

CITY OF MARCO ISLAND

ORDINANCE NO. 08- 14

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, AMENDING CHAPTER 54, ARTICLE II, ENTITLED THE “MARCO ISLAND BEACH MANAGEMENT AND VESSEL CONTROL ORDINANCE,” SECTION 54-32, ENTITLED “DEFINITIONS,” SECTION 54-33, ENTITLED “PENALTIES; SUSPENSION OR REVOCATION OF VENDOR PERMIT,” SECTION 54-34, ENTITLED “INTENT AND PURPOSE OF ARTICLE,” SECTION 54-35, ENTITLED “APPLICABILITY OF ARTICLE,” SECTION 54-36, ENTITLED “REGULATION OF USE AND CONDUCT ON THE BEACH,” SECTION 54-37, ENTITLED “OPERATION OF VESSELS,” SECTION 54-38, ENTITLED “CONCESSION OPERATIONS, EQUIPMENT RENTALS AND VENDORS ON THE BEACH AND ADJOINING WATERS,” AND CREATING SECTION 54-36.1, ENTITLED “BEACH PERMITS,” PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR REPEAL OF CONFLICTS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marco Island enacted the Beach Management and Vessel Control Ordinance (the “Beach Ordinance”) in 1998 and thereafter amended the Beach Ordinance in 2002; and

WHEREAS, certain regulations concerning activities on public beaches by the public require clarification to ensure the continued safe use and enjoyment of the public beach and adjoining waters of the City of Marco Island by its residents, visitors and the general public; and

WHEREAS, the Marco Island Beach Advisory Committee reviewed the proposed ordinance changes at a public meeting held on December 19, 2006 and provided comment to the Director of Community Services; and

WHEREAS, the Marco Island Planning Board, sitting as the Local Planning Agency, held a duly advertised public hearing on July 18, 2008 and determined the proposed changes contained in this Ordinance are consistent with the City of Marco Island Comprehensive Plan and Florida law, and recommends adoption of this Ordinance to the City Council; and

WHEREAS, after reviewing the City of Marco Island Planning Board’s recommendation, the recommendation of City staff, and comments from the public, the City Council finds the proposed amendments to its Code of Ordinances are in compliance and consistent with Florida law and its adopted Comprehensive Plan.

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WHEREAS, the City Council further finds adoption of this Ordinance is in the best interest of the residents of the City of Marco Island.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, AS FOLLOWS:

SECTION 1. Recitals.

The foregoing “WHEREAS” clauses are ratified and confirmed as being true, correct and reflective of the legislative intent underlying this Ordinance and are hereby made a specific part of this Ordinance.

SECTION 2. Amendment and Adoption.

The amendments to the Code of Ordinances contained in this Ordinance are hereby adopted as follows:

1. Sec. 54-32. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(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.

~~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 dB~~

(b) 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.

(c) 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.

(d) 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.

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(e) BEACH PERMIT means a vendor permit required by the City to comply with this article.

(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) DECIBEL (dB) means a unit for measuring the volume of sound; it is a logarithmic (dimensionless) unit of measure used in describing the amplitude of sound. Decibel is denoted as dB.

(j) DUNE means the mounds or mound of sand piled up by wind or other natural events or created by a legally permitted activity such as a Beach renourishment project, sources on the backshore of the Beach, landward of the high tide line.

(k) DUNE VEGETATION means the coastal plants that help to hold the sand in dunes. Examples of plants, but not limited to this list include: Sea oats, beach morning-glory, railroad vine, evening primrose, Indian paintbrush, and coastal sand bur.

(l) GULF means the Gulf of Mexico from Caxambas Pass to Capri Pass Inlet.

(m) IDLE SPEED means the lowest speed at which a Vessel or sailcraft can operate and maintain steering control; the Vessel shall not create a bow or stern wake.

(n) LICENSE OR LICENSED means ~~a valid Occupational License recognized by the City of Marco Island, if an Occupational License must be acquired.~~ a valid business receipts tax recognized by the City.

(o) OPERATE ~~or operation~~ means ~~to navigate or otherwise use any aircraft or vessel in or on the water.~~ 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 within the City's incorporated limits.

PERMIT ~~means a Beach Vendor's Permit or other permit required by the City of Marco Island to comply with this ordinance.~~

(p) 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~~ motor 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.

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(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~~ within the City. The term shall not include Vessels or sailcraft, but shall include body boards unless the context clearly indicates otherwise.

(r) SAILCRAFT 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 wind-surfboards.

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

(t) SKIER means anyone being towed with a line or rope behind a Vessel.

(u) SLOW SPEED / MINIMUM WAKE means the speed at which a Vessel is neither planning nor moving with an elevated bow. A Vessel that is operating on a plane or is in the process of coming off plane and settling into the water is not considered operating at a slow speed/minimum wake.

(v) 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.

(w) SURFING means the riding or paddling of a surfboard ~~within the waters of the Gulf of Mexico abutting or~~ City waters adjacent to the Beach.

(x) ULTRA-LIGHT AIRCRAFT OR ULTRA-LIGHT means any heavier-than-air, motorized aircraft that 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.

(y) VESSEL means any human, motor, wind, non-powered or motor propelled or artificially propelled water conveyance and every other description of boat, watercraft, barge, and airboat other than a seaplane on the water, used or capable of being used as a means of transportation on or in the water.

(z) WILDLIFE means any living animal species, including mammal, bird, fish, reptile, amphibian, invertebrate and/or plant species, especially living in a natural, undomesticated state.

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2. Sec. 54-33. Penalties; Suspension or Revocation of vendor permit. Beach Permit

A. (a) Pursuant to Chapter 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 sixty (60) days.

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

~~C. (c) In addition as a supplemental means of obtaining compliance with local codes, the City Council Code Enforcement Board may suspend or revoke a Beach vendor Permit for violations of this Ordinance, or for violations of other sections of the Code of Ordinances, including but not limited to Chapter 30 (Land Development Code) and Sec. 38-1 (Comprehensive Plan) after a notice of violation is provided to the permittee beach vendor and the beach vendor permittee 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 permittee beach vendor. The notice to the beach vendor permittee shall set forth the provisions of this Ordinance which are being violated. City staff shall present evidence of the violation to the City Council Code at the public hearing. The permittee beach vendor shall be given the 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 permittee beach vendor. If City Council the finds by the preponderance of evidence that this Ordinance has been violated, the City Council may suspend or revoke a Beach Permit Beach Vendor Permit. If a beach vendor permittee has had a Beach Vendor revoked, he shall not be eligible to obtain another Beach Vendor Permit for a period no greater than of twelve months. The hearing before city council the Code Enforcement Board 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" "permittee" includes the entity as well as the officers and principals of the entity. Accordingly, if an entity has its Beach Vendor Permit suspended 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 no greater than twelve months.~~

3. Sec. 54-34. Intent and Purpose of Article.

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 where concession sales, equipment rentals and other permitted activities and the within which the operation of aircraft, Vessels, 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 consistent with the intent and purpose of other sections of the City of Marco Island Code of Ordinances, including but not limited to Chapter 30, containing its Land Development Code, and Sec. 38-1, adopting by reference the City of Marco Island Comprehensive Plan.

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4. Sec. 54-35. Applicability of Article.

This article shall apply to and be enforced within the corporate limits of the City of Marco Island (~~City~~) including all Beaches, 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. ~~But shall not apply to the other barrier islands within Collier County jurisdiction.~~

5. Sec. 54-36. Regulation of Use and Conduct on the Beach

Unless otherwise prohibited, the public shall be entitled to engage in activities and use of Beach areas. A Beach Permit is required prior to engaging in certain activities occurring on the Beach such as concession sales, rental activities, etc.

- (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 service dogs accompanying visually impaired persons or hearing ear dogs accompanying hearing impaired handicapped persons with special needs shall be allowed on the Beach at all times.
- (c) Storage of Equipment on the Beach. It shall be unlawful for any person to store equipment, recreational motorized or non-motorized vehicles, chairs, umbrellas, etc. on the Beach or in the dunes. A licensed holder of a Beach Permit ~~Beach Vendor~~ is authorized to store equipment at the permitted operations office, storage area or headquarters, which shall be located at the dune vegetation line.
- (d) Wheeled Vehicles. The use of wheeled vehicles other than emergency safety vehicles, turtle nest monitoring, ATVs and similar wheeled vehicles used for vendor operation, baby stroller, or equipment for mobility impaired persons, is prohibited except by a Beach Permit special permit.
- (e) Open Fires Prohibited. Heated Objects to be Disposed of Properly. It shall be unlawful for any person to have open fires, barbecue grills, including portable type grills, ~~etc.~~ or other incendiary devices on the Beach. However, designated areas may be provided for use of stoves or grills as posted by the City solely for this purpose. It shall be unlawful for any person to dispose of any coals, briquettes, ember or other heated object except in City designated receptacles in designated areas. ~~Owners or users who bring material to the beach shall remove all materials when the owners or users leave the beach.~~

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- (f) Overnight Camping Prohibited. It shall be unlawful to camp overnight on the Beach.
- (g) 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.
- h. ~~Throwing of Balls, Frisbees, or other objects. It shall be unlawful for any person to throw any ball, frisbee, or other object within 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.~~
- i.~~(h)~~ Swimming. The public may swim at its own risk in the Beach area between the two jetties adjacent to the Cape Marco property. Otherwise, no person except a person actually engaged in a rescue attempt shall:
- (1) Swim or bath within 150 feet, measured in any direction, of a pier, jetty or breakwater;
 - (2) Swim or bath in any area posted exclusively for Vessel and/or sail craft use.
- j.~~(i)~~ Use of Aircraft on Beach or adjoining water is prohibited. No person, other than emergency, public safety, or mosquito control personnel, shall operate an aircraft, including seaplanes, ultra-lights or helicopters, on or from the Beach or the water within 750 feet ~~of the water's edge~~ from the Beach.
- k.~~(j)~~ ~~Soliciting and canvassing prohibited.~~ canvassing, advertising, and/or engaging in commercial operations other than permitted Beach operations is prohibited. There shall be no solicitation or canvassing for commercial purposes of the public on the Beach other than as permitted in this Article.
- ~~(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, who hold valid Beach Permits may solicit or canvass for the sale or rental of any merchandise, services, goods or property of any kind or character from within ten feet of their permitted operational area.

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- ~~l.~~ ~~Sound Amplification. As provided for in Ordinance 01-31, the City of Marco Island Noise Control Ordinance.~~
- ~~m.~~ ~~Breach of Peace; disorderly conduct. No person shall commit such acts as area 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.~~(k) Removal of Beach sand. No person shall remove sand from the Beach.
- ~~o.~~(l) 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 part thereof, charcoal briquettes or ashes, or any other litter, except in containers designated for the purpose. It is further unlawful to dispose of any household garbage on the Beach.
- ~~p.~~(m) ~~Beach vendors. Beach vendor operations and storage areas shall be established in the Beach Vendor Permit. Establishment of vendor areas as provided for in Chapter 161, Florida Statutes. Each vendor shall be responsible for the cleanliness of its own area. Each vendor will be responsible for the neat placement and arrangement of its equipment both during the business hours as well as after hours. No beach vendor shall infringe on the beach area of adjacent properties without first having an agreement signed by the owner of said properties. Beach permittees shall comply with all applicable City of Marco Island ordinances.~~
- ~~q.~~(n) Dune Protection. It shall be unlawful for any person to impact the dune by walking, sitting, storing equipment, throwing litter, trash, or any other article into the dune. It is further unlawful to trim and/or remove any vegetation of otherwise alter existing ground elevations or conditions of any dune without prior obtaining a permit from the City of Marco Island and/or the Florida Department of Environmental Protection, or other state or federal governmental agency.
- ~~r.~~(o) No Live Shelling. It shall be unlawful to collect, take, or possess any live shell on the Marco Island Beach without proper permit issued from the Florida Fish & Wildlife Conservation Commission or other state or federal governmental agency. Only shells that do not contain a live organism may be collected or removed from the Beach.
- ~~S.~~(p) The disturbance, destruction, or removal of wildlife is prohibited. Fishing from the Beach is a permitted activity and includes the legal gathering of bait fish. Crustaceans may not be collected from their natural Beach habitat.

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6. Sec. 54-36.1 Beach Permits.

A Beach Permit shall be required prior to engaging in commercial concession operations, equipment rental and other activities as provided in Sec. 54-38 on the Beach and shall be subject to all conditions, requirements and regulations provided in this article and including but not limited to Chapter 30 containing the Land Development Code, Section 38-1, incorporating by reference the City of Marco Island Comprehensive Plan, building and licensing codes and in any other applicable section of the City of Marco Island Code of Ordinances.

7. ~~Sec. 54-37 Operation of Vessels~~ Vessel Regulation–Speed Limits and Exemptions

A.(a) Operation of Vessel in excess of idle speed regulated. The operation of any Vessel, ~~or sailcraft~~ in excess of idle speed, as defined herein, in or on all waters of the Gulf of Mexico within ~~500~~ (750) feet offshore of all ~~sandy~~ Beaches and within (300) feet of the Beach adjacent to the S.R. 951/Jolley Bridge 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.

~~A. Personal Watercraft regulation. No person shall operate any personal watercraft:~~

- ~~1. Closer than 500 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 proceed to or from that portion of the Gulf at a speed greater than merely necessary to effectively traverse the breaking water 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.~~

~~B. (b) Vessel Corridors.~~ Areas of the Gulf adjacent to the Beach and closer than ~~500-750~~ 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.

~~B. (c) Beach launch of Vessels regulated.~~ No person except a law enforcement officer, ~~licensed beach vendor~~ the holder of a Beach Permit, authorized emergency personnel, or other person actually engaged in a rescue attempt shall traverse the Beach adjacent to the Gulf of Mexico with a motorized boat or personal watercraft to launch or retrieve 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.

~~D. (d) 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~~ 750 feet from the edge of the Beach.

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~~E—(e) 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.~~

~~F. Sailboats, including sail crafts, 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. Exceeding reasonable speed. Vessel speed not to exceed reasonable speed under existing conditions. Nothing 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.~~

~~H. Exemptions. The following shall be exempted from the provisions of this section:~~

~~1. The provisions of this article shall not be construed to prohibit the operation, racing or exhibition of vessels or sail craft 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 operation are conducted in a safe and prudent manner and in accordance with Section Six. A vessel speed is not to exceed reasonable speed under existing conditions. Under no circumstances, however, shall commercial fishing vessels be operate at greater than then idle speed within five hundred feet (500 feet) of bathers.~~

8. Sec. 54-38 Concession Operations, Equipment Rentals and Vendors on the Beach and Adjoining Waters.

All Beach Permittees shall comply with the City of Marco Island Waterway and Boating Safety Ordinance. 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:

(1) ~~(a) Beach Vendor Permit Requirement.~~ Any person or business enterprise of any type or kind engaged in the commercial sale of goods, services, rental, leasing, bailment or 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 sail craft,~~ shall be

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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:

- a-(1) The applicant must have an operations a physical location of business, office or headquarters at the Beach location where the permitted service will be rendered. If the applicant is providing equipment, boats, or Vessels for public use, the applicant must have an operation, or headquarters office 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 article, the term “immediately adjacent” means the applicant owns a building, leases space within an upland improved facility, or has a concession agreement contractual right 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.
- b-(2) The applicant must shall have a written lease or other written agreement executed by all owners of the beachfront property 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. The agreement or lease shall include a term requiring compliance with all City of Marco Island Code provisions, including but not limited to zoning regulations, comprehensive planning regulation, building codes and licensing.
- e-(3) The applicant must have and maintain a communications system including a telephone, either land lined or cellular and marine radio at its operation office with the functional capacity to be always alert to the whereabouts of the rental craft equipment, goods and other personal property belonging to the applicant and those that are rented to the customers.
- d-(4) If the applicant is engaged in the rental of motorized or windblown equipment, or other Vessel rentals the applicant must have a motorized chase boat rescue Vessel 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. Rescue Vessel(s) shall pass inspection by either the U.S. Coast Guard Auxiliary or the City of Marco Island Police Department thirty (30) days prior to issuance of a City of Marco Island Beach Vendor Permit. A copy of the inspection shall be submitted with the permit application to the City.
- e-(5) The applicant must have and maintain comprehensive general liability insurance with coverage not less than the amount of \$1,000,000.00 (one million dollars) 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 insuring company indicating such coverage and endorsement.

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~~¶(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 valid State Vessel registration number affixed. ~~thereon, and display either a U.S. Coast Guard inspection or U.S. Coast Guard Auxiliary Safety Check decal.~~

~~g-(7)~~ The applicant who proposes to rent recreational equipment, or ~~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 sail craft~~, shall be required to provide and maintain a buoy line of one or more buoys, designating the ~~500~~ 750 foot offshore measurement from the area of operation of the Beach vendor. The buoy(s) shall be placed ~~500~~ 750 feet offshore upon the start of the business operations and pulled in and out of the Gulf waters when business operations ends.

(8) The applicant shall provide the Community Development Director or designee an equipment removal plan to remove all equipment located along the Beachfront in the event of a Category 1 or greater storm event, or if a Tropical Storm warning is declared. The applicant(s) removal plan shall be reviewed annually as part of the Beach Permit, and the information provided shall indicate which Beach access will be necessary to remove equipment, an estimate of the time needed to remove equipment, and where equipment will be stored and/or secured prior to and during the storm event.

~~(2) Boating Safety Identification Cards. A person 21 years of age or younger may not operate a vessel powered by a motor of 10 horsepower or grater unless such person has in his or her possession aboard the vessel, photographic identification and a boater safety identification card issued by the Florida Fish and Wildlife Conservation Commission (Commission) which shows that he or she has: completed a Commission approved boater education course that meets the minimum 8-hour instruction requirement established by the National Association of State Boating Law Administration (NASBLA), or passed a course equivalency examination approved by the Commission, or passed a temporary certificate examination developed or approved by the Commission.~~

~~a. Any Commission approved boater education or boater safety course, equivalency examination developed or approved by the Commission, or temporary certificate examination developed or approved by the Commission must include a component regarding diving vessel, awareness of diver in the water, divers down flags, and the requirement of F.S. 327.331.~~

~~b. A person is exempt from subsection B if he or she:~~

~~1. Is licensed by the U.S. Coast Guard to serve as master of a vessel.~~

~~2. Is accompanied in the vessel by a person who is exempt from this Section or who holds an identification card in compliance with the Section,~~

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~~is 18 years of age or older who is attendant to the operation of the vessel and responsible for any violation that occurs during the operation.~~

~~3. Is a nonresident who has in his or her possession proof that he or she has completed a boater education course or equivalency examination in another state, or country which meets or exceeds the requirement for this Ordinance.~~

~~4. Is exempted by rule of the Commission.~~

(b) Boater Safety.

1. A livery, Beach Permittee, 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 the 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 Chapter 327.50, Florida Statutes.

2. When the Vessel is equipped with a motor of 10 horsepower or greater, the livery, Beach Permit Holder 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 include, but need not be limited to, all the topics included on the list provided to each livery or marina by the Marco Island Police Department.

a. The pre-operation instruction briefing shall be documented ~~to~~ on a form approved by the Marco Island Police Department prior to use;

b. Any such form shall be retained for a period of six-months;

c. Any such form shall be provided to the Marco Island Police Department or any City staff, or other law enforcement agency, upon request.

3. All renters, users, and passengers of any Vessel described in this Section shall initial and sign a 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 are also required to co-sign the form attesting that they have provided all operators with 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 for State Boating Law Administrators (NASBLA) 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, Beach Permit Holder 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, City staff, or any other law enforcement agency upon request.

5. The livery, Beach Permit Holder or marina shall display boating safety information in a place visible to the renting public. The Commission prescribes by rule pursuant to Chapter 120, Florida Statutes, the contents and size of the boating safety information to be displayed.

6. If a rental Vessel is involved in a boating incident or accident, which involves personal injury or significant property damage within the City, the livery or marina shall immediately notify the Marco Island Police Department upon notice of the accident.

~~(3)(c)~~ The vendor shall provide all ~~The renters, users, and passengers 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 onboard.~~

~~(4) 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.~~

~~(5)(d)~~ 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 person watercraft.

~~(6)(e)~~ Each rental personal watercraft must always operate with stock mufflers or with mufflers that are quieter than stock mufflers.

~~(7). Each person renting a personal watercraft or other vessel must read and initial that he/she understands the speed and operation restriction placed upon operation of personal watercraft by this Ordinance and/or by Chapter 327, Florida Statutes.~~

NOTE:

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~~Strikethrough words~~ are deletions to the existing Code of Ordinances

Underlined words are additions to the existing Code of Ordinances

- (8)(f) 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.
- ~~(9) 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 from the shore, operate at any safe speed, but not to exceed 20 miles per hour.~~
- (10)(g) 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 wake of another Vessel unreasonably or unnecessarily close to such Vessel, (3) operating when visibility around such other Vessel is obstructed, (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 3. Inclusion in the Code of Ordinances.

It is the intention of the City Council and it is hereby ordained that the amendments to the Code of Ordinances adopted by this Ordinance shall be included and become a part of the Code of Ordinances of the City of Marco Island. The sections of this Ordinance, as adopted, may be renumbered or relettered and that the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 4. Conflicts and Severability.

If any word, phrase, clause, subsection, or section of this Ordinance is for any reason held unconstitutional or invalid for any reason or cause, the remaining portion of this Ordinance shall remain in full force and effect and shall be valid as if the invalid portion was not included in the Ordinance. All sections or parts of sections of all existing ordinances in conflict with this Ordinance shall be and the same are hereby repealed to the extent of such conflict.

NOTE:

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SECTION 5. Effective Date.

This Ordinance shall take effect immediately upon adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND THIS

20th day of October, 2008.

Attest:

CITY OF MARCO ISLAND, FLORIDA

By: 

Laura M. Litzan, City Clerk

By: 

William D. Trotter, Chairman

(SEAL)

Reviewed for legal sufficiency:

By: 

Alan L. Gabriel, City Attorney

NOTE:

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