

ORDINANCE NO. 2023-03

AN ORDINANCE OF THE TOWN OF OCEAN RIDGE, FLORIDA, AMENDING ITS CODE OF ORDINANCES AT CHAPTER 70, SIGNS, ARTICLE I, IN GENERAL, BY CREATING A NEW SECTION 70-9, ENTITLED "BEACH SIGNS" TO ESTABLISH REASONABLE TIME, PLACE AND MANNER REGULATIONS FOR SIGNS ON BEACH PROPERTY; PROVIDING FOR SCOPE, INTENT, PURPOSE, FINDINGS, SEVERABILITY, REPEAL OF CONFLICTING ORDINANCES, FOR OTHER PURPOSES, AND AN EFFECTIVE DATE

WHEREAS, the Town of Ocean Ridge, Florida ("Town") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, Article VIII of the State Constitution and Chapter 166, Florida Statutes, provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, as the governing body, the Town Commission of the Town of Ocean Ridge ("Commission"), pursuant to the authority vested in it by Chapters 163 and 166, Florida Statutes, is authorized and empowered to consider changes to its land development code; and

WHEREAS, the Town of Ocean Ridge ("Town") desires to modify its regulation of signs at beach property within the Town of Ocean Ridge in a manner consistent with the United States Supreme Court's decision in *Reed v. Town of Gilbert*, 576 U.S. 155 (2015), holding that the regulation of signage based on content is subject to strict scrutiny in determining whether such regulation is constitutional; and

WHEREAS, the Reed decision does not prevent cities from regulating signs in a way that fully protects public safety and serves legitimate aesthetic objectives; and

WHEREAS, the Town does not wish to censor speech or regulate the content thereof, but rather to provide for the public welfare by regulating the physical characteristics and placement of signage on the beach in a manner that enhances the aesthetics of the beach, protects sea turtles, and reduces visual pollution; and

WHEREAS, the Commission finds and determines that these sign regulations are intended to protect the public from the dangers of unsafe signs, including signs that create hazardous conditions, confusion, and visual clutter through excess proliferation, improper placement, and potential illumination, animation, and excessive size; and

WHEREAS, the Commission finds and determines that these sign regulations are intended to permit signs that are compatible with their surroundings, aid orientation, and do not obstruct or

harm the sea turtles or beach visitors; and

WHEREAS, the Commission finds and determines that the prohibition of beach signs at or adjacent to the mean high water line or within an area of the beach that could be subject to customary use standards (subject to judicial determination) will reduce confusion and the aesthetic eyesores at the Town's beaches; and

WHEREAS, in accordance with the requirements of Chapter 163, Florida Statutes, and the Town's Land Development Code, the Town's Planning and Zoning Commission has reviewed the proposed Ordinance and recommends approval (with minor revisions included herein) and has determined that the proposed Ordinance is consistent with the City's Comprehensive Plan; and

WHEREAS, the Commission conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Commission has determined that this Ordinance is consistent with the City's Comprehensive Plan; and

WHEREAS, the Commission legislatively determines and declares that adoption of this Ordinance providing new regulations for beach signage is beneficial to the public interests of health, safety, and general welfare for the residents and visitors of the Town of Ocean Ridge; and,

WHEREAS, the Town Commission of the Town of Ocean Ridge deems approval of this Ordinance to be in the best interest of the residents and visitors of the Town of Ocean Ridge and serving a valid public purpose.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF OCEAN RIDGE, FLORIDA, AS FOLLOWS:

SECTION 1 – Findings of Fact: The **WHEREAS** clauses set forth above are adopted herein as true legislative findings of fact of the Town Commission in addition and supplemental to those findings set forth in Section 70- and in Section 70-9 of this Ordinance. It is the purpose and intent of this Ordinance to promote the health, safety, and general welfare of the residents and visitors of the Town and to ensure the proper regulatory requirements for signage on the beach within the Town's corporate limits.

SECTION 2 – Amendment: Chapter 70, entitled "Signs," Article I, entitled "In General," is hereby amended to add a new Section 70-9, to be entitled "Beach Signs" to read as follows (underline denotes additions; ~~stricken through~~ denotes deletions):

Chapter 70 – SIGNS

ARTICLE I. – IN GENERAL.

Sec. 70-9. Beach signs.

(a) Scope, Intent, Purpose, and Findings.

- (1) Scope. The provisions of this section shall regulate the location, number, size, appearance, construction and maintenance of all signs permitted on the beach. This section is not intended to and does not apply to signs constructed, maintained, or otherwise posted, owned, or leased on the beach by the Town of Ocean Ridge, Palm Beach County, the State of Florida, the federal government or their agents including, but not limited to signs for the protection of sea turtles or other federally protected species.
- (2) Intent. Increased numbers and size of signs, as well as the location of signs and illumination from signs, create confusion, visual distractions, and can be harmful to beach visitors and sea turtles. In addition, the indiscriminate construction and maintenance of signs detract from the appearance of the beach. It is therefore the intent of these regulations to promote and protect the public health, safety, general welfare, convenience, and enjoyment of the residents and visitors of the town. More specifically, these sign regulations are intended to:
- a. standardize the location of all signage on the beach;
 - b. permit, regulate, and encourage the use of signs compatible with beach usage and the protection of sea turtles;
 - c. establish regulations affecting the design, construction, and maintenance of beach signs for the purpose of ensuring equitable means of graphic communication, while maintaining a harmonious and aesthetically pleasing visual environment within the town;
 - d. regulate the appearance and design of beach signs in a manner that promotes and enhances the natural surroundings and beautification efforts of the town as a source of economic advantage;
 - e. maintain and enhance the scenic beauty of the aesthetic environment at the beach and the town's ability to attract tourism and other sources of economic growth;
 - f. preserve, conserve, protect, and enhance the aesthetic quality and scenic beauty of all beach areas in the town;
 - g. encourage the effective use of beach signs as a means of communication in the town;
 - h. ensure beach user safety;
 - i. regulate location and installation of beach signs so as to protect and not unsafely interfere with beach usage;
 - j. curtail the size and number of beach signs to the minimum reasonably necessary to allow for public communication and other forms of expression at the beach;
 - k. lessen the visual clutter that may otherwise be caused by the proliferation, improper placement, illumination, excessive height, and excessive area of beach signs which compete for the attention and are not necessary to aid in safe usage of the beach;
 - l. protect property values by precluding, to the maximum extent possible, beach signs that create a nuisance to those properties at or near the beach;
 - m. protect property values by ensuring that the size, number, and appearance of beach signs are in harmony with other signs in the area and not excessive;
 - n. except to the extent expressly preempted by Palm Beach County, state, or federal law, ensure that beach signs are constructed, installed, and maintained in a safe

- and satisfactory manner, and protect the public from unsafe signs;
- o. not regulate beach signs more than necessary to accomplish the compelling and important governmental objectives described herein;
- p. enable the fair and consistent enforcement of beach sign regulations; and,
- q. be considered the maximum standards allowed for signage on the beach.

(3) Purpose. The regulations in this section are not intended to regulate or censor speech based on its content or viewpoint, but rather to regulate the secondary effects of speech that may adversely affect the Town of Ocean Ridge's substantial and compelling governmental interests in preserving scenic beauty and community aesthetics, and beach user and sea turtle safety in conformance with the First Amendment. It is therefore the purpose of this section to promote aesthetics and the public health, safety, and general welfare, and assure the adequate provision of light and air within the Town of Ocean Ridge through reasonable, consistent, and nondiscriminatory standards for the posting, displaying, construction, use, and maintenance of signs and sign structures on the beach that are no more restrictive than necessary to achieve these governmental interests.

(4) Findings. In addition and supplemental to the findings and determinations contained in the "Whereas" provisions, which are incorporated by reference into this section, the Town Commission acting in its legislative capacity for the purpose of regulating beach signage, hereby makes the following findings of fact: The reasonable regulation of the location, number, size, use, appearance, construction, and maintenance of beach signs within the Town serves a compelling governmental interest, for the following reasons:

- a. Florida Constitution. Article II, Section 7 of the Florida Constitution provides that "[i]t shall be the policy of the state to conserve and protect its natural resources and scenic beauty. . . ." A beautiful beach environment preserves and enhances the desirability of the town as a place to live, to recreate, and to do business. Implementing the Florida Constitution is a compelling governmental interest.
- b. Florida Statutes. Florida law requires cities to adopt comprehensive plans and implement them through land development regulations (also known as zoning regulations) and approval of development orders that are consistent with the comprehensive plan. See Part II of Chapter 163, Florida Statutes. Florida law specifically requires that municipalities adopt sign regulations. See Section 163.3202(2)(f), Florida Statutes. Complying with state law is a compelling governmental interest.
- c. Town Land Development Code. Chapter 70 of the Land Development Code provides in section 70-1 that the chapter's purpose is to "protect and promote the health and safety of persons within the community and to aid and assist in the promotion of a planned residential environment by providing regulations which allow and encourage creativity, effectiveness and flexibility in the design and use of such devices, and minimize the unreasonable restraint upon the needs of the community, while avoiding an environment that encourages visual blight." Protecting and promoting the health and safety of persons within the community is a compelling governmental interest.

The Town Commission specifically finds that these beach sign regulations are narrowly tailored to achieve the compelling and substantial governmental interests of health and safety and aesthetics, and that there is no less restrictive way for the town to further these interests.

(b) Severability: If any provision of this section is found by a court of competent jurisdiction to be invalid, such finding must not affect the validity of the other provisions of this section that can be given effect without the invalid provision.

(1) Generally: If any part, section, subsection, paragraph, sentence, phrase, clause, term, or word of this section is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, subsection, graph, subparagraph, sentence, phrase, clause, term, or word of this section. Should any subsection, paragraph, sentence, clause, phrase, or other part of this section or the adopting ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this section or the adopting ordinance as a whole or any portion or part thereof, other than the part so declared to be invalid.

(2) Severability where less speech results: Without diminishing or limiting in any way the declaration of severability set forth in subsection (b)(1)(a) above, or elsewhere in this section or the adopting ordinance, if any part, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this section is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this section or the adopting ordinance, even if such severability would result in a situation in which there would be less speech, whether by subjecting previously exempt signs to permitting or otherwise.

(3) Severability of provisions pertaining to prohibited beach signs: Without diminishing or limiting in any way the declaration of severability set forth in subsection(b)(1)(a), or elsewhere in this section or the adopting ordinance, if any part, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this section or the adopting ordinance or any other law is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this section or the adopting ordinance that pertains to prohibited signs.

(c) Beach signs: Notwithstanding any other provision of this Chapter 70, it shall be unlawful for any person to place, construct, or maintain a sign on the beach unless it conforms to the following criteria:

(1) Signs are not allowed to be erected or placed on the beach seaward of the toe of the frontal dune, mean high-water line, erosion control line, or toe of a seawall, whichever is more landward. "Frontal dune" for purposes of this section means the first natural or manmade mound or bluff of sand which is located landward of the beach and which has sufficient vegetation, height, continuity, and/or configuration to offer protective value.

- (2) Signs shall not contain any lights, reflection, or illumination and shall conform in all manner to all laws applicable to the protection of sea turtles.
- (3) Signs shall be limited in size to 18 inches by 18 inches.
- (4) Signs shall be placed at least 200 feet apart, or one (1) sign at each corner of the property's boundaries if a property line is less than 200 feet.
- (5) Signs, and any associated supporting structure, column, upright pole, or brace, shall be white and shall be wood or PVC. The sign face may be vinyl covered aluminum.
- (6) The text on the signs shall be professionally printed and the top of the signs shall not exceed six (6) feet from grade when posted.
- (7) The face of the signs shall either face to the east or to the west.
- (8) One (1) sign may be attached to or hung by rope or chain across the beach-side access (at or near the toe of the dune) of a privately owned dune crossover if the sign is otherwise compliant with the requirements of subsections (2), (3), and (6) above.

(d) All persons desiring to erect a beach sign(s) shall apply for a building permit. Sufficient information shall be provided to the Town identifying where the proposed sign(s) will be erected including, but not limited to, a survey. If a permit is required from any other regulatory agency, the Town shall require proof of such regulatory agency permit(s) prior to issuing a building permit to erect a beach sign. The cost of the permit shall be set by Town Commission resolution.

(e) Upon the adoption of this Ordinance, all existing beach signs which do not conform to the requirements of this Ordinance shall be removed within thirty (30) days.

(f) Any sign or sign structure constructed or installed under the provisions of this article shall be maintained in a safe, functional and sound structural condition at all times. General maintenance of such sign or sign structure shall include the replacement of nonfunctioning, broken, or defective parts, painting, cleaning, and upkeep of the premises immediately surrounding the sign, sign structure, and any other action required for the maintenance of such sign or sign structure. All signs and supporting structures shall be kept painted or treated in some manner to prevent rust, decay, or deterioration.

SECTION 3 - Codification: This Ordinance shall be codified in the Code of Ordinances of the Town of Ocean Ridge, Florida.

SECTION 4 - Repeal of Conflicting Ordinances: All ordinances, resolutions or parts of ordinances and resolutions in conflict herewith are hereby repealed.

SECTION 5 - Severability: As more fully set forth in Section 70-9(b) of this Ordinance, if any word, clause, sentence, paragraph, section or part thereof contained in this Ordinance is declared to be unconstitutional, unenforceable, void or inoperative by a court of competent jurisdiction, such declaration shall not affect the validity of the remainder of this Ordinance.

SECTION 6 - Effective Date: This Ordinance shall become effective immediately upon adoption.

FIRST READING this 10th day of July, 2023.

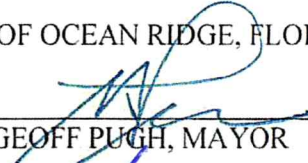
SECOND AND FINAL READING this 5th day of September, 2023.

Commissioner Coz offered the foregoing Ordinance and moved its adoption. The motion was seconded by Commissioner Besler and upon being put to a vote, the vote was as follows:

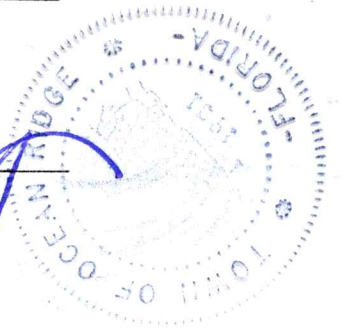
	AYE	NAY
GEOFF PUGH, Mayor	<u> X </u>	<u> </u>
STEVE COZ, Vice Mayor	<u> X </u>	<u> </u>
CAROLYN CASSIDY, Commissioner	<u> Absent </u>	<u> </u>
KENNETH KALEEL, Commissioner	<u> Absent </u>	<u> </u>
PHILIP BESLER, Commissioner	<u> X </u>	<u> </u>

The Mayor thereupon declared this Ordinance approved and adopted by the Town Commission of the Town of Ocean Ridge, Florida, on second reading, this 5th day of September, 2023.


TOWN OF OCEAN RIDGE, FLORIDA

BY: 
GEOFF PUGH, MAYOR

ATTEST: 
TOWN CLERK



APPROVED AS TO FORM AND
LEGAL SUFFICIENCY


Christy Goddeau, Town Attorney