

ORDINANCE NO. 2019-_____

AN ORDINANCE OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AMENDING SECTION 22-31 “WEST MASHTA ROAD BRIDGE” TO PROHIBIT FISHING FROM THE WEST MASHTA ROAD BRIDGE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 22-31 of the Village of Key Biscayne (the “Village”) Code of Ordinances (the “Village Code”) currently restricts uses and activities on the West Mashta Road Bridge; and

WHEREAS, the Village Council desires to amend the Village Code to further clarify permitted uses and activities; and

WHEREAS, the Village Council finds that adoption of this Ordinance is in the public health, safety, and welfare of the Village and its residents.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:¹

Section 1. Recitals. That the above-stated recitals are true and correct and are incorporated herein by this reference.

Section 2. Amending Village Code. That Section 22-31, “West Mashta Road Bridge” of the Code of Key Biscayne, Florida, is hereby amended to read as follows:

Sec. 22-31. – West Mashta Road Bridge.

No person shall engage in or participate in saltwater fishing activities on the West Mashta Road Bridge, unless authorized by a resolution adopted by the Village Council.

(a) ~~Definitions.~~ When used in this section, the following words shall mean as indicated:

~~Bridge~~ as used herein means the West Mashta Road Bridge owned by the Village of Key Biscayne.

~~Bridge Use Permit~~ as used herein means a permit issued by the Village pursuant to this section.

~~Saltwater Fishing Activities or Fishing Activities~~ as used herein means those fishing activities which the Village is authorized to regulate or prohibit pursuant to F.S. § 370.102.

¹ Coding: ~~Strikethrough~~ words are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with **highlighted double-strikethrough** and double underline.

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.*

(1) The Bridge may be utilized for the direct passage of vehicles and pedestrians, in accordance with the law.

(2) 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.

(3) No person shall occupy the Bridge under circumstances in which such occupancy would exceed the occupancy limits established in subparagraph (d) below.

(4) 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 F.S. §§ 810.08 and/or 810.09. 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.

(5) 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 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 F.S. §§ 810.08 and/or 810.09, prohibiting trespass after warning.

(6) No person who has received a Written notice from the Village Manager or her designee in accordance with paragraph (b)(5) above, shall thereafter 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 (1) through (8) as follows:

(1) Permits shall be issued by the Village upon application and payment of fees, in two classifications, to wit:

a. For residents of the Village;

b. 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.~~
- ~~(2) 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.~~
 - ~~(3) 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.~~
 - ~~(4) 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.~~
 - ~~(5) 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.~~
 - ~~(6) 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.~~
 - ~~(7) Failure to surrender a revoked Permit within ten working days of Written notification from the Village Manager or her designee shall be subject to the following additional penalties:
 - ~~a. The violator shall not be allowed to reapply for a new Permit for six months.~~
 - ~~b. 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.~~~~
 - ~~(8) 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 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 persons desire to utilize the Bridge for Fishing Activities, the Village Manager may issue a Special Event Permit pursuant to the provisions of Village Code section 17-5 requiring the issuance of a special events permit shall be applicable.~~
- ~~(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) *Hours of use.* Saltwater Fishing Activities or Fishing Activities at the Bridge shall be limited to daylight hours between sunrise and sundown.~~
- ~~(i) *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. That 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. Codification. That it is the intention of the Village Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Village's Code of Ordinances, and 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. Conflicts. That all ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 6. Effective Date. That this Ordinance shall become effective immediately upon final adoption on second reading.

PASSED on first reading on the _____ day of _____, 2019.

PASSED AND ADOPTED on second reading on the _____ day of _____, 2019.

MICHAEL W. DAVEY
MAYOR

ATTEST:

JENNIFER MEDINA, CMC
VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY:

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY