

MONROE COUNTY COURTHOUSE
500 WHITEHEAD STREET, SUITE 101
KEY WEST, FLORIDA 33040
TEL. (305) 294-4641
FAX (305) 295-3663

BRANCH OFFICE:
MARATHON SUB COURTHOUSE
3117 OVERSEAS HIGHWAY
MARATHON, FLORIDA 33050
TEL. (305) 289-6027
FAX (305) 289-1745



**CLERK OF THE CIRCUIT COURT
MONROE COUNTY**

www.clerk-of-the-court.com

February 8, 2011

BRANCH OFFICE:
PLANTATION KEY
GOVERNMENT CENTER
88820 OVERSEAS HIGHWAY
PLANTATION KEY, FLORIDA 33070
TEL. (305) 852-7145
FAX (305) 852-7146

ROTH BUILDING
50 HIGH POINT ROAD
PLANTATION KEY, FLORIDA 33070
TEL. (305) 852-7145
FAX (305) 853-7440

Ms. Liz Cloud, Program Administrator
Administrative Code & Weekly
R.A. Gray Building
500 S Bronough Street
Tallahassee FL 32399-0250

Via Certified Mail 7010 1670 0001 0244 7587

Dear Ms. Cloud,

Enclosed please find a certified copy of Ordinance No. 002-2011 amending Chapter 26, of the Monroe County Code (Waterways) to provide for "No Motor Zones" and consistent signage; providing for severability and repeal of inconsistent provisions; providing for filing with the Secretary of State; providing for an effective date.

This Ordinance was adopted by the Monroe County Board of County Commissioners at a Regular Meeting, held in formal session, on January 19, 2011. Please file for the record. Should you have any questions please feel free to contact me at (305) 295-3130.

Respectfully submitted,

Danny L. Kolhage
Clerk of the Circuit Court
and ex officio Clerk to the
Board of County Commissioners

by: *Pamela G. Hancock, D.C.*

cc: Municipal Code *via e-mail*
Growth Management *via e-mail*
County Attorney *via e-mail*
File



ORDINANCE NO. 002 - 2011

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING CHAPTER 26 OF THE MONROE COUNTY CODE (WATERWAYS) TO PROVIDE FOR "NO MOTOR ZONES" AND CONSISTENT SIGNAGE; PROVIDING FOR SEVERABILITY AND REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR FILING WITH THE SECRETARY OF STATE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Monroe County has a variety of boating restricted areas codified under Sec.26-71 of the Monroe County Code; and

WHEREAS, Monroe County has multiple Combustion Vessel Exclusion Zones intended to exclude vessels from entering such areas with internal combustion engines running; and

WHEREAS, the language Combustion Vessel Exclusion may be confusing to boaters and is inconsistent with similar federally established boating restricted areas in the Keys that use the language No Motor Zone; and

WHEREAS, utilizing the language No Motor Zone on buoys and signage will be clear to boaters, provide consistency between similar County and Federal zones, and increase compliance with the restrictions of such zones, and

WHEREAS, the Florida Fish & Wildlife Conservation Commission permits such boating restricted areas in accordance with Chapter 68D-23 Uniform Waterway Markers in Florida Waters; and

WHEREAS, the Florida Fish & Wildlife Conservation Commission has approved a request from the Marine Resources Office to rename Monroe County boating restricted areas from Combustion Vessel Exclusion Zones to No Motor Zones;

NOW, THEREFORE, BE IT ORDAINED BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS:

Section 1. Monroe County Code Section 26-1. Definitions shall be amended as follows:

Sec. 26-1. Definitions

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Combustion vessel exclusion zone means that no person shall operate a motorized vessel (as defined in this section), by use of a combustion engine, or in some cases where specifically established an electric motor, in any area spatially defined as "Combustion Vessel Exclusion Zone" and that is so identified as a "Combustion Vessel Exclusion Zone" by appropriate signage.

Commercial vessel means:

- (1) Any vessel primarily engaged in the taking or landing of saltwater fish or saltwater products or freshwater fish or freshwater products, or any vessel licensed pursuant to F.S. § 370.06 from which commercial quantities of saltwater products are harvested, from within and without the waters of this state for sale either to the consumer, retail dealer, or wholesale dealer; or
- (2) Any other vessel, except a recreational vessel as defined in this section.

Discharge includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

Dive means to wholly or partially submerge one's body while equipped with a mask or goggles, whether or not any type of underwater breathing apparatus is used.

Floating structure means as defined in F.S. § 327.02.

Houseboat means as provided in F.S. § 337.02.

Idle speed/no wake means that a vessel cannot proceed at a speed greater than that speed that is necessary to maintain steerage.

Live-aboard vessel.

- (1) The term "live-aboard vessel" means as provided in F.S. § 327.02.
- (2) Any vessel with a person living aboard and that is anchored, moored, or docked in the same location for 72 consecutive hours is presumed to be a live-aboard vessel.

Lobster mini-season means the two-day sport season authorized by the state pursuant to F.A.C. 68B-24.005.

Manager means the manager and/or management staff of the land based facility authorized by separate resolution and/or agreement to operate, manage and maintain any county mooring field.

Manmade water body means a water body that was created by excavation by mechanical means under human control and shall include a canal, cut basin, or channel where its edges or margins have subsequently been modified by natural forces.

- (1) For the purposes of this chapter, such water bodies may have natural components, for instance a channel or canal may have been dredged such that the dredge material was used to create land on one side, but not the other, thus leaving a relatively natural shoreline on the opposite side.
- (2) Also for the purposes of this chapter, the manmade water body must have "buildings," as defined in part II of this Code, along its shoreline to be applicable. If buildings are not present on a given shoreline on the date of adoption of the ordinance from which this section is derived, but such buildings are constructed at a later date, then the ordinance from which this section is derived becomes effective at that time.

Marine sanitation device means as defined in F.S. § 327.02.

Mobile pump-out vessel means any vessel capable of pumping out and receiving human body wastes and other effluent contained in marine sanitation devices installed aboard other vessels.

Mooring field means areas in and adjacent to the county installed mooring systems, including designated anchoring areas. These areas may include both county and state owned submerged lands, but shall exclude privately owned submerged lands. The delineation, implementation and management of county mooring fields shall be approved by the state.

Motorboat means as provided in F.S. § 327.02. This definition is synonymous with the definition of motorized vessel.

Motorized vessel means any vessel that is propelled or powered by machinery and that is capable of being used as a means of transportation on water.

No discharge zone means any of the areas located within state waters within the boundaries of the Florida Keys National Marine Sanctuary, as identified in Federal Register Notice 66:144, pp 38967—38969, promulgated on July 26, 2001, and as shown in attachment A of the ordinance from which this section is derived.

No Motor Zone means all vessels equipped with internal combustion motors (e.g.: gasoline or diesel motors) for propulsion must turn off the internal combustion motor and, if possible to do so, tilt or raise the internal combustion motor out of the water. The use of electric motors is not prohibited.

Owner means as provided in F.S. § 327.02.

Person means an individual, partnership, firm, corporation, association, or other entity, but does not include an individual on board a public vessel or the owner of a public vessel.

Public vessel means a vessel owned or a bareboat chartered and operated by the United States, the state, the county, or by a foreign nation, except when such vessel is in commerce.

Pump-out station means a facility that pumps or receives human body wastes and other effluent out of marine sanitation device installed on board vessels.

Real property owner means any part owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety, with legal or beneficial title to the whole or to part of real property.

Recreational vessel means any vessel:

- (1) Manufactured and used primarily for noncommercial purposes; or
- (2) Leased, rented, or chartered to a person for the person's noncommercial use.

Residential area means any area designated improved subdivision, suburban residential or suburban residential limited, sparsely settled, urban residential, and urban residential mobile home under the county land development regulations.

Seaworthy condition means that a vessel is in good condition and capable of the use for which it was designed.

Sewage means human body wastes and wastes from toilets and other receptacles, including approved marine sanitation devices (MSD) intended to receive or retain body wastes, whether treated or raw.

Slow speed/minimum wake means that a vessel must be fully off plane and completely settled into the water. It must not proceed at a speed greater than that which is reasonable and prudent to avoid the creation of an excessive wake or other hazardous condition under the existing circumstances. A vessel is not proceeding at a slow speed/minimum wake when it is:

- (1) Operating on a plane;
- (2) In the process of coming off plane and settling into the water or coming up onto a plane; or
- (3) Operating at a speed that creates a wake that is unreasonable or unnecessarily endangers other vessels.

Speargun means any device whether commercially manufactured or hand-made, that is designed and constructed so as to be capable of forcefully discharging at great velocity any spear or any similar projectile in a direction determined by the user thereof for a distance greater than two feet (24 inches) whether or not such spear or projectile is tethered to the firing apparatus or otherwise limited in its range. No distinction shall be made as to the mechanical construction or physical means used in such devices to create the potential energy necessary to eject or fire such spear or similar projectiles.

Vessel means as provided in F.S. § 327.02.

Water-borne craft or structures subject to density allocation and wastewater management requirements (water-borne craft) means and encompasses any of the following definitions, houseboat, floating structures, live aboard vessel, and vessel as defined in this chapter and F.S. § 327.02 when the object of such definitions is being occupied in a manner that would be construed as either a residential or business purpose that would normally require wastewater facilities. Such occupation, be it residential or commercial in nature, could involve either longterm or shortterm tenancies and typically would involve occupancy including habitation, eating, sleeping, bathing, and or a business functions where the occupant were aboard the water-borne craft for several hours per day.

- (1) Water-borne craft may as a matter of course occupy a dry slip, wet slip, or mooring as defined in this chapter and exist in a marina, marine facility, mooring field or other location within or on waters of this state as defined in this chapter.
- (2) Water-borne craft are subject to a density allocation commensurate with the district it occupies and is to be calculated as the equivalent of one density unit. Water-borne craft are subject to wastewater management requirements as defined in this section and part II of this Code.

Section 2. Article III Sec. 26-71 shall be amended as follows:

Sec. 26-71. Boat restricted zones established.

- (a) *Idle speed/no wake zones.* No person shall operate a vessel in the following areas spatially defined as "idle speed/no wake zones" at a speed in excess of idle speed/no wake as defined in this chapter:
 - (1) Summerland Key Channel: To include an area within 300 feet of shore along the southwest shore of Summerland Key, running contiguous with the shorelines of Summerland Key Cove and Summerland Cove Isles subdivisions.
 - (2) Ocean Reef Club:
 - a. Bayside: To include an area between 300 feet of shore along the northwest shore of North Key Largo running contiguous with the shoreline of Snapper Point subdivision, Ocean Reef Club, within the navigation channel that parallels the shoreline. Includes all internal canals of Snapper Point subdivision.
 - b. Oceanside: To include all residential canals in Angelfish Cay, all residential canals in Channel Cay, and the portion of Little Angelfish Creek adjacent to Angelfish Cay.
 - (3) Riviera Canal: To include the area of Riviera Canal, Key West, running from Cow Key Channel to the west, until it turns approximately 90 degrees to the north.
 - (4) Jolly Roger Estates, Little Torch Key: To include an area running parallel to the eastern shore of Jolly Roger subdivision approximately 300 feet offshore and within the deep navigation canal parallel to the subdivision shoreline. To include the northernmost canal (running east-west) leading into the internal subdivision canals.
 - (5) Sombrero Beach: To include the area at the west side of Sombrero Beach extending to the west side of the navigation canal, bounded at its southern extreme by Day Beacon No. 6.
 - (6) Safety Harbor: To include an area contiguous to and extending approximately 300 feet from the residential shorelines of Safety Harbor and Toll Gate Shores, within the existing deeper parallel navigation channel.
 - (7) Community Harbor: To include the area within the bounds of Community Harbor, Tavernier, Key Largo and extending in an arc from either side of the mouth, just outside the bounds of the Harbor.

- (8) All manmade water bodies: To include all manmade water bodies, as defined in this chapter, within the waters of the county.
 - (9) Dove Creek: From the open water of the Atlantic/Hawk's Channel, the eastern section of Dove Creek to the western end of Dove Creek subdivision and including the Dove Creek subdivision residential canal.
 - (10) Key West: Smathers Beach: To include an area parallel to the shore along Smathers Beach running 600 feet offshore.
- (b) *Slow speed/minimum wake zones.* No person shall operate a vessel in the following areas spatially defined as "slow speed/minimum wake zones" at a speed in excess of slow speed/minimum wake as defined in this chapter:
- (1) Snake Creek: To include the entire width of Snake Creek, from 100 feet south of the Snake Creek Bridge at U.S. Highway 1, to 100 feet north of the residential shoreline of the Venetian Shores subdivision, Plantation Key.
 - (2) Vaca Cut: Extending the length of Vaca Cut, Marathon from the regulatory marker located approximately 1,250 feet south of the Vaca Cut Bridge to the regulatory markers located approximately 800 feet north of the Vaca Cut Bridge.
 - (3) Whale Harbor: To include the area just north of the Whale Harbor Bridge and extending south the length of the Whale Harbor navigation channel to ATON number 1.
 - (4) Boot Key Harbor and Sister's Creek: To include all waters within Boot Key Harbor including contiguous creeks and manmade canals, and including approaches to the Harbor from the West beginning at Day Beacon No. 7 and from the South, Sister's Creek beginning at Day Beacon No. 4.
 - (5) Cow Key Channel: To include Cow Key Channel north of the Cow Key Channel Bridge at U.S. Highway 1 and ending at Day Beacon No. 11, south of the Cow Key Channel Bridge.
 - (6) Adams Waterway: To include the entire area known as Adams Waterway, Key Largo, leading from Blackwater Sound on Florida Bay to Largo Sound on the ocean side of the Island of Key Largo.
- (c) *No Motor Zones.* No person shall operate a motorized vessel in the following areas spatially defined as "no motor zones":
- (1) Harry Harris Park: To include an area parallel to the shoreline extending the length of Harry Harris Park, Tavernier, Key Largo extending to the west to include the five contiguous lots of Ocean Park Village and extending approximately 450 feet offshore.
 - (2) Dove Creek and Dove Lake: To include the western end of Dove Creek from the west end of Dove Creek subdivision to the mouth of Dove Lake and the entire area of Dove Lake.
 - (3) Whale Harbor Channel "Flats": To include the shallow areas adjacent to the northeast and southwest sides of Whale Harbor Channel on the ocean side of U.S. Highway 1. The approximate length of the zone extends from the Whale Harbor Channel Aids to Navigation Numbers 8 and 9 southeastward to Whale Harbor Channel Aids to Navigation

Numbers 1 and 2. The width of the zone is defined, on either side of the channel, by the adjacent shallow areas and the small channels farther to the northeast or southwest of the Whale Harbor Channel. The zones are approximately triangular on either side of Whale Harbor Channel. The Zones will specifically exclude the areas known as the "Sand Bar," shallow, sandy areas immediately contiguous to Whale Harbor Channel on either side.

- (d) *Motorboats prohibited zone.* No motorboat as defined herein shall enter an area established by County Ordinance as "motorboat prohibited zone." The following area is a "motorboat prohibited zone":

Varadero Beach: To include an area within 300 feet of shore along the cove on the bayside of Key Largo, known as Varadero Beach at approximately mm 95.6 bayside and as shown graphically in the attached map. Kayaks, canoes and similar exclusively human powered vessels are allowed in this zone.

- (e) *Viewable map of zones.* Viewable maps of each of the zones noted in this section are available at the county office for marine resources.

Section 3. Severability. If any section, paragraph, subdivision, clause, sentence or provision of this ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence, or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 4. Repeal of Inconsistent Provisions. All ordinances or parts of ordinance in conflict with this ordinance are hereby repealed to the extent of said conflict. The repeal of an ordinance herein shall not repeal the repealing clause of such ordinance or revive any ordinance which has been repealed thereby.

Section 5. Filing and Effective Date. This Ordinance shall be filed with the Florida Department of State, and shall become effective as provided in Sec. 125.66(2), Florida Statutes.

(This area is intentionally left blank)

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the 19th day of January, 2011.

Mayor Heather Carruthers
Mayor *pro tem* David Rice
Commissioner George Neugent
Commissioner Kim Wigington
Commissioner Sylvia Murphy

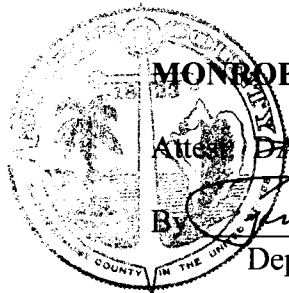
Yes

Yes

Yes

Yes

Yes



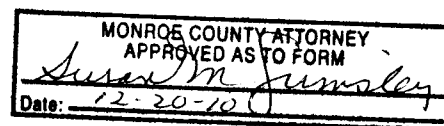
MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

Attest: **DANNY L. KOLHAGE, CLERK**

By [Signature]
Deputy Clerk

By

[Signature]
Mayor Heather Carruthers



FILED FOR RECORD
2011 FEB -8 AM 10:41
DANNY L. KOLHAGE
CLERK
MONROE COUNTY, FL