

**PROPOSED**

## ORDINANCE NO. 2018-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO PARKS AND RECREATION; AMENDING SECTION 25½-1 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"), PROVIDING FOR DEFINITIONS; CREATING SECTION 25½-13, PROVIDING FOR USE OF PARK PROPERTY TO ENGAGE IN COMMERCIAL RECREATIONAL INSTRUCTIONAL ACTIVITIES; CREATING SECTION 25½-14, ESTABLISHING A PERMITTING PROCESS TO ENGAGE IN ANY PERMITTED ACTIVITIES ON PARK PROPERTY; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, the Broward County Board of County Commissioners ("Board"), pursuant to its authority under Article VIII, Section 1, of the Florida Constitution and Chapter 125, Florida Statutes, is authorized to protect the public health, safety, and welfare and has the authority to enact regulations for valid governmental purposes that are not inconsistent with general or special law; and

WHEREAS, the Board finds that there has been an increase in unauthorized commercial recreational instructional activities in Broward County ("County") parks; and

WHEREAS, unregulated and unauthorized commercial recreational instructional activities could result in public harm and expose the County to liability; and

WHEREAS, pursuant to its home rule powers, the County has the authority to impose fees to support the expenses incurred in operating, maintaining, and regulating County parks and recreation facilities thereon that are reasonably related to the privilege of using County parks to conduct commercial recreational instructional activities; and

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1           WHEREAS, the Board desires to enact regulations relating to use of park  
2 property including, but not limited to, the requirement to obtain written authorization from  
3 the County prior to engaging in any commercial recreational instructional activity on  
4 County park property, as described herein; and

5           WHEREAS, the Board finds that the County has a substantial governmental  
6 interest in regulating commercial recreational instructional activities that are conducted  
7 in County parks and protecting the public from injuries that may result from any such  
8 activities conducted in County parks; and

9           WHEREAS, the Board finds that regulating the provision of commercial  
10 recreational instructional activities within County parks provides for the maximum  
11 enjoyment of such public park resources by the general public, while protecting the  
12 public and preserving such park resources; and

13           WHEREAS, the Board desires to enact regulations establishing a permitting  
14 process for activities and events within County parks and facilities that require prior  
15 authorization from the County including, but not limited to, establishing requirements  
16 and procedures for applications for permits, permit approvals, denials, suspensions, and  
17 revocations, and appeals from any such denials, suspensions, or revocations; and

18           WHEREAS, the Board finds that amending the Broward County Code of  
19 Ordinances as provided herein is in the best interest of the health, safety, and welfare of  
20 the residents in Broward County,

21           BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF  
22 BROWARD COUNTY, FLORIDA:

23           Section 1.   Section 25½-1 of the Broward County Code of Ordinances is  
24 hereby amended to read as follows:

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1 **Sec. 25½-1. Definitions.**

2 For the purposes of this chapter, the following words terms shall have the  
3 meanings indicated:

4 *Adult:* Any individual person eighteen (18) years of age or older.

5 *Applicant:* Any person applying for a permit under this chapter. The term  
6 "applicant" shall include any person on whose behalf an application for a permit under  
7 this chapter is made.

8 . . .

9 *County parks and historic sites or park property:* ~~All the land surface, the air~~  
10 ~~space above and all the adjacent materials situated in Broward County acquired by or~~  
11 ~~under the jurisdiction of the parks and recreation division, public services department, or~~  
12 ~~which may be acquired by this division or come under its jurisdiction. Specifically, this~~  
13 ~~includes all areas so far designated as park areas whether or not wholly or partially~~  
14 ~~developed, all historic sites whether or not wholly or partially developed. Wherever~~  
15 ~~herein the words "park," "parks" or "historic site" may be used, reference is made to~~  
16 ~~such county land areas as described herein. All areas, grounds, buildings, structures,~~  
17 and facilities owned or leased by Broward County and operated, maintained, or  
18 otherwise administered by the Division for parks and recreation purposes, consistent  
19 with the Charter of Broward County, Florida, relating to Broward County Park  
20 Preservation, which include, but are not limited to, athletic fields, recreation areas,  
21 aquatic areas, open green space, natural areas, neighborhood parks, children's  
22 playgrounds, nature centers and trails, dog parks, community centers, lakes, canals,  
23 and waterways. The terms "park" or "parks" shall refer to such County lands described  
24 herein and include all areas or lands whether or not wholly or partially developed.

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1 ...

2 Designated Representative: Any Division employee designated by the Director  
3 in accordance with authority under this article to act on behalf of the Director and  
4 Broward County.

5 ...

6 Section 2. Section 25½-13 of the Broward County Code of Ordinances is  
7 hereby created to read as follows:

8 [Underlining omitted]

9 **Sec. 25½-13. Use of park property for commercial recreational instructional**  
10 **activities.**

11 (a) *Definitions.* For purposes of this section, the following terms shall have  
12 the meanings indicated.

13 (1) *Instructional activity:* Any commercial class, lesson, or other recreational  
14 activity conducted by an Instructor on park property.

15 (2) *Instructor:* Any person that provides any instructional activity on park  
16 property in exchange for any form of compensation, including donations,  
17 or that otherwise provides such instructional activity directly or indirectly in  
18 connection with any business engaged in instruction. The definition of  
19 Instructor does not include any person providing instructional activities as  
20 part of a Division-operated or Division-sponsored recreational or  
21 educational program.

22 (3) *Permit:* Any written authorization issued by the Director or a Designated  
23 Representative in accordance with authority under this section, which  
24 grants permission to the permit holder to engage in a specified

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1 instructional activity on designated park property for up to one (1) year.  
2 The definition of permit does not include Recreation/Instruction  
3 Agreements.

4 (5) *Recreation/Instruction Agreement*: Any agreement executed by the  
5 Director, pursuant to authority granted by the County, and an Instructor  
6 that grants permission to the Instructor to use designated park property for  
7 up to one (1) year, during specific periods of time, for any County-  
8 authorized instructional activity that provides for the County to register the  
9 participants, collect the activity fees, and receive a portion of the monies  
10 collected from such activity.

11 (b) Instructional activities on park property shall be conducted only pursuant  
12 to the following:

13 (1) A permit issued by the Director or a Designated Representative in  
14 accordance with the authority and requirements of this section;

15 (2) A Recreation/Instruction Agreement executed by the Director; or

16 (3) An agreement with a properly licensed concessionaire executed by the  
17 appropriate award authority for the County.

18 (c) Issuance of a permit or execution of a Recreation/Instruction Agreement  
19 pursuant to (b)(1) or (2) above is contingent upon the Director or a Designated  
20 Representative, as applicable, determining that the proposed commercial recreational  
21 instructional activity is in compliance with all applicable requirements of this section.

22 Section 3. Section 25½-14 of the Broward County Code of Ordinances is  
23 hereby created to read as follows:

24 [Underlining omitted]

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1 **Sec. 25½-14. Permits for use of park property.**

2 (a) *Permits; minimum requirements.*

3 (1) All permits issued under this chapter shall, at a minimum, include the  
4 following:

5 a. A description of the permitted activity;

6 b. Identification of the designated park property where the permitted  
7 activity will be conducted and the specified time period(s) for such  
8 activity;

9 c. Payment of all applicable permit fees established by Resolution of  
10 the Commission or by the Director pursuant to such authority  
11 granted by the Commission for parks and recreation programs and  
12 services;

13 d. Duration of the permit, which shall be valid for up to one (1) year  
14 after the date of issuance. Renewal applications shall be provided  
15 to the Division at least fifteen (15) calendar days prior to the  
16 expiration of the then current permit;

17 e. Demonstration of compliance with all indemnity, insurance, criminal  
18 background screening, and any other requirements specified in the  
19 permit at the time of issuance of such permit, unless a conditional  
20 permit is issued by the Division in accordance with f. below;

21 f. Whether the permit is being issued by the Division as a conditional  
22 permit. A conditional permit allows the permit holder to  
23 demonstrate compliance with any requirements under the permit  
24 subsequent to the issuance of such permit, within the time period

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specified in such permit, and prior to the proposed commencement date of such intended activity;

- g. An agreement to demonstrate, at any given time upon request by the Director or a Designated Representative, continuing compliance with all requirements of the permit;
- h. An agreement to pay or reimburse the County for all costs the County may incur for damages to any park property and equipment arising from the permitted activity;
- i. An agreement to present such permit for inspection when utilizing any park property for the permitted activity, upon the request of the Director, a Designated Representative, or any law enforcement officer with jurisdictional authority;
- j. The County's right to cancel or postpone any permitted activity due to any inclement weather including, but not limited to, hurricanes, tropical storms, weather service warnings of severe weather, or any mandated closure of a County park, or any portion(s) thereof, by a governmental authority that has jurisdiction to order such closure; and
- k. Such other relevant information as the Director may reasonably require for the permitted activity.

(2) Permits shall not be assignable or transferable.

(b) *Applications for permits.*

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1 (1) Applications for permits shall be submitted to the Division in a written  
2 format approved by the Director and shall, at a minimum, include the  
3 following information:

- 4 a. Date of the application;
- 5 b. Description of the intended activity;
- 6 c. Park area or facility requested to be used to conduct the intended  
7 activity;
- 8 d. Date and time period for use of the requested park area or facility  
9 for the intended activity;
- 10 e. Name, address, and phone number of the applicant;
- 11 f. Name of the person reserving the requested park area or facility;
- 12 g. Estimated attendance; and
- 13 h. Any other information required by the Director in the application.

14 (2) Applications for permits received pursuant to (1) above shall have the date  
15 and time of receipt notated thereon and shall be processed in order of  
16 receipt. The Director or a Designated Representative shall review each  
17 application for compliance with all applicable requirements for the  
18 intended activity and shall provide written notice of approval or denial of  
19 such application within fourteen (14) calendar days after receipt, in  
20 accordance with (d) below, unless the Division provides written notice to  
21 the applicant that the Division requires additional time to review the  
22 application and extends the review period for an additional fourteen (14)  
23 calendar days. If an application is not approved or denied within fourteen  
24 (14) calendar days after receipt, or within twenty-eight (28) calendar days

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1 after receipt if notice was provided extending the review period in  
2 accordance with this section, the application will be deemed approved.

3 (c) *Denials of applications for permits.*

4 (1) Applications for permits under this article may be denied by the Director or  
5 a Designated Representative for any of the following reasons:

6 a. The application (including any required attachments and  
7 submissions) is not fully completed and executed in accordance  
8 with the application requirements;

9 b. The applicant has, on any prior occasion, made material  
10 misrepresentations regarding the nature or scope of any event or  
11 activity previously approved by the appropriate authority for the  
12 County, or has violated the terms of any prior written authorization  
13 from the County issued to or on behalf of the applicant;

14 c. The applicant has failed to demonstrate compliance with all  
15 applicable requirements for issuance of the permit for such  
16 intended activity at the time of application including, but not limited  
17 to, nonpayment of any application, user, or other fees established  
18 by the appropriate authority for the County and required to be  
19 submitted at the time of application;

20 d. The application contains a material falsehood or misrepresentation;

21 e. The applicant is legally incompetent to contract or to sue or be  
22 sued;

23 f. The applicant has, on any prior occasion, damaged park property  
24 and has not paid the County in full for such damage, or has any

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1 outstanding fees that remain unpaid and are due and owing to the  
2 County for any such prior use of park property;

3 g. The Division is in receipt of a complete and fully executed  
4 application from another applicant seeking use of the same park  
5 property at the same time, a permit has been or will be issued by  
6 the Director or a Designated Representative to the other applicant,  
7 and use of the requested park property does not reasonably permit  
8 multiple occupancy;

9 h. The intended activity conflicts with any previously planned  
10 County-authorized program or activity scheduled for the same time  
11 on the requested park property;

12 i. The intended activity is inconsistent with the classifications of  
13 permissible uses of the park, as provided under the Charter of  
14 Broward County, Florida, relating to Broward County Park  
15 Preservation;

16 j. The size, nature, or duration of the intended activity is inappropriate  
17 for the requested park property or will present an unreasonable  
18 danger to the health, safety, or welfare of the applicant, other users  
19 of the park, the general public, or the Division's employees;

20 k. The requested park property is not suitable for the intended activity  
21 because of landscaping, planting, or any environmental conditions  
22 reasonably likely to be harmed or damaged by such activity;

23 l. The requested park property is not suitable for the intended activity  
24 because it is a specialized area designated for a particular use

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1 including, but not limited to, aquatics areas, dog parks, athletic  
2 fields or areas, or children's playgrounds;

3 m. The intended activity or park use is prohibited by any federal, state,  
4 or local law or rules and regulations of the County;

5 n. The County is unable to provide the services required by the  
6 applicant for such intended activity; or

7 o. The applicant refuses to comply with conditions imposed by the  
8 Director to ensure that park property is not damaged and provide  
9 for the health, safety, and welfare of the public.

10 (2) The content of any speech or expression associated or in connection with  
11 the intended activity shall not be requested as part of the application  
12 process and shall not be considered as a basis for denial of any  
13 application for a permit under this article.

14 (3) A notice of denial shall set forth with specificity the grounds upon which  
15 the application for permit was denied pursuant to the standards set forth in  
16 (c)(1) above and, where feasible, such notice must propose measures to  
17 cure defects in any such application. A notice of denial shall also inform  
18 the applicant of the right to appeal any such denial as provided under (e)  
19 below. Unless timely appealed in accordance with (e) below, the Director  
20 or a Designated Representative's decision to deny an application for  
21 permit is final.

22 (4) When the basis for denial of any application for permit is pursuant to  
23 (c)(1)g. above, the Director or a Designated Representative shall suggest  
24 alternative times and places for such intended activity.

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1 (d) *Notices of approval or denial of applications for permits.* A written notice  
2 of approval or denial of an application for permit shall be provided to the applicant by  
3 U.S. first class mail or electronic mail to the address set forth on the application.

4 (e) *Appeal from denial of application for permit.*

5 (1) Any person whose application for permit is denied under (c)(1) above may  
6 appeal to the County Administrator or any designee of the County  
7 Administrator. Such appeal must be received by the County Administrator  
8 or designee within ten (10) calendar days after the mailing (electronic or  
9 hard copy) of the written notification of such denial. All appeals shall state  
10 with specificity the grounds upon which the decision for denial should be  
11 modified or reversed and shall be accompanied by copies of the  
12 application for permit, the written notice of denial, and any other  
13 documents material to the determination. Any person who fails to timely  
14 appeal shall be deemed to have waived the right to appeal the denial.

15 (2) The County Administrator or designee shall consider all timely appeals in  
16 accordance with the requirements of this section and make a written  
17 determination to affirm, modify, or reverse the denial of any such  
18 application for permit. All decisions of the County Administrator or  
19 designee shall be final and shall exhaust the applicant's administrative  
20 remedies. If a denial of an application for permit is affirmed on appeal, the  
21 applicant for such permit may seek judicial relief of such final action as  
22 provided under Florida law.

23 (3) If the time requirements set forth in this section appear inadequate to  
24 resolve the appeal prior to the date of the proposed activity, the burden

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1 shall be upon the applicant for permit to expedite any filings required and  
2 to request that the County Administrator or designee review the matter  
3 and render a written decision in a timely manner.

4 (f) *Suspension or revocation of permits.*

5 (1) The Director or a Designated Representative is authorized to suspend or  
6 revoke any permit issued under this article for a violation of any  
7 requirement(s) specified in the permit; any applicable federal, state, or  
8 local laws; or rules and regulations governing park use for the intended  
9 activity authorized under such permit. Written notices of suspension or  
10 revocation of any permits shall set forth the specific grounds upon which  
11 such action is being taken, the date upon which such action becomes  
12 effective, and shall include a reasonable time period to cure such violation,  
13 if such violation is subject to being cured. Notice under this section shall  
14 be provided to the permit holder by U.S. mail or electronic mail to the  
15 address set forth on the permit.

16 (2) Any permit holder who receives a written notice of suspension or  
17 revocation of a permit may submit a written appeal of such suspension or  
18 revocation to the County Administrator, or any designee of the County  
19 Administrator, consistent with the timeframes and process set out in (e)  
20 above. Appeals shall be processed and a written decision rendered within  
21 a timely manner if reasonable under the circumstances.

22 (3) Unless a permit is conditional or there exists an immediate threat to life or  
23 safety, the submission of a timely appeal pursuant to section (e) shall  
24 allow a permit to remain in effect during the pendency of such appeal. If

1 the permit holder does not submit a timely appeal, there is an immediate  
2 threat to life safety, or the permit was issued as a conditional permit, then  
3 the permit shall be considered suspended or revoked, as applicable, and  
4 the permit holder shall immediately cease the activity.

5 (g) The Director is authorized to establish a permitting system and any related  
6 rules, regulations, and written policies and procedures to implement the provisions of  
7 this section.

8 (h) Failure of any person who is required to obtain prior written authorization  
9 from the County in accordance with this chapter to engage in any activity on park  
10 property, or failure to comply with all applicable requirements under this section to  
11 continue engaging in such activity, shall constitute a violation of this section. Any  
12 person found to be in violation of this provision shall be provided notice of such  
13 violation, either verbally or in writing, by any designated representative and may be  
14 directed to leave the park property. Any person who fails to leave any park property  
15 after being directed to do so by any designated representative may be considered a  
16 trespasser on park property, in accordance with the applicable provisions of  
17 Chapter 810, Florida Statutes.

18 Section 4. SEVERABILITY.

19 If any portion of this Ordinance is determined by any Court to be invalid, the  
20 invalid portion shall be stricken, and such striking shall not affect the validity of the  
21 remainder of this Ordinance. If any Court determines that this Ordinance, or any portion  
22 hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies),  
23 or circumstance(s), such determination shall not affect the applicability hereof to any  
24 other individual, group, entity, property, or circumstance.

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1 Section 5. INCLUSION IN CODE.

2 It is the intention of the Board of County Commissioners that the provisions of  
3 this Ordinance shall become and be made a part of the Broward County Code; and that  
4 the sections of this Ordinance may be renumbered or relettered and the word  
5 "ordinance" may be changed to "section," "article," or such other appropriate word or  
6 phrase in order to accomplish such intentions.

7 Section 6. EFFECTIVE DATE.

8 This Ordinance shall become effective as provided by law.

9  
10 ENACTED

11 FILED WITH THE DEPARTMENT OF STATE

12 EFFECTIVE

13  
14 Approved as to form and legal sufficiency:  
15 Andrew J. Meyers, County Attorney

16 By /s/ Patrice M. Eichen 03/02/18  
17 Patrice M. Eichen (Date)  
18 Assistant County Attorney

19 By /s/ Maite Azcoitia 03/02/18  
20 Maite Azcoitia (Date)  
21 Deputy County Attorney

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