

CITY OF MARCO ISLAND
ORDINANCE NO: 06 - 05

AN ORDINANCE TO ESTABLISH WATERWAYS AND BOATING SAFETY REGULATIONS; INCLUDING BUT NOT LIMITED TO RESTRICTED AREAS AND ACTIVITIES; INTERFERENCE WITH NAVIGATION; ANCHORING AND MOORING; DAMAGE OF MARKERS OR BUOYS; ABANDONED VESSELS; SAFETY REGULATIONS; MARITIME SPECIAL EVENT REGULATIONS; SWIMMING AND DIVING RESTRICTIONS; PROVIDING FOR PENALTIES, INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the public waterways of the City are valuable economic assets used by residents, visitors, and businesses, it is incumbent upon the City to manage and protect and preserve these assets for the use and enjoyment of the public; and

WHEREAS, the City of Marco Island has been granted broad home rule powers under Article VIII, Section 2 (b), of the Florida State Constitution, and Section 166.021, Florida Statutes; and

WHEREAS, the Section 327.60 (2), Florida Statutes, provides municipalities the authority to regulate live-aboard vessels and vessels not engaged in the lawful exercise of rights of navigation; and

WHEREAS, the manner, mode, type and degree of uses to which the public bays and waterways are utilized by the public affects the health, safety and welfare, as well as the right to enjoyment thereof, of the individuals occupying or using such waters for recreational purposes as well as those residing nearby; and

WHEREAS, the City recognizes the concerns of property owners regarding the regulation of our waterways, the extended anchoring of vessels in waterways adjacent to residential areas, the related issues of privacy and visual intrusion in residential areas, the potential for noise generated by vessel equipment and occupants, the illegal discharge of sewage and other hazardous substances, the potential for derelict and abandoned vessels; and

WHEREAS, commercial vessels are a notable part of the local economy, marine contractors build docks, repair seawalls and add value to property, and they are subject to reasonable regulation, as are land-based contractors; and

WHEREAS, the right of navigation includes the safe operation of all vessels, anchoring for a reasonable period of time, anchoring for repairs, rest periods, weather related events and emergencies; and

WHEREAS, the right of navigation includes access to docks and seawalls adjacent to private property and due to the unique geography and construction of our community the safest navigable water is often closest to the shoreline and seawalls; and

WHEREAS, the right to navigate, moor, or anchor a vessel is not recognized as a "fundamental" right; and

WHEREAS, a vessel moored or anchored for an extended period of time, for reason other than emergency, repair, weather, or rest, is no longer exercising the right of navigation; and

WHEREAS, there is a rational basis for the regulation of activities on the waterways of the City, including pollution control, preventing hazards to navigation, removal of abandoned vessels, protection of the interests of property owners adjacent to waterways, and

WHEREAS, it is in the interest of the safety and welfare of the public that certain controls and regulations be enacted to reduce risk of injury to the public, to protect property values, and ensure the enjoyability of the natural resources by the public;

NOW, therefore be it ordained by the Council of the City of Marco Island, that:

SECTION 1: INTENT AND PURPOSE

It is the intent and purpose of this ordinance to protect and promote the health, safety and welfare of the public by providing reasonable regulation of the use and operation of vessels on the public waters of the City. It is intended that this ordinance shall be liberally construed to affect such intent and purpose.

SECTION 2: TITLE AND CITATION

This ordinance shall be known and cited as the "City of Marco Island Waterways and Boating Safety Ordinance."

SECTION 3: APPLICABILITY

This ordinance shall apply to and be enforced within the corporate limits of the City of Marco Island including all natural and man-made waterways, the Gulf of Mexico, and those islands within the defined city limits of the City. Employees of, and vessels operated by, or under the direction of, Federal, State, County or City governments, or their contractors, when authorized by the City, are exempt from these provisions.

SECTION 4: DEFINITIONS

As used in this chapter and in this ordinance, unless the context clearly requires a different meaning, the term:

Abandoned Vessel means any vessel whose ownership cannot be determined due to failure to register said vessel or failure to document said vessel; failure to properly mark or identify said vessel as required in the registration or documentation process; any unattended vessel which is adrift; any unattended vessel that is found in a badly deteriorated condition, or is taking on water, or is sinking or partially sunk, or sunk; any unattended vessel that is causing damage to private or public property; any unattended vessel that is releasing contaminants or chemicals into water; any unattended vessel that is or was on fire; or any unattended vessel that is a menace to navigation; any vessel that is unattended for a period greater than 72 hours.

Anchorage means a designated area within the bays and waterways of Marco Island in which vessels may remain at anchor for the period of time permitted by the ordinance.

Anchoring means to secure a vessel by use of ground tackle.

Bays and Waterways mean any natural or man-made body of water, creek, bay, inlet or canal within the boundaries of the City.

Beach means the soft sand portion of land lying seaward of a seawall or rocky shore or line of permanent vegetation and landward of the mean high water line.

Boating accident means a collision, accident, or casualty involving a vessel in or upon, or entering into or exiting from, the water, including but not limited to capsizing, collision with another vessel or object, sinking, personal injury, death, disappearance of any person from on board under circumstances which indicate the possibility of death or injury, or property damage (in excess of \$2000.00) to any vessel or dock, or other property.

Commercial Vessel means 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 Statute 370.06 from which commercial quantities of saltwater products are harvested, from within and without the waters of this state for sale either to the consumer, retail dealer, or wholesale dealer; or any vessel engaged in any activity wherein a fee is paid by the user, either directly or indirectly, to the owner, operator or custodian of the vessel; or any vessel engaged in commercial enterprise; or any vessel designed to support commercial operations; or any other vessel, except a recreational vessel as defined herein.

Commission means the Division of Law Enforcement of the Fish and Wildlife Conservation Commission.

Discharge means the intentional or unintentional release of pollution or sewage.

Ground Tackle means a mechanical device that prevents a vessel from moving, including but not limited to anchors, anchor chains, anchor lines and/or fittings, etc. for anchoring or mooring a vessel.

License or Licensed means a valid occupational license recognized by the City.

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

Live-Aboard Vessel shall have the same meaning as used in F.S. 327.02, as may be subsequently modified or amended from time to time.

Livery Vessel means any vessel leased, rented, or chartered to another person or entity for consideration.

Marina means a boating facility, chiefly for recreational boating, located on navigable water frontage, and providing all or any combination of the following: boat slips or dockage, dry boat storage, small boat hauling or launching facilities, marine fuel and lubricants, marine supplies, bait and fishing equipment, restaurants, boat and boat motor sales, and rentals. Minor boat, rigging and motor repair which is incidental to the principal marina use is generally allowed as an accessory use. However, no dredge, barge or other work-dockage or service is permitted, and no boat construction or reconstruction is permitted. A boat sales lot is not a marina.

Marine Sanitation Device means any equipment on board a vessel, which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.

Marker means any aid to navigation, including channel marker, information or regulatory mark, isolated danger mark, safe water mark, special mark, inland waters obstruction mark, or mooring buoy in, on, or over the waters or the shores thereof, and includes, but is not limited to, a sign, beacon, buoy, or light.

Moor means to tie off a vessel to any submerged fixed object; or to tie or secure a vessel to a piling, dock, wharf, seawall, dolphin, mooring buoy, or other object or thing located or attached to real property in or adjacent to real property.

Navigation Rules means the International Navigational Rules Act of 1977, 33 U.S.C. appendix following s. 1602, as amended, including the annexes thereto, for vessels on waters outside of established navigational lines of demarcation as specified in 33 C.F.R. part 80 or the Inland Navigational Rules Act of 1980, 33 U.S.C. S. 2001 et seq., as amended, including the annexes thereto, for vessels on all waters not outside of such lines of demarcation.

Not engaged in the exercise of the rights of navigation means a vessel anchored within the City for more than 72 consecutive hours.

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

Owner means a person who holds the legal title of a vessel, or, if a vessel is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession as vested in the conditional vendee, or lessee, or mortgagor, such person shall be deemed the owner.

Parasail means a parachute or paraglide device tethered to a vessel enabling recreational gliding in the air while being towed by the vessel.

Permit means a vendor's permit, building permit, or other permit required by the City to comply with this or any other City ordinance.

Person means an individual, partnership, firm, corporation, association, or other legal entity.

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.

Prohibited Activity means such activity as will impede or disturb navigation or creates a safety hazard, or any act specifically prohibited by this ordinance.

Recreational vessel means any vessel manufactured and used primarily for non-commercial purposes, or leased rented or chartered to a person for the person's non-commercial use.

Registration means a state-operating license on a vessel, which is issued with an identifying number, an annual certificate of registration, and a decal designating the year for which a registration fee is paid.

Restricted Area means any area denoted by regulatory marker, any area or vessel (moving or stationary) designated as restricted by a government entity denoted with markers, or by written, radio, or verbal notice to mariners. These restrictions may be made by a governmental entity on the basis of safety to the public, vessel speeds, vessel traffic, boating accidents, visibility, hazardous conditions, currents, water depth, or other navigation hazard.

Safety Equipment means that equipment designed to be life saving or distress conveying appliances required by the United States Coast Guard (as specified in the Code of Federal Regulations) by the State of Florida, and the City.

Seaplane means any aircraft that is capable of landing and/or lifting off from a water surface.

Unattended vessel is any vessel that has no person on board.

Vessel for the purpose of this ordinance means any human, motor, wind, non-powered or artificially propelled water conveyance and every other description of boat, watercraft, barge, and airboat, seaplane on the water, used or capable of being used as a means of transportation or in the water.

Water-Skiing means a person or persons being towed in the water by a vessel and using water skis, a ski board, inflatable device or aqua plane.

SECTION 5: RESTRICTED AREAS & ACTIVITIES

1. It shall be unlawful:

- A. To operate a vessel in a prohibited manner or to carry on any prohibited activity, as defined in this ordinance, or state or federal law, which has been deemed a safety hazard or interference with navigation, or to operate or continue operating after warning, within any restricted area.

- B. For anyone to fish from any private property of another without the express permission of the owner or lessee. Where such property is vacant or not developed, failure to provide written evidence of such permission shall be considered as prima facia evidence of lack of permission.
- C. For anyone to fish from the surface portion, sidewalk, roadway, approach, landing, or underneath any bridge, except the areas approved for fishing underneath the following:
 - 1. The State Road 951 Bridge at the Marco River.
 - 2. The County Road 92 Bridge at the Marco River.
- D. To launch or retrieve a vessel utilizing a trailer; from any public right-of-way or land owned by a government or from any private land without the consent of the owner, except:
 - 1. Marinas;
 - 2. Caxambas Park Boat Ramp;
 - 3. Southwest of the State Road 951 bridge at the Marco River;
 - 4. Other areas as specifically authorized by the City.
- E. For any person to post any sign, regulatory marker, aid to navigation, permanent mooring device, or other device in any canal, navigational channel, or other place without having first obtained a license or permit from the appropriate state or federal agency where such permit is required under state or federal law and a permit from the City.
- F. For any person with a commercial vessel to load or off-load hazardous materials upon a beach or public park, boating facility or ramp without a permit from the City.

SECTION 6: INTERFERENCE WITH NAVIGATION

No person shall operate, or permit anyone to operate, a vessel, anchor a vessel, or drift in a vessel, in a manner that interferes with navigation, except in case of emergency.

SECTION 7: ANCHORING AND MOORING

- 1. It shall be unlawful:
 - A. To anchor or moor a live-aboard vessel within the City.
 - B. To anchor or moor under or within 300 feet of the County Road 92 or State Road 951 bridges at the Marco River.
 - C. To moor a vessel at a dock, mooring, piling or seawall of a property owner without the consent of the owner or person in control of the premises, except in an emergency. Failure to provide written evidence of such permission shall be considered as prima facia evidence of lack of permission. Any such mooring must comply with all applicable regulations of City code.

- D. To anchor or moor a commercial vessel for a time period greater than twelve consecutive hours, except:
1. When engaged in a commercial activity permitted by the City.
 2. When anchored or moored at a commercial marina lawfully permitted pursuant to the Zoning Code. Any such anchoring or mooring must comply with all applicable regulations of City code.
 3. When anchored or moored within the Special Anchorage in Factory Bay designated on NOAA Chart 11430.
 4. When the vessel is in need of emergency repairs, for a reasonable period to complete the repairs, which shall not exceed 7 days.
 5. When anchored or moored to provide safe harbor during inclement weather.
 6. When anchored or moored during a verifiable emergency for a reasonable time which shall not exceed 7 days.
 7. When anchored or moored while awaiting a low tide sufficient for transit under a bridge to and/or from an indirect waterway for the purpose of engaging in and/or leaving commercial activity permitted by the City - such time not to exceed 15 days. This exception shall apply to only those vessels utilized by licensed Marine Construction Contractors for dock/seawall construction and repair.
 8. When anchored or moored while awaiting relocation from one City permitted activity to another - such time not to exceed 7 days. This exception shall apply to only those vessels utilized by licensed Marine Construction Contractors for dock/seawall construction and repair.
- E. To intentionally place or moor a commercial vessel on a beach for more than four hours without a permit from the City.
- F. To anchor a vessel as prohibited in this section or to anchor a vessel in a position that endangers, interferes, impedes, with the navigation of other vessels through the waterways, canals, and channels.
- G. For a power driven vessel and sailing vessel anchored at night to fail to display anchor lights, except vessels less than twenty (20) meters in length are not required to display anchor lights when anchored in the Special Anchorage designated on NOAA Chart 11430 in Factory Bay.
- H. To anchor a vessel during a hurricane warning by utilizing an anchor or series of anchors, without being affixed to a dock or seawall. During a hurricane warning each vessel operator shall secure their vessel to prevent the vessel, and/or its parts or contents from damaging the property of others.
- I. To anchor vessels without adequate ground tackle to hold the vessel at anchor. Vessels at anchor shall maintain a firm anchor and the operator shall insure that the vessel is not slipping anchor and changing its location.

- J. To leave any anchored vessel unattended without the following information posted securely on deck in a weather proof housing or format such as laminated paper:
1. Vessel owner's name, address (local and other, if applicable) and phone number(s);
 2. A secondary contact person with his or her name, address (local and other if applicable) and phone number(s). Secondary contacts shall live or work within Collier, Lee, or Dade Counties and be authorized to act in the owner's behalf should the vessel become endangered.
- K. To anchor any recreational vessel not engaged in the exercise of the rights of navigation except:
1. When proof of marine sanitation device holding tank pump out, or other satisfactory evidence of sufficient holding tank capacity, is provided to a City of Marco Island police officer and a permit is issued allowing an additional 72-hour anchoring period.
 2. When moored at a commercial marina lawfully permitted pursuant to the Zoning Code.
 3. When anchored within the Special Anchorage in Factory Bay designated on NOAA Chart 11430.
 4. When the vessel is in need of emergency repairs, for a reasonable period to complete the repairs, which shall not exceed 7 days.
 5. To provide safe harbor during inclement weather.
 6. During a verifiable emergency for a reasonable period which shall not exceed 7 days.
- L. Once a vessel is anchored within the city, the vessel shall be deemed to have been continuously anchored from the time at which it was first anchored. The vessel need not have been continuously anchored in the same location within the city limits. It is the express purpose of this section to prohibit evasion of the time limitations contained in this ordinance by relocation from one anchoring location within the city to another.
- M. To anchor or moor any recreational vessel closer than 300 feet to any seawall, bridge, dock, shoreline, or manmade structure for a time period greater than twelve consecutive hours, except:
1. At a dock, mooring, piling or seawall of a property owner with the consent of the owner or person in control of the premises. Failure to provide written evidence of such permission shall be considered as prima facie evidence of lack of permission. Any such dockage or mooring must comply with all applicable regulations of City code including those detailed in Chapter 54, Article IV, Boat Docking Facilities

2. When actively engaged in recreational fishing and not interfering with navigation.
3. When anchored or moored within the Special Anchorage in Factory Bay designated on NOAA Chart 11430.
4. The intent of this section is to maintain a channel for safe navigation, to reduce visual intrusion, and to prevent noise complaints.

SECTION 8: DAMAGE OF MARKERS OR BUOYS.

No person shall willfully damage, alter, or move a lawfully placed aid-to-navigation marker or buoy, regulatory marker or buoy, or area boundary marker or buoy. Any person who damages, alters, or moves a lawfully placed aid-to-navigation marker or buoy, regulatory marker or buoy, or area boundary marker or buoy located within the City shall immediately notify the Marco Island Police Department.

SECTION 9: ABANDONED VESSELS

Any vessel that is deemed abandoned in or on a city waterway, bay, canal, open water, or beach or abandoned in violation of this ordinance may be removed and impounded by the police department. All costs for removal, towing and storage will be assessed to the owner on a rate scale established by the City Manager. If the vessel is unclaimed shall be disposed as provided in state statutes and may be retained by the City for official use or sold with the proceeds paying for the charges incurred, with the remainder of the funds to be used solely by the Marco Island Police Department for the education and enforcement of marine related laws. (Ref. F.S. ch 327.22) Failure to act on the part of the owner waives all liability of the City from damages as a result from towing and storage.

SECTION 10: LIVERIES; SAFETY REGULATIONS

1. A livery or marina may not knowingly lease, hire, or rent a vessel to any person:
 - A. When the number of persons intending to use the vessel exceeds the number considered to constitute a maximum safety load for the vessel as specified on the authorized persons capacity plate of the vessel.
 - B. When the vessel does not contain the required safety equipment required under this ordinance and/or F.S. 327.50.
2. When the vessel is equipped with a motor of 10 horsepower or greater, the livery or marina shall provide a comprehensive pre-operation instruction briefing to all operators of rental vessels regardless of age and prior maritime training internal and external to a livery or marina that includes, but need not be limited to, all of the topics included on the list provided to each livery or marina by the Marco Island Police Department.
 - A. The pre-operation instruction briefing must be documented on a form approved by the Marco Island Police Department prior to use;
 - B. Any such form must be retained for a period of six months;

- C. Any such form shall be provided to the Marco Island Police Department, or any other law enforcement agency, upon request.
- 3. All operators shall initial and sign the form attesting that they have completed, understood, and will comply with all conditions set forth in the form. The livery or marina operator(s) who gave the pre-operation safety briefing will be required to co-sign the form attesting that they have insured that all operators have received the required pre-operation safety briefing.
- 4. Any person delivering the pre-operational safety briefing on behalf of the livery or marina shall have:
 - A. Successfully completed a boater safety course approved by the National Association of State Boating Law Administrators and this state.
 - B. A copy of the documentation attesting to the completion of this course must be maintained by the livery or marina during the person's employment, and for six months thereafter.
 - C. All liveries and marinas shall provide any requested documentation relating to an employee's competency to instruct the pre-operational safety briefing to the Marco Island Police Department, or any other law enforcement agency, upon request.
- 5. The livery or marina shall display boating safety information in a place visible to the renting public. The Commission prescribes by rule pursuant to F.S. ch 120, the contents and size of the boating safety information to be displayed.
- 6. If a rental vessel is involved in a boating accident within the City, the livery or marina shall immediately notify the Marco Island Police Department upon learning of the boating accident
- 7. No person under the age of fourteen may operate a powered rental boat, except in an emergency. No person may allow a person under the age of fourteen to operate a powered rental boat, except in an emergency.

SECTION 11: MARITIME SPECIAL EVENTS

Any person directing or holding a demonstration, regatta, race, marine parade, tournament, or exhibition on the navigable waters of the City, must insure that the event is held in compliance with F.S. 327.48 and obtain the appropriate permit(s) from the City. Any person directing the holding of such event shall be responsible for providing adequate protection to the participants, spectators, and other users of the water, and must obey all terms and conditions of required permits.

SECTION 12: WATER-SKI, PARASAIL, AND AQUAPLANES REGULATED

Water-skiing or towing of an object designed for a person to ride on or in when a person is actually riding on or in the object or being towed is prohibited within all canals or bays or when closer than 50 feet from any man made object.

SECTION 13: SWIMMING & DIVING

1. It shall be unlawful:
 - A. To swim, snorkel, or scuba dive within 50 feet of any bridge, within the City.
 - B. To jump from any bridge within the City.

SECTION 14: JURISDICTION AND ENFORCEMENT

1. This ordinance is enforceable by the Marco Island Police Department, the Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers, the Collier County Sheriff's Office, and any other state or federally authorized law enforcement agency, all of whom may order the removal of vessels deemed to be an interference or a hazard to public safety, enforce the provisions of this ordinance, or cause any inspections to be made of all vessels in accordance with this ordinance and Florida Statutes.
2. Such officers shall have the power and duty to issue such orders and to make such investigations, reports, and arrests in connection with the provisions of this ordinance, or cause any inspections to be made of all vessels in accordance with this ordinance and Florida Statutes.

SECTION 15: PENALTIES

1. Any person or persons, firm or corporation, or any agent thereof, who violates any of the provisions of any section of this chapter shall be punished by a fine not exceeding \$500.00, or imprisonment not exceeding 60 days, or by both such fine and imprisonment. Each day any violation of any provision of any section of this chapter shall continue shall constitute a separate offense.
2. In addition to the penalties provided in subsection (1) of this section, any condition caused or permitted to exist in violation of any of the provisions of this Code shall be deemed a public nuisance and may be abated by the City as provided by law, and each day that such condition continues shall be regarded as a new and separate offense.

SECTION 16: INCORPORATION, CONFLICT, AND SEVERABILITY

1. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this Ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section", "article", or other appropriate word.

2. All sections or parts of sections of the Code of Ordinances of the City of Marco Island, all ordinances or parts of ordinances, all resolutions or parts of resolutions, in conflict herewith, are hereby repealed to the extent of conflict.
3. If any word, phrase, clause, subsection or section of this Ordinance is for any reason held unconstitutional or invalid by a court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

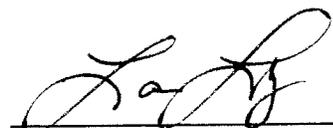
SECTION 17: EFFECTIVE DATE

This Ordinance shall take effect immediately upon adoption by the Marco Island City Council.

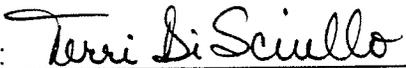
Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida, this 1st day of May 2006.

Attest:

CITY OF MARCO ISLAND, FLORIDA

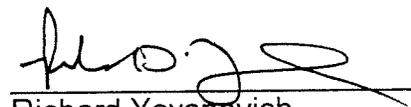


Laura Litzan

BY: 

Terri DiSciullo, Chairwoman

Approved as to form and legal:



Richard Yovanovich
City Attorney