

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: February 20, 2023

Agenda Item: 7A	Prepared By: Chris Noury, City Attorney
Agenda Section: New Business: Ordinance. First Reading	Date: February 14, 2023
An ordinance regarding the regulation of commercial recreational activities on the public beach	Division: Legal

Background:

The purpose of the ordinance is to regulate and control commercial recreational activity occurring on, or originating from, the public beach so as to preserve the unique nature of the public beach and to protect all persons who utilize the beaches from harm, undue annoyance, disturbance, and inconvenience. Specifically, the purpose is to standardize a formal approval process for:

1. Commercial recreational activity occurring on, or originating from, the public beach for the enjoyment of residents and visitors; and
2. Professional photography, weddings, filming, and special events occurring on the public beach.

A stakeholder’s meeting was held with NMB staff, the NMB Chamber of Commerce and affected businesses to address their concerns. The ordinance provides that no commercial recreational activity or special event shall occur on, or originate from, the public beach *unless* the business or individual has *one of the following*:

1. An annual permit granted by the Department of Parks and Recreation and approved by the City Manager.
2. A wedding or filming permit granted by the Department of Park and Recreation and approved by the City Manager.
3. A special event permit granted by City Council.

Fitness related instructional activities, surf/paddleboard instructional activities and services providing professional photographic/videography sessions or sittings will be required to pay a permit fee, ***however the permit fee will be waived for calendar year 2023.*** Vendors in each category will be required to have a North Myrtle Beach business license.

In addition, the vendors in the fitness related instructional activities and surf/paddleboard instructional activities will be required to carry liability insurance of at least \$1,000,000 which names the City of NMB as an additional insured. (In addition, any production company undertaking filming activities on the beach will be required to have liability insurance in the amount referenced above which names the City as an additional insured as will holders of special event permits regarding special events on the beach.)

Regarding weddings on the public beach, a wedding permit is required along with a wedding permit fee (which will be waived for calendar year 2023).

NOTE: The ordinance provides that beginning on ***January 1, 2024 and each year thereafter***, no commercial activity shall be held on the public beach on Memorial Day, July 4 or Labor Day.

Recommended Action: Adoption of the Ordinance on first reading.

Reviewed by City Manager		Reviewed by City Attorney
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Council Action:
Motion By _____ 2nd By _____ To _____

CHAPTER 5: BEACHES AND WATERWAYS

§5-27 COMMERCIAL RECREATIONAL ACTIVITY ON THE PUBLIC BEACH.

- 5-27.01 Purpose, applicability, and definitions
- 5-27.02 Commercial recreational activity on the public beach, generally
- 5-27.03 Annually approved permits on the public beach
- 5-27.04 Wedding and filming permits on the public beach
- 5-27.05 Special event permits on the public beach
- 5-27.06 Penalty

§5-27.01 PURPOSE, APPLICABILITY, AND DEFINITIONS.

- A. Purpose. The purpose of this chapter is to regulate and control commercial recreational activity occurring on, or originating from, the public beach so as to preserve the unique nature of the public beaches and to protect all persons who utilize the beaches from harm, undue annoyance, disturbance, and inconvenience. Specifically, the purpose is to standardize a formal approval process for:
 - 1. commercial recreational activity occurring on, or originating from, the public beach for the enjoyment of residents and visitors, and
 - 2. professional photography, weddings, filming, and special events occurring on the public beach.
- B. Definition. For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.
 - 1. **COMMERCIAL RECREATIONAL ACTIVITIES.** A recreational activity occurring on, or originating from, the public beach for the payment or charge of a fee for participation including but not limited to surfing, paddleboarding, yoga or other fitness-related activities.
 - 2. **SPECIAL EVENT.** A planned outdoor event occurring on the public beach which involves:
 - a. the organized gathering of persons for a common purpose, design, or goal, not to include casual beach use, or
 - b. a participatory activity by an individual or group on the public beach, which is related, directly or indirectly, to a business or commercial purpose.
 - 3. **CHARITABLE ORGANIZATION.** An organization that is determined by the Internal Revenue Service to be exempt from Federal income taxes under 26 U.S.C. Section 501(c)(3), (4), (6), (7), (8), (10) or (19) and exempt from business license tax under the City of North Myrtle Beach Code of Ordinances, Sections 7-6(D) and 7-6(E).
 - 4. **CHARITABLE PURPOSE.** A benevolent, philanthropic, patriotic, or eleemosynary purpose that does not result in personal gain to a sponsor, organizer, officer, director, trustee, or person with ultimate control of the organization.

§5-27.02 COMMERCIAL RECREATIONAL ACTIVITY ON THE PUBLIC BEACH, GENERALLY.

- A. No commercial recreational activity or special event shall occur on, or originate from, the public beach unless the business or individual has one of the following:
 - 1. an annual permit granted by the Department of Parks and Recreation and approved by the City Manager
 - 2. a wedding or filming permit granted by the Department of Parks and Recreation and approved by the City Manager
 - 3. a special event permit granted by the City Council
- B. All commercial recreational activities shall occur only on, or originate from, the public beach in such areas, on such dates and at such times as approved by the City Manager.
- C. City Council may limit the maximum number of annual permits granted.
- D. Beginning January 1, 2024, and each year thereafter, no commercial activity shall be held on the public beach on Memorial Day, July 4th or Labor Day.

§5-27.03 ANNUALLY APPROVED PERMITS ON THE PUBLIC BEACH.

- A. Following adoption of this ordinance and for calendar year 2023, vendor must submit an application for approval prior to May 1, 2023 to be eligible for review and consideration. Beginning in calendar year 2024 and each year thereafter, a vendor must submit an application for approval prior to February 1 of each year, to be eligible for review and consideration.
- B. Fitness-related instructional activities are eligible for consideration of an annual permit on the following terms:
 - 1. A permit fee is required. The permit fee will be waived for calendar year 2023.
 - 2. Vendor must have a City of North Myrtle Beach business license.
 - 3. Each vendor must carry liability insurance of at least \$1,000,000 which names the City of North Myrtle Beach as an additional insured.
 - 4. Depending on the nature of the activity, proof of legally mandated worker's compensation insurance may be required.
 - 5. Prior to the commencement of the activity, personally signed hold harmless and indemnification agreements in favor of the city from all employees and participants in such activity is required.
 - 6. Vendor shall not exceed thirty (30) participants per class.
 - 7. All instructors must be CPR and first aid certified through a nationally recognized training and certification organization accepted by either the Federal government or the State of South Carolina. The current certifications must be on file with the city.
 - 8. The vendor shall have a first aid kit onsite at all times.
 - 9. The staging or erection of obstructions of any kind on the public beach is prohibited.

10. Fitness-related instructional activities that occur on the public beach shall occur at least twenty-five (25) feet away from any public beach access, walkover, sand dune, or sand fence and may not block the beach in front of an access walkover.
 11. Instructors may not advertise, solicit, or engage in financial transactions on the beach.
- C. Surf/paddleboard instructional activities are eligible for consideration of an annual permit on the following terms:
1. A permit fee is required. The permit fee will be waived for calendar year 2023.
 2. Vendor must have a City of North Myrtle Beach business license.
 3. Each vendor must carry liability insurance of at least \$1,000,000 which names the City of North Myrtle Beach as an additional insured.
 4. Depending on the nature of the activity, proof of legally mandated worker's compensation insurance may be required.
 5. Prior to the commencement of the activity, personally signed hold harmless and indemnification agreements in favor of the city from all employees and participants in such activity is required.
 6. Vendor shall have at least one (1) instructor with a minimum ratio of one (1) instructor per eight (8) participants.
 7. All instructors must be CPR and first aid certified through a nationally recognized training and certification organization accepted by either the Federal government or the State of South Carolina. The current certifications must be on file with the city.
 8. The vendor shall have a first aid kit onsite at all times.
 9. The staging or erection of obstructions of any kind on the public beach is prohibited.
 10. Surf/paddleboard instructional activities that occur on the public beach shall occur at least twenty-five (25) feet away from any public beach access, walkover, sand dune, or sand fence and may not block the beach in front of an access walkover.
 11. Instructors may not advertise, solicit, or engage in financial transactions on the beach.
- D. Professional photographic or videography sessions or sittings of individuals, families or groups are eligible for consideration of an annual permit on the following terms:
1. A permit fee is required. The permit fee will be waived for calendar year 2023.
 2. The photographer or business owner must have a City of North Myrtle Beach business license.
 3. Photographic activities that occur on the public beach shall not interfere with the public's use of the same.
 4. No activity shall take place in the dune area.
 5. The staging or erection of obstructions of any kind on the public beach is prohibited.
 6. Professional photographic or videography activities that occur on the public beach shall occur at least twenty-five (25) feet away from any public beach access, walkover, sand dune, or sand fence and may not block the beach in front of an access walkover.

7. Photographers may not advertise, solicit, or engage in financial transactions on the beach.
- E. A charitable organization engaging in activities on the public beach with charitable purposes charging no payment or fee to participate is eligible for an annual permit on the following terms:
1. Vendor must submit an application for approval.
 2. A permit fee is not required.
 3. Each provider must carry liability insurance of at least \$1,000,000 which names the City of North Myrtle Beach as an additional insured.
 4. Prior to the commencement of the activity, personally signed hold harmless and indemnification agreements in favor of the city from all volunteers and participants in such activity are required to be submitted to the city.
- F. Failure to adhere to any of the standards set forth in this section will result in the immediate revocation of the annual permit to conduct commercial recreational activities on the public beach for the remainder of the calendar year as well as such penalties as set forth in §5-27.06.

§5-27.04 WEDDING AND FILMING PERMITS ON THE PUBLIC BEACH.

- A. The following provisions apply to weddings on the public beach:
1. A wedding permit is required.
 2. A permit fee is required. The permit fee will be waived for calendar year 2023.
 3. If a wedding planner, officiant, photographer, or any other paid vendor is hired, City of North Myrtle Beach business licenses are required for such vendors.
 4. Wedding activities that occur on the public beach shall occur at least twenty-five (25) feet away from any public beach access, walkover, sand dune, or sand fence and may not block the beach in front of an access walkover.
 5. Set-up regulations (no more than):
 - a. One (1) portable arch.
 - b. Two (2) small tables.
 - c. Twenty-Four (24) folding chairs.
 - d. One (1) battery operated portable sound device/speaker.
 6. Tiki torches, sky lanterns, floating lanterns and similar devices are prohibited.
 7. All wedding activities, including photography, shall not interfere with the use of the public beach.
 - a. A specific place on the beach shall not be reserved.
 - b. The public is not required to accommodate any request(s) to move, even those temporary in nature.
 8. Wedding receptions and catering of any kind is prohibited.

9. There shall be no throwing of materials of any type, including but not limited to rice, bird seed, confetti, seashells or silk or real flowers or flower petals, without prior approval from the Parks and Recreation Department.
 10. The staging or erection of obstructions of any kind on the public beach is prohibited.
 11. Vendors may not advertise, solicit, or engage in financial transactions on the beach.
- B. Any production company undertaking filming activities occurring on or originating from the public beach shall comply with the following terms:
1. A filming permit is required.
 2. A permit fee is required. The permit fee will be waived for calendar year 2023.
 3. The filmmaker and/or business owner must have a City of North Myrtle Beach business license.
 4. Each vendor must carry liability insurance of at least \$1,000,000 which names the City of North Myrtle Beach as an additional insured.
 5. Photographic and/or filming activities shall not interfere with the public's use of the same.
 6. No activity shall take place in the dune area.
 7. The staging or erection of obstructions of any kind on the public beach is prohibited.
 8. Filmmakers and/or business owners may not advertise, solicit, or engage in financial transactions on the beach.

§5-27.05 SPECIAL EVENT PERMITS ON THE PUBLIC BEACH.

- A. All special events occurring on or originating from the public beach, with the exception of small service group activities authorized by the City Manager, shall be considered by the City Council on an individual basis by submission of an electronic special event permit application.
- B. A special event permit is required.
- C. A permit fee may be required. The permit fee will be waived for calendar year 2023.
- D. No activity shall take place in the dune area.
- E. Each vendor must carry liability insurance of at least \$1,000,000 which names the City of North Myrtle Beach as an additional insured.
- F. The staging or erection of obstructions of any kind on the public beach is prohibited, with the exception of City approved beach games.
- G. Special events may not interfere with the general public's use of the beach or activities of approved franchises.
- H. Special events that occur on the public beach shall occur at least twenty-five (25) feet away from any public beach access, walkover, sand dune, or sand fence and may not block the beach in front of an access walkover.
- I. There shall be no advertising, solicitation, or financial transactions occurring on the beach.

§5-27.06 PENALTY.

Any person violating any provision of this code (i.e., §5-27) shall be subject to all the following that apply:

- A. §1-6 entitled “General Penalty” of the Code of Ordinances for the City of North Myrtle Beach.
- B. Revocation of business license pursuant to §7-15.
- C. Revocation of annual permits provided therein.
- D. Revocation of special event permit as provided therein.