

ORDINANCE 18-08

AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA, REPEALING AND REPLACING ORDINANCE 17-07 AND AMENDING CHAPTER 4, SECTION 4-1 OF THE BELLE ISLE CITY CODE TO DESIGNATE CERTAIN AREAS WITHIN THE JURISDICTIONAL LIMITS OF THE CITY AS A RESTRICTED HUNTING AREA; PROVIDING FOR DEMARCATION OF THE RESTRICTED HUNTING AREA; PROVIDING FOR ADDITIONAL DUTIES AND RESPONSIBILITIES OF CITY DEPARTMENTS; PROVIDING FOR PENALTIES, SETTING FORTH UNLAWFUL CONDUCT, AND COMPLIANCE METHODS; PROVIDING FOR CONFLICTS AND REPEAL, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Belle Isle (“City”) recognizes that the City is densely populated and developed with numerous recreational activities and uses occurring within the City and, in particular, around and within the Conway Chain of Lakes, including but not limited to, boating, canoeing, and air travel; and

WHEREAS, the City recognizes that many residents within the City, including those who own lots and developed properties proximate to the Conway Chain of Lakes, who have docks extending into the Conway Chains of Lakes, or who otherwise utilize and appreciate the Conway Chain of Lakes, have raised numerous safety related issues as to the taking of game with a gun within certain areas within the jurisdictional limits of the City; and

WHEREAS, the City recognizes that the City’s unilateral declaration that the City be recognized as a bird sanctuary, critical wildlife area, or restricted hunting area requires—to be effective—the assent and agreement of the Florida Fish and Wildlife Conservation Commission (“FWC”); and

WHEREAS, the City understands that section 379.104, Florida Statutes, codifies the Florida Legislature’s recognition that “the citizens of Florida have a right to hunt, fish, and take game, subject to the regulations and restrictions prescribed by general law and by s. 9, Art. IV of the State Constitution”; and

WHEREAS, the City understands that the FWC has the constitutional mandate to “exercise the regulatory and executive powers of the state with respect to wild animal life” and, pursuant to this constitutional authority, has enacted Florida Administrative Code Chapter 68A-19, which sets forth regulations and requirements for restricted hunting areas; and

WHEREAS, the City desires to balance the rights and privileges of lawfully hunting and taking game within the City’s jurisdictional limits with the inherent safety concerns raised when individuals are allowed to hunt or take game within a developed and intensely utilized municipality in terms of air, land, and water body travel and activity; and

WHEREAS, the City previously sought a bird sanctuary designation throughout the entirety of the City’s jurisdictional limits, but the City has since worked extensively with FWC regarding alternative options and resolutions that will adequately protect and afford the greatest benefit to the City and the policies described herein; and

WHEREAS, on or about June 19, 2018, the City and FWC made and entered into that certain amicable Settlement Agreement relating to the subject matter of this ordinance and which functions as the mutually agreeable implementation of the City’s goals and the FWC’s existing administrative code regulations; and

WHEREAS, the City determines, in accordance with Florida Administrative Code Chapter 68A-19, certain portions of the waters and tracts of land within the City’s current jurisdictional limits should be and are hereby made and declared a restricted hunting area as set forth herein.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF BELLE ISLE:

SECTION 1. Recitals. The above recitals are hereby ratified, confirmed as true, and are made part of this Ordinance.

SECTION 2. Restricted Hunting Area Designation. In accordance with Chapter 68A-19, Florida Administrative Code, the following area within the city limits of the City of Belle Isle is hereby declared a restricted hunting area:

- a. All uplands within the City’s jurisdictional limits;
- b. An area extending from the mean high water line of Lake Conway along all upland shoreline within the City’s jurisdictional limits to two hundred (200) feet in to the waters of Lake Conway as delineated in red on the attached Exhibit “A”; and
- c. An area extending from the mean high water line of Little Lake Conway along all upland shoreline within the City’s jurisdictional limits on the Lake’s southern boundary to two hundred (200) feet into the waters of Little Lake Conway as delineated in red on the attached Exhibit “A.”

Exhibit “A” shall be referred to and commonly known as the “City of Belle Isle Restricted Hunting Area Designation Map.”

SECTION 3. Belle Isle City Code Amendment. Chapter 4, Section 4-1 of the Belle Isle City Code is hereby repealed and replaced in its entirety as follows:

Sec. 4-1. Restricted hunting areas.

(a) General. The following area within the city limits of the City of Belle Isle is hereby declared a restricted hunting area:

- i. All uplands within the City's jurisdictional limits;
- ii. An area extending from the mean high water line of Lake Conway along all upland shoreline within the City's jurisdictional limits to two hundred (200) feet in to the waters of Lake Conway; and
- iii. An area extending from the mean high water line of Little Lake Conway along all upland shoreline within the City's jurisdictional limits on the Lake's southern boundary to two hundred (200) feet into the waters of Little Lake Conway.

Such restricted hunting area shall include the airspace over and above the restricted hunting area. The City of Belle Isle Restricted Hunting Area Designation Map, as adopted by ordinance creating this section, shall be made available upon request, shall be publicly displayed at city hall and the city's police department headquarters, and may be displayed at other areas within the city at the city manager or his/her designee's discretion. Additionally, other formats and colors of the City of Belle Isle Restricted Hunting Area Designation Map shall be made available upon reasonable request.

(b) Prohibition. In accordance with Florida Administrative Code Rule 68A-19.006 (June 2018), no person shall take any wildlife in any restricted hunting area using a gun unless such taking is authorized by a permit issued by the Florida Fish and Wildlife Conservation Commission's ("FWC") executive director or his/her designee after consolidation and approval by the City and such taking meets the regulations and requirements of this section and Florida Administrative Code Rule 68A-19.006 (June 2018). For purposes of this subsection, the prohibitions set forth herein apply and extend to the unpermitted taking of wildlife with a gun upon the tracts of land designated in the restricted hunting area, upon or within the bodies of water embraced upon and designated in the restricted hunting area, and within the airspace over and above the restricted hunting area. Additionally, such prohibition shall also apply to and prohibit the unpermitted taking of wildlife with a gun within the restricted hunting area in circumstances where the wildlife target of the gun discharge is located, fully or partially, within such restricted hunting area even when the person discharging the gun is located outside the restricted hunting area.

(c) Enforcement. The City of Belle Isle Police Department, including the Marine Patrol, shall be responsible for the enforcement of regulations of the Florida Fish and Wildlife Conservation Commission and the provisions set forth herein. Additionally, the city may enter into mutual aid agreements with other law enforcement agencies to enforce the restricted hunting area. Notwithstanding the preceding, the city's assumption of responsibility shall in no way preclude FWC law enforcement from also enforcing the regulations of the FWC within the restricted hunting area.

(d) Penalties; compliance alternatives. In addition to any other remedies or actions provided herein or at law and in equity, the city shall have the right, in its sole discretion, to any one (1) or more of the following remedies or action in the event a violation of this section has occurred or is occurring:

i) initiation of code enforcement, code compliance, or special magistrate proceedings against any and all alleged violators of this section for up to the maximum penalties proscribed in accordance with chapter 162, Florida Statutes, and as may be set forth in the city code;

ii) prosecution as a criminal misdemeanor punishable by a fine not exceeding \$500.00 or imprisonment for a definite term not exceeding sixty (60) days, or by both such fine and imprisonment in the discretion of the court;

iii) issuance of a civil citation with a civil penalty of \$400.00 per violation, which amount may be periodically amended by ordinance of the city;

iv) issuance of a summons or notice to appear in county court for violation of this municipal ordinance in accordance with chapter 901, Florida Statutes, as may be amended; and/or

v) initiation and prosecution of any appropriate action at law or in equity to bring about compliance or remedy, including but not limited to, instituting an action in any court to enjoin violations of this section, in which case the violating business, entity, and/or individual shall be liable to the city for reimbursement of the city's attorneys' fees and costs relating to such action.

Should the city elect to utilize any of the supplemental compliance alternatives set forth in this subsection, then any and all appeals shall be in accordance with Florida law and are otherwise not subject to the city's appellate processes and procedures as may be set forth in the city code. Additionally, nothing set forth herein shall preclude a finding that a particular violation is capable of repetition but evading review or is otherwise irreparable or irreversible in nature.

SECTION 4. Codification. Section three (3) of this Ordinance shall be incorporated into the City Code of Ordinance. 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 5. 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 6. Conflicts; Repeal. Ordinance 17-07 is hereby expressly repealed and replaced by this Ordinance as stated herein. Additionally, 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 7. Effective Date. This Ordinance shall take effect immediately upon adoption.

FIRST READING: _____, 2018

SECOND READING: _____, 2018

ADOPTED this ____ day of _____, 2018, by the City Council of the City of Debary, Florida.

	YES	NO	ABSENT
Ed Gold	_____	_____	_____
Anthony Carugno	_____	_____	_____
Jeremy Weinsier	_____	_____	_____
Mike Sims	_____	_____	_____
Harvey Readey	_____	_____	_____
Jim Partin	_____	_____	_____
Sue Nielsen	_____	_____	_____

**CITY COUNCIL
CITY OF BELLE ISLE, FLORIDA**

Lydia Pisano, Mayor

ATTEST: _____
Yolanda Quiceno, City Clerk

S:\DL\Clients\Belle Isle, City of\Florida Fish & Wildlife (Bird Sanctuary Challenge) B900-29005\Pleadings - DOAH\Settlement Documents\Restricted Hunting Area Ordinance - CRC 6-20-18.docx

STATE OF FLORIDA
COUNTY OF ORANGE

I, Yolanda Quiceno, CITY CLERK of the City of Belle Isle do hereby certify that the above and foregoing document ORDINANCE 18-08 was duly and legally passed by the Belle Isle City Council, in session assembled on the _____ day of _____ 2018, at which session a quorum of its members were present.

Notary Yolanda Quiceno, CMC-City Clerk