

City of Cocoa Beach City Commission Agenda Item Summary

**DEPARTMENT MAKING
REQUEST/NAME:**

Development Services /
David Dickey, Director of Development
Services

MEETING DATE

April 16, 2026

REQUESTED MOTION/ACTION

Adopt Ordinance 1715 on first reading — an ordinance of the City Commission of the City of Cocoa Beach, Florida, amending the Code of Ordinances, Chapter 15, by adding a new section 15-39A, entitled “UNAUTHORIZED COMMERCIAL EQUIPMENT”; Providing for legislative findings; providing definitions, providing for the impoundment of unauthorized commercial equipment used in connection with unlicensed commercial activity in the Ocean Beach Park; providing for notice, administrative fees, and reclaim procedures; providing for joint and several responsibility of owners, operators, principals, employees, agents and persons acting on behalf of an unlicensed beach business; providing for appeal; providing for codification; severability, conflicts, and an effective date.

Staff Representative: David Dickey, Development Services Director

Recommendation: Adopt on first reading

IS THIS ITEM BUDGETED (IF APPLICABLE)?

n/a

BACKGROUND:

With the adoption of ordinances 1542 and 1594, the city established a beach vending program to reasonably permit beach concessions on the ocean beach and to prohibit beach businesses from operating without first obtaining a valid beach agreement from the city. However, it has come to the attention of the city that some people continue unlicensed commercial activity despite repeated citations and prior enforcement actions.

This unlicensed activity interferes with the public's enjoyment of the beach park, inappropriately commercializes the Ocean Beach Park, may obstruct access, burdens city enforcement actions, and undermines the city's carefully regulated licensing system.

To address this, the city attorney has prepared the subject ordinance to address the unauthorized use of commercial equipment on the Ocean Beach Park. The ordinance will authorize city officers (police and code enforcement) to immediately remove and impound the equipment if it is not authorized by a valid beach license. Once impounded, equipment will be stored at a city facility and held until proof of ownership is provided, and city fees and costs are paid. Repeated use of unauthorized equipment may lead to an enhanced administrative hold period not to exceed 12 months, as ordered by the city special magistrate.

ORDINANCE 1715

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF COCOA BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 15, BY ADDING A NEW SECTION 15-39A, ENTITLED "UNAUTHORIZED COMMERCIAL EQUIPMENT"; PROVIDING FOR LEGISLATIVE FINDINGS; PROVIDING DEFINITIONS; PROVIDING FOR THE IMPOUNDMENT OF UNAUTHORIZED COMMERCIAL EQUIPMENT USED IN CONNECTION WITH UNLICENSED COMMERCIAL ACTIVITY IN THE OCEAN BEACH PARK; PROVIDING FOR NOTICE, ADMINISTRATIVE FEES, AND RECLAIM PROCEDURES; PROVIDING FOR JOINT AND SEVERAL RESPONSIBILITY OF OWNERS, OPERATORS, PRINCIPALS, EMPLOYEES, AGENTS, AND PERSONS ACTING ON BEHALF OF AN UNLICENSED BEACH BUSINESS; PROVIDING FOR APPEAL; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.

WHEREAS, the City of Cocoa Beach owns, manages, and regulates the use of Ocean Beach Park for the benefit, health, safety, and welfare of residents and visitors; and

WHEREAS, the City has adopted section 15-39 of the Code of Ordinances to regulate commercial activity in Ocean Beach Park and to prohibit beach businesses from operating without first obtaining a valid beach license agreement from the City; and

WHEREAS, unlicensed commercial activity in Ocean Beach Park interferes with the public's use and enjoyment of the beach, inappropriately commercializes the Ocean Beach Park, may obstruct access, burdens City enforcement resources, and undermines the City's carefully regulated licensing system for authorized beach businesses; and

WHEREAS, the City Commission finds that some persons and entities continue unlicensed commercial activity through employees, agents, contractors, or other persons acting on their behalf, despite repeated citations and prior enforcement efforts; and

WHEREAS, the City Commission further finds that commercial carts, coolers, wagons, containers, stands, signs, and related equipment used in connection with unlicensed commercial activity in Ocean Beach Park materially facilitate such unlawful activity and occupy public property without authorization; and

WHEREAS, the City Commission finds it necessary and appropriate to adopt a new section 15-39A to provide an administrative impoundment procedure for unauthorized commercial equipment used in connection with unlicensed commercial activity in Ocean Beach Park, together with reasonable notice and an opportunity to reclaim such property, in order to protect the public health, safety, and welfare and preserve the intended public use of Ocean Beach Park; and

WHEREAS, the City Commission intends this ordinance to regulate unauthorized commercial use of the Ocean Beach Park and related equipment, and not to authorize any forfeiture proceeding except as otherwise provided by law;

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF COCOA BEACH, FLORIDA, AS FOLLOWS:

Section 1. Recitals.

The foregoing Whereas clauses are hereby ratified and incorporated as the legislative findings of the City Commission.

Section 2. Adoption of new Section 15-39A.

Section 15-39A, "Unauthorized commercial equipment on Ocean Beach Park", of the Code of Ordinances, City of Cocoa Beach, Florida, is hereby adopted to read as follows.

Section 15-39A, "Unauthorized commercial equipment on Ocean Beach Park.

- i) It shall be unlawful for any person, association of persons, legal entity, owner, operator, principal, employer, contractor, agent, employee, or any other person acting directly or indirectly on behalf of another, to use, place, maintain, pull, tow, display, leave, or store any unauthorized commercial equipment in the Ocean Beach Park in connection with any commercial activity not authorized by a valid beach license agreement or special event approval.
- ii) For purposes of this subsection, the following words, terms, and phrases shall have the meanings ascribed to them below:
 - (a) "Unauthorized commercial equipment" means any cart, cooler, wagon, dolly, hand truck, pull-behind container, storage bin, box, chest, cabinet, display rack, stand, table, canopy, umbrella stand, sandwich board sign, menu board, towable apparatus, trailer not constituting a motor vehicle, or any other tangible personal property, together with its contents, used, placed, maintained, pulled, towed, displayed, stored, or left in the Ocean Beach Park in connection with commercial activity that is not authorized by a valid beach license agreement or a duly approved special event.
 - (b) "Impoundment" means the administrative removal, securing, storage, and retention by the city of unauthorized commercial equipment as provided in this section.
 - (c) "Responsible party" means any owner, operator, principal, employer, contractor, agent, employee, or other person or entity that conducts, directs, authorizes, benefits from, participates in, or acts on behalf of an unlicensed beach business or unauthorized commercial activity in Ocean Beach Park.
- iii) Determination of unauthorized commercial equipment. Any equipment located in Ocean Beach Park shall be presumed to be unauthorized commercial equipment when one or more of the following circumstances exist:
 - (a) The equipment is being used in connection with the sale or offering for sale of food, beverages, merchandise, rentals, goods, or services by a person or entity lacking a valid beach license agreement;
 - (b) The equipment bears the name, logo, menu, pricing, inventory, trade dress, or other identifying indicia of a business or commercial operation lacking a valid beach license agreement;
 - (c) The equipment is attended by or being used by a person who has been cited or warned for violating this section, or who is acting on behalf of a person or entity previously cited or warned for violating this section or section 15-39;
 - (d) The equipment is left, stored, or maintained in Ocean Beach Park without City authorization and is associated with commercial activity.
- iv) The presumptions set forth herein are rebuttable and may be overcome by competent substantial evidence.
- v) Authority to order cessation and removal.
- vi) The city manager, code enforcement officers, police officers, and such other employees as may be designated by the city manager are authorized to order the immediate cessation of

unauthorized commercial activity and the immediate removal of unauthorized commercial equipment from Ocean Beach Park.

- vii) Impoundment of unauthorized commercial equipment.
 - (a) Unauthorized commercial equipment may be immediately removed and impounded by the city when any one or more of the following circumstances exist:
 - (1) The equipment is unattended;
 - (2) The operator, possessor, or responsible party fails or refuses to remove the equipment after verbal or written direction from an authorized city official;
 - (3) The responsible party has previously received a citation, notice of violation, trespass warning, or other actual notice concerning a violation of this section or section 15-39, whether issued to that responsible party directly or to a person acting on that responsible party's behalf;
 - (4) The equipment obstructs public access, impedes pedestrian travel, interferes with the public's use and enjoyment of the beach, or creates a public safety concern;
 - (5) The equipment is left or stored on city property during non-operating hours without authorization;
 - (6) The equipment is being used in connection with commercial activity after revocation, denial, expiration, or termination of a prior beach license agreement.
 - (b) The city may use its own personnel, contractors, or law enforcement officers to remove and transport unauthorized commercial equipment to a secure storage location.
 - (c) The city shall use reasonable care in removing and storing impounded property, but shall not be liable for ordinary wear, deterioration, melting, spoilage, or loss of perishable items, ice, or food products resulting from the lawful exercise of its authority under this section.
- viii) Notice of impoundment.
 - (a) At the time of impoundment, if a responsible party is present, the city shall provide a written notice of impoundment to the person present, or if circumstances do not permit immediate written notice, the city shall provide notice as soon thereafter as reasonably practicable.
 - (b) If no responsible party is present, the city shall, within five (5) business days after impoundment, mail written notice to any reasonably identifiable owner or responsible party at the last known address, if known, and may also provide notice by electronic mail, text message, or posting on the city's website if such contact information is not available.
 - (c) The notice of impoundment shall state, at a minimum:
 - (1) A general description of the property impounded;
 - (2) The date, approximate time, and location of impoundment;
 - (3) The reason for impoundment;
 - (4) The location where the property is being stored;
 - (5) The procedure and deadline for reclaiming the property;
 - (6) The administrative removal, transportation, storage, and processing fees due, if then known, or the method for determining same;
 - (7) The right to request an administrative hearing before the Special Magistrate.
 - (d) Reclaim of impounded property.

- (1) Impounded property may be reclaimed by the owner or other person lawfully entitled to possession upon:
 - a. Submission of reasonable proof of ownership or lawful right to possession;
 - b. Payment of all applicable administrative removal, transportation, storage, and processing fees established by resolution of the city commission or, until such fee schedule is adopted, payment of the city's actual documented costs;
 - c. Payment of all outstanding citation fines or other code enforcement or special magistrate fines associated with the non-authorized business; and
 - d. Execution of a receipt acknowledging return of the property.
- (2) Reclaim of property shall not constitute authorization to conduct business in Ocean Beach Park, nor shall it waive any citation, trespass warning, or other enforcement action.
- (3) If the claimant seeks return of perishable goods or items necessary to prevent spoilage, the city manager or designee may authorize release upon payment of charges or other reasonable conditions pending a hearing.
- (4) If commercial equipment previously impounded under this section is thereafter found to be used again in violation of section 15-39 within twelve (12) months after its release, such equipment may be impounded again. Upon request for hearing by any person claiming an ownership or possessory interest, or upon referral by the city, the Special Magistrate may order that the equipment be retained by the city for an enhanced administrative hold period not to exceed twelve (12) months, upon finding by competent substantial evidence that: (i) the same equipment was previously impounded under this section; (ii) the equipment was reused in unlawful commercial activity in Ocean Beach Park after prior notice; and (iii) an enhanced hold period is reasonably necessary to prevent continued repeat violations. In determining the duration of any enhanced hold period, the Special Magistrate shall consider the nature and frequency of the violations, the prior enforcement history, the owner's or responsible party's knowledge of the violation, the risk of continued unlawful use, and any other competent substantial evidence presented at hearing. Any person claiming an ownership or possessory interest in the equipment shall retain the right to seek release upon payment of applicable administrative costs and upon such conditions as may be ordered by the Special Magistrate, provided that nothing herein requires the city to release the equipment before expiration of the hold period ordered after notice and hearing.

(e) Administrative hearing.

- (1) Any person claiming an ownership or possessory interest in impounded property may request an administrative hearing before the city's special magistrate by filing a written request within five (5) business days after impoundment.
- (2) The hearing shall be scheduled within a reasonable time. The special magistrate shall determine whether the impoundment was authorized under this section and the amount of applicable fees and costs, if any.
- (3) If the hearing officer determines the impoundment was not authorized, the city shall release the property without charge, or refund fees previously paid.
- (4) The decision of the special magistrate shall be final agency action.

(f) Unclaimed property.

Any impounded property not reclaimed within thirty (30) days after impoundment, or within such longer period as may be required by general law, may be treated by the city as unclaimed property and disposed of in any manner authorized by law. Prior to disposal, the city may require payment of accrued fees and costs as a condition of release.

(g) Joint and several responsibility.

- (1) All responsible parties shall be jointly and severally liable for violations of this section and for all administrative removal, transportation, storage, and processing fees and costs associated with impoundment.
- (2) A citation, warning, trespass notice, notice of violation, or other actual notice issued to any one responsible party shall constitute notice to all persons and entities acting jointly in the same unauthorized commercial operation, to the extent permitted by law and supported by competent substantial evidence.
- (3) Proof that a person is acting with the inventory, equipment, branding, menu, pricing, or other identifying indicia of a business shall constitute prima facie evidence that such person is acting on behalf of that business, subject to rebuttal.

(h) Cumulative remedies.

The remedies provided in this section are cumulative and in addition to all other remedies available to the city at law or in equity, including but not limited to code enforcement proceedings, issuance of citations, trespass enforcement, injunctive relief, recovery of administrative costs, and any other remedy authorized by law. Nothing herein shall require the city to exhaust one remedy before pursuing another.

(i) No creation of property right.

Nothing in this section shall be construed to create any right to conduct commercial activity in Ocean Beach Park absent a valid beach license agreement, nor to create any protected right to maintain commercial equipment on the Ocean Beach Park in violation of this Code.

Section 3. Codification.

It is the intention of the City Commission that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Cocoa Beach, and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

Section 4. Severability.

If any section, subsection, sentence, clause, phrase, or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this ordinance invalid or unconstitutional.

Section 5. Conflicts.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. Effective Date.

This ordinance shall become effective immediately upon adoption as provided by law.

Adopted by the City Commission on this _____ day of _____, 2026.

CITY OF COCOA BEACH

Keith Capizzi, Mayor

ATTEST:

Karin Grooms, City Clerk