

Town of Redington Beach

ORDINANCE NO. 2018 -03

AN ORDINANCE OF THE TOWN OF REDINGTON BEACH, FLORIDA, AMENDING CHAPTER 13 OF THE TOWN CODE; CONFIRMING THE PUBLIC'S LONG-STANDING CUSTOMARY USE OF THE DRY SAND AREAS OF THE TOWN'S 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 RELOCATION OF BEACH-RELATED REGULATIONS; PROVIDING FOR ENFORCEMENT; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, after the United States acquired Florida from Spain in the early 1800's, the lands under the navigable waters, including the shores, were held by the United States for the benefit of the people; and

WHEREAS, when Florida gained statehood, it was granted authority to hold, in its sovereign capacity, title to the beds of navigable waters, including the shore and the space between high and low water marks, in trust for the people of the state, who have rights of navigation, commerce, fishing, boating and other public uses; and

WHEREAS, the Town of Redington Beach (the Town) was incorporated as a Florida municipality in 1935 and its Charter was adopted in 1945; and

WHEREAS, the Town's founder, Charles E. Redington, his wife Hazel, and their five children wintered in the area in the 1920s from their home in Tucer, Indiana; and

WHEREAS, the Redingtons eventually moved to the area in 1925, and in 1935 were the first to construct a private home in the Town; and

WHEREAS, the Town has, since its inception, been a primarily residential community of approximately 1 square mile in size, consisting of beachfront single-family dwellings and, in more recent times condominiums, located on the beautiful Gulf of Mexico, with public beach-access ramps for persons to gain easy access to the Town's beaches; and

WHEREAS, historical records, photographic evidence, and testimony of citizens of the Town, confirm the public at large, including residents of and visitors to the Town, have utilized the dry sand areas of all of the beaches in the Town for recreational purposes since well before 1970 and indeed since time immemorial; and

WHEREAS, Article X, § 11 of the Florida Constitution provides that the state holds the land

seaward of the mean high-water line in trust for the people, and the public has a right of access along Florida's beaches and shorelines below the mean high-water line; and

WHEREAS, Florida Statutes §187.201(8)(b)(2) requires the state to ensure "the public's right to reasonable access to beaches"; and

WHEREAS, Under Florida's Beach and Shore Preservation Act, when public money is used to fund the expansion of a beach, the added sand becomes property of the state, free for public use. Beach and Shore Preservation Act, Florida Statutes § 161.011, et seq.; and

WHEREAS, the Town has long sought to safeguard the customary use of its beaches at the local law level, having adopted § 4-3 (animals prohibited at beaches) § 4-9 (sea turtles), § 6-134 (beach access and construction) § 13-4 (Beach Park rules), § 15-57 (adoption of state beach and shore regulations), and § 21-2 (operation of vehicles on beaches) of the Town Code, all aimed at affording a balance of acceptable use between owners of private properties along the beaches and beach visitors and all in effect prior to January 1, 2016; and

WHEREAS, Chapter Law 2018-94 created Florida Statutes § 163.035, creating a regulatory scheme for local governmental establishment of recreational customary use ordinances; and

WHEREAS, this new law creates significant new and costly procedural requirements for the adoption of any new customary use ordinances after July 1st 2018; and

WHEREAS, this new law is not applicable to ordinances in existence prior to January 1st 2016 and allows local governments to raise customary use as an affirmative defense in proceedings challenging any beach regulation ordinance adopted prior to July 1st 2018; and

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

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

WHEREAS, the use of the dry sand areas of the Town's beaches has been ancient, exercised without interruption, peaceable and free from dispute, reasonable, certain, obligatory, and consistent with other customs or other law; 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 federal district court for the Northern District of Florida, in *Alford v. Walton County*, 2017 WL 8785115, (N.D. Fla. November 22, 2017), the most recent case to consider a Florida local government's authority to maintain customary use ordinances, confirmed that such ordinances were within the right of local governments to adopt and maintain; and

WHEREAS, in light of this long and continuous use, the Board of Commissioners finds that the doctrine of customary use has applied to all of the beaches in the Town since even before the Town's founding; and

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

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

WHEREAS, the buffer zone set forth in this Ordinance 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 of the Town's beaches 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, the owners of property that contains a portion of the dry sand areas of the Town's beaches may, under the Town's pre-existing customary use rules and under this Ordinance, still make any use of their property which is consistent with such customary public uses and not calculated to interfere with such uses; and

WHEREAS, while the Town's Board of Commissioners finds that its current ordinances provide an effective protection of the customary use of the Town's beaches by residents and visitors, it also finds that it is in the best interests of the Town, its residents and visitors, to further bolster and clarify this pre-existing regulatory scheme by the adoption of this Ordinance.

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of the Town of Redington Beach, Florida, that:

Section 1. A new Article III of Chapter 13 (Parks and Recreation) of the Redington Beach Town Code, entitled Beaches, and initially consisting of § 13-30, is hereby created as follows:

ARTICLE III. – BEACHES

Sec. 13-30. – Customary use of dry sand beach.

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

(b) 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.

(c) Members of the public at large shall not utilize a fifteen (15) foot buffer zone located seaward from the toe of the dune or from any privately-owned permanent habitable structure 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 emergency service workers, including police, fire and paramedic personnel, nor to other governmental personnel exercising lawful duties, nor to persons invited or authorized to be within the zone by the private land owner.

(d) 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:

(1) traversing the beach;

(2) sitting on the sand, in a beach chair, or on a beach towel or blanket;

(3) using a beach umbrella that is seven (7) feet or less in diameter;

(4) sunbathing;

(5) picnicking;

(6) fishing;

(7) swimming or surfing off the beach;

(8) placement of surfing or fishing equipment for personal use; and

(9) building sand creations unless prohibited by § 4-9 of this code concerning sea turtles.

(e) 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.

(f) Activities on the beach are governed by § 4-9 (sea turtles), § 6-134 (beach access and construction) § 13-4 (Beach Park rules), and § 15-57 (adoption of state beach and shore regulations) of this code, and such other regulations as are now or may in the future be included in this article. Violations of this article are punishable as provided by § 1-14 of this code.

Section 2. Section 4-3 of the Redington Beach Town Code is hereby relocated to Article III of Chapter 13 and renumbered as follows:

Sec. 4-3 13-31. - Animals prohibited at beaches, parks and recreation areas.

(a) It is unlawful for any person to bring or have or ride or allow on any beach or in the water adjacent thereto any animal.

(b) It shall be unlawful for any person to bring or have or ride or allow on municipally owned parks or recreation areas any animal. The town shall post notice of the restriction in this section at the entranceway of each municipal park or recreation area, and, if there is no designated entranceway, at any other location convenient to public observation.

Section 3. Section 21-2 of the Redington Beach Town Code is hereby relocated to Article III of Chapter 13 and renumbered as follows:

Sec. ~~21-2~~ 13-32. - Operation of vehicles on beaches.

(a) It is unlawful for any person directly or indirectly to use or operate or to allow another to use or operate upon, on or along the gulf beach, or upon any beach or shoreline or waters adjacent thereto, within the town limits, any motor vehicle, unless application in writing showing reasonable necessity therefor shall first have been made to the board of commissioners and a special written approval is obtained from the town.

(b) The following shall be excepted from the provisions of this section:

(1) Municipal vehicles or equipment, any vehicle in such area for an emergency purpose for the public safety or general welfare, or any vehicle or equipment authorized by the town to be in such area for a public purpose.

(2) Mechanical equipment necessary and temporarily being used in such area for authorized improvements upon private or public property, for the construction of which improvements a permit has been applied for and granted by the town in the manner required by this Code and other ordinances of the town.

Section 4. For purposes of codification of any existing section of the Redington Beach Code herein amended, words underlined represent additions to original text, words ~~stricken~~ are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 5. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this

Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Board of Commissioners would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 6. The Codifier shall codify the substantive amendments to the Redington Beach Town Code contained in Sections 1 through 3 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 7. This Ordinance shall become effective immediately upon final passage and adoption.

PASSED AND ADOPTED by the Board of Commissioners of the Town of Redington Beach, Pinellas County, Florida, on this 6th Day of June, 2018.

ATTEST:


Missy Clarke, CMC Town Clerk


Nick Simons, Mayor

	Motion	Seconded	Aye	Nay	Absent
Commissioner Kornijtschuk			X		
Commissioner Dorgan		X	X		
Commissioner Steiermann			X		
Vice Mayor Will	X		X		
Mayor Simons			X		