

ORDINANCE NO. 2025-_____

AN ORDINANCE OF THE POLK COUNTY BOARD OF COUNTY COMMISSIONERS, REPEALING AND RESTATING ORDINANCE NUMBER 91-13, "THE POLK COUNTY WATERWAY PROTECTION CODE", AS AMENDED, ADDING AND UPDATING DEFINITIONS; ADDING DESIGNATED SWIM AREAS AND VESSEL EXCLUSION ZONES; UPDATING FORMATTING AND CLARIFYING LANGUAGE; AND PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR SEVERABILITY.

WHEREAS, Polk County has approximately five hundred fifty (550) lakes covering over ninety-three thousand (93,000) acres and hundreds of miles of streams and rivers; and

WHEREAS, the Board of County Commissioners desires to promote the safety and enjoyment of its waterways for all users; and

WHEREAS, Chapter 327, Florida Statutes, and Section 327.60, Florida Statutes, authorizes local governments to adopt ordinances for the regulation of any vessel operated upon local waterways. The numerous lakes and streams are a major asset to Polk County; and

WHEREAS, boats having been declared dangerous instrumentalities pursuant to Section 327.32, Florida Statutes, the Board of County Commissioners hereby determines that the following rules and regulations are necessary in order to protect the health, safety and general welfare of the citizens of the county using the waterways of the county.

WHEREAS, pursuant to Section 327.46, Florida Statutes, Polk County has the authority to establish boating-restricted areas, including idle speed / no wake zones, slow down/minimum wake speed zones, and vessel-exclusion zones; and

WHEREAS, the mixing of motorized vessel traffic with swimmers, waders, and users of non-motorized flotation devices presents a significant risk of serious injury or death due to the potential for propeller strikes collisions, and swamping.; and

WHEREAS, designated swim areas and vessel exclusion zones are critical tools to physically separate incompatible waterway uses thereby mitigating risks to venerable users; and

WHEREAS, the Board of County Commissioners of Polk County, Florida, finds it necessary in the public interest to so regulate waterway activities for the health, safety, and general welfare of the citizens of Polk County with the intent that vessels be operated in a manner which assures reasonable and prudent use of Polk County's waterways by all who attempt to use them; and

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF POLK COUNTY,
FLORIDA THAT:**

SECTION 1: SHORT TITLE.

This article shall be known as the "Polk County Waterway Protection Code".

SECTION 2: APPLICABILITY.

The regulations herein set forth shall apply to all navigable waters, creeks, canals and channels (whether natural or manmade) located within the entirety of Polk County, Florida, including all municipalities.

SECTION 3: COMPLIANCE WITH FEDERAL AND STATE LAW.

All vessels operating on the waterways of Polk County shall comply with all applicable federal and state laws, rules and regulations. The provisions of this article are supplementary to such federal and state laws, rules and regulations.

SECTION 4: EXEMPTIONS

The following are exempt from the prohibitions contained within:

- 1) Activities related to racing or exhibition vessels during a publicly announced, properly authorized and supervised, and adequately patrolled regatta or speed trial or exhibition.
- 2) Activities related to vessels operated by theme parks, authorized law enforcement firefighting, or rescue purposes.
- 3) Vessels operated related to environmental management activities.
- 4) Vessels on lakes lying entirely within lands wholly under single ownership, provided that such ownership encompasses the entire shoreline and lakebed.
- 5) Vessels operating under emergency conditions during an emergency.
- 6) Vessels used by an employee, officer, or authorized agent of local, state, or federal government for ensuring compliance with local, state, or federal law or for performing other official duties.
- 7) Vessels operating within a designated swim area/vessel exclusion zone for the sole purpose of accessing and departing from a dock located on property owned or operated by the vessel's owner or operator, provided that such vessels:
 - a. Operate at idle speed/no wake at all times within the designated swim area/vessel exclusion zone.
 - b. Take the most direct route to and from the dock.
 - c. Do not engage in any other activities within the designated swim area/vessel exclusion zone beyond what is minimally necessary to access and depart from the dock.

SECTION 5: ENFORCEMENT

- 1) The provisions of this article shall be enforced by duly authorized law enforcement officers and agencies within Polk County.
- 2) Any person violating any of the provisions of this article may be punished as provided in Florida Statutes, by issuance of a uniform boating citation.
- 3) Any person violating any of the provisions of this article shall, upon conviction, be guilty of a noncriminal infraction, punishable by a fine of up to five hundred dollars (\$500.00).

SECTION 6: DEFINITIONS: The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. If any definition is inconsistent with the definition in Florida Statutes, the definition in Florida Statutes shall take precedence: Use of the masculine gender shall include the feminine gender. The word "shall" is always mandatory and not merely discretionary.

Airboat shall mean any boat, sled, sea skiff, or swamp boat pushed or pulled or propelled by air power generated by an engine of more than twenty-five (25) horsepower.

Bather shall mean any person who is in the water, whether said person is swimming, wading, floating on any device, or engaged in other activity in the water.

Board shall mean the Board of County Commissioners of Polk County, Florida.

Canal shall mean a trench, the bottom of which is normally covered by water, with the upper edges of its two (2) sides normally above water.

Canoe shall mean a light, narrow vessel with curved sides and with both ends pointed. A canoe-like vessel with a transom may not be excluded from the definition of a canoe if the width of its transom is less than forty-five (45) per cent of the width of its beam or it has been designated as a canoe by the United States Coast Guard.

Channel shall mean a defined course, whether marked or unmarked, across a broader body of water between two (2) well defined points, such as the mouths of canals, rivers, or other waterways. Such rivers and canals will also be defined as channels.

County shall mean Polk County, Florida.

County boat ramp shall mean any boat ramp owned, leased or operated by the Polk County Board of County Commissioners.

Designated Swim Area means an area established for the primary purpose of protecting bathers from vessel traffic and is designated by the Board, through Resolution, for swimming and related activities, automatically created within the boundaries of any vessel exclusion zone established pursuant to Florida Statutes 327.46.

Idle speed/no wake means that a vessel cannot proceed at a speed greater than that speed which is necessary to maintain steerageway. At no time is any vessel required to proceed so slowly that the operator is unable to maintain control over the vessel or any other vessel or object that it has under tow.

Motorboat shall mean any vessel which is propelled or powered by machinery, and which is used or capable of being used as a means of transportation on water.

Nuisance noise means any sound that unreasonably disturbs the peace and quiet of others

Open water shall mean an area of water not containing fixed structures, such as a dock.

Operate shall mean to be in the actual physical control of a vessel on the waters of this county or to exercise control over or steer a vessel being towed by another vessel on these waters.

Operator means any person in charge of, in command of, or in actual physical control of a vessel on the waters of this county, exercising control over or having responsibility for a vessel's navigation or safety while the vessel is underway on the waters of this county, or controlling or steering a vessel being towed by another vessel on the waters of this county.

Owner means 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 shall mean an individual, partnership, firm, corporation, association, or other entity.

Personal watercraft shall mean a small class A-1 or A-2 vessel which uses an outboard motor, or an inboard motor powering a water jet pump, as its primary source of motive power on which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

Power loading shall mean the act of exceeding idle speed of the vessel's engine while loading or unloading a vessel at a boat ramp.

Rowboat shall mean a vessel manually powered by means of oars (paddles).

Sailboat shall mean any vessel whose primary source of propulsion is the natural element (i.e. wind). When under auxiliary power, a sailboat shall be considered a motorboat.

Shoreline shall mean the line marking the edge of a body of water.

Skier shall mean any person being drawn across the surface of the water.

Skiing shall mean the act of any person being drawn across the surface of the water.

Ski jump means a solid structure anchored to the bottom of a water body used in water skiing activities to propel skiers into the air.

Slalom course means a grouping of floating buoys anchored to the bottom of a lake or river bottom used in water skiing activities.

Slow down/minimum wake speed means that a vessel must not proceed at a speed greater than that speed which is reasonable and prudent to avoid an excessive wake or condition under the existing circumstances:

- 1) A motorboat in an area designated as a slow down/minimum wake zone that is operating on a plane is not proceeding at slow down minimum wake speed.
- 2) A motorboat in an area designated as a slow down/minimum wake zone that is in the process of coming off plane and settling into the water, which action creates more than no or minimum wake is not proceeding at slow down minimum wake speed.
- 3) A motorboat in an area designated as a slow down/minimum wake zone that produces no wake or minimum wake is proceeding at slow down minimum wake speed.
- 4) A motorboat in an area designated as a slow down/minimum wake zone that is completely off plane and which has settled into the water and is proceeding without wake or with minimum wake is proceeding at slow down minimum wake speed.

Substantially interferes means to hinder or impede the normal flow and progress of vessel traffic to a significant degree.

Vessel is synonymous with boat as referenced in section 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and air boat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

Vessel exclusion zone means an area designated by the Board, through resolution, from which all vessels are excluded to enhance safety, prevent user conflicts, and/or protect environmental resources.

Waters of the state means any navigable waters of the United States within the territorial limits of the state of Florida, the marginal sea adjacent to the state of Florida and the high seas when navigated as a part of a journey or ride to or from the shore of the state of Florida, and all the inland lakes, rivers, and canals under the jurisdiction of the state of Florida.

Waterway means any waters, lakes, canals, streams, lagoons or connecting waters, whether

natural or manmade, partially or wholly within the boundaries of this county.

SECTION 7: REGULATIONS AND STANDARDS.

- 1) Any person who operates a vessel on the waters of this county shall do so in a careful and prudent manner so as to show no evidence of a wanton disregard for the safety of persons or property.
- 2) No vessel (excluding airboats) shall travel on a plane (not fully settled into the water) within three Hundred (300) feet of any shoreline, except when pulling a skier from or returning him to shore.
- 3) No vessel shall travel on a plane within three Hundred (300) of any canal opening or seventy-five (75) feet from any fixed structure, except when pulling a skier from or returning him to shore.
- 4) Skiing shall be prohibited in channels or canals which are connected to lakes.
- 5) No slalom course or ski jump may be placed in or remain in any water body in Polk County unless the following conditions are met:
 - a. The slalom or ski jump course shall have an open water approach of a minimum length of six hundred (600) feet and an open exit of a minimum length of six hundred (600) feet. An additional open water of three Hundred (300) must exist on either side of the slalom course; and
 - b. The slalom course or ski jump shall be permitted by the State of Florida Department of Environmental Protection and any other regulatory agencies which require a permit for the placement of a slalom course or ski jump in a water body.
 - c. A slalom or ski jump course, which is in existence and has all required state and federal permits prior to the effective date of this article shall be exempt from the requirements of subsections 2, 3, and 5 of this section for the duration of the existing permits applicable to such slalom or ski jump.
- 6) All vessels shall operate at a slow down/minimum wake speed within three Hundred (300) feet from a canal or channel mouth. No vessel shall exceed an idle speed/no wake within a canal or channel.
- 7) Vessel Distance Regulations:
 - a. *From Vessels Towing Skiers:* All vessels shall keep at least three hundred (300) feet behind any vessel towing a skier.
 - b. *From Bathers and Other Vessels:* All vessels shall stay clear of, by at least three Hundred (300) , any bather or vessel (anchored or in motion) unless approaching at an idle speed.
 - c. *From Slalom Courses and Ski Jumps:* When a slalom course or ski jump is in use by skiers, all other vessels shall stay at least three Hundred (300) feet away on either side, and six hundred (600) feet from the entrance and exit.

- d. Right-of-Way: All motorboats shall yield the right-of-way to nonmotorized vessels.
- 8) A vessel shall not be operated by a person who is under the influence of drugs and/or alcoholic beverages to such an extent that his normal faculties are impaired to operate a vessel in a safe manner.
- 9) Every person under six (6) years of age, while on board a vessel measuring less than twenty-six (26) feet in length, shall wear a Type I, II, or III flotation device approved by the United States Coast Guard, while the vessel is underway. For purposes of this subsection, "underway" shall mean at all times, except when the vessel is anchored, moored or aground.
- 10) No person shall power load any vessel onto a trailer at any county boat ramp in such a manner as to potentially contribute to the undermining of the ramp or create a nuisance noise.
- 11) For the purpose of regulating the speed and operation of vessel traffic on the Oxbow section of the Old Kissimmee River outside the channelized portion of the Kissimmee River located in Sections 1, 12, Township 29S, Range 29E, in Polk County, Florida, the following vessel controlled zone is established along the portion of the Oxbow from the latitude longitude coordinates N27°59'03", W81°22'83" to N27°58'36", W81°22'46" as an idle speed no wake zone. The idle speed/no wake zone is depicted on the map attached to Ordinance No. 93-37. Exempt from the provisions of this section are Lakes Arbuckle and Hatchineha and immediately adjacent waterways and the Kissimmee River Oxbow located in Polk County between Lakes Kissimmee and Hatchineha and described in this subsection.
- 12) Airboat Regulations:
- a. *Hours of Operation*: No person shall operate an airboat between the hours of 10:00 p.m. and 7:00 a.m. Sunday through Thursday and 12:00 midnight and 6:00 a.m. Friday and Saturday, Memorial Day, Independence Day, and Labor Day. Airboats may be operated during the hours of 4:00 a.m. and 7:00 a.m. during authorized waterfowl hunting season.
 - b. *Distance from Residences*: No person shall operate an airboat above an idle speed within five hundred (500) feet of a residence. This distance setback from residences shall not apply during the hours of 8:00 a.m. and 5:00 p.m. Monday through Saturday to the use of airboats by commercial operators of airboat tours or rides holding a valid occupational license for such purposes as of March 5, 1996, for purposes of gaining ingress and egress to their base of operations or to residences constructed on Lake Hamilton after the effective date of Ordinance No. 96-14.
 - c. *Exemptions*: Nothing herein shall prohibit the operation of a properly operated airboat by an individual possessing an alligator trapping license as required by Florida Statutes and possessing a harvest permit issued by the Florida Game and Freshwater Fish Commission pursuant to Florida Administrative Code. This exemption shall only apply during the harvest season as established by the Florida Game and Freshwater Fish Commission.

This section shall not apply to the use of airboats by duly licensed and authorized persons engaged in the commercial eradication or control of aquatic weeds.

- 13) The exhaust of every internal combustion engine on any vessel operated on the waters of this county shall be effectively muffled so as to muffle the noise of the exhaust in a reasonable manner. Furthermore, the exhaust of every airboat shall be effectively muffled by automotive or aircraft style equipment. The use of cutouts is prohibited, except for vessels competing in a regatta or official boat race, and for such vessels while on trial runs.
 - a. *Enforcement.* The provisions of this subsection may be additionally enforced as a noncriminal infraction by the Division of Law Enforcement of the Florida Department of Environmental Protection and its officers, the Florida Game and Fresh Water Fish Commission and its officers, the sheriff and deputy sheriffs, and any other authorized law enforcement officer, pursuant to the provisions of Florida Statutes.
 - b. *Exemption.* Nothing in this section shall apply to the use of an airboat by duly authorized agents of the state, county, or federal government in the performance of their official duties.
- 14) No person shall launch or stop or park or moor a boat in any lake-interconnecting canal, to engage in any activity which substantially interferes with boat traffic on these waters.

SECTION 8: DESIGNATED SWIM AREAS AND VESSEL EXCLUSION ZONES.

- 1) *Designated Swim Areas:* A designated swim area shall be automatically created within the boundaries of any vessel exclusion zone established pursuant to Florida Statutes 327.46 upon the Board adopting a resolution designating a Vessel Exclusion Zone in accordance with this Ordinance upon finding that such designation is necessary to separate vessel and fishing activities from swimming activities for the safety of those participating in such activities. The boundaries of any designated swim area shall be established by the Board through resolution and shall be clearly marked by buoys, signs, or other appropriate markers in accordance with the Uniform State Waterway Marking System (USWMS).
- 2) *Permitted Activities:* Within such designated swim areas, the following activities are permitted:
 - a. Swimming and wading;
 - b. Floating and the use of non-motorized flotation devices;
 - c. Snorkeling and other recreational activities that do not involve the use of a vessel.
- 3) *Prohibited Activities:* Within such designated swim areas, the following activities are prohibited:
 - a. Operation of any motorized vessel, including but not limited to motorboats, personal watercraft, and airboats, except for law enforcement, emergency response, or other official purposes as authorized by this county;
 - b. Fishing, including the casting of lines or nets;
 - c. Anchoring or mooring of any vessel;
 - d. Any activity that endangers or interferes with the safety of swimmers.

- 4) *Signage*: The Polk County Sheriff's Department shall post signage at regular intervals along the shoreline adjacent to any designated swim area indicating the boundaries of the swim area and any applicable restrictions.
- 5) Nothing in this section shall be construed to prohibit the use of vessels within a designated swim area for law enforcement, emergency response, or other official purposes.

SECTION 9: VARIANCES.

The board may grant requests for variances from the requirements of this article only, provided the public health, safety and welfare are protected, in accordance with the following provisions:

- 1) Any person subject to the provisions of this article may apply to the Board for a variance
- 2) In order to grant a variance from this article, the board must determine that there has been a disclosure of good and sufficient cause.
- 3) An advertisement describing the variance request has been placed in a newspaper with local circulation.
- 4) Comments from affected local governing agencies (municipalities and special taxing districts) will be solicited in the review of all pertinent variance applications.
- 5) The Board may establish such conditions, in granting the variance, as it deems necessary to further the purpose of this article.

Section 10. NO WARRANTIES OR ASSURANCES

The establishment of a Vessel Exclusion Zone or Designated Swim Area by the Board does not imply any warranty or assurance of safety within that area. Users of these areas assume all risks associated with their use.

SECTION 11: SEVERABILITY.

If any provision of this Ordinance or if this Ordinance as applied is determined to be invalid or unconstitutional by a court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 12. EFFECTIVE DATE

This Ordinance shall take effect immediately upon filing with the Office of the Florida Secretary of State.