"The Best Waterfront City in Which to Live, Work and Play."

CITY OF RIVIERA BEACH – MEMORANDUM

TO: HON. MAYOR, CHAIRPERSON AND CITY COUNCIL

THROUGH: JONATHAN EVANS, CITY MANAGER, MPA, MBA, ICMA-CM

FROM: DAWN S. WYNN, CITY ATTORNEY

SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 13 OF THE CITY'S CODE OF ORDINANCES ENTITLED, "PARKS AND RECREATION", REPEALING ARTICLE III., "BOATS"; CREATING ARTICLE III., "BOATS, FLOATING STRUCTURES, LIVE-ABOARD VESSELS AND OTHER WATERCRAFT"; PROVIDING FOR APPLICABILITY, SEVERABILITY, REPEAL OF LAWS IN CONFLICT, AND CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

DATE: OCTOBER 20, 2021

CC: GENERAL PUBLIC

Summary:

On February 3, 2021, the City Council of the City of Riviera Beach passed Ordinance No. 4160, 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.

During this time, staff has met with local and state officials to review, amend, and develop updated regulations for floating structures and live-aboard vessels in the City.



Moreover, on June 24, 2021, Palm Beach County (PBC) enacted its own Ordinance prohibiting floating structures and providing for other regulations regarding the same (reference PBC Ordinance No. 2021-017.) The County Ordinance is applicable within the incorporated and unincorporated areas of the County, unless a municipality opts out or adopts an ordinance in conflict, in which case the County Ordinance is effective to the extent not in conflict with the City's ordinance.

Background:

Section 327.02(46), Florida Statutes, defines "Vessel" as "synonymous with boat as referenced in Section 1(b), Article VII of the State Constitution and includes every description of watercraft, barge, airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on the water."

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.

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 and 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."

Section 327.02(14), Florida Statutes, provides that "floating structures" are expressly excluded from the definition of the term "vessel" as defined in Section 327.02(46), Florida Statutes.

Section 327.02(14), Florida Statutes, provides that "Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from being classified as a floating structure."

The City of Riviera Beach City Council (hereinafter the "City Council") recognizes that the Supreme Court of the United States (hereinafter the "Court"), pursuant to *Lozman v. City of Riviera Beach*, 568 U.S. 115 (U.S. 2013), holds that an article (hereinafter "entity") situated upon the water does not constitute a "vessel" within the meaning of 1 U.S.C.A. § 3 if "a[n objective] reasonable observer, looking to "its "physical characteristics and activities, would not consider it to be designed to any practical degree for carrying people or things on water."

The Court, by adopting the foregoing objective purposive test in that *Lozman* decision, eliminated consideration of the owner's subjective intent in vessel status determinations.

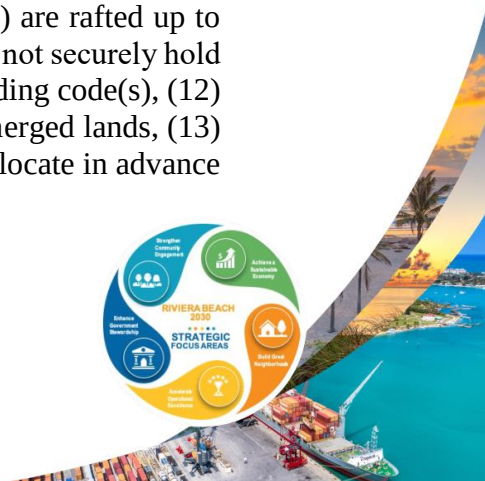
The City Council finds and recognizes that the Court, in that certain *Lozman* decision, held that the Petitioner's floating home did not constitute a "vessel" within the meaning of said

Act in view of that: (1) it was incapable of self-propulsion, (2) it has no rudder or other steering mechanism, (3) it has an unraked hull, (4) it had a rectangular bottom, (5) it had a draft of only 10 inches below water, (6) its infrequency of past movement (based upon the fact that, prior to its in rem arrest, it had traveled by tow over water only on four occasions over a 7-year period), (7) it could not be moved without dangerously swinging side-to-side (based upon the fact that when it has been towed, it had required a second boat to follow it from behind to prevent it from swinging dangerously side-to-side), (8) it had no special capacity to generate or store electricity, (9) its similarity to land-based residences (based upon the fact that its room looked like ordinary non-maritime living quarters), (10) it had ordinary windows and unsealed French doors rather than watertight portholes, and (11) it had no other feature that might suggest a design to transport over water anything other than its own furnishings and related personal effects.

The City Council has identified that it has become an increasingly common practice to moor, anchor, or otherwise affix floating structures over or otherwise upon waters included within the territorial jurisdiction of the State of Florida and the Waters of the City, including: (1) anchoring, mooring, or otherwise affixing floating structures and/or live-aboard vessels to unpermitted, unauthorized, or otherwise unlawful objects lying at or near the bottom of said waters including but not limited to upon sovereign submerged lands, (2) anchoring, mooring, tying off, or otherwise affixing floating structures and/or live-aboard vessels to publicly owned uplands and over or otherwise upon such waters and/or sovereign submerged lands, and (3) anchoring, mooring, tying off, or otherwise affixing floating structures and/or live-aboard vessels to plant species protected by federal, state, and/or local law(s), rule(s), or regulation(s) pursuant to an endangered, threatened, or species of special concern designation or listing and/or plant species (including, but not limited to, mangroves) whose defoliation or destruction is subject to special permitting requirements pursuant to the Florida Mangrove Trimming and Preservation Act.

The Waters within the City of Riviera Beach include the Lake Worth Lagoon, and all other navigable waters, all of which are environmentally sensitive aquatic habitat.

The City Council finds that the floating structures in the City commonly: (1) contain greywater and/or blackwater discharge facilities such as washrooms, showers, toilets, latrines, and/or outhouses, (2) do not contain a bilge pump(s), (3) do not contain a marine sanitation device(s), (4) hold unsecured or poorly contained stored fuel(s) and other potentially dangerous and/or hazardous products and materials such as propane tanks and furniture, (5) contain living quarters and/or recreational areas, (6) are utilized for the purpose of storage and/or habitation, (7) do not have navigational lights, (8) do not feature identifying information which a local, state, or federal government or enforcement agency may utilize to ascertain their owner(s) in a reasonably timely manner, (9) are rafted up to larger “primary” vessels or to larger “primary” floating structures, (10) do not securely hold on anchor, (11) are not built to any manufacturing standard(s) and/or building code(s), (12) are unauthorized or unlawfully anchored or moored upon sovereign submerged lands, (13) are abandoned, and (14) lack means of propulsion necessary to quickly relocate in advance of or during extreme weather events or other emergency events.



Floating structures within the territorial jurisdiction of the State of Florida and the Waters of the City may pose significant threat to the environment, human health, and navigational safety through the potential to discharge sewage, oil, or hazardous substances into the marine environment; physical damage to surrounding ecosystems; the proliferation of marine debris; and the inability to quickly locate an owner during times of emergency, to have the floating structure and/or live-aboard vessel timely removed.

Neither the United States nor the State of Florida have preempted the several states or local governments from legislating in the field of floating structure regulation.

Section 327.60(3), Florida Statutes, provides, in pertinent part, that Chapter 327, Florida Statutes, "does not prohibit local governmental authorities from the enactment or enforcement of regulations that prohibit or restrict the mooring or anchoring of floating structures[.]"

Section 192.001(17), Florida Statutes, provides, in pertinent part, that, "[a] floating structure is expressly included as a type of tangible personal property."

Under Florida law, there is no recognized common law, constitutional, or statutory littoral or riparian right to anchor, moor, or otherwise indefinitely or permanently affix or situate a floating structure upon or over waters included within the territorial jurisdiction of the State of Florida, or upon or over Waters of the City, including but not limited to upon sovereign submerged lands.

On June 24, 2021**,** Palm Beach County adopted Ordinance No. 2021-017, amending its Code of Ordinances to prohibit floating structures. As stated in summary, Palm Beach County's Ordinance applies within the incorporated and unincorporated areas of the County unless a municipality opts out or adopts an ordinance in conflict, in which case the County's Ordinance is effective to the extent not in conflict with the municipal ordinance.

Citywide Goal:
To promote the best interests of the health, safety, aesthetics, economic order and general welfare of the community and the residents of the City, and the advancement of the City's valid police powers.

Budget/Fiscal Impact:
Enactment of this Ordinance should not have any significant impact on the City's budget.

Recommendation(s):
The Office of the City Attorney recommends it is in the best interests of the City to approve this Ordinance.

Attachment(s):
1. Ordinance No. 4178

