

ORDINANCE NO: 2017-10

AN ORDINANCE OF WALTON COUNTY, FLORIDA, PROTECTING THE PUBLIC'S LONG-STANDING CUSTOMARY USE OF THE DRY SAND AREAS OF THE BEACHES, CLARIFYING WHICH USES ARE PERMITTED AND PROHIBITED FOR MEMBERS OF THE PUBLIC ON THE DRY SAND AREAS OF THE BEACH THAT ARE OWNED BY PRIVATE ENTITIES; PROVIDING FOR A BUFFER AREA AROUND PRIVATE PERMANENT STRUCTURES; PROVIDING FOR PENALTIES FOR VIOLATION OF THIS ORDINANCE; PROVIDING AUTHORITY, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the recreational use of the dry sand areas of all of the beaches in the County is a treasured asset of the County which is utilized by the public at large, including residents and visitors to the County; and

WHEREAS, the use of the dry sand areas of all of the beaches in the County are a vital economic asset to the County and the State of Florida; and

WHEREAS, the public at large, including residents and visitors to the County, have utilized the dry sand areas of all of the beaches in the County for recreational purposes since time immemorial; and

WHEREAS, the Florida Supreme Court in *City of Daytona Beach v. Tona-Rama, Inc.*, 294 So. 2d 73, 75 (Fla. 1974), expressly recognized the doctrine of customary use in the state of Florida; and

WHEREAS, the research and analysis of Dr. James Miller, as well as the testimony of citizens of the County, confirm that the doctrine of customary use has applied to all of the beaches in Walton County since before 1970; and

WHEREAS, the County desires to ensure that the public's long-standing customary use of the dry sand areas of all of the beaches in Walton County for recreational purposes is protected; and

WHEREAS, the County recognizes, acknowledges, and protects the rights of private property owners to enjoy and utilize their property; and

WHEREAS, the County desires to establish a fifteen (15) foot buffer zone located seaward from the toe of the dune or from any permanent habitable structure owned by a private

entity that is located on, or adjacent to, the dry sand areas of the beach, whichever is more seaward; and

WHEREAS, the public at large, including the residents and visitors to the County, shall not utilize such fifteen (15) foot buffer zone, except to utilize an existing or future public beach access point for ingress and egress to the beach; and

WHEREAS, such fifteen (15) foot buffer zone is not intended to constitute an abandonment of the public's right, based upon its long-standing customary use, to utilize the dry sand areas for recreational purposes in such buffer zone, but rather is provided voluntarily and solely as an accommodation to the private property rights of those individuals who own property on which a portion of the dry sand areas of the beach is located; and

WHEREAS, no individual, group, or entity shall interfere with the public's ability to continue its long-standing customary use of the dry sand areas located outside of the fifteen (15) foot buffer zone; and

WHEREAS, the owners of property that contains a portion of the dry sand areas of the beach may make any use of their property which is consistent with such public use and not calculated to interfere with the exercise of the right of the public to enjoy the dry sand area as a recreational adjunct of the wet sand or foreshore area.

NOW, THEREFORE, BE IT ORDAINED BY THE WALTON COUNTY BOARD OF COUNTY COMMISSIONERS THAT CHAPTER 23 OF THE WALTON COUNTY CODE OF ORDINANCES IS HEREBY CREATED TO READ AS FOLLOWS:

SECTION 1: AUTHORITY.

The authority for the enactment of this Ordinance is Chapter 125, *Florida Statutes*.

SECTION 2: REGULATION OF DRY SAND AREAS.

1. The public's long-standing customary use of the dry sand areas of all of the beaches in the County for recreational purposes is hereby recognized and protected. Except as stated in Paragraph 3, no individual, group, or entity shall impede or interfere with the right of the public at large, including the residents and visitors of the County, to utilize the dry sand areas of the beach that are owned by private entities for the uses as described in Paragraph 4.

2. 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 of permanent vegetation, usually the effective limit of storm waves, whichever is more seaward.

3. The public at large, including the residents and visitors of the County, shall not utilize a fifteen (15) foot buffer zone located seaward from the toe of the dune or from any

permanent habitable structure owned by a private entity that is located on, or adjacent to, the dry sand areas of the beach, whichever is more seaward, except as is necessary to utilize an existing or future public beach access point for ingress and egress to the beach. The foregoing buffer zone requirement shall not apply to the Walton County Sheriff's Office, the Walton County Tourist Development Council, the South Walton Fire District, and other emergency service providers.

4. The following are the sole uses permitted for members of the public on the dry sand areas of the beach that are owned by private entities: traversing the beach; sitting on the sand, in a beach chair, or on a beach towel or blanket; using a beach umbrella that is seven (7) feet or less in diameter; sunbathing; picnicking; fishing; swimming or surfing off the beach; placement of surfing or fishing equipment; and building sand creations.

5. The following are specifically prohibited for members of the public on the dry sand areas of the beach that are owned by private entities: use of tobacco; possession of animals; erection or use of tents.

7. Activities on the beach are governed by the Beach Activities Ordinance.

SECTION 3: PENALTY PROVISION.

A violation of this Chapter shall constitute a civil infraction punishable by a fine not to exceed \$500.00. Each occurrence of a violation, or, in the case of continuing violations, each day a violation occurs or continues, constitutes a separate offense. In addition to issuance of fines, the County shall have the power to sue for relief in civil court to enforce the provisions of this Ordinance.

SECTION 4: SEVERABILITY.

If any portion of this Ordinance is determined by any Court to be invalid, the invalid portion shall be stricken, and such striking shall not affect the validity of the remainder of this Ordinance. If any Court determines that this Ordinance, or any portion hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies), or circumstance(s), such determination shall not affect the applicability hereof to any other individual, group, entity, property, or circumstance.

SECTION 5: EFFECTIVE DATE.

This Ordinance shall become effective on April 1, 2017.

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PASSED AND DULY ADOPTED in regular session, by the Board of County Commissioners of Walton County, Florida, this 28th day of March 2017.

BOARD OF COUNTY COMMISSIONERS OF WALTON COUNTY, FLORIDA

Attest:

Kim Willett
for Alex Alford, Clerk of Circuit Court
and County Comptroller



Cecilia Jones
Cecilia Jones, Chair

CERTIFIED A TRUE COPY
March 29, 2017
ALEX ALFORD
CLERK OF COURTS &
COUNTY COMPTROLLER
WALTON COUNTY, FLORIDA
BY: Kim Willett
DEPUTY CLERK