

MEMORANDUM

TO: Tom Harmer, Town Manager

From: Allen Parsons, AICP
Director, Planning, Zoning & Building Department

Report Date: May 6, 2022

Meeting Date: May 16, 2022

Subject: Proposed Ordinance 2022-08, Establishing Chapter 89, Swimmer and Resource Protection Zone

Recommended Action

Provide direction to Manager and forward Ordinance 2022-08 to the June 6, 2022 Regular Meeting for first reading.

Background

At their February 22, 2022 Town Commission Regular Workshop Meeting, an overview of follow-up actions related to ongoing citizen complaints associated with boating and recreational activity, primarily in the vicinity of Greer Island and Jewfish Key was provided. The Commission directed staff to develop restrictions for usage of motorized vessels within the Greer Island lagoon area and on the southeastern portion of the Greer Island Manatee County-owned park, East of the Longboat Pass bridge.

To address one of the concerns related to motorized vessels congregating on the southeast portion of Greer Island near the entrance to the lagoon, Manatee County agreed to sign a section of the area for kayak and paddle-board landing only. Shortly after installing their signs they notified the Town that they are unenforceable and immediately removed them. Staff investigated options to establish restrictions on motorized vessels and to generally reestablish the area of the Greer Island Manatee County-owned park previously identified with signage by Manatee County as being limited to kayaks and paddle-boards. Based on several factors addressed below, staff has developed a recommended approach to create an area that is approximately the same extent¹ as that previously identified by Manatee County. The approach uses a combination of existing statutory provisions that prohibit the impeding of navigation and the adoption of a public bathing and swimming area.

Currently, there are existing Statutory provisions that law enforcement can use to address two ongoing reported issues:

- 1) Location: Within the Greer Island lagoon area.
Issue: Reckless boating activities by jet skis or other vessels and boating activity that can have negative impacts on sea grasses and wildlife such as manatees.

¹ The area previously identified with signage placed by Manatee County as being restricted to kayaks and paddle-boards included the southeastern portion of the Greer Island Manatee County-owned, which extended along the beach frontage approximately 100 linear feet north of the Land's End dock.

Response: If necessary, law enforcement can issue a citation for reckless or careless operation of a vessel, per Florida Statutes, 327.33.

- 2) Location: In the area near the entrance to the Greer Island lagoon/Canal 1A and near the Land's End property dock.

Issue: Impeding navigation by the anchoring or beaching of vessels.

Response: The Town has installed a sign notifying boaters of the regulation. If necessary, law enforcement can issue a citation for impeding navigation, per Florida Statutes, 327.44.

The locations described above are later described in the memo as the Statutorily enforceable areas.

Apart from the existing Statutory provisions, establishing restrictions within State waters is highly limited and prescriptive. Authority is granted to local governments (per Section 327.46, Florida Statutes) to establish boating-restricted-area ordinances for "any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion or other navigational hazards, or to protect seagrasses on privately owned submerged lands."

Florida Statutes allow for three types of boating restricted areas. These boating restricted area types include:

- 1) Idle-Speed-No-Wake areas;
- 2) Slow-Speed-Minimum-Wake; and
- 3) Vessel-Exclusion Zones for areas designated as a "public bathing beach or swim area" or for areas reserved for "a canoe trail or otherwise limited to vessels under oars or under sail" or "for a particular activity and user group separation must be imposed to protect the safety of those participating in such activity."

Establishing any of those three of types of boating restricted areas require review and approval by the Florida Fish and Wildlife Conservation Commission (FWC). In addition, an ordinance designating a boating restricted area generally requires submission of substantial and competent evidence showing that it is necessary to protect public safety. The substantial competent evidence requirement typically includes the submission of data, such as records of boating accidents or issuance of citations, gathered over an extended period of time, to demonstrate that there is a statistical or factual basis to justify the public safety benefits of a boating restricted area. The one exception, to the submission of substantial competent evidence, is for the establishment of vessel exclusion areas for public bathing or swimming. Establishment of this type of boating restricted area is at the discretion of a local jurisdiction and does not require accompanying evidence.

In researching options for establishing motorized vessel exclusion areas, along a portion of the Greer Island Manatee County-owned park and in the Greer Island lagoon area, staff learned that if any type of vessel exclusion area is established, applicable prohibitions would have to apply equally to all vessels. According to FWC, there would not be a way to apply a motorized vessel prohibition and exempt certain motorized vessels. For example, the Town could not provide an exception for motorized vessels that belong to residents who have docks within the Greer Island lagoon area.

Considering the Statutory context for establishing boating restricted areas described above, staff has utilized “Option 3” under the types of boating restrictions, as described above, to draft a new stand-alone ordinance. The proposed ordinance establishes a public bathing and swimming area on a portion of the southeasternmost part of the Greer Island Manatee County-owned park and establishes a placeholder for potential future provisions that could designate areas of boat restrictions for the purpose of protecting particular resources. Note: Designating a boating restricted area for resource protection purposes requires a finding of substantial competent evidence by FWC to be established.

Ordinance 2022-08 (Attachment A) creates Chapter 89 within the Town Code titled, Swimmer and Resource Protection. As described in the Ordinance, the purpose is to promote swimming in and on the waters of the Town of Longboat Key and ensure that such activities are conducted in a safe manner for those residents and visitors that engage in such activities. This Chapter seeks to ensure that swimmers are able to safely and reasonably enjoy the Town’s beaches and waters in a manner that protects the swimmers from boating accidents, hazardous currents and water levels, vessel congestion and other navigational hazards.

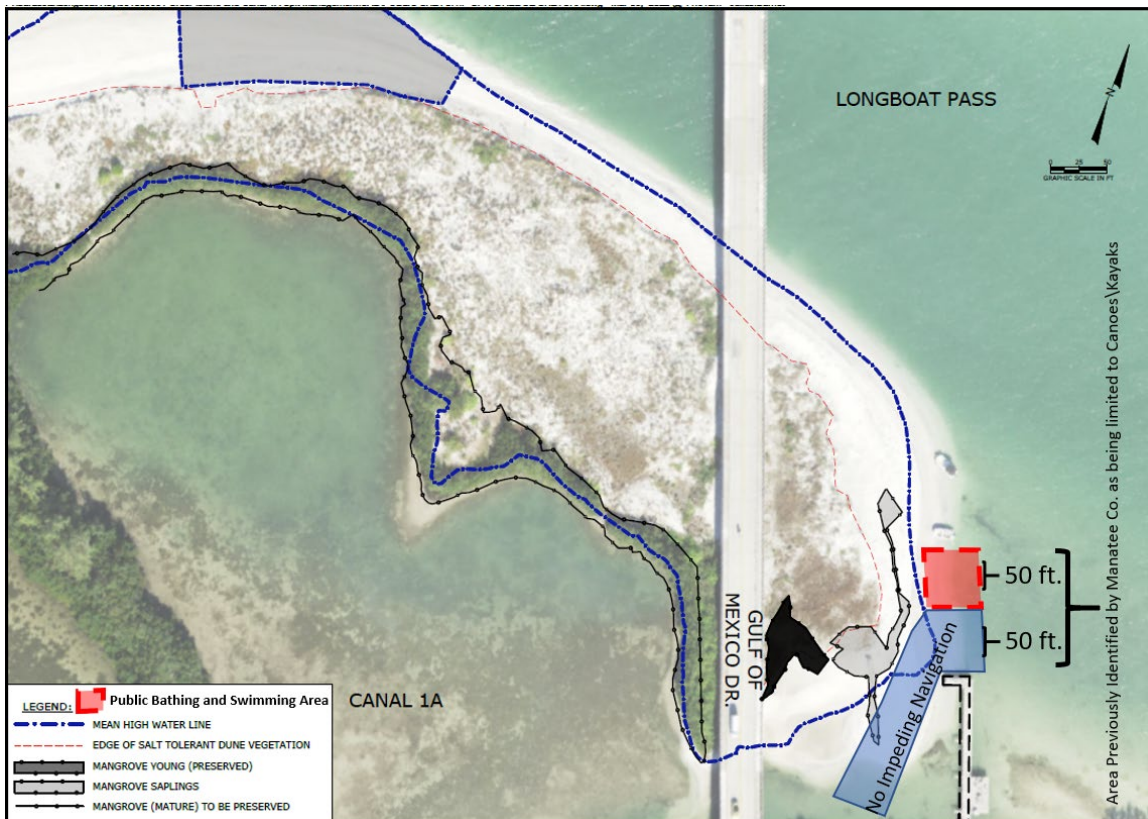
Pursuant to Section 327.46, Florida Statutes, Chapter 89 provides for the designation of “Areas of Restricted Water Activities” and prohibits the use of motorized vessels within any areas so designated. Chapter 89 designates the proposed “Public Bathing and Swimming Area” as the Town’s “Area of Restricted Water Activity.” This Public Bathing and Swimming Area, shown in red in the aerial image below, is a limited area that is described as being 50 feet in length by 50 feet in width, in generally North-to-South and East-to-West directions. The Public Bathing and Swimming Area is located at the southeasternmost portion of the Greer Island Manatee County-owned park, beginning 50 feet North of the Land’s End property dock. When combined with the area that can currently be enforced for anchored or beached boats that impede navigation the total area of approximately 100 linear feet north-to-south from the Land’s End dock. It is approximately the same area previously noticed by Manatee County as being restricted to kayaks and paddle-boards.

The intent of the Public Bathing and Swimming Area is to establish a location where motorized vessels would be prohibited from anchoring or beaching. A

“motorized vessel exclusion area” is created by combining the Public Bathing and Swimming Area and the Statutorily enforceable area, as described on page 1 of this memo. The “motorized vessel exclusion area” is comprised of two areas:

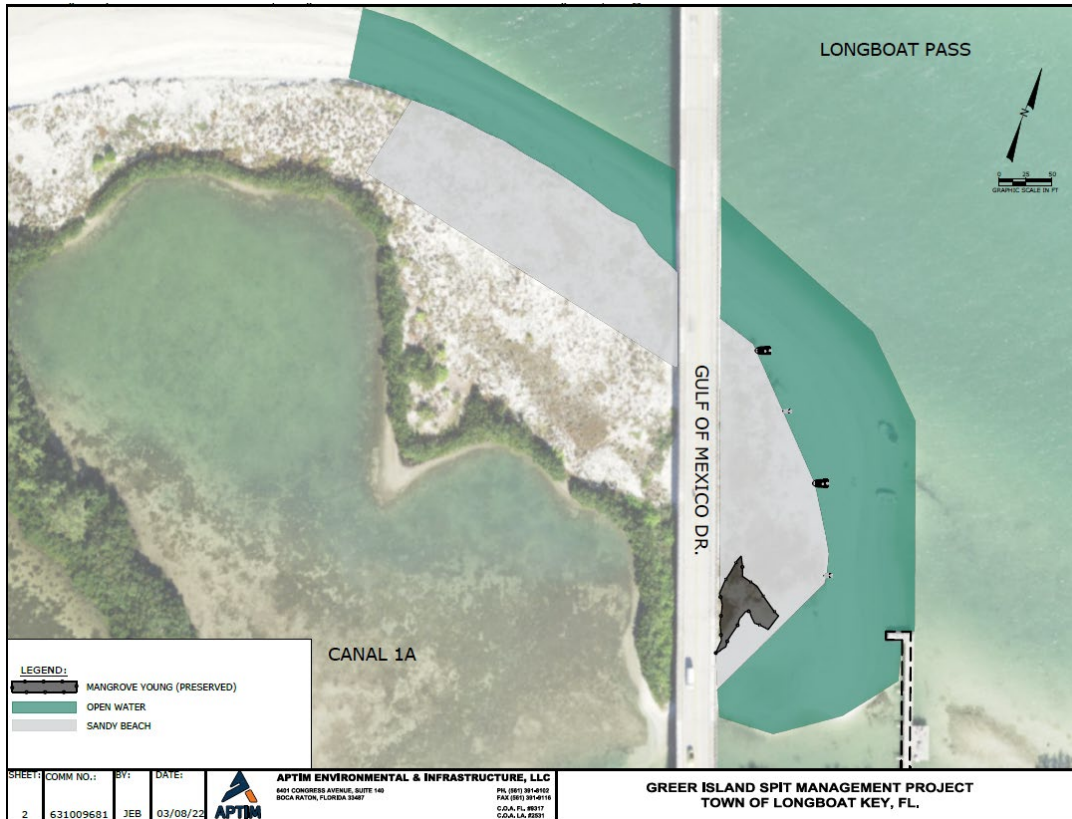
- 1) Statutorily enforced area: Approximately 50 linear feet North of the Land’s End property dock that provides access to the Greer Island lagoon and Canal 1A, and;
- 2) Public Bathing and Swimming Area: 50 linear feet prohibiting access of motorized vessels associated at the southeasternmost portion of the Greer Island County-owned park, beginning 50 feet North of the Land’s End property dock.

The map below shows the “motorized vessel exclusion area” that combines the Public Bathing and Swimming Area with the currently Statutorily enforceable area.



The proposal would facilitate the Town’s goals of prohibiting motorized vessels along the southeastern portion of the Greer Island Manatee County-owned park and would still leave an area for motorized vessels to anchor or beach on the remainder of the park, including an area that is less impacted by more active currents under the Longboat Pass Bridge. During previous discussions Manatee County indicated support for creating a limited non-motorized vessel landing area so long as some portion of the Manatee County-owned park, East of the Longboat Pass Bridge and outside of faster currents, was maintained.

In developing the proposed Ordinance, the staff anticipated the implementation of the Greer Island Spit Management plan and other naturally occurring changes to the shoreline. The described Public Bathing and Swimming Area allows for the swimming area to be in relation to the mean high-water line as the area grows or shrinks by accreting or eroding sand or by dredging activities. A graphic of the proposed change to the shoreline after the pending Spit Management Plan is shown below for reference.



Staff will be seeking Commission input on the proposed Ordinance and has proposed an adoption timeline that could be in place prior to the Commission's Summer recess.

Staff Recommendation

Provide direction to Manager and forward Ordinance 2022-08 to the June 6, 2022 Regular Meeting for first reading.

Attachment

- A. Proposed Ordinance 2022-08 (Available in Town Clerk's Office)
- B. PowerPoint Presentation (Available in Town Clerk's Office)

End of Agenda Item