

Annotated Model Municipal Harbor Management Ordinance



prepared for:

Southwest Florida Regional Harbor Board

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INTRODUCTION

The Southwest Regional Harbor Board (SWFRHB) was created in July 1995 by a memorandum of agreement among a local organization of boaters, state and regional agencies and the Florida Sea Grant College Program to resolve conflicts that arose from local government regulation of anchorages. Many of the boaters felt that length-of-stay restrictions were unnecessary in most anchorages of Southwest Florida and that overly burdensome and conflicting regulations would discourage cruising in the region. The Board's approach focuses on boater education and appropriate anchorage management to achieve the ecosystem benefit. The foundation established for this approach is set forth in a set of broad principles adopted by the SWFRHB as an appropriate guide to anchorage and mooring management in Southwest Florida.¹ Working with the Florida Sea Grant Program, SWFRHB has also sought to identify anchorages in Southwest Florida which require more active management based on current conflicts and to provide technical assistance in the development of appropriate anchorage management plans where warranted.

In continuance of these efforts, the SWFRHB commissioned the development of a Annotated Model Harbor Ordinance ("MHO") for consideration by local governments in Florida. The Model Harbor Ordinance sets forth the SWFRHB's principles in a two-tiered Harbor Management Plan. Part A of the Harbor Management Plan sets forth a set of minimal rules of anchoring and mooring that shall be adopted for all Waters of the City. Part A will remain in effect as the only restrictions on anchoring and mooring in the waters of the City, unless additional action is required as detailed in Part B. Enactment of additional rules and regulations under Part B will be warranted only when objective evidence of environmental damage or use conflicts, and upon recommendation of a local Harbor Advisory Board established pursuant to the Model Ordinance.

¹ Refer to Appendix I: SWFRHB PRINCIPLES OF ANCHORING AND HARBOR MANAGEMENT.

City of Sunshine, Florida

Chapter XX.
HARBOR MANAGEMENT PLAN ORDINANCE

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ARTICLE 1. BASIS OF ORDINANCE

This ordinance shall be referred to as the City of Sunshine Municipal Harbor Management ordinance.

Section I. Findings of Fact

Whereas, the City of Sunshine has ___ registered boats and significant seasonal and transient boaters; and

Whereas, the City of Sunshine's economy and quality of life are enriched by an abundance of recreational boating; and

Whereas, boat ownership and use in City of Sunshine and across Southwest Florida continues to experience a high annual rate of growth; and

Whereas, the City of Sunshine has limited boater resources, including appropriate safe harbors, anchorages and moorings sites; and

Whereas, the City of Sunshine desires to protect the environment while reducing the potential for user conflicts on its waterways; and

Whereas, the City of Sunshine desires to encourage safe and enjoyable recreational boating within the City; and

Whereas, the City of Sunshine desires to accommodate anchoring and mooring by recreational boaters in a manner that ensures the greatest degree of regional consistency throughout the waterways of Southwest Florida; and

Whereas, the City of Sunshine desires to accommodate anchoring and mooring by recreational boaters in a manner that is consistent with its particular circumstances and citizen needs;

NOW, THEREFORE, BE IT ORDAINED, BY THE BOARD OF THE CITY OF SUNSHINE on this ___ DAY OF ___, 20__.

Commentary

Accurate and substantiated Findings of Facts are invaluable indicators that ordinances or regulations are warranted exercises of the police power by governments for the protection of the health, safety and welfare of the citizenry.

The above Findings of Fact should be tailored to be consistent with the adopting municipalities normal formalities and procedures. Also, the statewide and Southwest Florida regional

information below can be used to supplement the language above when the City of Sunshine proposes and adopts the Municipal Harbor Ordinance. Specific Findings of Fact should be tailored to the individual municipality with respect to its specific boating communities, resources, environmental conditions, and reason(s) for adopting the ordinance. Specific annual statistics on boating by region and county can be researched at the website listed in footnote 2.

Florida's marine resources are used by over 809,000 state-registered boats with 300,000 more brought to the state by visitors.²

Boating and Fishing make a significant annual contribution, roughly \$500 million dollars (1993), to southwest Florida's regional economy.³

Boater registration in Florida have approximately doubled in fifteen years, a rate three times greater than the population increase.⁴

In 1989, recreational boat registrations in southwest Florida totaled 74,538 -- a 309% increase since 1970.⁵

In 1998, recreational boat registrations in southwest Florida totaled 107,565.⁶

In 1994, there were 19,758 boats that potentially use recreational anchorages in southwest Florida . This represented 39% of all resident-owned and transient recreational boats with overnight accommodations in Florida.⁷

Eighty-five to ninety percent of sport and commercially harvested

² Florida Fish and Wildlife Conservation Commission Internet Website, <www.state.fl.us/gfc> and The Florida Boating and Diving Guide, Florida Sports Foundation, 1993.

³ Id.

⁴ Florida Sea Grant College Program Strategic Plan 1998-2001, Sea Grant Publication No. TP-90, pg. 3, April 1998.

⁵ Feasibility of Non-Regulatory Approach to Bay Water Anchorage Management for Sustainable Recreational Use at 83.

⁶ Florida Game & Fish Commission Internet Website.

⁷ Feasibility of Non-Regulatory Approach to Bay Water Anchorage Management for Sustainable Recreational Use at 83.

*shellfish and finfish species in Florida depend on estuaries.*⁸

*Coastal mangrove systems present in southwest Florida provide valuable habitat for a wide range of species of animals including those listed as threatened or endangered by the U.S. Fish and Wildlife Service.*⁹

*Seagrass meadows are one of Florida's most important marine habitats and are critically important to marine productivity in the shallow-water areas of the state.*¹⁰

*The quality of Florida's surface waters can be degraded by wastewater, gray water, cleaning products spilled fuel, trash and the introduction of exotic organisms. These materials not only degrade Florida's environment, but also hamper the enjoyment of Florida's marine recreational environment.*¹¹

*The rapid increase in the number and type of boating activities has led to degradation of coastal waters by destruction of sea grass beds, from propeller damage and boat groundings, and the introduction of human, chemical, and noise pollution.*¹²

Section II. Ordinance Goals and Purpose

It is the purpose of this ordinance to accommodate the anchoring and mooring needs of responsible boaters while safeguarding environmental resources, navigational access and the general health safety and welfare of the people of the City of Sunshine.

Commentary

These above MHO Goals should be supplemented by and coordinated with the appropriate elements of the City of Sunshine's Comprehensive Plan such as the natural resources element,

⁸ Florida Sea Grant College Program Strategic Plan 1998-2001 at 3.

⁹ Ecosystems of Florida, pg. 544, University of Central Florida Press, 1990.

¹⁰ Coastal Currents, Florida Measures Boating's Impacts to Sea grass Beds, Florida Coastal management Program, pg. 12, Fall 1996.

¹¹ Clean Boating Habits Handbook, Florida's Clean Marina Program, Florida Department of Environmental Protection, <www.dep.state.fl.us/law/bas/grants/clean_marina>.

¹² Coastal Currents, Alternative Approaches to Anchorages in the Southwest, Florida Coastal Management Program, pg. 1, Fall 1996.

recreation element, coastal element, etc. As the MHO program is established, relevant portions may be incorporated into the Comprehensive Plan during future Evaluation and Appraisals Review(s).

Section III. Definitions

To the extent possible these definitions track applicable language from the 1999 Florida Statutes, 1999 Florida Administrative Code and/or have been adapted from learned treatises and other research documents. In customizing the City of Sunshine's Municipal Harbor Ordinance care should be taken use similar language where possible without creating conflicts with terminology previously adopted by the City of Sunshine in its ordinances or Comprehensive Plan.

(1) Anchorage - A customary, suitable, and designated harbor area in which vessels may anchor.¹³

(2) Anchoring - The use of heavy device fastened to a line or chain to hold a vessel in a desired position.¹⁴

(3) Designated Special Anchorage Areas - Coast Guard designated anchorage areas where the Secretary of Transportation determines such an anchorage grounds are necessitated due to maritime or commercial interests.^{15 16}

(4) Emergency - Any occurrence, or threat thereof, whether natural, technological or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property.¹⁷

(5) Harbor - A natural or man-made anchorage providing protection from most storms, maybe with breakwater and jetties; a place or docking and loading.¹⁸

¹³ [Adapted from] Chapman's Piloting, Seamanship and Boat Handling, 63rd Edition, pg. 618, Hearst Marine, William Morrow and Companies, 1999.

¹⁴ [Adapted from] Id. at 618. Developing technological advances may require revision of the traditional definition to include "anchoring systems" that rely on electronic devices to hold a boat in position without actually attaching to the submerged lands.

¹⁵ 33 C.F.R. § 471 (1997).

¹⁶ Such anchorage areas exist in Southwest Florida include: Marco Island at Marco River, Manatee River at Bradenton, and Apollo Beach at Tampa Bay. 33 C.F.R. § 110.74, 110.74a, 110.74b (1997).

¹⁷ Fla. Stat. § 252.34(3) (1999).

¹⁸ [Adapted from] Chapman's Piloting at 624.

(6) **Harbor Management Plan** - A two-part plan, prepared by the Harbor Advisory Board, adopted by the City Council, and as an amendment to the Local Government Comprehensive Plan.¹⁹ Part A shall address all anchoring and mooring within Waters of the City. Part B shall address the establishment and management of a Harbor Management Plan (HMP).

(7) **Harbormaster** - Designated City staff member charged with implementation of the Harbor Management Plan.

(8) **Mooring** - Permanent ground tackle, a place where vessels are kept at anchor.²⁰

(9) **Mooring Field** - Designated area where permanent ground tackle is utilized to provide multiple vessel moorings in accordance with the Harbor Management Plan.

(10) **Management Agreement** - A form of consent governing local management and protection activities on sovereign submerged lands entered into between the Trustees of the Internal Improvement Trust Fund and the local municipality.²¹

(11) **Vessel** - Under the Florida Vessel Registration and Safety Law, a term synonymous with the word “boat” as referenced in section 1(b), Section VII of the Florida Constitution and that 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.²²

(12) **Live-aboard Vessel** - Any vessel used solely as a residence; or a professional or other commercial enterprise, or a legal residence. A commercial fishing vessel is expressly excluded from the term “live-aboard vessel.”²³

¹⁹ Refer to Fla. Stat. § 163.3164(4) (1999).

²⁰ Chapman’s Piloting at 628.

²¹ F.A.C. 18-21.005(1)(e)(1) (1999).

²² Fla. Stat. § 327.02(36) (1999). *See also* City of Tampa Bay v. Tampa Shipbuilding & Engineering Co., 136 Fla. 216 (1939).

²³ Fla. Stat. § 327.02(16) (1999). The Board of Trustees of the Internal Improvement Fund has adopted an alternative definition relating to “live-aboard” vessels that is to be used in future submerged lands leases for marinas entered into pursuant to Fla. Stat. § 253.03(7)(b) (1999) and Fla. Admin. Code 18 - 21.005(e)(1). (1999). In these agreements, the term “live-aboard” is defined as a vessel docked at the facility and inhabited by a person for any five (5) consecutive days or a total of ten (10) days within a thirty (30) day period. If live-aboards are authorized by the lease, in no event shall a “live-aboard” status exceed six (6) months within any twelve (12) month period, nor shall any such vessel constitute a legal or primary residence.

Commentary

Some local governments have adopted their own definitions of “live-aboards” for the purposes of exercising police power jurisdiction over certain vessels. However, to the extent that these locally generated definitions are broader than those use by the State of Florida, these definitions may arguably contradict the State’s preemptive exercise of its police power and controlling interest in state submerged lands.

(13) Transient Vessel - Any vessel, outside of its home port, engaged in the legal exercise of its of the rights of navigation.

(14) Stored Vessel - Any uninhabited vessel moored or anchored for a period exceeding ____ days within the Waters of the City, excluding vessels at private docks.

(15) Waters of the City - Navigable waters within the territorial limits of the City of Sunshine.

Section IV. Jurisdiction and Authority

The waters included under the jurisdiction and authority of this ordinance are the waters of the City of Sunshine, as defined herein.

Commentary

Local governments in Florida possess concurrent jurisdiction and authority with state and federal governments to regulate the navigable waters within the territorial limits of the City of Sunshine. Local jurisdiction is derived from their police power and local home rule²⁴ as adopted by the 1968 Florida Constitutional amendments.

State authority and jurisdiction is derived from the police power and its ownership of state submerged lands.²⁵ IN FLORIDA, THE LEGISLATURE HAS AUTHORIZED THE BOARD OF TRUSTEES²⁶ TO REGULATE ANCHORING, BUT THE BOARD HAS NOT EXERCISED THIS AUTHORITY. THE LEGISLATURE HAS, HOWEVER, PREEMPTED LOCAL GOVERNMENT REGULATION OF ANCHORING BY NON LIVE-ABOARDS “ENGAGED IN THE EXERCISE OF THE RIGHTS OF NAVIGATION.” ALTHOUGH A DEFINITION OF LIVE

²⁴ Art. VIII(1)(g) of the Florida Constitution and Fla. Stat. § 125.01(1) (1999) gives counties home rule authority to “protect the health, safety, welfare and morals of its citizens.” Likewise, Art. VIII(2)(b) of the Florida Constitution and Fla. Stat. § 166.021 (1999) gives counties the powers of municipalities.

²⁵ Under the public trust doctrine, the state of Florida gained title to the beds of all navigable waters in the state upon statehood. See federal Submerged Lands Act (SLA), U.S.C.A. § 1301 et seq. (West 1998).

²⁶ See Fla. Const. art. X, § 10, Fla .Stat. § 253.07(a)-(b) (1999).

ABOARD IS PROVIDED, THE LEGISLATURE HAS NOT CLARIFIED WHAT IT MEANS BY “ENGAGED IN THE “EXERCISE OF THE RIGHTS OF NAVIGATION.”

Federal authority and jurisdiction is derived from the Commerce Clause²⁷ and federal navigational servitude both of which address protection of federal RIGHTS TO NAVIGATION. ANCHORING THAT IS INCIDENTAL TO THE EXERCISE OF THE RIGHTS OF NAVIGATION REMAINS PROTECTED BY FEDERAL LAW. HOWEVER, IN Barber v. State of Hawaii, 42 F.3d 1185, 1195 (9th Cir. 1994), THE NINTH CIRCUIT COURT OF APPEALS CONCLUDED THAT WHILE THE FEDERAL GOVERNMENT MAY PREEMPT STATE AND LOCAL ANCHORAGE REGULATION, IT HAS NOT DONE SO.²⁸ IN FACT, THERE IS AMPLE FEDERAL AUTHORITY WHICH SUGGESTS THAT CONGRESS INTENDED FOR STATES TO ASSUME A SUBSTANTIAL ROLE IN THE REGULATION OF NAVIGATION, INCLUDING ANCHORING, AS LONG AS IT DOES NOT UNDULY CIRCUMSCRIBE THE PROTECTED FEDERAL INTERESTS. HOWEVER, FEDERAL LAW OFFERS LITTLE GUIDANCE CONCERNING HOW FAR A STATE OR LOCAL GOVERNMENT MAY REGULATE ANCHORING BEFORE IT INTERFERES WITH THE FEDERAL NAVIGATION INTEREST.

FOR COMPLETE DISCUSSION OF LOCAL, STATE AND FEDERAL REGULATORY JURISDICTION AND AUTHORITY SEE Anchoring Away: Government Regulation and The Rights of Navigation in Florida, TP-99, Florida Seagrant College Program (August 1999).

Section V. Organizational Structure, Procedures, and Duties²⁹

(1) Harbor Advisory Board. A City agency known as the City of Sunshine Harbor Advisory

²⁷ See U.S. Const., art. I, § 8[3].

²⁸ At issue in Barber was Hawaii’s state-wide approach to anchoring and mooring regulation exercised through Hawaii Revised Statute (HRS) Chapter 200 - Ocean Recreation and Coastal Areas Program. HRS Chapters 200-4 and 200-6 (1998) delegate substantial control of anchoring and mooring to Hawaii’s Department of Transportation, Harbors Division which it exercised in relevant part through the promulgation of Hawaii Administrative Rules, Title 19, Chapters 41 and 42 (1998). The Hawaii legislature and administrative agencies clearly placed limits on the private use of streams and navigable waters without running afoul of the commerce clause or rights of navigational servitude.

²⁹ [Adapted from] Guidelines for the Development of Municipal Harbor Plans, State of Rhode Island, Coastal Resources Management Council, June 1997.

Board is hereby established.³⁰

(2) Composition and Appointment.³¹ The Harbor Advisory Board shall consist of __ members appointed by the City Council. The Harbormaster shall be a non-voting ex officio member.

(3) Qualifications and Members. No voting members of the Harbor Advisory Board shall be salaried officials of the City. __ members shall be representatives of the boating community. At least __ of the boating community members shall own a vessel that utilizes the managed harbor. __ members shall be representatives of institutions dedicated to the conservation of the marine environment. __ members shall be shoreside residents and property owners.

(4) Members, Terms and Vacancies.³² The term of office of a member of the Harbor Advisory Board shall be __ year(s) or until a successor has been appointed and has qualified. Vacancies shall be filled by the City Council within 30 days for the remainder of the term.

(5) Selection of Officers. Upon appointing the initial members of the Harbor Advisory Board, the City Council shall select a temporary Chair for the purposes of presiding over the meeting to select a permanent Chair. Thereafter, a Chairperson and an Alternate will be selected by the members of the Board and serve for a period of __ year(s). The Chair shall preside over meetings of the Board.

(6) Clerk. The City Manager or its designee shall be the Clerk of the Harbor Advisory Board. It shall be the duty of the Clerk to keep a record of all proceedings of the Harbor Advisory Board, transmit the Board's formal actions to the City Council when directed to do so, and perform such other duties as are usually performed by the clerk of a deliberative body.

(7) Rules and Procedures.

The Harbor Advisory Board shall meet at regular intervals to be determined by the Board, but not less than ____ [quarterly], and at such other times as the Chair deems it necessary for the orderly conduct of business.

The Harbor Advisory Board shall adopt rules for the transaction of its business and shall be governed in accordance with Chapters 119 and 125 of the Fla. Stat. concerning public records and open meetings. The rules may be amended upon notice to the members that amendments

³⁰ Harbor Advisory board meetings and actions should be conducted in accordance with Fla. Stat. § 286.011 (1999) and Fla. Const., art. I, § 24(b). For further discussion on advisory board duties to operate "in the Sunshine," see Monroe County v. Pigeon Key Historical Park, 647 So. 2d 857 (1994).

³¹ Refer to SWFRHB Section II, Principles #3 and #4. See Appendix I.

³² Id.

shall be acted upon at a forthcoming meeting.

A majority vote shall be required for all decisions of the Board.

(8) Jurisdiction. The Harbor Advisory Board shall exercise jurisdiction over all the waters of the City concerning matters related to mooring and anchoring.³³

(9) Purpose and Scope. The Harbor Advisory Board shall advise the City Council concerning all matters relevant to the management and use of the waters of the City for mooring and anchoring.

(10) Duties of the Harbor Advisory Board.

(a) The Harbor Advisory Board shall prepare and submit the Municipal Anchorage and Mooring Plan and any amendments thereto for review and approval by the City Council.

(b) The Harbor Advisory Board shall make recommendations for the establishment of managed municipal anchorages and mooring fields where warranted by environmental damage or user conflicts.

(c) The Harbor Advisory Board shall make recommendations for establishment and revision of the Fee and Penalties Schedule and amendments under a Harbor Management Plan (“HMP”).

(d) The Harbor Advisory Board shall recommend the Harbormaster for appointment by the City Council and shall review the performance of the Harbormaster on a ___ basis.

(e) The Harbor Advisory Board shall serve as the forum of first resort for disputes arising out of activities in the waters of the City related to mooring and anchoring.³⁴

(10) Duties of the City Council.

(a) Except in the case of emergencies, as defined herein, the City Council shall consult with the Harbor Advisory Board concerning all matters within the jurisdiction of the Harbor Advisory Board, prior to initiating final action on such matters.

(b) The City Council shall approve the Harbor Management Plan and any amendments thereto.

(c) The City Council shall approve the Harbor Management Plan Fee and Penalties Schedule and

³³ While the duties of the Harbor Advisory Board has been narrowly tailored to mooring and anchoring, in many cases, local governments have already established advisory Boards to address these and other marine issues. If so, the efforts of these Boards should be coordinated and may be consolidated.

³⁴ Refer to SWFRHB Section II, Principle # 11. See Appendix I.

amendments thereto.

(d) The City Council shall hear appeals from disputes brought before the Harbor Advisory Council.

(11) Duties of the Harbormaster. The Harbor Master shall be responsible for implementing the Harbor Management Plan, and all other applicable federal, state and local law. The specific duties of the Harbormaster shall be determined by the Harbor Advisory Board and approved by the City Council.

(12) Qualifications of the Harbormaster.³⁵ Qualifications of the Harbormaster shall be determined by the Harbor Advisory Board and approved by the City Council.

Commentary

*The duties and qualifications of the Harbormaster may vary greatly depending on the City of Sunshine's resources and need for coordination with other City staff or departments. Specifically, duties that require the ability to initiate contracts, enforce laws, make arrests, carry firearms or board vessels should be addressed in the duties and qualifications sections.*³⁶

ARTICLE 2. HARBOR MANAGEMENT PLAN

PART A. ANCHORING AND MOORING WITHIN THE WATERS OF THE CITY OF SUNSHINE

(1) There shall be a Harbor Management Plan, prepared by the Harbor Advisory Committee and adopted by the Town Council.

(2) The Harbor Management Plan shall comprise two sections. Section One shall address all anchoring and mooring within the waters of the town. Section Two shall address the establishment and management of Managed Municipal Anchorage and Mooring Fields.

Section I. Rules of General Applicability

(1) Only boats in good operating condition and under their own power with proper registration may anchor or moor in Waters of the City.

(2) Unless otherwise authorized in Part B below, the Waters of the City may not be utilized for

³⁵ Refer to SWFRHB Section II, Principle # 5. See Appendix I.

³⁶ For comments on these and similar issues, see The Right Tack: Charting Your Harbor's Future, Maine Coastal Program, Maine State Planning Office, July 1995. Copy on file with Authors.

vessel storage, by stored vessels as defined herein.

(3) It shall be the responsibility of the vessel and its crew to comply with all local, state, and federal laws that apply concerning safe operation of vessels, protection of wildlife and natural resources, discharges of petroleum products, septic waste, garbage and litter.³⁷ This also includes all applicable local ordinances regarding nuisance, noise, and other matters.

(4) Vessels may not anchor in a manner that:

- a. Jeopardizes other vessels at anchor or underway;
- b. Might cause damage to other property or persons; and/or
- c. Impedes access to docks, slips or public or private property.

(5) Areas of seagrass, living coral or rock outcroppings as identified by Florida SeaGrant (FSG), the Department of Environmental Protection (FDEP), the regional National Estuary Programs, or the City of Sunshine, cannot be used for anchoring. Special care must be taken to avoid anchoring impacts in aquatic preserves.

(6) Vessels must be capable of navigating under their own sail or power, or have ground tackle capable of holding vessel until winds are fair or a tow or repairs can be arranged. A reasonable amount of time must be allowed for such situations.

(7) In emergencies, the safety of the crew and the vessel will be of paramount importance until the emergency is past or the vessel has been moved to safety.

(8) Each mariner remains responsible for damages caused by his vessel or its wake.³⁸

PART B. HARBOR MANAGEMENT PLAN

Section I. Establishment of a Harbor Management Plan

(1) Where warranted by objective evidence of environmental damage or user conflicts, and upon recommendation of the Harbor Advisory Board, the City of Sunshine shall begin proceedings to establish a Harbor Management Plan (“HMP”).

³⁷ Including, but not limited to the following. Petroleum Control: Fla .Stat. § 403.161 (1999), 33 CFR 153.305; Solid Waste: Fla . Stat. § 403.413(4)(b) (1999), 33 CFR 151.63,.65,.67,.69,.71,.73 and Annex A; Sewage Management: Fla . Stat. § 327.53-4(a) (1999), Fla . Stat. § 327.53-5(5) (1999); Vessel Safety: Fla . Stat. ch. 327 (1999); Anchoring/Mooring Damage: 15 CFR Subpart P.

³⁸ [Adapted from] Principles of Anchoring and Harbor Management adopted by the SWFRHB on January 22, 1999. Copy of MOA on file with authors.

(2) The HMP should include the following Elements³⁹:

- 1) Initial Natural and Cultural Resource Inventory and Assessment;
- 2) ~~PHYSICAL AND TEMPORAL ZONING~~
- 3) Anchoring and Mooring Locations & Layout;
- 4) Anchoring and Mooring Tackle Specifications;
- 5) Landed Facilities Plan;
- 6) Navigational Aids Assessment, Maintenance and Improvement Plan;
- 7) Storm and Emergency Preparedness Plan;
- 8) A Dispute Resolution Process;
- 9) Initial Cost of Implementation Estimate; and
- 10) Projected Annual Budget.⁴⁰

Section II. Management Agreement with the State of Florida

Upon local adoption of the Harbor Management Plan, the City of Sunshine, as appropriate, shall seek to enter into an agreement with the State of Florida pursuant to Fla. Stat. § 253.03(7)(b) (1999) and Fla. Admin. Code 18 - 21.005(e)(1). (1999) for exercise of jurisdiction and authority over any state submerged lands encompassed in Plan.

Commentary

A management agreement may be utilized for activities involving non-commercial projects to protect and manage sovereign submerged lands.⁴¹ This approach has been adopted by the state in a few cases to permit local governments to establish managed anchorage areas within their jurisdiction.⁴² Local governments with management agreements approved or under review include Vero Beach, Stuart and Key West. Authority to enter into management agreements has been delegated by the Trustees to the Director of the Division of State Lands in the Department of Environmental Regulation.⁴³ The Directive authorizes the Director to “approve management

³⁹ Also Refer SWFRHB Principles Section II. See Appendix I.

⁴⁰ For more information on these topics, refer to: The Right Tack: Charting Your Harbor’s Future; Guidelines for the Development of Municipal Harbor Plans; Hurricane Manual for Marine Interests in Flagler County; Florida Inland Navigation District and Flagler County; Recommendations for Hurricane Preparations and Responses for Boating Communities and Industries, Florida Sea Grant College Program, TP-75, June 1994.

⁴¹ FLA. ADMIN. CODE § 18-21.005(1)(e)) (1998).

⁴² See Department of Environmental Protection web page (visited April 12, 1999) <<http://www.dep.state.fl.us/ecosystem/enved/emwork/place.htm>>; Interview with Don Keirn, Planner IV, Department of Environmental Protection, April 5, 1999.

⁴³ See Department of Natural Resources Directive 120 (May 17, 1990). The Department of Natural Resources and the Department of Environmental Regulation have subsequently been merged to form the

agreements with governmental entities, nonprofit and nonrevenue generating conservation, education, charitable, recreation or scientific groups for the management of educational, recreational or scientific activities”⁴⁴ However, in special cases, such as where there is controversy, the Governor and Cabinet must approve the Agreement.⁴⁵

Section III. HMP Fees and Penalties

(1) Fees and Penalties under the HMP and amendments thereto shall be recommended by the Harbor Advisory Board and approved by the City Council. Reasonable notice shall be given to the public prior to enforcement of the Fees and Penalties Schedule.

(2) All applications for mooring permits shall be accompanied by the appropriate fee. All such monies are non-refundable. These fees shall be reviewed annually by the Harbor Advisory Board and amendments thereto recommended for approval by the City Council.

Section IV. Harbor Management Fund

A Harbor Management Fund will be created for fees and penalties collected under the HMP. All monies shall be deposited into a Harbor Management Plan Fund earmarked for implementing activities authorized by the Model Harbor Ordinance.

Section V. Harbor Management Plan Handbook

(1) As part of the HMP development process, the Harbor Advisory Board shall recommend such further regulations as deemed necessary to implement the plan.

(2) The Harbor Advisory Board shall prepare a Harbor Management handbook that details the rules governing the use of the harbor, the authority of Harbormaster and such other information as may be useful to visiting boaters.

Commentary

These rules and regulations should be in accord with the Principles of Anchoring and Harbor Management adopted by the SWFRHB and not in conflict with other local, state, and federal laws. The City Council shall adopt the recommended rules and regulations as an integral part

Department of Environmental Protection.

⁴⁴See *id.*

⁴⁵See *id.*

of the HMP.

Section VI. Liability

Persons using the Waters of the City of Sunshine shall assume all risk of personal injury and damage or loss to their property. The City of Sunshine assumes no risk on account of accident, fire, theft, vandalism, or acts of god.⁴⁶

Commentary

For an overview of recent judicial interpretation of municipal and state liability related to management agreements see Natural Resources v. Garcia, 25 FLW 124a, (2000). The Supreme Court of Florida held that governmental entities that operate public facilities, such as swimming facilities on public beaches, assumes the common law to operate the facility safely, same as a private individual would have to invitees under similar circumstances. The governmental entity has a duty to warn the public of any dangerous conditions of which it knew or should have known. Also, the court upheld an indemnification clause in the subject management agreement whereby the local governmental entity agreed to indemnify the state for the local governmental entity for its won negligence. It was held that such an indemnification clause was not in conflict with Fla. Stat. § 768.28(18) (1999).

Section VI. Severability

If any Article, Part or Section of this ordinance is invalidated for any reason, the effected portion may be eliminated or modified to correct the reason of invalidation, if feasible without materially altering or negating the Ordinance Goals and SWFRHB Principles.

Section VII. Effective Date

The Model Harbor Ordinance shall become effective upon recommendation by the City of Sunshine's Harbor Advisory Board and approval of the City Council.

⁴⁶ [Adapted from] Guidelines for the Development of Municipal Harbor Plans, State of Rhode Island. See also, Natural Resources v. Garcia, 25 FLW 124a, (2000), Fla. Stat. § 768.28 (18) (1999).

Appendices:

APPENDIX I. SWFRHB PRINCIPLES OF ANCHORING AND HARBOR MANAGEMENT⁴⁷

THE SOUTH WEST FLORIDA REGIONAL HARBOR BOARD'S REGIONAL UMBRELLA STANDARDS FOR ANCHORAGE MANAGEMENT," SET FORTH BELOW SHOULD REPRESENT THE BASIC MANAGEMENT APPROACH FOR ANCHORING IN FLORIDA

I. PRINCIPLES OF ANCHORING

(1) ALL FEDERAL AND STATE LAWS APPLY TO ALL VESSELS INCLUDING LAWS CONCERNING OVERBOARD DISCHARGE OF PETROLEUM PRODUCTS, WASTE, GARBAGE AND LITTER. LOCAL LAWS REGARDING NUISANCE, NOISE, ETC TO ALL PERSONS, INCLUDING THOSE AT ANCHOR.

(2) VESSELS MAY NOT ANCHOR IN A MANNER THAT: A. JEOPARDIZES OTHER VESSELS AT ANCHOR OR UNDERWAY; B. MIGHT CAUSE DAMAGE TO OTHER PROPERTY OR PERSONS; C. IMPEDES ACCESS TO DOCKS, SLIPS OR PUBLIC OR PRIVATE PROPERTY

(3) AREAS OF SEAGRASS, LIVING CORAL OR ROCK OUTCROPPINGS AS IDENTIFIED BY FLORIDA SEAGRASS (FSG), THE DEPARTMENT OF ENVIRONMENTAL PROTECTION (FDEP), OR THE REGIONAL NATIONAL ESTUARY PROGRAMS, CANNOT BE USED FOR ANCHORING. SPECIAL CARE MUST BE TAKEN TO AVOID ANCHORING IMPACTS IN AQUATIC PRESERVES

(4) VESSELS MUST BE CAPABLE OF NAVIGATING UNDER THEIR OWN SAIL OR POWER, OR HAVE GROUND TACKLE CAPABLE OF HOLDING VESSEL UNTIL WINDS ARE FAIR OR A TOW OR REPAIRS CAN BE ARRANGED. A REASONABLE AMOUNT OF TIME MUST BE ALLOWED FOR SUCH SITUATIONS

(5) IN EMERGENCIES, THE SAFETY OF THE CREW AND THE VESSEL WILL BE OF PARAMOUNT IMPORTANCE UNTIL THE EMERGENCY IS PAST OR THE VESSEL HAS BEEN MOVED TO SAFETY. EACH MARINER REMAINS RESPONSIBLE FOR DAMAGES CAUSED BY HIS VESSEL OR ITS WAKE

NOTE: THERE ARE NO THIRD PARTY BENEFICIARIES UNDER THESE STANDARDS. NO THIRD PARTY HAS ANY RIGHTS OR CAUSE OF ACTION BASED UPON ANY FAILURE TO ENFORCE ANY OF THESE STANDARDS. FURTHER RESTRICTIONS SHOULD NOT BE PLACED ON ANCHORING IN FLORIDA IN THE ABSENCE OF ENVIRONMENTAL DAMAGE OR USER CONFLICTS THAT CANNOT BE OTHERWISE RESOLVED

II. HARBOR MANAGEMENT

(1) WHEN ENVIRONMENTAL DAMAGE OR USER CONFLICT HAVE BEEN DEMONSTRATED BY OBJECTIVE STANDARDS, CONSIDERATION SHOULD BE GIVEN TO THE DEVELOPMENT OF A LOCAL HARBOR MANAGEMENT

⁴⁷ Principles of Anchoring adopted January 22, 1999 by an unanimous vote by the quorum of SWFRHB members in attendance.

PLAN

(2) OBJECTIVE STANDARDS SHOULD BE BASED ON PLANNED, PERIODIC INVENTORIES OF ALL NATURAL AND CULTURAL RESOURCES WITHIN THE HARBOR AND ADJACENT SHORELINE

(3) LOCAL HARBOR MANAGEMENT PLANS SHOULD BE DEVELOPED UTILIZING CONSENSUS BUILDING PROCESSES THAT INCLUDE REPRESENTATION AMONG ALL STAKEHOLDERS

(4) LOCAL HARBOR MANAGEMENT PLANS SHOULD BE IMPLEMENTED BY A LOCAL HARBOR BOARD THAT INCLUDES BROAD BASED STAKEHOLDER REPRESENTATION, INCLUDING BOATER REPRESENTATION FROM WITHIN THE ANCHORAGE

(5) LOCAL HARBOR MANAGEMENT PLANS SHOULD CONSIDER THE APPOINTMENT OF A HARBOR MASTER, WHO SHOULD BE COMPETITIVELY SELECTED BASED ON QUALIFICATIONS ESTABLISHED BY THE LOCAL HARBOR BOARD AND WHO REPORTS TO IT.

(6) LOCAL HARBOR MANAGEMENT PLANS SHOULD ENSURE THAT THERE IS ADEQUATE ANCHORING AND/OR MOORING CAPACITY FOR TRANSIENT BOATERS AND THAT ADEQUATE PROMSION IS MADE FOR 'SAFE HARBOR' SHELTER DURING STORMS

(7) LOCAL HARBOR MANAGEMENT PLANS SHOULD ENSURE THAT ADEQUATE SUPPORT FACILITIES ARE AVAILABLE TO BOATERS. AT A MINIMUM THIS SHOULD INCLUDE DEDICATED DINGHY FACILITIES WHERE RESOURCES ARE AVAILABLE; CONSIDERATION SHOULD ALSO BE GIVEN TO RESTROOMS, SHOWERS, LAUNDRY FACILITIES AND OTHER AMENITIES

(8) LOCAL HARBOR MANAGEMENT PLANS SHOULD INCLUDE APPROPRIATE AIDS TO NAVIGATION AND OTHER SIGNAGE, AS NECESSARY TO DISTINGUISH ANCHORAGE, MOORING HELDS, RESTRICTED AREAS AND NAVIGATION CHANNELS

(9) LOCAL HARBOR MANAGEMENT PLANS SHOULD CONSIDER APPROPRIATE MEANS TO OBTAIN FINANCING OR CAPITAL IMPROVEMENTS AND MANAGEMENT ACTIVITIES, INCLUDING GOVERNMENT GRANTS AND REASONABLE USER FEES

(10) FOR MANAGED ANCHORAGES, CONSIDERATION SHOULD BE GIVEN TO SEEKING SPECIAL ANCHORAGE AREA DESIGNATION BY THE COAST GUARD

(11) LOCAL HARBOR MANAGEMENT PLANS SHOULD CONSIDER APPROPRIATE MECHANISMS TO RESOLVE DISPUTES WITHIN THE ANCHORAGE

(12) FOR MANAGED ANCHORAGES, LOCAL HARBOR MANAGEMENT PLANS SHOULD SEEK THE APPROPRIATE approval FROM THE STATE OF FLORIDA OR OTHER LEGAL OWNERS OF THE BOTTOM ANDS BENEATH THE ANCHORAGES

Appendix I. Contact Sources for Further Information

Southwest Florida Regional Harbor Board
c/o Southwest Florida Regional Planning Council
David Burr
4980 Bayline Drive
North Fort Myers, Florida 33918-2455

941- 656-7720 (Tel.)
352-656-7724 (Fax)

Florida Sea Grant Program (FSG)
Gustavo A. Antonini
Professor and Extension Specialist
P.O. Box 115530
University of Florida
Gainesville, FL 32611-5530

352-392-6233 (Tel.)
352-392-7682 (Fax)
email: creslag@nervm.nerdc.ufl.edu

University of Florida - Levin College of Law
Center for Governmental Responsibility
Tom Ankersen
Richard Hamann
230 Bruton-Geer Hall
P.O. Box 117629
Gainesville, Florida 32611-7629

352-392-2237 (Tel.)
352-392-1457 (Fax)

West Coast Inland Navigation District (WCIND)
Charles Listowski, Exec. Director
P.O. Box 1845
Venice, FL 34284-1845

941-485-9402 (Tel.)
941-485-8394 (Fax)

BAIL (Boater's Action and Information League, Inc.)
Walter Stilley, President
5835 Wildwood Avenue
Sarasota, FL 34231

941-922-5835 (Tel.)
941-922-5835 (Fax)

DEP (Florida Department of Environmental Protection)
Gary Lytton
Environmental Administrator
Rookery Bay Estuarine Research Reserve
10 Shell Island Road
Naples, FL 33962

941-775-8845 (Tel.)
941-417-6315 (Fax)