

AN ORDINANCE AMENDING THE CITY OF CAPE CORAL CODE OF ORDINANCES, CHAPTER 10, "LAND, WATERWAY USE RESTRICTIONS," BY ESTABLISHING ARTICLE V, "MOORING FIELDS"; PROVIDING FOR GENERAL CONDITIONS; PROVIDING FOR BIMINI BASIN MOORING FIELD RULES; PROVIDING FOR RESPONSIBILITIES OF TENANTS FOR ALL MOORING FIELDS; PROVIDING FOR AMENITIES AND SERVICES FOR ALL MOORING FIELDS; PROVIDING FOR LEASING REQUIREMENTS FOR ALL MOORING FIELDS; PROVIDING FOR SPEED LIMITS; PROVIDING FOR SEVERE STORM OR HURRICANE PLANS FOR ALL MOORING FIELDS; PROVIDING FOR PLANS FOR FUTURE EXPANSION FOR ALL MOORING FIELDS; PROVIDING FOR MANAGED MOORING AREAS; PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

NOW, THEREFORE, THE CITY OF CAPE CORAL, FLORIDA, HEREBY ORDAINS THIS ORDINANCE AS FOLLOWS:

SECTION 1. The City of Cape Coral Code of Ordinances, Chapter 10, "Land, Waterway Use Restrictions," Article V, "Mooring Fields," is hereby established as follows:

CHAPTER 10

LAND, WATERWAY USE RESTRICTIONS

...

ARTICLE V. MOORING FIELDS

DIVISION 1. – GENERAL CONDITIONS

§ 10-26 - Definitions.

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

Anchorage area means a customary, suitable and designated harbor area in which vessels may anchor.

Anchoring means the use of a heavy device fastened to a line or chain to hold a vessel in a desired position.

Designated special anchorage areas means anchorage areas designated by the coast guard where it has been determined such an anchorage ground is necessitated due to maritime or commercial interests.

Dinghy means a small boat usually 13 feet or less, either inflatable or rigid, that serves to provide transportation between a larger anchored vessel and land.

Emergency means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.

Harbor means a natural or manmade anchorage and/or mooring area providing some degree of protection and security from storms.

Harbor management plan for mooring area means a plan adopted by ordinance of the city council to address the rules and regulations of anchoring, mooring, and speed limits in the waters administrated by the city.

Harbormaster/ dockmaster means a designated city employee charged with implementation of the harbor management plan for mooring area.

Houseboat means a vessel that is used primarily as a residence for at least 21 days during any 30-day period in a county of this state if such residential use of the vessel is to the preclusion of its use as a means of transportation.

Idle speed is the minimum speed that will maintain the steerageway of a motorboat.

Live-aboard vessel means:

- (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 s. 222.17, Florida Statutes; or
- (c) A vessel used as a residence that does not have an effective means of propulsion for safe navigation.

A commercial fishing vessel is expressly excluded from the term "live-aboard vessel."

Marine sanitation device means any equipment for installation on board a vessel, which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage. Marine sanitation device Types I, II, and III shall be defined as provided in 33 C.F.R. part 159, as may be amended.

Mooring means permanent ground tackle where vessels are kept at anchor.

Mooring field means a designated area where permanent ground tackle is utilized to provide multiple vessel moorings in accordance with the harbor management plan for mooring area.

Slow speed means the speed at which a vessel proceeds when it is fully off plane and completely settled into the water, and when it creates only a minimum wake that does not endanger other vessels or marine life. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific numerical speed is assigned to slow speed.

Transient mooring means a mooring for use by vessels for periods of no more than 10 total days per month.

Vessel means a term synonymous with the word "boat," as referenced in section 1(b), section 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 under the Florida Vessel Registration and Safety Law.

§ 10-27 - Applicability; enforcement.

The harbor management plan for mooring area shall apply to all vessel(s), owner(s), crew(s), and guests entering the managed mooring field. Any vessel operator in violation of federal law(s) or regulation(s), state law(s) or regulation(s), or this Code would result in cause for eviction from the managed mooring field.

DIVISION 2. - BIMINI BASIN MOORING FIELD RULES

§ 10-28 - General description.

Bimini Basin, located in the City of Cape Coral Florida, is a 980,000-square foot body of water surrounded by four (4) access waterways. One of these four (4) waterways, Bimini Canal, provides boaters direct gulf access without any overhead obstructions.

§ 10-29 - Authority of harbormaster/dockmaster.

The harbormaster/dockmaster has the right to assign berths and moorings. No vessel shall occupy any mooring berth without the approval of the harbormaster/dockmaster or his designee. Subleasing of any mooring by the lessee is prohibited. Owners wishing to transfer to a different mooring other than the one assigned must obtain the prior authorization of the harbormaster/dockmaster or his designee and complete the required forms. It may be necessary to reassign a vessel from the particular space rented to another mooring within the managed mooring field as dictated by the practical needs of the existing use of the managed mooring field and the tenants therein. The decision or interpretation of this article shall be the responsibility of the harbormaster/dockmaster.

§ 10-30 - Intent and Purpose.

It is the intent of the harbor management plan for mooring area to address the primary management of the managed mooring field located in the Bimini Basin in the City of Cape Coral. This will provide a safe mooring option for transient boaters, while also allowing the City of Cape Coral the ability to effectively monitor and regulate the activities inside Bimini Basin.

§ 10-31 - Target group of boaters.

The Bimini Basin Mooring Field is designed to accommodate the needs of vessels, which are typically sailboats up to 35 feet in length. However, the mooring field layout can also be adjusted to allow larger vessels up to 45 feet in length.

§ 10-32 - Vessels allowed; toilet facilities.

- (a) Only vessels that are in compliance with the United States Coast Guard (USCG) regulations, and state statutes, particularly the operational and safety standards, shall be allowed within the managed mooring field. Only seaworthy vessels in good operating condition, capable of maneuvering under their own power or sail, possessing current registration and acceptable documentation, shall be allowed to moor or anchor within the managed mooring field. This is to ensure that all vessels are functional and operational, in the interest of public safety.
- (b) The decision of whether a vessel is considered to be in good operational condition and capable of maneuvering under its own power shall be the responsibility of the harbormaster/dockmaster, based on the United States Coast Guard and state laws and regulations concerning safety and operational requirements.
- (c) All vessels, except dinghies, without an integral source of propulsion (sail or motorized) are not allowed to remain within the managed mooring field. Examples of vessels that would not be allowed to remain within the managed mooring field are a sailboat with no motor and no sails, a motorboat with no motor, or a vessel that must be towed. This requirement does not include vessels that require minor sail or engine repairs.
- (d) Every vessel with an enclosed cabin and berthing facilities, including live-aboard vessels, shall, while on the waters of the state, be equipped with a toilet. On a vessel, other than a houseboat, the toilet may be portable or permanently installed. Every permanently installed toilet shall be properly attached to the appropriate United States Coast Guard certified or labeled marine sanitation device.
- (e) Every houseboat shall be equipped with at least one permanently installed toilet, which shall be properly connected to a United States Coast Guard certified or labeled type III marine sanitation device. If the toilet is simultaneously connected to both a type III marine sanitation device and another approved marine sanitation device, the valve or other mechanism selecting between the two marine sanitation devices shall be set to direct all sewage to the type III marine sanitation device and, while the vessel is on the waters of the state, shall be locked or otherwise secured by the boat operator so as to prevent resetting.

§ 10-33 - Transportation requirements.

All vessels should have a dinghy or other small craft as a method of conveyance to enable access to the dinghy dock and the office of the harbormaster/dockmaster. The vessel owner shall report the absence of a dinghy to the harbormaster/dockmaster. The vessel owner is responsible for transportation to and from the office of the harbormaster/dockmaster for registering to rent the mooring facilities. The vessel owner can utilize his main vessel for this purpose by temporarily bringing it to the fuel dock. The lack of such a dinghy shall not be a cause to refuse rental of a mooring. It is the sole responsibility of the occupants of the vessel to provide their own conveyance to the upland facilities. Under no circumstances is the city responsible for owning, operating, or maintaining a dinghy for the exclusive use of mooring patrons.

§ 10-34 - Commercial uses.

- (a) Commercial activities or vessels engaged in commercial activities are prohibited from mooring in the managed mooring field. The site is designed as a recreational and residential site and shall be maintained as such. No advertising or soliciting shall be permitted on any vessel moored within the managed mooring field, except for "for sale" signs, not to exceed one square foot in size. Each vessel shall be limited to two "for sale" signs.
- (b) Minor commercial activities and vessels, such as water taxis, delivery vessels, pump-out vessels, and those performing minor repairs on mooring vessels, may extend service to the vessels in the managed mooring field. The harbormaster/dockmaster shall make the final decision on determining whether a commercial vessel is allowed in the managed mooring field.

§ 10-35 - Repairs.

Major repairs or refitting of vessels, including any activity that could result in a deposition of any materials into the waterway or within the managed mooring field, are strictly prohibited since a significant water quality violation would result in an adverse impact to public health. Only minor repairs or mechanical adjustments may be conducted on vessels while in the managed mooring field. The harbormaster/dockmaster office shall be notified in advance to verify compliance of any proposed activity.

§ 10-36 - Mooring and anchoring methods.

- (a) The method of mooring vessels in the managed mooring field shall be by tying the buoy line to the bow only. The line used to attach a vessel to the mooring buoy shall be the one furnished, which has one end permanently attached to the buoy. No vessel shall be moored at the stern or be tied to more than one buoy or points on a vessel. Dropping or placement of additional anchors or anchor systems from any vessel in the managed mooring field is prohibited. All vessels within the managed mooring field shall only use the established buoys and anchoring systems.
- (b) Vessels may not anchor in a manner that:
 - (1) Jeopardizes other vessels at anchor or underway;
 - (2) Might cause damage to other property or persons; and/or
 - (3) Impedes access to docks, slips or public or private property.

§ 10-37 - Abandonment of vessels.

If a vessel is left unattended for more than 72 continuous hours without giving prior notification to the harbormaster/dockmaster, the vessel shall be considered abandoned. If any vessel is determined to be abandoned, it may be stored in a secure location or commercial marina for 30 days, during which time the harbormaster/dockmaster shall make a reasonable, diligent effort to locate the owner of the vessel. If the vessel is not reclaimed within 30 days, the vessel shall be sold under the process prescribed by state statutes, at fair market value, which will cover the cost of unpaid rental fees, as well as any fees due for storage and removal.

§ 10-38 - Illegal activities prohibited.

Any illegal activity within the boundaries of the city, which includes the managed mooring field, shall be grounds for immediate prosecution under the provisions of state statutes and/or this Code. It is the intent of the city to prosecute each violation to the fullest extent of the law.

§ 10-39 - Liability of city.

The city neither assumes, nor accepts any liability for use of the managed mooring field by tenants or guests. Also, the city neither assumes, nor accepts any responsibility for personal possessions, vessel, dinghy, or their contents or use while said vessels are located within the managed mooring field or upland facilities. Persons using the water of the city shall assume all risk of personal injury and damage

or loss to their property. The city neither assumes, nor accepts any risk due to accident, fire, theft, vandalism, or acts of God.

§ 10-40 - Anchoring outside designated anchorage.

Overnight anchoring outside of the mooring field boundary is prohibited within the Bimini Basin.

§ 10-41 - Special Events.

All vessels located in the Bimini Basin mooring field will need to be removed in advance of special events, including but not limited to:

- (a) Cardboard regatta; and
- (b) Christmas boat parade.

DIVISION 3. - RESPONSIBILITIES OF TENANTS – ALL MOORING FIELDS

§ 10-42 - Safe operation of vessels.

Reckless or careless operation of any vessel, including but not limited to violation of navigation rules, when the vessel endangers or is likely to endanger life, limb, property, or person, shall be grounds for eviction from the managed mooring field.

§ 10-43 - Use of sewage pump-out facilities.

- (a) Discharge of sewage or other pollutants within the managed mooring field is prohibited. All vessels permitted to use the anchorage area shall be equipped with an approved and properly operating marine sanitation device. The harbormaster shall have authority to inspect the device and require a vessel to use the pumpout facility before assigning a mooring. The dockmaster shall have the authority to require periodic pumpouts and install a lockout device on the system, if deemed necessary. The other pump-out facility could be a floating facility, sometimes known as a "honey barge," should one be put into operation. All tenants within the managed mooring field must maintain strict compliance with 33 CFR 159 and F.S. § 327.53 as amended, as to the operation and management of marine sanitation devices to reduce discharges that would adversely impact public health. The use of the pump-out facility will be included in the fee for all tenants.
- (b) Violation of this section will be reason for immediate eviction, withholding of any security deposit and prosecution to the fullest extent provided by federal, state and city laws. Enforcement of sewage discharge laws will be by the state fish and wildlife conservation commission, or federal, state and local marine patrol.

§ 10-44 - Conduct of tenants.

- (a) Noise shall be kept at a minimum at all times so as to avoid creation of a nuisance or disturbance. The anchorage area is in a residential neighborhood and tenants shall use discretion in using any sound producing devices or machinery, which may include but is not limited to televisions, radios, stereos and musical instruments, so as not to create a nuisance to other tenants and the surrounding community. Generators, blowers or other noisy machinery shall not be operated between the hours of 8:00 p.m. and 7:00 a.m. Disorderly, boisterous or rowdy conduct by a vessel owner, crew or guest that disturbs the peace of other occupants in the managed mooring field and the surrounding community shall be cause for a warning to the operator/tenant or eviction of the vessel from the managed mooring field.
- (b) The use of charcoal burners or any open flame equipment is prohibited on the docks or other common areas. All pets must be leashed while on the docks or in any common areas. Pets are permitted, provided they do not disturb other tenants. Laundry shall not be placed in public view aboard any vessel or in any common area.

§ 10-45 - Discharge of waste or other materials.

- (a) While within the managed mooring field, any discharge into the basin of any fluids, waste or other material, regardless of the nature thereof, that would adversely impact public health, except for clean bilge or properly treated wastewater, is prohibited by state and federal law. If the harbormaster/dockmaster or any employee observes any such discharge, they will immediately notify the department of environmental protection or call the state warning point number (800-320-0519). If such a discharge occurs and is illegal, eviction from the managed mooring field shall be mandatory, once appropriate environmental enforcement action has been taken.
- (b) In the event of an accidental discharge, the vessel captain, operator, or owner shall immediately notify the harbormaster/dockmaster to ensure any action that could improve the containment of the spilled/discharged material will begin as soon as possible.

§ 10-46 - Boarding by law enforcement personnel.

The vessel operator is encouraged to cooperate with and assist law enforcement personnel in the lawful pursuit of their duties. The vessel operator shall not improperly resist or obstruct a lawful boarding or inspection conducted by a law enforcement officer.

§ 10-47 - Emergency repairs in absence of tenant.

The harbormaster/dockmaster shall have the authority to make necessary repairs in the event of an emergency when an unattended vessel is in immediate danger of sinking or represents a threat to other vessels. The emergency may include, but shall not be limited to, the vessel sinking or fire, breakdown of a bilge, fuel or sewage pumps or fluid leaks or broken lines. The cost of repairs, parts and labor will be assessed to the owner of the vessel and be due and payable within 48 hours of the return of the owner of the vessel or as provided by the harbormaster/dockmaster. Failure to pay this cost shall result in the City placing a lien on the vessel for unpaid fees or charges assessed by the harbormaster. If the vessel is deemed to be in imminent danger of sinking, fails to meet United States Coast Guard and state standards, leaks fluids or materials, or represents a threat to other vessels, the harbormaster/dockmaster will require repairs to be made within a reasonable, but specific period. If the repairs are not adequately accomplished, the vessel may be evicted from the managed mooring field.

§ 10-48 - Departure of vessels with delinquent dockage accounts.

It is unlawful for the vessel owner to vacate a mooring without the permission of the harbormaster/dockmaster when said vessel has a delinquent dockage account. Additionally, as part of the lease agreement, the city will be authorized to place a lien on the vessel for the cost of the unpaid fees or charges assessed by the harbormaster/dockmaster.

DIVISION 4. - AMENITIES AND SERVICES – All MOORING FIELDS

§ 10-49 - Damage of amenities and property.

Misuse of any amenity or property is grounds for eviction. If any tenant, crew or guest damages any property or equipment of the amenities, due to neglect, misuse, vandalism or failure to follow stated instructions, the tenant shall be held responsible for the cost of repair and replacement, as well as any civil or criminal charges for the activity.

§ 10-50 - Use of dinghy docks.

- (a) Registered managed mooring field tenants shall have free use of the dinghy docks provided in the area by the City of Cape Coral. Dockage is limited to a single dinghy at any one time, with a maximum length of 13 feet overall. Dinghies must be kept in the water and secured by a single line of good quality from the bow to a cleat or ring on the dock.
- (b) Use of the dinghy docks by vessels anchored in designated anchorage is included in the anchorage amenity package. The same restrictions apply as to vessels in the managed mooring field.

§ 10-51 - Use of sewage pump-out facility.

For the Bimini Basin mooring field, a pump-out facility provided by the City of Cape Coral identified in the tenant lease agreement shall be open and in operation from 8:00 a.m. to 6:00 p.m., seven days a week, with the exception of Thanksgiving Day and Christmas Day. There is no fee for the use of this facility by registered mooring field tenants. All vessels in the managed mooring field must use the pump-out facility on an as required basis.

DIVISION 5. - LEASING REQUIREMENTS – ALL MOORING FIELDS

§ 10-52 - Lease agreement.

- (a) Tenancy in the managed mooring field shall fall into three categories defined as follows:
 - (1) Transient: 5 days maximum, with 1 day out, then 5 more consecutive days, not to exceed 10 days in any given month. This will be known as the “5-1-5” rule.
 - (2) Monthly: Not allowed
 - (3) Annually: Not allowed
- (b) All vessels with the intention of utilizing the managed mooring field must make prior reservations with the office of the harbor master/dockmaster, regardless of the planned length of stay. Arrangements for transient stays are on a space available basis and can be made upon arrival utilizing a very high frequency (VHF) radio on channel 16.
- (c) The tenants, upon taking residence within the managed mooring field, shall execute acknowledgement of the rules of the harbor management plan for mooring area, as well as the operational requirements of the managed mooring field. The lease agreement shall contain reasonable language, as deemed necessary, to enforce compliance with the provisions of this article.
- (d) A description of the requirements of the tenants, based on the terms of their anticipated stay, shall be as follows:
 - (1) Transient tenant (one day to five days) shall sign a lease/dockage agreement with a hold harmless clause, as well as a section on the acknowledgement of the rules and operational requirements within the managed mooring field, and pay the required daily fee in advance. There will be no assessment of a security deposit for transient tenants.
 - (2) Monthly tenant – Not allowed.
 - (3) Annual tenants – Not allowed.

§ 10-53 - Tenant information required.

- (a) The owner/vessel operator shall provide the following information for the lease/dockage agreement for the managed mooring field:
 - (1) Owner's or operator's name;
 - (2) Owner's or operator's home address, including city and state;
 - (3) Owner's or operator's telephone number;
 - (4) Emergency number (monthly and annual agreements);
 - (5) Length overall (LOA);
 - (6) Beam;
 - (7) Draft;
 - (8) Type of vessel;
 - (9) Mooring assignment;
 - (10) Vessel name;
 - (11) Registration or document number;
 - (12) Proof of insurance.

- (b) The tenant shall be responsible to inform the harbormaster/dockmaster of any changes in the preceding required lease information within 72 hours of any such changes.

§ 10-54 - Mooring rental rate.

The city council shall set the daily rental rate for the mooring fields by resolution. The rate shall be posted in the dockmaster's office and on the signs at the entrance to the mooring field.

§ 10-55 - Vacation of moorings.

Mooring field leaseholders are required to notify the office of the harbormaster/dockmaster whenever they plan to vacate the mooring for greater than 24 hours. A date of departure and planned time of return must be provided, if the vessel operator wants to maintain the right of tenancy. The harbormaster/dockmaster reserves the right to rent any unoccupied mooring space when an assigned vessel is absent for 24 hours or more, without any compensation to the mooring field leaseholder.

§ 10-56 - Moorings signage.

To ensure compliance with the rules and regulations of the mooring field, a single sign shall be placed at the west end of the mooring area. The sign shall be four feet high by six feet wide and shall display the following wording: "(NAME) MOORING FIELD," "ALL VESSELS MUST USE MOORING BUOYS," "FOR MOORING ASSIGNMENT REGISTER AT THE DOCKMASTER'S OFFICE," "\$ _____ PER DAY MOORING RENTAL FEE."

DIVISION 6. - SPEED LIMITS

§ 10-57 - Bimini Basin.

The speed limit in Bimini Basin and surround access waterways shall be slow speed, minimum wake or idle speed no wake as designated by the Florida Fish and Wildlife Commission.

DIVISION 7. - SEVERE STORM OR HURRICANE PLAN – ALL MOORING FIELDS

§ 10-58 - Safety plan.

The office of the harbormaster/dockmaster shall, if possible, warn the managed mooring field tenants to exercise prudent and appropriate judgment in the event that a severe storm or hurricane threatens the area. The tenants shall be advised that the mooring equipment provided in the managed mooring field may not be able to withstand a hurricane or tropical storm and/or the associated wind and tidal surges. Evacuation of the managed mooring field will not be mandatory; however, it may be recommended.

DIVISION 8. - PLANS FOR FUTURE EXPANSION – ALL MOORING FIELDS

§ 10-59 - Expansion of mooring field.

It may become necessary or desirable to expand a managed mooring field to address additional mooring requirements. At such time, a mooring field management plan may be modified to the extent that state and federal permit allow.

DIVISION 9. - MANAGED MOORING AREA

§ 10-60 - Physical moorings.

The mooring systems will consist of an embedment anchoring system, downline, and floating buoy system marked with permit and anchorage numbers. Specific installation details and engineered drawings will provide further details.

SECTION 2. Severability. In the event that any portion or Section of this ordinance is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or Sections of this ordinance which shall remain in full force and effect.

SECTION 3. Effective Date. This ordinance shall become effective immediately after its adoption by the Cape Coral City Council.

ADOPTED BY THE COUNCIL OF THE CITY OF CAPE CORAL AT ITS SPECIAL COUNCIL SESSION THIS 18th DAY OF June, 2018.



JOE COVIELLO, MAYOR

VOTE OF MAYOR AND COUNCILMEMBERS:

COVIELLO aye
GUNTER aye
CARIOSCIA aye
STOUT aye

NELSON aye
STOKES aye
WILLIAMS excused
COSDEN aye

ATTESTED TO AND FILED IN MY OFFICE THIS 19th DAY OF June, 2018.



REBECCA VAN DEUTEKOM
CITY CLERK

APPROVED AS TO FORM:



DOLORES D. MENENDEZ
CITY ATTORNEY
ord\Mooring Fields