

ORDINANCE NO. 2015-3951

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 66, "MARINE STRUCTURES, FACILITIES AND VEHICLES," ARTICLE IV, "VESSELS," SECTION 66-151, "LAUNCHING AND HAULING," TO AUTHORIZE THE INSTALLATION OF "TOW-AWAY ZONE" SIGNS ALONG PUBLIC SEAWALLS AND TO AUTHORIZE TOWING; PROVIDING FOR REPEALER; CODIFICATION; SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City Code, Chapter 66, provides for the regulation of vessels and docking, including limitations on docking at public and private land within the City; and

WHEREAS, the City Commission has received complaints about persons docking at public seawalls in single family neighborhoods causing problems and concerns in such neighborhoods; and

WHEREAS, the code currently provides that the launching, docking or hauling of boats from the City's public seawalls within its residential zoning districts is a violation of the City's Code; and

WHEREAS, the City in its proprietary authority, as the owner of many public seawalls within the various residential zoning districts desires to regulate the access to and use of the City's seawalls; and

WHEREAS, the seawalls serve a purpose of protecting the island and any public improvements from seawater encroachment; and

WHEREAS, the seawalls are not designed to act as a dock for the launching, docking or hauling of boats; and

WHEREAS, individuals may be injured due to attempts to improperly tie to or dock at seawalls, as the bayfront may be covered in coral, rocks, oyster beds, or various seaweeds that can cause slipping hazards; and

WHEREAS, improper docking is a liability risk to the City, and the seawalls are not routinely monitored and improper use of the seawalls as a dock, launching or hauling location would not be protective of the health, safety and welfare of the citizens and visitors of Miami Beach; and

WHEREAS, improper and unauthorized docking may result in damage to the seawall; and

WHEREAS, the amendments set forth below are necessary to put the community on notice that such improper unauthorized use or access to the seawalls shall result in towing of the vessel.

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

Section 1. Chapter 66, "Marine Structures, Facilities and Vehicles," Article IV, "Vessels," Section 66-151, "Launching, hauling and docking at public seawall, etc., prohibited," is hereby amended as follows:

* * *

Sec. 66-151. - Launching, hauling and docking at public seawall, etc., prohibited – unauthorized vessels.

(a) No person shall launch, dock, or remove any vessel from the waters of the city over any public seawall, sidewalk, street end, or public property except at locations where a regular business of launching, docking and hauling vessels is conducted, which has the necessary equipment to do such work, or in areas designated and posted for such purpose by the city. Any vessel that is docked along a city seawall shall be considered an unauthorized vessel.

(b) Docking of unauthorized vessels at public seawalls in residential neighborhoods prohibited.

(1) No person shall dock or otherwise secure any vessel, or embark or disembark any passengers or charter parties, at any municipal or public seawall, wharf, dock, or bulkhead, in a residential neighborhood, except in case of emergency involving safety to life or property.

(2) Enforcement and penalties.

a. Civil fine for violators. The following civil fines shall be imposed for a violation of this section:

1. First offense within a 12-month period a fine of \$100.00;
2. Second offense within a 12-month period a fine of \$250.00;
3. Third or fourth offenses within a 12-month period a fine of \$500.00;
4. Fifth offense within a 12-month period a fine of \$1,000.00; and
5. Sixth offense and subsequent offenses within a 12-month period a fine of \$2,500.00.

b. The City may also elect to have the unauthorized vessel towed pursuant to subsection b.2., below.

c. Enforcement.

1. The Code Compliance Department or the Miami Beach Police 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 an enforcing officer finds a violation of this section, the officer shall issue a notice of violation to the violator. The notice of violation 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.

2. The City shall post on all public seawalls the following notice:

"TOW-AWAY ZONE. 24 HOURS; 7 DAYS. UNAUTHORIZED VESSELS WILL BE TOWED AWAY AT OWNERS' RISK AND EXPENSE. [TELEPHONE NUMBER AND NAME OF TOWING COMPANY TO BE INSERTED]"

In order to establish a tow-away zone to remove unauthorized vessels from being docked at or along the city's seawall, the city must provide the above notice. The notice must be prominently placed along the seawall, with not less than one sign for each 25 feet of frontage. The notice must clearly indicate, in not less than two (2) inch high, light-reflective letters on a contrasting background that unauthorized vessels will be towed away at the owner's expense. The words "tow-away zone" must be included on the sign in not less than four (4) inch high letters. The notice must also provide the name and current telephone number of the person or firm towing or removing the vessels. The sign structure containing the required notice must be permanently installed with the words "tow-away zone" not less than three (3) feet and not more than six (6) feet above ground level and must be continuously maintained for not less than 24 hours prior to the towing or removal of any unauthorized vessels.

d. Rights of violators as to fines; 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 as identified in subsection (a) 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 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 special master shall be informed of such failure by report from the officer. Failure of the named violator to appeal the decision of the 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. 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 and it 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. After two months from the recording of any such lien which remains unpaid, the city may foreclose or otherwise execute upon the lien.
5. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.
6. The special master shall be prohibited from hearing the merits of the notice of violation or consideration of the timeliness of the request for an administrative hearing if the violator has failed to request an administrative hearing within ten days of the issuance of the notice of violation.

* * *

SECTION 2. Repealer.

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

SECTION 3. Codification.

It is the intention of the City Commission, 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 as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention, and that the word "ordinance" may be changed to "section" or other appropriate word.

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.

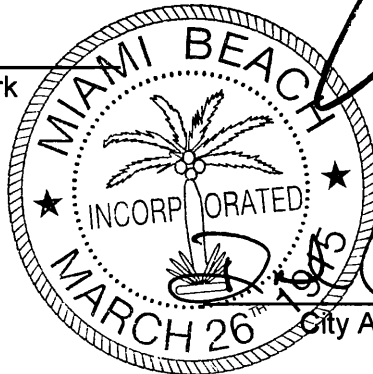
This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this 8 day of July, 2015.

Philip Levine, Mayor

ATTEST:

7/29/15
Rafael E. Granado, City Clerk



APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

[Signature]
City Attorney

6-11-15

Date

First Reading: June 10, 2015

Second Reading: July 8, 2015

Verified by: [Signature]

Thomas R. Mooney, AICP
Planning Director

Underscore denotes new language.

~~Strikethrough~~ denotes deleted language.

[Sponsored by Commissioner Michael Grieco].

Condensed Title:

Second Reading Public Hearing to consider an Ordinance to amend the following: CHAPTER 66, "MARINE STRUCTURES, FACILITIES AND VEHICLES," ARTICLE IV, "VESSELS," SECTION 66-151, "LAUNCHING AND HAULING," TO AUTHORIZE THE INSTALLATION OF "TOW-AWAY ZONE" SIGNS ALONG PUBLIC SEAWALLS AND TO AUTHORIZE TOWING; PROVIDING FOR REPEALER; CODIFICATION; SEVERABILITY AND AN EFFECTIVE DATE.

Key Intended Outcome Supported:

Reform Policing Culture With Customer Service Emphasis.

Supporting Data (Surveys, Environmental Scan, etc.):

The City Commission has received complaints from local residents on this issue. This change to the ordinance will demonstrate and support a customer-focused approach to policing as it will address residents' concerns directly.

Item Summary/Recommendation:

On April 15, 2015, the City Commission approved, at second reading, modifications to Chapter 66, to provide enforcement against improper docking, launching and hauling along all City seawalls, regardless of whether the seawall is in a single-family or multi-family zoning district. Subsequently, the City Marine Patrol and Code Compliance divisions determined that they were not authorized to tow vessels from the City's seawalls, despite the fact that the City's ordinances now preclude the launching, docking or hauling of vessels from the City's public seawalls.

In order to allow the Marine Patrol and Code Compliance to enforce the City's Code, and to be able to tow violating vessels, Chapter 66 is proposed to be amended to specifically authorize the City to tow.

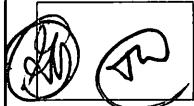
On June 10, 2015 the City Commission approved the Ordinance to amend Chapter 66 at First Reading and scheduled a Second Reading Public Hearing for July 8, 2015.

It is recommended that the Ordinance is adopted.

Advisory Board Recommendation:

NA

Financial Information:

Source of Funds:		Amount	Account
 OBPI	1	\$8,400 p.a.	011-1120000343
	2		
	3		
	Total		

Financial Impact Summary: This forecast is based on estimations of the number and size of towed vessels that might incur costs for the City. These will be met from MBPD general budget.

City Clerk's Office Legislative Tracking:

Chief of Staff Wendy Rich-Goldschmidt ext. 3054

Sign-Offs:

Department Director	Assistant City Manager	City Manager
Chief Daniel J. Oates <i>DJO</i>	<i>[Signature]</i>	<i>[Signature]</i>

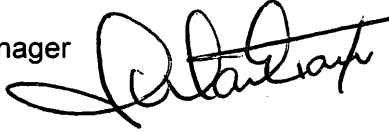
MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager



DATE: July 8, 2015

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 66, "MARINE STRUCTURES, FACILITIES AND VEHICLES," ARTICLE IV, "VESSELS," SECTION 66-151, "LAUNCHING AND HAULING," TO AUTHORIZE THE INSTALLATION OF "TOW-AWAY ZONE" SIGNS ALONG PUBLIC SEAWALLS AND TO AUTHORIZE TOWING; PROVIDING FOR REPEALER; CODIFICATION; SEVERABILITY AND AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

Approve the Ordinance.

HISTORY / BACKGROUND

On June 10, 2015 the subject Ordinance was approved at First Reading.

The City Commission has received complaints about persons docking at public seawalls in both single-family and multi-family zoning districts, causing problems and concerns in such districts. The seawalls serve a purpose of protecting the island and any public improvements from seawater encroachment. The seawalls are not designed to act as a dock for the launching, docking or hauling of vessels. Moreover, individuals may be injured due to attempts to improperly tie to or dock at seawalls, as the bay front may be covered in coral, rocks, oysters beds, or various seaweeds that can cause slipping hazards. Improper docking is a liability risk to the City, and the seawalls are not routinely monitored and improper use of the seawalls as a dock, launching or hauling location would not be protective of the health, safety and welfare of the citizens and visitors of Miami Beach. Improper and unauthorized docking may result in damage to the seawall.

On April 15, 2015, the City Commission approved, at second reading, modifications to Chapter 66, to provide enforcement against improper docking, launching and hauling along all City seawalls, regardless of whether the seawall is in a single-family or multi-family zoning district. Subsequently, the City Marine Patrol and Code Compliance divisions determined that they were not authorized

to tow vessels from the City's seawalls, despite the fact that the City's ordinances now preclude the launching, docking or hauling of vessels from the City's public seawalls.

In order to allow the Marine Patrol and Code Compliance to enforce the City's Code, and to be able to tow violating vessels, Chapter 66 is proposed to be amended to specifically authorize the City to tow.

The amendments set forth below are necessary to place the community on notice that improper unauthorized use or access to the seawalls shall result in towing of vessels.

Proposed Language:

Sec. 66-151. - Launching, hauling and docking at public seawall, etc., prohibited – unauthorized vessels.

(a) No person shall launch, dock, or remove any vessel from the waters of the city over any public seawall, sidewalk, street end, or public property except at locations where a regular business of launching, docking and hauling vessels is conducted, which has the necessary equipment to do such work, or in areas designated and posted for such purpose by the city. Any vessel that is docked along a city seawall shall be considered an unauthorized vessel.

(b) Docking of unauthorized vessels at public seawalls in residential neighborhoods prohibited.

An additional enforcement mechanism has been added to (b)(2)a.6. to provide "The City may alternately elect to have the unauthorized vessel towed pursuant to subsection b.2. below." Pursuant to that subsection the City shall post on all public seawalls the following notice, and comply with the following requirements:

"TOW-AWAY ZONE. 24 HOURS; 7 DAYS. UNAUTHORIZED VESSELS WILL BE TOWED AWAY AT OWNERS' RISK AND EXPENSE. [TELEPHONE NUMBER AND NAME OF TOWING COMPANY TO BE INSERTED]"

In order to establish a tow-away zone to remove unauthorized vessels from being docked at or along the city's seawall, the city, must provide the above notice. The notice must be prominently placed along the seawall, with not less than one sign for each 25 feet of frontage. The notice must clearly indicate, in not less than two (2) inch high, light-reflective letters on a contrasting background that unauthorized vessels will be towed away at the owner's expense. The words "tow-away zone" must be included on the sign in not less than four (4) inch high letters. The notice must also provide the name and current telephone number of the person or

firm towing or removing the vessels. The sign structure containing the required notice must be permanently installed with the words "tow-away zone" not less than three (3) feet and not more than six (6) feet above ground level and must be continuously maintained on the seawall for not less than 24 hours prior to the towing or removal of any unauthorized vessels.

Fiscal Impact:

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action. The Miami Beach Police Department Marine Patrol estimates that they would likely need to arrange for the towing of about 20 small vessels annually with approximately half eventually being claimed. The cost for an outside vendor to provide services quoted a flat rate of \$200 per unit. If half are claimed, the cost incurred by the City is \$2,000 per year. Storage is not a factor as the unclaimed vessels would be sent to auction after 30 days with revenue offsets.

For larger vessels the cost for an outside vendor to provide towing services was quoted at \$200 per hour with a 2 hour minimum. If the vessel is not immediately claimed, there is an additional charge of \$150 to transport the craft to storage. Storage costs are \$75 per day, with a 30 day maximum before disposal. Marine Patrol estimates the need to tow 10 mid to large-sized vessels annually. Of these 10, approximately 2 would fall into the worst case scenario, requiring all aforementioned services. For unclaimed vessels the disposal fee is \$400. This translates to a total of \$3,200 per unit or \$6,400 for two vessels.

The total anticipated cost to the City for both small and mid to large-sized water vessels is approximately \$8,400 annually. The five year forecast would therefore be \$42,000.

The City does not currently have a towing contract in place, for either derelict vessels or towing for a violation of Chapter 66. Marine Patrol vessels are not properly equipped to tow vessels. The City will need to issue a bid for towing services and as part of that bid the City will require the towing company to install the above referenced towing signs along the City's seawalls. The preparation and installation of the signs shall be required under the bid. The City is currently unaware of the cost associated with towing the vessels. There are three vessel related towing companies in Miami-Dade County. If the owner of the vessel claims the vessel from the towing company, the cost associated with the tow would pass to the vessel owner. Otherwise, the City will be responsible for the towing and any disposal costs.


JLM:DJO:DW



CITY OF MIAMI BEACH NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY given that the following public hearings will be held by the Mayor and City Commissioners of the City of Miami Beach, Florida, in the Commission Chambers, Third Floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **July 8, 2015**, at the times listed, or as soon thereafter as the matter can be heard:

10:35 a.m.

An Ordinance Amending Chapter 70 Of The Code Of The City Of Miami Beach, Florida, Entitled "Miscellaneous Offenses," By Amending Article 1, Entitled "In General," By Amending Section 70.1, Entitled "State Misdemeanors," By Creating Subsection (c) Which Provides Civil Penalties For The Possession Of Cannabis (Marijuana) For Amounts Under 20 Grams And Possession Of Drug Paraphernalia; And Setting Forth Penalties And Enforcement Responsibilities For A Violation Of Subsection 70-1(C)(1) And (2); Providing For Repeal; Severability; Codification; And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

10:40 a.m.

An Ordinance Amending Chapter 66, "Marine Structures, Facilities And Vehicles," Article IV, "Vessels," Section 66-151, "Launching And Hauling," To Authorize The Installation Of "Tow-Away Zone" Signs Along Public Seawalls And To Authorize Towing; Providing For Repeal; Codification; Severability And An Effective Date. *Inquiries may be directed to the Police Department at 305.673.7900.*

10:45 a.m.

An Ordinance Amending The Land Development Regulations (LDRs) Of The City Code, At Chapter 118, Entitled "Administrative And Review Procedures," Article VI, "Design Review Procedures; By Modifying Section 118-252, Entitled "Applicability And Exemptions"; To Exclude From Design Review Board Review City Applications Relating To Stormwater Pump Stations; Providing For Codification, Repeal, Severability And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

10:50 a.m.

An Ordinance Amending Chapter 70 Of The Code Of The City Of Miami Beach, Entitled "Miscellaneous Offenses," Article II, Entitled "Public Places," Division 3, Entitled "Alcoholic Beverages," By Amending Section 70-87 Thereof To (1) Clarify That The Consumption, Service, Sale, Or Possession Of Open Containers Of Alcoholic Beverages At Sidewalk Cafes Is Only Permitted During The Hours Set Forth In Chapter 6 Of The City Code, (2) Clarify That Alcoholic Beverage Establishments Shall Not Allow Any Person To Take From The Premises Any Opened Alcoholic Beverage Container Or Any Open Or Unsealed Container Of Alcoholic Beverages, And (3) Amend The Enforcement And Penalty Provisions; And Providing For Repeal, Severability, Codification, And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

10:55 a.m.

An Ordinance Amending Chapter 2 Of The Code Of The City Of Miami Beach, Entitled "Administration," By Amending Article II, Entitled "City Commission," By Amending Section 2-11, Entitled "Time Of Regular Meetings" And Section 2-12, Entitled "Meeting Agendas," By Amending The Requirements And Procedures Relating To City Commission Meetings And Agendas; Providing For Repeal, Codification, And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

11:00 a.m.

An Ordinance Amending Policy 1.2 Of The Future Land Use Element Of The Comprehensive Plan Pursuant To The Procedures In Section 163-3184(3), Florida Statutes; By Modifying The Medium Intensity Commercial Category (CD-2) And The Mixed Use Entertainment Category (MXE) To Establish The "Ocean Terrace Overlay" In Order To Allow For An F.A.R. Of 3.0 Within Its Boundaries; Providing For Repeal; Severability; Codification; And An Effective Date. *Inquiries may be directed to the Planning Department at 305.673.7550.*

11:00 a.m.

An Ordinance Amending The Land Development Regulations Of The Code Of The City Of Miami Beach, By Amending Chapter 142, "Zoning Districts And Regulations", Article III "Overlay Districts", Creating Division 10 "Ocean Terrace Overlay", To Modify The Applicable Setbacks And Allowable Encroachments, Increase The Allowable Height To 250 Feet For Residential Uses And 125 Feet For Hotel Uses, Increase The Allowable Floor Area To 3.0, To Limit The Maximum Floorplate Of The Tower Portion Of New Buildings, To Provide A Minimum Building Separation For The Tower Portion Of New Buildings, To Modify The Allowable Main, Conditional And Accessory Uses; Providing For Repeal; Severability; Codification; And An Effective Date. *Inquiries may be directed to the Planning Department at 305.673.7550.*

2:00 p.m.

A Resolution Of The Chairperson And Members Of The Miami Beach Redevelopment Agency (RDA), Accepting The Recommendation Of The City's Finance And Citywide Projects Committee, On First Reading Of This Resolution, And Approving, A Lease Agreement Between The RDA (Landlord) And Cubiche 105, LLC (Tenant), In Connection With The Use Of Suite Nos. 1-3 At The Anchor Shops, Located At 1555 Washington Avenue, Miami Beach, Florida (Premises), For A Term Of Nine (9) Years And Three Hundred And Sixty Four (364) Days From Rent Commencement, With Two (2) Renewal Options, For Five (5) Years Each; Further Waiving, The Competitive Bidding Requirement In Section 82-39(a) Of The City Code, Finding Such Waiver To Be In The Best Interest Of The City/RDA; Referring The Proposed Lease To The Planning Board, For Review And Approval, As Required Pursuant To Section 1.03(b)(4) Of The City Charter, And Setting A Public Hearing, As Required Pursuant To Section 82-37(a)(2) Of The City Code, For Second (And Final) Reading And Public Hearing. *Inquiries may be directed to the Tourism, Culture and Economic Development Department at 305.673.7193.*

Dr. Stanley Sutinick Citizen's Forum - Pursuant to Resolution No. 2013-28440, the times for the Dr. Stanley Sutinick Citizen's Forum are **8:30 a.m.** and **1:00 p.m.**, or as soon as possible thereafter. Approximately thirty minutes will be allocated to each session, with individuals being limited to no more than three minutes or for a period established by the Mayor. No appointment or advance notification is needed in order to speak to the Commission during this Forum.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these items are available for public inspection during normal business hours in the Office of the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting, or any item herein, may be continued, and under such circumstances, additional legal notice need not be provided.

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in alternate format, sign language interpreter (five-day notice required), information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceedings, call 305.604.2489 and select 1 for English or 2 for Spanish, then option 6, TTY users may call via 711 (Florida Relay Service).

Rafael E. Granado, City Clerk
City of Miami Beach