

ORDINANCE NO. 1464

AN ORDINANCE OF THE CITY OF PANAMA CITY BEACH, AMENDING THE CITY'S SIGN CODE TO PROHIBIT SIGNS ON THE SANDY GULF BEACH INTENDED TO EXCLUDE PERSONS FROM RECREATIONAL USE OF ANY PORTION OF THE SANDY GULF BEACH; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

WHEREAS, beaches in this City represent one of the most valuable natural resources of Florida, and it is in the public interest to preserve and protect them; and

WHEREAS, there are approximately 8 miles of beach within the City of Panama City Beach, which the City finds to be a tremendous asset to the community and the vendors, owners and guests who enjoy the City's beaches; and

WHEREAS, the City's beaches have been restored and renourished to protect against erosion in accordance with the Florida Beach and Shore Preservation Act which resulted in the creation of additional areas of sandy beach and the creation of the erosion control line. Pursuant to section 161.191, Florida Statute, the lands seaward of the erosion control line are deemed to be vested in the state by right of its sovereignty; and

WHEREAS, the Florida Supreme Court, in *Walton County v. Stop the Beach Renourishment, Inc.*, 998 So.2d 1102 (Fla. 2008), stated the public and private upland owners of the sandy beach share in equal rights of bathing, fishing, and navigation in lands that are held in sovereignty; and

WHEREAS, the City finds that it has rarely been asked to interfere in territorial disputes between commercial vendors, private upland property owners, and the public as to each parties' rights of use of any portion of sandy gulf beach in the City, likely given the long-standing benefits derived by the parties by their particular enjoyment of the land; and

WHEREAS, the City finds that, in the exceptionally rare times when a territorial dispute over the use of the sandy gulf beach has arisen, the City has

historically declined to trespass, sanction, or otherwise resolve that dispute in favor of any particular party; and

WHEREAS, the City finds that historically signs have been allowed on the sandy gulf beach in certain circumstances, but such signs have not been erected to exclude or intimidate any persons from general recreational use of the sandy gulf beach; and

WHEREAS, on July 1, 2018, HB 631 which created Chapter 2018-94, Laws of Florida, became effective throughout the state of Florida; and

WHEREAS, HB 631 created section 163.035, Florida Statutes, which creates a process by which a local government may adopt or keep in effect an ordinance or rule related to recreational customary use of a portion of a beach, this legislation does not affect title to areas of the sandy beach restored and renourished; and

WHEREAS, HB 631 does not apply to a ordinances adopted by a local government that were in effect prior to January 1, 2016, and for this reason, the City finds and determines that none of the City's ordinances are invalidated by HB 631; and

WHEREAS, the City finds that based upon recent media reports, anecdotal evidence, public comments and the testimony of the City Council and staff, the passage of HB 631 has created confusion among the public regarding the right of private property owners to exclude recreational beachgoers from any portion of the sandy gulf beach within the City; and

WHEREAS, On July 12, 2018, the Governor of the State of Florida issued Executive Order Number 18-202 of the State of Florida addressing the confusion surrounding public beach access and declaring that public beach access vital to the state; and

WHEREAS, the City is concerned that the ongoing confusion surrounding HB 631 is likely to cause individuals, commercial vendors, or upland property owners to erect "No Trespassing" signs or other signs intended to exclude on portions of the sandy gulf beach which are likely to mislead the public as to the City's longstanding policy against enforcing territorial disputes on the sandy gulf beach; and

WHEREAS, because the City Codes do not expressly prohibit the posting of “No Trespassing,” and Warning Signs (that give notice of a situation that might not be readily apparent) on the sandy Gulf beach, the Council believes it to be foreseeable that such signs may be erected on the beach with the intent or effect of excluding persons from the sandy gulf beach; and

WHEREAS, the City finds that it has a compelling governmental interest in preventing false statements, confusion, and misunderstanding that criminal or other law enforcement consequences may result from recreational use of any portion of the sandy beach of the Gulf of Mexico; and

WHEREAS, the City finds that this amendment to the City’s Sign Code is narrowly tailored to only prevent signs posted on the sandy gulf beach which contain such false statements or implication or create uncertainty while still allowing private property owners to exercise their First Amendment rights of free expression.

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

SECTION 1. From and after the effective date of this ordinance, Section 5.07.04 of the Land Development Code of the City of Panama City Beach related to Prohibited Signs, is amended to read as follows (new text **bold and underlined**, deleted text ~~struckthrough~~):

5.07.04 Prohibited Signs.

It shall be unlawful for any person to *Erect*, display, or allow to be *Erected* or displayed within the *City* any of the following types of *Signs*:

...

OO. Signs posted on the sandy beach of the Gulf of Mexico which state “no trespassing” or contain a materially similar message which provides warning that the public is excluded from recreational use of the sandy beach. For purposes of this section, “sandy 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 to where there is no frontal dune, to the line of permanent vegetation or construction, whichever is more seaward. Notwithstanding the foregoing, signs which otherwise constitute Safety Signs under section 5.07.03N of this Code, and signs which intend to exclude use of the sandy beach due to a dangerous or unsafe condition, or due to active construction, restoration, or renourishment on the sandy beach are not prohibited by this section provided such signs meet all applicable provisions of this Code.

SECTION 2. A Sign existing on the sandy Gulf Beach on the effective date of this Ordinance which was erected pursuant to a valid permit from the City, if a permit was required, and which complies in all respects with City ordinances in effect prior to the adoption of this Ordinance, is hereby deemed to be a Legal Sign. After the effective date of this Ordinance, these Legal Signs will remain Legal but be considered Nonconforming Signs. Legal, Nonconforming Signs shall, on or before December 31, 2018, conform to the requirements of this Ordinance or be removed.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 4. 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 Panama City Beach Land Development Code, and unless a contrary ordinance is adopted within ninety (90) days following such publication, the codification of this Ordinance shall become the final and official record of the matters herein ordained. Section numbers may be assigned and


changed whenever necessary or convenient.

SECTION 5. This Ordinance shall take effect immediately upon passage.

PASSED, APPROVED AND ADOPTED at the regular meeting of the City Council of the City of Panama City Beach, Florida, this 27th day of September, 2018.


MAYOR

ATTEST:


CITY CLERK

EXAMINED AND APPROVED by me this 27th day of September, 2018.


MAYOR

Published in the Panama City News Herald on the 12th day of Septmber, 2018.

Posted on pcbgov.com on the 28th day of September, 2018.