbols, and letters underlined are additions.

(6) Only the following forms of watercraft may be launched from, operated on adjacent waters of, and returned to the public beaches defined in section 8-52 and 8-71:

- a. Sail and manually powered watercraft under twenty-five feet in length, not equipped with a mechanical source of power, only in areas designated by the city manager.
- b. Waver powered watercraft, only in areas designated by the city manager.
- c. Any type of watercraft authorized under a concession agreement with the City as provided in section 8-55.1, provided that the city shall be limited to only one (1) concession agreement under section 8-55.1 for motorized watercraft.
- d. Soft-sided watercraft, except in designated watercraft launch areas.
- e. In the restricted area adjacent to the public beach described in section 8-52, the city manager may authorize the operation of watercraft in a designated corridor solely for the purpose of allowing the patrons of a food service establishment which is accessory to a hotel or motel located east of the easternmost public road right-of-way to anchor watercraft offshore of such establishment. Such establishment, by agreement with the city, shall be solely responsible for the maintenance of the corridor and shall indemnify the city for all activities therein. The city may require the inclusion of other terms and conditions which the city manager finds are necessary to protect the public. The city manager may suspend or revoke such agreement at any time if he finds that there is a threat to the health, safety and welfare of the public. The provisions of this subsection (6)e. are repealed eighteen (18) months from the effective date hereof, unless readopted by the city commission.

(7) Watercraft owned, operated or rented by the State Watercraft Concessionaire may be launched from, operated on adjacent waters of, and returned to the public beaches within a corridor hereinafter set forth, subject to the following terms and conditions:

- a. The State Watercraft Concession operation must comply with sections 8-174 (1), (3)–(7), (9)–(12) and (14); and
- b. The launch corridor within which the State Watercraft Concession may be operated shall be limited to a one hundred (100) foot corridor within that four

CODING: Words, symbols, and letters ~~stricken~~ are deletions; words, symbols, and letters underlined are additions.

hundred (400) feet portion of the public beach which is owned by the State of Florida, the Southernmost boundary of such one hundred (100) foot corridor shall be two hundred (200) feet North of City Lifeguard Tower 15; and

- c. The State Watercraft Concessionaire shall maintain, during the term of the State Watercraft Concession, commercial general liability (CGL) insurance covering bodily injury and property damage in an amount not less than one million dollars (\$1,000,000.00), per occurrence, combined single limit. The City shall be named as an additional insured on the policy. All policies shall be maintained in full force and effect at all times the watercraft rental concession is in operation and shall be endorsed to provide the city with thirty (30) days advance written notice of cancellation. All policies shall be issued by an insurance company authorized to issue policies in the State of Florida, subject to the approval of the City’s Risk Manager.
- d. The State Watercraft Concessionaire shall maintain, during the term of the State Watercraft Concession, auto insurance in compliance with Florida State Statutes for any owned, non-owned, hired, borrowed, leased or used vehicles operated in connection with the watercraft rental concession. All policies shall be issued by an insurance company authorized to issue policies in the State of Florida, subject to the approval of the City’s Risk Manager.
- e. The exception for the State Watercraft Concession established under section 8-173 shall be subject to suspension or revocation by the City Manager in the manner set forth in section 8-177 for failure to comply with any of the conditions set forth in section 8-173 (7)a. through d.

SECTION 3. That Section 8-174, Waiver for watercraft concession, of the Code of Ordinances of the City of Fort Lauderdale, Florida is hereby amended to read as follows:

Sec. 8-174. Waiver for watercraft concession.

A waiver from the provisions of section 8-171 may be granted to a commercial owner and the city (as to the public beach areas defined in section 8-52 and section 8-71) for the operation of one or more watercraft concession, subject to the following conditions:

...

CODING: Words, symbols, and letters ~~stricken~~ are deletions; words, symbols, and letters underlined are additions.

(15) When, in the opinion of the City’s Chief of Ocean Rescue, or his designee, conditions exist such as lightning, dangerous surf conditions, high winds, special events causing a heavy concentration of bathers within a launch corridor or other conditions that pose dangerous conditions and conflict between watercraft usage in the launch corridor and the threat of bodily harm to the general public within the launch corridor, then use of watercraft within the launch corridor may be temporarily suspended by the City’s Chief of Ocean Rescue in order to protect the public’s health, safety and welfare. The period of temporary suspension shall last for such period as the dangerous conditions persist in the opinion of the City’s Chief of Ocean Rescue. Notice of such temporary suspension shall be given to the personnel responsible for the watercraft concession operation within the launch corridor.

SECTION 4. That Section 8-175, Waiver application, of the Code of Ordinances of the City of Fort Lauderdale, Florida is hereby amended to read as follows:

Sec. 8-175. Waiver application.

An application for a waiver with an application fee to be set by the city manager, which such application fee shall be set in accordance with the actual cost to the city of administering this waiver application process, but not to exceed five hundred dollars (\$500.00), shall be filed with the city manager and include the following information:

. . .

~~(6) Insurance. Proof of public liability and property damage insurance coverage in the minimum amount of one million dollars (\$1,000,000.00) combined single limit. All policies shall be maintained in full force and effect at all times a watercraft rental concession is in operation and shall be endorsed to provide the city with thirty (30) days advance written notice of cancellation.~~

- a. Proof of commercial general liability (CGL) insurance covering bodily injury and property damage in an amount not less than one million dollars (\$1,000,000.00), per occurrence, combined single limit. The City shall be named as an additional insured on the policy.
- b. Proof of auto insurance in compliance with Florida State Statutes for any owned, non-owned, hired, borrowed, leased or used vehicles operated in connection with the watercraft rental concession.

CODING: Words, symbols, and letters ~~stricken~~ are deletions; words, symbols, and letters underlined are additions.

c. All policies shall be maintained in full force and effect at all times the watercraft rental concession is in operation and shall be endorsed to provide the city with thirty (30) days advance written notice of cancellation. The policies shall be issued by an insurance company authorized to issue policies in the State of Florida, subject to the approval of the City’s Risk Manager.

...

SECTION 5. That if any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 6. That all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed.

SECTION 7. That this Ordinance shall be in full force and effect ten days from the date of final passage.

PASSED FIRST READING this the 17th day of December, 2013.

PASSED SECOND READING this the ____ day of _____, 2014.

Mayor
JOHN P. “JACK” SEILER

ATTEST:

City Clerk
JONDA K. JOSEPH

L:\COMM 2013\Ords\December 17\rbd BirchStatePark.docx

CODING: Words, symbols, and letters ~~stricken~~ are deletions; words, symbols, and letters underlined are additions.