

ORDINANCE NO. 24-01

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 MODIFY THE 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, on August 12, 2020, the Village previously adopted an ordinance to create a vessel exclusion zone/swim area generally located waterward of the mean high water line off of portions of Port Antigua Beach & White Marlin Beach; and

WHEREAS, the Village has recently received requests from the owners of the properties located between the current vessel exclusion zone/swim areas off White Marlin Beach to reduce the extent of the portion of the swim zone that was excluded, while maintaining a narrow channel to allow property owners boat access to their docks; and

WHEREAS, for the protection of the public and swimmers, the Village Council desires to amend the vessel exclusion zone/swim area generally located waterward of the mean high water line off of Port Antigua Beach & White Marlin Beach to expand the vessel exclusion zone/swim

area by reducing the width of an area that was originally excluded from the vessel exclusion zone/swim area 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 underlined;

deleted text is shown as ~~strikethrough~~

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.

Vesle 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:

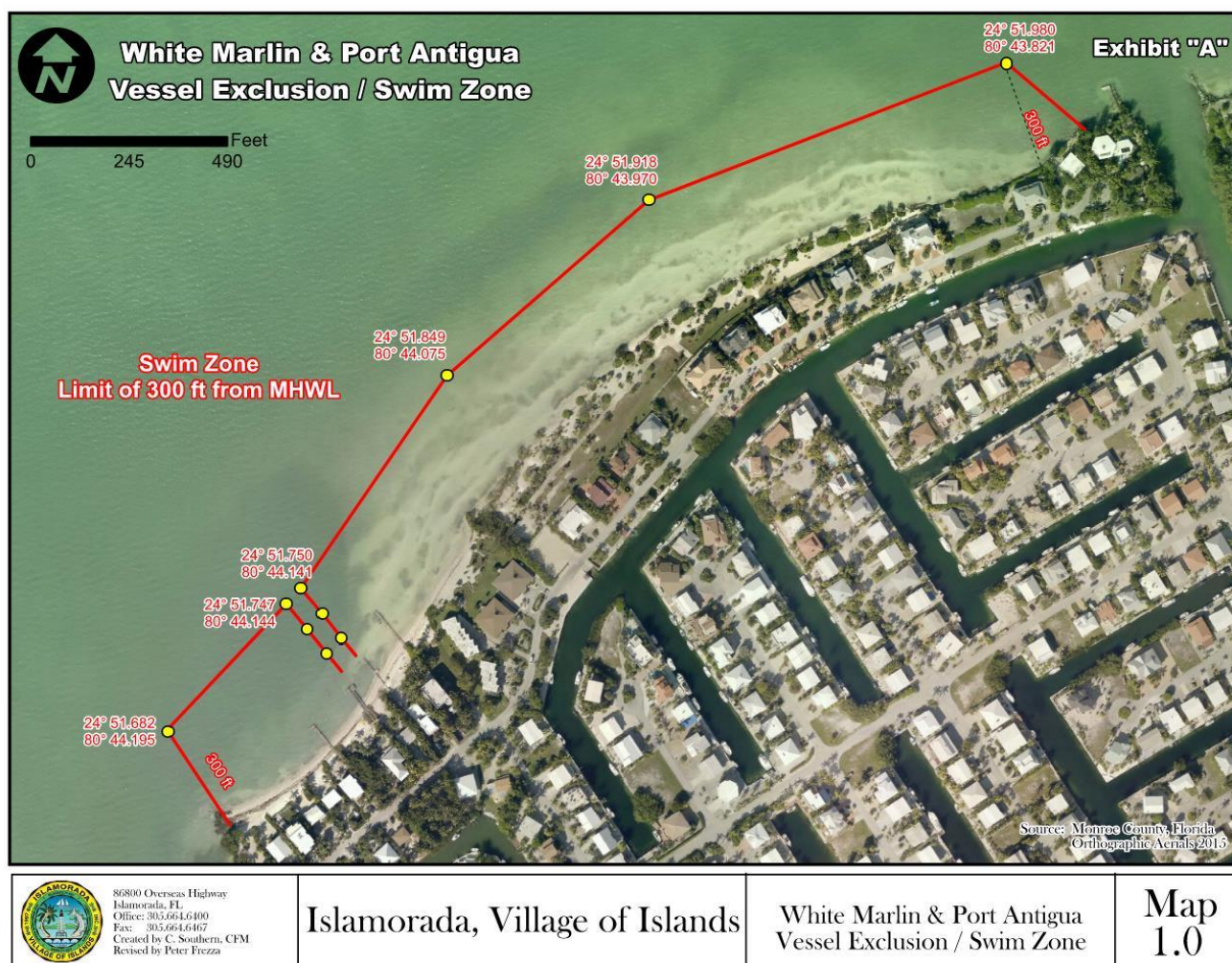
- a. Operating on plane is not proceeding at this speed,
- b. In the process of coming off plane and settling into the water or coming up onto plane is not proceeding at this speed,
- c. Operating at a speed that creates a wake which unreasonably or unnecessarily endangers other vessels or other persons 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.

(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;
- (3) Vessels used solely for sea rescue/emergency or for ensuring compliance with local, state or federal law.

(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 Vice Mayor Mahoney, who moved its adoption

on first reading. This motion was seconded by Councilwoman Jolin, and upon being put to a vote, the vote was as follows:

Mayor Joseph B. Pinder III	<u>Yes</u>
Vice Mayor Sharon Mahoney	<u>Yes</u>
Councilman Mark Gregg	<u>Yes</u>
Councilwoman Elizabeth Jolin	<u>Yes</u>
Councilman Henry Rosenthal	<u>Yes</u>

PASSED on first reading this 14th day of December, 2023.

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

Mayor Joseph B. Pinder III	Yes
Vice Mayor Sharon Mahoney	Yes
Councilman Mark Gregg	Yes
Councilwoman Elizabeth Jolin	Yes
Councilman Henry Rosenthal	Yes

PASSED AND ADOPTED on the second reading this 9th day of January, 2024.

DocuSigned by:
Joseph B. Pinder III
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JOSEPH B. PINDER III, MAYOR

ATTEST:

DocuSigned by:
Marne K. McGrath
008BA9A9B2704D5...
MARNE MCGRATH, VILLAGE CLERK

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

DocuSigned by:
John J. Quick
362BFAA7FDD417...
JOHN J. QUICK, VILLAGE ATTORNEY

