

## ORDINANCE 22-04

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELLEAIR BEACH, FLORIDA, AMENDING CHAPTER 30 – “MARINE STRUCTURES, ACTIVITIES, AND FACILITIES”, ARTICLE IV – “BEACH”, OF THE CITY’S CODE OF ORDINANCES, TO REPEAL PROVISIONS IN SECTION 30-141 ESTABLISHING A “GULF OF MEXICO SAFETY ZONE” IN ORDER TO CONFORM TO APPLICABLE STATE LAWS AND REGULATIONS; REPLACING THE “GULF OF MEXICO SAFETY ZONE” WITH A “VESSEL-EXCLUSION ZONE” DESIGNATED AS A “PUBLIC BATHING BEACH” RESTRICTED TO MANUALLY PROPELLED VESSELS ONLY; PROVIDING FOR THE INSTALLATION OF REGULATORY MARKERS; ESTABLISHING VIOLATIONS RELATING TO THE PUBLIC BATHING BEACH; ESTABLISHING THE MEANS OF ENFORCEMENT; AMENDING SECTIONS 30-142 THROUGH 30-144 TO CONFORM TO THE RESTRICTIONS APPLICABLE WITHIN THE CREATED VESSEL EXCLUSION ZONE; PROVIDING FOR THE INCORPORATION OF RECITALS; PROVIDING ADMINISTRATIVE DIRECTION TO IMPLEMENT THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 30, Article IV, Section 30-141, entitled “Gulf of Mexico safety zone” of the Belleair Beach City Code sets forth regulations relating to the permissible activities within a defined area along the City’s shoreline, and into the Gulf of Mexico; and

**WHEREAS**, Section 327.46 (1) (b) 3. a., Florida Statutes, provides municipalities and counties with authority to regulate the permitted uses in the coastal waters of the Gulf of Mexico by adopting an ordinance establishing a “vessel-exclusion zone,” if the area is designated as a “public bathing beach” or “swim area”; and

**WHEREAS**, through the Florida Administrative Code (“FAC”) the Fish and Wildlife Conservation Commission articulates rules, pursuant to its rulemaking authority in Fla. Stat. § 327.41, to establish the permissible parameters for uniform waterway regulatory markers; and

**WHEREAS**, F.A.C. 68D-23.103 (3) (f) defines a “vessel-exclusion zone” as “an area from which all vessels or certain classes of vessels are excluded”; and

**WHEREAS**, though a “public bathing beach” is a cognizable category of a “vessel - exclusion zone,” neither Florida Statutes nor the FAC define a “public bathing beach”; and

**WHEREAS**, Section 166.021, Florida Statutes acknowledges the City’s governmental, corporate, and proprietary powers enabling it to conduct municipal government, perform municipal functions, and render municipal services, and that the City may exercise those powers for municipal purposes except when expressly prohibited by law; and

**WHEREAS**, the City’s presently established “Gulf of Mexico Safety Zone,” does not conform to a permitted category within the State of Florida’s existing legal framework; and

**WHEREAS**, the City’s “Gulf of Mexico Safety Zone” has historically restricted the operation of vessels at an accelerated speed in the area extending 100 yards from the City’s shoreline along the Gulf of Mexico; and

**WHEREAS**, the City’s “Gulf of Mexico Safety Zone” has historically been designated by a series of permitted regulatory markers and buoys visibly establishing its perimeter to advise mariners and the beachgoing public alike of its dimensions and the permissible activity therein; and

**WHEREAS**, in order to bring its local regulations into alignment with state statutes and regulations, while continuing to balance the interests of vessel operators and the beachgoing public the City must amend its code; and

**WHEREAS**, at an open and noticed meeting held on July 5, 2022, the City Council declined to advance a proposed ordinance establishing a series of designated swim areas in portions of the City extending from the shoreline into the Gulf of Mexico; and

**WHEREAS**, at an open and noticed meeting held on August 1, 2022, the City Council of considered and tabled a proposed ordinance calling for the abolition of the “Gulf of Mexico Safety Zone” and removal of all then-existing buoys, and

**WHEREAS**, on August 15, 2022, the City Council of the City of Belleair Beach held a work session, attended by a staff member from the Fish and Wildlife Conservation Commission to discuss the regulatory options available for the City to amend its code in compliance with Florida’s statutory and regulatory framework for uniform waterway markers while effectively protecting and preserving the public’s health, safety, and welfare; and

**WHEREAS**, it is the desire of the City Council of the City of Belleair Beach to continue to protect against the operation of vessels at an accelerated speed in the vicinity of its coastline; and

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLEAIR BEACH, FLORIDA, THAT:**

**SECTION 1.** The above recitals are true and correct and are incorporated herein by reference.

**SECTION 2.** That Chapter 30, Article IV, Sections 30-141 to 30-145 of the Belleair Beach City Code, is amended to read as follows:

~~Sec. 30-141. –Gulf of Mexico safety zone.~~

~~(a) *Designated.* There is created a designated safety zone for restricted watercraft operation within the corporate boundaries of the city extending 100 yards from the shoreline into the Gulf of Mexico, and running parallel to the city's shoreline along the Gulf of Mexico.~~

~~(b) *Operation of watercraft.* The operation of any watercraft within the safety zone that threatens persons, property, watercraft and the use of the waters of the Gulf of Mexico shall constitute a violation of this section; provided, however, that watercraft intending to anchor at a location within the defined safety zone area may proceed at idle speed. Such restriction shall not apply to any watercraft entering the safety zone as a result of an actual emergency; nor shall it apply to any official emergency vessels.~~

~~(c) *Mooring to markers or buoys.* The mooring of any watercraft to markers or buoys placed by the city or other authorized governmental body shall be prohibited.~~

~~(d) *Erection of signs or markers.* The city may erect, or cause to be erected, appropriate signs in designated safety zone areas within the city, subject to state and federal regulations.~~

~~(e) *Violation; penalties.* A violation of this section shall constitute a noncriminal infraction as set forth in F.S. § 327.73.~~

#### **Section 30-141. Public Bathing Beach Area.**

(a) *Purpose.* This section is enacted for the purpose of protecting public bathers from dangers caused by increased and accelerated vessel operations along the beaches and shorelines of the City of Belleair Beach. The purpose of this Section is to protect public bathers that bathe, wade, lounge, congregate, and engage in recreational activities in and on the shallow waters of the City of Belleair Beach. The city desires to ensure that such activities are conducted in a manner that is safe for any residents and visitors that engage in such activities, with protection from potential boating accidents, vessel congestion, and other navigational hazards. The City intends to designate the entire area extending 100 yards from the city's shoreline and into the Gulf of Mexico as a public bathing beach.

(b) *Definitions.* For purposes of this Section, the following terms, phrases, words, and derivations shall have the meaning given herein.

1) *Boating restricted area.* An area of the city's waters within which the operation of vessels is subject to specified restrictions or from which vessels, or certain classes of vessels, are excluded.

2) *Buoy.* Any device designed to float which is anchored in the water and used to convey a message, carry a sign, or support a mooring pennant.

3) *Manually Propelled Vessels Only.* All vessels other than those propelled by oars, paddles, or poles are prohibited from entering the marked area. Vessels equipped with sails or a mechanical means of propulsion may enter the marked area only if the sails or mechanical means of propulsion is not in use

and, if possible to do so, the mechanical means of propulsion is tilted or raised out of the water.

- 4) Regulatory Marker. A device used to alert mariners to various regulatory matters such as permissible horsepower, speed, wake, or entry restrictions.
- 5) Vessel-Exclusion Zone. An area from which all vessels or certain classes of vessels are excluded.

(c) Public Bathing Beach Permitting Manually Propelled Vessel Only.

- 1) Public Bathing Beach Established. There is created a boating restricted area designated as a public bathing beach, wherein only manually propelled vessels are permitted. This area shall extend 100 yards from the city's shoreline into the Gulf of Mexico, and run parallel along the entirety of the City's shoreline abutting the Gulf of Mexico.
- 2) Public Bathing Beach Markers. This boating restricted area shall be designated by regulatory markers affixed to buoys, which shall be designed, installed, replaced, and maintained in conformity with any applicable state and federal regulatory requirements. The City may install, replace, and maintain the requisite regulatory markers and buoys, or cause such activity to occur.

(d) Violations.

- 1) Any operator or person in command of any motorized, wind-powered, or other artificially propelled vessel who intentionally or negligently navigates into the designated public bathing beach shall be deemed to have violated the restrictions set forth in this Section, which shall constitute a noncriminal infraction as set forth in F.S. § 327.73. Such restriction shall not apply to any watercraft entering the vessel-exclusion zone as a result of an emergency or to any official emergency vessels.
- 2) The mooring of any vessel, watercraft, or other foreign object to markers or buoys placed by the city or other authorized governmental body shall be prohibited and punishable by a fine pursuant to Section 1-15 of the city's code of ordinances.

- (e) Enforcement. Enforcement of the restrictions relating to the operation of any motorized, wind-powered or other artificially propelled vessel shall be by law enforcement officers from the Florida Fish and Wildlife Conservation Commission or County Sheriff Department, using the Uniform Boating Citation as provided for by applicable Florida law. Any other violations of this Section may be enforced by a city code enforcement inspector.

**Sec. 30-142.- Motorized Vessels.**

Motorized vessels may not be launched from the Belleair Beach Causeway lying within the city limits. Motorized vessels may not be launched from or operate within the City's Public Bathing Beach, when powered by mechanical or other artificial means. This restriction shall not apply where the vessel is being manually operated and the mechanical means of propulsion is not engaged and, where possible, tilted or raised out of the water.

**Sec. 30-143. - Sailboats.**

Hobie-cats or similar sailboats with masts over 15 feet in height may not be launched from the Belleair Beach Causeway lying within the city limits. Hobie-cats or similar sailboats may not be launched from or operate within the City's Public Bathing Beach, when powered by mechanical or other artificial means, or with the sail engaged to facilitate the vessel's acceleration. This restriction shall not apply where the vessel is being manually operated and the mechanical means is titled or raised out of the water and any components designed for the purpose of wind-based propulsion are not engaged.

**Sec. 30-144. - Prohibited activities.**

It shall be unlawful for any person to engage in any of the following prohibited activities while using or entering upon any public beach within the city, except as may otherwise be provided in chapter 38 of this Code:

- (1) *Pets or other animals.* Dogs, cats or other animals of any kind shall not be permitted on any beach, whether on a leash or running free, except service animals required by persons who are disabled.
- (2) *Motorized vehicles and electric bicycles.* Motorized vehicles and electric bicycles (as defined by F.S. § 316.003(23)) shall not be permitted on any beach at any time, except for authorized police, fire or rescue emergency vehicles, public vehicles required to perform services on the beach or commercial vehicles contracted by the city to perform services on the beach.
- (3) *Motorized watercraft.* Motorized watercraft shall not be permitted to be launched, retrieved, moored or docked at any beach at any time, except for authorized coast guard, police, fire or rescue watercraft. Nothing in this subsection shall prohibit the temporary launching or mooring of any watercraft propelled exclusively by human power as otherwise specified in this Article ~~or the wind~~. For the purpose of this subsection, the term "temporary mooring" means mooring from sunrise to sunset.
- (4) *Open fire or grills.* Open fires or electric, gas or charcoal grills shall not be permitted on any beach at any time.
- (5) *Possession and consumption of alcoholic beverages or use of glass containers.* A person shall not enter upon any beach while such person is in possession of any

alcoholic beverage, or consume any alcoholic beverage, except as permitted by the city manager. Further, no person shall enter upon any beach while such person is in the possession of any glass container.

- (6) *Live music, parties or special events.* Live music of any kind shall not be permitted on any beach, nor shall any social event, party or similar event consisting of ten or more people be held on the beach without first having obtained prior written permission from the city manager.
- (7) *Tents, cabanas, canopies, umbrellas and game equipment.* The placement of tents, cabanas, umbrellas and game equipment shall be permitted on a beach only during the period from sunrise to sunset.
- (8) *Motion picture or television production.* Motion pictures or television productions shall not be permitted on any beach without first having obtained prior written permission from the city manager. Nothing in this subsection shall prohibit members of any news media from videotaping or conducting a live broadcast from any beach in connection with a scheduled activity or a current news event.
- (9) *Aircraft operation.* No person shall take off or land any unlicensed or unregistered manned or unmanned aircraft of any kind within the corporate limits of the city including model or remote operated aircraft, except for police, fire, rescue air med-evac or other public safety aircraft, without first having obtained prior written permission from the city manager. Except for public safety aircraft, no person shall operate any manned aircraft over any beach area at an altitude below that authorized by the Federal Aviation Administration. Unmanned aircraft intended to operate within the corporate limits of the city shall comply with all applicable provisions of the FAA Reauthorization Act of 2018.
- (10) *Fireworks.* A person shall not enter upon any beach while in possession of any fireworks, sparklers or other incendiary devices or objects; nor shall any person cause any fireworks, sparklers or other incendiary devices to be ignited or exploded over, on or into any beach without first having obtained prior written permission from the city manager.

**Sec. 30-145 - Regulations.** The following regulations are established for the public beach along the Gulf of Mexico within the corporate limits of the city:

- (1) Posting of signs or markers. ~~There shall be no swimming limitation buoys or markers installed in the waters of the Gulf of Mexico along the beach.~~ Signs of appropriate size and lettering shall be prominently displayed at the beach accesses which shall read, "No Lifeguard On Duty—Swim At Your Own Risk."
- (2) Hours. The public beach shall be open to the public 24 hours per day, seven days per week.

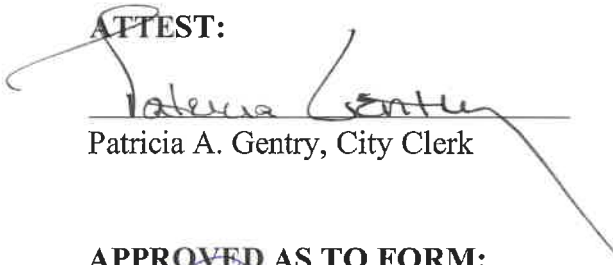
**SECTION 3.** City administration is hereby directed to submit all necessary administrative applications and documentation to all applicable government agencies and entities to lawfully re-design, alter, replace, install or maintain any regulatory markers or buoys establishing the vessel-exclusion zone established by this Ordinance.

**SECTION 4.** If any section, subsection, paragraph, sentence, clause or phrase in this Ordinance is held invalid by a court of competent jurisdiction, then such invalidity shall not affect the remaining portions of this Ordinance.

**SECTION 5.** This Ordinance shall become effective upon final adoption by the City Council of the City of Belleair Beach, Florida.

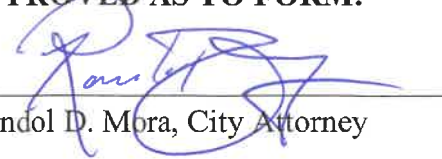
The above and foregoing Ordinance was read by title only and passed by a majority vote upon its first reading at a Regular Meeting of the City Council of the City of Belleair Beach, Florida, held on the 10th day of October 2022.

**ATTEST:**

  
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Patricia A. Gentry, City Clerk

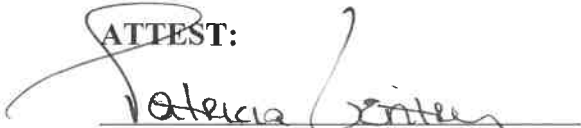
  
\_\_\_\_\_  
Dave Gattis, Mayor

**APPROVED AS TO FORM:**

  
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Randol D. Mora, City Attorney

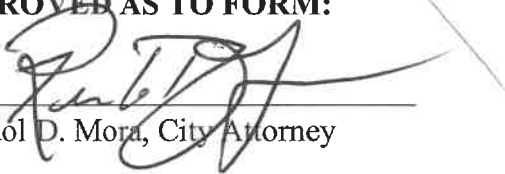
The above and foregoing Ordinance was read by title only and was passed by majority vote upon its second and final reading at the Regular Meeting of the City Council of the City of Belleair Beach, Florida, held on the 7th day of November 2022.

**ATTEST:**

  
\_\_\_\_\_  
Patricia A. Gentry, City Clerk

  
\_\_\_\_\_  
Dave Gattis, Mayor

**APPROVED AS TO FORM:**

  
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Randol D. Mora, City Attorney