

## ORDINANCE NO. 667

AN ORDINANCE OF THE CITY OF MEXICO BEACH, FLORIDA; ESTABLISHING A TEMPORARY MORATORIUM ON NEW BEACH VENDING BUSINESSES; ESTABLISHING A TEMPORARY MORATORIUM ON NEW OR EXPANDED LOCATIONS FOR PREVIOUSLY APPROVED BEACH VENDING BUSINESSES; PROVIDING EXCEPTIONS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Mexico Beach includes significant beach front property on the Gulf of Mexico; and

WHEREAS, most of the Sandy Beach area in the City is either deeded to the City or another public agency or is reserved or dedicated by plat; and

WHEREAS, the Recreation and Open Space Element of the City's Comprehensive Plan includes goals and objectives that relate to preserving public access to beaches and other open space; and

WHEREAS, historically there have been few businesses that operate on the Sandy Beach in the City to provide services or goods to the public; and

WHEREAS, the City has reviewed requests for such operations on a case by case basis, with the City Council making a determination for new businesses or locations pursuant to the approval processes described in the City's occupational license (local business tax) ordinance or peddlers ordinance; and

WHEREAS, those ordinances provide for a discretionary review of applications by the City Council; and

WHEREAS, the existence of those review processes, the City's past actions, and the City's Comprehensive Plan show that the City has consistently intended to allow only limited business activity on the Sandy Beach; and

WHEREAS, despite this, neither ordinance describes standards or factors for the City or the City Council to apply when making these determinations; and

WHEREAS, establishing clear rules for who may operate a business on the sandy beach, which activities are permissible, and where they may be conducted is in the best interest of applicants and the citizens so that each may plan for where these types of businesses are likely to be located and what activities are likely to occur, and so that each have a predictable, fair permitting process on which to rely; and

WHEREAS, the City is concerned that decisions under the current processes will be (1) susceptible to legal challenge due to limited rules and wide discretion of the Council, and (2) often could be found invalid for similar reasons; and

WHEREAS, City staff and legal counsel have begun developing more reliable processes and standards, but consideration by the Council and formal adoption by ordinance will require multiple public meetings; and

WHEREAS, the rights of businesses operating on the Sandy Beach relative to the rights of the public have become contentious issues in nearby communities and, therefore, deserve careful attention by the Council; and

WHEREAS, based on Florida's pending ordinance doctrine, new applications need not be approved while this ordinance awaits two readings and, regardless, applications for new beach businesses or new locations historically have required consideration by the Council; and

WHEREAS, the purpose of this ordinance is to place a temporary moratorium on new businesses from operating on the sandy beach and on existing businesses from operating in new or expanded locations on the Sandy Beach, as defined herein, for a period of time reasonably necessary for the City to determine the best way to regulate this matter for the benefit of the public health, safety, and welfare and to promulgate reasonable regulations; and

WHEREAS, issues regarding title to portions of the Sandy Beach that could be relevant to policy decisions have not been fully analyzed, the public has likely acquired customary rights of usage over all sandy beaches located in the City, and even in the absence of ownership or customary use the City retains some regulatory authority; and

WHEREAS, despite these considerations and without waiving the ability to adopt contrary regulations in the future, the City wishes to exempt certain activities from the moratorium to avoid unnecessary interference with beach front owners' businesses while the City develops new policies and processes.

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

**Section 1. Findings of fact.**

The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this ordinance.

**Section 2. Definitions.**

Sandy Beach: Sandy Beach shall mean all beach areas, regardless of ownership, on the Gulf of Mexico south of the dune, primary vegetation line, or most waterward seawall or retaining wall in that area of the beach.

Beach Vending: Beach Vending shall mean providing goods or services on the Sandy Beach in such a way that involves the physical presence on the Sandy Beach of a person affiliated with the business, even on an occasional basis, such as to drop off or pick up items or to provide maintenance.

**Section 2. Temporary Moratorium.**

Beginning on the effective date of this ordinance and continuing for a period of 75 days, or less if provided by an ordinance by the City Council, a moratorium is hereby imposed on the commencement, relocation, or expansion of any Beach Vending and on the establishment of any new locations for Beach Vending by a previously approved Beach Vending business within Mexico Beach. Previously approved shall mean only a business that presently conducts Beach Vending in Mexico Beach and has been granted an unexpired occupational license or peddlers permit for that purpose or has been provideD express approval to conduct Beach Vending by a vote of the City Council for the 2017 season or calendar year.

**Section 3. Exempted Activities.** This moratorium does not apply to activities conducted by a business operating primarily from a permanent Florida Building Code compliant building located on a beach front parcel zoned General Commercial, Tourist Commercial, or Tourist Mixed Use when such activities are conducted personally by the employees of such business and in compliance with other local laws, including the City's Leave No Trace ordinance.

**Section 4. Penalties.**

Any person or entity who violates any provision of this ordinance, or who fails to comply therewith, shall be subject to the penalties as prescribed in the Mexico Beach Code and/or as provided by law.

**Section 5. Severability.**

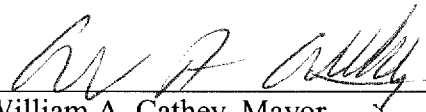
If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

**Section 6. Effective Date.**


This Ordinance shall become effective immediately upon its passage and adoption.

INTRODUCED at the Special Meeting of the City Council on the 23<sup>rd</sup> day of May, 2017. Adopted at the Regular Meeting of the City Council on the 13<sup>th</sup> day of June, 2017.

CITY OF MEXICO BEACH, FLORIDA

  
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William A. Cathey, Mayor

ATTEST:

  
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Adrian Welle, City Clerk