

ORDINANCE NO. 4160

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, ENACTING A MORATORIUM FOR UP TO 180 DAYS AS TO THE FILING, RECEIVING OR PROCESSING OF ANY APPLICATION OR PERMIT ASSOCIATED WITH FLOATING STRUCTURES OR LIVE-ABOARD VESSELS WITHIN THE CORPORATE LIMITS OF THE CITY OF RIVIERA BEACH; DIRECTING CITY STAFF TO REVIEW, AMEND AND DEVELOP UPDATED LAND DEVELOPMENT REGULATIONS AND OTHER RECOMMENDATIONS REGARDING REGULATION OF FLOATING STRUCTURES; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES; PROVIDING FOR CONFLICTS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City is granted the authority under Section 2(b), Art. VIII of the State Constitution, and Section 166.021, Florida Statutes, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the City recognizes that there has been an accelerated growth of floating home communities and floating commercial structures throughout the State of Florida and the country; and

WHEREAS, Section 327.02(14), Florida Statutes, defines “Floating structure” as “a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes, but is not limited to, an entity used as a residence, place of business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such...;” and

WHEREAS, Section 327.02(14), Florida Statutes, further states that floating structures are expressly excluded from the definition of the term “vessel” provided for 327.02(14), F.S.; and

WHEREAS, Section 327.02(22), Florida Statutes, defines “Live-aboard vessel” as (a) a vessel used solely as a residence and not for navigation; (b) a vessel for which a declaration of domicile has been filed pursuant to section 222.17, Florida Statutes; or (c) a vessel used as a residence that does not have an effective means of propulsion for safe navigation; and

WHEREAS, the Supreme Court of the United States in *Lozman v. City of Riviera Beach*, 568 U.S. 115 (U.S. 2013), held that a structure situated upon water does not constitute a “vessel” within the meaning of Section 327.02(46), Florida Statutes “unless a reasonable observer, looking to [its] physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water;” and

WHEREAS, the City’s Code of Ordinances currently incorporates the definitions of Section 127.02, F.S.; and

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WHEREAS, the City's Code of Ordinances, Chapter 13, Article III, Section 13-54 currently prohibits any person from establishing any floating mooring device or anchoring or mooring any vessel or floating structure in the waters of the City other than mooring at a dock or similar facility for more than 72 continuous or cumulative hours, during a 30-day period; and

WHEREAS, Section 13-54 does not apply to any vessel or floating structure owned and operated by the state or the United States government, or any vessel or floating structure operating within the Florida Intracoastal Waterway; and

WHEREAS, the City's Code of Ordinances, Chapter 13, Article III, Section 13-79 expressly prohibits permanent live-aboard vessels, providing that individuals who establish domicile on their vessels will be approved for lease of no more than six continuous months; and

WHEREAS, the City's Code of Ordinances, including its Land Development Code, does not adequately address remedies, enforcement, and other regulations for "vessels" and other floating structures or live-aboard vessels in violation of the City's Code; and

WHEREAS, other coastal communities have recognized this issue and have updated their land development codes to provide clear regulations of vessels, floating structures, and live aboard vessels; and

WHEREAS, the stationing or mooring of floating structures or live-aboard vessels have the potential to impact navigation, public health and safety, the environment, and public recreation in various locations throughout the City's jurisdiction; and

WHEREAS, the City hereby finds that this temporary moratorium is intended to give the City the time reasonably necessary to determine the best way to better regulate floating structures and live-aboard vessels for the benefit of public health, safety, and welfare and to promulgate reasonable regulations relating to such uses as deemed advisable by the City; and

WHEREAS, the City hereby finds that this Ordinance advances an important government purpose by reducing the likelihood of the negative, minimally regulated effects of floating structures and live-aboard vessels; and

WHEREAS, the City finds that imposing a temporary moratorium until adequate regulations have been developed, considered, revised, updated, and/or adopted is in the best interests of the health, safety, aesthetics, economic order, and general welfare of the community and the residents of the City, and is necessary to advance the City's valid police powers.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

Section 1. Legislative Findings, Intent and Purpose. The foregoing recitals are ratified as true and correct and are incorporated herein. It is the purpose and intent of this Ordinance to promote the health, safety and general welfare of the residents, businesses and stakeholders of the City.

Section 2. Definition. For purposes of this Ordinance, the term "Floating Structure" shall be as that term is defined by Section 327.02(14), Florida Statutes, and the term "live-aboard vessel" shall be as that term is defined by Section 327.02(22), Florida Statutes, both of which are

distinct from the term “Vessel” as defined by Section 327.02(46), Florida Statute, or “boat” as identified in Article VII, Section 1(b), of the Florida Constitution, and as further described in *Lozman v. City of Riviera Beach*, 568 U.S. 115 (U.S. 2013).

Section 3. Temporary Moratorium. Beginning on the effective date of this Ordinance and continuing for a period of up to 180 days, a moratorium is hereby imposed on the construction of, the filing, receiving, or processing of any applications or permits authorizing the placement, maintenance or support of uses conducted on floating structures or live-aboard vessels within the corporate limits of the City of Riviera Beach. This moratorium includes any applications or permits for installation of utilities or ancillary uses or structures that are designed and intended to facilitate access to, or uses being or to be conducted on a floating structure or live-aboard vessel within the corporate limits of the City of Riviera Beach.

Section 4. Geographic Areas Covered. This Ordinance applies to all areas within the corporate limits of the City of Riviera Beach, Florida.

Section 5. Study and Recommendations. During the moratorium period described in Section 3 of this Ordinance, the City staff, including Development Services and the Legal Department, is hereby directed to study existing state, federal and local laws in this and other jurisdictions and existing and proposed regulations associated with floating structures and live-aboard vessels, as well as the potential impact of floating structures and live-aboard vessels on the health, safety, and welfare of residents and businesses located within the City, and to develop and recommend land development regulations addressing uses conducted on floating structures and live-aboard vessels within the City of Riviera Beach, and any other relevant regulations and recommendations, with such recommendations and proposed regulations being delivered to the City Council within a reasonable time before the expiration of this moratorium. This Ordinance does not apply to positioning of barges used in connection with temporary activities such as marine construction.

Section 6. Severability. If any section, subsection, sentence, clause, phrase or provision of this Ordinance, or its application, to any person or circumstance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 7. Repeal of laws in conflict. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 8. Effective Date. This Ordinance shall become effective immediately upon its passage and adoption.

PASSED AND APPROVED on the first reading this 20th day of January, 2021.

PASSED AND ADOPTED on second and final reading this 3rd day of February, 2021.

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APPROVED:

**RONNIE L. FELDER
MAYOR**

**JULIA A. BOTEL, Ed. D
CHAIRPERSON**

ATTEST:

**CLAUDENE L. ANTHONY,
CERTIFIED MUNICIPAL CLERK
CITY CLERK**

**DOUGLAS LAWSON
CHAIR PRO TEM**

**TRADRICK MCCOY
COUNCILPERSON**

**SHIRLEY D. LANIER
COUNCILPERSON**

**KASHAMBA MILLER-ANDERSON
COUNCILPERSON**

REVIEWED AS TO LEGAL SUFFICIENCY

DAWN S. WYNN, CITY ATTORNEY

DATE: _____

1ST READING

MOTIONED BY: _____

SECONDED BY: _____

T. MCCOY _____

K. MILLER-ANDERSON _____

S. LANIER _____

J. BOTEL _____

D. LAWSON _____

2ND & FINAL READING

MOTIONED BY: _____

SECONDED BY: _____

T. MCCOY _____

K. MILLER-ANDERSON _____

S. LANIER _____

J. BOTEL _____

D. LAWSON _____