

ORDINANCE NO. 2020-2206

AN ORDINANCE OF THE CITY OF NEW PORT RICHEY, FLORIDA, PROVIDING FOR AMENDMENT OF CHAPTER 13 OF THE NEW PORT RICHEY CODE OF ORDINANCES, PERTAINING TO LICENSES AND BUSINESS REGULATIONS; PROVIDING A NEW ARTICLE XIV PERTAINING TO WATERCRAFT RENTALS FROM CITY PROPERTY; PROVIDING DEFINITIONS OF TERMS; PROVIDING FOR FRANCHISE AGREEMENTS; PROVIDING FOR APPLICATIONS; PROVIDING FOR OPERATIONS; PROVIDING FOR INSURANCE AND INDEMNIFICATION; PROVIDING FOR SUSPENSION AND REVOCATION OF FRANCHISES; PROVIDING FOR A FRANCHISE FEE; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, within the City limits of the City of New Port Richey, Florida, waterfront parks provide an opportunity for recreational use of the City's waterways by residents and visitors to the City;

WHEREAS, the operation of private businesses providing access to the water within the City is a benefit to the City, its residents, business owners and visitors;

WHEREAS, control of waterway businesses through the use of franchise agreements is necessary to preserve and protect the City's parks and waterways for the use of the general public and preservation of wildlife, parks and existing natural resources;

WHEREAS, the City Council desires to provide franchise opportunities for watercraft rentals within waterfront parks; and

WHEREAS, it is declared as a matter of legislative determination and public policy that the provisions and prohibitions herein are necessary in the public interest; and it is further declared that the provisions and prohibitions herein are in pursuance of and for the purpose of securing and promoting the public health, safety, welfare and quality of life in the City in accordance with the City's police powers.

**NOW, THEREFORE, THE CITY OF NEW PORT RICHEY, FLORIDA
HEREBY ORDAINS:**

Section 1. Chapter 13 of the Code of Ordinances, pertaining to licenses and business regulations, is hereby amended by adding Article XIV thereto, as follows (strikeout text is deleted and underlined text is added):

ARTICLE XIV. WATERCRAFT RENTAL FRANCHISES

Sec. 13-700. Definitions.

For purposes of this Article, the terms in this Section shall have the meanings thereafter ascribed to them.

Operate means to display, rent, lease, loan, control, maneuver, transport or drive.

Watercraft means any vessel designed or used for transportation of persons on the water, whether propelled manually, by machinery or by wind, including without limitation any boat, canoe, kayak, paddle board, surfboard, kiteboard, personal watercraft, or other vessel of any kind.

Watercraft for Hire means any watercraft that is available, offered, or used for rent, lease, loan, riding or operating for a fee of any kind, including without limitation water taxis or watercraft ride services.

Watercraft for Hire Vendor means any person, corporation, partnership or other business entity engaged in displaying, offering, renting, leasing, or loaning any Watercraft for Hire.

Sec. 13-701. Franchise required.

(a) No person shall operate as a Watercraft for Hire Vendor on or from any City property of any kind, including without limitation any park, dock or boat ramp, without first entering into a franchise agreement with the City, as provided in this Article.

(b) A Watercraft for Hire shall be deemed to be operating from a City property if it is located on any City property, anchored immediately adjacent thereto, or moored thereto at any time.

(c) The City may authorize one or more Watercraft for Hire franchise agreements per City waterfront property in accordance with this Article. The City Council may designate particular City properties available for said franchise agreements and may establish criteria for the award of such franchises, including limitations on the number of franchises allowed.

(d) The City Manager shall be authorized to approve Watercraft for Hire franchise agreements meeting the requirements of this Article, based upon competitive solicitation of qualified Watercraft for Hire Vendors. The acceptance of applications for franchise agreements shall be allowed on a periodic basis established by the City Manager from time to time.

(e) All franchise agreements under this Article shall require the payment of a franchise fee to the City equal to three percent of the gross revenue collected from the franchisee for all operations conducted within the City. Franchise fees shall be payable on a quarterly basis, and any franchisee shall allow the City to inspect the franchisee's financial records at any reasonable time to ensure compliance with this subsection.

(f) The term of each franchise agreement shall be for a period of one year with automatic annual renewals, provided the franchise operation remains in good standing. Either the City or the franchisee may terminate the franchise agreement effective at the end of the current one-year term, without cause, by giving written notice at least ninety (90) days prior to the end of any one-year term.

(g) A franchisee's authorization to use the City's property for the purposes herein shall not be exclusive. The enjoyment and exercise by a franchisee of any and all rights to use the City's property shall be subject to and subordinate to the dominant right of the public to use said property and to the lawful exercise of control by the City over the use thereof.

Sec. 13-702. Franchise application.

Applications of a Watercraft for Hire Vendor using City property shall include the following:

(a) Documentation that the applicant is authorized to legally conduct business within the State of Florida pursuant to Florida Statutes;

(b) A City of New Port Richey business tax receipt, or a completed application for a business tax receipt for operation of a business within the City limits;

(c) Site plans, drawings, sketches and/or photographs of the proposed operation;

(d) The detailed manner in which the applicant proposes to establish, maintain and operate the business;

(e) The proposed hours of operation;

(f) The proposed location from which the business is to be operated;

(g) An itemization of all watercraft by type and number to be used in the operation at any time;

(h) The proposed signage to be used in the operation;

- (i) The safety and sanitation devices and methods to be employed;
- (j) A schedule of proposed rates and charges for all classes of passengers or renters;
- (k) A list and description of all equipment or furniture to be used in the operation;
- (l) The applicant's previous experience in the operation of Watercraft for Hire; and
- (m) An insurance certificate demonstrating that the applicant has met the City's insurance requirements.

Sec. 13-703. Insurance and indemnification.

(a) Each Watercraft for Hire franchisee shall indemnify and hold the City, its officers, agents and employees harmless against all claims for personal or property damage of any kind arising in any way from the franchise or franchisee's operations or use of any City property.

(b) Any franchisee authorized under this Article shall operate at all times as an independent contractor and shall not be deemed a partner, associate, or agent of the City, or deemed to be in a joint venture with the City.

(c) Each franchisee shall maintain, throughout the term of the franchise agreement and throughout the term of any renewals, insurance insuring the City and the franchisee with regard to all operations of the franchisee and use of City property, in the following minimum amounts and types:

- (1) Workers' and unemployment compensation insurance as provided by the laws of this state;
- (2) One million dollars (\$1,000,000.00) for property damage, bodily injury, or death payable to any one person and two million dollars (\$2,000,000.00) per occurrence for property damage, bodily injury or death when totaled with all other claims or judgments arising out of the same incident or occurrence; and
- (3) Any additional insurance coverage the City determines is necessary due to the consumption of alcoholic beverages.

(d) The insurance policies a franchisee obtains to comply with this section shall be issued by a company or companies acceptable to the City and a current certificate or certificates of insurance shall be filed and maintained with the City during the term of the franchise agreement and any renewals. The policies shall name the City as an additional insured and shall contain a provision that written notice of cancellation or reduction in coverage of the policy shall be

delivered by certified mail, return receipt to the City at least 30 days in advance of the effective date of such cancellation or reduction.

Sec. 13-704. Operations.

(a) Anyone authorized under this Article to engage in the business of operating Watercraft for Hire from City property, shall be subject to all traffic and maritime rules and provisions of this Code and all other laws, ordinances, rules and regulations now in effect in the City or the state and all traffic and maritime ordinances and rules and regulations which may pertain to the operation of watercraft hereafter enacted or adopted by the City or the state, and such rules and regulations formulated and promulgated under authority of this part.

(b) No Watercraft for Hire Vendor shall allow or engage in any activity which interferes with the use and operation of City property or the general public's use thereof.

(c) No signs, displays, watercraft, equipment or furniture shall be placed upon any City property or used in any Watercraft for Hire operation, unless specifically authorized by the City.

(d) Each Watercraft for Hire Vendor shall ensure that all operations are conducted at all times with the highest available safety standards;

(e) Each Watercraft for Hire Vendor shall ensure that all City property is properly cleaned and maintained throughout the operation of the business on City property, and that all equipment, signs, displays, furniture and watercraft are removed from City property at the conclusion of each day's operation, unless otherwise specifically authorized by the City.

(f) Each Watercraft for Hire Vendor shall operate only in the location, manner and during the times and dates approved by the City as specified in the franchise agreement.

(g) No alcoholic beverages shall be allowed to be consumed or possessed by any Watercraft for Hire Vendor or any customer thereof on any City property, or in or on any watercraft, unless specifically authorized by the City for any particular Watercraft for Hire Vendor, and then only in the manner so authorized.

(h) Other operational conditions may be included in each franchise agreement authorized under this part, at the sole discretion of the City.

Sec. 13-705. Revocation, suspension.

(a) The City Manager may order the temporary suspension of operations of any Watercraft for Hire Vendor if at any time the operations of said vendor violate the provisions of this Article or any law, regulation, ordinance, or the franchise agreement, or if in the sole determination of the City Manager said operation constitutes a danger to any persons or property, or substantially infringes upon the use of any City property or waterway by the general public or any City official, employee, agent, licensee or invitee.

(b) The City Manager may order the temporary suspension of one or a class or group of Watercraft for Hire Vendors if deemed necessary due to a special event or other intended use of City property.

(c) A temporary suspension ordered by the City Manager hereunder shall be for such duration or an indefinite period of time as determined by the City Manager in his or her sole discretion.

(d) During any temporary suspension ordered hereunder, the Watercraft for Hire Vendor shall remove all watercraft, displays, signs, equipment and furniture from all City property and adjacent waterways, until such time as said suspension is lifted or expires.

(e) The City Manager may revoke and terminate any franchise agreement if the franchisee:

- (1) fails to pay all required franchise fees, when due;
- (2) misrepresents any franchise fees due, as determined by a review of said franchisee's records or other available information;
- (3) fails to honor any temporary suspension of said franchisee's operations;
- (4) fails to properly clean and maintain City property;
- (5) fails to properly remove all watercraft, signs, displays, equipment and furniture after the close of each day's operations;
- (6) engages in or allows the dangerous or nuisance operation of any watercraft;
or
- (7) violates any provisions of this Article, the franchise agreement, or any code, ordinance, regulation or law of any kind.

(f) Prior to revoking or terminating any franchise agreement, the City Manager shall provide notice to the franchisee thereunder specifying the nature of the violation and allowing the

franchisee a reasonable period of time to remedy such violation to the satisfaction of the City Manager. No time shall be allowed to any franchisee to remedy any violation which has been the subject of a prior notice hereunder, or if in the determination of the City Manager said franchisee has previously violated the franchise agreement or the current violation is so egregious, such that no opportunity to remedy the violation should be granted.

(g) Nothing contained in this Article shall create a property interest in favor of any franchisee, and any all franchises granted hereunder shall be considered temporary approvals for the use of public property which may be terminated at any time in accordance with the provisions of this Article in the best interest of the health, safety and welfare of the citizens of the City.

Section 2. Conflict with Other Ordinances and Codes. All ordinances or parts of ordinances of the City of New Port Richey, Florida, in conflict with the provisions of this ordinance, are hereby repealed to the extent of such conflict.

Section 3. Severability. If any provision or portion of this ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this ordinance shall remain in full force and effect.

Section 4. Effective Date. This ordinance shall take effect immediately upon its adoption as provided by law.

The foregoing Ordinance was duly read and approved on first reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida this _____ day of _____, 2020, and read and adopted on second reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida this _____ day of _____, 2020.

ATTEST:

By: _____
Judy Meyers, City Clerk

By: _____
Robert Marlowe, Mayor-Council Member

(Seal)

APPROVED AS TO FORM AND LEGALITY FOR
THE SOLE USE AND RELIANCE OF THE CITY
OF NEW PORT RICHEY, FLORIDA:

Timothy P. Driscoll, City Attorney