

**MINUTES
SPECIAL WORKSHOP
DESTIN CITY COUNCIL
DECEMBER 14, 2020
ANNEX COUNCIL CHAMBERS
5:30 PM**

The Council of the City of Destin met in special session with the following members and staff present:

Destin City Council

Mayor Gary Jarvis

Councilmember Kevin Schmidt

Councilmember Johnny King

Councilmember Dewey Destin

Councilmember Rodney Braden

Councilmember Skip Overdier

Councilmember Prebble Ramswell

City of Destin Staff

City Manager Lance Johnson

Code Compliance Officer David Bazylak

Community Development Director Louis Zunguze

City Planner Traci Goodhart

Land Use Attorney Kimberly Kopp (Virtual)

City Clerk Rey Bailey

City Engineer Donald Smith

IT Technician James Lauria

City Attorney Kyle Bauman

CALL TO ORDER

Mayor Gary Jarvis called the meeting to order at 5:30 PM, which was then followed by the recitation of the Pledge of Allegiance.

WORKSHOP

A. Livery Vessels

Public Comments:

Mayor Jarvis announced he will allow public comments at this time. He established the ground rules for members of the public to observe when commenting about tonight's workshop. The following individuals provided comments/asked questions:

Mr. Mike Abadie, Destin resident and livery rental operator, questioned the legality of the City of Destin's livery vessel ordinance and established moratorium in relation to Florida State Statutes. He discussed the following issues:

- Livery vessel moratorium violates Florida Statute 327.60(2)(d), which states that a county or municipality may not enact, continue in effect, or enforce any ordinance or local regulation discriminating against personal watercraft. The City's definition of livery vessel and the State's definition of livery vessel differ. Livery rental operators are concerned the City's ordinance overrides the State ordinance. The City's definition of livery vessel only includes pontoon boats and Jet Skis. The State's definition of

livery vessel includes pontoon boats, Jet Skis, any chartered fishing vessels, kayaks, and paddleboards. By the City's definition of livery vessel, the American Watersports Association, a national organization based on Washington, DC, believes the City is discriminating against Jet Skis, which also makes the moratorium illegal. Ms. Peggy Matthews, which represents this organization and the livery vessel industry, intends to approach the State Attorney General to get a ruling on this issue. Mr. Abadie recommends the following to the City Council:

- ❖ Option 1: Do nothing. Leave things exactly like they are, which could lead to litigation. In the event the livery rental operators prevail in the litigation and the judge vacates the City's livery vessel licensing and the moratorium, they would demand a return of all the money they paid the City for the past 4 years
- ❖ Option 2: Add charter fishing vessels to the ordinance and moratorium, which takes away discriminations against Jet Skis and makes the City's ordinance legal. Livery vessel operators will not pursue litigation
- ❖ Option 3: Remove Jet Skis from the City's livery vessel ordinance and moratorium. There is no State statute that protects pontoon boats, only Jet Skis and personal watercraft. Livery vessel operators will have no reason to pursue litigation

Mr. John Stephens, Destin resident and pontoon rental operator, discussed the following issues:

- Livery vessel permit application packet:
 - ❖ "Right to Conduct Business" documentation is listed in the livery vessel application checklist but is missing from the application packet
 - ❖ The "Acknowledgements" document is part of the packet, but it is not listed in the livery vessel application checklist
 - ❖ "Livery Vessel Permit Application" document needs to be added to the checklist
 - ❖ The application checklist notes that "restrooms and receptacles must be within 200 feet of livery vessel docking location." He believes a previous amendment to the City's ordinance removes the 200-foot requirement
- Amendment to Destin Livery Ordinance 17-02-CC:
 - ❖ Need to clean up the ambiguity in Ordinance 17-02-CC.
 - Section 13-149 – Renewals and Expiration of Permit states that all permits shall be valid no longer than 12 months. If someone applies early in November or any months, permit should be valid from March 1st to March 1st (which could be longer than 12 months). This provides no penalty for applying early
 - Section 13-148 – Permit not transferrable. It states that, "*If a vendor is an entity, of any kind, and the ownership of the entity is sold, transferred, or assigned, then the entity shall notify the City within ten (10) days of change in ownership, or any permit shall be deemed automatically revoked. No permit shall be used at any location other than the one for which it is issued.*" Recommend extending the 10-day notification period to 30 days, with the ability to file for an

extension. In the event the owner dies, significant others would not be burden with trying to accomplish this action with 10 days.

- Need more clarity on being able to transfer medallions from one business entity to another

Councilmember Destin inquired as to the meaning of "Right to Conduct Business" stating that he has not seen such document in other applications.

Code Compliance Officer David Bazylak explained it refers to a contract or a lease for the right to be on the property between a vendor and the property owner.

Councilmember Destin asked if this is standard in other situations where owners lease to restaurants or other businesses; otherwise, what is the rationale behind applying this rule to livery vessel rental operators and not to other businesses.

Councilmember Braden pointed out that the City requires beach vendors to have a contract, lease or a letter from the property owner stating they have the right to conduct business on the property.

Community Development Director Louis Zunguze explained that the City land use regulations requires an owner's permission for someone to operate from their property.

Mr. Stephens reiterated that the application checklist lists "Right to Conduct Business" document as a required item, but it is not included in the application packet.

Next to speak was Mr. Greg Fisher, a Destin resident and livery rental operator. He proceeded to read section of Ordinance 17-07-CC that amends Section 140 of the Code of Ordinances:

"The City Council of the City of Destin recognizes that the unregulated rental of Livery Vessels by the public impacts the welfare of the historic working waterfront, and jeopardizes the health, safety and welfare of the City's residents, property owners, and visitors. Therefore, it is necessary and in the interest of the public health, safety and welfare to monitor and provide reasonable means to ensure adherence to state laws and insure safe and responsible operation of such livery vessels. The unregulated rental of livery vessels has led to increased instances of unlicensed businesses renting Livery Vessels to inexperienced operators, which has led to unsafe conditions in the waters of the City during many times of the year. The requirement of a Permit for each Livery Vessel, that shall be rented out within the City, and the Permit Fees collected and used to support the Code Enforcement Division in enforcing this ordinance, will allow the City to effectively regulate and monitor Livery Vessels being rented by businesses within the City, which is reasonably related to protecting the public health, safety, and welfare of the City's residents and visitors, and is also reasonably related to preserving the historic working waterfront of the City."

He then pointed out there is not a single livery vessel operator in the room that was unlicensed before the enactment of the moratorium. He also hopes to hear sometime during this

meeting what “*preserving the historic working waterfront of the City*” means to each Council member.

Mr. Fisher asked how long it takes to complete a Harbor Capacity Study and what the goals are of the Study.

Mr. Zunguze noted the Harbor Capacity Study is projected to take place between March and November 2021. The goals are to get a good sense of how well the City is doing in terms of economic development in the harbor as well as the tourism aspects and environmental aspects in the harbor.

Mr. Fisher stated that with the City stopping new businesses from opening in Destin disenfranchises the businesses in Destin because businesses are opening in all other places. A lot of businesses are opening at Fort Walton Beach, Shalimar, Niceville, 30A, and Sandestin and they are all coming into Destin. The out-of-state boaters are also taking up their waterways. He continued that in terms of the Harbor Capacity Study determining whether they could add more boats is absurd because everyone can agree they already have congestion in their waterways. He added that it took Florida Keys 3 years to complete a Harbor Capacity Study with the Army Corps of Engineers and the final determination was that the marine environmental was too complex to assess to come up with a meaningful conclusion. He urged the Council to make sure something meaningful would come out of the Harbor Capacity Study before they spend \$200,000 to conduct it.

Ms. Maya Shulder, a Fort Walton Beach resident and business owner in Destin, stated that the City’s livery vessel renewal application process should be streamlined. Many of the applicants are multi-year operators. They have all been previously approved to operate in Destin. None has changed including their parking and fueling situations, yet this year’s application packet has a lot more pages than it had from previous years. For those operators who lease property, their landlords must go through an elaborate or complicated procedure. The City has added things to the Acknowledgements pages that apply to some but not all operators. She has two business locations and two company names in Destin. She applied for two livery companies and two livery permits, but one corporation overall; and that her equipment flowed between the two locations. However, there is a portion in the Acknowledgements pages that states if a boat or Jet Ski breaks down in the harbor it has to stay there, and she is not allowed to use the Jet Ski from her Calhoun Avenue location. She mentioned that she owns 55 Jet Skis but only rents out 35 Jet Skis because she only has enough slips for 35 Jet Skis, and so there is no way for her to add any more Jet Skis. The other skis are for maintenance, safety, and replacement for when other skis go down. ShMs. e also stated that the City has continuously refused to give them the extra livery stickers for maintenance issues or for chase skis if others go down. Her insurance requires her to have two chase skis in the water at both business locations. She added that the City has never addressed this issue even after they have been asked multiple times to have this issue clarified.

Ms. Shulder also noted that the Affidavit of No Change has completely been taken out of the application packet this year, which makes things a lot harder for veteran operators like her. She also pointed out that very few operators received their permit before the season started this year. It seems City staff is not able to handle and process all the documentation they are requesting from everybody. However, they still have to pay for the permits even if they do not receive them in time. She urged the City to make the process easier for everyone, especially for veteran operators, to conduct business.

Councilmember Schmidt asked whether operators who received their permits after the season started were able to do business anyway; to which Ms. Shulder replied affirmatively.

Councilmember Schmidt asked what the big difference was between this year and last year's application process that is making things more cumbersome for livery vessel rental operators.

Ms. Shulder stated that last year she could turn in one sheet of paper, which was an Affidavit of no Change, because her parking and fueling plans have not changed, and that her landlord only had to sign one piece of paper. This year the City is asking for a parking plan and a parking agreement that must be signed and notarized by her landlord who lives in Birmingham, Alabama. The fueling plan must be recertified by the fire department. She must resubmit the land lease. Also, the requirement for restrooms and receptacles to be within 200 feet of livery vessel docking location is back again when it should have been amended.

Councilmember Schmidt believes that the parking agreement, which is part of the application process, and which is asking the applicants to list all current and existing uses, including seasonal/temporary uses operating on property; is the responsibility of the property owner. He asked if there is a form, or any acceptable documentation, designed to be used to put in all this information.

According to Mr. Zunguze, they only need the name of the property owner so they could go to their files and ensure those businesses identified are still in operation. The whole idea is to ensure that the parking allocated to the existing businesses are still there, and that any additional parking being requested for the business is available. He added they have had a tremendous amount of challenges as far as parking is concern.

The Mayor stated that one of the things City staff needs to evaluate is the requirement for livery vessel operators to submit information about the other businesses on the property as well as the parking required for these businesses. This is clearly the responsibility of the property owner and not the livery vessel operators that are leasing the place from the property owner.

Mr. Zunguze agreed this information is the property owner's responsibility. It gives proof that the applicant is getting parking from the property owner. He added that since they are currently automating their files this year, all the information the applicants are entering this year will be easily captured in the system, and that the next renewal would be a lot easier and quicker.

Councilmember Ramswell asked for the reason the Affidavit of no Change was removed from the application process this year.

Mr. Bazylak noted that with the Affidavit of No Change, although the information may not have changed with regards to the applicant's livery vessel properties, there could be several other businesses on the property that could affect the parking. They require the parking plan from the property owner to determine if there are changes on the property as a whole.

Councilmember Ramswell stated this issue needs to be addressed further because it should be the property owner and not the livery vessel owner's responsibility to submit the parking plan.

Councilmember Destin asked Ms. Shulder to clarify her statement that there are rules that apply to some but not to others.

According to Ms. Shulder, restaurant owners do not have to supply some of the documentation required of livery vessel owners. Restaurants are not required to have stickers for every chair in their facility, while livery vessel owners have to have a sticker for each boat they own. Also, no other businesses are required to provide their sales tax information.

Councilmember Destin asked if there have been rules applied unevenly within the industry itself; to which Ms. Shulder replied there are not.

Mr. Ed Rogers, a Destin resident, and livery vessel owner expressed that the livery vessel industry is being regulated more so than any other businesses in Destin; adding that they should not have to go through an elaborate and complicated procedure every year. He noted that nothing has changed since he started his business 10 years ago. He believes City staff is unable to handle all the paperwork they require livery vessel operators to submit because a lot of them are receiving their permits very late in the season. There is no reason to create more paperwork. He continued that a lot of the information should already be in the system especially those of the veteran operators. The Affidavit of no Change is a good thing because to many operators, a lot of things do not change from year to year. Furthermore, the City has the Code Compliance Department to handle those businesses who lie in their application. He recommends increasing the penalty for fraudulent application to deter anyone from cheating. He also urged the City to bring back the Affidavit of No Change document and to streamline the application process to make it less burdensome for livery vessel operators.

Mr. Rogers also noted several livery vessel operators received a notice of code violation letter from the City last year stating they could not park their pontoon boats on their property because they are not approved for that use or for storage on their property. He explained that part of the livery business is pulling the boats out of the water for cleaning and maintenance, and they need a place to conduct this work which is normally done when their business is shut down for the season. They should not be expected to purchase another piece of property on which to do this type of work.

Councilmember Schmidt asked if there was an ordinance adopted prohibiting owners to park their boats in their parking lot during the off season. He noted that the Harbor CRA Advisory Committee has previously addressed this issue according to the minutes of one of their meetings.

Mr. Bazylak noted that the Harbor CRA Advisory Committee previously addressed this subject; however, to his knowledge, their recommendations were never brought before the City Council. He also pointed out there are certain sections in the Land Development Code that address outdoor storage in the required parking.

Councilmember Ramswell asked whether the letter some of the livery vessel operators received are for informational purposes only or they are a notice of actual code violation.

Mr. Bazylak explained they are actual code violations based on violations of certain sections of the Land Development Code, specifically those sections that address the use of required parking for storage and not meeting the conditions for outdoor storage.

Councilmember Ramswell requests this particular issue be further addressed at the next City Council meeting, and to have the contents of the referenced letter be made available to the Council for review prior to the next meeting.

Mr. Abadie noted there were 7 such letters issued to 7 different livery vessel operators last year. His investigation revealed there were at least 4 other businesses that committed a similar violation but did not receive a notice of violation letter from the City.

Mr. Bazylak explained that the letters that were issued last year had more to do with storage and the change of use in the South Harbor and North Harbor Mixed Use District. The City has not pursued them as they plan to have further discussions on this subject.

Mr. Abadie confirmed that the City sent everyone a follow up letter last year stating they are delaying, but not revoking, the violation until further notice.

Mr. Abadie also noted there are code violators which they refer to as the "outlaws." These are the people operating without a livery vessel license and permit, no insurance, and no facility of which to operate. He continued that the Harbor CRA Advisory Committee met and discussed getting rid of livery vessel operators that are causing all the problems by operating illegally; and that he is anxious to know how many of these "outlaws" have been caught and were issued citations since then, and the amount of money the City has collected from them.

Councilmember Ramswell requests this information be provided to Council at the next meeting.

Capt. Mike Eller, a Destin resident and charter boat captain, stated that the pontoon boats are obviously the biggest problem for the charter boat fishermen. Jet Skis are small and could get out of their way a lot quicker and easier. He continued they have not had much negative interactions with out-of-town boaters as they mostly own their own boats and know how to operate them. Also, they do not have much of a problem with other charter boats and Dolphin Cruise boats, or any of the boats in the harbor with a professional driver. He stated that pontoon boats being in demand at the harbor is a good thing but limiting the number of pontoon boats is the proper thing to do. It would also help to limit the number of Jet Skis, if possible. He further stated that pontoon boat operators are wrong to think they are giving pontoon boat renters the required test before sending them out to the water. These renters are not aware of the dangerous current around the mouth of the harbor and around the bridge. They are scared and they do not know how to maneuver these boats.

Mr. Bill McKissick, a Destin resident and pontoon boat salesman, stated that the main issue is safety. They need to find a way to improve the education and skill sets for renting pontoon boats. The test that is given and the video that is shown are not remotely adequate for the renters. They need to be completely redone to address such matters as anchoring, the current, and the basic "rules of the road." He also recommends imposing a larger fine for code violators.

Mr. John Stephens pointed out that livery vessel registration fees were raised last year, while the business tax receipt has not been raised since the 1990's. He recommends restructuring the fees and possibly putting a cap on livery vessel registration fees.

Mr. Greg Fisher noted that their group is organizing the Okaloosa County Watersports Coalition as of January 1, 2021, and that their objectives are very much in line with safety and

welfare of the community and protecting the interest of their industry. One of their objectives is to create a better test based on the local waters. He suggests basing things on facts and not observations as they further address this issue at future Council meetings.

Capt. Kevin O'Neill, a Fort Walton Beach resident and boat captain, noted that he called a meeting with the Fort Walton Beach Chamber of Commerce last year, as well as a representative from Florida Fish and Wildlife, and discussed safety on the waters. They came up with a great list of recommendations on how to keep people safe on the waterways. He also commented that most of the people in attendance at this meeting tonight have logged in thousands of hours on the water, but they are taking away from their ability and the necessary things they have to do, which are to keep the waterways safe and keep their customers safe, by arguing over such issues as parking and medallions on the back of their boats.

Mr. Johnny Fuller of Tailspin Watersports stated that the current renewal application process should be designed for new businesses and for those who have not been in business for several years. There should have been a simple renewal card, as previous City Managers have promised, for existing businesses instead of a thick renewal application packet. He stated his firm had been in business since 2007. They have followed the moratorium and all existing regulations. He also noted that with regards to comments about not being allowed to pull their boats out of the water and placing them on their property for cleaning, maintenance, and repair, they received a notice of violation letter just 3 days ago threatening a fine of \$100 daily if the boats are not removed.

Mr. Freddy Ortega, a Shalimar resident, stated he has not received his livery vessel permit which he applied for before the moratorium started. He and the attorney he hired have received no answer from the City. He asked the Council to instruct staff to provide a response.

Councilmember Braden recommends having Mr. Ortega's attorney contact the City Attorney to obtain an answer.

Mr. Mike Abadie noted that the Florida Fish and Wildlife creates the safety video, which is outdated and has nothing to do with the waterways in Destin and Okaloosa County. He stated that he spoke with the Code Compliance Manager Joey Forgione a few weeks ago and recommended having the City and/or the County spend a few thousand dollars and hire a company to make a local safety video that covers the harbor, Crab Island, the no wake zones and all the areas where boats are allowed and require livery vessel operators to use that video and charge them, if necessary.

The Mayor asked the City Manager when they could place the actions items from tonight's workshop on the agenda.

The City Manager stated they could bring these items back on January 4, 2021.

The Mayor turned the matter over to the City Council for comments and directions.

Councilmember Destin stated that listening to comments from the public and from the Council members, there seemed to be an agreement that the renewal application process is too complicated and cumbersome, and he would like to encourage staff to try to streamline it. He recommends reinstating the Affidavit of No Change but making it more precise so that the applicant could state exactly what situations in their business have not changed. He would like staff to make

an effort to get the licenses out in a timely fashion even though they did not attempt to shut anybody's business down for not having the licenses.

Councilmember Braden stated that although there are a lot of livery business owners and operators that follow the law, there are those who try to cheat the system. Some ask the City to streamline the renewal process for those existing businesses whose information have not changed, but Code Enforcement officers are finding out that some of the information they put on the application are not always accurate. For instance, some have more pontoon boats or Jet Skis than the numbers listed in the application. He continued that the City cannot design the application process just to punish those operators who get caught cheating. They must be consistent and design the process and apply it across the board. If livery business operators are willing to sign an affidavit stating that nothing has changed in their business, they should be ready to suffer the consequences if they are caught lying on the affidavit, including not being able to operate in Destin. He also stated that the accusation being made that the City is targeting the livery rental operators by writing them a citation is simply untrue. Code Compliance officers respond to every report of a code violation, whether it be someone reporting on his neighbor having a messy lawn or one business reporting on another who is in violation of a code. He also stated he has no problem allowing a livery operator to bring their boat on their property for repair and maintenance; but if the boat sits on the property for several days, it is considered outdoor storage, which is a code violation.

Councilmember Overdier recommends creating a Livery Task Force similar to the Short-Term Rental Task Force to come up with recommended solutions to perceived problems that have been identified.

Councilmember King agrees that the renewal application process needs to be streamlined, which is the main concern for many of the business owners to which he has spoken to about this issue. They also want to be treated fairly as the other businesses in the City. He continued that one of the comments that have been made tonight is to base things on facts and not observation as they address this issue further. He feels the best source for those facts will come from the Harbor Capacity Study.

Councilmember Schmidt agrees with the recommendation to streamline the renewal application process and bring back the Affidavit of No Change. However, he does not believe there would be one form of affidavit that would apply to all livery operators because some rent or lease and others own their property; and it is the property owner's responsibility to address the current situations on that property. Staff could possibly consider creating two different types of affidavits – one that would apply to those who rent or lease and another to those who own the property.

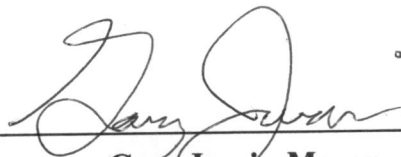
Councilmember Braden asked staff to simplify the renewal application process and to provide justification to Council for each requested information and documentation.

The Mayor stated that by the comments he heard tonight, it is clear the intent of the Council is to have a more refined livery vessel registration process. The perception that the City is practicing selective enforcement is unfounded because it is probably the first time in about a decade that the City finally has the resources to enforce the rules and regulation that have been in existence for many years. He also noted that he learned the true origin of the moratorium by reading the past minutes of the Harbor CRA Advisory Committee and City Council meetings. Although the issue of safety, catching illegal operators, and pollution in the waters are motivational factors, the moratorium came about because there was an apparent over capitalization of livery vessels at the

Destin Harbor which is a direct threat to their heritage of being a working waterfront, commercial fishing, and charter industry. He continued that it is to everyone's best interest to have a cooperative attitude. With the moratorium, the City is not trying to reduce the livery industry's footprint in the harbor today. Everyone is being guaranteed access to their business model to continue. Many are doing business profitably in the City of Destin, which is a good thing. Livery business owners have brought out some great points about the burdens that have been placed upon them. The City can fix the processes for them to do business in a reasonable manner in the City; and that the City could also do it in a manner that would give them a stronger and more effective way to regulate the bad operators or "outlaws."

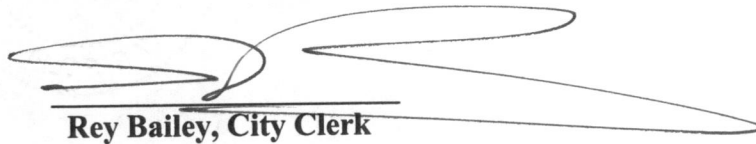
ADJOURNMENT

Having no further business at this time, the meeting was adjourned at 7:45 PM.



Gary Jarvis, Mayor

ATTEST:



Rey Bailey, City Clerk