



City of Coral Gables
CITY COMMISSION MEETING
May 13, 2008

ITEM TITLE:

AN ORDINANCE AMENDING CITY CODE CHAPTER 86, ENTITLED "WATERWAYS", DIVISION 2, ENTITLED "ANCHORING, MOORING, ETC."; IN PARTICULAR, SECTION 86-59, ENTITLED "TO ABUTTING PROPERTY", BY RESTRICTING THE PLACEMENT AND PROJECTION OF BOATS OR WATERCRAFT WHEN ANCHORED, MOORED, OR TIED UP TO WATERFRONT PROPERTY; SECTION 86-60, ENTITLED "OTHER THAN ABUTTING PROPERTY" BY ALLOWING ANCHORING OR MOORING OF BOATS OR WATERCRAFT TO OTHERS DURING DOCK CONSTRUCTION OR IMPROVEMENTS, SUBJECT TO SUFFICIENT ACCESS FOR SAFE NAVIGATION; SECTION 86-61, ENTITLED "ENFORCEMENT BY CHIEF OF POLICE" BY FURTHER AUTHORIZING CODE ENFORCEMENT OFFICERS TO ENFORCE CERTAIN PROVISIONS OF THE CODE; ADDING SECTION 86-62, ENTITLED "DEFINITIONS"; DIVISION 3, ENTITLED "OCEAN AND WATERWAY REGULATIONS", MODIFYING THE TITLE OF SECTION 86-84, TO "WATERCRAFT AS HAZARDS; UNOBSTRUCTED WATERWAYS", IN ADDITION WITHIN THE SAME SECTION, DECLARING IT UNLAWFUL TO POSITION A BOAT OR WATERCRAFT IN SUCH A WAY TO INTERFERE WITH THE NAVIGATION THROUGH THE CITY WATERWAYS; AND FURTHER AMENDING SECTION 86-86, ENTITLED "HURRICANE PROCEDURE-REGULATIONS", BY DECLARING IT UNLAWFUL TO MOOR A BOAT OR WATERCRAFT TO PRIVATE PROPERTY WITHOUT CONSENT; PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECTIVE DATE

RECOMMENDATION OF THE CITY MANAGER:

It is recommended that this Ordinance on first reading be adopted.

BRIEF HISTORY :

The proposed amendments to the City Code is an outcome of the opinion issued by the Third District Court of Appeal entered on October 10, 2007 (attached), in the case of Victor Bared and the City of Coral Gables Code Enforcement Board, Petitioners vs. Yife Tien, Respondent in which the Third District Court of Appeal agreed that City Code Section 86-59 did not protect its residents "from unwanted intrusions by mega-yachts" and stated that the City should craft such an ordinance.

The initial version of this Ordinance was presented at the December 11, 2007 City Commission meeting on first reading, and required among others amendments, that the mooring of boats and watercraft be consistent with the required setbacks for structures on the property. Following public input, the City Commission directed staff to hold a public meeting with affected residents to receive input on the proposed amendments to the City Code. Over sixty residents and city staff attended the February 19, 2008 meeting held at Fairchild Tropical Gardens. The majorities of those in attendance were not in favor of the initial version of this Ordinance, but were in favor of restricting the placement of boats up to the side property line, and allow for encroachment of the side property line, so long as the affected property owner agrees to such an encroachment. Concerns were also raised by the attending public with previous

language that required clear and unobstructed navigation through the waterways regardless of a hurricane event. The attached Ordinance addresses these concerns and further provides for enforcement of certain provisions of the Code by the Code Enforcement Division.

Representatives from the Gables Estates Homeowners' Association and certain residents from the Cocoplum area did express a desire for the Ordinance to require setback provisions. Initially, City staff indicated that site specifics could be developed to address the particular concerns of the areas, however, after further discussion and it was determined that Section 86-59 could be modified to achieve the intent of restricting further the anchoring and mooring of boats in properties with waterfront lengths of 150 feet or more, thereby addressing the concerns of the Gables Estates and certain residents from Cocoplum. The proposed Ordinance, as presented, has been modified to address the concerns of most residents affected by these regulations.

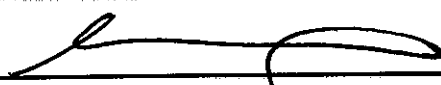
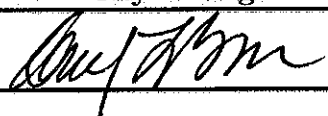
LEGISLATIVE ACTION:

Date:	Resolution/Ordinance No.	Comments
12-11-2007		Ordinance presented on first reading was deferred.

PUBLIC NOTIFICATION(S):

Date	Form of Notification
4-22-08	Letter with Proposed Ordinance sent to all associations abutting the waterway
4-22-08	Emails or letters sent to all residents corresponding with the City Manager's office concerning the subject matter and those who attended the February 19, 2008 Public Input Meeting
4-22-08	Letters sent to all those who attended the February 19, 2008 Public Input meeting
5-8-08	REVISIONS TO ORDINANCE MADE AND RESENT to all associations abutting the waterway
5-8-08	REVISIONS TO ORDINANCE MADE AND RESENT to all residents corresponding with the City Manager's office concerning the subject matter and those who attended the February 19, 2008 Public Input Meeting
5-9-08	Posting of Agenda

APPROVED BY:

Assistant City Manager	City Attorney	City Manager
		

ATTACHMENT(S):

1. Draft Ordinance
2. Draft Ordinance (Highlighted Changes)
3. Copy of the Third District Court of Appeal Opinion filed on October 10, 2007
4. Chart on Local Agencies "Boat Mooring Regulations"

CITY OF CORAL GABLES, FLORIDA

ORDINANCE NO. 2008-_____

AN ORDINANCE AMENDING CITY CODE CHAPTER 86, ENTITLED "WATERWAYS", DIVISION 2, ENTITLED "ANCHORING, MOORING, ETC."; IN PARTICULAR, SECTION 86-59, ENTITLED "TO ABUTTING PROPERTY", BY RESTRICTING THE PLACEMENT AND PROJECTION OF BOATS OR WATERCRAFT WHEN ANCHORED, MOORED, OR TIED UP TO WATERFRONT PROPERTY; SECTION 86-60, ENTITLED "OTHER THAN ABUTTING PROPERTY" BY ALLOWING ANCHORING OR MOORING OF BOATS OR WATERCRAFT TO OTHERS DURING DOCK CONSTRUCTION OR IMPROVEMENTS, SUBJECT TO SUFFICIENT ACCESS FOR SAFE NAVIGATION; SECTION 86-61, ENTITLED "ENFORCEMENT BY CHIEF OF POLICE" BY FURTHER AUTHORIZING CODE ENFORCEMENT OFFICERS TO ENFORCE CERTAIN PROVISIONS OF THE CODE; ADDING SECTION 86-62, ENTITLED "DEFINITIONS"; DIVISION 3, ENTITLED "OCEAN AND WATERWAY REGULATIONS", MODIFYING THE TITLE OF SECTION 86-84, TO "WATERCRAFT AS HAZARDS; UNOBSTRUCTED WATERWAYS", IN ADDITION WITHIN THE SAME SECTION, DECLARING IT UNLAWFUL TO POSITION A BOAT OR WATERCRAFT IN SUCH A WAY TO INTERFERE WITH THE NAVIGATION THROUGH THE CITY WATERWAYS; AND FURTHER AMENDING SECTION 86-86, ENTITLED "HURRICANE PROCEDURE- REGULATIONS", BY DECLARING IT UNLAWFUL TO MOOR A BOAT OR WATERCRAFT TO PRIVATE PROPERTY WITHOUT CONSENT; PROVIDING FOR SEVERABILITY, REPEALER, CODIFICATION, AND AN EFFECTIVE DATE

WHEREAS, the City of Coral Gables Commission finds that there is an alarming increase of large boats and commercial watercraft which are being anchored, moored or tied up to waterfront properties within the city limits which have had a deleterious effect upon the City's residents, marine life, and the navigability of the city waterways; and

WHEREAS, the Florida Statutes Section 253.141 provides that riparian rights are those incident to land bordering upon navigable waters and include the rights of ingress, egress, boating, bathing, and fishing and such others as may be or have been defined by law (Also see, *Thiesen v. Gulf, F. & A., Ry. Co.* 78 So.2d 491 (Fla. 1918)); and

WHEREAS, the waterways of the City of Coral Gables provide a unique ecological environment for marine life for the South Florida area and the City desires to continue to protect and foster such marine life activity; and

WHEREAS, the City wishes to adopt regulations to maintain a balance between the rights of property owners and the protection of marine life, while allowing the navigability of the waterways; and

WHEREAS, in order to protect adjoining property owners from boats or watercraft encroaching unto their property line, the City of Coral Gables Commission desires to regulate the mooring and anchoring of boats and other watercrafts on, upon the waterways under its jurisdiction; and

WHEREAS, the City of Coral Gables Commission wishes to regulate the occasions for mooring or anchoring a boat or watercraft in order to avoid a position that endangers, interferes, or impedes with the navigation of other boats or watercraft through the city waterways; and

WHEREAS, the City Commission wishes to provide for setbacks in those cases involving waterfront properties exceeding a certain length, which may result in the mooring of potentially larger boats, requiring a setback to maintain an unobstructed visual path to the waterway and further enhancing the maneuverability for ingress and egress of such a boat; and

WHEREAS, the State and Federal regulations exist governing waterways and these regulations supplement those State and Federal regulations.

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA THAT:

Section 1. The recitals and findings contained in the Preamble to this Ordinance are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. The City Code of the City of Coral Gables, Florida is hereby amended to provide additional restrictions and prohibitions under Chapter 86, entitled "Waterways", Division 2, entitled "Anchoring, mooring, etc." amending Section 86-59, entitled "To abutting property" to read as follows:

DIVISION 2. ANCHORING, MOORING, ETC.

Sec. 86-59. To abutting property.

(1) It shall be unlawful for any person to anchor, moor or tie up any boat or watercraft of any and every nature whatsoever to any waterfront property abutting the waterways and canals within the city, unless he is the owner of the property to which the boat or watercraft is anchored, moored or tied up or is the lessee of improved property having a dwelling structure thereon, under a written lease from the owner of the fee simple title to such property or is the guest in the house of the owner of improved property having a dwelling structure thereon, except in an emergency.

(2) It shall be unlawful for any person to anchor, moor or tie up any boat or watercraft of any and every nature whatsoever to any waterfront property with less than 150 feet of waterfront length, abutting the waterways and canals within the city in such a position that the length of the boat or watercraft extends beyond the side property lines of the property or is of such a length that when docked or anchored adjacent to such property it extends beyond such side property lines, unless the adjoining property owners agree to such extension. In those cases, where the property waterfront length is 150 feet or more, a ten (10) foot side setback would be required, without exceptions. Lot lines shall be extended into the waterway for purposes of the measurement.

(3) It shall be unlawful to moor, anchor or tie up a commercial boat or watercraft in residential districts to conduct any commercial activity.

Sec. 86-60. Other than abutting property.

(1) It shall be unlawful for any person to anchor or moor any boat or watercraft in the waterways and canals within the city other than to property abutting on the waterways, such as, but not limited to, any other boat or watercraft, except during dock construction, or improvements and only when there is sufficient access for safe navigation of a boat or watercraft through the waterway. When requesting to moor or anchor a boat or watercraft to another such vessel during any construction or improvement, the abutting property owner shall first have obtained a permit for the construction or improvement and such permit shall be displayed on the property.

Sec. 86-61. Enforcement by chief of police.

The chief of police or designee is hereby authorized and designated to receive such information, keep records and details provided for in sections 86-59 and 86-60 and the police department and any code enforcement official is hereby authorized to enforce and carry out the provisions of this division.

Sec. 86-62. Definitions.

Boat or watercraft means any human, motor, wind, non-powered or artificially propelled water conveyance and every other description of boat or watercraft used or capable of being used as a means of transportation in the water and used for pleasure by the owner or others.

Boat mooring space means any place where a boat or watercraft can be anchored, moored, or tied up, and the entire portion of boat lifts, personal watercraft lifts, davits, mooring piles, wharfs, or other similar structures or equipment used in the anchoring, mooring, or tying up of boats or watercraft.

Commercial activity means any and all activities involving a boat or watercraft that includes, but is not limited to, conducting excursions, sightseeing, drift fishing, charter boat services, renting or leasing dock space to others for compensation.

Commercial boat or watercraft means a boat or watercraft that is used in any and all activities and services in exchange for compensation. Services may include, but is not limited to, conducting excursions, sightseeing, drift fishing, or other charter boat services.

Length means the measurement from the tip of the bow in a straight line to the stern, including rudders, outboard motor brackets, handles, and other similar fittings, attachments, and extensions.

DIVISION 3. OCEAN AND WATERWAY REGULATIONS

Sec. 86-84. Watercrafts as hazards; unobstructed waterways

- (a) Whenever, in the opinion of the police chief, or designee the condition of any watercraft in the city waterway is such as to constitute a hazard, either to the safe passage of other water craft or due to the unsanitary conditions created thereby, or because of due to the dilapidation or unsightliness thereof, the owner of such watercraft shall, within three days after receiving notice from the police chief, or designee, remove such watercraft from the city waterway, and for failure to do so shall be guilty of an offense and the owner of the watercraft shall be responsible to the city for any cost or expense undertaken by the city for the purpose of removing the watercraft.
- (b) It shall be unlawful to moor, anchor or tie up a boat or watercraft in a position that endanger, interferes, or impedes with the free and unobstructed navigation of other boats or watercrafts through the waterways, except as provided for in Section 86-86, entitled "Hurricane procedure-Regulations."

Sec. 86-86. Hurricane procedure- Regulations.

- (a) Owners of boats or other watercrafts residing in the city are responsible to take precautionary measures to protect and secure their property in preparation of an event of a hurricane, or other natural disaster.
- (b) Further-recognizing that a hurricane is considered a natural disaster or an act of God, it is understood that certain regulations, laws and ordinances may be negated by such an event.
- (c) In view of the proficiency of the National Hurricane Center in predicting a hurricane, the following shall obtain:
 - (1) Boats or watercraft using the city waterway for refuge will be securely moored not later than 24 hours prior to the officially predicted approach of a hurricane.
 - (2) Such boats or watercraft will be moored only with adequate equipment and safeguards and in a manner so as to eliminate or minimize damage to other vessels boats, watercrafts, property or persons in the city. However, no such mooring will constitute an official approval thereof by the city, and no resultant damages or liability will accrue against the city.
 - (3) It should be clearly understood that any damages to boats, watercrafts, property or persons flowing from any hurricane moorings in the city waterway would be the

personal responsibility and liability of the boat or watercraft owner, including removal or salvage of the boat or watercraft.

- (d) It shall be unlawful to moor a boat or watercraft at a dock, piling or seawall of a property without the consent of the property owner or person in control of the premises.

Section 3. Severability.

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 4. Repealer.

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

Section 5. Codification.

It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Coral Gables Code of Ordinances; and that the sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

Section 6. Effective Date.

This ordinance shall become effective immediately upon the date of its adoption by the City Commission.

PASSED AND ADOPTED this _____ day of _____ 2008.

DONALD D. SLESNICK II, MAYOR

ATTEST:

WALTER FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

ELIZABETH M. HERNANDEZ
CITY ATTORNEY

PLEASE NOTE: UNDERLINED WORDS OR SENTENCES INDICATE THE PROPOSED CHANGES TO THE CITY CODE.

CITY OF CORAL GABLES, FLORIDA

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WHEREAS, the waterways of the City of Coral Gables provide a unique ecological environment for marine life for the South Florida area and the City desires to continue to protect and foster such marine life activity; and

WHEREAS, the City wishes to adopt regulations to maintain a balance between the rights of property owners and the protection of marine life, while allowing the navigability of the waterways; and

PLEASE NOTE: UNDERLINED WORDS OR SENTENCES INDICATE THE PROPOSED CHANGES TO THE CITY CODE.

WHEREAS, in order to protect adjoining property owners from boats or watercraft encroaching unto their property line, the City of Coral Gables Commission desires to regulate the mooring and anchoring of boats and other watercrafts on, upon the waterways under its jurisdiction; and

WHEREAS, the City of Coral Gables Commission wishes to regulate the occasions for mooring or anchoring a boat or watercraft in order to avoid a position that endangers, interferes, or impedes with the navigation of other boats or watercraft through the city waterways; and

WHEREAS, the City Commission wishes to provide for setbacks in those cases involving waterfront properties exceeding a certain length, which may result in the mooring of potentially larger boats, requiring a setback to maintain an unobstructed visual path to the waterway and further enhancing the maneuverability for ingress and egress of such a boat; and

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(3) It shall be unlawful to moor, anchor or tie up a commercial boat or watercraft in residential districts to conduct any commercial activity.

Sec. 86-60. Other than abutting property.

(1) It shall be unlawful for any person to anchor or moor any boat or watercraft in the waterways and canals within the city other than to property abutting on the waterways, such as, but not limited to, any other boat or watercraft, except during dock construction, or improvements and only when there is sufficient access for safe navigation of a boat or watercraft through the waterway. ~~unless he~~ When requesting to moor or anchor a boat or watercraft to another such vessel during any construction or improvement, the abutting property owner shall first have obtained a permit for the construction or improvement and such permit shall be displayed on the property. ~~applied to, and received from the chief of police, a designated spot, at which such craft may be anchored or moored. In making such application to the chief of police, such information shall be given by the seeker of the anchoring or mooring privilege as the chief shall deem necessary or expedient for the purpose of rendering the waterway safe for the passage and use by the craft thereof.~~

Sec. 86-61. Enforcement by chief of police.

The chief of police or designee is hereby authorized and designated to receive such information, keep records and details provided for in sections 86-59 and 86-60 and the police department and any code enforcement official is hereby authorized to enforce and carry out the provisions of this division.

Sec. 86-62. Definitions.

Boat or watercraft means any human, motor, wind, non-powered or artificially propelled water conveyance and every other description of boat or watercraft used or capable of being used as a means of transportation in the water and used for pleasure by the owner or others.

Boat mooring space means any place where a boat or watercraft can be anchored, moored, or tied up, and the entire portion of boat lifts, personal watercraft lifts, davits, mooring piles, wharfs, or other similar structures or equipment used in the anchoring, mooring, or tying up of boats or watercraft.

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Commercial activity means any and all activities involving a boat or watercraft that includes, but is not limited to, conducting excursions, sightseeing, drift fishing, charter boat services, renting or leasing dock space to others for compensation.

Commercial boat or watercraft means a boat or watercraft that is used in any and all activities and services in exchange for compensation. Services may include, but is not limited to, conducting excursions, sightseeing, drift fishing, or other charter boat services.

Length means the measurement from the tip of the bow in a straight line to the stern, including rudders, outboard motor brackets, handles, and other similar fittings, attachments, and extensions.

DIVISION 3. OCEAN AND WATERWAY REGULATIONS

Sec. 86-84. Watercrafts as hazards; notice, removal unobstructed waterways

- (a) Whenever, in the opinion of the police chief, or designee the condition of any watercraft in the city waterway is such as to constitute a hazard, either to the safe passage of other water craft or because of due to the unsanitary conditions created thereby, or because of due to the dilapidation or unsightliness thereof, the owner of such watercraft shall, within three days after receiving notice from the police chief, or designee, director of public safety remove such watercraft from the city waterway, and for failure to do so shall be guilty of an offense and the owner of the watercraft shall be responsible to the city for any cost or expense undertaken by the city for the purpose of removing the watercraft.
- (b) It shall be unlawful to moor, anchor or tie up a boat or watercraft in a position that endanger, interferes, or impedes with the free and unobstructed navigation of other boats or watercrafts through the waterways, except as provided for in Section 86-86, entitled "Hurricane procedure-Regulations."

Sec. 86-86. Hurricane procedure- Regulations.

- (a) Owners of boats or other watercrafts residing in the city are responsible to take precautionary measures to protect and secure their property in preparation of an event of a hurricane, or other natural disaster. and in recognition of the inherent responsibility of the city to protect the lives and property of its citizens, the chief of police will promulgate, distribute, post, and enforce regulations for the use of the city waterway in the event of a hurricane, or other act of God or natural disaster.
- (b) It is Further-recognizing zed that a hurricane is considered a natural disaster or an act of God, and therefore, it is understood that certain regulations, laws and ordinances may be negated by such an event.
- (c) In view of the proficiency of the National Hurricane Center in predicting a hurricane, the following shall obtain:

PLEASE NOTE: UNDERLINED WORDS OR SENTENCES INDICATE THE PROPOSED CHANGES TO THE CITY CODE.

- (1) ~~Vessels~~ Boats or watercraft using the city waterway for refuge will be securely moored not later than 24 hours prior to the officially predicted approach of a hurricane.
- (2) Such ~~vessels~~ boats or watercraft will be moored only with adequate equipment and safeguards and in a manner so as to eliminate or minimize damage to other ~~vessels~~ boats, watercrafts, property or persons in the city. However, no such mooring will constitute an official approval thereof by the city, and no resultant damages or liability will accrue against the city.
- (3) It should be clearly understood that any damages to boats, watercrafts, property or persons flowing from any hurricane moorings in the city waterway would be the personal responsibility and liability of the ~~vessel~~ boat or watercraft owner, including removal or salvage of the ~~vessel~~ boat or watercraft.
- (d) It shall be unlawful to moor a boat or watercraft at a dock, piling or seawall of a property without the consent of the property owner or person in control of the premises.

Section 3. Severability.

If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 4. Repealer.

All ordinances or parts of ordinances in conflict herewith, are and the same are hereby repealed.

Section 5. Codification.

It is the intention of the Commission of the City of Coral Gables, Florida, that the provisions of this Ordinance shall become and be made a part of the City of Coral Gables Code of Ordinances; and that the sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

Section 6. Effective Date.

This ordinance shall become effective immediately upon the date of its adoption by the City Commission.

PLEASE NOTE: UNDERLINED WORDS OR SENTENCES INDICATE THE PROPOSED CHANGES TO THE CITY CODE.

PASSED AND ADOPTED this _____ day of _____ 2008.

DONALD D. SLESNICK II, MAYOR

ATTEST:

WALTER FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

ELIZABETH M. HERNANDEZ
CITY ATTORNEY

Draft

Third District Court of Appeal

State of Florida, July Term, A.D. 2007

Opinion filed October 10, 2007.

Not final until disposition of timely filed motion for rehearing.

No. 3D07-1219

Consolidated: 3D07-1223

Lower Tribunal Nos. 06-512 AP; 06-10340

City of Coral Gables Code Enforcement Board, et al.,
Petitioners,

vs.

Yife Tien,
Respondent.

A Writ of Certiorari to the Circuit Court for Miami-Dade County, Cindy S. Lederman, Antonio Marin, and Marisa Tinkler Mendez, Judges.

Lourdes Alfonsin Ruiz, Assistant City Attorney; Timothy H. Crutchfield, for petitioners.

Aballi Milne Kalil & Escagedo and Hendrik G. Milne, for respondent.

Before GERSTEN, C.J., and GREEN and SHEPHERD, JJ.

SHEPHERD, J.

In this second-tier certiorari case,¹ we are called upon to settle a squabble between neighbors who own adjacent homes on the Gables Waterway, a bay access channel within the limits of the City of Coral Gables. Each home boasts 100-foot seawalls along the waterway. The neighbors—Petitioner Victor Bared and Respondent Yife Tien—apparently lived peaceably next to each other in this waterfront enclave until sometime in 2005 when, as Tien tells it, “Bared motored his 122-foot, two-story monster yacht up the Coral Gables Waterway and docked it off his backyard.” Although at least partially blocked from view by a twenty-five foot mangrove patch that grows just off Tien’s seawall, the nose of the vessel, when moored behind Bared’s home, protrudes approximately twenty feet into what Tien considers “his space,” in the waterway.

After asking “nicely, in writing, to please move the boat” and receiving an unneighborly response, Tien complained to the City Code Enforcement Department who cited Mr. Bared under Section 86-59 of the Coral Gables Code. This section provides:

It shall be unlawful for any person to anchor, moor or tie up any boat or craft of any and every nature whatsoever to any waterfront property abutting the waterways and canals within the city, unless he is the owner of the property to which the craft is anchored, moored or tied up or is the lessee of improved property having a dwelling structure thereon, under a written lease from the owner of the fee simple title to

¹See Art. V, § 4(b)(3), Fla. Const.; Fla. R. App. P. 9.030(b)(2)(B); City of Deerfield Beach v. Vaillant, 419 So. 2d 624 (Fla. 1982).

such property or is the guest in the house of the owner of improved property having a dwelling structure thereon.

Code 1958, § 7-5; Code 1991, § 14-41. Bared would not budge. Instead, he appealed to the Coral Gables Code Enforcement Board.

At the hearing before the Board, Tien presented what he considered to be watertight evidence in support of his position: "[T]o park a 122-foot boat off 100 feet of waterfront . . . , [y]ou are either going to be 22 feet into one neighbor's space or an aggregate of 22 feet into two neighbors' spaces." Bared conceded this point, but countered that the ordinance was inapplicable because this boat is anchored solely to Bared's own property. The City Attorney opined this was the determinative fact in the case, and the Board dismissed the violation.

On first tier certiorari, the circuit court appellate division disagreed with the Code Enforcement Board's decision. Conceding the yacht was "parked along [Bared's] seawall behind his own home," the appellate court chose to focus on Tien's equally indisputable point that "the yacht did extend over behind Tien's seawall . . . as well." The appellate court considered this fact sufficient to award relief to Tien under the ordinance and concluded, "[a]ny other interpretation of the statute would result in an absurd result" Bared now seeks to invoke our assistance.

We recognize at the outset that the scope of our review at this stage of the proceeding is quite limited. Where, as here, "full review of administrative action is

given in the circuit court as a matter of right,” a litigant “is not entitled to a second full review in the district court.” City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982). However, where “there has been a violation of a clearly established principle of law resulting in a miscarriage of justice,” then we are authorized to reach down and supply relief. Allstate Ins. Co. v. Kaklamanos, 843 So. 2d 885, 888 (Fla. 2003) (citing Ivey v. Allstate Ins. Co., 774 So. 2d 679, 682 (Fla. 2000)). As the court noted in Kaklamanos, “‘clearly established law’ can derive from a variety of legal sources, including recent controlling case law, rules of court, statutes, and constitutional law.” Kaklamanos, 843 So. 2d at 890. To that list, we today add municipal ordinances. Applying Kaklamanos, we conclude it would be a violation of “clearly established law” and a substantial “miscarriage of justice” if this mega-yacht was banned from the City of Coral Gables based upon this ordinance.

We are compelled to this conclusion based upon a plain reading of the ordinance. Originally adopted in 1958, when Coral Gables had considerably more vacant land within its limits than it has today, the ordinance prohibited the anchoring, mooring, or tying up of any waterfront property abutting the waterways and canals within the city. Although legislative intent is not our polestar, we doubt the city parents of that time were concerned about mega-yachts. The ordinance by

its terms suggests they were concerned about a "boat or any craft" being lashed to a dock or vacant lot along the waterway without the owner's permission.

We note the City of Coral Gables has filed its own petition for certiorari aligning itself with Bared. The City suggests, based upon earlier authority of this Court, we must defer to its "superior technical expertise and special vantage point" in interpreting this ordinance. See City of Hialeah Gardens v. Miami-Dade Charter Found., Inc., 857 So. 2d 202, 206 (Fla. 3d DCA 2003). The City reads too much into our City of Hialeah decision. We are not required to and do not defer to an agency's construction or application of a law or ordinance where we are equally capable of reading the ordinance. Fla. Hosp. v. Agency for Health Care Admin., 823 So. 2d 844, 848 (Fla. 1st DCA 2002) ("[A] court need not defer to an agency's construction or application of a statute if special agency expertise is not required, or if the agency's interpretation conflicts with the plain and ordinary meaning of the statute."). A plain reading of the ordinance in this case requires that we quash the decision below. Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984) ("When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.") (quoting A.R. Douglass, Inc. v. McRaney, 137 So. 157, 159 (Fla. 1931)). We feel

confident the City knows how to properly craft an ordinance to protect its citizens from unwanted intrusions by mega-yachts if it so desires.

Petitions granted. Decision quashed. Case remanded for further proceedings consistent herewith.

Boat Mooring Regulations

Local Government	Regulated	Setback	Description
Miami Beach	Yes	Yes	Article IV Supplementary District Regulations. Division 4. Supplementary Yard Regulations. Section 142-1132 entitled, "Allowable encroachments within required yards." (f) Marine structures,seaward side yard setbacks for boat slips, ...or structures of any kind will not be less than 7 ½ feet.....It is further provided that any boat, ship, or vessel of any kind shall not be docked or moored so that its projection extends into the required seaward side yard setback.....
Marco Island	Yes	Yes	Article IV Boat Docking Facilities. Division 1. Generally. Section 54-111 entitled, "Dimensional standards." (b) Side yard setback requirements for boat and docking facilities and swivel PWC lifts: (1) Boat docking facilities shall have a side yard setback equivalent to 15 percent of the seawall length, regardless of location, as measured from applicable riparian lines. a. The minimum required setback shall be 7.5 feet b. the maximum required setback will be 15 feet..... (4) Any boat, accessory attached to a boat, or PWC stored on decking of a boat docking facility must meet the set back requirements set forth in this section.
Boca Raton	Yes	No	Article III. Docks and Other Mooring Facilities. Section 22-59 entitled "Mooring" (2) "No part of a boat shall be moored so as to extend beyond a side property line projected into the canal. "
Cocoa Beach	No		
Dania Beach	Yes	No	Article II. Accessory and Detached Buildings and Structures. Section 33-40 entitled "Regulations and use of waterways and facilities related thereto." (12) Construction of Boat Lifts and Docks on Waterways; limitations. "(e) No watercraft shall be docked or anchored adjacent to residential property in such a position that it extends beyond the side property lines of the property or is of such length that when docked or anchored adjacent to such property it extends beyond such side property lines, unless the adjoining property owners agree to such extension."
Deerfield Beach	Yes	Yes	Section 98-87 entitled "Docking and Mooring Facilities" (d) Docking and Mooring Standards "(2) No watercraft will be docked or anchored in such position that it extends beyond the side yard setback lines required for structures in the applicable zoning district."
Delray Beach	No		
Golden Beach	No		
Key Colony	No		
Key West	No		
City of Coral Gables	Yes	Yes*	City Code Chapter 86 entitled "Waterways", Division 2, Anchoring, Mooring, etc., Section 86-59. To abutting property. (2) It shall be unlawful for any person to anchor, moor or tie up any boat or watercraft of any and every nature whatsoever to any waterfront property with less than 150 feet of waterfront length, abutting the waterways and canals within the city in such a position that the length of the boat or watercraft extends beyond the side property lines of the property or is of such a length that when docked or anchored adjacent to such property it extends beyond such side property lines, unless the adjoining property owners agree to such extension. In those cases, where the property's waterfront length is 150 feet or more, a 10-foot side setback would be required, without exceptions. Lot lines shall be extended into the waterway for purposes of the measurement.

*Note: For properties with waterfront lengths of 150 feet or more