ORDINANCE NO. 2021 - 017

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY FLORIDA AMENDING CHAPTER 6, ARTICLE I, OF THE PALM BEACH COUNTY CODE OF ORDINANCES (ORDINANCE 2015-030); AMENDING SECTION 6-2 OF THE PALM BEACH COUNTY CODE (ANCHORING OR MOORING OF FLOATING STRUCTURES) AMENDING SECTION 6-2(B) OF THE PALM BEACH COUNTY CODE (APPLICABILITY); ADMENDING SECTION 6-2(C) OF THE PALM BEACH COUNTY CODE (DEFINITIONS); AMENDING SECTION 6-2(D) OF THE PALM BEACH COUNTY CODE (PROHIBITION OF FLOATING STRUCTURES); AMENDING SECTION 6-2(E) OF THE PALM BEACH COUNTY CODE (ENFORCEMENT;PENALTIES); ADDING SECTION 6-2(E) OF THE PALM BEACH COUNTY CODE (EXCEPTIONS); PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners is the legislative body of Palm Beach County, Florida; and

WHEREAS, 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, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water."; 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, provides that "floating structures" are expressly excluded from the definition of the term "vessel" as defined in Section 327.02(46), Florida Statutes; and

WHEREAS, 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."; and

WHEREAS, the Palm Beach County Board of County Commissioners (hereinafter the "Board") recognizes that the Supreme Court of the United States (hereinafter the

"Court"), pursuant *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."; and

WHEREAS, 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; and

WHEREAS, the Board 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 had no rudder or other steering mechanism, (3) it had 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 had 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; and

WHEREAS, the Board 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 Palm Beach Waters of the County, including: (1) anchoring, mooring, or otherwise affixing floating structures 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 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 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; and

WHEREAS, the waters within Palm Beach County include, Lake Okeechobee, Lake Worth Lagoon, and all other navigable waters, all of which are environmentally sensitive aquatic habitat; and

WHEREAS, the Board finds that floating structures in the County 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; and

WHEREAS, floating structures within the territorial jurisdiction of the State of Florida and Waters of the County may pose a 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 timely removed; and

WHEREAS, 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; and

WHEREAS, Section 327.60(3), Florida Statutes, provides that local governments are not prohibited from the enacting or enforcing regulations that prohibit or restrict the mooring or anchoring of floating structures; and

WHEREAS, Section 1(g), Article VIII, of the Florida Constitution, vests the Board with the authority to enact countywide ordinances not inconsistent with general law except where the County's charter determines which shall prevail in the event of a conflict between county and municipal ordinances; and

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

WHEREAS, 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 Florida, or upon or over Waters of the County, including but not limited to upon sovereign submerged lands; and

WHEREAS, the Board finds that this Ordinance is necessary to advance the County's public health, safety, and welfare to protect the natural environment within the County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA that:

Section 1. SECTION 6-2(b), APPLICABILITY, is amended, as follows:

This Ordinance shall be applicable within the incorporated and unincorporated areas of the County, ~~and on all property owned by the County, including all submerged lands.~~ unless a municipality opts out or adopts an ordinance in conflict, in which case this Ordinance shall be effective to the extent not in conflict with the municipal ordinance.

Section 2. SECTION 6-2(c), DEFINITIONS, is amended as follows:

~~"Anchor" means the act of temporarily securing a floating structure in the water by means of an anchor or other device and associated tackle that is carried on the floating structure and cast or dropped overboard.~~

"Anchor" shall mean the use of traditional ground tackle, typically including an anchor, anchor chain, and line appurtenant to a floating structure and used to hold a floating structure in place.

"Barge" shall mean that term as it is defined at Section 327.02, Florida Statutes, as may be amended.

"Expressly Permit" means express authorization of both, all material components comprising the floating structure itself, and of the placement or situation of that floating structure in its specific configuration, length, size, and location, by all federal, state, and local government agencies pursuant to issuance of a written order granting, or granting with conditions, a written application to so construct and place or situate that floating structure.

"Floating Structure" means 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. Floating structures are expressly excluded from the definition of the term "vessel" as defined in Section 327.02, Florida Statutes, as may be amended. Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from classification as a floating structure. Registration of the entity as a vessel in accordance with Chapter 327, Florida Statutes, shall not preclude an entity from classification as a floating structure. In the event of a dispute as to whether an entity constitutes a floating structure versus a vessel, such dispute shall be exclusively determined under a preponderance of the evidence standard, by analyzing the following criteria which are attributes of a floating structure: (1) it is incapable of self-propulsion, (2) it does not have a rudder or other steering mechanism, (3) it does not have a raked hull, (4) it has a rectangular or a square bottom, (5) its draft is not comparable to the drafts of vessels of similar physical size, (6) its documented past geographical movement is infrequent, (7) it cannot be moved over meaningful distances without dangerously or hazardously swinging from side-to-side, (8) it does not have a (lawful) capacity to generate or store electricity, (9) it does not have a bilge pump(s), (10) it does not have an approved marine sanitation device(s), (11) its above water surface area(s) bear similarity to the interior or exterior of a land-based residential or commercial structure, (12) it has ordinary windows, open doorways, or unsealed doors, (13) it does not have any other physical features that might suggest to an objective reasonable observer a design to transport over water anything other than its own furnishings and related personal effects,

and (14) it is not titled and registered as a vessel. Payment of a tangible personal property tax regarding the entity in question or issuance or receipt of a tax exemption thereto, pursuant to Section 192.001(17), Florida Statutes, as may be amended, shall constitute prima facie evidence that the entity in question constitutes a floating structure under this Ordinance.

"Houseboat" means that term as it is defined at Section 327.02, Florida Statutes, as may be amended.

"Jackup Rig" means a self-elevating unit that is a type of mobile platform that consists of a buoyant hull fitted with a number of movable legs, capable of raising its hull over the surface of the sea.

"Lawfully Moored" means moored to a mooring ball, mooring buoy, or dock when such mooring is authorized under federal, state, and/or local law(s) and has received all required federal, state, and local permits and approvals to so moor.

"Live-Aboard Vessel" means that term as it is defined at Section 327.02, Florida Statutes, as may be amended.

"Marina" means that term as it is defined at Section 327.02, Florida Statutes, as may be amended.

"Marine Facility" means an accessory building or structure which is used to take a boat into or out of a water body, to moor, to berth, or to store a vessel or floating structure, but shall not include any building used for human habitation or any boat service, repair or sales facility.

"Moor" means the act of securing a floating structure in the water by means of a permanent or semi-permanent mooring system affixed to the bottom of the water body. As used in this Ordinance, to moor or a mooring shall include other meanings of mooring, such as tying off a floating structure to upland vegetation or to pilings, posts, or stakes.

"Private Mooring" means the act of securing a floating structure in the water by means of a permanent or semi-permanent mooring system affixed to the bottom of the water body where the bottom is owned by a private person or entity that is not the local, state, or federal government.

"Public Mooring Field" means an area within a public body of water where the public can legally secure their floating structure to a mooring buoy that is attached to the bottom of the water body with a permanent anchor.

"Vessel" means that term as it is defined at Section 327.02, Florida Statutes, as may be amended.

"Water Column and Water(s)" shall mean the vertical extent of water, including the surface thereof, above an area of submerged land, regardless of such land's public or private ownership.

"Waters of the County" means all portions of those public waters, up to and including the mean high water mark, located within the geographic boundary limits of Palm Beach County, which waters include waters within the jurisdictional boundaries of a municipality and waters within the jurisdiction of the state, including, but not limited to, all navigable and non-navigable waterways, canals, lagoons, bayous, bays, rivers, lakes, streams, springs, impoundments, and all other bodies of water, including fresh, brackish, saline, tidal surface, or underground, and including surface waters created by the removal of soil from uplands, but excluding any area preempted by law.

Section 3. SECTION 6-2(d), PROHIBITION OF FLOATING STRUCTURES, is amended as follows:

~~No floating structure shall be anchored or moored in the waters lying within the jurisdiction of the County or on nay property owned by the County, including any submerged lands. Notwithstanding the foregoing, nothing in this Ordinance shall prohibit a floating structure from anchoring or mooring at a public or private marina within a berth or slip, a public or private dock with permission from the property owner or on privately owned property, including submerged lands.~~

(a) It shall be unlawful for any person to anchor, moor, tie off, or otherwise affix a floating structure upon, or to, Waters of the County.

(b) It shall be unlawful for any person to anchor, moor, tie off, or otherwise affix a floating structure to publically owned uplands.

(c) It shall be unlawful for any person, within waters or submerged lands included within Waters of the County, to anchor, moor, tie off, or otherwise affix a floating structure to one or more plant species protected by federal, state, or local law(s), rule(s), or regulation(s) pursuant to an endangered, threatened, or species of special concern designation or listing.

(d) It shall be unlawful for any person, within waters or submerged lands included within Waters of the County, to anchor, moor, tie off, or otherwise affix a floating structure to one or more plant species (including, but not limited to, mangroves)

whose defoliation or destruction is subject to special permitting requirements under the Florida Mangrove Trimming and Preservation Act, codified at Sections 403.9321-403.9333, Florida Statutes, as may be amended or supplemented.

(e) It shall be unlawful for any person to place or maintain a floating structure in violation of this Ordinance.

(f) It shall be unlawful for any person to proximately cause or proximately contribute to the placement or maintenance of a floating structure in violation of this Ordinance.

(g) It shall be unlawful for any person to store items upon, occupy, or reside upon a floating structure within waters or submerged lands included within waters of the County or publically owned uplands.

Section 4. SECTION 6-2(e) is moved to 6-2(f) and SECTION 6-2(e), EXCEPTIONS, is created as follows:

(a) This Ordinance shall not apply to floating structures lawfully moored in a permitted public mooring field.

(b) This Ordinance shall not apply to floating structures lawfully moored in a permitted private mooring. It is the responsibility of the owner(s) or proprietor(s) of a private mooring facility to ensure that floating structures moored thereto comply with all applicable local, state, and federal proprietary, safety, environmental, and pollution control laws, rules, and regulations.

(c) This Ordinance shall not apply to floating structures that are lawfully moored or anchored above privately owned submerged lands.

(d) This Ordinance shall not apply to floating structures that are part of a permitted construction project.

(e) This Ordinance shall not apply to a floating structure that federal, state, and local proprietary laws and regulations expressly permit, when such floating structure has received all such required federal, state, and local permits and approvals (such as a floating boat lift or floating vessel platform permitted by the Florida Department of Environmental Protection pursuant to Chapter 403, Florida Statutes, and Chapter 62, Florida Administrative Code, as may be amended, and by all applicable federal permitting agencies), and is in compliance with all conditions of said permits and approvals.

(f) This Ordinance shall not apply to government waterway markers (such as, for example, regulatory markers and aids to navigation (the latter including, but not limited to, channel markers, danger markers, information markers, and aids of no lateral significance)).

(g) This Ordinance shall not apply to a waterway marker when that marker is both authorized under federal, state, and local law(s), and when its owner(s) and permittee(s) have received all required federal, state, and local permits and approvals to so place or maintain that waterway marker.

(h) This Ordinance shall not apply to a floating structure moored or docked at a lawfully established marina or marine facility. It is the responsibility of the owner(s) or proprietor(s) of lawfully established marinas and marine facilities to ensure that floating structures moored thereto comply with all applicable local, state, and federal proprietary, safety, environmental, and pollution control laws, rules, and regulations.

Section 6. SECTION 6-2(f), which was previously SECTION 6-2(e), ENFORCEMENT; PENALTIES, is amended as follows:

(a) Any law enforcement officer or Code Enforcement Officer acting within his/her jurisdiction is authorized to enforce this Ordinance.

(b) The violation of any provision of this Ordinance may be enforced pursuant to ~~F.S.~~ Section 125.69(1), Florida Statutes, as may be amended, and shall be punishable by a fine not to exceed five hundred dollars ($500.00) per day, by imprisonment in the county jail not to exceed sixty (60) days, or by both such fines and imprisonment.

(c) The violation of any provision of this Ordinance may be enforced pursuant to the procedures and penalties of ~~F.S.~~ Section 162.01, Florida Statutes, et seq. and Article 10 of the Palm Beach County Unified Land Development Code, as may be amended.

(d) The provisions of this Ordinance may be enforced pursuant to Chapter 8.5, Article II, of the Palm Beach County Code (the "Code Enforcement Citation Ordinance of Palm Beach County, Florida"), as may be amended, and shall be punishable by a fine not to exceed five hundred dollars ($500.00).

(e) In addition to the sanctions contained herein, ~~the County shall be authorized to take~~ this Ordinance may be enforced through any other appropriate legal action,

including, but not limited to, seeking cease and desist orders, instituting other administrative actions, and requesting temporary and permanent injunctions to enforce the provisions of this Ordinance. It is the purpose of this Ordinance to provide additional and cumulative remedies.

(f) Each day a violation of this Ordinance occurs shall constitute a separate offense and be punishable as such.

(g) Authorized enforcement officers may remove or destroy a floating structure found in violation of this Ordinance, in accordance with the following:

1. When a floating structure is found to be in violation of this Ordinance, notice shall be placed upon such floating structure notifying such owner(s), whether known or unknown, that the floating structure is in violation of this Ordinance. Owner(s) shall be given 21 calendar days from the date of the posting of the notice to remove the floating structure, except when there is an impending tropical system, in which case an owner(s) shall be given 24 hours from the date and time of the posting of the notice to remove the floating structure. Such notice shall be substantially in the following form:

"NOTICE OF ILLEGALLY ANCHORED OR MOORED FLOATING STRUCTURE

Palm Beach County Ordinance X prohibits the anchoring, mooring, tying off, or otherwise affixing of floating structures except when lawfully moored in a permitted public mooring field or permitted private mooring, or as otherwise permitted under the Ordinance. This floating structure is currently in violation of Ordinance X and is subject to enforcement under the Ordinance. You are hereby notified that you must remove the above-described floating structure by no later than _____, failing in which it will be removed or destroyed and you will be responsible for expenses including but not limited to all costs of removal, storage, disposal, and fines, as applicable.

2. The "NOTICE OF ILLEGALLY ANCHORED OR MOORED FLOATING STRUCTURE" as provided in subsection (g)(1) shall also be mailed by First-Class mail to the owner of the floating structure, if known. Evidence that an attempt has been made to mail such notice, if the owner is known, together with proof of posting, shall be sufficient to show that the notice requirements

of this part have been met, without regard to whether or not the alleged violator actually received such notice.

(h) All owners, part owners, joint owners, tenants-in-common, tenants in partnership, joint tenants, tenants by the entirety, lessees, sub-lessees, assignees, sub-assignees, and holders of legal or beneficial title to or interest in a floating structure that is in violation of this Ordinance, shall be jointly-and-severally liable with respect to any legal or equitable judgment or relief obtained in enforcing this Ordinance.

Section 7. REPEAL OF LAWS IN CONFLICT:

All local laws and ordinances in conflict with any provisions of this Ordinance are hereby repealed to the extent of such conflict.

Section 8. SEVERABILITY:

If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void, such holding shall not affect the remainder of this Ordinance.

Section 9. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:

The provisions of this Ordinance shall become and be made a part of the Palm Beach County Code. The sections of this Ordinance may be renumbered or relettered to accomplish such, and the word ordinance may be changed to section, article, or other appropriate word.

Section 10. CAPTIONS:

The captions, section headings, and section designations used in this Ordinance are for convenience only and shall have no effect on the interpretation of the provisions of this Ordinance.

Section 11. EFFECTIVE DATE:

The provisions of this Ordinance shall become effective upon filing with the Department of State.

APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach County, Florida, on this the 15th day of June, 2021.

JOSEPH ABRUZZO, CLERK OF THE CIRCUIT COURT & COMPTROLLER

By: _____
Deputy Clerk

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Dave Kerner, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
for Scott A. Stone
Assistant County Attorney

EFFECTIVE DATE: Filed with the Department of State on the 24th day of June, 2021.

FLORIDA DEPARTMENT of STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

June 24, 2021

Honorable Joseph Abruzzo
Clerk of the Circuit Court and Comptroller
Palm Beach County
301 North Olive Avenue
West Palm Beach, Florida 33401

Attention: Mr. Timothy Montiglio

Dear Mr. Abruzzo:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Palm Beach County Ordinance No. 2021-017, which was filed in this office on June 24, 2021.

Sincerely,

Anya Grosenbaugh
Program Administrator

AG/lb