ORDINANCE NO. 2015-02

AN ORDINANCE OF GULF COUNTY, FLORIDA PROHIBITING AND REGULATING OBSTRUCTIONS AND PERSONAL PROPERTY ABANDONED ON THE PUBLIC BEACHES OF GULF COUNTY, FLORIDA AND TO BE COMMONLY REFERRED TO AS "GULF COUNTY LEAVE NO TRACE ORDINANCE"; REQUIRING THE POSTING OF PROPER NOTICE/SIGNAGE AT BEACH ACCESS POINTS AND IN DAILY, WEEKLY AND MONTHLY RENTAL UNITS, IN GULF COUNTY, FLORIDA; FOR SAID POLICIES TO AMEND, BE CODIFIED AND BECOME PART OF THE GULF COUNTY LAND DEVELOPMENT REGULATIONS (LDR); PROVIDING FOR REPEALER, SEVERABILITY AND MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Florida Statute 125.01 the County shall have the power to carry on county government inclusive of the power to adopt its own rules that which are not inconsistent with general or special law; and

WHEREAS, pursuant to Florida Statute 125.01 the County shall reserve the powers to adopt ordinances necessary for the exercise of its powers and perform acts which are in the common interest of the people of Gulf County and exercise all powers and privileges not specifically prohibited by law; and

WHEREAS, the Board of County Commissioners of Gulf County Florida (hereinafter Commission) having received many verbal and written public recommendations from its citizens at various public hearings and meetings to address the current and future condition, maintenance and safety of Gulf County beaches throughout the County in order to protect the health and welfare of its residents, claimed and unclaimed property; the natural coastal beauty of Gulf County and the quality of life for all citizens and visitors to the County; and

WHEREAS, the Commission recognizes that Gulf County has 26 plus miles of public beach, ("Public Beaches" and or "Beaches"); and,

WHEREAS, residents and tourists have used and enjoyed the Public Beaches in Gulf County, Florida for generations; and,

WHEREAS, residents as well as the increased use by tourists of the Public Beaches in Gulf County, Florida for vacationing, recreation, fishing, walking, driving, water access and other traditional uses; and,

WHEREAS, the Commission finds and determines that the Gulf County Land Development Regulations and its public beach regulations are intended to maintain and improve the quality of life for all citizens and visitors of the County; and

WHEREAS, the Commission finds it is in the interest for the safety and welfare of the public that certain controls and regulations be enacted to reduce risk of injury to the public and ensure the continued peaceful use and enjoyment of Gulf County's beaches as a natural resource by the general public; and

WHEREAS, the manner, mode, type and degree of uses to which the Gulf County public beaches and adjoining waters are placed by the public affects the health, safety and welfare, as well as the right to enjoyment thereof, of the individuals occupying or using its beaches and waters for recreational purposes as well as those residing nearby; and

WHEREAS, the Commissioners find and determine that the County has adopted Land Development Regulations in order to implement its Comprehensive Plan (last reviewed and revised 11/2010), and to comply with the requirements of the laws of State of Florida, including Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163 of Florida Statutes as well as the regulation and preservation of Gulf County beaches pursuant to Florida Statute Chapter 161; and

WHEREAS, the Commission has received the recommendations of the various county departments as well as public meetings and commentary of its Tourist Development Council advisory board and representatives on the issue to establish basic community concerns and comments in formulating an Ordinance that achieves the goals of the community while balancing the property rights of its citizens and visitors; and

WHEREAS, the Commissioners find and determine that the County staff, its advisory boards and the public participation have devoted considerable time to developing, adapting and recommending an Ordinance that would attempt to implement a foundation for the future preservation and protection of Gulf County's beaches as well as the stated goals to maintain and promote public safety and recreational enjoyment; and

WHEREAS, the Commission has sought to implement the tools of smart growth management and its Florida best practices for County land regulations in establishing a proactive planning approach while maintaining the principles of Florida Statute 70.001, "Bert J. Harris, Jr., Private Property Rights Protection Act"; and

WHEREAS, Gulf County is at the core of the "Forgotten Coast" of the State of Florida, identified by its pristine beaches, critical environmental habitats and state restricted lands and parks, and with areas of Gulf County's coastline being nationally recognized as the "#1 Beach in America" and some of the "most beautiful beaches in the United States" it is the intent and goal of this Commission to preserve these unique natural qualities through the adoption and enactment of this

Ordinance; and

WHEREAS, the Commissioners find and determine that the a major deterrent to a decline is a healthy civic pride, and further note the importance of an interest in maintaining and beautifying its public beaches to maintain a civic pride and safe recreational environment; and

WHEREAS, the Commissioners find and determine that the import of the Leave No Trace Ordinance permitted under the Land Development Regulations for local governments, even smaller rural coastal counties such as Gulf County, have a vital role to play in preserving and enhancing the natural environment and beauty of the coastal region and public safety on its Public Beaches; and

WHEREAS, the Commission wishes to recognize and regulate a limited scope of conduct of those visiting and utilizing the beaches of Gulf County and the public safety and health hazards created by the abuse and or disregard of beach access and its use, driving privileges, camping and other recreational uses permitted by the Commission; and

WHEREAS, sea turtles and other protected species using the beaches in Gulf County as its natural habitat for nesting as well as laying eggs and hatching, and Gulf County desires to protect these endangered species; and,

WHEREAS, items of personal property left on the Public Beach unattended or overnight are obstacles for maintenance crews, interfere with the public's use, access and enjoyment of the Public Beaches in Gulf County and pose safety hazards, adversely affect the beauty of the beach, adversely affect tourism, adversely affects economic interests and can be an obstruction for sea turtles and other protected species; and,

WHEREAS, the uncontrolled regulation of claimed and unclaimed personal property has and will continue to have long term effects on the future preservation and public safety for Gulf County's beaches and its affects to the general health, natural beauty, public safety, smart growth and the joint welfare and wellbeing of the residents and visitors; and

WHEREAS, throughout the year, a proliferation of personal property including beach tents and other shading devices as well as chairs, ice and storage chests and other items of personal property used in commerce in and around the beaches of Gulf County that include (tents, chairs, paddle boards, sailboats, kayaks and other watercraft) and other camping supplies have been left overnight on the Public Beaches of Gulf County, Florida; and

WHEREAS, personal property left on the Public Beaches of Gulf County, Florida overnight as well as misuse and abuse of basic guidelines for peaceful enjoyment and proper sharing of the Public Beaches by the entire community constitutes a nuisance which is contrary to the public's health, safety and welfare; and

WHEREAS, in order to protect and maintain the use of the Public Beach for residents,

tourists, visitors, wildlife and maintenance crews, the overnight placement of items of personal property on the Public Beach must be, and is, prohibited; and,

WHEREAS, the personal property left overnight on the Public Beaches of Gulf County, Florida is neither "lost property" nor "abandoned property" as those terms are used in Section 705.101, Florida Statutes, because such property has neither been mislaid nor disposed of on the Public Beach in a wrecked or inoperative condition, and that the regulation of personal property left on the Public Beach overnight is not preempted by Chapter 705, Florida Statutes; and,

WHEREAS, leaving personal property in beach access points at any time blocks public access and creates a hazard and nuisance for other persons wishing to access the Public Beach; and,

WHEREAS, allowing persons to relocate items of personal property overnight to a safe and appropriate landward location reasonably balances the use and enjoyments of personal property with the need to protect the public access, public health, safety and welfare and wildlife; and,

WHEREAS, the County Administrator under the powers and duties delegated by Gulf County Ordinance 2014-02 shall be authorized to grant limited permission and exceptions to leave items of personal property on the Public Beach overnight under enumerated circumstances; and

WHEREAS, public trash containers, signs placed by a governmental agency on the beach and beach areas, and public items, should be allowed to remain on the Public Beach in order to further other important public interests and benefits, and

WHEREAS, the Commissioners find and determine that this ordinance will enhance the current and future attractiveness and economic well-being of the County and its beaches as a place in which to live, visit, and conduct business; and

WHEREAS, the Commissioners find and determine that in order to preserve, protect and promote the collective community efforts to protect the public beaches of Gulf County that it is appropriate and reasonable to require the participation and action of commercial vacation rental businesses that directly benefit from the continued maintenance, beauty and preservation of those same public beaches; and

WHEREAS, the Commissioners desire that there be an ample record of its intention that the presence of a severability clause in connection with the County's leave no trace regulations be applied to the maximum extent possible, even if a determination that any requirements, exceptions, limitations, variances or other provisions are invalid or unconstitutional for any reason whatsoever; and

WHEREAS, the Commissioners desire that there be an ample record that it intends that each restriction and regulation for the future use and rules for claimed and unclaimed property continue in effect regardless of the invalidity or unconstitutionality of any, or even all other, provisions of the County's leave no trace regulations, other ordinance provisions, or other laws, for any reason(s) whatsoever; and

WHEREAS, the Commissioners find and determine that these regulations and rules are consistent with all applicable policies of the County, including its Comprehensive Plan and Land Development Regulations, and are not in conflict with the public interest, and will not result in incompatible land uses; and

WHEREAS, On January 12, 2015 a Public Notice was advertised in The News Herald offering the public the opportunity to participate at a public hearing before the PDRB on Monday, January 26, 2015 consistent with the current LDR Article 2.05.04 (C)8 requirements; and the BOCC having received those comments and recommendations through the planning department representative from its public hearing; and

WHEREAS, on January 5, 2015 and January 19, 2015 a Public Notice was advertised in The News Herald offering the public an opportunity to participate at two public hearings before the Board of County Commissioners (BOCC) on January 13, 2015 at 9:00 am and a second public hearing on January 27, 2015 at 5:01 p.m. for the adoption of this proposed ordinance; and

NOW BE IT THEREFORE ORDAINED AS FOLLOWS:

Section 1 - *Purpose and Title*

The purpose of this ordinance is to ensure the Gulf County Public Beaches and beach access areas are free from any obstruction by any item of personal property in order to protect public ingress, egress and use of the Gulf County Public Beaches, promote public safety, protect citizens and visitors of Gulf County beaches and maintain a safe, welcoming and healthy beach and recreational environment, preserve the natural resource that is Gulf County's beaches and to protect identified endangered species on those identified areas of Gulf County's public beaches. This ordinance may be referred to as the "Gulf County Leave No Trace Ordinance."

Section 2 - *Definitions*

Gulf County Beaches and or ***Public Beach:*** includes all beaches within Gulf County located seaward of SR30A and County Road C30B and C30E commencing at the Indian Pass public boat ramp and extending to the southern boundary of the St. Joseph Peninsula State Park, the sandy shores of St. Joseph Bay and also including those boundaries lying south of Highway 98 commencing at the western boundary of the Gulf County Canal and extending to the Gulf/Bay County boundary line. The Public Beaches are limited to and means that area of unconsolidated material within Gulf County, Florida, that extends landward from the mean low-water line of the United States Gulf of Mexico, to

the frontal dune or, where there is no frontal dune, to the line of permanent vegetation or construction, whichever is more seaward.

Beach access areas: means those public beach access points within Gulf County, Florida identified by the Gulf County Public Parks and or Tourist Development Council signage, including boardwalks, walkways, and dedicated parking areas, and the areas on the Public Beach beginning at the entrance of the beach access point perpendicular with the applicable road right of way to the water's edge.

Beach Business: means a lawful business which operates on any of the Public Beaches located within Gulf County, Florida. This does not include businesses which operate on private property.

Camping: means the construction or erection of a shelter or similar structures for the purpose of sleeping; or lying upon the beach on a bedroll, blanket, or other protective garb for the purpose of sleeping.

Dune: means a mound, bluff or ridge of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location. In the absence of a discernible dune, the seaward boundary of a dune will be deemed to be the line of native vegetation.

Personal property: means all types of personal property, including by way of example and not limitation, tents (including tent frames), canopies, cabanas, umbrellas and other shading devices, beach chairs and other furniture, kayaks, canoes, catamarans, floats, sailboards, surfboards, kites, jet skis, sailboats, water cycles and other watercraft.

Person: includes a natural person and all artificial entities, such as, but not limited to, corporations, limited liability companies, partnerships, limited partnerships, associations, trustees, receivers, legal representatives and organizations.

Toe of the dune: means that area just seaward and off the dune where there is no vegetation.

Section 3 - *Obstructions on the Beach and Beach Access Areas Prohibited*

(1) It shall be unlawful for any person to leave an item of personal property unattended on any portion of the Public Beach located on Gulf County Beaches from one hour after published sunset until the published time for sunrise the following day, except as otherwise permitted in this ordinance

(2) It shall be unlawful for any person to leave an item of personal property unattended at anytime within any public beach access area located on Gulf County Beaches.

(3) Any item of personal property left on the Public Beach unattended in violation of this article shall be deemed discarded by the owner and shall become the property of Gulf County, which may dispose of the item. (Exceptions stated herein below *Sections 4* & 5 for beach/waterfront property

owner and their proper display of permitted property).

(4) From one hour after published sunset until the published time for sunrise the following day, on Gulf County Beaches, items of personal property that are relocated as close to, but not on, the toe of the dune or native vegetation, or where there are no dunes or native vegetation, are relocated as close as practicable to an existing permanent structure or the line of buildings, will not be considered discarded by the owner, abandoned or a violation of this ordinance, provided:

(a) Such items shall not be placed on the dune or on native vegetation;

(b) Such items shall be stored in a neat and orderly manner;

(c) Such items shall not inhibit access to the Public Beach from the nearest public access areas, nor obstruct access on the Public Beach, nor impact native vegetation, nor significantly affect sea turtles.

(d) Private property owners may store items under or adjacent to their private dune walkovers or boardwalks.

(e) Items shall not be placed on any public beach access point or within 20 feet of any public trash receptacle.

(5) Unattended items of personal property in violation of this article shall be removed from the Public Beach by Gulf County personnel or by any law enforcement officer.

(6) Unattended or abandoned items of personal property, and unattended unfilled holes in the public beach, are in violation of this article and shall be deemed a public nuisance.

(7) It shall be unlawful for any person to discard or otherwise dispose of or abandon any trash, garbage, bottles, containers, cans, dead fish or parts thereof, charcoal briquettes or ashes, or any other litter, except in designated containers for that purpose. If it is further unlawful to dispose of any household garbage on the beach or in the Gulf County Beaches trash receptacles.

Section 4 – *Exceptions*

The prohibitions under Section 3 contained herein do not apply to:

(a) Trash containers;

(b) Signs placed by Gulf County or another permitted governmental agency;

(c) Items placed by persons acting under authority of the County Administrator or other governmental agency;

(d) Structures, including without limitation boardwalks, decks, and dune walkovers constructed and permitted by Gulf County or the State of Florida;

(e) Items placed on the beach by persons who have authorization or a permit to engage in marine turtle nesting research issued by the United States Fish and Wildlife Service or the State of Florida.

(f) Items placed on the beach by persons who have authorized permit from Gulf County Administration as either approved and permitted temporary placement or authorized

placement with proper permits by the beachfront property owner.

Section 5 – *Permits*

(1) Permits may be issued by the County Administrator or their designee for activities otherwise prohibited by this article for such periods of time and under such conditions as the County Administrator deems reasonably appropriate under the circumstances that are found to be necessary for:

(a) Reasonable accommodation of persons with disabilities;
(b) Adjunct to a lawfully existing activity;
(c) For the conduct of a governmental, civic or educational activity;
(d) For the conduct of scientific research;
(e) For special events, or
(f) For a beach amusement, beach business, or beach service.
(g) For registered and documented property owner for water/beach front property

(2) There shall be a nominal administrative and tag fee set by the County Administration on an annual basis for obtaining permits issued for 1(e) or (f). All permit applications shall include the following:

(a) Name and contact information of the owner or person in possession and control of the item;
(b) Description of the item;
(c) Location of the item;
(d) Duration of time the item will remain in such location; and
(e) Acknowledgement that owner or person in possession and control of the item will be liable for any impacts to federally protected species.
(f) Special events permit shall include the consent and approval of the adjacent property owner
(g) Annual permits for beach and/or waterfront owners permit applications shall include proof of ownership of parcel/lot.

(3) This Ordinance is not intended to authorize any violation of Florida Statute 379.2431 or any of the provisions of the Endangered Species Act. Gulf County will not be liable for any impacts to federally protected species resulting from persons leaving items of personal property on the beach and such liability will rest with the owner of such item.

Section 6 - *Digging Holes on Beach*

It shall be required that all holes dug on the beach are to be attended at all times and shall be completely filled and restored to their original level condition prior to leaving the Gulf County Beach the same day it is created.

Section 7 - *Overnight Camping*

It shall be unlawful to camp overnight on Gulf County Beaches within 400 feet from any Gulf front

and or waterfront residence(s).

Section 8 - *Possession of Glass Containers Prohibited*

It shall be unlawful for any person while on Gulf County Beaches or beach access areas to possess or utilize any glass bottle, container or material.

Section 9 – *Open Fires and Grilling; Restricted areas and Prohibited uses*

Heated objects are to be disposed of properly. It shall be unlawful for any person to have open fires within 100 feet to any structure (boardwalks included) on Gulf County Beaches with the exception of designated areas that may be posted as permitted by Gulf County under the supervision and prior authority of the County Administrator. All materials brought to the beach shall be removed from the beach by the owners or users that same day and upon extinguishing open fire. Open fires shall be controlled, supervised and attended for their entire duration. All open fires on Gulf County Beaches shall strictly prohibit materials to burn other than natural wood materials (*pallets; wood with screws, nails or any metals and all pressure treated woods are all strictly prohibited from burning on Gulf County Beaches*). The County Administration and Board reserve the right to prohibit open fires on Gulf County Beaches for designated days due to unfavorable weather conditions and public safety concerns.

Section 10 - *Beach Driving Amendments*

Gulf County Beach Driving Ordinance 1997-02 and its amendment through Gulf County Ordinance 2014-03 shall be further amended, revised and codified herein to enact the following restrictions and regulations:

1. County property owners and residents only: Any and all future annual beach driving permits issued by the Tax Collector of Gulf County and or Gulf County Tourist Development Council office pursuant to the "Gulf County Beach Driving Ordinance" recited above shall be limited to hereinafter only documented and verified Gulf County property owners and/or full time residents. Accordingly, annual beach driving permits and vehicular access to Gulf County Beaches shall be strictly prohibited to any person(s) other than properly permitted Gulf County property owners and residents.
2. Speed limit reduced from 15 mph to 10 mph for all Gulf County Beaches

Section 11 - *Beach Vehicle Authorized*

Pursuant to Gulf County Ordinance hereby authorizes the use of permitted motor vehicles on the designated public beaches of Gulf County for enforcement of this ordinance, provided that such vehicles and trailers are owned, leased or otherwise controlled by Gulf County. Such vehicles must use designated and approved dune cross-overs for ingress and egress to aforementioned public beach.

Section 12 - *Soliciting and Canvassing Prohibited*

There shall be no solicitation or canvassing of the Gulf County Beaches other than Gulf County Administrative, Gulf County TDC, Gulf County Law enforcement or other Gulf County authorized officials as designated by the County Administrator.

Section 13 – *Sound Amplification*

Except by special permit, no audio device, such as loudspeakers, television, radio, musical instrument or other noise mechanisms except equipment used by Gulf County officials or law enforcement, rescue or beach safety officials and personnel, shall be used on the beach in a manner:

1. That exceeds a noise of 60 decibels (DBA) measured on the A-weighted scale at 25 feet from the sound source; or
2. that otherwise violates Gulf County's Noise Control or Nuisance Ordinance

Section 14 – *Breach of the Peace; Disorderly Conduct*

No person shall commit such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engage in brawling or fighting, or engage in such conduct as to constitute a breach of the peace or disorderly conduct.

Section 15 - *Removal of Beach Sand*

No beach sand may be removed from any Gulf County Beach.

Section 16 – *Leave No Trace and related informational signs in rental units*

In each rental unit rented by the day or week, or longer period, within Gulf County, Florida, there shall be posted or placed in a plainly legible fashion, in a conspicuous place in each rental unit for each occupancy, a sign in form and substance approved by the County Administrator that explains the "Gulf County Leave No Trace Ordinance: prohibiting tents and personal property on the Public Beach at night; and other most notable regulations that include:

(1) Warning beachgoers that any unattended tents or property left on the Public Beach at night shall be deemed discarded by the owners and become the property of Gulf County and may be removed and disposed of by the appropriate authority.
(2) All holes on the beach are to be filled in the same day they are created
(3) Driving on Gulf County beaches is a privilege and permit provided exclusively to annually registered county property owners or residents. That any and all non-permitted drivers and those exceeding the beach maximum speed limit of 10 mph should be reported to the Gulf County Sheriff's Department.
(4) Camping, bonfire and glass regulations

(5) Chumming and Fishing regulations
(6) Breach of the Peace, Sound restrictions and Disorderly Conduct

Section 17 - *Education and Information*

Following the adoption of this Ordinance, the Gulf County Tourist Development Council shall promptly draft and submit to the County Administrator a proposed public information statement detailing a summary of the regulations and online references for detail review. Upon approval and authorization of the County Administrator, the Gulf County TDC shall thereafter conduct an annual public information campaign (digital, printed literature) to distribute and inform residents, visitors/tourists, business owners and other related persons affected by the Ordinance.

Section 18 – *Notice*

Gulf County shall also provide notice of this Ordinance by posting signage located at its beach access points and on its county website. Any and all failure of Section 17 and or Section 18 shall not serve as a defense to enforcement and issuance proper citations by Gulf County officials.

Section 19 – *Disposition and Reporting Requirements*

All items collected for being in violation of this ordinance shall be immediately taken to the Gulf County public facility and thereafter properly disposed of by authorized county staff.

The Gulf County Administration through its Public Works Department shall document its collection efforts and submit through a monthly report to the County Administrator.

Section 20 – *Enforcement*

Pursuant to Florida Statute 162.22, a person found to be in violation of this Ordinance may be charged a fine, not to exceed $500.00, and may be sentenced to a term of imprisonment, up to but not to exceed 60 days.

Section 21 – *Repealer*
Any and all ordinances in conflict herewith are hereby repealed to the extent of any conflict.

Section 22 - *Severability*

It is declared to be the intent of the Board of County Commissioners of Gulf County, Florida, that if any section, subsection, sentence, clause, or provision of this Ordinance is held invalid, the remainder of the Ordinance shall be construed as not having contained said section, subsection, sentence, clause, or provision, and shall not be affected by such holding.

Section 23 - *Modification*

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of considerations that may arise during public hearings. Such modifications shall be incorporated into the final version of the Ordinance adopted by the Board and filed by the Clerk to the Board pursuant to Section 4.

Section 24 – Effective Date.

This Ordinance shall be effective as provided by law.

The foregoing Ordinance was offered by Commissioner Yeager, who moved its adoption. The motion was seconded by Commissioner Bryan, and being put to vote, the vote as follows:

Commissioner McDaniel	Yes	Commissioner Yeager	Yes
Commissioner Bryan	Yes	Commissioner Quinn	Yes
Commissioner McLemore	Yes		

Adopted on this the 27th day of January, 2015.

ATTEST:
REBECCA L. NORRIS, CLERK

By: _____
Clerk of Court

APPROVED AS TO FORM:

By: _____
Jeremy T.M. Novak, Gulf County Attorney

BOARD OF COUNTY COMMISSIONERS
OF GULF COUNTY, FLORIDA

By: _____
Ward McDaniel, Chairman