

ORDINANCE 2010-01

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF ORCHID, FLORIDA, PROHIBITING MARINE LIFE FISHING INVOLVING "CHUMMING" AND "BLOODBAITING" WITHIN THE TOWN; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the Town is granted the authority, under § 2(b), Art. VIII of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the Town has become aware of activities involving fishing for sharks on beaches, commonly known as "chumming" or "bloodbaiting", in close proximity to swimming activities within the Town limits; and

WHEREAS, the Town Council finds that the marine life attracted or attended to be attracted by such practices present a serious and dangerous risk of harm to persons in the ocean waters of the beaches located within the Town; and

WHEREAS, such fishing activity lures or is intended to lure marine life such as sharks near the beach, which may injure such marine life during "catch and release", and which can reasonably be expected to endanger members of the public in and around the water; and

WHEREAS, the Town, under its police power, has a duty to protect residents and others using the beaches within the Town, and particularly, restrict any activity which may increase the possibility of a shark attack; and

WHEREAS, the Town Council of the Town of Orchid, Florida, hereby finds this ordinance to be in the best interests of the public health, safety, and welfare of the citizens of Orchid.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF ORCHID HEREBY ORDAINS, AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are hereby fully incorporated herein by reference as legislative findings of the Town Council of Orchid.

Section 2. The Town of Orchid Code of Ordinances, Chapter 3, is hereby amended to create a new section 3-2 as follows (underlined type indicates textual additions to the Town Code):

Section 3-2. Unlawful Chumming or Bloodbaiting.

It shall be unlawful for any person, while on the beach or ocean water within the jurisdiction of the Town, to intentionally fish for any marine life by using methods commonly known as "chumming" or "bloodbaiting." For the purpose of this section, "chumming" or "bloodbaiting" shall mean the placement, depositing or using in or on saltwaters of any fish or parts of fish in any form, meat, fowl or animal parts in any form, or any other substance or material upon which marine life might feed, for the purpose of attracting marine life of any species to a particular area, but such term shall not include or prohibit fishing with baited hooks or live traps.

Nothing in this section shall be construed to create a duty of any sort on the part of any municipal employee to prevent fishing of, or to warn of the presence of sharks in the ocean.

Section 3. Penalties. Any violation of this Ordinance shall be punishable by a fine not exceeding Five Hundred and no/100 Dollars (\$500.00), or imprisonment for a term not exceeding sixty (60) days or both. Each day that a violation exists shall constitute a separate violation. In addition, any violation shall be deemed a public nuisance, and may be abated as provided by law.

Section 4. Enforcement. This Ordinance may be enforced by any Public Safety Officer of the Town, or any other law enforcement officer having jurisdiction in the Town and Indian River County, Florida.

Section 5. Repeal of Prior Inconsistent Ordinances and Resolutions. All prior inconsistent ordinances and resolutions adopted by the Town Council, or parts of prior ordinances and resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

Section 6. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 7. Effective Date. This Ordinance shall become effective immediately upon adoption by the Town Council of the Town of Orchid, Florida.

ADOPTED by the Town Council of the Town of Orchid, Florida, in a regular meeting assembled on the 1st day of September, 2010.

Ordinance 2010-01 was moved for adoption by Councilmember Johnson and seconded by Vice Mayor Joyce, and adopted by the following roll call vote:

Mayor Dunlop
Vice Mayor Joyce
Councilmember Johnson
Councilmember Oatway
Councilmember Troxell

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

Richard G. Dunlop
Mayor Richard Dunlop, Town of Orchid

ATTEST:

Terri Wallace
Terri Wallace, Town Clerk

Approved as to legal form and sufficiency for the Town of Orchid only:

Anthony A. Garganese
Anthony A. Garganese, Town Attorney