

ORDINANCE NO. 2023-29

AN ORDINANCE OF ST. JOHNS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, PROHIBITING FLOATING STRUCTURES; PROVIDING FOR A TITLE; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE PROHIBITION OF FLOATING STRUCTURES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR INCLUSION IN THE CODE ENFORCEMENT CITATION ORDINANCE OF ST. JOHNS COUNTY, FLORIDA; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, St. Johns County (“the County”) has recently seen a rise in the anchoring and mooring of non-water dependent Floating Structures; and

WHEREAS, Florida Statute 327.02(14), defines a floating structure as “a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water but which serves purposes or provides services typically associated with a structure or other improvement to real property; the term includes but is not limited to, an entity used as a residence, place of business or office with public access; a hotel or motel; a restaurant or lounge; a clubhouse; a meeting facility; or a mining platform, dredge, dragline, or similar facility or entity represented as such.”; and

WHEREAS, “Floating Structures” are defined separately from “vessels” or “boats” under Florida Statute 327.02 and Florida State Constitution Section 1(b), Article VII; and

WHEREAS, the courts have adopted an objective test, that eliminates an owner’s subjective intent in determining whether a “floating structure” is a “vessel” in *Lozman v. City of Riviera Beach*, 568 U.S. 115 (2013), “a reasonable observer, looking to its physical characteristics and activities, would not consider it to be designed to any practical degree for carrying people or things on water”; and

WHEREAS, anchoring or mooring of Floating Structures within the Waters of the County poses a special risk to persons and property as these structures are usually not self-propelled and cannot be quickly move during emergencies; and

WHEREAS, the arbitrary anchoring of Floating Structures in the Waters of the County creates a hazard to the safety of others that may utilize those waters; and

WHEREAS, the Waters of the County are environmentally sensitive aquatic habitats and Floating Structures within the territorial jurisdiction of the State of Florida and the Waters of the County may pose a significant threat to the environment, human health, and navigational safety through the potential discharge of sewage, oil, or other hazardous substances into the marine environment, may physically damage surrounding ecosystems, and may proliferate marine debris; and

WHEREAS, a Floating Structure may be difficult or impossible to timely remove in

emergencies without the ability to quickly locate an owner; and

WHEREAS, the requirement that a Floating Structure be anchored, moored, or tethered at public or private marinas or mooring fields after sunset will greatly decrease the potential of damage or injury and protect the health, safety, and welfare of the public and is in the public interest; and

WHEREAS, under Section 327.60, Florida Statute, counties have the authority to prohibit or restrict the mooring or anchoring of floating structures, live-aboard vessels, or commercial vessel, excluding commercial fishing vessels, within their jurisdiction; and

WHEREAS, neither the United States nor the State of Florida have preempted the several states or local governments from legislating in the field of floating structure regulation; and

WHEREAS, Section 1(f), Article VIII, of the Florida Constitution, vests the Board with the authority to enact countywide ordinances not inconsistent with general law except an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict; and

WHEREAS, Section 192.001(17), Florida Statute, provides, in pertinent part, that “[a] floating structure is expressly included as a type of tangible personal property.”; and

WHEREAS, under Florida law, there is no recognized common law, constitutional, or statutory littoral or riparian right to Anchor, Moor, or otherwise indefinitely or permanently affix or situate a floating structure upon or over Waters of the County, including but not limited to upon sovereign submerged lands; and

WHEREAS, the Board finds that this Ordinance is necessary to advance the County’s public health, safety, and welfare to protect the natural environment within the County.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above recitals are hereby adopted as legislative findings by the St. Johns County Board of County Commissioners and incorporated and made a part of this Ordinance.

Section 2. Title. This Ordinance shall be titled the “St. Johns County Floating Structure Prohibition Ordinance.”

Section 3. Applicability. This Ordinance shall be applicable within the incorporated and unincorporated areas of the County, unless a municipality opts out or adopts an ordinance in conflict, in which case this Ordinance shall be effective to the extent not in conflict with the municipal ordinance.

Section 4. Definitions. For the purposes of this ordinance the following definitions shall be used.

“Anchor” means the use of traditional ground tackle, typically including an anchor,

anchor chain, and line appurtenant to a Floating Structure and used to hold a Floating Structure in place.

“Barge” means a Vessel that does not have living quarters, is not propelled by its own power, and is designed to be pushed or pulled by another Vessel.

“Floating Structure” means a floating entity, with or without accommodations built thereon, which is not primarily used as a means of transportation on water, but which serves purposes or provides services typically associated with a structure or other improvement to real property. The term includes, but is not limited to, an entity used as a residence, place of business or office with public access, hotel or motel, a restaurant or lounge, a clubhouse, a meeting room, a storage or parking facility, or a mining platform, dredge, dragline, or similar facility or entity represented as such. Floating structures are expressly excluded from the definition of the term “vessel” as defined in Section 327.02, Florida Statute, as may be amended. Incidental movement upon water or resting partially or entirely on the bottom does not, in and of itself, preclude an entity from classification as a Floating Structure. Registration of the entity as a Vessel in accordance with Chapter 327, Florida Statute, shall not preclude an entity from classification as a Floating Structure. In the event of a dispute as to whether an entity constitutes a “Floating Structure” versus a “vessel”, such dispute shall be exclusively determined under a preponderance of the evidence standard, by analyzing the following objective criteria which are attributes of a Floating Structure: (1) it is incapable of self-propulsion, which means it does not have effective means of propulsion for Safe Navigation, (2) it does not have a rudder or other steering mechanism, (3) it does not have a rake hull, which is designed to move smoothly through the water with little effort, (4) it has a rectangular or a square bottom, (5) its draft is not comparable to the drafts of Vessels of similar physical size, (6) its documented past geographical movement is infrequent, (7) it cannot be moved over meaningful distances without dangerously or hazardously swinging from side-to-side, (8) it does not have a (lawful) capacity to generate or store electricity, (9) it does not have a bilge pump(s) for effective means to dewater, (10) it does not have an approved marine sanitation device(s), (11) its above water surface area(s) bear similarity to the interior or exterior of a land-based residential or commercial structure, (12) it has ordinary windows, open doorways, or unsealed doors, which means doors and doorways are designed to be enclosed are incapable of being sealed off or remain open to the elements for extended periods of time, (13) it does not have any other physical features that might suggest to an objective reasonable observer a design to transport over water anything other than its owns furnishing and related personal effects, and (14) it is not titled and registered as a Vessel. Payment of a tangible personal property tax regarding the entity in question or issuance or receipt of a tax exemption thereto, pursuant to Section 192.001(17), Florida Statutes, as may be amended, shall constitute prima facie evidence that the entity in question constitutes a “Floating Structure” under this Ordinance.

“Houseboat” means a Vessel that is used primarily as a residence for at least twenty-one (21) days during any thirty (30) day period if such residential use of the Vessel is to the preclusion of its use as a means of transportation.

“Jack Up Rig” means a self-elevating unit that is a type of mobile platform that consists of a buoyant hull fitted with a number of movable legs, capable of raising its hull over the surface of the sea.

“Lawfully Moored” means moored to a mooring ball, mooring buoy, or dock when such mooring is authorized under federal, state, and/or local law(s) and has received all required federal, state, local permits and approvals to so moor.

“Live-Aboard Vessel” means a Vessel used solely as a residence and not for navigation, or a Vessel for which a declaration of domicile has been filed pursuant to Florida Statute 222.17, or a Vessel used as a residence that does not have an effective means of propulsion for Safe Navigation. Commercial fishing Vessels are expressly excluded from the term “live-aboard vessel.”

“Marine Facility” means an accessory building or structure which is used to take a boat into or out of a water body, to Moor, to berth, or to store a Vessel or Floating Structure, but shall not include any building used for human habitation or any boat service, repair or sale facility.

“Moor” means the act of securing a Floating Structure in the water by means of a permanent or semi-permanent mooring system affixed to the bottom of the water body. As used in this Ordinance, to moor or a mooring shall include other meanings of mooring such as tying off a Floating Structure to upland vegetation or to pilings, posts, or stakes.

“Private Mooring” means the act of securing of a Floating Structure in the water by means of a permanent or semi-permanent mooring system affixed to the bottom of the water body where the bottom is owned by a private person or entity that is not the local, state, or federal government.

“Public Mooring Field” means an area within a public body of water where the public can legally secure their Floating Structure to a mooring buoy that is attached to the bottom of the water body with a permanent anchor.

“Safe Navigation” means the ability of the Floating Structure operator to make headway, properly steering the floating structure on a predetermined course without substantial risk of injury or damage to other persons, the Floating Structure, or property solely from the Floating Structure’s operation.

“Vessel” is synonymous with “boat” as referenced in s. 1(b), Art. VII of Florida’s State Constitution and means every description of watercraft, Barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

“Waters of the County” means all portions of those public waters, up to and including the mean high water mark, located within the geographic boundary limits of St. Johns County, which waters include waters within the jurisdictional boundaries of a

municipality and waters within the jurisdictional of the state, including, but not limited to all navigable and non-navigate waterways, canals, lagoons, bayous, bays, rivers, lakes, streams, springs, impoundments, and all other bodies of water, including fresh, brackish, saline, tidal surface, or underground, and including surface waters created by the removal of soil from uplands, but excluding any area preempted by law.

Section 5. Prohibition of Floating Structures.

- (a) It shall be unlawful for any person to Anchor, Moor, tie off, or otherwise affix a Floating Structure upon, or to, the Waters of the County.
- (b) It shall be unlawful for any person to Anchor, Moor, tie off, or otherwise affix a Floating Structure to publicly owned vehicles.
- (c) It shall be unlawful for any person, within waters or submerged land included within the Waters of the County, to Anchor, Moor, tie off, or otherwise affix a Floating Structure to one or more plant species protected by federal, state, or local law(s), rule(s), or regulation(s) pursuant to an endangered, threatened, or species of special concern designation or listing.
- (d) It shall be unlawful for any person, within waters or submerged lands included within the Waters of the County, to Anchor, Moor, tie off, or otherwise affix a Floating Structure to one or more plant species (including, but not limited to, mangroves) whose defoliation or destruction is subject to special permitting requirements under the Florida Mangrove Trimming and Preservation Act, codified at Section 403.9321-403.9333, Florida Statutes, as may be amended or supplemented.
- (e) It shall be unlawful for any person to construct, place, or maintain a Floating Structure or proximately causing or proximately contributing to the construction, placement or maintenance of a Floating Structure in violation of this Ordinance.
- (f) It shall be unlawful for any person to store items upon, occupy, or reside upon a Floating Structure within waters or submerged lands included within the Waters of the County or publicly owned uplands.
- (g) Any municipality that later adopts this ordinance may independently enact its own separate-and-distinct subsection of enumerated prohibitions.

Section 6. Exceptions are created as follows:

- (a) This Ordinance shall not apply to Floating Structures Lawfully Moored in a permitted Public Mooring Field. For purposes of this section, “Lawfully Moored in a permitted Public Mooring Field” means moored to a mooring ball or mooring buoy that is authorized under federal, state, and local law(s), which

has received all required federal, state, and local permits and approvals, and which is situated within a mooring field managed by a local government.

- (b) This Ordinance shall not apply to Floating Structures Lawfully Moored in a permitted Private Mooring. For purposes of this section, “Lawfully Moored in a permitted Private mooring” means moored to a mooring ball or mooring buoy when such mooring is both authorized under federal, state, and local law(s), and has received all required federal, state, and local permits and approvals to so moor.
- (c) This Ordinance shall not apply to a Floating Structure moored or docked at a lawfully established marina or Marine Facility. It is the responsibility of the owner(s) or proprietor(s) of lawfully established marinas and marine facilities to ensure that Floating Structures moored thereto comply with all applicable local, state, and federal proprietary, safety, environmental, and pollution controls laws, rules, and regulations.
- (d) This Ordinance shall not apply to Vessels, including but not limited to Barges, Jack Up Rigs, Houseboats, and Live-Aboard Vessels.
- (e) This Ordinance shall not apply to Floating Structures that are Lawfully Moored or anchored above privately-owned submerged lands.
- (f) This Ordinance shall not apply to Floating Structures that are part of a permitted construction project or a permitted dredging activity.
- (g) This Ordinance shall not apply to a Floating Structure that federal, state, and local proprietary laws and regulations expressly permit, when such Floating Structure has received all such required federal, state, and local permits and approvals (such as a floating boat lift or floating vessel platform permitted by the Florida Department of Environmental Protection pursuant to Chapter 403, Florida Statutes, and Chapter 62, Florida Administrative Code, as may be amended, and by all applicable federal permitting agencies), and is in compliance with all conditions of said permits and approvals.
- (h) This Ordinance shall not apply to government waterway markers; such as, regulatory markers and aids to navigation (the latter including, but not limited to, channel markers, danger markers, information markers, and aids of no lateral significance).
- (i) This Ordinance shall not apply to a waterway marker when that marker is both authorized under federal, state, and local law(s), and when its owner(s) and permittee(s) have received all required federal, state, and local permits and approvals to so place or maintain that waterway marker.
- (j) Any municipality that later adopts this ordinance may independently enact its own separate-and-distinct subsection of enumerated exceptions.

Section 7. Enforcement; Penalties

- (a) Any law enforcement officer or Code Enforcement Officer acting within his/her jurisdiction is authorized to enforce this Ordinance.
- (b) The violation of any provision of this Ordinance may be enforced pursuant to Section 125.69(1), Florida Statute, as may be amended, and shall be punishable by a fine not to exceed five hundred dollars (\$500.00) per day, by imprisonment in the county jail not to exceed sixty (60) days, or by both such fines and imprisonment.
- (c) Civil Authority to Dismantle or Remove Offending Floating Structure. The violation of any provision of this Ordinance may be enforced pursuant to the procedures and penalties of Section 162.01 Florida Statutes. For any violation of this Ordinance, St. Johns County may initiate an original county or circuit court action, or special magistrate proceeding pursuant to Chapter 162, Florida Statutes. The County may dismantle or remove a Floating Structure held in violation of this Ordinance, and at its sole discretionary election may arrange to store or return it to the rightful owner, upon the owner's payment of all reasonable costs associated with said dismantlement, removal, or storage.
- (d) In addition to the sanctions contained herein, this Ordinance may be enforced through any other appropriate legal action, including, but not limited to, seeking cease and desist orders, instituting other administrative actions, and requesting temporary and permanent injunctions to enforce the provisions this Ordinance. It is the purpose of this Ordinance to provide additional and cumulative remedies.
- (e) Each day a violation of this Ordinance occurs shall constitute a separate offense and be punishable as such.
 - a. When a Floating Structure is found to be in violation of this Ordinance, notice shall be placed upon such Floating Structure notifying such owner(s), whether known or unknown, that the Floating Structure is in violation of this Ordinance. Owner(s) shall be given twenty-one (21) calendar days from the date of the posting of the notice to remove the Floating Structure, except when there is an impending tropical system, in which case an owner(s) shall be given twenty-four (24) hours from the date and time of the posting of the notice to remove the Floating Structure. Such notice shall be substantially in the following form:

**“NOTICE OF ILLEGALLY ANCHORED OR MOORED
FLOATING STRUCTURE**

St. Johns County Ordinance 2023-29 prohibits the anchoring, mooring, tying off, or otherwise affixing of Floating Structures except when Lawfully Moored in a permitted Public Mooring Field or permitted Private Mooring, or as otherwise permitted under the Ordinance. This Floating Structure is currently in violation of Ordinance 2023-29 and is subject to enforcement under the Ordinance. You are hereby notified that you must remove the above-described Floating Structure by no later than _____(date), failing to do so will result in the Floating Structure being removed or destroyed and you will be responsible for expenses including but not limited to all costs of removal, storage, disposal, and fines, and administrative costs as applicable”.

- b. The “NOTICE OF ILLEGALLY ANCHORED OR MOORED FLOATING STRUCTURE” shall also be mailed by First-Class mail to the owner of the Floating Structure, if known. Evidence that an attempt has been made to mail such notice, if the owner is known, together with proof of posting, shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

- (f) If a person fails to pay the civil penalty or request a hearing, fails to appear in court to contest the citation when a hearing has been requested, or fails to appear in court as may be required, the court may enter judgment for an amount not to exceed \$500.00 per infraction and/or may issue a rule to show cause upon the request of the County. The court rule shall require such person to appear before the court to explain why action on the citation has been taken. If any person who is issued such rule fails to appear in response to the court’s directive, the person may be held in contempt of court. At any hearing pursuant to this Ordinance, the commission of a violation must be proved by a preponderance of the evidence. The Florida Rules of Civil Procedure and Florida Evidence Code shall be applicable.

- (g) Costs. Any court of competent jurisdiction, administrative hearing officer, the St. Johns County Special Magistrate, and the code enforcement boards and special magistrates of each municipality within the county, are authorized to impose against violators of this Ordinance any costs associated with the dismantlement, removal, impoundment, or storage of any Floating Structure held in violation of this Ordinance.

- (h) Joint and Several Liability. All owners, part owners, joint owners, tenant-in-common, tenants in partnership, joint tenants, tenants by the entirety, lessees, sub-lessees, assignees, sub-assignees, and holders of legal or beneficial title to or interest in a Floating Structure that is in violation of this Ordinance, shall be jointly-and-severally liable with respect to any legal or equitable judgment or relief obtain in enforcing this Ordinance.

- (i) Collection of Penalties. All civil penalties shall be paid to and collected by the Clerk of Court as provided by law.
- (j) No Waiver or Estoppel. It being that St. Johns County, the State of Florida, federal or state enforcement agencies, and municipalities within the county possess discretion to enforce this ordinance, such local governments' or state or federal enforcement agencies' delay or failure to enforce any provision contained in this ordinance, however long continued, shall not be deemed a waiver or estoppel of the right for the local government or state or federal enforcement agency to enforce this Ordinance at any time thereafter.
- (k) Authorization to Contract for Dismantling. The County is authorized to contract on an on-call basis with at least one marine salvage company to assist with the expeditious covering, dismantlement or removal of Floating Structures held in violation of this Ordinance. The County is authorized to cover, dismantle, or remove such offending Floating Structures pursuant to said contract.
- (l) Any person who willfully refuses to sign and accept a citation issued by an enforcement agent shall be guilty of a misdemeanor of the second degree, punishable as provided in Section 775.082 or 775.083, Florida Statutes.

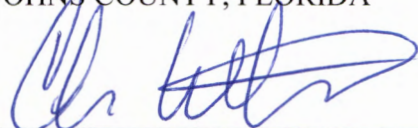
Section 8. Severance Clause. It is the intent of the Board of County Commissioners of St. Johns County, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining sections, subsections, sentences, clauses, phrases, or provision of this Ordinance.

Section 9. Effective Date. This Ordinance shall take effect upon its being filed with the Department of State of Florida.

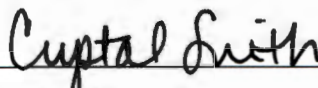
PASSED AND ENACTED by the Board of County Commissioners of St. Johns County, Florida, this 15th day of August, 2023.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

Rendition Date AUG 03 2023

By: 
Christian Whitehurst, Chair

ATTEST: Brandon J. Patty, Clerk of the Court &
Comptroller

By: 
Deputy Clerk

Effective Date: AUG 04 2023



LOCALIQ

FLORIDA

PO Box 631244 Cincinnati, OH 45263-1244

PROOF OF PUBLICATION

Brandon Patty, Clerk of Circuit Attn: Natasha McGee, Deputy Clerk
CLERK OF THE COURTS
Minutes And Records
500 San Sebastian View

Saint Augustine FL 32084

STATE OF WISCONSIN, COUNTY OF BROWN

Before the undersigned authority personally appeared, who on oath says that he or she is the Legal Coordinator of the St Augustine Record, published in St Johns County, Florida; that the attached copy of advertisement, being a Public Notices, was published on the publicly accessible website of St Johns County, Florida, or in a newspaper by print in the issues of, on:

07/20/2023

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Subscribed and sworn to before me, by the legal clerk, who is personally known to me, on 07/20/2023

Nicole Jacobs
Legal Clerk

Mariah Verhagen
Notary, State of WI, County of Brown

8-25-26

My commission expires

Publication Cost: \$108.80

Order No: 9066204

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THIS IS NOT AN INVOICE!

Please do not use this form for payment remittance.

MARIAH VERHAGEN
Notary Public
State of Wisconsin

NOTICE OF PUBLIC HEARING OF THE ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS NOTICE IS HEREBY GIVEN that the Board of County Commissioners of St. Johns County, Florida, will hold a public hearing to consider adoption of the following ordinance at a regular meeting on Tuesday, August 1, 2023, at 9:00 a.m. in the County Auditorium at the County Administration Building, 500 San Sebastian View, St. Augustine, Florida:
AN ORDINANCE OF ST. JOHNS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, PROHIBITING FLOATING STRUCTURES; PROVIDING FOR A TITLE; PROVIDING FOR APPLICABILITY; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE PROHIBITION OF FLOATING STRUCTURES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES; PROVIDING FOR INCLUSION IN THE CODE ENFORCEMENT CITATION ORDINANCE OF ST. JOHNS COUNTY, FLORIDA; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

The proposed ordinance is on file in the office of the Clerk of the Board of County Commissioners at the County Administration Building, 500 San Sebastian View, St. Augustine, Florida, and may be examined by interested parties prior to the said public hearing. Please take note that the proposed ordinance is subject to revision prior to hearing or adoption. All parties having any interest in said ordinance will be afforded an opportunity to be heard at the public hearing.

If a person decides to appeal any decision made with respect to any matter considered at the hearing, such person will need a record of the proceedings, and for such purposes he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

NOTICE TO PERSONS NEEDING SPECIAL ACCOMMODATIONS AND TO ALL HEARING IMPAIRED PERSONS: In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in this proceeding should contact ADA Coordinator, at (904) 209-0400 or at the Facilities Management Department, 2416 Dobbs Road, St. Augustine, FL 32086. For hearing impaired individuals: Florida Relay Service: 1-800-955-8770, no later than 5 days prior to the date of this hearing.

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA
BRANDON J. PATTY, ITS CLERK
By: Yvonne King, Deputy Clerk
July 20, 2023; #9066204



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

August 7, 2023

FILED AUG 04 2023
St. Johns County
Clerk of Court

By: Crystal Smith
Deputy Clerk

Honorable Brandon Patty
Clerk of Courts
St. Johns County
500 San Sebastian View
St. Augustine, FL 32084

Attention: Crystal Smith

Dear Honorable Brandon Patty,

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of St. Johns County Ordinance No. 2023-29, which was filed in this office on August 4, 2023.

Sincerely,

Anya Owens
Administrative Code and Register Director

ACO/wlh