NORTH MIAMI
FLORIDA
776 N.E. 125 Street, North Miami, Florida 33161

Council Report

To: The Honorable Mayor and City Council

From: Derrick Corker, Manager of Parks & Recreation

Date: July 8, 2014

RE: Personal Training and Other Outdoor Professional Services

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RECOMMENDATION

Staff is recommending that the Mayor and City Council approve the new permit and a city Ordinance of the Personal Training & Other Outdoor Professional Services Application.

BACKGROUND

The Personal Training & Other Outdoor Professional Services Application is for Private Fitness Instructors regarding the uses of the Parks and Recreation facilities. We have been having a ton of issues with personal trainers and fitness coaches utilizing parks ground for personal gains/benefits while the city is held countable for any injuries that may accrue at the park. The policy serves as a limitation of use of public areas.

The city doesn't currently offer a Personal Training & Other Outdoor Professional permit. This permit will allow the city to accepted Personal Training & Other Outdoor Professional with the proper paperwork. The Department will offer contract that runs through January 1 – June 30 and July 1 - December 31. The permit will be offered at the following sites Griffing Community Center, Claude Pepper Park, Enchanted Forest and North Miami Stadium. This permit is anticipated to be a slight revenue generator for the City.

Attachments

Resolution
Personal Training & Other Outdoor Professional Services Application

RESOLUTION NO. _____

A RESOLUTION OF THE VICE MAYOR AS ACTING MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING AND ADOPTING THE ATTACHED POLICY FOR PERMITTING COMMERCIAL USE OF DEDICATED CITY PARKLANDS AND FACILITIES FOR PERSONAL TRAINING AND OTHER OUTDOOR PRIVATE PROFESSIONAL SERVICES, TO BE IMPLEMENTED AND ENFORCED BY THE PARKS AND RECREATION DEPARTMENT; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, the City of North Miami ("City") has a wide variety of recreational programs, activities and fee schedules which are updated from time to time by the City Parks and Recreation Department ("Parks Department"), with the aim to offset expenses incurred by the City in hosting recreational programs, activities, and the use of park facilities; and

WHEREAS, the Parks Department completed a review of current use of City owned park areas and found extensive use of such parklands by personal training and other outdoor private professional service entities ("Private Use"); and

WHEREAS, the Parks Department has identified numerous issues with personal trainers and fitness coaches utilizing City parks for personal gain and benefit, without consideration of damage to the park grounds or exposure to potential liability to the City by extensive and unregulated Private Use of public lands and facilities; and

WHEREAS, the Parks Department desires to establish a policy to permit the current unregulated Private Use of public parks and facilities, in the attempt of limiting the City's exposure to liability and to help generate some funds to restore the public parks from the wear and deterioration occasioned by excessive Private Use; and

WHEREAS, the Vice Mayor as Acting Mayor and City Council find the attached policy for permitting commercial use of dedicated City parklands and facilities for personal training and other outdoor private professional services to be fair, reasonable and essential for the continued provision of high quality recreational programs and activities, focusing on the public's health, safety and welfare.

NOW THEREFORE, BE IT RESOLVED BY THE VICE MAYOR AS ACTING MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. **Policy Approval and Adoption.** The Vice Mayor as Acting Mayor and City Council of the City of North Miami, Florida, hereby approve and adopt the policy (attached hereto as "Attachment A") for permitting commercial use of dedicated City parklands and facilities for personal training and other outdoor private professional services, to be implemented and enforced by the Parks and Recreation Department.

Section 2. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Vice Mayor as Acting Mayor and City Council of the City of North Miami, Florida, this _____ day of July, 2014.

_____
PHILIPPE BIEN-AIME
VICE MAYOR AS ACTING MAYOR

ATTEST:

_____
MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

_____
REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Vice Mayor as Acting Mayor Philippe Bien-Aime	_____ (Yes)	_____ (No)
Councilperson Scott Galvin	_____ (Yes)	_____ (No)
Councilperson Carol Keys, Esq.	_____ (Yes)	_____ (No)
Councilperson Marie Erlande Steril	_____ (Yes)	_____ (No)

NORTH MIAMI FLORIDA PARKS & RECREATION It Starts in Parks!

North Miami ACHIEVE

North Miami All-America City 2010

Attachment A

Commercial Use of Dedicated Parkland for Personal Training and Other Outdoor Professional Services 6 Month Park Use Application and Permit

Type of Permit Requesting
Please check predominant use:

- ❑ Fitness, Cross Training or Professional Exercise Trainer, Medium to High Impact
- ❑ Yoga, Pilates or other Light Impact Trainer
- ❑ Other Adult Services
  Please define:_____

Requested Permit Term:

- ❑ January 1 through June 30
- ❑ July 1 through December 31

Requested Park Location:

_____

_____

Alternative Location:

_____

_____

Application Date:

_____

Permit Holder Information

Name:_____

Company Name:_____

Contact Person:_____

Address:_____

City:_____ State:_____ Zip Code:_____

Phone Number:_____ Alternate Phone Number:_____

Fax Number:_____

E-mail Address:_____

Florida Driver's License or Identification Card Number*:_____

General Liability Insurance Provider*:_____

Policy Number:_____

Permit holder must provide documents as verifiable proof before the Park Use Permit may be issued.

Use Allowed

Programs/activities as described in the program activity description section herein are allowed and must adhere to the rules attached as **EXHIBIT A**. To the extent of any conflict between the program activities authorized in this Permit and other existing uses, the City reserves the right to adjust the uses authorized. This Permit may not be assigned.

Conditions of Permit

(1) Permit holder shall clean the park location at the end of every session of use under this Permit.

(2) Modifications or improvements proposed by the permit holder to obtain electric service at any park location are not covered by this permit and must be approved by the City before the proposed modifications or improvements may be made. Additional agreements may be required for proposed modifications or improvements.

(3) Permit holder shall at all times maintain in their possession the issued permit credential in the manner prescribed by rule by the Parks and Recreation Department.

(4) Permit holder shall not provide and/or facilitate organized or sanctioned activity (i.e. soccer tournaments, disc golf leagues, practice sessions etc).

(5) Permit holder shall not provide and/or facilitate recreational programming and services for youth including but not limited to camps and instructional clinics.

(6) Permit holder shall not use the park location if the area has been closed by the City due to inclement weather or other reason. The City will notify the permit holder point of contact of the closure and will post signage at the site to identify the nature and duration of the closure.

(7) Permit holder shall advise permit holder's employees of the park use policies to ensure that all activities under this permit comply with the park use policies and procedures as set forth in **EXHIBIT A** and general Parks and Recreation Department park rules.

Payment

In exchange for this permit, permit holder has paid a registration fee of $50.00. In addition, for every month in which permit holder provides personal training or fitness.

Term/Termination

This permit shall be effective from and after the date of signature by the permit holder and the Director or his/her designee, and shall automatically terminate on the termination of the requested permit term selected above, unless terminated earlier under this provision.

The Parks and Recreation Department may terminate this registration upon seven (7) days notice to the permit holder upon determining that the permit holder caused or allowed others under the permit holder's control to cause damage to the park location beyond normal wear and tear.

If the permit is terminated due to property damage, the City may retain payments made by the permit holder to offset the damages, in addition to pursuing other legal remedies available.

Insurance

Registrant has provided insurance as prescribed by rule by the Parks and Recreation Department and agrees to maintain, throughout the permit term, the insurance coverage described on **EXHIBIT B,** which is attached to and made a part of this permit for all purposes. The insurance policies shall contain the correct endorsements in favor of the City of North Miami.

Registrant must supply evidence of any required insurance coverage to the Parks and Recreation Department Contact when registrant submits the signed application. If the required evidence of insurance is not provided at the time registrant submits this application, execution of the permit by City shall be delayed until adequate evidence is provided. In addition, if at any time during the term of this permit, City or Parks and Recreation Department learns that any required insurance coverage has lapsed or been cancelled, the City may immediately terminate this permit.

Compliance with City of North Miami Rules and Regulations

In addition to the specific rules and regulations established for this permit and use program, applicant acknowledges that each park and permit is subject to general park rules and regulations as currently exist and as may be adopted administratively or by ordinance by the City of North Miami and agrees to abide by these rules and regulations.

Program/Activity Description

Describe the program/activity including number of participants expected:

_____

_____

_____

_____

Describe in detail how the park land, park equipment, and park improvements will be used:

_____

_____

Indemnity/Waiver

Permit holder agrees to indemnify and hold harmless the City of North Miami, its agents, employees, and assigns, against any liability based upon the services provided by the permit holder, the issuance of this permit, or the failure of permit holder to comply with the terms of the permit. Permit holder, permit holder's employees, volunteers, and clients waive any right they may have had to sue the City, its officers, employees, and assigns due to conduct under this permit. Permit holder shall communicate the terms of this indemnity and waiver to all permit holder's employees, volunteers, and clients.

Applicant's Verification:

I verify that all of the above information is true. I have also read, understand, and am willing to comply with the park use policies and procedures as set forth by the City of North Miami Parks and Recreation Department. I agree to the terms of this six (6) Month Commercial Use of Park Use Permit and am authorized to sign on behalf of the Permit holder.

Signature of Applicant / Printed Name / Date

Please complete this application and return to the address below:

Mailing Address:
City of North Miami
Parks and Recreation Department
Attention: Front Desk
12300 NE 8 Avenue
North Miami, FL 33161

Contact: Derrick Corker
Director
Phone: (305) 895-9840
Fax: (305) 892-8639
E-mail: dcorker@northmiamifl.gov

City of North Miami Parks and Recreation Department Approvals: (office use only)

Verified by:

Administrative - Signature	Printed Name	Date

Approved by:

City of North Miami Parks and Recreation Department Director or Designee	Printed Name	Date

Exhibit A
City of North Miami
Rules Regarding Commercial Use of Dedicated Parkland

A fee and use policy has been approved and rules developed to establish commercial use and location trends for regularly scheduled adult health and fitness activities in the City of North Miami park system. This program includes revisions that protect the public's use and provides health and fitness consultants, dog trainers, and other outdoor professional service provider's reasonable access, use-based fee structure and equipment limits to minimize damage to North Miami parks.

Section	Description	Proposed Rule or Fee
1	Approved Commercial Use	Fitness Groups, Dog Trainers, Yoga Instruction, and other adult professional fitness services as approved by the Director of Parks and Recreation
2	Fitness Session	Block of time permit holder is allotted to provide service (2 hour maximum)
3	Regularly Scheduled Programming	Permit holder plans and schedules a series of fitness sessions occurring in North Miami parks (i.e. daily or weekly)
4	Approved Locations	Four (4) inner city and urban area parks, as listed below, excluding off-leash areas, public walkways, and pre-defined use areas: – Enchanted Forest Park – Pepper Park – Griffing Park – North Miami Athletic Stadium
5	Excluded Areas	Any area specifically dedicated to a use that would reasonably conflict with any approved use is excluded. For example, holding fitness classes in an area dedicated as a children's play area or basketball court is not appropriate. Shared parkland with the School District will not be an approved location for commercial activity at this time.
6	Approved Equipment	Trainers may **not** bring equipment to parks that could damage the parkland, facility or pose a hazard to the general public. These items include but are not limited to: – Tractor tires – Vehicles on park property – Cables or railroad ties – Attaching equipment to trees, hand rails or other fixed items. Trainers are allowed to bring yoga mats, water bottles, Dynamax medicine balls, rubber and TRX brand suspension bands.
7	Impact on public use and priority of the permit	Permit holders shall not interrupt existing use of an area by the general public and the public must always have access to park entrances. Blocking of

Section	Description	Proposed Rule or Fee
		public access is prohibited. Alternatively if a fitness camp or training session has already begun and is in process, the general public may not interrupt an ongoing fitness class.
8	Fee for Adult Professional Services, intended to include fitness trainers, boot camp leaders and other exercise professionals	**Fee per Trainer, Instructor:** $50 Base Permit Fee (6 Months)
9	Fitness Zones	Not applicable. Approved list of parks includes areas not allowed for commercial use.
10	Permit Credential	ID Card with Photo for each permit holder. Permit Holders are required to wear or have with them the permit credential when conducting business on City property. City retains the right to request proof of permit by requesting permit credential by any City of North Miami employee.
11	Enforcement	Parks and Recreation Staff. Violations of this permit or Parks and Recreation Department (PARD) rules may result in the revocation of permit. Three (3) or more violations by any permit holder shall result in permanent removal from the program.
12	Parking Lots	Dedicated parking lots may not be used for any fitness, training or professional service purpose at any time.
13	Addition or Removal of Approved Park Locations	Parks and Recreation Staff will review the addition and/or deletion of approved locations at each 6 month review of the permitting program.

Exhibit B

Insurance Requirements

The following outlines the insurance requirements that are required for you to be a commercial health and fitness service provider in the City of North Miami park system. Please give this document to your insurance agent. He/she will assist you in meeting the insurance requirements. Additionally, your insurance agent should send Parks and Recreation a Certificate of Insurance so that we may have verification of your coverage on file.

A. General Requirements.

(1) The registrant (i.e. fitness instructor(s)) shall at a minimum carry insurance in the types and amounts indicated below for the duration of the permit.

(2) The registrant shall forward Certificates of Insurance with the endorsements required below to the City as verification of coverage.

(3) Registrant shall not commence sessions until the required insurance is obtained and has been reviewed by City. Approval of insurance by City shall not relieve or decrease the liability of registrant hereunder and shall not be construed to be a limitation of liability on the part of Registrant.

(4) Registrant's insurance coverage shall be written by companies licensed to do business in the State of Florida at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

(5) All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the following information:

City of North Miami
Parks & Recreation Department
12300 NE 8th Avenue
North Miami, Florida 33161

(6) The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the application, covering both City and registrant, shall be considered primary coverage as applicable.

(7) If insurance policies are not written for amounts specified below, registrant shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

(8) City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

(9) City reserves the right to review the insurance requirements set forth during the effective period of this permit and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as registrant.

(10) Registrant shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the permit or as required in permit rules.

(11) Registrant shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

(12) The insurance coverage's specified below are required minimums and are not intended to limit the responsibility or liability of the registrant.

B. Specific Requirements.

Workers Compensation as required by Law in (F.S.) Florida Statutes, Chapter 440. The following minimum limits are required:

(1) Worker's Compensation and Employers' Liability Insurance – Part A: Statutory Coverage.
Part B: Employers' Liability - $100,000 bodily injury each accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee.

If you are electing an exemption as outlined in F.S. 440.05, provide a Certificate of Waiver/Exemption.

(2) Commercial General Liability Insurance – Minimum Limit of $1,000,000. Coverage shall not contain any endorsement (s) limiting or excluding contractual liability or cross liability.

(3) Professional Liability Insurance Coverage. At a minimum limit of $100,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this permit.

If coverage is written on a claims made basis, the retroactive date shall be prior to or coincident with the date of the application and the certificate of insurance shall state that the coverage is claims made and indicate the retroactive date.

(4) Umbrella or Excess Liability – registrant may satisfy the minimum liability limits required above with an Umbrella or Excess Liability policy. The Annual Aggregate limit of this policy shall not be less than the highest limit of the "Per Occurrence" limit for Commercial General Liability, unless the Certificate of Insurance states that Umbrella or Excess Liability provides coverage on a "follow-form" basis.

C. Waiver of Subrogation

Registrant agrees by entering into this contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit registrant to enter into any pre-loss agreement to waive subrogation without an endorsement, then registrant agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This waiver of Subrogation requirement shall not apply to any policy which includes a condition specifically prohibiting such an endorsement, or voids coverage should Registrar enter into such an agreement on a pre-loss basis.

Commercial Use of Dedicated Park land
Frequently Asked Questions

1. Why is the Parks and Recreation Department implementing this process?

A. Parks and Recreation values fitness and enjoyment of outdoor recreation areas. The department has an established concession program process in place for the permitting of park use for mutually beneficial commercial purposes. The goal is to promote and coordinate successful partnerships with commercial entities and public park users, and to ensure the safety of park patrons.

2. My work colleague and I get together sometimes to work out in the park or go for a jog, will I have to get a permit?

A. No, the process will be required when fees are collected, or when business is conducted on park property. You may still utilize park space first come first served in a shared manner.

3. My friends and I meet occasionally to walk and we bring our toddlers in strollers, will we need a permit?

A. No, the process will be required when fees are collected, or when business is conducted on park property. You may still utilize park space first come first served in a shared manner.

4. What will the permitting process entail?

A. The department has pre-identified four sites for city wide permitting in an effort to create a citywide structure that enables and promotes fitness and health business opportunities system wide.

- Apply for a permit and request an approved site, and
- Provide the required liability insurance, and
- Upon approval, pay the required registration fee.

5. What are the permit fees?

A. A 6 month $50 registration fee will be required of each individual service provider. All rentals and special events have first priority.

6. I have been using park land to conduct business activities, do I need a permit?

A. Yes.
Examples include: fitness camps, running groups, boot camps, martial arts classes, yoga classes, and dog training seminars.

7. I'm organizing a group activity for my club/organization, but am not collecting any money for this activity. I do, however, plan to show up in an area, use it quite exclusively, and perhaps have a radio or amplified sound on site. Do I need a permit?

A. If no money would be collected from the Club/Organization for the activity, there would be no commercial or private gain from this activity. For that reason, a fee would not have to be assessed. So, a sound permit would still be required, but no fee assessed.

8. What are some of the Park Rules and permits that I need to be aware of?

A. Examples:

- Glass and Styrofoam are prohibited in all parks. What else is prohibited?
- Sound Permits are required for all amplified sound for our city? If so how does one obtain a permit?
- Park curfew is 9 pm. I think our curfew is sundown?
- The hike and bike trail system are not a useable site for organized events or activities.
- It is illegal to drive on non-designated or un-paved vehicular areas without a permit, including motorcycles, scooters and devices such as Segways. What kind of permit?
- For more information on Park Rules, see this web page We could link it to our site

9. What are some examples of potential public safety hazards on dedicated parkland?

A. Examples:

- Blocking of sidewalks, trails and passageways from public use, and blocking ADA access areas.
- Conducting primary business operations from public parkland. Examples: setting up business registration operations.
- Conducting auxiliary business operations from public parkland.
- Examples: selling food, water, and other products to the public.
- Loud and/or un-permitted music in a public park.
- Utilization of unsafe and park damaging equipment on dedicated parkland.
- Conducting or performing such unsafe practices such as:

- Swinging or pushing of large tractor tires over park grounds.
- Use of railings, trees and plumbing fixtures to anchor resistance bands.
- Up righting and relocating public picnic tables for use in activities.
- Dragging commercial ship mooring ropes for long distances for resistance training purposes.
- Utilization of tennis and basketball courts for setting up obstacle courses.

10. I'm a park user and want to ensure my fitness activities are being conducted by a permitted vendor. How will I know if a vendor has been permitted?

A. All permitted vendors will be issued a permit they must carry on parkland. This also ensures that your park permit fees help offset the cost of park maintenance and upkeep by commercial users.

11. What is tangible personal property?

A. The statutory definition for "tangible personal property" is "personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses."