

AN ACT TO BE ENTITLED

**AN ORDINANCE AMENDING THE PASCO COUNTY CODE SECTIONS 114-39 AND 114-40; CLARIFYING WHAT CONSTITUTES DERELICT OR ABANDONED PROPERTY; AMENDING WHERE RIP-RAP MAY BE PLACED; AMENDING THE STANDARDS FOR THE CONSTRUCTION OF DOCKS; REQUIRING A PERMIT FOR DOCK AND SEAWALL CONSTRUCTION; RESTRICTING THE SEAWARD EXTENT OF SEAWALLS; PROVIDING FOR MODIFICATION THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; PROVIDING FOR SEVERABILITY, REPEALER, CONFLICT, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.**

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WHEREAS, Pasco County is responsible to protect the safety and general welfare of the citizens of Pasco County, Florida; and

WHEREAS, the prevention of the improper disposal of derelict property, construction debris, solid waste, and other materials into waters of the county is necessary to protect public health and safety and the environment of Pasco County; and

WHEREAS, the regulation of docks within Pasco County is necessary to reduce the number and frequency of disputes between residents adjacent to canals arising from uncontrolled construction of docks and mooring of boats within the County; and

WHEREAS, regulations regarding the construction of docks is necessary to ensure the navigability of county waterways; and

WHEREAS, the Board of County Commissioners finds that requiring a dock construction permit will help prevent the construction of docks that impede or obstruct navigation and protect the public health and safety; and

WHEREAS, the Board of County Commissioners finds that regulations regarding the size and extent of docks over waterways is necessary to ensure the navigability of county waterways; and

WHEREAS, regulations regarding minimum channel width within canals are necessary to ensure the navigability of county waterways by emergency and police vessels; and

WHEREAS, the Board finds that the protections of this ordinance should be applied retroactively to preserve canal use rights, access to public waters and the navigability of county waters; and

WHEREAS, Chapter 125, Florida Statutes, gives county commissions the power and authority to regulate mooring of vessels, the regulation of derelict property and the construction of docks and seawalls within the county and the authority to adopt these measures.

NOW THEREFORE, be it ordained by the Board of County Commissioners of Pasco

County, Florida, as follows:

SECTION A. RECITALS

The recital clauses set forth above are hereby adopted and incorporated herein by reference.

SECTION B. AMENDMENT OF PASCO COUNTY CODE SECTION 114-39

Pasco County Code Section 114-39 is hereby amended as follows (new language is shown underlined and deleted language is shown stricken through):

**Sec. 114-39. Junked, wrecked, abandoned or derelict property.**

(a) No person shall abandon or dump any article of wrecked or derelict property on or in any water of the county or at any port within the county. This includes but is not limited to wrecked, inoperative or partially dismantled vessels, decrepit or partially sunken docks, trailers, boats, machinery, construction debris, garbage, solid waste or other material. Notwithstanding this prohibition, it shall be lawful to place rip-rap at the toe of a vertical seawall or along an unimproved shoreline provided:

- (1) The rip-rap consists only of natural boulders or clean concrete rubble one to three feet in diameter in average dimensions;
- (2) The slope of the riprap is no steeper than two horizontal to one vertical and the horizontal distance from the toe of the seawall is no more than eight feet, or one-third of the total width of waterway, whichever is more restrictive (the width of the waterway shall be calculated at low tide);
- (3) There are no reinforcing rods or other similar protrusions in concrete rubble and all rubble or boulders are free of attached sediments, paint, stain or other such coatings and free of saturation by any petroleum based product.
- (4) Neither the distance nor the use of the riprap shall interfere with navigation;
- (5) There is no filling or dredging associated with the placement of riprap other than the riprap material itself;
- (6) There shall be no filling of submerged grassbeds;
- (7) The amount of wetland area filled shall not exceed 100 square feet; and
- (8) There shall be no filling of coral communities.
- (9) This exemption allowing rip-rap is also subject to the specific conditions as follows:
  - a. Installation of the rip-rap shall not result in requiring any subsequent request to dredge for navigational access;
  - b. There shall be no backfilling to obtain useable upland or to straighten

an otherwise sinuous shoreline; and

- c. There shall be no filling or backfilling to reclaim land lost by avulsion or erosion.

(10) "Rip-rap" is a sloping retaining or stabilizing structure made to reduce the force of waves and to protect the shore from erosion, and consists of unconsolidated boulders, rock, or clean concrete rubble with no exposed reinforcing rods or similar protrusions.

(b) If a vessel or other article of derelict or abandoned property is located on or in the waters of the county or at any port in the county in violation of subsection (a) of this section, the county may remove and dispose of the property in accordance with F.S. ch. 705 or may require the owner of the property to remove the property.

(c) It shall be unlawful for any person to oppose, obstruct or resist any designated agent of the county in his discharge of duties or to fail or neglect or refuse to remove the abandoned, wrecked, junked or partially dismantled, inoperative or derelict property in accordance with the notice given pursuant to subsection (b) of this section.

#### SECTION C. AMENDMENT OF PASCO COUNTY CODE SECTION 114-40

Pasco County Code Section 114-40 is hereby amended as follows (new language is shown underlined and deleted language is shown stricken through):

##### **Sec. 114-40. Obstruction of watercourse; dock construction.**

(a) It shall be unlawful for any person to maintain, erect or establish on any water of the county any obstruction, whereby the normal navigation of boats may be obstructed or impeded. The purpose of this article is to preserve canal use rights, access to public waters and ensure the navigability of all County waters, including unmarked as well as marked channels. Additionally regarding the maintenance, construction or substantial improvement of any dock or similar structure on marine waters, including any unmarked or marked channels, rivers, manmade waterways and canals:

- (1) No dock, structure, moored vessel, or combination thereof shall project from the seawall or shoreline (mean high water line) into the waterway a distance greater than one third of the total width of the waterway, project beyond the side use lines of the associated upland property, project beyond the edge of any marked or unmarked channel nor project a distance great enough to reduce the navigable channel within a canal to a width of less than 12 feet.

- (2) Any flotation material used in floating docks shall be fully encapsulated; suitable for marine use; resistant to puncture, fire, cracking, peeling, or loss of pellets and generally impervious to water or fuel damage.
- (3) No dock or similar structure shall exceed a maximum height of 15 feet above the mean high water mark.
- (4) For the dead-end of canals and other instances where the side use lines of adjoining lots may converge (the point at which the lines between properties no longer run perpendicular with the general direction of the shoreline and/or seawall), such as a bend or curve in a waterway or canal, docks shall be placed so as to maximize navigability and to preserve canal use rights to all nearby property owners. To this end docks on all lots (typically three or four lots including the last lots on each side of the canal and the lot(s) at the end) that make up a dead-end of a canal, and other instances where side use lines converge, shall be built within the confines of the side use lines extending out toward the radial point of the canal dead-end or bend and shall further be limited to the waterward use line located within the side use lines. Additionally for dead-ends, the canal side owners shall build within their canal use rights envelope ("canal use zone") as far away from the end of the canal as practicable and the end lot owner shall build in the center of the lot or canal, to extent practicable.
- (5) Common ownership docks may be permitted if they comply with the criteria already enumerated in this section and with the following additional criteria: (a) the applicant(s) shall furnish a written agreement signed and acknowledged by all record owners of the participating upland riparian properties, in a form acceptable to Pasco County, providing for appropriate reciprocal-easements, restrictions and covenants running with the land, which shall be filed in the public records of the county at the expense of the applicant(s); (b) the permit shall provide that all parties shall have reciprocal rights under the permit and shall be held jointly responsible for compliance with all rules, regulations and conditions set forth in the permit and this ordinance; and (c) the regulations for setbacks apply to joint ownership docks with the exception that docks may be extended over common side use lines of the co-applicants.

- (6) This Ordinance shall apply retroactively, provided however, for the purposes of this Ordinance a nonconforming use exception for an existing dock, structure, moored vessel, or combination thereof may be granted as an acceptable nonconforming use provided that: (a) the dock, structure, moored vessel, or combination thereof must actually be in existence on the effective date of this Ordinance; (b) the dock, structure, moored vessel, or combination thereof must have continued without abandonment; (c) the dock, structure, moored vessel, or combination thereof does not extend beyond the side use lines; (d) the dock, structure, moored vessel, or combination thereof must be in legal compliance with previous dock ordinances and other state, federal and local regulations; and, (e) the dock, structure, moored vessel, or combination thereof must not pose a threat or hazard to navigation or the general health, welfare, or safety of the public. The nonconforming use may continue provided that there are no additions, expansions, or other modifications to the existing dock, structure, moored vessel, or combination thereof which will have the effect of increasing the square footage of the dock or otherwise increasing the nonconformity. The nonconforming use shall terminate and the dock, structure, moored vessel, or combination thereof shall be brought into full compliance with this Ordinance in case of:
1. Abandonment of the property or premises for 6 consecutive months or more;
  2. The dock is substantially damaged or destroyed or substantially improved;
  3. Any extension, expansion, or modification of the dock, structure, moored vessel, or combination thereof which has the effect of increasing the area, size, capacity, or nonconformity of such dock, structure, moored vessel, or combination thereof.
- (7) For purposes of this paragraph (a), the width of the waterway shall be calculated at the narrowest place where the dock is located and between opposing seawalls or, if seawalls are not present, between opposing mean low water lines, except lots at the end of a canal shall use the narrowest width of the canal measured at the adjoining side lots.

(8) The extent of the waterward side of new seawalls shall be the lesser of: (a) even with adjacent seawalls or (b) even with the property line of the lot on which the seawall is to be constructed.

(b) Definitions:

(1) “Dock” is defined as a fixed or floating structure, including but not limited to moorings, piers, wharves, standalone pilings, and boat lifting equipment over or alongside water, which may be used for, but not limited to, the purpose of berthing buoyant vessels, fishing, or swimming.

(2) “Canal use rights” mean those rights allowing usufructuary rights to the water for recreational and navigational purposes and to wharf out or moor vessels in a manner consistent with this ordinance.

(3) “Side use lines” are lines extending into the water from the property lines of upland owners adjacent to the water. Side use lines begin at the waterfront property corner and generally extend out perpendicular to the canal centerline, except that side use lines extend to the radial point at dead-ends and bends of canals. Along with the waterward use line, canal use lines mark the area (the “canal use zone”) where upland property owners may exercise canal use rights in a manner consistent with this ordinance.

(4) “Radial point” shall mean the center point within the dead-end or bend of a canal equally distant from the shoreline or upland within the dead-end or bend.

(5) “Common Ownership Dock” is defined as a dock which may extend over side use lines of adjacent landowners upland of a canal or shoreline that have entered into an agreement of joint access and ownership of said dock.

(6) “Substantial damage” shall mean damage of any origin sustained by a dock whereby the cost of restoring the dock to its pre-damaged condition would equal or exceed 50% of the market value of the dock before the damage occurred.

(7) “Substantial improvement” shall mean the replacement of more than 50% of the structure, or the lateral or lineal extension of any dock.

(8) “Waterward use line” shall mean a line generally parallel to the shoreline located a distance of one third of the total width of the canal as measured pursuant to paragraph (a)(7). Waterward use lines shall not extend beyond side use lines. Waterward use lines and side use lines shall be referred to collectively as “canal use lines” and together create the “canal use zone” for an upland owner.

(c) No person shall construct or substantially improve any dock or similar structure or a seawall on the marine waters, including any unmarked or marked channels, rivers, manmade waterways and canals of the county without first obtaining a permit from the county; all authorizations required by state, federal, or local governments or agencies; and authorization from the owner(s) of the upland property to which the dock will be attached. The County shall assess permitting fees as established by resolution from time to time by the Board of County Commissioners.

(d) Variances may be granted to these dock construction standards and mooring restrictions pursuant to the procedures and conditions of section 316 of the Land Development Code.

SECTION C. SEVERABILITY

It is declared to be the intent of the Board of County Commissioners of Pasco County, Florida, that if any section, subsection, sentence, clause, or provision, of this ordinance shall be declared invalid, the remainder of this ordinance shall be construed as not having contained said section, subsection, sentence, clause, or provision, and shall not be effected by such holding.

SECTION D. REPEALER

All provisions of the Code of Pasco County, as amended, and ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of any conflict.

SECTION E. CONFLICT

To the extent of any conflict between any other County ordinances and this Ordinance, this Ordinance shall be deemed to be controlling.

SECTION F. MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this ordinance may be modified as a result of considerations that may arise during public hearings. Such modifications shall be incorporated into the final version of the ordinance adopted by the Board and filed by the Clerk of the Board pursuant to Section H.

SECTION G. INCLUSION IN THE CODE

It is the intent of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pasco County Code, Chapter 114.

SECTION H.            EFFECTIVE DATE

A certified copy of this ordinance shall be filed with the Department of State by the Clerk to the Board within ten (10) days of adoption. This ordinance shall become effective upon filing with the Department of State. Notwithstanding the foregoing, for purposes of the applicability section of this Ordinance, the effective date of all sections of this Ordinance shall be March 27, 2007.

PASSED AND ORDAINED AS AN ORDINANCE this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

BOARD OF COUNTY COMMISSIONERS  
OF PASCO COUNTY, FLORIDA

(S E A L)

ATTEST:

BY: \_\_\_\_\_  
JED PITTMAN, CLERK

BY: \_\_\_\_\_  
ANN HILDEBRAND, CHAIRMAN

APPROVED AS TO LEGAL FORM AND SUFFICIENCY  
OFFICE OF THE COUNTY ATTORNEY

BY: \_\_\_\_\_  
ATTORNEY