

PROPOSED

ORDINANCE NO. 2021-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO MANATEE PROTECTION PLAN BOAT SLIPS AND FEES; AMENDING VARIOUS SECTIONS OF CHAPTER 27 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"); PROVIDING FOR DEFINITIONS; CLARIFYING MANATEE PROTECTION PLAN IMPLEMENTATION AND EXEMPTIONS; ESTABLISHING PROCEDURES FOR BOAT SLIP ALLOCATION; FREEZING ANNUAL INCREASES IN BOAT SLIP FEES AND MANATEE PROTECTION PLAN FEES; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by Commissioner Lamar P. Fisher)

WHEREAS, Section 379.2431(2)(t)3., Florida Statutes, requires that each of Florida's coastal counties include a boat facility siting element in a manatee protection plan, and Objective 12-A.3 of the Broward County Comprehensive Plan's Conservation Element requires that new boat facilities will be located on sites that minimize potential manatee/boat overlap, injury to manatees, and disturbance of manatee habitat;

WHEREAS, on June 26, 2007, the Board of County Commissioners ("Board") adopted the Boat Facility Siting Plan ("BFSP") component of the Manatee Protection Plan, providing for a new slip impact fee and a manatee mitigation fee, which are necessary to fund the various conservation and monitoring elements of the BFSP to enhance manatee protection;

WHEREAS, on November 27, 2007, the Board amended Section 37-224, Broward County Code of Ordinances ("Code"), establishing an initial slip fee of four hundred dollars (\$400) and an initial manatee mitigation fee of twenty dollars (\$20), and providing for a four percent (4%) annual increase in both fees;

Coding:

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1 WHEREAS, Broward County staff has determined the annual fee increases are no
2 longer necessary and recommends freezing the new slip and annual manatee mitigation
3 fees at the current Fiscal Year 2021 rate;

4 WHEREAS, the BFSP provides for the allocation of boat slips to individual facilities
5 through a pool of available slips, divided into discrete geographic regions and zones
6 within those regions, and utilizing the County's environmental resource and marine facility
7 licensing processes; and

8 WHEREAS, the proposed amendment establishes procedures for County staff and
9 license applicants regarding the allocation of scarce boat slips and reallocation of unused
10 boat slips,

11
12 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
13 BROWARD COUNTY, FLORIDA:

14
15 Section 1. Section 27-332 of the Broward County Code of Ordinances is hereby
16 amended to read as follows:

17 **Sec. 27-332. Definitions and incorporation by reference.**

18 The definitions in this article apply only to this article. The general definitions in
19 Section 27-4 shall apply unless in conflict with a definition contained herein. The Manatee
20 Protection Plan and the application forms for environmental resource licenses, general
21 licenses, and jurisdictional determinations maintained by EPGMD are incorporated by
22 reference into this article. When a term is defined in this section and in the MPP, the
23 stricter or more restrictive definition shall apply.

24 . . .

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underscored type are additions.

1 *Applicant* means any person that requires a license and has made application for
2 such license to EPGMD.

3 *Boat or marine facility* means a public or private structure, operation, or facility
4 where boats are moored or launched, including commercial, recreational, private,
5 governmental, and residential marinas, and boat ramps. A dry storage facility is
6 considered a boat facility if the dry storage facility has the capability of launching vessels
7 into adjacent waters or water access is provided adjacent to the project. Facilities such
8 as long-term boat storage lots, boat yards, or boat dealership lots that do not have direct
9 water access are not considered boat or marine facilities. Waterfront single-family
10 residences and waterfront multislip facilities with less than five (5) slips are not considered
11 boat or marine facilities.

12 *Environmental rResource /License or ERL* means an approval issued by EPGMD
13 for activities involving ~~dredging and filling~~ alteration of an aquatic resource, wetland
14 alteration, or mangrove alteration, or construction or alteration of a mitigation banking, as
15 defined by this section.

16 . . .

17 *Functional values* means those ecological values provided by wetland resources,
18 including, but not necessarily limited to, flood storage, flood conveyance, groundwater
19 recharge and discharge, erosion control, wave attenuation, water quality enhancement
20 and protection, nutrient removal, food chain support, and fish and wildlife habitat,
21 nurseryies, and breeding grounds.

22 *Good Faith Application* means an ERL application for which the applicant has
23 made payment of the application fee portion of the new slip fee and County staff has
24 determined the applicant has provided sufficient proof of ownership of the property

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1 subject to the application and, if necessary, i) a water quality analysis, ii) a sediment and
2 soil analysis, and iii) a natural resource survey to accurately characterize the project site
3 conditions.

4 . . .

5 *Maintenance* means an activity that sustains an area to its original design or
6 construction specifications, whichever is most restrictive.

7 *Manatee Protection Plan* or *MPP* means the management plan developed by
8 Broward County, approved by the Florida Fish and Wildlife Conservation Commission,
9 and used by Broward County to ensure the long-term protection of manatees and their
10 habitat.

11 *Manatee Protection Plan Zone(s)* or *MPP Zone(s)* means map areas established
12 by the Boat Facility Siting Plan component of the Manatee Protection Plan, which divides
13 Broward County into North, Center, and South waterway regions and five areas of special
14 concern. Slips are allocated based upon the “pool” of existing and available slips within
15 the applicable Manatee Protection Plan Zone.

16 . . .

17 *Mitigation bank* means a project within the mitigation service area designated and
18 licensed for the purpose of providing compensation for wetland impacts, and includes a
19 resource analysis, ~~credit assignment system~~ and long-term maintenance plan that
20 assures persistence of the mitigation bank and the wetland functional values.

21 . . .

22 *Regulated aquatic and wetland resources* means all rivers, lakes, streams,
23 springs, canals, ditches, impoundments, wetlands, and all other bodies of water, whether
24 artificial or natural, including fresh, brackish, saline, tidal, surface, or underground.

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 underlined type are additions.

1 *Significant benthic community* means an assemblage of organisms occupying the
2 benthic substrate that is composed of economically important shellfish, hard or soft corals,
3 seagrasses, or a diverse macroinvertebrate association.

4 *Single-family residence* means a building located on a single lot, having a roof and
5 outer walls detached from any other structure, and designed to be occupied by a single
6 housekeeping unit, and excluding duplex or multiplex buildings on a single lot regardless
7 of whether occupied by members of a single housekeeping unit.

8 *Slip* means the space designed for the mooring or storage of a single watercraft,
9 including, but not limited to, the space for a wet or dry slip, anchorage, beached or blocked
10 watercraft, watercraft hoists, seawalls, floating platforms, davits, boat lifts, and the parking
11 spaces associated with boat ramps and similar launching facilities. Piers authorized only
12 for fishing or observation are not considered slips.

13 *Solid waste* means garbage, rubbish, refuse, sludge, or other discarded solid or
14 semisolid material resulting from domestic, commercial, industrial, agricultural, or
15 governmental activities or operations. This includes, but is not necessarily limited to,
16 wood, putrescible construction and demolition debris, and asphalt or other asphaltic
17 material.

18 *Significant benthic community* means an assemblage of organisms occupying the
19 benthic substrate that is composed of economically important shellfish, hard or soft corals,
20 seagrasses, or a diverse macroinvertebrate association.

21 . . .

23 Section 2. Section 27-333 of the Broward County Code of Ordinances is hereby
24 amended to read as follows:

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underlined type are additions.

1 **Sec. 27-333. Prohibited activities.**

2 (a) *Prohibitions.*

3 (1) No person shall cause, permit, suffer, allow, conduct, or cause to be
4 conducted impact, alteration, construction, demolition, dredging, or filling in
5 regulated aquatic or wetland resources, except in accordance with a
6 currently valid ~~environmental resource license~~ ERL issued by EPGMD and
7 all general and specific license conditions contained therein.

8 (2) No person shall cause, suffer, permit, or allow the alteration or trimming of
9 mangroves unless performed in accordance with the requirements of
10 Chapter 373, Part IV, F.S. Florida Statutes (§ Section 373.403, F.S. Florida
11 Statutes, et seq.), and Chapter 403, F.S. Florida Statutes, as amended.

12 (3) No person shall excavate or cause to be excavated a water body in the
13 uplands, of a size equal to or greater than one (1) acre but less than two (2)
14 acres without a currently valid general license, or with of a size of equal to
15 or greater than two (2) acres ~~except in accordance with~~ without a currently valid
16 ~~environmental resource license issued by~~ EPGMD ERL, and except in
17 compliance with all general and specific the license and all license
18 conditions.

19 (4) No local government entity in Broward County may issue a development
20 order for development within wetlands, as defined herein, until an EPGMD
21 license has been issued pursuant to this article. However, local government
22 entities may issue a land use planning amendments, rezoning, site plan,
23 plat approval, or development orders issued pursuant to Chapter 380, F.S.
24

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Florida Statutes, in areas containing wetlands upon the issuance of a Conceptual Dredge and Fill Review Report by EPGMD.

Section 3. Section 27-334 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 27-334. Application requirement and standards.

■ ■ ■

(c) *Fees:*

(1) Each application shall be accompanied by a nonrefundable filing application fee, as adopted by resolution of the Board or as established in this section. Processing of an application will not begin until the appropriate application fees are received by EPGMD.

(2) Pursuant to the Broward County Manatee Protection Plan ("MPP"), each Environmental Resource License ERL applicant proposing to add one (1) or more new boat slips at a boat or marine facility above the historical number of slips present at that facility, except for projects at a single-family residence as defined in the MPP, is required to pay to EPGMD a nonrefundable application fee of one hundred dollars (\$100.00) per new proposed slip as partial payment of the total new slip new slip fee in Table I of six hundred sixty-six dollars (\$666.00) per proposed slip. The application fee portion of the new slip new slip fee is due at the time an application is submitted. At the time that an application is determined to be a Good Faith Application by EPGMD to be in "good faith" pursuant to the MPP and the standards of this article, slips for the proposed project are may be allocated

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1 to the project from the pool of available slips ~~available under in~~ the
2 applicable MPP Zone, if any. A ~~nonrefundable~~ pPayment of the ~~current~~
3 ~~fiscal year's total new slip~~ remainder of the new slip fee, ~~less any application~~
4 ~~fee already paid pursuant to this Subsection~~, is due and must be received
5 by EPGMD ~~after the completion of to complete~~ the application process and
6 prior to issuance of the ~~Environmental Resource License~~ ERL. If an
7 application denial becomes final without legal challenge, or a denial is
8 upheld as the end result of any legal challenge, the slips allocated to the
9 proposed project from those available pursuant to the MPP shall return to
10 the pool of slips. Additionally, ~~starting in Fiscal Year 2009 (on October 1,~~
11 ~~2008) and in accordance with Section 27-342, each multi-slip~~ multislip
12 facility with five (5) or more slips shall also pay to EPGMD an annual
13 manatee mitigation fee ~~in accordance with Table I of thirty-two dollars~~
14 (\$32.00) for each allocated slip on or before the ~~anniversary date of the~~
15 ~~issuance of October 1 of each year pursuant to Section 27-342 and the~~
16 facility's Marine Facility Operating License.

17
18 TABLE I
19
20 MANATEE PROTECTION PLAN FEES

<i>Fiscal Year</i>	<i>New Slip Fee Per Proposed Slip</i>	<i>Manatee Mitigation Fee Per Each Existing Slip</i>
2008	\$400.00	\$0.00
2009	416.00	20.00
2010	432.64	20.80

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22 underlined type are additions.

<i>Fiscal Year</i>	<i>New-Slip Fee Per Proposed Slip</i>	<i>Manatee Mitigation Fee Per Each Existing Slip</i>
2011	449.95	21.63
2012	467.94	22.50
2013	486.66	23.40
2014	506.13	24.33
2015	526.38	25.31
2016	547.44	26.32
2017	569.34	27.37

~~New-slip fees and manatee mitigation fees not specifically listed in Table I shall continue to increase at a rate of four percent (4%) per year. There is created a Manatee Protection Plan Fund ("MPP Fund"), which is to be supervised and utilized by the County to expend monies to meet its obligations under the MPP. The MPP Fund shall consist of all monies collected as new-slip new slip fees and manatee mitigation fees received pursuant to this ~~S~~ubsection, in addition to any other monies as may be authorized to be deposited or transferred into the MPP Fund by resolution of the Board or as otherwise established by County ordinance.~~

~~(3) Construction of a new transitory slip at a boat or marine facility shall be subject to payment of the new slip fee and the availability of slips within the relevant MPP Zone. Existing and new transitory slips are exempt from annual manatee mitigation fees. A transitory slip shall not be converted to a permanent slip without obtaining an ERL and paying the annual manatee mitigation fee.~~

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1 (4) All fees payable under this article are nonrefundable and nontransferable.
2 Unless otherwise established in this article, there are no fee exemptions or
3 discounts.

4 (d) *Procedure:* Within thirty (30) days after the receipt of an application for an
5 ~~environmental resource license ERL~~, the applicant may be requested to provide such
6 additional information ~~that as~~ is reasonably necessary to determine whether the license
7 should be issued or denied. A decision, ~~which is on the application~~ based upon the criteria
8 contained in this article, ~~sections 27-331 to 27-341, on the application~~ shall be in writing
9 and mailed to the applicant's address no later than ninety (90) days after the requested
10 additional information is received from the applicant, or, if a timely request for additional
11 information is not made, no later than ninety (90) days after receipt of the application. If
12 an application is not approved or denied within the applicable ninety (90) days, the
13 applicant may, within thirty (30) days of after the last date when a timely decision could
14 have been made, request EPGMD to make a final agency determination on the license.
15 Then tThe applicant may seek administrative review of a final agency determination as
16 provided by this chapter. Alternatively, the applicant may, in writing, waive the time
17 frames for processing its application in order to maintain its Good Faith Application status
18 for a future allocation of slips and voluntarily allow more time to complete processing its
19 application.

20 ...

21 (g) *License Conditions:* The approval of an ~~environmental resource license~~
22 ~~ERL~~ may be subject to the applicant's compliance with a set of general and specific
23 conditions which shall be in writing and made a part of the license.

24

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(h) *As-Built Drawings Required:* When appropriate, ~~it shall be required that~~, after a regulated aquatic resource has been excavated and finished grading has occurred, the applicant shall submit as-built drawings for approval. Such as-built drawings shall be signed and sealed by a professional engineer or professional land surveyor registered in the State of Florida.

(i) *Public Notice:* When an environmental resource license ERL application is received, a description of the project and its location will be publicly available at the main EPGMD office pursuant to Chapter 119, F.S. Florida Statutes, and will be available for public comment welcomed. Where an application is reviewed for work within a municipality, that municipality will be provided a copy of the application for comment prior to a final agency "action" determination on the application.

Section 4. Section 27-335 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 27-335. Exemptions.

The following projects are exempt from license requirements:

■ ■ ■

(9) New slips at single-family residences, including the licensing and fee requirements of the Manatee Protection Plan. This exemption shall not apply when the facility meets the definition of a boat or marine facility.

Section 5. Section 27-337 of the Broward County Code of Ordinances is hereby amended to read as follows:

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1 **Sec. 27-337. Criteria for issuance or denial of an eEnvironmental rResource**
2 **ILicense.**

3 . . .

4 (e) Additional criteria and waiting list for boat or marine facility projects subject
5 to the Manatee Protection Plan:

6 (1) In addition to the requirements of this chapter and the MPP, each applicant
7 for an ERL proposing construction or reconfiguration of a boat or marine
8 facility shall:

- 9 a. Submit sufficient information to qualify as a Good Faith Application;
10 and
- 11 b. Obtain a determination from EPGMD of the availability of slips within
12 the MPP Zone where the project is located.

13 (2) If sufficient slips are available within the applicable MPP Zone to fully grant
14 the number of slips applied for, the application may proceed for a final
15 agency determination of issuance or denial, subject to payment of all
16 remaining fees and fulfillment of all other application requirements.

17 (3) If sufficient slips are not available within the applicable MPP Zone to fully
18 grant the number of slips applied for, the applicant will be notified in writing
19 of the opportunity to amend the application to request only the currently
20 available slips and/or be put on the waiting list for the remainder of the slips.
21 The waiting list option is subject to EPGMD receiving i) an application for a
22 modification to the ERL for the remaining slips within thirty (30) days after
23 the date of notification, and ii) a waiver in writing of the time frames for
24 processing the application for modification.

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(4) If no slips are available within the applicable MPP Zone, the applicant will be notified of the opportunity to be put on the waiting list, subject to EPGMD receiving a waiver in writing of the time frames for EPGMD's processing of the application.

(5) The waiting list for slips in each MPP Zone shall be composed of applications that have been grandfathered pursuant to Subsection (8) below and Good Faith Applications for which sufficient slips were not available within the applicable MPP Zone to fully grant the number of slips requested. The order of priority within the waiting list shall be: first, any grandfathered applications, by date and time of application; and then each subsequent application by date and the time that the application met the Good Faith Application requirements, except as otherwise provided herein. Proposed slips on the waiting list and positions on the waiting list are not transferrable or assignable except in connection with a sale or transfer of the real property comprising the boat or marine facility.

(6) When slips are returned to the pool of available slips for an MPP Zone with a waiting list, the following process shall apply:

- a. The highest priority applicant on the waiting list for that MPP Zone shall be notified in writing by EPGMD of the total number of slips available and the opportunity to proceed with its pending application.
- b. If the number of slips returned to the pool is greater than the highest priority applicant's pending application would utilize, the next highest priority applicant shall also be notified in writing by EPGMD of the total number of slips that became available, the number of slips

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subject to a higher priority application, and the opportunity to proceed with its pending application for the number of slips available after consideration of the higher priority application.

c. Within thirty (30) days after the date on the notification, an applicant may notify EPGMD in writing to either process its application for the available slips up to the maximum number of slips for which it has a Good Faith Application or to withdraw its application. If no response is received within thirty (30) days after the date on the notification, the application shall be moved to the bottom of the waiting list based upon an application date equal to the day after the deadline, i.e., the thirty-first (31st) day.

(7) If the number of slips available in the applicable pool is less than the number of slips the applicant has requested in a Good Faith Application, the applicant shall have thirty (30) days from the date of the notification to pursue issuance or denial of an ERL for the available slips and to apply for a modification to the ERL for the remainder of the Good Faith Application slips pursuant to Section (3), above. If an application for modification of the ERL is received by EPGMD for the remaining slips within the foregoing time frame, that application for modification shall retain the same application date for priority purposes in the waiting list as the original Good Faith Application. If an applicant notifies the EPGMD in writing that it will not pursue issuance or denial of its ERL, or does not submit an application for modification of the ERL for the remaining Good Faith Application slips, within thirty (30) days

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after the date of the notification, the application shall be removed from the waiting list.

(8) Grandfathered applications and order of priority.

- a. EPGMD shall notify in writing all boat or marine facility applicants whose applications for an ERL or for modification to an ERL were received after January 1, 2020, but before January 1, 2021, and who were unable to obtain an ERL or ERL modification for the full number of slips applied for due to the unavailability of slips in the relevant MPP Zone, of the opportunity to be placed on a waiting list of grandfathered applications for the relevant MPP Zone.
- b. All notified applicants shall have thirty (30) days after the date of the notification to request in writing that their application be added to the grandfathered waiting list and to apply for a modification of an ERL for the remainder of the slips originally applied for. Such waitlisted applicants shall have an additional thirty (30) days to meet the requirements of a Good Faith Application, if those steps have not previously been completed.
- c. The priority order of the waiting list for grandfathered applications shall be determined by the date and, if necessary, time of the original submittal of an application for an ERL or application for modification of an ERL that was not able to be processed for the full number of slips applied for due to slip scarcity in the applicable MPP Zone.
- d. No applications received on or after January 1, 2021, shall be eligible for inclusion in the grandfathered waiting list.

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1 (9) Slips allocated to a boat or marine facility are not transferable or assignable
2 to any other facility or MPP Zone.

3 (10) An ERL that authorizes construction of one (1) or more slips at a boat or
4 marine facility shall expire no later than two (2) years after issuance by
5 EPGMD and may only be extended or renewed i) once for one (1) additional
6 year if an applicant demonstrates to EPGMD that is diligently pursuing other
7 regulatory permits (i.e., United States Army Corps of Engineers, Florida
8 Department of Environmental Protection, or South Florida Water
9 Management District permits necessary for construction of or modifications
10 to its boat or marine facility, ii) as may be required by state law, or iii) as
11 allowed by a variance granted pursuant to Sections 27-10 through 27-13 of
12 this chapter.

13 (11) Slips allocated to a boat or marine facility by issuance of an ERL, inclusion
14 of an application on the waiting list, or that were in existence at the time of
15 adoption of the MPP shall be returned to the pool of available slips within
16 an MPP Zone in total or in relevant number if:

17 a. An applicant fails to meet any application requirement of this chapter
18 in a timely manner, including payment of any fees due;

19 b. The application is denied, subject to exhaustion of available legal
20 processes to challenge or appeal the denial;

21 c. An ERL expires or is revoked prior to total or partial construction of
22 the slip(s);

23 d. An ERL modification reduces the number of slips available at the
24 facility;

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- e. A facility closes or ceases to operate for a continuous period of one (1) year or longer after completion of construction; or
- f. A site inspection, as-built drawings, or other documentation indicates that the constructed amount of slip capacity is less than the licensed number, unless the ERL has not expired or been revoked.

Section 6. Section 27-340 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 27-340. Other licenses, permits, or authorizations.

(a) *Additional Permits/Licenses Permits or Licenses:* The successful acquisition of an ~~environmental resource~~ license ERL from EPGMD does not relieve, alleviate or replace the requirements of, ~~the applicant from obtaining~~ any other federal, state, or local ~~permits/licenses~~ permit or license requirements as mandated.

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Section 7. Section 27-342 of the Broward County Code of Ordinances is hereby amended to read as follows:

Secs. 27-342. Marine facility operating licenses.

Pursuant to the MPP, a Marine Facility Operating License is hereby established. Each existing, new, or reconstructed ~~multi-slip~~ boat or marine facility with five (5) or more slips located in coastal waters, as defined in the MPP, is required to apply for and obtain a Marine Facility Operating License and pay the annual manatee mitigation fee required established in Subsection 27-334(c)(2) prior to and annually throughout operation of the facility. Applications must be made on forms approved by EPGMD. ~~Existing facilities~~

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1 ~~must apply for a Marine Facility Operating License on or before October 1, 2008.~~ A
2 Marine Facility Operating License is valid for one (1) year and must be renewed annually
3 prior to expiration. ~~Renewal of a Marine Facility Operating License requires p~~Payment of
4 the annual manatee mitigation fee applicable during the current fiscal year as established
5 in Subsection 27-334(c)(2) is required for renewal of a Marine Facility Operating License
6 and continued operation of the facility.

7

8 Section 8. Severability.

9 If any portion of this Ordinance is determined by any court to be invalid, the invalid
10 portion will be stricken, and such striking will not affect the validity of the remainder of this
11 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be
12 legally applied to any individual, group, entity, property, or circumstance, such
13 determination will not affect the applicability of this Ordinance to any other individual,
14 group, entity, property, or circumstance.

15

16 Section 9. Inclusion in the Broward County Code of Ordinances.

17 It is the intention of the Board of County Commissioners that the provisions of this
18 Ordinance become part of the Broward County Code of Ordinances as of the effective
19 date. The sections of this Ordinance may be renumbered or relettered and the word
20 "ordinance" may be changed to "section," "article," or such other appropriate word or
21 phrase to the extent necessary in order to accomplish such intention.

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1 Section 10. Effective Date.

2 This Ordinance is effective as of the date provided by law.

3 ENACTED

4 FILED WITH THE DEPARTMENT OF STATE

5 EFFECTIVE

PROPOSED

6 Approved as to form and legal sufficiency:

7 Andrew J. Meyers, County Attorney

8

9 By /s/ Michael C. Owens 03/24/2021

10 Michael C. Owens (date)

11 Senior Assistant County Attorney

12 By /s/ Maite Azcoitia 03/24/2021

13 Maite Azcoitia (date)

14 Deputy County Attorney

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