

# MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139 . [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

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## **Fifth Amended and Restated RULES AND REGULATIONS FOR BEACHFRONT CONCESSION OPERATIONS**

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The following Rules and Regulations (the "Rules and Regulations") shall apply to Beachfront Concessions within the City of Miami Beach:

### **1. DEFINITIONS.**

(a) **Beachfront Concession** - beachfront operations authorized by the City of Miami Beach to either: 1) the Upland Owner Concessionaire, or 2) a Direct City Concessionaire, subsequent to the submission of all requirements, which grants the right to use the public beach land to rent beach equipment (lounge chairs, umbrellas and the like), sell food and beverages and/or rent watersports equipment, or to furnish, without charge, any of the foregoing.

### **(b) Beachfront Concession Agreements -**

(1) **Direct City Beachfront Concession Agreement** - a concession agreement between the City and a Direct City Concessionaire that authorizes the operation of a Beachfront Concession, adjacent to public property for the general public.

(2) **Commercial Beachfront Concession Agreement** - a letter agreement between the City and the Upland Owner Concessionaire that authorizes the operation of a Beachfront Concession adjacent to the Upland Property for the general public, in addition to the guests and/or residents of the Upland Owner Concessionaire.

(3) **Non-Commercial Beachfront Concession Agreement** - a letter agreement between the City and the Upland Owner Concessionaire that authorizes the operation of a Beachfront Concession solely for the guests and/or residents of the Upland Owner Concessionaire.

(c) **Beachfront Concession Layout** - a schematic plan (as depicted and described in Exhibit "1") submitted to, and approved by, the City of Miami Beach which illustrates, in conjunction with the Concessionaire equipment list, the Concession Facilities that the Concessionaire is permitted to have within the Workable Area.

(c) **Concessionaire** - any Direct City Concessionaire, Upland Owner Concessionaire or Third-Party Concession Operator.

(e) **Concession Area** - the area to be occupied or otherwise used by the Concessionaire, which shall be east of the dunes, west of the shoreline, and:

- (1) in the case of an Upland Owner Concessionaire and its Third Party Concession Operator, if any, bounded by the extensions of the north and south property lines of the Upland Property, all as determined by the City of Miami Beach; or
- (2) in the case of a Direct City Concessionaire, all as determined by the City of Miami Beach.

(f) **Concession Facilities** - Concession Huts and Storage Boxes (as depicted and described in Exhibit "2"), as well as any other items or equipment including, but not limited to, cooking, heating, and refrigeration equipment or furnishings approved by the City of Miami Beach in connection with the Beachfront Concession.

(g) **Direct City Concessionaire** - a provider of beach concession management and operation services who has been contracted directly by the City of Miami Beach.

(h) **Motor Vehicle** - any City-approved automobile, truck, sport utility vehicle, golf cart, all-terrain vehicle (ATV), or any other means of transportation that is, to the extent required by law, approved and appropriately licensed by the Florida Department of Transportation and/or Florida Department of Motor Vehicles to travel on paved roadways, including any Trailer or Concession Facility.

(i) **Third Party Concession Operator** - a provider of beach concession management and operation services who has been subcontracted by the Upland Owner Concessionaire, excluding Direct City Concessionaires.

(j) **Trailer** - any non-motorized vehicle or other means of transportation (e.g., jet ski trailers), with wheels, or constructed so that it can be fitted with wheels, and which is used or intended to be used for any one of the following purposes:

- (1) the rental of watersports equipment;
- (2) the sale of food and/or beverages;
- (3) the distribution, delivery, towing and return of anything, including, without limitation, jet skis, towels, chaises, cabanas, umbrellas, and personal property; or
- (4) Mobile cooking and /or heating Concession Facilities.

(k) **Upland Owner Concessionaire (Commercial or Non-Commercial)** - the legal owner of the Upland Property and operator of a Beachfront Concession who is authorized, pursuant to a Commercial Beachfront Concession Agreement (Commercial Upland Owner Concessionaire) or a Non-Commercial Beachfront Concession Agreement (Non-Commercial Upland Owner Concessionaire):

- (1) to conduct its own beachfront operations; and/or
- (2) to subcontract its beachfront operations to a Third-Party Concession Operator.

(l) **Upland Property** - the folio of land adjacent to, and immediately westward of, the public beach utilized by an authorized Beachfront Concession.

(m) **Workable Area** - the portion of the Concession Area bounded on the west by the trash receptacle line, and on the east by the lifeguard line of sight (or 10 feet from the mean high water line, whichever is further from the water), and bounded by the extensions of the north and south property lines of the Upland Property in the case of an Upland Owner Concessionaire, all as determined by the City of Miami Beach. The Concessionaire shall not be allowed to place any Concession Facilities outside of the Workable Area.

## 2. GENERAL CONDITIONS.

(a) Each applicant to the City for approval as either a Direct City Concessionaire or an Upland Owner Concessionaire ("Applicant Concessionaire") must provide the City with written acknowledgment (see Exhibit "3", *Beachfront Concession Application*) of its understanding of, and agreement to abide by, these Rules and Regulations prior to being granted a Beachfront Concession. The entire application must be signed on behalf of the Applicant Concessionaire by a senior management authorized individual; must contain the printed or typed name and title of the signer, whose signature must be notarized; must be accompanied by a report of the Secretary of State of the State in which the Applicant Concessionaire is organized and a report from the Secretary of the State of Florida if Florida is not the state of incorporation. Each such report must be dated not more than thirty (30) days before the submission of the application and must reflect that the Applicant Concessionaire is in good standing and that the applications signer holds a position which indicates his authority to sign the application; and must comply with all of the City's requirements for the application, including the following acknowledgments:

- (1) a written acknowledgment (see Exhibit "3", *Beachfront Concession Application*) of its understanding of, and agreement to abide by, these Rules and Regulations prior to being granted a Beachfront Concession;
- (2) a written acknowledgment of its acceptance of its obligation, as to each person who, on its behalf, is to operate a Motor Vehicle on the beach ("Prospective Driver"), to do the following before the Prospective Driver drives any Motor Vehicle:
  - (A) sign, in addition to the Prospective Driver, duplicate originals of the Safe Driving Agreement (in substantially the form attached as Exhibit "4" or as amended by the City from time to time), with one fully-signed original to be held by the Concessionaire and the other fully-signed original to be delivered by the Concessionaire to the Prospective Driver;
  - (8) retain, and make available for inspection by the City upon its request, each such fully-signed Safe Driving Agreement throughout the period that the Prospective Driver is operating a Motor Vehicle on behalf of the Applicant Concessionaire

and for a period of two years after the Prospective Driver ceases to operate a Motor Vehicle on behalf of the Applicant Concessionaire ; and

(C) require the Prospective Driver to satisfactorily complete a one-hour training course to instruct the Prospective Driver in the operation of a Motor Vehicle in compliance with the Safe Driving Agreement , said training to include actual operation by the Prospective Driver of the type of Motor Vehicle which he or she is anticipated to drive;

- (3) if the Applicant Concessionaire seeks approval as a Direct City Concessionaire, a written acknowledgment that it will not subcontract to any other person or entity the performance of any of its duties and obligations as a Direct City Concessionaire;
- (4) if the Applicant Concessionaire seeks approval as an Upland Owner Concessionaire, a written acknowledgment that , if it contracts with a Third-Party Concession Operator for the management and operation of all, or a part of, the Beachfront Concession, the Upland Owner Concessionaire shall remain responsible to the City for performing under the terms and conditions of the Beachfront Concession.

The Applicant Concessionaire's application is not complete and will not be considered by the City if any of the City's application requirements (including the above acknowledgments) are not satisfied. The City reserves the right, before considering any application, to require that any documentation or information be updated, expanded, and resubmitted if it is deemed necessary by the City in order to clarify and /or confirm any such documentation or information.

(b) Any Beachfront Concession granted pursuant to these Rules and Regulations shall not be construed to vest any additional rights upon the Concessionaire that do not otherwise exist, except for the privilege of temporary use of the beachfront in accordance with the conditions and requirements set forth in these Rules and Regulations and all other applicable City, County, State, and Federal laws. Concessionaires are hereby notified that all beaches within the City of Miami Beach are public and, as such, Beachfront Concession operations must not restrict, or appear to restrict, access or in any way limit the public nature or ambiance of the beachfront.

(c) Concessionaires must abide by all City, County, State, and Federal laws, and these Rules and Regulations as amended or adopted hereafter with regard to the use of the beachfront areas.

(d) Every Motor Vehicle or Concession Facility which is present on the beach, either stationary or capable of movement, and every Concessionaire which conducts any operations on the beach, shall comply with the requirements of these Rules and Regulations for Beachfront Concession Operations as applicable, except that the following are exempt from these requirements: the personnel, operations, or vehicles of any governmental agency.

(e) There is no responsibility on behalf of the City of Miami Beach for any lost, stolen, or damaged property belonging to a Concessionaire.

(f) Concessionaires are responsible for any damage caused to any City-owned property and /or the beachfront during the time of its usage of said areas.

(g) Concessionaires must submit a written evacuation plan to the City for the prompt removal from the beach of all Motor Vehicles, Trailers, and Concession Facilities. The plan shall be implemented within one (1) hour of notification by appropriate City authorities and within eight (8) Hours of the issuance of a Hurricane Warning by the Miami-Dade County Office of Emergency Management. This plan must be submitted to the City for approval (see *Exhibit '3', Beachfront Concession Application*). An operation plan must also be submitted (see *Exhibit '3', Beachfront Concession Application*). Each Concessionaire shall conduct a drill once per year, at the City's discretion, prior to hurricane season, to remove all of its Concession Facilities from the beach.

(h) The City reserves the right to amend these Rules and Regulations. Said amendments shall be binding on all Concessionaires.

### **3. BUSINESS TAX RECEIPTS AND FEES.**

(a) **Business Tax Receipts (for all Concessionaires)** - A City Business Tax Receipt (valid from October 1 through September 30 of the following year) is required for each activity which a Concessionaire operates on the beachfront (Example: a Concessionaire providing food and beverage (Food and Beverage) sales, and beach equipment rentals, must obtain two Business Tax Receipts). The issuance of a Business Tax Receipt by the City is conditioned upon, and subject to, compliance with these Rules and Regulations, as amended from time to time. Said Business Tax Receipt(s) shall be considered null and void if the City withdraws, discontinues, or otherwise revokes the authorization granted to the Concessionaire to operate a Beachfront Concession.

b) **Upland Fee and Mobile Cooking/Heating Fee (for Upland Owner Concessionaires)** - In addition to the Business Tax Receipts required in Paragraph 3(a) above, an Upland Owner Concessionaire shall pay an Upland Fee, currently in the amount of \$23.00 per Upland Unit for Fiscal Year 2019 /20 (increased annually in accordance with the Consumer Price Index), up to a maximum of \$16,538 per Upland Property (increased annually in accordance with the Consumer Price Index), will be required of each concession location. The number of Upland Units shall be determined by the City's Finance Department. If the Upland Owner Concessionaire is authorized to use a mobile cooking and/or heating Concession Facility, the Upland Owner Concessionaire shall also pay a Mobile Cooking/Heating Fee, in the fixed annual amount of \$120,000.00, payable on a monthly basis, in the amount of \$10,000.00. The monthly Mobile Cooking/Heating Fee shall be paid, in advance, on the first day of each month.

c) In the event that the Concessionaire is an Upland Owner Concessionaire, and the Concession Area is utilized by any additional property or properties, other than the Upland Property, the Upland Property owner must receive prior written approval from the City and shall pay an Upland Fee, per property, based on the number of units contained in the Upland Property and any additional properties. There shall be no maximum Upland Fee for Beachfront Concessions utilized by multiple properties or for two or more Beachfront Concessions held by a Concessionaire. These fees shall be due and payable in advance prior to the City's granting authorization for a Beachfront Concession, and prior to October 1, of each year thereafter.

d) **Direct City Concessionaire Concession Fees** - In addition to the Business Tax Receipts required in Paragraph 3(a) above, a Direct City Concessionaire will pay the City a concession fee, to be negotiated between the Direct City Concessionaire and the City, in connection with the operation of a Beachfront Concession, to be delineated in the Direct City Beachfront Concession Agreement.

#### **4. INSURANCE.**

(a) Every Concessionaire must maintain the required Beach Concession Insurance set forth in the attached Exhibit "5" at all times. Every Concessionaire shall:

- (1) furnish to the City a Certificate of Insurance, in customary form and substance, evidencing compliance with those requirements; and
- (2) furnish to the City a renewal Certificate of Insurance, in customary form and substance, evidencing compliance with these requirements, at least fifteen (15) calendar days before:

(A) the expiration of a current Certificate of Insurance; or

(B) the effective date of any cancellation of the insurance;

(b) In the event the Concession Area is utilized by any additional person or entity which is not a Concessionaire, each such person or entity must maintain the required Beach Concession Insurance requirements set forth in the attached Exhibit "5" at all times. The Concessionaire is responsible for compliance with these requirements by said additional person or entity. This Paragraph 4(b) shall not be interpreted or applied in any manner to diminish the responsibilities of the Concessionaire or to authorize the use of the Concession Area by any additional person or entity.

#### **5. CONCESSION AREA.**

(a) Each Concessionaire shall comply with the approved Beachfront Concession Layout (form attached hereto and marked as Exhibit "1"), which sets forth the Workable Area of the Beachfront Concession and shall stay within the Workable Area. The Concessionaire shall not be allowed to place Concession Facilities anywhere outside of the Workable Area. The Concessionaire shall not permit patrons to place any chairs, umbrellas, or any other items/equipment belonging to the Concessionaire outside of the Workable Area.

(b) Notwithstanding Paragraph 5(a) above, due to the irregular curve of the beach at 20<sup>th</sup> Street, the Concessionaire immediately south of 20<sup>th</sup> Street shall be permitted to occupy the Street end of 20<sup>th</sup> Street. Use of street ends by Concessionaires at all other locations is prohibited.

(c) Concession Facilities, other than trash receptacles and beach chairs /umbrellas, shall not occupy more than forty percent (40%) of the north/south distance of the Workable Area. By way of example, if the north /south distance of the Workable Area is 100 feet, and the Concession Huts and Storage Boxes are 10 feet by 10 feet each, there shall be no more than a combination of four (4) Concession Huts and/or Storage Boxes permitted within the Workable Area. Notwithstanding the foregoing, Concession Huts and/or Storage Boxes shall be permitted to be placed/stacked east and west of each other.

(d) Concessionaires shall place, if included as part of the Beachfront Concession Layout, one (1) Storage Box at the southwest corner of the Workable Area and one (1) Storage Box at the northwest corner of the Workable Area, as a means to identify said boundaries of the Workable Area.

(e) The Workable Area shall be set up every day no earlier than one (1) hour after sunrise and removed no later than one (1) hour before sunset, except that from April 1 to October

31 (including Holidays as defined in Rule 8(b) (2) and Weekends) , Concessionaires must wait until Miami-Dade County has conducted its morning turtle nesting survey before commencing set up (the "Operating Hours").

(f) The Concessionaire shall post signs which state "BEACH OPEN TO THE PUBLIC" on all Concession Huts and Storage Boxes. Said signs shall include, for commercial Beachfront Concessions, the prices to be paid by the public, to the extent applicable, for food and beverages, the rental of watersports equipment, and the rental of beach equipment. Said signs shall require prior written approval by the City.

(g) The Concessionaire shall post the following items in a visible location inside the Concession Huts: 1) a copy of the Business Tax Receipt, 2) a copy of these Rules and Regulations, and 3) basic operating procedures for Concessionaire staff, which procedures shall be subject to review and approval by the City (i.e., time of deployment of equipment, location of equipment, collection of trash, etc.).

(h) Concession Facilities shall be neat, clean, and well maintained at all times. The Concession Area and operation must be aesthetically pleasing and non-detrimental to the surrounding environment. Any graffiti shall be removed or re-painted with matching paint within twenty-four (24) hours.

(i) Beachfront Concession activities, including the placement and/or use of umbrellas, canopies , etc., shall not obstruct the view of a lifeguard. Any request from a lifeguard to relocate any item that obstructs his/her view shall be treated as an emergency and the item shall be relocated immediately.

## **6. FOOD AND BEVERAGE SERVICE.**

(a) A Food Service license issued by the Florida Department of Business and Professional Regulation - Division of Hotels and Restaurants for the food service unit must be supplied by the applicant for a Beachfront Concession before a City Business Tax Receipt for a Food and Beverage Beachfront Concession may be issued.

(b) If the Beachfront Concession includes Food and Beverage service, then at least one supervisory employee must possess a Food Service Management Certification issued by the Miami-Dade County Public Health Department. In addition, each food service facility must be licensed by the Florida Department of Business & Professional Regulation - Division of Hotels and Restaurants (8240 NW 52<sup>nd</sup> Terrace, Suite 101, Doral, Florida, 33166; telephone: 850-487-1395).

(c) Concessionaires shall not vend or offer glass containers, metal containers, plastic lids, single use plastic beverage straws, single use plastic stirrers, except that plastic beverage straws or plastic stirrers may be provided to an individual with a disability or medical condition, as described in Section 11. Notwithstanding the foregoing, recyclable plastic bottles will be permitted. The use of plastic bags (except for large plastic bags used for trash collection) shall not be permitted.

(d) **100% Reusable Ware Requirement for Concessionaires (Excluding take-out Food and Beverage Service provided by Mobile Cooking and Heating Concession Facility).** The requirements of this subsection 6(d) shall become effective on October 16, 2020.

- (f) ) All Concessionaires are required to utilize 100% reusable wares , in connection with the containment, delivery, display, consumption and retrieval of all items used for the purpose of providing Food and Beverage services in the Concession Area or the beach. Reusable wares shall include, but are not limited to , tableware , serving dishes/containers, condiments, plates , bowls, hot and cold cups, and flatware. Notwithstanding the foregoing, Concessionaires will be permitted to use napkins made from recycled materials and wooden coffee stirrers. All reusable wares are required to be collected and removed from the beach by the Concessionaire upon conclusion of their use. This reusable ware requirement shall not apply to take-out Food and Beverage services provided by mobile cooking and heating Concession Facilities, as more particularly described in Subsection (e).

(e) **Take-Out Food and Beverage Services provided by Mobile Cooking and Heating Concession Facility.** In connection with providing take-out Food and Beverage services, Upland Owner Concessionaires shall pursue the use of service articles made of biodegradable or recycled materials, including, but not limited to, tableware, serving dishes/containers, condiments, plates, bowls, hot and cold cups, napkins, wooden coffee stirrers and flatware. The City encourages the use of unbleached, non-coated, recycled content, paper food service articles and other fiber-based food service articles as the most environmentally preferred alternatives. No plastic bags should be distributed; instead the applicant should use paper or reusable bags (materials can vary, such as calico, cotton, hemp, jute and others) ;

(f) Upland Owner Concessionaires are encouraged to reduce the amount of packaging and use packaging that does not contain packaging inks, dyes, pigments, adhesives, stabilizers, and additives with levels of lead, cadmium, mercury or hexavalent chromium in packaging inks, dyes, pigments, adhesives, stabilizers, and additives equal to or greater than 100 parts per million, which is consistent with packaging statutes adopted by 19 U.S. states. The following exceptions apply to this heavy metal threshold recommendation for packaging:

- (1) ) Packaging made from recycled materials;
- (2) Packaging that is essential to the protection, safe handling , or function of the package's content;
- (3) Packaging having a controlled distribution and reuse (i.e., beverage containers subject to mandatory deposit requirements); and
- (4) ) Packaging or packaging component that is glass or ceramic where the decoration has been vitrified and when tested, and meets specific requirements.

## **7. WASTE DISPOSAL.**

(a) The Concessionaire shall provide, at its sole expense, at least two (2) City approved trash receptacles (one (1) for trash and one (1) for recyclable materials) within the confines of the Concession Area, approved for its use and for the use of the public. Additionally, the Concessionaire shall provide, at its sole cost and expense, City-approved individual, disposable ashtrays for all patrons smoking within the Concession Area. Said ashtrays shall be branded consistent with the Miami Beach litter campaign. Disposal of the contents of said trash receptacles, disposable ashtrays, and the removal of all other trash or litter from the Concession Area, shall be performed in accordance with Section 7(b), and shall be the sole responsibility of the Concessionaire.



(b) Each Concessionaire shall be responsible, at all times throughout the day, for the collection of all trash, litter, disposable ashtrays, and cigarette and cigar butts within the entire Concession Area, irrespective of whether such materials are in trash receptacles or disposable ashtrays or in the sand, prior to the placement of any umbrellas or chairs each morning and at the end of each day of operation. All such materials shall be identified as either trash or recyclable and placed in the appropriate cans for trash or recyclable items. Unless otherwise approved in writing by Miami-Dade, County, all such materials collected by the Concessionaire must be removed from the beach and disposed of by the Concessionaire and shall not be placed in the Miami-Dade County or City of Miami Beach serviced trash receptacles or dumpsters under any circumstances.

(c) **Food and Beverage Waste (including Mobile Cooking and/or Heating Cooking Facilities).** Any waste items, unconsumed food or beverage, food remains such as bones, fruit skins, or other remaining food matter will be placed in a clear plastic bag which will prevent leakage by the Concessionaire and placed in the appropriate trash can for collection and disposal. Upland Owner Concessionaires are responsible for all trash and debris generated by the utilization of any approved mobile cooking and/or heating Concession Facility on the beach.

(d) The City shall charge Concessionaires for the costs of special clean up necessary should Concessionaires fail to reasonably perform.

## **8. STORAGE.**

(a) There shall be no overnight storage of any kind east of the dune line on the beach, except for the following:

- (1) Beach chairs, day beds, and cabanas will be permitted to remain within the Workable Area overnight, as long as they are in good condition, neatly stacked, and orderly arranged side-by-side, running east and west, immediately adjacent to the Storage Boxes/Concession Huts. Stacked equipment shall not interfere with beach cleaning and grooming operations, as determined by the City of Miami Beach. In no event shall the stacked equipment exceed a height of eight (8) feet.
- (2) Concession Huts and Storage Boxes will be allowed to remain on the beach, as long as they are well maintained, adequately secured to prevent unauthorized access, and kept east of the west boundary of the Workable Area. Concession Huts and/or Storage Boxes shall only be used for dispensing services and/or storage of items or equipment, approved by the City of Miami Beach, and used in connection with a Beachfront Concession.

(b) Trailers for storage shall not be permitted anywhere on the beach at any time, or on any adjacent dune area or spoil area (west of the dune area), except that not more than one storage trailer per Concessionaire may be permitted to be parked only immediately east of the dune area and only during Operating Hours as defined in Rule 5(e); and only if one of the following is applicable:

- (1) Weekend days; or
- (2) New Year's Day, Martin Luther King Day, President's Day,



filled and sealed prior to receipt by Concessionaire), providing food in, or offering the use of expanded polystyrene food service articles. Except as permitted, Concessionaire is prohibited from selling, using, providing food in, or offering the use of plastic beverage straws or plastic stirrers on the beach. Additionally, pursuant to Section 46-92(c) of the Code of the City of Miami Beach it is unlawful for any person to carry onto any beach in the City a glass or metal bottle or glass or metal containers. Concessionaire is prohibited from selling, using, providing food in, or offering the use of glass or metal bottles or glass or metal containers.

Furthermore, Section 46-92(c) of the Code, of the City of Miami Beach, as may be amended from time to time, shall apply to all Concessionaires, their employees / subcontractors, and members of the public.

## **12. WATERSPORTS.**

The following regulations specifically apply to Concessionaires offering watersport concessions:

- (a) All propeller craft must have propeller guards.
- (b) All operations that involve the use of watercraft must have a "chase watercraft vessel" readily available for problems that may arise during the rental of watersports equipment and be in good working order. The "chase watercraft vessel" is subject to the prior approval of the City.
- (c) The operation of all watersport activities (motorized and non-motorized) shall be conducted outside the 300-foot restricted swim area and no closer than 400 feet of any lifeguard stand. The location of each watersport concession shall be subject to the approval of appropriate City Departments.
- (d) Concessionaires are responsible for instructing clients on the safe operation of watersports equipment including, without limitation, directions to stay out of all restricted swim areas; to wear a lifejacket at all times; and how to use, and the circumstances for use of, the kill switch.
- (e) In its application, each Concessionaire must identify a channel (adjacent to the Concession Area) to be used as an access route through which users of watersport equipment may leave the beachfront and enter open water. Said channel shall be a minimum of 25 feet in width and shall extend 300 feet east and perpendicular to the shoreline and be marked by removable orange colored buoys which shall be a minimum of eighteen (18) inches in diameter. There shall be a minimum of four (4) buoys on each side of the channel, equally spaced. The water channel shall be marked by the Concessionaire before watersports equipment is used. The channel, and any changes in the channel, must be approved as provided in Section 12(n).
- (f) Watercraft shall not exceed "idle speed" within the channel.
- (g) The continuous wearing of a life jacket is required for all watersport activities (i.e., wave runners, jet skis, kayaks, paddle boards, etc.). All life jackets must be approved by the U.S. Coast Guard and be in good condition. Concessionaires shall supply all users of watersport equipment with life jackets in appropriate sizes.

(h) Each Concessionaire must comply with the following Florida Statutes, and as such Statutes may be amended - F.S. 327.39, F.S. 327.395, and F.S. 327.54, which includes, in part, the following:

- (1) All persons under the age of 14 cannot operate or rent a personal watercraft ("PWC.");
- (2) All persons 14 years of age or over, but under age 18, can operate a PWC with a boater ID card but cannot rent a PWC;
- (3) All persons 18 years of age, and born on or after January 1, 1988, can rent and operate a PWC with a boater ID card;
- (4) All persons born before January 1, 1988 must meet the age requirement to rent and operate a PWC;
- (5) Valid identification shall be required by the Concessionaire.

(i) Parasailing shall be conducted only from winch boats operating beyond the restricted swim areas.

(j) All watercraft equipment shall meet the registration and license requirements of the State of Florida.

(k) All motorized watersports equipment shall be equipped with approved kill switches in good working order. The watersports equipment driver shall wear the kill switch activator at all times.

(l) Fueling watersports equipment is allowed on the beach under the following conditions only: signs must be posted where the gasoline is kept; cans which are spill-proof must be used; residents, tourists, and the general public, must be kept a safe distance from where the fueling process is taking place. Fuel shall not be stored on the beach overnight. Fueling must be completed over a secondary vessel to prevent spillage.

(m) The equipment permitted to be used in a watersport Beachfront Concession operation consists of a maximum of five (5) waverunners for rent, and a combined total of six (6) kayaks and/or paddleboards for rent. Notwithstanding the foregoing, the Beachfront Concessions located at 1601 Collins Avenue (Loews Hotel) and 4441 Collins Avenue (Fontainebleau Hotel) have additional grandfathered equipment, including additional waverunners, banana boats, and parasail operations.

(n) Any change to, or addition of, a watersport Beachfront Concession, or the implementation of a new water channel to accommodate a new watersport Beachfront Concession operation, shall require review by, and a recommendation from, the Marine and Waterfront Protection Authority, as well as written approval by the City Manager or his designee.

### **13. MOTOR VEHICLES, TRAILERS AND CONCESSION FACILITIES.**

(a) A Concessionaire's Motor Vehicle shall only be allowed on the beach for purposes of supplying the Beachfront Concession, and, if and to the extent authorized, to initially deploy equipment and a Trailer at the beginning of the day, to remove the equipment and Trailer (if a Trailer is authorized) at the close of operations each day, and the Concessionaire's Motor Vehicle

must leave the beach immediately thereafter. Said supplying, deployment, and removal operations shall only be permitted during a Concessionaire's regular hours of operation, and shall be completed safely. No Motor Vehicle or Trailer is permitted on the beach before 1 hour after sunrise and after 1 hour before sunset. Access to the beach shall only be permitted via the predetermined and assigned beach access points/dune crossovers authorized for such use and nearest to the Concession Area as reflected in the Concession application.

(b) Motor Vehicles, including Motor Vehicles with attached Trailers, operated on the beach shall not exceed 5 M.P.H. and shall only operate on the "hard packed sand" area in the immediate vicinity of the Concession Area, or to-and-from the predetermined and assigned beach access point. After transporting equipment to a Concession Area (as said area is delineated in the "Beachfront Concession Layout" diagram attached to the Concessionaire's authorization to operate a Beachfront Concession) the Motor Vehicle, and any Trailer attached thereto, shall be removed from the beach (except to the extent that said authorization permits the Trailer to remain during the Concession's hours of operation). Driving on the beach shall be kept to a minimum. No Concession-related vehicular traffic will be permitted on the beach, at any time or for any purpose, other than as stated and as approved herein. Driving on the beach from one Concession Area to another to service, supervise, or for any other reason, is prohibited. Concessionaires must exit onto the street to access other locations.

(c) Eighteen-inch (18") high cones, orange in color, shall be placed in front of, and at the rear of, a Motor Vehicle or Trailer when parked on the beach. Concessionaires must inspect the perimeter of the Motor Vehicle or Trailer and surrounding area, prior to starting the engine, to assure a clear path of egress and only proceed with extreme caution.

(d) All Motor Vehicles, Trailers and/or Concession Facilities must each display two (2) "Beach Vehicle Pass" decals containing a unique Identification Number issued by the City. Said Identification Number on the decals must be sufficiently large and clear as will make said Identification Number reasonably visible and readable. No other identification or signage of any kind shall be displayed, except that the name of the Concessionaire which owns and operates the Motor Vehicle, Trailer, and /or Concession Facility may also be displayed, in which case the Upland Owner Concessionaire (if any) may also add its name. The two (2) decals must be placed on opposing sides of the vehicle (either front/back or left/right). The Identification Number will correspond to the number on the City file which contains originals or copies of all applications, permits, correspondence, and other materials which concern or relate to the Beachfront Concession and/or the Beach Vehicle Pass decals which have been issued. Concessionaire with multiple Motor Vehicles, Trailers, or Concession Facilities will receive a unique Identification Number for each such Motor Vehicle, Trailer and /or Concession Facility. As to each Motor Vehicle, Trailer, or Concession Facility for which the City issues Beach Vehicle Pass decals, the City shall advise the Concessionaire in writing of the limits applicable to each such Motor Vehicle, Trailer, or Concession Facility, including the limited area, the limited range, and the limited points of entry to and exits from the beach. Such limits shall be reflected in a document issued by the City which must be displayed in or on the Motor Vehicle, Trailer, or Concession Facility, at all times.

(e) Each Beachfront Concession shall be limited to the use of one (1) motor vehicle servicing the Concession Area at a time and one (1) Trailer, to supply and/or service the Beachfront Concession. Notwithstanding the foregoing, Beachfront Concessions with a watersports permit shall be allowed one (1) additional vehicle to service the watersports operation.

(f) Due care and caution must be utilized at all times while driving any Motor Vehicle, and any Trailer attached there to, on the beach.

(g) Prior to entering the beach and at all times while on the beach, drivers must turn on their Motor Vehicle's headlights and front and rear flashers and their Trailer's rear flashers, to the extent that the Motor Vehicle or Trailer is so equipped.

(h) Both the passenger and driver's side front windows of the Motor Vehicle shall be rolled down while operating said Motor Vehicle on the beach.

(i) All Motor Vehicles and any Trailers attached there to, shall stay west of the garbage can line on the hard-packed sand when travelling north and south, and shall travel only north or south on the beach except to the limited extent necessary for brief periods to deploy, service, or remove anything necessary for the Concessionaire to conduct its operations. All Motor Vehicles, and any Trailers attached thereto, entering the area east of the garbage cans shall travel in a ninety-degree angle to the garbage can line. Notwithstanding, all Motor Vehicles shall at all times remain west of all Concession Facilities and other beach equipment (e.g., chairs, umbrellas). The only exception to this rule is for Beachfront Concessions that have been authorized to conduct watersports activities and are in the process of deploying, servicing, or removing watersports equipment from the Concession Area. Said deployment, servicing, or removal of watersports equipment must be conducted with no less than one additional Concession employee who will be positioned on the beachfront to directly supervise and guide said deployment, service, or removal operation, to ensure the safety of the public. Additionally, during any deployment, service, or removal operation, the Concessionaire is required to place no less than eight (8), eighteen-inch (18") high cones, orange in color, no less than four (4) on the northernmost boundary and no less than four (4) on the southernmost boundary of the projected path (from hard-packed sand to the shoreline) of the Motor Vehicle to create a clear non-obstructed path perpendicular to the shoreline, of no less than twenty-five feet (25') in width (when measured from north to south). The vehicle driver and a supervising Concessionaire employee must independently inspect the vehicle perimeter, surrounding area, and path (once marked) before starting the engine, to assure a clear path of ingress to the shoreline or egress to the hard packed sand, and only then, proceed with the respective operation with extreme caution to ensure the safety of all beachfront patrons and persons and property on the beach.

(j) Use of a cellular phone or any other electronic device by the driver while the Motor Vehicle is in motion is prohibited. The Motor Vehicle's gear shift must be placed in the "park" position and the emergency break engaged prior to any use of a cellular telephone or any other electronic device by the driver.

(k) Concessionaires, their employees, and contractors, are prohibited from driving their personal vehicles on the beach at any time, irrespective of whether the personal vehicle is a motor vehicle or any other type of vehicle (e.g., motorcycle).

(l) Any Motor Vehicle not reflected in an approved Beachfront Concession "Vehicle Information Sheet," and/or not approved by the City, will be required to leave the beach immediately.

(m) Motor Vehicles and Trailers shall not be parked or left unattended on the beach, at any time or for any reason, except that golf carts and ATVs shall be permitted to park immediately east of the dune for no more than 30 minutes, but only during the Operating Hours of the Concessionaire and only to the extent that the emergency vehicle path remains unobstructed.

(n) Each driver shall be required by the Concessionaire to drive with both hands on the steering wheel at all times.

(o) Each driver shall be required by the Concessionaire to hold at all times a valid and effective Florida chauffeur's or driver's license (whichever the law may require) which is not suspended or revoked.

(p) Each driver shall be required by the Concessionaire to drive at all times without being under the influence of alcohol, drugs, or any substance which may impair the Driver's ability to drive safely.

(q) Each driver shall be required by the Concessionaire, before the Driver begins his or her work for the Concessionaire, to complete a one-hour training course on the operation of a Motor Vehicle in compliance with the Safe Driving Agreement (in substantially the form attached as Exhibit "4" or as amended by the City from time to time). The training shall include actual operation by the Driver of the type of Motor Vehicle which the Driver is expected to drive.

(r) **Mobile Cooking and/or Heating Concession Facilities.** The following requirements shall apply to mobile cooking and/or heating Concession Facilities:

(i) Mobile cooking and/or heating Concession Facilities will only be permitted at those locations operating pursuant to a valid, City-issued (1) Business Tax Receipt and (2) Beachfront Concession Agreement which specifically authorizes a mobile cooking and/or heating Concession Facility.

(ii) **Only City-approved Concession Facilities will be permitted.** All mobile cooking and /or heating Concession Facilities must be uniform in color, size, and style, for any given location. Any and all mobile cooking and /or heating Concession Facilities must receive prior approval by the City Manager, in accordance with the City Planning Department's current Beach Concession Design Guidelines (attached hereto as Exhibit "2"), or any other such design as may be approved by the City Manager and the City's Planning Department. No Trailer manufactured before 2016 is permitted on the beachfront.

(iii) Mobile cooking and/or heating Concession Facilities will only be permitted on the beachfront in accordance with applicable City, County, State, and Federal laws, and shall be inspected at least once per year by the City's Fire Department.

(iv) Mobile cooking and/or heating Concession Facilities shall only be permitted by means of battery powered, solar powered, or propane gas systems, that are properly approved, permitted, and installed in accordance with applicable City, County, State, and Federal laws. The use of electricity-producing generating devices (generators) is prohibited.

(v) Upland Owner Concessionaires who are authorized to provide mobile cooking and/or heating Concession Facilities may provide patrons table seating immediately adjacent to the cooking and/or heating Concession Facility. Each mobile cooking and/or heating Concession Facility may provide a maximum of ten (10) tables, with no more than one (1) Umbrella and four (4) chairs per table. All facilities are subject to approval by the Planning Department.

- (vi) Notwithstanding any other provisions contained herein, all mobile cooking and/or heating Concession Facilities must be removed from the beach at least 1 hour before sunset ; shall not be permitted to remain on the beach overnight; and shall not be located on the beach prior to 1 hour after sunrise.

#### **14. ENFORCEMENT AND PENALTIES.**

These Rules and Regulations shall be enforced by the City, as set forth below:

(a) The following monetary penalties shall be imposed for a failure to comply with these Rules and Regulations:

- (1) First offense... a penalty of \$250.00 ;
- (2) Second offense for the same violation within a 12-month period... a penalty of \$500.00;
- (3) Third offense for the same violation within a 12-month period... a penalty of \$1,000.00;
- (4) Fourth offense and subsequent offenses for the same violation within a 12-month period... a penalty of \$1,500.00.

The City may issue a written warning for first time violations in lieu of a first offense violation. There shall be a three (3) month transition period; from the date these Rules and Regulations are adopted, when only written warnings will be issued, prior to the City issuing Notices of Violation which include penalties.

Such penalties are in addition to and separate from any violations issued by the City for noncompliance with other sections of the City Code.

(b) The City Manager, or his designee, through its Field Monitor, or other designee, shall enforce the provisions of these Rules and Regulations. As used in these Rules and Regulations, "Field Monitor" shall include, but not be limited to, a Code Compliance Officer, Park Ranger, or a Police Officer. If a Field Monitor finds a violation of this section, the Field Monitor 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 penalty for which the violator is liable, and instructions and due date for paying the penalty.

(c) If a Concessionaire, or any of its employees or independent contractors, is the named violator, and after issuance of the Notice of Violation, the Concessionaire fails to pay the penalty within ten (10) days, the Beachfront Concession may be revoked by the City Manager.

(d) The City reserves the right to suspend or revoke a Concessionaire's Business Tax Receipt(s) and its other authorizations to operate the Beachfront Concession upon satisfaction of the following two conditions:

- (1) a Concessionaire , or any of its employees or independent contractors, is the named violator, in any Notice of Violation of these Rules and Regulations; and



- (2) the Concessionaire, within ten (10) days after issuance of the Notice of Violation, fails to pay the applicable fine.

The suspension or revocation shall be effective ten (10) days after the City sends written notice thereof to the Concessionaire; provided, however, that the City Manager or his designee may order the suspension or revocation to be effective at any earlier time, including the time at which the Notice of Violation is issued, if the City Manager or his designee makes a written determination that the continued operation of the Beachfront Concession is a danger to public health or safety.

(e) A notice sent to a Concessionaire of suspension or revocation, irrespective of when sent, shall state the reason (s) for the suspension or revocation.

(f) Anyone found operating on the beach without the required licenses and approvals will be removed from the beach and will not be allowed to apply for a Beachfront Concession for twelve (12) months thereafter.

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