

ORDINANCE NO. 2005-943

COASTAL CONSTRUCTION ORDINANCE

**AN ORDINANCE PROTECTING THE BEACH AND DUNE RESOURCES
OF THE CITY OF ORANGE BEACH**

SECTION 1: **PURPOSE**

The purpose of this ordinance is to implement the City of Orange Beach's Coastal Use Permitting Program as delegated to the City by the Alabama Department of Environmental Management pursuant to the ADEM Division 8 Coastal Program Rules and the Alabama Environmental Management Act, as amended, and to protect the valuable beach and dune resources of the City of Orange Beach from adverse impacts associated with construction and other activities.

SECTION 2: **DEFINITIONS**

For the purposes of this Ordinance, the following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

“ADEM” means the Alabama Department of Environmental Management.

“Agency” means any unit, department, or office of federal, state or local government, including subdivisions thereof.

“Alabama Coastal Area Management Program” or “ACAMP” (see definition of “management program”)

“Beach” means a sandy shoreline area characterized by low relief, generally of gentle slope, and some vegetation. The beach extends from the waterline to a change in physiographic form such as a dune or bluff, a change in sediment type, such as clay from sand, and/or a change in vegetation type. Gulf beaches are those sand beaches of the mainland and islands in Alabama which are subjected to the direct and normal wave action of the Gulf of Mexico. The upper limit of Gulf beaches is usually a transition from halophytic, succulent, prostrate plant forms such as *Hydrocotyle bonariensis* (pennywort), *Cakile edentula* (sea rocket), *Iva imbricata* (marsh or seashore elder), and *Ipomoea stolonifera* (seaside morning glory) to a zone occupied by grasses, and the same prostrate forms mentioned above.

“Beach service” means the following services provided along Gulf-fronting properties, including but not limited to: the rental of beach chairs, umbrellas, volleyball nets, portable sun shelters, boats, and other similar equipment, and/or beach cleaning services, lifeguard services, and other similar services as determined by the Department.

“City” means the City of Orange Beach.

“Coastal area” means the waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder) lying seaward of the continuous 10 foot contour (as defined below) extending seaward to the outer limit of the United States territorial sea. The inland boundaries of the coastal area are described as follows: begin at the southernmost point of the Mississippi-Alabama state line where the land surface elevation reaches 10 feet above mean sea level and continue in a general easterly direction along the 10-foot contour to the proximity of Mobile Bay; continue in a northerly direction on the 10-foot contour along the western shore of Mobile County; thence southeastward along the north line of Mobile County to the intersection with the Baldwin County line in the Mobile River; thence along the west and north lines of Baldwin County in the Mobile and Alabama Rivers to the intersection of the westernmost point of Baldwin County where the land surface altitude reaches 10 feet above mean sea level; thence along the 10-foot contour in a southwesterly and southern direction along the Alabama River, the Mobile River delta and the east shore of Mobile Bay to the proximity of Bon Secour; thence continue along the 10-foot contour in an easterly and northeasterly direction to the Alabama-Florida state line.

“Coastal resources” means valuable human, natural, cultural, recreational or historical assets within the coastal area, such as water quality, air quality, wetlands and submersed grassbeds, beaches and dunes, wildlife habitats, biological resources, and water resources.

“Coastal Use Permit” means a permit issued by the City under its local program delegation, as authorized and approved of by the Alabama Department of Environmental Management, for construction activities on properties intersected by the Construction Control Line, or south of the southern Right of Way of U.S. Highway 182.

“Commercial Structure” means a hotel, motel, restaurant, store, gas station, bank or other similar structures utilized in retail or wholesale trade and/or services.

“Construction activities” means the placement, assembly or installation of new structures or the substantial improvement of existing structures, or site preparation associated with the future placement, assembly, installation or improvement of structures. This includes, but is not limited to, the clearing or excavation of land, and the placement, erection or substantial improvement of any existing or new structures including forms, footings, foundations, pilings, parking lots, driveways, dwellings, decks, gazebos, pools or any other similar structures. Construction does not include the placement of survey markers or minor hand clearing associated with conducting a land survey nor does it include the demolition or removal of existing structures.

“Construction control line” or “CCL” means a line seaward of which construction activities are restricted or prohibited. This line is constituted as the straight line segments formed by connecting plane coordinates (as expressed in NAD 27 Alabama West coordinates):

(x = 456,856.032 feet; y = 92,874.036 feet) in the vicinity of ADEM monument BC-31 to
(x = 461,865.947 feet; y = 94,391.131 feet) in the vicinity of ADEM monument BC-32 to
(x = 463,992.195 feet; y = 94,935.555 feet) in the vicinity of ADEM monument BC-33 to
(x = 466,038.578 feet; y = 95,534.410 feet) in the vicinity of ADEM monument BC-34 to
(x = 466,816.191 feet; y = 95,695.196 feet) in the vicinity of ADEM monument BC-35 to
(x = 467,195.619 feet; y = 95,898.951 feet) in the vicinity of ADEM monument BC-36 to
(x = 469,282.178 feet; y = 96,648.946 feet) in the vicinity of ADEM monument BC-37 to
(x = 475,472.539 feet; y = 98,380.947 feet) in the vicinity of ADEM monument BC-38 to
(x = 476,304.695 feet; y = 98,579.846 feet) in the vicinity of ADEM monument BC-39 to
(x = 476,948.092 feet; y = 98,722.141 feet) in the vicinity of ADEM monument BC-40 to
(x = 479,249.115 feet; y = 99,050.021 feet) in the vicinity of ADEM monument BC-41 to
(x = 479,434.293 feet; y = 99,057.019 feet) in the vicinity of ADEM monument BC-42 to
(x = 479,907.870 feet; y = 99,097.293 feet) in the vicinity of ADEM monument BC-43 to
(x = 480,904.364 feet; y = 99,236.552 feet) in the vicinity of ADEM monument BC-44 to
(x = 488,825.140 feet; y = 100,844.567 feet) in the vicinity of ADEM monument BC-45 to
(x = 489,712.334 feet; y = 101,001.701 feet) in the vicinity of ADEM monument BC-45A to
(x = 491,026.916 feet; y = 101,322.132 feet) in the vicinity of ADEM monument BC-46 to
(x = 492,439.303 feet; y = 101,623.576 feet) in the vicinity of ADEM monument BC-47 to
(x = 494,213.397 feet; y = 101,981.671 feet) in the vicinity of ADEM monument BC-48.

All references to monument numbers above are noted for convenience only. All official submissions to the City regarding the "construction control line" must be based upon official state plane coordinates as determined by a registered surveyor.

“Crestline” means a line running more or less parallel with the shoreline interconnecting the peaks of the primary dune system.

“Cultural resource” means any district, building, site, object, or other material in American history, architecture, archaeology, paleontology or culture which is of national, state, or local significance.

“Coastal Use review” means the procedure by which the City reviews uses subject to the Alabama Coastal Area Management Program for the purpose of determining whether or not to issue or deny a City Coastal Use permit, variance, and/or other authorization for a project located on a property intersected by the Construction Control Line.

“Dune” (see definition of primary dune system).

“Dune walkover” means a raised walkway constructed for the purpose of protecting the beach and dune system between mean high tide and the construction control line from damage that may result from anticipated pedestrian traffic to the beach. This does not include any portion of any pier extending seaward of mean high tide.

"Duplex" means a contiguous residential structure containing two separate living units.

“Endangered species” means any species, including subspecies and varieties that are in danger of extinction throughout all or a significant portion of their range in Alabama. Endangered species are those whose prospects for survival are in immediate jeopardy and which must have help or extinction or extirpation from Alabama will probably follow. These species are defined by Code of Federal Regulations 50 CFR 17.11 and 17.12, January 1, 1989, as amended and Alabama Act No. 82-424.

“Existing structure” means a structure of which the construction was initiated prior to adoption of this ordinance, and for which all required state, local and federal authorizations have been properly obtained.

“Footprint” means the ground area covered by a structure when viewed from the top or plan view.

“Habitable structure” means any structure providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, cooking and sanitation.

“Interagency coordination” means consultation of a proposed project between the City and the Alabama Department of Conservation and Natural Resources, the Alabama Department of Environmental Management, the U.S. Fish and Wildlife Service, the Alabama Historical Commission and/or other pertinent agencies to obtain formal comments on a proposed Coastal Use from such agencies, to identify information gaps and to review other relevant aspects of the project.

“Management program” includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the State in accordance with the provisions of Chapter 7 of Title 9, Code of Alabama 1975, as amended, setting forth objectives, policies and standards to guide public and private users of lands and waters in the coastal area.

“Minor structure” means that subset of structures including, but not limited to, a dune walkover, sand fencing, deck, porch, platform, ramp, non-asphaltic parking area, sunshelter, gazebo, or other like object which is not habitable.

“Multi-Family Dwelling” means a contiguous residential structure containing 3 or more living units.

“Multi-Unit Residential Development” means a residential development which includes three or more single family dwellings or duplexes or a residential development containing one or more multi-family dwellings.

“New structure” means any structure that is not an existing structure.

“Person” means any and all persons, natural or artificial, including but not limited to, any individual, partnership, association, society, joint stock company, firm, company, corporation, institution, trust, estate, or other legal entity or business organization or any state or local governmental entity and any successor of the foregoing.

“Primary dune system” means a ridge or series of ridges of unconsolidated and usually mobile sands lying landward of the upper limit of Gulf beaches which serves as the principal defense against storm wave attack. Vegetatively, this primary protective dune can be characterized by *Uniola paniculata* (sea oats), *Spartina patens* (saltmeadow cordgrass), *Panicum amarulum* (dune panicgrass), *Distichlis spicata* (saltgrass), *Solidago pauciflosculosa* (seaside goldenrod), *Hydrocotyle bonariensis* (pennywort), and *Ipomoea stolonifera* (seaside morning glory).

“Single Family Dwelling” means a single residential structure containing a single living unit.

“Significant impact” means the result of any activity carried out by a person which is likely to have more than a negligible adverse effect on the coastal area.

“Structure” includes but is not limited to a multi-family dwelling, commercial building, single family dwelling, duplex, bulkhead, deck, pool, parking lot, gazebo, fencing, signage, or other object the whole or parts of which are arranged by human action including any substantial improvement to an existing structure. This does not include temporary pipelines placed as a part of an approved beach nourishment project, nor does it include water, oil, gas, electricity, or sewage pipelines or conduits located beneath the surface of lands or waterbottoms to the extent that the placement and presence has no permanent disturbance of the land or waterbottoms.

“Substantial improvement” means

1. Any extension, enlargement, additions or expansion to any structure which increases the footprint of the structure or an increase in height which increases the habitable area of the structure; or
2. Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the fair market value of the structure, either:
 - (i) before the repair, reconstruction or improvement is started; or
 - (ii) if the structure has been damaged and is being restored, before the damage occurred;

or

3. Any repair, reconstruction, or improvement of a structure which has been declared substantially damaged under the City Flood Plain Management Ordinance.
4. For the purpose of determining whether the repair, reconstruction, or improvement of a structure constitutes a substantial improvement, each structure on the property shall be considered separately, i.e., each habitable building, parking area, pool and associated decks, retaining walls, etc., shall be considered a separate and individual structure.

“Use” means any human or corporate activity or result therefrom.

“Use of Regional Benefit” means a use which is other than local in nature and produces benefits to citizens of more than one unit of local government or which is in the National interest. The City recognizes the following uses and others of a similar nature to be of regional benefit:

1. Publicly owned recreational facilities;
2. Major transportation facilities such as state and federal highways, commercial ports, Federal Navigation projects and airports;
3. Major energy facilities;
4. Regional water and wastewater treatment facilities;
5. Facilities relating to the national security.
6. Nourishment of Gulf-fronting beaches, to the extent that structural stabilization is not necessitated or proposed.

SECTION 2: GENERAL CONDITIONS

(1) In no case shall the provisions set forth in this Ordinance or any action taken pursuant to this Ordinance relieve any person of the obligation to comply with the requirements of the federal consistency regulations, any state or federal statute or the requirements of any local ordinance.

(2) Any Coastal Use permit, variance, modification and/or other authorization issued by the City pursuant to this Ordinance shall not be construed as granting or vesting of any property rights or exclusive privileges in any properties nor shall it authorize any injury to the property or rights of others.

(3) The City may re-evaluate, re-open, modify, suspend or revoke any permit, variance, modification and/or other authorization issued pursuant to this Ordinance for any just cause, including, but not limited to, the following:

(a) violation of any condition or provision of a Coastal Use permit, variance, modification or other authorization;

(b) supporting information filed with an application proves to be false, incomplete or inaccurate;

(c) newly discovered information, previously not considered by the City which reasonably could have been known by the applicant and relates to the ability of the use or activity to comply with any of the provisions of this Ordinance.

(d) the Ordinance on which the Coastal Use permit, variance, modification or other authorization was based has been changed by promulgation or judicial decision after the permit was issued and before construction has commenced.

(4) The City may determine to hold in abeyance or deny without prejudice the issuance of any Coastal Use permit, variance, modification and/or other authorization if the applicant or his business, partnership, or Limited Licensed Corporation is in substantial non-compliance with this or any other City Ordinances and/or the conditions or specifications of any existing City permit. Substantial non-compliance may be measured by the occurrence of an unresolved violation or enforcement action. Abeyance may persist until the City has determined that the non-compliance no longer exists, becomes permitted or otherwise authorized, or until such time that the City determines that compliance will be assured.

(5) The issuance of any Coastal Use permit, variance, modification or other authorization pursuant to this Ordinance is conditional upon continued compliance with this Ordinance, all other applicable City Ordinances and the Alabama Coastal Area Management Program. In addition, the City may impose such relevant conditions that it deems appropriate to assure compliance with this Ordinance.

(6) In determining a use's ability to comply with this Ordinance, the City shall consider the extent to which the use adversely impacts the following coastal resources:

(a) fish and wildlife habitats, especially the designated critical habitats of endangered species listed pursuant to 16 U.S.C. ss1531-1543;

(b) historical, architectural or archaeological sites designated pursuant to 16 U.S.C. §§ 470 470W; and

(c) shorelines, beaches and primary and secondary dunes.

Uses that are determined by the City to adversely impact these coastal resources may be denied a permit, variance, modification or other authorization under this Ordinance.

(7) A person or persons discovering historical, cultural, or archaeological resources while in the course of conducting an activity permitted or authorized under this Ordinance shall immediately cease construction and notify the City Building Department and the State Historical Preservation Officer.

SECTION 3. COASTAL USE APPLICATION AND REVIEW PROCESS

(1) Any person wishing to conduct construction activities on a property intersected by the construction control line or otherwise lying south of the southern right of way of U.S. Highway 182 must make application to the City for a Coastal Use Review and receive a Coastal Use Permit, variance and/or other authorization from the City.

(2) The Coastal Use review procedure is initiated by submission of a completed Coastal Use application form supplied by the City and the appropriate application fee. Upon receipt of the application and the appropriate fee, the City will begin its review process, will inform the permit applicant of any additional information and studies which may be required, and will initiate the public notice and interagency coordination process (if required).

(3) Application shall contain, at a minimum, the following information:

(a) the name and address of the applicant to whom the permit is to be issued;

(b) the name and address of the property owner (if different than the applicant) on which the activity is proposed;

(c) the signature of the applicant and property owner;

(d) a description of the proposed activity; and

(e) all other specific information which may be required by this Ordinance for that particular type of activity (e.g., E-Dune Wave Height study for substantial construction).

(4) If the City finds during the course of its review that the use is not subject to the requirements of this ordinance, it will so notify the applicant and the review process will be terminated.

(5) The following uses on properties intersected by the construction control line shall require a Coastal Use review to insure compliance but shall not require the issuance of a Coastal Use Permit:

(a) The construction of dune walkovers associated with single-family or duplex structures and otherwise constructed in accordance with the requirements of this and other City ordinances;

(b) the construction of sand fencing otherwise constructed in accordance with the requirements of this and other City ordinances;

(c) the construction of a dune enhancement project otherwise constructed in accordance with the requirements of this and other City ordinances;

(d) repairs and/or reconstructions of an existing structure which do not constitute a substantial improvement, as defined by the Ordinance; and/or

(e) other such uses the City may determine not to have a significant impact on coastal resources otherwise in compliance with the requirements of this and other City ordinances.

Note: Even though the above listed uses may not require a Coastal Use permit, they **may** require a City Building Permit.

(6) The following uses on properties intersected by the construction control line shall require a formal review and the issuance of a Coastal Use Permit prior to the commencement of construction activities:

(a) The construction of new single family dwellings and duplexes or the substantial improvement of any such structures;

(b) the construction of a new motel, hotel, condominium, commercial structure, multi-family dwelling, or a multi-unit residential development, or the substantial improvement of any such structures;

(c) the construction of any new bulkheads, seawalls, or other similar erosion control structures or the substantial improvement of any such structures;

(d) the construction of new piers or the substantial improvement of any such structures;

(e) the construction other new major structures or the substantial improvement of any such structures; and/or

(7) Following receipt of the completed application and any additional information requested, the City shall do one of the following:

(a) Determine the activities is not subject to the formal permit review process and notify the applicant as such; or

(b) initiate a formal Coastal Use Permit Review.

(8) A formal Coastal Use Permit Review shall be initiated upon the receipt of a completed application and appropriate fee for a use subject to the formal review process. A Coastal Use Permit Review shall include the following:

(a) The issuance of a public notice in a paper of local circulation. This public notice shall provide for at least a 15 day comment period during which the public may provide comments on the project to the City. Upon completion of the public notice period, the City shall determine if any person has satisfactorily demonstrated that a relevant and significant issue cannot be effectively or fully communicated to the City in writing or a significant public interest would be served by the holding a public hearing. If the City determines that such a hearing is warranted, it shall be held in accordance with the requirements of this Ordinance.

(b) The commencement of interagency coordination by the City. This shall include submitting copies of the application, the site plan and survey and any other applicable information to the following agencies. These agencies shall be given at least 30 days to review and comment on the project:

1. The Alabama Department of Conservation and Natural Resources-State Lands Division-Coastal Section;
2. The U.S. Fish and Wildlife Service-Daphne Field Office;
3. The Alabama Historical Commission; and
4. The Alabama Department of Environmental Management-Mobile Field Office.

Upon completion of interagency coordination, the City shall review all pertinent comments from the agencies. Any outstanding comments shall be forwarded to the applicant. Any formal objections and/or formal requests for denial made by the above noted agencies or other pertinent state or federal agency shall be forwarded to the applicant for resolution prior to issuance of a final decision by the City.

(9) Upon completion of the public comment period, the review of any comments from the public, a review of any comments offered during any public hearing, and a review of the comments obtained during interagency coordination, the City shall determine if the project meets the requirements of this and all other applicable City Ordinances. Upon the completion of this review, the City shall:

(a) Issue a Coastal Use permit with appropriate conditions to insure continued compliance; or

(b) Deny the application. A denial shall include the reason(s) for denial and inform the applicant of appeal procedures.

SECTION 4. **VARIANCES**

(1) The City may grant a variance from any requirement of this Ordinance where the applicant therefore has demonstrated to the satisfaction of the City that application of the requirement(s) of the Ordinance would be unduly restrictive or constitute a taking of property without payment of full compensation in accordance with the Constitution of the State of Alabama and Constitution of the United States. Any variance granted pursuant to this Ordinance may impose conditions and requirements to effectuate to the maximum extent the object of the portion of the Ordinance for which a variance is sought.

(2) An application for a variance pursuant to this Ordinance shall contain, at a minimum, the following information:

- (a) a completed Coastal Use application form and any information required for the type of Coastal Use for which the variance is being sought;
- (b) written statements indicating specifically from which portion(s) of the Ordinance a variance is sought;
- (c) a legal argument and documentation which demonstrates that failure by the City to grant a variance would constitute a taking of property without just compensation, or otherwise be deemed unduly restrictive;
- (d) a copy of the deed or other instrument under which the applicant claims title or possession of the property upon which the project will be carried out;
- (e) a demonstration that the proposed use has been planned so as to minimize impacts on coastal resources and a demonstration that no alternative sites or means to accomplish the desired activity are available; and
- (f) such other information as the City may reasonably require.

(3) Upon receipt of a Coastal Use Variance application, a review of the application shall be initiated and shall be conducted in accordance with the requirements in 3.(8) as detailed above.

- (4) The City's final determination on a variance application shall be based on the following criteria:
- (a) whether or not the applicant has demonstrated to the satisfaction of the City that application of the requirement would be unduly restrictive or constitute a taking of property without payment of full compensation in accordance with the Constitution of the State of Alabama or the Constitution of the United States;
 - (b) whether or not a demonstration that the project has been planned so as to minimize impacts on coastal resources and a demonstration that no alternative sites or means to accomplish the desired activity are available;
 - (c) whether or not the use complies with each provision of this and other Ordinances, as applicable, excepting the specified Ordinance (s) for which the variance is requested; and
 - (d) whether or not the proposed activity, or alternatives identified during the review process, with imposed conditions represents a reasonable balance between protection of coastal resources and the need for economic development.

(5) Upon completion of the public comment period, any comments from the public, the results of any public hearing, and the comments generated during interagency review, the City shall review the project and determine if the variance meets the requirements of this and all other applicable City Ordinances. Upon the completion of this review, the City shall:

- (a) Issue a Coastal Use Variance with appropriate conditions to insure continued compliance; or
- (b) Deny the variance application. A denial shall include the reason(s) for denial and inform the applicant of appeal procedures.

(6) The burden of proof that a proposed use or activity complies with the variance provisions of this Ordinance shall be on the applicant requesting the variance.

(7) Persons receiving a variance are expected to mitigate for unavoidable impacts to coastal resources.

SECTION 5. PUBLIC NOTICE AND HEARINGS

(1) The City shall issue a public notice of a proposed use subject to the Coastal Use Permit requirements of this Ordinance, for the purpose of soliciting public comment thereon. Said notice shall be issued at least fifteen (15) days prior to issuance of the City's decision on such an application.

(2) The City may provide an opportunity for a public hearing on the proposed activity if any person has satisfactorily demonstrated that a relevant and significant issue cannot be effectively or fully communicated to the City in writing or a significant public interest would be served thereby. Any public hearing provided shall be announced at least thirty days prior to the hearing date.

(3) The City will provide post notice of final determinations made on permit or variance applications to those individuals who properly request such notice in writing to the City during the public comment period.

(4) Public notice may not be required for modifications, and permit extensions or renewals in which the impact is expected to be equal to or less than that originally permitted. All editorial changes and permit name changes shall not be subject to the public notice requirements of this rule.

SECTION 6. APPEALS

In general, an appeal by an applicant may be made of any administrative decision to the City of Orange Beach Municipal Council; any subsequent appeal would be made to the Circuit Court of Baldwin County, Alabama.

SECTION 7. ENFORCEMENT

(1) Any permit, variance, modification or other authorization issued by the City under this ordinance is enforceable under applicable City authorities. Additionally, any Coastal Use permit, variance, modification or other authorization issued by the City under this ordinance is considered an administrative action taken for the purposes of the Alabama Environmental Management Act, and as such, any terms, conditions, or limitations are enforceable by the Alabama Department of Environmental Management under provided for under state law and the ADEM Division 8 Coastal Program rules.

(2) Any person required to have a permit, certification, variance, modification or other authorization pursuant to this Ordinance who fails to receive such a permit, certification, modification or other authorization, who violates the conditions of that action, who conducts activities in a manner not authorized by that action, or who violates this chapter or applicable orders of the City is subject to enforcement action by the City as well as to any one or combination of the following enforcement actions under the Alabama Environmental Management Act:

(a) An administrative order requiring compliance, mitigation, cessation, removal, penalties, and/or any other action deemed necessary to resolve the violation;

(b) An action for injunctive relief;

(c) An action for penalties.

(3) Any enforcement action issued by the City shall specify a reasonable time within which the non-compliance must cease. In appropriate cases, a reasonable time may be **immediately**. Reasonableness shall be determined based upon the severity of the violation and the complexity and availability of the measures necessary to correct the violation.

(4) Threatened or actual violations of this Ordinance may be restrained by order of the Circuit Court of Baldwin County, Alabama.

SECTION 8. SPECIFIC REQUIREMENTS FOR CONSTRUCTION ACTIVITIES AND OTHER USES ON GULF FRONT BEACHES AND DUNES AND GULF-FRONTING SHORELINES

- (1) No person shall remove primary dune or beach sands and/or vegetation or otherwise alter the beach and primary dune system, except for the construction of an approved dune enhancement or beach nourishment project;
- (2) No person shall construct any new structure, other than dune walkovers and sand fencing constructed in accordance with this Ordinance and piers which are a use of regional benefit, or make any substantial improvement to any existing structure, on, beneath or above the surface of any land or waterbottoms located between the construction control line and a point 1500 linear feet seaward of the adjoining Gulf of Mexico (or sub-region thereof) shoreline.
- (3) No person shall construct any new structure, or make any substantial improvement to any existing structure, on, beneath or above the surface of any state owned lands located in Sections 2 and 3 of Township 4 South, Range 33 West (Tallahassee Meridian) in Baldwin County.
- (4) No person shall commence construction activities, construct any new structure or make any substantial improvement to an existing structure, on, beneath or above the surface of any parcel of land intersected by the construction control line without first having obtained a Coastal Use permit, variance, and/or other authorization therefore from the City.
- (5) An application for a permit to construct a single family dwelling or duplex on a property intersected by the construction control line shall contain:
 - (a) a legal description of the property on which the structure is proposed, as well as the street address;
 - (b) an area map showing the location of the property in relation to roads and other recognized landmarks;
 - (c) a survey of the property prepared and stamped by a duly licensed land surveyor of the State of Alabama showing the location of the construction control line as determined from the state plane coordinates, the distance to the property from the two nearest construction control line monuments located on either side of the property, and a depiction of the buildable area landward of the CCL as determined by the building setbacks established by City Zoning Ordinances;
 - (d) a dated site plan, based on the above required survey, which depicts the location and footprint of all proposed structures.
 - (e) a copy of the deed, lease or other instrument under which the applicant claims title, possession or permission from the owner of the property to carry out the project or other documentation that the owner grants an interest to the applicant to prepare development plans for the owner and/or his property;
 - (f) a completed Coastal Use application form; and
 - (g) such other information as the City may reasonably require to assure compliance with the City's Ordinances.
- (6) An application for a permit to construct a motel, hotel, condominium, commercial structure, multi-family dwelling, or a multi-unit residential development shall contain:
 - (a) All information required by (5) (a-g) above.
 - (b) A plan view topographic survey showing one foot contours, referenced to NGVD, for the entire property; the location of the CCL; cross sectional topographic profiles along north-south lines parallel to the property boundary at points 1/4 and 3/4 of the property width; and an overlay of all proposed structures on, above and beneath the surface of the property. The required topographic information on the surveys must be current (within 30 days of submission of the application, and/or after any major changes may have been made to the property [e.g., beach nourishment projects]).
 - (c) An "Environmental Impact and Natural Hazards Study" which will include, at a minimum, the following:
 - (1) a Wave Height Study (EDUNE or SBEACH) using current topographical information;
 - (2) the location and delineation of velocity zones; and
 - (3) an analysis of the project's potential to significantly increase the likelihood that damage will occur from floods, hurricanes, or storms.

(d) An identification of potential impacts to coastal resources, including historical, architectural or archaeological sites designated pursuant to 16 U.S.C. §§ 470-470W; any endangered species listed pursuant to 16 U.S.C. §§1531-1543; and public access to tidal and submerged lands, navigable waters and beaches or other public recreational resources, and any proposed actions to mitigate for those impacts.

(e) A “Beach and Dune Enhancement and Protection Plan” which includes, at a minimum, the following:

- (1) a fence placed and maintained along the construction control line prior to and during construction activities to prevent material and equipment seaward of the construction control line;
- (2) dune walkovers designed to accommodate the anticipated pedestrian traffic from the completed project;
- (3) the placement of sand fences and planting of suitable natural vegetation in areas devoid of vegetation;
- (4) a monitoring and maintenance program for the sand fences and plantings;
- (5) a sea turtle conservation lighting plan prepared in accordance with U.S. Fish and Wildlife Service guidelines; and
- (6) provisions for beach access for emergency services and beach services, to include storage of beach chairs and other equipment provided for the customary enjoyment of unit owners, lessees or tenants, etc.

(7) No person shall construct any new bulkhead, seawall, retaining wall, or similar erosion control structure, or make any substantial improvements to any existing, bulkhead, seawall, retaining wall, or similar erosion control structure, located on any property intersected by the construction control line without first obtaining a Coastal Use permit therefore from the City.

(a) An application for a permit to construct a new bulkhead, seawall, retaining wall, or similar erosion control structure, or to make any substantial improvements to any existing, bulkhead, seawall, retaining wall, or similar erosion control structure, shall contain:

- (1) a legal description of the property(s) on which the structure is proposed, including the street address(s);
- (2) a boundary and topographic survey of the property(s) prepared by a duly licensed surveyor of the State of Alabama showing one foot contours, referenced to NGVD, for the entire property, the location of all existing structures, the location of the construction control line as determined by state plane coordinates, the distance to the property from the two nearest construction control line monuments located on either side of the property, the location of mean high tide, and a site plan, based upon the above required survey, showing the location, configuration and dimensions of all proposed erosion control structures;
- (3) a copy of a deed, lease or other instrument under which the applicant(s) claims title, possession, or permission from the owner(s) of the property(s) to carry out the project;
- (4) a letter or other document signed by a licensed Professional Engineer certifying that the bulkhead, seawall, retaining wall, or similar erosion control structure is required to insure the structural stability of an existing habitable structure(s) or use of regional benefit located on the property(s) for which the permit is requested;
- (5) an analysis of the feasibility of all non-structural alternatives, including, but not limited to, preservation and restoration of dunes and beaches, shoreline restoration and nourishment, retreat, and/or abandonment;
- (6) an analysis of the impacts of the proposed structure on the adjacent properties, including those properties which are not located immediately adjacent to the project site, but which may be impacted by any short term and long term changes in the littoral system including changes in the long-shore transport of beach sands;
- (7) A completed Coastal Use Application form; and

(8) certification that the proposed structure is otherwise in compliance with all City Flood Plain Management Ordinances and Building Codes.

(b) A permit for the construction of a bulkhead, retaining wall, seawall, or similar erosion control structure on Gulf beaches or dunes may be issued provided it can be demonstrated that:

(1) the proposed bulkhead, retaining wall, seawall, or similar erosion control structure is landward of the CCL and landward of mean high tide;

(2) is necessary to protect and insure the structural integrity of an existing habitable structure or use of regional benefit;

(3) there are no other feasible non-structural alternatives including but not limited to preservation and restoration of dunes, shoreline restoration and nourishment, retreat and/or abandonment;

(4) the bulkhead, seawall, retaining wall or other similar erosion control structure will not inhibit public access to the flat beach area seaward of mean high tide, or if the structure has such an effect, alternative means of public access are provided;

(5) there will be no negative impacts to adjacent or distant properties; and

(6) the proposed structure is otherwise in compliance with all City Flood Plain Management Ordinances (e.g., "Flood Damage Prevention Ordinance") and Building Codes.

(9) No person shall operate a motorized vehicle on the beach or primary dune system, except as may be provided by the provisions of this Ordinance.

(10) The operation of beach cleaning equipment, government inspection and monitoring vehicles, motorized vehicles for conducting scientific research, biological surveys, or similar activities, and safety and law enforcement vehicles on the flat beach area seaward of the primary dune system may be permissible, provided it is demonstrated to the satisfaction of the City that:

(a) a route of ingress and egress has been designated and approved by the City;

(b) beach and dune vegetation will not be impacted or destroyed; and

(c) the equipment will be operated only in areas specified by the City.

(11) The operation of motorized vehicles on the flat beach area seaward of the primary dune system in conjunction with operation of a beach service may be permissible, provided it is demonstrated to the satisfaction of the City that:

(a) ingress and egress to the flat beach area is made on the site for which the beach service is being provided, or if multiple adjacent sites are being serviced, ingress and egress is made at one of the adjacent sites;

(b) the motorized vehicles will be operated only for the purpose of transporting equipment and/or conducting beach cleaning activities;

(c) beach and dune vegetation will not be impacted or destroyed;

(e) the motorized vehicles will not be refueled, parked or stored, repaired (other than emergency repairs necessary to remove the vehicle from the beach and dune system), and/or maintained on the flat beach area;

(f) the motorized vehicles will be utilized to transport beach service equipment at the beginning and end of each tourist season, and to remove and re-place equipment before and after hurricanes and other major, named, storm events for which a hurricane or tropical storm watch has been issued for the Baldwin County, Alabama and/or Escambia County, Florida areas. The daily use of motorized vehicles on the beaches and dunes for the transport of beach service equipment after such equipment is initially deployed shall not be permissible; and

(g) motorized vehicles will be operated on the flat beach area seaward of the primary dune system only during the time period between sunrise and sunset.

(12) Persons wishing to utilize waters from the Gulf of Mexico for the purpose of jetting pilings in conjunction with the construction of dune walkovers, dwellings and other structures, may operate motorized vehicle on the flat beach area seaward of the primary dune system to transport pumps and other necessary equipment provided that:

(a) a route of ingress and egress has been designated and/or approved by the Department or the Department's contractor;

(b) the equipment will be operated only in areas specified by the Department or the Department's contractor and only for the purpose of transporting pumps and other necessary equipment;

(c) the motorized vehicles will not be refueled, parked or stored, repaired (other than emergency repairs necessary to remove the vehicle from the beach and dune system), and/or maintained on the flat beach area; and

(d) motorized vehicle will be operated on the flat beach area seaward of the primary dune system only during the time period between sunrise and sunset.

(e) beach and dune vegetation will not be impacted or destroyed;

(f) all runoff water from the jetting of pilings, with the exception of that jetting water generated from the construction of a dune walkover, is directed and contained landward of the CCL; and

(g) the City is notified at least 48 hours prior to such activities taking place; and

(h) a letter of permission from City (Coastal Resources Manager) is obtained.

(13) No provision of the Ordinance, nor any permit, variance or any other authorization issued pursuant to any provision of this Ordinance, authorizing the use of any motorized vehicles on the flat beach area seaward of the primary dune system shall grant any right of trespass and/or any other property rights. Any person who operates any motorized vehicle on the flat beach area seaward of the primary dune system shall be solely responsible for obtaining rights of access to any private property which must be entered, accessed or traversed.

(14) Septic tanks and other similar on-site sewage disposal systems shall not be permitted on a parcel of property lying seaward of, or intersected by, the construction control line.

(15) Dune walkovers constructed seaward of the construction control line meeting the following criteria shall be permissible:

(a) The dune walkover is no more than six feet in width, constructed without roof or walls, elevated at least two feet above the existing dune with a single set of stairs or single ramp leading directly from the seaward terminus of the walkover to the existing beach elevation.

(b) Dune walkovers shall extend no further seaward than necessary to convey persons across the primary dune system and in no case shall a dune walkover extend onto the flat wet beach area subject to normal wave action. In the event of shoreline retreat, such as following erosive storm events, any dune walkover which extends onto the flat wet beach area subject to normal wave action shall be shortened or otherwise modified such that it is no longer subject to normal wave action.

(16) Sand Fencing constructed seaward of the construction control line for the purpose of dune enhancement meeting the following criteria shall be permissible:

(a) the sand fencing is constructed utilizing degradable materials (plastic fencing is not acceptable);

(b) the supporting posts are no larger than 2" in width or 4" in diameter, and are placed by excavation and not anchored other than by backfill of excavated materials. Posts may not be concreted, cabled, or placed by other manner of permanent or near permanent fixing. The posts shall extend into the substrate to a depth of at least 2 feet and no deeper than 5 feet below ground level;

1. the sand fencing is placed no farther seaward than the approximate natural seaward line of vegetation and/or in no case shall sand fencing be placed on the flat wet beach area seaward of the primary dune line; and

2. the sand fencing is constructed in parallel sections no longer than 10' in length each spaced a minimum of 7' apart on a diagonal alignment (a northeast to southwest or northwest to southeast orientation) for the shore-parallel coverage of the subject property.

3. Signage may be placed at or near the top of the post supporting the sand fencing if the signs do not exceed 18 inches in height by 12 inches in width and include wording that:

- i. warns against dune destruction (or emphasizes dune preservation),
- ii. prohibits destruction of dune vegetation, including the picking of sea oats, and/or
- iii. warns against trespassing.

(17) Lot line fencing seaward of the Construction Control Line may be permissible if:

(a) the fence is placed between dissimilar uses, as between public accessways and private property, or between motel, hotel, condominium, or planned multi-unit development and single-family/duplex residential development; and

(b) fence posts are no closer than 8 feet apart, do not exceed 4 inches by 4 inches in size, are no higher than 5 feet above ground level, and are placed by excavation and not anchored other than by backfill of excavated materials. Posts may not be concreted, cabled, or placed by other manner of permanent or near permanent fixing. The posts shall extend into the substrate to a depth of at least 2 feet and no deeper than 5 feet below ground level; and

(c) the posts may be connected only by a single rope no greater than 4-6 inches in diameter extended between any or all posts; and

(d) posts and fencing may extend no further seaward than the seaward limit of living vegetation, customarily found just seaward of the primary dune crestline as confirmed by the Department; and

(e) signs may be placed at or near the top of the post if the signs do not exceed 18 inches in height by 12 inches in width and include wording that:

- iv. warns against dune destruction (or emphasizes dune preservation),
- v. prohibits destruction of dune vegetation, including the picking of sea oats, and/or
- vi. warns against trespassing.

(18) No person shall discharge, nor allow to be discharged, any stormwater from roofs, parking lots, or other areas; water pumped from swimming pools and/or swimming pool filters; or other discharges, to the area seaward of the construction control line, except for:

(a) water used for irrigation purposes;

(b) water generated from by the jetting of pilings for construction of an approved dune walkover expressly permitted (by written notification) by the City's Coastal Resources Manager; or

(c) return water generated by an approved beach nourishment or dune enhancement project.

SECTION 9. FEES

The following fees shall be submitted with each Coastal Use application. All fees other than the Base Fee are additive (e.g.: A single family dwelling variance application fee would be: \$50.00 + \$450.00 + \$1,125.00= \$1625.00). Additionally, Coastal Use fees are in addition to any required Building Permit fees.

Project Description	Fee
Coastal Use Review Base Fee	\$50.00
Single Family Dwelling or Duplex	\$450.00
2 Single Family Dwellings or 2 Duplexes on a Single Property	\$600.00
Commercial (non-residential) Structure or Residential Structures having more than 4 Units	\$6,000.00
Retaining Wall, Sea Wall, or other Hardened Erosion Control Structure	\$700.00
All Other Projects Requiring a Coastal Use Permit, Modifications and Extension	\$275.00
Variance (variance fee is in addition to base project fee(s))	\$1,125.00

SECTION 10. SEVERABILITY

If any section, clause, sentence or phrase of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

SECTION 11. INCONSISTENCIES

All other ordinances or resolutions or parts of ordinances or resolutions in conflict herewith shall be and the same are, to the extent of such conflict, hereby repealed. This ordinance shall replace former ordinance No. 2005-928.

SECTION 12. EFFECTIVE DATE

This Ordinance shall become effective immediately upon its adoption and publication as required by law.

ADOPTED this 15th day of November, 2005.

Steve Russo, Mayor

ATTEST:

Cathy Constantino, City Clerk