



Council Communication

To: Mayor and Village Council

From: Roget V. Bryan, Village Attorney

Date: June 18, 2020

SUBJECT: AN ORDINANCE AMENDING SECTION 66-2 “OPERATION OF VESSELS IN RESTRICTED AREAS” OF THE VILLAGE CODE TO CREATE A VESSEL EXCLUSION ZONE/SWIM AREA GENERALLY LOCATED NORTH OF PORT ANTIGUA AND WHITE MARLIN BEACH ON LOWER MATECUMBE KEY

Background:

Back in 2014, the Village Council discussed the on-going issues associated with “party boats” anchoring in shallow water near Port Antigua Beach and White Marlin Beach on Lower Matecumbe Key. At that meeting the Village Attorney presented the Village Council with an update on available options that the Village could consider in addressing the concerns of residents of the respective neighborhoods. A Town Hall meeting was held on May 14, 2014 to gain input from residents of the Port Antigua / White Marlin beach areas and on May 22, 2014, the Village Council discussed the results of the Town Hall Meeting and the consensus views expressed by the residents to establish a swim area / no motor zone of White Marlin/Port Antigua Beach. The Village Council considered the item at a first reading on June 24, 2014 and based on the public comment received in opposition to the proposed swim area, the Village Council voted not to move forward with the proposed Ordinance.

In February 2020, based on the continued escalation of the boating traffic and activity in the subject areas, the Village Council gave direction to staff to engage in further discussions with residents of the Port Antigua/White Marlin Beach area towards establishment of a vessel exclusion zone / swim area. As a result of those discussions, at the update given by staff at the May 21, 2020 regular meeting, the Village Council directed staff to draft an Ordinance for consideration that would create a “Swim Zone” in the area of Port Antigua Beach/White Marlin Beach community on Lower Matecumbe Key. The designated areas are depicted on the attached Exhibit “A” to the Ordinance.

Analysis:

In accordance with F.S. Section 327.46, the Village has the authority to create certain boating restricted areas, including a vessel exclusion zone/ public swim area, provided that such an area is not established for private purposes or for shoreline protection. An ordinance establishing a

public swim area would not require prior approval by the Florida Fish and Wildlife Conservation Commission (“FWC”). The proposed ordinance would create a “Vessel Exclusion Area/Swim Zone” extending approximately three hundred (300) feet from the mean high water line (MHWL) off of the Port Antigua White Marlin shoreline. By establishing a public swim area, all vessels of any type will be prohibited from entering the designated area.

Regulatory Permits from the FWC, U.S. Coast Guard and Army Corp of Engineers (“ACOE”) would only be required for installation of the waterway markers and signage for the delineated areas. Informational markers and regulatory buoys that are compliant with Florida Administrative Code, Chapter 68D-23, are required to delineate the restricted area and must first be approved and permitted by the necessary agencies before being installed by the Village. If the proposed Ordinance is adopted, the Village will apply for the necessary permit and approvals to install the necessary regulatory buoys and informational signage.

A violation of this Ordinance may be enforced by issuance of a uniform boating citation by a duly authorized law enforcement officer pursuant to the procedures set forth in F.S. § 327.73 and F.S. § 327.74. The penalty for a violation would be up to two hundred and fifty (\$250.00) dollars as provided for by F.S. section 327.73, or such other amount as may be authorized by the state legislature should the statute be amended.

Budget Impact:

Village staff has estimated the cost of creating informational signage and regulatory buoys at approximately \$7,500.00 and anticipates the annual cost of maintenance for the buoys and signage at approximately \$2,500.00. The cost of any additional enforcement by the Monroe County Sheriff’s Office is not known at this time.

Staff Impact:

There would be no significant staff impact associated with the adoption of this Ordinance other than such staffing and resources necessary for buoy and signage maintenance. The potential need for additional staffing or resources from the Sheriff’s office for enforcement have not been determined at this time.

Recommendation:

If the Village Council desires to establish a Vessel Exclusion Zone/Swim Area off of the Port Antigua/White Marlin Beach as set forth in Exhibit A” to Ordinance attached, it is recommended that the Village Council pass the proposed Ordinance on first reading.

ORDINANCE NO. ____

AN ORDINANCE OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AMENDING CHAPTER 66 “WATERWAYS”, ARTICLE I “IN GENERAL”, SECTION 66-2 “OPERATION OF VESSELS IN RESTRICTED AREAS” OF THE VILLAGE CODE TO CREATE A VESSEL EXCLUSION ZONE/SWIM AREA GENERALLY LOCATED OFF OF PORT ANTIGUA AND WHITE MARLIN BEACH ON LOWER MATECUMBE KEY, AS FURTHER DESCRIBED ON EXHIBIT “A”; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, pursuant to Section 327.46, Florida Statutes, the Village of Islamorada, Village of Islands (the “Village”) has the authority to adopt vessel exclusion zones or swim areas within the Village; and

WHEREAS, the operation of vessels close to the shoreline and within swimming areas is a threat to the safety and welfare of the public; and

WHEREAS, for the protection of the public and swimmers, the Village Council desires to create a vessel exclusion zone/swim area generally located waterward of the mean high water line off of Port Antigua Beach & White Marlin Beach as further delineated in Exhibit “A” hereto; and

WHEREAS, the Village Council hereby finds and declares that the adoption of this Ordinance is necessary, appropriate and in the best interests of the Village and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

Section 2. **Amendments to the Code.** Chapter 66 entitled “Waterways”, Article I “In General”, Section 66-2 “Operation of vessels in restricted areas” is hereby amended as follows:

Additional text is shown as <u>underlined</u> ;	deleted text is shown as strikethrough
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Article I. In General

Sec. 66-2 Operation of vessels in restricted areas

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning. If any definition is inconsistent with the definitions in F.S. § 327.02, the definition in F.S. § 327.02 shall take precedence.

Idle speed - no wake means that a vessel must proceed at a speed no greater than that which will maintain steerageway and headway. At no time is any vessel required to proceed so slowly that the operator is unable to maintain control over the vessel or any other vessel or object that it has under tow.

Marker means any channel mark or other aid to navigation, information or regulatory mark, isolated danger mark, safe water mark, special mark, inland waters obstruction mark, or mooring buoy in, on, or over the village controlled waters or the shores thereof.

Motorized vessel means any vessel equipped with machinery for propulsion, irrespective of whether the propulsion is in actual operation.

Operate means to be in charge of or in command of or in actual physical control of a vessel upon the village controlled waters, or to exercise control over or to have responsibility for a vessel's navigation or safety while the vessel is underway upon village controlled waters, or to control or steer a vessel being towed by a vessel upon village controlled waters.

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

Slow Speed Minimum Wake and *Slow Speed* may be used interchangeably and means that a vessel must be fully off plane and completely settled into the water. The vessel must then proceed at a speed which is reasonable and prudent under the prevailing circumstances so as to avoid the creation of an excessive wake or other hazardous condition which endangers or is likely to endanger other vessels or other persons using the waterway. At no time is any vessel required to proceed so slowly that the operator is unable to maintain control over the vessel or any other vessel or object that it has under tow.

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

Swim Area means a designated area wherein all vessels of any type are prohibited from entering the marked area.

Vessel means every description of watercraft, barge, and air boat, other than a sea plane on water, used or capable of being used as a means of transportation on water.

Vessel-exclusion zone means an area from which all vessels or certain classes of vessels are excluded.

(b) *Prohibited activities.* It shall be prohibited for any individual to operate a motorized vessel at a speed greater than four knots or in a manner which creates a wake, in the following restricted areas:

- (1) Within an area designated and marked as an idle speed - no wake zone;
- (2) Within 300 feet of a "diver down" flag; or
- (3) Within 300 feet of improved residential or commercial shorelines.

(c) *Slow Speed Minimum Wake Zones.*

(1) Pursuant to Florida Administrative Code Chapter 68D-23.103, "Slow Speed Minimum Wake" and "Slow Speed" may be used interchangeably and mean that all vessels must be fully off plane and completely settled into the water. The vessel must then proceed at a speed which is reasonable and prudent under the prevailing circumstances so as to avoid the creation of an excessive wake or other hazardous condition which endangers or is likely to endanger other vessels or other persons using the waterway. At no time is any vessel required to proceed so slowly that the operator is unable to maintain control over the vessel or any other vessel or object that it has under tow. A vessel that is:

- a. Operating on plane is not proceeding at this speed,
- b. In the process of coming off plane and settling into the water or coming up onto plane is not proceeding at this speed,
- c. Operating at a speed that creates a wake which unreasonably or unnecessarily endangers other vessels or other persons using the waterway, or is likely to do so, is not proceeding at this speed,
- d. Completely off plane and which has fully settled into the water and is proceeding at a reasonable and prudent speed with little or no wake is proceeding at this speed.

(2) The following described waterways or portions of waterways is hereby established as Slow Speed Minimum Wake zones on a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline:

- a. A boating safety zone from approximately mangrove fringe to mangrove fringe, within the Whale Harbor Wheel Ditch, which encompasses the area of a line drawn perpendicular to the waterway, that passes through a westerly point (24°56'43.76" N 80°37'24.82" W) to a line that passes through an eastern point (24°56'44.14" N 80°37'08.16" W) as depicted in the attached Exhibit "A".

(d) Designated Swim Areas.

No owner, operator or Person in command of any Vessel shall permit the operation of or operate a Vessel within the area generally located 300 feet north from the area of Port Antigua Beach & White Marlin Beach, as shown on the White Marlin/Port Antigua Map below.

[Add Map]

~~(d)~~(e) Exemptions. The following acts shall be exempt from the regulations contained in this section:

- (1) A motorized vessel operating under emergency conditions during an emergency; or
- (2) Operation of a motorized vessel within an officially marked channel at the speed specified in the officially marked channel; and
- (3) Vessels used solely for sea rescue/emergency or for ensuring compliance with local, state or federal law.

~~(e)~~(f) Penalties.

- (1) A violation of subsection (b), ~~(c)~~ or ~~(d)~~ of this section may be enforced by issuance of a uniform boating citation by a duly authorized law enforcement officer pursuant to the procedures set forth in F.S. § 327.73 and F.S. § 327.74.
- (2) The civil penalty for a violation of subsection (b), ~~(c)~~ or ~~(d)~~ of this section shall be \$250.00 as provided in F.S. § 327.73, or such other amount as may be authorized by the state legislature should F.S. § 327.73 be amended.
- (3) Nothing contained herein, however, shall prohibit the village from enforcing this section by any other lawful means.

Section 3. Repeal of Conflicting Provisions. The provisions of the Village Code of Ordinances and all Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any sentence, section, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sentences, sections, clauses or phrases of the Ordinance but they shall remain in effect it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. It is the intention of the Village Council and it is hereby ordained the provisions of this Ordinance shall become and be made part of the Village of Islamorada Code, that sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

Section 6. **Effective Date.** This Ordinance shall become effective immediately upon adoption.

The foregoing Ordinance was offered by _____, who moved its adoption on first reading. This motion was seconded by _____, and upon being put to a vote, the vote was as follows:

Mayor Mike Forster _____
Vice Mayor Ken Davis _____
Councilwoman Deb Gillis _____
Councilman Jim Mooney _____
Councilman Chris Sante _____

PASSED on the first reading this ___ day of _____, 2020.

The foregoing Ordinance was offered by _____, who moved its adoption on first reading. This motion was seconded by _____, and upon being put to a vote, the vote was as follows:

Mayor Mike Forster _____
Vice Mayor Ken Davis _____
Councilwoman Deb Gillis _____
Councilman Jim Mooney _____
Councilman Chris Sante _____

PASSED AND ADOPTED on the second reading this ___ day of _____, 2020.

MIKE FORSTER, MAYOR

ATTEST:

KELLY TOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF
ISLAMORADA, VILLAGE OF ISLANDS ONLY

ROGET V. BRYAN, VILLAGE ATTORNEY



White Marlin (Port Antigua) Proposed 2020 Beach Swim Zone



**Proposed Swim Zone
Limit of 300 ft from MHWL**

Exhibit "A"

300 ft

300 ft

Source: Monroe County, Florida
Orthographic Aerials 2015

86800 Overseas Highway
Islamorada, FL
Office: 305.664.6424
Fax: 305.664.6467
Created by C. Southern, CFM



Islamorada, Village of Islands

White Marlin (Port Antigua)
Proposed 2020 Beach Swim Zone

Map 1.0