

**ORDINANCE NO. 2003-10**

**AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING THE VILLAGE CODE BY CREATING CHAPTER 22 "PUBLIC PLACES", INCLUDING ARTICLE I "RESTRICTIONS ON ACTIVITIES", CONSISTING OF SECTION 22-1 "WEST MASHTA ROAD BRIDGE", REGULATING FISHING ACTIVITIES AT AND THE USE OF THE VILLAGE'S WEST MASHTA ROAD BRIDGE AND PROVIDING PERMIT PROGRAM FOR SUCH PURPOSES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR A PENALTY; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, residents in the vicinity of the Village's West Mashta Road Bridge (the "Bridge") have reported problems of noise, traffic and unsanitary conditions created by the use of the Bridge for saltwater fishing activities; and

WHEREAS, the Village is the owner of the Bridge; and

WHEREAS, after investigation of the problem, the Village Manager has recommended that the Village Council adopt this Ordinance in order to remedy the problem; and

WHEREAS, the Village Council finds that it is necessary to adopt the regulations, prohibitions and restrictions provided for in this Ordinance in order to remediate problems related to saltwater fishing activities at the Bridge; and

WHEREAS, the Village Council further finds that the objectives of this Ordinance include mitigation of noise, traffic, congestion and pollution related to the salt water fishing activities at the Bridge; and further finds that the size and space limitations of the Bridge, in terms of the Bridge's limited ability to accommodate fishing activities while serving its primary transportation purpose, support the establishment of the Bridge use permit program, provided herein and of the restrictions and prohibitions set forth herein; and

WHEREAS, the Village Council finds that the provisions of this Ordinance are necessary for

the purpose of protecting the public health, safety and welfare, as authorized by Section 370.102, Florida Statutes.

**NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAZYNE, FLORIDA, AS FOLLOWS:**

**Section 1.**     **Recitals.**     That each of the above stated recitals is hereby adopted and confirmed.

**Section 2.**     **Village Code Amended.**     That the Village Code of the Village of Key Biscayne, Florida is hereby amended by creating Chapter 22 "Public Places", including Article I "Restrictions on Activities" consisting of Section 22-1 "West Mashta Road Bridge", to read as follows:

**Chapter 22 Public Places  
Article I – Restrictions on Activities.**

**Section 22-1 West Mashta Road Bridge**

- (a)     *Definitions:*
  - (i)     The term "Bridge" as used herein means the West Mashta Road Bridge owned by the Village of Key Biscayne.
  - (ii)    The term "Bridge Use Permit" as used herein means a permit issued by the Village pursuant to this section.
  - (iii)   The term "Saltwater Fishing Activities" or "Fishing Activities" as used herein means those fishing activities which the Village is authorized to regulate or prohibit pursuant to Section 370.102, Florida Statutes.
  - (iv)    The term "Village Representative" as used herein means a Bridge attendant, Village police officer, Village code enforcement officer or designee of the Village Manager.

(b) *Use; Prohibitions:*

- (i) The Bridge may be utilized for the direct passage of vehicles and pedestrians, in accordance with the law.
- (ii) No person shall engage in or participate in Saltwater Fishing Activities at the Bridge, unless such person has in their possession a current and valid Bridge Use Permit issued by the Village to such person or is a guest of a Village resident who has in such Village resident's possession such Bridge Use Permit.
- (iii) No person shall occupy the Bridge under circumstances in which such occupancy would exceed the occupancy limits established in subparagraph (d) below.
- (iv) Any person who is violating any of the restrictions of this Section may be advised by a Village Representative to immediately comply with such restriction or to leave the Bridge and shall be warned that the failure of such person to comply or to leave the Bridge shall constitute trespass on Village property as proscribed by Section 810.08 and/or 810.09, Florida Statutes. Upon such non-complying person's willful failure to leave the Bridge, he or she shall be subject to enforcement of the provisions of the above cited Florida Statutes prohibiting trespass after warning.
- (v) In the event that any person is cited by a Village code enforcement officer or police officer for a violation of the restrictions of this Section, upon two or more occasions within any one year period of time, the Village Manager or her designee may bar such person from any further use of the Bridge, except for simply passing over such Bridge without engaging in any Fishing Activities or other activities thereon, for a period of up to one year, by providing written notice thereof by Certified Mail, Return Receipt Requested, addressed to such person at such person's last known address or at an address previously furnished by such person to the Village or to a Village Representative or by written notice personally served upon such person by hand delivery. After such notice, if such person shall willfully enter upon or remain at the Bridge, (other than simply passing over such Bridge without engaging in any Fishing Activities or other activities thereon), he or she shall be subject to the enforcement of the provisions of Section 810.08 and/or 810.09, Florida Statutes, prohibiting trespass after warning.

- (vi) No person who has received a written notice from the Village Manager or her designee in accordance with paragraph (b) (v) above, shall there-after enter upon or remain at the Bridge (other than simply passing over such Bridge without engaging in any Fishing Activities or other activities thereon) during the period for which such person has been barred from the Bridge.
  
- (c) *Bridge Use Permits:* Bridge Use Permits (the "Permit") shall be issued and administered in accordance with the requirements of subparagraph (i) through (viii) as follows:
  - (i) Permits shall be issued by the Village upon application and payment of fees, in two classifications, to wit:
    1. For residents of the Village;
    2. For non-residents of the Village.

The fee for residents shall be \$10.00 per calendar year, and the fee for non-residents shall be \$50.00 per calendar year. Permits shall be subject to annual renewal. Permits shall be applied for and issued at the Village Hall licensing and permit office during regular hours of the Village. Additionally, the Village Manager may provide for Permit application and issuance at the Police Dispatcher's Office of the Department of Public Safety at designated hours or weekends and holidays.

- (ii) The application for a Permit shall be on a form as required by the Village. One master Permit may be issued for each resident household and for each non-resident household. Subsidiary Permits may be issued at no additional fee to individual members of each such household having a master Permit. Replacement Permits may be issued upon proof that the prior Permit was lost, stolen or destroyed. If the current applicant is a residential lessee of the Village, a copy of the current lease showing proof of Village residency shall be made part of the application. Residents of the Village shall provide a copy of their motor vehicle operator's license or voter's registration card and a recent electric service bill as proof of residency for the residence household. Alternative forms of identification may be accepted by the Village.
  
- (iii) Permits issued to residents of the Village shall also enable guests of such Village residents to exercise the privileges of the Permit when accompanied by the Village resident. Permits issued to non-residents of the Village shall not authorize use of the Bridge by guests of non-

residents of the Village.

- (iv) The Village Manager is hereby authorized to make provisions for the issuance of temporary Permits to seasonal visitors or seasonal occupants of residences in the Village.
  - (v) It shall be unlawful for any person to represent that he or she is entitled to status as a Village resident for purposes of this section when he or she is not so entitled, or to use a Permit at any time that he or she is not so entitled.
  - (vi) Upon provision of ten days prior written notice by mail and an opportunity to be heard by the Village Manager or her designee, the Village Manager or her designee is authorized to revoke the master and/or subsidiary Permit of any person found to be in violation of the provisions of this section.
  - (vii) Failure to surrender a revoked Permit within ten (10) working days of written notification from the Village Manager or her designee shall be subject to the following additional penalties:
    - 1. The violator shall not be allowed to reapply for a new Permit for six (6) months.
    - 2. Once restored, if the Permit holder should again have his or her Permit revoked by the Village, the Permit holder shall be barred from applying for a new Permit for a one year period.
  - (viii) The Village Manager is authorized to suspend the issuance of new Permits once the level of Saltwater Fishing Activities at the Bridge reaches a stage at which occupancy restrictions upon the use of the Bridge for Saltwater Fishing Activities regularly exceed the restrictions of this section.
- (d) *Occupancy Restrictions:* No more than eighteen (18) persons may utilize the Bridge for Fishing Activities at the same time. Residents of the Village, possessing a valid Permit issued pursuant to this section, shall have a preference over non-residents for use of the Bridge for Fishing Activities under circumstances in which occupancy of the Bridge exceeds occupancy restrictions provided herein.
- (e) *Special Events Permits:* In the event that a group of ten (10) or more persons desire to utilize the Bridge for Fishing Activities at the same time, the Village Manager may issue a Special Event Permit pursuant to the provisions of Village Code Section 17-4 requiring the issuance of a special events permit.

- (f) *Sanitary Restrictions:* No person engaging in Fishing Activities at the Bridge shall leave or cause to be left at the Bridge any fish remains, bait, fish tackle or other related debris before leaving the Bridge.
- (g) *Signage Required:* The Village Manager shall provide for the installation of signage at the Bridge warning of the Permit requirement provided by this section.
- (h) *Exemptions:* This section shall not be construed to prohibit the simple, direct passage of vehicles or pedestrians over the Bridge in accordance with law.

**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. Inclusion In The Code.** It is the intention of the Village Council that the provisions of this Ordinance shall become and made a part of the Village Code; that the 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 5. Penalty.** Any person who violates any provisions of this Ordinance shall, upon conviction, be punished by a fine not to exceed \$500.00 or imprisonment in the County jail not to exceed sixty (60) days or both such fine and imprisonment. Each day that a violation continues shall be deemed a separate violation. This Ordinance shall also be subject to enforcement under the Local Government Code Enforcement Act, Chapter 162, F.S., as amended, and Section 2-31, et. seq. of the Village Code, as amended. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction.

**Section 6.**     **Effective Date.** This Ordinance shall become effective ten (10) days following adoption on second reading.

PASSED AND ADOPTED on first reading this 10th day of June, 2003.

PASSED AND ADOPTED on second reading this 28th day of October, 2003.

MAYOR ROBERT OLDAKOWSKI

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY