

ORDINANCE NO. 9741-24

AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA MAKING AMENDMENTS TO CHAPTER 33 WATERWAYS AND VESSELS, BY AMENDING ARTICLE I- IN GENERAL, ARTICLE II - CITY OWNED DOCKING FACILITIES, AND ARTICLE III - VESSELS TO CLARIFY, REVISE AND MODIFY EXISTING ARTICLES AND SECTIONS; AMENDING SECTION 33.026 ESTABLISHING A CIVIL PENALTY FOR UNPERMITTED COMMERCIAL ACTIVITY IN A CITY OWNED MARINE FACILITY AND ESTABLISHING CITATION PROCEDURES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 33 sets forth the rules and use regulations that govern activities on all waterways and city-owned marine facilities in the City of Clearwater ("City");

WHEREAS, this Chapter 33 has not been amended or updated since 2010;

WHEREAS, this Ordinance is necessary to clarify, revise, and modify use regulations for the City waterways and the City owned marine facilities;

WHEREAS, the City Council determines that the adoption of this Ordinance to be in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEARWATER, FLORIDA, THAT:

Section 1: Section 33.002 is amended as follows:

Sec. 33.002. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City council means the City Council of the City of Clearwater, Florida

Commercial vessel means:

- (a) ~~Any vessel primarily engaged in the taking or landing of saltwater fish or saltwater products or freshwater fish or freshwater products, or any vessel licensed pursuant to Florida Statutes from which commercial quantities of saltwater products are harvested, from within and without the navigable waters for sale either to the consumer, retail dealer, or wholesale dealer.~~ Any vessel that takes passengers for hire, fee, or consideration, including commercial fishing vessels engaged in the taking or landing of saltwater fish or saltwater products.
- (b) ~~Any other vessel, except a recreational vessel as defined in this section.~~ A vessel used as a place of business or for-profit enterprise to include but not limited to: charters, bareboat charters, sight-seeing tours, dinner cruises, AirBnB and the like.
- (c) Any advertisement or insured as charter or certification for commercial purposes will be prima face evidence of commercial activity.

Derelict vessel means any vessel that is left, stored, or abandoned:

- (a) In a wrecked, junked, or substantially dismantled condition upon any navigable waters within the city;
- (b) At any port or mooring facility in this city without the consent of the agency having jurisdiction thereof; or
- (c) Docked, grounded at, or beached upon the property of another without the consent of the owner of the property.

Direct sewage pump-out connection means a connection between a vessel and the city sewer system for the purpose of removing sewage from the holding tank or head on a vessel.

Disabled, as used to describe a vessel, means that the vessel is unable to move under its own mechanical power or sail because of a mechanical failure or emergency.

Discharge means but is not limited to any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

Dock means ~~as defined by section 8-102 of the Clearwater Community Development Code~~ an accessory structure, not offered for sale or rental, including a pier, wharf, loading platform, tie poles, dolphins, accessory structures, or boat lift which is constructed on pilings over open water, or which is supported by flotation.

Harbormaster means the harbormaster of the city, or the harbormaster's designee or duly appointed substitute or deputy.

Hazardous chemicals or substances means the term as defined by state and federal law or regulations.

Holding tank means a receptacle on a vessel which is used to contain sewage.

Length means the measurement from end to end over the deck parallel to the centerline excluding sheer.

Live-aboard vessel means:

- (a) Any vessel used solely as a residence and not for navigation;
- (b) Any vessel represented as a place of business, or a professional or other commercial enterprise; however, a commercial fishing boat is expressly excluded from the term "live-aboard vessel;" or
- (c) Any vessel for which a declaration of domicile has been filed pursuant to Florida Statutes
- (d) A vessel used as a residence that does not have an effective means of _____ propulsion for safe navigation

City- Owned Marina facilities means ~~as defined by section 8-102 of the Clearwater Community Development Code.~~ City of Clearwater owned marinas, docks, piers, boat ramps, boat launches, as well as the seawalls, bulkheads and upland property and structures that support them.

Marine sanitation device means equipment other than a toilet, for installation on board a vessel, which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.

Mooring means the act of docking, anchoring, intentional grounding, or otherwise securing a vessel such that any portion of the vessel is in the water.

Motorboat means any vessel equipped with machinery for propulsion, irrespective of whether the propulsion machinery is in actual operation.

Navigable waters means all portions of those waters, up to and including the mean high-water mark, located within the corporate limits of the city, which are of such size and so situated as may be used for purposes common or useful to the public, and shall include all waterways or portions of waterways which are susceptible to being used in their natural and ordinary condition as a highway for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. This definition shall not apply to landlocked inland waters to which the general public does not have access or the right of use.

Operate means to be in charge of or in command of or in actual physical control of a vessel upon the navigable waters, or to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon the navigable waters, or to control or steer a vessel being towed by another vessel upon the navigable waters.

Owner means a person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person, reserved or created by agreement and securing payment of performance of an obligation, but the term excludes a lessee under a lease not intended as security.

Person means an individual, partnership, corporation, or other legal entity. As used in this chapter, the term includes but is not limited to any owner, master, officer, or employee of any vessel.

Personal watercraft means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

Petroleum products means oil, gasoline, diesel fuel, petroleum or chemical compositions of any kind which contain petroleum in any form, including fuel oil, oil sludge, oil or fuel residue, and oil refuse.

Recreational vessel means any vessel: used for a noncommercial purposes.

- ~~(a) Manufactured and used primarily for noncommercial purposes; or~~
- ~~(b) Leased, rented, or chartered to a person for the person's noncommercial use.~~

Sewage means human body wastes and the contents and wastes from toilets, marine sanitation devices, and other receptacles designed, intended, or used to receive or retain human body wastes.

Sewage pump-out station means a system consisting of a pump, with or without a tank, with sewer transfer lines having an approved connection to the city sewer system, which can be temporarily connected to a vessel for the purpose of removing sewage from the vessel's holding tank or head. Any such system may be either fixed or portable.

Vessel is synonymous with boat as referenced in s. 1(b), Art. 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.

Section 2: Section 33.006 is amended as follows:

Sec. 33.006. Clearwater Marina building leases.

The city manager is authorized to approve and execute on behalf of the city all Clearwater Marina building leases, except as provided herein, subject to the following conditions and limitations;

- (1) *Term.* The maximum term of any lease shall be three years, with an additional two-year option, giving a five year total term if approved by the city manager.
- (2) *Rental rates.* Rental rates shall be generally consistent with the rates for commercial space on Clearwater Beach, and with the rates historically earned by spaces in the marina. Rental rates may include a flat rate, a percentage of gross revenues, or a combination thereof. The rental of a space for a flat rate or a percentage of gross revenues, or combination thereof, less than 100 percent of that paid by the prior lessee shall require the approval of the city council.
- (3) *Rental payments; deposits.* Each lease shall provide that rent shall be paid on the first day of each month and shall be delinquent if not paid on or before the fifth day of the month. Delinquent payments shall bear interest at a rate determined by the city manager, plus a late charge of ~~\$10.00 as designated in the agreement between the City and the lessee.~~ At the commencement of each lease, the lessee shall pay the first month's rent and a security deposit in an amount equal to one month's rent to secure the faithful performance of the lessee's obligations, which deposit may be used to pay for damage to the premises or any other lawful purpose. At the end of the term of the lease, the deposit amount or balance thereof, if any, shall be credited to the lessee's last monthly rental payment. The lessee shall not be entitled to interest earned on the deposit.
- (4) *Use of premises.* The premises shall be used only for lawful and proper purposes, and the purposes shall be specified in the lease agreement.
- (5) *Assignment.* The lessee shall not assign, sublease, mortgage, pledge, or hypothecate the premises, the lease agreement, or any rights thereunder without the prior written consent of the city manager.
- (6) *Taxes and utility services.* The lessee shall promptly pay all taxes levied against the premises or the leasehold interest therein, and all charges for utility services, including but not limited to electricity, water, sewer, telephone, and cable television.
- (7) *Improvements.* The lessee may be required to perform improvements to the premises at lessee's cost, subject to approval of the city manager, as may be agreed by the parties.

- (8) *Signs.* All signs shall comply with the sign code requirements of the city, and shall be subject to the approval of the city manager, who may delegate the authority to approve signs to the harbormaster.
- (9) *Insurance, hold-harmless, and indemnification.* The lease agreement shall require the lessee to obtain liability insurance, with the city named as an additional insured, and to agree to indemnify and save the city harmless from liability for damage to property and injury to persons resulting from or in connection with the lessee's use and occupancy of the premises, other than liability arising from the city's own negligence.
 - a. Without limiting the generality of the foregoing, the lessee shall indemnify and save the city harmless from any mechanic's liens or other claims which may arise from improvements to the premises, and shall require any contractor performing improvements to the premises to furnish a performance and payment bond assuring the completion of the improvements and the payment of subcontractors and material suppliers.
 - b. The minimum insurance, hold-harmless and indemnification requirements shall be in accordance with the latest version of the city's risk management guide.
- (10) *Other provisions.* The lease agreement may contain such other provisions as are customary in a commercial lease agreement or which are determined advisable by the city manager, as agreed upon by the parties. The inclusion of certain provisions in this section shall not be deemed to exclude other provisions, not inconsistent with this section, to which the parties may agree.
- (11) *Form of standard lease agreement.* The city manager shall develop the form of a standard lease agreement, which shall be used in negotiating the lease of spaces in the marina building. Except for those provisions, which are required by this section, the city charter, or Florida law, the standard lease agreement shall be subject to negotiation in each case.

Section 3: Section 33.004 is amended as follows:

Sec. 33.004. - Diving or jumping from city-owned docks, piers, bridges.

It shall be unlawful for any person to dive or jump from any dock, pier, seawall, piling, bridge, bridge structure, or any other structure which is owned, operated, or leased by the city and located on, over, within, or adjacent to any public waters, regardless of navigability, within the city. ~~This prohibition shall not apply where such an activity is specifically permitted by the harbormaster, which permission shall be evidenced by official city signs or written consent.~~

Section 4: Section 33.023 is amended as follows:

Sec. 33.023. - Designation of rental areas and specific uses- rental and permit requirements.

Under the direction of the city manager, the Harbormaster is authorized to designate specific areas City-owned marine facilities from which where rent, lease, license or a permit is required for commercial or other use is to be obtained and to establish the specific use to be made thereof for all marine properties owned by the city including marinas, docks, piers, wharfs, launch ramps and publicly owned upland facilities associated therewith. City-owned marine facilities.

Section 5: Section 33.024 is amended as follows:

Sec. 33.024. - Permitted uses; division of uses.

City-owned or controlled boat slips and docking spaces controlled marine facilities and docking spaces shall be used only for recreational vessels and commercial vessels. Use of those areas set aside for recreational vessels shall be limited to wet storage of recreational, noncommercial vessels. Unless otherwise authorized by the Harbormaster, use of city-owned boat slips or docking spaces shall be limited to one vessel per space. No commercial activity shall be permitted in or from docking spaces designated for use by recreational, noncommercial vessels nor shall commercial vessels occupy those spaces. Use of those areas set aside for commercial vessels shall be limited to the following types of commercial activities: 1) passenger-carrying or passenger service-oriented, such as, but not limited to open party boats, excursion boats, charter fishing boats, and personal watercraft rental; or 2) non-passenger-carrying, vessels engaged in commercial or charter fishing, or other similar enterprises as defined within this chapter.

Section 6: Section 33.025 is amended as follows:

Sec. 33.025. - Permit required for certain uses.

Written permits shall be issued to authorize the use of any city-owned docking space except for overnight or short-term use by transient vessels. Such permits shall be uniform except as to rental to be charged for different types of spaces and as to the types of activities to be permitted therein. Such permits shall be on a month-to-month basis only, except where specifically excepted from such requirements by the city manager. The permit issued pursuant to this section shall not be construed to convey or grant any interest in the docking city-owned marine facility and shall be considered to be a license agreement.

Section 7: Section 33.026 is amended as follows:

Sec. 33.026. - Use without permit prohibited; exception.

- (1) No person shall dock any vessel of any type whatsoever at any city-owned docking space for which a charge has been established for the use thereof, without first having obtained a written permit for the use of such space. ~~Transient vessels shall not be required to obtain a written permit, provided that the operators of such vessels register their vessels and pay the appropriate dockage fee immediately upon arrival at a city-owned facility and keep such fees current throughout their visit.~~
- (2) No person shall engage in commercial activity in a city owned marine facility in the absence of a permit or commercial license agreement with the City.
- (3) Any person who pleads guilty or nolo contendere or is convicted of violating this section shall be guilty of a class II civil infraction pursuant to Section 1.12 of this Code of Ordinances.

Section 8: Section 33.027 is amended as follows:

Sec. 33.027. - Authority to revoke permits or registrations.

- (1) Any permit issued pursuant to section 33.025 or registration pursuant to 33.026 for the use of any city-owned dock space may be immediately revoked by the ~~city manager~~ harbormaster for failure to pay the appropriate dockage charge in the manner specified or for any other breach of the conditions of the written permit, registration or marina rules. Upon notification of such revocation, the person named in the permit or registration shall immediately remove the vessel ~~named in the permit from the docking space assigned under the permit from the marine facility. Failure to remove the vessel may be subject to removal or protective storage.~~
- (2) The docking permit for any vessel permitted to dock at any city-owned marine facility may be revoked at any time such vessel is operated in violation of any ordinance, law, regulation or act of the city, county, state, or the federal government, any rule established in accordance with Ordinance 33.021 or at any time any illegal activity is conducted on board the vessel, whether under way or moored or at anchor.

Section 9: Section 33.029 is amended as follows:

Sec. 33.029. Payment of dockage fees.

Dockage fees for city-owned dock space assigned to commercial vessels or recreational vessels on a month-to-month basis, or other time frame as approved by the city manager, shall be paid monthly in advance. Dockage fees for transient vessels shall be paid daily, weekly or monthly in advance. A late fee will be assessed 5 business days after the first of the month as designated on the agreement between the City and the vessel owner or operator.

Section 10: Section 33.030 is amended as follows:

Sec. 33.030. - Failure to pay dockage; impoundment.

- (1) If any person to whom a written docking permit or registration has been issued fails to pay the appropriate dockage charges in the manner specified in the permit or registration, the vessel named in the permit may, upon ten days' written notice, be impounded by the city until such delinquent charges, together with impoundment fees, have been paid.
- (2) During any period of impoundment pursuant to this section, the daily transient wet storage rate in effect on the date of impoundment shall be charged for each day of impoundment in addition to the impoundment fee.
- (3) Upon impoundment, the harbormaster shall immediately notify the owner or person holding the registration of the vessel, provide such owner or registrant with any opportunity to reclaim the vessel following the payment of charges assessed for impoundment, and provide such owner or registrant with an opportunity to provide any reason such owner or registrant may have as to why the charges should not be assessed prior to the time that such assessment becomes final.

Section 11: Section 33.031 is amended as follows:

Sec. 33.031. Sale of petroleum products.

The city manager shall have authority to designate locations on city-owned property at or from which petroleum products for the use of boats may be sold and no such products may be used, sold or delivered except from such locations. The locations for sale of petroleum products by the city at the Clearwater Municipal Marina are the marina fuel dock located at the southeast end of the marina ~~and the marina commercial fuel dock located along the seawall on the east end of the marina~~. A fully qualified fuel vendor, as approved by the city manager and under an annual fuel contract with the city, shall provide all petroleum products sold at the Clearwater Municipal Marina. The city manager shall establish retail prices for such petroleum products, which prices, insofar as federal regulations permit, shall be comparable with prices for similar products sold ~~in similar quantities~~ by other marine fuel outlets in the area.

Section 12: Section 33.054 is amended as follows:

Sec. 33.054. - Parking, storing vehicle, trailer, vessel in the parking area of ~~public docking~~ city-owned marine facilities over 72 hours.

No vehicle, vessel or trailer may be parked or stored in the parking area of any public dock, launching ramp or other ~~public waterfront~~ city-owned marine facilities for a period of more than 72 consecutive hours. Any vehicle, vessel or trailer found parked or stored in violation of the time provision set out in this section shall in addition to the penalty provided in section 1.12 be

deemed derelict and/or abandoned and subject to removal as provided by law. Within this section, the term "vehicle" shall mean any device in, upon or by which any person or property is or may be transported or drawn upon a street or highway, and the term "trailer" shall mean any vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle.

Section 13: Section 33.055 is amended as follows:

Sec. 33.055. Prohibited mooring, beaching or placing of vessels.

- (1) No vessel of any kind whatsoever shall moor to or tie up to a private seawall or dock or be beached upon private property within the city limits without the permission of the owner thereof.
- (2) It is unlawful for a person, firm, or corporation to store, leave, or abandon any derelict vessel in any navigable waters within the city. No vessel that is in an unregistered, derelict, wrecked, junked, or substantially dismantled condition shall be permitted to dock, moor, or tie up at any private seawall, dock, or moorage space within the city, except that such vessel may moor at licensed marine facilities for the purpose of repair.
- (3) No vessel shall be moored or otherwise placed in such a manner as to impede, restrict, or otherwise interfere with the use of city-owned marine facilities, public docks, ~~launching ramps~~ or other public waterfront facilities.
- (4) No vessel shall be permitted to occupy any of the city-owned Island Way Grill, non-leased public dock slips for more than four hours per day between the hours of 8:01 a.m. and 9:59 p.m. and at all between the hours of 10:00 p.m. and 8:00 a.m., except in an emergency or hours may be adjusted to coincide with special events as authorized by the city harbormaster. The harbormaster will determine whether the circumstance constitutes an emergency or a special ~~event~~ circumstance.
- (5) No vessel shall be permitted to occupy the city-owned recreation center (Sand Pearl), non-leased public dock slips for more than four hours per day between the hours of 8:01 a.m. and 9:59 p.m. and at all between the hours of 10:00 p.m. and 8:00 a.m., except in an emergency or hours may be adjusted to coincide with special events as authorized by the city harbormaster. The harbormaster will determine whether the circumstance constitutes an emergency or a special ~~event~~ circumstance.
- (6) No vessel shall be permitted to occupy the city-owned side tie, non-leased public mooring section of the downtown boat slips, for more than four hours per day between the hours of 8:01 a.m. and 9:59 p.m. and at all between the hours of 10:00 p.m. and 8:00 a.m., except in an emergency or hours may be adjusted to coincide with special events as authorized by the city harbormaster. The harbormaster will determine whether the circumstance constitutes an emergency or a special ~~event~~ circumstance.
- (7) Vessels in violation of this section shall be subject to ~~punishment~~ all remedies as provided by law, including, but not limited to those enforcement procedures contained in article 7 of the Clearwater Community Development Code, and all costs of towing and storage of vessels in violation of this section shall be assessed to the vessel owner.

Coding: Words in strikeout type are deletions from existing text.
Words in underline type are additions.

Section 11: Should any of the clauses, sentences, paragraphs, sections, or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

Section 12: This Ordinance shall become effective immediately upon adoption by City Council.

PASSED ON FIRST READING

January 18, 2024

PASSED ON SECOND AND FINAL
READING AND ADOPTED

February 1, 2024

DocuSigned by:

Brian Aungst

Brian J. Aungst Sr.
Mayor

Approved as to form:

DocuSigned by:

Matthew Mytych

Matthew J. Mytych, Esq.
Assistant City Attorney

Attest:

DocuSigned by:

Rosemarie Call

Rosemarie Call
City Clerk

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