

ORDINANCE NO. 3074

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING THE CITY OF RIVIERA BEACH COMPREHENSIVE PLAN CAPITAL IMPROVEMENT ELEMENT, WITH THE CITY'S FIVE YEAR CAPITAL PROJECTS PLAN FOR FISCAL YEARS 2010 THROUGH 2014, WHICH IS REQUIRED TO BE AMENDED ANNUALLY ACCORDING TO FLORIDA STATUTES SECTION 163.3177; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statutes Section 163.3177 states that the Capital Improvement Element of the Comprehensive Plan must be amended annually in order to maintain a financially feasible five year schedule of capital projects plan; and

WHEREAS, Florida Statutes Section 163.3177 also states that sufficient revenues must be currently available or committed to fund the first three years of the capital improvement plan and that there are planned funding sources for the fourth and fifth years of the capital improvement schedule; and

WHEREAS, a summary of the Five Year Capital Projects Plan is attached for approval and to be in compliance with Florida Statutes Section 163.3177.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, THAT:

SECTION 1. The City Council amends the City's Comprehensive Plan with Attachment A, the Five Year Capital Projects Budget for fiscal years 2010 through 2014, which is required to be amended annually according to Florida Statutes Section 163.3177. These amendments to the Capital Plan are being recommended based on input by the City Council at the November 5, 2009 Capital Workshop. (Attachment A)

SECTION 2. Should any word, phrase, clause, subsection, section, part or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Ordinance as a whole, or any part thereof other than the part declared invalid.

SECTION 3. All Ordinances or parts of Ordinances in conflict herewith or to the extent of such conflict shall be repealed.

SECTION 4. This Ordinance repeals and replaces Ordinance number 3055 approved in 2008.

SECTION 5. This Ordinance shall take effect upon its final passage and approval by the City Council and shall not be delivered for inclusion in the Code of Ordinances.

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PAGE 2

PASSED AND APPROVED on the first reading this 2nd day of December,
2009.

PASSED AND ADOPTED on second and final reading this 16th day of
December, 2009.

APPROVED:

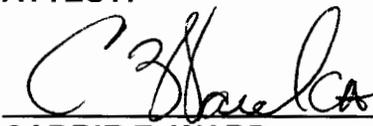


THOMAS A. MASTERS
MAYOR



DAWN S. PARDO
CHAIRPERSON

ATTEST:



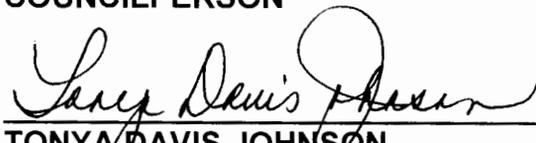
CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK



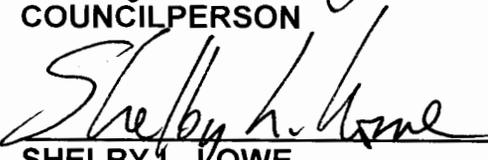
JUDY L. DAVIS
CHAIR PRO TEM



BILLIE E. BROOKS
COUNCILPERSON



TONYA DAVIS JOHNSON
COUNCILPERSON



SHELBY L. LOWE
COUNCILPERSON

ORDINANCE NO. 3075

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, ENACTING A ONE-YEAR MORATORIUM AS TO THE FILING AND/OR RECEIVING OF ANY APPLICATION FOR THE ESTABLISHMENT OF PAIN MANAGEMENT CLINICS; PROVIDING FOR LEGISLATIVE FINDINGS, INTENT AND PURPOSE; PROVIDING FOR A DEFINITION OF PAIN MANAGEMENT CLINIC; PROVIDING FOR THE BOUNDARIES SUBJECT TO THE MORATORIUM; PROVIDING FOR SEVERABILITY AND CONFLICTS AND; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in the "Interim Report of the Broward County Grand Jury" developed for the State Attorney's Office for the 17th Judicial Circuit in Broward County, Florida, entitled the "The Proliferation of Pain Clinics in South Florida" the Grand Jury made the following findings: (i) from August 2008 to November 2009, one new pain clinic is opened in Broward and Palm Beach counties every three days; (ii) doctors in Palm Beach County dispensed the second highest volume of Oxycodone units in the United States; and (iii) in 2008, prescription drugs were attributed to an average of 13.5 deaths per day in Florida; and

WHEREAS, the City of Riviera Beach has recently been made aware by news reports that a pattern of illegal drug use and distribution has been associated with some pain management clinics in south Florida, which dispense narcotic drugs on-site; and

WHEREAS, the threat of illegal narcotic activity and increased crime associated with pain management clinics is significant and could undermine the economic health of the City's development and redevelopment efforts; and

WHEREAS, it is the intention of the City Council to direct staff to analyze the effects of pain management clinics in the City, to analyze whether additional standards should be incorporated into the City's land development regulations and to evaluate the process for the issuance of development permits, business tax receipts, or other approvals regulating the location of pain management clinics within the City which would further and promote the public health, safety, morals and general welfare; and

WHEREAS, Palm Beach County has enacted a moratorium pertaining to pain management clinics in the unincorporated areas of the County, and as a result, the City could become a target for the location of pain management clinics in northern Palm Beach County because the unincorporated areas in the northern portion of Palm Beach County are not available for these uses during the moratorium period; and

City moratorium which prohibits the granting of development permits, business tax receipts, or other approvals; and

WHEREAS, it is neither the intent of this moratorium to interfere with legitimate medical clinics nor with the legal use of controlled substances.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, FLORIDA AS FOLLOWS:

SECTION 1. Legislative Findings, Intent and Purpose. The Whereas clauses are true and correct and incorporated herein and represent the legislative findings of the City Council. It is the purpose and intent of this Ordinance to promote the health and general welfare of the residents and businesses of the City through the analysis of any impacts from pain management clinics and through consideration of criteria for the location of pain management clinic uses within the City.

SECTION 2. Definition. For purposes of this Ordinance a "Pain management clinic" is defined as a privately owned pain-management clinic, facility or office, which advertises in any medium for any type of pain-management services, or employs a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications, and is required to register with the Florida Department of Health pursuant to sections 458.309 or 459.005, Florida Statutes (2009). A physician is primarily engaged in the treatment of pain by prescribing or dispensing controlled substance medications when the majority of the patients seen are prescribed or dispensed controlled substance medications for the treatment of chronic nonmalignant pain. Chronic nonmalignant pain is pain unrelated to cancer which persists beyond the usual course of the disease or the injury that is the cause of the pain for more than 90 days after surgery.

SECTION 3. Boundaries. This Ordinance shall apply to all properties located within the boundaries of the City of Riviera Beach.

SECTION 4. Moratorium and Direction to Staff. The City Council hereby enacts a one-year moratorium prohibiting the filing and/or receiving of any application for the opening, establishment, or development of a pain management clinic, in whole or in part, within the City. Staff is hereby directed to analyze the effects of pain management clinics in the City, to analyze whether standards should be incorporated into the City's land development regulations, and to evaluate the process for the issuance of development permits, business tax receipts, or other approvals regulating the location of pain management clinics within the City which would further and promote the public health, safety, morals and general welfare.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any

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court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 6. Repeal of laws in conflict. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 7. Effective Date. This Ordinance shall take effect immediately upon its final approval and adoption.

PASSED AND APPROVED on the first reading this 17TH day of FEBRUARY 2010.

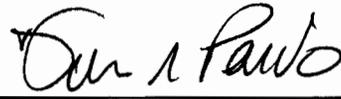
PASSED AND ADOPTED on second and final reading this 3RD day of MARCH, 2010.

[Signatures on following pages]

APPROVED:

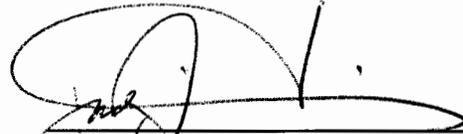


THOMAS A. MASTERS, MAYOR



DAWN S. PARDO
CHAIRPERSON

(MUNICIPAL SEAL)



JUDY L. DAVIS
CHAIR PRO TEM

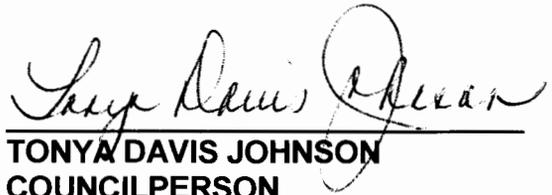
ATTEST:



CARRIE E. WARD,
MASTER MUNICIPAL CLERK
CITY CLERK



BILLIE E. BROOKS
COUNCILPERSON



TONYA DAVIS JOHNSON
COUNCILPERSON

ABSENT
SHELBY L. LOWE
COUNCILPERSON

1ST READING

MOTIONED BY: J. DAVIS
SECONDED BY: T. JOHNSON

D. PARDO AYE
J. DAVIS AYE
B. BROOKS AYE
T. JOHNSON AYE
S. LOWE AYE

2ND & FINAL READING

MOTIONED BY: T. JOHNSON
SECONDED BY: J. DAVIS

D. PARDO AYE
J. DAVIS AYE
B. BROOKS AYE
T. JOHNSON AYE
S. LOWE ABSENT

REVIEWED AS TO LEGAL SUFFICIENCY

Pamela H. Ryan
PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 2/10/10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 31 OF THE CODE OF ORDINANCES ENTITLED "ZONING" BY AMENDING ARTICLE VI, ENTITLED "SUPPLEMENTAL DISTRICT REGULATIONS" BY INCLUDING A NEW SECTION ENTITLED "RESIDENTIAL DOCKS"; PROVIDING FOR SEVERABILITY, CODIFICATION AND CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Riviera Beach Code of Ordinances controls and directs the development of land within the municipal limits of the City; and

WHEREAS, the City Council implemented a Zoning In Progress on July 1, 2009 to develop regulations for Residential Docks in conformance with the Land Development Code; and

WHEREAS, the Planning and Zoning Board voted on February 11, 2010 to recommend approval of the draft regulations for Residential Docks; and

WHEREAS, the City Council has determined that the enactment of this Ordinance is for a proper municipal purpose and protects the health, safety and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

SECTION 1. That Chapter 31 "Zoning", Article VI, "Supplemental District Regulations", is amended by adding the following regulations entitled "Residential Docks", as follows:

RESIDENTIAL DOCKS

RESIDENTIAL DOCKS AND RELATED MARINE FACILITIES AND VESSELS

Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Boat lift means any device fixed to the ground, a seawall, post, piling or a dock, designed to lift watercraft clear of the water.

Canal means a stream or river or an artificial waterway with a width of less than 500 feet, which is not surrounded by land on all sides.

Canal dead end means the terminus or closed end section of a canal.

Dock means a floating, cantilevered, or pile supported structure, with a horizontal top surface, designed and used primarily for the securing of watercraft in the water, fishing, swimming or other water-related activity. The term *dock* shall include piers.

Dolphin means a single pile or cluster of closely driven piles used as a fender for a dock or as a mooring or guide for watercraft, but not used as a channel marker or as a dock piling.

Finger Dock means a section of dock which extends roughly perpendicular to a shore-normal dock, but which is not a marginal dock. The term *finger dock* shall include "T" and "L" heads.

Marginal Dock means a dock with the long axis is parallel to the shoreline, and which abuts the shoreline along its length.

Shore-normal Dock means a dock with the long axis roughly perpendicular to the shoreline.

Mooring means any appliance used to secure a vessel other than to a dock or seawall.

Moored means attached to a dock or mooring facility.

Piling means the vertical support member of a dock, or a vertical member of relatively symmetrical cross-section, installed into the substrate and extending above the water to provide lateral support for a vessel.

Residential Docks and Related Marine Facilities means any structures and appurtenances thereto extending into or above any body of water from a residential zoning district, designed and used primarily for the securing of watercraft in the water, fishing, swimming or other water-related activity. It shall include docks, piers, terminal platforms, marginal docks, finger docks, boat lifts, wave attenuators, pilings, and dolphins.

Seawall means a vertical or near vertical wall between the water and the land, designed to hold back the soil, and prevent erosion of the soil.

Shoreline – In canals, the *shoreline* is the platted property line of the subject property which is closest to and generally parallel to the canal. In all other waterbodies, the *shoreline* is the mean or ordinary high water line.

Side lines means the “projection” of the upland side property lines into the waterbody for purposes of side setbacks for residential docks and related marine structures and vessels in this chapter, as defined below:

- a. On sovereignty submerged lands, side lines are the “riparian lines.”
- b. On privately owned submerged lands owned by the individual upland lot owner, the side lines are the side property lines.
- c. On all submerged lands not included in a. or b. above, side lines shall be constructed as follows:

The landward end of the side line shall in every case be the intersection of the upland side property line with the shoreline. The side line projects waterward in a straight line from this point, over an infinite length. The side line projects waterward at an angle perpendicular to the shoreline (see Figure 1 below), with the following exceptions:

Where the shoreline reaches an inflection point at its intersection with the side property line (see Figure 2 below), or within 10 feet of its intersection with the side property line on one side of the side property line only (see Figure 3 below), the side line shall extend waterward at an angle which bisects the angles of the shoreline on either side of the inflection point. Where the shoreline reaches inflection points at or within 10 feet of its intersection with the side property line on both sides of the side property line (see Figure 4 below), the side line shall extend waterward at an angle which bisects the angles of the shorelines beyond the inflection points.

For curved shorelines, the angle of the shoreline for purposes of this section is the angle of the tangent to the curve, whether it be at its intersection with the side property line, or at an inflection point (see Figures 5 and 6 below).

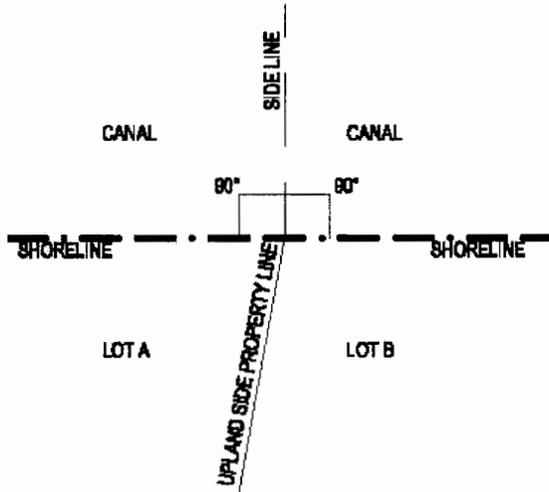


Figure 1

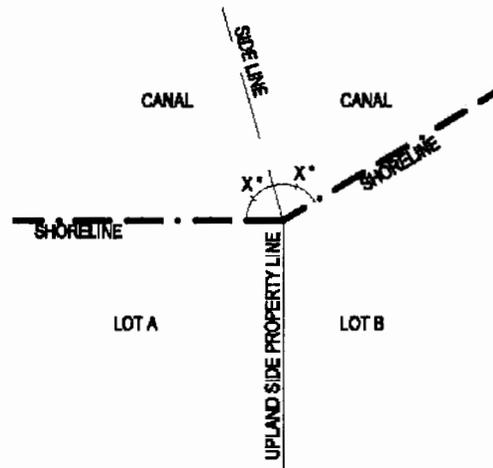


Figure 2

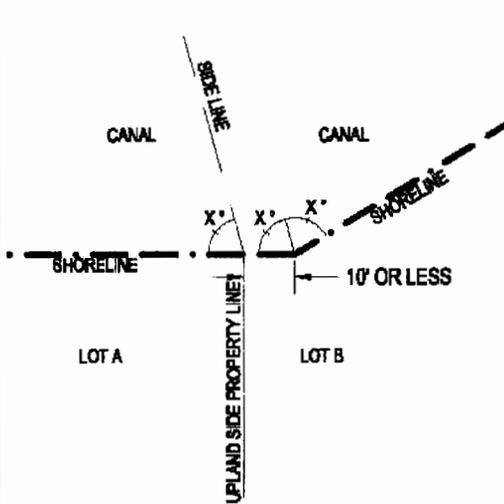


Figure 3

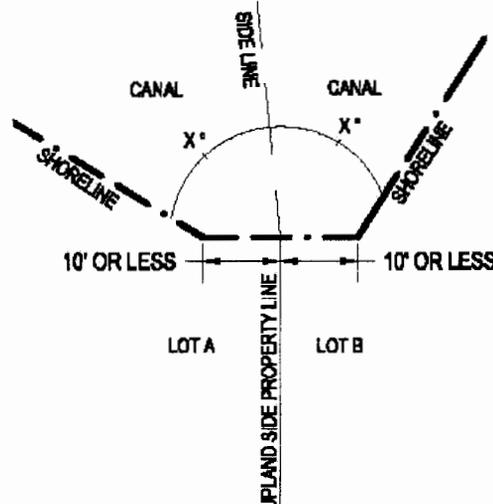


Figure 4

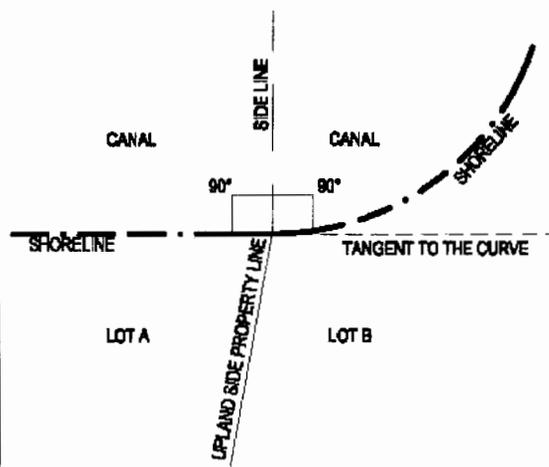


Figure 5

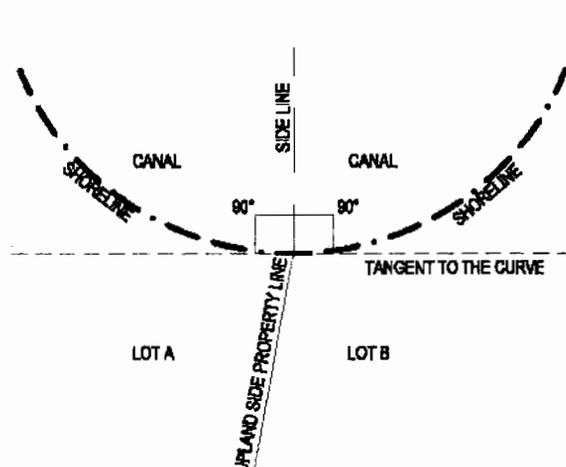


Figure 6

Vessel means a watercraft as defined in the definitions contained in Chapter 327, Florida Statutes.

Waterbody width means the distance from the shoreline of the subject property to the shoreline of the property across the *waterbody*, measured perpendicular to the shoreline of the subject property.

Docks and Related Marine Facilities Permitted as Accessory Use.

- (a) Accessory Use. Residential docks and related marine facilities, including but not limited to docks, piers, boat lifts, dolphins, pilings, and moorings are permitted as an accessory use to the principal residential structure in all residential zoning districts, subject to the requirements of this Chapter.

Regulations Governing Construction in Canals.

- (a) The following regulations apply in canals within the City, reference the Canals and Waterbody Map:

Residential docks and related marine facilities shall be setback from the side lines by 5 feet.

Except in the Shore Drive/Palm Drive canal, residential docks and related marine facilities shall not extend more than 25 percent of the waterbody width from the shoreline of the parcel to which the structure is accessory, or the following distance, whichever is less:

In the Lake Park Marina Canal, 21 feet.

In the Wilma Circle Canal, 30 feet, subject to any agreement with the submerged land property owner, Inlet Marina of Palm Beach, Ltd.

In the Gulfstream Way/Bimini Lane Canal, 30 feet.

In the Grand Bahama Lane Canal, 30 feet.

In the Morse Boulevard/Powell Drive Canal, 40 feet.

In the Sugar Sands Canal, 30 feet for properties fronting on Singer Drive, 40 feet for all other properties. The three longer, shore-normal existing docks on the south side are hereby specifically allowed to be maintained or rebuilt to the existing shore-normal and shore-parallel dimensions.

In the Yacht Harbor Canal (the finger extending east of the main harbor), 75 feet on the north and south sides, and 35 feet on the east side.

In the Shore Drive/Palm Drive canal, residential docks and related marine facilities shall not extend more than 33 percent of the waterbody width from the shoreline of the parcel to which the structure is accessory, or 25 feet, whichever is less.

On the north side of the Sugar Sands Canal, no vessel shall be moored in such a manner as to project more than 30 feet from the north side seawall.

Except in the Shore Drive/Palm Drive canal, no vessel shall be moored in such a manner as to obstruct more than 30 percent of the width of the waterbody in which the boat or other watercraft is moored.

In the Shore Drive/Palm Drive canal, no vessel shall be moored in such a manner as to obstruct more than 33 percent of the width of the canal.

Vessels shall be moored such that no part of a vessel, including anchors or lines, shall extend beyond the side lines.

Residential docks and related marine facilities shall be constructed in accordance with the following requirements and regulations:

- a. Marginal docks shall extend a maximum of eight (8) feet out from the face of the bulkhead wall.
- b. Shore-normal docks shall not exceed a width of eight (8) feet.
- c. Finger docks shall not exceed a width of eight (8) feet.
- d. No dock shall be located closer to the side property line extended than half of its extension waterside.
- e. Shore-normal docks and finger docks shall be for vessel mooring only, and shall be spaced accordingly.
- f. Wave attenuators shall not be permitted, except at the mouth of a canal.
- g. Mooring buoys and anchors shall not be installed unless they are part of at least a two-point system which will secure the vessel within the limits specified in this chapter.

Regulations Governing Construction in Waterbodies other than Canals.

- (a) The following regulations apply in waterbodies other than canals, within the City:

Residential docks and related marine facilities shall be setback from the side lines by 5 feet.

Residential docks and related marine facilities shall not be located more than 25 percent of the waterbody width, or 200 feet, whichever is less, from the shoreline of the parcel to which the structure is accessory.

No vessel shall be moored in such a manner as to obstruct more than 25 percent of the width of the waterbody in which the boat or other watercraft is moored, or to unreasonably infringe on navigation. No part of a boat shall be moored so as to extend beyond the side lines.

Residential docks and related marine facilities shall be constructed in accordance with the following requirements and regulations:

Marginal docks or piers shall extend a maximum of twelve (12) feet out from the face of the bulkhead wall.

Shore-normal docks shall not exceed a width of ten (10) feet for a single-family dock, and twelve (12) feet for a multi-family dock.

Finger docks shall not exceed a width of ten (10) feet for a single-family dock, and twelve (12) feet for a multi-family dock.

Any dock or overwater decking other than a marginal dock, and/or a single shore-normal dock and finger dock shall be for vessel mooring only and shall be spaced accordingly.

Regulations Governing Construction in All Waterbodies.

The following regulations apply in all waterbodies within the City:

Each dock shall be provided with at least 1 ladder extending from the dock surface to 1 foot below mean low water.

Enclosures Prohibited. Residential docks and related marine facilities shall not contain walls, roofs, coverings, or enclosures, other than dock boxes, covered or uncovered fish cleaning tables, utility pedestals, and trash receptacles.

Canal Dead end or inside corner. In regard to construction waterside of any platted lot at the dead end of a canal or on the inside corner of a waterbody, a dock or a pier may be placed zero (0) feet from the side line when all of the following requirements are complied with:

The lots abutting the side line shall be in a RS-5 Single Family Dwelling District.

At least one (1) of the lots abutting the side line shall have less than seventy-five (75) feet frontage on the water.

A dock or pier shall be constructed at the same time, by each of the abutting owners, with both owners' consent, on both sides of the side line in question.

The dock or pier on a lot shall be structurally independent of the dock or pier on the adjacent lot.

Commercial Use Prohibited. Use of residential docks and related marine facilities for commercial purposes is prohibited. However, the following shall not be construed to be "for commercial purposes": rental of a private residence with a dock or pier; construction by a developer of a dock or pier; or the sole act of mooring a commercial vessel at the vessel owner's private residential dock (this shall not be construed to allow commercial loading or unloading operations, or embarking or disembarking of paid personnel or passengers for hire). No dock shall contain an advertising sign.

Use of Residential Docks. Residential docks shall be used only by residents or their guests, and shall not be used by or rented or leased to nonresidents other than owners of the principal dwelling or dwellings. For the purpose of this Section, the term guest shall mean a person or persons visiting the resident. In any case, a guest vessel may not be moored at the dock more than 60 nights within one calendar year.

Lighting. Artificial lighting may be installed on a dock for security or safety. Applicant must provide documentation that lighting will not adversely affect surrounding properties. Blinking or intermittent lights are prohibited.

Floating Docks. Floating docks are permitted, subject to conformance with all requirements of this Section and all applicable building codes.

Permits Required.

(a) Building Permit Required:

- (1) A building permit is required for construction or expansion of all residential docks and related marine facilities, and for installation of lighting or other electrical facilities on such structures. The building permit shall be obtained prior to initiation of the construction or expansion.

- (2) A building permit is not required for non-structural repairs or maintenance, or for replacement of deck boards or something similar

(b) Additional application requirements.

- (1) Proof that the applicant is the owner of the upland residential property adjacent to the waterbody.
- (2) Two sets of construction plans prepared by and under the seal of a Florida Licensed Professional Engineer. Plans shall include a site plan drawn to scale sufficient to represent all elements of the proposed facilities, the shoreline/seawall of the upland property from which the dock will project, top of seawall elevation, the docks and related marine facilities of the adjacent properties, and the docks and related marine facilities across the waterbody from the proposed facilities, if within 100 feet of the proposed facilities. Adjacent and nearby facilities owned by others may be scaled from an aerial photograph, if indicated as such on the site plan, and if field verified by observation concurrent with preparation of the site plan.
- (3) Written authorization for the proposed dock from the Florida Department of Environmental Protection (DEP) or South Florida Water Management District (SFWMD), and the U.S. Army Corps of Engineers (Corps), is required. A printout from the DEP's self-certification website shall be sufficient to meet this requirement, if it provides the applicable authorization. Such written approval shall not be expired.

(c) Supporting Documentation.

- (1) In addition to the specific limits provided in this ordinance, the proposed residential docks and related marine facilities and vessel mooring shall not preclude abutting or adjacent property owners from constructing residential docks or related marine facilities in accordance with this section.
- (2) In addition to the specific limits provided in this ordinance, the proposed residential docks and related marine facilities and vessel mooring shall not preclude abutting or adjacent property owners from mooring, maneuvering, or usage associated with their residential docks or related marine facilities legally existing or constructed in accordance with this section.

Maintenance.

Residential docks and related marine facilities shall be maintained by the property owner in a safe, properly maintained condition as determined by the City Code Administrator. A licensed contractor or the property owner by way of owner builder building permit shall perform all work on residential docks and related marine facilities. A residential dock or related marine facility which is determined by the Building Official to be in an unsafe condition is hereby declared a public nuisance.

Nonconforming structures.

Unless otherwise provided for, any existing residential dock or related marine facility that does not meet the requirements of this chapter shall not be added to or altered in any manner so as to increase the extent to which the structure is in violation of applicable requirements. Any existing residential dock or related marine facility legally constructed prior to this ordinance may be repaired or replaced, except that if the residential dock or related marine facility has failed or been destroyed, it must be repaired or replaced within two years of its failure or destruction, or meet the other provisions of this ordinance. Such docks shall be subject to all provisions of this Code relating to unsafe structures.

Measurement of Docks and Marine Facilities.

Unless otherwise provided herein, any required measurement associated with a dock or related marine facility shall be made from the property line of the property to which the dock or facility is accessory.

SECTION 2. If any word, phrase, clause, subsection or section of this Ordinance is for any reason held invalid, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

SECTION 3. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Riviera Beach, and the sections of this Ordinance may be renumbered to accomplish such intentions.

SECTION 4. That all sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

SECTION 5. Specific authority is hereby granted to codify this Ordinance.

ORDINANCE NO. 3076

PAGE 11

PASSED AND APPROVED on the first reading this 3RD day of
MARCH 2010.

PASSED AND ADOPTED on second and final reading this 7TH day of
APRIL 2010.

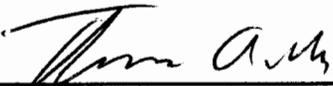
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ORDINANCE NO. 3076
PAGE 12

PASSED AND APPROVED on the first reading this _____ day of _____,
_____.

PASSED AND ADOPTED on second and final reading this 7 day of
April, 2010.

APPROVED:



THOMAS A. MASTERS
MAYOR

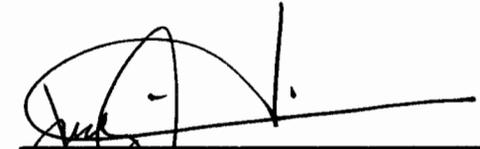


BILLIE E. BROOKS
COUNCILPERSON

ATTEST:



CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK



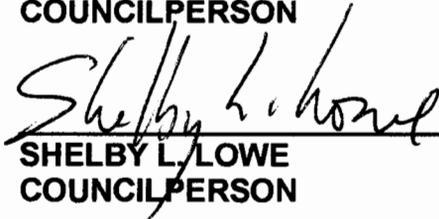
JUDY L. DAVIS
CHAIR PRO TEM



CEDRICK A. THOMAS
COUNCILPERSON



DAWN S. PARDO
COUNCILPERSON



SHELBY L. LOWE
COUNCILPERSON

1ST READING

MOTIONED BY: T. DAVIS JOHNSON

SECONDED BY: J. DAVIS

B. BROOKS AYE

J. DAVIS AYE

T. JOHNSON AYE

D. PARDO AYE

S. LOWE AYE

2ND & FINAL READING

MOTIONED BY: B. BROOKS

SECONDED BY: C. THOMAS

B. BROOKS AYE

J. DAVIS AYE

C. THOMAS AYE

D. PARDO AYE

S. LOWE AYE

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: _____

ORDINANCE NO. 3077

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 31 OF THE CODE OF ORDINANCES ENTITLED "ZONING", BY AMENDING ARTICLE III ENTITLED "SITE PLAN REVIEW", BY CREATING A NEW SECTION 31-63 ENTITLED "EXPEDITED PERMITTING" TO PROVIDE FOR AN EXPEDITED PERMITTING PROGRAM FOR QUALIFIED DEVELOPMENT PROJECTS; PROVIDING FOR SEVERABILITY, CODIFICATION AND CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Riviera Beach Code of Ordinances controls and directs the development of land within the municipal limits of the City; and

WHEREAS, staff has determined that it would be a benefit to provide an expedited permitting process; and

WHEREAS, the City Council has determined that the enactment of this Ordinance is for a proper municipal purpose and protects the health, safety and welfare of the public.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

SECTION 1. That Chapter 31 of the Code of Ordinances is amended by creating a new Section 31-63 entitled "Expedited Permitting" as follows.

Sec. 31-63. Expedited permitting program.

(a) *Purpose and intent.* The expedited permitting program provides qualifying projects an efficient process to resolve issues in a timely manner through face-to-face meetings with a city representative without sacrificing any requirements established in this chapter. The expedited permitting program is available to qualifying companies that are expanding operations or moving into the city so that value-added employment may be created at a faster pace.

(b) *Applicability.* The following criteria shall be used to determine whether a company qualifies for the targeted expedited permitting program:

(1) The property must be properly zoned and platted for the intended use to be eligible.

(2) The company or business must fall into one of the following industry clusters to be eligible for targeted expedited permitting:

- a. Bioscience, Medical, and Pharmaceutical;
- b. Aerospace and Engineering;
- c. Information Technology;
- d. Business and Financial Services;
- e. Marine Businesses and Fishing Equipment Manufacturing;
- f. Corporate Headquarters;
- g. Alternative Energy Manufacturing/Development; and
- h. Education relating to the above industry clusters.

(3) The company must demonstrate the capability to create at least 30 new Jobs in the City of Riviera Beach and to hire Riviera Beach residents to the maximum extent possible within the first two years of operation; or expand its operation within the city as a result of creating at least 30 new jobs in the two years prior to the issuance of the certificate of occupancy for the new facilities; or a combination thereof.

(4) Jobs created must be considered value-added employment based on the average wages and/or compensation paid by the employer. Value-added employment is defined when the average compensation package of positions created is at least fifteen percent higher than the current per capita income level in the City.

(5) Companies must pass the City's due diligence process to establish solvency and credibility prior to acceptance into the program. Due diligence reports (1) shall include a Dun & Bradstreet report and (2) must be reviewed by the City Manager, Community Development Director, and Finance Director for the City.

(6) Notwithstanding the criteria above, a company may qualify for the targeted expedited permitting program if the company is a sanctioned project by the State of Florida or other officially sanctioned economic development organization (e.g. Office of Tourism, Trade and Economic Development (OTTED), Enterprise Florida, Riviera Beach CRA, or Business Development Board of Palm Beach County).

(c) *The Program.* Companies that have been accepted into the expedited permitting program shall receive the following benefits:

(1) The City Manager shall appoint a single *point of contact* at the City who shall be kept apprised of all developments relating to the review of the project by the City's staff in order to keep the project on track and provide a periodic status report to the company's project manager; and

(2) The Community Development Department shall inform the applicant of the necessary steps required for project approval in a pre-application meeting; and

(3) The project shall receive priority at every phase of the review process by City Staff, including face-to-face meetings; and

(4) The City's development review committee shall review and provide comments to the applicant within ten (10) business days of submission of plans by the applicant; and

(5) In the case that major issues arise at any point during the development review process, a face-to-face meeting of all concerned parties will be called within three

business days so that a resolution may be found in a timely and efficient manner;
and

(6) An economic section provided by the applicant will be included in the staff report for the project for the Planning and Zoning Board and City Council hearings.

SECTION 2. If any word, phrase, clause, subsection or section of this Ordinance is for any reason held invalid, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

SECTION 3. It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Riviera Beach, and the sections of this Ordinance may be renumbered to accomplish such intentions.

SECTION 4. That all sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

SECTION 5. Specific authority is hereby granted to codify this Ordinance.

SECTION 6. This ordinance shall be in full force and effect immediately upon its final passage and approval.

PASSED AND APPROVED on the first reading this _____ day of _____ 2010.

PASSED AND ADOPTED on second and final reading this _____ day of _____ 2010

*****THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK*****

ORDINANCE NO. 3077

PAGE 4

PASSED AND APPROVED on the first reading this 3RD day of MARCH,
2010.

PASSED AND ADOPTED on second and final reading this 7 day of
April, 2010.

APPROVED:



THOMAS A. MASTERS
MAYOR

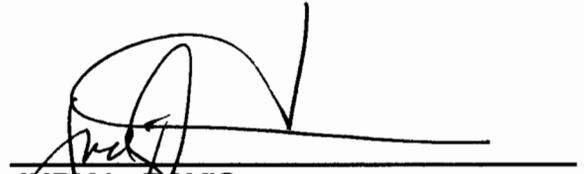


BILLIE E. BROOKS
COUNCILPERSON

ATTEST:



CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK



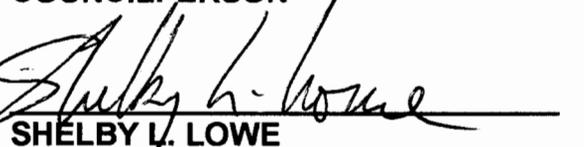
JUDY L. DAVIS
CHAIR PRO TEM



CEDRICK A. THOMAS
COUNCILPERSON



DAWN S. PARDO
COUNCILPERSON



SHELBY L. LOWE
COUNCILPERSON

1ST READING

MOTIONED BY: T. DAVIS JOHNSON

SECONDED BY: J. DAVIS

B. BROOKS	<u>AYE</u>
J. DAVIS	<u>AYE</u>
T. JOHNSON	<u>AYE</u>
D. PARDO	<u>AYE</u>
S. LOWE	<u>AYE</u>

2ND & FINAL READING

MOTIONED BY: B. BROOKS

SECONDED BY: C. THOMAS

B. BROOKS	<u>AYE</u>
J. DAVIS	<u>AYE</u>
C. THOMAS	<u>AYE</u>
D. PARDO	<u>AYE</u>
S. LOWE	<u>AYE</u>

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: _____

ORDINANCE NO. 3078

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 10 OF THE CITY'S CODE OF ORDINANCES ENTITLED "LICENSES AND BUSINESS REGULATIONS," BY CREATING A NEW ARTICLE VII, ENTITLED "CERTIFICATE OF USE"; PROVIDING FOR SEVERABILITY, CONFLICTS, AND CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Riviera Beach, Florida, recognizes the need for a certificate of use ordinance to make it unlawful for any person, either directly or indirectly, to conduct any business in the City of Riviera Beach without first making application for and obtaining a "Certificate of Use" and renewing same on an annual basis; and

WHEREAS, the Certificate of Use will supplement the Business tax receipt license and provide an additional layer of regulation and accountability; and

WHEREAS, the City Council believes that this addition to the Code of Ordinances will be in the best interests of the health, safety and welfare of the citizens of the City of Riviera Beach.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. That Chapter 10 entitled "Licenses and Business Regulations" of the City of Riviera Beach Code of Ordinances is hereby amended by creating Article VII, entitled "Certificate of Use" as follows:

CERTIFICATE OF USE

(1) Purpose.

The Certificate of Use assures that the particular business is allowed in the zoning district where it is located. It also verifies that the structure was built for the proposed type of business.

(2) Definitions.

When used in this article, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) *Certificate of use* means the method by which the city grants approval for a business to exist at a given location.

- (b) *Owner/applicant* means the owner and/or operator of a business who applies for a certificate of use for premises within the city, pursuant to the terms, provisions and conditions of this article.
- (c) *Person* means, but is not limited to, an individual, firm, association, joint venture, partnership, estate, trust, business, syndicate, fiduciary, corporation, and any other business entity.
- (d) *Premises* means all lands, structures, places, and also the equipment and appurtenances connected, or used therewith, and also any personal property which is either affixed to, or otherwise used in connection with, any such business conducted on such premises.
- (e) *Special magistrate* means a special master or special magistrate who is appointed by the City pursuant to Section 162.03(2), Florida Statutes, or otherwise, who has the authority to hold hearings and assess fines against violators of the municipal codes and ordinances.

(3) Certificate of use required.

- (a) *Certificate of use required.* It shall be unlawful for any person, either directly or indirectly, to conduct any business, including home occupations, in the City of Riviera Beach, without first making application for and obtaining a certificate of use and renewing same on an annual basis. In conjunction with the certificate of use application and any renewal thereof, rental property owners shall make and file with the city an affidavit, duly authenticated, setting forth the total number of occupants that will be permitted to reside on site and in each separate rental unit.
- (b) *Existing businesses; effective date.* As of the effective date of the ordinance from which this article is derived, all existing businesses, including home occupations, holding a valid business tax receipt shall be considered to have an active certificate of use and shall not be subject to an initial fee. However, all existing business locations requiring a certificate of use as of the effective date of the ordinance shall make an application within the first six months after the date of adoption of this article and shall be subject to the annual renewal fee, commencing on October 1, 2010. Said applications shall be processed by city staff and shall be available in the city's Finance/Utility billing department. All businesses shall renew the certificate of use on an annual basis when their business tax receipt is renewed or prior to October 1 of each year. Nothing contained in this article shall prohibit the revocation of a certificate of use for existing businesses which fail to make application within the six (6)

months time period as required hereinabove or which otherwise fail to comply with this article.

- (c) *Fees.* In order to obtain a certificate of use, an initial fee shall be paid for the purpose of defraying the costs of all new business inspections and processing of the required documents; except for valid businesses existing as of the date of the adoption of this article. An annual renewal fee shall be paid to defray the administrative costs associated with the annual renewal of the certificate of use. The initial fee and the renewal fee shall be set by a resolution of the City of Riviera Beach City Council and added to the city's regular schedule of fees and charges.

(4) Administration

The provisions of this article shall be administered by Finance in coordination with the Community Development Department and enforced by Code Enforcement. Community Development shall:

- (a) Promulgate and enforce all reasonable rules and regulations necessary to the operation and enforcement of this article.
- (b) Prepare all forms, certificates and decals and prescribe the information to be given therein.
- (c) Require applicants to submit a completed and signed application with all affidavits and oaths necessary for the administration of this article. Each application will be submitted with payment of a nonrefundable application fee.
- (d) Investigate and determine the eligibility of any applicant for a certificate of use, as prescribed by this article or other governing laws and ordinances. Obtain endorsements, when necessary, of other agencies which may have a regulatory interest in a particular business tax receipt.
- (e) Notify any application of the acceptance or rejection of their application in writing, with reasons for the denial of the certificate of use.

(5) Denial of a certificate of use by the city; suspension or revocation of certificate of use or imposition of additional conditions of approval by the special magistrate.

- (a) *Specific violations which may result in the denial of certificate of use by the city; or the suspension or revocation by the special magistrate; or by the imposition of additional conditions by the special magistrate.* A certificate of use may be denied by the city

upon application; or denied, suspended, revoked or conditioned by the special magistrate as provided herein pursuant to section 2-334 when it is determined that:

- (1) An owner/applicant has misrepresented or failed to disclose material facts or information which is required to be included in the certificate of use application or any other application required by the city, the county or the state;
- (2) An owner/applicant, as part of the business activity, has violated the city's code which regulates the use and/or operation of the premises and/or one of the following determinations is made: such conduct has become a public nuisance as set forth in the city's code or state statute; such activity violates the city's regulations as set forth in chapter 3, alcoholic beverages; such activity is manifestly injurious to the public morals; or the owner/applicant is operating the business in such a manner as to injure the health, safety, or welfare or to disturb the quiet enjoyment of the citizens in the nearby vicinity;
- (3) The issuance of the certificate of use was contingent upon the owner/applicant's compliance with specific provisions of the city's, the county's or the state's laws and the owner/applicant has not satisfied or has violated such conditions, to include but not limited to, specific conditions of approval imposed upon the owner/applicant by development orders issued by the city;
- (4) An owner/applicant has violated any provision of this article and has failed or refused to cease or correct the violation at the premises after having been notified to do so by the city or by an order of the special magistrate;
- (5) The premises have been condemned by the local health authority or by the city's building official for failure to meet state and local standards;
- (6) An owner/applicant is conducting a business from a premise but does not possess a valid and current business tax receipt as required by state and local law;
- (7) The premises are being operated as a group home without proper licensure by all state and local licensing agencies and/or in violation of the city's zoning ordinances; or

- (8) The premises are being operated in violation of the city's minimum housing regulations.
- (b) *Enforcement procedures.* Upon determination by the city that an owner/applicant is in violation of the provisions of this article, the city shall notify, in writing, the owner/applicant of the premises of the nature of the violation and provide notice of a hearing before the special magistrate pursuant to section 2-335, enforcement procedures. The conduct for such hearing shall be in conformance with section 2-336, conduct of hearing. The special magistrate's findings and order shall constitute the final administrative action of the city for purposes of judicial review under state law.
- (1) *Issuance or denial by the city.* The city must either issue or deny issuance of a certificate of use within forty (40) days after application is made for such certificate or for the renewal of the current certificate. An owner/applicant may also request a hearing as set forth herein before the special magistrate regarding the denial of the issuance of a certificate of use for that business by the city. The request for hearing must be in writing and filed with the city within ten (10) days of the receipt of the written decision by the city.
- (2) *Review; closures; liens.* If the owner/operator fails to seek timely appellate review of an order of the special magistrate and fails to comply timely with such order, the city may pursue enforcement procedures including the closure of all or a portion of such business. Business closings pursuant to orders of the special magistrate shall be enforced by the city's police department and the costs of such enforcement shall be placed as a lien against the owner/applicant's real and personal property by recording an order assessing such costs in the public records of Palm Beach County. No fees shall be refunded if a certificate of use is suspended or revoked or if a business is closed pursuant to this subsection.
- (3) *Orders; relevant factors.* The special magistrate shall fashion an order when enforcing this article which is narrowly tailored to abate the objectionable conduct without necessarily infringing upon the conduct of the lawful enterprise, whenever possible.

SECTION 2. All sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

ORDINANCE NO. 3078
PAGE -6-

SECTION 3. If any word, phrase, clause, subsection, or sections of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this ordinance.

SECTION 4. Specific authority is hereby granted to codify this ordinance.

SECTION 5. This ordinance shall be in full force and effect immediately upon its final passage and adoption.

PASSED AND APPROVED on the first reading this _____ day of _____, 2010.

PASSED AND ADOPTED on second and final reading this _____ day of _____, 2010.

[SIGNATURES ON FOLLOWING PAGE]

ORDINANCE NO. 3078
PAGE 7

PASSED AND APPROVED on the first reading this 3RD day of MARCH,
2010.

PASSED AND ADOPTED on second and final reading this 7TH day of
APRIL, 2010.

APPROVED:



THOMAS A. MASTERS
MAYOR



BILLIE E. BROOKS
COUNCILPERSON

ATTEST:



CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK



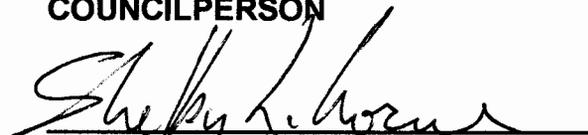
JUDY L. DAVIS
CHAIR PRO TEM



CEDRICK A. THOMAS
COUNCILPERSON



DAWN S. PARDO
COUNCILPERSON



SHELBY L. LOWE
COUNCILPERSON

ORDINANCE NO. 3078
PAGE 8

1ST READING

MOTIONED BY: J. DAVIS

SECONDED BY: T. DAVIS JOHNSON

B. BROOKS AYE

J. DAVIS AYE

T. JOHNSON AYE

D. PARDO AYE

S. LOWE AYE

2ND & FINAL READING

MOTIONED BY: B. BROOKS

SECONDED BY: C. THOMAS

B. BROOKS AYE

J. DAVIS AYE

C. THOMAS AYE

D. PARDO AYE

S. LOWE AYE

REVIEWED AS TO LEGAL SUFFICIENCY

PAMALA HANNA RYAN, CITY ATTORNEY

DATE: _____

ORDINANCE NO. 3079

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC FRANCHISE; IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR MONTHLY PAYMENTS TO THE CITY OF RIVIERA BEACH; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Riviera Beach, Florida recognizes that the City of Riviera Beach and its citizens need and desire the continued benefits of electric service; and

WHEREAS, the provision of such service requires substantial investments of capital and other resources in order to construct, maintain and operate facilities essential to the provision of such service in addition to costly administrative functions, and the City of Riviera Beach does not desire to undertake to provide such services; and

WHEREAS, Florida Power & Light Company ("FPL") is a public utility which has the demonstrated ability to supply such services; and

WHEREAS, there is currently in effect a franchise agreement between the City of Riviera Beach and FPL, the terms of which are set forth in City of Riviera Beach Ordinance No. 2171, passed and adopted August 18, 1982, and FPL's written acceptance thereof dated August 20, 1982 granting to FPL, its successors and assigns, a thirty (30) year electric franchise ("Current Franchise Agreement"); and

WHEREAS, FPL and the City of Riviera Beach desire to enter into a new agreement ("New Franchise Agreement") providing for the payment of fees to the City of Riviera Beach in exchange for the nonexclusive right and privilege of supplying electricity and other services within the City of Riviera Beach free of competition from the City of Riviera Beach, pursuant to certain terms and conditions; and

WHEREAS, the City Council of the City of Riviera Beach deems it to be in the best interest of the City of Riviera Beach and its citizens to enter into the New Franchise Agreement prior to expiration of the Current Franchise Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

Section 1. Grant of Franchise; Term. There is hereby granted to Florida Power & Light Company, its successors and assigns (hereinafter called the "Grantee"), for the period of 30 years from the effective date hereof, the nonexclusive right, privilege and franchise (hereinafter called "franchise") to construct, operate and maintain in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, rights-of-way and other public places (hereinafter called "public rights-of-way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the City of Riviera Beach, Florida, and its successors (hereinafter called the "Grantor"), in accordance with the Grantee's customary practice with respect to construction and maintenance, electric light and power facilities, including, without limitation, conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations (hereinafter called "facilities"), for the purpose of supplying

electricity and other services to the Grantor and its successors, the inhabitants thereof, and persons beyond the limits thereof.

Section 2. Location and Relocation of Grantee's Facilities. The facilities of the Grantee shall be installed, located or relocated so as to not unreasonably interfere with traffic over the public rights-of-way or with reasonable egress from and ingress to abutting property. To avoid conflicts with traffic, the location or relocation of all facilities shall be made as representatives of the Grantor may prescribe in accordance with the Grantor's reasonable rules and regulations with reference to the placing and maintaining in, under, upon, along, over and across said public rights-of-way; provided, however, that such rules or regulations (a) shall not prohibit the exercise of the Grantee's right to use said public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic, (b) shall not unreasonably interfere with the Grantee's ability to furnish reasonably sufficient, adequate and efficient electric service to all of its customers, and (c) shall not require the relocation of any of the Grantee's facilities installed before or after the effective date hereof in public rights-of-way unless or until widening or otherwise changing the configuration of the paved portion of any public right-of-way used by motor vehicles causes such installed facilities to unreasonably interfere with motor vehicular traffic. Such rules and regulations shall recognize that above-grade facilities of the Grantee installed after the effective date hereof should be installed near the outer boundaries of the public rights-of-way to the extent possible. When any portion of a public right-of-way is excavated by the Grantee in the location or relocation of any of its facilities, the portion of the public right-of-way so excavated shall within a reasonable time be replaced by the Grantee at its expense and

in as good condition as it was at the time of such excavation. The Grantor shall not be liable to the Grantee for any cost or expense in connection with any relocation of the Grantee's facilities required under subsection (c) of this Section, except, however, the Grantee shall be entitled to reimbursement of its costs from others and as may be provided by law.

Section 3. Grantor's Liability. The Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its facilities hereunder, and the acceptance of this ordinance shall be deemed an agreement on the part of the Grantee to indemnify the Grantor and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to the Grantor by reason of the negligence, default or misconduct of the Grantee in the construction, operation or maintenance of its facilities hereunder.

Section 4. Grantee's Rates and Rules for Electric Service. All rates and rules and regulations established by the Grantee from time to time shall be subject to such regulation as may be provided by law.

Section 5. Grantee's Consideration for Franchise. As a consideration for this franchise, the Grantee shall pay to the Grantor, commencing 90 days after the effective date hereof, and each month thereafter for the remainder of the term of this franchise, an amount which added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Grantor against the Grantee's property, business or operations and those of its subsidiaries during the Grantee's monthly billing period ending 60 days prior to each such payment will equal

6.0 percent of the Grantee's billed revenues, less actual write-offs, from the sale of electrical energy to residential, commercial and industrial customers (as such customers are defined by FPL's tariff) within the incorporated areas of the Grantor for the monthly billing period ending 60 days prior to each such payment, and in no event shall payment for the rights and privileges granted herein exceed 6.0 percent of such revenues for any monthly billing period of the Grantee.

The Grantor understands and agrees that such revenues as described in the preceding paragraph are limited, as in the existing franchise Ordinance No. 2171, to the precise revenues described therein, and that such revenues do not include, by way of example and not limitation: (a) revenues from the sale of electrical energy for Public Street and Highway Lighting (service for lighting public ways and areas); (b) revenues from Other Sales to Public Authorities (service with eligibility restricted to governmental entities); (c) revenues from Sales to Railroads and Railways (service supplied for propulsion of electric transit vehicles); (d) revenues from Sales for Resale (service to other utilities for resale purposes); (e) franchise fees; (f) Late Payment Charges; (g) Field Collection Charges; (h) other service charges.

Section 6. "Most Favored Nations" Clause for Benefit of Grantor. If during the term of this franchise the Grantee enters into a franchise agreement with any other municipality located in Palm Beach County, Florida, where the number of Grantee's active electrical customers is equal to or less than the number of Grantee's active electrical customers within the incorporated area of the Grantor, the terms of which provide for the payment of franchise fees by the Grantee at a rate greater than 6.0% of

the Grantee's residential, commercial and industrial revenues (as such customers are defined by FPL's tariff), under the same terms and conditions as specified in Section 5 hereof, the Grantee, upon written request of the Grantor, shall negotiate and enter into a new franchise agreement with the Grantor in which the percentage to be used in calculating monthly payments under Section 5 hereof shall be no greater than that percentage which the Grantee has agreed to use as a basis for the calculation of payments to the other Palm Beach County municipality, provided, however, that such new franchise agreement shall include additional benefits to the Grantee, in addition to all benefits provided herein, at least equal to those provided by its franchise agreement with the other Palm Beach County municipality. Subject to all limitations, terms and conditions specified in the preceding sentence, the Grantor shall have the sole discretion to determine the percentage to be used in calculating monthly payments, and the Grantee shall have the sole discretion to determine those benefits to which it would be entitled, under any such new franchise agreement.

Section 7. Grantor's Covenants Not to Compete; Green Initiatives. As a further consideration, during the term of this franchise or any extension thereof, the Grantor agrees: (a) not to engage in the distribution and/or sale, in competition with the Grantee, of electric capacity and/or electric energy to any ultimate consumer of electric utility service (herein called a "retail customer") or to any electrical distribution system established solely to serve any retail customer formerly served by the Grantee, (b) not to participate in any proceeding or contractual arrangement, the purpose or terms of which would be to obligate the Grantee to transmit and/or distribute, electric capacity and/or electric energy from any third party(ies) to any other retail customer's facility(ies),

and (c) not to seek to have the Grantee transmit and/or distribute electric capacity and/or electric energy generated by or on behalf of the Grantor at one location to the Grantor's facility(ies) at any other location(s) except as may be consistent with applicable law. Nothing specified herein shall prohibit the Grantor from engaging with other utilities or persons in wholesale transactions which are subject to the provisions of the Federal Power Act.

Additionally, nothing herein shall prohibit Grantor from adopting or complying with "green initiatives" (defined as environmental or alternative energy initiatives including both conservation and the generation or use of electricity provided in whole or in part by wind, solar, tidal, geothermal, ocean currents, biomass or other natural processes) which enable or require Grantor to generate electrical energy for consumption at facilities owned or operated by Grantor, provided that such initiatives and the implementation of same do not violate any of the terms or conditions of this New Franchise Agreement, specifically including but not limited to Sections 7(a), 7(b) and 7(c) of this Agreement as more fully stated above.

Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing electric capacity and/or electric energy from any other person, or (ii) from seeking to have the Grantee transmit and/or distribute to any facility(ies) of the Grantor electric capacity and/or electric energy purchased by the Grantor from any other person; provided, however, that before the Grantor elects to purchase electric capacity and/or electric energy from any other person, the Grantor shall notify the Grantee. Such notice shall include a summary of the specific rates, terms and conditions which have been offered by the other person and identify the Grantor's facilities to be served

under the offer. The Grantee shall thereafter have 90 days to evaluate the offer and, if the Grantee offers rates, terms and conditions which are equal to or better than those offered by the other person, the Grantor shall be obligated to continue to purchase from the Grantee electric capacity and/or electric energy to serve the previously-identified facilities of the Grantor for a term no shorter than that offered by the other person. If the Grantee does not agree to rates, terms and conditions which equal or better the other person's offer, all of the terms and conditions of this franchise shall remain in effect.

Section 8. "Most Favored Nations" Clause for Benefit of Grantee. If the Grantor grants a right, privilege or franchise to any other person or otherwise enables any other such person to construct, operate or maintain electric light and power facilities within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve or compete on terms and conditions which the Grantee determines are more favorable than the terms and conditions contained herein, the Grantee may at any time thereafter terminate this franchise if such terms and conditions are not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of such terms and conditions that it considers more favorable. The Grantor shall then have 90 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee. If the Grantee determines that such terms or conditions are not remedied by the Grantor within said time period, the Grantee may terminate this

franchise agreement by delivering written notice to the Grantor's City Manager and termination shall be effective on the date of delivery of such notice.

Section 9. Legal or Regulatory Changes. If as a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) any person is permitted to provide electric service within the incorporated areas of the Grantor to a customer then being served by the Grantee, or to any new applicant for electric service within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve, and the Grantee determines that its obligations hereunder, or otherwise resulting from this franchise in respect to rates and service, place it at a competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action, terminate this franchise if such competitive disadvantage is not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 90 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of the consequences of such action which resulted in the competitive disadvantage. The Grantor shall then have 90 days in which to correct or otherwise remedy the competitive disadvantage. If such competitive disadvantage is not remedied by the Grantor within said time period, the Grantee may terminate this franchise agreement by delivering written notice to the Grantor's City Manager and termination shall take effect on the date of delivery of such notice.

Section 10. Default by Grantee. Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this franchise shall be grounds for forfeiture, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal) by a court of competent jurisdiction that the Grantee has failed to comply in a substantial respect with any of the provisions of this franchise, and the Grantee shall have six months after such final determination to make good the default before a forfeiture shall result with the right of the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case require.

Section 11. Default by Grantor. Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this ordinance, including but not limited to: (a) denying the Grantee use of public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this franchise; (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-way, shall constitute breach of this franchise and entitle the Grantee to withhold all or part of the payments provided for in Section 5 hereof until such time as a use permit is issued or a court of competent jurisdiction has reached a final determination in the matter. The Grantor recognizes and agrees that nothing in this franchise agreement constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign right of condemnation and that the Grantee, in its sole discretion, may exercise such right.

Section 12. Audit of Grantee's Records Relating to Franchise Payments. The Grantor may, upon reasonable notice and within 90 days after each anniversary date of this franchise, at the Grantor's expense, examine the records of the Grantee relating to the calculation of the franchise payment for the year preceding such anniversary date. Such examination shall be during normal business hours at the Grantee's office where such records are maintained. Records not prepared by the Grantee in the ordinary course of business may be provided at the Grantor's expense and as the Grantor and the Grantee may agree in writing. Information identifying the Grantee's customers by name or their electric consumption shall not be taken from the Grantee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the Grantor, shall be reported to the Grantee. The Grantor's right to examine the records of the Grantee in accordance with this Section shall not be conducted by any third party employed by the Grantor whose fee, in whole or part, for conducting such audit is contingent on findings of the audit.

Grantor waives, settles and bars all claims relating in any way to the amounts paid by the Grantee under the Current Franchise Agreement embodied in Ordinance No. 2171, not asserted in writing within 365 days after the effective date of this Ordinance.

Section 13. Limited Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding in no way affects the validity of the remaining portions of this ordinance. Notwithstanding the foregoing, it is expressly provided that if any of the

provisions of Sections 1, 2, 5, 7, 8, 9 or 11 are found or adjudged to be invalid, void or of no effect, the Ordinance shall be null and void and of no force or effect.

Section 14. Definition of "Person." As used herein "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an incorporated association, a joint venture, a governmental authority or any other entity of whatever nature.

Section 15. Repeal of Prior Ordinances. Ordinance No. 2171, passed and adopted August 18, 1982, and all other ordinances and parts of ordinances and all resolutions and parts of resolutions in conflict herewith, are hereby repealed.

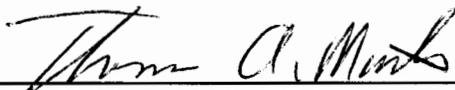
Section 16. Grantee's Acceptance. As a condition precedent to the taking effect of this ordinance, the Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of adoption of this ordinance. The effective date of this ordinance shall be the date upon which the Grantee files such acceptance.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND APPROVED on first reading this 7th day of July 2010.

PASSED AND ADOPTED on second and final reading this 4 day of August, 2010.

APPROVED:



THOMAS A. MASTERS
MAYOR



DAWN S. PARDO
CHAIRPERSON

(MUNICIPAL SEAL)

ATTEST:


CARRIE E. WARD
MASTER MUNICIPAL CLERK
CITY CLERK



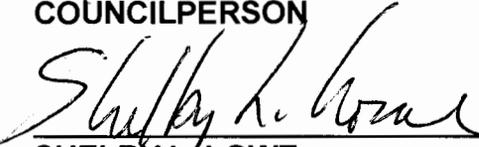
JUDY L. DAVIS
CHAIR PRO-TEM



BILLIE E. BROOKS
COUNCILPERSON



CEDRICK A. THOMAS
COUNCILPERSON



SHELBY L. LOWE
COUNCILPERSON

1ST READING

MOTIONED BY: C. Thomas

SECONDED BY: B. Brooks

D. PARDO aye

J. DAVIS aye

B. BROOKS aye

C. THOMAS aye

S. LOWE nay

2ND & FINAL READING

MOTIONED BY: J. DAVIS

SECONDED BY: B. BROOKS

D. PARDO AYE

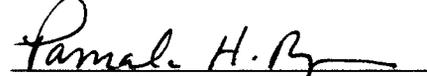
J. DAVIS AYE

B. BROOKS AYE

C. THOMAS AYE

S. LOWE NAY

REVIEWED AS TO LEGAL SUFFICIENCY


PAMALA HANNA RYAN, CITY ATTORNEY

DATE: 6/28/10

ORDINANCE NO. 3079

CERTIFICATE OF PUBLICATION

I hereby certify that Notice of the proposed enactment of this ordinance was duly published in a newspaper of general circulation within the City of Riviera Beach as required by the applicable Florida Statute.



CARRIE E. WARD, MMC, CITY CLERK