

[DRAFT 02/28/2019]

ORDINANCE NO.

**AN ORDINANCE
TO AMEND THE CODE OF ORDINANCES,
ADOPTED JULY 24, 1989, AT CHAPTER 6, BEACHES, BOATS, AND
WATERWAYS, ARTICLE I. IN GENERAL, BY REVISION OF SECTIONS
6-13 AND 6-18 TO REGULATE CERTAIN ACTIVITIES AT, ON, AND
OVER GULF FRONT BEACHES
AND AT CHAPTER 15, HEALTH AND SANITATION,
ARTICLE II. SMOKING IN PUBLIC PLACES
SECTIONS 15-24 AND 15-29 GENERALLY, AND THE GULF PLACE
CITY BEACHFRONT AND PRIVATE BEACHES PARTICULARLY
AND TO PRESCRIBE PENALTIES FOR VIOLATIONS**

WHEREAS, the City of Gulf Shores has undertaken to improve City owned property at Gulf Place to provide for new areas for the Beachfront use and enjoyment of its citizens and visitors; and

WHEREAS, the City Council City of Gulf Shores has heretofore undertaken to regulate certain activities both at Gulf front beaches generally and at the Gulf Place City Beachfront in particular through the adoption of Code of Ordinances Sections 6-13 and 6-18 and Sections 15-24 and 15-29 in order to enhance and promote the use, enjoyment, and safety of its citizens and visitors; and

WHEREAS, the City Council of the City of Gulf Shores, without amending or repealing existing ordinances and regulations prohibiting or regulating activities within the City of Gulf Shores and its police jurisdiction generally, finds it appropriate to confirm, revise, amend, extend, and add restrictions relating to activities that are regulated or prohibited under Sections 6-13 and 6-18 and 15-24 and 15-29; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GULF SHORES, ALABAMA, WHILE IN REGULAR SESSION ON MARCH 11, 2019, as follows:

Section 1. That Article I of Chapter 6, Beaches, Boats, and Waterways of the *Code of Ordinances*, adopted July 24, 1989, be and it is hereby amended by the amendment of Section 6-13 to read in its entirety as follows:

Sec. 6-13. - Erection of tents and shelters and abandonment of beach equipment on public beaches and certain other portions of gulf front beaches prohibited; digging of holes on gulf front beaches and the public beach regulated; possession or use of breakable containers; solicitation and related activities on sand areas of the public beach prohibited; methods of enforcement and penalties for violations.

(a) Definitions. As used in this section, the following terms shall have the following meanings:

Beach equipment means any personal items that are designed or manufactured for use, or actually used, on the beach or in adjacent waters. Examples include, without limitation, chairs, loungers, umbrellas, tents or shelters of any size, horseshoes and stakes, kayaks, paddle vessels, sailboards, surf boards, fishing gear, sporting equipment, rafts, flotation devices, beach toys, baskets, bags, towels, coolers, and other personal effects and items. Beach equipment shall not include chair setups or permitted storage facilities as defined in section 8-8(e) of this Code maintained on its licensed site by a duly licensed beach chair rental business or personal watercraft, towables, or permitted storage facilities as defined in section 8-8(e) of this Code maintained on its licensed site by a duly licensed beachfront recreational business.

Public Beach means any public area, including all public streets, alleys, and public parking areas, located within any of the following areas:

(1) An area bounded on the north by the south right-of-way line of Alabama Highway 182, on the east by the west boundary line of Lot 8, Block 9, Gulf Shores Unit One, on the south by the Gulf of Mexico, and on the west by the west right-of-way lines of Lots 5 and 16 of Block 5, Gulf Shores Unit One.

(2) An area bounded on the east and west, respectively, by the east and west rights-of-way lines of West 4th Street, on the north by the south right-of-way line of Alabama Highway 182, and on the south by the Gulf of Mexico.

(3) An area bounded on the east and west, respectively, by the east and west rights-of-way lines of West 5th Street, on the north by the south right-of-way line of Alabama Highway 182, and on the south by the Gulf of Mexico.

(4) An area bounded on the east and west, respectively, by the east and west rights-of-way lines of West 6th Street, on the north by the south right-of-way line of Alabama Highway 182, and on the south by the Gulf of Mexico.

(5) An area bounded on the east and west, respectively, by the east and west rights-of-way lines of West 10th Street, on the north by the south right-of-way line of Alabama Highway 182, and on the south by the Gulf of Mexico.

(6) An area bounded on the east and west, respectively, by the east and west rights-of-way lines of West 12th Street, on the north by the south right-of-way line of Alabama Highway 182, and on the south by the Gulf of Mexico.

(7) An area bounded on the east and west, respectively, by the east and west rights-of-way lines of West 13th Street, on the north by the south right-of-way line of Alabama Highway 182, and on the south by the Gulf of Mexico.

(8) The public area at Little Lagoon Pass north of the north right-of-way line of Alabama Highway 182 to Little Lagoon and south of the south right-of-way line of Alabama Highway 182 to the Gulf of Mexico, being a strip approximately one hundred (100) feet wide on the south side of Alabama Highway 182, centered on the centerline of the channel, and on the north side of Alabama Highway 182, a strip approximately two hundred (200) feet wide centered on the extended centerline of the channel, and extending in a northerly and southerly direction from the Gulf of Mexico to Little Lagoon.

(9) An area north of the north right-of-way line of Alabama Highway 182 (three hundred thirty (330) feet frontage on West Beach Boulevard) extending to Little Lagoon, bounded on the west by the pass from Little Lagoon into the Gulf of Mexico, the shape being irregular and containing approximately 4.1 acres; and an area south of the south right-of-way line of Alabama Highway 182 to the Gulf of Mexico consisting of Lots 3 and 4 of Resubdivided Lots 24, 25, and 26 of Unit 6.

(10) Lagoon Drive running along Little Lagoon from the south right of way line of Sandpiper Lane to the north right of way line of Alabama Highway 182 as platted on the Plat of Lagoon Estates, Blocks 2-6.

Public beach project area means the area within the corporate limits of the city lying seaward of the construction control line, excluding, however, any portion of such area lying directly beneath any habitable structure existing seaward of such line.

Beach Project Tent Line: A line on the Public beach project area as located and marked by the City from time to time as the seaward boundary for the erection of tents and other regulated activities. Appropriate markers designating the location of such line as determined by the city shall be installed by the city prior to the issuance of any separate citation under subsection (f) below for violation of subsection (b)(1) below. The enforcement of subsection (g) below shall commence immediately without regard to whether the installation of such markers has yet taken place.

Tent or shelter means any tent, shelter, canopy, cabana, windscreen, or other supported ground cover or enclosure and shall also mean the frame, support poles, guy lines, and other support features for a tent or shelter when the covering is not attached; provided, however, that the term shall not include any folding beach umbrella supported by a single pole; any umbrella or shade attached solely to a beach chair, to a child's stroller, or to a wheel chair designed for beach use by handicapped persons; or any pop-up type freestanding tent or shelter designed for beach use having no length or width dimension greater than seven (7) feet and no height dimension greater than four (4) feet.

Beach project fencing means the sand stabilization fencing installed and maintained by the city as part of the beach project established on the gulf front beaches within the corporate limits of the City of Gulf Shores under the authority of article 11 of chapter 47 of title 11 of the Code of Alabama.

Construction control line means the construction control line as defined in section 7-121(a) of this Code as now or hereafter in effect.

(b) *Prohibited and regulated activities.*

(1) *Areas where tents and shelters strictly prohibited.* No tent or shelter shall at any time be erected (1) on any public beach or (2) **south of the Beach Project Tent Line** on any gulf front beach within the corporate limits of the City of Gulf Shores; provided, however, that erection of tents and shelters may be allowed from time to time in areas of a public beach designated and marked by the City for such use.

(2) *Areas where no beach equipment may be erected, utilized or stored.* No item of beach equipment shall at any time be erected, utilized, or stored within the area north of the beach project fencing and south of the construction control line on any gulf front beach within the corporate limits of the City of Gulf Shores; provided, however, that this subsection (b)(2) shall not prohibit the erection, utilization, or storage of beach equipment on any portion of such area lying beneath any habitable structure existing south of the construction control line.

Any item determined by a law enforcement officer or beach inspector to be erected, utilized, or stored in violation of this subsection (b) may be impounded and stored by the city if the owner or permitted user of the item fails or refuses to remove the item after being directed by the officer or inspector to effect such removal or if the owner or permitted user cannot be immediately identified and notified by the officer or inspector.

(3) *Digging of holes regulated.*

(A) No person shall dig any hole within the area north of the beach project fencing and south of the construction control line on any gulf front beach within the corporate limits of the City of Gulf Shores.

(B) No person shall dig any hole to a depth greater than twelve (12) inches on any public beach or on any portion of any gulf front beach within the corporate limits of the City of Gulf Shores lying south of the beach project fencing.

(C) Any hole dug on any public beach or on any portion of any gulf front beach within the corporate limits of the City of Gulf Shores lying south of the beach

project fencing shall at all times be attended by a responsible person over the age of sixteen (16) years or well and appropriately marked so as to prevent injury from the presence of the hole.

(D)

Any hole dug on any public beach or on any portion of any gulf front beach within the corporate limits of the City of Gulf Shores lying south of the beach project fencing shall be properly filled to a condition level with the adjacent sand upon abandonment of the use of the hole and in all events by not later than thirty (30) minutes prior to sunset.

(4) Breakable Containers prohibited on Public Beach Project Area

It shall be unlawful for any person to possess or use on the Public Beach Project Area any container which is susceptible of breaking, shattering, fracturing, or becoming fragmented, including, but not limited to glass and breakable plastics, with a resulting risk of injury to any person on the Public Beach Project Area.

(5) Solicitation and related activities prohibited on sand areas within public beach.

Without addressing all issues relating to the entirety of the area included within the public beach as defined, the city council of the City of Gulf Shores finds and confirms that the sand areas within the public beach as defined are now and have historically been set aside only for the restorative and recreational enjoyment of the public and that such sand areas do not constitute a forum for public communication by tradition or designation. Except as may be otherwise specifically authorized by the city in a public assembly permit for a franchised festival activity at the public beach, it shall be unlawful for any person to solicit, peddle, canvass, beg, panhandle, proselytize, picket or demonstrate for any purpose, commercial or noncommercial, while on the beach sand areas of the public beach.

(c) Beach items to be removed daily; items not removed by owner or user subject to removal and disposal by city. Except as otherwise specifically authorized by the city in a special events or assembly permit with respect to the erection and use of tents and temporary shelters, no item of beach

equipment not otherwise prohibited under subsection (b) shall be placed or remain (1) on any public beach or (2) any portion of any gulf front beach within the corporate limits of the City of Gulf Shores lying south of the beach project fencing before sunrise. Each item of such beach equipment shall be removed by its owner or permitted user from any public beach or any portion of any gulf front beach within the corporate limits of the City of Gulf Shores lying south of the beach project fencing by one (1) hour after sunset. Any item of such beach equipment found on any public beach or any portion of any gulf front beach within the corporate limits of the City of Gulf Shores lying south of the beach project fencing between one (1) hour after sunset and sunrise may be treated by the city as abandoned property and removed and disposed of by the city as abandoned property.

(d) Failure or refusal to comply with instructions of officer or inspector.

(1) No person shall fail or refuse to remove an item of beach equipment erected, owned, stored, or in use by such person in violation of subsection (b) or (c) above after being directed to effect such removal by a law enforcement officer or beach inspector.

(2) No person shall fail or refuse to discontinue activities in violation of subsection (b)(4) above after being directed to cease such activities by a law enforcement officer or beach inspector.

(e) Enforcement by beach inspectors. In addition to enforcement by law enforcement officers of the city, the mayor shall appoint a sufficient number of city employees as beach inspectors to ensure proper enforcement of this section. Such beach inspectors shall not be law enforcement officers or peace officers within the meaning of state law and shall not have authority as officers of the city to make arrests. Such beach inspectors shall be authorized only to direct compliance with this section, to issue citations for violations of this section, to impound items determined by them to be prohibited property pursuant to subsection (b) above, and to remove and dispose of items determined by them to be abandoned property pursuant to subsection (c) above.

(f) *Penalty for violation of subsection (b) or (c).* Any person violating subsection (b) or (c) of this section, or both, shall be guilty of an offense and, upon conviction, shall be punished for each offense by a fine of fifty dollars (\$50.00). In addition, costs of two dollars (\$2.00) shall be taxed for each contested disposition of an offense defined in subsection (b). Such offenses and fine and cost amounts are hereby made a part of the schedule of municipal offenses, fines, and costs authorized under Alabama Rules of Judicial Administration 20(c).

(g) *Penalty for violation of subsection (d).* Any person violating subsection (d) of this section shall be guilty of an offense and upon conviction, shall be punished for each offense by a fine of not more than five hundred dollars (\$500.00), imprisonment for a period not exceeding six (6) months, or both.

Section 2. That Article I of Chapter 6, Beaches, Boats, and Waterways of the *Code of Ordinances*, adopted July 24, 1989, be and it is hereby amended by the amendment of Section 6-18 to read in its entirety as follows:

Sec. 6-18. - Activities Prohibited and Regulated At Gulf Place City Beachfront; Sanctions For Violation of Regulations Prescribed.

(a) Definitions: As used in this section 6-18, the following terms shall have the following meanings:

Gulf Place City Beachfront shall mean the public areas bounded on the north by the south right-of-way line of Alabama Highway 182, on the east by the west boundary line of Lot 8, Block 9, Gulf Shores Unit One, on the south by the Gulf of Mexico, and on the west by the west right-of-way lines of Lots 5 and 16 of Block 5, Gulf Shores Unit One.

(b) Regulated and Prohibited Activities

Without repeal or amendment of any existing provision of the Code of Ordinances, all of which remain applicable and in effect according to their terms, the following provisions regulating or prohibiting activities specifically apply to the Gulf Place City Beachfront:

(1) Animals. Except as otherwise allowed under Code of Ordinances Section 6-8 and except for a trained dog or miniature horse constituting a service animal within the definition of Ala. Code § 21-7-4 or 28 C.F.R. § 35.104, it shall be unlawful for any person to take or allow a dog, cat, horse, or other pet or domestic or domesticated animal or livestock into or in the Gulf Place City Beachfront, except while contained within a vehicle or animal trailer on the designated vehicle travelways and parking areas; **provided, however, it shall not be unlawful to take or allow a dog into or in the nonsand areas of the Gulf Place City Beachfront when (a) the dog is carried by its custodian or controlled on a suitable leash or harness with leash attached, (b) does not create a nuisance condition by barking or otherwise making a loud or raucous noise or biting, frightening, threatening, or intimidating any person, and (c) the dog's custodian fully complies with the feces removal requirements of Section 5-37 of the Code of Ordinances.**

(2) Tents or Shelters. Except as authorized in an assembly permit issued by the City Council upon written application **or when erected in any tent areas that may be designated and marked with appropriate signage by the City from time to time**, no tent or shelter shall at any time be erected in the Gulf Place City Beachfront. *Tent or shelter* means any tent, shelter, canopy, cabana, windscreen, or other supported ground cover or enclosure and shall also mean the frame, support poles, guy lines, and other support features for a tent or shelter when the covering is not attached; provided, however, that the term shall not include any folding beach umbrella supported by a single pole; any umbrella or shade attached solely to a beach chair, to a child's stroller, or to a wheel chair designed for beach use by handicapped persons; or any pop-up type freestanding tent or shelter designed for beach use having no length or width dimension greater than seven (7) feet and no height dimension greater than four (4) feet.

(3) Beach equipment. No item of beach equipment as defined in Code of Ordinances Section 6-13 not otherwise prohibited under subsection (3) above or under Section 6-13(b) shall be placed or remain on the Gulf Place City Beachfront before sunrise. Each item of such beach equipment shall be

removed by its owner or permitted user from the Gulf Place City Beachfront by one (1) hour after sunset. Any item of such beach equipment found on the Gulf Place City Beachfront between one (1) hour after sunset and sunrise may be treated by the city as abandoned property and removed and disposed of by the city as abandoned property.

(4) Motorized vehicles or conveyances. No person shall operate any motor vehicle, motorized vehicle, motor-driven cycle, motorized scooter or other self-propelled conveyance on any portion of the Gulf Place City Beachfront outside the designated vehicle travelways and parking areas except as authorized by permit issued by the City Council upon written application; provided, however, that this provision shall not apply to (a) any electric personal assistive mobility device which is a self-balancing two non-tandem wheeled device as defined in Ala. Code §31-1-1.1, (b) to any motorized vehicle or conveyance when being utilized by law enforcement or other municipal personnel in the active provision of public safety or public maintenance services, or (c) to an “other power-driven mobility device” as defined for purposes of the Americans With Disabilities Act when used by a person providing credible assurance that the device is used because of a disability.

(5) Digging and Removal of Sand. No person shall dig any hole to a depth greater than twelve (12) inches on any portion of the Gulf Place City Beachfront. Any hole dug on any portion of the Gulf Place City Beachfront must at all times be attended by a responsible person over the age of sixteen (16) years or well and appropriately marked so as to prevent injury from the presence of the hole. Any hole dug on any portion of the Gulf Place City Beachfront shall be properly filled to a condition level with the adjacent sand upon abandonment of the use of the hole and in all events by not later than thirty (30) minutes prior to sunset. No person shall intentionally remove any sand or beach vegetation from any portion of the Gulf Place City Beachfront.

(6) Breakable Containers. It shall be unlawful for any person to possess or use on any portion of the Gulf Place City Beachfront any container which is subject to break, shatter, fracture, disintegrate, or become fragmented, including, but not limited to, glass, breakable plastics, etc.; provided, however, that this subsection shall not apply to the possession or use of

breakable containers within the passenger compartment of a vehicle on the vehicle travelways and parking areas of the Gulf Place City Beachfront

(7) Overnight Sleeping. Except as specifically authorized in an assembly permit issued by the City Council upon written application, it shall be unlawful for any person to sleep in a tent, sleeping bag, automobile, van, truck, camper, trailer, or other vehicle of any kind or nature, or in the open anywhere within the Gulf Place City Beachfront between the hours of 10:00 p.m. and 6:00 a.m.

(8) Fireworks. Except as authorized by the City Council by ordinance or resolution relating to special permitted Fireworks displays, the possession or use of fireworks within any portion of the Gulf Place City Beachfront is prohibited. The term fireworks includes any squib, rocket, firecracker, Roman candle, sparkler, fire balloon, sky lantern, signal light, railroad track torpedo, photographer's flashlight composition, and any other devices or compositions used to obtain visible or audible pyrotechnic display.

(9) Sound Reproduction Devices. In addition to the general regulation of unreasonable noise or vibration under Section 15-1 of the Code of Ordinances, it shall be unlawful for any person or persons to play, use, operate, or permit to be played, used or operated any radio, tape recorder, cassette player, CD player or other machine or device for reproducing sound within any portion of the Gulf Place City Beachfront if the sound generated by such machine or device is audible at a distance of thirty (30) feet from the machine or device producing the sound. This subsection shall not be construed to regulate the initial production or amplification of sound, and the direct amplification of the human voice or music through the use of bullhorns or amplifiers is not regulated under this subsection.

(10) Fishing. It shall be unlawful for any person to engage in fishing or surfcasting from any portion of the Gulf Place City Beachfront or in any portion of the Gulf of Mexico lying within 100 feet of the water's edge along the Gulf side boundary of the Gulf Place City Beachfront.

(11) Solicitation. Except as may be otherwise specifically authorized by the City in a public assembly permit for a franchised festival activity and subject to the current separate regulation set out in Sections 6-13 and 6-17, it shall be unlawful for any person to solicit, peddle, canvass, beg, panhandle,

proselytize, picket or demonstrate for any purpose, commercial or noncommercial, on any portion of the Gulf Place City Beachfront.

(12) Fires, Grills, Cooking Devices. Except as may be otherwise specifically authorized by the City in a public assembly permit, no fires in any form, including open fires and cooking grill fires, and no stoves or other fueled or electric cooking devices shall be permitted on any portion of the Gulf Place City Beachfront.

(13) Alcoholic Beverages. It shall be unlawful for any person to possess or to consume any malt or brewed beverage, any wine or liquor, or any alcoholic or intoxicating beverages on any portion of the Gulf Place City Beachfront, provided that the provisions of this subsection shall not apply to the possession of malt or brewed beverages, wine or liquor, or other alcoholic or intoxicating beverages within vehicles on the vehicle travelways and parking areas of the Gulf Place City Beachfront if and only if: (a) such beverages are contained intact within their original unopened container; (b) such original unopened container is completely enclosed within an opaque outer container so that such original unopened container is not visible; and (c) such beverages were purchased from a licensee of the Alabama Alcoholic Beverage Control Board duly licensed to sell such beverages at retail for off-premises consumption; and, further, provided that the provisions of this subsection shall not apply to possession or consumption otherwise specifically authorized by the City in a public assembly permit for a franchised festival activity.

(14) Tobacco and E-cigarettes. Smoking of any tobacco product, the use of smokeless tobacco in any form, and the use of e-cigarettes, e-cigars, e-pipes or similar vapor devices are prohibited within the entirety of the Gulf Place City Beachfront.

(15) Drones. It shall be unlawful for any person to take off, land, operate, or to assist in the operation of any drone over, at, or from the Gulf Place City Beachfront unless such operation has been permitted by the FAA and approved in advance by the City of Gulf Shores.

(16) Laser Pointers. It shall be unlawful for any person other than sworn police officers, fire marshals and firemen in the performance of their duties to possess or to use a portable handheld laser pointer within the Gulf Place City Beachfront.

(c) Penalty for violation of subsection (c). Any person violating any provision of subsection (b) above shall be guilty of an offense and upon conviction, shall be punished for each offense by a fine of not more than five hundred dollars (\$500.00), imprisonment for a period not exceeding six (6) months, or both.

Section 3. That Article II. Smoking In Public Places of Chapter 15, Health and Sanitation of the *Code of Ordinances*, adopted July 24, 1989, be and it is hereby amended by revising certain language at Section 15-24 and Section 15-29 to read as follows:

Sec. 15-24. Application of Article to City Facilities

All City Parks and all enclosed facilities, including buildings and vehicles owned, leased or operated by the City shall be subject to the provisions of this Ordinance. City Parks shall include: Meyer Park, Sims Park, Kids' Park, City Sportsplex, Sportsplex Wetlands Park, Skateboard Park, Canal Park, Wade Ward Nature Park, Lagoon Park (Mo's Landing), Lagoon Pass Park and *all public beaches and associated parking lots and Gulf Place City Beachfronts*.

Sec. 15-29. Where smoking not regulated

Notwithstanding any other provisions of this article to the contrary, the following areas shall be exempt from the provisions of the above sections of this article listing the areas where smoking is prohibited:

* * *

(6) All private beaches.

* * *

Section 4. That this Ordinance shall not be interpreted to repeal any other ordinance of the City of Gulf Shores or any provision of the law of Alabama adopted by operation of Section 1-8 of the City's Code of Ordinances. To the extent that specific conduct at the Gulf Place City Beachfront regulated by this Ordinance is subject to specific regulation under other provisions of the Code of Ordinances, the provisions of Section 2 of this Ordinance shall be interpreted as governing to the extent of any inconsistency with such other provisions.

Section 5. That the provisions of this Ordinance are severable and a determination of the invalidity of any portion of this Ordinance shall not affect the validity and enforceability of the remainder of the Ordinance.

Section 6. That this Ordinance shall become effective upon its adoption and publication as required by law.

ADOPTED this 11th day of March, 2019.

Robert Craft, Mayor

ATTEST:

Wanda Parris, MMC
City Clerk