Sec. 8-144. - Private use of public property abutting waterways.

The city commission, by resolution duly adopted, may grant a dock permit for the use by private persons of certain public property abutting or touching a waterway, including some public property described in section 8-143 as set forth herein, except: (i) areas being utilized as municipal docks for which docking fees are being charged and collected and those areas under license by the city; (ii) street ends as more particularly defined herein; (iii) city parks; (iv) subject to certain conditions set forth in subsection (17) hereof. Upland parcels with property lines that abut or are contiguous to a navigable waterway independent of that described in section 8-143(a), and (v), certain upland parcels falling within the ambit of the Florida Supreme Court case of Burkart v. City of Fort Lauderdale, 168 So. 2d 65 (Fla. 1964) and more particularly defined below in subsection (18) hereof, said dock permits may be granted under the following conditions and restrictions, to-wit:

(1) Application for a dock permit under this section shall be accompanied by an administrative fee, the amount of which shall be reflective of the cost of administering the application, review and adoption of resolution granting a permit for the use by private persons of public property abutting or touching a waterway and shall be established from time to time by the city commission by duly adopted resolution. As to upland parcels, the application shall also be accompanied by a survey of the upland parcel and adjacent waterway qualifying for the dock permit with the side property lines and side yard setback lines extended into the abutting waterway. The application shall further be accompanied by a sketch and description illustrating the specific location and dimensions of the dock area and public swale area, as more particularly defined below, to be reviewed and recommended for approval to the city commission. An application for a dock permit may be filed by contract vendee prior to obtaining fee simple title to the upland parcel, provided, however, the granting of a dock permit will not be effective until such time as the conveyance of fee simple title of the upland parcel to the applicant has been recorded in the Public Records of Broward County. Florida.

(a) Ten (10) days prior to adoption of the resolution granting a dock permit, the applicant shall: (i) execute a covenant running with the land, in a form and content acceptable to the city attorney, binding the obligation of maintenance, repair, and reconstruction and timely removal of the dock and appurtenant seawall to the applicant/permit holder and qualifying upland parcel and providing for a claim of lien to be recorded against the qualifying upland parcel for costs expended by the city in maintaining, repairing, or reconstructing the permitted dock upon the failure permit holder's obligations relative thereto and removal of the permitted dock upon failure of the dock permit holder to remove the dock within the time specified in subsection 4(c) hereof, which such covenant shall be recorded by the city in the Public Records of Broward County, Florida, at the permit holder's

expense. In the event a claim of lien is recorded against the upland parcel and the city is thereafter reimbursed for the costs underlying the claim of lien, the city shall record a release, discharge or satisfaction of the claim of lien. In the event the dock and all appurtenances are timely removed, the covenant running with the land shall be released and discharged by the city, executed by the city manager or deputy city manager and such release or discharge shall be recorded by the city in the Public Records of Broward County, Florida, at the expense of the permit holder.

(2) The dock permit granted herein shall not be effective until such time as: (i) a certified copy of the resolution granting the dock permit has been recorded in the Public Records of Broward County, Florida by the city at the expense of the applicant/permit holder; (ii) together with a recorded copy of the covenant running with the land as referenced in subsection 1(a) above; and (iii) a copy of the recorded resolution and covenant running with the land is filed with the city's office of marine facilities. In order to optimize and preserve the existing character of the surrounding neighborhood, applicants for a permit under this section are limited to owners of upland parcels as hereinafter defined.

(a) An "upland parcel" is a parcel of land that by extending the side property lines thereof to perpendicularly intersect with the boundary lines of the adjacent waterway defined in section 8-143, where the upland parcel lies directly across the street from the public property abutting or touching a waterway identified in city code section 8-143, for which one may qualify for applying for a dock permit ("Public Dock Permit Parcel"). To qualify as an upland parcel, a principal building must be situated thereon. The owner(s) of the upland parcel, including contract vendees thereof, shall be the only person(s) eligible to apply for a dock permit for the public dock permit parcel across the street from the upland parcel.

(b) For a public dock permit parcel for an upland parcel where there is a curvature to the boundaries of the waterway, the office of marine facilities shall make recommendations to the marine advisory board with respect to criteria: (i) the length of the dock; (ii) the size and dimensions of the envelope within which a vessel may be berthed; (iii) dock area and public swale area as defined below. In its review, the marine advisory board shall make recommendations to the city commission as to: (i), (ii) and (iii) above, as well as other relevant terms and conditions. Applicants for a dock permit under this subsection 2(b) shall be limited to owners of upland parcels for which side property lines intersect in a non-perpendicular manner with the boundary lines of the adjacent waterway as defined in section 8-143.

(3) To allow the general public's access to the waterway abutting the public dock permit

parcel, the permitted length of a marginal permitted dock shall not exceed the width of the corresponding upland parcel as measured from the extension into the waterway of the side yard setbacks for the principal building on the upland parcel. The permitted length of a marginal permitted dock under subsection 2(b) above shall be determined by the city commission upon review of the marine advisory board recommendations. No vessel may be berthed in such a manner that it encroaches into the area proscribed under section 47-19.3(h). The permitted berthing envelope for a vessel shall be determined by the city commission upon review of the marine advisory board recommendations for public dock permit parcels described in subsection 2(b) above. The berthing of a vessel in such a manner that encroaches into the area proscribed under section 47-19.3(h) or exceeds the permitted berthing envelope as determined by the city commission for public dock permit parcels described in section 2(b) hereof shall be unlawful and a violation of this Code as set forth in section 1-6.

(4) (a) During the term of the dock permit, the permit holder shall be required to repair, replace, reconstruct or maintain the dock or adjacent seawall or both to meet the requirements of section 47-19.3(f). "Boat slips, docks, boat davits, hoists and similar mooring structures" of the city's Unified Land Development Code and other relevant terms and conditions imposed by the resolution granting the dock permit. Permit holder shall also be required, during the term of the dock permit, to post and maintain a city-issued sign on the dock indicating the Resolution No. that authorized the permit to use the dock.

(b) The permit to use the dock shall expire upon the: (i) abandonment of the use of the dock; or (ii) recordation of the deed of conveyance transferring title to the upland parcel; or (iii) termination, expiration or revocation of the dock permit by the city commission, whichever (i), (ii) or (iii) shall first occur, subject to survivability of the obligation to remove the dock pursuant to subsection 4(c) below and the obligations within the covenant running with the land as set forth in subsection 1(a) hereof.

(c) Except as set forth in subsection 4(e)(d) below, upon expiration of the permit to use the dock, the permit holder shall be obligated to remove the dock and all appurtenances thereto no later than three (3) months after the termination, revocation or expiration of the permit to use the dock. This provision shall be a continuing obligation that survives expiration of the permit to use the dock.

(d) In the event a dock permit is granted to a successor applicant for the same public dock permit parcel within the time proscribed in subsection 4(d) hereof, the obligation to remove the dock and all appurtenances thereto shall be discharged as to the former permit holder and a release and discharge of the covenant

running with the upland parcel shall be executed by the city manager or deputy city manager and recorded by the city in the Public Records of Broward County, Florida at the expense of the permit holder.

(e) The dock permit granted may be revoked by the city commission for good cause shown upon at least ninety (90) days advance notice to the permit holder and an opportunity for the permit holder to be heard.

(5) All improvements such as docks, seawalls and the like which are made or placed upon the public dock permit parcel or within the dock area and public swale area by a private person shall be constructed with appropriate permits from all applicable regulatory authorities having subject matter jurisdiction regarding such matters. All maintenance and repairs shall be performed according to city engineering standards and all applicable regulatory codes including the city's Unified Land Development Code regulations, Florida Building Code and Broward County Amendments thereto.

(6) All docks installed pursuant to this section must be either: (i) floating docks that can adapt to sea level rise over their useful life span; or (ii) fixed docks installed at a minimum elevation consistent with the requirements of section 47-19.3(f); or (iii) fixed docks the height of which are even with the city's seawall, whichever (ii) or (iii) is the greater. Penetrating the city seawall to support the dock or permanently attaching improvements, such as cleats, ladders, ramps, mooring whips or similar devices to the city's seawall is prohibited, unless: (a) specifically recommended pursuant to the dock building permit review process; or (b) where the seawall and dock are being constructed by the dock permit holder; or (c) upon demonstration of hardship, as it relates to accommodations under the Americans with Disability Act, as same may be amended from time to time and as authorized in the resolution granting the dock permit.

(7) The holder of the permit shall be responsible for maintaining improvements within the dock area, as hereinafter defined and for maintaining and beautifying the public swale area, as hereinafter defined. The public swale area shall be landscaped in accordance with: (i) the established landscape plan for the area in question adopted by the department of sustainable development; or (ii) a landscape plan approved by the department of sustainable development and embodied in the resolution adopted by the city commission granting the permit under this section. Failure to do so shall be grounds for revocation of the permit.

(a) For the purposes of this section, the term "dock area" shall mean that area bounded by: (i) the upland cap of the seawall abutting the dock; and (ii) extending over the water the length and width of the dock; and (iii) including the area within which the vessel may be berthed and all appurtenances to the dock area. The length of the dock shall not exceed: (1) the distance between the extension into the waterway of the two (2) side yard setbacks for the principal building on the

corresponding upland parcel; nor (2) the boundaries of the dock as set by the city commission pursuant to subsection 2(b) above, whichever (1) or (2) above is applicable.

(b) For the purposes of this section, the term "public swale area" shall be the area: (1) within the waterward extension of the side property lines of the upland parcel from the edge of the adjacent publicly dedicated right-of-way closest to the waterway to the wet-faced edge of the seawall cap, excluding therefrom the dock; or (2) the boundaries of the dock as set by the city commission pursuant to subsection 2(b) above, whichever (1) or (2) above is applicable.

(8) Parking in the public swale area, where allowed, is intended to be temporary in nature. Overnight or long-term parking by persons associated with upland property owners under subsection 2(a) or (b) hereof both with and without a dock permit is discouraged. There shall be no fueling of vessels from tank trucks along the adjacent publicly dedicated right-of-way.

(9) The holder of such dock permit shall not charge or collect any rent or fees from anyone using such dock constructed on the public dock permit parcel. Signage such as "private dock" may be placed on the dock within the dock area. No signage shall be placed upon or within the public swale area. Only vessels owned by the permit holder and registered with the city as part of the dock permit application or amended thereafter may be moored at the permitted dock. Except as to a tender, there shall be no rafting of vessels from the vessel moored at the permitted dock. The berthing of a vessel at a public dock permit parcel that is not authorized pursuant to the city commission granting a dock permit ("Unauthorized Vessel") shall be unlawful and a violation of the Code pursuant to section 1-6.

(10) A permit granted to a permit holder to construct a dock or authorization to use an existing dock upon the public dock permit parcel and the acceptance and use of same by the permit holder shall constitute a guarantee from the permit holder to the city to indemnify and hold the city harmless for any damage or injury to any person using such facilities.

(11) The public swale area shall be kept open at all times as means of reasonable ingress and egress to the public, but the permit holder shall have the right to exclude the public from the dock area.

(12) The violation of any provisions of this section or any regulations relating thereto hereinafter enacted or violations of any of the terms or conditions relative to the granting or renewal of a dock permit shall be unlawful and a violation of this Code pursuant to section 1-6 and may also constitute cause for revocation of the permit.

(13) The resolution granting the permit or the administrative approval of the permit for a renewal term may specify additional reasonable terms and conditions pertaining to the

use or improvement of the public dock permit parcel.

(14) Only public lands which are not needed by the city for public docking purposes are available for private use under the terms hereof, and the supervisor of marine facilities shall furnish to the city manager a complete list of all street-ends and other city-owned property abutting waterways which is not needed for dockage purposes from time to time, provided, however, no dock permits shall be issued under subsection (15), (16), (17), and (18), except in compliance with the terms and conditions thereof.

(15) No dock permits shall be issued for public dock permit parcels where the public right-of-way terminates at the waterway (e.g. "street ends"). For dock permits that were issued for street-ends prior to June 1, 2019, those dock permits shall continue to remain valid, until expiration of their initial term, and, upon renewal such dock permit shall be subject to the terms and conditions set forth in any renewal permits and this section, other than the prohibition against issuance of dock permits for street-ends.

(16) To preserve the general public's right to intermittently use and have access to city parks located on waterways, no dock permits shall be issued for parcels where the public right-of-way is located within city-owned land that is used for park purposes. For dock permits that were issued for city-owned land that was used for park purposes at the time of issuance, those dock permits shall continue to remain valid, until expiration of their initial term, and, upon renewal such dock permit shall be subject to the terms and conditions set forth in any renewal permits and in this section, other than the prohibition against issuance of dock permits along public rights-of-way within city-owned lands used for park purposes.

(17) Other than upland parcels referenced in subsection (18) below, subject to exceptions hereinafter set forth, no dock permits shall be issued for upland parcels that abut and are contiguous to a waterway and have riparian rights relative thereto after July 1, 2025 or after such date that the city raises the seawall with municipal funds, whichever is first. For dock permits that were issued prior to June 1, 2019 for upland parcels that abutted and are contiguous to a waterway and to which riparian rights have attached thereto, those dock permits shall continue to remain valid until expiration of their initial term, and, upon renewal such dock permit shall be subject to the terms and conditions set forth in any renewal permits and this section, other than the prohibition against issuance of dock permits for upland parcels that abut a waterway and have riparian rights. Any permits for these upland parcels issued after June 1, 2019 will require the raising of the seawall by the applicant to the current elevation standard as a condition of the dock permit.

(18) In accordance with the Florida Supreme Court holding in Burkart v. City of Fort Lauderdale, 168 So. 2d 65 (Fla. 1964), dock permits shall not be required for the following lots and blocks set forth on the Plat of IDLEWYLD, as recorded in Plat Book 1,

Page 19 of the Public Records of Broward County, Florida: Lots 1—5 and 11—12 Block 1; Lots 1—6 Blocks 2, 3, 4, 5, 6, and 8; Lots 1-7, Block 8: and Lots 1—3 and 27—32, Block 12 thereof.

(Code 1953, § 11-12; Ord. No. C-68-23, § 2, 6-4-68; Ord. No. C-87-95, § 1, 11-17-87; Ord. No. C-17-28 , § 20, 9-13-17; Ord. No. C-19-22 , § 1, 10-2-19)