


CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION – 12-004

TO: Marc Sarnoff, Commissioner
Office of Commissioner - District 2 - COM
FROM: Julie O. Bru, City Attorney 
DATE: November 9, 2012
RE: Regulation of Moorings

You have asked:

**WHETHER A MUNICIPALITY HAS THE ABILITY
TO REGULATE MOORINGS ON UNDERWATER
LAND OWNED, LEASED OR ADJACENT TO IT?**

A municipality's ability to regulate moorings on underwater land owned, leased or adjacent to it is limited by operation of the Florida Statutes. The applicable statute is §327.60 Fla. Statutes, which reads:

327.60 Local regulations; limitations.

(1) The provisions of [*chapter 327*] and chapter 328 shall govern the operation, equipment, and all other matters relating thereto whenever any vessel shall be operated upon the waters of this state or when any activity regulated hereby shall take place thereon.

(2) Nothing in this chapter or chapter 328 shall be construed to prevent the adoption of any ordinance or local regulation relating to operation of vessels, except that a county or municipality shall not enact, continue in effect, or enforce any ordinance or local regulation:

(a) Establishing a vessel or associated equipment performance or other safety standard, imposing a requirement for associated equipment, or regulating the carrying or use of marine safety articles;

(b) Relating to the design, manufacture, installation, or use of any marine sanitation device on any vessel;

(c) Regulating any vessel upon the Florida Intracoastal Waterway;

(d) Discriminating against personal watercraft;

(e) Discriminating against airboats, for ordinances adopted after July 1, 2006, unless adopted by a two-thirds vote of the governing body enacting such ordinance;

(f) Regulating the anchoring of vessels other than live-aboard vessels¹ outside the marked boundaries of mooring fields permitted as provided in s. 327.40;

(g) Regulating engine or exhaust noise, except as provided in s. 327.65; or

(h) That conflicts with any provisions of this chapter or any amendments thereto or rules adopted thereunder.

§ 327.02 (17) defines "Live-aboard vessel" as:

(a) Any vessel used solely as a residence and not for navigation;

(b) Any vessel represented as a place of business or a professional or other commercial enterprise; or

(c) Any vessel for which a declaration of domicile has been filed pursuant to s. 222.17.

(3) Nothing in this section shall be construed to prohibit local governmental authorities from the enactment or enforcement of regulations which prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions or of any vessels within the marked boundaries of mooring fields permitted as provided in s. 327.40. However, local governmental authorities are prohibited from regulating the anchoring outside of such mooring fields of vessels other than live-aboard vessels as defined in s. 327.02. *Emphasis added*

The above-referenced statute provides that a municipality may regulate mooring by establishing marked mooring fields in accordance with state law. This means that a municipality may designate and mark a certain area of water as a “mooring field.” The municipality must seek and obtain approval from the State of Florida before it may place any markers designating the boundaries of the mooring field. Once the markers are properly put into place the municipality may take enforcement action against any vessel that does not have permission to anchor in the mooring field.

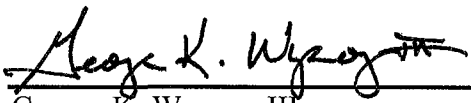
A municipality may not, however, regulate the mooring of vessels outside the marked mooring fields. This means that those boaters who are unwilling to pay for moorings are still allowed to anchor outside the marked boundaries of mooring fields.

Conclusion

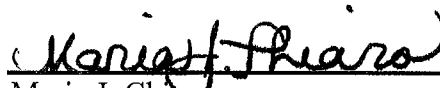
The City’s authority to regulate the mooring of vessels in or upon the waters owned or leased by the City is limited to areas designated as mooring fields that have been properly marked according to the provisions of Florida law. The City does not have the authority to regulate the mooring of vessels outside of the designated mooring fields.

PREPARED BY:

REVIEWED BY:



George K. Wysong III
Assistant City Attorney



Maria J. Chiare
Deputy City Attorney

cc: Honorable Mayor and Members of the City Commission
Johnny Martinez P.E., City Manager

Select Year: 2012

The 2012 Florida Statutes

Title XXIV
VESSELS

Chapter 327
VESSEL SAFETY

[View Entire Chapter](#)

327.60 Local regulations; limitations.—

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(2) Nothing in this chapter or chapter 328 shall be construed to prevent the adoption of any ordinance or local regulation relating to operation of vessels, except that a county or municipality shall not enact, continue in effect, or enforce any ordinance or local regulation:

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(d) Discriminating against personal watercraft;

(e) Discriminating against airboats, for ordinances adopted after July 1, 2006, unless adopted by a two-thirds vote of the governing body enacting such ordinance;

(f) Regulating the anchoring of vessels other than live-aboard vessels outside the marked boundaries of mooring fields permitted as provided in s. [327.40](#);

(g) Regulating engine or exhaust noise, except as provided in s. [327.65](#); or

(h) That conflicts with any provisions of this chapter or any amendments thereto or rules adopted thereunder.

(3) Nothing in this section shall be construed to prohibit local governmental authorities from the enactment or enforcement of regulations which prohibit or restrict the mooring or anchoring of floating structures or live-aboard vessels within their jurisdictions or of any vessels within the marked boundaries of mooring fields permitted as provided in s. [327.40](#). However, local governmental authorities are prohibited from regulating the anchoring outside of such mooring fields of vessels other than live-aboard vessels as defined in s. [327.02](#).

History.—s. 10, ch. 59-400; s. 16, ch. 63-105; s. 1, ch. 65-361; s. 3, ch. 72-55; s. 2, ch. 83-20; s. 38, ch. 95-143; s. 30, ch. 99-289; s. 20, ch. 2000-362; s. 3, ch. 2006-172; s. 3, ch. 2006-309; s. 14, ch. 2009-86.

Note.—Former s. 371.59.

Select Year: 2012  

The 2012 Florida Statutes

[Title XXIV](#)
VESSELS

[Chapter 327](#)
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327.40 Uniform waterway markers.—

(1) Waters of this state shall be marked only in conformity with the United States Aids to Navigation System, 33 C.F.R. part 62.

(2)(a) Application for marking inland lakes and state waters and any navigable waters under concurrent jurisdiction of the Coast Guard and the division shall be made to the division, accompanied by a map locating the approximate placement of markers, a list of the markers to be placed, a statement of the specification of the markers, a statement of the purpose of marking, and the names of persons responsible for the placement and upkeep of such markers. The division will assist the applicant to secure the proper permission from the Coast Guard where required, make such investigations as needed, and issue a permit. The division shall furnish the applicant with the information concerning the system adopted and the rules existing for placing and maintaining the markers. The division shall keep records of all approvals given and counsel with individuals, counties, municipalities, motorboat clubs, or other groups desiring to mark waterways for safety and navigation purposes in Florida.

(b)1. No person or municipality, county, or other governmental entity shall place any uniform waterway marker in, on, or over the waters or shores of the state without a permit from the division.

2. The placement of information markers by counties, municipalities, or other governmental entities on inland lakes and their associated canals are exempt from permitting under this section.

(c) The commission is authorized to adopt rules pursuant to chapter 120 to implement this section.

(3) The placement under this section or s. [327.41](#) of any uniform waterway marker on state submerged lands does not subject such lands to the lease requirements of chapter 253.

History.—s. 6, ch. 63-105; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 4, ch. 90-219; s. 14, ch. 2000-362; s. 1, ch. 2005-217; s. 10, ch. 2009-86.

Note.—Former s. 371.521.