

**CITY OF APALACHICOLA  
APALACHICOLA FLOATING STRUCTURE  
ORDINANCE 2018-06**

AN ORDINANCE OF THE CITY OF APALACHICOLA CITY COMMISSIONERS AMENDING CHAPTER 5 OF THE CITY CODE; PROVIDING RESTRICTIONS ON THE ANCHORING OR MOORING OR UTILIZATION FOR HABITATION OF FLOATING STRUCTURES; REQUIRING A LICENSE AND ADMINISTRATIVE FEE; REQUIRING IDENTIFICATION ON FLOATING STRUCTURES; ESTABLISHING PENALTIES; AUTHORIZING THE REMOVAL OF FLOATING STRUCTURES; PROHIBITING THE SALE, DISTRIBUTION OR CONSUMPTION OF ALCOHOLIC BEVERAGES ON OR IN CONNECTION WITH FLOATING STRUCTURES; PROVIDING FOR THE SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, there is a continuing concern with the health of the Apalachicola River and Bay; the lack of fresh water flow into the River and Bay and the threat of water quality degradation from point and non-point sources continue to challenge the health of the River and Bay; non-point sources may include stormwater run-off and septic tank nitrates;

WHEREAS, there is a continuing problem with the mooring of Floating Structures in the waters under the jurisdiction of the City of Apalachicola and within the Apalachicola River, an Outstanding Florida Water; and

WHEREAS, the discharge of minimally treated or untreated human waste may degrade water quality of the Apalachicola River and Bay;

WHEREAS, the random anchoring of Floating Structures in the Apalachicola River and Bay creates a hazard to the safety of others that may utilize those waters that have customarily been used in recreational and commercial boating and fishing activities and as a navigable means for access and egress to and from the Apalachicola River and Bay and its tributaries;

WHEREAS, for unregulated short-term rental of floating structures, the random anchoring of Floating Structures is an emergency management concern in the event of a hurricane and a building safety concern;

WHEREAS, there is a growing safety concern regarding the consumption of alcoholic beverages in association with waterborne recreational activities provided from Floating Structures in the waters of the State; and furthermore, there is a concern for continued public accessibility and navigability on public water bodies.

WHEREAS, the challenges that could be faced by the local enforcement agencies and other emergency responders in providing service to waterborne incidents is exacerbated by the influence of alcohol consumption, particularly in association with large crowds of people; and

WHEREAS, the prohibition of the sale, distribution, or consumption of alcohol from or on Floating Structures will greatly decrease the potential of damage or injury and protect the health, safety and welfare of the public; and

WHEREAS, the requirement that Floating Structures be anchored, moored or berthed at public or private marinas, mooring fields or public or private docks with the consent of the owner after sunset will greatly decrease the potential for damage or injury and interference with public navigation and protect the health, safety and welfare of the public; and

WHEREAS, under the provisions of Section 327.60, Florida Statutes, local governments have the authority to prohibit or restrict the mooring or anchoring of Floating Structures, liveaboard vessels, or commercial vessels, excluding commercial fishing vessels, within their jurisdictions; and

WHEREAS, the requirements that Floating Structures moor or anchor at night at marinas or mooring fields and connect to City utilities is in the public interest; and

WHEREAS, public and navigable waterways are public highways. See *State ex rel. Wilcox v. T.O.I., Inc.* 206 So.2d 69,71 (Fla. 4<sup>th</sup> DCA 1968); and

WHEREAS, a county has the right to close public roads and highways where necessity dictates on a temporary or a permanent basis, and the general authority of the boards of county commissioners over the location of public roads in their respective counties has been held to be plenary. *Id.*, cf at 72; and

WHEREAS, littoral and riparian landowners “have no rights in navigable waters and state sovereign submerged lands that are superior to other members of the public with regard to rights of bathing, fishing and navigation. “See *Walton County v. Stop the Beach Renourishment, Inc.* 998 So2d 1102, 1111 (Fla. 2008), *aff’d* 560 U.S. 702 (U.S. 2010); and

WHEREAS, “[a] private action cannot be maintained by one who has no interest in [a] waterway beyond that enjoyed by the public in common to use it as a highway.” See *Bertram v. State Road Dept.*, 118 So. 2d 674, 765 (Fla 3<sup>rd</sup> DCA 1960).

NOW THEREFORE, be it ordained by the people of the City of Apalachicola through their City Commission of Apalachicola, Florida;

**Section 1. Recitals.** The above recitals are incorporated by reference herein.

**Section 2. Creation.** There is hereby created Article V, of Chapter 5 of the City Code as follows:

**Section 3. Anchoring, mooring, or berthing of Floating Structures.**

(1) Applicability. This section shall be applicable within the jurisdictional limits of the City of Apalachicola in the Apalachicola Bay and River, its tributaries, and shall include all submerged

lands under the jurisdiction of the City as described within the City Charter and shown on attachment A.

(2) Definitions. Anchor means the act of temporarily securing a Floating Structure in the water by means of an anchor or other device and associated tackle that is carried on the Floating Structure and cast or dropped overboard.

**Berth** means the act of securing a Floating Structure to a slip, dock, seawall, or a fixed or floating pier or piling.

**Area** means that area as depicted on Exhibit "A".

**Floating Structure** means a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water, but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes, but is not limited to, an entity used as a residence, place of business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or similar facility or entity represented as such. Floating Structures are expressly excluded from the definition of the term "vessel" as defined in Section 327.02, Florida Statutes. Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from classification as a Floating Structure. Registration of the entity as a vessel in accordance with Chapter 327, Florida Statutes, shall not preclude an entity from classification as a Floating Structure. In the event it is disputed whether an entity constitutes a floating structure versus a vessel, such dispute shall be exclusively determined, under a preponderance of the evidence standard, by analyzing (1) whether it is capable of self-propulsion, (2) whether it has a rudder or other steering mechanism, (3) whether it has a raked hull, (4) whether it has rectangular or a square bottom, (5) by comparing its draft to the drafts of vessels of a similar physical size, (6) its infrequency of documented past geographical movement, (7) whether it can be moved over meaningful distances without dangerously or hazardously swinging from side-to-side, (8) if it has a (lawful) capacity to generate or store electricity, (9) whether it has a bilge pump(s), (10) whether it has an approved marine sanitation device(s), (11) whether it is above water surface area(s) bear similarity to the interior or exterior of a land-based residential or commercial structure, (12) whether it has ordinary windows, open doorways, or unsealed doors, (13) whether it has any other physical features that might suggest to an objective reasonable observer a design to transport over water anything other than its own furnishings and related personal effects, and (14) whether it is titled and registered as a vessel. Payment of a tangible personal property tax regarding the entity in question or issuance or receipt of tax exemption thereto, pursuant to Section 192.001(17), Florida Statutes, shall constitute prima facie evidence that the entity in question constitutes a floating structure under this Article.

**Moored** means the act of securing a Floating Structure in the water by means of a permanent or semi-permanent mooring system affixed to the bottom of the water body.

**Sunrise** shall, for purposes of this section, occur at the time set by the National Weather Service.

**Sunset** shall, for purposes of this section, occur at the time set by the National Weather Service.

**Vessel** shall be synonymous with boat as referenced in s. 1(b). Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

**Section 4.** Restrictions on the anchoring or mooring of Floating Structures. From the period of sunset until sunrise, all Floating Structures within the jurisdiction of the City shall be anchored, moored or berthed at a public or private marina, within a permitted mooring field in accordance with all applicable regulations, at a public or private dock with permission from the property owner, or on private property (including submerged lands) with the permission of the owner provided that the anchoring or mooring shall be accomplished in a manner such that the Floating Structure does not constitute a navigational hazard or interfere with vessels using the public waterways. The following shall be exempt from the provisions of this section:

(a) Houseboats in use as private residences, connected to city sewer, anchored and licensed by the City in accordance with all applicable local and state regulations, including submerged land leases when applicable.

(b) Dredges, draglines, or similar entities for the duration of a lawfully permitted project and when in actual transit or mobilization between projects.

(c) Floating Structures operating within the Apalachicola River Area during the time beginning January 1 and ending June 30, 2019, but only under the following conditions:

(i) Floating Structures moored after dark must, at a minimum, have a 360-degree white all-around masthead light with two-mile visibility mounted such that it is not obstructed from any angle. Where this requirement conflicts with state or federal anchor lighting regulations, the more stringent regulation shall apply;

(ii) This exemption shall exist only during the transition period and shall sunset and no longer be effective as of June 30, 2019. At that time, no Floating Structures shall be allowed.

(iii) Any Floating Structure operating within the Area shall possess and have displayed a license issued by the City allowing its operation during the period of January 1 to June 30, 2019. Such license shall be issued upon demonstration that the Floating Structure is in compliance with all laws and regulations of the United States, the State of Florida, the Florida Building Code, and the City. An administrative fee shall be paid to the City for the ability to operate and locate within the Area in the amount of \$1000 per month or for any portion of a month that the Floating Structure operates in the Area.

(a) Owner identification required. The name and contact information (which must at a minimum include a valid, active telephone number) of the owner shall be displayed on every Floating Structure as follows:

(b) Letters and numbers must be bold block letters at least 3" high in a color contrasting to the portion of the structure to which they are affixed.

(c) The information must be displayed the forward half of the structure on both sides above the waterline.

(d) Floating Structures shall be prohibited from roping or cordoning off an area in the vicinity of a Floating Structure or otherwise limiting the area within the City's jurisdiction from which the public may freely access. This prohibition shall not include the area immediately under the Floating Structure itself;

**Section 5. Sale, Distribution or Consumption of Alcoholic Beverages Prohibited.** The sale, distribution, or consumption of alcoholic beverages (with or without charge), in conjunction with any commercial activity, on a Floating Structure or Vessel, or on or within any boundary or structure that is tethered or otherwise connected to such Floating Structure or Vessel, is prohibited.

(1) In the application of this Ordinance, the following shall apply:

(a) The term "sale" shall mean the exchange of an alcoholic beverage for anything of value.

(b) The term "distribution" shall mean the delivery of an alcoholic beverage to another, whether for the exchange of value or not, and shall include the delivery of an alcoholic beverage to other Floating Structures or vessels or to individuals not located on the Floating Structure.

(2) This prohibition shall not apply to:

(a) Alcoholic beverages served and consumed on Floating Structures that meet City, State, and other applicable codes or vessels permanently moored to a dock, wharf, or other mooring place that is accessed through upland properties on which exist lawful uses that are properly licensed to serve alcoholic beverages, and for which the State alcoholic beverage license includes the Floating Structure or Vessel on which the beverages are to be served and provided the service of alcohol is consistent with all other provisions of law or the City Code, including being connected to City utilities.

(b) The serving of alcoholic beverages during pleasure excursions (e.g., dinner cruises, sunset cruises, wildlife viewing cruises, etc.) charter or commercial fishing, or similar functions in which alcohol is consumed on board the Vessel providing the excursion, and the Vessel is under the command of a captain with the necessary licensure, and for which the subject business maintains all the requisite licenses and permits.

**Section 6. Enforcement; penalties.**

(1) The City of Apalachicola Police Department/Harbor Master shall enforce this section pursuant to Section 30.15, Florida Statutes and as otherwise provided by law. The City of Apalachicola Police Department/Harbor Master shall have the authority to issue a civil citation for a violation of these provisions.

(2) Penalties.

(a) The violation of any provision of this section shall constitute a civil infraction and shall be punishable by a civil fine of up to five hundred dollars (\$500.00).

(b) A second violation of any provision of this section within a twelve (12) consecutive month period shall be punishable as a misdemeanor of the second degree.

(c) Each day a violation of this section occurs shall constitute a separate offense and be punishable as such.

(3) In addition to the sanctions contained herein, the City shall be authorized to take any other appropriate legal action, including, but not limited to, initiating civil actions, seeking cease and desist orders, instituting other administrative actions, and requesting temporary and permanent injunctions to enforce the provisions of this section. It is the purpose of this section to provide additional and cumulative remedies.

**Section 7. Removal of Floating Structures.**

(1) Upon receipt of a complaint of a Floating Structure not anchored, moored, or berthed as provided herein, the Chief of Police/Harbor Master shall investigate and, if a violation is observed, shall affix the requisite notice to the structure. The enforcing officer shall also attempt to contact the owner or responsible party using the information provided pursuant to section. If the information provided pursuant to above, is either not posted or inaccurate, the enforcing officer is under no obligation to make further attempts to identify and contact the owner. Failure of the enforcement officer to contact the owner or responsible property does not negate or eliminate a violation.

(2) After the posting of the notice, the owner shall have five (5) calendar days to remove the Floating Structure. If the Floating Structure has not been removed within the five-day correction period, then the City Police Chief/Harbor Master shall cause the Floating Structure to be removed and the owner shall be assessed a cost recovery fee.

(3) All costs associated with removal, towing, impounding, and administrative costs shall be the responsibility of the owner.

**Section 8. Inclusion in the Code of Ordinances.**

It is hereby directed that the provisions of this Ordinance be included in the Code of Ordinances of the City of Apalachicola, Florida. To that end, any renumbering of the various sections is hereby authorized as necessary to achieve this directive.

**Section 9. Severability.**

If any provision of this Ordinance is found to be invalid by a court of competent jurisdiction, then such determination shall not render the remaining provisions of the Ordinance invalid.

**Section 10.** To the extent of conflict in or with other Ordinances or laws of the City of Apalachicola, Florida, the terms of this Ordinance shall prevail.

**Section 11. Effective Date.**

This Ordinance shall be filed with the Secretary of State within ten (10) days of adoption and shall take effect on December 4, 2018.

**Section 12. Construction and Interpretation.**

This Article, being necessary for the health, safety, and welfare of the residents of the county, shall be liberally construed to effect the public purposes hereof, and interpretation of this Article shall be deferred in favor of City of Apalachicola, the applicable federal or state enforcement agency, or municipality, and such construction and interpretation shall be entitled to great weight in adversarial administrative proceedings, on trial and on appeal.

**Section 13. Waterway Markers.**

- a. This Article shall not apply to government waterway markers (such as, for example, regulatory markers and aids to navigation (the latter including, but not limited to, channel markers, danger markers, information markers, and aids of no lateral significance)).
- b. This Article shall not apply to a waterway marker when that marker is both authorized under federal, state, and local law(s), and when its owner(s) and permittee(s) have received all required federal, state and local permits and approvals to so place or maintain that waterway marker.

**Section 14. Joint and Several Liabilities.**

All owners, part owners, joint owners, tenants-in-common, tenants in partnership, joint tenants, tenants by the entirety, lessees, sub-lessees, assignees, sub-assignees, and holders of legal or beneficial title to or interest in a floating structure held in violation of this Article, shall be jointly and severally liable with respect to any legal or equitable judgment or relief obtained by a federal or state agency, the State of Florida, Franklin County, or a municipality within the county.

**Section 15. No Waiver or Estoppel.**

It being that the City of Apalachicola, the State of Florida, federal or state enforcement agencies, possess discretion to enforce this Article, such local governments' or state of federal enforcement agencies' delay or failure to enforce any provision contained in this Article, however long continued, shall not be deemed a waiver or estoppel of the right for the local government or state or federal enforcement agency to enforce this Article at any time thereafter.

This Ordinance was first read in open session on the 6<sup>th</sup> day of November, 2018. This Ordinance was read for the second time and fully adopted in open session on the 4<sup>th</sup> day of December, 2018. The final adoption and motion was made by Commissioner \_\_\_\_\_, second by Commissioner \_\_\_\_\_.

Voting Aye:

Voting Nay:

FOR THE CITY COMMISSION OF THE  
CITY OF APALACHICOLA, FLORIDA

\_\_\_\_\_  
VAN W. JOHNSON, SR., MAYOR

ATTEST:

\_\_\_\_\_  
DEBORAH GUILLOTTE, CITY CLERK





**Corporate Limits of Apalachicola in Franklin County, Florida**

Beginning at the point on the North bank of the Apalachicola River where the West line of Fractional Section 25 in Township 8 South, Range 8 West, intersects said river at the Southwesterly corner of said Fractional Section 25; Thence running due South into the Aplachicola Bay one mile from the shoreline; Thence in an Easterly direction parallel to the meandering of the shoreline to a point Southeast of the Easterly and Northerly bank of the said Apalachicola River; Thence running Northwest to the Westerly shoreline of Big Towhead Island; Thence continuing in a Northwesterly direction along the said shoreline to the Northwesterly pont of said island; Thence Northwest to the Easterly and Northerly bank of said Apalachicola River; Thence meandering along the bank of said river in a Northwesterly and Westerly direction to the point of beginning.

