

ORDINANCE NO. 98- 12

AN ORDINANCE ESTABLISHING A CITY OF MARCO ISLAND BEACH MANAGEMENT AND VESSEL CONTROL ORDINANCE RELATING TO BEACH AND WATER SAFETY, AND THE REGULATION OF VENDORS ON THE BEACH; ESTABLISHING INTENT AND PURPOSE; PROVIDING TITLE AND CITATIONS; PROVIDING FOR APPLICABILITY; PROVIDING DEFINITIONS; PROVIDING FOR REGULATIONS AND USE AND CONDUCT ON THE BEACH; ESTABLISHING BEACH VENDOR OPERATIONS AREA, STORAGE AREA, AND WALKWAY AREAS; PROVIDING FOR VESSEL REGULATIONS; PROVIDING FOR REGULATIONS FOR CONCESSION OPERATIONS, EQUIPMENT RENTAL, AND VENDORS ON THE BEACH AND ADJOINING WATERS; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; PROVIDING FOR PENALTIES FOR VIOLATIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the recreational use of the public beaches is a treasured asset of the City of Marco Island ("City") which is afforded to the public at large, including residents of and visitors to the City; and

WHEREAS, the sandy beaches of the City are an important economic asset and it is incumbent on the City to manage and protect this asset; and

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

WHEREAS, the operation of boats and other water craft in excess of idle speed may pose a threat to the health, safety and welfare of swimmers and others who are located offshore from beaches and within shore front bathing areas; and

WHEREAS, it is necessary that the speed and operation of certain aircraft, and water craft offshore from beaches and shore front bathing areas be controlled in order to protect the health, safety and welfare of the citizens of the City and visitors to the City; and

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

WHEREAS, all beach vendors currently operating on the City's beaches pursuant to a valid Collier County beach vendor permit which will expire on September 30, 1998, shall be permitted to continue to operate on the City's beaches until November 15, 1998.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MARCO ISLAND, that:

SECTION ONE: INTENT AND PURPOSE

It is the intent and purpose of this Ordinance to protect and promote the health, safety and welfare of the public at large, including residents and visitors to the City of Marco Island, by providing reasonable regulation of the public's use and conduct on the beach and adjoining waters of the City of Marco Island, including the designation of specific areas within which the operation of aircraft and personal water craft may be regulated or prohibited. It is further intended that this Ordinance shall be liberally construed to effect such intent and purpose.

SECTION TWO: TITLE AND CITATION

This Ordinance shall be known and be cited as the "Marco Island Beach Management and Vessel Control Ordinance."

SECTION THREE: APPLICABILITY

This Ordinance shall apply to and be enforced within the City of Marco Island but shall not apply to the other barrier islands within Collier County jurisdiction.

SECTION FOUR: DEFINITIONS

For the purposes of this Ordinance, the following words, which may or may not be capitalized in text, shall be defined as set forth below:

A. **AIRCRAFT** means any motor vehicle or contrivance now known or hereinafter invented, which is used or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. The term "aircraft" shall include ultra-light aircraft and seaplanes.

B. **A-WEIGHTED SCALE** or **SOUND LEVEL** means the sound pressure level in decibels as measured on a sound level meter using the A-weighted network. The level so read is designated DBA.

C. BATHER means any person who is in the same water as a vessel, whether said person is swimming, wading or engaged in any other activity in the water.

D. BATHING AREA means any area of the waters adjoining the beach in which bathers are located or may be located, whether or not designated by signs or other form of notification.

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

F. BLOOD BAITING means the use of blood or bloody fish parts to attract sharks.

G. CAMPING means the erection of shelter or similar structures for the purpose of sleeping overnight or lying upon the beach either under or outside of any shelter, vehicle, bedroll, blanket, or other protective garb.

H. CHUMMING means the throwing of bait or fish parts into the water to attract fish.

I. MARCO ISLAND means the incorporated area of Collier County and known as the City of Marco Island.

J. DECIBEL [DBA] means a unit for describing the amplitude of sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty [20] micronewtons per square meter.

K. GULF means the Gulf of Mexico and Capri Pass Inlet to Collier Bay inlet.

L. IDLE SPEED means the lowest speed at which a vessel or sailcraft can operate and maintain steering control.

M. PERSONAL WATERCRAFT means any personal water craft designed exclusively for the riding enjoyment of one or more persons, being propelled by propellers or by a jet pump with a fully enclosed impeller and not weighing over 350 pounds or having a length greater than 10 feet. The term "jet ski" for the purposes of this Ordinance shall include "sea sleds", "dolphin boats", "wave runners" or other such product name meeting the description herein provided.

N. LICENSE or LICENSED means a valid Occupational License recognized by the City of Marco Island, if an Occupational License must be acquired.

O. OPERATE or OPERATION means to navigate or otherwise use any aircraft or vessel in or on the water.

P. PERMIT means a Beach Vendor's Permit issued by the City of Marco Island.

Q. RAFTS, FLOATS, AND FLOTATION DEVICES means any device, whether of canvas, vinyl, rubber, styrofoam, or other substance, intended or capable of assisting in the flotation of a person on or in the water of the Gulf of Mexico. The term shall not include vessels or sail-craft, but shall include body boards unless the context clearly indicates otherwise.

R. SAIL-CRAFT means a wind-propelled vehicle used or capable of being used as a means of transportation on or in the water, including sailboats, sailboards and windsurfboards.

S. SEAPLANE means any aircraft as defined herein that is capable of landing and/or lifting off from a water surface.

T. SOLICIT OR CANVASS means any act, delivery, or exchange not initiated by the prospective customer or which directs attention to any business, mercantile or commercial establishment, or any other commercial activity, for the purpose of directly or indirectly promoting commercial interests through sales, rentals, or any exchange of value.

U. SURFING means the riding or paddling of a surfboard within the waters of the Gulf of Mexico abutting or adjacent to the beach.

V. ULTRA-LIGHT AIRCRAFT or ULTRA-LIGHT means any heavier-than-air, motorized aircraft which meets the criteria for maximum weight, fuel capacity or airspeed established for such aircraft by the Federal Aviation Administration under part 103 of the Federal Aviation Regulations.

W. VESSEL means a motor propelled or artificially propelled vehicle and every other description of boat, water craft, barge, and air boat other than a seaplane on the water, used or capable of being used as a means of transportation on or in the water, excluding personal water-craft.

SECTION FIVE: REGULATION OF USE AND CONDUCT ON THE BEACH

A. Possession of Glass Containers Prohibited. It shall be unlawful for any person while on the beach or beach access areas to possess or utilize any glass bottle or container.

B. Restrictions on Animals on the Beach. It shall be unlawful for any person owning or having under their control any animal, to permit such animal upon the beach, except guide dogs accompanying visually impaired persons or hearing ear dogs accompanying hearing impaired persons shall be allowed on the beach at all times.

C. Wheeled Vehicles. The use of wheeled vehicles other than emergency and public safety vehicles, turtle nest monitoring, ATVs and similar wheeled vehicles used for vendor operations, baby strollers, or equipment for mobility impaired persons is prohibited except by special permit.

D. Open Fires Prohibited; Heated objects to be Disposed of Properly. It shall be unlawful for any person to have open fires, barbecue grills, etc. on the beach. However, designated areas may be provided for use of stoves or grills as posted by the City of Marco Island. It shall be unlawful for any person to dispose of any coals, briquets, embers or other heated object except in City designated receptacles. All materials brought to the beach should be removed from the beach by the owners or users when such people leave the beach.

E. Overnight Camping Prohibited. It shall be unlawful to camp overnight on the beach.

F. Fishing. It shall be unlawful for any person while on the beach or within 1,000 feet from shore to intentionally fish for sharks or to fish by those methods commonly known as chumming or blood baiting. Nothing herein shall be construed to create a duty of any sort on the part of any law enforcement officer or City employee to prevent fishing or to warn of the presence of sharks in the Gulf of Mexico.

G. Throwing of Balls, Frisbees, or other objects. It shall be unlawful for any person to throw any ball, frisbee, or other object through any the beach or bathing area AFTER having been warned by any law enforcement officer that such activity interferes with or endangers the movement of pedestrian traffic or public safety.

H. Swimming. No person except a person actually engaged in a rescue attempt shall:

1. swim or bathe within 150 feet, measured in any direction, from a pier or jetty or breakwater;
2. swim or bathe in any area posted exclusively for vessel and / or sail-craft use.

I. Operation of vessel or sail craft while intoxicated. No person shall operate a vessel or sail craft of any description whether motorized or not, surf or otherwise use any other equipment in the Gulf of Mexico within the territorial waters of the City of Marco Island when under the influence of any alcoholic beverage, or any chemical substance as set forth in Section 877.111, Florida Statutes, to the extent that the person's normal faculties are impaired.

J. Use of aircraft on beach or adjoining water is prohibited. No person shall operate an Aircraft, including seaplanes or ultra-lights, on or from the beach or the water within 750 feet of the water's edge.

K. Soliciting and Canvassing Prohibited. There shall be no solicitation or canvassing of the public on the beach other than:

1. By licensed concessionaires of goods and services for use or consumption on the beach. No person other than a licensed concessionaire shall solicit

or canvass for the sale or rental of merchandise, services, goods, or property of any kind or character intended for use or consumption on the beach.

2. Permitted beach vendors may solicit or canvass for the sale or rental of any merchandise, services, goods or property of any kind or character from within 10 feet of their permitted operational area.

L. Sound Amplification. Except by special permit, no audio device, such as loudspeakers, television, radio, compact disc, tape, or record player, or musical instrument, except equipment used by law enforcement, rescue or beach safety personnel, shall be used on the beach in a manner:

1. that exceeds a noise level of 60 decibels [DBA] measured on the A-weighted scale at 25 feet from the sound source; or
2. that otherwise violates the City of Marco Island Noise Control Ordinance.

M. Breach of the Peace; Disorderly Conduct. No person shall commit such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engage in brawling or fighting, or engage in such conduct as to constitute a breach of the peace or disorderly conduct.

N. Removal of Beach Sand. No beach sand may be removed from the beach.

O. Litter. It shall be unlawful for any person to discard or otherwise dispose of or abandon any trash, garbage, bottles, containers, cans, dead fish or parts thereof, charcoal briquettes or ashes, or any other litter, except in designated containers for that purpose. It is further unlawful to dispose of any household garbage on the beach.

P. Beach vendor operations and storage areas will be established in the Beach Vendor Permit. These areas are based on Chapter 161, Florida Statutes.

Each vendor shall be responsible for the cleanliness of their own area. They will be responsible for the neat placement and arrangement of their equipment both during the business hours as well as after hours. No beach vendor will infringe on the beach area of adjacent properties without first having an agreement signed by the owner of said properties.

SECTION SIX: VESSEL REGULATION

A. Operation of vessel in excess of idle speed prohibited. The operation of any vessel, or sail-craft, in excess of idle speed, as defined herein, in or on all waters of the Gulf of Mexico within five hundred (500) feet offshore from all sandy beaches is hereby prohibited.

Said prohibition shall be effective and enforceable regardless of whether or not such area is designated by appropriate sign, buoy or other public notice.

B. Personal watercraft regulation. No person shall operate any personal watercraft:

1. Closer than 750 feet measured perpendicular from the water's edge except to go to and from the shore or except in a vessel corridor designated under subsection (C) hereof, or (a.) proceed to or from that portion of the Gulf beyond 500 feet at a speed greater than merely necessary to effectively traverse the breaking water, and from all distances from 500 feet to 750 feet from the shore, at the lowest safe speed under the then existing conditions, but in no case to exceed 20 miles per hour; or
2. In an unsafe, reckless or careless manner endangering the life, limb, or property of any person.

C. Vessel corridors. Areas of the Gulf adjacent to the beach and closer than 750 feet from the shore may be designated by resolution of the Marco City Council as being used exclusively for vessel use between dawn and dusk daily.

D. Beach launch of vessels regulated. No person except a law enforcement officer, licensed beach vendor, authorized emergency personnel, or other person actually engaged in a rescue attempt shall traverse the beach with a motorized boat or personal watercraft or launch such vessel from the beach from an unauthorized launching area. A licensed beach vendor's location is an authorized launch site for that vendor's equipment.

E. Water Skiing. No person(s) including the skier(s) (anyone being towed on a line behind a vessel) and the vessel operator(s) shall water ski closer than 500 feet from the edge of the beach.

F. Sail-craft, including sailboats, wind-surfboards, and sailboards. No person shall operate a sail-craft closer than 500 feet perpendicular from the water's edge where bathers are present except to go to and from the shore by the most direct means possible in a safe and reasonable manner.

G. Regulated Areas. No person shall operate a motorized vessel or sailcraft within an area which has been clearly marked by buoys or some other distinguishing device for bathing, swimming or which has been otherwise restricted by the City, provided that this subsection shall not apply in the case of an emergency or to patrol or rescue craft.

1. A buoy line designating the 500 foot offshore measurement will be maintained by the City.

H. Vessel speed not to exceed reasonable speed under existing conditions. Nothing

contained in this Ordinance shall be construed to authorize or approve the speed of any vessel or sail craft in excess of that which is reasonable and proper under the existing conditions or circumstances including, but not limited to, the presence of water skiers, bathers, fishermen, natural hazards or other water traffic.

I. Exemptions. The following shall be exempted from the provisions of Section Six of this Ordinance.

1. The provisions of this Ordinance shall not be construed to prohibit the operation, racing or exhibition of vessels or sailcraft during a publicly announced, properly authorized, supervised and adequately patrolled regatta, speed trial or exhibition.
2. The operators of Law Enforcement or rescue vessels or vessels operating under emergency conditions shall be exempted while conducting official duties or operating under emergency conditions.
3. Commercial fishing vessels are exempted while conducting fish netting operations, provided the operations are conducted in a safe and prudent manner and in accordance with Section Six (H), Vessel speed not to exceed reasonable speed under existing conditions. Under no circumstances, however, shall commercial fishing vessels be operated at greater than idle speed within five hundred feet (500 feet) of bathers.

SECTION SEVEN: REGULATION OF CONCESSION OPERATIONS, EQUIPMENT RENTALS AND VENDORS ON THE BEACH AND ADJOINING WATERS

The safety and welfare of the persons that reside nearby the City's beach areas and of the public that recreate on the beach and adjoining waters makes necessary and appropriate the following regulations:

A. Beach Vendor Permit Requirement. Any person or business enterprise of any type or kind engaged in the rental, leasing, bailment for consideration, or which otherwise provides recreational equipment for remuneration, including motorized or wind-driven vessel(s) for the use by the public on the beach or adjoining waters of Marco Island, including personal watercraft and sailcraft, shall be required to obtain a "Beach Vendor Permit" from the City of Marco Island. A Beach Vendor Permit shall be issued and maintained upon the applicant paying such application fee established by the City by resolution and the applicant meeting the following requirements:

1. The applicant must have an operations office or headquarters located at an upland improved facility immediately adjacent to the area where vessels, goods and services are being offered by a vendor for public use with

direct access to the beach areas. For the purposes of this Ordinance, the term "immediately adjacent" means the applicant either owns a building, leases space within an upland improved facility, or has a concession agreement to operate on the land adjacent to the water. The term "immediately adjacent" does not include a permanent building which has obtained beach access from a landowner which owns land adjacent to the water.

2. The applicant must have a written agreement with the affected beachfront property owner at the time application is made for a Beach Vendor Permit, and such agreement shall remain in full force and effect as a condition of the Beach Vendor Permit.
3. The applicant must have and maintain a communications system including a telephone, either land lined or cellular, and marine radio at its operations office with the functional capacity to be always alert to the whereabouts of the rental craft.
4. The applicant must have a motorized chase boat with operational marine radio or cellular phone in good working condition that satisfies U.S. Coast Guard safety requirements, kept at the vessel rental site during all hours of applicant's rental operations.
5. The applicant must have and maintain comprehensive general liability insurance with coverage not less than the amount of \$1,000,000.00 combined single limits, and the City of Marco Island must be named as additional insured. An endorsement Certificate must be received by the City from the insurance company indicating such coverage and endorsement.
6. The applicant shall provide a list describing and indicating the vessel registration number of each motorized vessel the applicant shall place in service. Any motorized vessel placed in service for public use after a Beach Vendor's Permit has been issued shall have a State vessel registration number affixed thereon, and display either a U.S. Coast Guard inspection or U.S. Coast Guard Auxiliary Safety Check decal.
7. Beach vendors who had a valid beach vendor permit issued by Collier County for the period of October 1, 1997 to September 30, 1998, shall be permitted to continue operations until November 15, 1998. In order to continue operating past that date, a Beach Vendor Permit must be obtained from the City.

B. As set forth in Section 327.395, Florida Statutes, until October 1, 2001, the

operation of a motorized vessel powered by a motor of ten horsepower or greater is prohibited by anyone born after September 30, 1980, and on or after October 1, 2001, a person 21 years of age or younger, unless that person has in his/her possession aboard the vessel photographic identification and a boater safety identification card issued pursuant to Section 327.395, Florida Statutes, or such person is at least 16 years of age and the person's parent, or a supervisor 18 years of age or older is either exempt from the requirements of Section 327.395, Florida Statutes, or has a valid boater safety identification card issued pursuant to that section, accompanies that person during operation of the vessel and assumes all responsibility for each operation violation that may occur during that operation of that vessel. It shall be a violation of this section and this Ordinance for any person to rent, lease or otherwise provide a motorized vehicle to anyone in violation of Section 327.395, Florida Statutes.

C. The renter, user, and passenger of any vessel described in this section shall have on board an approved and operational Personal Flotation Device (PFD) for each occupant while using or having such vessel in the water. It is a violation of this section for any such person using such vessel not to have a life vest on board.

D. Each vendor under this Ordinance must also provide pre-ride boater safety instruction and safety information to each person who rents a vessel powered by a motor rated at ten horsepower or greater.

E. Each rental personal watercraft must conspicuously display the special speed limit instructions that apply within all the respective distances from the shore. The speed instructions must be easily visible to the operator of the rental personal watercraft when the operator is in the operating position on the personal watercraft.

F. Each rental personal watercraft must always operate with stock mufflers or with mufflers that are quieter than stock mufflers.

G. Each person renting a personal watercraft must read and initial that he/she understands the speed and operation restrictions placed upon operation of personal watercraft by this Ordinance and/or by Chapter 327, Florida Statutes.

H. Each rental personal watercraft must display identifying letters and/or numbers that identify the specific personal watercraft vendor. Each identification number and/or letter, trademark, logo, and/or company name must be at least four inches in height and must contrast with its background color so as to be easily visible at a distance of 250 feet by a person with 20/20 vision.

I. Each personal watercraft must use a vessel corridor whenever a corridor is available. The maximum allowable speed in the corridor within 500 feet of the shore is the slowest speed at which the operator can effectively control the personal watercraft and be able to transverse the breaking water, and at all distances from 500 feet to 750 feet from the shore, operate at any safe speed, but not to exceed 20 miles per hour.

J. All personal watercraft must be operated in a reasonable and prudent manner at all times. Maneuvers which unreasonably or unnecessarily endanger life, safety, or property, including, but not limited to (1) weaving through congested vessel traffic, (2) jumping the wake of another vessel unreasonably or unnecessarily close to such vessel, (3) operating when visibility around such other vessel is obstructed, or (4) operating in a manner that requires intentional swerving at the last moment to avoid collision, constitute reckless operation and are in violation of this section and this Ordinance.

SECTION EIGHT: CODE OF ORDINANCES; CONFLICT AND SEVERABILITY

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

B. All sections or parts of sections of the Code of Laws and Ordinances of Collier County, Florida, all Collier County Ordinances or parts of ordinances and all Collier County resolutions or parts of resolutions made applicable by the City Charter or otherwise and which are in conflict herewith are hereby repealed to the extent of such conflict.

C. If any word, phrase, clause, subsection or section of this Ordinance is for any reason held unconstitutional or invalid by any court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

SECTION NINE: PENALTIES FOR VIOLATION

A. Pursuant to Section 162.22, Florida Statutes, a person found to be in violation of this Ordinance may be charged a fine, not to exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed 60 days.

B. Violations of this Ordinance may also be prosecuted before a code enforcement board established by the City of Marco Island.

C. The City Council may suspend or revoke a Beach Vendor Permit for violations of this Ordinance after notice of violation is provided to the beach vendor and the beach vendor fails to timely cure the violation. A public hearing to consider suspension or revocation of a Beach Vendor Permit shall occur before the City Council upon fourteen (14) days written notice to the beach vendor. The notice to the beach vendor shall set forth the provisions of this Ordinance which is/are being violated. City staff shall present evidence of the violation to the City Council at the public hearing. The beach vendor shall be given an opportunity to address the alleged violations, present evidence and witnesses and cross-examine City witnesses. City staff will be entitled to cross examine any witnesses testifying on behalf of the beach vendor.

If the City Council finds by the preponderance of the evidence that this Ordinance has been violated, the City Council may suspend or revoke a Beach Vendor Permit. If a beach vendor has had a Beach Vendor Permit revoked, he shall not be eligible to obtain another Beach Vendor Permit for a period of twelve months. The hearing before the City Council shall not be required to follow the same procedures as a trial before a court, but fundamental due process will be observed and govern the proceedings. For purposes of this section, the term "beach vendor" includes the entity as well as the officers and principals of the entity. Accordingly, if an entity has its Beach Vendor Permit revoked, an officer or principal of the entity shall not be permitted to be an officer or principal in an entity which obtains a Beach Vendor Permit for a period of twelve months.

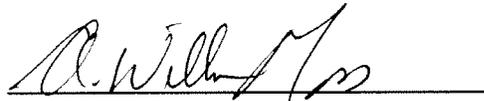
SECTION TEN:

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

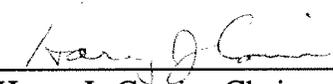
Passed in open and regular session through roll call vote by the City Council of Marco Island, Florida, this 8th day of September, 1998.

ATTEST:

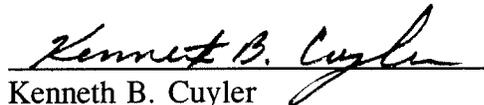
CITY OF MARCO ISLAND, FLORIDA



A. William Moss
City Manager/City Clerk

By: 
Harry J. Cowin, Chairman

Approved as to form and
legal sufficiency:



Kenneth B. Cuyler
City Attorney