



**AGENDA
HARBOR AND WATERWAYS BOARD MEETING
THURSDAY, MARCH 28, 2024
5:30 PM
DESTIN CITY HALL ANNEX CHAMBERS**

- 1. CALL TO ORDER/PLEDGE OF ALLEGIANCE/ROLL CALL**
- 2. APPROVAL OF MINUTES**
 - A) Minutes 09/28/2023**
- 3. PUBLIC COMMENTS**
- 4. NEW BUSINESS**
 - A) Net Positive Environmental Benefit (NPEB) Fee – LDC 11.05.02.N**
 - B) Draft Land Development Code Marina Siting Section of the Draft Article 7 – Resource Conservation & Protection**
- 5. COMMITTEE MEMBER REPORTS**
- 6. NEXT MEETING DATE: April 25, 2024**

Any person requiring a special accommodation at this hearing because of a disability or physical impairment should contact the City Clerk at (850) 837-4242 at least 48 hours prior to the hearing. If a person decides to appeal any decision made with respect to any matter considered at such meeting, such person will need a record of the proceeding and for such purpose may need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence upon which the appeal is to be based. (Sec. 286.0105, Florida Statutes)

**MINUTES OF THE
HARBOR AND WATERWAYS BOARD MEETING
DESTIN CITY HALL, SEPTEMBER 28, 2023 - 5:30 P.M.**

1. CALL TO ORDER:

Chairman Stephens called the Destin Harbor and Waterways Board meeting to order at approximately 5:30 p.m. on Monday, September 28, 2023, at Destin City Hall, with the Pledge of Allegiance immediately following.

2. ROLL CALL:

Member Present:

John Stephens
Jim Green
Guy Tadlock
Bill McKissick
Richard Hoey
Jerod Hayden

Members Absent

Casey Jones

Staff:

Kim Montgomery Deputy City Clerk
Steven O'Connor Principal Planner
Rachel Hoag Planner
Christopher Willis Planner
Kyle Bauman City Attorney

3. APPROVAL OF MINUTES:

- **August 28, 2023**

Motion by Vice Chairman Green, seconded by Board member Tadlock, the members approved both sets of minutes by consent with corrections made to the August 28, 2023, minutes. The motion passed 6-0.

4. NEW BUSINESS:

- **Net Positive Environmental Benefit (NPEB) Fee – LDC 11.05.02.N**

Mr. O'Connor explained staff brought this before City Council at one of their recent meetings and they were directed to bring it before this board first to get their input and a recommendation to take it back to City Council for their consideration. He then explained the NPEB fee was established in 1984 and applies to all marine construction that impacts the harbor. Indicating those being anything waterward of the property line, a 25% fee would be applied to the total cost of the construction. He provided the members with the background history of how with the State's assistance, in the 90's, the city created a memorandum of understanding of what the fees would help offset. Such as the costs for purchasing and installing the harbor pump and station, its maintenance, and making stormwater runoff improvements along Highway 98, as well as water monitoring programs and other environmental programs. He explained that staff has provided four recommendations:

1. Keep assessing the NPEB fee to all projects within the Harbor and Canals adjacent to the Harbor, as staff is currently implementing the regulations. This means any new dock, modification, or repair to an existing approved dock and the addition of, modification or

repair to riprap will be assessed a fee of 25% of the construction cost for labor and materials.

2. Assess an initial 25% NPEB fee to all new facilities and expansions or major modifications, then a lesser percentage, for discussion purposes, a 10% fee, for any voluntary modification or repair not directly linked to an emergency event, such as a hurricane or other event out of the upland property owner's control. The NPEB assessment for existing facilities can vary by marine facility type. For example, existing residential facilities can be assessed at an 10% NPEB fee, and nonresidential can remain at 25% or some variation thereof.
3. Assess the 25% NPEB fee once, and no additional fees are required until an expansion or other major modification is proposed from the approved initial marine facility.
4. Any other option the Board may want to develop and recommend to City Council.

Staff is seeking a recommended Option from the Harbor & Waterway Board regarding the implementation of the Net Positive Environmental Benefit Fee program. Staff's suggestion of Option 2 is aimed at attempting to strike a balance between the need to address water quality issues in the Harbor, and also encourages the property owners to maintain and upkeep their facilities. In this regard, Option 2 captures the initial impact of the construction of the marine facilities and the water-based activities those facilities support. Then, a lesser NPEB fee is assessed when repairs or maintenance is required as the repairs extend the marine facility's life, further extending the impacts of the water-based activities it supports.

Vice Chairman Green asked Mr. O'Connor if he knows the annual average collected from the fee. According to Mr. O'Connor, recently the city has seen a tremendous increase in the fees collected because of Compass program that is now in place, but in the past, it was only increased when large marine projects that were built. Vice Chairman Green then asked if the funds collected are used for anything other than harbor associated projects. According to Mr. O'Connor, it is not, the account set up for the funds is very specific.

Board member Tadlock spoke of how he is confident that with the public input and members input, he believes that something can be established to have a fair solution for all and a good funding source for the harbor.

Board member Hayden asked if NPEB is the only funding source for stormwater treatment. Mr. O'Connor explained the city can use other funding sources adding that as far as cost goes for the harbor pump, the city has not collected near enough for the cost of keeping it in working order.

Chairman Stephens opened the hearing to the public to speak.

Mr. Neil Parker 618 Choctaw Drive argued that the NPEB fee is basically a user fee that the city is charging the owners of Holiday Isle and asked how the city would charge all the

boats that come into the harbor and into the canals this user fee. He additionally stated how Holiday Isle takes in over \$10M in taxes and although he understands the city does not get all of it, they get a good portion of it, this fee is ridiculous.

Vice Chairman Green clarified for the record that there is not a user fee for the canals for which the reply was correct.

Staff, members of the Board and the City Attorney tried to explain to Mr. Parker that there is no user fee to use the canals and explained that there is some ambiguity where the harbor ends and the canals begin and provided the definition of what a “User Fee” truly is.

Dr. Irvin Manning 617 Magnolia Drive stated that he first wanted it known that he does not feel the canals are a part of the harbor and therefore they should not have to pay into this tax. He spoke of how this is going to be counterproductive because people are not going to want to pay the fee to repair their seawall.

Mr. O'Connor explained that any project upland, such as seawalls, do not pay the fee. It is only for projects waterward of the property line.

Nicki Noblin 501 Gulf Shore Drive and the President of Holiday Isle feels that the fee percentage is too much and would inhibit people from replacing their old rotting seawalls and docks. She then spoke of the Point One Mezzanine project and how they did not pay the fee and their project will substantially impact the harbor environment more than a residential dock.

Chairman Green corrected Ms. Noblin by informing her and the audience that Point One Mezzanine did pay over \$500k towards the NPEB fund and this was discussed at Council level regarding using the funds towards dredging the channel.

Todd Ginkel 513 Osceola defining a seawall construction and what covered by the fee. He also feels that some sort of fee should be collected from the rental boat businesses because they are the ones that are most likely cruising through the canals and causing environmental issues from erosion.

Rob Valiton 508 Norriego Road agrees with Mr. Ginkel that the environmental impacts by owners are not near as high as they are by the tourists, pointing out that he does not have any problem with them, as they fuel the local economy.

Lynn Schmidt 223 Durango Road Destin Harbor Resort feels that the 25% fee is too high and asked that it should be lowered to something that can be affordable. She spoke of an upcoming project for the condo to replace all the seawalls and how this fee would make them unaffordable if they are not within their property boundaries.

Mark Luciani, 223 Durango spoke of all the fees that has to be paid to the State and the city for permits for their docks and submerged land lease and suggests that the percentages be broken down between commercial and residential.

CeCe Harned 609 Magnolia Drive feels that the percentages of what the residential should not be the same as the commercial marinas pay for the environment impacts. She asked what happens when the community is affected by a hurricane and structures have to be replaced, also since the canals are run by Holiday Isle, what do they (HI) get from the percentage paid into the fee, regarding canal improvements.

Kevin Guernsey 539 Gulf Shore Drive questioned if staff is projecting how future projects that will impact the environment.

Chairman Stephens closed the Public Comment.

Vice Chairman Green spoke of how he agrees with most of the comments but pointed out that without the harbor, the canals are just a pond, however, they are interconnected to the harbor. He does, however, agree that if a marina is being built, it should have to pay a higher percentage since it will cause more of an impact than single family residential properties dock project would, but cautioned most of the condominiums are considered residential, therefore they should be careful with certain terms they're using to identify those types of projects, since they too will be residential. He then spoke of percentages, and he feels that 10-25 percent residential/commercial, and board for board should not constitute a fee, especially if they've already paid into it for the initial build.

Chairman Stephens agrees but feels it would be fair to assess the percentages on an x-number of slips. Board member Green agreed and suggested setting a benchmark of possibly ten slips.

The members and staff briefly discussed the classifications and how they are reviewed by just staff or when it reaches a higher level of review process that would then come before the board for a recommendation to Council.

Board member Tadlock spoke of the incorporation of the canals into the city and how there is not any commercial activity on them and mentioned the rulings that have to be followed per the HOA covenants. He suggests keeping it simple and any project on the canals of course has to get permitted, but he does not think there should be an NPEB fee charged for any residential project in the canals, since those would only be on 6-foot marginal docks. He also feels that any residential projects that are on the harbor that has a dock and lift should also not have to pay the fee, and it should only be directed to commercial activity.

Motion by Vice Chairman Green to recommend to the city council concerning the net positive environmental benefit fee to apply to with percentages as follows:

- **The harbor and canals are considered together.**
- **Residential slips less than 10 - 10%**
- **Greater than 10 – 25%**
- **All commercial 25%**
- **Board for board exempt from the fee if within the original footprint.**
- **New and expansion - not exempt for all projects waterward of the property line. Board member Hayden provided the second.**

In discussion, Vice Chairman Green stated he feels this is the fairest way he sees that would benefit everyone. However, they shouldn't penalize the industry either and feels that it should be fair across the board. He agrees that 25% for residential is not fair, however 0% for residential is not fair either. Pointing out that everyone that enjoys the waterways and has access to the harbor, the bay, and the Gulf, should have to pay towards keeping it healthy.

After asking Chairman Stephens for permission to speak, Mr. O'Connor spoke of cumulative effects and how they initially impact a singular location but as they build, they continue to grow they impact a larger area to where eventually, it impacts an entire area; and this, is what is now taking place in the harbor. Pointing out that there is no single activity now that does not impact the harbor.

Vice Chairman Green spoke of how the Harbor Capacity Study, which was based on facts and not opinions, proved that the channel or infrastructure, which is only a fifty foot wide channel and created in the 1940's, is what is over capacity by the amount of traffic that utilizes it. Additionally, that study and results allows the next steps to be taken, which is the 107 Cap Study.

Board member Hayden suggested a reduced fee, based on the fee schedule described, for board for board projects, since there is only so much new construction that can now happen on the harbor. Vice Chairman pointed out that if someone has already paid the fee, they would not have to pay again if they are replacing their entire project exactly the way it was originally built.

Chairman Stephens provided an amendment to the motion for the following:

- **Class 1, Residential – 7% (Less than 1,000 sq. foot and two slips or less)**
- **Class 2, 3 or more slips – 10% (Over 1,000 sq. ft. with 3 or more and up to 9 slips)**
- **Class 3, Commercial – 25% (All commercial docks/marine facilities or a residential facility with 10 slips or more.**

Both Vice Chairman Green and Board member Hayden agreed with the amendment to the motion. The motion passed 6-0.

Mr. O'Connor clarified again for all that board for board projects would be exempt.

5. PUBLIC COMMENT:

Neil Parker 618 Magnolia Drive asked what the steps were if there is no record of an NPEB being ever paid for the project currently on the property, noting that there is a lot of very old structures in existence.

Mr. O'Connor reiterated that if the request is for a board for board replacement of the current structure, there would not be a fee.

Mrs. Lynn Schmidt asked if there was a hurricane, and everything had to be replaced, what are the rules. According to Mr. O'Connor, as long as the permit pulled within 6-months of the disaster and the reconstruction is within the same footprint, there would be no fees.

Board member Hoey spoke of the Emergency Order that the Governor puts in place for the counties that are affected by a disaster, which allows for the homeowners to get everything rebuilt without having to go through the normal permitting processes.

Board member Tadlock spoke to the members of the public on the importance for property owners to keep good records of what is on their property.

6. MEMBER COMMENTS:

➤ Chairman Stephens

1. Vessel Anchoring in the Harbor

Spoke of how this past summer there was noticeably more vessels in the harbor, even commercial vessels and asked if there is a solution that is being worked on, such as a harbor mooring area.

According to Vice Chairman Green, during the harbor capacity study meetings, this was and still is being discussed at a higher level.

The City Attorney also spoke on the subject explaining that discussions with the County attorney's have been taking place and more information will be brought forward on the subject.

2. Commercial Vessel Slips & Parking requirements.

Chairman Stephens also spoke of seeing vessels pulling up and picking up passengers on the harbor and how he is sure that those are not businesses that have shared parking agreements

with the property owners and how those customers are negating the parking agreements by using spaces, however, he is not sure what can be done about it.

Mr. O'Connor spoke of the requirements of the Development Order and how parking analysis are required as well as shared parking agreements, when the parking on property is shared for businesses that operate at different time of the day. He also spoke about how hard it is to enforce, if staff is not made aware of any kind of operations outside of what was approved by staff in that Development Order.

➤ **Vice Chairman Green**

1. Turn Lane at Marler & 98 – Delayed this discussion to the next meeting.

2. Proposed City Marina Project – Spoke of not being in favor of the idea to put an amphitheater in at 1 Harbor Blvd. property mainly because most of the Harbor CRA funds were utilized for the purchase and, it does not meet the goals and objectives of the Council.

Vice Chairman Green made the motion to recommend City Council direct staff to look for ways to create a used motor oil recycling collection site for the city residents and businesses. Chairman Stephens provided the second. The motion passed with a unanimous vote of 6-0.

➤ **Board member Tadlock – Water Quality Issues**

Board member Tadlock spoke of how he is very concerned with water quality in the harbor and the canals, after being hospitalized from a recent exposure to the water behind his residence. He stated that the doctor told him the infection he experienced, was most likely caused by bacteria from water that he must have ingested, and asked staff how water quality is tested and if or how it is provided to City Council.

Chairman Stephens spoke of how he volunteers for Choctawhatchee Basin Allowance (CBA), to take water samplings. He explained he tests in two locations in the harbor and one between the Coastguard Station and Crab Island. He also mentioned that there are four other location in the north side of Choctawhatchee Bay that are also sampled and, as far as he is aware, there are two locations at Joe's Bayou and Indian Bayou that have deficiencies in Chlorophyll.

Board member Tadlock asked how fecal chloroform is tested. According to Chairman Stephens, Okaloosa County, not CBA or the city, tests for that and releases the report. Board member Tadlock also stated he has requested the run times are for the Harbor pump for the past five years.

Motion by Tadlock seconded by Green to have staff provide the following records so they can be discussed at their next Harbor & Waterways Board meeting:

- 1) What department and person(s) are responsible for monitoring the water quality of the Harbor? How is this reported upward and ultimately to the Mayor, City Manager, and Council?**
- 2) Provide complete details of the Water testing procedures done by the city or their agent.**
- 3) Monthly schedule and actual run times for the flushing pump for the past 5 years.**

Chairman Green amended the motion to add any county or other testing results to be provided as well, with Vice Chairman Green seconding the amendment. The motion passed 6-0.

7. DIRECTOR'S REPORT: None

8. ADJOURNMENT:

With there being no further discussion, the meeting adjourned at 8:05 p.m.

Adopted and approved this _____ day of _____ 2023.

John Stephens, Chairman

Kim Montgomery, Deputy City Clerk

CITY OF DESTIN – COMMUNITY DEVELOPMENT



AGENDA ITEM

MEETING DATE: March 28, 2024**BOARD/COMMITTEE:** Harbor & Waterways Board**TYPE OF AGENDA ITEM:** Action Item**OUTLINE NUMBER:** 4.A.**TO:** Harbor & Waterways Board**THRU:** Louis Zunguze, Interim City Manager
Kimberly Kopp, City Attorney**FROM:** Steve O'Connor, Principal Planner
Krystal Strickland, Finance Director**DATE:** March 15, 2024**SUBJECT:** Net Positive Environmental Benefit (NPEB) Fee – LDC 11.05.02.N

I. BACKGROUND: Staff brought the recent issues of re-implementing the **Net Positive Benefit Fee (NPEB)** before City Council on October 16, 2023 after the Harbor & Waterways Board proposed their recommended changes to the Fee calculation of the NPEB. City Council requested Staff bring back an ordinance with the Harbor & Waterways Board recommendation, for Council's consideration.

The Draft Ordinance was developed and was sent to the Local Planning Agency for their consideration and recommendation to City Council. The LPA as the recommending body on all matters related to **Land Use**, the **Land Development Code**, and the **Comprehensive Plan**, needed to make some motion before forwarding the ordinance to Council.

March 7, 2024 - LPA Hearing

The following information was presented to the LPA for their review.

Any change in the NPEB fee structure will also require a Comprehensive Plan Amendment, since the NPEB fee is specifically called out in **Policy 6-1.2.3: Protect Water Quality within Destin Harbor** as twenty-five percent (25%). Therefore, two ordinances are up for consideration, Ord. 24-03-PC & Ord. 24-04-LC (see Attachments). To recap, Staff brought the following options to both the City Council and the HWB for discussion and consideration.

OPTIONS:

- 1.) Keep assessing the **NPEB** fee to all projects within the Harbor and Canals adjacent to the Harbor, as Staff is currently implementing the regulations. This means any new dock, modification, or repair to an existing approved dock and the addition of, modification or

repair to riprap will be assessed a fee of 25% of the construction cost (labor & materials).

2.) Assess an initial 25% **NPEB** fee to all new facilities and expansions or major modifications, then a lesser percentage, for discussion purposes, a 10% fee, for any voluntary modification or repair not directly linked to an emergency event, such as a hurricane or other event out of the upland property owner's control.

The NPEB assessment for existing facilities can vary by marine facility type. For example, existing residential facilities can be assessed a 10% NPEB fee, and non-residential can remain at 25% or some variation thereof.

3.) Assess the 25% **NPEB** fee once, and no additional fees are required until an expansion or other major modification is proposed from the approved initial marine facility.

4.) Any other option the Board may want to develop and recommend to City Council

The HWB listened to Staff's options and then also took in the numerous public comments regarding the impact of the **NPEB** fee. As such, the HWB created their own recommendation as follows:

- The **NPEB** should apply to all new or expansion of existing marine facility projects within the Destin Harbor and canals adjacent to the Destin Harbor.
- The **NPEB** should not apply to any Board for replacement.
- The **NPEB** fee should be applied as follows:
 - Category 1 Marine Construction Projects – 7%
 - Category 2 Marine Construction Projects – 10%
 - Category 3 Marine Construction Projects – 25%

As proposed in the draft **Land Development Code (LDC) Article 2 – Administration** the HWB recommended breaking out various marine construction projects in the following manner:

- **Category 1** – All State Self Certified docks
- **Category 2** – Residential docks with 3 – 9 slips or larger than 1,000 sq. ft.
- **Category 3** – All commercial docks and any residential projects that do not fit within Class 1 or 2

It should be noted that a large portion of City Council's discussion was around whether the seven percent (7%) for Category 1 projects and ten percent (10%) for Category 2 was going to be sufficient to cover the impacts of marine-based activities from those uses. The Harbor Capacity Study showed that private vessel traffic was one of, if not the largest, segment of users in the harbor. Further, the fees collected over the years annually have not been enough to cover even the electrical bill for the Harbor Pump, let alone maintenance.

II. DISCUSSION: During the March 7, 2024 LPA meeting, a member of the public came and spoke about making the NPEB Fee more sustainable and consistent. The LPA took the public comments into consideration then made a motion for Staff to return to the HWB with the proposed changes as discussed below.

Public Comments From the March 7, 2024 LPA Hearing

At the conclusion of Staff's presentation and a little discussion, the LPA Chairman opened the item up for public comment. At this time, there was a proposed change in how the City thinks about the NPEB Fee and the sustainability of the fee. Currently, any marine project that the NPEB Fee is applicable requires 25% of the project's cost of construction to be paid to the City. This in many cases disincentivizes individuals from making repairs to their facilities, making them more environmentally friendly or more resistant to storm damage. Further, this fee structure does not make for a very consistent stream of money for the NPEB Fee, which is meant to pay for the tools and systems needed to maintain the health of the Harbor. Some years the NPEB fee collected was less than \$6000, while this year we collected \$5413 through February with one extraordinary collection over \$90,000 in March. The disparity causes budget items for the harbor pump to be paid for out of the General Fund, as the NPEB Fee does not consistently even cover the cost to pay for the electric bill averaging \$17,000 a year. Ideally the NPEB fee would also cover the cost of cleaning the 4 or 5 stormwater fallout that drain into the Harbor (approximately \$25,000 per year). In addition, the Committee should consider using NPEB funds for regular dredging to maintain the optimal depth of the harbor channel, estimated at \$800,000 every 3-5 years.

SUMMARY	Fiscal Year							
							2024	OCT 2017 -
	2018	2019	2020	2021	2022	2023	(OCT-FEB)	FEB 2024
NPEB Revenue	\$ 46,495	\$ 20,800	\$ 6,600	\$ 1,884	\$ 5,575	\$ 54,961	\$ 5,413	TOTAL
Harbor Water Testing	\$ 3,820	\$ 1,910	\$ -	\$ 2,400	\$ 7,200	\$ 2,864	\$ 2,864	\$ 21,058
Harbor Pump Utilities	5,239	17,756	17,188	3,540	13,586	44,055	12,906	\$ 114,270
Stormwater Fallouts (4 of 5 x \$25k/yr)	20,000	20,000	20,000	20,000	20,000	20,000	20,000	\$ 140,000
Choctahatchee Basin Alliance (29%=2 of 7 sensors)	7,143	7,143	3,571	8,214	13,929	9,286	9,286	\$ 58,571
Harbor Water Quality Exps	\$ 36,202	\$ 46,809	\$ 40,759	\$ 34,154	\$ 54,715	\$ 76,204	\$ 45,056	\$ 333,899
NET (rev - exp)	\$ 10,293	\$ (26,009)	\$ (34,159)	\$ (32,271)	\$ (49,140)	\$ (21,243)	\$ (39,643)	\$ (192,171)

The proposed change from the HWB recommendation is as follows. First, reduce the upfront cost of the Initial NPEB Fee by something more manageable than 25%. There were no real specific percentages proposed at the LPA Hearing. Second, assess an annual fee per slip for all marine facilities and docks in or adjacent to the Harbor including the canals. There was an example marina facility discussed as below based on the proposed NPEB Fee Structure:

EXAMPLE NPEB Fee Structure

Cost of the Marina: ~\$360,000

Number of slips: 36

Initial fee of 10% = \$36,000

Cost per slip/per year \$100 = \$108,000 (over 30 years)

To give a little more perspective, the Army Corps of Engineers studied ~260 slips during the Harbor Capacity Study. Starting at Harbor Walk to the Destin Yacht Club. This is hardly even half the slips in the harbor. The 260 slips alone would generate \$26,000/year. An annual maintenance assessment would stabilize the NPEB Fee account, and could possibly minimize

the City's need to dip into the General Fund to pay for repairs or maintenance of the facilities that should be supported by the NPEB fee.

A. Link to Strategic Goals / Objectives: 2) Enhanced quality of life and safety for families

3) Economic Development and revitalization

5) Improve mobility and connectivity

6) A green and sustainable environment

B. Effect on Budget (EOB): NPEB Fee Account

C. Level of Service (LOS): More clear and consistent review procedures for proposed Marine Construction projects.

D. Legislative Sponsor:

III. CONCLUSION: The LPA motioned to have Staff present the proposed Net Positive Environmental Benefit fee to the Board for reconsideration and recommendation of a new fee structure in light of the proposed change discussed at the March 7, 2024 LPA Hearing.

IV. RECOMMENDED MOTION: I move that Harbor & Waterways Board recommend the new Net Positive Environmental Benefit Fee be structured as discussed, with an initial fee of ____% and an annual assessment of \$____ per slip for non-residential slips, and \$____ for residential slips.

ALTERNATIVE MOTIONS:

I move that the Harbor & Waterways Board recommend a new NPEB Fee Structure as discussed.

I move that the Harbor & Waterways Board deny the proposed new NPEB Fee Structure and recommend the Board's original recommendation.

Attachments:

1. 1 - Policy 6-1.2.3 - Protect Water Quality within Destin Harbor
2. 2 - LDC 11.05.00. Marina Siting
3. 3 - 1995 FDEP MOU
4. 4 - Ordinance 24-03-PC NPEB Comp Plan Amendment
5. 5 - Ordinance 24-04-LC NPEB

Attachement 1)

Policy 6-1.2.3: Protect Water Quality within Destin Harbor. Upland development impacting coastal resources and water quality within Destin Harbor shall be required to provide stormwater improvements and site design that ensures post-development runoff volume and water quality of receiving waters entering Destin Harbor meets or exceeds minimum standards established by the FDEP and Northwest Florida Water Management District (NFWFMD). For water-dependent development proposed over water within Destin Harbor, the City will continue to administer its Net Positive Environmental Benefit (NPEB) Program to assess such development a fee to support funding of infrastructure improvements that benefit or enhance water quality within Destin Harbor. Water-dependent development for purposes of this policy include marinas, boating facilities, construction supporting commercial or sport fishing, construction supporting marine activities, passenger ferries, boardwalks, and recreation-related activities. Net positive environmental benefits are the gains in environmental quality or other ecological properties attained by remediation or ecological restoration, less the environmental harm caused by those actions. The NPEB contribution shall be computed as 25% of the cost for construction occurring waterward from the mean high-water line. The NPEB fee shall only be assessed for those construction projects receiving necessary permits or exemption documentation from the Florida Department of Environmental Protection. Fees collected by the City shall be earmarked to a water quality improvement fund used only to pay for infrastructure improvements or ecological projects benefiting water quality or ecology within Destin Harbor. In lieu of payment of a fee used for water quality infrastructure improvements, the City may grant fee credit for stormwater improvements or other similar environmental projects implemented by property owners or developers if such improvement or project enhances or benefits water quality or the ecologic conditions within Destin Harbor above minimum standards established by the City and DEP.

11.05.00. - Marina siting.

11.05.01. *General regulations; prohibitions.* This article establishes and regulates procedures and standards by which the City controls and regulates development, construction and activities within and contiguous to the Harbor and waterways of Destin. The following regulations and prohibitions shall apply to the Harbor and waterways of Destin:

- A. No person shall construct or add to an existing dock, seawall, bulkhead, mooring or piling, modify an existing submerged land lease, or conditions thereto, or conduct dredge or fill operations in, or contiguous to, the Harbor or waterways of Destin without first obtaining the proper authorization from the appropriate federal, state and City agencies.
- B. The addition or modification of a boat lift or pilings within an existing legal and conforming boat slip shall not require the review of the Harbor and Waterways Board or the City Council. Rather, a copy of the U.S. Army Corps of Engineers permit, DEP permit, and a homeowner's association approval (if applicable) shall accompany a completed application for a building permit, provided no additional slips are created.
- C. No fish carcasses and debris shall be discharged into the Harbor or waterways of Destin.
- D. No person who maintains or operates a dock shall allow or permit the disposal of fish carcasses, litter, waste petroleum products or other pollutants into the Harbor or waterways of Destin. Trash disposal receptacles shall be anchored to each dock to ensure compliance with the provisions of this article.
- E. No fuel or oil shall be willfully or knowingly discharged in the Harbor or waterways of Destin. No dock which sells fuel or oil shall be constructed, operated or maintained in the Harbor or waterways of Destin unless an oil abatement plan, in accordance with Coast Guard guidelines, is available at each dock. The Destin Harbor and Waterways Board shall review and recommend approval or disapproval of each oil abatement plan to the City Council, which shall have approval authority. Each existing dock which sells fuel or oil shall develop and have approved an oil abatement plan acceptable to the City. All new docks which sell fuel or oil shall develop and have an approved oil abatement plan, which is acceptable to the City, prior to receiving a building permit from the City.
- F. No new or existing dock shall be constructed or modified such that the length of any pier as completed is greater than 20 percent of the width of the Harbor or waterway at the place where the pier is located, or out 200 feet, whichever is less, except in Choctawhatchee Bay.
- G. No piling(s) shall be added to the waterward end of any pier which piling(s) would make the total length of the dock more than 200 feet, or 20 percent of the waterway, whichever is less, except in Choctawhatchee Bay.
- H.

No vessel shall be moored or docked on the waterward end of any pier of the maximum legal length, as determined pursuant to subsection F above, for more than 72 hours.

- I. No dock shall be constructed which permits the commercial docking of boats with on-board toilets unless such the dock is equipped with a sewage pump-out.
- J. No dock shall be constructed which permits the docking of a live-aboard unless such vessel has an operable holding tank.
- K. No boat shall be moored in the Harbor or waterways of Destin such that constitutes a hazard to navigation.
- L. No dock shall be constructed such that it constitutes a hazard to navigation.
- M. Excepting docks connected to uplands zoned SHMU, or those located on Choctawhatchee Bay, no dock shall be longer than the width, at the mean high-water line, of the lot to which the dock is attached.
 - 1. For those docks connected to uplands zoned SHMU, or those located on Choctawhatchee Bay, a dock may be constructed to a length of 1.5 times the width of the property at the mean high-water line, provided the length of the dock not exceed the maximum length established by paragraphs F and G above.
 - 2. For the purpose of this subsection, lots may be combined with neighboring lots. However, no dock may exceed the limitations specified in subsection F above.
- N. No dock shall be constructed or modified such that slip density exceeds one slip per eight lineal feet of waterfront footage except that, on canals, no lot may have more than one slip per 45 linear feet of waterfront. However, all lots riparian to a canal shall be entitled to at least two slips on the canal.
- O. No boat or vessel, entering into, exiting or operating within the Destin Harbor shall operate at such speed that would create a wake that endangers other boats or vessels, swimmers or other persons within the Destin Harbor, or would contribute to any adjacent land erosion.
- P. No heated or cooled water may be emitted into the Harbor, waterways, or the Harbor canals other than from a boat.
- Q. No pier shall extend more than six feet into a canal right-of-way.
- R. No discharge of water shall contain phosphorous or any other substance likely to cause a violation of the water quality standards specified in Chapter 17-302, Florida Administrative Code.
- S. No dock or vessel shall be placed within the 25-foot setback of a property line without providing prior written notification to the adjoining landowners and requesting their response. Any objections received from the adjoining property owners will be considered by the Harbor and Waterways Board in their recommendations to the City Council.

- T. No dock shall unreasonably interfere with the riparian rights of others.
- U. No dock of 100 feet or longer shall be constructed unless a white navigation/security night-light is installed at the furthest point seaward on said dock and such light is to be illuminated continuously from dusk to dawn every night of the year. All existing docks 100 feet or longer shall install and operate a navigation/security light pursuant to this subsection. Each light shall be installed within 90 days after adoption of this Code.
- V. No commercially operated boat docking facilities shall be permitted or operated unless equipped with firefighting facilities as specified by the City.
- W. No construction shall be allowed which violates any provision of the Standard Building Code, as adopted by the City.
- X. No electrical or water service upon any dock shall be installed unless a permit is obtained from the Planning Department and Building Department for that service.
- Y. No person, while operating a boat within the or waterways of Destin shall allow or permit the disposal of fish carcasses, litter, waste, petroleum products or other pollutants into the Harbor or waterways of Destin from such boats.
- Z. No lot, or multi-contiguous lots, with less than 50 feet of waterfront footage shall be allowed individual docks, unless they are parallel to the shoreline. However, docks may be allowed under the provisions of subsection 11.05.01.M.2.

11.05.02. *Permitting procedures.* The following procedures shall be adhered to by persons desiring to construct a new dock or add to, alter or remodel, add riprap to, or reconstruct an existing dock:

- A. Persons desiring to construct a new dock or add to, alter, remodel, add riprap to, or reconstruct an existing dock shall apply for and obtain a permit and other authorization from the City prior to construction.
- B. Each applicant shall designate the location of his property on the or waterways of Destin and attach this to the building permit application and must complete the City application form(s).
- C. Application shall be made by filing with the City, the City's permit application form and a copy of the joint application form used by the United States Army Corps of Engineers, and the Florida Department of Environmental Protection, the requirements of which are expressly adopted herein as they existed on the effective date of this Code, and as they are hereafter amended by said respective agencies.
- D. A building permit shall be obtained from the City prior to beginning construction, in accordance with City ordinances.
- E. If the dock is to have more than two slips for commercial use or for use by persons other than the owner, the applicant/owner shall supply a certified copy, from the Okaloosa County Tax Appraiser, of all names, addresses, and property I.D. numbers of the owners of adjacent

waterfront property.

- F. The Harbor and Waterways Board shall review all timely received applications at the next regularly scheduled Harbor and Waterways Board meeting. The City Council shall take final action on the application within 30 days of receipt of all state and federal permits and the Board's recommendation.
- G. Marinas having ten or more slips and/or non-residential docking facilities shall require a public hearing before the City Council prior to approval.
- H. Building permits must be obtained within one year of final approval by the City Council or the approval expires and must be resubmitted for reconsideration by both the Harbor and Waterways Board and City Council. The project will be subject to all current regulations of the City.
- I. The application must be signed by the title of record owner(s) or any long-term lessee of the abutting upland property.
- J. Applications for permission for dock construction shall include scaled drawings, prepared and certified by a land surveyor or architect, if requested by the Harbors and Waterways Board at the public hearing, and said plans shall include at a minimum:
 - 1. Accurate measurements for depth and width in several locations in the vicinity of the proposed dock.
 - 2. Channels, shoals, obstructions, docks, markers, and proposed improvements.
 - 3. Accurate location of the applicant's shoreline, and the opposing shoreline with corresponding measurements.
 - 4. Riparian lines.
 - 5. Other site specific information.
- K. In water bodies of less than 100 feet in width, owners of property on the opposing shore to the proposed construction shall be provided with written notification of the proposed construction. Any objections received will be provided to the Harbor and Waterways Board and the City Council.
- L. Where multiple slips extend from the shore and on multiple-slip docks and for any slip in a canal, aerators or circulation devices shall be required as determined by the City. Such devices shall be required where it is determined that circulation is deemed to be interfered with by the proposed facilities.
- M. Shorelines shall require protection from erosion as determined by the City.
- N. A net positive environmental benefit (NPEB), equal to 25 percent of the cost of construction shall be made to the City of Destin by the applicant prior to issuance of a building permit for each construction project authorized by this Article, which is located within the Destin Harbor.

- O. No permit shall be issued by the City until the applicant obtains all authorizations and permits from federal and state agencies, and until the required NPEB funds are paid, if applicable.
- P. All applicants shall apply to the City and must receive preliminary approval for the proposed construction prior to taking any other action. Preliminary approval shall be considered for issuance by the City Council after review and recommendations of the Harbor and Waterways Board. If the application is for joint ownership of a dock, the applicant must obtain written permission from all title of record owners and long-term lessees of the abutting upland property. Upon approval of all appropriate federal and state agencies, final approval from the City Council shall be obtained before a permit is issued.
- Q. The following procedures shall apply to transferring permits:
 - 1. The permit is not transferable without the written consent of the City, which consent shall not be unreasonably withheld. The City Manager, or his designee, shall determine transferability upon recommendation of the Board. The decision may be appealed to the City Council.
 - 2. Whenever, during a construction project, a permittee transfers title of record to the abutting upland property or leases that property by long-term lease, a request by the original permittee shall be made to the City to transfer the permit. Forms for this purpose may be obtained from the City. Failure to apply for such a transfer within 30 days from the date the abutting upland property is sold or conveyed by long-term lease will result in an additional fee being charged to the original permittee by the City.
 - 3. At the time of transfer, all construction shall be inspected for compliance with the City's minimum plumbing, electrical and structural requirements and for compliance with the conditions of the existing permit. Fees for said inspections are set forth in Article 18 of this Code. All deficiencies shall be corrected prior to final transfer of the dock.
- R. All construction in the Harbor and waterways of Destin shall require a permit from the City.
- S. The applicant shall be responsible for personal injury or property damage which arises from construction and use of the project to the extent provided by common law.
- T. The City shall retain the right to revoke any permit issued under this Article if the health, safety or welfare of any person or property is in jeopardy, or for any other good cause. If the applicant fails to remove such structure within the time specified upon revocation of the permit, the City shall have the right to immediately remove the same at the cost and expense of the applicant. Good cause shall include, but not be limited to, violation of any permit conditions, or any provision of this Article.
- U. Upon completion of a dock, or other structure requiring a construction permit, a final inspection shall be conducted by the City. After the final inspection is complete, a certificate of occupancy will be issued which shall be a permanent permit for such dock or structure.

11.05.03. *Inspection and repairs.* All construction shall be inspected by the City Building Inspector for compliance with applicable building codes. The permittee shall be responsible for the condition and repair of permitted docks and failure to maintain said docks in a safe condition shall constitute grounds for revocation of the permit.

11.05.04. *Permit revocation.* The City reserves full right, power and authority to revoke a permit at any time for good cause. In the event that permittee fails to remove said structure within the time specified upon revocation of the permit, the City shall have the right to immediately remove same at the cost and expense of the permittee. Good cause shall include, but not be limited to, violation of any permit condition, or any provision of this ordinance.

11.05.05. *Liveaboards.* Except in an emergency, no person(s) shall live aboard any boat in Harbor and waterways of Destin for a period exceeding 48 hours without notifying the Environmental Officer, or other City official as designated by the City Manager, and receiving a registration permit. In cases of an emergency, such notification shall be given to the Environmental Officer within three hours after the immediate emergency situation ceases. Proof that each live-aboard boat has an operable holding tank must be furnished to the Environmental Officer at time of notification. All liveaboards must comply with all applicable regulations of the U.S. Coast Guard, Florida Marine Patrol, and City of Destin.

11.05.06. *Joint ownership docks.* Permits may be granted for joint ownership of a dock at the common riparian boundary, subject to the following conditions:

- A. No permits shall be granted to persons other than the title of record owner or long-term lessee of the abutting upland property.
- B. The permit application must be signed by the owner of record or long-term lessee of all abutting upland property having access to the facility.
- C. The permit shall provide that all parties shall have equal rights under the permit and shall be held jointly responsible for compliance with all rules, regulations and conditions set forth in the permit and this ordinance.
- D. The regulations for setbacks apply to joint ownership docks with the exception that docks may be extended over the common property lines.

11.05.07. *Permit for maintenance and cosmetic improvements.* The City Manager, or his designee, may issue permits within the Harbor and waterways of Destin for which maintenance or cosmetic improvement is accomplished to existing facilities. No permit shall be issued for facilities which do not conform to the standard Harbor drawings and the adopted marina siting requirements.

11.05.08. *Registration of structures.* All existing docks, seawalls and bulkheads located within the Harbor and waterways of Destin shall be registered with the City as follows:

- A.

The title of record or long-term lessee of all existing structures at the time of adoption of this ordinance shall register such structure with the City within 90 days after adoption of this ordinance.

- B. Each structure shall be re-registered upon any change in ownership or long-term lessee of the abutting upland property.
- C. The City shall be notified upon the expiration of an existing long-term lease by the title of record owner of the abutting upland property.
- D. The City shall be notified by the title of record owner and long-term lessee of the abutting upland property upon the destruction of 50 percent of the replacement value of the structure. The City shall maintain a registration of all docks, seawalls and bulkheads located within the Destin Harbor.

11.05.09. *Exceptions.* Exceptions from the provisions of Section 11.05.01 are as follows:

- A. The Board of Adjustment may approve an exception for docks and pilings to be extended beyond the limits allowed in paragraphs M and N of Section 11.05.01 provided that, in addition to the criteria listed in Section 2.25.03.G, the following criteria is also met:
 - 1. That site-specific environmental conditions would impede placement of slips near or next to the shoreline.
 - 2. That site specific environmental conditions exist that prohibit dredging.
 - 3. That the proposed layout of the dock and pilings does not create a hazard to navigation.
 - 4. That no additional slips are obtained than would otherwise fit into a dock of the maximum size allowed without the exception.

11.05.10. *Reconstruction of existing facilities.* For existing facilities which are damaged by accidents, vandalism, ordinary wear and tear or acts of God, the provisions of paragraphs F, G, M, and N of Section 11.05.01 shall not be applicable to reconstruction so long as the damaged facilities are reconstructed in the same or lesser dimensions and so long as the construction permit is applied for from the City within six months of the sustaining damage.

11.05.11. *Penalties.* Any person found in violation of this article shall be punished by a fine not exceeding \$500.00 or imprisoned for a term not exceeding 60 days or by both such fine and imprisonment. Each day any violation of any provision of this Code continues shall constitute a separate offense.

(Ord. No. 152.40, § 3, 8-6-01; Ord. No. 05-13-LC, § 13, 8-22-05; Ord. No. 07-21-LC, §§ 17, 18, 5-7-07; Ord. No. 07-46-LC, § 3, 12-17-07; Ord. No. 09-01-LC, § 3, 2-17-09; Ord. No. 20-02-LC, § 3, 2-18-20)

Editor's note— As of June 1, 1997, this section (§ 11.05.04 excepted) is superseded by Ord. No. 87.1 (codified as City Code ch. 5, art. III). See appendix B hereto.

5003.16
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MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT is made and entered into this 7th day of August of 1995 by and between the Florida Department of Environmental Protection (hereinafter "DEP") and the City of Destin (hereinafter "City"), a political subdivision of the state of Florida.

Article 1. Background and objectives.

WHEREAS, Destin Harbor has experienced significant water quality degradation over the past 50 years from a variety of uncontrolled sources, including untreated stormwater; and

WHEREAS, the City and DEP recognize that Destin Harbor is a vital economic resource of the City due to its unique location and use as a harbor for recreational, sport and commercial fishing vessels; and

WHEREAS, the City, in coordination with the Northwest Florida Water Management District and DEP has implemented a pumping system to attempt to improve water quality in the Destin Harbor caused by past pollutant loading; and

WHEREAS, Section 5-55 (12) of the City's Code of Ordinances limits the number of boat slips within the harbor, and the City has created a harbor master position to police and protect Destin Harbor; and

WHEREAS, the City is committed to further restoration measures and protection of Destin Harbor by implementing a stormwater retrofit and maintenance program to correct and treat currently untreated stormwater discharging into Destin Harbor from Highway 98; and

WHEREAS, the City has made application to Florida Department of Transportation for an ISTEA grant in the amount of FOUR HUNDRED AND FIFTY THOUSAND DOLLARS (\$450,000), which is independent of the DEP's wetland resource permitting actions, to begin the

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process of designing a specific stormwater treatment system to treat stormwater prior to discharge off of U.S. Highway 98 into Destin Harbor; and

WHEREAS, the City has adopted an ordinance, which creates the Destin Harbor Stormwater Trust Fund and which is specifically designated for the funding and implementation of a stormwater retrofit program of untreated stormwater discharge off of U.S. Highway 98 in Destin Harbor; said ordinance does not assess a fee on single family docks and further provides that older docks, which do not increase the number or size of slips in the Destin Harbor will be charged no fee; and

WHEREAS, the funding will include the assessment of a fee in an amount to be determined by the DEP for each new commercial or multifamily residential slip which may only be used for the construction and maintenance of stormwater treatment facilities discharging into Destin Harbor, and which facilities must be approved by the DEP and permitted under Part IV of Chapter 373, Florida Statutes and Title 62 of the Florida Administrative Code; and

WHEREAS, DEP recognizes that the approved program may be offered in lieu of mitigation by an individual applicant to construct or rehabilitate commercial or multifamily slips by making deposits to the previously mentioned trust fund for stormwater retrofit.

NOW, THEREFORE in consideration of the premises and covenants contained herein, the parties agree as follows:

Article 2. Statement of Work.

1. The City shall be responsible for the collection of the fees required in Ordinance No. 275 adopted by the City and agreed to by DEP as set forth in the stormwater retrofit

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ordinance. Said funds shall be deposited by the City into the City Destin Harbor Stormwater Treatment Fund (DHSTF) and shall not be co-mingled with any other City funds.

2. The City may only disburse funds from the DHSTF in accordance with the provisions of the ordinance for the specific purpose of constructing stormwater treatment facilities and maintenance thereof as set forth in Ordinance 275.

3. In the event it is determined the City has excess funds exceeding the amount needed for the construction and maintenance of the stormwater facilities, which facilities must be approved by the DEP and permitted under Part IV of Chapter 373, Florida Statutes and Title 62 of the Florida Administrative Code, the City may disburse any excess funds for other water quality improvement projects benefitting the harbor as mutually agreed to by the City and DEP.

4. The City shall keep detailed accounting records which conform with generally accepted accounting principles which shall include but not be limited to cash receipt journal, cash disbursement journal, general ledger and all other subsidiary ledgers as reasonably necessary. All such reports shall be retained by the City for at least fifteen years from the execution of this Agreement.

5. The City shall provide access to all its records which relate to this Agreement and agrees to provide such assistance as necessary to facilitate their review when necessary by DEP to insure compliance with the County and financial standards. DEP shall have the right to access all such records for for at least fifteen years from the execution of this Agreement.

6. The City shall make all records or documents which relate to this Agreement available to DEP at the official office of the City during regular business hours.

7. Nothing in this Agreement shall be construed as relieving any party or individual applicant of the duty to comply with other applicable federal, state or local laws, regulations or ordinances either presently in existence or as may be amended or delegated to DEP in the future.

Article 3. Term of the Agreement Extension.

A. Initial Term. This Agreement shall be for an initial term of ten years beginning from the date of execution.

b. Extension Terms. This Agreement may be extended upon the same terms and conditions by mutual written agreement of both parties.

C. Continuation of this Agreement in whole or in part will be contingent upon the availability of funds.

Article 4. Key Officials.

THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION:

The Secretary or authorized delegatee will provide review and approval of all terms of all agreements and will exercise the authority to approve conduct of any cooperative projects with regards to the conditions contained herein. The Chief of the Bureau of Submerged Land and Environmental Resources shall act as the authorized technical representative for DEP with regard to the technical scope of this Agreement. DEP shall provide written notice to the City of any changes in key officials within four weeks of any such change.

THE CITY OF DESTIN:

The City Planning Director shall act as the authorized technical representative for the City with regard to the technical scope of this Agreement. The City shall provide written

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notice to DEP of any changes in authorized technical representatives within four weeks of such change.

1. Semiannual reports shall be generated by the City concerning implementation of the stormwater retrofit program as approved by the DEP.

2. The City shall provide to DEP a semiannual statement, in writing showing the net amount remaining in the DHSTF.

3. The City shall submit an annual report to DEP for the previous fiscal year, October 1 through September 30, due June 1 of every year thereafter detailing the amount of monies collected and disbursed, including any disbursement to the City for administrative costs concerning implementation of this Agreement.

Article 5. Amendment.

This Agreement may be modified by amendment upon mutual written agreement of both parties.

Article 6. Termination.

A. This Agreement shall terminate automatically unless the same is extended pursuant to Article 3 by mutual written agreement prior to expiration of the date of this Agreement. If there is money left in the fund at the time of termination, then all monies must be disbursed to implementation of any part of the proposed stormwater treatment facility or other mutually agreed upon water quality improvement program benefitting the harbor.

B. This Agreement may be terminated by mutual agreement of the parties at any time provided that all monies have been committed and/or disbursed to implementation of any part

of the proposed stormwater treatment facility or other mutually agreed upon water quality improvement program benefitting the harbor.

Article 7. Notices.

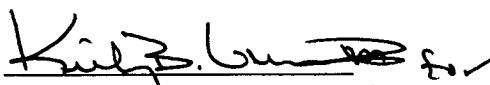
All notices required or permitted to be given under the terms and provisions of this Agreement by either party to the other shall be in writing and shall be sent by registered or certified return receipt requested to the parties as follows: P.O. Box 399, Destin, Florida 32540,
2600 Blair Stone Road
 for the City, Tallahassee, FL 32399 for DEP, or to such other address as hereinafter be provided by parties in writing. Notices by registered or certified mail shall be deemed received on the delivery date indicated by the U.S. Post Office on the return receipt.

Article 8. Venue.

Any litigation hereunder shall be brought in the applicable state or federal courts in Okaloosa or Leon County, Florida. The terms and conditions set forth in this Agreement may be enforced in a court of competent jurisdiction as provided by Florida law.

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the last day and year noted below.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 
 Virginia B. Wetherell, Secretary

Date: 8/14/95

CITY OF DESTIN
 By: 
 Mayor

Date: 8-9-95

Attest:

Carolyn L. Smith

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Deputy Clerk

Approved by the DEP Attorney
for form and legal sufficiency:

Sybil Standaell

Approved by the City Attorney
for form and legal sufficiency:

Robert E. McFarland

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~~MACGOW~~
5003.16

ORDINANCE NO. 275

AN ORDINANCE OF THE CITY OF DESTIN, FLORIDA, RELATING TO CREATION OF A DESTIN HARBOR STORMWATER TRUST FUND; PROVIDING FOR AUTHORITY; PROVIDING FOR CONTRIBUTIONS TO THE DESTIN HARBOR STORMWATER TRUST FUND IN LIEU OF MITIGATION PAYMENTS TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION; PROVIDING FOR A SEPARATE BANK ACCOUNT FOR DESTIN HARBOR STORMWATER TRUST FUNDS; PROVIDING THAT THE CITY ADMINISTER AND MONITOR THE TRUST FUND; PROVIDING FOR CONSTRUCTION AND MAINTENANCE OF A STORMWATER RETRO FIT FACILITY; PROVIDING FOR A MAINTENANCE BUDGET; PROVIDING FOR USE OF EXCESS FUNDS FOR OTHER WATER QUALITY PROGRAMS TO BENEFIT DESTIN HARBOR; PROVIDING FOR ACCESS BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION TO ALL CITY FINANCIAL AND OPERATING RECORDS RELATING TO THE DESTIN HARBOR STORMWATER TRUST FUND; AND PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the harbor in the City of Destin (hereinafter the "harbor") has experienced significant water quality degradation over the past 50 years from a variety of uncontrolled sources, including untreated stormwater; and

WHEREAS, the City and the Florida Department of Environmental Protection (hereinafter referred to as "DEP") recognize that the harbor is a vital economic resource of the City due to its unique location and use for recreational, sport and commercial fishing vessels; and

WHEREAS, the City, in coordination with the Northwest Florida Water Management District and DEP has implemented a pumping system to attempt to improve water quality in the Destin Harbor caused by past pollutant loading; and

WHEREAS, Section 5-55 (12) of the Code of Ordinances of the City of Destin limits the number of boat slips within the harbor and creates a harbor master to protect the harbor; and

WHEREAS, the City is committed to further restoration measures and protection of the harbor by establishing a stormwater treatment facility and maintenance program to correct and treat currently untreated stormwater discharging into the harbor from Highway 98 and its surrounding drainage basins; and

WHEREAS, the City is desirous of creating a separate trust fund to construct and maintain facilities to treat stormwater discharge from U.S. Highway 98 and its surrounding drainage basins.

BE IT ORDAINED by the City Council of Destin, Florida, as follows:

SECTION 1. PROVIDING FOR AUTHORITY. The authority for enactment of this ordinance is Article 1, Section 1.01(b) of the City Charter and Section 166.021, Florida Statutes.

SECTION 2. MITIGATION FUNDS. Any funds required by the DEP to be paid to the City of Destin in lieu of mitigation as defined in Section 373.414(1)(b), Florida Statutes by an applicant to construct or rehabilitate commercial or multi-family residential boat slips in the harbor shall be deposited into the Destin Harbor Trust Fund. These funds are to offset mitigation for water quality impacts pursuant to Section 403.918(2)(b), Florida Statutes.

SECTION 3. CREATION OF BANK ACCOUNT The City shall create a separate interest bearing trust account entitled "Destin Harbor Stormwater Trust Fund", and all mitigation funds received for new commercial, multi-family or residential boat slips shall be deposited directly into this bank account. The funds placed in this bank account shall not be commingled with any other funds of the City of Destin.

SECTION 4. ADMINISTRATION OF TRUST FUNDS The City shall monitor the construction and maintenance of the stormwater treatment facilities. The City Finance Officer shall file a report to the City Council on a semi-annual basis concerning the budget for the Destin Harbor Stormwater Trust Fund.

The City Finance Officer shall keep detailed accounting records of the use of Destin Harbor Stormwater Trust Funds which conform with generally accepted accounting principals and such records shall be maintained by the City for at least five years. The City shall provide complete access to the Florida Department of Environmental Protection of all of its records which in any way relate or pertain to the Destin Harbor Stormwater Trust Fund. As part of its record keeping and budget report, the City shall submit an annual report to the Florida Department of Environmental Protection for the previous fiscal year (October 1 through September 30) and said report shall be delivered to the Florida Department of Environmental Protection on June 1 of every year.

SECTION 5. STORMWATER TREATMENT FACILITIES. The City shall use funds from the Destin Harbor Stormwater Trust Fund account for the construction and maintenance of stormwater treatment facilities, which will treat the stormwater discharge from U.S. Highway 98 and other drainage basins prior to entering the harbor. The construction of the treatment facilities shall be in accordance with plans and specifications provided by the Florida Department of Transportation and approved by the Florida Department of Environmental Protection. Exhibit "A" attached to this ordinance and made a part hereof shows the approximate locations of the three outfalls and the approximate basins for each treatment facility.

SECTION 6. MAINTENANCE OF THE STORMWATER FACILITIES. After the construction of the aforementioned stormwater treatment facilities, funds remaining in Destin Harbor Stormwater Trust Fund account shall be used for the maintenance of the stormwater

treatment facilities. After one year of operation, an annual budget for the maintenance of the facilities for the following year shall be established. The annual budget shall be approved by the City Council.

SECTION 7. USE OF EXCESS FUNDS FOR GENERAL HARBOR RESTORATION. After the aforementioned annual budget is established and approved for the next year, then any funds collected during the subsequent year and deposited in the Destin Harbor Stormwater Trust Fund account in excess of the required budget for annual maintenance of the stormwater facilities and construction of any additional stormwater facilities, if necessary, may be used by the City for other water quality programs benefitting the harbor.

SECTION 8. SEVERABILITY Each separate provision of this ordinance is deemed independent of all other provisions herein so that if any portion or revision of this ordinance is declared invalid, all other provisions thereof shall remain valid and enforceable.

SECTION 10. EFFECTIVE DATE This ordinance shall be effective upon its adoption by City Council and signature of the Mayor.

ADOPTED: July 3, 1995
BY: Gary L. Alden
Gary L. Alden, Mayor

ATTEST:

Philip G. Cook
Philip G. Cook, City Manager

Carolyn Lee Garrett
Carolyn Lee Garrett, City Clerk

The form and legal sufficiency of the foregoing has been reviewed and approved by the City Attorney.

Robert E. McGill, III
Robert E. McGill, III
City Attorney

First Reading: 6-19-95
Second Reading: 7-3-95

X-2.a.

REPORT AND RECOMMENDATION

TO: CITY COUNCIL

FROM: HARBORS AND WATERWAYS BOARD

THRU: PHILIP COOK, CITY MANAGER
JANE MOORE, DIRECTOR PLANNING AND ZONING

SUBJECT: HARBOR BOARD RECOMMENDATION REGARDING EXEMPTIONS TO NET
POSITIVE ENVIRONMENTAL BENEFIT ASSESSMENTS

DATE: OCTOBER 2, 1995

ISSUE:

To establish standard operating procedures for issuing NPEB credits and to establish NPEB exemptions.

BACKGROUND:

The Destin Harbors and Waterways Board held a public workshop on July 31, 1995 to discuss whether boat lifts should be exempt from NPEB assessment. There was also discussion at the September 25, 1995 meeting regarding NPEB credits and exemptions.

DISCUSSION:

The Harbors and Waterways Board discussed the assessment of credits and exemptions for NPEB assessments. The consensus of the board is to include the following as credits and exemptions

NPEB CREDITS

- 1) Sewage Pump Out Stations (when it is not required by DEP)
- 2) Planting of Aquatic vegetation along shoreline for erosion control and sea grasses to improve the harbor ecosystem.
- 3) Establishing and maintaining a Used Oil Recovery Station.
- 4) Removal of creosote pilings. (This does not apply if existing pilings can not be used for new project.)
- 5) Stormwater outfall improvements.
- 6) Contributions to Stormwater Management Trust Fund.
- 7) Difference of cost of pre-stress pilings up to 50% of the NPEB assessment.

NPEB EXEMPTIONS

- 1) Boat lifts installed on existing pilings.**NPEB will be assessed on the installation of new pilings only.***
- 2) Electrical
- 3) Water
- 4) Telephone
- 5) Cable Television

FINANCIAL IMPACT:

The Harbors and Waterways Board feels a person should not be made to pay an NPEB assessment on items that do not contribute to the degradation of the Harbor or items that they consider to be accessories.

RECOMMENDATION:

Harbors and Waterways Board recommends NPEB credits and exemptions as listed above.

SUGGESTED MOTION:

Move that Council approve NPEB credits and exemptions listed above.

REPORT REVIEWED AND APPROVED BY:

City Manager
Planning Director
Environmental Officer

Initial

PC
BB

Date

9.27
9-27-95
9-28-95

HARBOR\REPORT.REC\BLIFT.NPE

ORDINANCE NO. 24-03-PC

AN ORDINANCE OF THE CITY OF DESTIN, FLORIDA, AMENDING COMPREHENSIVE PLAN: 2020; PROVIDING FOR AUTHORITY; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR JURISDICTION; PROVIDING FOR THE ADOPTION OF AN AMENDMENT TO THE COMPREHENSIVE PLAN, CHAPTER 6, COASTAL MANAGEMENT ELEMENT, RELATING TO NET POSITIVE ENVIRONMENTAL BENEFIT (“NPEB”) CONTRIBUTIONS; AMENDING COMPREHENSIVE PLAN POLICY 6-1.2.3: “PROTECT WATER QUALITY WITHIN DESTIN HARBOR”; PROVIDING FOR INCORPORATION INTO THE COMPREHENSIVE PLAN; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

SECTION 1. AUTHORITY.

The authority for enactment of this Ordinance is Article 1, Section 1.01 (b) of the City Charter and Section 166.021, Florida Statutes.

SECTION 2. FINDINGS OF FACT.

WHEREAS, the City Council in providing for the health, safety and welfare of its citizens finds that the City should modify the regulations for marina siting; and

WHEREAS, Policy 6-1.2.3 of the City’s Comprehensive Plan requires protection for water quality within the Destin Harbor; and

WHEREAS, Policy 6-1.2.3 of the City’s Comprehensive Plan provides that:

“[f]or water-dependent development proposed over water within Destin Harbor, the City will continue to administer its Net Positive Environmental Benefit (NPEB) Program to assess such development a fee to support funding of infrastructure improvements that benefit or enhance water quality within Destin Harbor. Water-dependent development for purposes of this policy include marinas, boating facilities, construction supporting commercial or sport fishing, construction supporting marine activities, passenger ferries, boardwalks, and recreation-related activities. Net positive environmental benefits are the gains in environmental quality or other ecological properties attained by remediation or ecological restoration, less the environmental harm caused by those actions. The NPEB contribution shall be computed as 25% of the cost for construction occurring waterward from the mean high-water line. The NPEB fee shall only be assessed for those construction projects receiving necessary permits or exemption documentation from the Florida Department of Environmental Protection. Fees collected by the City shall be earmarked to a water quality improvement fund used only to pay for infrastructure improvements or

ecological projects benefiting water quality or ecology within Destin Harbor. In lieu of payment of a fee used for water quality infrastructure improvements, the City may grant fee credit for stormwater improvements or other similar environmental projects implemented by property owners or developers if such improvement or project enhances or benefits water quality or the ecologic conditions within Destin Harbor above minimum standards established by the City and DEP.

WHEREAS, the City Council desires to amend the Comprehensive Plan and Land Development Code to modify the NPEB contribution amount which is currently set at 25% of the cost for construction occurring waterward from the mean high water line; and

WHEREAS, the City's Harbor and Waterways Board recommended establishing a class structure for marine construction projects consisting of the following three classes, generally: Class 1 would include all state self-certified docks, Class 2 would include all residential docks with 3 to 9 boat slips or those larger than 1000 square feet, and Class 3 would include all commercial docks and any residential projects that do not fit within Class 1 or 2; and

WHEREAS, the Harbor and Waterways Board recommended the following NPEB fee amounts be required in each of the three classes of marine construction projects: 7% for Class 1; 10% for Class 2; 25% for Class 3; and

WHEREAS, on October 5, 2023, the City Council voted to approve and codify the Harbor and Waterways Board's recommendations; and

WHEREAS, City Council has determined that a Comprehensive Plan Amendment is required in order to enact the desired updates to City policies; and

WHEREAS, a public hearing has been conducted after due public notice by the Local Planning Agency and its recommendations reported to the City Council; and

WHEREAS, a public hearing has been conducted by the City Council after due public notice.

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

NOTE: Language in all sections of this ordinance that is ~~strike-thru~~ is language proposed to be deleted, underline language is language to be added, language that is not in strike-thru or underlined is not to be changed. The symbol * represents sections of the City's Comprehensive Plan that have been skipped and remain unchanged.**

SECTION 3. AMENDMENTS TO CHAPTER 6 OF COMPREHENSIVE PLAN.

Policy 6-1.2.3 of the City's Comprehensive Plan is hereby amended as follows:

“[f]or water-dependent development proposed over water within Destin Harbor, the City will continue to administer its Net Positive Environmental Benefit (NPEB) Program to assess such development a fee to support funding of infrastructure improvements that benefit or enhance water quality within Destin Harbor. Water-dependent development for purposes of this policy include marinas, boating facilities, construction supporting commercial or sport fishing, construction supporting marine activities, passenger ferries, boardwalks, and recreation-related activities. Net positive environmental benefits are the gains in environmental quality or other ecological properties attained by remediation or ecological restoration, less the environmental harm caused by those actions. ~~The NPEB contribution shall be computed as 25% of the cost for construction occurring waterward from the mean high water line.~~ The NPEB fee shall only be assessed for those construction projects receiving necessary permits or exemption documentation from the Florida Department of Environmental Protection. Fees collected by the City shall be earmarked to a water quality improvement fund used only to pay for infrastructure improvements or ecological projects benefiting water quality or ecology within Destin Harbor. In lieu of payment of a fee used for water quality infrastructure improvements, the City may grant fee credit for stormwater improvements or other similar environmental projects implemented by property owners or developers if such improvement or project enhances or benefits water quality or the ecologic conditions within Destin Harbor above minimum standards established by the City and DEP.

SECTION 4. INCORPORATION INTO COMPREHENSIVE PLAN. This ordinance shall be incorporated into the City of Destin's Comprehensive Plan and any section or paragraph number or letter and any heading may be changed or modified as necessary to effectuate the foregoing.

SECTION 5. CONFLICTING PROVISIONS. City Ordinances and City Resolutions, or parts, thereof, in conflict with the provisions of this ordinance are hereby superseded by this ordinance to the extent of such conflict.

SECTION 6. SEVERABILITY. If any section, phase, sentence, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any 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 7. EFFECTIVE DATE. This ordinance shall become effective upon occurrence of all three of the following: (1) its adoption by the City Council, (2) signature by the Mayor, and (3) The Comprehensive Plan amendment set forth herein shall not become effective, in accordance with Section 163.3184(3), *Florida Statutes*, until 31 days after the State land planning agency (Florida Department of Economic Opportunity) notifies the City that the Comprehensive Plan amendment package is complete. If timely challenged, the Comprehensive Plan amendment shall not become effective until the said State land

planning agency or the Administration Commission enters a final order determining the adopted amendment to be in compliance.

ADOPTED THIS _____ DAY OF _____, 2024.

By: _____
Bobby Wagner, Mayor

ATTEST:

The form and legal sufficiency of the foregoing has been reviewed and approved by the City Attorney, for the City of Destin, only.

Rey Bailey, City Clerk

Kimberly Romano Kopp, City Attorney

First Reading: _____
Second Reading: _____

ORDINANCE NO. 24-04-LC

AN ORDINANCE OF THE CITY OF DESTIN, FLORIDA; AMENDING SECTION 11.05.00 OF THE LAND DEVELOPMENT CODE TO DEFINE CATEGORIES 1, 2 AND 3 FOR HARBOR DOCK CONSTRUCTION AND AMEND REQUIRED PAYMENT AMOUNTS OF NET POSITIVE ENVIRONMENTAL BENEFIT FEES BASED ON HARBOR DOCK CONSTRUCTION CATEGORY; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR INCORPORATION INTO THE LAND DEVELOPMENT CODE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

SECTION 1. AUTHORITY.

The authority for enactment of this Ordinance is Article 1, Section 1.01 (b) of the City Charter and Section 166.021, Florida Statutes.

SECTION 2. FINDINGS OF FACT.

WHEREAS, the City Council in providing for the health, safety and welfare of its citizens finds that the City should modify the regulations for marina siting; and

WHEREAS, Policy 6-1.2.3 of the City's Comprehensive Plan requires protection for water quality within the Destin Harbor; and

WHEREAS, Policy 6-1.2.3 of the City's Comprehensive Plan provides that:

“[f]or water-dependent development proposed over water within Destin Harbor, the City will continue to administer its Net Positive Environmental Benefit (NPEB) Program to assess such development a fee to support funding of infrastructure improvements that benefit or enhance water quality within Destin Harbor. Water-dependent development for purposes of this policy include marinas, boating facilities, construction supporting commercial or sport fishing, construction supporting marine activities, passenger ferries, boardwalks, and recreation-related activities. Net positive environmental benefits are the gains in environmental quality or other ecological properties attained by remediation or ecological restoration, less the environmental harm caused by those actions. The NPEB contribution shall be computed as 25% of the cost for construction occurring waterward from the mean high-water line. The NPEB fee shall only be assessed for those construction projects receiving necessary permits or exemption documentation from the Florida Department of Environmental Protection. Fees collected by the City shall be earmarked to a water quality improvement fund used only to pay for infrastructure improvements or ecological projects benefiting water quality or ecology within Destin Harbor. In lieu of payment of a fee used for water quality infrastructure improvements, the City may grant fee credit for stormwater improvements or other similar environmental projects implemented by property owners or developers if such

improvement or project enhances or benefits water quality or the ecologic conditions within Destin Harbor above minimum standards established by the City and DEP.

WHEREAS, the City is currently processing a Comprehensive Plan amendment concurrent with this Ordinance to modify the NPEB contribution amount which is currently set at 25% of the cost for construction occurring waterward from the mean high water line; and

WHEREAS, the City's Harbor and Waterways Board recommended establishing a class structure for marine construction projects consisting of the following three classes, generally: Class 1 would include all state self-certified docks, Class 2 would include all residential docks with 3 to 9 boat slips or those larger than 1000 square feet, and Class 3 would include all commercial docks and any residential projects that do not fit within Class 1 or 2; and

WHEREAS, the Harbor and Waterways Board recommended the following NPEB fee amounts be required in each of the three classes of marine construction projects: 7% for Class 1; 10% for Class 2; 25% for Class 3; and

WHEREAS, on October 5, 2023, the City Council voted to approve and codify the Harbor and Waterways Board's recommendations; and

WHEREAS, City Council has determined that this ordinance is consistent with the adopted comprehensive plan and is in the best interests of the City and its citizens; and

WHEREAS, a public hearing has been conducted after due public notice by the Local Planning Agency and its recommendations reported to the City Council; and

WHEREAS, a public hearing has been conducted by the City Council after due public notice.

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

NOTE: Language in all sections of this ordinance that is ~~strike-thru~~ is language proposed to be deleted, underline language is language to be added, language that is not in strike-thru or underlined is not to be changed. The symbol *** represents sections of the Land Development Code that have been skipped and remain unchanged.

SECTION 3. AMENDMENTS TO LAND DEVELOPMENT CODE ARTICLE 11.

Section 11.05.00 of the Land Development Code is hereby amended as follows:

11.05.00. - Marina siting.

11.05.02. *Permitting procedures.* The following procedures shall be adhered to by persons desiring to construct a new dock or add to, alter or remodel, add riprap to, or reconstruct an existing dock:

- G. ~~Marinas having ten or more slips and/or non-residential docking facilities shall require a public hearing before the City Council prior to approval.~~ Marine Construction Project Classifications Categories.

1: The following marine construction projects are considered Category 1, provided they do not otherwise require Harbor & Waterways Board review pursuant to this Article 11:

- a. Residential docks that qualify for self-certification from Florida Department of Environmental Protection (FDEP);
 - b. Residential docks with 2 or fewer slips;
 - c. Boat lifts in existing slips;
 - d. Upland slips not located within state waters; and
 - e. Sea walls.
2. Class 2: Marine Construction projects shall be considered Category 2 provided they do not otherwise require Harbor & Waterways Board review pursuant to this Article 11:
- a. Residential docks not qualifying for FDEP self-certification;
 - b. Residential docks with 3-9 slips;
 - c. Residential docks requiring U.S. Army Corps of Engineers (USACE) approval; and
 - d. Residential docks proposed within twenty-five feet (25') of any established or implied riparian setback from adjacent properties.
3. The following marine construction projects are Category 3:
- a. Residential docks with 10 or more slips;
 - b. Commercial docks;
 - c. Other non-residential docks;
 - d. Oil abatement plans; and
 - e. Dredge and/or fill requests.

- N. A net positive environmental benefit (NPEB), ~~equal to 25 percent of the cost of construction~~ shall be made to the City of Destin by the applicant prior to issuance of a building permit for each construction project authorized by this Article, which is located within the Destin Harbor or within any canals adjacent to the Destin Harbor, as follows:

Class 1 Harbor Dock Construction Projects – 7% of the cost of construction;

Class 2 Harbor Dock Construction Projects – 10% of the cost of construction;

Class 3 Harbor Dock Construction Projects – 25% of the cost of construction.

- O. No permit shall be issued by the City until the applicant obtains all authorizations and permits from federal and state agencies, and until the required NPEB funds are paid, if applicable.

SECTION 4. INCORPORATION INTO LAND DEVELOPMENT CODE. This ordinance shall

be incorporated into the City of Destin's Land Development Code and any section or paragraph number or letter and any heading may be changed or modified as necessary to effectuate the foregoing.

SECTION 5. CONFLICTING PROVISIONS. City Ordinances and City Resolutions, or parts, thereof, in conflict with the provisions of this ordinance are hereby superseded by this ordinance to the extent of such conflict.

SECTION 6. SEVERABILITY. If any section, phase, sentence, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any 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 7. EFFECTIVE DATE. This ordinance shall become effective upon occurrence of all three of the following: (1) its adoption by the City Council, (2) signature by the Mayor, and (3) Ordinance 24-03-PC (containing the Comprehensive Plan text amendment for the amount of the NPEB fee) becoming effective. In the event that Ordinance 24-03-PC does not become effective, this Ordinance shall be null and void.

ADOPTED THIS _____ DAY OF _____, 2024.

By: _____
Bobby Wagner, Mayor

ATTEST:

The form and legal sufficiency of the foregoing has been reviewed and approved by the City Attorney, for the City of Destin, only.

Rey Bailey, City Clerk

Kimberly Romano Kopp, City Attorney

First Reading: _____
Second Reading: _____

CITY OF DESTIN – COMMUNITY DEVELOPMENT



AGENDA ITEM

MEETING DATE: March 28, 2024

BOARD/COMMITTEE: Harbor & Waterways Board

TYPE OF AGENDA ITEM: Action Item

OUTLINE NUMBER: 4.B.

TO: Harbor & Waterways Board

THRU: Louis Zunguze, Interim City Manager
Kimberly Kopp, City Attorney

FROM: Daniel Butler, Senior Planner
Steve O'Connor, Principal Planner

DATE: March 22, 2024

SUBJECT: Draft Land Development Code Marina Siting Section of the Draft Article 7 –
Resource Conservation & Protection

I. BACKGROUND:

On April 5, 2021, Staff brought the Scope of Work and Budget to completely rewrite the **Land Development Code (LDC)** for approval to the City Council, both of which were approved unanimously. Since that time, Staff has worked with the 3TP Consultants to move forward diligently and systematically with drafting the new LDC. This work to date has involved the following:

Review of Comprehensive Plan Policies
Developing Planning Areas and their associated Intent Statements
Review of the LDC text chapter by chapter

II. DISCUSSION:

The LDC Rewrite Project is a complete reorganization and update to the development standards and regulations for the City of Destin. Currently, the **Marina Siting** section is located in *Article 11 – Coastal Management and Conservation*.

The reorganization of the regulations has taken all procedural processes and placed them in *Article 2 – Administration*. Meaning, all marine projects' application review and approval processes by the **Harbor and Waterways Board (HWB)** and **City Council** (if applicable) is proposed to be located there, as discussed with the **HWB** in April 2023. On the other hand, the specific development standards are proposed to be placed in *Section 7.02 – Marina Siting of Article 7 – Resource Conservation & Protection*.

Section 7.02 – Marina Siting

This section focuses on the proposed Marina Siting specific regulations and development standards. The attached **Section 7.02** lists all the development standards that an applicant must meet when proposing a residential or commercial dock. The language included in the proposed **Marina Siting Section 7.02** is significantly less than what is currently in **11.05.00 – Marina Siting** due to the reorganization of the LDC, i.e:

- a. relocating the application and review procedures from the current Marina Siting regulations to **Article 2 - Administration**, and
- b. removing the language that is more appropriately located within the Code of Ordinances.

The intent of the report is to find out from the HWB if there are any elements or regulations the Board considers to be missing or need to be improved for stronger regulations or clarity regarding the development of marine facilities. This can include new requirements to meet state or federal regulations for marine facilities, such as fuel abatement plans, max length, slip densities, etc.

A. Link to Strategic Goals / Objectives: #2. Enhanced quality of life and safety for families

#3. Economic development and revitalization

#4. Effective, efficient, and aesthetically pleasing infrastructure

#6 A green and sustainable environment.

B. Effect on Budget (EOB): Budget for this work is already approved.

C. Level of Service (LOS): Develop and implement processes for consistent and streamlined application of codes and procedures.

D. Legislative Sponsor:

III. CONCLUSION:

Staff is seeking the Board's input and recommendation of the proposed development regulations for marine facilities as presented in **Section 7.02 – Marina Siting** of the draft **Article 7 of the LDC**. Any recommendations the Board provides will be incorporated into a report for the **Local Planning Agency (LPA)** and **City Council's** consideration and review before going back forward with the final draft development.

STAFF RECOMMENDATION: Staff recommends the Harbor & Waterways Board forward a positive recommendation to City Council for the proposed Marina Siting language.

IV. RECOMMENDED MOTION:

I move that the Harbor & Waterways Board recommend City Council approve the proposed language of **Section 7.02 – Marina Siting** of the Draft **Article 7 – Resource Conservation & Protection** as presented.

ALTERNATE MOTION: I move that the Harbor & Waterways Board recommend City Council approve the proposed language of **Section 7.02 – Marina Siting** of the

Draft *Article 7 – Resource Conservation & Protection* with the following additional regulations ().

Attachments:

1. 1. Marina Siting DRAFT - Article 7
Section 7.02
2. 2. Ordinance 20-06-LC Marina Siting
DRAFT - With comments
3. 3. Article 2 - Administration - Section
2.08. - April 2023

City of Destin, FL - Land Development Code

SECTION 7.02 MARINA SITING

SECTION 7.02.01 PURPOSE

- A. This Section establishes and regulates standards by which the City controls and regulates development, construction, and activities within and contiguous to the Harbor and waterways of Destin.

SECTION 7.02.02 GENERAL REGULATIONS

- A. The requirement of a Harbor and Waterways Board (HWB) application, and any applicable public hearings, shall be in accordance with Section 2.08.03 of this Code.
- B. All marine construction projects shall provide the City with the applicable homeowner's association (if applicable), State, and Federal approvals at the time of building permit submittal.
- C. No dock of 100 feet or longer shall be constructed unless a white navigation/security night-light is installed at the furthest point seaward on said dock.
 - 1. All navigation/security night-lights shall be illuminated continuously from dusk to dawn every night of the year.
 - 2. All existing docks 100 feet or longer shall install and operate a navigation/security light pursuant to this subsection.
 - a. Each light shall be installed within 90 days after adoption of this Code.
- D. No utility services shall be installed upon any dock without a permit obtained from the City.
- E. Aerators or circulation devices may be required as determined by the City when it is determined that the water circulation is deemed to be impacted negatively by the proposed facilities.

SECTION 7.02.03 COMMERCIAL REGULATIONS

- A. Commercial marine businesses located within the City that rent or operate passenger vessels must provide designated docking facilities, whether privately owned or leased.
- B. All commercial docks shall be designed with at least one (1) sewage pump out station for public use. Such sewage pump out station shall be operable and maintained.
- C. All commercial docks shall be designed with the necessary firefighting facilities, as specified by the City or Destin Fire Control.

SECTION 7.02.04 DIMENSIONAL AND DENSITY LIMITATIONS

- A. Length
 - 1. The following table includes the maximum dock length allowed for any new dock construction or modifications. For the purposes of this subsection, lots may be combined with neighboring lots, however no dock may exceed the limitations outlined in this Section:

Dock Location	Maximum Length Allowed
Any waterfront property not adjacent to Choctawhatchee Bay or zoned South Harbor Mixed Use (SHMU)	The width of the lot at the mean high-water line, or 20% of the width of the adjacent waterway at the place the pier is located, whichever is less.
Waterfront property with uplands zoned South Harbor Mixed Use (SHMU)	1.5 times the width of the lot at the mean high-water line, or 20% of the width of the adjacent waterway at the

DRAFT

City of Destin, FL - Land Development Code

	place the pier is located, whichever is less.
Waterfront property adjacent to Choctawhatchee Bay.	1.5 times the width of the lot at the mean high-water line, or 200 feet, whichever is less.
Waterfront Property with less than 50 feet of waterfront shoreline.	No individual dock is allowed, unless parallel to the shoreline (marginal dock). Marginal docks shall not be wider than six (6) feet. Docks may be allowed if lots are combined with neighboring lots in accordance with Section 7.02.04.A.

- B. No pier shall extend more than six (6) feet into a canal right-of-way.
- C. Density
 - 1. No dock shall be constructed or modified such that slip density exceeds one (1) slip per eight (8) linear feet of waterfrontage.
 - 2. Docks along canals shall not have more than one (1) slip per 45 linear feet of waterfrontage.
 - 3. Lots that are riparian to a canal shall be entitled to at least two (2) slips on the canal.

ORDINANCE NO. 20-06-LC

AN ORDINANCE OF THE CITY OF DESTIN, FLORIDA AMENDING SECTION 11.05.00 OF THE LAND DEVELOPMENT CODE; AMENDING REGULATIONS FOR MARINA SITING; PROVIDING FOR FINDINGS OF FACT; PROVIDING FOR INCORPORATION INTO THE LAND DEVELOPMENT CODE; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

SECTION 1. AUTHORITY.

The authority for enactment of this Ordinance is Article 1, Section 1.01 (b) of the City Charter, Section 166.021, Florida Statutes and Chapter 163, Part II, Florida Statutes.

SECTION 2. FINDINGS OF FACT.

WHEREAS, the City Council in providing for the health, safety and welfare of its citizens finds that the City should modify the regulations for marina siting; and

WHEREAS, the City Council has determined that this ordinance is consistent with the adopted comprehensive plan and is in the best interests of the City and its citizens; and

WHEREAS, a public hearing has been conducted after due public notice by the Local Planning Agency and its recommendations reported to the City Council; and

WHEREAS, a public hearing has been conducted by the City Council after due public notice.

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

NOTE: Language in all sections of this ordinance that is ~~strike-thru~~ is language proposed to be deleted, underline language is language to be added, language that is not in strike-thru or underlined is not to be changed. The symbol * represents sections of the Land Development Code that have been skipped and remain unchanged.**

SECTION 3. AMENDMENT OF LAND DEVELOPMENT CODE SECTION 11.05.00.

Section 11.05.00 of the Land Development Code is hereby amended as follows:

11.05.00. - Marina siting.

Section 7.02.01 11.05.01. *General regulations; prohibitions.* This article establishes and regulates procedures and standards by which the City controls and regulates development, construction and activities within and contiguous to the Harbor and waterways of Destin. The following regulations and prohibitions shall apply to the Harbor and waterways of Destin:

Section 2.08

No person shall construct or add to an existing dock, seawall, bulkhead, mooring or piling, modify an existing submerged land lease, or conditions thereto, or conduct dredge or fill operations in, or contiguous to, the Harbor or waterways of Destin without first obtaining the proper authorization from the appropriate federal, state and City agencies.

- B. All new commercial docks, marinas, upland cuts, and proposed single-family marine construction projects of 1000 square feet or more shall require approval from the Harbor and Waterways Board and City Council. The addition or modification of a boat lift or pilings within an existing legal and conforming boat slip shall not require the review of the Harbor and Waterways Board or the City Council. Rather, a copy of the U.S. Army Corps of Engineers permit, DEP permit, and a homeowner's association approval (if applicable) shall accompany a completed application for a building permit, provided no additional slips are created.

**Section 2.08 &
Section 7.02.02**

**Move to Code
of Ordinances**

**Move to Code
of Ordinances**

**Move to Code
of Ordinances
and to Section
2.13.04 - Fuel
Abatement
Location TBD**

- C. No fish carcasses and debris shall be discharged into the Harbor or waterways of Destin.
- D. No person who maintains or operates a dock shall allow or permit the disposal of fish carcasses, litter, waste petroleum products or other pollutants into the Harbor or waterways of Destin. Trash disposal receptacles shall be anchored to each dock to ensure compliance with the provisions of this article.
- E. No fuel or oil shall be willfully or knowingly discharged in the Harbor or waterways of Destin. No dock which sells fuel or oil shall be constructed, operated or maintained in the Harbor or waterways of Destin unless an oil abatement plan, in accordance with Coast Guard guidelines, is available at each dock. The Destin Harbor and Waterways Board shall review and recommend approval or disapproval of each oil abatement plan to the City Council, which shall have approval authority. Each existing dock which sells fuel or oil shall develop and have approved an oil abatement plan acceptable to the City. All new docks which sell fuel or oil shall develop and have an approved oil abatement plan, which is acceptable to the City, prior to receiving a building permit from the City.

Section 7.02.04

- F. No new or existing dock shall be constructed or modified such that the length of any pier as completed is greater than 20 percent of the width of the Harbor or waterway at the place where the pier is located, or out 200 feet, whichever is less, except in Choctawhatchee Bay.

Section 7.02.04

- G. No piling(s) shall be added to the waterward end of any pier which piling(s) would make the total length of the dock more than 200 feet, or 20 percent of the waterway, whichever is less, except in Choctawhatchee Bay.

**Move to Code
of Ordinances**

- H. No vessel shall be moored or docked on the waterward end of any pier of the maximum legal length, as determined pursuant to subsection F above, for more than 72 hours.

Section 7.02.03

- I. No dock shall be constructed which permits the commercial docking of boats with on-board toilets unless such the dock is equipped with a sewage pump-out.

**Move to Code
of Ordinances**

- J. No dock shall be constructed which permits the docking of a live-aboard unless such vessel has an operable holding tank.

**Move to Code
of Ordinances**

- K. No boat shall be moored in the Harbor or waterways of Destin such that constitutes a hazard to navigation.

Removed

- L. No dock shall be constructed such that it constitutes a hazard to navigation.

Section 7.02.04

- M. Excepting docks connected to uplands zoned SHMU, or those located on Choctawhatchee Bay, no dock shall be longer than the width, at the mean high-water line, of the lot to which the dock is attached.

- Section 7.02.04** 1. For those docks connected to uplands zoned SHMU, or those located on Choctawhatchee Bay, a dock may be constructed to a length of 1.5 times the width of the property at the mean high-water line, provided the length of the dock not exceed the maximum length established by paragraphs F and G above.
2. For the purpose of this subsection, lots may be combined with neighboring lots. However, no dock may exceed the limitations specified in subsection F above.
- Section 7.02.04** N. No dock shall be constructed or modified such that slip density exceeds one slip per eight lineal feet of waterfront footage except that, on canals, no lot may have more than one slip per 45 linear feet of waterfront. However, all lots riparian to a canal shall be entitled to at least two slips on the canal.
- Move to Code of Ordinances** O. No boat or vessel, entering into, exiting or operating within the Destin Harbor shall operate at such speed that would create a wake that endangers other boats or vessels, swimmers or other persons within the Destin Harbor, or would contribute to any adjacent land erosion.
- Move to Code of Ordinances** P. No heated or cooled water may be emitted into the Harbor, waterways, or the Harbor canals other than from a boat.
- Section 7.02.04** Q. No pier shall extend more than six feet into a canal right-of-way.
- Move to Code of Ordinances** R. No discharge of water shall contain phosphorous or any other substance likely to cause a violation of the water quality standards specified in Chapter 17-302, Florida Administrative Code.
- Section 2.02.03.** S. No dock or vessel shall be placed within the 25-foot setback of a property line without providing prior written notification to the adjoining landowners. ~~and requesting their response.~~ Any objections received from the adjoining property owners will be considered by the Harbor and Waterways Board in their recommendations to the City Council.
- Section 2.08.03** T. No dock shall unreasonably interfere with the riparian rights of others. Any objections received from the adjoining property owners will be considered by the Harbor and Waterways Board in their recommendations to the City Council.
- Section 7.02.02** U. No dock of 100 feet or longer shall be constructed unless a white navigation/security night-light is installed at the furthest point seaward on said dock and such light is to be illuminated continuously from dusk to dawn every night of the year. All existing docks 100 feet or longer shall install and operate a navigation/security light pursuant to this subsection. Each light shall be installed within 90 days after adoption of this Code.
- Section 7.02.03** V. No commercially operated boat docking facilities shall be permitted or operated unless equipped with firefighting facilities as specified by the City.
- Section 2.08.05** W. No construction shall be allowed which violates any provision of the Standard Building Code, as adopted by the City.
- Section 7.02.02** X. No electrical or water service upon any dock shall be installed unless a permit is obtained from the Planning Department and Building Department for that service.
- Move to Code of Ordinances** Y. No person, while operating a boat within the or waterways of Destin shall allow or permit the disposal of fish carcasses, litter, waste, petroleum products or other pollutants into the Harbor or waterways of Destin from such boats.
- Section 7.02.04** Z. No lot, or multi-contiguous lots, with less than 50 feet of waterfront footage shall be allowed individual docks, unless they are parallel to the shoreline. However, docks may be allowed under the provisions of subsection 11.05.01.M.2. Any objections received from the adjoining property

owners will be considered by the Harbor and Waterways Board in their recommendations to the City Council.

Section 7.02.03 X. Commercial marine businesses located in South Harbor Mixed Use (SHMU) and/or Calhoun Mixed Use (CMU), that operate or rent passenger vessels must provide designated docking facilities, whether privately owned or leased.

Section 2.14.03 11.05.02. *Permitting procedures.* The following procedures shall be adhered to by persons desiring to construct a new dock or add to, alter or remodel, add riprap to, or reconstruct an existing dock:

- A. Persons desiring to construct a new dock or add to, alter, remodel, add riprap to, or reconstruct an existing dock shall apply for and obtain a permit and other authorization from the City prior to construction.
- B. Each applicant shall designate the location of his property on the or waterways of Destin and attach this to the building permit application and must complete the City application form(s).
- C. Application shall be made by filing with the City, the City's permit application form and a copy of the joint application form used by the United States Army Corps of Engineers, and the Florida Department of Environmental Protection, the requirements of which are expressly adopted herein as they existed on the effective date of this Code, and as they are hereafter amended by said respective agencies.
- D. A building permit shall be obtained from the City prior to beginning construction, in accordance with City ordinances.
- E. If the dock is to have more than two slips for commercial use or for use by persons other than the owner, the applicant/owner shall supply a certified copy, from the Okaloosa County Tax Appraiser, of all names, addresses, and property I.D. numbers of the owners of adjacent waterfront property.
- F. **Section 2.14.03** City Staff ~~The Harbor and Waterways Board~~ shall review all timely received applications. Applications that meet the requirement of 11.05.01.B will be reviewed at the next regularly scheduled Harbor and Waterways Board meeting. The City Council shall take final action on the application within 30 days of receipt of all state and federal permits and the Board's recommendation.
- G. **Section 2.08.03** Marinas having ten or more slips and/or non-residential docking facilities shall require a public hearing before the City Council prior to approval. A marina having ten or more slips and/or non-residential docking facilities shall be denied if the City Council determines that the proposed development does not meet the criteria outlined in this section and, further if the proposed development is adverse to the public's interest.

Criteria for marinas and/or non-residential docking facilities:

- 1. **Section 7.02.02** Land use compatibility. The applicant shall demonstrate that the proposed development, including its proposed scale and intensity, traffic-generating characteristics, and off-site impacts are compatible and harmonious with adjacent land use and will not adversely impact land use activities in the immediate vicinity. The proposed development shall meet or exceed the requirements outlined in Article 7.12.00, City's Land Development Code.

2. Proper use of mitigative infrastructure. The applicant shall demonstrate the proposed development and site plan have been designed to incorporate mitigative techniques needed to prevent adverse impacts to surface waters. The proposed development shall meet or exceed the requirements outlined in Article 10.03.00, City's Land Development Code.

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3. Hazardous waste. The proposed development shall not generate hazardous waste or require use of hazardous materials in its operation without use of city-approved mitigative techniques designed to prevent any adverse impacts to adjacent surface waters. The development shall include best management principles and practices and must comply with the requirements outlined in Article 11.09.00, City's Land Development Code.

H. Building permits must be obtained within one year of final approval by the City Council or the approval expires and must be resubmitted for reconsideration by both the Harbor and Waterways Board and City Council. The project will be subject to all current regulations of the City.

I. The application must be signed by the title of record owner(s) or any long-term lessee of the abutting upland property.

K. Applications for permission for dock or upland cut construction shall include scaled drawings, - prepared and certified by a land surveyor or architect, if requested by the Harbors and Waterways Board at the public hearing, and said plans shall include at a minimum:

1. Boundary Survey or Plat, to include:

- i. Location of the mean high-water line
- ii. Linear feet of water frontage

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2. Accurate measurements for depth and width in several locations in the vicinity of the proposed dock, in addition to:

- i. Linear feet and/or total square footage of the proposed project
- ii. Boathouse height, if applicable
- iii. Identification of environmentally sensitive areas, if applicable (i.e., sea grasses)

3. Accurate location of the applicant's shoreline, and the opposing shoreline with corresponding measurements, if applicable (i.e., Destin Harbor, Joe's Bayou, Indian Bayou)

4. Riparian lines setbacks (i.e., 25' adjacent property lines)

5. Other site-specific information.

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K. In water bodies of less than 100 feet in width, owners of property on the opposing shore to the proposed construction shall be provided with written notification of the proposed construction. Any objections received will be provided to the Harbor and Waterways Board and the City Council.

- L. Where multiple slips extend from the shore and on multiple-slip docks and for any slip in a canal, aerators or circulation devices shall be required as determined by the City. Such devices shall be required where it is determined that circulation is deemed to be interfered with by the proposed facilities.

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- M. Shorelines shall require protection from erosion as determined by the City.

- N. A net positive environmental benefit (NPEB), equal to 25 percent of the cost of construction shall be made to the City of Destin by the applicant prior to issuance of a building permit for each construction project authorized by this Article, which is located within the Destin Harbor.

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- O. No permit shall be issued by the City until the applicant obtains all authorizations and permits from federal and state agencies, and until the required NPEB funds are paid, if applicable.

- P. All applicants shall apply to the City and must receive preliminary approval for the proposed construction prior to taking any other action. Preliminary approval shall be considered for projects meeting the criteria outlined in 11.05.01.B by the City Council after review and recommendations of the Harbor and Waterways Board. If the application is for joint ownership of a dock, the applicant must obtain written permission from all title of record owners and long-term lessees of the abutting upland property. Upon approval of all appropriate federal and state agencies, final approval from the City Council shall be obtained before a permit is issued.

- Q. The following procedures shall apply to transferring permits:

1. The permit is not transferable without the written consent of the City, which consent shall not be unreasonably withheld. The City Manager, or his designee, shall determine transferability upon recommendation of the Board. The decision may be appealed to the City Council.
2. Whenever, during a construction project, a permittee transfers title of record to the abutting upland property or leases that property by long-term lease, a request by the original permittee shall be made to the City to transfer the permit. Forms for this purpose may be obtained from the City. Failure to apply for such a transfer within 30 days from the date the abutting upland property is sold or conveyed by long-term lease will result in an additional fee being charged to the original permittee by the City.
3. At the time of transfer, all construction shall be inspected for compliance with the City's minimum plumbing, electrical and structural requirements and for compliance with the conditions of the existing permit. Fees for said inspections are set forth in Article 18 of this Code. All deficiencies shall be corrected prior to final transfer of the dock.

Remove

- R. All construction in the Harbor and waterways of Destin shall require a permit from the City.

- S. The applicant shall be responsible for personal injury or property damage which arises from construction and use of the project to the extent provided by common law.

- T. The City shall retain the right to revoke any permit issued under this Article if the health, safety or welfare of any person or property is in jeopardy, or for any other good cause. If the applicant fails to remove such structure within the time specified upon revocation of the permit, the City shall have the right to immediately remove the same at the cost and expense of the applicant. Good cause shall include, but not be limited to, violation of any permit conditions, or any provision of this Article.

- U. Upon completion of a dock, or other structure requiring a construction permit, a final inspection shall be conducted by the City. After the final inspection is complete, a certificate of occupancy will be issued which shall be a permanent permit for such dock or structure.

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Remove

V. The addition or modification of an upland cut shall require the review of the Harbor and Waterways Board and City Council. A copy of the U.S. Army Corps of Engineers permit, DEP permit, and a homeowner's association approval (if applicable) shall be required at the time of permit issuance. The project will be subject to all current regulations of the City, and must meet the minimum side setback requirements for said zoning districts.

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W. Written notice shall be provided to adjacent property owners in accordance with Article 2.17.00, Land Development Code.

11.05.03. *Inspection and repairs.* All construction shall be inspected by the City Building Inspector for compliance with applicable building codes. The permittee shall be responsible for the condition and repair of permitted docks and failure to maintain said docks in a safe condition shall constitute grounds for

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revocation of the permit.

11.05.04. *Permit revocation.* The City reserves full right, power and authority to revoke a permit at any time for good cause. In the event that permittee fails to remove said structure within the time specified upon revocation of the permit, the City shall have the right to immediately remove same at the cost and expense of the permittee. Good cause shall include, but not be limited to, violation of any permit condition, or any provision of this ordinance.

Move to Code
of Ordinances

11.05.05. *Liveaboards.* Except in an emergency, no person(s) shall live aboard any boat in Harbor and waterways of Destin for a period exceeding 48 hours without notifying the Code Compliance Department Environmental Officer, or other City official as designated by the City Manager, and receiving a registration permit. In cases of an emergency, such notification shall be given to the Code Compliance Department Environmental Officer within three hours after the immediate emergency situation ceases. Proof that each live-aboard boat has an operable holding tank must be furnished to the Code Compliance Department Environmental Officer at time of notification. All liveaboards must comply with all applicable regulations of the U.S. Coast Guard, Florida Marine Patrol, and City of Destin.

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11.05.06. *Joint ownership docks.* Permits may be granted for joint ownership of a dock at the common riparian boundary, subject to the following conditions:

- A. No permits shall be granted to persons other than the title of record owner or long-term lessee of the abutting upland property.
- B. The permit application must be signed by the owner of record or long-term lessee of all abutting upland property having access to the facility.
- C. The permit shall provide that all parties shall have equal rights under the permit and shall be held jointly responsible for compliance with all rules, regulations and conditions set forth in the permit and this ordinance.
- D. The regulations for setbacks apply to joint ownership docks with the exception that docks may be extended over the common property lines.

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11.05.07. *Permit for maintenance and cosmetic improvements.* The City Manager, or his designee, may issue permits within the Harbor and waterways of Destin for which maintenance or cosmetic improvement is accomplished to existing facilities. No permit shall be issued for facilities which do not conform to the standard Harbor drawings and the adopted marina siting requirements.

Remove

11.05.08. *Registration of structures.* All existing docks, seawalls and bulkheads located within the Harbor and waterways of Destin shall be registered with the City as follows:

- A. The title of record or long-term lessee of all existing structures at the time of adoption of this ordinance shall register such structure with the City within 90 days after adoption of this ordinance.
- B. Each structure shall be re-registered upon any change in ownership or long-term lessee of the abutting upland property.
- C. The City shall be notified upon the expiration of an existing long-term lease by the title of record owner of the abutting upland property.
- D. The City shall be notified by the title of record owner and long-term lessee of the abutting upland property upon the destruction of 50 percent of the replacement value of the structure. The City shall maintain a registration of all docks, seawalls and bulkheads located within the Destin Harbor.

11.05.09. *Exceptions.* Exceptions from the provisions of Section 11.05.01 are as follows:

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- A. The Board of Adjustment may approve an exception for docks and pilings to be extended beyond the limits allowed in paragraphs M and N of Section 11.05.01 provided that, in addition to the criteria listed in Section 2.25.03.G, the following criteria is also met:
 - 1. That site-specific environmental conditions would impede placement of slips near or next to the shoreline.
 - 2. That site specific environmental conditions exist that prohibit dredging.
 - 3. That the proposed layout of the dock and pilings does not create a hazard to navigation.
 - 4. That no additional slips are obtained than would otherwise fit into a dock of the maximum size allowed without the exception.
- B. Properties located in the South Harbor Mixed Use zoning district ~~that propose development under Tier 1 or 2 development standards~~ are exempt from the provisions prescribed in paragraphs F, G, M and N of Section 11.05.01 provided they meet all of the following criteria:
 - 1. An approved submerged land lease from FDEP is submitted.
 - 2. An approval from the Army Corps of Engineers stating that the length of docks and pilings will not create a risk to navigation is submitted.
 - 3. This provision only applies to properties with only non-residential uses and mixed uses that contain non-residential uses and short-term residential uses.
 - 4. This provision does not apply to developments that contain long-term residential uses.
 - 5. A minimum ten percent of the total number of the slips in the project are set aside for fare carrying boats and that another minimum ten percent of the total slips are set aside for transient boats that are open to the public (to promote non-automobile travel). "Project" as used herein shall mean the entire number of slips tied to the uplands and not the total number of slips past 200 feet from the uplands. A minimum of 50 percent of the transient slips must be reserved for non-rental users. The remainder of the total ten percent may be reserved for short-term rental users. A loading and unloading area or slip must be reserved for use by a water taxi. This area or slip must be clearly marked by signage stating that it is reserved for the water taxi.
 - 6. For Tier 1 developments, all of the requirements listed in Section 7.09.03.F.7 must be met.

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- C. Properties located in the Calhoun Mixed Use zoning district ~~that propose development under Tier 1 or 2 development standards~~ are exempt from the provisions prescribed in paragraphs M and N of Section 11.05.01 provided they meet all of the following criteria:

1. An approved submerged land lease from FDEP is submitted.
2. An approval from the Army Corps of Engineers stating that the length of docks and pilings will not create a risk to navigation is submitted.
3. A minimum ten percent of the total number of the slips in the project are set aside for fare carrying boats and that another minimum ten percent of the total slips are set aside for transient boats that are open to the public (to promote non-automobile travel). "Project" as used herein shall mean the entire number of slips tied to the uplands and not the total number of slips past 200 feet from the uplands. A minimum of 50 percent of the transient slips must be reserved for non-rental users. The remainder of the total ten percent may be reserved for short-term rental users. A loading and unloading area or slip must be reserved for use by a water taxi. This area or slip must be clearly marked by signage stating that it is reserved for the water taxi.
4. For Tier 1 developments, all of the requirements listed in Section 7.09.03.F.7 must be met.

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Nonconformities 11.05.10. *Reconstruction of existing facilities.* For existing facilities which are damaged by accidents, vandalism, ordinary wear and tear or acts of God, the provisions of paragraphs F, G, M, and N of Section 11.05.01 shall not be applicable to reconstruction so long as the damaged facilities are reconstructed in the same or lesser dimensions and so long as the construction permit is applied for from the City within six months of the sustaining damage.

Move to the new Citation Authority 11.05.11. *Penalties.* Any person found in violation of this article shall be punished by a fine not exceeding \$500.00 or imprisoned for a term not exceeding 60 days or by both such fine and imprisonment. Each day any violation of any provision of this Code continues shall constitute a separate offense.

(Ord. No. 152.40, § 3, 8-6-01; Ord. No. 05-13-LC, § 13, 8-22-05; Ord. No. 07-21-LC, §§ 17, 18, 5-7-07; Ord. No. 07-46-LC, § 3, 12-17-07; Ord. No. 09-01-LC, § 3, 2-17-09)

Editor's note— As of June 1, 1997, this section (§ 11.05.04 excepted) is superseded by Ord. No. 87.1 (codified as City Code Ch. 5, art. III). See appendix B hereto.

SECTION 4. INCORPORATION INTO LAND DEVELOPMENT CODE. This ordinance shall be incorporated into the City of Destin's Land Development Code and any section or paragraph number or letter and any heading may be changed or modified as necessary to effectuate the foregoing.

SECTION 5. CONFLICTING PROVISIONS. Special Acts of the Florida Legislature applicable to the incorporated area of the City of Destin, City Ordinances and City Resolutions, or parts, thereof, in conflict with the provisions of this ordinance are hereby superseded by this ordinance to the extent of such conflict.

SECTION 6. SEVERABILITY. If any section, phase, sentence, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any 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 7. EFFECTIVE DATE. This ordinance shall become effective upon its adoption by the City Council and signature by the Mayor.

ADOPTED THIS _____ DAY OF _____, 2020.

By: _____
Gary Jarvis, Mayor

ATTEST:

The form and legal sufficiency of the foregoing has been reviewed and approved by the City Land Use Attorney.

Rey Bailey, City Clerk

Kimberly Kopp, City Land Use Attorney

First Reading: _____
Second Reading: _____

SECTION 2.08 PROCEDURES FOR HARBOR AND WATERWAYS BOARD REVIEW

SECTION 2.08.01 PURPOSE AND INTENT

- A. Marine construction in Destin requires compliance with the Marina Siting in **Section X.XX.XX**, and may require review by the Harbor and Waterways Board (HWB) and or City Council, to preserve and protect one of Destin's premier natural resources, the Destin Harbor and waterways that fall within the City's jurisdiction.
- B. The bodies of water and waterways under the jurisdiction of the City of Destin for the purposes of enforcement of this Code are:
 1. The Destin Harbor
 2. The canals of Holiday Isle
 3. Indian Bayou (If the upland property is within the city limits)
 4. Joe's Bayou
 5. Marler Bayou
 6. Choctawhatchee Bay (If the upland property is within the city limits)

SECTION 2.08.02 MARINE CONSTRUCTION CLASSIFICATIONS

- A. Marine Construction Classification Categories: The following includes the three categories and category criteria:
 1. Category 1: Marine Construction projects shall be considered Category 1 if the following criteria applies:
 - a. Residential docks eligible for self-certification from Florida Department of Environmental Protection (FDEP)
 - b. Boat lifts in existing slips
 - c. Upland slips
 - d. Sea walls that are upland of the declared mean high water line
 - e. Seawall that are waterward of the declared mean high water line
 2. Category 2: Marine Construction projects shall be considered Category 2 if any of the following criteria applies:
 - a. Residential docks not qualifying for FDEP self-certification,
 - b. Residential docks with 3-9 slips,
 - c. Residential docks requiring U.S. Army Corps of Engineers (USACE) approval
 - d. Residential docks proposed within twenty-five feet (25') of any established or implied riparian setback from adjacent properties
 3. Category 3: Marine Construction projects shall be considered Category 3 if any of the following criteria applies:
 - a. Residential docks with 10 or more slips
 - b. Commercial docks
 - c. Oil abatement plans
 - d. Dredge and/or Fill requests
 1. Application Materials require proof of submittal to State and Federal agencies as applicable.
 2. Proposed dredge and fill requires a Marine Construction Permit review and shall have State and Federal approvals at time of Marine Construction permit application submittal.

SECTION 2.08.03 HARBOR AND WATERWAYS BOARD REVIEW

City of Destin, FL - Land Development Code

- A. Category 1 Marine construction applications do not require Harbor and Waterways Board review and are reviewed through a building or marine construction permit application as outlined in **Section 2.08.05**.
- B. All marine construction applications deemed Category 2 shall require submittal of a Harbor and Waterways Board application.
 - 1. Category 2 and 3 applications are reviewed by the HWB during a public hearing for recommendation to City Council.
 - 2. A complete application must be received a minimum of 30 days prior to the Harbor and Waterways Board meeting.
 - a. Applications will not be scheduled for a meeting until all required materials have been received.
 - 3. All objections received before the will be forwarded to the HWB prior to the public hearing.
 - 4. All objections heard during a public Hearing of the HWB will be forwarded to City Council.
- C. All marine construction applications deemed Category 3 shall require review by the Harbor and Waterways Board for recommendation to City Council for review at a Public Hearing.

SECTION 2.08.04 CITY COUNCIL REVIEW

- A. All marine construction applications deemed Category 2 or 3 shall require review and approval by City Council prior to the issuance of any building permits and the start of construction.
 - 1. Category 2 applications will be reviewed by City Council on the Consent Agenda for regularly scheduled council meetings.
 - 2. Category 3 applications will be reviewed by City Council during a publicly noticed public hearing per **Sections 2.02.03. and 2.15**.
- B. The City Council shall approve, approve with conditions, or deny the application at the next available regularly scheduled City Council meeting.
- C. All objections received before the public hearing will be forwarded to the City Council prior to the scheduled meeting.

SECTION 2.08.05 MARINE CONSTRUCTION PERMITS

- A. All marine construction permits must be obtained within one (1) year of final approval by the City Council.
 - 1. If construction permits are not obtained within one (1) year, the proposed construction must be reconsidered by both the Harbor and Waterways Board and City Council.
- B. Approval of all applicable State or Federal permits are required at the time of marine construction permit application submittal.
- C. The project will be subject to all current regulations of the city at the time of permit submittal.
- D. Marine Construction permits must be obtained in accordance with **Section 2.14.03**.