

ORDINANCE NO. 2005-5

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING SECTION 30-102 AGU GOVERNMENTAL USE DISTRICT OF CHAPTER 30 ZONING OF THE CODE OF KEY BISCAYNE, FLORIDA, BY ADDING A SCHEDULE OF PERMITTED USES AND REGULATIONS FOR PUBLIC BEACHES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council desires to amend the Zoning and Land Development Regulations contained in Chapter 30 of the Code of Key Biscayne, Florida, for the purpose of protecting the public beach areas and the public's right of access to the public beach areas within the jurisdictional limits of the Village; and

WHEREAS, the Village has reevaluated the zoning regulations applicable to the Government Use District of the Village Zoning and Land Development Regulations, and has determined that certain changes should be made to those regulations; and

WHEREAS, the Local Planning Agency at a duly called public meeting has heard and recommended the adoption of this Ordinance as consistent with the Village Comprehensive Plan; and

WHEREAS, this proposed Ordinance has been properly noticed and heard in conformance with Section 166.041, Florida Statutes and in conformance with the Village Zoning and Land Development Regulations; and

WHEREAS, the Village Council finds that this Ordinance will promote the health, safety and welfare of the citizens of the Village.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted

and confirmed.

Section 2. Amendments to Section 30-102. That Section 30-102 Government Use Zoning District of Chapter 30 Zoning of the Code of Key Biscayne, Florida is hereby amended as follows¹:

Sec. 30-102. GU Government Use District.

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(b) *Purpose and Uses.*

TABLE INSET:

District Purpose	Main Permitted Uses	Conditional Uses	Accessory Uses	Prohibited Uses
This district is designed to permit land owned by a governmental entity to be used for any public purpose and certain limited private activities.	Governmental Buildings and facilities such as but not limited to schools, offices, post offices, parks, open space, community centers, recreational buildings, police and fire stations. <u>Recreational activities as described in subsection (e).</u>	None	Any Use customarily associated with the Main Permitted Use (See section:30-111)	Any Use not listed as a Main Permitted Use, Conditional Use, or Accessory Use. (See section 30-113)

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(e) Permitted Recreational Activities. Subject to the approval of a Beach Management Plan pursuant to subsection (f) and the supplementary regulations in subsection (g) the activities as described below shall be considered Main Permitted Uses on lands within the GU District which are seaward of the Erosion Control Line (as identified in Section 1.03 of the Village Charter) where such activities occur as ancillary and supportive of principal uses conducted on the upland contiguous privately owned property.

^{1/} Proposed additions to existing Village Code text are indicated by underline; proposed deletions from existing Village Code text are shown by ~~strike through~~.

<u>Type of Recreational Activities</u>	<u>Upland Hotel</u>	<u>Upland Private Beach Club</u>	<u>Upland Multi-Family Residential</u>
Use of lounges/ chairs/umbrellas	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
Food and Beverage Service	<u>Yes</u>	<u>Yes</u>	<u>No</u>
Special Events ¹	<u>Yes</u>	<u>Yes</u>	<u>Yes</u>
Use of Non-Motorized Vessels ²	<u>Yes</u>	<u>Yes</u>	<u>No</u> ³

¹ Special Events shall be limited to the following: organized athletic events, meetings, parties, weddings, fireworks displays, or professional film activities and shall be subject to obtaining a Special Event Permit pursuant to Section 17-5 of the Village Code.

² Up to six (6) non-motorized Vessels (as defined in Section 327.02(37), Florida Statutes) shall be permitted for use in conjunction with and as accessory to hotels of at least 250 rooms or private beach clubs. They shall be operated only through an approved channel authorized under Section 4-32 of the Village Code, and shall be uniformly marked and painted in a uniquely identifiable manner associated only with the hotel property or private beach club. Additionally, except for an authorized rescue vessel approved under Section (g)(9) below, the use of motorized vessels is absolutely prohibited.

³ Nothing in this section shall be construed or interpreted to preclude individual Village residents from the legal use and enjoyment of the public beach area, or deny or impair the common law riparian rights of persons owning property which fronts the public beach area, or to require that individual residents (including specifically residents within any multifamily apartment building) obtain an approved Beach Management Plan for such activities.

(f) Beach Management Plan Approval. As a condition to the establishment, use and operation of any of the uses listed in section (e) above (except for Special Events which require a Special Event Permit), a plan for the proposed use and operation (Beach Management Plan) shall be submitted and approved by the Village. Except for the use of lounges, chairs and umbrellas, all Beach Management Plans shall require the approval of the Village Council after a public hearing noticed in accordance with Section 30-68 of the Village Code. Beach Management Plans for the use of lounges, chairs and umbrellas shall be approved by the Village Manager. In the approval, the Village Manager or Village Council must find that the proposed activity(ies) comply with the requirements of this section and do not constitute a threat to public safety or welfare or constitute a danger or impediment to the public beach area. The Village Council or the Village Manager shall impose reasonable restrictions and conditions on the approval of the Beach Management Plan in order to preserve the health, safety and welfare of the Village residents. Violation of any provision of the approved Beach Management Plan automatically results in the revocation the Beach Management Plan approval. Nothing in this section shall be construed or interpreted to preclude individual Village residents from the legal use and enjoyment of the public beach area, or deny or impair the common law riparian rights of persons owning property which fronts the public beach area, or to require that individual residents (including specifically residents within any multifamily apartment building) obtain an approved Beach Management Plan for such activities.

(1) *Beach Management Plan Application and Procedures.* In a form provided by the

Village, all Beach Management Plans shall be submitted to the Village Manager and shall contain the following information:

- a. A detailed and dimensioned site plan depicting the type and location of all proposed activity(ies), structures, garbage containers, storage areas and where the use of Vessels is proposed, the proposed location of a channel to be approved by Village Council pursuant to Section 4-32 of the Village Code;
- b. If applicable, the number of proposed Vessels;
- c. Proposed hours of operation;
- d. Proposed safety & emergency plans;
- e. If applicable, storage, hours of use and method of fueling of an all terrain vehicle authorized under Section (g)(10) below;
- f. Indemnity and Insurance (with Village as additional insured) in a form and amount approved by Village Attorney;
- g. Proof of ownership of adjacent upland property or written authorization from upland property owner;
- h. Application fee plus the annual inspection fee for the approved activity as established by resolution pursuant to Section 30-4 of the Village Code;
- i. Any additional information as reasonably required by the Village Manager.

(g) *Supplementary Regulations.* The recreational activities identified in subsection (e) shall be subject to the following restrictions:

- (1) All activities shall be conducted as accessory to the adjacent contiguous upland property.
- (2) It is prohibited to conduct the sale or rental of any equipment or food and beverage item associated with any permitted activity upon the public beach. The sale or rental shall only be conducted upon the associated upland private property.
- (3) None of the permitted activities shall be conducted or maintained outside of the property area contained within the extension of the side lot lines of the upland property as they extend seaward toward the waterline.
- (4) Activities adjacent to the upland hotel and private beach club properties shall be setback twenty (20) feet from the adjacent property side lot lines as extended seaward

toward the waterline.

- (5) Activities adjacent to the upland multi-family residential properties shall be setback (100) feet from the adjacent property side lot lines as extended seaward toward the waterline.
- (6) None of the permitted activities including the storage of any equipment shall be maintained or conducted within five (5) feet of the dune as defined pursuant to Section 161.54, Florida Statutes, or within fifteen (15) feet of the waterline, unless overnight storage on the public beach is approved pursuant to a Beach Management Plan.
- (7) Except for one (1) corporate insignia, no larger than twenty (20) square inches identifying the applicant or the upland property owner, commercial advertising shall be prohibited on all equipment associated with any approved activity.
- (8) Except as approved pursuant to a Special Event Permit, hours of operation shall be limited to between sunup and sundown each day and all equipment, furniture, and temporary structures (if any) shall be removed from the public beach by sundown each day unless overnight storage on the public beach is approved pursuant to a Beach Management Plan. This limitation shall not apply to the use of chairs and lounges for viewing fireworks displays on Independence Day or New Year-s Eve.
- (9) The use of non-motorized vessels shall be prohibited without the onsite provision of one (1) personal watercraft as defined in Section 327.02, Florida Statutes, maintained in good working condition and available at all times for emergency rescue purposes. The personal watercraft shall have a four stroke engine or best available technology, be equipped with an operational marine radio or wireless phone, and shall satisfy all U.S. Coast Guard safety requirements.
- (10) Except for an unenclosed motorized all terrain vehicle approved pursuant to a Beach Management Plan, it is prohibited to use or operate or to allow another to use or operate upon, or along the public beach, or upon any beach or shoreline or waters adjacent thereto, any motorized vehicle. The private use of an all terrain vehicle must be limited in use to the loading and unloading of equipment permitted under an approved Beach Management Plan. This prohibition shall not apply to any municipal, county or state vehicle, or to any vehicle or equipment authorized by the Village to be used or operated for a public purpose.
- (11) Approval of a Beach Management Plan does not exempt user from adhering to all local, state and federal statutes and regulations and requirements, including, but not limited to, Article II AOccupational License Tax@ of Chapter 25 ATaxation@ of the Village Code.

(e)(h) *Change Upon Sale or Lease Expiration.* Upon the sale (or expiration of a long term lease)

of GU land that was owned (or leased) by the Village, the Village Council shall change the zoning district designation pursuant to the procedures established in this section.

~~(i)~~ *Conflict.* Except as provided herein, ~~T~~this section shall be the exclusive regulation governing lands designated GU, and to the extent that it conflicts with any other section of this chapter, this section shall control.

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.** That it is the intention of the Village Council, and it is hereby ordained that the provisions of this Ordinance shall become and made a part of the Code of the Key Biscayne, Florida; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word

Section 5. **Effective Date.** This Ordinance shall become effective sixty (60) days after adoption on second reading.

PASSED AND ADOPTED on first reading this 26th day of April, 2005.

PASSED AND ADOPTED on second reading this 24th day of May, 2005.

MAYOR ROBERT OLDAKOWSKI

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY