

ORDINANCE NO. C-19-

AN ORDINANCE OF THE CITY OF FORT LAUDERDALE, FLORIDA AMENDING SECTION 8-144, "PRIVATE USE OF PUBLIC PROPERTY ABUTTING WATERWAYS" OF THE CITY OF FORT LAUDERDALE CODE OF ORDINANCES PROVIDING DEFINED TERMS AS TO WHO MAY APPLY FOR A DOCK PERMIT; IMPOSING AN OBLIGATION UPON A PERMIT HOLDER FOR REMOVAL OF THE DOCK AND APPURTENANCES UPON TERMINATION, EXPIRATION OR REVOCATION OF A DOCK PERMIT; PROVIDING FOR EITHER EXECUTION OF A COVENANT RUNNING WITH THE LAND OR THE POSTING OF SECURITY TO COVER THE COST OF REMOVAL OF DOCKS AND APPURTENANCES THERETO; IMPOSITION OF AN OBLIGATION TO RECORD IN THE PUBLIC RECORDS OF BROWARD COUNTY, FLORIDA A CERTIFIED COPY OF THE RESOLUTION GRANTING OR RENEWING A DOCK PERMIT; PROVIDING FOR ADMINISTRATIVE FEES FOR THE REVIEW OF A DOCK PERMIT APPLICATION AND ISSUANCE OF A RESOLUTION FOR THE GRANTING OF THE DOCK PERMIT OR RENEWAL OF A DOCK PERMIT UPON CERTAIN TERMS AND CONDITIONS; ENSURING DOCKS ARE OF SUCH A HEIGHT AS TO TAKE INTO ACCOUNT ADJUSTMENTS FOR RISING SEA LEVELS; PROVIDING FOR AN INITIAL TERM FOR THE INITIAL DOCK PERMIT OF FIVE ~~FOUR~~ YEARS WITH ~~TWO~~ ADDITIONAL FIVE ~~THREE~~ YEAR RENEWAL TERMS THEREAFTER; IDENTIFYING THE DOCK AREA WHERE THE PERMIT HOLDER HAS CERTAIN RIGHTS EXCLUDING THE GENERAL PUBLIC AND DEFINING THE PUBLIC SWALE AREA WHERE THE GENERAL PUBLIC HAS THE RIGHT OF ACCESS; PROVIDING FOR SEVERABILITY; REPEAL OF CONFLICTING ORDINANCE PROVISIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 8-144 of the City of Fort Lauderdale Code of Ordinances is in need of amendment to provide for the preservation of the character of the neighborhood within which a dock permit is sought and to identify with specificity what persons qualify for an application for a dock permit under Code Sec. 8-144;

WHEREAS, prior to this amendment to Code Sec. 8-144 for dock permits that are abandoned, terminated, expired or revoked, the City inherits the expense of removal

of such dock and there is a need to require the permit holder to post security for the removal of the dock in the event the dock permit is abandoned, terminated, expired or revoked and no new dock permit is issued within three (3) months of the abandonment, termination, expiration or revocation of the former dock permit; and

WHEREAS, prior to this amendment, an obligation is imposed on the permit holder to construct or make substantial repairs to a dock or seawall or both, by past practice the permit is issued for a fixed term of five (5) years and there is no fixed term for the permit absent an obligation on the permit holder to construct or make substantial repairs to the dock or seawall or both and to rectify this situation staff has recommended that the dock permit be issued for an initial term of ~~five (5) four (4)~~ years, with renewals every five (5) years thereafter~~two (2) three (3) year renewal terms~~; and

WHEREAS, in order to more definitively identify the area where the general public has access and where the general public has no right to encroach within the permit holder's dock area the amendments provide definitions for Dock Area for the permit holder and Public Swale Area for which the general public has access; and

WHEREAS, the amendments require an administrative fee to cover the costs of administering the application, review and adoption of the resolution initially granting the dock permit and similarly an administrative fee for the application, review and adoption of the resolution granting the dock permit for the renewal term; and

WHEREAS, in light of rising sea levels the amendments to Code Sec. 8-144 provide that docks must either be (i) floating docks that can adapt to sea level rise over their useful life span or (ii) fixed docks installed at a minimum elevation consistent with the requirements of Code Sec. 47-19.3 (f) or (iii) fixed docks the height of which are even with the City's seawall, and as between (ii) and (iii), whichever is the greater height; and

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

SECTION 1. That Code Section 8-144, entitled "Private Use of Public Property Abutting Waterways" is hereby amended to read as follows:

Sec. 8-144. Private Use of Public Property Abutting Waterways.

The City Commission, by Resolution duly adopted, may grant a dock permit for the use by private persons of public property abutting or touching a waterway, including all public property described in section 8-143, except areas being utilized as municipal docks for which docking fees are being charged and collected and those areas under license by the City, under the following conditions and restrictions, to-wit:

- (1) Application for a dock permit under this section shall be accompanied by an administrative fee, the amount of which shall be reflective of the cost of administering the application, review and adoption of resolution granting a permit for the use by private persons of public property abutting or touching a waterway and shall be established from time to time by the City Commission by duly adopted Resolution. As to Upland Parcels, the application shall be

accompanied by a survey of the Upland Parcel qualifying for the dock permit with the side property lines and side yard setback lines extended into the abutting waterway. For an application for a dock permit where there is no corresponding Upland Parcel, the application shall be accompanied by a sketch and description which includes extension of the boundaries of the adjacent public right-of-way into the abutting waterway.

(a) Ten (10) days prior ~~Prior~~ to adoption of the Resolution granting a dock permit, the applicant shall either (i) execute a covenant running with the land, in a form and content acceptable to the City Attorney, binding the obligation of maintenance and repair of the dock and appurtenant seawall to the qualifying Upland Parcel or Neighboring Upland Parcel and providing for a claim of lien to be recorded against the qualifying Upland Parcel or Neighboring Upland Parcel for costs expended by the City in maintaining and repairing the permitted dock and removal of the permitted dock upon failure of the dock permit holder to remove the dock within the time specified in Section 4 (d) hereof or (ii) ~~provide a deposit monies to the City~~ or post a performance bond, acceptable to the City Attorney, callable by the City and conditioned upon the dock permit holder timely removing the ~~permitted~~ dock and all appurtenances thereto within the time set forth in section 4 (d) hereof, the amount of the deposit monies or performance bond being sufficient to cover the cost of removal in the event the permit holder fails to timely remove the dock and all appurtenances thereto as set forth herein. In the event the dock and all appurtenances are timely removed, either (a) ~~the covenant running with the land shall be released and discharged or (b) the deposit monies shall be returned to the permit holder or~~ the performance bond shall be discharged.

(2) The dock permit granted herein shall not be effective until such time as (i) a certified copy of the Resolution granting the dock permit has been recorded in the Public Records of Broward County, Florida by the applicant / permit holder, (ii) together with a ~~recorded~~ copy of the covenant running with the land as referenced in Section 1 (a) above, if applicable and (iii) a copy of the recorded Resolution is filed with the City's Office of Marine Facilities. In order to optimize and preserve the existing character of the surrounding neighborhood, Applicants for a permit under Code Sec. 8-144 are limited to owners of Upland Parcels and Neighboring Upland Parcels as defined hereafter.

- (a) An Upland Parcel is a parcel of land that by extending the side property lines thereof to perpendicularly intersect with the boundary lines of the adjacent waterway, where the Upland Parcel Property lies directly across the street from the public property abutting or touching a waterway for which one may qualify for applying for a dock permit (“Public Dock Permit Parcel”). The owner of the Upland Parcel shall be the only person eligible to apply for a dock permit for the public property across the street from the Upland Parcel.
- (b) A Neighboring Upland Parcel is a parcel of land that does not lie directly across the street from public property abutting or touching a waterway but is within three hundred (300) feet of a Public Dock Permit Parcelan Upland Parcel, said distance to be measured from the closest points of a property line for (i) the Public Dock Permit Parcel Upland Parcel and (ii) the Neighboring Upland Parcel. The owners of Neighboring Upland Parcels are the only persons eligible to apply for a dock permit under Code Section 8-144 if there is no existing Upland Parcel as defined in Section 2 (a) above.
- (c) In the event that two Neighboring Upland Parcel owners submit a second applications is filed for the same dock permit within three (3) months of =a first application for the same dock permit each other and before adoption of a Resolution by the City Commission granting the dock permit, preference shall be given to the application by an Upland Parcel owner over a Neighboring Upland Parcel owner. In the event that both applications are from Neighboring Upland Parcel owners, preference shall be given to the application from the Neighboring Upland Parcel owner—that is closest to the midpoint of the waterfront boundary of such Public Dock Permit Parcel location of the dock permit at issue.
- (d) For public property abutting or touching a waterway which is the subject of an application for a dock permit where such Public Dock Permit Parcel public property is not directly across the street from an Upland Parcel and the Public Dock Permit Parcel public property which is the subject of an application is where a public right-of-way terminates at the waterway (e.g. “street-ends”), the Office of Marine Facilities shall make recommendations to the Marine Advisory Board as to (i) the length of the dock, (ii) the size and dimensions of the envelope within which a vessel may be berthed, (iii) the portion of such public property which will be used exclusively by the permit holder, (iv) the portion of such public property which will be available to the general public, and (v) the waterfrontage that will be

available to the general public. In its review, the Marine Advisory Board shall make recommendations to the City Commission. Applicants for a dock permit under this subsection shall be limited to owners of property within three hundred (300) feet of the midpoint of the waterfront boundary of such public property, said distance to be measured from the closest points of the Applicant's property to the midpoint of the waterfront boundary of the Public Dock Permit Parcel such property that is the subject of the dock permit.

- (e) For a Public Dock Permit Parcel public property abutting or touching a waterway which is the subject of an application for a dock permit where there is a curvature to the boundaries of the waterway, the Office of Marine Facilities shall make recommendations to the Marine Advisory Board with respect to criteria (i) through (v) set forth in subsection 4 (d) above. In its review, the Marine Advisory Board shall make recommendations to the City Commission. Applicants for a dock permit under this subsection shall be limited to owners of property within three hundred (300) feet of the midpoint of the waterfront boundary of such Public Dock Permit Parcel proposed location of the dock which is the subject of the dock permit application, said distance to be measured from the closest point of the Applicant's property to the midpoint of the waterfront boundary of the Public Dock Permit Parcel, with preference given to the Applicant whose ~~these owners~~ of property is located the closest to the midpoint of the waterfront boundary of such Public Dock Permit Parcel ~~proposed location of the dock with which~~ is the subject of the dock permit application.

- (3) The permitted length of a marginal permitted dock width of the dock shall not exceed the width of the corresponding Upland Parcel as measured from the extension into the waterway of the side yard setbacks for the principal building on the Upland Parcel as if the Upland Parcel were not on a waterway. The permitted length of a marginal permitted dock under Section 2 (c) or (d) above shall be determined by the City Commission upon review of the Marine Advisory Board recommendations. No vessel may be berthed in such a manner that it encroaches into the area proscribed under Code Sec. 47-19.3 (hf). The permitted berthing envelope for a vessel shall be determined by the City Commission upon review of the Marine Advisory Board recommendations for Public Dock Permit Parcels described in Section 2 (c) or (d) above. The berthing of a vessel in such a manner that encroaches into the area proscribed under Code Section 47-19.3 (h) or exceeds the permitted berthing envelope as determined by the City Commission for Public Dock Permit Parcels described in Section 2 (d) or (e) shall be unlawful and a violation of this Code as set forth in Code Section 1-6.

~~(4)(1)~~ Unless a fixed period of time is prescribed in the resolution, permits shall be temporary in nature, revocable at the will of the city commission without cause. Permission granted for fixed periods of time may be conditioned upon the requirement that the permit holder shall repair, replace or maintain the adjacent seawall during the term. In such event, permission may be revoked by the city upon at least ninety (90) days of advance notice to the permit holder.

(a) The dock permit granted under this Sec. 8-144 shall be for an initial term of ~~five (5) four (4)~~ years, with ~~renewals required every five (5) years thereafter~~~~two (2) three (3) year renewal terms~~. The permit holder shall be notified by the City of the required renewal and granted ~~ninety (90) days to~~ file an application for the granting of ~~any~~ the renewal term with the Office of Marine Facilities. Application for any renewal term shall be accompanied by an administrative fee, the amount of which shall be reflective of the cost of administering the renewal application, review, inspection and administrative approval or denial of the renewal term, the amount of which shall be established from time to time by the City Commission by duly adopted Resolution. The application for a renewal term shall be reviewed initially by the Office of Marine Facilities who, after reviewing the history of compliance with the terms and conditions set forth in the resolution granting the dock permit for the initial term, shall make a recommendation to the City Manager as to whether to grant or deny the application for a renewal term and specifying additional terms and conditions, if any, for the renewal term. The administrative approval or denial shall be executed by the City Manager or Assistant City Manager.

(b) During the term of the dock permit the permit holder shall be required to repair, replace or maintain the dock or adjacent seawall or both to meet the requirements of ~~Code~~ Sec. 47-19.3 (f), "Boat slips, docks, boat davits, hoists and similar mooring structures" of the Unified Land Development Code and other terms and conditions imposed by the Resolution granting the dock permit or imposed by the granting of the dock permit during a renewal term.

(c) ~~(d)~~ — The permit to use the dock shall expire upon the (i) abandonment of the use of the dock or (ii) sale of the Upland Parcel or Neighboring Upland Parcel, or (iii) termination, expiration or revocation of the dock permit by the City Commission, whichever (i), (ii) or (iii) shall first occur, subject to survivability of the obligation to remove the dock pursuant to section 4 (d) below ~~and the covenant running with the land as set forth in section 1 (a) hereof.~~

~~(e)~~(d) Except as set forth in section 4 (e) below, upon expiration of the permit to use the dock, the permit holder shall be obligated to remove the dock and all appurtenances thereto within three (3) months of the termination, revocation or expiration of the permit to use the dock. This provision shall be a continuing obligation that survives expiration of the permit to use the dock.

~~(f)~~(e) In the event a dock permit is granted to a successor applicant for the same dock permit within the time proscribed in section 4 (d) hereof, the obligation to remove the dock and all appurtenances thereto shall be discharged as to the former permit holder.

~~(g)~~(f) The dock permit granted may be revoked by the City Commission for good cause shown upon at least ninety (90) days advance notice to the permit holder and an opportunity for the permit holder to be heard

~~(5)~~(2) All improvements such as docks, seawalls and the like which are made or placed upon such public property by a private person shall be constructed with appropriate permits from all applicable regulatory authorities having subject matter jurisdiction regarding such matters. All and all maintenance and repairs shall be performed according to city engineering division standards and all applicable regulatory codes including the City's Unified Land Development Code regulations and Florida Building Code and in compliance with building permits obtained from the sustainable development department.

(6) All docks installed pursuant to this Code Sec. 8-144 must be either (i) floating docks that can adapt to sea level rise over their useful life span or (ii) fixed docks installed at a minimum elevation consistent with the requirements of Code Sec. 47-19.3 (f) or (iii) fixed docks the height of which are even with the City's seawall, whichever (ii) or (iii) is the greatest. Penetrating the City seawall to support the dock or permanently attaching improvements, such as cleats, ladders, ramps, mooring whips or similar devices to the City's seawall is prohibited, unless (a) specifically recommended pursuant to the dock building permit review process or (b) where the seawall and dock are being constructed by the dock permit holder, or (c) upon demonstration of extreme hardship, as it relates to accommodations under the Americans with Disability Act, as amended from time to time and as authorized in the resolution granting the dock permit use by private persons of public property abutting or touching a waterway.

~~(7)~~(3) The holder of the permit shall be responsible for maintaining improvements within the Dock Area, as hereinafter defined to the area and for beautifying the Public Swale Area, as hereinafter defined. a reasonable area in and around the dock location to be specified The Public Swale Area shall be

landscaped in accordance with (i) the established landscape plan for the area in question adopted by the Department of Sustainable Development or (ii) a landscape plan approved by the Department of Sustainable Development and embodied in the Resolution adopted by the City Commission granting the permit under this section. Failure and failure to do so shall be grounds for revocation of the permit.

(a) For the purposes of this ~~Code Sec. 8-144 section 7~~ the term “Dock Area” shall mean that area bounded by (i) the upland cap of the seawall abutting the dock and (ii) extending over the water the length and width of the dock, and (iii) including the area within which the vessel may be berthed and all appurtenances to the Dock Area. The length of the dock shall not exceed (a) the distance between the extension into the waterway of the two side yard setbacks for the principal building on the corresponding Upland Parcel as if said Upland Parcel were not abutting the waterway nor (b) the boundaries of the dock as set by the City Commission pursuant to Code Sec.8-144 (2) (d) or (e).

(b) For the purposes of this ~~Code Sec. 8-144section 7~~, the term “Public Swale Area” shall be the area within the waterward extension of the side property lines of the Upland Parcel from the edge of the adjacent publicly dedicated right-of-way closest to the waterway to the wet-faced edge of the seawall cap, excluding therefrom the Dock Area.

(8) Parking in the Public Swale Area by the permit holder or their invitees shall be limited to vehicles engaged in the act of loading or off-loading persons or supplies from the vehicles to the moored vessel. There shall be no fueling of vessels from tank trucks along the adjacent publicly dedicated right-of-way.

(9)(4) Such permits shall not be assignable without the written approval by Resolution of the City Commission.

(10)(5) The holder of such ~~dock~~ permit shall not charge or collect any rent or fees from anyone using such dock constructed on public property. ~~Signage such as “Private Dock” may be placed on the dock within the Dock Area. No signage shall be placed upon or within the Public Swale Areasuch dock indicating it is a private dock. Only vessels owed by the permit holder and registered with the City as part of the dock permit application or amended thereafter may be moored at the permitted dock. Except as to a tender, there shall be no rafting of vessels from the vessel moored at the permitted dock. The berthing of a vessel at a Public Dock Permit Parcel that is not authorized pursuant to the City Commission granting a dock permit (“Unauthorized Vessel”)~~ shall be unlawful and a violation of the Code pursuant to Code Sec. 1-6.

~~(11)(6)~~ A permit granted to a permit holder ~~private individual~~ to construct a dock or authorization to use an existing dock upon public property and the acceptance and use of same by the permit holder ~~such private person~~ shall constitute a guarantee from the permit holder ~~such private person~~ to the City to hold the City harmless for any damage or injury to any person using such facilities.

~~(12)(7)~~ The Public Swale Area ~~Such street ends or public property abutting waterways so used by a private person~~ shall be kept open at all times as means of reasonable ingress and egress to the public, but the permit holder shall have the right to exclude the public from the Dock Area ~~a reasonable portion upon which he has placed improvements [not exceeding fifty (50) percent of the area].~~

~~(13)(8)~~ The violation of any provisions of this Section 8-144 ~~section~~ or any regulations relating thereto hereinafter enacted shall be unlawful and a violation of this Code pursuant to Code Sec. 1-6 and may also constitute cause for revocation of the permit.

~~(9)~~ ~~Upon direction of the city, the former holder of a permit shall remove at his own expense any nonfixture improvements placed by him upon public lands, whenever permission is revoked, and shall make the necessary repairs to the city property to place the same in good condition.~~

~~(14)(10)~~ The resolution granting the permit or the administrative approval of the permit for a renewal term may specify other terms and conditions pertaining to the use or improvement of the property.

~~(15)(11)~~ Only public lands which are not needed by the City for public docking purposes are available for private use under the terms hereof, and the Supervisor of Marine Facilities shall furnish to the City Manager a complete list of all street-ends and other City-owned property abutting waterways which is not needed for dockage purposes from time to time.

SECTION 2. That if any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 3. That all ordinances or parts of ordinances in conflict herewith, be and the same are hereby repealed.

SECTION 4. That this Ordinance shall be in full force and effect within ten (10) days from the date of final passage.

PASSED FIRST READING this the ___ day of _____, 2019.

PASSED SECOND READING this the ___ day of _____, 2019

D:\CITY\Marine\Proposed Revision to 8-144\8-144 draft.3.A.docx

D:\CITY\Marine\Proposed Revision to 8-144\8-144 draft.3.B.docx

/Volumes/Untitled/CITY/Marine/Proposed Revision to 8-144/02.24.19 8-144 draft.4 rbd.docx