

1 The Finance Committee offers the following substitute to File No.
2 2022-61:

3
4 Introduced by Council Member DeFoor and Co-Sponsored by Council
5 Members Pittman, Ferraro, and Carlucci:

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8 **ORDINANCE 2022-61**

9 AN ORDINANCE APPROPRIATING \$200,000 IN THE
10 DERELICT VESSEL AND FLOATING STRUCTURE REMOVAL
11 FUND FROM THE PARKS DEPARTMENT TO NEIGHBORHOODS
12 DEPARTMENT IN ORDER TO PROVIDE THE NEIGHBORHOODS
13 DEPARTMENT FUNDING TO IMPLEMENT AND ENFORCE THE
14 NEWLY CREATED CHAPTER 388, *ORDINANCE CODE* (BOATS
15 AND WATERWAYS); AMENDING CHAPTER 388 (BOATS AND
16 WATERWAYS), *ORDINANCE CODE*, TO CREATE A NEW PART
17 4 (ANCHORING LIMITATION AREAS) PURSUANT TO THE
18 AUTHORITY GRANTED TO COUNTIES IN SECTION
19 327.4108, *FLORIDA STATUTES*; REQUESTING THAT THE
20 MAYOR DIRECT THE PARKS DEPARTMENT TO IMPLEMENT
21 AND MAINTAIN THE SIGNAGE REQUIRED; PROVIDING
22 THAT COUNCIL IS EXERCISING COUNTY POWERS;
23 PROVIDING FOR CODIFICATION INSTRUCTIONS;
24 PROVIDING AN EFFECTIVE DATE.

25
26 **WHEREAS**, the Florida Legislature recently amended Section
27 327.4108, *F.S.*, to provide for counties meeting certain criteria to
28 establish anchoring limitation areas adjacent to urban areas that
29 have residential docking facilities and significant recreational
30 boating traffic; and

31 **WHEREAS**, the City of Jacksonville, as a consolidated city/county

1 government, is authorized to enact an ordinance establishing
2 anchoring limitation areas within the county and desires to do so
3 subject to the requirements of Section 327.4108, *F.S.*; and

4 **WHEREAS**, the City of Jacksonville has provided notice to the
5 Florida Fish and Wildlife Conservation Commission ("FWC") as required
6 by Sec. 327.4108(2)(c), *F.S.* through Resolution 2021-727-A; now
7 therefore

8 **BE IT ORDAINED** by the Council of the City of Jacksonville:

9 **Section 1. Appropriation.** For the 2021-2022 fiscal year,
10 within the City's budget, there are hereby appropriated the indicated
11 sum(s) from the account(s) listed in subsection (a) to the account(s)
12 listed in subsection (b):

13 attached hereto as **Revised Exhibit 1** and incorporated herein by this
14 reference

15 (a) Appropriated from:

16 See **Revised Exhibit 1** \$200,000.00

17 (b) Appropriated to:

18 See **Revised Exhibit 1** \$200,000.00

19 (c) **Explanation of Appropriation**

20 The appropriation above in the Derelict Vessel and Floating Structure
21 Removal Fund is a reappropriation of funds from the Parks, Recreation
22 and Community Services Department ("Parks Department") to the
23 Neighborhoods Department for implementation and enforcement of the
24 newly created Ch. 388 (Boats and Waterways), *Ordinance Code*.

25 **Section 2. Purpose.** The purpose of the appropriation in
26 Section 1 is to provide funding to the department which will be doing
27 the work to implement and enforce Ch. 388, *Ordinance Code*. Two of
28 the Divisions within the Neighborhoods Department, along with the
29 Jacksonville Sheriff's Office, are involved with the effort to enforce
30 Chapter 388, *Ordinance Code*, throughout Duval County with regard to
31 derelict vessels, abandoned vessels, floating structures and now,

1 with enactment of this ordinance, vessels in violation of anchoring
2 limitation areas. Derelict vessels were previously handled by the
3 Parks Department, but this task has been reassigned to the
4 Neighborhoods Department.

5 **Section 3. Amending Chapter 388 (Boats and Waterways),**
6 **Ordinance Code, to create a new Part 4 (Anchoring Limitation Areas).**
7 Chapter 388 (Boats and Waterways), *Ordinance Code*, is hereby amended
8 to create a new Part 4 (Anchoring Limitation Areas), in to read as
9 follows:

10 **Chapter 388 - BOATS and WATERWAYS**

11 * * *

12 **PART 4. - ANCHORING LIMITATION AREAS**

13 **Sec. 388.401. - Findings and legislative intent.**

14 (a) Pursuant to Sec. 327.4108, *F.S.* (2022), the Florida Legislature
15 has expressly authorized counties meeting certain criteria to
16 enact regulations that establish anchoring limitation areas
17 adjacent to urban areas that have residential docking facilities
18 and significant recreational boating traffic.

19 (b) The Council finds that the City of Jacksonville, acting under
20 its authority as a chartered county government pursuant to
21 Section 1.101 of the City Charter and Section 4.102, *Ordinance*
22 *Code*, meets the criteria established in Sec. 327.4108, *F.S.*
23 (2022), to create anchoring limitation areas within its
24 jurisdiction.

25 (c) The purpose of this Part 4 is to implement the provisions of
26 Sec. 327.4108, *F.S.* (2022), by creating anchoring limitation
27 areas ("Anchoring Limitation Areas"), as more fully described
28 below, which will promote the public access to the waters of
29 the state; enhance navigational safety; protect maritime
30 infrastructure; protect the marine environment, deter
31 improperly stored, abandoned, or derelict vessels, and provide

1 a civil enforcement mechanism with regard to Anchoring
2 Limitation Areas.

3 (d) Should Sec. 327.4108, *F.S.* be amended, the statute will
4 immediately take precedence over this Part 4.

5 **Sec. 388.402. - Definitions.**

6 *Impoundment of vessel* means, for purposes of this Part, the
7 removal of the vessel by a law enforcement officer, or under
8 authorization of a law enforcement officer, without the ability of
9 the owner to claim the vessel.

10 *Navigable-in-fact waterways* means waterways that are navigable
11 in their natural or unimproved condition over which useful commerce
12 or public recreation of a substantial and permanent character is or
13 may be conducted in the customary mode of trade and travel on water.
14 The term does not include lakes or streams that are theoretically
15 navigable; have a potential for navigability; or are temporary,
16 precarious, and unprofitable, but the term does include lakes or
17 streams that have practical usefulness to the public as highways for
18 transportation.

19 *Storage of vessel* means the period of time after impoundment
20 that a vessel occupies space in the water or on land for the purpose
21 of vessel storage.

22 **Sec. 388.403. -Criteria for Anchoring Limitation Areas.**

23 The following criteria required by Sec. 327.4108, *F.S.* (2022) are as
24 follows:

25 (a) The aggregate total of Anchoring Limitation Areas within Duval
26 County may not exceed 10 percent of the county's delineated
27 navigable-in-fact waterways.

28 (b) Each Anchoring Limitation Area established herein must meet all
29 the following requirements:

30 (1) Be less than 100 acres in size. For purposes of this
31 subsection, the calculated size of the anchoring limitation area does

1 not include any portion of the marked channel of the Florida
2 Intracoastal Waterway contiguous to the anchoring limitation area;

3 (2) Not include any mooring field or marina; and

4 (3) Be clearly marked with the following:

5 (A) Signs that provide reasonable notice to boaters
6 identifying the duration of time beyond which
7 anchoring is limited and identifying Ch. 388, Part 4,
8 *Ordinance Code*, as the ordinance that created the
9 Anchoring Limitation Area.

10 (B) Buoys may, if required, also be installed and
11 maintained to mark the boundary of the anchoring
12 limitations areas.

13 (c) The design and the proposed location of the signs, as either
14 posts or buoys, shall be managed by the Parks Department. The
15 Parks Department shall coordinate the permitting of the signs
16 with FWC, pursuant to Sections 327.4108, 327.40 and 327.41, *F.S.*
17 and FWC Rules.

18 **Sec. 388.404. - Anchoring Limitation Areas Defined.**

19 The following areas are designated as Anchoring Limitation Areas:

20 (a) Ortega River Anchoring Limitation Area # 1

21 [INSERT AREA 1 COLOR MAP HERE]

22 (b) Ortega River Anchoring Limitation Area # 2

23 [INSERT AREA 2 COLOR MAP HERE]

24 (c) Ortega River Anchoring Limitation Area # 3

25 [INSERT AREA 3 COLOR MAP HERE]

26 (d) Ortega River Anchoring Limitation Area # 4

27 [INSERT AREA 4 COLOR MAP HERE]

28 Renderings of the boundaries of these Anchoring Limitation Areas
29 can also be found at www.coj.net.

30 **Sec. 388.405. - Anchoring Restricted in Anchoring Limitation**
31 **Areas.**

1 (a) A person may not anchor a vessel for more than 45 consecutive
2 days in any 6-month period in any Anchoring Limitation Area
3 established in this Part without leaving all Anchoring
4 Limitation Areas for at least 24 hours, and eight (8) miles
5 away, except as provided in Sec. 388.406 below.

6 (b) In order to not be in violation of this Part, if a person moves
7 a vessel from an Anchoring Limitation Area on or before the 44th
8 day, then that vessel shall not relocate to another Anchoring
9 Limitation Area within a radius of eight (8) miles.

10 **Sec. 388.406. - Vessels not restricted in Anchoring Limitation**
11 **Areas.**

12 The anchoring restrictions of this Part do not apply to:

13 (a) Vessels owned or operated by a governmental entity for law
14 enforcement, firefighting, military or rescue purposes.

15 (b) Construction or dredging vessels on an active job site.

16 (c) Vessels actively engaged in fully licensed commercial fishing,
17 as defined in Sec. 327.02, *F.S.*.

18 (d) Vessels anchored or moored within the riparian rights of the
19 owner of the vessel, and only at a maximum distance from the
20 shore of the riparian owner that provides the depth required for
21 the safe anchorage/mooring of such vessel, considering the swing
22 of the vessel at mean low tide. Riparian rights means those
23 rights incident to the lands bordering upon navigable waters,
24 as recognized by the courts of Florida and in common law.

25 **Sec. 388.407. - Enforcement Procedures.**

26 (a) A law enforcement officer has the authority to issue a citation
27 consistent with this Part.

28 (b) If based upon an investigation by the officer or evidence
29 provided by others, the officer has reasonable cause to believe
30 that a vessel has been in an Anchoring Limitation Area in
31 violation of this Part, the officer shall inquire regarding same

1 of the vessel owner, operator or responsible party. Personal
2 investigation may include receipt of at least one sworn
3 affidavit from each of at least two unrelated adult witnesses
4 setting forth facts establishing, either separately or together
5 with other information known to the officer, the reasonable
6 cause referenced above.

7 (c) In order to avoid a violation of this Part, the vessel owner,
8 operator or responsible party must rebut the presumption that
9 the vessel has not exceeded the limitations described in this
10 Part, by the greater weight of the evidence.

11 (d) Upon inquiry by a law enforcement officer, a vessel owner,
12 operator, or responsible party must be given an opportunity to
13 provide such proof. Such proof may include any of the following:

14 (1) documentation showing that the vessel was in another
15 location at least eight (8) miles away, and for at least
16 24 hours, within a period of less than 45 days before the
17 inquiry; or

18 (2) electronic evidence, including, but not limited to,
19 navigational devices or tracking devices that show the
20 vessel was in another location at least eight (8) miles
21 away, for at least 24 hours, within a period of less than
22 45 days before the inquiry.

23 (e) If a vessel owner or operator is present and fails or refuses
24 to provide proof that the vessel has not exceeded the limitations
25 described in Sec. 388.405, herein, the law enforcement officer
26 may issue a citation for a violation of this Part.

27 (f) Any person who willfully refuses to sign and accept a citation
28 issued by a law enforcement officer shall be guilty of a
29 misdemeanor as provided for in Sec. 162.21, *F.S.* and Chapter
30 609 (Code Enforcement Citations), *Ordinance Code*.

31 (g) If the vessel owner or responsible party is not present, the law

1 enforcement officer shall follow the standard operating
2 procedures of the Jacksonville Sheriff's Office to locate and
3 notify the owner or responsible party of the violation. The
4 law enforcement officer may issue the citation through the U.S.
5 mail if the owner or responsible party is not present. A law
6 enforcement officer may also provide hand delivery of the
7 citation.

8 (h) The civil citation shall contain:

- 9 (1) The date and time of issuance.
- 10 (2) The name and address of the person to whom the citation is
11 issued if the person is known or is present to accept the
12 citation and provide his or her name and address.
- 13 (3) The date and time the civil infraction was committed.
- 14 (4) The facts constituting reasonable cause.
- 15 (5) The number or Section of the Ordinance Code which has been
16 violated.
- 17 (6) The name and authority of the Officer.
- 18 (7) The procedure for the person to follow in order to pay the
19 civil penalty or to contest the citation.
- 20 (8) A conspicuous statement that if the person fails to pay the
21 civil penalty within the time allowed, or fails to appear
22 in court to contest the citation, he shall be deemed to
23 have waived his right to contest the citation and that, in
24 such case, judgement may be entered against the person for
25 an amount up to the maximum civil penalty.

26 (i) After issuance of a citation in person, the law enforcement
27 officer may authorize the removal of a vessel from an Anchoring
28 Limitation Area and impound the vessel for up to 48 hours, or
29 may cause such removal and impoundment, if the vessel owner,
30 operator or responsible party:

- 31 (1) Anchors the vessel in violation of this Part within 12 hours

1 after being issued the citation in person; or

2 (2) Refuses to leave the anchoring limitation area after being
3 directed to do so by a law enforcement officer.

4 (j) If the vessel is impounded, after 48 hours have elapsed since
5 impoundment, if the vessel owner, operator, or responsible
6 party has not appeared to claim the vessel at the designated
7 impoundment location, then the law enforcement officer acting
8 under this Part is authorized to place, or have placed, the
9 vessel into a designated storage location, at the vessel
10 operator's expense, until the vessel owner, operator, or
11 responsible party has claimed the vessel and paid all removal,
12 impoundment, penalty and storage fees which have accrued since
13 impoundment and as a result of any penalties. The owner or
14 responsible party of the vessel may claim the vessel during
15 storage after payment of towing, impoundment and storage fees.

16 (k) A person cited for a civil infraction shall elect one of the
17 following within 10 calendar days of the date of receipt of the
18 citation.

19 (1) To pay the civil penalty to the Tax Collector or to the Clerk
20 of Court (as specified on the citation) in accordance with
21 the schedule set forth in Section 609.109, *Ordinance Code*,
22 or

23 (2) To obtain a court date from the office of the Clerk of the
24 County Court.

25 (1) If a person cited pays the civil penalty then the person has
26 admitted to committing the violation.

27 (m) If a person cited elects to obtain a court date but fails to
28 appear in court, he shall be deemed to have admitted the
29 violation and to have waived his right to a hearing on the issue
30 of the commission of the infraction.

31 (n) The person to whom the citation is issued shall be provided a

1 copy of the citation through certified mail, return receipt
2 requested, if the address of the owner of or responsible party
3 is known, provided if such notice of the citation is sent under
4 this paragraph is returned as unclaimed or refused, notice may
5 be provided by posting as follows:

6 (1) Such notice may be posted at least 10 calendar days prior
7 to the expiration of any deadline contained in the notice,
8 in at least two locations, one of which shall be the vessel
9 upon which the violation is alleged to exist and the other
10 of which shall be at Jacksonville City Hall; and

11 (2) Proof of posting shall be by affidavit of the person posting
12 the notice, which affidavit shall include a copy of the
13 notice posted and the date and places of its posting.

14 (o) A vessel that is the subject of four (4) or more violations
15 within 12 months which result in dispositions other than
16 acquittal or dismissal shall, by operation of law be declared
17 to be a public nuisance and subject to Sec. 705.103, *F.S.*, which
18 provides that the vessel may be removed, after a 21-day notice
19 period, and destroyed or used for an artificial reef; or by
20 operation of law declared to be a derelict vessel, subject to
21 Sec. 823.11, *F.S.*, which provides that the vessel may be
22 relocated, removed, stored, destroyed or disposed of.

23 (p) The costs of such removal and destruction are recoverable
24 against the vessel owner or the party determined to be legally
25 responsible for the vessel being upon the waters of the state
26 in a derelict condition.

27 (q) Pursuant to Sec. 327.4108(6)(d), *F.S.*, the law enforcement
28 agency acting under this Part to remove or impound a vessel, or
29 to cause such removal or impoundment, shall be held harmless
30 for any damage to the vessel resulting from such removal or
31 impoundment unless the damage results from gross negligence or

1 willful misconduct.

2 (r) A contractor performing removal, impoundment and/or storage
3 services or other such activities at the direction of a law
4 enforcement officer or the Neighborhoods Department pursuant to
5 this Part must:

6 (1) Be licensed in accordance with United States Coast Guard
7 regulations, as applicable.

8 (2) Obtain and carry a current policy issued by a licensed
9 insurance carrier in this state to insure against any
10 accident, loss, injury, property damage, or other casualty
11 caused by or resulting from the contractor's actions.

12 (3) Be properly equipped to perform such services.

13 **Sec. 388.408. County Court jurisdiction.**

14 (a) The County Court in and for the Fourth Judicial Circuit shall
15 hear charges of code violations pursuant to the issuance of
16 citations.

17 (b) Any person so charged may contest the citation in the County
18 Court.

19 **Sec. 388.409. - Violations.**

20 (a) Pursuant to Sec. 327.73(1)(z), *F.S.* (2022), a violation of
21 Anchoring Limitation Areas is punishable as a noncriminal
22 infraction for which the penalty is:

23 (1) For a first offense, up to a maximum of \$50.

24 (2) For a second offense, up to a maximum of \$100.

25 (3) For a third or subsequent offense, up to a maximum of
26 \$250.

27 (b) Pursuant to Sec. 327.72, *F.S.*, any person who does not pay the
28 civil penalty listed in Sec. 388.408 (Violations), above,
29 within 30 days commits a misdemeanor of the second degree,
30 punishable as provided in Sec. 775.082, *F.S.* or Sec. 775.083,
31 *F.S.*

1 (c) In addition to the civil penalty imposed above, the owner or
2 operator of a vessel that is removed and impounded pursuant to
3 Section 388.407, *Ordinance Code*, must pay all removal and
4 storage fees before the vessel is released. A vessel removed
5 pursuant to Section 388.407 may not be impounded for longer than
6 48 hours. Following impoundment, the vessel may be stored as
7 described in Section 388.407(j).

8 (d) All penalties and fines relating to this Chapter shall be placed
9 into the *Derelict and Abandoned Vessel and Floating Structure*
10 *Enforcement and Removal Trust Fund*, Sec. 111.787, *Ordinance*
11 *Code*. Reimbursement for the removal, impoundment and storage
12 of vessels resulting from the enforcement of this Part shall be
13 provided to the entity that initially paid for those services.

14 **Section 4. Directive to Legislative Services Division for**
15 **delivering maps.** Maps of the boundaries of the Ortega River Anchoring
16 Limitation Areas described in Section 3 above are attached hereto as
17 **Exhibit 2**. Upon adoption of this Ordinance, the Legislative Services
18 Division is directed to forward the maps attached as **Exhibit 2** to the
19 Information Technologies Division to be placed on the City website.
20 The Legislative Services Division is also directed to forward the
21 maps to the Parks, Recreation, and Community Services Department for
22 coordination with the Florida Fish and Wildlife Conservation
23 Commission for the posting of signs within the waterway to alert the
24 boating public.

25 **Section 5. Requesting the Mayor to Direct the Parks,**
26 **Recreation, and Community Services Department to oversee the signage**
27 **for the Anchoring Limitation Areas.** The Council requests that the
28 Parks, Recreation, and Community Services Department ("Parks
29 Department") oversee the design, permitting, procurement,
30 installation and maintenance of the signs within the waterway, through
31 the Florida Fish and Wildlife Conservation Commission ("FWC"), that

1 will alert the boating community to the Anchoring Limitation Areas.
2 The Council requests that this task be completed as quickly as
3 possible. Publication of the Anchoring Limitation Areas should also
4 be provided through all media channels be provided so that the public
5 is informed not only by the signs posted but the media communication
6 as well.

7 **Section 6. Council exercising county powers.** Pursuant to
8 Section 4.102, *Ordinance Code*, the enactment of this Ordinance shall
9 be deemed to be the exercise of county powers.

10 **Section 7. Compliance with Sec. 327.4108, F.S.** As required
11 in Sec. 327.408(2)(c), *F.S.*, a notice was provided to the Florida
12 Fish and Wildlife Conservation Commission at least 30 days before the
13 introduction of this ordinance, to notify the public of the City's
14 intention to establish anchoring limitation areas.

15 **Section 8. Codification Instructions.** The Codifier and the
16 Office of General Counsel are authorized to make all chapter and
17 division "tables of contents" consistent with the changes set forth
18 herein, including renumbering of sections. Such editorial changes
19 and any others necessary to make the Ordinance Code shall be made
20 forthwith and when inconsistencies are discovered.

21 **Section 9. Effective Date.** This ordinance shall become
22 effective upon signature by the Mayor or upon becoming effective
23 without the Mayor's signature.

24
25 Form Approved:

26
27 _____
28 Office of General Counsel

29 Legislation Prepared by: Susan C. Grandin

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