



CITY OF BELLE ISLE, FL
CITY COUNCIL WORKSHOP

Held in City Hall Chambers 1600 Nela Avenue, Belle Isle, FL

Tuesday, March 30, 2021 * 6:30 PM

AGENDA

City Council Commissioners

Nicholas Fouraker, Mayor

District 1 Commissioner – Ed Gold | District 2 Commissioner – Anthony Carugno | District 3 Commissioner – Karl Shuck

District 4 Commissioner – Mike Sims | District 5 Commissioner – Harvey Readey | District 6 Commissioner – Jim Partin

District 7 Commissioner – Sue Nielsen

1. **Call to Order and Confirmation of Quorum**
2. **New Business**
 - a. Discussion/direction on Canoe Trail
 - b. Discussion/direction on Designating Swim Areas
3. **Adjournment**



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

Meeting Date: March 30, 2021

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: Canoe Trail and Swim Areas

Background: Florida Statute 327.46 (1) (c) states: Municipalities and counties have the authority to establish by ordinance the following other boating-restricted areas: 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.

The City's Comprehensive Plan, dating back to 1990, laid out a canoe trail along the shore of the center and south lobes of Lake Conway. Each time the Comprehensive Plan was updated, the canoe trail remained in the plan. We have public places along both lobes of the lake to establish a canoe trail, including the launch at Warren Park that was specifically built for this purpose in 2017.

The City will follow the criteria outlined in Chapter 68D-21, F.A.C (68D-21.004. Criteria for Approval of Ordinances), paragraph (4) which states an ordinance establishing a vessel exclusion zone (an area from which all vessels or certain classes of vessels are excluded) will be approved if the area is reserved exclusively:

1. As a canoe trail or otherwise limits vessel propulsion if the applicant demonstrates by competent substantial evidence how the restriction is necessary to protect public safety pursuant to Section 327.46, F.S., and if:
 - a. One of the following restrictions, as defined in Rule 68D-23.103, F.A.C., is imposed: "No Motorized Vessels" or "No Motorboats" or "Motorboats Prohibited;" "No Power-driven Vessels;" "No Internal Combustion Motors;" "Manually Propelled Vessels Only;" and,
 - b. Imposition of the restriction will not unreasonably or unnecessarily endanger navigation or interfere with the use of a navigation channel that is lawfully marked with lateral aids to navigation.

If there is a conflict with the trail and the skiing course on the south lobe, the City staff will work with skiers to alleviate the conflict.

The Council will also discuss several areas to designate as "swim only" areas. These areas will include those lake-side parks (Swann, Delia, Cross Lake, LaBelle, and Peninsular) and also a discussion on whether or not the City should consider designating the Sandbar as a swim only

area and include this in this application to FWC. If so, what would this swim area at the Sandbar look like?

b.



CITY OF BELLE ISLE, FLORIDA

1600 Nela Avenue
Belle Isle, Florida 32809
(407) 851-7730 • FAX (407) 240-2222
www.cityofbelleislefl.org

January 29, 2021

Florida Fish and Wildlife Conservation Commission
620 South Meridian Street
Tallahassee, FL 32399-1600

RE: Application for vessel-exclusion zone

Dear Commissioners:

Please consider this letter as an application for the City of Belle Isle to establish a vessel-exclusion zone on the Conway Chain of Lakes for the purpose of establishing a canoe trail and other vessels under oars (kayak, rowboats, paddleboards, and small sailboats, etc.) under Florida Statute 327.46(c)3.

The Canoe Trail was approved on the City's Comprehensive Plan since the Plan was adopted in 1990. Attached to this application is an excerpt from the 1990 Comprehensive Plan. The trail has been included in all updates to the Comprehensive Plan in 1990.

The City is required to review and update its Comprehensive Plan every seven year in accordance with Florida Statute 163.3191. The City's next review and update will be in 2023. The City Council anticipates that it will amend the Plan to include an extension of the Canoe Trail to the north lobes of Lake Conway. Therefore in addition to establishing a vessel-exclusion zone on the center and south lakes as shown in the attached plan, the City would also request approval of a similar vessel-exclusion zone on the north lobes in anticipation of amending the Comprehensive Plan in 2023.

The City will comply with all of the requirements for identifying and marking the vessel-exclusion zones. If additional information is needed, please have the FWC representative contact me directly. I would also request that the City be contacted when this will appear in the Commission's agenda. Thank you.

Sincerely,

Nicholas Fouraker
Mayor

ORDINANCE NO. 21-XX

AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA, AMENDING CHAPTER 34, ARTICLE II OF THE CITY CODE GOVERNING BOAT EQUIPMENT AND OPERATION; CREATING A NEW SECTION 34-38 TO ESTABLISH SPECIAL BOATING RESTRICTED AREA FOR THE PURPOSE OF ESTABLISHING A CANOE TRAIL; AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION, DIRECTION TO CITY STAFF, 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, pursuant to the requirements of Chapter 163, Part II, Florida Statutes (F.S.) and Chapter 9j-5, Florida Administrative Code (F.A.C), the City of Belle Isle adopted its original Comprehensive Plan in June of 1991, and the plan was updated through the preparation and adoption of an Evaluation and Appraiser Report (EAR) required by Section 163.3191, F.S.; and

WHEREAS, Goal 2, Objective 2.1 of the City's original Comprehensive Plan and subsequent EARs call for establishment of a Canoe Trail along the shore of the center and south lobes of the Conway Chain of Lakes, and

WHEREAS, Section 327.46(1)(c), Florida Statutes authorizes the City Council of City of Belle Isle to establish a vessel exclusion zone in an area designated as a canoe trail or which is otherwise reserved for vessels under oars or under sail; and

WHEREAS, the City wishes to establish a Canoe Trail along the shore of the center and south lobes of the Conway Chain of Lakes as stated in the Comprehensive Plan 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 in accordance with Section 327.46(1)(c), Florida Statutes.

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 34-38 of the City Code is hereby established to read as follows:

Section 34-38 - Establishment of Vessel-Exclusion Zone for Canoe Trail .

The following described waterways or portions of waterways are hereby established as Vessel-Exclusion Zone:

The 100-foot wide 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, all as depicted in the attached Exhibit "A".

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. Direction to City Staff. City staff, under direction of the City Manager, are hereby directed and authorized, as of the Effective Date of this Ordinance, to construct, install, and/or contract for the construction and installation of such regulatory markers and signs as necessary to implement and inform the public of the vessel-exclusion zone established by this Ordinance.

SECTION 7. 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: _____, 2021

SECOND READING: _____, 2021

ADOPTED this ____ day of _____, 2021, by the City Council of the City of Belle Isle, Florida.

CITY COUNCIL

CITY OF BELLE ISLE

OBJECTIVE 2.1:

The City shall require public boat ramps based on a level of service standard of one public boat ramp per 3,000 residents and public canoe launches based on the level of service standard of one public canoe launch per 1,500 residents.

POLICY 2.1.1:

The City will ensure that the Conway Lake Chain canoe trails include numbered signposts to provide guidance to trail users. Signs and trail markers should be visible and easily recognized to promote recreational use.

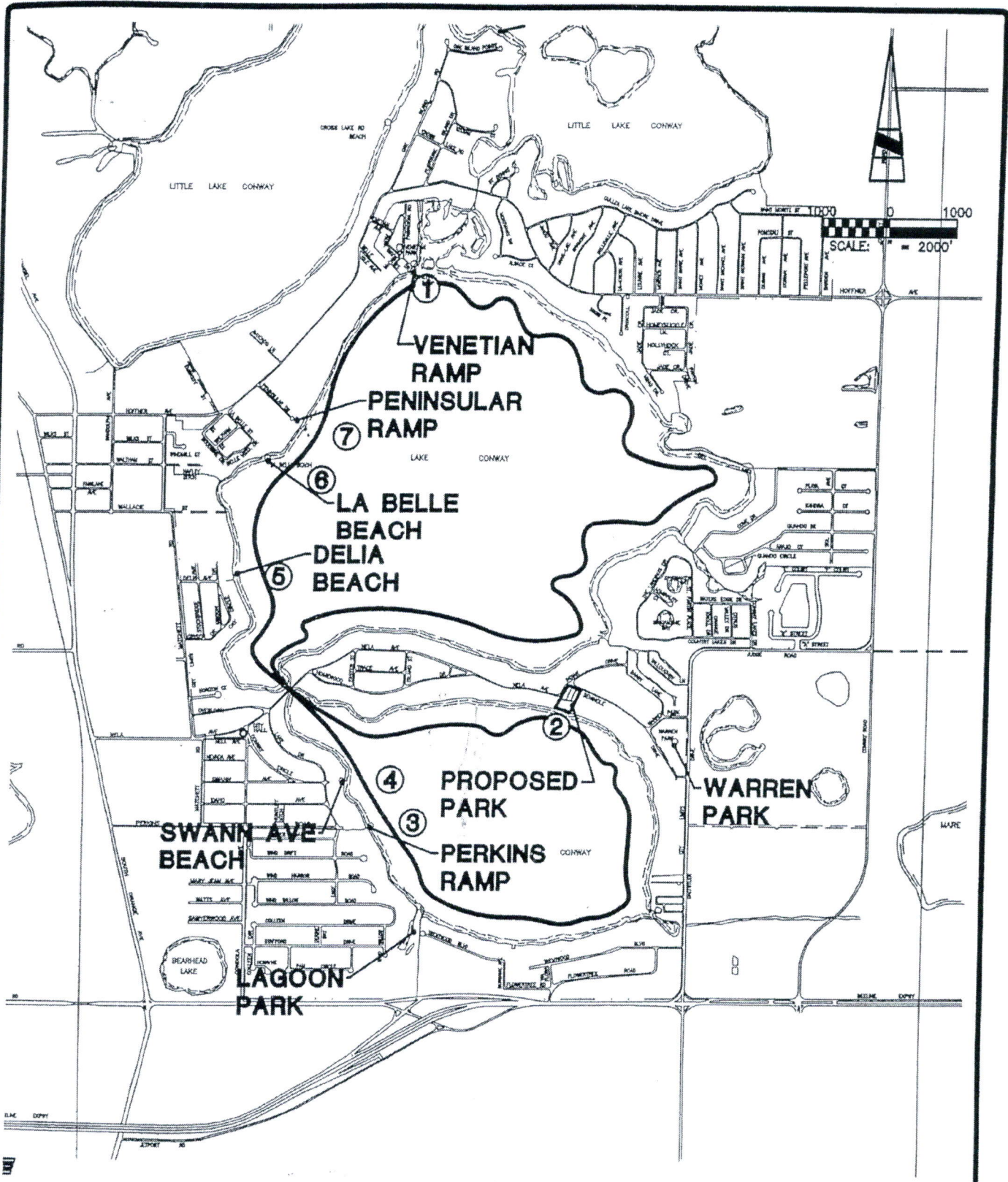
POLICY 2.1.2:

To encourage public access, ensure active and passive public recreation opportunities, and to facilitate environmental education, informational signs will be posted at all City parks and boat ramps regarding the presence of the Conway Lake Chain canoe trails. An element of the signs will be information for all water craft regarding safety and, in particular, safe use of power boats within the designated canoe trails where self-propelled craft will be used.

POLICY 2.1.3:

The City will use the City of Belle Isle Canoe Trail site plan (Figure A) to guide future canoe trail and waterways planning efforts within the Conway Lake Chain.

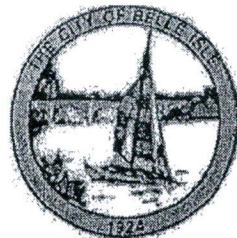
IMAGES: BI-logo.pg 028081D3.TIF 028081D4.TIF 028081E3.TIF 028081E4.TIF PLAT.bmp q3611nw1.tif



CITY OF BELLE ISLE
CANOE TRAIL

BOYLE

FE-B52-001-02



A

Select Year: 2020

The 2020 Florida Statutes

[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(28), 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; s. 31, ch. 2020-150.

Note.—Former s. 371.522.

Written warnings Notice of Proposed Rule

FISH AND WILDLIFE CONSERVATION COMMISSION

Vessel Registration and Boating Safety

RULE NOS.:RULE TITLES:

68D-21.001 Requirements for Applications

68D-21.004 Criteria for Approval of Ordinances

PURPOSE AND EFFECT: These rule amendments will provide clarity regarding the application and approval process for ordinances creating boating restricted areas.

SUMMARY: These rules provide guidelines for local governments regarding applications for approval of ordinances establishing boating restricted areas, and the proposed changes are intended to provide clarity regarding the application and approval process. Specific proposed changes include defining “launching and landing facilities,” adding written warnings to the proofs considered in assessing whether there is competent substantial evidence to support that a boating restricted area is necessary to protect public safety, and providing clarification of traffic congestion metrics. These updates will add transparency to the ordinance application process used by local governments to establish boating restricted areas, such as slow speed zones, within their jurisdictions. The overall result of these rule amendments will be a more efficient application and ordinance review process.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The nature of the rule and the preliminary analysis conducted to determine whether a SERC was required.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 327.04, 327.46 FS.

LAW IMPLEMENTED: 327.46, FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Major Robert Rowe, Division of Law Enforcement, Boating and Waterways Section, 620 South Meridian St., Tallahassee, Florida 32399-1600, (850)488-5600, robert.rowe@myfwc.com.

THE FULL TEXT OF THE PROPOSED RULE IS:

68D-21.001 Requirements for Applications.

(1) Approval by the Florida Fish and Wildlife Conservation Commission is not required for ordinances adopted pursuant to Section 327.46(1)(b), F.S. Regulatory markers necessary for implementing those ordinances must be permitted as required in Sections 327.40 and 327.41, F.S., and as provided in Chapter 68D-23, F.A.C.

(2) Any municipality or county application for approval of an ordinance establishing a boating-restricted area pursuant to Section 327.46(1)(c), F.S., must be submitted to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section.

(3) Each application must include:

(a) The name of the applicant municipality or county.

(b) The name, mailing address, telephone number, and any email address or facsimile number of the applicant's:

1. Primary contact person; and,
2. Attorney or qualified representative.

(c) A certified copy of the adopted ordinance for which approval is sought. A county or municipality may submit a draft ordinance for review and approval. Approval, if granted, is conditioned upon the draft ordinance being adopted without amendment and does not become effective until a certified copy of the ordinance as adopted is received by the Boating and Waterways Section. If the draft ordinance is amended, approval of the draft ordinance will be rescinded and the ordinance as adopted will be reviewed.

(d) A statement identifying the provision within Section 327.46(1)(c), F.S., authorizing regulation of vessel speed or operation by the ordinance.

(e) One or more scaled drawings no larger than 8 1/2 inches by 11 inches, reproducible in black and white on standard office photocopying equipment which clearly show the following:

1. The jurisdictional boundaries of the municipality or county enacting the ordinance and, for county ordinances, the jurisdictional boundaries of any municipality in which a boating-restricted area is located.

2. The exact boundaries of each boating-restricted area established by the ordinance and the restrictions on vessel operation imposed within each boating-restricted area.

3. Any other known boating-restricted area (federal, state, county, other municipality, etc.) located within 2,500 feet of any boating-restricted area established by the ordinance.

4. The location of any of the following within a proposed boating-restricted area or used as a basis for establishing a boating restricted area, identified with a label or legend as to whether or not it is available for use by the general public:

- a. Any boat ramp, hoist, marine railway, or other launching or landing facility. For purposes of this Chapter, and in interpreting s. 327.46, F.S., a “launching or landing facility” shall be any improvement built or installed upon land that facilitates a vessel transitioning from the land to the water and vice versa. A launching or landing facility shall not include any amenity built near or adjacent to the water which does not facilitate a vessel transitioning from the land to water, or vice versa.

- b. Any fuel pump or dispenser at any marine fueling facility or licensed terminal facility.

- c. Any lock structure.

- d. Any designated public bathing beach or swim area.

5. The location of any of the following within a proposed boating-restricted area or used as a basis for establishing a boating restricted area:

- a. Any bridge, including any bridge fender system, if present.

- b. Any dam, spillway, or flood control structure.

- c. Any confluence of water bodies presenting a blind corner.

- d. Any bend or other intervening obstruction to visibility that may obscure other vessels or other users of the waterway in a narrow channel, fairway, or other similar area within the meaning of Inland Navigation Rule 9 (33 U.S.C. §2009) as adopted by Section 327.33, F.S.

- e. Any specific hazards to navigation (with a label or legend describing the hazard).

6. If relied upon as a basis for establishing the boating-restricted area, the location and description of any of the following within the proposed boating restricted area boundary:

- a. Any specific area subject to unsafe levels of vessel traffic congestion, together with documentation showing these unsafe levels, as provided in Rule 68D-21.004.

- b. Any specific area subject to hazardous water levels or currents, together with documentation showing these hazardous levels, as provided in Rule 68D-21.004.

- c. Any reported boating accident for which speed, wake, or operation of a vessel was a primary contributing factor.

- d. Any issuance of a Uniform Boating Citation or written warning related to vessel speed, wake, or operation. The Applicant shall be responsible for reviewing citations and written warnings to ensure they are relevant to the application as provided in Rule 68D-21.004(3)(c)3.b. Applications submitted with citations or written warnings that are outside the scope of Rule 68D-21.004(3)(c)3.b. will be denied without prejudice to the Applicant reapplying with only citations and written warnings identified in Rule 68D-21.004(3)(c)3.b.

7. The shoreline-to-shoreline width of the body of water upon which the boating restricted area is to be established and, if the water body is a lake or pond, the total surface area expressed in acres.

(f) Documentation that the ordinance was developed, prior to presenting language for adoption, in consultation and coordination with:

1. The governing body of every other county or municipality sharing jurisdiction over the area in which the boating-restricted area is located.

2. The United States Coast Guard if the boating-restricted area is to be established on navigable waters of the United States as defined in 33 C.F.R. §2.36(a) (2009), which is adopted by reference and is available at <http://www.gpoaccess.gov/cfr/index.html>.

3. The United States Army Corps of Engineers if the boating-restricted area is to be established on navigable waters of the United States as defined in 33 C.F.R. §329.4 (2009), which is adopted by reference and is available at <http://www.gpoaccess.gov/cfr/index.html>.

(g) A summary of the facts and circumstances the applicant contends justifies the establishment of the restriction on speed or operation and a list of the evidence in support of that contention the applicant desires for the agency to review.

(h) An appendix containing all evidence listed in paragraph (g), above, except that the appendix need not include the following:

1. Copies of Boating Accident Reports or Boating Accident Investigation Reports if those reports are identified by law enforcement agency case number and provided in a list. If the Boating and Waterways Section does not have a copy on file of one or more such reports, it will request that the applicant supplement the application appendix with copies of those reports.

2. Copies of Florida Uniform Boating Citations or written warnings if identified by citation number or warning number in a list. If one or more citations or written warnings are not already entered into the ArrestNet Database maintained by the Commission Field Services Section, the Boating and Waterways Section will request the applicant ~~to~~ supplement the application appendix with copies of those citations or warnings. The applicant can request information regarding citations or warnings that are contained within the ArrestNet database by emailing DLE.reports@myfwc.com.

(i) Proof that the applicant has at its own cost published, as provided by Sections 50.011-.031, F.S., once a week for 2 consecutive weeks, prior notice of the public hearing on the ordinance in a newspaper of general circulation in the area(s) affected by the ordinance.

(j) The signature of the applicant's attorney or qualified representative.

(k) The date the application is submitted.

(4) Complete applications may be submitted:

(a) By mail or in person to the Fish and Wildlife Conservation Commission, Boating and Waterways Section, 620 South Meridian Street, Tallahassee, FL 32399-1600, or

(b) As a Portable Document Format (.pdf) file attached to an email addressed to waterway.management@myfwc.com.

(5) The Boating and Waterways Section will not process partial or incomplete applications.

Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History—New 10-6-10.

68D-21.004 Criteria for Approval of Ordinances.

(1) Any ordinance submitted pursuant to Section 327.46(1)(c), F.S., and in compliance with Chapter 68D-21, F.A.C., is subject to review and approval by the Commission.

(2) An ordinance establishing either an "idle speed, no wake" or a "slow speed, minimum wake" boating restricted area will be approved for areas not more than 300 feet from a confluence (intersection) 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.

(a) A blind corner is presented where an intervening obstruction to visibility prevents the operator of a vessel on one of the water bodies from seeing a vessel on the other water body at a distance of 300 feet or less from the confluence.

(b) A bend or other intervening obstruction to visibility in a narrow channel, fairway, or other similar water body within the meaning of Inland Navigation Rule 9 (33 U.S.C. §2009) as adopted by Section 327.33, F.S., is

presented where a decision sight distance of less than 300 feet exists and prevents the operator of a vessel from seeing other vessels or other users of the waterway.

(3) An ordinance establishing a “slow speed, minimum wake” boating-restricted area or numerical speed limit boating-restricted area regulated at 25 or 30 miles per hour will be approved for areas:

(a) Subject to hazardous water levels or currents if:

1. The boating-restricted area established in the ordinance is active and enforceable only when the water levels are at or above flood stage on a river gauge operated or reported by the National Weather Service’s River Forecast Center (<http://www.srh.noaa.gov/serfc/>) or at the equivalent level on a river gauge operated or reported by the United States Geological Survey’s National Water Information System (<http://waterdata.usgs.gov/fl/nwis/rt>) and the specific gauge and flood stage water level is specified in the ordinance.

~~2. The United States Coast Pilot (<http://www.nauticalcharts.noaa.gov/nsd/cpdownload.htm>) identifies the area as being subject to hazardous tides or currents.~~

~~2.-3.~~ A navigation chart published by the National Oceanic and Atmospheric Administration’s National Ocean Service (<http://www.nauticalcharts.noaa.gov/>) identifies the area as being subject to hazardous tides or currents.

~~3.-4.~~ Creditable data demonstrate that the area is subject to water levels or currents that endanger vessels operating in the area or the occupants of such vessels.

(b) Containing a documented navigational hazard of a nature that vessel operation in its vicinity at speed in excess of slow speed, minimum wake endangers the vessel or its occupants. Navigational hazards are presumed to exist within the marked boundaries of mooring fields as permitted by Section 327.40, F.S.

(c) Subject to unsafe levels of vessel traffic congestion, seasonally ~~seasonal~~ or year-round, such that:

1. The traffic density including concentration of fishing vessels or any other vessels would require that vessels slacken speed under Inland Navigation Rule 6(a)(ii) (33 U.S.C. §2006) as adopted by Section 327.33, F.S., or

2. It presents a significant risk of collision or a significant threat to boating safety.

3. Unsafe levels of vessel traffic congestion, a significant risk of collision, or a significant threat to boating safety may be demonstrated by:

a. Accident reports – The following reports of boating accidents are acceptable if prepared contemporaneously with the boating accident being reported and if such reports reflect law enforcement’s determination that vessel traffic congestion or the speed, or wake, or operation of a vessel involved in the accident was a primary contributing factor in caused or contributed to the accident:

I. Florida Boating Accident Investigation Report, form FWCDLE 146, or Florida Boating Accident Self Report, form FWCDLE 146C, supplied by the Commission as provided in Section 327.302, F.S.; United States Coast Guard Recreational Boating Accident Report, form CG-3865, ~~as provided in 33 C.F.R. §§173.55, 173.57;~~ United States Coast Guard Report of Marine Casualty, Injury or Death, form CG-2692, ~~as provided in 46 C.F.R. §4.05-10.~~ The current versions of these forms are adopted by reference in subsection (7) ~~(5)~~; prior editions of these forms are also acceptable.

II. A law enforcement agency’s official offense or incident report prepared and signed by an officer authorized under Section 327.70, F.S., to enforce the provisions of Chapters 327 and 328, F.S.

III. Medical records, including EMS and medical examiner reports, if they document death or injuries as a result of a boating accident and specify the nature and location of the boating accident;

b. Uniform boating citations issued on citation forms supplied by the Commission as provided in Section 327.74, F.S., or written warnings if the violation alleged in the citation or warning is related to the cited vessel’s speed, or wake, or operation. Citations and written warnings unrelated to vessel speed, wake, or operation will not be considered, nor will verbal warnings. In no event will citations or written warnings issued for violations of chapter 328, or sections 327.50, 327.53, 327.54, 327.65, 327.66, Florida Statutes be considered.

c. A vessel traffic study demonstrating that vessel traffic congestion or the speed, wake, or operation of vessels in the area create unsafe levels of vessel traffic congestion, a significant risk of collision, or a significant threat to boating safety. The if the conclusions of the study are, as determined by the Boating and Waterways Section, must be based upon sufficient facts or data, be are the product of reliable principles and methods, and apply if the study has applied the principles and methods reliably to the facts or data considered. In assessing the creditability of a vessel traffic study, the following factors (as applicable) shall be among those considered:

I. Whether the study's methodology can be or has been tested (i.e., whether the study's methodology can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability),

II. Whether the study's methodology has been subject to peer review and publication,

III. The known or potential rate of error of the study's methodology,

IV. The existence and maintenance of standards and controls; and,

V. Whether the methodology has been generally accepted in the scientific community.

Vessel traffic studies must identify the number of vessels transmitting the proposed boating restricted area each hour for no less than six hours out of each twenty-four-hour period documented and provided to the Commission. When this minimum threshold is met, the area will be evaluated taking all other relevant factors into consideration, including width of the waterway, vessel types using the waterway, navigational hazards, and other conditions specific to the proposed boating restricted area.

d. Other creditable data. For the purposes of this subparagraph, "other creditable data" means facts or data that are of a type reasonably relied upon by experts in the fields of boating safety, maritime safety, navigation safety, ports and waterways safety assessments, or vessel traffic management, as contemplated in Section 90.704, F.S.

4. When relying upon vessel traffic studies for reviews under this Rule, video surveillance made during a vessel traffic study may be submitted with a corresponding log documenting number of vessels, vessel types, examples of careless or reckless operation of vessels, navigation rule violations, actions taken to avoid collisions, unsafe vessel speeds, near misses of navigational hazards by vessels, or any other specific criteria the applicant wants considered, along with relevant video time stamps for each item. Without such a corresponding log documenting the specific identified issues, video surveillance will not be considered. Video surveillance which has been altered or edited will not be considered.

(d) That could have been established as an idle speed, no wake boating-restricted area under Section 327.46(1)(b)1., F.S., provided the applicant demonstrates by competent substantial evidence how the specific regulation will adequately solve public safety concerns in the area.

(4) An ordinance establishing a vessel exclusion zone (an area from which all vessels or certain classes of vessels are excluded) will be approved if the area is reserved exclusively:

1. As a canoe trail or otherwise limits vessel propulsion if the applicant demonstrates by competent substantial evidence how the restriction is necessary to protect public safety pursuant to Section 327.46, F.S., and if:

a. One of the following restrictions, as defined in Rule 68D-23.103, F.A.C., is imposed: "No Motorized Vessels" or "No Motorboats" or "Motorboats Prohibited;" "No Power-driven Vessels;" "No Internal Combustion Motors;" "Manually Propelled Vessels Only;" and,

b. Imposition of the restriction will not unreasonably or unnecessarily endanger navigation or interfere with the use of a navigation channel that is lawfully marked with lateral aids to navigation.

2. For a particular specified activity (e.g.: sailing instruction, marine research, water skiing, personal watercraft use, sailboard use, etc.) if the applicant demonstrates by competent substantial evidence how certain classes of vessels (including all vessels if appropriate under the prevailing circumstances) endanger or are likely to endanger those participating in the specified activity and that the specified classes of vessels must be excluded from the area in order to adequately protect the safety of those participating in the specified activity.

(5) The Commission may approve an ordinance creating a year-round boating restricted area when the documentation provided reflects competent substantial evidence that such a restriction is necessary to protect public safety throughout the entire year. When vessel traffic studies alone are relied upon to apply for a year-round boating restricted area, the studies must document the area for a minimum of four consecutive, non-holiday (those days not identified as "holidays" in 68D-23.103) days, for each season (spring, summer, fall, and winter).

(6) The Commission may approve an ordinance creating a seasonal boating restricted area when the documentation provided reflects competent substantial evidence that such a restriction is necessary to protect public safety throughout the requested season. When vessel traffic studies alone are relied upon to apply for a seasonal boating restricted area, the studies must document the area for a minimum of four consecutive, non-holiday days (those days not identified as "holidays" in 68D-23.103), for each season sought to be regulated. For purposes of this Chapter, a seasonal boating restricted area shall mean a boating restricted area in force and effect for any time period less than a complete calendar year.

(7)(5) The following forms are adopted and incorporated by reference:

(a) Florida Boating Accident Investigation Report, form FWCDLE 146 (07/2010), available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-> and Florida Boating Accident Self Report, form FWCDLE 146C (07/2010), available at <https://www.flrules.org/Gateway/reference.asp?No=Ref->, supplied by the Commission as provided in Sections 327.301 and 327.302, F.S. These forms may also be obtained from the Boating and Waterways Section, 620 South Meridian Street, Tallahassee, FL 32399-1600.

(b) United States Coast Guard Recreational Boating Accident Report, form CG-3865 (Rev. 09/18) (~~Rev. 07/08~~), as provided in 33 C.F.R. §§173.55, 173.57, available at <https://www.flrules.org/Gateway/reference.asp?No=Ref->. This form may also be obtained from Commandant (CG-5422), U.S. Coast Guard Headquarters, 2100 Second St. S.W., Stop 7581, Washington, DC 20593-7581, or downloaded at <http://www.usegboating.org/assets/1/Publications/cg3865bar form2008.pdf>.

(c) United States Coast Guard Report of Marine Casualty, Commercial Diving Casualty, or OCS Related Casualty Injury or Death, form CG-2692 (Rev. 07/19) (~~Rev. 06/04~~), as provided in 46 C.F.R. §4.05-10 available at <https://www.flrules.org/Gateway/reference.asp?No=Ref->. This form may also be obtained from the Coast Guard Sector Office, Coast Guard Marine Inspection Office or Coast Guard Group Office nearest the scene of the marine casualty, or from Commander, USCG Seventh District, Brickell Plaza Federal Building, 909 S.E. 1st Avenue, Miami, FL 33131-3050, or downloaded at http://www.useg.mil/forms/CG/CG_2692.pdf.

Rulemaking Authority 327.04, 327.302, 327.46 FS. Law Implemented 327.302, 327.46 FS. History--New 10-6-10, _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Major Robert Rowe, Division of Law Enforcement, Boating and Waterways Section, 620 South Meridian St., Tallahassee, Florida 32399-1600, (850)488-5600, robert.rowe@myfwc.com.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Fish and Wildlife Conservation Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 17, 2020

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: August 5, 2020