



**CITY OF BELLE ISLE, FLORIDA
CITY COUNCIL AGENDA ITEM COVER SHEET**

Meeting Date: May 1, 2018

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: Dock Ordinance (Ordinance 18-04)

Background: In February 2017, the Council adopted Ordinance 17-02 for the regulation, construction and repair of docks. Since its adoption, there has been difficulty in administering this ordinance due to places where it conflicts with itself. The City Manager requested the City Council to place a moratorium on dock permits until the ordinance could be written to eliminate the conflicts. The moratorium has expired.

The City Manager presented a draft of a new ordinance at the November 7 Council Meeting and an updated ordinance at the November 21st meeting incorporating the changes directed by the City Council.

At the November 21st meeting, the Council recommended new changes to the draft ordinance which are highlighted in the document. This document is now clearer for reviewing applications against the regulations; does not conflict with itself; and is not confusing as it does not allow for misinterpretation.

At the February 6, 2018 Council Meeting, the Council approved final changes to the Dock Ordinance and directed it be sent to the Planning and Zoning (P&Z) Board for their review and recommendations. The P&Z Board recommended changes to the ordinance. Most of those changes were for sentence structure, grammar, or to make a passage clearer so they were not highlighted in this version of this draft.

At the April 3, 2018 Council meeting, the Council discussed the recommendations by the P&Z Board and directed that the ordinance be put in final form and read for the 1st time at the April 17, 2018 Council meeting. The April 17th meeting was adjourned before this topic was discussed by Council. Under public comment at the April 17th Meeting, Kent Perroux, a resident suggested a change to the "grandfather" language in Section 48-34 (c) which is incorporated in the final draft.

Staff Recommendation: Briefly discuss any remaining items and approve the ordinance for a first reading.

Suggested Motion: I move that we read Ordinance 18-04, Docks for the first time by title only

Alternatives: Do not approve ordinance and provide further direction to city staff

Fiscal Impact: None

Attachments: Draft of Ordinance 18-04

ORDINANCE No.: 18-04

AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA; AMENDING THE BELLE ISLE LAND DEVELOPMENT CODE, CHAPTER 48 ARTICLE II CONCERNING DOCK REGULATIONS, INCLUDING BUT NOT LIMITED TO PERMITTING, CRITERIA, EXCEPTIONS, REQUIREMENTS, MAINTENANCE, REPAIR, VARIANCES, APPLICATION PROCEDURES, DEFINITIONS, NONCONFORMING DOCKS, NUMBER, LOCATION, AND RELATED MATTERS; PROVIDING FINDINGS BY THE CITY COUNCIL; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, Citizens of the City of Belle Isle have expressed concern to the City Council about the scope and extent of regulation of docks within the City; and

WHEREAS, on March 21, 2017, the City Council adopted Ordinance No. 17-02 amending Chapter 48, Article II the City Land Development Code with respect to dock regulations; and

WHEREAS, the City Council has determined that further amendment to Chapter 48, Article II of the City Land Development Code is necessary in order to further improve and clarify the City's dock regulations and to respond to the concerns of citizens of Belle Isle; and

WHEREAS, the City of Belle Isle Planning and Zoning Board serves as local planning agency for the City; and

WHEREAS, the Planning and Zoning Board, acting in its capacity as the City's Local Planning Agency, has duly considered and recommended approval to the City Council of the revisions to the dock regulations effected by this Ordinance at a public meeting on March 27, 2018; and

WHEREAS, the City Council has found and determined that the adoption of this Ordinance is in the interests of the public health, safety and welfare, will aid in the harmonious, orderly and progressive development of the City, and serves a valid public purpose.

BE IT ORDAINED by the City Council of Belle Isle, Florida:

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. Amendment of Land Development Code. Chapter 48, Article II of the City Land Development Code is hereby repealed in its entirety and replaced with the following:

ARTICLE II. - DOCKS

Sec. 48-30. – Definitions

The following words, terms and phrases, when used in this article, will have the following meanings unless the context clearly indicates a different meaning:

Access walkway means that portion of the dock that commences on the upland parcel and extends to and terminates at the junction with the terminal platform.

Boat(s) means all inboard and outboard motorized and nonmotorized vessels, including, but not limited to, rowboats, sailboats, canoes, kayaks, skiffs, rafts, dugouts, dredges, personal watercraft, paddleboards, and other vehicles of transportation for use on water, including any and all objects tied to or connected therewith while being propelled through the water.

Boathouse means a roofed structure constructed over or adjacent to water to provide a covered mooring or storage place for boats.

Boathouse lot means a lot that is waterfront and was platted as a "B" lot to a primary "A" lot under the same parcel identification number and serves as a lake access lot for the parcel with the primary "A" lot having a principal structure.

Dock means any permanently fixed or floating structure, slip, platform (whether covered or uncovered) extending from the upland into the water, capable of use for boat mooring and other water-dependent recreational activities. The term "dock" also includes the area used to dock or moor a boat, and any device or structure detached from the land that is used for or is capable of use as a swimming or recreational platform, boat lift and/or for other water-dependent recreational activities, or as a platform for non-boating use. This term does not include any boat that is temporarily docked, moored, or anchored for less than 72 hours in any one day.

Linear shoreline frontage shall mean the width of lot measured in a straight line between the two outermost property corners at the NHWC.

Maintenance means the act of keeping the dock in a safe and useable condition consistent with original design specifications.

Mooring area means the portion of a docking facility used for the mooring of boats.

Normal High Water Contour (NHWC) means the horizontal location of the theoretical shoreline when the lake level is at the Normal High Water Elevation as defined herein. This is more specifically the horizontal location of the surface ground elevation points which match the Normal High Water Elevation as defined herein.

Normal High Water Elevation (NHWE) means the water surface elevation of Lake Conway and its directly connected water bodies as defined by Orange County. As of December 2016 the NHWE was 85.45, NAVD 88.

Personal watercraft (Florida Statutes 327.39) means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motive power and

which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

Principal structure means the building or structure in which the principal use of the parcel or lot is conducted. A dock shall not be the principal structure on a parcel or lot.

Principal use means a use of the upland parcel for residential, commercial or governmental purposes.

Private dock means a dock, which may be used by only those persons living on the upland parcel and their usual and customary guests.

Projected property line means a continuation of, and extension to, the upland property line. In cases of privately owned bottomland, that is, non-sovereignty submerged lands underlying a water body; the projected property line is the actual property line.

Public dock means a dock which is subject to public access. Docks associated with governmental and non-governmental institutions, and private organizations are included in the definition of public dock.

Repair means to restore to the permitted design specifications of a dock structure, including the replacement of the entire dock or portions of the dock.

Semi-private dock means a dock, which may be used by a group of residents living in and authorized by a subdivision association or multifamily development and their usual and customary guests.

Slip or boat-slip means a space designed for the mooring or storage of a single boat.

Terminal platform means that portion of a dock beginning at the point where the lateral width of the dock exceeds the maximum allowed width of the access walkway or provision is made for mooring boats. The terminal platform shall be designed for the mooring and launching of boats, or other water-dependent activities.

Sec. 48-31. - Application process.

(a) Permit and review. Any person desiring to construct a new dock, repair an existing non-conforming dock or add to an existing dock, regardless of whether it is made of wood or another material, within the city shall first apply for a permit to the city. The City shall determine for a pre-existing dock, whether a permit for repair is necessary under sec. 48-34 below. The city shall review the application for completeness and sufficiency as to whether all data, documentation, and materials required herein are provided and shall contact the applicant if the application fails to meet any of the requirements set forth in this section. After an application has been deemed complete and sufficient by the City, the City shall perform a site review of the proposed dock location.

(1) City's administrative review fees. Application fees shall be in accordance with the city fee schedule. The administrative review fee does not include the City of Belle Isle building permit's processing fee.

(2) Application. The applicant shall submit a completed city dock application, a survey and five sets of plans showing the proposed dock. The application shall be available in the city hall office.

(3) The survey of the property, performed within the last three (3) years, shall be a boundary survey signed and sealed by a surveyor holding a current license with the State of Florida and certifying to the applicant and the City accuracy of the information listed below. A survey greater than three (3) years old may be submitted if it includes an affidavit by the owner stating there is no change to the information in the survey.

- (i) Lot lines or boundaries of the upland area;
- (ii) Location, date and elevation of the edge of water;
- (iii) Location of any wetlands vegetation both upland or aquatic;
- (iv) Any fences, docks, bulkheads, seawalls, ramps, buildings, paths or walkways or any structure on the upland and lake area;
- (v) The NHWC line across the property;
- (vi) The location of Elevation 79.5 (NAVD 1988) of the lake bottom within ten (10) feet of the proposed dock;
- (vii) The location of Elevation 80.0 (NAVD 1988) contour of the lake bottom within ten (10) feet of the proposed dock.

(4) The plans shall include a scale drawing(s) signed and sealed by a professional licensed professional engineer or architect and accompanied by five (5) copies that provide accurate information as to each of the following elements:

- (i) An arrow indicating the northerly direction and an indication of the scale to which the drawing was prepared. All drawings must be drawn utilizing an industry standard engineering scale;
- (ii) The dimensions of the property, and the length and location of the proposed dock, or dock addition, as measured from the NHWC to the point most waterward of the NHWC, and identify the licensed contractor who will be installing or constructing the improvements;
- (iii) The exact distance between the shoreward end of the proposed dock and two permanent objects (e.g., house, tree) to be used as reference points;

(iv) The exact distance of setbacks from adjacent property lines and projected property lines to the nearest portion of the proposed dock and mooring area, and an approximation of the distance from the closest dock on each side of the property;

(v) The deck and roof elevation of the proposed dock, boathouse or other structure connected to the dock;

(vi) Location of any water lines, electrical outlets or sources, hose bibs;

(vii) All items of the survey in (3) above; and

(viii) Location of lifts, hoists, mooring pilings and mooring areas of any boat.

(5) Building permit. Following the approval by the city of a dock application, the applicant is also required to obtain a building permit from the City of Belle Isle building department prior to commencing construction. In the event electricity is run to the dock, the proper electrical permit must also be obtained from the City of Belle Isle building department.

(6) Each dock length will be measured perpendicularly from the NHWC to the most waterward point on the dock. A distance from two fixed objects or structures on each lot shall be referenced on the dock permit application plans.

(b) Commencement and completion of construction. All construction must be commenced, or completed, or both, within the guidelines established by the City of Belle Isle building department. The applicant is responsible for all fees associated with the procurement of the necessary permits.

(c) The approved permit is valid for one year from the date of the application.

Sec. 48-32. - Design criteria.

(a) Dock applications shall be reviewed under the following design criteria:

(1) Setbacks. Private docks shall have a minimum side setback of five (5) feet from the projected property lines of all abutting waterfront properties. Public and Semi-private docks shall have a minimum side setback of twenty-five (25) feet from the projected property lines of all abutting waterfront properties. For purposes of setback, the terminal platform includes any moored boats or intended boat mooring area. Any reduction from the minimum side setback will require a variance.

(2) Length. The lakeward end of the terminal platform shall be allowed to project to the greater of:

(i) Where the lake bottom has an elevation of 79.5 (NAVD 88);

(ii) 15 feet lakeward of the point where the lake bottom has an elevation of 80 (NAVD 88); or

(iii) 40' from the NHWC

(3) Total area. The terminal platform of the dock collectively may not exceed the square footage of ten times the linear shoreline frontage for the first 75 feet of linear shoreline frontage and then five times the linear shoreline frontage for each foot in excess of 75 feet thereafter, and the total of each when combined shall not to exceed a maximum of 1,000 square feet. A maximum terminal platform area of 400 square feet shall be allowed for properties with less than 40' of linear shoreline frontage. The area for the docking and mooring of boats and other appurtenances is included in the terminal platform area calculation

(4) Height. Except for floating docks, the minimum height of dock decks shall place them one foot above the NHWE of Lake Conway. The maximum height, which is to be measured from the top of the structure, shall be 14 feet above the NHWE of Lake Conway.

(5) Access Walkway. Access walkways shall be a minimum of four and a maximum of five feet in width. The area for a walkway shall not be included as part of the total area for the dock.

(6) Number and location of docks:

(i) No dock shall be allowed to extend greater than 15 feet lakeward of an existing dock within 300 feet of the proposed location for the dock or dock addition without a variance.

(ii) No dock construction permit shall be issued on a lot or combination of lots that does not have a principal structure first located thereon.

(iii) Only one dock per principal structure that is located on a lot or combination of lots shall be allowed on any such lot or combination of lots.

(iv) Dock(s) that are privately owned or attached to private property shall only be permitted on lots or combinations of lots zoned or used for residential purposes, and no docks shall be permitted on any lot or combination of lots used for agricultural, commercial, professional-office and/or industrial purposes. If the permit is for a combination of lots, the dock shall be built on the lot where the principal building is located.

(v) Dock(s) that are semi-private or owned by a homeowners association (HOA) or governmental agency shall be adjacent to and attached to upland property that is semi-private or owned by the HOA or public agency. These docks shall be exempt from the provisions of subsection 6 (ii) of this section so long as the HOA, public agency, or other relevant owner owns the attached upland property and is the applicant. Only one dock

per parcel may be located on the property. The term "parcel" as used in this subsection (v) shall mean all contiguous property owned by a HOA or by a public entity.

vi) All dock(s) shall be permanently affixed to the lake bottom, and shall be subject to the provisions of this article.

vii) A floating structure, unless it is associated with a permanent dock, shall be considered a separate dock subject to all provisions of this article.

viii) A floating structure shall be considered to be associated with a dock, if it is installed within the boat slip area, is attached to the dock, or is immediately adjacent to a side of the dock. In no case shall any floating structure extend the permitted length of a dock or extend into the side yard setback, or violate other relevant restrictions.

ix) Notwithstanding any other regulation to the contrary, no dock shall extend across more than 50% of the linear shoreline frontage. The linear shoreline frontage shall be measured in a straight line between the two outermost property corners at the NHWC.

(b) Dock or Boathouse on canal lot:

(1) Boathouses and docks on canal lots are subject to this article and the additional requirements of this subsection (b), notwithstanding that the lots along the canals interconnecting with Lake Conway within the city were platted and accepted by the city under the premise that these lots would serve as lake access for the residents of the associated parcel.

(2) Docks on canals are limited to the edge of the canal, and only if the proposed dock does not impede or restrict the boat traffic in the canal.

(3) The length, size and location of a Dock on a canal are further limited to no more than a width of 14 feet along the canal frontage if boat traffic in the canal is not impeded or restricted by the proposed Dock.

(4) A navigable travel way of 15' width along the axis (center) of the canal shall be maintained between all docks and potential docks.

(c) Restrictions. All docks are subject to the additional restrictions below:

(1) No dock or work for or on a dock shall be within areas which constitute easements for ingress or egress, or for drainage held by individuals or the general public.

(2) No flat roofs. Minimum roof pitch (slope) is 2:12; Maximum roof pitch (slope) is 5:12.

(3) No structure having enclosed sidewalls shall be permitted on any dock. The term "enclosed" shall include, by way of example but not by limitation, plastic, canvas and other screening enclosures, chain link and lattice fencing, or any form of paneling. For the purposes

of this section, a power curtain canvas, boat lift canopy skirt, retractable canopy curtain, or any other similar product made for the protection of a boat will not be considered as a dock enclosure.

(4) Under no circumstances shall a dock be used, permitted or occupied as living quarters, or as a bunk house, enclosed recreational use, or for any other non-water related use.

(5) Storage lockers shall not exceed 30 inches in height above the deck and 67 cubic feet of volume. Storage lockers on a dock shall not be used to store boat maintenance and/or repair equipment and materials, fuel, fueling equipment, and hazardous materials or hazardous wastes. Storage lockers are prohibited on semi-private or publicly owned docks.

(6) Any permit to place, locate, extend, expand, use or otherwise construct a dock, whether along Lake Conway or any canal or any other water body within the City, is subject to and shall not be construed as inconsistent with any law or regulation of the State of Florida or the United States. In addition, in granting or denying any application under this article the City may consider whether the proposed construction or activities would create unreasonable interference with the riparian or littoral rights of one or more nearby property owners, or the general public, as determined by the City in its discretion. As used in this subsection (6), "unreasonable interference" shall include but not be limited to situations in which a proposed structure or activity would impede access to, ingress to, or egress from the relevant body of water by boaters, swimmers, and others with a right to utilize the water body; encroaches upon, intersects, or otherwise interferes with commonly traveled boat routes or established watercraft channels; creates an unusual configuration of the shoreline that restricts boating access within navigable sections of the waterway; unreasonably impairs the view of the water body from one or more other waterfront properties; or otherwise unreasonably impairs or encroaches upon a riparian or littoral right held by one or more property owners or the general public under the law. Notwithstanding the foregoing, the City does not represent or guarantee that a dock or other permitted activity under this article will not affect a riparian or littoral right held by a property owner or the public, which rights are by law subject to local government regulations such as those contained in this article, and the City disclaims to the extent consistent with the law any liability for claims related to such.

Sec. 48-33. – Dock Variances.

(a) In the event the applicant wishes to construct, expand, extend, or repair a dock, or conduct any other activity not meeting one or more of the criteria or requirements described in section 48-32, a variance application must be made for hearing by the Belle Isle Planning and Zoning Board. Application fees shall be in accordance with the city fee schedule.

(b) The board shall not approve an application for a variance unless and until each of the following criteria have been met:

(1) The dock shall not create conditions hazardous to navigation nor any safety hazards;

(2) The location and placement of the dock shall be compatible with other docks in the area, and the NHWC of the lake;

(3) The current level of the lake shall not be a factor in deciding whether to approve or deny a variance

(4) The application does not confer a special benefit to the landowner over and above the adjoining landowners and does not interfere with the rights of the adjoining property owner to enjoy reasonable use of their property; and

(5) The requirements of subsection 42-64(1) Variances except for subsection 42-64(1)d (hardship).

Sec. 48-34. - Dock maintenance and repair and minor modifications.

(a) *Dock maintenance and repair, responsibility of property owner.* The owner of property on which a dock is located is responsible for maintaining a dock in safe and useable condition. Every dock and associated structures shall remain adequately supported, not create debris or obstructions, and shall be maintained in sound condition and good repair, so as to prevent negative impact on adjacent properties or waterway use and recreation.

(b) *Maintenance and repair of docks.* When maintenance and repair of docks involves the repair or replacement of pilings or other portions of the dock at or below the water surface, or of any roofed structure, the permit holder shall submit an application for a permit pursuant to section 48-31 of this article. Maintenance or repair of the deck surface of a dock that does not involve activity at or below the water surface, or of any roofed structure, is allowed without notice or permit, except that all such maintenance and repair activities must maintain the original design and original footprint of the dock and structures located on such dock or associated therewith.

(c) *Nonconforming "grandfathered" docks.* A dock that was duly permitted and authorized by the County when under County jurisdiction, or duly permitted and authorized by the City under and that complied with a previous version of the City's dock regulations, which dock does not conform with the City's current dock regulations under this article, shall be considered a "grandfathered" dock and shall be an authorized legally non-conforming structure. Except for maintenance and repair activities allowed by this article, the expansion or modification of a legally non-conforming (or "grandfathered") dock is not permitted except in situations where: (i) the dock is brought into conformance with the then current dock regulations of this article, or (ii) the city determines that the dock will be modified in such a way as to substantially decrease or mitigate the dock's non-conformity with the current dock regulations of this article. However, when a grandfathered dock is damaged or requires any maintenance or repairs, the costs of which equal or exceed 75 percent of the then current cost to reconstruct the dock, such maintenance or repair shall not be permitted unless the dock is brought into compliance with the current regulations under this article and any other relevant City regulation.

(d) *Minor modifications to permitted docks.* Minor modifications to all existing docks must be approved by the city. The applicant must submit a request for the proposed deviation change

or modification to the original site plan to the city manager for consideration. Additional information may be requested from the applicant in order to complete the review. Minor modifications must comply with the provisions of this article. Any modification that may require a variance or waiver of any provision of this article shall not be considered a minor modification. Any modification that increases the size of the terminal platform or increases the horizontal or vertical footprint of the dock shall not be considered a minor modification. The city manager may require notification of abutting waterfront property owners of the application for minor modification. City approval or disapproval shall include a statement regarding requirement or no requirement for a permit.

(e) When repair of an existing dock is subject to a new permit by the City, an applicant shall provide to the City the prior dock permit and survey whether issued by Orange County or the City. The City shall determine whether or not the proposed repair necessitates a permit under this section. The applicant shall have the burden of proof to show the dock preceded any dock regulation of Orange County or the City or provide the prior permit and survey for the dock.

Sec. 48-35. - Violations; penalties; enforcement.

(a) It shall be unlawful for any person to violate any provision of this article, or any provision of any resolution enacted pursuant to the authority of this article. Any person who violates this chapter, or any provision of any resolution enacted pursuant to the authority of this article, may be prosecuted in accordance with Chapter 14 of the Belle Isle code.

(b) In addition to the enforcement and penalty provisions provided in Chapter 14, the city may avail itself of any other legal or equitable remedy available to it, including without limitation, injunctive relief or revocation of any permit involved.

(c) Any person violating this article shall be liable for all costs incurred by the city in connection with enforcing this article or any provision of any resolution enacted pursuant to this article, including without limitation, attorneys' fees and investigative and court costs.

(d) If the code enforcement officer determines that construction is occurring without prior approval or not in accordance with these regulations, the code enforcement officer shall promptly issue a written notice of violation to the applicant and/or designated contractor. The notice of violation shall include a description of the site where the violation has occurred, cite the provisions of these regulations, general or special laws which have been violated, and set forth the remedial action required by the city. Such remedial action may include submittal of revised drawings, reapplication for a permit, double the permit fee, removal of dock, and administrative and civil penalties.

SECTION 4. Codification. This Ordinance shall be incorporated into the Land Development Code of the City of Belle Isle, Florida. 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 Land Development 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. 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 become effective immediately upon adoption by the City Council of the City of Belle Isle, Florida.

FIRST READING: _____, 2018

SECOND READING: _____, 2018

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

CITY COUNCIL
CITY OF BELLE ISLE

Lydia Pisano, Mayor

ATTEST:

Yolanda Quiceno, City Clerk