

ORDINANCE 2023- 01

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF OKALOOSA COUNTY, FLORIDA; AMENDING CHAPTER 16, SECTION 16-43 OF THE CODE OF ORDINANCES TO PROHIBIT SMOKING AND VAPING IN COUNTY OWNED PUBLIC PARKS AND BEACHES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Okaloosa County Code of Ordinances, Chapter 16, “Regulation of use and conduct at the beach, county parks, water bodies, and all recreational areas in unincorporated areas of Okaloosa County,” Section 16-43, identifies prohibited activities within all recreational areas in unincorporated areas of the County; and

WHEREAS, Chapter 2022-213, Laws of Florida, enacted and signed into law by the Governor on June 24, 2022, effective July 1, 2022, amended the Florida Clean Air Act (Chapter 386, part II, Florida Statutes) to provide that counties and municipalities may restrict smoking within the boundaries of any public beaches and public parks they own; and

WHEREAS, the legislation amends § 386.209, Florida Statutes, to expressly provide that counties and municipalities may further restrict smoking within the boundaries of any public beaches and public parks the local government owns, with the exception of restrictions on the smoking of unfiltered cigars which is preempted to the State; and

WHEREAS, cigarette butts are one of the most commonly found items of litter on Florida’s beaches; and

WHEREAS, the litter caused by those who improperly dispose of filtered cigars and cigarette butts or other tobacco products on the Public Beach and in Public Parks is difficult to remove from the beaches, can cause ingestion hazards to wildlife, can significantly detract from a healthy environment, and reduce the enjoyment of the County’s public beaches and parks for those individuals and families who want to enjoy a healthy environment, free of smoking-related pollution and hazards; and

WHEREAS, research conducted by the Ocean Conservancy, a nonprofit environmental advocacy group, has found that cigarette butts are the fourth most harmful type of litter to marine life due to ingestion and contamination of the environment, and thus harm seabirds, sea turtles and marine mammals; and

WHEREAS, the Board of County Commissioners desires to protect the aesthetic beauty and environmental health of the County’s public parks and beaches; and

WHEREAS, in addition to the harmful impact of litter, the Florida Legislature has found in § 386.202, Florida Statutes, that the intent of the Florida Clean Air Act is to protect people from the health hazards of secondhand tobacco smoke and vapor and to implement the Florida health initiative in s. 20, Art. X of the State Constitution; and

WHEREAS, the Florida Legislature in its staff analysis further notes that exposure to secondhand smoke can cause numerous health problems and has been causally linked to cancer and to other potentially fatal diseases. Secondhand smoke is generally defined as smoke from burning tobacco products or smoke that is exhaled by a tobacco smoker; and

WHEREAS, the Board of County Commissioners finds that this Ordinance serves the public interest and is necessary and appropriate to protect public health, safety, and welfare of its citizens and visitors.

NOW, THEREFORE, be it ordained by the Board of County Commissioners of Okaloosa County as follows:

Section 1. The Okaloosa County Code of Ordinances, Chapter 16, Section 16-43 “Regulation of use and conduct at the beach, county parks, water bodies, and all recreational areas in unincorporated areas of Okaloosa County” is hereby amended as follows (note strikethrough text indicates deletions, underline text indicates additions):

Sec. 16-43. Regulation of use and conduct at the beach, county parks, water bodies, and all recreational areas in unincorporated areas of Okaloosa County.

- (a) *Overnight camping.* Overnight camping is restricted to posted parks only. Otherwise it shall be unlawful to camp or leave non permitted items such as, but not limited to, personal property as defined in subsection 16-41 above, collapsible structures, sheds, trailers, etc. unattended overnight and/or those time periods during which the beaches, county parks, or recreational areas are closed.
- (b) *Fires and fireworks.* It shall be unlawful for any person, firm, corporation, or other legal entity to ignite any substance or material or to light or participate in the lighting of any fire between the vegetation line or mean high water mark (beach area), whichever is a greater distance from the water's edge, and the water's edge of the Gulf of Mexico in Okaloosa County, Florida. No person shall bring into, possess, or set off or otherwise cause to explode or discharge or burn any fireworks as defined herein in any county park or any other county owned or leased property unless approval has been granted by the board of county commissioners or their designee.
 - (1) No open fires/flames are allowed at John Beasley Park, James Lee Park, Newman C. Brackin Park or the Okaloosa Island Pier. This includes but is not limited to sternos, Bar-B-Q grills, candles, tiki torches, fireworks, etc.
 - (2) No fires are allowed in county public parks or recreation areas except in the grills and/or fire rings that have been provided by the parks division.

(c) Smoking and vaping prohibited within County-owned public parks and public beaches. It shall be prohibited for any person in or on any County-owned public park or public beach to smoke, burn, ignite, inhale, exhale or consume any cigarette, pipe, lighted tobacco product, electronic cigarette, or vapor producing device other than an unfiltered cigar.

~~(e)~~(d) *Fishing.* It shall be unlawful for any person on property owned by Okaloosa County:

- (1) To fish in the Gulf of Mexico after having been warned by any law enforcement officer that the health and safety of bathers is being endangered; or
- (2) While on the beach to intentionally fish for sharks or to fish by those methods commonly known as "chumming" or "blood baiting."
- (3) Nothing in this section shall be construed to create a duty on the part of any governmental employee or agent to prevent fishing or to warn of the presence of sharks in the Gulf of Mexico.

~~(d)~~(e) *Glass containers.* No person, firm, corporation, joint venture, partnership, or other legal entity shall possess or utilize any glass or ceramic bottle or container in or on any public park, beach, or recreational area in the county.

~~(e)~~(f) *Soliciting and canvassing.* It shall be unlawful for any person to solicit or canvass within the boundaries or in front of at any county park, beach or recreation area, except those operating with a permit issued by the board of county commissioners or their designee.

~~(f)~~(g) *Littering.* It shall be unlawful for any person to discard or otherwise dispose or abandon any trash, garbage, bottles, containers, cans, dead fish or parts thereof, charcoal briquettes or ashes, or any other litter on the beach, county park or recreational area except in designated containers for that purpose. It is further unlawful to dispose of any household or commercial garbage on the beach, county park or any recreational area.

~~(g)~~(h) *Obstructions on the beach.* It shall be prohibited for all types of personal property as defined in subsection 16-41, and other personal articles to be left on the beach overnight or in such a manner that they interfere with beach maintenance, or cleaning, nesting turtles, emergency vehicles, or lifeguards' view of the water. It shall be prohibited for all types of personal property to be placed or remain on the beach between 12:00 a.m. and 7:30 a.m. Central Time (standard or daylight savings time, whichever is in effect), except as otherwise permitted in this article.

There shall be a minimum setback of 25 feet from the gulf side of the dune on all public beaches on Okaloosa Island and James Lee Park for an emergency access lane.

~~(h)~~(i) *Swimming, surfing, use of rafts, floats and other flotation devices.*

- (1) The director of public safety or the Okaloosa County Sheriff shall have the authority to declare that a state of emergency exists and order the posting of double red flags prohibiting entry into the water. This shall apply to all county public beaches and beach access ways on Okaloosa Island and James Lee Park.
- (2) Following a declaration of a state of emergency for any portion of any water body in Okaloosa County including the incorporated areas, and the posting of double red flags prohibiting entry into the water, failure to comply with directions of lifeguards or law

enforcement officers shall be a violation of Section 843.02, Florida Statutes, or other applicable statute. Those persons surfing as defined herein with a surfboard attached to the surfer by a leash are exempt from this article.

- (3) No person, firm, corporation or other legal entity except a lifeguard or other person actually engaged in a rescue attempt shall:
 - a. Operate any watercraft, swim, bathe, surf, wade or dive within 150 feet of the Okaloosa Island Pier extending into the Gulf of Mexico on Okaloosa Island.
 - b. Swim or bathe in violation of an order given pursuant to subsection (h) of this section.

~~(j)~~(j) *Flag warning system.*

- (1) A flag warning system shall be adopted by the board of county commissioners.
- (2) All county beaches as referenced in subsection (h)(1) and public access points to beaches leading to the Gulf of Mexico shall display a sign informing the public of the beach flag warning system, and hours lifeguards are on duty and notification that when lifeguards are not on duty swimmers shall swim at their own risk. The sign shall not be less than 24 inches wide and 30 inches long.
- (3) Beach vendors and contractors and other governmental entities are encouraged to post the beach flag warning system sign in a prominent place at their place of business. The sign shall be in color and not less than 24 inches wide and 30 inches long.
- (4) Beach lifeguards at county beaches, as referenced in subsection (h)(1), shall post the appropriate flags depicting current conditions at each designated beach from the second Saturday in March through the second weekend in October. Warning flags will be raised when lifeguards are on duty and actively guarding and will be lowered when lifeguards leave the beach daily.

~~(k)~~(k) *Sound amplification.* No audio device, such as but not limited to, loudspeakers, television, radio, compact disc, tape, record player, iPod, phone, computer, or musical instrument, except equipment used by law enforcement, rescue or beach safety personnel, shall be used on the beach, county park, recreational areas and water bodies in any manner, that can be heard by a person using normal hearing facilities, at a distance of 100 feet or more from the source of the sound except if permitted by a county sanctioned event, e.g., a concert or other event.

~~(l)~~(l) *Removal of beach sand.* No beach sand may be removed from the beach except for permitted construction under guidelines established by the county.

~~(m)~~(m) *Removal of water.* No water may be pumped from the Gulf of Mexico except for permitted construction under guidelines established by the county.

~~(n)~~(n) *Animals.* Animals are prohibited in county parks, beaches or other recreational areas with the exception of those used for assistance as a service animal in accordance with Section 413.08, Florida Statutes, or law enforcement.

~~(o)~~(o) Use of illegal drugs, alcohol and fireworks shall be prohibited in any county park, beach or other recreational area. The prohibition of the use of alcohol does not apply within the appropriately licensed establishments at the Island Pier, Newman C. Brackin Park and

James Lee Park and any other establishment in a county park as approved by the board of county commissioners or its designee.

~~(p)~~(p) Disorderly conduct will not be permitted at any county park, beach or recreational area. It shall include but not be limited to profanity, fighting, and disturbing the public peace.

~~(q)~~(q) *Abandonment.* Any personal property as defined in section 16-41 and/or other item generally used for boating, swimming, sunbathing, beach recreation, advertised or non-advertised sports activities and/or gatherings on the beach or county recreational areas for more than the permitted time, or during a time that is prohibited, shall be deemed abandoned. Abandoned items of personal property in violation of this article are hereby declared a public nuisance. Abandoned items shall be deemed discarded by the owner and shall become property of Okaloosa County, which may dispose of the item.

~~(r)~~(r) The use of trampolines or bounce houses may not be used on the beach or at any county recreational area.

~~(s)~~(s) *Enforcement.*

(1) The sheriff department, Okaloosa County Public Works Department, Facility and Parks Department, Code Enforcement, Tourist Development Department and Okaloosa County Public Safety Department are hereby authorized and directed to remove from the beaches and recreation areas items of personal property that is abandoned or not in accordance with the terms in this article and enforce all other provisions of this article.

(2) Items removed from beaches or recreation areas shall become property of Okaloosa County which shall dispose of the items in any legal manner it deems appropriate.

Section 2. **CODIFICATION.** It is the intent of the Okaloosa County Board of County Commissioners that the provisions of this ordinance shall be codified. The codifier is granted broad and liberal authority in codifying the provisions of this Ordinance.

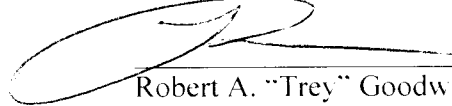
Section 3. **SEVERABILITY.** If any section, sentence, phrase, word or portion of this Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Ordinance not otherwise determined to be invalid, unlawful or unconstitutional.

Section 4. **CONFLICTS.** In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance of the County, the provision which establishes the higher standards for the promotion and protection of the health and safety of the people shall prevail.

Section 5. **EFFECTIVE DATE.** This Ordinance shall be filed with the Secretary of State within ten (10) days of adoption and shall become effective upon filing.

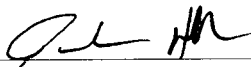
PASSED AND ADOPTED in Regular Session this 17th day of January, 2023.

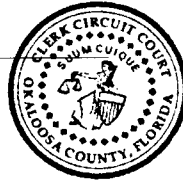
BOARD OF COUNTY COMMISSIONERS
OF OKALOOSA COUNTY


Robert A. "Trey" Goodwin, III, Chairman

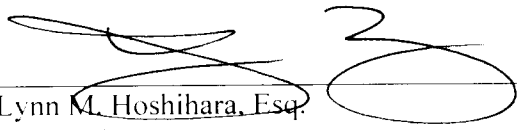
ATTEST:



For 
J.D. Peacock II, Clerk



APPROVED AS TO FORM:


Lynn M. Hoshihara, Esq.
County Attorney



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

January 18, 2023

Honorable J. D. Peacock II
Clerk of the Circuit Court
Okaloosa County
101 East James Lee Boulevard
Crestview, Florida 32536-1359

Attention: Maria Everton

Dear Honorable J.D. Peacock:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Okaloosa County Ordinance No. 2023-01, which was filed in this office on January 18, 2023.

If you have any questions or need further assistance, please contact me at (850) 245-6271 or Anya.Owens@DOS.MyFlorida.com.

Sincerely,

Anya C. Owens
Program Administrator
Florida Administrative Code and Register

ACO/rra