

ORDINANCE NO. 688

AN ORDINANCE OF THE CITY OF MEXICO BEACH, FLORIDA PROHIBITING BUSINESSES FROM OPERATING ON THE BEACH WITHOUT A BEACH VENDING PERMIT; PROVIDING AN EXCEPTION FOR BUSINESSES MEETING SPECIFIED CONDITIONS; PROVIDING DEFINITIONS; PROVIDING BEACH VENDING PERMIT APPROVAL PROCESS; PROVIDING PERMISSIBLE LOCATIONS FOR ACTIVITIES CONDUCTED UNDER A BEACH VENDING PERMIT; PROVIDING PERMISSIBLE ACTIVITIES UNDER A BEACH VENDING PERMIT; PROHIBITING HEAVY WOODEN LOUNGER STYLE CHAIRS ON THE BEACH AFTER SEPTEMBER 30, 2018; PROVIDING A LIMITED EXCEPTION TO LEAVE NO TRACE FOR HOLDERS OF BEACH VENDING PERMITS; REPEALING ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

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

WHEREAS, the rights of businesses operating on the Beach (as defined herein) relative to the rights of the public have become contentious issues in nearby communities and, therefore, deserve careful attention by the City Council; and

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

WHEREAS, much of the Beach in the City is relatively narrow, particularly compared to nearby communities, and obstructions on the Beach pose risks and complications for police, emergency rescue, and environmental monitoring vehicles during daytime and nighttime hours; 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, businesses operating on the Beach sometimes reduce the non-paying public's ability to use portions of the Beach; and

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

WHEREAS, those businesses have operated in only four locations, each associated with a gulf front hotel or restaurant; and

WHEREAS, the City Council believes that the types of locations where businesses have operated on the Beach and the types of activities that have been conducted are consistent with the character of the City and the preferences of its citizens and visitors; and

WHEREAS, a large increase in the number and intensity of businesses operating on the Beach would be detrimental to the character of the City and its long-term property values; and

WHEREAS, allowing businesses on areas of the Beach that have zoning and uses similar to the locations where businesses historically have been allowed on the Beach is in the best interest of the City and properly balances the interests of the public and gulf front property owners.

WHEREAS, in the past the City has reviewed requests to operate a business on the Beach 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 peddlers ordinance or occupational license (local business tax) ordinance; and

WHEREAS, the City has determined that establishing clear rules for who may operate a business on the Beach, which activities are permissible, and where they may be conducted is in the best interest of businesses and the citizens so that each may plan for where these activities are likely to be conducted,

WHEREAS, the City has determined that establishing a more defined and predictable permitting process would be beneficial; and

WHEREAS, providing an exemption from the Beach Vending Permit requirement for activities prearranged by a customer and not involving the use of a motor vehicle on the Beach will allow for low intensity activities such as family photos and small weddings to continue to occur on the Beach without a Beach Vending Permit.

WHEREAS, phasing out heavy, difficult-to-move wooden loungers will assist police, emergency, rescue, and environmental monitoring vehicles on the Beach; preserve and improve public access to the Beach; and improve compliance with the Leave No Trace Ordinance while minimizing impacts to the Beach and dunes from regularly moving heavy loungers.

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

Section 1. Definitions.

Beach: Beach shall mean 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.

Beach Vending Permit: an annual permit granted pursuant to this ordinance to allow business activities that are otherwise prohibited under Section 2.

Section 2. Soliciting, canvassing, selling and renting on Beach prohibited.

No person shall sell or rent, or solicit or canvass for the sale or rental of merchandise, services, goods or property of any kind or character in, upon or from the Beach without a Beach Vending Permit. This prohibition includes providing goods or services on the Beach in a way that involves even the occasional presence on the Beach of a person affiliated with the business, such as to drop off or pick up items or to provide maintenance.

This prohibition does not apply to and a Beach Vending Permit is not required for a transaction or service that occurs in part on the Beach if all of the following are true:

1. the transaction is initiated and prearranged by the customer from a business representative who is not located on the Beach, a public beach access, or public parking lot;
2. the transaction or service does not involve the use of a motor vehicle on the Beach, either as part of the activity or for delivery, retrieval, or maintenance related to the activity; and
3. the transaction or service does not involve placing a collection bin or any unattended item on the Beach.

Section 3. Beach Vending Permit approval process.

Applications for a Beach Vending Permit must be made in writing to the City Administrator and provide all information needed to determine if all requirements of this ordinance are met. Applicants are required to use the City application form, but may include additional information. Applications may include a request to operate one or more ATVs on the Beach in the area covered by the permit but only if vehicular access to the Beach exists within 100 feet from the permitted area. Such requests may be approved as part of the Beach Vending Permit if they are otherwise consistent with the City's ordinances governing driving on the beach. Beach Vending Permits expire at the end of the calendar year during which they are granted and only apply to the location and activities specified in the application. Additional locations require new applications for additional Beach Vending Permits. A \$50.00 application fee is required for each Beach Vending Permit. More than one Beach Vending Permit may apply to a single location if the all owners of the qualifying upland parcel provide written consent. The City may suspend or revoke a Beach Vending Permit due to violations of the Beach Vending Permit or applicable laws, including City ordinances.

Decisions regarding applications are made by the City Administrator or his designee. An applicant may appeal any denial to the City Council, which may approve the application upon determining that the application meets the requirements of this ordinance.

Section 4. Vehicles on the Beach.

The only types of vehicles allowed on the beach pursuant to a Beach Vending Permit are ATVs, as defined by Florida Statute 317.003 as, “any motorized off-highway or all-terrain vehicle 50 inches or less in width, having a dry weight of 1,200 pounds or less, designed to travel on three or more nonhighway tires, and manufactured for recreational use by one or more persons. ATVs must be operated consistent with Florida law. ATVs may only be operated within the permitted area and directly to and from the beach access approved in the permit holder’s application. ATVs shall only be allowed within the permitted area before 7:00 am and after 7:00 pm. Should an emergency necessitate the use of any vehicle outside the above hours on the beach, permission must be obtained from the City Administrator or his or her designee. Any violation of Florida law related to the use of the ATV in conjunction with activities under the Beach Vending Permit or any violation of the requirements of this paragraph shall be grounds for revoking a Beach Vending Permit.

Section 5. Permissible Locations.

Beach Vending Permits may only be granted for Beach locations that are part of or immediately behind (*e.g.* not across the street) a parcel of property that meets all of the following conditions:

1. the parcel is zoned General Commercial or Tourist Commercial,
2. the parcel is the location of a hotel, motel, restaurant, tavern, or bar that currently operates validly under City and State law; if such use discontinues for more than seven consecutive days (such as for going out of business or seasonal closure), the Beach Vending Permit is automatically suspended and will go back into effect when the hotel, motel, restaurant, tavern, or bar reopens for continuous long-term operations, and
3. the location is not on Beach deeded to the City or another public agency.

The goods permitted by this ordinance to be placed upon the Beach for rental or sale shall be displayed, or stored or placed so as to avoid being an obstacle to emergency and other permitted vehicles.

Section 6. Permissible Operators.

The following parties may be granted a Beach Vending Permit or conduct activities pursuant to a Beach Vending Permit:

1. the owner of the qualifying upland parcel
2. the lessee operator of the hotel, motel, restaurant, tavern, or bar located on the qualifying upland parcel
3. a third party who has written permission from either of the two above parties to conduct business on the Beach that is on or behind the qualifying parcel.

Section 7. Permissible Activities.

The holder of a Beach Vending Permit may solicit, sell, or rent the following goods or services at the location covered by a Beach Vending Permit:

1. Umbrellas;
2. Hobie Cats, Sunfish, Prindles and similar sailboats;
3. Jet skis and other motor driven floating devices;
4. Cabanas;
5. Aqua cycles (same as water cycles);
6. Floats and surfboards;
7. Chairs;
8. Parasail rides, kite rides, and watersled rides;
9. Sailboards (but not kite boards);
10. Kayaks, canoes and similar hand paddled boats;
11. Beach photography, including photographs subsequently purchased and delivered off the Beach.

The purpose of allowing these activities pursuant to a Beach Vending Permit is to reasonably permit the solicitation and immediate sale or rental of certain goods and services which serve a public need to certain commercially oriented locations of the Beach and that are not themselves a nuisance or detriment, without unreasonably interfering with the flow, recreation, enjoyment and privacy of persons otherwise upon the Beach.

Heavy, difficult-to-move wooden lounge style chairs may not be placed on the Beach or rented under a Beach Vending Permit after September 30, 2018.

Section 8. Insurance Requirements

All holders of Beach Vending Permits must maintain general commercial liability insurance, naming the City of Mexico Beach as an additional insured, in the minimum amount of \$100,000 per occurrence and \$300,000 in the aggregate. Each motor driven floating device and each combination tow boat and parasail, kite, watersled ride, and each shuttle craft, hydro-flyer and its shuttle craft of the like pulled by a tow boat, rented, leased or hired within the City shall be insured against bodily injury and property damage in an amount not less than \$250,000.00 per occurrence with \$1,000,000.00 aggregate, or such insurance as is required by the State of Florida, whichever provides the greater limits and protection of the public. Additionally, if the Beach Vending Permit provides for the public to rent, ride, or participate in any of the foregoing activities, the general commercial liability insurance requirement is increased to \$250,000.00 per occurrence and \$1,000,000.00 in the aggregate, or such insurance as is required by the State of Florida, whichever provides the greater limits and protection of the public. The City shall not issue a Beach Vending Permit until the applicant has provided certificates of insurance to the City showing compliance with these requirements and naming the City as an additional insured. In the event that any required insurance is canceled, the Beach Vending Permit shall automatically be suspended.

Section 9. Limited Exemption from Leave No Trace.

Booths and storage boxes used by a holder of a Beach Vending Permit to conduct business or store items are exempt from the City's Leave No Trace requirements if they are located immediately next to a seawall or the toe of the sand dune or, if neither exists, then immediately next to a paved surface adjoining the Beach. Heavy wooden loungers may be left unattended on the Beach overnight within the area covered by the Beach Vending Permit until and including September 30, 2018 if they are located immediately next to a seawall or the toe of the sand dune, or, if neither exists, then immediately next to a paved surface adjoining the Beach. In addition, it is not a violation of the Leave No Trace ordinance for a holder of a Beach Vending Permit to leave other items and equipment unattended on the Beach overnight within the area covered by the Beach Vending permit if (1) they are typical for the type of business activities approved under the Beach Vending Permit and (2) they are moved landward to the seawall or the toe of the sand dune or, if neither exists, then immediately next to a paved surface adjoining the Beach.

Section 10. Repealer.

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

Section 11. Codification.


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. Section numbers may be assigned and changed whenever necessary or convenient.

Section 12. Effective Date.

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 1st day of April, 2018.

CITY COUNCIL
CITY OF MEXICO BEACH, FLORIDA



William A. Cathey, Mayor

ATTEST:



Adrian Welle, City Clerk