

ORDINANCE 22- _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF OKALOOSA COUNTY, FLORIDA; MAKING VARIOUS FINDINGS OF FACT; CREATING ARTICLE VIII OF CHAPTER 12 OF THE OKALOOSA COUNTY CODE OF ORDINANCES; ESTABLISHING WATERWAY RENTAL VENDOR SAFETY AND OPERATING STANDARD; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR CODIFICATION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Okaloosa County (the “Board” or “County”) is empowered by Section 125.01, Florida Statutes, to establish, coordinate, and enforce such regulations as are necessary for protection of the health, safety and welfare of the public; and

WHEREAS, Section 7.46, Florida Statutes, establishes boundaries of Okaloosa County, Florida, which includes the surface waters within the jurisdiction of the State of Florida; and

WHEREAS, Chapters 327 and 328, Florida Statutes, establish the boating laws for the State of Florida; and

WHEREAS, Section 327.60, Florida Statutes, limits local government in regulating boater safety, but does not prevent the adoption of any ordinance or local regulation relating to the operation of vessels, except as it relates to vessel or equipment performance or safety standards associated with equipment, or regulating the carrying or use of marine safety equipment, relating to the design, manufacture or installation of sanitation devices, regulating vessels upon the Florida Intracoastal Waterway, discriminating against personal watercraft or airboats, regulating any anchoring of vessels outside of marked mooring fields, nor regulating engine or exhaust noise; and

WHEREAS, Florida leads the nation in the number of reportable boating accidents in 2019 and 2021; and

WHEREAS, Florida Fish and Wildlife Conservation Commission reported in its summary of 2020 Uniform Boating Citations that the leading causes of citations for state enforcement included safety equipment and regulations violations, registration/number violations, and boating within restricted areas; and

WHEREAS, Okaloosa County is continually ranked among the top 10 for most boating accidents, according to the Florida Fish and Wildlife Conservation Commission, with only one other panhandle county making the top 10; and

WHEREAS, in 2020 Boating Accident Statistical Report released in May 2021, there were 836 boating accidents in the state of Florida and **Okaloosa was ranked number 6** in leading accidents the majority of reported incidents were collisions with other vessels, and the primary cause was the lack of proper look-out or inattention; and

WHEREAS, among Okaloosa 31 reported boating incidents, 12 involved pontoon boats and 17 involved personal watercraft. Two incidents involved fatalities and 16 involved accidents with injury; and

WHEREAS, Rental or borrowed vessels make up less than 20% of all registered vessels in the County, data since 2016 show that these vessels account for 36% to 66% of the FWC crash data; and,

WHEREAS, in 2020, Okaloosa County ranked number 1 in the State of Florida for Boating Under the Influence "BUI" Issued at 56, and;

WHEREAS, By the end of July, 2021, Okaloosa County had already surpassed the number of BUI arrests for 2020 at 65 and was on track to hit 80+ "BUI" citations, and;

WHEREAS, Of the BUI arrests by July, 2021, 72% were from tourist related rentals, and;

WHEREAS, In addition to Boating Under the Influence, speed, and a lack of equipment and waterway operating knowledge may also play a role in crashes and other waterway safety related issues, and;

WHEREAS, By the end of July 2021, there were 191 waterway citations issued (non-BUI) by the Okaloosa Sheriff's Department, of which 74% were from tourism related rentals.

WHEREAS, the Board recognizes the need to ensure proper licensing, maintenance of insurance and to promote safety in the waters of the County; and

WHEREAS, the Board has determined that it is necessary to provide additional standards pertaining to livery vessel rentals to help mitigate safety problems associated with such rentals; and

WHEREAS, the Board has determined that such measures are necessary to promote the health, safety and welfare of the County.

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

SECTION 1. CREATION OF ARTICLE VIII CHAPTER 12

Article VIII of Chapter 12 of the Okaloosa County Code of Ordinances is hereby created and established as follows:

Sec. 12-232 Short title.

This article shall be known and may be cited as the “Waterway Rental Vendor Safety Ordinance.”

Sec. 12-233 Findings of Fact, Purpose and Authority.

- a. The above recitals are incorporated by reference into this Ordinance and are adopted as Findings of Fact.
- b. The purpose of this ordinance shall be to regulate livery vessels rental vendors and operators in order to promote safety, encourage tourism, support responsible marine businesses and protect our natural resources.
- c. The County hereby declares that the public health, safety and welfare of the citizens and visitors of the county requires regulation of personal watercraft and livery vessels rentals.
- d. The County is hereby authorized to regulate livery vessels rental vendors and operators in the interest of safety, therefore requiring certain conditions of those renting livery vessels.

Sec. 12-234 Applicability.

This ordinance shall apply and shall include all areas of Okaloosa County, including all public waters within the County in which the tide ebbs and flows, except those areas within those municipal city limits where there is an otherwise contravening City ordinance regulating the same activity or where otherwise determined to be preempted by State or Federal law.

Sec. 12-235 Definitions.

Livery Business or Business: Any person or entity engaged in the rental or leasing for consideration of a livery vessel(s).

Business Location: Shall mean a site/location that is zoned commercial or other non-residential zoning, which otherwise permits livery vessel rentals, and which has the required dockage, parking, and bathroom facilities, and meets all other location/site standards to operate such a business.

County Administrator: The designee(s) of the Okaloosa County Administrator.

PWC Eco-tour: An educational tour led by a guide knowledgeable in environmental and ecological preservation.

Idle speed: The lowest speed at which a livery vessel can operate and maintain steering control. The actual speed will depend upon the design of the personal watercraft or livery vessels, the load, wind direction and speed, and the conditions of the water. Generally, it shall mean the minimum speed required for personal watercraft or livery vessels to effectively traverse breaking water.

Livery vessel: Means a vessel leased, rented, or chartered to another for consideration, but it does not mean: (1) a vessel under the control at all times by the United States Coast Guard licensed Captain; or (2) paddleboards, kayaks, canoes, or any other vessel not powered by an internal combustion engine or sail (sailboards excluded). A personal Watercraft as defined in Section 327.02 (36) as set forth below, shall be included in the definition of Livery Vessel for purposes of this Article.

Operate: To be in charge of, in command of, or in actual physical control of a vessel upon the waters of the states of Florida, to exercise control over or to have responsibility for the vessel's navigation or safety while the vessel is underway upon the waters of the state, or to control of steer a vessel being towed by another vessel upon the waters of the state.

Owner: A person, other than a lienholder, having the property in or title to a vessel. The term includes a person entitled to the use or possession of a vessel subject to an interest in another person which is reserved or created by agreement and securing payment of performance of an obligation. The term does not include a lessee under a lease not intended as security.

Person: Any individual(s), partnership, firm, association, corporation, or any other entity whatsoever.

Personal watercraft or PWC: in accordance with 327.02 (36), Florida Statutes, means a vessel (as defined in section 327.02(46), Fla. Stat.) that is less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

Livery vessels

Permit means a County operating license on a vessel which is issued with an annual certificate of permit.

Sec. 12-236. Unlicensed rental of livery vessels prohibited.

- a. No person, whether a commercial operator or a person, shall offer for rent or lease for consideration a livery vessel within Okaloosa County except from a Business Location which fully complies with the regulations set forth in this article.
- b. No person shall rent or lease from any Business within Okaloosa County except from a Business holding a valid license and which fully conforms to the terms of this article.

- c. No person shall offer rent or lease for consideration a personal watercraft or livery vessels which is not registered in the name of the business and which does not have a valid Florida vessel permit number affixed thereon.

Sec. 12-237 Permit application; fees; term; display.

- a. Application - An application shall be made to the County for local permit on a form provided by the County. Information to be provided by the applicant in or with the application shall include, at a minimum:
 - a. Business location:
 - i. The Business Tax Receipt number and street address from which the Business will operate. Businesses must have a physical location to operate the Business from a P.O. Box is not valid.
 - ii. If the applicant is not the owner of the property from which the Business will be operated, the applicant shall submit a notarized letter of authorization from the owner of the property to the applicant.
 - b. Ownership information:
 - i. Business owner's name, home address, local address, telephone number;
 - ii. A certificate of Good Standing the Florida Secretary of State Division of Corporations, demonstrating the Business is in good standing with the State of Florida and certified to conduct business within the State;
 - iii. Manager's name, home address, local address, telephone number;
 - iv. Mailing address at which notice of any county information pertinent to any license or Business shall be considered received and binding upon the application or license holder on the fifth day after first class mail is posted to said address;
 - v. State sales tax number.
 - vi. A copy of a state submerged lands lease or easement as may be required by the State of Florida.
 - c. Business equipment information:
 - i. The number of, and description of, the livery vessels to be used by the Business, including model, year, manufacturer, color and Florida vessel registration number(s).
 - ii. A description of the response vessel(s) to be kept at the place of business as well as the Florida vessel registration number.
 - d. Proof of insurance pursuant to s. 327.54(5), Florida Statutes.
 - e. The application signed by the owner attesting to the accuracy and truthfulness of the information provided under penalty of perjury; additionally, acknowledging that the applicant has read and understands all ordinances and regulations regarding livery vessels. Applicants who misrepresent information provided under this section shall not be issued a license, or if issued, may suffer suspension or revocation of the license.
 - f. Fees. The County is authorized and shall charge reasonable permit fees to compensate for the expenses directly associated with the administration and enforcement of this Article. The board of county commissioners shall establish by resolution all fees, rates,

and charges under this Article. A separate per-vessel fee shall be charged for the issuance of each permit issued under this article.

g. Permit Term -The permit shall be issued on an annual basis coinciding with the areas annual weather cycle March 1, through February 28th/29th. Applications may be made at any time during the calendar year.

h. Permit Display. Any Business offering the rental of livery vessels shall display the Permit Certificate in plain sight at the location from which the rentals are offered.

Sec. 12-238 Rental Vessel Business Standards.

a. Business Land Use - Zoning/Use Requirements Except as otherwise provided in this ordinance, Businesses holding a valid license shall be situated together with their vessels upon a site authorized by the Land Development Code and this ordinance to have such business and shall not:

- 1) Be located within five hundred (500) feet of any other business offering livery vessels for rent or lease, except where said business is owned by the same individuals or entities, or where said business has established an agreement with the existing business which is regulated under the Ordinance on the property. All current validly existing businesses as of the date of enactment of this ordinance are vested and Section 12-238(a)(1) is not applicable to their existing business site. Validly existing business is a business that has all necessary permits, approvals, zoning, licenses and certifications at time of adoption of this Article that are necessary to legally operate their business at their business site in accordance with the County, State and Federal Laws.
- 2) Be located upon or utilize any County or City property for renting, vessel drop off, for passenger debarkation, or similar Business-related activity without written permission of the County or City.

b. Business Site Requirements:

- 1) Vehicular Parking - Livery vessel establishments must have and maintain property vehicular parking in accordance with the County's Land Development Code Requirements.
- 2) Physical Location and structure - Each Livery vessel establishment shall have a physical location meeting the standards herein to include mailing address to receive mail at the location. A structure capable of protecting staff during normal inclement weather (example a shed) shall be required so that staff are protected and can remain present on the site at all times during all hours of operation open to customers. All structure must be constructed in accordance with the Florida Building code in effect at the time of operation.
- 3) 3) Dockage – Docks must be maintained and kept safe and in good working condition in accordance with all Florida State building standards. All necessary State permitting relating to any dock(s) must be maintained for the duration of the business.

- 4) Restrooms – Livery vessel establishments must have and maintain on site ADA restroom facilities and business owned trash and recycling receptacles. These may be combined with other restrooms that are legally available to business customers in close proximity and open during all hours of operation.
 - 5) Safety Equipment - Prior to operation, a Livery vessel establishment shall file with the County a refueling plan approved by the appropriate Fire Department, FDEP and FWC, as appropriate. The plan shall provide sufficient details and specifications to assure appropriate on-site maintenance and inspection, spill prevention and response training, a spill response plan to mitigate and report any impacts to the beach or the waters of the County, the Gulf of Mexico or East Pass; to provide proper safety precautions regarding the storage of fuels; and provide fire safety equipment. The Owner shall in all operations comply with all provisions of the refueling plan.
 - 6) Safety– a business location shall ensure compliance with boater safety identification pursuant to F.S. § 327.395, and with livery safety regulations pursuant to F.S. § 327.54. ensure compliance with boater safety identification pursuant to F.S. § 327.395, and with livery safety regulations pursuant to F.S. § 327.54. Livery vessel vendor shall provide local safety and regulatory instruction, such as no-wake zones, Crab Island safety corridor, etc. (may be combined with requirements of F.S. § 327.54).
- c. Business Contact/Communication during Operational Hours - A Business Location shall have and maintain a consistent telephone number and an operable marine radio at its land-based operations office during all hours of operation.
 - d. Response Vessel - All business with one (1) or more rentals shall have a motorized response vessel and person with an operational marine radio in good running condition that meets all United States Coast Guard safety requirements kept at the launching site during all hours of the business operation. The response vessel may be a personal watercraft reserved for this purpose.
 - e. Insurance - A Business must have and maintain comprehensive third-party liability insurance in accordance with Section Chapter 327.54(5), Florida Statutes and as set forth within this Article for the Business and all vessels in operation.
 - f. Business Tax Receipt License - All businesses must have a business tax receipt license issued from the Okaloosa County Tax Collector. Such license or a copy thereof shall be publicly displayed on site.
 - g. Vessel Registration - Each livery vessels must be registered in the name of the Business and have a State of Florida vessel registration number affixed thereon. Additionally, all vessels must be locally permitted as set forth within this Article.
 - h. Vessel and Business Identification Marking - Each vessel and Business (from the water) shall provide the name and valid, active phone number of the Business as well as the vessel name on the outside of the vessel of an adequate size and in a location to be easily

readable when the approaching the vessel or Business. In addition, the vessel and Business (from the water) shall contain the same unique identification markings that are on the customer floatation devices and each rental vessel shall have a unique number inside the marking, as follows:

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

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

i. Employee Training - Employees shall be required to complete the following training and upon request provide documentation at the site to any County or its designees. At all times during business hours, an employee that has completed the training must be located at the business facility. Employees that have not completed the training shall have thirty (30) days from start of employment to complete the training and may temporarily operate under the supervision of someone who has completed the training. Current/Existing employees shall have six months from the effective date of this ordinance to comply with these training requirements. Documentation of training must be kept at the Business location and be made available for inspection at all times when the business is open. Training shall apply to all employees that supervise, take reservations, handle paperwork with customers, provide pre-ride/pre-rental training, or otherwise operate the rental or response/recovery equipment and shall include the following:

- 1) State of Florida Boating Safety Education Course;
- 2) Okaloosa Boating and Waterway Safety Video;
- 3) FWC's online Livery Course;
- 4) American Heart Association First Aid Response Course;
- 5) PWC or Pontoon equipment training - In house training on the safety/operation on the specific apparatus rented by the vendor; and
- 6) Contingency Training - In house training for the employee on the specific contingency plans required for this Business location.

j. Fueling - Any Fuel tanks utilized at the business location shall meet all applicable fire, safety, and environmental regulations to include any permitting by the applicable fire department, the FWC or FDEP. Fueling of livery vessels on or within 50ft of the water shall require a spill-proof nozzle or other acceptable device designated for prevention of fuel overflow. If vessels are fueled at the rental location the Business employees shall undergo additional training on fuel safety and property fuel techniques. The type of fire extinguishers necessary to extinguish fuel fires shall be operational and accessible at the fuel location.

k. Emergency Contingency Plans - Each Business shall have contingency plans/protocols for the emergencies listed below. At a minimum, these plans/protocols shall include contacts to call, immediate steps, reporting, and similar provisions including, but not limited to:

- 1) Fuel/Oil Spill;
- 2) Fuel Fire;

- 3) Rental Vessel Accident;
- 4) Medical Emergency; and
- 5) Inclement Weather.

1. Mandatory Pre-season Meeting – The first week of February annually, all businesses regulated under this Article are required to attend a mandatory meeting by the business primary business owner and/or operator before the County’s prime tourism season begins in mid-February of each year. The mandatory meeting will include members of County staff, law enforcement and may include other interested participants. For convience, more than one meeting may be scheduled. Failure of a business to attend a preseason meeting will result in a suspension of its licensure until a meeting is held. Individual makeup meetings shall be by appointment only for an administrative fee as set by resolution of the Board of County Commissioners.

Sec. 12-239 Rental Customer Operating Requirements

a. Training – In addition to any and all State mandated training, all operator of the rental vessel shall undergo the following training:

- 1) Okaloosa Boating and Waterway Safety Video;
- 2) PWC or Pontoon equipment video/training on the safety/operation on the specific apparatus rented; and
- 3) Emergency contact information for law enforcement, coast guard, 911, and vendor.

b. Operator Identification - Operators shall have a wrist band indicating they have met the training requirements above and are properly licensed. There shall be three separate identification colored wrist bands which shall be used by the business to identify the Operators, the color coordination of wrist bands is as follows:

- 1) Green – to use when Operator is over the age of 18 years old and was born before January 1, 1988 and by Florida law is not required to obtain a Florida Temporary Boaters Certification or obtain the National Association of State Boating Law Administrators (NASBLA) approved boaters license or passed a Florida Temporary Boaters Certification.
- 2) Pink – to use when Operator is over the age of 18 but born after January 1, 1988 or is under 18 but at least 16 years old who has a NASBLA approved boaters license or passes a Florida Temporary Boaters Certification.
- 3) Yellow – to use when Operator is 16 years old or older and can only drive with someone who was born before January 1, 1988 or who obtains a NASBLA approved boaters license or passes a Florida Temporary Boaters Certification.

c. License - All Livery Vessel business shall maintain a copy of the Operator/renters State Drivers license/certification which can be produced to the appropriate County/State authorities if and when requested.

- 1) d. Required Documentation - The Rental Customer shall have a copy of the rental agreement;
- 2) Contact number/call sign to contact rental Agency;
- 3) Safety and operational information for the device;
- 4) Map of the area with the location of Rental Agency shown as well as any boater restrictive areas;
- 5) Emergency Contact Information and Other Emergency Rental Agency; Communication Device - Shall be an operational cell phone, portable marine radio or other device capable to communicate to the Business and emergency personnel; and
- 6) Identification markings shall be placed on each personal flotation device worn by operators of the livery vessels which distinguishes the Business from other businesses engaged in the rental of livery vessels.

Sec. 12-239 Insurance.

- a. No person shall operate a Business unless covered by a comprehensive general liability insurance policy insuring the public against bodily injury or property damage resulting from or incidental to the operation, use, or rental of livery vessels. At a minimum, the policy shall provide coverage of not less than five hundred thousand dollars (\$500,000.00) per occurrence and one million dollars (\$1,000,000.00) per aggregate. The policy shall be written through insurers licensed and authorized to do business in the State of Florida otherwise meeting the requirements of section 327.54, Florida Statutes.

Evidence of said coverage shall be provided with sufficient documentation ensuring that the Insurance requirements meet the provisions of this Article at time of registration.

- b. Insurance coverage as required by this Article shall remain in full force during the entire time that the County's permit is valid and outstanding, proof of which shall be provided to the County at time of permitting and upon request. Failure to provide such proof shall render the permit null and void and of no further use and effect.

Sec. 12-240 Enforcement.

- a. The provisions of this ordinance shall be enforced by members of all duly authorized law enforcement agencies within Okaloosa County, including but not limited to the Okaloosa County Sheriff's Department, any law enforcement officer of the City jurisdiction the vendor lies within, any certified law enforcement officer of the State, and by the County's Code Enforcement Department.

Sec. 12-241 Penalties.

The provisions of this Article shall be enforced as provided in Chapter 11, Article VI of the Okaloosa County Code of Ordinances and chapter 162, Florida Statutes, and by such other means as are specified herein below:

f. Code enforcement: The code enforcement division may enforce the terms of this Article by bringing a case to the code enforcement board, as Provided in Chapter 11, Article VI, Sec. 11-605(b) Okaloosa County Code of Ordinances, and Ch. 162, Pt. I, Florida Statutes.

g. Civil citation: The code enforcement division or other duly authorized officer or authority, may enforce the terms of this article through issuance of civil citation as provided in Chapter 11, Article VI, Section 11-605(c) of the Okaloosa County Code of Ordinances, title Code Enforcement Procedure for Citation, and Chapter 162, Pt. II, Florida Statutes.

h. Denial/Suspension/Revocation: Any permit issued pursuant to this Article may be revoked if the county finds the registrant, after reasonable notice of the charges and an opportunity to be heard by an impartial party (whether code enforcement board, County appointed special magistrate, or judge with competent jurisdiction), has violated this Article. Upon review of the evidence provided, the County Administrator or his/her designee shall make a determination in writing as to the revocation of the permit, a copy of which shall be provided via certified mail to the registrant. The County's determination in writing shall constitute final action by the county and may be appealed to a circuit court of competent jurisdiction.

i. Criminal penalties: If a vendor or person rents or leases for hire a livery vessel without a permit issued pursuant to this article, then each individual livery vessel rented or leased without a permit shall be deemed a separate and unique violation of this article, with each separate unpermitted livery vessel being rented constituting a violation punishable as a separate and distinct misdemeanor against the vendor or person renting the unpermitted livery vessel. Each misdemeanor charged pursuant to this section shall carry a fine of up to five hundred dollars (\$500.00) and a definite term of imprisonment of not more than sixty (60) days as provided in section 125.69, Florida Statutes, Chapter 162, Florida Statutes and Chapter 1, Sec. 1-10 of the Okaloosa County Code of Ordinances. The intent of this provision is to treat each Livery Vessel rented without a permit as a separate violation of this article punishable by a separate fine, and separate term of imprisonment.

Nothing contained in this article shall be deemed to prohibit the County from seeking enforcement by any other means provided by law, including, but not limited to, filing an action for declaratory and injunctive relief in a court of competent jurisdiction.

SECTION 2. CODIFICATION IN THE CODE OF ORDINANCES. It is the intention of the Board and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Okaloosa County Code of Ordinances and that the sections of this Ordinance may be renumbered to accomplish that intent.

SECTION 3. SEVERABILITY. Should any section or provision of this Ordinance or any portion thereof, or any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof other than the part declared to be invalid.

SECTION 4. EFFECTIVE DATE. This Ordinance will become effective upon receipt of notice of its filing with the Office of the Secretary of State.

PASSED AND ADOPTED in Regular Session this ___ day of _____, 2022.

BOARD OF COUNTY COMMISSIONERS
OF OKALOOSA COUNTY

Mel Ponder, Chairman

ATTEST:

J.D. Peacock II, Clerk

APPROVED AS TO FORM:

Lynn M. Hoshihara, Esq.
County Attorney