

ORDINANCE NO.: 12-14

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BAY COUNTY, FLORIDA CREATING A NEW ARTICLE VI, OBSTRUCTIONS ON THE BEACH AND BEACH ACCESS AREAS PROHIBITED, IN CHAPTER 5, BOATS, BEACHES AND WATER SAFETY, OF THE BAY COUNTY CODE; PROVIDING FOR DEFINITIONS; PROHIBITING ITEMS OF PERSONAL PROPERTY ON THE BEACH OVERNIGHT AND ANYTIME IN BEACH ACCESS AREAS; PROVIDING FOR THE REMOVAL OF SUCH PROPERTY; PROVIDING FOR EXCEPTIONS; PROVIDING FOR PERMITS; PROVIDING FOR NOTICE; PROVIDING FOR PENALTIES; PROVIDING FOR EDUCATION; PROVIDING FOR SEVERABILITY, REPEAL, INCLUSION IN CODE, AND AN EFFECTIVE DATE.

WHEREAS, there are approximately 25 miles of beach within unincorporated Bay County, of this 9 miles are located on the mainland, 14 miles are on Shell Island and there are 2 miles within St. Andrews State Park; and

WHEREAS, the beach is used and enjoyed by residents and tourists: and

WHEREAS, residents and tourists have traditionally traversed the beach for access, ingress, egress, and regress; and

WHEREAS, there are various recorded beach restoration easements that acknowledge that upon placement of sand on the beach for beach renourishment pursuant to Section 161.141 Florida Statutes the renourished property is subject to a public easement for traditional uses of the sandy beach; and

WHEREAS, the County restores, renourishes, and maintains the beach (outside of state parks and federal lands), and regularly patrols, cleans, and removes debris and trash from the beach; and

WHEREAS, sea turtles use the beach to lay eggs and to hatch, and Bay County desires to protect these endangered species; and

WHEREAS, items of personal property left on the beach overnight are obstacles for maintenance crews, security, and beach patrols, interfere with the public's access, use and enjoyment of the beach, pose safety hazards, adversely affect aesthetic beauty, tourism, economic interests, and can be an obstruction for sea turtles; and

WHEREAS, during the summer season especially, hundreds of beach tents, canopies, cabanas, shading devices, chairs, and other items of personal property have been left overnight on the beach; and

WHEREAS, personal property which is left on the beach overnight constitutes a nuisance which is contrary to the public health, safety and welfare; and

WHEREAS, in order to protect and maintain the use of the beach for residents, visitors, tourists, wildlife, sea turtles, maintenance crews, security, and beach patrols, the overnight placement of items of personal property on the beach must be prohibited; and

WHEREAS, the personal property left on the beach is neither “lost property” nor “abandoned property” as those terms are defined in Section 705.101, Florida Statutes, because such property has neither been mislaid nor disposed of on the beach in a wrecked or inoperative condition, and that the regulation of personal property left on the beach overnight is not preempted by Chapter 705, Florida Statutes; and

WHEREAS, leaving personal property in beach access points at any time blocks public access and creates a hazard and nuisance for other persons wishing to access the beach, including maintenance crews, security, and beach patrols; and

WHEREAS, allowing persons to relocate items of personal property overnight to a safe and appropriate, landward location reasonably balances the use and enjoyment of personal property with the need to protect public access, public safety, and wildlife; and

WHEREAS, the County Manager should be empowered to authorize persons to leave items of personal property on the beach in certain limited circumstances; and

WHEREAS, public trash containers, lifeguard stands and associated items, signs placed by a governmental agency on the beach and beach areas, and public items, should be allowed to remain on the beach in order to further other important public interests and benefits.

NOW THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Bay County, Florida as follows:

SECTION 1. The following Article VI, Obstructions on the Beach and Beach Access Areas Prohibited, in Chapter 5, Boats, Beaches and Water Safety, of the Bay County Code, is adopted.

Article VI. Obstructions on the Beach and Beach Access Areas Prohibited.

Section 5-120. Purpose. The purpose of this article is to ensure the beach and beach access areas are free from any obstruction by any item of personal property in order to protect public ingress, egress, and regress to the beach, promote public safety, and to protect endangered sea turtles.

Section 5-121. Definitions. As used in this Article:

Beach means that area of unconsolidated material that extends landward from the mean low-water line of the Gulf of Mexico, to the frontal dune, or to where there is no frontal dune, to the line of permanent vegetation or construction, whichever is more seaward.

Beach access areas means those public beach access points identified by the Bay County Parks and Recreation Department, including associated boardwalks, walkways, and dedicated parking areas, and the area on the 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 upland 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.

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.

Toe of the dune means that area just seaward and off the dune where there is no vegetation.

Section 5-122. Obstructions on the Beach and Beach Access Areas Prohibited.

(1) It shall be unlawful for any person to leave an item of personal property on any portion of the beach located in the unincorporated area of Bay County from 9:00 P.M. until 5:00 A.M. daily, except as otherwise permitted in this article.

(2) It shall be unlawful for any person to leave an item of personal property at anytime within any public beach access area located in the unincorporated area of Bay County.

(3) Any item of personal property left on the beach in violation of this article shall be deemed abandoned and shall become the property of Bay County, which may dispose of the item.

(4) From 9:00 P.M. until 5:00 A.M. daily, items of personal property that are relocated as close to but not on the toe of the dune native vegetation, or where there is no dunes or native vegetation are relocated as close as practicable to an existing permanent structure or the line of buildings, will not be considered abandoned or a violation of this article, provided:

- (a) such items shall not be placed on the dune or on native vegetation;
- (b) such items shall be stored in a neat and orderly manner;
- (c) such items shall not inhibit access to the beach from the nearest public access areas, nor obstruct access on the beach, nor impact native vegetation, nor significantly affect sea turtles.

(d) Private property owners may store items under or adjacent to their private dune walkovers or boardwalks.

(e) Items shall not be placed on any public beach access point or within 20 feet of any public trash receptacle.

(5) Abandoned items of personal property in violation of this article shall be removed from the beach by the Code Enforcement Officer, persons under contract with the Bay County Tourist Development Council, any law enforcement officer, licensed beach patrol, or lifeguard.

(6) Abandoned items of personal property in violation of this article are a public nuisance.

Section 5-123. - Exceptions. The prohibitions contained in Sec. 5-122 do not apply to:

(a) trash containers;

(b) lifeguard stands and lifeguard storage containers, and safety devices;

(c) signs placed by a governmental agency;

(d) items placed by persons acting under authority of the County Manager or other governmental agency;

(e) structures, including without limitation boardwalks, decks, and dune walkovers constructed and permitted by Bay County or the State of Florida; and

(f) 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.

Section 5-124. Permits

(1) Permits may be issued by the County Manager or their designee for activities otherwise prohibited by this article for such periods of time and under such conditions as the County Manager deems appropriate under the circumstances that are found to be necessary for:

(a) reasonable accommodation of persons with disabilities;

(b) adjunct to a lawfully existing activity;

(c) for the conduct of a governmental, civic or educational activity;

(d) for the conduct of scientific research;

(e) for special events, or

(f) for a beach amusement, beach business, or beach service governed by Article IV of this Chapter.

(2) There shall be no fee for obtaining this permit. Such permit shall include the following:

(a) name and contact information of the owner or person in possession and control of the item;

- (b) description of the item;
- (c) location of the item;
- (d) duration of time the item will remain in such location; and
- (e) acknowledgement that owner or person in possession and control of the item will be liable for any impacts to federally protected species.

(3) This article is not intended to authorize any violation of Section 379.2431 Florida Statutes or any of the provisions of the Endangered Species Act. Bay County 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.

Section 5-124. Notice. The County shall provide notice of this ordinance by posting a permanent sign located at the entry of every beach access point.

Section 5-125. Penalty. Violations of this article are punishable as provided in Section 1-6 of the Bay County Code of Ordinances.

SECTION 2. EDUCATION AND INFORMATION. Within the first year after adoption of this Ordinance, the Bay County Tourist Development Council may prepare and distribute brochures to beach vendors, resorts, condominiums, hotels, and other similar commercial operations and make presentations explaining this Ordinance.

SECTION 3. SEVERABILITY. It is hereby declared to be the intent of the Board of County Commissioners of Bay County, Florida that if any section, subsection, clause, phrase, or provision of this Ordinance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 4. REPEAL. All ordinances or parts of ordinances in conflict with this Ordinance are to the extent of such conflict hereby repealed.


SECTION 5. INCLUSION IN CODE. It is the intention of the Board of County Commissioners of Bay County, Florida, and it is hereby provided that the provisions of this Ordinance shall become and be made a part of the Code of Bay County, Florida: that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention: and that the word "ordinance" may be changed to "section", "article" or other appropriate designation.

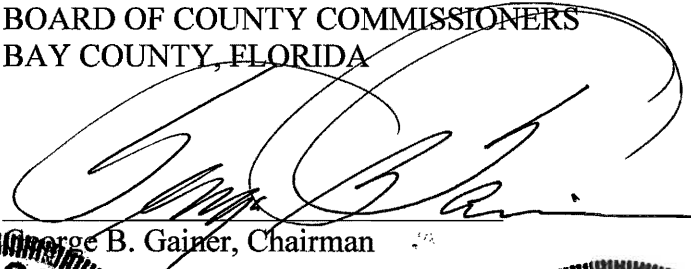
SECTION 6. EFFECTIVE DATE. A certified copy of this Ordinance as enacted shall be filed by the Clerk of the Board with the office of the Secretary of State of the State of Florida within ten (10) days after enactment, and this Ordinance shall take effect immediately in accordance with Section 125.66 (2), Florida Statutes.

DULY ADOPTED in regular session this 5th day of June, 2012.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
BAY COUNTY, FLORIDA


Bill Kinsaul, Clerk


George B. Gainer, Chairman

Approved as to form:


Office of County Attorney

