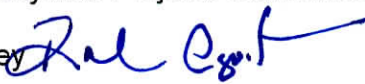




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COMMITTEE MEMORANDUM

TO: Commissioner Ricky Arriola and
Members of Finance and Citywide Projects Committee

FROM: Raul J. Aguila, City Attorney 

DATE: April 19, 2019

SUBJECT: **DISCUSSION REGARDING THE MARINE AND WATERFRONT PROTECTION
AUTHORITY'S RECOMMENDATION REGARDING THE ESTABLISHMENT OF
A MOORING FIELD IN SUNSET HARBOUR**

INTRODUCTION

Commissioner Ricky Arriola sponsored agenda item C4M on the March 13, 2019 City Commission meeting, which referred a discussion item to the Finance and Citywide Projects Committee ("FCWPC"), regarding the Marine and Waterfront Protection Authority's recommendation to explore the City's establishment of a mooring field in Sunset Harbour.

PROHIBITION ON CITY'S AUTHORITY TO REGULATE OUTSIDE OF PERMITTED MOORING FIELDS

The anchoring and mooring of vessels on waterways in this State is directly regulated by those statutory provisions set forth in Chapter 327 of the Florida Statutes, which is titled and identified as "Vessel Safety." Section 327.60(2)(f) of the Florida Statutes, expressly prohibits counties and municipalities from enacting, continuing in effect, or enforcing any ordinance or local regulation pertaining to the anchoring of vessels that are located **outside the marked boundaries of a permitted mooring field**.¹ While neither Florida statutory law nor administrative regulations provide a definition for a mooring field, the general consensus is that a mooring field should be identified as a designated area on the water that has strategically placed permanent anchorage to which vessels may safely tie-up and swing with the tide and wind without impacting other boats in the area.

Notwithstanding the aforementioned State prohibition, in 2009, the Florida Legislature enacted the Anchoring and Mooring Pilot Program (the "Pilot Program"), which was codified within Section 327.4105 of the Florida Statutes. The goals of the Pilot Program were to encourage the establishment of additional public mooring fields throughout the State, and to develop and test policies and regulatory requirements that:

¹ The City does have limited authority to regulate live-aboard vessels and commercial vessels.

- promote the establishment and use of properly permitted mooring fields;
- promote public access to the waters of the State;
- enhance navigational safety;
- protect maritime infrastructure;
- protect the marine environment; and
- deter improperly stored, abandoned or derelict vessels.

In response to the Pilot Program, the State authorized certain local governmental entities to establish new mooring fields at specifically identifiable locations.² **The Pilot Program was not re-enacted by the Florida Legislation, and the provisions of Section 327.4105 expired, as of July 1, 2017.** Therefore, at this time, the City – with certain limited exceptions – continues to be prohibited from regulating anchored vessels outside the marked boundaries of public mooring fields.

AUTHORITY OF THE CITY TO ESTABLISH A PUBLIC MOORING FIELD

Florida Administrative Code Rule 62-330.420 (which is identified as “General Permit to Local Governments for Public Mooring Fields” and attached as Exhibit “A” hereto), **provide(s) legal authority for counties and municipalities to establish mooring fields within their municipal territorial jurisdiction(s).** More specifically, Section 62-330.420 of the Florida Administrative Code expressly states that a general permit may be granted, “....to any local government to construct, operate, and maintain a public mooring field for up to 100 vessels, including a dinghy dock and sewage pump-out dock directly supporting the mooring field.”

Prior to the establishment of any public mooring field, there are multiple legal and regulatory considerations which are implicated in the creation of a mooring field including, but not limited to:

- the issuance of State and federal permits;
- the implementation of a Mooring Field Management Plan; and
- the adoption of a City ordinance or resolution.

The City would be legally required to obtain authorization from governmental regulatory agencies in order to create the City’s public mooring field, which will likely include:

- Submerged Lands Lease – State of Florida;
- Environmental Resource Permit – DEP;
- Obstructions to Navigation - U.S. Army Corps of Engineers (“USACE”);
- Boating Restricted Area Signage - FWC; and
- Special Anchorage Area Designation – United States Coast Guard (“USCG”) governmental regulation agencies.

The permitting process surrounding this endeavor would require the City to formulate a proposed Mooring Field Management Plan, which would contain the existing or proposed land-based support facilities (e.g., bathrooms, showers, etc.), project design and implementation details, as well as the location criteria, design criteria and operational criteria(s) necessary to

² The locations selected for the Pilot Program were City of St. Augustine, City of St. Petersburg, City of Sarasota, Monroe County in partnership with the cities of Key West and Marathon, and Martin County, in partnership with the City of Stuart.

meet those compliance requirements promulgated by the various regulatory governmental agencies. Furthermore, the State of Florida manages nearly all submerged lands or lands lying beneath any navigable waters, pursuant to Chapter 253 of the Florida Statutes. This will require a lease from the State for the proposed mooring field that may be located over such sovereignty submerged lands. See Fla. Admin. Code R. 18-21.005(1)(d)(8). The submerged lands lease would incorporate all local government governance documents enacted by the Mayor and City Commission establishing the mooring field.

The Mayor and City Commission would also have to adopt an ordinance or resolution to establish the mooring field which would, among other things, contain the following:

- length of time a vessel may remain at the mooring field; the establishment of fees, safety and insurance considerations;
- operational hours for noise and machinery;
- requirements relating to the display of signs;
- sanitation requirements;
- provisions regarding fishing, swimming and other recreational activities; and
- restrictions on feeding wildlife.

A local governmental entity may either choose to operate a Mooring Field itself, or contract with a private company or non-profit organization to oversee its operations (a "Managed Mooring Field" or MMF). In those circumstances in which the MMF operation is overseen by a private company, any agreement with the private contractor should address the management's obligations surrounding this amenity, which may include, without limitation, management of dinghy docks, fueling stations, holding tank pump-out stations, garbage disposal facilities, and shower and restroom facilities.

CONCLUSION

While the City continues to be prohibited from regulating the anchorage or mooring of vessels (other than live-aboard vessels) outside the boundaries of an established mooring field, the City does have the legal authority to create a public mooring field, pursuant to Fla. Admin. Code R. 62-330.420. Nonetheless, as identified herein, there are a plethora of regulatory and permitting considerations implicated in the process of establishing a mooring field. The process can be accomplished, but it is complex and time-consuming; most likely involving approvals at the local, state, and federal level. In that regard, should the FCWPC recommend to initiate the establishment of a local mooring field in Sunset Harbour (and the City Commission adopt the Committee's recommendation), the following essential steps should also be considered:

- Given the extensive regulatory and permitting process, a point person within the Administration should be identified to identify potential policy considerations and issues at all levels of government; and
- It is strongly urged that the Administration retain an outside consultant with the professional expertise to guide the City through the extensive regulatory and permitting process.

RJA/AB:sp
Attachment

62-330.420 General Permit to Local Governments for Public Mooring Fields.

(1) A general permit is granted to any local government to construct, operate, and maintain a public mooring field for up to 100 vessels, including a dinghy dock and sewage pumpout dock directly supporting the mooring field.

(2) The Notice of Intent to use this general permit required under subsection 62-330.402(1), F.A.C., shall include the following additional information:

(a) Mooring Field Management Plan (Management Plan) that provides reasonable assurance that the mooring field and supporting land-based facility will comply with all of the requirements of this general permit. The Management Plan shall be binding on the permittee for the life of the mooring field. Any revisions or modifications to the Management Plan require written approval, by the Department, prior to becoming effective.

(b) All drawings and documents in support of the proposed mooring field and associated land-based support facility, including details on the anchoring systems proposed for mooring vessels in the mooring field, and any docks, pumpout facilities, kiosks, and in-water navigational signs and markers proposed.

(c) A scaled bathymetry plan showing water depths throughout the proposed mooring field, including any ingress and egress channels directly associated with the mooring field and water depths at any docks proposed at the land-based support facility.

(d) A benthic resource inventory of the proposed mooring field location as well as the areas for the proposed dinghy and pumpout docks.

(3) To qualify for this general permit, the local government must comply with the following specific conditions, in addition to the general conditions in Rule 62-330.405, F.A.C.:

(a) Management Plan:

1. At least 30 days prior to submittal of a notice to use this general permit, the local government shall conduct at least one pre-application meeting with the Department to discuss the adequacy of the Management Plan, existing or proposed land-based support facility, project design, and implementation details.

2. Example Management Plans are included in the "References and Design Aids" for Volume I, available at <http://www.dep.state.fl.us/water/rulesprog.htm#erp>. Entities using this general permit are not required to follow the examples.

(b) Siting Criteria:

1. Navigational access must already exist between the mooring field and the nearest customarily used access channel or navigable waters for the sizes of vessels for which the mooring field is designed to serve, such that no new dredging is required to create access or adequate mooring depths.

2. The mooring field and mooring areas associated with the dinghy dock and pumpout vessel dock shall be sited in an area with adequate circulation and flushing based on the bathymetry plan required in paragraph (2)(c), above, and the proposed drafts and types of vessels to be moored.

3. The mooring field shall be associated with an existing or permitted land-based support facility that is operational prior to the mooring field being occupied. The land-based support facility shall provide amenities and conveniences for the number of occupants that are using the mooring field (e.g., parking, bathrooms, shower facilities, laundry facilities, etc.). These details shall be included in the Management Plan.

4. The mooring field, dinghy dock, and sewage pumpout dock shall not be located in the following areas.

a. Within any marked or customarily used navigational channel, or within setbacks established by the U.S. Army Corps of Engineers for federal channels.

b. Where they would adversely affect waters classified by the Department of Agriculture and Consumer Services as approved, conditionally approved, restricted, or conditionally restricted for shellfish harvesting as set forth in Chapter 5L-1, F.A.C. This can be demonstrated by providing a letter of no objection from the Department of Agriculture and Consumer Services. However, no letter is required if a project will be located in Palm Beach, Broward, or Miami-Dade County.

c. Where they would adversely affect critical habitat designated by the U.S. Fish and Wildlife Service or U.S. National Marine Fisheries Service for any federally-listed threatened or endangered species under the Endangered Species Act of 1973.

d. In predominantly fresh waters as defined in Chapter 62-302, F.A.C.

(c) Design criteria:

1. The mooring field shall accommodate no more than 100 vessels (excluding any dinghies that may be attached to parent vessels).

2. Vessel mooring systems and the installation plans must be designed by a Florida registered professional so that the mooring

systems with vessels attached withstand, at a minimum, tropical storm force winds and so that the associated tethers, lines, and buoys do not scour or damage the bottom. The mooring system and associated tethers, lines, and buoys shall be maintained for the life of the facility.

3. The mooring field shall be permanently associated with a land-based support facility that provides the following:

a. Pumpout either fixed or portable, or a pumpout vessel under contract for service or owned by the land-based support facility capable of serving all vessels using the mooring field, and a plan for regular pumpouts of vessels when needed.

b. A landing platform or dinghy dock for mooring field users to access the land-based support facility, as well as a dock for a fixed sewage pumpout or mooring for the pumpout vessel if one is requested. Such docks are authorized to be constructed under this general permit, provided neither dock exceeds 500 square feet of structure over wetlands and other surface waters, and sufficient water depth exists at the dock for the sizes of vessels for which the dock is designed to serve.

4. The mooring field shall be marked in accordance with Florida Fish and Wildlife Conservation Commission requirements under Chapter 327, F.S., including markings of the outside boundaries of the mooring field.

5. Dredging and filling of wetlands or other surface waters is authorized only for the installation of pilings; mooring buoys; vessel mooring systems; mooring field regulatory; boundary, and information markers; dinghy docks; and sewage pumpout docks.

6. If located in a county with a Manatee Protection Plan (MPP) approved by the Florida Fish and Wildlife Conservation Commission, the mooring field shall be designed and maintained in conformance with the MPP. Documentation of plan consistency must be submitted concurrently with the notice to use the general permit in the form of a letter of consistency from the Commission. A review by the Commission can be requested at ImperiledSpecies@myFWC.com.

(d) Operational Criteria:

1. The local government or its contracted entity shall operate and maintain the mooring field and land-based support facility in accordance with the terms of this general permit, the Management Plan, and sovereign submerged lands lease (if applicable) throughout the life of the mooring field.

2. Occupied vessels with Type III marine sanitation devices shall be required to have their holding tanks pumped out, at a minimum, on a 7-day interval while continuously moored in the mooring field. The Management Plan shall specify a pumpout plan, tracking and inspection times, which generally shall not be less than a minimum 7-day interval. The pumpout plan shall include a flag notification system for facilities that are using a pumpout vessel and a proposed inspection schedule for Type I or II systems.

3. The local government must provide, at the land-based support facility, for the regular collection of solid waste, sewage, and recyclable goods from vessels moored at the mooring field. All collected sewage waste must be discharged at a facility permitted by the Department or the Florida Department of Health.

4. The local government must provide information to users explaining ways to minimize discharges of grey water, including encouragement to use land-based support facilities. This information also shall be included in the Management Plan.

5. The following activities are prohibited in the mooring field and at the dinghy dock and sewage pumpout dock at the land-based support facility, unless specifically authorized in the Management Plan or a separate, valid authorization under Part IV of Chapter 373, F.S.:

a. Major boat repair and maintenance.

b. Fueling activities. However, this shall not prevent fueling at the land-based support facility.

c. Boat hull scraping or painting.

6. The local government shall identify in the Management Plan whether it will provide brochures, or install and maintain a kiosk or permanent information display board in a clearly visible location at the land-based support facility, providing information on:

a. Operational provisions and restrictions associated with use of the mooring field and land-based support facility,

b. Manatee protection and applicable manatee zones as adopted in Chapter 68C-22, F.A.C., which is incorporated by reference in subparagraph 62-330.417(3)(c)2., F.A.C.,

c. Location and availability of sewage pumpout facilities and procedures,

d. Navigational ingress and egress to the mooring field and land-based support facility, including identification of channel markers, shoals, and other significant navigational issues, such as controlling water depths; or by providing charts for sale or a location where they may be purchased,

e. Seagrasses, corals, and other significant resources in the adjacent waters, such as their location, protection, and avoidance of impacts, and their importance to the water resources; and,

f. Prohibitions on discharging trash, sewage, and hazardous wastes into the water, and ways to minimize discharging grey water

into the water.

(e) Sovereignty Submerged Lands Lease:

1. All public mooring fields and associated land-based support facilities located on sovereignty submerged lands require a lease from the Board of Trustees of the Internal Improvement Trust Fund in accordance with the application procedures and requirements of Chapters 18-18, 18-20, and 18-21, F.A.C., as applicable.

2. The lease boundary shall include the over-water surface area of the mooring field, encompassing all of the swing areas and square footage between the swing areas including internal thoroughfares.

3. The lease boundary shall include the preempted area for the dinghy dock and the sewage pumpout dock that contains a temporary mooring area to access a fixed sewage pumpout and for the mooring of a sewage pumpout vessel, if these structures are proposed and located on sovereignty submerged lands and not part of an existing lease or other forms of authorization by the Board of Trustees of the Internal Improvement Fund.

4. The Management Plan shall be referenced in the lease, when located over sovereignty submerged lands.

Rulemaking Authority 373.043, 373.044, 373.118(4), 373.4131 FS. Law Implemented 373.117, 373.118, 373.413, 373.414, 373.416, 373.422 FS. History—New 11-19-15.