

Municipality prohibiting anchoring of vessels

Number: INFORMAL

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Mr. Robert H. Berntsson
City of Punta Gorda Attorney
326 West Marion Avenue
Punta Gorda, Florida 33950-4492

RE: VESSELS--WATERCRAFT--MUNICIPALITIES--authority of city to prohibit anchoring of vessels. ss. 327.60 & 327.22, Fla. Stat.

Dear Mr. Berntsson:

You ask whether the City of Punta Gorda may enforce an ordinance regulating the mooring and operation of water craft as well as other activities that hazardously impact the operation and navigation of other vessels.[1] While this office has no authority to comment on the validity of a particular code provision, the following discussion of state law may assist you in determining whether certain ordinances are enforceable.

Chapter 327, Florida Statutes, the "Florida Vessel Safety Law," recognizes the authority of local governments to regulate the operation of vessels on Florida waterways.[2] For example, section 327.60, Florida Statutes, acknowledges the authority of local governments to regulate the operation and equipment of vessels so long as the regulations are not in conflict with the statute. Section 327.22(1), Florida Statutes, permits a county or municipality to adopt ordinances providing for enforcement of noncriminal violations of section 327.33, Florida Statutes, relating to the careless operation of a vessel which results in the endangering or damaging of property, by citation mailed to the registered owner of the vessel. Such ordinance applies only in designated restricted areas which are properly marked and in need of shoreline protection.

Section 327.60, Florida Statutes, provides:

"(1) The provisions of ss. 327.01, 327.02, 327.30-327.40, 327.44-327.50, 327.54, 327.56, 327.65, 328.40-328.48, 328.52-328.58, 328.62 and 328.64 shall govern the operation, equipment, and all other matters relating thereto whenever any vessel shall be operated upon the waterways or when any activity regulated hereby shall take place thereon. Nothing in these sections shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels, except that no such ordinance or local law may apply to the Florida Intracoastal Waterway and except that such ordinances or local laws shall be operative only when they are not in conflict with this chapter or any amendments thereto or regulations thereunder.

(2) Nothing contained in the provisions of 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. However, *local governmental authorities are prohibited from regulating the anchorage of non-live-aboard vessels engaged in the exercise of rights of navigation.*" (e.s.)

Thus, regulation of vessels on the waterways within its boundaries is permissible by a municipality only to the extent that such regulation is not inconsistent or in conflict with the provisions of Chapter 327, Florida Statutes, or regulations adopted thereunder. Such ordinances, however, may not apply to the Florida Intracoastal Waterway and, relevant to your inquiry, may not regulate the anchorage of non-live-aboard vessels engaged in the exercise of rights of navigation. The plain language of the statutory prohibition against the regulation of anchorage of non-live-aboard vessels is clear on its face and no further interpretation is necessary.[3]

This office has found that regulations restricting boat speeds within certain areas falls within a municipality's authority to regulate the operation of vessels within its boundaries.[4] Such authority, however, does not authorize a municipality to impose license requirements on non-resident operators of vessels coming within the municipality's boundaries or to regulate the taking or possession of saltwater fish.[5]

Thus, to the extent the Punta Gorda Code does not conflict with state law or attendant regulations, the city may enforce its ordinances regulating the operation and other activities of vessels that may constitute a hazard to navigation or interfere with another vessel.[6] However, the city may not enforce its code to regulate the anchorage of non-live-aboard vessels engaged in the exercise of rights of navigation.[7]

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

[1] Section 6-22, City of Punta Gorda Code, provides:

"Except in the case of an emergency declared by the Mayor or City Council, or City Manager, or as required for maintenance dredging, no person shall anchor, moor, raft-up or permit to be anchored, moored, rafted-up or operate any vessel or carry on any activity, including but not limited to the placing of crab traps, anchor lines, anchors, mooring buoys, pilings or similar objects, in a manner which shall unreasonably or unnecessarily constitute a hazard to navigation or interfere with another vessel. Making fast to a navigational aid is prohibited. Anchoring, mooring, or rafting up a vessel to environmentally protected and/or sensitive vegetation is prohibited. Anchoring under or mooring to bridges or in or adjacent to heavily traveled channels shall constitute interference."

[2] *Cf. Lee County v. Lippi*, 662 So. 2d 1304 (Fla. 2d DCA 1995) (Chapter 327, Fla. Stat., authorizing state to take action regarding operation of boats in certain areas does not deprive

county of authority to adopt ordinance on the same subject).

[3] See *M.W. v. Davis*, 756 So. 2d 90 (Fla. 2000) (when language of statute is clear and unambiguous and conveys and definite meaning, there is no occasion for resorting to rules of statutory interpretation and construction); *McLaughlin v. State*, 721 So. 2d 1170 (Fla. 1998); *Osborne v. Simpson*, 114 So. 543 (Fla. 1927) (where statute's language is plain, definite in meaning without ambiguity, it fixes legislative intention and interpretation and construction are not needed).

[4] See Op. Att'y Gen. Fla. 88-46 (1988).

[5] See Op. Att'y Gen. Fla. 92-88 (1992).

[6] *Cf.* section 861.021(1), Florida Statutes, making it "unlawful for any person to place any crawfish, crab, or fish trap or set net or other similar device with a buoy or marker attached so that said buoy or marker obstructs the navigation of boats in channels of the waters of the state which are marked by, and which markers are continuously maintained by, the Coast Guard of the United States."

[7] See *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972); *City of Miami Beach v. Rocio Corporation*, 404 So.2d 1066 (Fla. 3d DCA 1981), *pet. for rev. den.*, 408 So.2d 1092 (Fla. 1981) (municipal ordinances are inferior to state law and must fail when conflict arises). *And see Campbell v. Monroe County*, 426 So. 2d 1158, 1161 (Fla. 3d DCA 1983). It is the rule that if any doubt exists as to whether there is a conflict between state and local legislation, doubt is to be resolved against the ordinance in favor of the statute.