



**AGENDA REPORT**  
**August 6, 2019**

**Legislative Intent and Permission to Advertise, Re: Chapter 122 Waterways**

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**SUBJECT:**

Legislative Intent and Permission to Advertise, Re: Chapter 122 Waterways

**FISCAL IMPACT:**

FY 18-19 None

FY 19-20 Up to \$5,000 for the installation of waterway markers

**DEPT/OFFICE:**

Natural Resources Management

**REQUESTED ACTION:**

Staff is seeking legislative intent and permission to advertise amendments and provide edits to Chapter 122 Waterways, to allow for the implementation of new slow-speed and idle-speed zones along the St. Johns River and strike outdated provisions within this chapter.

**SUMMARY EXPLANATION and BACKGROUND:**

Brevard County Code of Ordinances, Chapter 122 Waterways, provides for watercraft safety and slow-speed zones within the County's waterways and along the Atlantic coast. Brevard County presently has over 34,000 registered vessels with over 900 of those listed as airboats. Mr. Curt McKinney, the owner of Camp Holly Airboat Rides, operating on the St. John's River at the intersection of Hwy 192, has requested that the County consider placing a boating safety zone at the intersection of HWY 192 and the St. John's River.

On April 19, 2018, Mr. McKinney presented his safety concerns and the concerns of the boating public in this area to the Brevard Marine Advisory Council (BMAC). The BMAC motioned in favor of creating a boating safety zone in this area and asked staff to pursue the necessary actions at the state and local level to implement the appropriate zones.

On July 11, 2018, staff attended a membership meeting of the Brevard County Airboat Club and presented options for slow-speed and idle-speed boating safety zones along the St. John's River in the Camp Holly area. A variety of options were presented to the club at that meeting. On December 5, 2018, the Brevard County Airboat Club formally approved the draft zones as shown on the attached maps.

Per Florida Statutes, formal boating safety zones must be created locally and then brought

before the Florida Fish and Wildlife Conservation Commission (FWC) for final approval and adoption at the State level. Approval at the State level will provide enforcement authority to the State in addition to local law enforcement. Staff has been working with the FWC Waterway Management Section in Tallahassee and local FWC Law Enforcement on this issue. State and local law enforcement agree on the boating safety concerns in the Camp Holly area.

While reviewing Chapter 122 and the current watercraft safety and slow-speed zones within the County, staff noted some provisions that have become outdated since the last thorough review of this ordinance in 1996. It is proposed that these provisions be stricken to bring the ordinance up-to-date.

Staff is seeking legislative intent and permission to advertise to allow for the implementation of new slow-speed and idle-speed zones along the St. Johns River, coordinating simultaneously for approvals at the State level, and permission to review and edit the existing Waterway code and strike outdated provisions within this chapter.

**CLERK TO THE BOARD INSTRUCTIONS:**

None

**ATTACHMENTS:**

**Description**

- ▢ **CampHollyMap**
- ▢ **County Code, Chapter 122 Waterways**



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August 7, 2019

**M E M O R A N D U M**

TO: Virginia Barker, Natural Resources Management Director

RE: Item J.1., Legislative Intent and Permission to Advertise Chapter 122, Waterways

The Board of County Commissioners, in regular session on August 6, 2019, approved legislative intent and permission to advertise amendments and provide edits to Chapter 122 Waterways, to allow for the implementation of new slow-speed and idle-speed zones along the St. Johns River and strike outdated provisions within the chapter.

Your continued cooperation is greatly appreciated.

Sincerely yours,

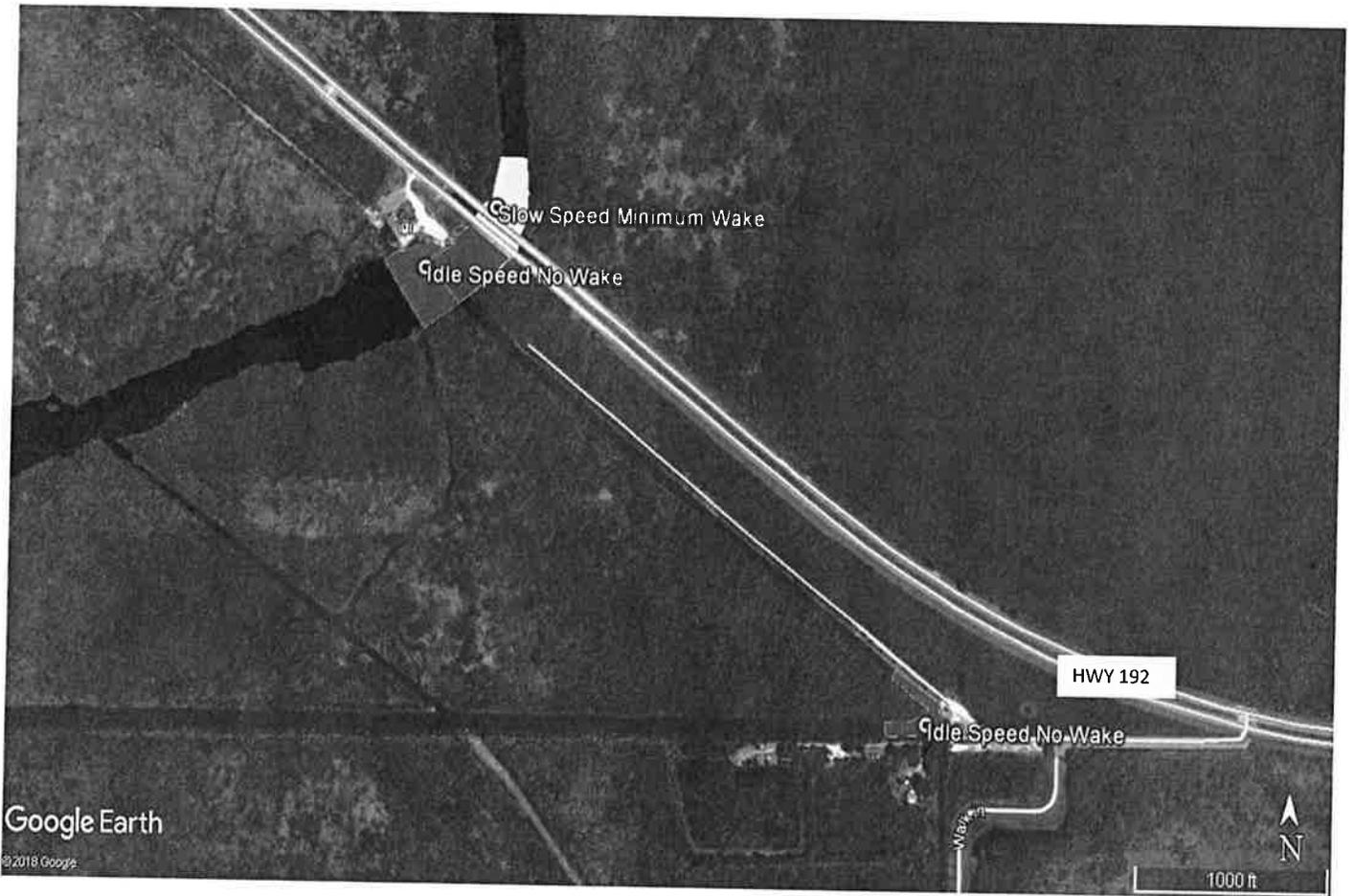
BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

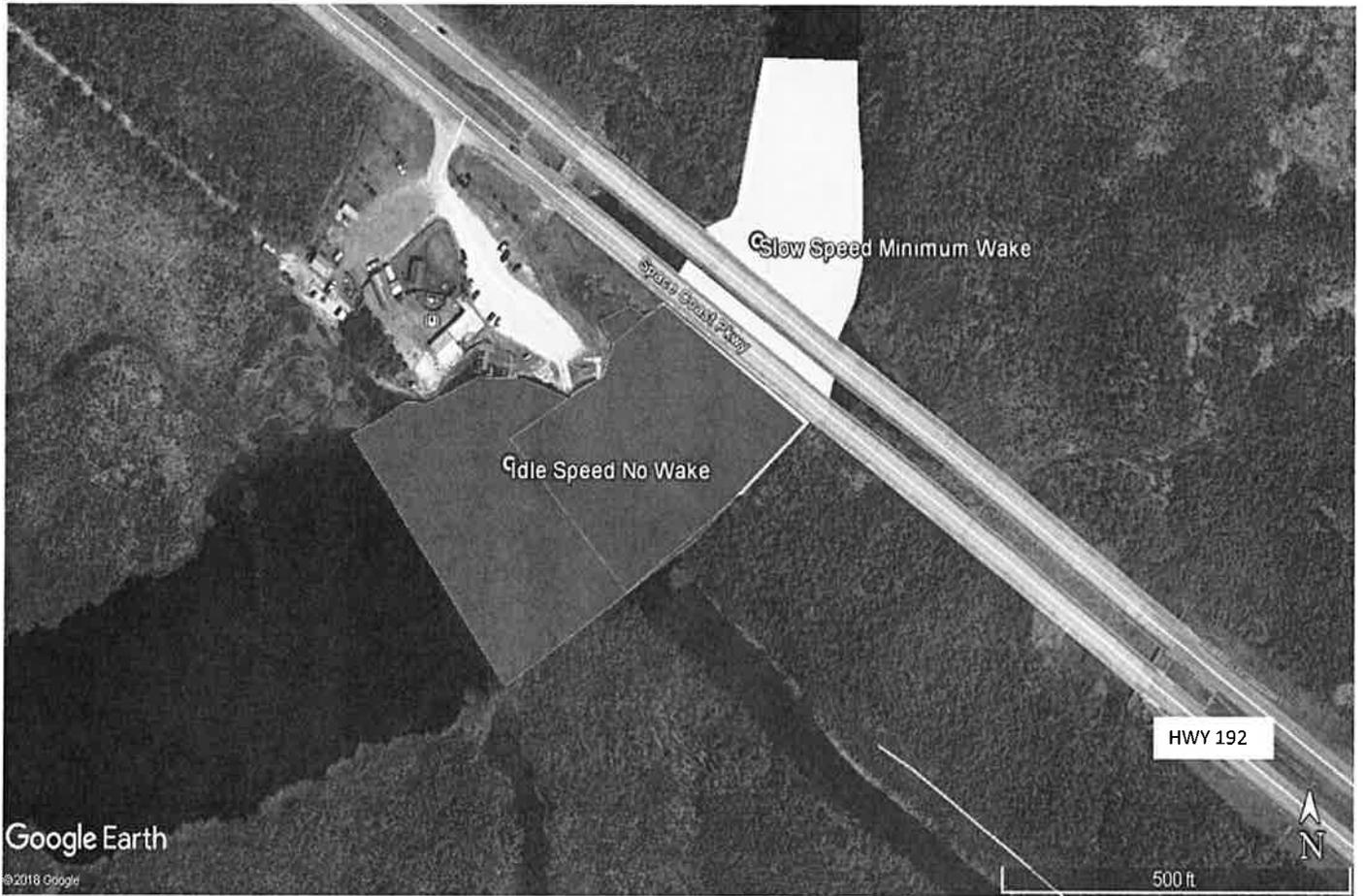
Tammy Rowe, Deputy Clerk

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cc: County Attorney



**Proposed Camp Holly Area and Sweetwater Ramp Slow-speed & Idle-speed Zones**  
(Highway 192 at the St. Johns River)



**Proposed Camp Area Holly Slow-speed & Idle-speed Zones**



**Proposed Sweetwater Ramp Idle-speed Zone**

## Chapter 122 - WATERWAYS

### ARTICLE I. - IN GENERAL

Sec. 122-1. - Fishing within residential, manmade saltwater canal prohibited; exceptions.

- (a) *Authority.* This section is enacted under authority of F.S. ch. 93-376.
- (b) *Purpose and intent.* It is hereby declared to be the intent of this section to prohibit the taking of fish from any residential, manmade saltwater canal within unincorporated Brevard County, except by hook and line or cast nets thrown by hand.
- (c) *Definitions.* As used in this section, the following words and terms shall have the following meanings, unless some other meaning is plainly intended:
  - (1) *Brevard County* means unincorporated Brevard County.
  - (2) *Residential* means all improved real property within the county used for either a multifamily residence, a single-family residence, including trailer parks or any real property falling within a residential zoning classification as defined in the Code.
  - (3) *Manmade* means made by human beings or not of natural origin.
  - (4) *Canal* means a manmade waterway.
- (d) *Prohibited activity.* It shall be a violation of this section to take fish from any residential, manmade, saltwater canal within the county by any means other than by hook and line or cast net thrown by hand. In addition to this restriction, between the hours of 11:00 p.m. and 7:00 a.m., it shall be a violation to take fish from any residential, manmade, saltwater canal within the county by a cast net of more than six feet.
- (e) *Penalty.* Any violation of this section shall be prosecuted in the same manner as a misdemeanor and upon conviction shall be punished by a fine not to exceed \$500.00 or by imprisonment in the county jail not to exceed 60 days or by both such fine and imprisonment.

(Ord. No. 93-23, §§ 1—6, 12-7-93; Ord. No. 96-12, § 1, 3-26-96)

Cross reference— Saltwater canal fishing restrictions authorized, § 262-1.

Secs. 122-2—122-25. - Reserved.

### ARTICLE II. - BOATS AND WATER SAFETY

#### DIVISION 1. - IN GENERAL

Sec. 122-26. - Idle speed, no wake zones.

- (a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
  - Idle speed, no wake* means the minimum speed that will maintain the steerage way of a watercraft.
  - Idle speed, no wake zones* means those waterways within the unincorporated area of the county in which watercraft traffic shall not exceed idle speed. Those waterways shall be as follows:
    - (1) That waterway commonly known as the Grand Canal and all canals connecting to the Grand Canal, between the north section line of section 34, township 26 south, range 37 east, and the northern terminus of the Grand Canal immediately south of State Road 404, commonly known as the Pineda Causeway.

- (2) That waterway beginning at the intersection of the extended centerline of Venetian Way with the city of Indian Harbour Beach/Brevard County boundary; thence southerly along the city of Indian Harbour Beach/Brevard County boundary to the intersection of the city of Melbourne/Brevard County boundary; thence westerly along the city of Melbourne/Brevard County boundary approximately 500 feet; thence northerly to the southern tip of Merritt Island; thence northerly along the eastern shore of Merritt Island to the intersection of the extended centerline of Venetian Way; thence easterly along the extended centerline of Venetian Way to the point of beginning.
- (3) All waters of Sykes Creek between SR 528, commonly known as the Bennett Causeway, and the county line of section 13, township 24 south, range 36 east.
- (4) The easterly 200 feet of the entrance canal into the Lake Washington Acres subdivision, the canal lying between the western terminus of the northern canal and the western terminus of the southern canal, and the canal south of Evinrude Road located in section 15, township 27 south, range 36 east, according to the replat of Lake Washington Acres, section 1, plat book 2153.
- (5) The canals associated with the Indian River Isles Subdivision (First Addition, Second Addition, Third Addition, and South Indian River Isles). Being further described as: the southeast  $\frac{1}{4}$  of section 1, township 26, range 36; and the northeast  $\frac{1}{2}$  of section 12, township 26, range 36.
- (6) The canal lying north of Laguna Vista Drive located in Lakewood Manor, plat book 20-20, page 50, located in section 10, township 27 south, range 36 east.
- (7) Fox Lake, up to the southern mouth of the canal connecting Fox Lake to South Lake, a body of water adjacent to Fox Lake Park located at 4400 Fox Lake Road, Titusville, Florida, 32796. Legal Description, Part of S  $\frac{1}{2}$  as described in Official Records Book 688, Page 860, public records of the county.

*Watercraft* means any vessel that travels on, in or under the water regardless of method of propulsion.

- (b) The idle speed, no wake zone, area shall be posted by appropriate signs stating "IDLE SPEED, NO WAKE." Such signs shall be made of materials, which will retain, despite the weather and other exposures, the information required to convey the intended regulation. Reflectorized materials will be used. The sign shall be colored white with a circle of international orange with center. The words "IDLE SPEED, NO WAKE" shall be set forth in black letters inside the circle. The sign may be attached to another object such as a piling, buoy, structure or land and shall be no smaller than three feet by three feet. The signs shall be placed not more than 500 feet apart throughout the idle speed, no wake zone, and at the beginning of each idle speed zone.
- (c) For the purpose of regulating the speed and operation of watercraft traffic within idle speed no wake zones:
  - (1) It shall be unlawful for any person, by any means or in any manner, to intentionally or negligently injure or harm a manatee.
  - (2) It shall be unlawful for any person operating a watercraft to exceed the speed restrictions established in this section for idle speed zones. Any person who violates the provisions of this subsection shall be punished as provided in subsection (d).
- (d) In accordance with F.S. § 327.73, any violation of the speed restrictions within the designated restricted areas as specified in this section shall be considered a noncriminal infraction, punishable by a civil penalty of \$35.00. Enforcement of this section shall be as specified in F.S. § 327.70, and all infractions of this section shall be issued on a uniform boating citation as provided by F.S. § 327.74, by those agencies authorized to enforce vessel speed regulations. Pursuant to F.S. § 327.72, any person failing to pay the civil penalty as designated in this section or to utilize the remedies provided in F.S. § 327.73 shall be considered guilty of a misdemeanor of the second degree, punishable as provided in F.S. §§ 775.082 or 775.083.

(Code 1979, §§ 24-44—24-47; Ord. No. 96-55, § 1, 12-10-96; Ord. No. 05-39, 8-23-05)

Editor's note— Ord. No. 05-39, adopted August 23, 2005, changed the title of § 122-26 from "Idle speed zones" to "Idle speed, no wake zones."

Sec. 122-27. - Use of vessels in residential areas.

- (a) *Definition.* As used in this section the word "vessel" is synonymous with "boat" and shall mean any motor or artificially propelled vehicle, including air boats, swamp boats and every other description of watercraft, used or capable of being used as a means of transportation on water.
- (b) *Speed restrictions.* All vessels operated within 1,000 feet of any building or structure temporarily or permanently occupied by any person for residential purposes shall be operated at idle speed, not to exceed five miles per hour. In accordance with F.S. § 327.73 any violation of this subsection is a noncriminal infraction punishable by a fine of \$100.00.
- (c) *Affected areas.* The provisions of this section shall apply only to vessels operated on Lake Poinsett.

(Code 1979, § 15½-1; Ord. No. 2000-019, § 1, 3-14-00)

Sec. 122-28. - Operation of airboats in restricted area on Lake Poinsett.

- (a) *Definitions.* For the purpose of this section the following words and phrases shall have the meanings respectively ascribed to them in this subsection unless otherwise specifically stated:

*Airboat* means any watercraft which operates on a water surface or water body and which is propelled by an engine, motor or other propulsion system which utilizes a propeller, fan or blade which is not normally submerged below the water surface upon which the craft operates.

*Lake Poinsett Subdivision Area* means the subdivision in that portion of the county located within section 34, township 24 south, range 35 east and section 3, township 25 south, range 35 east, Brevard County, Florida.

*Nighttime* means the period from sunset to one-half hour after sunrise, as sunrise and sunset are officially determined by the National Weather Service.

*Operate* means the exercise of the physical control of an airboat involving the launching or flotation, and engagement or activation of the propulsion system of any airboat on a waterway in the restricted area encompassed within this section.

*Restricted area* means that part of Lake Poinsett and adjoining canals lying in section 34, township 24 south, range 35 east and section 3, township 25 south, range 35 east, Brevard County, Florida and lying northerly and easterly of the following described control line: Commence at the northeast corner of plat book 19, page 144 and run south 0°03' west along the east line of southwest ¼ of section 34, a distance of 400 feet to the southeast corner of the plat; thence run south 20°00' east, a distance of 1,125 feet to the point of beginning; thence for a first course run north 65°00' west, a distance of 2,050 feet; thence for a second course run north 38°00' west a distance of 1,900 feet more or less to the northerly shore of Lake Poinsett which is the termination point of the control line.

- (b) *Prohibited acts.*

- (1) It shall be unlawful under the provisions of this section for any person to launch or load any airboat on Lake Poinsett in the county during the nighttime hours within the restricted area on Lake Poinsett, including canals within the Lake Poinsett Subdivision.
- (2) It shall be unlawful for any person to operate any airboat at greater than an idle speed not to exceed five miles per hour at any time within the restricted area.
- (3) It shall be unlawful to operate an airboat at greater than idle speed within the canals of the Lake Poinsett Subdivision located in the county at any time.

- (4) It shall also be unlawful for any person to launch or load any airboat from the Lake Poinsett Subdivision or any public or private property located on or adjacent to Pluckebaum Road and the Lake Poinsett Lodge areas within the restricted area during the nighttime hours.
- (5) It shall be unlawful for any person to intentionally remove or destroy any sign, marker or buoy defining or announcing the control line of the restricted area.
- (c) *Exemption.* The provisions of this section shall not prohibit the operation, launching or loading of an airboat within the restricted areas and adjacent to the Lake Poinsett Subdivision or within the canals of the Lake Poinsett Subdivision by any state, county or federal officer on official public business.
- (d) *Penalties.* In accordance with F.S. § 327.73, any person convicted of a violation of any of the provisions of subsection (b)(1) or (b)(2) of this section shall be guilty of a noncriminal infraction punishable by a fine of \$100.00. All other violations of this section shall be punished as provided in section 1-7.

(Code 1979, § 15½-6; Ord. No. 2000-019, § 2, 3-14-00)

Sec. 122-29. - Sykes Creek and Kiwanis Island Basin and Scottsmoor Landing Park.

- (a) *Definitions.* For the purposes of this section the following definitions shall apply:

*Channel exempt* more specifically defines what portion of a described waterway is being regulated or restricted, and shall remove or exempt the posted portion of the marked channel of Sykes Creek from restriction or regulation.

*Kiwanis Island Basin* means that body of water commonly known by such name and existing within the confines of Merritt Island between the Sykes Creek Parkway Bridge and State Road 520.

*S curve area* means that body of water described as all of those waters of Sykes Creek bounded by Merritt Island within section 13, township 24 south, range 36 east.

*Scottsmoor Landing Park area* is that body of water in the Indian River outside the marked "channel" extending 2,000 feet perpendicular to the shoreline of Scottsmoor Landing Park and two miles south of the park and an additional two miles (to extent of the county limits) north of the park.

*Slow speed* means that speed at which a motorboat is not on a plane, rides level in the water and produces a minimal wake.

*Sykes Creek* means the whole of Sykes Creek which may be defined as that body of water commonly known as Sykes Creek within the confines of Merritt Island, existing between the Canaveral Barge Canal and that certain roadway commonly known as Sykes Creek Parkway.

*Water skiing* means the towing or pulling of a person in or on the water by a motorboat (or other watercraft capable of doing so) while such person is mounted on water skis or other similar devices.

- (b) *Use regulations.* The use of watercraft and of water skiing in Sykes Creek and the Kiwanis Island Basin shall be regulated as follows:
  - (1) A permanent slow speed-channel exempt zone is hereby established for the entire Sykes Creek and Kiwanis Island Basin, extending south from the entry of Sykes Creek into the Canaveral Barge Canal and north from that certain roadway known as State Road 520.
  - (2) The maximum speed of a watercraft within the posted channel of Sykes Creek shall be 25 miles per hour.
  - (3) Notwithstanding the canal exempt provision established in subsection (b)(1) above, a permanent slow speed zone is hereby established in the following areas:
    - a. That portion of Sykes Creek extending south from the entrance of the Canaveral Barge Canal into Sykes Creek to the State Road 528 Bridge.
    - b. The entire S curve area.

- c. The entire Kiwanis Island Basin area.
  - d. The Scottsmoor Landing Park area.
- (4) Water skiing shall be prohibited within the waters of Sykes Creek north of State Road 520 and south of the entry of Sykes Creek into the Canaveral Barge Canal.
- (c) *Posting of restricted areas.* The restrictions as created by this section shall be posted by county personnel with appropriate signs. Such signs shall be made of materials which will retain, despite the weather and other exposure, the information which conveys the intended regulation. The sign may be attached to another object such as a piling, buoy, structure or land and shall be no smaller than three feet by three feet.
- (d) *Penalty.*
- (1) In accordance with F.S. § 327.73, any violation of the speed restrictions within this section shall be considered a noncriminal infraction punishable by a civil penalty of \$35.00. Enforcement of the section shall be as specified in F.S. § 327.70, and all infractions of this section shall be issued on a uniform boating citation as provided by F.S. § 327.74, by those agencies authorized to enforce vessel speed regulations. Pursuant to F.S. § 327.72, any person failing to pay the civil penalty as designated in this section or to utilize the remedies provided in F.S. § 327.73 shall be considered guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082 or 775.083.
  - (2) Any person violating any other provisions of this section shall be punished as provided in section 1-7.

(Code 1979, § 24-48; Ord. No. 96-04, § 1, 2-6-96)

Sec. 122-30. - Vessels in ocean.

- (a) *Definitions.* For the purposes of this section the following definitions shall apply:

*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.

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

*Slow speed/minimum wake* means the speed of a vessel shall be such that the vessel is completely off plane and fully settled into the water. Vessels may then proceed at a speed which is reasonable and prudent under the existing conditions. Large displacement hull vessels shall not create a large, damaging or potentially dangerous wake, even though settled in water they must compensate by reducing speed.

*Vessel* means a boat, as referenced in Article VII, Section 1(b), Florida State Constitution, and includes every description of watercraft, barge, and airboat, other than a sea plane on the water, used or capable of being used as a means of transportation on water. This includes all types of personal watercraft.

- (b) *Area encompassed.* The provisions of this section shall be applicable within the unincorporated areas of the county. These provisions shall be construed to supplement federal and state laws and regulations, when not expressly inconsistent therewith, on all waterways where such federal and state laws and regulations are applicable.
- (c) *Operation near shoreline.* No vessels, except, human or wind powered vessels, shall be operated within 500 feet of the Atlantic Ocean shoreline, except when launching and landing, and in such cases the vessel shall proceed through the aforesaid 500 feet substantially in a line perpendicular to the shore and the watercraft shall not be maneuvered within the 500 feet except for the purpose of launching or landing. No vessel shall be operated otherwise unless allowed to do so under a permit obtained from the United States Coast Guard, as required by F.S. § 327.48.

- (d) *Right-of-way of persons in water.* All swimmers and bathers in the ocean shall be given the absolute right-of-way over vessels. All vessels within 100 feet of any swimmer or bather in the water shall proceed with extreme caution in such a manner as not to endanger such persons in the water.
- (e) *Exemptions.* United States Coast Guard, Florida Marine Patrol, county law enforcement, or other official vessels operating under emergency conditions or while performing official duties shall be exempted from the provisions of this section.
- (f) *Enforcement.* It shall be unlawful to violate any provisions of this section. A citation shall be issued pursuant to F.S. §§ 327.72 and 327.73 for any such violation.

(Ord. No. 98-36, § 1, 7-7-98)

Secs. 122-31—122-39. - Reserved.

## DIVISION 2. - COMBUSTION MOTOR EXCLUSION AND SLOW SPEED/MINIMUM WAKE ZONES

Sec. 122-40. - Definitions.

For the purposes of this division the following definitions shall apply:

*Babe Cushman Canal* is the northern body of water within Indian Landing as recorded in plat book \_\_\_\_\_, page \_\_\_\_\_.

*Combustion motor exclusion zone* is a water surface area where watercraft propelled with combustion motors or electrical trolling motors are prohibited. Within this zone, watercraft use is limited to canoes, kayaks, sailboats, and flat bottom boats.

*Indian Landing* is a subdivision located in Section 10, Township 29 South, Range 38 East as approved by Brevard County under Subdivision Plan number SD95-01-001 and as recorded in plat book \_\_\_\_\_, page \_\_\_\_\_.

*Kel Fox Canal* is the southern body of water within Indian Landing as recorded in plat book \_\_\_\_\_, page \_\_\_\_\_.

*Navigational access* is the area in the Indian River Lagoon located between the outlet of the Kel Fox Canal and a deep natural channel delineated by navigational aids for ingress and egress for watercraft to Indian Landing via the Kel Fox Canal.

*Near shore area* is that part of the Indian River Lagoon extending 900 feet perpendicular to the shoreline of Indian Landing and including the area of navigational access, as defined above.

*Slow speed/minimum wake* means that speed at which a motorboat is not on a plane, rides level in the water, and produces a minimum wake.

*Watercraft* means any vessel that travels on, in, or under the water regardless of its method of propulsion.

(Ord. No. 00-58, § 1, 11-28-00)

Sec. 122-41. - Waterway use regulations.

The operation of watercraft shall be regulated as follows:

- (1) A permanent slow speed/minimum wake zone is hereby established for the defined near shore area and navigational access that is adjacent to Indian Landing. It shall be unlawful to exceed slow speed/minimum wake within the near shore area and navigation access.

- (2) A permanent combustion motor exclusion zone is hereby established within the Babe Cushman Canal. It shall be unlawful for boats equipped with combustion engines to enter, moor in, or otherwise use the Babe Cushman Canal. It is also unlawful to damage or destroy any elements of the barrier that restricts access to the Babe Cushman Canal.

(Ord. No. 00-58, § 2, 11-28-00)

Sec. 122-42. - Posting of restricted areas.

The slow speed zone, navigational access, and combustion motor exclusion zone as created by this section shall be posted and maintained by the developer of Indian Landing and his successors, Indian Landing's Home Owners Association, with appropriate signs. Such signs shall be made of materials that will retain, despite the weather and other exposure, the information that conveys the intended regulation. The sign may be attached to a piling, buoy, structure or land and shall be no smaller than three feet by three feet. The signs shall be placed not more than 500 feet apart along the zones and access.

(Ord. No. 00-58, § 3, 11-28-00)

Sec. 122-43. - Exemptions.

The United States Coast Guard, Florida Marine Patrol, Brevard County Sheriff, or other official watercraft operating under emergency conditions or while performing official duties shall be exempt from the provisions of this section.

(Ord. No. 00-58, § 4, 11-28-00)

Sec. 122-44. - Enforcement.

It shall be unlawful to violate any provisions of section 122-41. A citation shall be issued pursuant to F.S. § 327.72 and 327.73 for any such violation.

(Ord. No. 00-58, § 5, 11-28-00)

Sec. 122-45. - Penalties.

In accordance with F.S. § 327.73, any violation of the speed restrictions within this section shall be considered a non-criminal infraction punishable by a civil penalty provided in the aforementioned statute. Enforcement of the section shall be as specified in F.S. § 327.70, and all infractions of this section shall be issued on a uniform boating citation as provided by FS. § 327.74, by those agencies authorized to enforce vessel speed regulations. Pursuant to F.S. § 327.72, any person failing to pay the civil penalty as designated in this section or to utilize the remedies provided in F.S. § 327.73 shall be considered guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082 or 775.083.

(Ord. No. 00-58, § 6, 11-28-00)