

**ORDINANCE 2015-\_\_\_\_\_**

**AN ORDINANCE OF ESCAMBIA COUNTY, FLORIDA CREATING CHAPTER 42, ENVIRONMENT, ARTICLE X OF THE ESCAMBIA COUNTY CODE OF ORDINANCES; PROHIBITING AND REGULATING OBSTRUCTIONS AND PERSONAL PROPERTY ABANDONED ON BEACHES AND TO BE COMMONLY REFERRED TO AS THE "LEAVE NO TRACE ORDINANCE"; REQUIRING THE POSTING OF PROPER SIGNAGE AT BEACH ACCESS POINTS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Florida Statute 125.01 the County shall have the power to carry on county government inclusive of the power to adopt its own rules that which are not inconsistent with general or special law; and

**WHEREAS**, pursuant to Florida Statute 125.01 the County shall reserve the powers to adopt ordinances necessary for the exercise of its powers and perform acts which are in the common interest of the people of Escambia County and exercise all powers and privileges not specifically prohibited by law; and

**WHEREAS**, Escambia County has ± 8.3 miles of public Gulf of Mexico fronting beaches on Pensacola Beach, Florida (Sometimes referred to herein as the "public beach"); and

**WHEREAS**, residents and tourists use and enjoy the public beach on Pensacola Beach, Florida for recreation, fishing, walking, water access and other traditional uses; and

**WHEREAS**, nesting sea turtles, shorebirds, and other protected species use the public beach as habitat for critical aspects of their lifecycle such as egg laying, foraging, and rearing of young; and

**WHEREAS**, items of personal property left on the public beach unattended overnight are obstacles for maintenance crews, interfere with the public's use, access and enjoyment of the public beach, pose safety hazards, adversely affect the beauty of the public beach, adversely affect tourism, adversely affect economic interests, and cause negative impacts to nesting sea turtles and other protected species; and

**WHEREAS**, the uncontrolled regulation of claimed and unclaimed personal property has and will continue to have long term effects on the future preservation and public safety for Escambia County's beaches and its affects to the general health, natural beauty, public safety, smart growth, and the joint welfare and wellbeing of the residents and visitors; and

**WHEREAS**, hundreds of beach tents, canopies, cabanas, shading devices,

chairs, ice chests, storage chests, and other items of personal property, including personal property used in commerce such as, but not limited to, tents, chairs, jet skis, paddle boards, surfboards, sailboats, kayaks, and other watercraft have been left overnight on the public beach on Pensacola Beach, Florida; and

**WHEREAS**, personal property left on the public beach of Pensacola Beach, Florida overnight as well as misuse and abuse of basic guidelines for peaceful enjoyment and proper sharing of the public beaches by the entire community constitutes a nuisance which is contrary to the public's health, safety and welfare; and

**WHEREAS**, in order to protect and maintain the use of the public beach for residents, tourists, visitors, wildlife and maintenance crews, the overnight placement of items of personal property on the public beach, must be, and is, prohibited; and

**WHEREAS**, the personal property left overnight on the public beaches of Escambia County, Florida 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**, leaving personal property in beach access points at any time blocks public access and creates a hazard and nuisance for other persons wishing to access the public beach; and

**WHEREAS**, allowing persons to relocate items of personal property overnight to a safe and appropriate location off the public beach, as close as practicable to an existing permanent structure or the line of buildings, reasonably balances the use and enjoyments of personal property with the need to protect the public access, public health, safety and welfare, and wildlife; and

**WHEREAS**, the County Administrator shall be authorized to grant limited permission and exceptions to leave items of personal property on the public beach overnight under enumerated circumstances; and

**WHEREAS**, public trash containers, signs placed by a governmental agency on the beach and beach areas, and public items, should be allowed to remain on the public beach in order to further other important public interests and benefits; and

**WHEREAS**, these regulations and rules are consistent with all applicable policies of the County, including its Comprehensive Plan and Land Development Regulations, and are not in conflict with the public interest;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY:**

**Section 1.** The foregoing recitals are true and correct and incorporated herein by reference.

**Section 2.** Part I of the Escambia County Code of Ordinances, Chapter 42, Article X, is hereby created to read as follows (words underlined are additions and words ~~stricken~~ are deletions):

**Article X. ESCAMBIA COUNTY LEAVE NO TRACE. OBSTRUCTIONS ON BEACHES PROHIBITED.**

**Section 42-415 Purpose.** The purpose of this article is to ensure the Gulf of Mexico beaches on Pensacola Beach are free from any obstruction by any item of personal property in order to protect public ingress, egress, and regress to the beach, promote public safety, and to protect endangered sea turtles.

**Section 42-416– Definitions**

The following words, terms, and phrases when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Beach (Gulf)* - means that area of unconsolidated material that extends landward from the mean low-water line of the Gulf of Mexico, to the 1975 Coastal Construction Control Line.

*Dune* - means a mound, bluff or ridge of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location. In the absence of a discernible dune, the seaward boundary of a dune will be deemed to be the line of native vegetation.

*Personal property* - means all types of personal property, also to include items available commercially, such as but not limited to: tents (including tent frames), canopies, cabanas, coolers, umbrellas and other shading devices, picnic tables, tiki huts, volleyball nets, tents, hammocks, beach chairs and other furniture, kayaks, canoes, catamarans, floats, sailboards, surfboards, kites, jet skis, sailboats, water cycles and other watercraft.

*Sunrise* – means the phenomenon of the sun's daily appearance on the eastern horizon as a result of the earth's rotation. The word is often used to refer to the time at which the first part of the sun becomes visible in the morning at a given location.

*Sunset* – means the phenomenon of the sun's daily disappearance below the western horizon as a result of the earth's rotation. The word is often used to refer to

the time at which the last part of the sun disappears below the horizon in the evening at a given location.

Toe of the dune - means that area just seaward and off the dune where there is no vegetation.

**Section 42-417 Obstructions on the beach and beach access areas prohibited.**

- a) It shall be unlawful for any person to leave an item of personal property unattended on any portion of the sandy gulf beach located on Pensacola Beach from sunset until sunrise daily, except as otherwise permitted in this article.
- b) Any item of personal property left on the beach unattended in violation of this article shall be deemed discarded by the owner and shall become the property of Escambia County, which may dispose of the item.
- c) Beach vendors shall either remove all equipment from the public beach each night, or stack and arrange beach furniture within twenty (20) feet from the toe of the dune so that the shortest edge faces the shoreline (minimum fifty (50) feet between stacks or storage boxes).
  - a. Equipment, such as wooden beach lounges, that may not reasonably meet this requirement, shall be phased out of operation by January 1, 2018.
- d) From sunset until sunrise daily, on private property with the upland owner's permission, items of personal property that are relocated as close as practicable to an existing permanent structure or the line of buildings, will not be considered discarded by the owner, abandoned or a violation of this article, provided:
  - (1) Such items shall not be placed on the dune or on native vegetation;
  - (2) Such items shall be stored in a neat and orderly manner;
  - (3) Such items shall not inhibit access to the beach from the nearest public access areas, nor obstruct access on the beach, nor impact native vegetation, nor significantly affect sea turtles.
  - (4) Private property owners may store items under or adjacent to their private dune walkovers or boardwalks as long as adhering to item (c) above.
  - (5) Items shall not be placed on any public beach access point or within twenty (20) feet of any public trash receptacle.
  - (6) Beach vendors shall either remove beach furniture from the beach each night or stack, as described in item (c) above.
- e) Unattended or abandoned items of personal property in violation of this article may be removed from the beach by Escambia County staff, Santa Rosa Island Authority (SRIA) staff, persons under contract with Escambia County or SRIA, designated agents of Escambia County or SRIA, any law enforcement officer, licensed beach patrol, or lifeguard.
- f) Unattended or abandoned items of personal property in violation of this article are a public nuisance.

**Sec. 42-418 -Exceptions. The prohibitions contained in Section 42-417 do not apply to:**

- (1) Trash containers;**
- (2) Lifeguard stands and lifeguard storage containers, and safety devices;**
- (3) Signs placed by a governmental agency;**
- (4) Items placed by persons acting under authority of the County Administrator or the SRIA Executive Director;**
- (5) Structures, including without limitation boardwalks, decks, and dune walkovers constructed and permitted by Escambia County and SRIA; and**
- (6) 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;**

**Sec. 42-419 - Permits.**

**(a) Permits may be issued by the County Administrator or their designee for activities otherwise prohibited by this article for such periods of time and under such conditions as the County Administrator deems appropriate under the circumstances that are found to be necessary for:**

- (1) Reasonable accommodation of persons with disabilities;**
- (2) Adjunct to a lawfully existing activity;**
- (3) For the conduct of a governmental, civic or educational activity;**
- (4) For the conduct of scientific research;**
- (5) For special events, or**

**(b) Such permit shall include the following:**

- (1) Name and contact information of the owner or person in possession and control of the item;**
- (2) Description of the item;**
- (3) Location of the item;**
- (4) Duration of time the item will remain in such location; and**
- (5) Acknowledgement that owner or person in possession and control of the item will be liable for any impacts to federally protected species.**
- (6) A copy of an approved Florida Department of Environmental Protection field permit and associated special conditions is required to be provided to the County and SRIA prior to deployment of item(s) onto the beach**

**(c) This article is not intended to authorize any violation of Section 379.2431 Florida Statutes or any of the provisions of the Endangered Species Act. Escambia County will not be liable for any impacts to federally protected species resulting from persons leaving items of personal property on the beach and such liability will rest with the owner of such item.**

**Section 42-420 Notice**

**SRIA shall provide notice of this ordinance by posting a permanent sign located at the entry of each beach access point.**

**Section 42-421 Penalty**

**Violations of this article are punishable as provided in Section 1-17 of the County Code of Ordinances**

**Section 3. Severability.**

If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any Court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

**Section 4. Inclusion in the Code.**

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall be codified as required by F.S. §125.68 (2011); and that the sections, subsections and other provisions of this Ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

**Section 5. Effective Date.**

This Ordinance shall become effective upon filing with the Department of State.

DONE AND ENACTED this \_\_\_\_ day of \_\_\_\_\_, 2015.

**BOARD OF COUNTY COMMISSIONERS  
ESCAMBIA COUNTY, FLORIDA**

Approved as to form and legal  
sufficiency.

By/Title: M. Crawford, ACA  
Date: 9-17-15

\_\_\_\_\_  
Steven Barry, Chairman

ATTEST: Pam Childers  
Clerk of the Circuit Court

BY: \_\_\_\_\_  
Deputy Clerk

(SEAL)

Enacted:

Filed with Department of State:

Effective: