

ORDINANCE 2020-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA; REORGANIZING AND UPDATING CHAPTER 122 WATERWAYS, CODE OF ORDINANCES OF BREVARD COUNTY, BY REPEALING AND REPLACING ALL SECTIONS; CREATING SEC. 122-1 DEFINITIONS; SEC. 122-2 ENFORCEMENT; SEC. 122-26 MANATEE PROTECTION BOARD SPEED ZONES; SEC. 122-27 IDLE SPEED NO WAKE ZONES; SEC. 122-28 SLOW SPEED, MINIMUM WAKE AND MOTOR EXCLUSION ZONES; SEC. 122-30 USE OF VESSELS IN RESIDENTIAL AREAS ON LAKE POINSETT; SEC. 122-31 OPERATION OF AIRBOATS IN RESTRICTED AREAS ON LAKE POINSETT; SEC. 122-32 SCOTTSMOOR LANDING PARK; SEC. 122-33 VESSELS IN OCEAN; PROVIDING FOR APPLICABILITY, REFERENCE TO OTHER AUTHORITY, SEVERABILITY, CODIFICATION; RESOLUTION OF CONFLICTING PROVISIONS AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Brevard County, Florida (hereinafter the "Board") is a political subdivision of the State of Florida, having a responsibility to provide certain services to benefit citizens of the County and to promote the health, safety, and general welfare of the citizens of the County; and

WHEREAS, Chapter 122 Waterways, Code of Ordinances of Brevard County, Florida, regulating boating activities in certain waterways of the County has been in existence for many years and has been amended several times; and

WHEREAS, some of the code sections have become outdated with changes to the Brevard County Comprehensive Plan and the adoption of the Manatee Protection Plan, as well as a result of changes to state laws regulating boating activity; and

WHEREAS, it is desirable to update and improve the organization of Chapter 122 Waterways; and

WHEREAS, the Board in regular session on August 6, 2019, approved legislative intent and permission to advertise amendments to Chapter 122 Waterways to update provisions within the chapter; and

WHEREAS, the Brevard Marine Advisory Council at their regular meeting on June 18, 2020, reviewed the proposed changes and recommended approval of the ordinance amendment.

NOW THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Brevard County, Florida:

Section 1. Repeal of Chapter 122 of the Code of Ordinances of Brevard County.

The Board hereby repeals Chapter 122 of the Code of Ordinances of Brevard County, which shall be replaced as follows:

Chapter 122 – Waterways

ARTICLE I. IN GENERAL

Section 122-1 - Definitions.

Unless the context clearly requires a different meaning or one is specifically set out herein, then the words and terms used herein are to be defined and applied as set forth in Chapter 327, Florida Statutes, as may from time to time be amended. The definitions contained in this Section shall apply throughout Chapter 122 and this Ordinance and shall have the following meanings, unless some other meaning is plainly intended:

Airboat: Any watercraft which operates on a water surface or water body and which is propelled by an engine, motor or other propulsion system which utilizes a propeller, fan or blade which is not normally submerged below the water surface upon which the craft operates.

Bather: Any person who is in the same water as a vessel, whether said person is swimming, wading, or engaged in any other activity.

Boating-Restricted Area: An area of the waters of the County within which the operation of Vessels is subject to specified restrictions or from which Vessels are excluded.

Canal: A manmade waterway

Combustion motor exclusion zone: A surface water area where watercraft propelled with combustion motors or electrical trolling motors are prohibited. Within this zone, watercraft use is limited to canoes, kayaks, sailboats, and flat bottom boats.

County: Brevard County, Florida, a political subdivision of the State of Florida.

Idle Speed / Idle Speed No Wake: May be used interchangeably and mean that a Vessel must proceed at a speed no greater than that which will maintain steerageway and headway. At no time is any Vessel required to proceed so slowly that the Operator is unable to maintain control over the Vessel or any other Vessel or object that it has under tow.

Idle Speed / Idle Speed No Wake Zones: Those waterways within Brevard County in which watercraft traffic shall not exceed Idle Speed

Manmade: Made by human beings or not of natural origin

Nighttime: The period from sunset to one-half hour after sunrise, as sunrise and sunset are officially determined by the National Weather Service.

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

Operator: A person who operates a Vessel.

Person: An individual, firm, partnership, corporation, association, or other legal entity.

Regulatory Marker: A device used to alert the Operator to various regulatory matters such as horsepower, speed, wake, or entry restrictions in conformity with the Uniform State Waterway Marking System and the United States Aids to Navigation System, Part 62 of Title 33 of the Code of Federal Regulations.

Residential: All improved real property within the county used for either a multifamily residence, a single-family residence, including trailer parks or any real property falling within a residential zoning classification as defined in the Code.

Slow Speed / Slow Speed Minimum Wake: May be used interchangeably and mean that a Vessel must be fully off plane and completely settled into the water. The Vessel must then proceed at a speed that is reasonable and prudent under the prevailing circumstances so as to avoid the creation of an excessive wake or other hazardous condition that endangers or is likely to endanger other Vessels or other persons using the waterway. At no time is any Vessel required to proceed so slowly that the operator is unable to maintain control over the Vessel or any other Vessel or object that it has under tow.

Slow Speed / Slow Speed Minimum Wake Zone: Those waterways within Brevard County in which watercraft traffic shall not exceed Slow Speed.

Vessel: Synonymous with "boat" as referenced in s. 1(b), Art. VII, Florida Constitution, and includes every description of watercraft, barge, and airboat, whether driven by an outboard or inboard motor, other than a seaplane on the water, used or capable of being used as a means of transportation on water. This includes all types of personal watercraft.

Watercraft: Any vessel that travels on, in or under the water regardless of method of propulsion.

Waters of the County / Waterways of the County: May be used interchangeably and mean any navigable waters of the United States within the territorial limits of Brevard County and all inland lakes, rivers, and canals under the jurisdiction of the

County.

Wake: When used in conjunction with a numerical size limit, means all changes in the vertical height of the water's surface caused by the passage of a Vessel including, but not limited to, a Vessel's bow wave, stern wake, and propeller wash, measured from the ambient tide level to the crest of the Vessel's wake at a distance of not less than 25 feet from the Vessel.

Section 122-2 - Enforcement.

The Division of Law Enforcement of the Fish and Wildlife Conservation Commission and its officers, and all other law enforcement officers, as defined under existing or future laws of the State of Florida, including, but not limited to, the County Sheriff and his duly authorized deputies, are hereby authorized to enforce the provisions of this Ordinance.

Section 122-3 - Fishing within residential, manmade saltwater canals

- (a) *Authority*. This section is enacted under authority of the Laws of Florida Ch. 93-376
- (b) *Purpose and intent*. It is hereby declared to be the intent of this section to prohibit the taking of fish from any residential, manmade saltwater canal within unincorporated Brevard County, except by hook and line or cast nets thrown by hand.
- (c) *Prohibited activity*. It shall be a violation of this section to take fish from any residential, manmade, saltwater canal within the county by any means other than by hook and line or cast net thrown by hand. In addition to this restriction, between the hours of 11:00 p.m. and 7:00 a.m., it shall be a violation to take fish from any residential, manmade, saltwater canal within the county by a cast net of more than six feet.
- (d) *Penalty*. Any violation of this section shall be prosecuted in the same manner as a misdemeanor and upon conviction shall be punished by a fine not to exceed \$500.00 or by imprisonment in the county jail not to exceed 60 days or by both such fine and imprisonment.

Secs. 122-4 – 122-25. Reserved.

ARTICLE II. BOATS AND WATER SAFETY

DIVISION 1. – IN GENERAL

Section 122-26 - Manatee Protection Boat Speed Zones.

- (a) It shall be unlawful for any person, by any means or in any manner, to intentionally or negligently injure or harm a manatee.

- (b) It shall be unlawful for any person operating a watercraft to exceed the State and Federal Idle Speed and Slow Speed restrictions established in the Brevard County Manatee Protection Plan, as adopted by the Brevard County Board of County Commissioners on January 16, 2003, and its amendments. Any person who violates the provisions of this subsection shall be punished as provided in F.S. § 327.70.

Section 122-27 - Idle Speed, No Wake Zones

- (a) Idle speed, no wake zones within the waterways of the unincorporated area of the County shall be as follows:

- (1) The easterly 200 feet of the entrance canal into the Lake Washington Acres subdivision, the canal lying between the western terminus of the northern canal and the western terminus of the southern canal, and the canal south of Evinrude Road located in section 15 and 22, township 27 south, range 36 east, according to the Replat Of Lake Washington Acres Section One as recorded in Plat Book 21, Page 53 of the Public Records of Brevard County, Florida.
 - (2) The canals associated with the Indian River Isles Subdivision (First Addition, Second Addition, Third Addition, and South Indian River Isles). Being further described as: the southeast $\frac{1}{4}$ of section 1, township 26, range 36; and the northeast $\frac{1}{2}$ of section 12, township 26, range 36.
 - (3) The canal lying north of Laguna Vista Drive located in Lakewood Manor, as recorded in Plat Book 20, Page 20 of the Public Records of Brevard County, Florida lying in section 10, township 27 south, range 36 east.
 - (4) Fox Lake, up to the southern mouth of the canal connecting Fox Lake to South Lake, a body of water adjacent to Fox Lake Park located at 4400 Fox Lake Road, Titusville, Florida, 32796. Legal Description, Part of S $\frac{1}{2}$ as described in Official Records Book 688, Page 860, public records of the county.
- (b) *Posting of restricted areas.* The restrictions as created by this section shall be posted by County personnel with appropriate signs. Such signs shall be made of materials which will retain, despite the weather and other exposure, the information which conveys the intended regulation. The sign may be attached to another object such as a piling, buoy, structure or land and shall be no smaller than three feet by three feet.
- (c) *Penalties.* In accordance with F.S. § 327.73, any violation of the speed restrictions within this section shall be considered a non-criminal infraction punishable by a civil penalty provided in the aforementioned statute. Enforcement of the section shall be as specified in F.S. § 327.70, and all infractions of this section shall be issued on a uniform boating citation as provided by FS. § 327.74, by those agencies authorized to enforce vessel speed regulations. Pursuant to F.S. § 327.72, any person failing to pay the civil penalty as designated in this section or to utilize the remedies provided in F.S. § 327.73 shall be considered guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082 or 775.083.

Section 122-28 - Slow Speed, Minimum Wake and Motor Exclusion Zones

(a) *Definitions.* For the purpose of this section the following definitions shall apply:

Babe Cushman Canal as shown on the plats of Indian Landing Phase II as recorded in Plat Book 47, Page 17 and Indian Landing Riverside as recorded in Plat Book 49, Page 63 both of the Public Records of Brevard County, Florida.

Indian Landing is a subdivision located in Section 10, Township 29 South, Range 38 East as approved by Brevard County as shown on the plats of Indian Landing Phase II as recorded in Plat Book 47, Page 17 and Indian Landing Riverside as recorded in Plat Book 49, Page 63 both of the Public Records of Brevard County, Florida.

Kel Fox Canal is the southern body of water as shown on the plat of Indian Landing Riverside as recorded in Plat Book 49, Page 63 both of the Public Records of Brevard County, Florida.

Indian Landing Navigational access is the area in the Indian River Lagoon located between the outlet of the Kel Fox Canal and a deep natural channel delineated by navigational aids for ingress and egress for watercraft to Indian Landing via the Kel Fox Canal.

Indian Landing Near shore area is that part of the Indian River Lagoon extending 900 feet perpendicular to the shoreline of Indian Landing and including the area of navigational access, as defined above.

(b) *Use regulations.*

- (1) A permanent slow speed/minimum wake zone is hereby established for the defined Indian Landing Near shore area and Indian Landing Navigational access that is adjacent to Indian Landing. It shall be unlawful to exceed slow speed/minimum wake within the near shore area and navigation access.
- (2) A permanent combustion motor exclusion zone is hereby established within the Babe Cushman Canal. It shall be unlawful for boats equipped with combustion engines to enter, moor in, or otherwise use the Babe Cushman Canal. It is also unlawful to damage or destroy any elements of the barrier that restricts access to the Babe Cushman Canal.

(c) *Posting of restricted areas.* The slow speed zone, navigational access, and combustion motor exclusion zone as created by this section shall be posted and maintained by the developer of Indian Landing and his successors, Indian Landing's Home Owners Association, with appropriate signs. Such signs shall be made of materials that will retain, despite the weather and other exposure, the information that conveys the intended regulation. The sign may be attached to a piling, buoy, structure or land and shall be no smaller than three feet by three feet. The signs shall be placed not more than 500 feet apart along the zones and access.

- (d) *Exemptions.* The United States Coast Guard, Florida Fish and Wildlife Conservation Commission, Brevard County Sheriff, or other official watercraft operating under emergency conditions or while performing official duties shall be exempt from the provisions of this section.
- (e) *Enforcement.* It shall be unlawful to violate any provisions of section 122-28. A citation shall be issued pursuant to F.S. § 327.72 and 327.73 for any such violation.
- (f) *Penalties.* In accordance with F.S. § 327.73, any violation of the speed restrictions within this section shall be considered a non-criminal infraction punishable by a civil penalty provided in the aforementioned statute. Enforcement of the section shall be as specified in F.S. § 327.70, and all infractions of this section shall be issued on a uniform boating citation as provided by FS. § 327,74, by those agencies authorized to enforce vessel speed regulations. Pursuant to F.S. § 327.72, any person failing to pay the civil penalty as designated in this section or to utilize the remedies provided in F.S. § 327.73 shall be considered guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082 or 775.083.

Sec. 122-29. Reserved

Sec. 122-30. - Use of vessels in residential areas on Lake Poinsett.

- (a) *Speed restrictions.* All vessels operated within 1,000 feet of any building or structure temporarily or permanently occupied by any person for residential purposes shall be operated at idle speed, not to exceed five miles per hour. In accordance with F.S. § 327.73 any violation of this subsection is a noncriminal infraction punishable by a fine of \$100.00.

Sec. 122-31. - Operation of airboats in restricted areas on Lake Poinsett.

- (a) *Definitions.* For the purpose of this section the following words and phrases shall have the meanings respectively ascribed to them in this subsection unless otherwise specifically stated:

Lake Poinsett Subdivision Area: The subdivision in that portion of the county located within section 34, township 24 south, range 35 east and section 3, township 25 south, range 35 east, Brevard County, Florida.

Lake Poinsett Restricted area: That part of Lake Poinsett and adjoining canals lying in section 34, township 24 south, range 35 east and section 3, township 25 south, range 35 east, Brevard County, Florida and lying northerly and easterly of the following described control line: Commence at the northeast corner of plat book 19, page 144 and run south 0°03' west along the east line of southwest ¼ of section 34, a distance of 400 feet to the southeast corner of the plat; thence run south 20°00' east, a distance of 1,125 feet to the point of beginning; thence for a first course run north 65°00' west, a distance of 2,050 feet; thence for a second course run north 38°00' west a distance of 1,900 feet more or less to the northerly shore of Lake Poinsett which is the termination point of the control line.

- (b) *Prohibited acts.*

- (1) It shall be unlawful under the provisions of this section for any person to launch or load any airboat on Lake Poinsett in the county during the nighttime hours within the restricted area on Lake Poinsett, including canals within the Lake Poinsett Subdivision.
 - (2) It shall be unlawful for any person to operate any airboat at greater than an idle speed not to exceed five miles per hour at any time within the restricted area.
 - (3) It shall be unlawful to operate an airboat at greater than idle speed within the canals of the Lake Poinsett Subdivision located in the county at any time.
 - (4) It shall also be unlawful for any person to launch or load any airboat from the Lake Poinsett Subdivision or any public or private property located on or adjacent to Pluckebaum Road and the Lake Poinsett Lodge areas within the restricted area during the nighttime hours.
 - (5) It shall be unlawful for any person to intentionally remove or destroy any sign, marker or buoy defining or announcing the control line of the restricted area.
- (c) *Exemption.* The provisions of this section shall not prohibit the operation, launching or loading of an airboat within the restricted areas and adjacent to the Lake Poinsett Subdivision or within the canals of the Lake Poinsett Subdivision by any state, county or federal officer on official public business.
- (d) *Penalties.* In accordance with F.S. § 327.73, any person convicted of a violation of any of the provisions of this section shall be guilty of a noncriminal infraction punishable by a fine of \$100.00.

Sec. 122-32. - Scottsmoor Landing Park.

- (a) *Definitions.* For the purpose of this section the following words and phrases shall have the meanings respectively ascribed to them in this subsection unless otherwise specifically stated:

Channel Exempt: Specifically defines what portion of a described waterway is being regulated or restricted, and shall remove or exempt the posted portion of the marked channel from restriction or regulation.

Scottsmoor Landing Park Area: The body of water in the Indian River outside the marked "channel" extending 2,000 feet perpendicular to the shoreline of Scottsmoor Landing Park and two miles south of the park and an additional two miles (to extent of the county limits) north of the park.

- (b) *Use regulations.* Notwithstanding the Channel Exempt provision established in subsection (a) above, a permanent Slow Speed Zone is hereby established in the Scottsmoor Landing Park Area.
- (c) *Posting of restricted areas.* The restrictions as created by this section shall be posted by County personnel with appropriate signs. Such signs shall be made of materials which will retain, despite the weather and other exposure, the information which conveys the intended regulation. The sign may be attached to another object such as a piling, buoy, structure or land and shall be no smaller than three feet by three feet.

- (d) *Penalty.* In accordance with F.S. § 327.73, any violation of the speed restrictions within this section shall be considered a noncriminal infraction punishable by a civil penalty of \$50.00 except as otherwise provided for allowable county court costs for boating infractions. Enforcement of the section shall be as specified in F.S. § 327.70, and all infractions of this section shall be issued on a uniform boating citation as provided by F.S. § 327.74, by those agencies authorized to enforce vessel speed regulations. Pursuant to F.S. § 327.72, any person failing to pay the civil penalty as designated in this section or to utilize the remedies provided in F.S. § 327.73 shall be considered guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082 or 775.083.

Sec. 122-33. - Vessels in ocean.

- (a) *Area encompassed.* The provisions of this section shall be applicable within the unincorporated areas of the county. These provisions shall be construed to supplement federal and state laws and regulations, when not expressly inconsistent therewith, on all waterways where such federal and state laws and regulations are applicable.
- (b) *Operation near shoreline.* No vessels, except, human or wind powered vessels, shall be operated within 500 feet of the Atlantic Ocean shoreline, except when launching and landing, and in such cases the vessel shall proceed through the aforesaid 500 feet substantially in a line perpendicular to the shore and the watercraft shall not be maneuvered within the 500 feet except for the purpose of launching or landing. No vessel shall be operated otherwise unless allowed to do so under a permit obtained from the United States Coast Guard, as required by F.S. § 327.48.
- (c) *Right-of-way of persons in water.* All swimmers and bathers in the ocean shall be given the absolute right-of-way over vessels. All vessels within 100 feet of any swimmer or bather in the water shall proceed with extreme caution in such a manner as not to endanger such persons in the water.
- (d) *Exemptions.* United States Coast Guard, Florida Fish and Wildlife Conservation Commission, county law enforcement, or other official vessels operating under emergency conditions or while performing official duties shall be exempted from the provisions of this section.
- (e) *Enforcement.* It shall be unlawful to violate any provisions of this section. A citation shall be issued pursuant to F.S. §§ 327.72 and 327.73 for any such violation.

Section 2. Applicability. This Ordinance shall apply within the unincorporated areas of the County.

Section 3. Severability. It shall be the legislative intent that if any section, subsection, paragraph, sentence, clause, or provision of this Ordinance is held invalid, the remainder of this Ordinance shall not be affected.

Section 4. Reference to Other Authority. Where a statute or administrative rules are referenced herein, this shall mean the most recently adopted version of said statute and administrative rules.

Section 5. Resolution of Conflicting Provisions. In the case of a direct conflict between any provision of this Ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulations, the more restrictive shall apply.

Section 6. Codification. The provisions of this Ordinance shall become and be made a part of the code of laws and ordinances of the County of Brevard. The sections, subsections, paragraphs, and other divisions contained in this Ordinance may be re- numbered for incorporation or consistency with any existing or future codification of the Ordinances of Brevard County, Florida.

Section 7. Effective Date. This Ordinance shall become effective upon adoption by the Board of County Commissioners and filing with the Department of State. A certified copy of the Ordinance shall be filed with the State, within ten days of enactment.

APPROVED AND ADOPTED this ____ day of _____, 2020.

BRYAN ANDREW LOBER, CHAIR
BOARD OF COUNTY
COMMISSIONERS
BREVARD COUNTY, FLORIDA

ATTEST:

SCOTT ELLIS, CLERK OF COURT

Reviewed for legal form and content:



Assistant County Attorney