

ORDINANCE NO. 2007-102

2007 DEC 17 PM 2:54

AN ORDINANCE OF SARASOTA COUNTY, FLORIDA, RELATING TO THE USE OF PARKS, BEACHES AND PUBLIC LAND IN SARASOTA COUNTY, FLORIDA; REPEALING ORDINANCE NO. 87-013 AS CODIFIED IN SECTION 90-31 OF THE SARASOTA COUNTY CODE, (THE "CODE") RELATING TO COMMERCIAL ACTIVITIES ON BEACHES AND RECREATION AREAS; REPEALING ORDINANCE NO. 78-035, AS AMENDED, AS CODIFIED IN SECTION 90-32 OF THE CODE RELATING TO USE RESTRICTIONS FOR PARKS, BEACHES AND RECREATION AREAS; REPEALING ORDINANCE NO. 84-003, AS AMENDED, AS CODIFIED IN SECTION 90-33 OF THE CODE, RELATING TO VEHICLES AND WATERCRAFT PROHIBITED FROM PARKS, RECREATION AREAS AND BEACHES DURING CERTAIN HOURS; REPEALING ORDINANCE NO. 79-075, AS CODIFIED IN SECTION 90-34 OF THE CODE, RELATING TO FEES FOR USE OF COUNTY PARKS AND RECREATION FACILITIES; REPEALING ORDINANCE NO. 98-045, AS AMENDED, AS CODIFIED IN SECTION 90-35 OF THE CODE, RELATING TO PROTECTION OF PARKS, BEACHES, RECREATION AREAS, NATURAL AREAS AND OTHER PUBLIC LANDS; CREATING A NEW ARTICLE II OF CHAPTER 90 OF THE CODE RELATING TO THE USE OF PARKS, BEACHES AND PUBLIC LAND; PROVIDING FOR FINDINGS; PROVIDING FOR DEFINITIONS; PROVIDING PROHIBITED ACTIVITIES AND USES; PROVIDING FOR FEES FOR USE OF PUBLIC RECREATION AREAS, BEACHES, PUBLIC BEACH PARKS AND PUBLIC NATURAL AREAS; PROVIDING FOR POSTING OF SIGNS; PROVIDING FOR ENFORCEMENT AND REMEDIES; PROVIDING FOR PENALTIES; PROVIDING FOR APPLICABILITY; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY:

SECTION 1. This Ordinance creates a new Article II of Chapter 90 (PARKS, RECREATION AND PUBLIC LANDS) of the Sarasota County Code (the "Code") and repeals Ordinance No. 87-013, as codified in section 90-31 of the Code, repeals Ordinance No. 78-035, as amended, as codified in section 90-32 of the Code, repeals Ordinance No. 84-003, as amended, as codified in section 90-33 of the Code, repeals Ordinance No. 79-075, as amended, as codified in Section 90-34 of the Code, repeals Ordinance No. 98-045, as amended, as codified in Section 90-35 of the Code.

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SECTION 2. A new Section 90-31 of the Code is hereby established to read as follows:

Sec. 90-31. Findings.

(a) The Board of County Commissioners hereby finds and determines with regard to commercial activities on Beaches, Public Beach Parks, Public Natural Areas, and in Public Recreation Areas that:

- (1) Commercial solicitation on the Beaches, in Public Beach Parks and Public Recreation Areas located within Sarasota County has become a nuisance unreasonably interfering with the flow, recreation, use, enjoyment and privacy of citizens and guests of the County and directly and adversely affecting the tourism industry of the County.
- (2) The Beaches, Public Beach Parks and Public Recreation Areas of the County have been traditionally used for noncommercial recreational activities and commercial solicitation is inconsistent with the recreational purposes for which such recreational areas are used.
- (3) Ample alternatives for the communication of commercial speech, such as Soliciting, and the erection of signs to attract customers to purchase goods or services exist at locations other than the Beaches, Public Beach Parks and other Public Recreation Areas.
- (4) Reasonable restrictions on commercial Solicitation, Canvassing and merchandising of goods and services along the Beaches, in Public Beach Parks or other Public Recreation Areas of the County will promote the general welfare, tranquility and the intended uses of Public Recreation Areas.

(b) The Board of County Commissioners hereby finds and determines with regard to use restrictions for Public Beach Parks, Beaches, Public Natural Areas, and Public Recreation Areas:

- (1) Population growth County-wide and accelerated growth in utilization of public recreation facilities has resulted in increased vandalism of public structures and in some instances destruction of natural environmental aspects of some sites, such as beach dunes.
- (2) A schedule of openings and closings of Public Beach Parks and Public Recreation Areas which is as nearly uniform as possible will be advantageous to the public, and will benefit security forces which are charged with law enforcement.
- (3) Acts of vandalism and destruction of County recreation facilities occur predominantly during evening hours after active recreation programs have been concluded and permanent staff are no longer located at the premises.
- (4) Experience has shown that vandalism at County recreation facilities can be effectively controlled by regulating the presence of motor Vehicles and Watercraft at such facilities.

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- (5) The Board is authorized by F.S. Ch. 125 to establish Public Beach Parks, Beaches, Public Recreation Areas, Public Natural Areas or other public lands for the protection and preservation of their natural features or historic significance and for public use and enjoyment of the areas and facilities.
 - (6) The Board finds that, in order to maintain public lands, it is necessary that no unauthorized removal or destruction of property be allowed at Public Recreation Areas, Beaches, Public Beach Parks, Public Natural Areas or other public lands.
- (c) The Board of County Commissioners hereby finds and determines with regard to certain Public Recreation areas, Public Beach Parks, the Beaches located immediately seaward, or waterward thereof:
- (1) County beaches attract people and families who travel from near and far to enjoy the coastal environment, breathe the fresh air, jog, play or relax on the sand or in the water, and engage in other healthy recreational or fitness-related activities;
 - (2) The litter caused by those who improperly dispose of cigar and cigarette butts or other tobacco products on the Public Beach Parks and Beach is difficult to remove from the beaches, can lead to severe burns and/or ingestion hazards to park patrons and wildlife, can significantly detract from a healthy environment, and reduce the enjoyment of the County's beaches for those individuals and families who want to enjoy a healthy environment, free of smoking-related pollution and hazards.
 - (3) For a number of years, volunteer groups performing coastal clean-ups, as well as Sarasota County Parks and Recreation staff, have reported that cigarette butts constitute one of the largest categories of litter collected from these areas, possibly because some smokers have the misconception that cigarette butts are biodegradable.
 - (4) The Board desires to promote and enhance a healthy environment at its Beaches and Public Recreation Areas for the safe enjoyment by all individuals, especially children, by prohibiting smoking in Public Beach Parks and on Beaches located immediately seaward, or waterward thereof, or in Public Recreation Areas where youth athletic activities take place, except in areas specifically designated and suitably equipped for that purpose.
 - (5) The creation of designated smoking areas in Public Beach Parks reduce smoking-related litter and provide for the safe enjoyment of the public lands by everyone. Designated smoking areas will be equipped to facilitate the proper disposal of smoking-related litter.

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SECTION 3. A new Section 90-32 of the Code is hereby established to read as follows:

Sec. 90-32. Definitions.

For the purpose of this section, the following terms shall have the meaning indicated in this subsection.

- (1) *Beach* means any sandy or rocky area located waterward or seaward of the vegetation line or a bluff. Where a functioning shore-parallel seawall or rock revetment exists, the beach shall constitute the sandy or rocky area located seaward or waterward thereof.
- (2) *Board* means the Sarasota Board of County Commissioners.
- (3) *Citation* means the summons issued by a law enforcement officer and shall be in the form prescribed by the County.
- (4) *Code Administrator* means the County Administrator, or designee.
- (5) *County* means Sarasota County, Florida.
- (6) *Public Beach Park* means any public parkland contiguous to a Beach or separated by a roadway from a Beach that is located along the Gulf of Mexico and/or Big Sarasota Pass, Venice Inlet, or a reestablished Midnight Pass, including parking areas associated with the Public Beach Park.
- (7) *Public Natural Area* means any property owned or leased by Sarasota County for public use and preservation of its natural resources.
- (8) *Public Recreation Area* means any property owned, leased, or operated by Sarasota County and used for a public park including, but not limited to, parking areas and public accesses associated with the Public Recreation Area.
- (9) *Soliciting* or *Canvassing* means any display, delivery, or exchange of merchandise or services, or information related to the delivery or exchange of merchandise or services, not initiated by the prospective customer, which directs attention to any business, mercantile or commercial endeavor or any other commercial activity, for the purpose of directly or indirectly promoting commercial interests through giveaways, sales, rentals or any exchange of value.
- (10) *Person* means any individual, firm, association, partnership, joint adventure, business, trust, syndicate, or corporation.
- (11) *Vehicle* means any device, in, upon, or by which any person or property may be transported or drawn, including automobiles, trucks, motorcycles, tractors, trailers, buses, motor homes or campers, whether motor-drawn or not. This shall not include a non-motorized bicycle.
- (12) *Watercraft* means any boat, motorboat, sailboat, vessel, houseboat, barge, surfboard, floating structure, floating home or any contrivance of any nature whatsoever which is waterborne and is capable of moving under its own mechanical power, by sail or by tow line.

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SECTION 4. A new Section 90-33 of the Code is hereby established to read as follows:

Sec. 90-33. Prohibited Activities and Uses.

Unless otherwise noted, the following uses and activities are prohibited on Beaches and within Public Recreation Areas, Public Beach Parks, or Public Natural Areas:

- (1) Holding, drinking from, possessing, or disposing of glass containers of any kind.
- (2) Dogs, cats, and other pets outside of areas specifically designated for activities involving such animals, except for dogs trained to assist or aid disabled or handicapped persons when such dogs are actually being used to assist or aid such persons. Any dog, cat or other pet found in violation of this section may be impounded and held in accordance with provisions of the Sarasota County Code of Ordinances.
- (3) The use of cigarettes, cigars, or any tobacco products:
 - a. Within the defined perimeter at County-owned or operated Public Recreation Areas while such Areas are being utilized for organized youth athletic activities. For purposes of this Section, the "defined perimeter" is the area that encompasses all athletic fields, spectator stands, concession areas, restroom areas, walking or congregating areas, and all intervening spaces. This area is generally, but not exclusively, outlined by perimeter fencing with gates at points of entry. For purposes of this Section, a "youth athletic organization or league" is defined as an organization which contracts with County Parks and Recreation to conduct activities related to youth athletic leagues, including athletic practices and games, meetings, clinics, and demonstrations, on a regularly scheduled basis at County-owned or operated Public Recreation Areas (e.g. baseball, football, soccer, softball).
 - b. Within any Public Beach Park or on any portion of a Beach located seaward or waterward of a Public Beach Park at any time, except in smoking areas, as determined by resolution adopted by Sarasota County, the City of Sarasota, and/or the City of Venice.
- (4) Abandonment of animal fecal matter.
- (5) Fishing activities conducted within swim areas designated by swim buoys.
- (6) Parking or driving Vehicles or mooring Watercraft between the hours of 12:00 midnight and 6:00 a.m. daily unless the Board, for good and sufficient reason, orders any of said facilities to be subject to a different closing time. This subsection shall not apply to authorized emergency and law enforcement vehicles, authorized maintenance or repair vehicles, marked vehicles of public safety and public service agencies, or vehicles displaying a permit that has been issued by the Code Administrator.

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- (7) Driving or parking a Vehicle or Watercraft except in those areas specifically designed or otherwise designated by signs to be used for such driving or parking; provided, however, that the Code Administrator may issue written permits granting special parking privileges, upon application therefore, to persons suffering acute physical disabilities, which permits shall specifically recite on the face thereof the exact extent of the special privileges and the area or areas involved. Provided further, this subsection shall not apply to authorized emergency and law enforcement vehicles, authorized maintenance or repair vehicles, or marked vehicles of public safety and public service agencies.
- (8) Operation of a bicycle within a posted area that excludes such use.
- (9) Operation of an automobile, truck, motorcycle, motor scooter, motor bicycle, or other mode of transportation in excess of 15 miles per hour, unless otherwise posted by the County.
- (10) Overnight camping of any type except in those areas that are developed and designated for such use and where the Code Administrator has authorized such use by permit.
- (11) Disposal of any paper, waste, garbage, trash, cigarette butts, debris, or other litter of any kind except in proper receptacles. The use of County receptacles is limited to paper, waste, garbage, trash, debris or other litter that was generated as the result of activities at the Public Beach Park, Beach, Public Natural Areas or Public Recreation Area at which the receptacles are located.
- (12) The sale of food or drink of any kind, including beer and other intoxicating beverages, or the sale or rental of athletic equipment, sports equipment, jet skis and other Watercraft, or any other items; provided, however, that the County may issue permits, or enter into license agreements, leases or other agreements for the sale or rental of any of the above on such terms and conditions as the County shall deem proper and in the best interest of the citizens of the County.
- (13) The playing of sports and games in which an object is propelled through the air by any means except in those areas specifically designed or otherwise designated for such activities.
- (14) Fires, except in grills, fireplaces, or barbecue pits that are provided by the County, or that are associated with County-managed prescribed burns.
- (15) Soliciting or canvassing unless authorized in writing by County Parks and Recreation.
- (16) Destroying, cutting, carving, mutilating, moving, displacing, breaking off, injuring, defacing, marring, moving, digging, harmfully disturbing or removing from any area, or the waters thereof, any buildings, structures, facilities, cultural resources, including historic and prehistoric, equipment, park property, soil, natural water bottom formation, sand, gravel, rocks, stones, fossils, minerals, plants (including terrestrial, aquatic, marine, or epiphytic plants) or animals, artifacts, or other materials. Provided, however, this subsection shall not apply to: (i) legal fishing; (ii) trapping

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or removal of animals by a County-authorized party; (iii) the sculpting of sand (such as sand castles) on Beaches or within Public Beach Parks, or the collection of shells, sharks' teeth, and other natural materials that wash up on Beaches or within Public Beach Parks, except as otherwise prohibited by federal, State, or local laws; or (iv) the collection of natural objects, including plant and animal life and minerals, for scientific and educational purposes so long as such collection is conducted in compliance with all federal, state or local laws and authorized by a permit from the Code Administrator. Permission shall be applied for by submitting a written request at least ten (10) business days prior to collection; (v) the management of the land and risk abatement by the County.

- (17) Introduction of any plant or animal species to the environment by willful abandonment, negligence, or for any other reason without permission from the County department or division charged with enforcement of this provision.

SECTION 5. A new Section 90-34 of the Code is hereby established to read as follows:

Sec. 90-34. Fees for use of Public Recreation Areas, Beaches, Public Beach Parks and Public Natural Areas.

(a) *Fees authorized.*

- (1) County Parks and Recreation is hereby authorized to charge the following types of fees in accordance with the standards of this section:
- a. Entrance fees to a Public Recreation Area. The areas are usually well defined but are not necessarily enclosed. The entrance is the patron's first contact with the Public Recreation Area; however, the Area may contain additional facilities or activities for which fees are charged.
 - b. Admission fees to enter a building, structure, or natural chamber. These facilities usually offer an exhibit, show, ceremony, performance, demonstration, or special equipment. Entry and exit are normally controlled and attendance is regulated.
 - c. Rental fees for the privilege of exclusive use of tangible property of any kind. This fee gives the patron the right of enjoying all the advantages derivable from the use of the property without consuming, destroying, or injuring it in any way.
 - d. User fees for the use of a facility, participation in an activity, or fares for a controlled ride. The patron usually enjoys the privilege of use simultaneously with others.
 - e. Sales revenues obtained from the operation of refectories, stores, concessions, restaurants, etc., and from the sale of merchandise or

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other property. Unconditional ownership of the item must pass from the seller to the buyer with each sale.

- f. License or permit fees (synonymous terms). A license is a written acknowledgement of consent to do some lawful thing without command and it is usually issued by a division of government. A license ordinarily involves permission to perform an action, but it seldom grants authority to occupy space or use property.
- g. Special service fees for supplying extraordinary articles, commodities, activities, or services as an accommodation to the public. These accommodations must be unusual in character and not normally considered a required governmental service.

All fees shall, to the extent practicable, be equal to the average actual cost, including overhead, incurred by County Parks and Recreation in programming and maintenance for the Public Recreation Areas, Beaches, Public Beach Parks or Public Natural Areas and incidental facilities under its control.

- (2) A general fee schedule, based upon competent substantial data developed by County Parks and Recreation and meeting the standards of subsection (a)(1) of this section, may be established by resolution of the Board and amended by the Board from time to time in accordance with the standards of this section.

- (b) *Appeals.* Appeals from any fee charged under the authority of this section shall be heard by the Board at a regularly scheduled meeting after notice to the appellant. Based upon competent substantial evidence, the Board may, after the hearing, adjust the fee in accordance with the standards of subsection (a)(1) of this section.

SECTION 6. A new Section 90-35 of the Code is hereby established to read as follows:

Sec. 90-35. Posting of signs.

The Code Administrator is hereby authorized to post appropriate signs on public property at Public Recreation Areas, Beaches, Public Beach Parks or Public Natural Areas, giving notice of the regulations set forth in this Article.

SECTION 7. A new Section 90-36 of the Code is hereby established to read as follows:

Sec. 90-36. Enforcement and remedies.

- (1) The Sarasota County Sheriff, his deputies, any municipal police officer and any other law enforcement or code enforcement officer authorized to enforce County ordinances shall have the duty and authority to enforce the provisions of this

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article by the issuance of a Citation to the alleged violator A Citation shall contain the following:

- a. The date and time of issuance;
- b. The name, if available, and address of the Person to the Citation is issued;
- c. The date the infraction was committed;
- d. The facts of the infraction;
- e. The number or section of the Code violated;
- f. The name and title of the law enforcement officer or code enforcement officer;
- g. The procedure for the Person to follow in order to pay the penalty or to contest the Citation;
- h. The applicable penalty if the Person elects to contest the Citation;
- i. A conspicuous statement that if the Person fails to pay the penalty within 30 days or fails to appear in court to contest the Citation, the Person shall be deemed to have waived their right to contest the Citation and that, in such case, judgment shall be entered against the Person for the amount of the Citation, plus court cost, recording fees, and any other charges required by this article.

- (2) Notwithstanding any other provisions of this article for enforcement or penalties, the Board may also enforce this article by actions at law or in equity for damages and injunctive relief, and, in the event the Board prevails in any such action, the Board shall be entitled to an award of its costs and reasonable attorneys' fees.

SECTION 8. A new Section 90-37 of the Code is hereby established to read as follows:

Sec. 90-37. Penalties.

- (1) Any person who violates Subsections 90-33 (1), (2), (3), (4), or (5) is subject to a civil fine in the amount of \$97.00 plus any additional costs imposed by State or local law.
- (2) Any person who violates Subsections 90-33 (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16) or (17) is subject to prosecution for a misdemeanor of the second degree, punishable as provided in Sections 775.082 and 775.083, Florida Statutes, by a defined term of imprisonment not exceeding 60 days and a fine not exceeding \$500.00.
- (3) Court costs may be imposed as provided by law.
- (4) The County may seek to impose a lien on property owned by the Person cited for a violation of the Code if that Person fails to pay any amount entered as a judgment.

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SECTION 9. A new Section 90-38 of the Code is hereby established to read as follows:

Sec. 90-38. Applicability.

This Article shall be applicable in both the unincorporated and incorporated areas of the County to the extent that such municipality has not enacted an ordinance which conflicts with any provisions of this Article. Should any section of this Article conflict with any municipal ordinance on the same subject, the municipal ordinance shall control provided that the remaining sections of this Article shall remain in full force and effect in the municipality.

SECTION 10. A new Section 90-39 of the Code is hereby established to read as follows:

Sec. 90-39. Repeal.

Sarasota County Ordinance Nos. 78-035, as amended, 79-075, 84-003, as amended, 87-013, and 98-045, as amended, are hereby repealed.

SECTION 11. Severability.

The provisions of this Ordinance are severable and it is the legislative intention to confer upon the whole or any part of the Ordinance the powers herein provided. If any of the provisions of this Ordinance shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of the Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such unconstitutional provision not been included herein.

SECTION 12. Effective Date.

This Ordinance shall take effect immediately upon filing with the office of the Florida Secretary of State.

PASSED AND DULY ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, this 11th day of December, 2007.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA

KAREN E. RUSHING, Clerk of Circuit Court and Ex-Officio Clerk of the Board of County Commissioners of Sarasota County, Florida

By: Nora Patterson
Chair

By: [Signature]
Deputy Clerk