

Lee County Board of County Commissioners
Agenda Item Summary

Blue Sheet No. 20020107

1. **REQUESTED MOTION:**

ACTION REQUESTED: Direct to Public Hearing and authorize advertising to amend Lee County's Vessel Control Ordinance 96-22. The amendments to the ordinance are consistent with the changes to Fla. Stat. §327.60. Suggested Public Hearing date: February 26, 2002 at 5:00 p.m..

WHY ACTION IS NECESSARY: Provides for uniformity with Fla. Stat. §327.60, as amended on July 1, 2000, prohibiting discrimination against personal watercraft.

WHAT ACTION ACCOMPLISHES: Changes Lee County Ordinance 96-22-Vessel Control, by deleting provisions regulating personal watercraft and amending the section entitled, "Areas of Regulated Water Activity."

2. **DEPARTMENTAL CATEGORY:** 08
COMMISSION DISTRICT #

C8A

3. **MEETING DATE:**

02-26-2002

4. **AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. **REQUIREMENT/PURPOSE:**
(Specify)

- STATUTE
- ORDINANCE 96-22
- ADMIN. CODE
- OTHER

6. **REQUESTOR OF INFORMATION:**

- A. COMMISSIONER
- B. DEPARTMENT Natural Resources
- C. DIVISION

BY: Roland Ottolini

7. **BACKGROUND:**

On July 1, 2001, the Florida Legislature, by Senate Bill #386, amended Fla. Stat. §327.60 to provide that ordinances and local laws enacted by cities and counties to regulate the operation and equipment of vessels may not "discriminate" against personal watercraft. Lee County Ordinance 96-22, Section F, regulated personal watercraft by prohibiting personal watercraft activity in certain areas.

At its August 6, 2001 Management and Planning Meeting, the Board Of County Commissioners directed staff to repeal Section F in its entirety, thereby allowing full use of the previously restricted area by all boaters.

Other minor changes are being proposed as well. A copy of the Ordinance with the proposed amendments shown in underlining and the proposed deletions shown in ~~strike-out~~ is attached.

The public hearing on the amendments to 96-22 will be heard by the Board of County Commissioners at its regular meeting February 26, 2002 at 5:00 p.m..

Attachment: Draft Ordinance (dated 01/31/02)

8. **MANAGEMENT RECOMMENDATIONS:**

9. **RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
	N/A	N/A	N/A		QA 1/30/02	OM 1/31/02	RISK 1/31/02	GC 1-31-02	

10. **COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED 2 wks 2/26/02
- OTHER 2/26/02

RECEIVED BY
COUNTY ADMIN.
1/31/02
2342
COUNTY ADMIN.
FORWARDED TO:
1/31 315

to PR

AGENDA UPDATE

FROM



DIVISION OF PUBLIC RESOURCES

MEETING OF FEBRUARY 12, 2002

RE: CONSENT 8(D)-VESSEL CONTROL ORDINANCE

Attached please find the second revised draft Ordinance . Please replace the one in your Agenda book with this one.

Thank you.

**SEND TO: BOARD - ALBION JUDAH COY JANES ST. CERNY
DONALD STILWELL, COUNTY MANAGER
BILL HAMMOND, DEPUTY COUNTY MANAGER
BRUCE LOUCKS, ASSISTANT COUNTY MANAGER
ANTONIO MAJUL, BUDGET OPERATIONS
JIM LAVENDER, PUBLIC WORKS
JIM YAEGER, COUNTY ATTORNEY
LISA PIERCE, MINUTES DEPARTMENT
PUBLIC RESOURCES OFFICE
COMMISSION RECEPTION DESK**

DATE DISTRIBUTED: February 8, 2002

TIME DISTRIBUTED: 1:30 PM

LEE COUNTY ORDINANCE NO. _____

AN ORDINANCE READOPTING AMENDING AND RESTATING THE LEE COUNTY VESSEL CONTROL AND WATER SAFETY ORDINANCE, ~~NO. 90-51 AS AMENDED BY NOS. 90-63 AND 91-16; NO. 96-22~~ RELATING TO VESSEL CONTROL AND WATER SAFETY; PROVIDING FOR TITLE, PURPOSE AND AUTHORITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR AREAS OF ENFORCEMENT AND MEANS OF ENFORCEMENT; PROVIDING FOR VESSEL REGULATION INCLUDING SPEED, CAREFUL AND PRUDENT OPERATION REQUIRED, AREAS OF PROHIBITED WATER ACTIVITY, AREAS OF REGULATED WATER ACTIVITY, AREAS OF SPECIAL MANAGEMENT ~~AND REGULATIONS FOR OPERATION OF PERSONAL WATERCRAFT~~; PROVIDING FOR REGULATIONS FOR PERSONAL WATERCRAFT RENTALS; ~~RELATING TO PROHIBITED PERSONAL WATERCRAFT ACTIVITY WITHIN WATERS OF CAPTIVA ISLAND~~; PROVIDING FOR PROCEDURES TO DESIGNATE AREAS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR PENALTY; PROVIDING FOR REPEALER, CONFLICTS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE ~~AND SUNSET PROVISION~~.

WHEREAS, the recreational use of the waters and public beaches is an asset of this County which is afforded the public at large, including residents and visitors to the County; and,

WHEREAS, it is not the intent of the County in this Ordinance to either regulate or post speed limits for motorized vessels in all of the waters that may be subject to the County's jurisdiction, nor to unduly interfere with traditional waterway uses for commercial and recreational purposes by boaters and fishermen; and

WHEREAS, the manner, mode, type and degree of uses to which the waters adjoining beaches are placed by the public affects the health, safety and welfare as well

as the right to enjoyment by individuals using the beaches or waters for recreational purposes as well as those residing nearby; and,

WHEREAS, the operation of vessels in certain known swimming areas and in excess of idle speed poses a threat to the health, safety and welfare of swimmers and others located offshore from beaches; and,

WHEREAS, regulations which reduce vessel wakes and regulate vessel speeds will aid in reducing turbidity along and erosion to grass beds, mangroves and shorelines that serve as habitat for manatees, wading birds and other flora and fauna within Lee County; and,

~~WHEREAS, the Lee County Board of County Commissioners finds that Captiva Island is unique in that a majority of the shoreline is developed for residential use; and,~~

~~WHEREAS, the use of personal watercraft is continuous in a limited area and creates persistent noise which is a nuisance to a residential area; and,~~

~~WHEREAS, it is in the interest for safety and welfare of the public to establish certain regulations for commercial vessel activity and limited areas of personal watercraft activity.~~

~~WHEREAS, the Lee County Board of County Commissioners recognizes the need for standards for location of personal watercraft rentals to ensure that such operations are located and utilized within commercially zoned areas to preserve residentially zoned areas and to ensure that personal watercraft are operated with a high degree of safety standards to protect the renter and the public; and,~~

~~WHEREAS, the Lee County Board of County Commissioners finds that personal~~

~~watercraft rentals have a greater impact on land areas than other types of water oriented activities because personal watercraft create a persistent noise from continuous use in limited areas and the numbers of watercraft that could be rented from one source which serves to multiply the noise; and,~~

WHEREAS, the use of personal watercraft floating vendors in Lee County has been found to create an intrusion of commercial activity into residentially zoned areas; and,

WHEREAS, it is in the interest of protecting residential neighborhoods, preserving the County's natural resources and limiting intrusion into public bathing areas that this Ordinance is further amended to set forth specific standards for the location and operation of commercial personal watercraft rentals and to regulate the use of personal watercraft floating vendors in the waters of Lee County; and,

~~WHEREAS, the operation of personal watercraft in areas used for other water activities poses a threat to the safety of swimmers and the control of other water vessels; and,~~

~~WHEREAS, the manner in which personal watercraft are used continuously in a limited area, such persistent noise causes a nuisance to adjoining residential areas and disrupts the habitat of wildlife; and,~~

WHEREAS, it is in the interest for safety and welfare of the public and the County's natural resources to establish certain regulations for speed control and limited areas of watercraft activity to reduce injury to the public and ensure the continuation of our natural resources for the public benefit and welfare; and

~~WHEREAS, the re-adoption and restatement of this Ordinance will safeguard the~~

citizens of Lee County by having vessel control and water safety legislation during the procedural attack on the validity of the enactment of Lee County Ordinance No. 90-51, as amended.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: TITLE

This Ordinance shall be known and may be cited as the Lee County Vessel Control and Water Safety Ordinance.

SECTION TWO: PURPOSE AND AUTHORITY

A. The purpose of this Ordinance shall be to promote safety in and between boating, swimming and other water related activities in Lee County and to preserve and protect our natural resources.

B. The County does hereby declare that the public health, safety and welfare of the citizens of the County and others requires designation of specific areas within which the operation of vessels and personal watercraft may be regulated or prohibited, and in which swimming, waterskiing, skindiving and other water activity, or any of them, may be prohibited or regulated.

C. The County is hereby authorized to designate specific areas prescribing the water activities that may be conducted and the operation of vessels therein, and the regulations for the conduct thereof. The County may, in the interest of safety, prohibit vessels including personal watercraft from operating within such designated area and may prohibit swimming, waterskiing, skindiving and other water activities, or any of them, from

being conducted in such areas.

SECTION THREE: DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

A. "Bather" means any person who is in the same water as a vessel, whether said person is swimming, wading or engaged in any other activity in the water.

B. "Beach" means the soft sand portion of land lying seaward of a seawall or line of permanent vegetation and seaward of the mean high water line.

C. "Floating Vendor" means a vessel represented as a place of business, a professional or other commercial enterprise which is used to solicit, conduct, or canvass for the sale or rental of any merchandise, services, goods or property of any kind or character. This term does not include the following types of vessels:

1. A vessel which in and of itself is rented;
2. Any parasail operation using self contained operational equipment so that launching or landing does not occur on land;
3. A vessel maintained in a permanent location over privately owned or leased submerged bottomlands; or,
4. A vessel used for hire (i.e., charter boat, dive boat, dinner cruise boat, tour boat, etc.).

D. "Idle speed" means the lowest speed at which a vessel can operate and maintain steering control. The actual speed will depend upon the design of the vessel and on the vessel's load, wind direction and speed, and the sea conditions. Generally, it will be between 1 and 3 miles per hour for outboard and inboard/outboard vessels, between 2 and 5 miles per hour for fixed shaft/rudder vessels, and the minimum speed merely necessary to effectively traverse breaking water for personal watercraft. For a non-motor propelled vessel, idle speed means that speed necessary for steerageway.

E. "Littoral Waters" means that part of the ocean or sea which abuts the shoreline and includes the shore to the ordinary high watermark. For purposes of this ordinance, the littoral right to use such waters shall be limited to the waters within the boundaries of the land-based site as those boundaries extend into the water at right angles from the shoreline. See attached Exhibit "A".

F. "Operate" means to navigate or otherwise use any vessel in, on or under the water.

G. "Person" means any individual, partnership, firm, corporation, association or other entity.

H. "Personal watercraft" means a small class A-1 or A-2 vessel as defined by state law which uses an outboard motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designated 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.

I. "Site" means the plot or parcel of land or combination of contiguous lots or parcels of land.

J. "Slow speed" means no speed greater than that which is reasonable and prudent to avoid either intentionally or negligently disturbing, colliding with, or injuring manatees and which comports with the duty of all persons to use due care under the circumstances. A vessel in a slow speed zone that:

1. is operating on a plane is not proceeding at slow speed;
2. 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 speed;
3. that produces no wake or minimum wake is proceeding at slow speed;
4. 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 speed.

K. "Slow speed zone" means a designated area within which all vessel operators shall proceed at slow speed not on a plane and producing no or minimum wake.

L. "Steerageway" means the minimum rate of motion required for the helm of the vessel to have effect.

M. "Vessel" means an engine ~~motor~~-propelled or artificially-propelled vehicle and every other description of boat, 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 including personal watercraft. This term shall not include unpowered rafts, floats or floatation devices, whether of canvas, vinyl, rubber, styrofoam or other substance, intended or capable of assisting in the floatation of a person on or in the water.

N. "Water-oriented structure" shall mean and include without limitation, any fishing pier, pier, wharf, observation walkway, platform, boathouse, mooring pile, riprap, revetment, seawall, bulkhead, retaining wall, jetty, platform, boat lift, davit, boat ramp, or any other obstacle, obstruction or protrusion used primarily for the landing or launching of watercraft, erosion control and shoreline stabilization, or for water oriented activities.

SECTION FOUR: AREA OF ENFORCEMENT

The area of enforcement of the provisions of this Ordinance shall be all public navigable waters, creeks, bayous, canals and channels, whether natural or man-made, located within the unincorporated areas of Lee County, including all public waters within the jurisdiction of the County in which the tide ebbs and flows. This Ordinance does not apply to the Florida Intracoastal Waterway and West Coast Inland Navigation District Waterway.

SECTION FIVE: MEANS OF ENFORCEMENT

The provisions of this Ordinance shall be enforced by members of all duly authorized law enforcement agencies within the County. Section Seven of this Ordinance shall also be enforced by the appropriate Lee County Department, Division or Agency.

SECTION SIX: VESSEL REGULATION

A. SPEED

Vessel speed shall not exceed reasonable speed under existing conditions. Nothing contained in this Ordinance shall be construed to authorize or approve any speed greater than is reasonable and proper in consideration of local conditions, other water traffic, fishermen, water skiers or bathers in the area, or other hazards.

B. CAREFUL AND PRUDENT OPERATION REQUIRED

Every person operating any vessel in, on or under any waters within the area of enforcement as set forth above shall do so in a careful and prudent manner, taking into consideration the weather conditions and range of visibility, water turbulence, proximities to fishermen, bathers, water skiers and other boats and watercraft, and all other attendant circumstances so as not to endanger the life, limb or property of any person. Failure to operate a vessel in such a careful and prudent manner shall constitute careless boating in violation of this Ordinance.

C. AREAS OF PROHIBITED WATER ACTIVITY

No owner, operator or person in command of any vessel shall permit or operate a vessel within 500 feet of a County-park beach on littoral waters adjacent thereto and designated by posting proper signage as a "Swimming Only" zone - vessel exclusion area, or any other area that may be so designated by the Lee County Board of County Commissioners pursuant to the procedures set forth in this Ordinance.

D. AREAS OF REGULATED WATER ACTIVITY

No owner, operator or person in command of any gasoline engine powered vessel which includes personal watercraft as defined herein, shall permit or operate said vessel at a speed greater than, or in excess of, idle speed whenever the vessel is in an Area of Regulated Water Activity except as to those prohibited areas set forth in Section Six C. of this Ordinance. Ingress and egress to the beaches shall be as nearly perpendicular to the shoreline as possible and parallel cruising of the shoreline shall be prohibited. The following areas are hereby designated as Areas of Regulated Water Activity:

1. All waters within 500 feet offshore from all beaches whether or not so designated with appropriate signs;
2. All waters within 500 feet from any water-oriented structure, whether or not designated for such purpose by appropriate signs;
3. Any area designated as an official "NO WAKE - IDLE SPEED ONLY" area which is so posted in such a manner and place that it may be reasonably expected to be seen and read by a person in operation of a vessel within the area;
4. The Great Calusa Blueway Paddling Trail is intended for recreational use solely by canoeists and kayakers, except in those areas where a boating channel crosses the paddling trail or is a part of the paddling trail. In those areas of the paddling trail where gasoline-engine powered vessels may operate, certain parts may be designated and

marked as “no wake-idle speed only” areas for safety of all boaters in that area.

5. All waters within 100 feet inshore and offshore of the Bascule bridge span of the Sanibel Causeway whether or not so designated with idle speed signs; and

5- 6. Any other area that may be so designated by the Lee County Board of County Commissioners according to the procedures set forth in this Ordinance;

E. AREAS OF SPECIAL MANAGEMENT

No owner, operator or person in command of any vessel shall permit or operate a vessel at a speed greater than, or in the excess of, either idle speed, slow speed or under motor power, whichever is applicable, whenever the vessel is in an Area of Special Management except as to those prohibited areas or regulated areas as set forth in Sections Six C. and D., respectively. These Areas are so designated to provide increased protection of the manatees and other natural resources. The following areas are hereby designated as Areas of Special Management:

- ~~1. Any area designated as an official “No Wake/Idle Speed Only” or “Slow Speed Zone” which is so posted in such a manner and place that it may be reasonably expected to be seen and read by a person in operation of a vessel in the area. Such areas are identified on attached Exhibit “A”; or,~~
2. Any area designated as an official “No Motor Power” zone which is so

~~posted in such a manner and place that may be reasonably expected to be seen and read by a person in operation of a vessel in the area. Operation of a vessel in these areas shall be without motor power. Poling, rowing or wind power is permissible. Such areas are identified on attached Exhibit "B"; or,~~

- ~~3. Any other area that may be so designated by the Lee County Board of County Commissioners pursuant to the procedures set forth in this Ordinance.~~

~~F. AREAS OF PROHIBITED PERSONAL WATERCRAFT ACTIVITY~~

~~No owner or operator shall operate any personal watercraft within the following areas of prohibited personal watercraft activity:~~

- ~~1. All waters within 500 feet of the shoreline of the west side of Captiva Island between Blind Pass and Redfish Pass; and~~
- ~~2. All waters between the shoreline of the east side of Captiva Island and a line commencing at the tripod marker and extending due south to Blind Pass. This area shall include Roosevelt Channel.~~

~~E. E. REGULATIONS FOR OPERATION OF PERSONAL WATERCRAFT~~

~~In addition to the regulations set forth above, all personal watercraft shall also be operated in the following manner:~~

- ~~1. A person may not operate a personal watercraft unless each person riding on or being towed behind such vessel is wearing a type I, type II, type III or type V personal flotation device approved by the united~~

States Coast Guard.

2. A person operating a personal watercraft equipped by the manufacturer with a lanyard type engine cutoff switch must attach such lanyard to his person, clothing or personal flotation device as is appropriate for the specific vessel.
3. No person under the age of 14 shall operate a personal watercraft on the waters of this County.
4. It is unlawful for the owner of any personal watercraft or any person having charge over or control of a personal watercraft to authorize or knowingly permit the same to be operated by a person under 14 years of age in violation of this section.
5. A person shall not operate a personal watercraft at any time between sunset to sunrise.
6. A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to, weaving through congested vessel traffic, jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed, and swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel. Failure to operate a personal watercraft in such a careful and prudent manner shall constitute

careless boating in violation of this Ordinance.

7. ~~Subsection F. shall not apply to a performer engaged in a professional exhibition or a person participating in a regatta, race, marine parade, tournament or exhibition held in compliance with this Ordinance and Section 327.48, Florida Statutes.~~

SECTION SEVEN: REGULATIONS AND LOCATIONS FOR PERSONAL WATERCRAFT RENTALS

Any person engaged in the rental, leasing, bailment for consideration or otherwise providing transportation for remuneration, of personal watercraft for use by the public on any waters of Lee County, must meet the following requirements as of the effective date of this Ordinance including any new and already existing rental operations:

A. A person is required to obtain a county occupational license which shall be issued to the personal watercraft rental operations office.

1. The operations office shall be located at a land-based site; and,
2. The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, County-owned beach access, or any residentially zoned land that must be traversed to gain beach access; and,
3. All business transactions such as the exchange of consideration or remuneration for the rental, leasing, bailment or any other type of transaction between the commercial rental operator and customer shall occur on the land-based site for which the occupational license is issued; and,

4. The personal watercraft shall only be rented or operated on the littoral waters offshore of the land-based site for which the occupational license is issued until the personal watercraft travels beyond the 500 feet offshore idle speed limit.

A floating vendor of personal watercraft rentals may operate within the littoral waters of a land-based site as long as the floating vendor has an occupational license issued at that land-based site.

- B. A person must have and maintain a telephone and an operable marine radio at its land-based operations office.
- C. A person must have a manned, motorized chase vessel with operational marine radio in good running condition that meets all United States Coast Guard safety requirements and is within vision of where the personal watercraft are being operated during all hours of the persons operations.
- D. A person must have and maintain comprehensive general liability insurance with coverage not less than \$500,000.00 combined single limits. A copy of the current insurance policy shall be kept at the rental operations office.
- E. A person shall register each personal watercraft and have a Florida vessel registration number affixed thereon.
- F. A person may not lease, hire or rent a personal watercraft to any person who is under 16 years of age.

SECTION EIGHT: PROCEDURES TO DESIGNATE AREAS

By Resolution adopted at a public hearing upon at least ~~fifteen (15)~~ ten (10) days

notice (excluding Sundays and legal holidays) published in a newspaper of general circulation in Lee County, Florida, the Board of County Commissioners of Lee County may designate additional specific areas as an "Area of Prohibited Water Activity" as described in Section Six. C., an "Area of Regulated Water Activity" as described in Section Six. D., or an "Area of Special Management" as described in Section Six.

E. In designating such areas, the Board of County Commissioners shall hear all testimony presented and make a finding that the designation is necessary for the safety and/or welfare of the citizens of the County. Upon the adoption of such a Resolution, the Board of County Commissioners shall publish the Resolution one time in a newspaper of general circulation in Lee County, Florida, after which the designation of the area shall be complete and binding; provided, however, no person shall be convicted of a violation of this Section relating to such specified areas until signs designating the boundaries of the area so designated have been posted in such a manner and place that they may reasonably be expected to be seen and read by a person operating a vessel in that area; provided however that no signs will need to be posted for areas described in Sections Six. C. and D. unless so designated as a requirement.

SECTION NINE: EXEMPTIONS

A. The provisions of this Ordinance shall not be construed to prohibit the running of racing or exhibition boats or personal watercraft during a publicly announced, properly authorized and supervised, and adequately patrolled regatta or speed trial or exhibition. "Properly authorized" shall require approval by the Lee County Board of County Commissioners.

B. Florida Marine Patrol rescue Fish and Wildlife Conservation Commission craft, Lee County Sheriff's Department craft, other official craft and craft operating under emergency conditions shall be exempted from the provisions of this Ordinance while performing their official duties or operating in an emergency.

C. Commercial vessels are exempted from the provisions of this Ordinance while conducting fish netting operations, provided the operations are conducted under the safety constraints of Sections Six. A., SPEED and Six. B., CAREFUL AND PRUDENT OPERATION REQUIRED; but at no time shall vessels be operated at greater than slow speed within 500 feet of bathers. This exemption is consistent with the "commercial watercraft" exemption set forth in the Lee County Caloosahatchee River Vessel Operation and Manatee Protection Ordinance. Such commercial vessels will also be exempt from State regulations if they comply with the conditional exemption requirements set forth in Section 16N-22.003, F.A.C.

SECTION TEN: PENALTY

Violation of the provisions of this Ordinance, or failure to comply with any of the requirements, shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any provisions shall upon conviction thereof be fined or imprisoned, or both, as provided by law, and in addition shall pay all costs and expenses involved in the case. In the alternative, a citation may be issued pursuant to the procedures set forth in Sections 327.73 and 327.72, Florida Statutes.

SECTION ELEVEN: REPEALER

Lee County Ordinance numbers 83-30 and 84-3 are hereby repealed and shall be

null and void on the effective date of this ordinance.

SECTION TWELVE: CONFLICT

In the event that any provision of this Ordinance is found to be contrary to any other Lee County Ordinance which regulates the same subject matter, then in said event, the more restrictive Ordinance shall apply.

SECTION THIRTEEN: SEVERABILITY

The provisions of this Ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any of the provisions of this Ordinance shall be held unconstitutional by any Court of competent jurisdiction, the decision of such Court shall not affect or impair any remaining provisions of this Ordinance. It is hereby declared to be the legislative intent that this Ordinance would be adopted had such unconstitutional provision not been included therein.

SECTION FOURTEEN: EFFECTIVE DATE AND SUNSET PROVISION

This Ordinance shall take effect immediately upon receipt of official acknowledgment from the Secretary of State of Florida that it has been filed with that office.

~~This Ordinance specifically re-adopts and restates the Lee County Vessel Control and Water Safety Ordinance, No. 90-51, as amended, to provide Lee County with an enforceable Ordinance during the litigation and ensuing appeals on the issue of the validity of the enactment procedures of said ordinance. This Ordinance shall be deemed repealed and of no further force or effect upon a final appellate court's ruling that Lee County Ordinance No. 90-51 was validly enacted.~~

THE FOREGOING ORDINANCE was offered by Commissioner _____ who moved its adoption. The motion was seconded by Commissioner _____ and, upon being put to a vote, the vote was as follows:

BOB JANES	_____
DOUGLAS ST. CERNY	_____
RAY JUDAH	_____
ANDREW COY	_____
JOHN ALBION	_____

DONE AND ADOPTED this _____ day of _____, 2002.

ATTEST: CHARLIE GREEN
CLERK OF THE COURT

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:


BY: _____
Office of the County Attorney

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: February 7, 2002

To: Lee Cares

FROM:


Kristie Kroslack
Assistant County Attorney

**RE: Consent Item 8D, Blue Sheet # 20020107
Vessel Control Ordinance 96-22**

Please substitute the attached draft Ordinance for the one that you originally received with the blue sheet.

This item is on the February 12, 2002 agenda.

Of significance are the changes to page 10, section D4, relating to the Great Calusa Blueway Paddling Trail.

#3



Blue Sheet / Contract Tracking System

Number

Type Department Category
Agenda Status

Subject

DPT_ATY REC_ATY ATY_CAD/DPW REC_CAD/DPW
CAD/DPW_DPR REC_DPR DATE_SCHEDULED Agenda Item

Comment

Board Action Other
Issue

CON_RISK REC_RISK RISK_ATY
REC_ATY ATY_DPT/CAD/CHA REC_DPT/CAD/CHA
DPT/CAD/CHA_MIN REC_MIN MIN_FIN
REC_FIN FIN_MIN MIN_CON

DPR_ATY DPR_CAD DPR_CHA ATY_CHA
CAD_CHA CAD_ATY CHA_MIN MIN_DPR
DISTR_DATE MIN_FIN FIN_MIN
DISTR_COMMENT

AGENDA UPDATE

FROM



DIVISION OF PUBLIC RESOURCES

MEETING OF FEBRUARY 12, 2002

RE: CONSENT 8(D)-VESSEL CONTROL ORDINANCE

Attached please find a revised copy of the proposed Ordinance. Please replace the one in your agenda packet with this one.

Thank you.

**SEND TO: BOARD - ALBION JUDAH COY JANES ST. CERNY
DONALD STILWELL, COUNTY MANAGER
BILL HAMMOND, DEPUTY COUNTY MANAGER
BRUCE LOUCKS, ASSISTANT COUNTY MANAGER
ANTONIO MAJUL, BUDGET OPERATIONS
JIM LAVENDER, PUBLIC WORKS
JIM YAEGER, COUNTY ATTORNEY
LISA PIERCE, MINUTES DEPARTMENT
PUBLIC RESOURCES OFFICE
COMMISSION RECEPTION DESK**

DATE DISTRIBUTED: February 6, 2002

TIME DISTRIBUTED: 10:00 AM

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: February 4, 2002

To: Patricia Geren
Lee Cares

FROM:


Kristie Kroslack
Assistant County Attorney

**RE: Blue Sheet # 20020107 Vessel Control Ordinance 96-22
Board of County Commissioners Meeting February 12, 2002**

Kathy,

Attached please find a draft Ordinance to be attached to the blue sheet as referenced above. The original draft had an error in it as it had a strike over on some language that should have remained as it was. Please accept my apology for this error.

If you have any questions please do not hesitate to give me a call.

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20020107

1. REQUESTED MOTION:

ACTION REQUESTED: Direct to Public Hearing and authorize advertising to amend Lee County's Vessel Control Ordinance 96-22. The amendments to the ordinance are consistent with the changes to Fla. Stat. §327.60. Suggested Public Hearing date: February 26, 2002 at 5:00 p.m..

WHY ACTION IS NECESSARY: Provides for uniformity with Fla. Stat. §327.60, as amended on July 1, 2000, prohibiting discrimination against personal watercraft.

WHAT ACTION ACCOMPLISHES: Changes Lee County Ordinance 96-22- Vessel Control, by deleting provisions regulating personal watercraft and amending the section entitled, "Areas of Regulated Water Activity."

2. DEPARTMENTAL CATEGORY: 08
COMMISSION DISTRICT #

3. MEETING DATE: February 12, 2002

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

(Specify)

- STATUTE
- ORDINANCE 96-22
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

A. COMMISSIONER

B. DEPARTMENT Natural Resources

C. DIVISION

BY: Roland Ottolini

7. BACKGROUND:

On July 1, 2001, the Florida Legislature, by Senate Bill #386, amended Fla. Stat. §327.60 to provide that ordinances and local laws enacted by cities and counties to regulate the operation and equipment of vessels may not "discriminate" against personal watercraft. Lee County Ordinance 96-22, Section F, regulated personal watercraft by prohibiting personal watercraft activity in certain areas.

At its August 6, 2001 Management and Planning Meeting, the Board Of County Commissioners directed staff to repeal Section F in its entirety, thereby allowing full use of the previously restricted area by all boaters.

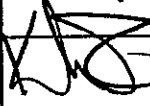
Other minor changes are being proposed as well. A copy of the Ordinance with the proposed amendments shown in underlining and the proposed deletions shown in ~~strike-out~~ is attached.

The public hearing on the amendments to 96-22 will be heard by the Board of County Commissioners at its regular meeting February 26, 2002 at 5:00 p.m..

Attachment: Draft Ordinance (dated 01/31/02)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	RISK	GC	
				 4/20/02					

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

LEE COUNTY ORDINANCE NO. _____

AN ORDINANCE READOPTING AMENDING AND RESTATING THE LEE COUNTY VESSEL CONTROL AND WATER SAFETY ORDINANCE, ~~NO. 90-51 AS AMENDED BY NOS. 90-63 AND 91-16; NO. 96-22~~ RELATING TO VESSEL CONTROL AND WATER SAFETY; PROVIDING FOR TITLE, PURPOSE AND AUTHORITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR AREAS OF ENFORCEMENT AND MEANS OF ENFORCEMENT; PROVIDING FOR VESSEL REGULATION INCLUDING SPEED, CAREFUL AND PRUDENT OPERATION REQUIRED, AREAS OF PROHIBITED WATER ACTIVITY, AREAS OF REGULATED WATER ACTIVITY, AREAS OF SPECIAL MANAGEMENT ~~AND REGULATIONS FOR OPERATION OF PERSONAL WATERCRAFT; PROVIDING FOR REGULATIONS FOR PERSONAL WATERCRAFT RENTALS; RELATING TO PROHIBITED PERSONAL WATERCRAFT ACTIVITY WITHIN WATERS OF CAPTIVA ISLAND;~~ PROVIDING FOR PROCEDURES TO DESIGNATE AREAS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR PENALTY; PROVIDING FOR REPEALER, CONFLICTS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE ~~AND SUNSET PROVISION.~~

WHEREAS, the recreational use of the waters and public beaches is an asset of this County which is afforded the public at large, including residents and visitors to the County; and,

WHEREAS, it is not the intent of the County in this Ordinance to either regulate or post speed limits for motorized vessels in all of the waters that may be subject to the County's jurisdiction, nor to unduly interfere with traditional waterway uses for commercial and recreational purposes by boaters and fishermen; and

WHEREAS, the manner, mode, type and degree of uses to which the waters adjoining beaches are placed by the public affects the health, safety and welfare as well

as the right to enjoyment by individuals using the beaches or waters for recreational purposes as well as those residing nearby; and,

WHEREAS, the operation of vessels in certain known swimming areas and in excess of idle speed poses a threat to the health, safety and welfare of swimmers and others located offshore from beaches; and,

WHEREAS, regulations which reduce vessel wakes and regulate vessel speeds will aid in reducing turbidity along and erosion to grass beds, mangroves and shorelines that serve as habitat for manatees, wading birds and other flora and fauna within Lee County; and,

~~WHEREAS, the Lee County Board of County Commissioners finds that Captiva Island is unique in that a majority of the shoreline is developed for residential use; and,~~

~~WHEREAS, the use of personal watercraft is continuous in a limited area and creates persistent noise which is a nuisance to a residential area; and,~~

~~WHEREAS, it is in the interest for safety and welfare of the public to establish certain regulations for commercial vessel activity and limited areas of personal watercraft activity;~~

~~WHEREAS, the Lee County Board of County Commissioners recognizes the need for standards for location of personal watercraft rentals to ensure that such operations are located and utilized within commercially zoned areas to preserve residentially zoned areas and to ensure that personal watercraft are operated with a high degree of safety standards to protect the renter and the public; and,~~

~~WHEREAS, the Lee County Board of County Commissioners finds that personal~~

~~watercraft rentals have a greater impact on land areas than other types of water oriented activities because personal watercraft create a persistent noise from continuous use in limited areas and the numbers of watercraft that could be rented from one source which serves to multiply the noise; and,~~

WHEREAS, the use of personal watercraft floating vendors in Lee County has been found to create an intrusion of commercial activity into residentially zoned areas; and,

WHEREAS, it is in the interest of protecting residential neighborhoods, preserving the County's natural resources and limiting intrusion into public bathing areas that this Ordinance is further amended to set forth specific standards for the location and operation of commercial personal watercraft rentals and to regulate the use of personal watercraft floating vendors in the waters of Lee County; and,

~~WHEREAS, the operation of personal watercraft in areas used for other water activities poses a threat to the safety of swimmers and the control of other water vessels; and,~~

~~WHEREAS, the manner in which personal watercraft are used continuously in a limited area, such persistent noise causes a nuisance to adjoining residential areas and disrupts the habitat of wildlife; and,~~

WHEREAS, it is in the interest for safety and welfare of the public and the County's natural resources to establish certain regulations for speed control and limited areas of watercraft activity to reduce injury to the public and ensure the continuation of our natural resources for the public benefit and welfare; and

~~WHEREAS, the re-adoption and restatement of this Ordinance will safeguard the~~

citizens of Lee County by having vessel control and water safety legislation during the procedural attack on the validity of the enactment of Lee County Ordinance No. 90-51, as amended.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: TITLE

This Ordinance shall be known and may be cited as the Lee County Vessel Control and Water Safety Ordinance.

SECTION TWO: PURPOSE AND AUTHORITY

A. The purpose of this Ordinance shall be to promote safety in and between boating, swimming and other water related activities in Lee County and to preserve and protect our natural resources.

B. The County does hereby declare that the public health, safety and welfare of the citizens of the County and others requires designation of specific areas within which the operation of vessels and ~~personal watercraft~~ may be regulated or prohibited, and in which swimming, waterskiing, skindiving and other water activity, or any of them, may be prohibited or regulated.

C. The County is hereby authorized to designate specific areas prescribing the water activities that may be conducted and the operation of vessels therein, and the regulations for the conduct thereof. The County may, in the interest of safety, prohibit vessels ~~including personal watercraft~~ from operating within such designated area and may prohibit swimming, waterskiing, skindiving and other water activities, or any of them, from

being conducted in such areas.

SECTION THREE: DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

A. "Bather" means any person who is in the same water as a vessel, whether said person is swimming, wading or engaged in any other activity in the water.

B. "Beach" means the soft sand portion of land lying seaward of a seawall or line of permanent vegetation and seaward of the mean high water line.

C. "Floating Vendor" means a vessel represented as a place of business, a professional or other commercial enterprise which is used to solicit, conduct, or canvass for the sale or rental of any merchandise, services, goods or property of any kind or character. This term does not include the following types of vessels:

1. A vessel which in and of itself is rented;
2. Any parasail operation using self contained operational equipment so that launching or landing does not occur on land;
3. A vessel maintained in a permanent location over privately owned or leased submerged bottomlands; or,
4. A vessel used for hire (i.e., charter boat, dive boat, dinner cruise boat, tour boat, etc.).

D. "Idle speed" means the lowest speed at which a vessel can operate and maintain steering control. The actual speed will depend upon the design of the vessel and on the vessel's load, wind direction and speed, and the sea conditions. Generally, it will be between 1 and 3 miles per hour for outboard and inboard/outboard vessels, between 2 and 5 miles per hour for fixed shaft/rudder vessels, and the minimum speed merely necessary to effectively traverse breaking water for personal watercraft. For a non-motor propelled vessel, idle speed means that speed necessary for steerageway.

E. "Littoral Waters" means that part of the ocean or sea which abuts the shoreline and includes the shore to the ordinary high watermark. For purposes of this ordinance, the littoral right to use such waters shall be limited to the waters within the boundaries of the land-based site as those boundaries extend into the water at right angles from the shoreline. See attached Exhibit "A".

F. "Operate" means to navigate or otherwise use any vessel in, on or under the water.

G. "Person" means any individual, partnership, firm, corporation, association or other entity.

H. "Personal watercraft" means a small class A-1 or A-2 vessel as defined by state law which uses an outboard motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designated 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.

I. "Site" means the plot or parcel of land or combination of contiguous lots or parcels of land.

J. "Slow speed" means no speed greater than that which is reasonable and prudent to avoid either intentionally or negligently disturbing, colliding with, or injuring manatees and which comports with the duty of all persons to use due care under the circumstances. A vessel in a slow speed zone that:

1. is operating on a plane is not proceeding at slow speed;
2. 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 speed;
3. that produces no wake or minimum wake is proceeding at slow speed;
4. 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 speed.

K. "Slow speed zone" means a designated area within which all vessel operators shall proceed at slow speed not on a plane and producing no or minimum wake.

L. "Steerageway" means the minimum rate of motion required for the helm of the vessel to have effect.

M. "Vessel" means a motor-propelled or artificially-propelled vehicle and every other description of boat, 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 including personal watercraft. This term shall not include rafts, floats or floatation devices, whether of canvas, vinyl, rubber, styrofoam or other substance, intended or capable of assisting in the floatation of a person on or in the water.

N. "Water-oriented structure" shall mean and include without limitation, any fishing pier, pier, wharf, observation walkway, platform, boathouse, mooring pile, riprap, revetment, seawall, bulkhead, retaining wall, jetty, platform, boat lift, davit, boat ramp, or any other obstacle, obstruction or protrusion used primarily for the landing or launching of watercraft, erosion control and shoreline stabilization, or for water oriented activities.

SECTION FOUR: AREA OF ENFORCEMENT

The area of enforcement of the provisions of this Ordinance shall be all public navigable waters, creeks, bayous, canals and channels, whether natural or man-made, located within the unincorporated areas of Lee County, including all public waters within the jurisdiction of the County in which the tide ebbs and flows. This Ordinance does not apply to the Florida Intracoastal Waterway and West Coast Inland Navigation District Waterway.

SECTION FIVE: MEANS OF ENFORCEMENT

The provisions of this Ordinance shall be enforced by members of all duly authorized law enforcement agencies within the County. Section Seven of this Ordinance shall also be enforced by the appropriate Lee County Department, Division or Agency.

SECTION SIX: VESSEL REGULATION

A. SPEED

Vessel speed shall not exceed reasonable speed under existing conditions. Nothing contained in this Ordinance shall be construed to authorize or approve any speed greater than is reasonable and proper in consideration of local conditions, other water traffic, fishermen, water skiers or bathers in the area, or other hazards.

B. CAREFUL AND PRUDENT OPERATION REQUIRED

Every person operating any vessel in, on or under any waters within the area of enforcement as set forth above shall do so in a careful and prudent manner, taking into consideration the weather conditions and range of visibility, water turbulence, proximities to fishermen, bathers, water skiers and other boats and watercraft, and all other attendant circumstances so as not to endanger the life, limb or property of any person. Failure to operate a vessel in such a careful and prudent manner shall constitute careless boating in violation of this Ordinance.

C. AREAS OF PROHIBITED WATER ACTIVITY

No owner, operator or person in command of any vessel shall permit or operate a vessel within 500 feet of a County-park beach on littoral waters adjacent thereto and designated by posting proper signage as a "Swimming Only" zone - vessel exclusion area, or any other area that may be so designated by the Lee County Board of County Commissioners pursuant to the procedures set forth in this Ordinance.

D. AREAS OF REGULATED WATER ACTIVITY

No owner, operator or person in command of any vessel shall permit or operate said vessel at a speed greater than, or in excess of, idle speed whenever the vessel is in an Area of Regulated Water Activity except as to those prohibited areas set forth in Section Six C. of this Ordinance. Ingress and egress to the beaches shall be as nearly perpendicular to the shoreline as possible and parallel cruising of the shoreline shall be prohibited. The following areas are hereby designated as Areas of Regulated Water Activity:

1. All waters within 500 feet offshore from all beaches whether or not so designated with appropriate signs; and,
2. All waters within 500 feet from any water-oriented structure, whether or not designated for such purpose by appropriate signs; and,
3. Any area designated as an official "NO WAKE - IDLE SPEED ONLY" area which is so posted in such a manner and place that it may be reasonably expected to be seen and read by a person in operation of a vessel within the area; and,
4. Vessels, powered by a gasoline motor, are prohibited from utilizing the Great Calusa Blueway Paddling Trail [attached trail map- Exhibit "B"] which is intended for recreational use only by canoeists and kayakers, except in those areas where a boating channel crosses the paddling trail. All waters within 50 feet parallel to the trail on either side and where crossing the paddling trail, shall constitute

“idle speed-no wake” areas.

5. All waters within 100 feet inshore and offshore of the Bascule bridge span of the Sanibel Causeway whether or not so designated with idle speed signs; and

5- 6. Any other area that may be so designated by the Lee County Board of County Commissioners according to the procedure set forth in this Ordinance;

E. AREAS OF SPECIAL MANAGEMENT

No owner, operator or person in command of any vessel shall permit or operate a vessel at a speed greater than, or in the excess of, either idle speed, slow speed or under motor power, whichever is applicable, whenever the vessel is in an Area of Special Management except as to those prohibited areas or regulated areas as set forth in Sections Six C. and D., respectively. These Areas are so designated to provide increased protection of the manatees and other natural resources. ~~The following areas are hereby designated as Areas of Special Management:~~

- ~~1. Any area designated as an official “No Wake/Idle Speed Only” or “Slow Speed Zone” which is so posted in such a manner and place that it may be reasonably expected to be seen and read by a person in operation of a vessel in the area. Such areas are identified on attached Exhibit “A”; or,~~
2. Any area designated as an official “No Motor Power” zone which is so posted in such a manner and place that may be reasonably expected

~~to be seen and read by a person in operation of a vessel in the area:
-Operation of a vessel in these areas shall be without motor power.
Poling, rowing or wind power is permissible. Such areas are identified
on attached Exhibit "B"; or,~~

- ~~3. Any other area that may be so designated by the Lee County Board of County Commissioners pursuant to the procedures set forth in this Ordinance.~~

~~F. AREAS OF PROHIBITED PERSONAL WATERCRAFT ACTIVITY~~

~~No owner or operator shall operate any personal watercraft within the following areas of prohibited personal watercraft activity:~~

- ~~1. All waters within 500 feet of the shoreline of the west side of Captiva Island between Blind Pass and Redfish Pass; and~~
- ~~2. All waters between the shoreline of the east side of Captiva Island and a line commencing at the tripod marker and extending due south to Blind Pass. This area shall include Roosevelt Channel.~~

~~E. E. REGULATIONS FOR OPERATION OF PERSONAL WATERCRAFT~~

~~In addition to the regulations set forth above, all personal watercraft shall also be operated in the following manner:~~

- ~~1. A person may not operate a personal watercraft unless each person riding on or being towed behind such vessel is wearing a type I, type II, type III or type V personal flotation device approved by the United States Coast Guard.~~

2. A person operating a personal watercraft equipped by the manufacturer with a lanyard type engine cutoff switch must attach such lanyard to his person, clothing or personal flotation device as is appropriate for the specific vessel.
3. No person under the age of 14 shall operate a personal watercraft on the waters of this County.
4. It is unlawful for the owner of any personal watercraft or any person having charge over or control of a personal watercraft to authorize or knowingly permit the same to be operated by a person under 14 years of age in violation of this section.
5. A person shall not operate a personal watercraft at any time between sunset to sunrise.
6. A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to, weaving through congested vessel traffic, jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed, and swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel. Failure to operate a personal watercraft in such a careful and prudent manner shall constitute careless boating in violation of this Ordinance.

7. ~~Subsection F. shall not apply to a performer engaged in a professional exhibition or a person participating in a regatta, race, marine parade, tournament or exhibition held in compliance with this Ordinance and Section 327.48, Florida Statutes.~~

SECTION SEVEN: REGULATIONS AND LOCATIONS FOR PERSONAL WATERCRAFT RENTALS

Any person engaged in the rental, leasing, bailment for consideration or otherwise providing transportation for remuneration, of personal watercraft for use by the public on any waters of Lee County, must meet the following requirements as of the effective date of this Ordinance including any new and already existing rental operations:

A. A person is required to obtain a county occupational license which shall be issued to the personal watercraft rental operations office.

1. The operations office shall be located at a land-based site; and,
2. The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, County-owned beach access, or any residentially zoned land that must be traversed to gain beach access; and,
3. All business transactions such as the exchange of consideration or remuneration for the rental, leasing, bailment or any other type of transaction between the commercial rental operator and customer shall occur on the land-based site for which the occupational license is issued; and,
4. The personal watercraft shall only be rented or operated on the littoral

waters offshore of the land-based site for which the occupational license is issued until the personal watercraft travels beyond the 500 feet offshore idle speed limit.

A floating vendor of personal watercraft rentals may operate within the littoral waters of a land-based site as long as the floating vendor has an occupational license issued at that land-based site.

- B. A person must have and maintain a telephone and an operable marine radio at its land-based operations office.
- C. A person must have a manned, motorized chase vessel with operational marine radio in good running condition that meets all United States Coast Guard safety requirements and is within vision of where the personal watercraft are being operated during all hours of the persons operations.
- D. A person must have and maintain comprehensive general liability insurance with coverage not less than \$500,000.00 combined single limits. A copy of the current insurance policy shall be kept at the rental operations office.
- E. A person shall register each personal watercraft and have a Florida vessel registration number affixed thereon.
- F. A person may not lease, hire or rent a personal watercraft to any person who is under 16 years of age.

SECTION EIGHT: PROCEDURES TO DESIGNATE AREAS

By Resolution adopted at a public hearing upon at least ~~fifteen (15)~~ ten (10) days notice (excluding Sundays and legal holidays) published in a newspaper of general

circulation in Lee County, Florida, the Board of County Commissioners of Lee County may designate additional specific areas as an "Area of Prohibited Water Activity" as described in Section Six. C., an "Area of Regulated Water Activity" as described in Section Six. D., or an "Area of Special Management" as described in Section Six.

E. In designating such areas, the Board of County Commissioners shall hear all testimony presented and make a finding that the designation is necessary for the safety and/or welfare of the citizens of the County. Upon the adoption of such a Resolution, the Board of County Commissioners shall publish the Resolution one time in a newspaper of general circulation in Lee County, Florida, after which the designation of the area shall be complete and binding; provided, however, no person shall be convicted of a violation of this Section relating to such specified areas until signs designating the boundaries of the area so designated have been posted in such a manner and place that they may reasonably be expected to be seen and read by a person operating a vessel in that area; provided however that no signs will need to be posted for areas described in Sections Six. C. and D. unless so designated as a requirement.

SECTION NINE: EXEMPTIONS

A. The provisions of this Ordinance shall not be construed to prohibit the running of racing or exhibition boats or personal watercraft during a publicly announced, properly authorized and supervised, and adequately patrolled regatta or speed trial or exhibition. "Properly authorized" shall require approval by the Lee County Board of County Commissioners.

B. Florida ~~Marine Patrol rescue~~ Fish and Wildlife Conservation Commission

craft, Lee County Sheriff's Department craft, other official craft and craft operating under emergency conditions shall be exempted from the provisions of this Ordinance while performing their official duties or operating in an emergency.

C. Commercial vessels are exempted from the provisions of this Ordinance while conducting fish netting operations, provided the operations are conducted under the safety constraints of Sections Six. A., SPEED and Six. B., CAREFUL AND PRUDENT OPERATION REQUIRED; but at no time shall vessels be operated at greater than slow speed within 500 feet of bathers. This exemption is consistent with the "commercial watercraft" exemption set forth in the Lee County Caloosahatchee River Vessel Operation and Manatee Protection Ordinance. Such commercial vessels will also be exempt from State regulations if they comply with the conditional exemption requirements set forth in Section 16N-22.003, F.A.C.

SECTION TEN: PENALTY

Violation of the provisions of this Ordinance, or failure to comply with any of the requirements, shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any provisions shall upon conviction thereof be fined or imprisoned, or both, as provided by law, and in addition shall pay all costs and expenses involved in the case. In the alternative, a citation may be issued pursuant to the procedures set forth in Sections 327.73 and 327.72, Florida Statutes.

SECTION ELEVEN: REPEALER

Lee County Ordinance numbers 83-30 and 84-3 are hereby repealed and shall be null and void on the effective date of this ordinance.

SECTION TWELVE: CONFLICT

In the event that any provision of this Ordinance is found to be contrary to any other Lee County Ordinance which regulates the same subject matter, then in said event, the more restrictive Ordinance shall apply.

SECTION THIRTEEN: SEVERABILITY

The provisions of this Ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any of the provisions of this Ordinance shall be held unconstitutional by any Court of competent jurisdiction, the decision of such Court shall not affect or impair any remaining provisions of this Ordinance. It is hereby declared to be the legislative intent that this Ordinance would be adopted had such unconstitutional provision not been included therein.

SECTION FOURTEEN: EFFECTIVE DATE AND SUNSET PROVISION

This Ordinance shall take effect immediately upon receipt of official acknowledgment from the Secretary of State of Florida that it has been filed with that office.

~~This Ordinance specifically re-adopts and restates the Lee County Vessel Control and Water Safety Ordinance, No. 90-51, as amended, to provide Lee County with an enforceable Ordinance during the litigation and ensuing appeals on the issue of the validity of the enactment procedures of said ordinance. This Ordinance shall be deemed repealed and of no further force or effect upon a final appellate court's ruling that Lee County Ordinance No. 90-51 was validly enacted.~~

THE FOREGOING ORDINANCE was offered by Commissioner _____ who moved its adoption. The motion was seconded by Commissioner _____ and, upon being put to a vote, the vote was as follows:

BOB JANES _____
DOUGLAS ST. CERNY _____
RAY JUDAH _____
ANDREW COY _____
JOHN ALBION _____

DONE AND ADOPTED this _____ day of _____, 2002.

ATTEST: CHARLIE GREEN
CLERK OF THE COURT

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

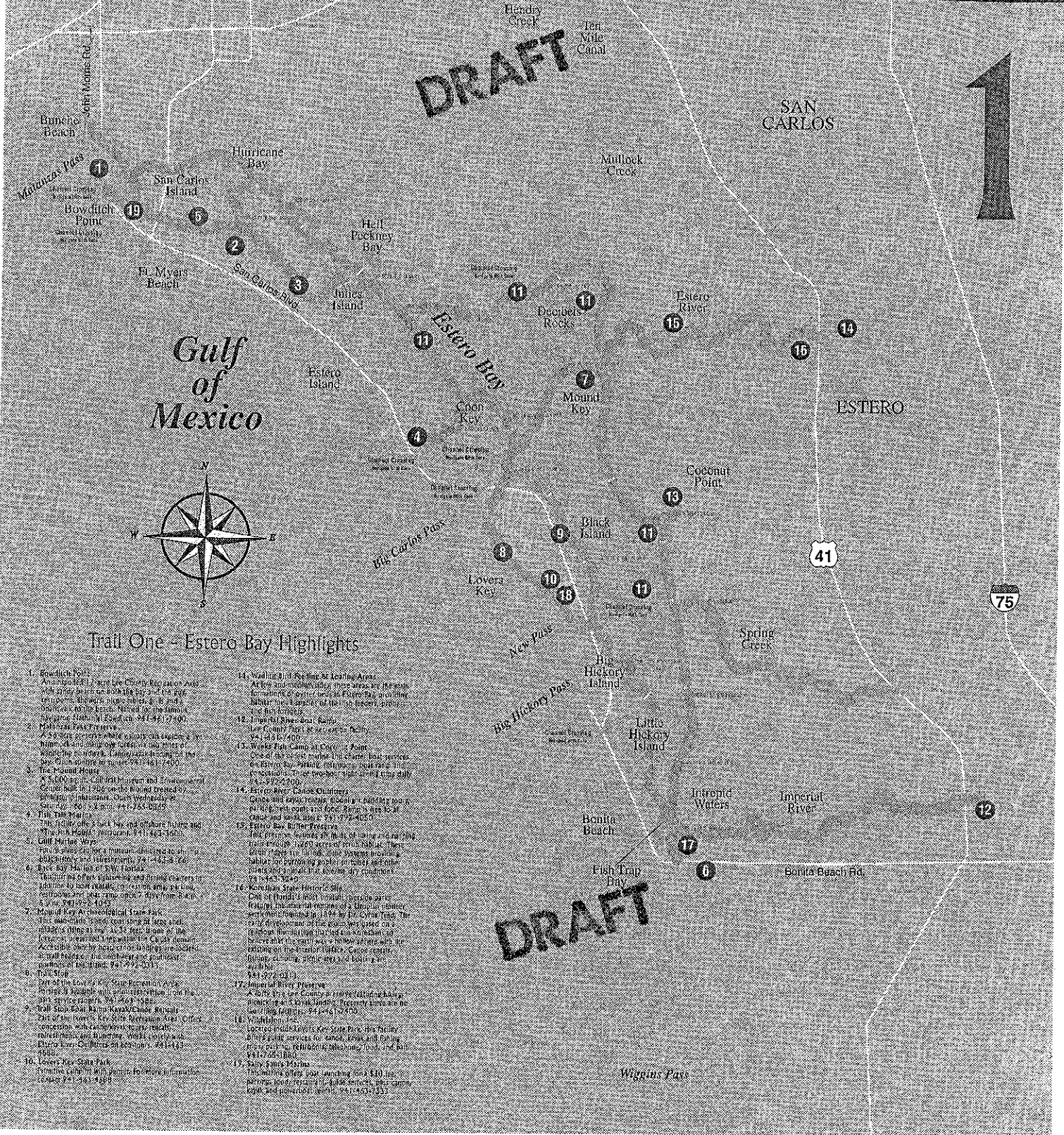
APPROVED AS TO FORM:

BY: _____
Office of the County Attorney

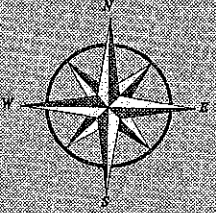
The Great Calusa Blueway - Trail One - Estero Bay

DRAFT

1



Gulf of Mexico



Trail One - Estero Bay Highlights

1. Bowditch Point
A small island in the Estero Bay area with a historic fort and a small boat ramp. It is a great spot for bird watching and fishing. (41° 15' N, 81° 15' W)
2. Hurricane Bay
A beautiful bay area with a small boat ramp and a picnic area. It is a great spot for bird watching and fishing. (41° 15' N, 81° 15' W)
3. The Island House
A historic house on San Carlos Island, built in 1888. It is a great spot for bird watching and fishing. (41° 15' N, 81° 15' W)
4. Estero Bay
The main body of water in the Estero Bay area, known for its diverse wildlife and scenic views. (41° 15' N, 81° 15' W)
5. San Carlos Island
A small island in the Estero Bay area, known for its diverse wildlife and scenic views. (41° 15' N, 81° 15' W)
6. Fish Trap Bay
A small bay area with a historic fish trap and a picnic area. It is a great spot for bird watching and fishing. (41° 15' N, 81° 15' W)
7. Mound Key
A small island in the Estero Bay area, known for its diverse wildlife and scenic views. (41° 15' N, 81° 15' W)
8. Lovers Key
A small island in the Estero Bay area, known for its diverse wildlife and scenic views. (41° 15' N, 81° 15' W)
9. Black Island
A small island in the Estero Bay area, known for its diverse wildlife and scenic views. (41° 15' N, 81° 15' W)
10. Coconut Point
A small point in the Estero Bay area, known for its diverse wildlife and scenic views. (41° 15' N, 81° 15' W)
11. Estero Bay
The main body of water in the Estero Bay area, known for its diverse wildlife and scenic views. (41° 15' N, 81° 15' W)
12. Deciduous Rocks
A small area of rocks in the Estero Bay area, known for its diverse wildlife and scenic views. (41° 15' N, 81° 15' W)
13. Water Fish Camp at Coconut Point
A small camp area at Coconut Point, known for its diverse wildlife and scenic views. (41° 15' N, 81° 15' W)
14. Estero River
A small river in the Estero Bay area, known for its diverse wildlife and scenic views. (41° 15' N, 81° 15' W)
15. Estero Bay
The main body of water in the Estero Bay area, known for its diverse wildlife and scenic views. (41° 15' N, 81° 15' W)
16. Bonita Beach
A small beach area in the Estero Bay area, known for its diverse wildlife and scenic views. (41° 15' N, 81° 15' W)
17. Fish Trap Bay
A small bay area with a historic fish trap and a picnic area. It is a great spot for bird watching and fishing. (41° 15' N, 81° 15' W)

DRAFT

Wiggins Pass

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20020107

1. REQUESTED MOTION:

ACTION REQUESTED: Direct to Public Hearing and authorize advertising to amend Lee County's Vessel Control Ordinance 96-22. The amendments to the ordinance are consistent with the changes to Fla. Stat. §327.60. Suggested Public Hearing date: February 26, 2002 at 5:00 p.m..

WHY ACTION IS NECESSARY: Provides for uniformity with Fla. Stat. §327.60, as amended on July 1, 2000, prohibiting discrimination against personal watercraft.

WHAT ACTION ACCOMPLISHES: Changes Lee County Ordinance 96-22-Vessel Control, by deleting provisions regulating personal watercraft and amending the section entitled, "Areas of Regulated Water Activity."

2. DEPARTMENTAL CATEGORY: 08
COMMISSION DISTRICT #

3. MEETING DATE: February 12, 2002

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE 96-22
- ADMIN. CODE
- OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT Natural Resources
- C. DIVISION
- BY: Roland Ottolini

7. BACKGROUND:

On July 1, 2001, the Florida Legislature, by Senate Bill #386, amended Fla. Stat. §327.60 to provide that ordinances and local laws enacted by cities and counties to regulate the operation and equipment of vessels may not "discriminate" against personal watercraft. Lee County Ordinance 96-22, Section F, regulated personal watercraft by prohibiting personal watercraft activity in certain areas.

At its August 6, 2001 Management and Planning Meeting, the Board Of County Commissioners directed staff to repeal Section F in its entirety, thereby allowing full use of the previously restricted area by all boaters.

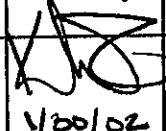
Other minor changes are being proposed as well. A copy of the Ordinance with the proposed amendments shown in underlining and the proposed deletions shown in ~~strike-out~~ is attached.

The public hearing on the amendments to 96-22 will be heard by the Board of County Commissioners at its regular meeting February 26, 2002 at 5:00 p.m..

Attachment: Draft Ordinance (dated 01/31/02)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
					OA	OM	RISK	GC	
				 1/30/02					

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

LEE COUNTY ORDINANCE NO. _____

AN ORDINANCE READOPTING AMENDING AND RESTATING THE LEE COUNTY VESSEL CONTROL AND WATER SAFETY ORDINANCE, ~~NO. 90-51 AS AMENDED BY NOS. 90-63 AND 91-16; NO. 96-22~~ RELATING TO VESSEL CONTROL AND WATER SAFETY; PROVIDING FOR TITLE, PURPOSE AND AUTHORITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR AREAS OF ENFORCEMENT AND MEANS OF ENFORCEMENT; PROVIDING FOR VESSEL REGULATION INCLUDING SPEED, CAREFUL AND PRUDENT OPERATION REQUIRED, AREAS OF PROHIBITED WATER ACTIVITY, AREAS OF REGULATED WATER ACTIVITY, AREAS OF SPECIAL MANAGEMENT ~~AND REGULATIONS FOR OPERATION OF PERSONAL WATERCRAFT; PROVIDING FOR REGULATIONS FOR PERSONAL WATERCRAFT RENTALS; RELATING TO PROHIBITED PERSONAL WATERCRAFT ACTIVITY WITHIN WATERS OF CAPTIVA ISLAND;~~ PROVIDING FOR PROCEDURES TO DESIGNATE AREAS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR PENALTY; PROVIDING FOR REPEALER, CONFLICTS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE ~~AND SUNSET PROVISION.~~

WHEREAS, the recreational use of the waters and public beaches is an asset of this County which is afforded the public at large, including residents and visitors to the County; and,

WHEREAS, it is not the intent of the County in this Ordinance to either regulate or post speed limits for motorized vessels in all of the waters that may be subject to the County's jurisdiction, nor to unduly interfere with traditional waterway uses for commercial and recreational purposes by boaters and fishermen; and

WHEREAS, the manner, mode, type and degree of uses to which the waters adjoining beaches are placed by the public affects the health, safety and welfare as well

as the right to enjoyment by individuals using the beaches or waters for recreational purposes as well as those residing nearby; and,

WHEREAS, the operation of vessels in certain known swimming areas and in excess of idle speed poses a threat to the health, safety and welfare of swimmers and others located offshore from beaches; and,

WHEREAS, regulations which reduce vessel wakes and regulate vessel speeds will aid in reducing turbidity along and erosion to grass beds, mangroves and shorelines that serve as habitat for manatees, wading birds and other flora and fauna within Lee County; and,

~~WHEREAS, the Lee County Board of County Commissioners finds that Captiva Island is unique in that a majority of the shoreline is developed for residential use; and,~~

~~WHEREAS, the use of personal watercraft is continuous in a limited area and creates persistent noise which is a nuisance to a residential area; and,~~

~~WHEREAS, it is in the interest for safety and welfare of the public to establish certain regulations for commercial vessel activity and limited areas of personal watercraft activity.~~

~~WHEREAS, the Lee County Board of County Commissioners recognizes the need for standards for location of personal watercraft rentals to ensure that such operations are located and utilized within commercially zoned areas to preserve residentially zoned areas and to ensure that personal watercraft are operated with a high degree of safety standards to protect the renter and the public; and,~~

~~WHEREAS, the Lee County Board of County Commissioners finds that personal~~

~~watercraft rentals have a greater impact on land areas than other types of water-oriented activities because personal watercraft create a persistent noise from continuous use in limited areas and the numbers of watercraft that could be rented from one source which serves to multiply the noise; and,~~

WHEREAS, the use of personal watercraft floating vendors in Lee County has been found to create an intrusion of commercial activity into residentially zoned areas; and,

WHEREAS, it is in the interest of protecting residential neighborhoods, preserving the County's natural resources and limiting intrusion into public bathing areas that this Ordinance is further amended to set forth specific standards for the location and operation of commercial personal watercraft rentals and to regulate the use of personal watercraft floating vendors in the waters of Lee County; and,

~~WHEREAS, the operation of personal watercraft in areas used for other water activities poses a threat to the safety of swimmers and the control of other water vessels; and,~~

~~WHEREAS, the manner in which personal watercraft are used continuously in a limited area, such persistent noise causes a nuisance to adjoining residential areas and disrupts the habitat of wildlife; and,~~

WHEREAS, it is in the interest for safety and welfare of the public and the County's natural resources to establish certain regulations for speed control and limited areas of watercraft activity to reduce injury to the public and ensure the continuation of our natural resources for the public benefit and welfare; and

~~WHEREAS, the re-adoption and restatement of this Ordinance will safeguard the~~

~~citizens of Lee County by having vessel control and water safety legislation during the procedural attack on the validity of the enactment of Lee County Ordinance No. 90-51, as amended.~~

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: TITLE

This Ordinance shall be known and may be cited as the Lee County Vessel Control and Water Safety Ordinance.

SECTION TWO: PURPOSE AND AUTHORITY

A. The purpose of this Ordinance shall be to promote safety in and between boating, swimming and other water related activities in Lee County and to preserve and protect our natural resources.

B. The County does hereby declare that the public health, safety and welfare of the citizens of the County and others requires designation of specific areas within which the operation of vessels ~~and personal watercraft~~ may be regulated or prohibited, and in which swimming, waterskiing, skindiving and other water activity, or any of them, may be prohibited or regulated.

C. The County is hereby authorized to designate specific areas prescribing the water activities that may be conducted and the operation of vessels therein, and the regulations for the conduct thereof. The County may, in the interest of safety, prohibit vessels ~~including personal watercraft~~ from operating within such designated area and may prohibit swimming, waterskiing, skindiving and other water activities, or any of them, from

being conducted in such areas.

SECTION THREE: DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

A. “Bather” means any person who is in the same water as a vessel, whether said person is swimming, wading or engaged in any other activity in the water.

B. “Beach” means the soft sand portion of land lying seaward of a seawall or line of permanent vegetation and seaward of the mean high water line.

C. “Floating Vendor” means a vessel represented as a place of business, a professional or other commercial enterprise which is used to solicit, conduct, or canvass for the sale or rental of any merchandise, services, goods or property of any kind or character. This term does not include the following types of vessels:

1. A vessel which in and of itself is rented;
2. Any parasail operation using self contained operational equipment so that launching or landing does not occur on land;
3. A vessel maintained in a permanent location over privately owned or leased submerged bottomlands; or,
4. A vessel used for hire (i.e., charter boat, dive boat, dinner cruise boat, tour boat, etc.).

D. "Idle speed" means the lowest speed at which a vessel can operate and maintain steering control. The actual speed will depend upon the design of the vessel and on the vessel's load, wind direction and speed, and the sea conditions. Generally, it will be between 1 and 3 miles per hour for outboard and inboard/outboard vessels, between 2 and 5 miles per hour for fixed shaft/rudder vessels, and the minimum speed merely necessary to effectively traverse breaking water for personal watercraft. For a non-motor propelled vessel, idle speed means that speed necessary for steerageway.

E. "Littoral Waters" means that part of the ocean or sea which abuts the shoreline and includes the shore to the ordinary high watermark. For purposes of this ordinance, the littoral right to use such waters shall be limited to the waters within the boundaries of the land-based site as those boundaries extend into the water at right angles from the shoreline. See attached Exhibit "A".

F. "Operate" means to navigate or otherwise use any vessel in, on or under the water.

G. "Person" means any individual, partnership, firm, corporation, association or other entity.

H. "Personal watercraft" means a small class A-1 or A-2 vessel as defined by state law which uses an outboard motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designated 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.

I. "Site" means the plot or parcel of land or combination of contiguous lots or parcels of land.

J. "Slow speed" means no speed greater than that which is reasonable and prudent to avoid either intentionally or negligently disturbing, colliding with, or injuring manatees and which comports with the duty of all persons to use due care under the circumstances. A vessel in a slow speed zone that:

1. is operating on a plane is not proceeding at slow speed;
2. 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 speed;
3. that produces no wake or minimum wake is proceeding at slow speed;
4. 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 speed.

K. "Slow speed zone" means a designated area within which all vessel operators shall proceed at slow speed not on a plane and producing no or minimum wake.

L. "Steerageway" means the minimum rate of motion required for the helm of the vessel to have effect.

M. "Vessel" means a motor-propelled or artificially-propelled vehicle and every other description of boat, 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 including personal watercraft. This term shall not include rafts, floats or floatation devices, whether of canvas, vinyl, rubber, styrofoam or other substance, intended or capable of assisting in the floatation of a person on or in the water.

N. "Water-oriented structure" shall mean and include without limitation, any fishing pier, pier, wharf, observation walkway, platform, boathouse, mooring pile, riprap, revetment, seawall, bulkhead, retaining wall, jetty, platform, boat lift, davit, boat ramp, or any other obstacle, obstruction or protrusion used primarily for the landing or launching of watercraft, erosion control and shoreline stabilization, or for water oriented activities.

SECTION FOUR: AREA OF ENFORCEMENT

The area of enforcement of the provisions of this Ordinance shall be all public navigable waters, creeks, bayous, canals and channels, whether natural or man-made, located within the unincorporated areas of Lee County, including all public waters within the jurisdiction of the County in which the tide ebbs and flows. This Ordinance does not apply to the Florida Intracoastal Waterway and West Coast Inland Navigation District Waterway.

SECTION FIVE: MEANS OF ENFORCEMENT

The provisions of this Ordinance shall be enforced by members of all duly authorized law enforcement agencies within the County. Section Seven of this Ordinance shall also be enforced by the appropriate Lee County Department, Division or Agency.

SECTION SIX: VESSEL REGULATION

A. SPEED

Vessel speed shall not exceed reasonable speed under existing conditions. Nothing contained in this Ordinance shall be construed to authorize or approve any speed greater than is reasonable and proper in consideration of local conditions, other water traffic, fishermen, water skiers or bathers in the area, or other hazards.

B. CAREFUL AND PRUDENT OPERATION REQUIRED

Every person operating any vessel in, on or under any waters within the area of enforcement as set forth above shall do so in a careful and prudent manner, taking into consideration the weather conditions and range of visibility, water turbulence, proximities to fishermen, bathers, water skiers and other boats and watercraft, and all other attendant circumstances so as not to endanger the life, limb or property of any person. Failure to operate a vessel in such a careful and prudent manner shall constitute careless boating in violation of this Ordinance.

C. AREAS OF PROHIBITED WATER ACTIVITY

No owner, operator or person in command of any vessel shall permit or operate a vessel within 500 feet of a County-park beach on littoral waters adjacent thereto and designated by posting proper signage as a "Swimming Only" zone - vessel exclusion area, or any other area that may be so designated by the Lee County Board of County Commissioners pursuant to the procedures set forth in this Ordinance.

D. AREAS OF REGULATED WATER ACTIVITY

No owner, operator or person in command of any vessel shall permit or operate said vessel at a speed greater than, or in excess of, idle speed whenever the vessel is in an Area of Regulated Water Activity except as to those prohibited areas set forth in Section Six C. of this Ordinance. Ingress and egress to the beaches shall be as nearly perpendicular to the shoreline as possible and parallel cruising of the shoreline shall be prohibited. The following areas are hereby designated as Areas of Regulated Water Activity:

1. All waters within 500 feet offshore from all beaches whether or not so designated with appropriate signs; and,
2. All waters within 500 feet from any water-oriented structure, whether or not designated for such purpose by appropriate signs; and,
3. Any area designated as an official "NO WAKE - IDLE SPEED ONLY" area which is so posted in such a manner and place that it may be reasonably expected to be seen and read by a person in operation of a vessel within the area; and,
4. Vessels, powered by a gasoline motor, are prohibited from utilizing the Great Calusa Blueway Paddling Trail [attached trail map- Exhibit "B"] which is intended for recreational use only by canoeists and kayakers, except in those areas where a boating channel crosses the paddling trail. All waters within 50 feet parallel to the trail on either side and where crossing the paddling trail, shall constitute

“idle speed-no wake” areas.

5. All waters within 100 feet inshore and offshore of the Bascule bridge span of the Sanibel Causeway whether or not so designated with idle speed signs; and

5- 6. Any other area that may be so designated by the Lee County Board of County Commissioners according to the procedure set forth in this Ordinance;

E. AREAS OF SPECIAL MANAGEMENT

No owner, operator or person in command of any vessel shall permit or operate a vessel at a speed greater than, or in the excess of, either idle speed, slow speed or under motor power, whichever is applicable, whenever the vessel is in an Area of Special Management except as to those prohibited areas or regulated areas as set forth in Sections Six C. and D., respectively. These Areas are so designated to provide increased protection of the manatees and other natural resources. ~~The following areas are hereby designated as Areas of Special Management:~~

- ~~1. Any area designated as an official “No Wake/Idle Speed Only” or “Slow Speed Zone” which is so posted in such a manner and place that it may be reasonably expected to be seen and read by a person in operation of a vessel in the area. Such areas are identified on attached Exhibit “A”; or,~~
- ~~2. Any area designated as an official “No Motor Power” zone which is so posted in such a manner and place that may be reasonably expected~~

~~to be seen and read by a person in operation of a vessel in the area.~~

~~Operation of a vessel in these areas shall be without motor power.~~

~~Poling, rowing or wind power is permissible. Such areas are identified~~

~~on attached Exhibit "B"; or,~~

- ~~3. Any other area that may be so designated by the Lee County Board of County Commissioners pursuant to the procedures set forth in this Ordinance.~~

~~F. AREAS OF PROHIBITED PERSONAL WATERCRAFT ACTIVITY~~

~~No owner or operator shall operate any personal watercraft within the following areas of prohibited personal watercraft activity:~~

- ~~1. All waters within 500 feet of the shoreline of the west side of Captiva Island between Blind Pass and Redfish Pass; and~~
- ~~2. All waters between the shoreline of the east side of Captiva Island and a line commencing at the tripod marker and extending due south to Blind Pass. This area shall include Roosevelt Channel.~~

~~E. F. REGULATIONS FOR OPERATION OF PERSONAL WATERCRAFT~~

~~In addition to the regulations set forth above, all personal watercraft shall also be operated in the following manner:~~

- ~~1. A person may not operate a personal watercraft unless each person riding on or being towed behind such vessel is wearing a type I, type II, type III or type V personal flotation device approved by the United States Coast Guard.~~

2. A person operating a personal watercraft equipped by the manufacturer with a lanyard type engine cutoff switch must attach such lanyard to his person, clothing or personal flotation device as is appropriate for the specific vessel.
3. No person under the age of 14 shall operate a personal watercraft on the waters of this County.
4. It is unlawful for the owner of any personal watercraft or any person having charge over or control of a personal watercraft to authorize or knowingly permit the same to be operated by a person under 14 years of age in violation of this section.
5. A person shall not operate a personal watercraft at any time between sunset to sunrise.
6. A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to, weaving through congested vessel traffic, jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed, and swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel. Failure to operate a personal watercraft in such a careful and prudent manner shall constitute careless boating in violation of this Ordinance.

7. ~~Subsection F. shall not apply to a performer engaged in a professional exhibition or a person participating in a regatta, race, marine parade, tournament or exhibition held in compliance with this Ordinance and Section 327.48, Florida Statutes.~~

SECTION SEVEN: REGULATIONS AND LOCATIONS FOR PERSONAL WATERCRAFT RENTALS

Any person engaged in the rental, leasing, bailment for consideration or otherwise providing transportation for remuneration, of personal watercraft for use by the public on any waters of Lee County, must meet the following requirements as of the effective date of this Ordinance including any new and already existing rental operations:

- A. A person is required to obtain a county occupational license which shall be issued to the personal watercraft rental operations office.
1. The operations office shall be located at a land-based site; and,
 2. The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, County-owned beach access, or any residentially zoned land that must be traversed to gain beach access; and,
 3. All business transactions such as the exchange of consideration or remuneration for the rental, leasing, bailment or any other type of transaction between the commercial rental operator and customer shall occur on the land-based site for which the occupational license is issued; and,
 4. The personal watercraft shall only be rented or operated on the littoral

waters offshore of the land-based site for which the occupational license is issued until the personal watercraft travels beyond the 500 feet offshore idle speed limit.

A floating vendor of personal watercraft rentals may operate within the littoral waters of a land-based site as long as the floating vendor has an occupational license issued at that land-based site.

- B. A person must have and maintain a telephone and an operable marine radio at its land-based operations office.
- C. A person must have a manned, motorized chase vessel with operational marine radio in good running condition that meets all United States Coast Guard safety requirements and is within vision of where the personal watercraft are being operated during all hours of the persons operations.
- D. A person must have and maintain comprehensive general liability insurance with coverage not less than \$500,000.00 combined single limits. A copy of the current insurance policy shall be kept at the rental operations office.
- E. A person shall register each personal watercraft and have a Florida vessel registration number affixed thereon.
- F. A person may not lease, hire or rent a personal watercraft to any person who is under 16 years of age.

SECTION EIGHT: PROCEDURES TO DESIGNATE AREAS

By Resolution adopted at a public hearing upon at least ~~fifteen (15)~~ ten (10) days notice (excluding Sundays and legal holidays) published in a newspaper of general

circulation in Lee County, Florida, the Board of County Commissioners of Lee County may designate additional specific areas as an "Area of Prohibited Water Activity" as described in Section Six. C., an "Area of Regulated Water Activity" as described in Section Six. D., or an "Area of Special Management" as described in Section Six.

E. In designating such areas, the Board of County Commissioners shall hear all testimony presented and make a finding that the designation is necessary for the safety and/or welfare of the citizens of the County. Upon the adoption of such a Resolution, the Board of County Commissioners shall publish the Resolution one time in a newspaper of general circulation in Lee County, Florida, after which the designation of the area shall be complete and binding; provided, however, no person shall be convicted of a violation of this Section relating to such specified areas until signs designating the boundaries of the area so designated have been posted in such a manner and place that they may reasonably be expected to be seen and read by a person operating a vessel in that area; provided however that no signs will need to be posted for areas described in Sections Six. C. and D. unless so designated as a requirement.

SECTION NINE: EXEMPTIONS

A. The provisions of this Ordinance shall not be construed to prohibit the running of racing or exhibition boats or personal watercraft during a publicly announced, properly authorized and supervised, and adequately patrolled regatta or speed trial or exhibition. "Properly authorized" shall require approval by the Lee County Board of County Commissioners.

B. Florida ~~Marine Patrol-rescue~~ Fish and Wildlife Conservation Commission

craft, Lee County Sheriff's Department craft, other official craft and craft operating under emergency conditions shall be exempted from the provisions of this Ordinance while performing their official duties or operating in an emergency.

C. Commercial vessels are exempted from the provisions of this Ordinance while conducting fish netting operations, provided the operations are conducted under the safety constraints of Sections Six. A., SPEED and Six. B., CAREFUL AND PRUDENT OPERATION REQUIRED; but at no time shall vessels be operated at greater than slow speed within 500 feet of bathers. This exemption is consistent with the "commercial watercraft" exemption set forth in the Lee County Caloosahatchee River Vessel Operation and Manatee Protection Ordinance. Such commercial vessels will also be exempt from State regulations if they comply with the conditional exemption requirements set forth in Section 16N-22.003, F.A.C.

SECTION TEN: PENALTY

Violation of the provisions of this Ordinance, or failure to comply with any of the requirements, shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any provisions shall upon conviction thereof be fined or imprisoned, or both, as provided by law, and in addition shall pay all costs and expenses involved in the case. In the alternative, a citation may be issued pursuant to the procedures set forth in Sections 327.73 and 327.72, Florida Statutes.

SECTION ELEVEN: REPEALER

Lee County Ordinance numbers 83-30 and 84-3 are hereby repealed and shall be null and void on the effective date of this ordinance.

SECTION TWELVE: CONFLICT

In the event that any provision of this Ordinance is found to be contrary to any other Lee County Ordinance which regulates the same subject matter, then in said event, the more restrictive Ordinance shall apply.

SECTION THIRTEEN: SEVERABILITY

The provisions of this Ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any of the provisions of this Ordinance shall be held unconstitutional by any Court of competent jurisdiction, the decision of such Court shall not affect or impair any remaining provisions of this Ordinance. It is hereby declared to be the legislative intent that this Ordinance would be adopted had such unconstitutional provision not been included therein.

SECTION FOURTEEN: EFFECTIVE DATE AND SUNSET PROVISION

This Ordinance shall take effect immediately upon receipt of official acknowledgment from the Secretary of State of Florida that it has been filed with that office.

~~This Ordinance specifically re-adopts and restates the Lee County Vessel Control and Water Safety Ordinance, No. 90-51, as amended, to provide Lee County with an enforceable Ordinance during the litigation and ensuing appeals on the issue of the validity of the enactment procedures of said ordinance. This Ordinance shall be deemed repealed and of no further force or effect upon a final appellate court's ruling that Lee County Ordinance No. 90-51 was validly enacted.~~

THE FOREGOING ORDINANCE was offered by Commissioner _____ who moved its adoption. The motion was seconded by Commissioner _____ and, upon being put to a vote, the vote was as follows:

BOB JANES _____
DOUGLAS ST. CERNY _____
RAY JUDAH _____
ANDREW COY _____
JOHN ALBION _____

DONE AND ADOPTED this _____ day of _____, 2002.

ATTEST: CHARLIE GREEN
CLERK OF THE COURT

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

BY: _____
Office of the County Attorney