

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

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<b>Meeting Date:</b>	June 15, 2021	<input type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Workshop	<input checked="" type="checkbox"/> Public Hearing
<b>Department:</b>	<u>Environmental Resources Management</u>		

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**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to adopt: AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY FLORIDA AMENDING CHAPTER 6, ARTICLE I, OF THE PALM BEACH COUNTY CODE OF ORDINANCES (ORDINANCE 2015-030); AMENDING SECTION 6-2 OF THE PALM BEACH COUNTY CODE (ANCHORING OR MOORING OF FLOATING STRUCTURES); AMENDING SECTION 6-2(B) OF THE PALM BEACH COUNTY CODE (APPLICABILITY); AMENDING SECTION 6-2(C) OF THE PALM BEACH COUNTY CODE (DEFINITIONS); AMENDING SECTION 6-2(D) OF THE PALM BEACH COUNTY CODE (PROHIBITION OF FLOATING STRUCTURES); AMENDING SECTION 6-2(E) OF THE PALM BEACH COUNTY CODE (ENFORCEMENT; PENALTIES); ADDING SECTION 6-2(E) OF THE PALM BEACH COUNTY CODE (EXCEPTIONS); PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

**Summary:** Staff was directed by the Board of County Commissioners to amend the Cindy DeFilippo Floating Structure Ordinance (2015-030) to address continuing floating structure issues in waters of the County. The proposed Ordinance Amendment will prohibit the anchoring, mooring or otherwise affixing of floating structures upon or to, waters of the County within the incorporated and unincorporated areas of the County unless a municipality opts out or adopts an ordinance in conflict, and allow for direct removal of floating structures in violation of the Ordinance, unless anchored or moored at a marina, marine facility, permitted public mooring field, privately owned dock, permitted private mooring, privately owned submerged land or as otherwise permitted under the Ordinance. Floating structures found to be in violation of the Ordinance will have a notice placed upon them to notify the owner(s) that the floating structure is in violation of this Ordinance and that they have 21 calendar days from the date of the posting to remove the floating structure, except when there is an impending tropical system, in which case an owner(s) shall be given 24 hours from the date and time of the posting of the notice to remove the floating structure. This Ordinance is a tool for municipal enforcement; the County is not assuming enforcement responsibilities within incorporated boundaries. Any law enforcement officer or Code Enforcement Officer acting within his/her jurisdiction can enforce this Ordinance. Minor revisions to the Ordinance Amendment were made between the Preliminary Reading May 18<sup>th</sup>, 2021 (6B-1) and the Public Hearing scheduled for June 15 2021 (Attachment 2). Countywide (SS)

**(Background and Justification continued on Page 3)**

**Attachments:**

- 1. Proposed Ordinance Amendment: Strike Thru-Underlined Version
- 2. Red-line of Ordinance Amendment to reflect minor revisions since May 18<sup>th</sup>, 2021 (6B-1)
- 3. Current Ordinance, 2015-030

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<b>Recommended by:</b>		<u>5-24-2021</u>	SAS 5/21/21
	Department Director	Date	
<b>Approved by:</b>		<u>5/27/21</u>	
	Assistant County Administrator	Date	

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2021	2022	2023	2024	2025
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	-0-	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?	Yes _____		No <u>x</u>		
Does this item include the use of federal funds?	Yes _____		No <u>x</u>		
Budget Account No.:					
Fund _____	Department _____	Unit _____	Object _____	Program _____	

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Department Fiscal Review:

\_\_\_\_\_  
*S. Henry*

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Dev. and Control Comments:

\_\_\_\_\_  
*Lisa Munt 5/20/21*  
OFMB *5/19/21*  
*Jackson 5/19/21*

\_\_\_\_\_  
*Dr. S. Jackson 5/20/21*  
Contract Development & Control

B. Legal Sufficiency:

\_\_\_\_\_  
*5/27/21*  
Assistant County Attorney

C. Other Department Review:

\_\_\_\_\_  
Department Director

**Continued from Page 1**

**Background and Justification:** With the passing of the Cindy DeFilippo Floating Structure Ordinance in 2015, the County continues to experience a large number of anchored and moored floating structures in waters of the County. These floating structures pose navigational and safety hazards since they are not self-propelled and cannot quickly relocate during an emergency or weather event. The purpose of this amendment, in part, is to improve enforcement of the Ordinance by expanding the Ordinance's jurisdictional boundaries. The current Ordinance only prohibits the anchoring or mooring of floating structures in waters within the jurisdiction of the County or on County-owned property. These limited jurisdictional boundaries have made enforcement difficult for law enforcement, as the owners of the floating structures in violation of the Ordinance will simply relocate them just outside of those boundaries.

ORDINANCE NO. 2021 - \_\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY FLORIDA AMENDING CHAPTER 6, ARTICLE I, OF THE PALM BEACH COUNTY CODE OF ORDINANCES (ORDINANCE 2015-030); AMENDING SECTION 6-2 OF THE PALM BEACH COUNTY CODE (ANCHORING OR MOORING OF FLOATING STRUCTURES) AMENDING SECTION 6-2(B) OF THE PALM BEACH COUNTY CODE (APPLICABILITY); ADMENDING SECTION 6-2(C) OF THE PALM BEACH COUNTY CODE (DEFINITIONS); AMENDING SECTION 6-2(D) OF THE PALM BEACH COUNTY CODE (PROHIBITION OF FLOATING STRUCTURES); AMENDING SECTION 6-2(E) OF THE PALM BEACH COUNTY CODE (ENFORCEMENT;PENALTIES); ADDING SECTION 6-2(E) OF THE PALM BEACH COUNTY CODE (EXCEPTIONS); PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Board of County Commissioners is the legislative body of Palm Beach County, Florida; and

**WHEREAS**, Section 327.02(46), Florida Statutes, defines "Vessel" as "synonymous with boat as referenced in Section 1(b), Article VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water."; and

**WHEREAS**, Section 327.02(14), Florida Statutes, defines "floating structure" as "a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes, but is not limited to, an entity used as a residence, place of business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such."; and

**WHEREAS**, Section 327.02(14), Florida Statutes, provides that "floating structures" are expressly excluded from the definition of the term "vessel" as defined in Section 327.02(46), Florida Statutes; and

**WHEREAS**, 327.02(14), Florida Statutes, provides that "Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from being classified as a floating structure."; and

**WHEREAS**, the Palm Beach County Board of County Commissioners (hereinafter the "Board") recognizes that the Supreme Court of the United States (hereinafter the

1 “Court”), pursuant *Lozman v. City of Riviera Beach*, 568 U.S. 115 (U.S. 2013), holds that  
2 an article (hereinafter “entity”) situated upon the water does not constitute a “vessel”  
3 within the meaning of 1 U.S.C.A. § 3 if “a[n objective] reasonable observer, looking to” its  
4 “physical characteristics and activities, would not consider it to be designed to any  
5 practical degree for carrying people or things on water.”; and

6 **WHEREAS**, the Court, by adopting the foregoing objective purposive test in that  
7 *Lozman* decision, eliminated consideration of the owner’s subjective intent in vessel  
8 status determinations; and

9 **WHEREAS**, the Board finds and recognizes that the Court, in that certain *Lozman*  
10 decision, held that the Petitioner’s floating home did not constitute a “vessel” within the  
11 meaning of said Act in view of that: (1) it was incapable of self-propulsion, (2) it had no  
12 rudder or other steering mechanism, (3) it had an unraked hull, (4) it had a rectangular  
13 bottom, (5) it had a draft of only 10 inches below water, (6) its infrequency of past  
14 movement (based upon the fact that, prior to its in rem arrest, it had traveled by tow over  
15 water only on four occasions over a 7-year period), (7) it could not be moved without  
16 dangerously swinging side-to-side (based upon the fact that when it had been towed, it  
17 had required a second boat to follow it from behind to prevent it from swinging  
18 dangerously side-to-side), (8) it had no special capacity to generate or store electricity,  
19 (9) its similarity to land-based residences (based upon the fact that its room looked like  
20 ordinary non-maritime living quarters), (10) it had ordinary windows and unsealed French  
21 doors rather than watertight portholes, and (11) it had no other feature that might suggest  
22 a design to transport over water anything other than its own furnishings and related  
23 personal effects; and

24 **WHEREAS**, the Board has identified that it has become an increasingly common  
25 practice to moor, anchor, or otherwise affix floating structures over or otherwise upon  
26 waters included within the territorial jurisdiction of the State of Florida and Palm Beach  
27 Waters of the County, including: (1) anchoring, mooring, or otherwise affixing floating  
28 structures to unpermitted, unauthorized, or otherwise unlawful objects lying at or near the  
29 bottom of said waters including but not limited to upon sovereign submerged lands, (2)  
30 anchoring, mooring tying off, or otherwise affixing floating structures to publicly owned  
31 uplands and over or otherwise upon such waters and/or sovereign submerged lands, and  
32 (3) anchoring, mooring, tying off, or otherwise affixing floating structures to plant species  
33 protected by federal, state, and/or local law(s), rule(s), or regulation(s) pursuant to an

1 endangered, threatened, or species of special concern designation or listing and/or plant  
2 species (including, but not limited to, mangroves) whose defoliation or destruction is  
3 subject to special permitting requirements pursuant to the Florida Mangrove Trimming  
4 and Preservation Act; and

5       **WHEREAS**, the waters within Palm Beach County include, Lake Okeechobee,  
6 Lake Worth Lagoon, and all other navigable waters, all of which are environmentally  
7 sensitive aquatic habitat; and

8       **WHEREAS**, the Board finds that floating structures in the County commonly: (1)  
9 contain greywater and/or blackwater discharge facilities such as washrooms, showers,  
10 toilets, latrines, and/or outhouses, (2) do not contain a bilge pump(s), (3) do not contain  
11 a marine sanitation device(s), (4) hold unsecured or poorly contained stored fuel(s) and  
12 other potentially dangerous and/or hazardous products and materials such as propane  
13 tanks and furniture, (5) contain living quarters and/or recreational areas, (6) are utilized  
14 for the purpose of storage and/or habitation, (7) do not have navigational lights, (8) do not  
15 feature identifying information which a local, state, or federal government or enforcement  
16 agency may utilize to ascertain their owner(s) in a reasonably timely manner, (9) are  
17 rafted up to larger “primary” vessels or to larger “primary” floating structures, (10) do not  
18 securely hold on anchor, (11) are not built to any manufacturing standard(s) and/or  
19 building code(s), (12) are unauthorized or unlawfully anchored or moored upon sovereign  
20 submerged lands, (13) are abandoned, and (14) lack means of propulsion necessary to  
21 quickly relocate in advance of or during extreme weather events or other emergency  
22 events; and

23       **WHEREAS**, floating structures within the territorial jurisdiction of the State of  
24 Florida and Waters of the County may pose a significant threat to the environment, human  
25 health, and navigational safety through the potential to discharge sewage, oil, or  
26 hazardous substances into the marine environment; physical damage to surrounding  
27 ecosystems; the proliferation of marine debris; and the inability to quickly locate an owner  
28 during times of emergency, to have the floating structure timely removed; and

29       **WHEREAS**, neither the United States nor the State of Florida have preempted the  
30 several states or local governments from legislating in the field of floating structure  
31 regulation; and

1           **WHEREAS**, Section 327.60(3), Florida Statutes, provides that local governments  
2 are not prohibited from the enacting or enforcing regulations that prohibit or restrict the  
3 mooring or anchoring of floating structures; and

4           **WHEREAS**, Section 1(g), Article VIII, of the Florida Constitution, vests the Board  
5 with the authority to enact countywide ordinances not inconsistent with general law except  
6 where the County's charter determines which shall prevail in the event of a conflict  
7 between county and municipal ordinances; and

8           **WHEREAS**, Section 192.001(17), Florida Statutes, provides, in pertinent part, that,  
9 "[a] floating structure is expressly included as a type of tangible personal property."; and

10          **WHEREAS**, under Florida law, there is no recognized common law, constitutional,  
11 or statutory littoral or riparian right to anchor, moor, or otherwise indefinitely or  
12 permanently affix or situate a floating structure upon or over waters included within the  
13 territorial jurisdiction of the State Florida, or upon or over Waters of the County, including  
14 but not limited to upon sovereign submerged lands; and

15          **WHEREAS**, the Board finds that this Ordinance is necessary to advance the  
16 County's public health, safety, and welfare to protect the natural environment within the  
17 County.

18          **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**  
19 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA that:**

20          **Section 1. SECTION 6-2(b), APPLICABILITY, is amended, as follows:**

21          This Ordinance shall be applicable within the incorporated and unincorporated areas of  
22 the County, ~~and on all property owned by the County, including all submerged lands.~~  
23 unless a municipality opts out or adopts an ordinance in conflict, in which case this  
24 Ordinance shall be effective to the extent not in conflict with the municipal ordinance.

25          **Section 2. SECTION 6-2(c), DEFINITIONS, is amended as follows:**

26          ~~"Anchor" means the act of temporarily securing a floating structure in the water by~~  
27 ~~means of an anchor or other device and associated tackle that is carried on the floating~~  
28 ~~structure and cast or dropped overboard.~~

29          "Anchor" shall mean the use of traditional ground tackle, typically including an  
30 anchor, anchor chain, and line appurtenant to a floating structure and used to hold a  
31 floating structure in place.

32          "Barge" shall mean that term as it is defined at Section 327.02, Florida Statutes,  
33 as may be amended.

1 “Expressly Permit” means express authorization of both, all material components  
2 comprising the floating structure itself, and of the placement or situation of that floating  
3 structure in its specific configuration, length, size, and location, by all federal, state, and  
4 local government agencies pursuant to issuance of a written order granting, or granting  
5 with conditions, a written application to so construct and place or situate that floating  
6 structure.

7 “Floating Structure” means a floating entity, with or without accommodations built  
8 thereon, which is not primarily used as a means of transportation on water but which  
9 serves purposes or provides services typically associated with a structure or other  
10 improvement to real property. The term includes, but is not limited to, an entity used as  
11 a residence, place of business or office with public access; a hotel or motel; a restaurant  
12 or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining  
13 platform, dredge, dragline, or similar facility or entity represented as such. Floating  
14 structures are expressly excluded from the definition of the term “vessel” as defined in  
15 Section 327.02, Florida Statutes, as may be amended. Incidental movement upon water  
16 or resting partially or entirely on the bottom does not, in and of itself, preclude an entity  
17 from classification as a floating structure. Registration of the entity as a vessel in  
18 accordance with Chapter 327, Florida Statutes, shall not preclude an entity from  
19 classification as a floating structure. In the event of a dispute as to whether an entity  
20 constitutes a floating structure versus a vessel, such dispute shall be exclusively  
21 determined under a preponderance of the evidence standard, by analyzing whether: (1)  
22 it is incapable of self-propulsion, (2) it does not have a rudder or other steering  
23 mechanism, (3) it does not have a raked hull, (4) it has a rectangular or a square bottom,  
24 (5) its draft is not comparable to the drafts of vessels of similar physical size, (6) its  
25 documented past geographical movement is infrequent, (7) it cannot be moved over  
26 meaningful distances without dangerously or hazardously swinging from side-to-side, (8)  
27 it does not have a (lawful) capacity to generate or store electricity, (9) it does not have a  
28 bilge pump(s), (10) it does not have an approved marine sanitation device(s), (11) its  
29 above water surface area(s) bear similarity to the interior or exterior of a land-based  
30 residential or commercial structure, (12) it has ordinary windows, open doorways, or  
31 unsealed doors, (13) it does not have any other physical features that might suggest to  
32 an objective reasonable observer a design to transport over water anything other than its  
33 own furnishings and related personal effects, and (14) it is not titled and registered as a



1 vessel. Payment of a tangible personal property tax regarding the entity in question or  
2 issuance or receipt of a tax exemption thereto, pursuant to Section 192.001(17), Florida  
3 Statutes, as may be amended, shall constitute prima facie evidence that the entity in  
4 question constitutes a floating structure under this Ordinance.

5 “Houseboat” means that term as it is defined at Section 327.02, Florida Statutes,  
6 as may be amended.

7 “Jackup Rig” means a self-elevating unit that is a type of mobile platform that  
8 consists of a buoyant hull fitted with a number of movable legs, capable of raising its hull  
9 over the surface of the sea.

10 “Lawfully Moored” means moored to a mooring ball, mooring buoy, or dock when  
11 such mooring is authorized under federal, state, and/or local law(s) and has received all  
12 required federal, state, and local permits and approvals to so moor.

13 “Live-Aboard Vessel” means that term as it is defined at Section 327.02, Florida  
14 Statutes, as may be amended.

15 “Marina” means that term as it is defined at Section 327.02, Florida Statutes, as  
16 may be amended.

17 “Marine Facility” means an accessory building or structure which is used to take a  
18 boat into or out of a water body, to moor, to berth, or to store a vessel or floating structure,  
19 but shall not include any building used for human habitation or any boat service, repair or  
20 sales facility.

21 “Moor” means the act of securing a floating structure in the water by means of a  
22 permanent or semi-permanent mooring system affixed to the bottom of the water body.  
23 As used in this Ordinance, to moor or a mooring shall include other meanings of mooring,  
24 such as tying off a floating structure to upland vegetation or to pilings, posts, or stakes.

25 “Private Mooring” means the act of securing a floating structure in the water by  
26 means of a permanent or semi-permanent mooring system affixed to the bottom of the  
27 water body where the bottom is owned by a private person or entity that is not the local,  
28 state, or federal government.

29 “Public Mooring Field” means an area within a public body of water where the  
30 public can legally secure their floating structure to a mooring buoy that is attached to the  
31 bottom of the water body with a permanent anchor.

32 “Vessel” means that term as it is defined at Section 327.02, Florida Statutes, as  
33 may be amended.

1 “Water Column and Water(s)” shall mean the vertical extent of water, including the  
2 surface thereof, above an area of submerged land, regardless of such land’s public or  
3 private ownership.

4 “Waters of the County” means all portions of those public waters, up to and  
5 including the mean high water mark, located within the geographic boundary limits of  
6 Palm Beach County, which waters include waters within the jurisdictional boundaries of  
7 a municipality and waters within the jurisdiction of the state, including, but not limited to,  
8 all navigable and non-navigable waterways, canals, lagoons, bayous, bays, rivers, lakes,  
9 streams, springs, impoundments, and all other bodies of water, including fresh, brackish,  
10 saline, tidal surface, or underground, and including surface waters created by the removal  
11 of soil from uplands, but excluding any area preempted by law.

12 **Section 3. SECTION 6-2(d), PROHIBITION OF FLOATING STRUCTURES, is**  
13 **amended as follows:**

14 ~~No floating structure shall be anchored or moored in the waters lying within the jurisdiction~~  
15 ~~of the County or on any property owned by the County, including any submerged lands.~~  
16 ~~Notwithstanding the foregoing, nothing in this Ordinance shall prohibit a floating structure~~  
17 ~~from anchoring or mooring at a public or private marina within a berth or slip, a public or~~  
18 ~~private dock with permission from the property owner or on privately owned property,~~  
19 ~~including submerged lands.~~

20 (a) It shall be unlawful for any person to anchor, moor, tie off, or otherwise affix a  
21 floating structure upon, or to, Waters of the County.

22 (b) It shall be unlawful for any person to anchor, moor, tie off, or otherwise affix a  
23 floating structure to publically owned uplands.

24 (c) It shall be unlawful for any person, within waters or submerged lands included  
25 within Waters of the County, to anchor, moor, tie off, or otherwise affix a floating  
26 structure to one or more plant species protected by federal, state, or local law(s),  
27 rule(s), or regulation(s) pursuant to an endangered, threatened, or species of  
28 special concern designation or listing.

29 (d) It shall be unlawful for any person, within waters or submerged lands included  
30 within Waters of the County, to anchor, moor, tie off, or otherwise affix a floating  
31 structure to one or more plant species (including, but not limited to, mangroves)  
32 whose defoliation or destruction is subject to special permitting requirements under

1        the Florida Mangrove Trimming and Preservation Act, codified at Sections  
2        403.9321-403.9333, Florida Statutes, as may be amended or supplemented.

3        (e) It shall be unlawful for any person to place or maintain a floating structure in  
4        violation of this Ordinance.

5        (f) It shall be unlawful for any person to proximately cause or proximately contribute  
6        to the placement or maintenance of a floating structure in violation of this  
7        Ordinance.

8        (g) It shall be unlawful for any person to store items upon, occupy, or reside upon a  
9        floating structure within waters or submerged lands included within waters of the  
10       County or publically owned uplands.

11       **Section 4. SECTION 6-2(e) is moved to 6-2(f) and SECTION 6-2(e), EXCEPTIONS,**  
12       **is created as follows:**

13       (a) This Ordinance shall not apply to floating structures lawfully moored in a permitted  
14       public mooring field.

15       (b) This Ordinance shall not apply to floating structures lawfully moored in a permitted  
16       private mooring. It is the responsibility of the owner(s) or proprietor(s) of a private  
17       mooring facility to ensure that floating structures moored thereto comply with all  
18       applicable local, state, and federal proprietary, safety, environmental, and pollution  
19       control laws, rules, and regulations.

20       (c) This Ordinance shall not apply to floating structures that are lawfully moored or  
21       anchored above privately owned submerged lands.

22       (d) This Ordinance shall not apply to floating structures that are part of a permitted  
23       construction project.

24       (e) This Ordinance shall not apply to a floating structure that federal, state, and local  
25       proprietary laws and regulations expressly permit, when such floating structure has  
26       received all such required federal, state, and local permits and approvals (such as  
27       a floating boat lift or floating vessel platform permitted by the Florida Department  
28       of Environmental Protection pursuant to Chapter 403, Florida Statutes, and  
29       Chapter 62, Florida Administrative Code, as may be amended, and by all  
30       applicable federal permitting agencies), and is in compliance with all conditions of  
31       said permits and approvals.

32       (f) This Ordinance shall not apply to government waterway markers (such as, for  
33       example, regulatory markers and aids to navigation (the latter including, but not

1        limited to, channel markers, danger markers, information markers, and aids of no  
2        lateral significance)).

3        (g) This Ordinance shall not apply to a waterway marker when that marker is both  
4        authorized under federal, state, and local law(s), and when its owner(s) and  
5        permittee(s) have received all required federal, state, and local permits and  
6        approvals to so place or maintain that waterway marker.

7        (h) This Ordinance shall not apply to a floating structure moored or docked at a lawfully  
8        established marina or marine facility. It is the responsibility of the owner(s) or  
9        proprietor(s) of lawfully established marinas and marine facilities to ensure that  
10       floating structures moored thereto comply with all applicable local, state, and  
11       federal proprietary, safety, environmental, and pollution control laws, rules, and  
12       regulations.

13       **Section 6. SECTION 6-2(f), which was previously SECTION 6-2(e),**  
14       **ENFORCEMENT; PENALTIES, is amended as follows:**

15       (a) Any law enforcement officer or Code Enforcement Officer acting within his/her  
16       jurisdiction is authorized to enforce this Ordinance.

17       (b) The violation of any provision of this Ordinance may be enforced pursuant to F.S.  
18       Section 125.69(1), Florida Statutes, as may be amended, and shall be punishable  
19       by a fine not to exceed five hundred dollars (\$500.00) per day, by imprisonment in  
20       the county jail not to exceed sixty (60) days, or by both such fines and  
21       imprisonment.

22       (c) The violation of any provision of this Ordinance may be enforced pursuant to the  
23       procedures and penalties of F.S. Section 162.01, Florida Statutes, et seq. and  
24       Article 10 of the Palm Beach County Unified Land Development Code, as may be  
25       amended.

26       (d) The provisions of this Ordinance may be enforced pursuant to Chapter 8.5, Article  
27       II, of the Palm Beach County Code (the "Code Enforcement Citation Ordinance of  
28       Palm Beach County, Florida"), as may be amended, and shall be punishable by a  
29       fine not to exceed five hundred dollars (\$500.00).

30       (e) In addition to the sanctions contained herein, ~~the County shall be authorized to~~  
31       take this Ordinance may be enforced through any other appropriate legal action,  
32       including, but not limited to, seeking cease and desist orders, instituting other  
33       administrative actions, and requesting temporary and permanent injunctions to

1 enforce the provisions of this Ordinance. It is the purpose of this Ordinance to  
2 provide additional and cumulative remedies.

3 (f) Each day a violation of this Ordinance occurs shall constitute a separate offense  
4 and be punishable as such.

5 (g) Authorized enforcement officers may remove or destroy a floating structure found  
6 in violation of this Ordinance, in accordance with the following:

7 1. When a floating structure is found to be in violation of this Ordinance, notice  
8 shall be placed upon such floating structure notifying such owner(s),  
9 whether known or unknown, that the floating structure is in violation of this  
10 Ordinance. Owner(s) shall be given 21 calendar days from the date of the  
11 posting of the notice to remove the floating structure, except when there is  
12 an impending tropical system, in which case an owner(s) shall be given 24  
13 hours from the date and time of the posting of the notice to remove the  
14 floating structure. Such notice shall be substantially in the following form:

15 "NOTICE OF ILLEGALLY ANCHORED OR MOORED FLOATING  
16 STRUCTURE

17 Palm Beach County Ordinance X prohibits the anchoring, mooring, tying off,  
18 or otherwise affixing of floating structures except when lawfully moored in a  
19 permitted public mooring field or permitted private mooring, or as otherwise  
20 permitted under the Ordinance. This floating structure is currently in  
21 violation of Ordinance X and is subject to enforcement under the Ordinance.  
22 You are hereby notified that you must remove the above-described floating  
23 structure by no later than \_\_\_\_\_, failing in which it will be removed or  
24 destroyed and you will be responsible for expenses including but not limited  
25 to all costs of removal, storage, disposal, and fines, as applicable.

26 2. The "NOTICE OF ILLEGALLY ANCHORED OR MOORED FLOATING  
27 STRUCTURE" as provided in subsection (g)(1) shall also be mailed by First-  
28 Class mail to the owner of the floating structure, if known. Evidence that an  
29 attempt has been made to mail such notice, if the owner is known, together  
30 with proof of posting, shall be sufficient to show that the notice requirements  
31 of this part have been met, without regard to whether or not the alleged  
32 violator actually received such notice.

1 (h) All owners, part owners, joint owners, tenants-in-common, tenants in partnership,  
2 joint tenants, tenants by the entirety, lessees, sub-lessees, assignees, sub-  
3 assignees, and holders of legal or beneficial title to or interest in a floating structure  
4 that is in violation of this Ordinance, shall be jointly-and-severally liable with  
5 respect to any legal or equitable judgment or relief obtained in enforcing this  
6 Ordinance.

7 **Section 7. REPEAL OF LAWS IN CONFLICT:**

8 All local laws and ordinances in conflict with any provisions of this Ordinance are  
9 hereby repealed to the extent of such conflict.

10 **Section 8. SEVERABILITY:**

11 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is  
12 for any reason held by a Court of competent jurisdiction to be unconstitutional,  
13 inoperative, or void, such holding shall not affect the remainder of this Ordinance.

14 **Section 9. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

15 The provisions of this Ordinance shall become and be made a part of the Palm  
16 Beach County Code. The sections of this Ordinance may be renumbered or relettered  
17 to accomplish such, and the word ordinance may be changed to section, article, or  
18 other appropriate word.

19 **Section 10. CAPTIONS:**

20 The captions, section headings, and section designations used in this Ordinance  
21 are for convenience only and shall have no effect on the interpretation of the provisions  
22 of this Ordinance.

23 **Section 11. EFFECTIVE DATE:**

24 The provisions of this Ordinance shall become effective upon filing with the  
25 Department of State.

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ORDINANCE NO. 2021 - \_\_\_\_\_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY FLORIDA AMENDING CHAPTER 6, ARTICLE I, OF THE PALM BEACH COUNTY CODE OF ORDINANCES (ORDINANCE 2015-030); AMENDING SECTION 6-2 OF THE PALM BEACH COUNTY CODE (ANCHORING OR MOORING OF FLOATING STRUCTURES) AMENDING SECTION 6-2(B) OF THE PALM BEACH COUNTY CODE (APPLICABILITY); ADMENDING SECTION 6-2(C) OF THE PALM BEACH COUNTY CODE (DEFINITIONS); AMENDING SECTION 6-2(D) OF THE PALM BEACH COUNTY CODE (PROHIBITION OF FLOATING STRUCTURES); AMENDING SECTION 6-2(E) OF THE PALM BEACH COUNTY CODE (ENFORCEMENT;PENALTIES); ADDING SECTION 6-2(E) OF THE PALM BEACH COUNTY CODE (EXCEPTIONS); PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Board of County Commissioners is the legislative body of Palm Beach County, Florida; and

**WHEREAS**, Section 327.02(46), Florida Statutes, defines "Vessel" as "synonymous with boat as referenced in Section 1(b), Article VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water."; and

**WHEREAS**, Section 327.02(14), Florida Statutes, defines "floating structure" as "a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes, but is not limited to, an entity used as a residence, place of business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such."; and

**WHEREAS**, Section 327.02(14), Florida Statutes, provides that "floating structures" are expressly excluded from the definition of the term "vessel" as defined in Section 327.02(46), Florida Statutes; and

**WHEREAS**, 327.02(14), Florida Statutes, provides that "Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from being classified as a floating structure."; and

**WHEREAS**, the Palm Beach County Board of County Commissioners (hereinafter the "Board") recognizes that the Supreme Court of the United States (hereinafter the



1 “Court”), pursuant *Lozman v. City of Riviera Beach*, 568 U.S. 115 (U.S. 2013), holds that  
2 an article (hereinafter “entity”) situated upon the water does not constitute a “vessel”  
3 within the meaning of 1 U.S.C.A. § 3 if “a[n objective] reasonable observer, looking to” its  
4 “physical characteristics and activities, would not consider it to be designed to any  
5 practical degree for carrying people or things on water.”; and

6 **WHEREAS**, the Court, by adopting the foregoing objective purposive test in that  
7 *Lozman* decision, eliminated consideration of the owner’s subjective intent in vessel  
8 status determinations; and

9 **WHEREAS**, the Board finds and recognizes that the Court, in that certain *Lozman*  
10 decision, held that the Petitioner’s floating home did not constitute a “vessel” within the  
11 meaning of said Act in view of that: (1) it was incapable of self-propulsion, (2) it had no  
12 rudder or other steering mechanism, (3) it had an unraked hull, (4) it had a rectangular  
13 bottom, (5) it had a draft of only 10 inches below water, (6) its infrequency of past  
14 movement (based upon the fact that, prior to its in rem arrest, it had traveled by tow over  
15 water only on four occasions over a 7-year period), (7) it could not be moved without  
16 dangerously swinging side-to-side (based upon the fact that when it had been towed, it  
17 had required a second boat to follow it from behind to prevent it from swinging  
18 dangerously side-to-side), (8) it had no special capacity to generate or store electricity,  
19 (9) its similarity to land-based residences (based upon the fact that its room looked like  
20 ordinary non-maritime living quarters), (10) it had ordinary windows and unsealed French  
21 doors rather than watertight portholes, and (11) it had no other feature that might suggest  
22 a design to transport over water anything other than its own furnishings and related  
23 personal effects; and

24 **WHEREAS**, the Board has identified that it has become an increasingly common  
25 practice to moor, anchor, or otherwise affix floating structures over or otherwise upon  
26 waters included within the territorial jurisdiction of the State of Florida and Palm Beach  
27 Waters of the County, including: (1) anchoring, mooring, or otherwise affixing floating  
28 structures to unpermitted, unauthorized, or otherwise unlawful objects lying at or near the  
29 bottom of said waters including but not limited to upon sovereign submerged lands, (2)  
30 anchoring, mooring tying off, or otherwise affixing floating structures to publicly owned  
31 uplands and over or otherwise upon such waters and/or sovereign submerged lands, and  
32 (3) anchoring, mooring, tying off, or otherwise affixing floating structures to plant species  
33 protected by federal, state, and/or local law(s), rule(s), or regulation(s) pursuant to an

1 endangered, threatened, or species of special concern designation or listing and/or plant  
2 species (including, but not limited to, mangroves) whose defoliation or destruction is  
3 subject to special permitting requirements pursuant to the Florida Mangrove Trimming  
4 and Preservation Act; and

5       **WHEREAS**, the waters within Palm Beach County include, Lake Okeechobee,  
6 Lake Worth Lagoon, and all other navigable waters, all of which are environmentally  
7 sensitive aquatic habitat; and

8       **WHEREAS**, the Board finds that floating structures in the County commonly: (1)  
9 contain greywater and/or blackwater discharge facilities such as washrooms, showers,  
10 toilets, latrines, and/or outhouses, (2) do not contain a bilge pump(s), (3) do not contain  
11 a marine sanitation device(s), (4) hold unsecured or poorly contained stored fuel(s) and  
12 other potentially dangerous and/or hazardous products and materials such as propane  
13 tanks and furniture, (5) contain living quarters and/or recreational areas, (6) are utilized  
14 for the purpose of storage and/or habitation, (7) do not have navigational lights, (8) do not  
15 feature identifying information which a local, state, or federal government or enforcement  
16 agency may utilize to ascertain their owner(s) in a reasonably timely manner, (9) are  
17 rafted up to larger “primary” vessels or to larger “primary” floating structures, (10) do not  
18 securely hold on anchor, (11) are not built to any manufacturing standard(s) and/or  
19 building code(s), (12) are unauthorized or unlawfully anchored or moored upon sovereign  
20 submerged lands, (13) are abandoned, and (14) lack means of propulsion necessary to  
21 quickly relocate in advance of or during extreme weather events or other emergency  
22 events; and

23       **WHEREAS**, floating structures within the territorial jurisdiction of the State of  
24 Florida and Waters of the County may pose a significant threat to the environment, human  
25 health, and navigational safety through the potential to discharge sewage, oil, or  
26 hazardous substances into the marine environment; physical damage to surrounding  
27 ecosystems; the proliferation of marine debris; and the inability to quickly locate an owner  
28 during times of emergency, to have the floating structure timely removed; and

29       **WHEREAS**, neither the United States nor the State of Florida have preempted the  
30 several states or local governments from legislating in the field of floating structure  
31 regulation; and

1       **WHEREAS**, Section 327.60(3), Florida Statutes, provides that local governments  
2 are not prohibited from the enacting or enforcing regulations that prohibit or restrict the  
3 mooring or anchoring of floating structures; and

4       **WHEREAS**, Section 1(g), Article VIII, of the Florida Constitution, vests the Board  
5 with the authority to enact countywide ordinances not inconsistent with general law except  
6 where the County's charter determines which shall prevail in the event of a conflict  
7 between county and municipal ordinances; and

8       **WHEREAS**, Section 192.001(17), Florida Statutes, provides, in pertinent part, that,  
9 "[a] floating structure is expressly included as a type of tangible personal property."; and

10       **WHEREAS**, under Florida law, there is no recognized common law, constitutional,  
11 or statutory littoral or riparian right to anchor, moor, or otherwise indefinitely or  
12 permanently affix or situate a floating structure upon or over waters included within the  
13 territorial jurisdiction of the State Florida, or upon or over Waters of the County, including  
14 but not limited to upon sovereign submerged lands; and

15       **WHEREAS**, the Board finds that this Ordinance is necessary to advance the  
16 County's public health, safety, and welfare to protect the natural environment within the  
17 County.

18       **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**  
19 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA that:**

20       **Section 1. SECTION 6-2(b), APPLICABILITY, is amended, as follows:**

21       This Ordinance shall be applicable within the incorporated and unincorporated areas of  
22 the County, ~~and on all property owned by the County, including all submerged lands.~~  
23 unless a municipality opts out or adopts an ordinance in conflict, in which case this  
24 Ordinance shall be effective to the extent not in conflict with the municipal ordinance.

25       **Section 2. SECTION 6-2(c), DEFINITIONS, is amended as follows:**

26       ~~"Anchor" means the act of temporarily securing a floating structure in the water by~~  
27 ~~means of an anchor or other device and associated tackle that is carried on the floating~~  
28 ~~structure and cast or dropped overboard.~~

29       "Anchor" shall mean the use of traditional ground tackle, typically including an  
30 anchor, anchor chain, and line appurtenant to a floating structure and used to hold a  
31 floating structure in place.

32       "Barge" shall mean that term as it is defined at Section 327.02, Florida Statutes,  
33 as may be amended.

1 “Expressly Permit” means express authorization of both, all material components  
2 comprising the floating structure itself, and of the placement or situation of that floating  
3 structure in its specific configuration, length, size, and location, by all federal, state, and  
4 local government agencies pursuant to issuance of a written order granting, or granting  
5 with conditions, a written application to so construct and place or situate that floating  
6 structure.

7 “Floating Structure” means a floating entity, with or without accommodations built  
8 thereon, which is not primarily used as a means of transportation on water but which  
9 serves purposes or provides services typically associated with a structure or other  
10 improvement to real property. The term includes, but is not limited to, an entity used as  
11 a residence, place of business or office with public access; a hotel or motel; a restaurant  
12 or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining  
13 platform, dredge, dragline, or similar facility or entity represented as such. Floating  
14 structures are expressly excluded from the definition of the term “vessel” as defined in  
15 Section 327.02, Florida Statutes, as may be amended. Incidental movement upon water  
16 or resting partially or entirely on the bottom does not, in and of itself, preclude an entity  
17 from classification as a floating structure. Registration of the entity as a vessel in  
18 accordance with Chapter 327, Florida Statutes, shall not preclude an entity from  
19 classification as a floating structure. In the event of a dispute as to whether an entity  
20 constitutes a floating structure versus a vessel, such dispute shall be exclusively  
21 determined under a preponderance of the evidence standard, by analyzing whether: (1)  
22 it is incapable of self-propulsion, (2) it does not have a rudder or other steering  
23 mechanism, (3) it does not have a raked hull, (4) it has a rectangular or a square bottom,  
24 (5) its draft is not comparable to the drafts of vessels of similar physical size, (6) its  
25 documented past geographical movement is infrequent, (7) it cannot be moved over  
26 meaningful distances without dangerously or hazardously swinging from side-to-side, (8)  
27 it does not have a (lawful) capacity to generate or store electricity, (9) it does not have  
28 a bilge pump(s), (10) it does not have an approved marine sanitation device(s), (11) its  
29 above water surface area(s) bear similarity to the interior or exterior of a land-based  
30 residential or commercial structure, (12) it has ordinary windows, open doorways, or  
31 unsealed doors, (13) it does not have any other physical features that might suggest to  
32 an objective reasonable observer a design to transport over water anything other than its  
33 own furnishings and related personal effects, and (14) it is not titled and registered as a

1 vessel. Payment of a tangible personal property tax regarding the entity in question or  
2 issuance or receipt of a tax exemption thereto, pursuant to Section 192.001(17), Florida  
3 Statutes, as may be amended, shall constitute prima facie evidence that the entity in  
4 question constitutes a floating structure under this Ordinance.

5 “Houseboat” means that term as it is defined at Section 327.02, Florida Statutes,  
6 as may be amended.

7 “Jackup Rig” means a self-elevating unit that is a type of mobile platform that  
8 consists of a buoyant hull fitted with a number of movable legs, capable of raising its hull  
9 over the surface of the sea.

10 “Lawfully Moored” means moored to a mooring ball, mooring buoy, or dock when  
11 such mooring is authorized under federal, state, and/or local law(s) and has received all  
12 required federal, state, and local permits and approvals to so moor.

13 “Live-Aboard Vessel” means that term as it is defined at Section 327.02, Florida  
14 Statutes, as may be amended.

15 “Marina” means that term as it is defined at Section 327.02, Florida Statutes, as  
16 may be amended.

17 “Marine Facility” means an accessory building or structure which is used to take a  
18 boat into or out of a water body, to moor, to berth, or to store a vessel or floating structure,  
19 but shall not include any building used for human habitation or any boat service, repair or  
20 sales facility.

21 “Moor” means the act of securing a floating structure in the water by means of a  
22 permanent or semi-permanent mooring system affixed to the bottom of the water body.  
23 As used in this Ordinance, to moor or a mooring shall include other meanings of mooring,  
24 such as tying off a floating structure to upland vegetation or to pilings, posts, or stakes.

25 “Private Mooring” means the act of securing a floating structure in the water by  
26 means of a permanent or semi-permanent mooring system affixed to the bottom of the  
27 water body where the bottom is owned by a private person or entity that is not the local,  
28 state, or federal government.

29 “Public Mooring Field” means an area within a public body of water where the  
30 public can legally secure their floating structure to a mooring buoy that is attached to the  
31 bottom of the water body with a permanent anchor.

32 “Vessel” means that term as it is defined at Section 327.02, Florida Statutes, as  
33 may be amended.

1 “Water Column and Water(s)” shall mean the vertical extent of water, including the  
2 surface thereof, above an area of submerged land, regardless of such land’s public or  
3 private ownership.

4 “Waters of the County” means all portions of those public waters, up to and  
5 including the mean high water mark, located within the geographic boundary limits of  
6 Palm Beach County, which waters include waters within the jurisdictional boundaries of  
7 a municipality and waters within the jurisdiction of the state, including, but not limited to,  
8 all navigable and non-navigable waterways, canals, lagoons, bayous, bays, rivers, lakes,  
9 streams, springs, impoundments, and all other bodies of water, including fresh, brackish,  
10 saline, tidal surface, or underground, and including surface waters created by the removal  
11 of soil from uplands, but excluding any area preempted by law.

12 **Section 3. SECTION 6-2(d), PROHIBITION OF FLOATING STRUCTURES, is**  
13 **amended as follows:**

14 ~~No floating structure shall be anchored or moored in the waters lying within the jurisdiction~~  
15 ~~of the County or on any property owned by the County, including any submerged lands.~~  
16 ~~Notwithstanding the foregoing, nothing in this Ordinance shall prohibit a floating structure~~  
17 ~~from anchoring or mooring at a public or private marina within a berth or slip, a public or~~  
18 ~~private dock with permission from the property owner or on privately owned property,~~  
19 ~~including submerged lands.~~

20 (a) It shall be unlawful for any person to anchor, moor, tie off, or otherwise affix a  
21 floating structure upon, or to, Waters of the County.

22 (b) It shall be unlawful for any person to anchor, moor, tie off, or otherwise affix a  
23 floating structure to publically owned uplands.

24 (c) It shall be unlawful for any person, within waters or submerged lands included  
25 within Waters of the County, to anchor, moor, tie off, or otherwise affix a floating  
26 structure to one or more plant species protected by federal, state, or local law(s),  
27 rule(s), or regulation(s) pursuant to an endangered, threatened, or species of  
28 special concern designation or listing.

29 (d) It shall be unlawful for any person, within waters or submerged lands included  
30 within Waters of the County, to anchor, moor, tie off, or otherwise affix a floating  
31 structure to one or more plant species (including, but not limited to, mangroves)  
32 whose defoliation or destruction is subject to special permitting requirements under

1        the Florida Mangrove Trimming and Preservation Act, codified at Sections  
2        403.9321-403.9333, Florida Statutes, as may be amended or supplemented.

3        (e) It shall be unlawful for any person to place or maintain a floating structure in  
4        violation of this Ordinance.

5        (f) It shall be unlawful for any person to proximately cause or proximately contribute  
6        to the placement or maintenance of a floating structure in violation of this  
7        Ordinance.

8        (g) It shall be unlawful for any person to store items upon, occupy, or reside upon a  
9        floating structure within waters or submerged lands included within waters of the  
10       County or publically owned uplands.

11       **Section 4. SECTION 6-2(e) is moved to 6-2(f) and SECTION 6-2(e), EXCEPTIONS,**  
12       **is created as follows:**

13       (a) This Ordinance shall not apply to floating structures lawfully moored in a permitted  
14       public mooring field.

15       (b) This Ordinance shall not apply to floating structures lawfully moored in a permitted  
16       private mooring. It is the responsibility of the owner(s) or proprietor(s) of a private  
17       mooring facility to ensure that floating structures moored thereto comply with all  
18       applicable local, state, and federal proprietary, safety, environmental, and pollution  
19       control laws, rules, and regulations.

20       ~~(b)~~(c)    This Ordinance shall not apply to floating structures that are lawfully moored  
21       or anchored above privately owned submerged lands.

22       ~~(c)~~(d)    This Ordinance shall not apply to floating structures that are part of a  
23       permitted construction project.

24       ~~(d)~~(e)    This Ordinance shall not apply to a floating structure that federal, state, and  
25       local proprietary laws and regulations expressly permit, when such floating  
26       structure has received all such required federal, state, and local permits and  
27       approvals (such as a floating boat lift or floating vessel platform permitted by the  
28       Florida Department of Environmental Protection pursuant to Chapter 403, Florida  
29       Statutes, and Chapter 62, Florida Administrative Code, as may be amended, and  
30       by all applicable federal permitting agencies), and is in compliance with all  
31       conditions of said permits and approvals.

32       ~~(e)~~(f)    This Ordinance shall not apply to government waterway markers (such as,  
33       for example, regulatory markers and aids to navigation (the latter including, but not

1 limited to, channel markers, danger markers, information markers, and aids of no  
2 lateral significance)).

3 ~~(f)~~(g) This Ordinance shall not apply to a waterway marker when that marker is  
4 both authorized under federal, state, and local law(s), and when its owner(s) and  
5 permittee(s) have received all required federal, state, and local permits and  
6 approvals to so place or maintain that waterway marker.

7 ~~(g)~~(h) This Ordinance shall not apply to a floating structure moored or docked at  
8 a lawfully established marina or marine facility. It is the responsibility of the  
9 owner(s) or proprietor(s) of lawfully established marinas and marine facilities to  
10 ensure that floating structures moored thereto comply with all applicable local,  
11 state, and federal proprietary, safety, environmental, and pollution control laws,  
12 rules, and regulations.

13 **Section 6. SECTION 6-2(f), which was previously SECTION 6-2(e),**  
14 **ENFORCEMENT; PENALTIES, is amended as follows:**

15 (a) Any law enforcement officer or Code Enforcement Officer acting within his/her  
16 jurisdiction is authorized to enforce this Ordinance.

17 (b) The violation of any provision of this Ordinance may be enforced pursuant to F.S.  
18 Section 125.69(1), Florida Statutes, as may be amended, and shall be punishable  
19 by a fine not to exceed five hundred dollars (\$500.00) per day, by imprisonment in  
20 the county jail not to exceed sixty (60) days, or by both such fines and  
21 imprisonment.

22 (c) The violation of any provision of this Ordinance may be enforced pursuant to the  
23 procedures and penalties of F.S. Section 162.01, Florida Statutes, et seq. and  
24 Article 10 of the Palm Beach County Unified Land Development Code, as may be  
25 amended.

26 (d) The provisions of this Ordinance may be enforced pursuant to Chapter 8.5, Article  
27 II, of the Palm Beach County Code (the "Code Enforcement Citation Ordinance of  
28 Palm Beach County, Florida"), as may be amended, and shall be punishable by a  
29 fine not to exceed five hundred dollars (\$500.00).

30 (e) In addition to the sanctions contained herein, ~~the County shall be authorized to~~  
31 ~~take this~~ Ordinance may be enforced through any other appropriate legal action,  
32 including, but not limited to, seeking cease and desist orders, instituting other  
33 administrative actions, and requesting temporary and permanent injunctions to



1 enforce the provisions of this Ordinance. It is the purpose of this Ordinance to  
2 provide additional and cumulative remedies.

3 (f) Each day a violation of this Ordinance occurs shall constitute a separate offense  
4 and be punishable as such.

5 (g) Authorized enforcement officers may remove or destroy a floating structure found  
6 in violation of this Ordinance, in accordance with the following:

7 1. When a floating structure is found to be in violation of this Ordinance, notice  
8 shall be placed upon such floating structure notifying such owner(s),  
9 whether known or unknown, that the floating structure is in violation of this  
10 Ordinance. Owner(s) shall be given 14-21 calendar days from the date of  
11 the posting of the notice to remove the floating structure, except when there  
12 is an impending tropical system, in which case an owner(s) shall be given  
13 24 hours from the date and time of the posting of the notice to remove the  
14 floating structure. Such notice shall be substantially in the following form:

15 “NOTICE OF ILLEGALLY ANCHORED OR MOORED FLOATING  
16 STRUCTURE

17 Palm Beach County Ordinance X prohibits the anchoring, mooring, tying off,  
18 or otherwise affixing of floating structures except when lawfully moored in a  
19 permitted public mooring field or permitted private mooring, or as otherwise  
20 permitted under the Ordinance. This floating structure is currently in  
21 violation of Ordinance X and is subject to enforcement under the Ordinance.  
22 You are hereby notified that you must remove the above-described floating  
23 structure by no later than \_\_\_\_\_, failing in which it will be removed or  
24 destroyed and you will be responsible for expenses including but not limited  
25 to all costs of removal, and storage, disposal, and fines, as applicable.

26 The floating structure will be maintained by \_\_\_\_\_ for a period of  
27 \_\_\_\_\_ days after removal and can be redeemed by contacting  
28 \_\_\_\_\_  
29 and paying expenses including but not limited to all costs of removal and  
30 storage, and fines, as applicable. Failure to redeem the floating structure  
31 by \_\_\_\_\_ will result in the floating structure being destroyed.”

32 2. The “NOTICE OF ILLEGALLY ANCHORED OR MOORED FLOATING  
33 STRUCTURE” as provided in subsection (g)(1) shall also be mailed by First-

1                   Class mail to the owner of the floating structure, if known. Evidence that an  
2                   attempt has been made to mail such notice, if the owner is known, together  
3                   with proof of posting, shall be sufficient to show that the notice requirements  
4                   of this part have been met, without regard to whether or not the alleged  
5                   violator actually received such notice.

6                   (h) All owners, part owners, joint owners, tenants-in-common, tenants in partnership,  
7                   joint tenants, tenants by the entirety, lessees, sub-lessees, assignees, sub-  
8                   assignees, and holders of legal or beneficial title to or interest in a floating structure  
9                   that is in violation of this Ordinance, shall be jointly-and-severally liable with  
10                  respect to any legal or equitable judgment or relief obtained in enforcing this  
11                  Ordinance.

12                  **Section 7. REPEAL OF LAWS IN CONFLICT:**

13                  All local laws and ordinances in conflict with any provisions of this Ordinance are  
14                  hereby repealed to the extent of such conflict.

15                  **Section 8. SEVERABILITY:**

16                  If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is  
17                  for any reason held by a Court of competent jurisdiction to be unconstitutional,  
18                  inoperative, or void, such holding shall not affect the remainder of this Ordinance.

19                  **Section 9. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

20                  The provisions of this Ordinance shall become and be made a part of the Palm  
21                  Beach County Code. The sections of this Ordinance may be renumbered or relettered  
22                  to accomplish such, and the word ordinance may be changed to section, article, or  
23                  other appropriate word.

24                  **Section 10. CAPTIONS:**

25                  The captions, section headings, and section designations used in this Ordinance  
26                  are for convenience only and shall have no effect on the interpretation of the provisions  
27                  of this Ordinance.

28                  **Section 11. EFFECTIVE DATE:**

29                  The provisions of this Ordinance shall become effective upon filing with the  
30                  Department of State.

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**APPROVED and ADOPTED** by the Board of County Commissioners of Palm Beach  
County, Florida, on this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

JOSEPH ABRUZZO, CLERK OF THE CIRCUIT COURT & COMPTROLLER	PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS
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By: _____ Deputy Clerk	By: _____ Dave Kerner, Mayor
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APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Scott A. Stone  
Assistant County Attorney

**EFFECTIVE DATE:** Filed with the Department of State on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_.

ORDINANCE NO. 2015- 030

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE KNOWN AS "THE CINDY DEFILIPPO FLOATING STRUCTURE ORDINANCE"; PROVIDING FOR A TITLE; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE PROHIBITION OF FLOATING STRUCTURES; PROVIDING FOR ENFORCEMENT; PENALTIES; PROVIDING FOR INCLUSION IN THE CODE ENFORCEMENT CITATION ORDINANCE OF PALM BEACH COUNTY, FLORIDA; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING CAPTIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the County has recently seen a rise in the anchoring and mooring of now water dependent floating structures in the waters of the County; and

WHEREAS, in 2014, one such floating structure broke free from its moorings during a storm and caused property damage to adjacent property; and

WHEREAS, anchoring or mooring of floating structures within the waters of Palm Beach County poses a special risk to persons and property as these structures are usually not self propelled and cannot be quickly relocated during weather events; and

WHEREAS, floating structures pose navigational hazards above and beyond those caused by vessels whose primary purpose is navigation; and

WHEREAS, floating structures generally serve purposes and provide services typically associated with land based structures and are more appropriately located on land or directly connected thereto where they can more easily connect to water, sewer and waste disposal facilities; and

WHEREAS, unregulated floating structures may preempt the customary water dependent uses and riparian rights of surface waters including but not limited to ingress, egress, boating, bathing and fishing, as provided Section 253.141, Florida Statutes; and

WHEREAS, prohibiting the anchoring or mooring of floating structures outside of privately owned property, marinas and docks is in accord with the policy of the state to limit activities on sovereign submerged lands to water dependent activities.

WHEREAS, the Board of County Commissioners of Palm Beach County finds that floating structures, other than those anchored or moored at privately owned property, a marina or dock, should be prohibited from anchoring or mooring in the waters within the jurisdiction of the County or on property owned by the County.

1           NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY  
2 COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

3

4 **Section 1. TITLE.**

5 This Ordinance shall be titled the Cindy DeFilippo Floating Structure Ordinance.

6

7 **Section 2. APPLICABILITY.**

8 This Ordinance shall be applicable within the unincorporated areas of the County and on all  
9 property owned by the County, including all submerged lands.

10 **Section 3. DEFINITIONS.**

11           “Anchor” means the act of temporarily securing a floating structure in the water by  
12 means of an anchor or other device and associated tackle that is carried on the floating structure  
13 and cast or dropped overboard.

14           “Floating structure” means a floating entity, with or without accommodations built  
15 thereon, which is not primarily used as a means of transportation on water but which serves  
16 purposes or provides services typically associated with a structure or other improvement to real  
17 property. The term includes, but is not limited to, an entity used as a residence, place of  
18 business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a  
19 meeting facility; a storage or parking facility; or similar facility or entity represented as such.  
20 Floating structures are expressly excluded from the definition of the term “vessel” as defined in  
21 Section 327.02, Florida Statutes. Incidental movement upon water or resting partially or  
22 entirely on the bottom does not, in and of itself, preclude an entity from classification as a  
23 floating structure. Registration of the entity as a vessel in accordance with Chapter 327,  
24 Florida Statutes, shall not preclude an entity from classification as a floating structure.

25           “Moor” means the act of securing a floating structure in the water by means of a  
26 permanent or semi-permanent mooring system affixed to the bottom of the water body.

27

28 **Section 4. PROHIBITION OF FLOATING STRUCTURES.**

29 No floating structure shall be anchored or moored in the waters lying within the jurisdiction of  
30 the County or on any property owned by the County, including any submerged lands.  
31 Notwithstanding the foregoing, nothing in this Ordinance shall prohibit a floating structure  
32 from anchoring or mooring at a public or private marina within a berth or slip, a public or

1 private dock with permission from the property owner or on privately owned property,  
2 including submerged lands.

3

4 **Section 5. ENFORCEMENT; PENALTIES.**

5 (a) Any law enforcement officer acting within his/her jurisdiction or Palm Beach County Code  
6 Enforcement Officer is authorized to enforce this Ordinance.

7 (b) The violation of any provision of this Ordinance may be enforced pursuant to F.S. § 125.69  
8 and shall be punishable by a fine not to exceed five hundred dollars (\$500.00), by  
9 imprisonment in the county jail not to exceed sixty (60) days or by both such fine and  
10 imprisonment.

11 (c) The violation of any provision of this Ordinance may be enforced pursuant to the  
12 procedures and penalties of F.S. § 162.01 et seq. and Article 10 of the Palm Beach County  
13 Unified Land Development Code.

14 (d) The provisions of this Ordinance may be enforced pursuant to Chapter 8.5, Article II, of the  
15 Palm Beach County Code (the "Code Enforcement Citation Ordinance of Palm Beach County,  
16 Florida") and shall be punishable by a fine not to exceed five hundred dollars (\$500.00).

17 (e) In addition to the sanctions contained herein, the County shall be authorized to take any  
18 other appropriate legal action, including, but not limited to, seeking cease and desist orders,  
19 instituting other administrative actions, and requesting temporary and permanent injunctions to  
20 enforce the provisions of this Ordinance. It is the purpose of this Ordinance to provide  
21 additional and cumulative remedies.

22 (f) Each day a violation of this Ordinance occurs shall constitute a separate offense and be  
23 punishable as such.

24

25 **Section 6. INCLUSION IN THE CODE ENFORCEMENT CITATION ORDINANCE OF**  
26 **PALM BEACH COUNTY, FLORIDA.**

27 Schedule "A" of Chapter 8.5, Article II, of the Palm Beach County Code (the "Code  
28 Enforcement Citation Ordinance of Palm Beach County, Florida") is hereby amended to  
29 include the list of infractions attached hereto as Exhibit 1.

30

1    **Section 7. REPEAL OF LAWS IN CONFLICT:**

2           All local laws and ordinances in conflict with any provisions of this Ordinance are  
3 hereby repealed to the extent of such conflict.

4  
5    **Section 8. SEVERABILITY:**

6           If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any  
7 reason held by a Court of competent jurisdiction to be unconstitutional, inoperative, or void,  
8 such holding shall not affect the remainder of this Ordinance.

9  
10   **Section 9. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

11           The provisions of this Ordinance shall become and be made a part of the Palm Beach  
12 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish  
13 such, and the word ordinance may be changed to section, article, or other appropriate word.

14  
15   **Section 10. CAPTIONS:**

16           The captions, section headings, and section designations used in this Ordinance are for  
17 convenience only and shall have no effect on the interpretation of the provisions of this  
18 Ordinance.

19  
20   **Section 11. EFFECTIVE DATE:**

21           The provisions of this Ordinance shall become effective upon filing with the  
22 Department of State.

23  
24           APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach  
25 County, Florida, on this the 18th day of August, 2015.

26   **SHARON R. BOCK, CLERK**

27   **PALM BEACH COUNTY, FLORIDA, BY ITS**  
28   **BOARD OF COUNTY COMMISSIONERS**

29  
30   By:   
31       Deputy Clerk

32   By:   
33       Shelley Vana, Mayor

34   **APPROVED AS TO FORM AND**  
35   **LEGAL SUFFICIENCY**

36  
37   By:   
38       County Attorney

1           **EFFECTIVE DATE:** Filed with the Department of State on the 24<sup>th</sup> day of  
2           August, 2015.  
3



**EXHIBIT 1**

<b><u>Code Provision</u></b>	<b><u>Description</u></b>	<b><u>Class</u></b>	<b><u>Fine Amount</u></b>
Ordinance No. 2015-_____, Section 4, Palm Beach County Floating Structure Ordinance	Anchoring or mooring floating structure in county waters or on county property other than on privately owned property, at a marina or at a dock.	IV	\$250.00



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

August 24, 2015

Honorable Sharon R. Bock  
Clerk and Comptroller  
Palm Beach County  
301 North Olive Avenue  
West Palm Beach, Florida 33401

Attention: Timothy Montiglio, Administrative Specialist II

Dear Ms. Bock:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Palm Beach County Ordinance No. 2015-030, which was filed in this office on August 24, 2015.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb