

ORDINANCE NO. 687

AN ORDINANCE OF THE CITY OF MEXICO BEACH, FLORIDA AMENDING THE CITY'S LEAVE NO TRACE ORDINANCE; PROVIDING DEFINITIONS; MODIFYING THE SCOPE OF THE ORDINANCE TO COVER ALL PERSONAL PROPERTY EXCEPT LISTED EXCEPTIONS; PROVIDING MORE DETAILED PROCEDURES FOR PICKING UP DISCARDED ITEMS AND PROCEDURES TO RETRIEVE DISCARDED ITEMS IN SOME CASES; PROVIDING PROCEDURES TO ESTABLISH A VIOLATION OCCURRED THE PRIOR NIGHT; REPEALING ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

WHEREAS, City of Mexico Beach (the "City") Ordinance 664, hereafter referred to as "the Leave No Trace Ordinance," was prepared by a Petitioner's Committee made up of citizens of the City and thereafter was approved by a vote of the citizens of the City on February 21, 2017 pursuant to the initiative procedure set forth by the Charter of the City of Mexico Beach; and

WHEREAS, the Leave No Trace Ordinance applies to certain types of items and does not provide exceptions as to those items; and

WHEREAS, due to the lack of exceptions, the City has applied the Leave No Trace Ordinance to all persons and businesses;

WHEREAS, a beach vendor filed a lawsuit against the City after the City required the beach vendor to follow the Leave No Trace Ordinance regarding heavy chairs and other items; and

WHEREAS, the court conducted a hearing on two days' notice to consider a request for a temporary injunction against enforcing the Leave No Trace Ordinance as to that beach vendor; and

WHEREAS, the court ruled in favor of the beach vendor, finding that the beach vendor was likely to succeed later at a final hearing largely because the court considered the terms "beach," "public beach," and "unattended" in the Leave No Trace ordinance to be vague or ambiguous; and

WHEREAS, amending the ordinance is more cost effective than pursuing a judicial appeal of the temporary injunction and would be beneficial to the City as the current litigation proceeds and in the event that any new disagreements arise regarding the Leave No Trace Ordinance; and

WHEREAS, amending the Leave No Trace Ordinance to eliminate ambiguity not only is allowed during litigation, it is the best approach for the City and its citizens to ensure that

enforcement of the ordinance is reliable and so that citizens, businesses, and visitors may more clearly understand their rights; and

WHEREAS, even after eliminating the ambiguities that were the focus of the court, the Leave No Trace Ordinance or its application to certain situations could be challenged based on other theories; and

WHEREAS, the City may minimize the risks involved with further challenges to the Leave No Trace Ordinance and may simplify enforcement for City employees by amending the Leave No Trace Ordinance and formalizing enforcement practices that that have proved effective to the City;

WHEREAS, the City Council has been reluctant to revise any language since it was voted on favorably by the citizens earlier this year, but now finds that it would be beneficial to the City to amend each aspect of the Leave No Trace Ordinance that is likely to be challenged;

WHEREAS, the Leave No Trace Ordinance used the term “public beach” once in its title and twice in its “Whereas” clauses, but used the term “beach” throughout the body of the ordinance; and

WHEREAS, the Order Granting Temporary injunction describes these terms as conflicting, created doubt as to which areas are covered by the Leave No Trace Ordinance, and relied on this issue in finding that a substantial likelihood of success on the merits exists; and

WHEREAS, therefore it would be prudent for the City to amend this beach terminology and clarify the intent of the ordinance; and

WHEREAS, all beaches within the City of Mexico Beach are open to the public and the City is unaware of any efforts by land owners or tenants to exclude the general public from any beach within the City; and

WHEREAS, the vast majority of beaches within the City are either deeded to the City or another public agency or, in the case of the plats for Mexico Beach Units 1, 3, and 4, are reserved or dedicated to the public; and

WHEREAS, the plats for Mexico Beach Unit 5, 7, 9 reserve the beach for swimming and bathing purposes to the property owners within that Unit, indicating that these limited rights are common to a large number of owners; and

WHEREAS, Mexico Beach Unit 2 is the only other plat that includes beach front property and it is silent regarding ownership or use of the beach;

WHEREAS, six years after the plat for Mexico Beach Unit 2 was recorded, the Unit 2 developer recorded Warranty Deed for a “DEED OF DEDICATION” “to dedicate to the PROPERTY OWNERS of Unit #2 of Mexico Beach and the owners of the RAINBOW MOTEL property, Mexico Beach the following described land in Bay County, Florida, to-wit; For the

Express Purpose of Swimming and Bathing purposes only: That parcel of land that lies on the Gulf side of the Rainbow Motel lots and Blocks E, F, I, J, M, N, Q, R & U, of Unit #2 of Mexico Beach and extends from the Southwest boundary of the above described property to the Gulf of Mexico” [Book 3, Page 599, Official Records of Bay County, FL]; and

WHEREAS, it is uncertain whether this deed granted an easement to use property for swimming and bathing or granted ownership to property with a restriction on the use of the property;

WHEREAS, regardless of the answer to that question, this deed appears to provide rights in common to this beach to numerous owners rather than special rights to each waterfront owner to the beach behind their property and, as a result, it is doubtful that any one party has exclusive ownership of any portion of the beach covered by the deed; and

WHEREAS, consequently there are very few parcels in the City that might include sole ownership to a portion of the beach; and

WHEREAS, this finding is consistent with the Bay County Property Appraiser map, which shows only four privately owned parcels as including the beach, one of which based on the Deed of Dedication discussed above; and

WHEREAS, Florida follows the concept of customary rights of usage to establish public rights to beaches even when beaches are privately owned; and

WHEREAS, the public likely has acquired customary rights of usage over all beaches located in the City regardless of ownership considerations, and

WHEREAS, even in the absence of ownership or customary use, the City still has police power regulatory authority similar to the authority it uses to regulate other privately owned land in the City;

WHEREAS, based on the foregoing, the City finds it appropriate to include all beaches within the scope of Leave No Trace and eliminate from the ordinance the suggestion that there may be a special class of “private beaches” within the City for regulatory purposes; and

WHEREAS, the City wishes to clarify the term “unattended” due to the Order Granting Temporary Injunction in the present litigation; and

WHEREAS, in *Catron v. City of St. Petersburg*, a case about preventing storage of personal property on public land, the 11th Circuit Court of Appeals held that the term “unattended” was not facially void for vagueness [658 F.3d 1260, 1272–73 (11th Cir. 2011)]; and

WHEREAS, the 11th Circuit equated unattended with, “not closely and plainly accompanied by someone associated with the owner” and added that “[t]he common and ordinary meaning of “unattended” indicates that an item is not “unattended” if some person — the owner or his proxy — is present with the item and looking after it;” and

WHEREAS, this precedent should prevent “unattended” from being held facially void for vagueness, but the possibility of as applied challenges remains (challenges against the application of the ordinance to a particular set of facts or person); and

WHEREAS, due to this risk and to simplify enforcement for City employees and provide greater notice to the public of what is prohibited, the City wishes to provide additional details regarding what it is and is not considered unattended; and

WHEREAS, the City will now include a definition for “unattended” based in part on the 11th Circuit’s comments regarding unattended and that provides additional details that are useful to the beach context in order to provide clearer notice of what is prohibited; and

WHEREAS, in some instances City will not attempt to remove items left in violation of this ordinance until morning; and

WHEREAS, this practice is beneficial during turtle season because it reduces vehicular traffic and lights on the beach at night and lowers the City’s costs and more convenient throughout the year; and

WHEREAS, the City wishes to specify how to establish that a violation occurred overnight in instances when an owner is attending property the following morning after a violation occurred the prior night; and

WHEREAS, the Leave No Trace Ordinance stated the following purposes and reasoning:

WHEREAS, the City Council finds that the health, safety, and welfare of the citizens of, and visitors to, the City of Mexico Beach would be best protected by the regulation of recreational beach activities in the City; and

WHEREAS, the City Council finds that it is in the public's best interest to regulate beach related activities; and

WHEREAS the City Council finds that it is in the best interest of the public to prohibit items that interfere with beach maintenance, nesting sea turtles, nesting shore birds, or emergency vehicles, from remaining on the beach overnight.

WHEREAS, items of personal property left on the public beach unattended or overnight are obstacles for maintenance crew, interfere with the public's access, and enjoyment of the public beaches of the City of Mexico Beach and pose safety hazards, adversely affect the beauty of the beach, affect tourism, adversely affects economic interests, and can be an obstruction for sea turtles and other protected species; and

WHEREAS, these are valid municipal purposes and are particularly important to Mexico Beach considering the narrow width of the beach in Mexico Beach relative to surrounding communities; and

WHEREAS, despite this, other types of personal property could similarly interfere with the interests described by the Leave No Trace Ordinance; and

WHEREAS, the City does not wish to prohibit some items of personal property while inadvertently allowing other items of personal property that are equally or even more problematic to the interests described above; and

WHEREAS, to more effectively advance the purposes of the Leave No Trace Ordinance and to minimize the likelihood of an under-inclusiveness claim, the City has chosen to broaden the scope of the type of personal property covered by the Ordinances but provide specific exemptions; and

WHEREAS, these exempted items each provide public health, safety, or welfare benefits that provide a basis for treating them differently than other personal property and each generally provides the same benefit at night as during the day; and

WHEREAS, the Leave No Trace Ordinance and similar ordinances of nearby communities state that personal property left overnight on the beach is neither "lost property" nor "abandoned property" as those terms are used in Section 705.101, Florida Statutes, because such property has neither been mislaid nor disposed of on the public beach in a wrecked or inoperative condition, and that the regulation of personal property left on the public beach overnight is not preempted by Chapter 705, Florida Statutes; and,

WHEREAS, Mexico Beach has fewer exceptions to the nighttime prohibition on unattended personal property than neighboring communities and this could result in more difficult or more frequent disagreements about ownership; and

WHEREAS, in staff's experience, it is preferable to allow persons to have property back if the City still possesses it and this also reduces the City's costs, and

WHEREAS, the City has decided that it is good policy and reduces legal risks to establish a process for owners to retrieve personal property from the City after it has been removed from the beach by the City if the City still possess it; and

WHEREAS, the City wishes to provide for immediate disposal of litter.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MEXICO BEACH, FLORIDA:

SECTION 1. From and after the effective date of this ordinance, any reference by the Leave No Trace Ordinance to “public beach” or “public beaches,” including within its title and whereas clauses is deleted and replaced with the term “beach.”

SECTION 2. From and after the effective date of this ordinance, Section 1 of The Leave No Trace Ordinance regarding Definitions is created as follows

SECTION 1 DEFINITIONS

Beach: "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 where there is no frontal dune, to the line of permanent vegetation or construction, whichever is more seaward.

Unattended: "unattended" means not closely and plainly accompanied by its owner or by someone acting as the owner's proxy who is present on the beach with the item and looking after it.

SECTION 3. From and after the effective date of this ordinance, Section 1 of The Leave No Trace Ordinance regarding Regulation of Use and Conduct on the Beach and Water Bodies is amended to read as follows

SECTION 2 REGULATION OF USE AND CONDUCT ON THE BEACH AND WATER BODIES.

A. Obstructions on the beach.

1. It shall be unlawful for any person or business to leave an item of personal property unattended on the beach between 7pm and 7am, except as otherwise permitted by ordinance.
2. Exceptions. This prohibition does not apply to:
 - i. Items placed by the City or another governmental agency in furtherance of health, safety, and welfare purposes;
 - ii. Trash containers;
 - iii. Lifeguard stands and lifeguard storage containers and safety devices;
 - iv. Signs placed by the City or another governmental entity;

- v. Items placed by persons acting under authority of the City Administrator or other governmental agency on behalf of the City or the governmental agency;
- vi. Structures, including without limitation boardwalks, decks, and dune walkovers constructed and permitted by the City, Bay County or the State of Florida;
- vii. 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 of State of Florida; and
- viii. Items expressly exempted by City ordinance from the Leave No Trace requirement, either in all cases or pursuant to a specific permit or approval.

3. State of Emergency: All items, whether permitted or not, shall be removed from the beach within 24 hours following a declaration of a state of emergency for Bay County or the City of Mexico Beach due to and in advance of a hurricane or other severe weather systems.

4. Discarded Items: Any item of personal property left on the beach unattended in violation of this ordinance shall be deemed discarded by its owner and shall become the property of the City of Mexico Beach if removed by the City pursuant to this ordinance, which may dispose of the item in any manner it sees fit. Items meeting the definition of "litter" under any Florida civil or criminal statute will be disposed of immediately. All other items will be placed in a designated outdoor space on City property while they await disposal. Members of the public may contact City Hall or Public works and may retrieve items they left on the beach once they have provided an accurate description of the discarded items, if the items have not been disposed of yet. The City will not be responsible for damage to or loss of items that were collected due to a violation of this ordinance.

B. Digging Holes on Beach

It shall be required that all holes dug on the beach are to be attended at all times and shall be completely filled and restored to their original level condition prior to leaving the beach the same day it is created unless part of a construction project permitted under the Florida Building Code or similar law.

SECTION 4. From and after the effective date of this ordinance, Section 2 of The Leave No Trace Ordinance regarding Enforcement is amended to read as follows

SECTION 23 ENFORCEMENT

It shall be the duty and responsibility of the City of Mexico Beach to enforce all provisions of this ordinance. City employees or contractors will not remove personal property from the beach if it is being attended, but a City employee may issue a warning or citation if a City employee observed a violation during a prior night.

SECTION 5. From and after the effective date of this ordinance, Section 3 of The Leave No Trace Ordinance regarding Penalties is amended to read as follows

SECTION 3 PENALTIES

Any person who shall violate any of the provisions of this Ordinance or amendments thereto; who shall fail, neglect or refuse to comply with order or notice or in pursuance and by authority of this Ordinance shall be subject to the loss of their property and has committed a civil infraction punishable as provided by the Mexico Beach City Code

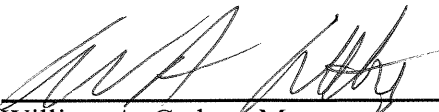
SECTION 6. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 7. The appropriate officers and agents of the City are authorized and directed to codify, include and publish in electronic format the provisions of this Ordinance within the City of Mexico Beach Code of Ordinances or Land Development Regulations. Section numbers may be assigned and changed whenever necessary or convenient.


SECTION 8. This Ordinance shall take effect immediately upon passage.

PASSED, APPROVED AND ADOPTED at the regular meeting of the City Council of the City of Mexico Beach, Florida, this 14th day of November, 2017.

CITY COUNCIL
CITY OF MEXICO BEACH, FLORIDA



William A. Cathey, Mayor

ATTEST:


Adrian Welle, City Clerk