



## CITY OF BELLE ISLE, FL

1600 NELA AVENUE, BELLE ISLE, FL 32809 \* TEL 407-851-7730

### MEMORANDUM

From the Desk of Bob Francis, City Manager

**To:** Mayor and Council  
**Date:** March 3, 2020  
**Re:** Lake Conway Workshop

**Background:** Over the past few years, traffic on the Conway Chain of Lakes has significantly increased especially personal water craft. The ordinances that the City and County have in place for Lake Conway are good ordinances, but they cannot be enforced because FWC has not recognized the ordinances.

From FS 327.46(1)(c)3.b: ***"Any of the ordinances adopted pursuant to this paragraph shall not take effect until the commission has reviewed the ordinance and determined by substantial competent evidence that the ordinance is necessary to protect public safety pursuant to this paragraph."***

I have reported over the past year that the Lake Conway Navigation Advisory Board has been receiving public comment at their meetings regarding speed or personal watercraft; distance at which personal watercraft come to other boats; boats coming too close to shore, docks and other boats that are anchored; and that all watercraft speed through the narrow part of Little Lake Conway, sometimes as many as 6 abreast. That part of Little Lake Conway could be considered a blind spot. In response to public comment at Navigation Advisory Board meeting, the County is also discussing what steps they may take to try to control issues on the lake.

Also in response to citizen concerns and complaints regarding the above issues, the City Council directed the City Attorney and City Manager to draft an ordinance and apply to the FWC for their approval. The Council also directed the City Attorney to review state laws and statutes and to reach out to the County Attorney to collaborate on how these issues can be addressed and if the City or County have jurisdictional control over the operation of vessels on Lake Conway. As a result of this effort, the City Attorney issued a document to the City Council in October 2019 with his opinion. The document was forwarded to the Navigation Board and the County. The report is attached. At a Navigation Advisory Board meeting in late 2019, it was reported that the Chair of the Board and District 3 County Commissioner Uribe were working with the County Attorney on Lake Conway issues. To date, the results of that meeting have not been discussed at Advisory Board Meetings.



The City Attorney reviewed the state law adopted in 1957 that created the Lake Conway Navigation District and vested governing authority in the Orange County Board of County Commissioners as the Lake Conway Navigation District Board. This authority was to among its other powers to: ***control and regulate speed and operation of boats, boating activity and navigation.*** Section 6 of this same Act allows the Navigation Board: ***"to employ and retain all personnel necessary to carry out the purposes of this act"***, and lastly, Section 11 of this Act: ***"authorizes and empowers the Board adopt by resolution reasonable and uniform rules and regulations to regulate and control the speed and operation of all water craft or boats of any kind plying on or using the waters within said District, including specifically the canals therein. Violations of any such rule or regulation shall be a misdemeanor and shall be punishable by imprisonment in the county jail for not exceeding ninety days, or by fine of not exceeding \$200."***

In 1959, another law was passed that gave the Lake Conway navigation District Board the authority to tax the privately owned land which borders and is adjacent to the waters and canals of Lake Conway ***"to provide suitable personnel and equipment to regulate and control the water craft using said waters of the district."***

The City Attorney's report concludes that the 1957 law may still be enforceable. Even if it is not, then the City and County are authorized to adopt ordinances on control of boats and apply to the FWC for approval of the ordinances. Florida Statute 327 allows for the City or County to apply. ***"Any application for approval of an ordinance shall be reviewed and acted upon within 90 days after receipt of a completed application. Within 30 days after a municipality or county submits an application for approval to the commission, the commission shall advise the municipality or county as to what information, if any, is needed to deem the application complete. An application shall be considered complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired."*** Any application for approval of an ordinance shall be reviewed and acted upon within 90 days after receipt of a completed application. Within 30 days after a municipality or county submits an application for approval to the commission, the commission shall advise the municipality or county as to what information, if any, is needed to deem the application complete. An application shall be considered complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired."

The Orange County boating ordinances and City boating ordinances mirror each other and are in line with the state statutes. It appears that the only issue is whether or not the 1957 law overrides the current state statutes. The City Attorney's document seems to favor that it does.

As of the date of this workshop, there hasn't been any update coming from the Lake Conway Navigation Advisory Board or the County on any of the issues that were brought before them. The City has drafted another ordinance to establish speed zones in the narrow part of Little Lake Conway.

In speaking with some members of the boating and boating recreational community, it appears that they are in agreement with the Orange County and City regulations on distances but they see the 36 mph speed limit as problematic for wakeboarding and skiing. It might be acceptable to change the regulations to state that the speed limit will remain at 36 mph unless a vessel is towing a



wakeboarder or skier, then the speed limit will be 50 mph or whatever is acceptable to those in the recreational industry. They should be in attendance at the meeting to work through this issue.

As for direction at the end of the workshop, the City staff is looking at the following options:

1. Request the County provide a similar opinion on whether or not the 1957 state law takes precedent over the current state statutes.
2. Review the latest ordinance drafted by the City and if satisfactory it goes through the adoption process. If not, then provide direction to the staff on what changes are to be made.
3. Once adopted, direct that the City apply to FWC requesting the FWC adopt the City's ordinances.
4. As this is an important issue to City of Belle Isle, City of Edgewood, and Orange County residents, then if either the City or County applies to the FWC for approval of the regulations, then a coalition of elected officials, including the mayors of Belle Isle and Edgewood, Orange County District 3 Commissioner, State Senator Stewart and State Representative Eskamani should appear before the FWC in support of the FWC approving Orange County's regulations or the City's ordinances.

Attachments:

- 1957 State Law excerpt
- 1959 State Law excerpt
- Florida Statute 327
- Orange County Municipal Code on Watercraft, Sections 8-31 to 8-37
- Belle Isle Municipal Code on Watercraft, Sections 34-31 to 34-37
- City Attorney Report dated October 23, 2019
- Draft Ordinance on Speed Zone on Little Lake Conway



purchase money; providing such instrument must permit the said Board to pay off all or any portion of the deferred purchase price at any time the said Board may desire; and provided further that said Board shall not by said instrument or by the acquisition of said land become itself liable for the purchase price but the land shall stand as the sole security for the purchase price and each such instrument shall so provide and shall also provide that neither the credit of said Board nor the credit of Special School District No. 1 of said County is pledged for the payment of such purchase price. In years subsequent to the fiscal year in which such land is acquired funds shall be budgeted for the payment of the deferred portions of the purchase price so long as and to the extent that said Board shall determine doing so to be for the best interest of the public school system of Orange County, Florida.

Section 3. This act is intended to be cumulative and is not intended to repeal or curtail any existing authority of the Board of Public Instruction of Orange County, Florida.

Section 4. The Board should not be obligated at any one time for more than \$100,000.00 under this Act.

Section 5. This Act shall take effect immediately upon its becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State May 30, 1957.

CHAPTER 57-1643

HOUSE BILL NO. 1626

AN ACT to authorize the creation of the following described lands lying and being in Orange County, State of Florida, to-wit:

Beginning at the Northeast corner of the Northwest quarter of the Northeast quarter of Section 20, Township 23 South, Range 30 East run thence North along State Road No. 15 to the Northeast corner of the Northwest quarter of the Northeast quarter of Section 17, Township 23 South, Range 30 East; thence West along Orlando Gardens Road to the Southeast corner of the Southwest quarter of the Southwest quarter of Section 8, Township 23 South, Range 30 East; thence North along Conway Gardens Road to the Northeast corner of the Southwest quarter of the South-



the west quarter of Section 8, Township 23 South, Range 30 East; thence West along Pershing Avenue to the Northwest corner of the Southwest quarter of the Southeast quarter of Section 7, Township 23 South, Range 30 East; thence South along Bumby Avenue to Gatlin Avenue; thence Westerly along Gatlin Avenue to a point 660 feet West of the Northeast corner of Section 13, Township 23 South, Range 29 East; thence South 1650 feet; thence West 660 feet to the West line of Government Lot 1; thence South to the North line of Government Lot 2; thence Westerly to the center of Section 13, Township 23 South, Range 29 East; thence South 400.7 feet; thence Westerly 1486.5 feet to State Road No. 527 (Kuhl Avenue); thence Southerly along State Road No. 527 to Hoffner Avenue; thence East along Hoffner Avenue to Randolph Avenue; thence South along Randolph Avenue to Wallace Street; thence East along Wallace Street to Matchett Road; thence Southerly along Matchett Road to intersection with Nela Avenue; thence East along Nela Avenue to the East line of Section 25, Township 23 South, Range 29 East; thence South along said East line of Section 25, Township 23 South, Range 29 East to the Southeast corner of Section 25, Township 23 South, Range 29 East; thence East to the Southeast corner of the Southwest quarter of the Southwest quarter of Section 29, Township 23 South, Range 30 East; thence North to the Northeast corner of the Northwest quarter of the Northwest quarter of Section 29, Township 23 South, Range 30 East; thence East to the Southeast Corner of the Southwest quarter of the Southeast quarter of Section 20, Township 23 South, Range 30 East; thence North to the Northeast corner of the Northwest quarter of the Northeast quarter of Section 20, Township 23 South, Range 30 East, being the point of beginning.

into a special Water and Navigation Control District to be known as the "Lake Conway Water and Navigation Control District", with power: to regulate and control the level of water within said District; to build, erect, and maintain wells for the purpose of restoring, maintaining, lowering, and raising the water level of the lakes within said District, and to provide drainage of excess waters from the lakes within said District: to have authority to control, regulate and determine the water level of the lakes



within said District; to provide for the levying of taxes within said District for the payment of costs and expenses; determining that establishment and maintenance of said District confers special benefits on lands within said District for which ad valorem taxes may be assessed and collected; providing that taxes shall not be levied, assessed and collected in an amount in excess of two (2) mills on the total assessed valuation of the land within the District and the valuation of the land shall be determined by the valuation established by the Tax Assessor of Orange County, Florida, for lands within said District; to authorize and empower the said District to issue bonds to obtain funds to carry out the purposes of this law; to build, erect and maintain, and repair navigable canals within said District; to provide that the County Commissioners of Orange County, Florida shall be the governing body of said District and prescribing their duties, authority and functions; to make rules and regulations governing speed and operation of water craft plying the waters within said District; to provide for the punishment of violations of such rules and regulations; to provide regulations for the construction by private individuals or concerns of canals or ditches within the District, and to provide punishment for violation thereof; to provide for the establishment of an advisory committee to the Board of County Commissioners of Orange County with reference to the affairs of said District; to provide for the Clerk of the Circuit Court to serve as secretary ex officio and prescribing his duties; to provide that after the effective date of this Act it shall be unlawful to do any dredging, pumping of sand, extension of land, construction or extension of islands, creating obstructions in or under any of the waters of said District without obtaining a permit from the Lake Conway Water and Navigation Control District; providing for the requirements of applications to secure permits; providing for notice of public hearing on application for permits to make findings of fact according to standards stated in the Act; providing for public hearing on applications for permits; providing for the right of rehearing and the right of appeal on applications for permit; providing for exceptions as to docks and wharves in front of upland property owners with the power to establish rules and regulations therefor; providing for the period of time said permits may be issued; providing for the applicants for permits to pay the cost and expenses of process in determination of the application for per-



mits; providing for the applicants for purchase of submerged land from the trustees of the internal improvement fund to file a copy of said application together with other information with the Lake Conway Water and Navigation Control District; providing for the publication of notice of public hearing for proposed purchase of submerged land and other lands from the trustees of the Internal Improvement Fund of the State of Florida; providing for the Lake Conway Water and Navigation Control District to determine its recommendations on proposed purchase of all submerged land and other lands within the said District and submit them in writing to the trustees of the Internal Improvement Fund of the State of Florida after public hearing; providing that all costs and expenses of the process of determination and hearing of the Lake Conway Water Navigation Control District on its recommendations for sale of submerged land and other land shall be paid for by the applicants; granting the Lake Conway Water and Navigation Control District the right to subpoena witnesses and to compel them to testify under oath; providing for penalties for violation of this Act; providing that said Act is a valid public purpose; providing for this Act to be liberally construed; providing severability clause; repealing all laws in conflict herewith.

WHEREAS, the establishment and creation of the LAKE CONWAY WATER AND NAVIGATION CONTROL DISTRICT in Orange County, Florida would be for the benefit of the people of said district in that it would tend to promote their health, safety and general welfare,

NOW, THEREFORE,

*Be It Enacted by the Legislature of the State of Florida:*

Section 1. That in order to provide for adequate regulation and control of all lakes, canals, streams, waterways, inlets, bays and their alteration by dredging, filling, pumping, or otherwise altering the shoreline, land contours and/or water areas, and in the interest of public rights, public welfare, protection of public riparian property rights and the preservation of the natural beauty and attractiveness of the lakes, canals, streams, waterways, inlets and bays, and to provide for wells to restore and maintain water levels and to control and regulate speed and operation of boats, boating activity and navigation, and to provide adequate notice



as to the purchase of lands from the Trustees of the Internal Improvement Fund, within the District, and to provide public hearings and recommendations as to the same, there is hereby created the LAKE CONWAY WATER AND NAVIGATION CONTROL DISTRICT within the following described lands situate, lying and being in Orange County, Florida:

Beginning at the Northeast corner of the Northwest quarter of the Northeast quarter of Section 20, Township 23 South, Range 30 East; run thence North along State Road No. 15 to the Northeast corner of the Northwest quarter of the Northeast quarter of Section 17, Township 23 South, Range 30 East; thence West along Orlando Gardens Road to the Southeast corner of the Southwest quarter of the Southwest quarter of Section 8, Township 23 South, Range 30 East; thence North along Conway Gardens Road to the Northeast corner of the Southwest quarter of the Southwest quarter of Section 8, Township 23 South, Range 30 East; thence West along Pershing Avenue to the Northwest corner of the Southwest quarter of the Southeast quarter of Section 7, Township 23 South, Range 30 East; thence South along Bumby Avenue to Gatlin Avenue; thence Westerly along Gatlin Avenue to a point 660 feet West of the Northeast corner of Section 13, Township 23 South, Range 29 East; thence South 1650 feet; thence West 660 feet to the West line of Government Lot 1; thence South to the North line of Government Lot 2; thence Westerly to the Center of Section 13, Township 23 South, Range 29 East; thence South 400.7 feet; thence Westerly 1486.5 feet to State Road No. 527 (Kuhl Avenue); thence Southerly along State Road No. 527 to Hoffner Avenue; thence East along Hoffner Avenue to Randolph Avenue; thence South along Randolph Avenue to Wallace Street; thence East along Wallace Street to Matchett Road; thence Southerly along Matchett Road to intersection with Nela Avenue; thence East along Nela Avenue to the East line of Section 25, Township 23 South, Range 29 East; thence South along said East line of Section 25, Township 23 South, Range 29 East to the Southeast corner of Section 25, Township 23 South, Range 29 East; thence East to the Southeast corner of the Southwest quarter of the Southwest quarter of Section 29, Township 23 South, Range 30 East; thence North



to the Northeast corner of the Northwest quarter of the Northwest quarter of Section 29, Township 23 South, Range 30 East; thence East to the Southeast corner of the Southwest quarter of the Southeast quarter of Section 20, Township 23 South, Range 30 East; thence North to the Northeast corner of the Northwest quarter of the Northeast quarter of Section 20, Township 23 South, Range 30 East, being the point of beginning.

Section 2. The following terms and phrases, when used in this Act, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

*District* means the Lake Conway Water and Navigation Control District.

*Board* means the Board of County Commissioners of Orange County, Florida, acting as the governing authority of the Lake Conway Water and Navigation Control District.

*Water or Waters* includes all lakes, canals, streams, waterways, bays and inlets within the District.

*Person, Firm, Partnership or Corporation*, when used in this Act, shall not include the State of Florida and Orange County, Florida.

*Person* shall mean an individual, firm, partnership or corporation.

Section 3. The Lake Conway Water and Navigation Control District shall be composed of the duly elected members of the Board of County Commissioners of Orange County, Florida, and said Board shall be the governing authority of the Lake Conway Water and Navigation Control District.

Section 4. The Board shall each year elect one (1) of its members as Chairman. The Clerk of the Circuit Court of Orange County, Florida, shall serve as secretary ex officio and as Clerk of the Lake Conway Water and Navigation Control District, and shall keep the minutes of the meetings of said District, but he shall not be entitled to any salary or additional compensation therefor, nor shall he be entitled to a vote on said Board. The members of the Board shall not be entitled to any additional salary or additional compensation for their services as members of said governing authority of the Lake Conway Water and Navigation Control District.



Section 5. It shall be the duty of the Clerk on and after the effective date of this Act to accept and process all applications and matters of business coming before the District and receive all revenues and receipts of the District. He shall further provide for such administrative service as may be requested by the Board and shall keep accurate records of the business of said District. He shall have available at all times for public inspection any and all rules, regulations and codes promulgated by the Board for the District.

Section 6. The Board shall have the power to employ or retain all personnel necessary to carry out the purposes of this Act. The payment of such personnel, costs and expenses of the District shall be an obligation of the said District and not the responsibility of Orange County, Florida.

Section 7. The Board shall regulate and control the level of water within the lakes, canals, streams, waterways, basins, bays and inlets in the said District and may make such investigation or cause investigation to be made as may be necessary to properly regulate and control the level of the waters within said District.

Section 8. The Board shall build, erect and maintain wells within the said District for the purpose of restoring, maintaining, lowering and raising the water level of the lakes within the District as deemed necessary by the Board. The Board may employ such persons, firms or corporations as may be necessary to advise it as to the number and location of the wells within the District.

Section 9. The Board shall provide for the drainage of excess waters from the lakes, canals, streams, waterways, bays and inlets within said District as it shall deem necessary from time to time.

Section 10. The Board shall build, construct and repair canals and locks within the said District as may be necessary to render the waters navigable and to carry out the purposes of this Act.

Section 11. The Board is hereby authorized and empowered to adopt by resolution reasonable and uniform rules and regulations to regulate and control the speed and operation of all water craft or boats of any kind plying on or using the waters within said District, including specifically the canals therein. Violation of any such rule or regulation shall be a misdemeanor and shall be punishable by imprisonment in the county jail for not exceeding ninety



(90) days, or by a fine not exceeding Two Hundred Dollars (\$200.00), or by both such imprisonment and fine.

Section 12: That on and after the effective date of this Act, it shall be unlawful for any person to do any dredging, pumping of sand, extension of lands, construction or extension of islands, creating canals, basins, inlets or bays for subdivisions or for any other purpose, filling of any submerged lands or creating obstructions in, on or under any of the waters of said District except as hereinafter provided.

(a) Any person, firm or corporation desiring to do any dredging, pumping of sand, filling of any submerged lands, extension of lands, construction of islands in or under the waters in the said District, or desiring to create canals, basins, inlets or bays for subdivisions or for any other purpose, or to create obstructions in, on or under any of the waters of the said District, shall make an application to the District for a permit to be granted to such person, firm or corporation to dredge, pump sand, fill or extend lands, or create canals, ditches, basins, inlets, or bays for subdivisions or for any other purpose, construction of islands, or to create obstructions in, on or under any of the waters of said District, or the excavating of basins or channels in the District.

(b) That said application shall be accompanied by a plan or drawing showing specifically what is proposed to be done, and the location of property owners who may be affected thereby. Said plan or drawing shall be to scale and shall show the depths of the waters and the elevation of the development above the waterline, and shall have been drawn by an accredited civil engineer; that said application shall include the names and mailing addresses of all the owners of property within five hundred (500) feet of the nearest point of said development; that said application shall further include proof of ownership of the property which is proposed to be developed; that the District may require such other information as may be necessary in the processing and determination of the application.

(c) The application shall be filed with the Clerk of said District, together with such filing fees and costs as may be necessary for the filing, processing and determination of said application; provided, however, such fees and costs shall not exceed Ten Dollars (\$10.00).



CHAPTER 59-1648  
HOUSE BILL NO. 1294

AN ACT relating to improvements on highways and streets upon petition of abutting property owners; amending Section 1 of Chapter 57-1645, Special Acts of 1957.

*Be It Enacted by the Legislature of the State of Florida:*

Section 1. Section 1, Chapter 57-1645, Special Acts of 1957, is amended to read:

"Section 1. That upon petition signed by the owners of Sixty-Six and two-thirds per cent (66 2/3%) of the real estate and frontage described in such petition as property to be specially benefited, which real estate shall be regarded as a district and may be that which abuts upon the line of the proposed improvements, requesting the Board of County Commissioners of Orange County, to grade, pave, curb or gutter any continuous portion of a single highway or street, or two or more connecting highways or streets, or to make two or more of such improvements, by assessment of the entire cost thereof against the abutting property or such portion of the cost as the Board of County Commissioners may designate, the Board of County Commissioners shall have the power, in their discretion, upon a finding by said Board of County Commissioners that the petition is sufficient in form, substance and execution, to order such improvement to be made and to specially assess against the abutting property that portion of the cost that the Board has designated and to pay as a county charge any remaining cost."

Section 2. All laws and parts of laws in conflict herewith are hereby repealed.

Section 3. This Act shall take effect upon becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State May 26, 1959.

CHAPTER 59-1649  
HOUSE BILL NO. 1537

AN ACT relating to creation of a special water and navigation control district to be known as "Lake Conway Water and Navi-



gation Control District" amending Section 1 and Section 19, Chapter 57-1643, Special Acts, 1957; repealing Section 20 and Section 21, Chapter 57-1643, Special Acts, 1957; providing an effective date.

*Be It Enacted by the Legislature of the State of Florida:*

Section 1. Section 1 of Chapter 57-1643, Special Acts, 1957, is amended to read:

"Section 1. That in order to provide for adequate regulation and control of all lakes, canals, streams, waterways, inlets, bays and their alteration by dredging, filling, pumping or otherwise altering the shoreline, land contours and/or water areas, and in the interest of public rights, public welfare, protection of public riparian property rights and the preservation of the natural beauty and attractiveness of the lakes, canals, streams, waterways, inlets and bays, and to provide for wells to restore and maintain water levels and to control and regulate speed and operation of boats, boating activity and navigation, and to provide adequate notice as to the purchase of lands from the Trustees of the Internal Improvement Fund, within the District, and to provide public hearings and recommendations as to the same, there is hereby created the LAKE CONWAY WATER AND NAVIGATION CONTROL DISTRICT within the following described lands situate, lying and being in Orange County, Florida:

All privately owned land which borders and is adjacent and contiguous to the waters and canals of Lake Conway, in Orange County, Florida, whether located within the boundaries of any municipality or not."

Section 2. Section 19 of Chapter 57-1643, Special Acts, 1957, is amended to read:

"Section 19. The Board is authorized and empowered to expend and use the said moneys collected under the taxing, and fee provisions of this law to carry out the intent and purpose of this law and said authority and power shall include, but is not limited to, the payment of costs and expenses incident to the administration of the district, the payment of personnel wages and salaries, and the payment of engineering or other technical experts who may be employed to assist and advise the Board. The Board is also authorized and empowered to expend the funds collected by the taxing, and fee provisions of this law to build, construct, erect

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and maintain wells, canals, and drainage facilities and to provide suitable personnel and equipment to regulate and control the water craft using the said waters of the district, and in general to carry out the intent and purpose of this Act."

Section 3. Section 20 of Chapter 57-1643, Special Acts, 1957, is repealed. Section 21 of Chapter 57-1643, Special Acts, 1957, is repealed.

Section 4. All laws or parts of laws in conflict herewith are hereby repealed.

Section 5. This Act shall take effect immediately upon becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 4, 1959.

CHAPTER 59-1650

SENATE BILL NO. 682

AN ACT making it unlawful for any merchant or shopkeeper or any other person to keep open store and dispose, sell or barter any ware, merchandise, goods or chattels on Sunday in Orange County, Florida; providing certain exceptions; providing for a referendum of the electors of Orange County, Florida; providing that violation of the Act is unlawful and a misdemeanor; providing a penalty for violation thereof; providing for an effective date.

*Be It Enacted by the Legislature of the State of Florida:*

Section 1. It shall be unlawful on Sunday for any merchant or shopkeeper or any other person to keep open store and dispose, sell or barter any ware, merchandise, goods, or chattels; provided, in cases of emergency or necessity, however, merchants, shopkeepers and others may dispose of the comforts and necessities of life to customers without keeping open doors.

The foregoing section shall not be held to prohibit selling or keeping open stores for the purpose of selling drugs, ice, meals, gasoline, heating fuels and newspapers, provided that other merchandise be completely covered or curtained off; provided further that nothing in the foregoing section shall be held to pro-



## The 2019 Florida Statutes

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Title XXIV  
VESSELS

Chapter 327  
VESSEL SAFETY

[View Entire Chapter](#)

### **327.46 Boating-restricted areas.—**

(1) Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on the waters of this state for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.

(a) The commission may establish boating-restricted areas by rule pursuant to chapter 120.

(b) Municipalities and counties have the authority to establish the following boating-restricted areas by ordinance:

1. An ordinance establishing an idle speed, no wake boating-restricted area, if the area is:

a. Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width or within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.

b. Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width or within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.

c. Inside or within 300 feet of any lock structure.

2. An ordinance establishing a slow speed, minimum wake boating-restricted area if the area is:

a. Within 300 feet of any bridge fender system.

b. Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.

c. On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.

d. On a lake or pond of less than 10 acres in total surface area.

3. An ordinance establishing a vessel-exclusion zone if the area is:

a. Designated as a public bathing beach or swim area.

b. Within 300 feet of a dam, spillway, or flood control structure.

(c) Municipalities and counties have the authority to establish by ordinance the following other boating-restricted areas:



1. An ordinance establishing an idle speed, no wake boating-restricted area, if the area is within 300 feet of a confluence of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area if an intervening obstruction to visibility may obscure other vessels or other users of the waterway.

2. An ordinance establishing a slow speed, minimum wake, or numerical speed limit boating-restricted area if the area is:

a. Within 300 feet of a confluence of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area if an intervening obstruction to visibility may obscure other vessels or other users of the waterway.

b. Subject to unsafe levels of vessel traffic congestion.

c. Subject to hazardous water levels or currents, or containing other navigational hazards.

d. An area that accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate to present a significant risk of collision or a significant threat to boating safety.

3. An ordinance establishing a vessel-exclusion zone if the area is reserved exclusively:

a. As a canoe trail or otherwise limited to vessels under oars or under sail.

b. For a particular activity and user group separation must be imposed to protect the safety of those participating in such activity.

Any of the ordinances adopted pursuant to this paragraph shall not take effect until the commission has reviewed the ordinance and determined by substantial competent evidence that the ordinance is necessary to protect public safety pursuant to this paragraph. Any application for approval of an ordinance shall be reviewed and acted upon within 90 days after receipt of a completed application. Within 30 days after a municipality or county submits an application for approval to the commission, the commission shall advise the municipality or county as to what information, if any, is needed to deem the application complete. An application shall be considered complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. The commission's action on the application shall be subject to review under chapter 120. The commission shall initiate rulemaking no later than January 1, 2010, to provide criteria and procedures for reviewing applications and procedures for providing for public notice and participation pursuant to this paragraph.

(d) Owners of private submerged lands that are adjacent to Outstanding Florida Waters, as defined in s. 403.061(27), or an aquatic preserve established under ss. 258.39-258.399 may request that the commission establish boating-restricted areas solely to protect any seagrass and contiguous seagrass habitat within their private property boundaries from seagrass scarring due to propeller dredging. Owners making a request pursuant to this paragraph must demonstrate to the commission clear ownership of the submerged lands. The commission shall adopt rules to implement this paragraph, including, but not limited to, establishing an application process and criteria for meeting the requirements of this paragraph. Each approved boating-restricted area shall be established by commission rule. For marking boating-restricted zones established pursuant to this paragraph, owners of privately submerged lands shall apply to the commission for a uniform waterway marker permit in accordance with ss. 327.40 and 327.41, and shall be responsible for marking the boating-restricted zone in accordance with the terms of the permit.

(e) As used in this section, the term "seagrass" has the same meaning as in s. 253.04.



(2) Each such boating-restricted area shall be developed in consultation and coordination with the governing body of the county or municipality in which the boating-restricted area is located and, when the boating-restricted area is to be on the navigable waters of the United States, with the United States Coast Guard and the United States Army Corps of Engineers.

(3) It is unlawful for any person to operate a vessel in a prohibited manner or to carry on any prohibited activity, as defined in this chapter, within a boating-restricted area which has been clearly marked by regulatory markers as authorized under this chapter.

(4) Restrictions in a boating-restricted area established pursuant to this section shall not apply in the case of an emergency or to a law enforcement, firefighting, or rescue vessel owned or operated by a governmental entity.

**History.**—s. 7, ch. 63-105; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 23, ch. 78-95; s. 7, ch. 81-100; s. 27, ch. 99-245; s. 16, ch. 2000-362; s. 13, ch. 2009-86; s. 8, ch. 2017-163.

**Note.**—Former s. 371.522.



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## The 2019 Florida Statutes

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[Title XXIV](#)  
VESSELS

[Chapter 327](#)  
VESSEL SAFETY

[View Entire Chapter](#)

**327.461 Safety zones, security zones, regulated navigation areas, and naval vessel protection zones; prohibited entry; penalties.—**

(1)(a) A person may not knowingly operate a vessel, or authorize the operation of a vessel, in violation of the restrictions of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as defined in and established pursuant to 33 C.F.R. part 165.

(b) The intent of this section is to provide for state and local law enforcement agencies to operate in federally designated exclusion zones specified in paragraph (a). State and local law enforcement personnel may enforce these zones at the request of a federal authority if necessary to augment federal law enforcement efforts and if there is a compelling need to protect the residents and infrastructure of this state. Requests for state and local law enforcement personnel to enforce these zones must be made to the Department of Law Enforcement through the Florida Mutual Aid Plan described in s. [23.1231](#).

(2) A person who knowingly operates a vessel, or authorizes the operation of a vessel, in violation of the restrictions of such a safety zone, security zone, regulated navigation area, or naval vessel protection zone commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(3) A person who continues to operate, or authorize the operation of, a vessel in violation of the restrictions of such a safety zone, security zone, regulated navigation area, or naval vessel protection zone after being warned against doing so, or who refuses to leave or otherwise cease violating the restrictions of such a safety zone, security zone, regulated navigation area, or naval vessel protection zone after having been ordered to do so by a law enforcement officer or by competent military authority, commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(4) A person who knowingly enters a safety zone, security zone, regulated navigation area, or naval vessel protection zone by swimming, diving, wading, or other similar means commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(5) A person who remains within or reenters such a safety zone, security zone, regulated navigation area, or naval vessel protection zone after being warned not to do so, or who refuses to leave or otherwise cease violating such a safety zone, security zone, regulated navigation area, or naval vessel protection zone after having been ordered to do so by a law enforcement officer or by competent military authority, commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(6) Each incursion into such a safety zone, security zone, regulated navigation area, or naval vessel protection zone is considered a separate offense.

(7) An entry into such a safety zone, security zone, regulated navigation area, or naval vessel protection zone that has been authorized by the captain of the port or the captain's designee is not a violation of this



section.

**History.**—s. 4, ch. 2004-74.



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## The 2019 Florida Statutes

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[Title XXIV](#)  
VESSELS

[Chapter 327](#)  
VESSEL SAFETY

[View Entire Chapter](#)

### **327.60 Local regulations; limitations.—**

(1) The provisions of this chapter and chapter 328 shall govern the operation, equipment, and all other matters relating thereto whenever any vessel shall be operated upon the waters of this state or when any activity regulated hereby shall take place thereon.

(2) This chapter and chapter 328 do not prevent the adoption of any ordinance or local regulation relating to operation of vessels, except that a county or municipality may not enact, continue in effect, or enforce any ordinance or local regulation:

(a) Establishing a vessel or associated equipment performance or other safety standard, imposing a requirement for associated equipment, or regulating the carrying or use of marine safety articles;

(b) Relating to the design, manufacture, or installation of any marine sanitation device on any vessel, except as authorized in subsection (4);

(c) Regulating any vessel upon the Florida Intracoastal Waterway;

(d) Discriminating against personal watercraft;

(e) Discriminating against airboats, for ordinances adopted after July 1, 2006, unless adopted by a two-thirds vote of the governing body enacting such ordinance;

(f) Regulating the anchoring of vessels outside the marked boundaries of mooring fields permitted as provided in s. [327.40](#), except for:

1. Live-aboard vessels; and

2. Commercial vessels, excluding commercial fishing vessels;

(g) Regulating engine or exhaust noise, except as provided in s. [327.65](#); or

(h) That conflicts with any provisions of this chapter or any amendments thereto or rules adopted thereunder.

(3) This section does not prohibit local governmental authorities from the enactment or enforcement of regulations that prohibit or restrict the mooring or anchoring of floating structures, live-aboard vessels, or commercial vessels, excluding commercial fishing vessels, within their jurisdictions or of any vessels within the marked boundaries of mooring fields permitted as provided in s. [327.40](#).

(4)(a) A local government may enact and enforce regulations that require owners or operators of vessels or floating structures subject to the marine sanitation requirements of s. [327.53](#) to provide proof of proper sewage disposal by means of an approved sewage pumpout service, approved sewage pumpout facility, or approved waste reception facility when anchored or moored for more than 10 consecutive days within the following areas:

1. Marked boundaries of a permitted mooring field under the jurisdiction of the local government;



2. No-discharge zones as published in Volume 53, No. 13 of the Federal Register, page 1678 (1988); Volume 64, No. 164 of the Federal Register, pages 46390-46391 (1999); and Volume 67, No. 98 of the Federal Register, pages 35735-35743 (2002); or

3. No-discharge zones established pursuant to 40 C.F.R. s. 1700.10.

(b) Before a local government may adopt an ordinance to enact and enforce such regulations, the local government must ensure that there are approved sewage pumpout services, approved sewage pumpout facilities, or approved waste reception facilities available within its jurisdiction. Any ordinance adopted pursuant to this subsection may not take effect until reviewed and approved as consistent with this subsection by the commission.

(c) Upon approval of the Administrator of the United States Environmental Protection Agency pursuant to 33 U.S.C. s. 1322, a county designated as a rural area of opportunity may create a no-discharge zone for freshwater waterbodies within the county's jurisdiction to prohibit treated and untreated sewage discharges from floating structures and live-aboard vessels not capable of being used as a means of transportation and from houseboats. Within no-discharge zone boundaries, operators of such floating structures, live-aboard vessels, and houseboats shall retain their sewage on board for discharge at a pumpout facility or for discharge more than 3 miles off the coast in the Atlantic Ocean or more than 9 miles off the coast in the Gulf of Mexico. Violations of this paragraph are punishable as provided in s. 327.53(6) and (7).

(d) This subsection does not prohibit a local government from enacting or enforcing such sewage pumpout requirements for live-aboard vessels, floating structures, and commercial vessels, excluding commercial fishing vessels, within any areas of its jurisdiction.

(e) The commission may adopt rules to implement this subsection.

(5) A local government may enact and enforce regulations to implement the procedures for abandoned or lost property that allow the local law enforcement agency to remove a vessel affixed to a public dock within its jurisdiction that is abandoned or lost property pursuant to s. 705.103(1). Such regulation must require the local law enforcement agency to post a written notice at least 24 hours before removing the vessel.

**History.**—s. 10, ch. 59-400; s. 16, ch. 63-105; s. 1, ch. 65-361; s. 3, ch. 72-55; s. 2, ch. 83-20; s. 38, ch. 95-143; s. 30, ch. 99-289; s. 20, ch. 2000-362; s. 3, ch. 2006-172; s. 3, ch. 2006-309; s. 14, ch. 2009-86; s. 9, ch. 2017-163; s. 3, ch. 2019-54.

**Note.**—Former s. 371.59.



Sec. 8-31. - General operation of boats and personal watercraft.

- (a) All boats and motorboats shall, whenever possible, keep at least three hundred (300) feet behind any boat towing a skier and shall stay clear of, by at least one hundred (100) feet, any boat or motorboat anchored or used for fishing. When a ski jump is in use, all other boats shall, whenever possible, stay at least one hundred (100) feet away on either side and five hundred (500) feet behind the ski jump.
- (b) No person shall operate any boat recklessly, overload any boat, indulge in any motorboat race, make sudden turns at excessive speed, follow too closely to other boats, or operate any boat in such a way that it may endanger other boats, life or property.
- (c) All motorboat operators shall sit within the confines of the boat and shall require that their passengers do likewise. Bowriding and gunwhale riding are strictly prohibited.
- (d) Care shall be taken by the operators of all motorboats and personal watercraft to prevent damage from their wash, bow wave or stern wave, or from objects towed by such boats to other boats, docks, piers, shorelines and boathouses. Boats, motorboats and personal watercraft shall not create a wake while operating within a canal, or within one hundred (100) feet of the shoreline, docks, piers, bridges or boathouses, or any other object arising from the water (excluding ski jumps or slalom courses) except when picking up or dropping off a waterskier. The one hundred-foot distance shall be measured from the boat, motorboat or personal watercraft itself or from any extension thereof, including but not limited to, a skier, aquaplane or other device being towed.
- (e) All boats and motorboats towing water skiers, aquaplanes or other devices shall operate in a counterclockwise direction of the waterway whenever possible.

(Code 1965, § 4-5; Ord. No. 83-37, § 5, 9-19-83; Ord. No. 95-19, § 3, 7-25-95)

Sec. 8-32. - Speed limits; posting.

The board of county commissioners may, by resolution, impose a speed limit on any waterway when it is determined that a speed limit is necessary to protect the health, safety and general welfare of the citizens of the county. Such speed limit shall be lawfully posted in or near the waterway in a location to be visible to the public.

(Code 1965, § 4-6; Ord. No. 83-37, § 6, 9-19-83)



**State Law reference—** Violation of speed limits, F.S. § 327.33(2).

**Sec. 8-33. - Personal watercraft.**

- (a) Personal watercraft under power shall keep at least three hundred (300) feet behind any boat towing a skier and shall stay clear of, by at least one hundred (100) feet, any vessel anchored or used for fishing or otherwise not under power. When a ski jump is in use, all personal watercraft shall stay clear of the area three hundred (300) feet on either side and five hundred (500) feet ahead of, and five hundred (500) feet behind, the ski jump.
- (b) Personal watercraft are prohibited on ski jumps not explicitly designated for their use.
- (c) No person shall create a wake while operating a personal watercraft within one hundred (100) feet of any persons in the water.
- (d) No person shall operate a personal watercraft while exceeding the manufacturer's recommended maximum weight or number of occupants.

(Ord. No. 95-19, § 4, 7-25-95)

**Sec. 8-34. - Swimmers and skin divers.**

- (a) No person shall swim from the shore more than one hundred (100) feet unless accompanied by a boat or identified by a standard buoy and flag.
- (b) No person shall scuba or skin dive unless identified by a standard scuba or skin diving flag.

(Ord. No. 95-19, § 5, 7-25-95)

**Sec. 8-37. - Muffling equipment.**

In order to minimize noise, boats, motorboats and personal watercraft shall utilize only factory-issued muffling equipment.

(Ord. No. 95-19, § 8, 7-25-95)



## ARTICLE II. - BOAT EQUIPMENT AND OPERATION<sup>[2]</sup>

### Footnotes:

--- (2) ---

**State Law reference**— Florida Vessel Safety Law, F.S. ch. 327; local regulation of vessels qualified, F.S. §§ 327.22, 327.60.

### Sec. 34-31. - Authority; scope.

- (a) This article is adopted pursuant to the city's home rule authority to adopt ordinances to protect the health, safety and general welfare of the citizens of the city, and, further, pursuant to F.S. § 327.60.
- (b) Vessels having been declared dangerous instrumentalities pursuant to F.S. § 327.32, the city council hereby determines that the following rules and regulations are necessary in order to protect the health, safety and general welfare of the citizens of the city using the waterways of Lake Conway.
- (c) This article shall apply to all waterways of Lake Conway lying within the boundaries of the city.

(Code 1980, § 3-21; Code 1991, § 3-31)

### Sec. 34-32. - Definitions.

For the purposes of this article, the following words and phrases shall have the meanings ascribed to them by this section, unless the context indicates otherwise:

*Motorboat* means any vessel which is propelled or powered by machinery and which is used or capable of being used as a means of transportation on water.

*Operator* means any person in charge of, or having immediate control over, a vessel, whether such person is the owner of the vessel or a permitted or an unauthorized user of the vessel.

*Vessel* 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.

*Waterway* means any waters, lakes, canals, streams, lagoons or connecting waters, whether natural or manmade, partially or wholly within the boundaries of the city.

(Code 1980, § 3-22; Code 1991, § 3-32)

**State Law reference**— Similar definitions, F.S. § 327.02.

### Sec. 34-33. - Compliance with federal and state law.

All vessels operating on or about the waterways of the city shall comply with all applicable federal and state laws, rules and regulations. The provisions of this article are supplementary to such federal and state laws, rules and regulations.

(Code 1980, § 3-23; Code 1991, § 3-33)

### Sec. 34-34. - Minimum safety equipment.



All vessels shall carry the safety equipment required by F.S. § 327.50. Each person being towed by a vessel shall wear a Coast Guard-approved lifesaving device suitable for such use.

(Code 1980, § 3-24; Code 1991, § 3-34)

**State Law reference**— Equipment and lighting requirements, F.S. § 327.50.

Sec. 34-35. - General operation of vessels.

- (a) *Minimum distance requirements.* All vessels and motorboats shall, whenever possible, keep at least 300 feet behind any vessel towing a skier, and shall stay clear of, by at least 100 feet, any vessel or motorboat anchored or used for fishing. When a ski jump is in use, all other vessels shall, whenever possible, stay at least 100 feet away on either side and 500 feet behind the ski jump.
- (b) *Occupants to remain seated.* All motorboat operators shall sit within the confines of the vessel and shall require that their passengers do likewise. Bowriding and gunwale riding are strictly prohibited.
- (c) *Damaging wake prohibited; canal and shoreline speed limits.* Care shall be taken by the operators of all motorboats to prevent damage from their wash, bow wave or stern wave, or from objects towed by such vessels, to other vessels, docks, piers, shorelines and boathouses. Vessels and motorboats shall not operate at more than five miles per hour within 100 feet of the shoreline, docks, piers or boathouses, except when picking up or dropping off a water skier. Vessels being operated in canals shall not operate at more than five miles per hour unless a higher speed is posted.
- (d) *Direction of towing vessels.* All vessels and motorboats towing water skiers, aquaplanes or other devices shall operate in a counterclockwise direction on the waterway, whenever possible.

(Code 1980, § 3-25; Code 1991, § 3-35)

**State Law reference**— Reckless or careless operation, F.S. § 327.33(1).

Sec. 34-36. - Speed limits.

The speed limit for watercraft on the waterway shall be 35 miles per hour. Such speed limit shall be lawfully posted in or near the waterway in a location visible to the public. The term "watercraft," for purposes of this section, shall include motorboats, seaplanes, and any and all other craft which are propelled or powered by any internal or external combustion engine or motor.

(Code 1980, § 3-26; Code 1991, § 3-36)

Sec. 34-37. - Wake regulations.

- (a) *Findings.* The city council makes the following findings:
  - (1) The prudent and safe operation of boats, vessels, and watercraft is essential to protect the public health, safety, and welfare of the citizens of the city.
  - (2) An idle speed, no wake zone in the Conway Chain of Lakes is necessary to avoid hazards to persons and damage to property resulting from boats, vessels, and watercraft traveling at excessive speeds.
  - (3) The city council is empowered to perform public work and take whatever prudent action is necessary to ensure the health, safety, and welfare of the community under F.S. § 252.38(5)(a).
  - (4) The city council is empowered to regulate the speed and wake of boats, vessels, and watercraft under F.S. § 252.38(5)(a).



- (5) The city police department is empowered to impose penalties under 252.50 for violations of the regulated the speed and wake of boats, vessels, and watercraft under F.S. § 252.38(5)(a).

(b) *Definitions.*

*Boat, vessel, or Watercraft* means any vessel being propelled or powered by machinery, including but not limited to personal watercraft.

*Idle speed, no wake zone* means an area of a waterway, in this instance the Conway Chain of Lakes, in which a boat, vessel, or watercraft cannot proceed at a speed greater than that specified by the idle speed, no wake zone definition in State Rule chapter 68D-24.002. "Idle speed, no wake zone" indicates a boating restricted area, in this instance the Conway Chain of Lakes that has been established to protect the safety of the public. "Idle speed, no wake zone" means that a boat, vessel, or watercraft cannot proceed at a speed greater than that speed which is necessary to maintain steerageway (Florida Administrative Code, chapter 68D-24.002).

*Person* means an individual, partnership, firm, corporation, or other entity.

*Steerageway* means the minimum rate of motion required for the helm of the vessel to have effect.

*Wake* means all changes in the vertical height of the water surface caused by the passage of a boat, vessel, or watercraft, including but not limited to a vessel's bow wake, stern wake, and propeller wash.

- (c) *Prohibition.* It shall be unlawful for any person in physical control of a boat, vessel, or watercraft in the idle speed, no wake zone to operate the vessel in violation of the idle speed, no wake zone within 500 feet of any boat ramp, hoist, marine railway, shoreline, or other launching or landing facility available for use by the general boating public; within 300 feet of a confluence of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area if an intervening obstruction to visibility may obscure other vessels or other users of the waterway, and hazardous water levels or currents, or containing other navigational hazards.
- (d) *Exemptions.* The restrictions created by this section shall not apply to a vessel of a federal, state, county, or city agency while operated by an officer, employee, or agent thereof who is engaged in law enforcement or other necessary city or governmental activity. Further, the restrictions created by this section, shall not apply to vessels operated under emergency conditions during a legitimate emergency.

(Ord. No. [17-13](#), § 1—4, 9-19-2017; Ord. No. [17-15](#), § 1—4, 9-28-2017)



**REPORT TO BELLE ISLE CITY COUNCIL  
REGARDING REGULATION OF BOATING ACTIVITIES  
ON LAKE CONWAY CHAIN OF LAKES**

Prepared by: Fishback Dominick Law Firm

Date: October 23, 2019



## INTRODUCTION

Concerns have been raised regarding disruptive boating and related activities on the Lake Conway chain of lakes. There are various statutes limiting local government authority to regulate in this arena. The City Council tasked our office with performing a legal review of the matter to determine what types of regulations the City can adopt, and what alternatives exist to regulate boating activities on the Lake Conway chain of lakes.

This Report also discusses the authority of the Lake Conway Water Navigation Control District, which is composed of the Orange County Board of County Commissioners, to regulate boating activities.

## DISCUSSION

### 1) Regulation of Boating Activities: State Preemption

In 2009, the Florida Legislature amended the boating statutes (Ch. 327, Fla. Stats.) to place significant restrictions on local government authority to regulate boating and related activities.

The statutes provide as follows with respect to preemption of local regulation:

327.60 Local regulations; limitations.—

...

(2) This chapter and chapter 328 do not prevent the adoption of any ordinance or local regulation relating to operation of vessels, except that a county or municipality may not enact, continue in effect, or enforce any ordinance or local regulation:

(a) Establishing a vessel or associated equipment performance or other safety standard, imposing a requirement for associated equipment, or regulating the carrying or use of marine safety articles;

(b) Relating to the design, manufacture, or installation of any marine sanitation device on any vessel, except as authorized in subsection (4);

(c) Regulating any vessel upon the Florida Intracoastal Waterway;

(d) Discriminating against personal watercraft;

(e) Discriminating against airboats, for ordinances adopted after July 1, 2006, unless adopted by a two-thirds vote of the governing body enacting such ordinance;

(f) Regulating the anchoring of vessels outside the marked boundaries of mooring fields permitted as provided in s. 327.40, except for:

1. Live-aboard vessels; and



2. Commercial vessels, excluding commercial fishing vessels;

(g) Regulating engine or exhaust noise, except as provided in s. 327.65; or

(h) That conflicts with any provisions of this chapter or any amendments thereto or rules adopted thereunder.

(3) This section does not prohibit local governmental authorities from the enactment or enforcement of regulations that prohibit or restrict the mooring or anchoring of floating structures, live-aboard vessels, or commercial vessels, excluding commercial fishing vessels, within their jurisdictions or of any vessels within the marked boundaries of mooring fields permitted as provided in s. 327.40.

...

In sum, the above statute preserves local government authority to adopt ordinances regulating boating activities except for matters falling within the preempted categories. Perhaps most relevant to the City's concerns is the above preemption of local regulation of engine and exhaust noise.

## 2) Speed Restrictions and Vessel-Exclusion Zones

In addition to the areas of state preemption outlined above, another statute strictly limits circumstances under which a local government can establish no-wake, minimum speed, and vessel-exclusion zones:

### 327.46 Boating-restricted areas.—

(1) Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on the waters of this state for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.

(a) The commission [the FWC] may establish boating-restricted areas by rule pursuant to chapter 120.

(b) Municipalities and counties have the authority to establish the following boating-restricted areas by ordinance:

1. An ordinance establishing an idle speed, no wake boating-restricted area, if the area is:

a. Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width or within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.

b. Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width or



within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.

c. Inside or within 300 feet of any lock structure.

2. An ordinance establishing a slow speed, minimum wake boating-restricted area if the area is:

a. Within 300 feet of any bridge fender system.

b. Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.

c. On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.

d. On a lake or pond of less than 10 acres in total surface area.

3. An ordinance establishing a vessel-exclusion zone if the area is:

a. Designated as a public bathing beach or swim area.

b. Within 300 feet of a dam, spillway, or flood control structure.

(c) Municipalities and counties have the authority to establish by ordinance the following other boating-restricted areas:

1. An ordinance establishing an idle speed, no wake boating-restricted area, if the area is within 300 feet of a confluence of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area if an intervening obstruction to visibility may obscure other vessels or other users of the waterway.

2. An ordinance establishing a slow speed, minimum wake, or numerical speed limit boating-restricted area if the area is:

a. Within 300 feet of a confluence of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area if an intervening obstruction to visibility may obscure other vessels or other users of the waterway.

b. Subject to unsafe levels of vessel traffic congestion.

c. Subject to hazardous water levels or currents, or containing other navigational hazards.

d. An area that accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate to present a significant risk of collision or a significant threat to boating safety.

3. An ordinance establishing a vessel-exclusion zone if the area is reserved exclusively:

a. As a canoe trail or otherwise limited to vessels under oars or under sail.

b. For a particular activity and user group separation must be imposed to protect the safety of those participating in such activity.



Any of the ordinances adopted pursuant to this paragraph shall not take effect until the commission has reviewed the ordinance and determined by substantial competent evidence that the ordinance is necessary to protect public safety pursuant to this paragraph. Any application for approval of an ordinance shall be reviewed and acted upon within 90 days after receipt of a completed application. Within 30 days after a municipality or county submits an application for approval to the commission, the commission shall advise the municipality or county as to what information, if any, is needed to deem the application complete. An application shall be considered complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. The commission's action on the application shall be subject to review under chapter 120. The commission shall initiate rulemaking no later than January 1, 2010, to provide criteria and procedures for reviewing applications and procedures for providing for public notice and participation pursuant to this paragraph.

To sum up the above statute, local governments are subject to significant restrictions when it comes to restricting boating speed and establishing vessel-exclusion zones.

No-wake zones and minimum speed zones can be readily established for areas in close proximity to certain structures like boat ramps, hoists, bridges, dams, spillways, and other structures. Vessel-exclusion zones can be similarly established in areas in close proximity to swimming areas, dams, spillways, and flood control structures. Establishing the foregoing no-wake, minimum speed, and vessel-exclusion zones requires adoption of an ordinance and FWC permitting for placement of markers.

On the other hand, establishing speed restrictions and vessel-exclusion zones in areas other than those outlined above is subject to heightened review by FWC. FWC must review and approve any ordinance establishing such restrictions, in addition to granting marker permits. Further, FWC approval requires a local government to demonstrate by substantial competent evidence that the ordinance is necessary to protect public safety. It has been suggested that FWC is unlikely to approve these restrictions absent documentation of actual safety events. Generalized concerns about safety may not be enough.

### 3) **Protection of Vegetation**

Protection of vegetation is not one of the statutorily enumerated grounds for establishing no-wake zones, minimum speed zones, or vessel-exclusion zones. Therefore, it does not appear that the City may establish such zones for the purpose of protecting vegetation. See *Headley v. City of Miami*, 215 So. 3d 1 (Fla. 2017) (“[L]egislative direction as to how a thing shall be done is, in effect, a prohibition against it being done any other way.”).

However, it should be noted that protection of vegetation is not one of the enumerated items preempted to the state under Fla. Stat. 327.60. Therefore, the City could in theory adopt regulations penalizing the destruction of certain vegetation provided that such regulations do not regulate speed or establish vessel-exclusion zones.



Alternatively, the City could consider the use of information markers for protecting vegetation. Information markers are discussed in the next section and distinguished from regulatory markers.

We have reviewed the applicability of Fla. Stat. 327.46(1)(d), which establishes a limited exception whereby boating-restricted areas may be established for protection of seagrass in those lakes constituting Outstanding Florida Waters. The exception does not appear helpful to the City. Under Fla. Stat. 327.46(1)(d):

Owners of private submerged lands that are adjacent to Outstanding Florida Waters, as defined in s. 403.061(27), or an aquatic preserve established under ss. 258.39-258.399 may request that the commission establish boating-restricted areas solely to protect any seagrass and contiguous seagrass habitat within their private property boundaries from seagrass scarring due to propeller dredging. Owners making a request pursuant to this paragraph must demonstrate to the commission clear ownership of the submerged lands. The commission shall adopt rules to implement this paragraph, including, but not limited to, establishing an application process and criteria for meeting the requirements of this paragraph. Each approved boating-restricted area shall be established by commission rule. For marking boating-restricted zones established pursuant to this paragraph, owners of privately submerged lands shall apply to the commission for a uniform waterway marker permit in accordance with ss. 327.40 and 327.41, and shall be responsible for marking the boating-restricted zone in accordance with the terms of the permit.

It does not appear that the Conway lakes are on the list of Outstanding Florida Waters. Also, the exception is limited to situations where private applicants own the submerged lands. Further, it appears that such boating restricted areas can only be established within the privately owned areas, and only to protect seagrass from propeller dredging. Finally, the exception does not appear available to protect forms of aquatic vegetation other than seagrass. Therefore, the above exception appears to be of limited utility to the City.

#### **4) Regulatory vs. Information Markers**

A local government is required to obtain FWC approval before it may erect any regulatory marker upon a lake. Fla. Stat. 327.41(4). A "regulatory marker" means "a device used to alert the mariner to various regulatory matters such as horsepower, speed, wake, or entry restrictions." F.A.C. 68D-23.103(1)(d).

On the other hand, a local government is not required to obtain FWC approval for the placement of "information markers." Fla. Stat. 327.40(2)(b)2. An "information marker" means "a device external to a vessel intended to provide the mariner with information concerning matters other than dangers or obstructions to navigation, or regulatory matters." F.A.C. 68D-23.103(1)(b).

Placement of information markers is thus a potential alternative approach for accomplishing City goals without the obstacle of FWC approval. The information contained in such markers, and even their mere presence, could encourage boaters to limit their speed and otherwise moderate their behavior, notwithstanding that such markers are purely informational in nature and unenforceable as regulations.



**5) Limiting Access to Lakes and Charging Fees:**

The approach has been suggested of limiting access to the lakes through the City's boat ramps to City residents as a way of cutting down on disruptive boating activities. This approach may be subject to legal challenge based on the "public trust doctrine," which provides that navigable waters and the land thereunder are "held by the state, by virtue of its sovereignty, in trust for all the people." Fla. Const. Art. X, Sec. 11. The Florida Attorney General's Office has held that the public trust doctrine prevents a city from limiting access to its public beaches to city residents. AGO 74-279.

The question has also arisen as to whether the City could charge fees for use of its ramps to access the lakes. We are aware of no legal principle that would prohibit such user fees, provided that all members of the public are treated the same. See AGO 74-279 (city could not discriminate against non-residents with respect to access to beaches).

**6) Regulation of Litter on Lakes**

Litter is not on the list of preempted matters under the boating statutes. See Fla. Stat. 327.60(2). Also, Florida's litter statute "does not limit the authority of any state or local agency to enforce other laws, rules, or ordinances relating to litter or solid waste management." Fla. Stat. 403.413(7). Therefore, it appears that the city may adopt ordinances regulating litter on lakes.

**7) Regulating Alcohol Consumption on Lakes**

It is apparently legal for boat drivers and occupants to drink alcohol, but boating under the influence is illegal. Fla. Stat. 327.35. The question here is whether the City could adopt an ordinance further limiting drinking alcohol during or related to boating and lake activities. We are aware of no statute or legal principle that would prevent the city from adopting such an ordinance.

Regulation of alcohol consumption does not appear in the list of preempted matters under the boating statutes. See Fla. Stat. 327.60(2). Also, the alcoholic beverage statutes only preempt local governments from prohibiting or regulating "those activities or business transactions of a licensee regulated by the Division of Alcoholic Beverages and Tobacco under the Beverage Law," and not the consumption of alcohol by individuals. Fla. Stat. 562.45(2)(c). See AGO 83-67 (county could adopt ordinance prohibiting alcoholic beverage consumption on semi-public parking lot).

**8) Diver Flags**

Fla. Stat. 327.331 places limitations on boating activities near divers and snorklers when a diver flag is displayed:

327.331 Divers; definitions; divers-down warning device required; obstruction to navigation of certain waters; penalty.—

(1) As used in this section:



(a) "Diver" means a person who is wholly or partially submerged in the waters of the state and is equipped with a face mask and snorkel or underwater breathing apparatus.

...

(2) All divers must prominently display a divers-down warning device in the area in which the diving occurs, other than when diving in an area customarily used for swimming only. A divers-down buoy may not be used or displayed onboard a vessel.

...

(6) A vessel other than a law-enforcement or rescue vessel that approaches within 100 feet of a divers-down warning device on a river, inlet, or navigation channel, or within 300 feet of a divers-down warning device on waters other than a river, inlet, or navigation channel, must proceed no faster than is necessary to maintain headway and steerageway.

We have been informed that snorklers are commonly present on Lake Conway, and that such snorklers do not always follow the statutory requirement that they place divers-down warning devices. It has been suggested that were such snorklers to follow the statute, it could positively influence boating behavior, since boats are required to operate at minimal speed within 300 feet of such devices.

Violation of the above statute constitutes a non-criminal infraction punishable in accordance with Fla. Stat. 327.73. Municipal law enforcement officers are authorized to enforce the statute. Fla. Stat. 327.70(1). Enforcement of the statute against both snorklers and boaters could positively affect boating behavior on the Lake Conway chain of lakes.

#### 9) **Enforcement on State Lands:**

During our discussions with City staff, the question arose as to whether the City could enforce ordinances upon state-owned land where lake waters have receded. We are aware of no legal principle that would prevent such enforcement. Florida Attorney General Opinion 79-71 offers guidance. In that opinion, the Attorney General's Office held that a city could enact an ordinance regulating and restricting the manner of egress, ingress, boating, bathing, and fishing on a state-owned beach. The Attorney General's Office stated the following legal principles governing city regulation of state-owned lands:

The general principle of law applicable to this situation, subject to the below-discussed conditions and limitations, is that a municipality has civil and criminal jurisdiction over property within its corporate boundaries and may thus regulate and restrict certain activities reasonably calculated to protect the public health, safety, and welfare. See 64 C.J.S. *Municipal Corporations* s. 1816 (1950); *Carter v. Town of Palm Beach*, 237 So.2d 130 (Fla. 1970); *City of Miami Beach v. Texas Co.*, 194 So. 368 (Fla. 1940); *Metropolitan Dade County v. Pierce*, 236 So.2d 202 (3 D.C.A. Fla., 1970); and AGO's 077-139 and 060-139. This municipal power to regulate is subject to the state's paramount power to regulate and control the use of its sovereign lands. Any attempted regulation of state-owned property to the extent such regulation has been preempted by the state or is inconsistent with general law or with regulations adopted by the state would be invalid. See s. 166.021, F. S.; *City of Miami Beach v. Forte Towers, Inc.*, 305 So.2d 764 (Fla. 1974); and AGO's 078-141, 075-167, 074-286, and 073-463. A further limitation upon a municipality's power to regulate activities upon, and use of, state-owned property, and corollary to the requirement that



regulations and restrictions of certain activities must be in furtherance of public health, safety, and welfare, is that such regulation must not be in violation of constitutional protections afforded to the public for the use of, and access to, state sovereignty lands. This constitutionally derived protection is known as the public trust doctrine. See *McDowell v. Trustees of Internal Improvement Fund*, 90 So.2d 715 (Fla. 1956); *White v. Hughes*, 190 So. 446 (Fla. 1939); *Adams v. Elliott*, 174 So. 731 (Fla. 1937); and AGO 073-430.

...  
However, as it is stated in 64 C.J.S. *Municipal Corporations* s. 1818c, p. 301 (1950), "in order to be valid, the regulations adopted must be reasonable and nondiscriminatory, and they must tend to promote the public health, safety, morals, or general welfare." In *Carter v. Town of Palm Beach*, 237 So.2d 130 (Fla. 1970), the Florida Supreme Court held that a complete ban of all surfing within the municipal boundaries of the Town of Palm Beach was unconstitutional. The court in its holding concluded, at 131-132, that "[t]he Town of Palm Beach may regulate and control surfing and skinning in areas subject to its jurisdiction and may prohibit these activities at certain places along the beach. However, the complete prohibition of this sport from all the beach area is arbitrary and unreasonable."

...  
See also *Inglis v. Rymer*, 152 So. 4 (Fla. 1934) (holding that prohibition of skating rinks, an activity "not inherently injurious to the prevailing conception of public morals, nor a nuisance per se" [*id.* at 5], is unconstitutional); and AGO 073-430 (concluding that the Okaloosa Island Authority was "without authority to ban all swimming along the foreshore of the Gulf of Mexico . . ."). See *Moffett v. State*, 340 So.2d 1155 (Fla. 1976), and *Atlantic Beach v. Oosterhoudt*, 172 So. 687 (Fla. 1937), for examples of lawful regulation.

See also AGO 60-139 (city could enforce ordinance in state-owned park).

Based on the above, the City could adopt ordinances governing activities on state-owned land around and in the City's lakes provided that such ordinances 1) are not preempted by and do not conflict with any statute, 2) are reasonable and nondiscriminatory, and 3) tend to promote the public health, safety, morals, or general welfare.

#### **10) The Lake Conway Water and Navigation Control District**

In 1957 the Florida Legislature created by special act the Lake Conway Water Navigation Control District (the "Navigation Control District"), which is composed of the members of the Orange County Board of County Commissioners. Ch. 57-1643, Laws of Florida (the "Special Act"). The Special Act is codified in the Orange County Code at Chapter 33, Article II.

The Special Act grants the Navigation Control District broad authority including the following:

- "to make rules and regulations governing speed and operation of water craft plying the waters within said District";
- "to regulate and control the level of water within said District";
- "to build, erect, and maintain wells for the purpose of restoring, maintaining, lowering, and raising the water level of the lakes within said District";



- “to provide drainage of excess waters from the lakes within said District”;
- “to have authority to control, regulate and determine the water level of the lakes within said District”;
- “to provide for the levying of taxes within said District for the payment of costs and expenses”;
- “to issue bonds to obtain funds to carry out the purposes of this law”;
- “to build, erect and maintain, and repair navigable canals within said District”;
- “to provide for the punishment of violations of such rules and regulations”;
- “to provide regulations for the construction by private individuals or concerns of canals or ditches within the District”; and
- to require a permit for “any dredging, pumping of sand, extension of land, construction or extension of islands, creating obstructions in or under any of the waters of said District.”

As discussed, in 2009 the Florida Legislature placed a number of restrictions on local government authority to regulate boating. The question is whether and to what extent such restrictions apply to the Navigation Control District.

The two primary statutes limiting local government authority, Fla. Stats. 327.60 and 327.46, only reference municipalities and counties and do not mention special districts like the Navigation Control District. Further, courts have held that, “[w]here a general act and a special act conflict, the latter prevails.” *State ex rel. Johnson v. Vizzini*, 227 So. 2d 205, 207 (Fla. 1969). Therefore, the statutes arguably do not supersede the authority granted to the Navigation Control District by the Special Act.

The Navigation Control District would have to obtain FWC approval before erecting any regulatory marker on a lake. See Fla. Stat. 327.40(b)1. (“No person or municipality, county, or other governmental entity shall place any uniform waterway marker in, on, or over the waters or shores of the state without a permit from the division.”). FWC could point to such provision as evidence that the Legislature has preempted regulatory authority of not just municipalities and counties but special districts as well. However, the counter-argument is that FWC authority to approve marker permits of the Navigation Control District is limited to review of the technical specifications of the markers only (i.e. size, color, symbols, etc.) and not substantive matters like boating speed and operation, which arguably remain the purview of the District.

FWC could also argue that the 2009 boating statutory amendments override Navigation Control District authority based on the legal principle of implied preemption. A court may find implied preemption “where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Florida Legislature.” *GLA & Assocs. v. City of Boca Raton*, 855 So. 2d 278, 282 (Fla. 4<sup>th</sup> DCA 2003). However, implied preemption is disfavored by courts, which are “reluctant to preclude a local elected governing body from exercising its local powers by finding preemption by implication in the absence of an explicit legislative directive.” *Shands Teaching Hosp. & Clinics v. Mercury Ins. Co.*, 97 So. 3d 204 (Fla. 2012).

In sum, we are of the opinion that the District retains all authority granted to it by the Special Act, and that in the event of a conflict between FWC and District authority, District authority would prevail. We discussed our position with the Orange County attorney’s office. They informed us that one of their



previous attorneys, who is no longer employed in their office, had advised the County that 1) the District retains its authority under the Special Act except for authority to establish no-wake and minimum speed zones; and 2) the District must obtain FWC approval before placing any signage upon lakes.

For the reasons discussed in this section, we disagree with the previous County Attorney's first point, as we believe the District retains all authority granted to it by the Special Act, including the authority to regulate boating speed and operation. We agree with the second point since under the statutes all governmental entities are required to obtain FWC permitting before placing signage upon lakes. However, it is our opinion that FWC's review of such applications for signage would have to be limited to review of technical specifications of the signs and could not be denied based on their regulatory content.

We have been informed by the County that the District has never adopted any regulations governing boating activities. Were the District to adopt such regulations in the future, the question arises as to whether a District regulation or City ordinance would control in the event of a conflict. While the law is not entirely clear, it appears that the District's regulations would control. Typically, a special act of the legislature will control when in conflict with a general law. *State ex rel. Johnson v. Vizzini*, 227 So. 2d 205, 207 (Fla. 1969). The District derives its authority from the Special Act, whereas the City derives its authority in this arena from the general grant of home rule powers under the Florida Statutes and Constitution. This suggests that a District regulation would take precedence over a City ordinance. However, this would not prevent the City from adopting an ordinance imposing the same or more stringent restrictions than a District regulation. See *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1020 (Fla. 2d DCA 2005) ("the fact that an ordinance imposes additional requirements on a person or business is not evidence of a conflict."); *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309, 314 (Fla. 2008) ("[T]he test for conflict is whether in order to comply with one provision, a violation of the other is required.").

### SUMMARY

- The City has authority to regulate boating and related activities except where expressly preempted by Florida's boating statutes. The City is expressly preempted from and may not adopt regulations pertaining to: (1) equipment requirements and standards; (2) design, manufacture, or installation of marine sanitation devices (with exceptions); (3) vessels upon the Florida Intracoastal Waterway; (4) regulations discriminating against personal watercraft; (5) regulations discriminating against airboats; (6) regulation of vessels outside of mooring fields (with exceptions); or (7) regulating engine or exhaust noise.
- Subject to FWC permitting, the City may establish no-wake zones, minimum speed zones, and numerical speed limits in certain areas in close proximity to certain structures such as boat ramps, hoists, bridges, dams, spillways, and other structures. See Fla. Stat. 327.46.
- Subject to FWC permitting, the City may establish vessel-exclusion zones in areas in close proximity to swimming areas, dams, spillways, flood control structures, and areas exclusively reserved as canoe trails or for vessels using oars or sail.



- Establishing speed restrictions in areas not in close proximity to the above structures is subject to heightened scrutiny by FWC, requires FWC approval of the markers and ordinance, and requires the City to demonstrate through competent substantial evidence the existence of safety hazards.
- The City may not adopt speed restrictions or vessel-exclusion zones for the purposes of protecting vegetation. However, the City could in theory adopt regulations penalizing the destruction of vegetation. Alternatively, the City could use information markers to encourage the protection of vegetation.
- The City may regulate matters not preempted by the boating statutes or other statutes, including but not limited to (1) alcohol consumption, (2) litter, (3) use fees for city ramps, and (4) any other matter not preempted by Fla. Stat. 327.60 or other statute.
- The City may install information markers on lakes without approval of FWC. The presence of information markers could have the practical effect of causing boaters to slow down or otherwise moderate their behavior, notwithstanding that they are purely informational and not regulatory in nature.
- The Lake Conway Water Navigation Control District arguably retains broad authority to regulate boating activities on the Lake Conway chain of lakes. However, the District would need to be convinced of such and would need to adopt regulations enforceable by the City. It is possible that FWC could challenge the District's authority in court under such scenario.







**ORDINANCE NO. 19-05**

**AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA, AMENDING CHAPTER 34 , ARTICLE II OF THE CITY CODE GOVERNING BOAT EQUIPMENT AND OPERATION; AMENDING SECTION 34-37 GOVERNING WAKE REGULATIONS TO ESTABLISH SPECIAL SLOW SPEED MINIMUM WAKE ZONES; PROVIDING FOR DEFINITIONS;AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, AND THE EFFECTIVE DATE OF THIS ORDINANCE.**

**WHEREAS**, the City Council of the City of Belle Isle desires to provide for the health, safety, and welfare of its citizens, residents and visitors; and

**WHEREAS**, boating safety concerns around the "Narrows" on the North Lake of the Conway Chain of Lakes (Little Lake Conway) and the Canoe/Kayak Trail at the Canoe/Kayak Launch Locations within the Conway Chain of Lakes have been brought to the attention of the City Council of the City of Belle Isle; and

**WHEREAS**, there exist extreme safety hazards on portions of the Conway Chain of Lakes which are used for public bathing, pleasure boating and fishing by children and adults; and

**WHEREAS**, the Conway Chain of Lakes is the location of two Seaplane Bases, one on the South Lake and one on the North Lake; and

**WHEREAS**, the Little Lake Conway Seaplane Base is located within a narrow "gap" on Little Lake Conway measuring less than 400 feet wide; and

**WHEREAS**, the City Council finds that hazards result from the operation of boats and personal watercraft (PWC), whether driven by outboard or inboard motors, at high rates of speed, or in such a fashion as to create a substantial wake, or in a careless fashion; and

**WHEREAS**, the City Council finds that the health, safety and welfare of the citizens of the City of Belle Isle and Orange County and of all persons using or living along the Conway Chain of Lakes is jeopardized unless the use of said boats and PWCs is regulated as provided in this Ordinance; and

**WHEREAS**, the City Council wishes to ensure that no boats are operated in the navigable waters of the Conway Chain of Lakes at such a speed so as to cause a wake of such magnitude as to endanger the safety of any swimmer or diver or as to endanger any other boat, whether anchored, secured to a dock or underway; and

**WHEREAS**, the City Council wishes to ensure that no boats are operated in the navigable waters of the Conway Chain of Lakes at such a speed so as to cause a wake of such magnitude as to endanger the safety of sea planes landing or taking off; and

**WHEREAS**, the City Council wishes to ensure that no boats are operated at such a speed so as to cause a wake of such magnitude as to cause danger to any dock, or any other public or private property, or cause appreciable erosion to the banks or shallow areas of any navigable waterway in a way that will cause irreparable damage to the lake's vegetation; and



**WHEREAS**, Florida Statutes § 327.46(1)(c) authorizes the City Council of City of Belle Isle to establish Slow Speed Minimum Wake boating safety zones by ordinance in areas within 300 feet of a confluence of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area if an intervening obstruction to visibility may obscure other vessels or other users of the waterway; in areas subject to hazardous water levels or currents; and in areas containing other navigational hazards on the Conway Chain of Lakes, provided that the Florida Fish and Wildlife Conservation Commission (FWC) has reviewed the ordinance and determined by substantial competent evidence that the ordinance is necessary to protect public safety; and

**WHEREAS**, the City wishes to establish Slow Speed Minimum Wake boating safety zones around specified blind corners within the Conway Chain of Lakes, including on Little Lake Conway as it approaches the "Narrows" on the Little Lake Conway measuring an average of less than 400 feet at its widest point; and

**WHEREAS**, the City Council finds that the "Narrows" is subject to unsafe levels of vessel traffic congestion and that it has been demonstrated through boating citations and other creditable data that the area presents a significant risk of collision or a significant threat to boating safety; and

**WHEREAS**, the City Council of the City of Belle Isle has identified areas within the Conway Chain of Lakes that require regulation in order to protect the boating public and finds that allowing boaters to operate at speeds greater than Slow Speed Minimum Wake within this "gap" would create dangerous navigational hazards; and

**WHEREAS**, additionally, the City Council finds that regulating, from shoreline to shoreline, the entire contiguous zone that is the blind zone area as an Slow Speed Minimum Wake zone is important for the safety and welfare of the City's citizens, residents, and visitors; and

**WHEREAS**, the City Council finds that this Ordinance leaves in place numerous areas on the Conway Chain of Lakes where higher speeds and wakes for the recreational enjoyment of City's citizens, residents, and visitors are allowed; and **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLE ISLE AS FOLLOWS:**

**SECTION 1. Recitals.** The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

**SECTION 2. City Code Amendment.** Section 34-37 of the City Code is hereby amended to read as follows:

Section 34-37 - Establishment of Special Slow Speed Minimum Wake Zones.

(a) *Definition of "Slow Speed" and "Slow Speed Minimum Wake Zones."* Pursuant to Florida Administrative Code Chapter 68D-23.103, "Slow Speed" and "Slow Speed Minimum Wake" may be used interchangeably, and mean that a vessel must be fully off plane and completely settled into the water and the vessel must then proceed at a speed which is reasonable and prudent under the prevailing circumstances so as to avoid the creation of an excessive wake or other hazardous condition which endangers or is likely to endanger other vessels or other persons using



the waterway. At no time is any vessel required to proceed so slowly that the operator is unable to maintain control over the vessel or any other vessel or object that it has under tow. A vessel that is:

- (1) Operating on plane is not proceeding at this speed;
  - (2) In the process of coming off plane and settling into the water or coming up onto plane is not proceeding at this speed;
  - (3) Operating at a speed that creates a wake which unreasonably or unnecessarily endangers other vessels or other persons using the waterway, or is likely to do so, is not proceeding at this speed;
  - (4) Completely off plane and which has fully settled into the water and is proceeding at a reasonable and prudent speed with little or no wake is proceeding at this speed.
- (b) *Establishment of Slow Speed Minimum Wake Zones.* The following described waterways or portions of waterways are hereby established as Slow Speed Minimum Wake Zones:

(1) The area extending from shoreline to shoreline, at the "Narrows" on Little Lake Conway, that extends 370 feet from a point at the dock located at 2042 Gatlin Avenue, Orlando, FL (which is at 28.49159837,-81.35309159,26.83308085); 353 feet from a point of land located at 2054 Gatlin Ave., Orlando, FL (which is at 28.49177057,-81.35270102,23.6994152); 355 feet from a dock located at 2062 Gatlin Ave., Orlando, FL (which is at 28.49207672,-81.35238923); and 360 feet from a dock located at 4875 Murray Lee Lane, Orlando, FL (which is at 28.49221826,-81.35217949) to a line drawn perpendicular to the waterway and to points of land located at 4908 Oak Island Road, Belle Isle, FL (which is at 28.49123343,-81.35176158), all as depicted in the attached Exhibit "A."

(2) The area extending along the shoreline on the Conway Chain of Lakes, constituting one, continuous zone with no gaps, that begins at Venetian Boat Ramp (28.48156013,-81.3521391), continuing, with no gaps, incorporating the Canoe/Kayak Trail to the Warren Park Ramp (28.46175653,-81.34170848) to Perkins Ramp (28.45856914,-81.35330564) to Swann Beach (28.46017067,-81.35494271) to Delia Beach (28.46854215,-81.36023079) to La Belle Beach (28.47387299,-81.35906624) to Peninsular Beach (28.47078844,-81.35555146) and back to Venetian Ramp, located within the City of Belle and to the Seaplane Bases (Lake Conway North 80-30; 28.47831446,-81.3659345 and Lake Conway South 80-20; 28.45473677,-81.34056525), all as depicted in the attached Exhibit "B" and Exhibit "C," respectively.

**SECTION 3. Codification.** Upon approval by the Florida Fish and Wildlife Conservation Commission, this Ordinance shall be incorporated into the Belle Isle City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance or the City Code may be freely made.



**SECTION 4. Severability.** If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

**SECTION 5. Conflicts.** In the event of a conflict or conflicts between this Ordinance and any other ordinance or provision of law, this Ordinance controls to the extent of the conflict, as allowable under the law.

**SECTION 6. Effective Date.** This Ordinance shall take effect immediately upon its passage and adoption by the City Council of the City of Belle Isle, or approval of the Ordinance by the Florida Fish and Wildlife Conservation Commission, whichever occurs latest.

**FIRST READING:** \_\_\_\_\_, 2019

**SECOND READING:** \_\_\_\_\_, 2019

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2019, by the City Council of the City of Belle Isle, Florida.

CITY COUNCIL

CITY OF BELLE ISLE

\_\_\_\_\_  
Nick Fouraker, Mayor

ATTEST:

\_\_\_\_\_  
Yolanda Quiceno, City Clerk



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