



VILLAGE OF KEY BISCAIYNE

Office of the Village Manager

MEMORANDUM

Village Council

Franklin H. Caplan, *Mayor*

Michael E. Kelly, *Vice Mayor*

Michael W. Davey

Enrique Garcia

Robert Gusman

Mayra P. Lindsay

James S. Taintor

Village Manager

Genaro "Chip" Iglesias

DATE: April 26, 2011

TO: Honorable Mayor and Members of the Village Council

FROM: Genaro "Chip" Iglesias, Village Manager

RE: Ordinance for Vessel Exclusion Zone/Swim Area

RECOMMENDATION

Recommend approval of ordinance creating a vessel exclusion zone/swim area for the area located west of 398 Harbor Drive to 485 W. Matheson Drive as outlined in the attached aerial.

BACKGROUND

Council provided direction to implement a Vessel Exclusion/Swim Area for the area described above by placing buoys. Coastal Systems International conducted a preliminary consultation with the regulatory agencies that would have oversight of a permit requesting placement of buoys and they were advised by Florida Fish and Wildlife Commission that an ordinance creating such an area would be required and also a Uniform Waterways Marker Permit. This is the first step of proceeding with seeking approval for buoy placement for such purpose. There are several regulatory agencies, Fish and Wildlife Commission ("FWC"), State of Florida Department of Environmental Protection ("DEP"), Miami-Dade County Environmental Resources Management ("DERM"), which would review any permits submitted to place buoys in the aforementioned area.

ORDINANCE NO. 2011-

AN ORDINANCE OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA, AMENDING SECTION 4-32 "PROHIBITED WATER ACTIVITY" CREATING A VESSEL EXCLUSION ZONE/SWIM AREA GENERALLY LOCATED WEST OF 398 HARBOR DRIVE TO 485 W. MATHESON DRIVE AS FURTHER DESCRIBED ON EXHIBIT "A;" PROVIDING FOR GENERAL EXCEPTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne (the "Village"), pursuant to Section 327.46, F.S., has the authority to adopt vessel exclusion zone/swim areas within the Village; and

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

WHEREAS, in order to protect the public and swimmers, the Village Council desires to create a vessel exclusion zone/swim area for the area generally located west of 398 Harbor Drive to 485 W. Matheson Drive as further described on Exhibit "A;" and

WHEREAS, the Village Council hereby finds and declares that adoption of this Ordinance is necessary, appropriate, and advances the public interest.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAIYNE, FLORIDA, AS FOLLOWS:

Section 1. The preceding "Whereas" clauses are ratified and incorporated as the legislative intent of this Ordinance.

Section 2. **Section 4-32 of the Village Code Amended.** The Village Council hereby amends Section 4-32 "Prohibited Water Activity" as follows:

Sec. 4-32. - Prohibited water activity.

- (1) No owner, operator or Person in command of any Vessel shall permit or operate a Vessel within the area of the Atlantic Ocean, 300 feet east of the Beach from the southern boundary of Crandon Park to the northern boundary of Bill Baggs, Cape Florida State Park, except as authorized by the Village Council.
- (2) No owner, operator or Person in command of any Vessel shall permit or operate a Vessel within the area of Biscayne Bay, generally located west of 398 Harbor Drive to 485 W. Matheson Drive as shown on the Nixon Beach Swim Zone Map, except as authorized by the Village Council.

[Add Map]

- (3) Vessels used solely for an emergency/sea rescue or for ensuring compliance with local, state, or federal law are excluded from the provisions of this section.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, 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 sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Conflicts. All ordinances or parts of ordinances, resolution or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 5. Effective Date. This Ordinance shall become effective immediately upon adoption on second reading

PASSED AND ADOPTED on first reading this ___ day of ____, 2011.

PASSED AND ADOPTED on second reading this ___ day of ____, 2011.

MAYOR FRANKLIN H. CAPLAN

ATTEST:

CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY



SWIM ZONE LOCATION TABLE

PT	EASTING	NORTHING	LATITUDE	LONGITUDE
A1	928485.04	495303.17	25° 41' 38.16"	80° 10' 22.97"
A2	928372.74	495359.59	25° 41' 38.72"	80° 10' 24.20"
A3	928057.00	494731.13	25° 41' 32.52"	80° 10' 27.69"
A4	928159.59	494679.59	25° 41' 32.00"	80° 10' 26.57"

VILLAGE OF KEY BISCAYNE
NIXON BEACH SWIM ZONE
LOCATION OF PROPOSED SWIM BUOYS