

DIVISION 1. - GENERALLY

Sec. 86-26. - 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 furniture includes, but is not limited to, any chair (including lounge chair), umbrella, tent or any other object that is used on the public beach.

Beach furniture operator is a hotel or condominium association located on the east side of Collins Avenue that provides beach furniture services to its building residents and verified guests.

Beach furniture setup is the daily organized preplacement, presetting or pre-positioning of beach furniture by a beach furniture operator or user on the beach in anticipation of use. Beach furniture setup shall not include beach furniture staging.

Beach furniture staging is the organized, daily and temporary placement or stacking of beach chairs by a beach furniture operator in preparation for as-needed, on-demand distribution to beach furniture users. Staging shall be limited to a designated staging area not to exceed one eight-foot by eight-foot portion of the public beach (located within the beach furniture operation allocation area as defined in subsection 86-31(2)c.) for beach furniture operators with properties with less than 200 feet of beach frontage, and one 12-foot by 12-foot portion of the public beach within the beach furniture allocation area for beach furniture operators with properties with 200 feet or more of beach frontage, subject to a maximum permitted height of stacked chairs of four and one-half feet.

Beach furniture storage is the daytime or overnight storage of beach furniture on the public beach.

Beach furniture user is an individual using any item of beach furniture while on the public beach. This applies to the general public, condominium residents and guests, and verified hotel guests.

Exclusion zone means all waters within the center line of 96th Street on the north and southward to the northerly line of 87th Terrace, including all improvements, recreational areas and property therein measured from the mean low water line; and that portion of the water area of the Atlantic Ocean, marked by regulatory markers, extended up to a maximum of 300 feet off shore from the mean high water line lying between the center line of 96th Street to the northerly line of 87th Terrace, as described on exhibit A. As the markers will move about their anchor location with the tides and currents, enforcement of the exclusion zone shall extend to the area defined by the markers at the water surface at the time of infraction.

Editor's note— Exhibit A is not included herein but is available for public inspection at town offices.

Idle speed/no wake means a motorboat speed not greater than that necessary to maintain steerageway. A motorboat that is operating on a plane is not proceeding at idle speed/no wake.

Motorboat means any vessel, including personal watercraft, that is propelled or powered by machinery and that is used or capable of being used as a means of transportation on water.

Operate means to be in charge of, or in command of or in actual physical control of a motorboat in the exclusion zone.

Personal watercraft means a small class A-1 or A-2 vessel that uses an outboard motor or an inboard motor powering a water jet pump as its primary source of motive power and that is designed to be operated by a person sitting, standing, or kneeling on or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

Public beach means land that is seaward of the erosion control line. It shall also include all easements and rights-of-way within the area that are utilized for public beach purposes.

Regulatory marker means any anchored or fixed marker in, on or over the water, or anchored platform on the surface of the water, and includes, but is not limited to, a bathing beach marker, speed zone marker, information marker, congested area marker or warning marker.

Vessel is synonymous with boat as referenced in Section 1(b), Article VII of the Florida Constitution and includes every description of watercraft, barge and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

(Ord. No. 1416, § 2, 5-8-01; Ord. No. 1658, § 3, 12-13-16; Ord. No. 17-1662, § 2, 6-13-17; Ord. No. 20-1714, § 2, 9-10-20; Ord. No. 22-1727, § 2, 9-13-22)

Sec. 86-27. - Intent of article.

It is the intent of the town commission to prohibit those activities by persons on the public beach of the town that adversely affect the attractiveness of the public beach or endanger citizens, residents and visitors who use its facilities. The town commission further finds and determines that motorboats that operate in the exclusion zone at excessive speeds or in a reckless and unsafe manner create a situation dangerous to the lives and property of persons using said waters within the exclusion zone; that excessive motorboat speed erodes shoreline property and destroys bulkheads, seawalls, docks and piers; and that said excessive speed or the operation of motorboats in a reckless and unsafe manner reduces other available recreational uses for said waters. The town commission further finds and determines that because different size motorboats create different problems when they operate at the same speed, a flexible regulatory scheme is required.

(Ord. No. 1416, § 3, 5-8-01; Ord. No. 20-1714, § 2, 9-10-20)

Sec. 86-28. - Prohibitions—Motorboat restricted zones.

- (a) It shall be unlawful for any person to operate a motorboat within the exclusion zone in violation of the rules, regulations and standards established by the town commission under the authority and power granted in section 86-29.
- (b) No person shall operate a motorboat or personal watercraft, or permit, allow or suffer a motorboat or personal watercraft to be operated in the exclusion zone or be allowed to moor or tie-up to any regulatory marker within the exclusion zone. The town commission may establish idle speed/no wake zones ("zones") to allow motorboat or personal watercraft to landfall through these zones. These zones will be clearly marked throughout the exclusion zone. Emergency vessels, motorboats or personal watercraft used solely for the purpose of effecting an emergency/sea rescue or for the purpose of ensuring compliance with federal, state or local laws are excluded from the applicability of these regulations. A map reflecting the boundaries of the exclusion zone shall be available at the town clerk's office for reference by the public. After the effective date of these regulations, the areas located seaward of the public beaches within the beach areas of the exclusion zone shall be known as restricted swim areas and shall be governed by the provisions of this ordinance. The exclusion zone shall be marked on the water with uniform regulatory markers in accordance with applicable state and federal laws and regulations.
- (c) The provisions of these regulations shall be enforced by the town police department and other local, state and federal authorities having jurisdiction over the water located within the exclusion zone.
- (d) The regulation of motorboat or personal watercraft use in the exclusion zone as herein described has been established by the town commission under the authority and power granted in section 86-29, and in F.S. §§ 327.46 and 327.60. The effectiveness of this section shall be subject to approval by the Florida Fish and Wildlife Commission of the exclusion zone pursuant to said statutes.

(Ord. No. 1416, § 4, 5-8-01)

Sec. 86-29. - Power and authority of town commission.

- (a) The town commission shall have the power and authority to establish and enforce exclusion zones and to establish and enforce rules, regulations and standards designed to reduce the speed of motorboats and eliminate the operation of motorboats in a reckless or unsafe manner in any waters lying within the boundaries of the town, in accordance with the legislative intent of section 86-27.
- (b) Rules, regulations and standards established by the town commission pursuant to the mandate of this section shall become effective upon adoption by the town commission.

(Ord. No. 1416, § 5, 5-8-01)

Sec. 86-30. - Limitations on beach furniture; prohibitions on beach and dune system.

- (a) Beach furniture shall not inhibit access to or use of the public beach, nor obstruct reasonable access on the public beach for pedestrians and emergency vehicles, nor impact native vegetation, nor destroy or disturb sea turtles or other wildlife, including their habitats and nesting sites.
- (b) Beach furniture setup shall be limited to pre-setting of 0.1 chairs and umbrellas per lineal foot of beach frontage per beach furniture operator.
- (c) Beach furniture storage shall be prohibited on the public beach in accordance with section 150 of the town Charter. Limited daytime beach furniture setup and staging shall be permitted in accordance with the terms of this article.
- (d) Except for beach furniture setup and staging as permitted by this article, beach furniture shall be removed from the public beach when not in use. Removal shall occur promptly after use of the beach furniture ceases.
- (e) Beach furniture provided by a beach furniture operator or a user that is a hotel or condominium shall be clearly identified as to its ownership, maintained in good condition, free from evidence of deterioration, weather, and discoloration at all times.
- (f) Storage boxes or similar shed-type structures on the public beach shall be prohibited.
- (g) Beach furniture staging shall be limited to beach chairs and umbrellas stacked to a maximum height of four and one-half feet within the designated staging area.
- (h) Placement of beach furniture on the public beach shall comply with the following regulations and restrictions:
 - (1) Beach furniture shall not be placed within 12 feet of the perimeter of a lifeguard tower, or within a 12-foot-wide path (six feet to the north and south of the center line) extending behind and in front of a lifeguard tower, from the erosion control line to the ocean to allow lifeguard or emergency personnel unobstructed view and access to the public beach or ocean.
 - (2) Beach furniture shall not be placed at or within a 12-foot-wide path (six feet to the north and south of center line) extending from any street end or public beach access route to the ocean, or in the 12-foot area immediately adjacent to the street ends, to ensure clear and unobstructed access by the public and emergency and maintenance vehicles and personnel.
 - (3) Beach furniture, including staging, shall be placed no less than 15 feet seaward of the edge of the vegetation line of the dune to ensure clear and unobstructed access by the public and emergency and maintenance vehicles and personnel.
 - (4) Beach furniture shall not be placed at or within 20 feet of the high tide water's edge to provide for unobstructed access to the water and recreational use.

- (i) In the event of a declared state of emergency, natural disaster, storm warning or severe weather alert, any beach furniture placed on the public beach shall be removed from the public beach within two hours of the declared state of emergency, natural disaster, storm warning, or severe weather alert. Beach furniture shall not be placed on the public beach until such time as the beach is cleaned and/or raked after the emergency, natural disaster, storm, or severe weather event, and the town manager or designee advises that beach furniture may be placed on the public beach.
- (j) A request to relocate or remove beach furniture in violation of this article from a code enforcement officer, police or law enforcement personnel, or lifeguard shall be complied with immediately.
- (k) Motorized vehicular traffic and the operation of any motorized vehicles, whether engine, battery or electric-powered, is prohibited on the beach, upon a dune, in an area containing dune vegetation, or in the waters adjacent to the beach. The provisions of this subsection shall not apply to a person acting under authority of or with permission of the Town or other governmental agencies or entities for cleanup, maintenance, repairs, public safety, or emergencies, or to the use of any wheelchair or approved conveyance by an individual with a mobility impairment. To assist in the movement of beach furniture to and from the public beach, non-fuel powered carts that can be pulled, pushed, or moved based on electric, battery or hydraulic power, that are not designed to be ridden on, and that do not exceed a maximum speed of three miles per hour, may be used by a beach furniture operator only on the hardpack for the transportation of beach furniture to and from the public beach.
- (l) It is prohibited for any person or entity, including beach furniture operators, to enter into any type of arrangement with other persons or entities including properties on the west side of Collins Avenue, related to beach furniture on the beach, upon a dune, in an area containing dune vegetation, or in the waters adjacent to a beach. Only beach furniture operators are permitted to conduct beach furniture operations on the public beach for their residents and verified guests, and no other person or entity may provide beach furniture services except as permitted in this article. This article shall not prohibit a hotel or condominium, either for itself or through a third party vendor, from providing its verified hotel guests or building residents or their guests, with beach furniture operations or service in accordance with the provisions of this article. The town as the owner and operator of the community center may, either for itself or through a third party vendor, provide town residents with beach furniture operations or service in accordance with the provisions of this article.

(Ord. No. 1658, § 3, 12-13-16; Ord. No. 20-1714, § 2, 9-10-20; Ord. No. 22-1727, § 2, 9-13-22)

Sec. 86-31. - Beach furniture operator permits and requirements.

A beach furniture operator must obtain a permit for beach furniture services. A beach furniture operator must procure a local business tax receipt and comply with the regulations of section 70-41 of this Code and all required licenses or permits from county, state and federal entities. The term of a beach furniture operator permit shall be one year, unless revoked for failure to comply with applicable regulations of this article.

Application. A beach furniture operator shall apply or provide annual supporting documentation to the town annually by August 1 for a beach furniture operator permit on a form prepared by the town with the applicable permit application fee. Beach furniture operator permits shall be valid annually from October 1 through September 30, unless revoked sooner for failure to comply with applicable regulations of this article.

(1) Beach furniture operator permit applications shall include the following:

- a. An application fee of \$500.00 for hotels and \$250.00 for condominiums;
- b. Beach furniture operations plan, including specifications on setup, storage, staffing and clean-up, and an evacuation plan, in the event of a natural disaster such as a tropical storm or hurricane, specifying a storage area during the natural disaster;
- c. Signed and sealed survey of the beach furniture operator's property, which shall depict the dimension of beach frontage; and
- d. Compliance with indemnification and insurance requirements pursuant to section 86-32 of this Code.

(2) A beach furniture operator:

- a. Shall place beach furniture directly seaward of the beach furniture operator's property and only within an area that is ten feet north of the seaward extension of the southern boundary and ten feet south of the seaward extension of the northern boundary of the beach furniture operator's property in order to allow corridors to the ocean for use, safe access, and enjoyment by the general public.
- b. Shall provide trash receptacles to support beach furniture operations and remove all garbage, trash, litter, and debris contained therein when full. Trash receptacles must be removed from the public beach by the end of the beach operation day. A beach furniture operator shall continuously maintain and inspect the beach, as needed, to remove any garbage, trash, litter, or debris generated by the beach furniture operator's activity.
- c. Shall only place beach furniture within the allowable beach furniture operation allocation area of the public beach at any one time, as depicted on exhibit A attached hereto (graphic on beach furniture operation allocation area), as amended and on file and available for inspection at the town clerk's office.
- d. Reserved.

e. Shall be permitted to conduct beach furniture (chair) operations, including beach furniture setup and staging between the hours of 8:00 a.m. and sunset, after which time the staging area must be completely broken down and all beach furniture (chairs) must be removed and stored on private property daily. The staging area shall be kept in a compact and orderly configuration, with all beach furniture/chairs stacked to the maximum permitted height of four and one-half feet when not in use.

- (3) Exemption. Nothing in this article shall require a permit from a beach furniture user to place beach furniture on the public beach for personal use on an as needed basis.
- (4) Review of beach furniture operator permit application. A permit shall be granted upon the submittal of a completed application and the required fee in compliance with this article, as determined by the town manager or designee.
- (5) A beach furniture operator permit is revocable if the applicant does not meet the requirements as specified in this article. A beach furniture operator permit shall not be renewed if open violations of this article or the beach furniture operator permit exist at the time of renewal.
- (6) Appeals. If a beach furniture operator permit is denied or revoked by the town manager or designee, the beach furniture operator may, within 30 days of the decision, file a notice of appeal to the town commission. The appeal shall be heard as a quasi-judicial matter.

(Ord. No. 1658, § 3, 12-13-16; Ord. No. 17-1662, § 2, 6-13-17; Ord. No. 20-1714, § 2, 9-10-20; Ord. No. 22-1727, § 2, 9-13-22)

Sec. 86-32. - Indemnification and insurance.

- (a) The beach furniture operator agrees to indemnify, defend, save and hold harmless the town, its officers and employees from any and all claims, liability, lawsuits, damages and causes of action which may arise out of the permit and/or the beach furniture operator's activity on the public beach.
- (b) The beach furniture operator agrees to obtain and maintain for the entire permit period, at its own expense, the following requirements:
 - (1) Commercial general liability insurance in the amount of \$1,000,000.00 per occurrence for bodily injury and property damage. The town must be named as an additional insured on this policy, and an endorsement must be issued as part of the policy reflecting compliance with this requirement.
 - (2) Workers' compensation and employers' liability as required by the state.
- (c) All policies must be issued by companies authorized to do business in the state and rated B+:VI or better per Best's Key Rating Guide, latest edition.
- (d)

The town must receive 30 days' written notice prior to any cancellation, non-renewal or material change in the coverage provided.

- (e) The beach furniture operator must provide and have approved by the town an original certificate of insurance as evidence that the requirements set forth in this section have been met prior to commencing operations.
- (f) Failure to comply with these requirements shall be deemed to be operating without a valid permit and shall cause an immediate suspension or revocation of the permit.

(Ord. No. 1658, § 3, 12-13-16; Ord. No. 20-1714, § 2, 9-10-20)

Sec. 86-33. - Violations, civil fines and penalties.

Any person or entity found to be in violation of any condition of this article issued herein shall first be issued a warning. Failure to correct the violation within 24 hours following the beach furniture operator's receipt of a warning shall result in the issuance of a civil violation notice as provided in section 15-10 of this Code.

Violations of this section shall be subject to the following fines:

- (1) If the violation is the first violation—\$100.00.
- (2) If the violation is the second violation of the original violation for which a \$100.00 fine was paid within the preceding 12 months—\$250.00.
- (3) Any subsequent violation after the second violation of the original violation within the preceding 12 months—\$500.00.
- (4) After the third violation for the same violation, a beach furniture operator shall be suspended from beach furniture operations for a period of one year from the date of violation.

(Ord. No. 1658, § 3, 12-13-16; Ord. No. 17-1662, § 2, 6-13-17; Ord. No. 20-1714, § 2, 9-10-20)

Sec. 86-34. - Lost or abandoned beach furniture.

Whenever a code compliance officer or law enforcement officer shall ascertain that an article of lost or abandoned beach furniture is present on the public beach, the officer shall follow the procedures set forth in F.S. ch. 705, as may be amended from time to time. Notwithstanding, a code compliance officer may also enforce the provisions of this section in accordance with section 86-33 of this article. Code compliance officers are designated to administer the provisions of this section and F.S. ch. 705, as may be amended from time to time, pertaining to lost or abandoned property. For the purpose of ascertaining whether unattended beach furniture has been lost or abandoned, any beach furniture left unattended for more than 24 hours shall be presumed to be lost or abandoned property.

(Ord. No. 20-1714, § 2, 9-10-20)

Sec. 86-35. - Reserved.