

MEMORANDUM

TO: Tom Harmer, Town Manager

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

Report Date: May 26, 2022

Meeting Date: June 6, 2022

Subject: Ordinance 2022-08, Establishing Chapter 89, Public Bathing Protection

Recommended Action

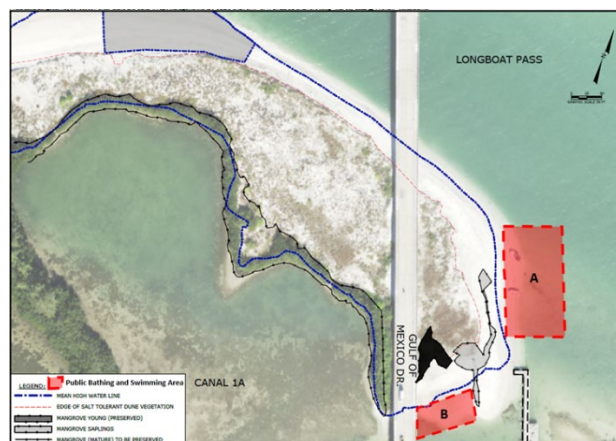
Forward Ordinance 2022-08 to the June 20, 2022 Special Meeting for second reading and public hearing, with a revised width in Area 'A' of 50 feet.

Background

At their May 16, 2022 Town Commission Regular Workshop Meeting, the Town Commission directed staff to develop two motorized vessel exclusion areas on the southeastern portion of the Greer Island Manatee County-owned park, East of the Longboat Pass bridge.

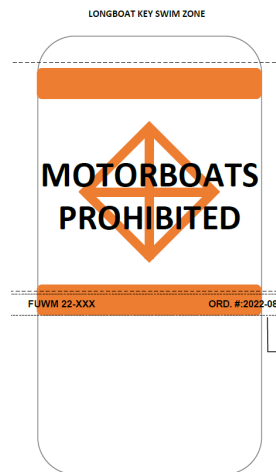
These areas are intended to address concerns related to motorized vessels that have historically congregated on the southeast portion of Greer Island, near the entrance to the Greer Island lagoon, which has continued to expand its landward extent further East over time. The gatherings of motorized vessels, non-motorized vessels and bathers wading into the shallow waters on Greer Island has increased significantly with the expansion of the shoreline over the last several years. As discussed, earlier in the year, Manatee County agreed to place signage in a section of this area for kayak and paddleboard landing only. Shortly after installing their signs they notified the Town that they were unenforceable, and immediately removed them. Staff investigated options to establish restrictions on motorized vessels and to reestablish the area of the Greer Island Manatee County-owned park previously identified with signage (by Manatee County) as being limited to kayaks and paddleboards.

The Town Commission provided direction to meet that objective, including expanding the width of the area from 50 to 100 feet. The Town Commission also provided direction to include an additional area at the southeasternmost portion of the Greer Island County-owned park, beginning at a location immediately East of the Longboat Pass bridge and North of the navigable channel of Canal 1A. The area locations are depicted below.



As noted during the May 16, 2022 Regular Workshop discussion, establishing a motorized vessel exclusion area requires review and approval by the Florida Fish and Wildlife Conservation Commission (FWC), with the 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.

The proposed boating-restricted areas are being established pursuant to Section 327.46(1)(b)(3)(a), Florida Statutes as a “public bathing beach” and will restrict the operation of motorized vessels within the delineated areas, including the ability for such vessels to anchor or beach on the sand. Based on feedback from the Florida Fish and Wildlife Conservation Commission (FWC), the areas will be referred to as Public Bathing areas (not swimming areas) and the areas will be required to be marked with associated Uniform Waterway Markers (UWM) identifying the areas as “Motor Boats Prohibited” areas. An example UWM is provided below:



Following the May 16, 2022 Regular Workshop, the Police Department raised concerns about any potential for a perceived inducement of swimming due to currents, in or around the area identified with an ‘A’ (in the image above and in Ordinance 2022-08), which can be potentially hazardous to swimmers. The Police Department noted that on the opposite side of Longboat Pass, in Manatee County, the entire beach frontage, from the Gulf of Mexico side around to the bay side, has been designated as a no-swim area. In seeking a professional opinion with regard to swimmer safety, staff reached out to the Chief of Manatee County lifeguards, who opined that anywhere near Longboat Pass is not advised to be a formal swimming area.

These legitimate concerns are proposed to be mitigated by the following:

- The ordinance’s Purpose describes an intent to protect public bathers in the, common and currently occurring, activity of wading, lounging and congregating in shallow water. Public bathing in this area is an existing historic use typically

associated with boaters who pull up their boats to Greer Island. This designation is intended to provide for a safer condition for bathers to use while standing and wading in the shallow waters without encroachment or potential collisions from motorized vessels.

- The areas will be marked by UWM that identify the areas as “Motor Boats Prohibited” areas.
- Signage can be posted on land on Greer Island that will include appropriate warnings for individuals who choose to move beyond the shallow shoreline. For example: dangerous currents in the area; no lifeguards on duty; and swimming is at one’s own risk.
- Removing the interaction of motorized vessels from these areas will add an additional measure of safety for kayakers, paddleboard users and those other users that wade into the shallow waters.

Another safety related measure that staff recommends is to limit the width of Public Bathing area ‘A’ to 50 feet in order to reduce the area that can exceed typical wading depths. Depth measurements taken on June 1, 2022, with a Tide Level of 2.4 feet are available in the Town Clerk’s Office.

Additionally, Staff also recommends pursuing a study or providing other means of substantial competent evidence to submit to FWC to address conditions along the other frontage of Greer Island. If the Commission supports this approach, Ordinance 2022-08 could be viewed as an interim step to establishing increasing levels of safety to park users.

Ordinance 2022-08 (Attachment A) creates Chapter 89 within the Town Code titled, Public Bathing Protection. As described in the Ordinance, the purpose is “to protect public bathers that bathe, wade, lounge and congregate in and on the shallow 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 public bathers are able to safely and reasonably enjoy the Town’s beaches and waters in a manner that protects bathers from boating accidents, hazardous currents and water levels, vessel congestion and other navigational hazards.”

Pursuant to Section 327.46(1)(b)(3)(a), 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 “Motor Boats Prohibited Area” as the Town’s “Area of Restricted Water Activity.”

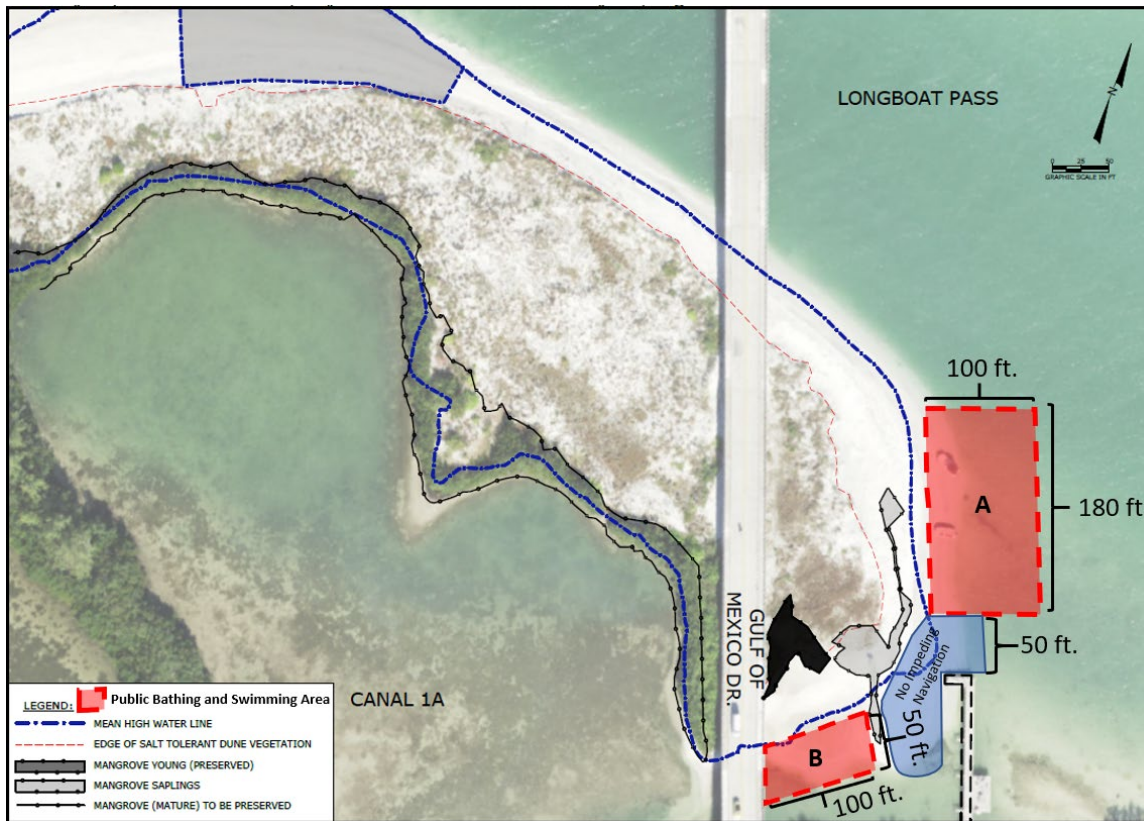
This Motor Boats Prohibited Area, shown in red in the aerial image above, is comprised of two areas:

- The first area is located toward the southeasternmost portion of the Greer Island Manatee County-owned park, beginning 50 feet North of the Land’s End property dock, and is described as being 180 feet in length (generally North-to-South) by 100 feet in width (generally East-to-West).
- The second area is located at the southeasternmost portion of the Greer Island Manatee County-owned park. It begins immediately East of the Longboat Pass bridge, and North of the navigable channel of Canal 1A, and then extends eastward

from the Longboat Pass bridge a distance of one hundred (100) feet, with that area being 50 feet in depth from the mean high-water line.

Both of these areas are described in a manner that acknowledges that the land area is subject to change through accretion, erosion and dredging or spit maintenance activities of the Town. Areas are identified as being dimensioned from the mean high-water line of the Greer Island Manatee County-owned park, which is subject to change over time. As the landform changes, the UWM locations will need to be correspondingly updated in coordination with FWC.

As noted previously, the Motor Boats Prohibited Areas, when combined with the area that can currently be enforced for anchored or beached boats that impede navigation, creates a near continuous area from the Greer Island lagoon entrance to the beachfront along the southeastern portion of the Greer Island County-owned park (see aerial image below).



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.

Staff has been working with FWC on the UWM permitting in an effort to have the area marked prior to the July 4th weekend. Acquiring the UWM is the critical path and at the time of the writing of this memo, it is not certain whether the UWM will be able to be acquired and in place by that timeframe. Town staff inquired as to whether temporary markings could be provided, if the UWM were not received by the July 4th weekend. Staff was informed

that only officially approved UWM are allowed to be placed in State waters. Staff is also inquiring of other jurisdictions if they may have any excess appropriate UWM, which could be placed in the water, if acquisition from the vendor is not timely. We should have answers regarding availability of UWM by the time of second reading and public hearing on June 20, 2022.

Staff Recommendation

Forward Ordinance 2022-08 to the June 20, 2022 Special Meeting for second reading and public hearing, with a revised width in Area 'A' of 50 feet.

Attachment

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

End of Agenda Item