ORDINANCE NO. 015 - 2018

AN ORDINANCE OF THE MONROE COUNTY BOARD OF COUNTY
COMMISSIONERS AMENDING CHAPTER 26 ("WATERWAYS") OF THE
MONROE COUNTY CODE OF ORDINANCES TO CREATE ARTICLE VIII.
("FLOATING STRUCTURES"); PROVIDING FOR PROHIBITION OF
FLOATING STRUCTURES; PROVIDING FOR SEVERABILITY; PROVIDING
FOR REPEAL OF CONFLICTING PROVISIONS INCONSISTENT
HEREWITH; PROVIDING FOR INCORPORATION INTO THE CODE OF
ORDINANCES; PROVIDING FOR TRANSMITTAL TO THE SECRETARY OF
STATE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners is the legislative body of Monroe
County, Florida; and

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

WHEREAS, Section 327.02(22)(a)-(c), Florida Statutes, defines “Live-aboard vessel” as
“A vessel used solely as a residence and not for navigation,” a “vessel for which a declaration of
domicile has been filed pursuant to Section 222.17, Florida Statutes,” or “a vessel used as a
residence that does not have an effective means of propulsion for safe propulsion.”; and

WHEREAS, Section 327.02(17), Florida Statutes, defines “Houseboat” as “a vessel that
is used primarily as a residence for at least 21 days during any 30-day period in a county of this
state if such residential use of the vessel is to the preclusion of its use as a means of
transportation.”; and

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

WHEREAS, Section 327.02(14), Florida Statutes, provides that “Floating structures are
expressly excluded from the definition of the term “vessel”” defined at Section 327.02(46),
Florida Statutes; and

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

WHEREAS, under the federal Rules of Construction Act, 1 U.S.C. Section 3, “[t]he
word “vessel” includes every description of watercraft or other artificial contrivance used, or
capable of being used, as a means of transportation on water.”; and
WHEREAS, the Monroe County Board of County Commissioners (hereinafter the “Board”) finds and recognizes that the Supreme Court of the United States (hereinafter the “Court”), pursuant to *Lozman v. City of Riviera Beach*, 568 U.S. 115 (U.S. 2013), holds that an article (hereinafter “entity”) situated upon the water does not constitute a “vessel” within the meaning of said Act if “[a]n objective] reasonable observer, looking to its “physical characteristics and activities, would not consider it to be designed to any practical degree for carrying people or things on water.”; and

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

WHEREAS, the Board finds and recognizes that while the Court, in that certain *Lozman* decision, held that “lack of self-propulsion is not dispositive” of whether an entity constitutes a “vessel” within the meaning of said Act, the Court nonetheless held that “lack of self-propulsion” may be a relevant physical characteristic to consider in deciding whether an entity constitutes a “vessel”; and

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

WHEREAS, the Board has identified that it has become an increasingly common practice to moor, anchor, or otherwise affix floating structures over or otherwise upon waters included within the territorial jurisdiction of the State of Florida and County waters, including (1) anchoring, mooring, or otherwise affixing floating structures to unpermitted, unauthorized, or otherwise unlawful objects lying at or near the bottom of said waters including but not limited to upon sovereign submerged lands, (2) anchoring, mooring, tying off, or otherwise affixing floating structures to State of Florida and/or County-owned uplands and over or otherwise upon such waters and/or sovereign submerged lands, and (3) anchoring, mooring, tying off, or otherwise affixing floating structures to plant species protected by federal, state, and/or local law(s), rule(s), or regulation(s) pursuant to an endangered, threatened, or species of special concern designation or listing and/or plant species (including, but not limited to, mangroves) whose defoliation or destruction is subject to special protections under the Monroe County Comprehensive Plan and Code(s) and special permitting requirements pursuant to the Florida Mangrove Trimming and Preservation Act; and

WHEREAS, the waters surrounding the Florida Keys of Monroe County, Florida, are situated within the boundaries of the Florida Keys National Marine Sanctuary and have, since July 26, 2001, been designated a federal No Discharge Zone (NDZ) by the United States.
WHEREAS, the Board finds that floating structures in the county commonly (1) contain
greywater and/or blackwater discharge facilities such as washrooms, showers, toilets, latrines,
and/or outhouses, (2) do not contain a bilge pump(s), (3) do not contain a marine sanitation
device(s), (4) hold unsecured or poorly contained stored fuel(s) and other potentially dangerous
and/or hazardous products and materials such as propane tanks and furniture, (5) contain living
quarters and/or recreational areas, (6) are utilized for the purpose of storage and/or habitation, (7)
do not have navigational lights, (8) do not feature identifying information which a local, state, or
federal government or enforcement agency may utilize to ascertain their owner(s) in a reasonably
timely manner, (9) are rafted up to larger “primary” vessels or to larger “primary” floating
structures, (10) do not securely hold on anchor, (11) are not built to any manufacturing
standard(s) and/or building code(s), (12) are unauthorizedly or unlawfully anchored or moored
upon sovereign submerged lands, (13) are commonly abandoned, (14) lack means of propulsion
necessary to quickly relocate in advance of or during extreme weather events or other emergency
events, and (15) cost Monroe County significantly more than vessels to remove and dispose of;
and

WHEREAS, neither the United States nor the State of Florida have pre-empted the
several states or local governments from legislating in the field of floating structure regulation;
and

WHEREAS, Section 327.60(3), Florida Statutes, provides, in pertinent part, that Chapter
327, Florida Statutes, “does not prohibit local governmental authorities from the enactment or
enforcement of regulations that prohibit or restrict the mooring or anchoring of floating
structures[.]”; and

WHEREAS, Article VIII, Section 1.(f), of the Florida Constitution, vests the Board with
the authority to legislate countywide, except within a municipality that has adopted an ordinance
which conflicts with a County ordinance; and

WHEREAS, Monroe County Ordinance 14-2010 - Section 12-141, codified at Section
12-141 of Chapter 12 of the Monroe County Code of Ordinances (entitled “Environmental and
Natural Resource Protection”), defines “County waters” as “[A]ny Monroe County waters,
whether contained within boundaries naturally artificially, or diffused, including, but not limited
to the Gulf, bays, canals, estuaries, and wetlands. County waters include those waters which are
part of the State as being specified within Monroe County pursuant to Section 7.44, Florida
Statutes, and Article II, Section 1, Constitution of the State of Florida (Rev. 1968), waters out to
three marine leagues, or waters in the immediate vicinity of county reefs.”; see also Section 7.44,
Florida Statutes (“So much of the State of Florida as is situated south of the County of Collier and
west or south of the County of Miami-Dade, constitutes the County of Monroe.”); see also
Bateman v. State, 238 So. 621, 626-27 (Fla. 1970) (Ervin, C.J., dissenting) (“Monroe County’s
boundary is described in Section 7.44, Florida Statutes, as follows: “So much of the State of
Florida as is situated south of the county of Collier and west or south of the county of Dade,
constitutes the county of Monroe.” It follows, of course, from this description that all submerged
lands or navigable waters in the southermost portion of the state of Florida that do not lie in
Collier and Dade counties are a part of Monroe County.”), rev’d on other grounds; see also
Lipscomb v. Gialourakis, 133 So. 104, 107 (Fla. 1931) (“[I]t must be construed that counties
bordering on the Gulf of Mexico include that area within the Gulf adjacent to the upland and
adjacent to the state boundary line.”); and
WHEREAS, Article II, Section 1.(a) of the Florida Constitution provides that the state’s (and therefore Monroe County’s) territorial boundaries on the east side extend “to the edge of the Gulf Stream or a distance of three geographic miles[,] whichever is the greater distance[.]” To that end, on any given day, the Gulf Stream is in a different location. See Benson v. Norwegian Cruise Line, Ltd., 859 So. 2d 1213, 1215-16 (Fla. 3rd DCA 2003); and

WHEREAS, public and navigable waterways are public highways. See State ex rel. Wilcox v. T.O.L., Inc., 206 So. 2d 69, 71 (Fla. 4th DCA 1968); and

WHEREAS, a county has the right to close public roads and highways where necessity dictates on a temporary or a permanent basis, and the general authority of the boards of county commissioners over the location of public roads in their respective counties has been held to be plenary. Id., cf. at 72; and

WHEREAS, the power of local governments to regulate and restrict certain activities reasonably calculated to protect the public health, safety, and welfare, is subject to the State of Florida’s paramount power to regulate and control the use of its sovereign submerged lands; and

WHEREAS, where private ownership of submerged bottoms outward from the shore has originated upon a valid conveyance out of the State of Florida, state law establishes that submerged land included in such grants are subject to taxes lawfully imposed. See Section 253.141(4), Florida Statutes; and

WHEREAS, Section 192.001(17), Florida Statutes, provides, in pertinent part, that “A floating structure is expressly included as a type of tangible personal property.”; and

WHEREAS, “littoral or riparian rights are appurtenances to ownership of littoral or riparian uplands. They are not founded on ownership of submerged lands.” See Hayes v. Bowman, 91 So. 2d 795, 802 (Fla. 1957); and

WHEREAS, littoral and riparian rights are those incident to uplands bordering upon navigable waters, such rights are appurtenant to and inseparable from the littoral or riparian upland, and inure to the owner of the littoral or riparian land, but are neither owned by the upland landowner nor are of a proprietary nature. See Section 253.141(1), Florida Statutes; and

WHEREAS, littoral and riparian landowners “have no rights in navigable waters and state sovereign submerged lands that are superior to other members of the public with regard to rights of bathing, fishing, and navigation.” See Walton County v. Stop the Beach Renourishment, Inc., 998 So. 2d 1102, 1111 (Fla. 2008), aff’d, 560 U.S. 702 (U.S. 2010); and

WHEREAS, “[a] private action cannot be maintained by one who has no interest in [a] waterway beyond that enjoyed by the public in common to use it as a highway.” See Bertram v. State Road Dept., 118 So. 2d 674, 675 (Fla. 3rd DCA 1960); and

WHEREAS, while littoral and “riparian rights exist in Florida as a matter of constitutional right and property law, it is the clearly established law of Florida that even constitutional rights may be regulated.” See Central Florida Investments, Inc. v. Orange County Code Enforcement Board, 790 So. 2d 593, 597 (Fla. 5th DCA 2001); and

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

WHEREAS, the Monroe County Board of County Commissioners finds that this Ordinance is necessary to advance the County’s valid public, navigational, and environmental health, safety, and welfare police power interests;

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

SECTION 1. - Recitals and Legislative Intent. The foregoing recitals and statements of legislative intent are true and correct and are hereby incorporated as if fully stated herein.

SECTION 2. - Title. This Ordinance shall be titled the “Monroe County Floating Structure Prohibition Ordinance.”

SECTION 3. - Creation. That Chapter 26 of the Monroe County Code of Ordinances, entitled “Waterways,” is hereby amended to create Article VIII, entitled “Floating Structures,” as follows:

ARTICLE VIII. - FLOATING STRUCTURES

Section 26-214. Jurisdiction; Administration.

(a) Monroe County. This Article shall apply to waters included within County waters and submerged lands underlying County waters. Monroe County and any authorized federal or state enforcement agency may enforce violations of this Article.

(b) Municipalities Within Monroe County. This Article does not apply to waters within the territorial jurisdiction of any municipality within the county unless and until such municipality adopts this ordinance. Upon such adoption, this Article applies to waters included within the territorial jurisdiction of the adopting municipality and submerged lands underlying such waters; upon such adoption, any authorized federal or state enforcement agency may enforce violations of this Article within the territorial jurisdiction of the adopting municipality.

Section 26-215. Definitions. The phrases, terms, and words used in this Article shall be, except as specifically defined otherwise herein, the same as they have been defined in the Monroe County Code of Ordinances and in the Monroe County Land Development Code. The following terms shall have the following specific definitions as used herein:

Anchor. Shall mean use of traditional ground tackle, typically including an anchor, anchor chain, and line, appurtenant to a floating structure, and used to hold a floating structure in place.

Barge. Shall mean that term as it is defined at Section 327.02, Florida Statutes.

Floating Structure. Shall mean a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real
property. The term includes, but is not limited to, an entity used as a residence, place of business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; a storage or parking facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such. Floating structures are expressly excluded from the definition of the term “vessel” provided in this section. Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from classification as a floating structure. In the event it is disputed whether an entity constitutes a floating structure versus a vessel, such dispute shall be exclusively determined, under a preponderance of the evidence standard, by analyzing (1) whether it is capable of self-propulsion, (2) whether it has a rudder or other steering mechanism, (3) whether it has a raked hull, (4) whether it has a rectangular or a square bottom, (5) by comparing its draft to the drafts of vessels of a similar physical size, (6) its infrequency of documented past geographical movement, (7) whether it can be moved over meaningful distances without dangerously or hazardously swinging from side-to-side, (8) if it has a (lawful) capacity to generate or store electricity, (9) whether it has a bilge pump(s), (10) whether it has an approved marine sanitation device(s), (11) whether its above-water surface area(s) bear similarity to the interior or exterior of a land-based residential or commercial structure, (12) whether it has ordinary windows, open doorways, or unsealed doors, (13) whether it has any other physical features that might suggest to an objective reasonable observer a design to transport over water anything other than its own furnishings and related personal effects, and (14) whether it is titled and registered as a vessel. Payment of a tangible personal property tax regarding the entity in question or issuance or receipt of a tax exemption thereto, pursuant to Section 192.001(17), Florida Statutes, shall constitute prima facie evidence that the entity in question constitutes a floating structure under this Article.

**Houseboat.** Shall mean that term as it is defined at Section 327.02, Florida Statutes.

**Live-Aboard Vessel.** Shall mean that term as it is defined at Section 327.02, Florida Statutes.

**Marina.** Shall mean that term as it is defined at Chapter 101, Monroe County Land Development Code.

**Marine facility.** Shall mean that term as it is defined at Chapter 101, Monroe County Land Development Code.

**Moor.** Shall mean use of a device, placed on or affixed to the bottom, intended for permanent use, to hold a floating structure in place. As used in this Article, except as to the terms “lawfully moored in a public mooring field” and “lawfully moored on a permitted private mooring,” to moor or a mooring shall include other meanings of mooring such as tying off a floating structure to upland vegetation or to offshore beams, pilings, posts, or stakes. For purposes of clarification, “offshore beams, pilings, posts, or stakes” means beams, pilings, posts, or stakes neither attached to nor meaningfully connected to a lawfully established dock which itself is affixed and appurtenant to and extends out from an upland parcel.

**Vessel.** Shall mean that term as it is defined at Section 327.02, Florida Statutes.

**Water Column and water(s).** The vertical extent of water, including the surface thereof, above an area of submerged land, regardless of such land’s public or private ownership.
**Limitation Clause.** Application of the foregoing specifically defined terms is limited to this Article, and these terms shall not re-define, modify, override, or supersede any such term defined elsewhere in the Monroe County Code(s).

**Section 26-216. Construction and Interpretation.** This Article, being necessary for the health, safety, and welfare of the residents of the county, shall be liberally construed to effect the public purposes hereof; and interpretation of this Article shall be deferred in favor of Monroe County, the applicable federal or state enforcement agency, or municipality, and such construction and interpretation shall be entitled to great weight in adversarial administrative proceedings, on trial, and on appeal.

**Section 26-217. Prohibitions.**

(a) All legal and natural persons are prohibited from mooring, anchoring, or otherwise indefinitely or permanently affixing, a floating structure upon, or to, waters or submerged lands included within County waters.

(b) All legal and natural persons are prohibited from anchoring, mooring, tying off, or otherwise indefinitely or permanently affixing a floating structure to State of Florida or County-owned uplands and over or otherwise upon waters or sovereign submerged lands included within County waters.

(c) All legal and natural persons are prohibited, within waters or submerged lands included within County waters, from anchoring, mooring, tying off, or otherwise affixing a floating structure to one or more plant species protected by federal, state, or local law(s), rule(s), or regulation(s) pursuant to an endangered, threatened, or species of special concern designation or listing; all legal and natural persons are prohibited, within waters or submerged lands included within County waters, from anchoring, mooring, tying off, or otherwise affixing a floating structure to one or more plant species (including, but not limited to, mangroves) whose defoliation or destruction is subject to special protections under the Monroe County Comprehensive Plan and Code(s) and special permitting requirements under the Florida Mangrove Trimming and Preservation Act, codified at Sections 403.9321-403.9333, Florida Statutes, as may be amended or supplemented.

(d) All legal and natural persons are prohibited from constructing, placing, or maintaining a floating structure violative of this Article; all legal and natural persons are prohibited from proximately causing or proximately contributing to the construction, placement, or maintenance of a floating structure violative of this Article.

(e) All natural and legal persons are prohibited from storing items upon, occupying, or residing upon a floating structure violative of this Article.

(f) Any municipality that later adopts this ordinance may independently enact its own separate-and-distinct subsection of enumerated prohibitions.

**Section 26-218. Exceptions.**

(a) This Article shall not apply to floating structures lawfully moored in a permitted public mooring field. For purposes of clarification, “lawfully moored in a permitted
public mooring field” means moored to a mooring ball or mooring buoy that is
authorized under federal, state, and local law(s), which has received all required
federal, state, and local permits and approvals, and which is situated within a
mooring field managed by a local government.

(b) This Article shall not apply to floating structures lawfully moored on a permitted
private mooring. For purposes of clarification, “lawfully moored on a permitted
private mooring” means a private party’s mooring to a mooring ball or mooring buoy
when such mooring is both authorized under federal, state, and local law(s), and
when that private party has received all required federal, state, and local permits and
approvals to so moor.

(c) This Article shall not apply to vessels, including (but not limited to) barges
(including (but not limited to) mobile platforms such as jackup rigs), houseboats, and
live-aboard vessels.

(d) This Article shall not apply to a floating structure that federal, state, and local
proprietary laws and regulations expressly permit, when such structure has received
all such required federal, state, and local permits and approvals (such as, for example,
a floating boat lift or floating vessel platform permitted by the Florida Department of
Environmental Protection pursuant to Chapter 403, Florida Statutes, and Chapter 62,
Florida Administrative Code, by Monroe County pursuant to the Monroe County
Code(s), and by all applicable federal permitting agencies), and is in compliance with
all conditions of said permits and approvals. For purposes of clarification, “expressly
permit” exclusively means express authorization, of both all material components
comprising the structure itself, and of the placement or situation of that structure in
its specific configuration, length, size, and location, by all federal, state, and local
government agencies pursuant to issuance of a written order granting, or granting
with conditions, a written application to so construct and place or situate that
structure.

(e) This Article shall not apply to government waterway markers (such as, for example,
regulatory markers and aids to navigation (the latter including, but not limited to,
channel markers, danger markers, information markers, and aids of no lateral
significance)).

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

(g) This Article shall not apply to a floating structure moored at a lawfully established
marina or moored at a lawfully established marine facility. It is hereby understood
that it shall be the responsibility of the owner(s) or proprietor(s) of lawfully
established marinas and marine facilities to ensure that floating structures moored
therein comply with all applicable local, state, and federal proprietary, safety,
environmental, and pollution control laws, rules, and regulations.

(h) Any municipality that later adopts this ordinance may independently enact its own
separate-and-distinct subsection of enumerated exceptions.
Section 26-219. Penalties; Enforcement Procedure.

(a) **Criminal Offense.** Prosecution of violations of this Article may be prosecuted in the name of the State of Florida by the prosecuting attorney thereof as more fully set forth in Section 125.69(1), Florida Statutes. Any person or entity found guilty of violating this Article may be sentenced to up to sixty (60) days in jail, or fined in an amount of up to $500.00, or be subject to both imprisonment and fines.

(b) **Civil Offense.** Violations of this Article may be prosecuted by Monroe County and by any municipality located within the county, by original county or circuit court action, or under Chapter 162, Florida Statutes, and Chapter 8, Monroe County Code, or pursuant to the pertinent municipality’s code compliance ordinances, administratively, at law, and in equity, as may be necessary to enforce compliance with this Article, and to collect damages in the form of fines authorized by law.

1) **Authority to Dismantle or Remove Offending Floating Structures.** For any violation of this Article, Monroe County may initiate an original county or circuit court action, or code compliance proceedings pursuant to Chapter 162, Florida Statutes, and Chapter 8, Monroe County Code. The County may dismantle or remove a floating structure held in violation of this Article, and at its sole discretionary election may make arrangements to store or return it to the rightful owner, upon the owner’s payment of all reasonable costs associated with said dismantlement, removal, or storage.

2) **Municipal Authority to Dismantle or Remove Offending Floating Structures.** For any violation of this Article, each municipality within the county may initiate an original county or circuit court action, or code compliance proceedings pursuant to its own code enforcement ordinances and Chapter 162, Florida Statutes. Each municipality may dismantle or remove a floating structure held in violation of this Article, and at its sole discretionary election may make arrangements to store or return it to the rightful owner, upon the owner’s payment of all reasonable costs associated with said dismantlement, removal, or storage.

(c) **Federal, State Authority to Dismantle or Remove Offending Floating Structures.** Any federal or state enforcement agency may by original action, or pursuant to its own codified or administrative enforcement scheme, criminally, civilly, or administratively enforce against any violation of this Article. Any federal or state enforcement agency may dismantle or remove a floating structure held in violation of this Article, and at its sole discretionary election may make arrangements to impound, store, or return it to the rightful owner, upon the owner’s payment of all reasonable costs associated with said dismantlement, removal, impoundment, or storage.

(d) **Injunctive Relief.** The county attorney, the attorneys for each municipality within the county, and all federal or state enforcement agency attorneys are authorized to immediately seek affirmative or negative injunctive relief authorizing or commanding the dismantlement, removal, covering, or cessation of activities, construction, maintenance, practices, renovations, repairs, or uses in violation of this Article by motion for emergency, preliminary, or permanent injunction, including by ex parte motion, or other forms of equitable relief, from a court of competent jurisdiction.
jurisdiction, upon presentation of prima facie evidence of a violation of this Article to
such court.

(e) **Units of Prosecution.** It being that floating structures in violation of this Article
present a serious threat to the public, navigational, and environmental health, safety,
and welfare, a rebuttable presumption shall arise that violation of this Article
constitutes a violation that is irreparable or irreversible in nature. Each day that a
prohibited floating structure remains in violation of this Article constitutes a separate
irreparable or irreversible offense.

(f) **Joint-and-Several Liability.** All owners, part owners, joint owners, tenants-in-
common, tenants in partnership, joint tenants, tenants by the entirety, lessees, sub-
lessees, assignees, sub-assignees, and holders of legal or beneficial title to or interest
in a floating structure held in violation of this Article, shall be jointly-and-severally
liable with respect to any legal or equitable judgment or relief obtained by a federal
or state agency, the State of Florida, Monroe County, or a municipality within the
county.

(g) **Costs.** Any court of competent jurisdiction, administrative hearing officer, the
Monroe County Code Compliance Special Magistrate, and the code enforcement
boards and special magistrates of each municipality within the county, are authorized
to impose against violators of this Article any costs associated with the
dismantlement, removal, impoundment, or storage of any floating structure held in
violation of this Article.

(h) **No Waiver or Estoppel.** It being that Monroe County, the State of Florida, federal or
state enforcement agencies, and municipalities within the county possess discretion to
enforce this Article, such local governments’ or state or federal enforcement
agencies’ delay or failure to enforce any provision contained in this Article, however
long continued, shall not be deemed a waiver or estoppel of the right for the local
government or state or federal enforcement agency to enforce this Article at any time
thereafter.

(i) The Monroe County Marine Resources Office is authorized to contract on an on-call
basis with at least one marine salvage company to assist with the expeditious
covering, dismantlement or removal of floating structures held in violation of this
Article. The Marine Resources Office is authorized to cover, dismantle, or remove
such offending floating structures pursuant to said contract(s).

**Section 26-220. Provisions to Be Cumulative.** This Article is cumulative to any other
substantive laws, ordinances, regulations, and rules, and is cumulative to any
enforcement procedure that those laws, ordinances, regulations, and rules may provide.
This Article does not supersede or repeal or otherwise modify those laws, ordinances,
regulations, rules, or enforcement procedures thereunder in any way.

**Section 26-221. Private Right-of-Action.** Any natural person may seek injunctive relief
in a court of competent jurisdiction to enforce violations of this Article against a violator.

**SECTION 4. - Inconsistency, Partial Invalidity, Severability, and Survival of Provisions.** If
any provision of this Article, or any portion thereof, is held to be invalid or unenforceable in or by
any administrative hearing officer or court of competent jurisdiction, the invalidity or
unenforceability of such provision, or any portion thereof, shall neither limit nor impair the
operation, enforceability, or validity of any other provision of this Article, or any remaining
portion(s) thereof. All other provisions of this Article, and remaining portion(s) thereof, shall
continue unimpaired in full force and effect.

SECTION 5. - Repeal of Inconsistent Provisions. All ordinances or parts of ordinance in
conflict with this ordinance are hereby repealed to the extent of said conflict. The repeal of an
ordinance herein shall not repeal the repealing clause of such ordinance or revive any ordinance
which has been repealed thereby.

SECTION 6. - Captions and Paragraph Headings. Captions and paragraph headings, where
used herein, are inserted for convenience only and are not intended to descriptively limit the
scope and intent of the particular paragraph or text to which they refer.

SECTION 7. - Inclusion in the Monroe County Code of Ordinances. The provisions of this
ordinance shall be included and incorporated into the Code of Ordinances of Monroe County,
Florida and shall be numbered to conform with the uniform numbering system of the Code.

SECTION 8. - Effective Date. This ordinance shall be filed in the Office of the Secretary of the
State of Florida and shall become effective as provided by law.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida
at a regular meeting held on the 18th day of July, 2018.

Mayor  David P. Rice              Yes
Mayor pro tem  Sylvia J. Murphy    Yes
Commissioner  Danny L. Kolhage    Yes
Commissioner  Heather Carruthers  Yes
Commissioner  George Neugent      Yes

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

By

Mayor David Rice

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM

PETER MORRIS
ASSISTANT COUNTY ATTORNEY
Date: 7/20/19