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**DIVISION 3. - BEACH BOATING RESTRICTED AREA**

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**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:

*Business operator* means a lessee, licensee, franchisee or other person expressly authorized by a commercial owner to engage in the business of operating a watercraft concession on property subject to a waiver pursuant to section 8-174.

*Chase watercraft* means a watercraft available solely for the purpose of effecting a sea rescue in an emergency or for the purpose of ensuring that rental watercraft are operated in compliance with federal or state law or with city or county ordinances.

*Commercial owner* means the owner or lessee (under a lease of at least fifty (50) years) of property located east of the right-of-way of State Road A-1-A and upon which stands a hotel or motel abutting the sandy beach; provided, however, that commercial owner shall not include owners or lessees of properties described above if (a) the abutting sandy beach is dedicated to the public or (b) the public beach as defined in section 8-52 and section 8-71 lies eastward of such owner's or lessee's platted property.

*Corridor or marked corridor* means a defined area within the restricted area leading from the shoreline to the eastern boundary of the restricted area, established in conjunction with the approval of a waiver for watercraft concessions pursuant to section 8-174, in which certain forms of watercraft may be operated.

*Customer* means a person renting watercraft to be operated in a corridor, or using watercraft operated in a corridor whether or not consideration has been paid for such use. The term does not mean a commercial owner, a business operator or an employee of either.

*Manually powered watercraft* means watercraft which use human physical effort as their primary source of motive power, such as kayaks or rowboats.

*Mechanically powered watercraft* means watercraft which use an internal combustion engine or an electric motor as their primary source of motive propulsion.

*Residential owner* means the owner of property located east of the right-of-way of State Road A-1-A abutting the sandy beach upon which stands a single-family dwelling, townhouse, condominium or co-operative residential structure or upon which property a club for recreational purposes is operated.

*Restricted area* means the area defined in section 8-171.

*Sail powered watercraft* means watercraft whose primary source of propulsion is the wind, such as sailboats and sailboards.

*Soft-sided watercraft* means personal floating rafts, inner tubes and other soft or inflatable objects used for passive water recreation.

*Waiver* means permission from the city for a commercial owner of appropriately zoned property to operate or contract one (1) or more watercraft concessions within corridors through the restricted area.

*Watercraft concession* mean a business operating mechanically powered, manually powered or sail powered watercraft or other watercraft used for active recreation. Mechanically powered watercraft used in a corridor must have a guarded propeller or use jet propulsion.

*Watercraft operator* means a person who is in actual physical control of or steering any form of watercraft rented from a watercraft concession other than soft-sided watercraft.

*Wave powered watercraft* means devices designed to be propelled by wave action, such as surfboards.

(Ord. No. C-93-26, § 1, 5-18-93; Ord. No. C-96-24, § 1, 5-21-96)

#### **Sec. 8-171. - Restricted area.**

Except as hereinafter provided, it shall be unlawful for any person to steer, propel, anchor, moor, operate or cause to be operated, any watercraft within the waters of the following described area:

An area 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 Point of Americas Plat, according to the plat thereof, recorded in Plat Book 69, Page 45 of the Public Records of Broward County, Florida.

No part of the Florida Intracoastal Waterway shall be included in the above described area.

(Ord. No. C-93-26, § 1, 5-18-93; Ord. No. C-94-55, § 1, 11-15-94)

#### **Sec. 8-172. - Government watercraft not included.**

Watercraft operated by or under the direction of the federal, state, county or city governments, while engaged in law enforcement or other necessary governmental functions, shall be exempt from the restrictions set forth in section 8-171.

(Ord. No. C-93-26, § 1, 5-18-93)

#### **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 operate through the restricted area only in a corridor, as authorized by a waiver granted under section 8-174
- (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.
- (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 (25) feet in length, not equipped with a mechanical source of power, only in areas designated by the city manager.
  - b. Wave 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.

(Ord. No. C-93-26, § 1, 5-18-93; Ord. No. C-96-24, § 1, 5-21-96; Ord. No. C-97-12, § 1, 5-6-97)

#### **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 of more watercraft concessions, subject to the following conditions:

- (1)

One (1) or more corridors extending from the shoreline to the eastward extremity of the restricted area, which corridor or corridors shall be marked with buoys or similar devices conforming to the uniform state waterway marking system, shall be established for the passage of watercraft rented by customers, watercraft used by the business operator to transport customers to watercraft recreation activities beyond the restricted area, and chase watercraft through the restricted area. Mechanically powered watercraft operated in a corridor must have a guarded propeller or use jet propulsion. The buoys or other similar devices shall be installed, maintained and replaced as required, by the commercial owner or business operator for as long as the corridor is in effect.

- (2) The specific location and width of the marked corridors shall be subject to the approval of the city in accordance with the following provisions:
  - a. The upland property of the commercial owner must have at least twenty-five (25) yards of beachfront.
  - b. The corridor shall be designed so as to provide an appropriate level of safety for the type of watercraft that will transit therein.
- (3) The commercial owner or business operator shall provide watercraft operators renting watercraft a written form notifying the watercraft operators of the special operating conditions set forth in this section and of the applicable penalties for violating any of the conditions. Before permitting rental watercraft to be operated within the corridor, the commercial owner or business operator shall have the watercraft operator sign the form, acknowledging that the operator has read the form and will comply with the special operating conditions.
- (4) The commercial owner or business operator shall maintain a safety watch whenever any rental watercraft, other than a soft-sided watercraft, is in operation. The beachfront of each corridor shall be marked with one (1) sign on each side of the corridor of a size and color sufficient to warn all swimmers to stay out of the corridor; all such signs shall conform to Chapter 47 of this Code.
- (5) All mechanically powered watercraft operators (other than the chase watercraft operator) shall proceed in the marked corridor at slow down minimum wake speed, as defined in section 8-166(b)(1), and sail powered watercraft operators shall proceed at the minimum speed necessary to maintain safe steerage. All watercraft operators shall yield the right-of-way to any swimmer. The commercial owner or business operator shall warn the watercraft operators when operating in the marked corridor to proceed at the appropriate speed and to yield the right-of-way to any swimmer and shall ensure that all rental watercraft meet all applicable federal and state safety equipment requirements. The commercial owner or business operator shall provide a personal flotation device to each individual who will occupy a rental watercraft, other than a soft-sided watercraft, and shall stress the importance of wearing same while the watercraft is being operated.
- (6) At least one (1) chase watercraft shall be readily available in close proximity to the marked corridor for use by the commercial owner or business operator whenever any rental watercraft, other than a soft-sided watercraft, is in operation. Such watercraft shall be clearly identifiable as such with markings to be approved by the city.
- (7) The rental watercraft of the commercial owner or business operator shall be color coded or otherwise plainly marked so as to permit the identification of the ownership of the rental watercraft from a distance of one hundred fifty (150) yards, and so as to

distinguish the chase watercraft from the rental watercraft of the commercial owner or business operator.

- (8) A commercial owner may not assign, sell, encumber or otherwise transfer a waiver. Any change of ownership of the commercial owner's property shall require the new owner to submit a new application subject to all of the conditions and requirements of this division.
- (9) A business operator may not assign or otherwise transfer his rights under a waiver until the new business operator has submitted to the city manager a signed statement that the new business operator agrees to be bound by all of the conditions and requirements of this division.
- (10) While in use, rental watercraft may be stored on the sandy beach above the high water mark. Overnight storage shall be allowed only if suitable measures are taken to secure the rental watercraft and associated equipment at a non-permanent storage area above the high water mark. Such storage area shall be subject to approval by the city.
- (11) Fuel handling by the commercial owner or business operator on the sandy beach shall conform to the following measures, in addition to any other applicable laws or regulations:
  - a. All fuel containers shall be placed in city fire department approved containment vessels located above the high water mark to protect the beach environment from fuel spillage. A maximum of twenty-five (25) gallons of fuel may be stored at any one time per concession.
  - b. There shall be contingency plans for a fuel spill and equipment to contain and clean same shall be immediately available. The details of such plan shall be submitted to the city prior to the commencement of fuel handling on the sandy beach.
  - c. No fuel may be stored overnight.
- (12) Major repairs of watercraft on the sandy beach are prohibited.
- (13) The establishment of watercraft concessions for the city on the public beaches shall be in the manner set forth for recreation concessions in section 8-55.1, provided that the city shall be limited to one (1) concession agreement under section 8-55.1 for motorized watercraft.
- (14) Any personal watercraft, as defined in Chapter 327, Florida Statutes, which are used by a watercraft concession operated under this section, shall be supplied with the best available technology for noise muffling.

(Ord. No. C-93-26, § 1, 5-18-93; Ord. No. C-96-24, § 1, 5-21-96; Ord. No. C-97-12, § 2, 5-6-97)

### **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:

- (1) The name, address, telephone number and signature of the commercial owner.
- (2) The address of the premises from which the watercraft rental concession will be conducted.
- (3) The name, address, telephone number and signature of the business operator.

- (4) A complete description of all activities proposed to be conducted under the waiver, including a description of the various types, sizes and approximate numbers of watercraft to be operated and a statement of provisions to be made for the safety of the public during operation under the waiver.
- (5) A drawing showing the specific location of the activities to be conducted under the waiver and indicating the specific location and width of the marked corridor or corridors, the position of the buoys and beach front signage.
- (6) 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.
- (7) Any additional information which is reasonably necessary to enable the city commission to determine whether the activities proposed to be conducted under the waiver may constitute a reasonably likely threat of endangering public safety.

(Ord. No. C-93-26, § 1, 5-18-93)

#### **Sec. 8-176. - Action by the marine advisory board and city commission.**

The marine advisory board shall initially review the waiver application and submit its recommendation to the city commission. The city commission, at a public hearing, may grant or deny an application. Among other factors, the city commission may consider whether:

- (1) The waiver application is incomplete in a material respect.
- (2) The waiver application has been fraudulently completed.
- (3) The activity proposed under the waiver application could not be conducted without a reasonably likely threat of endangering public safety.

(Ord. No. C-93-26, § 1, 5-18-93)

#### **Sec. 8-177. - Suspension; revocation.**

- (a) Any waiver granted under the provisions of this division may be suspended or revoked by the city manager following notice to the commercial owner or business operator for any of the following reasons:
  - (1) Upon discovery that the waiver application was fraudulently completed.
  - (2) When the city manager finds that any activity conducted under the waiver presents a clear and present danger to members of the public. Clear and present danger as used herein means such activity creates a reasonably likely threat of endangering public safety. It shall be permissible inference that an activity creates a reasonably likely threat of endangering public safety if customers of a commercial owner or business operator have been issued nine (9) citations within the fiscal year of the city for operating the watercraft for which the commercial owner has been granted a waiver in violation of this division or other city or county ordinance or in violation of any federal or state law. For the purposes of this subsection, only those citations resulting in a finding of guilt by a court of law, or for which a plea of guilty or nolo contendere is entered, regardless of whether a violator is formally adjudicated guilty, applies.
  - (3) Upon discovery that the commercial owner or business operator has failed to fulfill any one of the obligations imposed on the commercial owner or business operator by this division, other than those pertaining to watercraft.

- (4) When the operation of any watercraft permitted to be operated through the corridor results in a death or any injury to any swimmer or operator within the restricted area or marked corridor, if the negligence of the commercial owner or business operator contributed to such injury or death.
- (5) When the commercial owner, business operator or their employees have been issued six (6) citations within the fiscal year of the city for violating any of the provisions of this division or other city or county ordinance or any federal or state law pertaining to watercraft. For the purposes of this subsection, only those citations resulting in a finding of guilt by a court of law, or for which a plea of guilty or nolo contendere is entered, regardless of whether a violator is formally adjudicated guilty, shall apply.
- (b) Prior to a suspension or revocation becoming effective, the commercial owner or business operator shall be entitled to be heard by the city commission upon the filing of a request for such hearing, if the request is filed with the city clerk within five (5) business days after receipt of notice of suspension or revocation. The city commission may uphold, modify or repeal the suspension or revocation.

(Ord. No. C-93-26, § 1, 5-18-93; Ord. No. C-96-24, § 1, 5-21-96)

#### **Sec. 8-178. - Effective date.**

This division shall become effective only upon approval by the Florida Department of Natural Resources of the boating restricted area and the completion of installation of regulatory markers by the city to delineate such area. The city shall publicize the effective date by means reasonably calculated to inform interested persons. Owners with contractual arrangements with a business operator to conduct watercraft rentals, in existence prior to such effective date, shall have sixty (60) days from such effective date to submit an application for a waiver as provided herein.

(Ord. No. C-93-26, § 1, 5-18-93)