

ORDINANCE NO. 2021-_____

AN ORDINANCE AMENDING CHAPTER 62, "LAND DEVELOPMENT REGULATIONS", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VI, ZONING REGULATIONS, DIVISION 1, SPECIFICALLY AMENDING SECTION 62-2118, RESIDENTIAL BOAT DOCKS AND PIERS, TO REVISE THE EXISTING DEFINITIONS AND TO ADD NEW DEFINITIONS FOR BUFFER ESTABLISHMENT LINE, BULKHEAD AND SEAWALL, SAFE UPLAND LINE, VESSEL, WATERCRAFT, AND WATERWAY ENCROACHMENT; AMENDING THE GENERAL REQUIREMENTS TO ESTABLISH A CLEAR, NAVIGABLE ZONE, TO CLARIFY MARINE IMPROVEMENTS AND ACCESSORIES SUBJECT TO SIDE SETBACK AND PROJECTION REQUIREMENTS, AND TO CLARIFY POINTS OF MEASUREMENT FOR RESIDENTIAL BOAT DOCK AND PIER PROJECTION INTO MANMADE WATERWAYS; ADDING PROVISIONS REGARDING NON-CONFORMING DOCKS; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA.

WHEREAS, the Board of County Commissioners desires to establish clear, navigable zones between residential boat docks in manmade canals that coincide with current setbacks; and

WHEREAS, the Board of County Commissioners wishes to establish clearly defined measuring points for residential boat dock projections in manmade canals; and

WHEREAS, the Board of County Commissioners, on January 26, 2021, approved legislative intent and permission to advertise an amendment to land development regulations regarding residential boat docks and piers; and

WHEREAS, the Building Construction Advisory Committee, on March 10, 2021, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Local Planning Agency, on March 22, 2021, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Board of County Commissioners has reviewed the recommendations of the Local Planning Agency and the Building Construction Advisory Committee and has considered the comments of interested citizens in public hearing; and

WHEREAS, the Board of County Commissioners has determined that the proposed amendment serves the public health, safety and welfare of the citizens of Brevard County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Section 62-2118. Definitions and rules of construction, Code of Ordinances of Brevard County, Florida, Residential boat docks and piers is hereby amended as follows:

Sec. 62-2118. - Residential boat docks and piers.

- (a) *Purpose and intent.* The provisions of this section are intended to regulate the size and location of boathouses, docks and piers located in canals, public drainage easements and drainage rights-of-way in all residential zoning classifications in the unincorporated areas of the county. This section also provides minimum structural standards for the construction of residential boat docks and piers.
- (b) *Definitions.* For purposes of this section:
 - (1) *Boathouse* means a structure built at the water's edge used for storing boats, which may extend from a seawall or the shore over the water. A boathouse has a roof, and is partially or totally enclosed by sides.
 - (2) *Buffer establishment line* means a surveyed contour line along a shoreline from which the landward surface water protection buffer may be identified. The line is established along the approximate land-water interface of a shoreline. The elevation of 0.9 feet N.G.V.D. 1929, or N.A.V.D 1988 equivalent elevation, shall be used to define the line along the Indian River Lagoon system. The use of this line is exclusive to Brevard County for the sole purpose of establishing the surface water protection buffer or dock projection into canal and infers no jurisdictional or property boundaries.
 - (3) *Bulkhead or seawall* means a manmade shoreline wall, breakwater or encroachment, excluding shoreline stabilization as defined in Section 62-3661 Brevard County Code, as may be amended, designed or positioned to break the force of waves or to hold back or protect the shoreline from erosion. Headwalls and other similar minor structures necessary for the implementation of permitted stormwater management systems shall not be considered bulkheads.
 - (4) *Covered boat dock* means a structure built at the water's edge used for storing boats, which may extend from a seawall or the shore over the water. A covered boat dock has a roof, but shall be neither partially nor totally enclosed by sides of any type.
 - (5) *Canal* means a manmade or artificially improved natural waterway at least 80 feet in width, as depicted on recorded instrument, which may be used for navigation or drainage.
 - (6) *Dock and pier* mean a platform extending from a seawall or the shore which is used to secure or provide access to boats. A dock or pier is supported by piles or pillars and has no sides or roof.

- (57) *Drainage easement or right-of-way* means a stream or a manmade or artificially improved natural waterway less than 80 feet, as depicted on recorded instrument, in width which has been accepted by the county and recorded as such.
- (8) *Safe upland line* means a boundary line determined by the Florida Department of Environmental Protection, Bureau of Survey and Mapping, in consultation with the applicant. The safe upland line is normally located landward of either the mean or ordinary high-water line and is based upon the location of known or approximated mean high-water lines, ordinary high-water lines and mature upland vegetative communities, whichever is applicable.
- (9) *Vessel* means synonymous with boat as referenced in s. 1(b), Article VII, Florida Constitution, and includes every description of watercraft, barge, and airboat, whether driven by outboard or inboard motor, other than a seaplane on the water, used or capable of being used as a means of transportation on the water. This includes all types of personal watercraft.
- (10) *Watercraft* means any vessel that travels on, in or under the water regardless of means of propulsion.
- (11) *Waterway encroachment* includes, but is not limited to, buoys, crustacean or fish traps, nets, oyster mats and gardens, floating and inflatable docks, rafts, platforms and mats, fishing poles and equipment, boating accessories, parts, and attachments, boards, rocks not part of a revetment, vegetation not including mangroves regulated by the Florida Department of Environmental Protection, or any other object that could potentially impede navigation.

(c) *Required permits; site plan.*

- (1) A dock permit, if applicable, shall be obtained from the Army Corps of Engineers. The Army Corps of Engineers must also approve any excavation done in conjunction with the construction of a boat dock or pier. In cases where a canal may come under state jurisdiction, permits may also be required from the state department of environmental regulation and department of natural resources.
- (2) Prior to the issuance of a building permit for a boat dock or pier, a site plan showing the location of the proposed construction in relation to the existing structures on the site or lot shall be submitted to the public works department for approval when the boat dock or pier is proposed to be built in a public drainage easement or drainage right-of-way. In cases where the public works director determines that the proposed dock or pier may interfere with the primary function of the drainage easement or right-of-way, the applicant may be required to obtain approval from the board of county commissioners.
- (3) A building permit shall be obtained for the construction of a covered boat dock, boat dock or pier located in canals, drainage easements and drainage rights-of-way in the unincorporated areas of the county. Construction of any covered boat dock, boat dock or pier must meet the minimum construction standards specified in subsection (e) of this section. In conjunction with the building permit application for a covered boat dock, boat dock or pier, the applicant shall submit a site plan

bearing the approval of the public works department or the board of county commissioners as described in subsection (c)(2) of this section.

(d) *General requirements.*

- (1) A boat dock, covered boat dock or pier shall be an accessory use in all residential zoning classifications in the unincorporated areas of the county. Boathouses shall be prohibited from being constructed in a canal, drainage easement or drainage right-of-way in the unincorporated areas of the county.
- (2) A boat dock, covered boat dock or pier, including pilings, together with moored vessel(s) or watercraft, and any waterway encroachment, shall maintain a clear, navigable zone by extending no closer than seven and one-half feet to the side property line, as projected in a straight line into the waterway.
- (3) No boat dock, covered boat dock or pier, together with pilings, moored vessel(s) or watercraft, and any waterway encroachment, shall project into a manmade waterway more than 20 percent of the width of the waterway, as depicted on the recorded instrument creating the waterway, or 30 feet from the property line, whichever is less. Where the property line extends into the waterway:
 - i) If the property is non-bulkheaded, dock projection shall be measured from one of the following: buffer establishment line, safe upland line, mean high-water line or ordinary high-water line, as indicated on the applicant's survey.
 - ii) If the property is bulkheaded, dock projection shall be measured from the face of the bulkhead or seawall.
- (4) Docks and piers shall be no higher than the property's seawall, if any exists, or no more than three feet above the mean high-water line of the waterway if no seawall exists. No covered boat dock shall exceed 20 feet in height, as measured from the mean high-water line to the highest point of the roof of the covered boat dock.
- (5) The deck of the dock, pier, boat lift or covered boat dock, including the platform and any walkways attached to the dock, pier, boat lift or covered boat dock which extend out over the water, shall not exceed 400 square feet in size. When a covered boat dock or covered boat lift is constructed, the area under roof shall not exceed 500 square feet, and in no case shall the area defined by the deck together with the roofed area exceed 600 square feet.

(e) *Construction standards.* In conjunction with all building permit applications, the applicant shall submit two copies of plans and specifications, drawn to scale, with sufficient clarity and detail to indicate the nature and character of the work. The design, construction, alteration and repair of the superstructure of residential boat docks and piers shall conform to the provisions of the Standard Building Code, as adopted by the board of county commissioners. Pile dimensions, spacing and embedment shall be designed according to accepted engineering practices.

(f) *Final survey.* Upon completion of the boat dock or pier, a final survey prepared and certified by an engineer or surveyor registered in the state, showing the as-built

location and depicting compliance with the minimum setback requirements for the boat dock or pier, shall be submitted to the county building division for final approval.

- (g) *Maintenance.* No owner of any parcel of property in the unincorporated area of the county shall permit any boat dock or pier located on or contiguous to his property to become dilapidated, deteriorated, structurally unsound, or a safety hazard, or otherwise be in violation of this chapter.
- (h) *Nonconforming Docks.* An existing boat dock, covered boat dock or pier, together with pilings that have been permitted, shall be considered a legal nonconforming dock and may remain until said boat dock, covered boat dock or pier, together with pilings that have been permitted, is replaced or more than 50% of the dock's structural element (excluding decking) is repaired.

(Code 1979, § 14-20.44; Ord. No. 2009-22, § 1, 8-18-09)

SECTION 2. 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 regulation, the more restrictive shall apply.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 4. Area Encompassed. This ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

SECTION 5. Effective Date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This ordinance shall take effect upon adoption and filing as required by law.

SECTION 6. Inclusion in code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, 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 such other appropriate word or phrase in order to accomplish such intentions.

DONE, ORDERED AND ADOPTED, in regular session, this _____ day of _____, 2021.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Rachel M. Sadoff, Clerk

(S E A L)

Rita Pritchett, Chair
(Approved by the Board on _____, 2021)

Reviewed for legal form and content by: _____