

**CITY OF BILOXI
AGENDA ITEM
FACT SHEET**

Item No.: 5 K

Council Meeting Date: June 18, 2019

ITEM TITLE: RESOLUTION

INTRODUCED BY: Mayor Andrew "FoFo" Gilich

CONTACT PERSON: E. Michael Leonard, CAO *ew*

John Miller, Director of the Police Department

SUMMARY EXPLANATION:

Resolution authorizing entry into Memorandum of Agreement with the United States Coast Guard regarding joint law enforcement boardings

Resolution Ordinance _____ Public Hearing _____ Routine Agenda _____

Exhibits for Review

Contract Minutes _____ Plans/Maps _____ Deed _____ Lease _____

Other (Specify): Exhibit A: Memorandum of Agreement

Submittal Authorization: Council President _____ Mayor

STAFF RECOMMENDATION: Staff recommends approval

COUNCIL ACTION: Motion By: _____ Second By: _____

| Vote: | Councilmember | Yes | No | Other | Councilmember | Yes | No | Other |
|-------|---------------|-----|-----|-------|---------------|-----|-----|-------|
| | Lawrence | ___ | ___ | ___ | Tisdale | ___ | ___ | ___ |
| | Gines | ___ | ___ | ___ | Glavan | ___ | ___ | ___ |
| | Newman | ___ | ___ | ___ | Barrett | ___ | ___ | ___ |
| | Deming | ___ | ___ | ___ | | | | |

ACTION TAKEN:

Resolution No.

RESOLUTION AUTHORIZING ENTRY INTO MEMORANDUM OF AGREEMENT WITH
THE UNITED STATES COAST GUARD REGARDING JOINT LAW ENFORCEMENT
BOARDINGS

WHEREAS, the City of Biloxi (the "City") is a duly formed and incorporated municipality under Mississippi Law and operates a police department within its municipal boundaries as provided by Mississippi Statutes;

WHEREAS, the Biloxi Police Department (the "BPD") has law enforcement responsibility concerning recreational vessels on all waters subject to the jurisdiction of the City and State as well as waters subject to Federal jurisdiction that are also within jurisdiction of the City;

WHEREAS, the United States Coast Guard (the "USCG") has primary responsibility for the enforcement of vessel inspection and related federal statutes applicable to vessels classified as other than recreational vessels;

WHEREAS, the BPD and USCG share a common goal of preventing and/or mitigating boating under the influence of alcohol and agree to coordinate their efforts so that the most effective enforcement option is prosecuted in each case;

WHEREAS, the Memorandum of Agreement, attached hereto as Exhibit "A," defines the relationship between the USCG and BPD in the conduct and procedures of boating safety programs and joint boardings on waters within the concurrent jurisdiction of the BPD and the USCG; and

WHEREAS, it is the recommendation of John Miller, Police Chief, that the City enter into the Memorandum of Agreement, attached hereto as Exhibit "A," with USCG for the purposes stated above.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF BILOXI, MISSISSIPPI, THAT:

Section 1: The findings, conclusions, and statements of fact contained in the foregoing preamble are hereby adopted, ratified, and incorporated herein.

Section 2: The Mayor and the Chief of Police are hereby authorized to accept and execute, on behalf of the City of Biloxi, the Memorandum of Agreement, attached hereto as Exhibit "A," with the United States Coast Guard.

Section 3: This resolution shall take effect and be in force from and after adoption.

**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES COAST GUARD (USCG)
AND
THE BILOXI POLICE DEPARTMENT (BPD)
REGARDING
JOINT LAW ENFORCEMENT BOARDINGS**



1. **PARTIES:** This Memorandum of Agreement (MOA) is between the United States Coast Guard (USCG) and Biloxi Police Department, MS (BPD).
2. **AUTHORITY:** This MOA is authorized under the provisions of 14 U.S.C. 522, 701, 33 CFR 95.
3. **PURPOSE:** To define the relationship between the USCG and BPD in the conduct and procedures of boating safety programs and joint boardings on waters within the concurrent jurisdiction of the BPD and the USCG. The parties will also use this agreement as a basis for enhanced collaboration between the USCG, BPD and local law enforcement agencies within the state. The BPD has law enforcement responsibility concerning recreational vessels on all waters subject to the jurisdiction of the city/state as well as waters subject to Federal jurisdiction that are also within jurisdiction of the city. The USCG has primary responsibility for the enforcement of vessel inspection and related federal statues applicable to vessels classified as other than recreational vessels. This does not limit the BPD's authority to take necessary action involving obvious violations related to these vessels that may jeopardize public safety nor does it limit the USCG's authority to take lawful action against recreational boaters in city/state waters. Additionally, the BPD and USCG share a common goal of preventing/mitigating boating under the influence of alcohol and agree to coordinate their BUI efforts so that the most effective enforcement option is prosecuted in each case. BPD and USCG agree that it is preferable for impaired boat operators be prosecuted through the state or local judicial system. In those instances where Federal prosecution is either the only option or is deemed to be the most effective option, no state prosecution will be sought. Both city/state and Federal prosecution (criminal or civil) will normally not be pursued.

4. RESPONSIBILITIES.

USCG STA Gulfport:

- a. Violations of city/state standards/laws for both recreational and non-recreational vessels detected by USCG Boarding Officers may be reported to the BPD for disposition.

- b. During joint boardings, BPD Officers and USCG Boarding Officers should work together to conduct Federal and city/state safety inspections. The BPD Officer and Boarding Officer should discuss who has lead prior to conducting a boarding.
- c. A BPD Officer or USCG Boarding Officer will not normally board a vessel for inspection if the operator produces a recent satisfactory state or USCG examination, report of boarding or current USCG Auxiliary Vessel Safety Check. However, notwithstanding a recent satisfactory examination, a boarding may be conducted at the BPD Officer's or Boarding Officer's discretion.
- d. If the USCG detects a boat operator apparently under the influence of alcohol or other drugs within state waters, where concurrent jurisdiction exists, the USCG may conduct field sobriety tests to determine if probable cause exists. For those cases which are likely to be prosecuted by the state or city, the USCG will not request a preliminary breath test. If a boat operator is determined to be under the influence, the USCG will remove the impaired operator from control of the vessel and contact BPD or other local law enforcement to discuss enforcement options.
- e. Will make contact with BPD via dispatch, or delegated officer to request or plan joint operations.
- f. When BPD is designated as the lead agency, the USCG will follow the BPD officer's lead.
- g. Will, at all times unless dictated by national emergency, adhere to the USCG Use of Force policy.
- h. Will, as operations permit, respond to calls for assistance for BUI and other LE related cases.
- i. Will provide the Boarding Officer who observed a violation of state/local law or regulation to testify for the prosecution for the observed offense or to testify in any other proceeding related to the violation.

BPD:

- a. Violations of Federal standards/laws for both recreational and non-recreational vessels and associated equipment violations detected by the BPD Officers may be reported to the USCG for disposition.
- b. During joint boardings, BPD Officers and USCG Boarding Officers should work together to conduct Federal and city/state safety inspections. The BPD Officer and Boarding Officer should discuss who has lead prior to conducting a boarding.

c. A BPD Officer or USCG Boarding Officer will not normally board a vessel for inspection if the operator produces a recent satisfactory state or USCG examination, report of boarding or current USCG Auxiliary Vessel Safety Check. However, notwithstanding a recent satisfactory examination, a boarding may be conducted at the BPD Officer's or Boarding Officer's discretion.

d. Will make contact with the USCG via the watchstander, Officer of the Day, or delegated Boarding Officer to request or plan joint operations.

e. When the USCG is designated as the lead agency, the BPD will follow the USCG Boarding Officer's lead.

f. Is encouraged to contact the USCG and solicit a representative Boarding Officer to join BPD when conducting public outreach and boating safety events.

5. GENERAL PROVISIONS:

a. **AUTHORITY:** At all times, the BPD and the USCG will operate under its own organic authority and responsibility.

b. **MODIFICATION OF AGREEMENT:** This MOA may only be modified by the written agreement of the Parties, duly signed by their authorized representatives. A written request for modification shall be provided to the other party at least 60 days prior to the proposed date of change.

c. **TERMINATION:** The terms of this Agreement, as modified with consent of all parties, will remain in effect until either party notifies the others of its intention to terminate the agreement. Either party may terminate this agreement upon written notice to the other parties.

d. **TRANSFERABILITY:** This Agreement is not transferable except with the written consent of the Parties.

e. **ENTIRE AGREEMENT:** It is expressly understood and agreed that this MOA embodies the entire Agreement between the Parties regarding the MOA's subject matter. Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the Department of Homeland Security or the United States Coast Guard, or the Biloxi Police Department. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.

f. **EFFECTIVE DATE:** This MOA takes effect beginning on the day after the last Party signs.

6. POINTS OF CONTACT:

USCG Station Gulfport
991 23RD Ave
Gulfport, MS 39501

Telephone: 228-868-3743

Biloxi Police Department
170 Porter Ave
Biloxi, MS 39530

Telephone: 228-392-0641

7. SIGNATORIES:

For USCG: BMCS Thomas R. Frisbie, Officer in Charge STA Gulfport

For City of Biloxi: A.M. Gilich, Jr., Mayor

For BPD: John Miller, Biloxi Police Chief

