

ORDINANCE NO. 2020-09

AN ORDINANCE OF THE CITY OF INDIAN ROCKS BEACH, FLORIDA, AMENDING CHAPTER 74 – WATERWAYS, CREATING ARTICLE IV, TO BE ENTITLED ‘LEAVE NO TRACE’, CREATING SECTION 74-100 – PURPOSE AND TITLE; CREATING SECTION 74-101 – DEFINITIONS; CREATING SECTION 74-102 – DIGGING HOLES ON BEACH; CREATING SECTION 74-103 – OBSTRUCTIONS ON THE BEACH AND BEACH ACCESS AREAS PROHIBITED; CREATING SECTION 74-104 - EXCEPTIONS; CREATING SECTION 74-105 – PERMITS; CREATING SECTION 74-106 – FIRES PROHIBITED; REPEALING CHAPTER 26 – ENVIROMENT, ARTICLE V - JUNKED, WRECKED OR ABANDONED PROPERTY, DIVISION 1 – GENERALLY, SECTION 26-131 – CONFISCATION OF ABANDONED PROPERTY; REPEALING CHAPTER 74 – WATERWAYS, ARTICLE III – BEACHES, DIVISION 1 – GENERALLY, SECTION 74-65 TENTS, CANOPIES, AND VOLLEYBALL NETS; CREATING A LEAVE NO TRACE ORDINANCE PROHIBITING THE LEAVING OR ABANDONMENT OF PERSONAL PROPERTY ON THE CITY’S BEACHES; PROHIBITING UNFILLED HOLES ON THE CITY’S BEACHES; PROHIBITING THE OBSTRUCTION OF THE BEACH AND BEACH ACCESS; PROVIDING FOR EXCEPTIONS; PROVIDING FOR A PERMITTING PROCESS; PROHIBITING FIRES ON THE BEACH; PROVIDING FOR LEGISLATIVE FINDINGS; AND PROVIDING FOR AN EFFECTIVE DATE THEREOF.

WHEREAS, the City Commission of the City of Indian Rocks Beach desires to ensure the public beach and beach access areas of the City are free from any obstruction by any item of personal property in order to protect public ingress, egress, use of the public beach, the natural environment, the beauty and aesthetics of the City, and promote the public safety; and

WHEREAS, the City Commission of the City of Indian Rocks Beach desires to protect endangered sea turtles which nest on public beaches where abandoned property and unfilled holes can pose a serious hazard and risk of endangerment to wildlife; and

WHEREAS, prohibiting persons from leaving or abandoning personal property on the City’s beaches and beach access areas, and prohibiting unfilled holes, effectuates that desire; and

WHEREAS, Section 705.103, Florida Statutes, contemplates the procedures to be used when dealing with lost or abandoned property on public property; and

WHEREAS, the City currently regulates certain abandoned property left on the beach in Sections 74-65 and 26-131 of the Code of Ordinances of the City, which the Leave No Trace ordinance makes moot; and

WHEREAS, repealing Sections 74-65 and 26-131 of the City Code and replacing it with the Leave No Trace ordinance better effectuates the City's ability to regulate abandoned property left on the beach; and

WHEREAS, the City Commission finds this Ordinance benefits public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF INDIAN ROCKS BEACH, FLORIDA, THAT:

SECTION 1. Chapter 74 (Waterways) of the City of Indian Rocks Beach Code of Ordinances is hereby amended as follows:

ARTICLE IV. – LEAVE NO TRACE

Sec. 74-100. – Purpose, title, and enforcement.

The purpose of this article is to ensure the public beach and beach access areas are free from any obstruction by any item of personal property in order to protect public ingress, egress and use of the public beach, promote public safety, and to protect wildlife, including endangered sea turtles. This article may be referred to as the "Leave No Trace Ordinance." A violation of any of the sections of this Article may result in the imposition of a fine consistent with Section 1-14 of the City's Code of Ordinances.

Sec. 74-101. - Definitions.

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

Beach means the zone of unconsolidated material that extends landward from the mean low water line to either the place where there is a marked change in material or physiographic form: the line of permanent vegetation, which is usually the effective limit of storm waves; or constructed bulkheads or other coastal protection structures.

Beach access areas means those public beach access points in the City, identified by appropriate signage, including associated boardwalks, walkways, and dedicated parking areas, and the area on the public beach beginning at the entrance of the beach access point perpendicular with the applicable road right-of-way to the water's edge.

Dune means a mound, bluff or ridge of loose sediment, usually sand-sized sediment, lying landward of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location. In the

absence of a discernible dune, the seaward boundary of a dune will be deemed to be the line of native vegetation.

Person includes a natural person and all artificial entities, such as, but not limited to, corporations, limited liability companies, partnerships, limited partnerships, associations, trustees, receivers, legal representatives, and organizations.

Personal property means all types of personal property, including by way of example and not limitation, tents (including tent frames), canopies, cabanas, umbrellas and other shading devices, picnic tables, tiki huts, volleyball nets, tents, hammocks, beach chairs and other furniture, kayaks, canoes, catamarans, floats, sailboards, surfboards, kites, jet skis, sailboats, water cycles and other watercraft.

Public beach means any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired the right of use or easement to or over the area by prescription, dedication, presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom.

Sec. 74-102. - Digging holes on beach.

Holes dug on the beach are required to be attended and shall be filled prior to leaving the public beach.

Sec. 74-103. - Obstructions on the beach and beach access areas prohibited.

- (a) It shall be unlawful for any person to leave an item of personal property unattended on any portion of the public beach located in the City for any amount of time from 10:00 p.m. until 6:00 a.m. daily, except as otherwise permitted in this article.
- (b) It shall be unlawful for any person to leave an item of personal property unattended at any time within any public beach access area located in the City.
- (c) Any items of personal property that remain on the beach in violation of this article shall be deemed a nuisance and abandoned by the owner and shall be removed by a deputy of the Pinellas County Sheriff's Office, public service staff, code enforcement officer, or other authorized designee of the City Manager. Any personal property so removed shall be stored in an area designated by the City. After 90 days of impoundment, as required by F.S. § 705.103, the City may dispose of any item(s) removed pursuant to this section. The City may, by resolution, enact an impoundment fee to be collected at the time any item(s) are retrieved from impoundment by the party claiming the item(s).
- (d) The dry sand area of the beach is defined as the zone of unconsolidated material that extends landward from the mean high-water line to the place where there is marked change in material or physiographic form, or to the line permanent vegetation, usually the effective limit of storm waves, whichever is more seaward. Items of personal property shall not be left on the dry sand.

- (e) Unattended items of personal property in violation of this article shall be removed from the public beach by any deputy of the Pinellas County Sheriff's Office, code enforcement officer, or City public service staff.
- (f) Unattended or abandoned items of personal property, and unattended, unfilled holes on the beach, are in violation of this article and are a public nuisance.
- (g) This section shall not affect or in any way restrict the riparian rights of property owners.

Sec. 74-104. - Exceptions.

The prohibitions contained herein do not apply to:

- (a) Trash containers;
- (b) Signs placed by the City or a governmental agency;
- (c) Items placed by persons acting under authority of city manager or other governmental agency;
- (d) Structures, including without limitation boardwalks, decks, and dune walkovers constructed and permitted by the City, county or the State;
- (e) Items placed on the beach by persons who have authorization or a permit to engage in marine turtle nesting research issued by the United States Fish and Wildlife Service or the State.

Sec. 74-105. - Permits.

- (a) Permits may be issued by the city manager, or his or her authorized designee for activities otherwise prohibited by this article for such periods of time and under such conditions as the city manager deems reasonably appropriate under the circumstances that are found to be necessary for:
 - (1) Reasonable accommodation of persons with disabilities;
 - (2) Adjunct to a lawfully existing activity;
 - (3) For the conduct of a governmental, civic or educational activity;
 - (4) For the conduct of scientific research; or
 - (5) For special events approved by the City Commission or City Manager, as otherwise required by the City's Code of Ordinances.
- (b) There shall be no fee for obtaining this permit. Such permit shall include the following:
 - (1) Name and contact information of the owner or person in possession and control of the item;
 - (2) Description of the item;

(3) Location of the item;

(4) Duration of time the item will remain in such location; and

(5) Acknowledgement that the owner or person in possession and control of the item will be liable for any impacts to federally protected species.

(c) This article is not intended to authorize any violation of F.S. § 379.2431, or any of the provisions of the Endangered Species Act. The City will not be liable for any impacts to federally protected species resulting from persons leaving items of personal property on the beach and such liability will rest with the owner of such item.

Sec. 74-106. - Fires prohibited.

It shall be unlawful to start, maintain, or otherwise ignite an open fire on the beach or sand within the City.

SECTION 2. Chapter 26 (Environment), Article V (Junked, Wrecked or Abandoned Property), Division 1 (Generally) Section 26-131 (Confiscation of abandoned property) of the City of Indian Rocks Beach Code of Ordinances is hereby amended and repealed as follows:

Sec. 26-131. -- Confiscation of abandoned property.

~~The designated law enforcement agency is hereby authorized and directed to confiscate any and all abandoned personal property within the city, subject to the following terms and conditions:~~

~~(1) Such abandoned personal property, unless perishable, shall remain in the possession and custody of the designated law enforcement agency for a period of two weeks before being thus confiscated, and during such period of time a representative of the designated law enforcement agency shall use reasonable diligence in an effort to locate the owner of the property. If the owner is located he shall be given five days' notice requesting that he pay all charges, fees, fines, damages and expenses due to the city, and stating that, upon his failure to pay such amounts, such personal property shall be forthwith confiscated.~~

~~(2) In the confiscation of any personal property a representative of the designated law enforcement agency is hereby authorized and directed to forthwith dispose of the property in accordance with directions of the city manager.~~

SECTION 3. Chapter 74 (Waterways), Article III (Beaches), Division 1 (Generally) Section 74-65 (Tents, canopies, and volleyball nets) of the City of Indian Rocks Beach Code of Ordinances is hereby amended and repealed as follows:

~~Sec. 74-65. -- Tents, canopies, and volleyball nets.~~

~~*Intent.* It is the intent of the city commission to preserve and protect the beauty of the city's beaches, parks, and other public property for use by residents and tourists. In furtherance of such purpose, the city commission makes the following findings of fact:~~

~~(1) The city has a significant tourist and county resident day use visitor population that utilizes its beaches, parks, and other public property.~~

~~(2) Being a largely recreational and tourist community, the city's beaches, parks, and other public property are a very valuable asset.~~

~~(3) The city has a significant occurrence of structures left on the beaches, parks, and other public property and the city has incurred significant cost in removing the structures.~~

~~(4) Permitting the structures to remain on the beaches, parks and other public property overnight has a negative effect on the appearance of the beach areas and upon the city's tourism industry.~~

~~(5) Leaving unattended tents, canopies, or volleyball nets on the beach, exposes a risk of harm to others and the natural beauty of the beach.~~

~~(6) Prohibiting tents, canopies, or volleyball nets to remain on the beaches, parks, and other public property overnight will promote the public health, safety, and welfare.~~

~~a. *Prohibition.* It shall be unlawful for any person to place upon the public beach any tent, canopy, or volleyball net between the seawall and the west edge of the dune area, and west of the dune area between 10:00 p.m. and 6:00 a.m.~~

~~b. It shall be unlawful for any person placing or causing to be placed any tent, canopy, or volleyball net or equipment upon the public beach to allow such to remain upon such public beaches, parks, and other public property between 10:00 p.m. and 6:00 a.m.~~

~~c. *Penalty.* Any tent, canopy, or volleyball net left on the beaches, parks, and other public property overnight will be considered abandoned property and will be subject the provisions under section 26-131.~~

~~d. This section shall not effect or in any way restrict the riparian rights of property owners.~~

SECTION 4. For purposes of codification of any existing section of the Indian Rocks Beach Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

SECTION 5. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the City Commission would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

SECTION 6. The Codifier shall codify the substantive amendments to the Indian Rocks Beach City Code contained in Sections 1 through 3 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

SECTION 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon its adoption.

ADOPTED ON FIRST READING on the 10th day of November 2020, by the City Commission of the City of Indian Rocks Beach, Florida.

PUBLISHED IN the Tampa Bay Times on the 25th day of November 2020.

ADOPTED ON SECOND AND FINAL READING on the 8th day of December, 2020, by the City Commission of the City of Indian Rocks Beach, Florida.

Joanne Moston Kennedy
Mayor-Commissioner

Approved as to form:

Attest:

Randy Mora, City Attorney

Deanne B. O'Reilly, MMC
City Clerk