

**ORDINANCE NO. 2012-1141**

**AN ORDINANCE TO AMEND CHAPTER 30, ARTICLE VI  
OF THE CODE OF ORDINANCES FOR THE CITY OF ORANGE BEACH  
ENTITLED "BEACH AND DUNE PROTECTION AND PRESERVATION"**

**SECTION 1.**

**BE IT ORDAINED** by the City Council of the City of Orange Beach that Chapter 30, Article VI of the Code of Ordinances, entitled "Beach and Dune Protection and Preservation" is hereby amended and restated as follows:

**"Section 30-\_\_\_\_. Statutory Authorization.**

The State of Alabama has in § 11-52-9 and § 11-52-10 of the Code of Alabama, 1975, authorized local government units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry consistent with its Comprehensive Plan.

**Section 30-\_\_\_\_. Findings of Fact.**

- (1) Orange Beach is a resort island community where beaches have significant public and private use.
- (2) The City has funded, constructed and currently maintains a comprehensively engineered beach and dune restoration system.
- (3) The natural and restored beach and dune resources protect both public and private infrastructure by providing vital defenses against storm surge and high waves.
- (4) Sand dunes hold and store replacement sand for eroded beaches during storm events.
- (5) When sand dunes are adversely affected by avoidable impacts such as foot traffic, digging, construction activities, contour alteration, sand mining or vehicular traffic, the public health, safety and welfare are harmed.

**Section 30-\_\_\_\_. Statement of Purpose.**

- (a) The purpose of this article is to impose reasonable regulations that will protect the public investment in the beaches and dunes, and to protect public and private infrastructures. The regulations are intended to prevent harm or degradation to the valuable and protective sand dune resources from unauthorized foot or vehicular traffic, unauthorized digging, mining or other unnatural alteration of the dunes, unauthorized staging of construction materials or other unauthorized construction activity, installation of vegetation inconsistent with sand dune systems, pet activity, or other unauthorized or disturbing activities that may lead to the gradual, immediate, or cumulative degradation of the natural or restored dune resources. This article is intended to achieve these purposes by:
  - (1) Providing a method of identifying protective dune systems or resources within the planning and zoning jurisdiction of the City of Orange Beach;
  - (2) Establishing regulations that permit reasonable use and repair of or intrusion into the dune systems or resources, consistent with sound sand dune conservation practices;

- (3) Identifying and mitigating damaging, unacceptable and detrimental activities within the dune systems;
- (4) Prohibiting potential dangerous material (i.e., glass containers, etc.) from being utilized on the sandy beach area south of the CCL, and minimizing potentially dangerous activities on the sandy beach area; and
- (5) Maintaining an open access way along the beach for beach management and emergency personnel; and
- (6) Requiring the sustainable use of beach-quality sand resources.

**Section 30-\_\_\_\_. Objectives.**

The objectives of this article are:

- (1) To protect the public health, safety and general welfare; to protect public and private infrastructure;
- (2) To minimize expenditure of public money for costly tropical storm or hurricane recovery projects due to the adverse impacts associated with damaging storm surge or wave action resulting from impairment of or damage to protective dune resources;
- (3) To prevent damage and require restoration of damaged dunes;
- (4) To encourage the growth, expansion and vitality of the City's beach and dune resources.
- (5) To minimize obstacles and conflicts between official vehicles and certain beach equipment;
- (6) To eliminate threats to endangered sea turtles from entanglements and other obstacles.

**Section 30-\_\_\_\_. Lands to Which this Article Applies.**

This article shall apply to that land lying south of the Alabama Department of Environmental Management (ADEM) Coastal Construction Line (CCL) within the City and its police jurisdiction.

**Section 30-\_\_\_\_. Administration; Enforcement.**

- (1) The Director of the Community Development / Engineering & Environmental Department or his/her designee shall administer and enforce the provisions of this article in the manner and form and with the powers provided by Chapter 1 of the City's Code of Ordinances and this article.
- (2) In addition to the criminal and penalties for violation described, the City may institute civil proceedings in a court of competent jurisdiction to compel restoration of sand dunes damaged in violation of this article and / or injunctive relief and any other relief at law or equity. Such action may also be instituted by anyone who is especially damaged by the violation of any portion of this article.

**Section 30-\_\_\_\_. Definitions.**

Words used in this article are intended to have the definitions set forth below unless the context requires otherwise.

- (1) *Adverse impact* means anything that would destroy, harm impair, diminish or degrade the value of utility of a sand dune for storm protection or wildlife habitat.
- (2) *Beach* means the soft and portion of land lying seaward of the landward of the mean high tide line.
- (3) *Department* means the City of Orange Beach Community Development / Engineering & Environmental Department.
- (4) *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 damages that may result from anticipated pedestrian traffic to the beach and which is no more than six (6) feet in width, constructed without roof or walls, elevated at least one foot above the dune, and extends seaward of the seaward vegetation line.
- (5) *Emergency Access Corridor* means an area that is 10 feet wide which extends from the terminus of each dune walkover to the shoreline.
- (6) *Invasive exotic species* means non-native or invasive vegetation, which, if left undisturbed by manmade forces, will create a monoculture as determined from time to time by the Department.
- (7) *Mean high tide line* means the surveyed line approved by the Commissioner of the Alabama Department of Conservation and Natural Resources, per Alabama Act 2006-676, p. 1365, SS 1., which establishes a fixed mean high tide line, based on shoreline conditions prior to Tropical Storm Isadore of 2002. The mean high tide line is recorded in book \_\_\_\_\_ at the Baldwin County Satellite Courthouse in Foley, Alabama.
- (8) *Pets* means any non-indigenous or domesticated animal such as dogs, cats, horses, etc.
- (9) *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 surge and wave attack. A dune is subject to fluctuations in configuration and location. Vegetatively, this primary protective dune can be characterized by *Agnelli 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).
- (10) *Tent or shelter* means any tent, shelter, canopy, cabana, windscreen, or other supported ground cover or enclosure; provided, however, that the term shall not include any folding beach umbrella supported by a single pole; any umbrella or shade attached solely to a beach chair, to a child's stroller, or to a wheel chair designed for beach use by handicapped persons; or any pop-up type freestanding tent or shelter designed for beach use having no length or width dimension greater than seven (7) feet and no height dimension greater than four (4) feet.
- (11) *Beach equipment* means any personal items that are designed or manufactured for use, or actually used, on the beach or in adjacent waters. Examples include, without limitation, chairs, loungers, umbrellas, tents or shelters of any size, horseshoes and stakes, kayaks, paddle vessels, sailboards, surf boards, fishing gear, sporting equipment, rafts, flotation devices, beach toys, baskets, bags, towels, coolers and other personal effects and items. Beach equipment shall not include chair setups maintained on its licensed site by a duly licensed beach chair rental business.

**Section 30-- \_\_\_\_\_. Prohibited Activities.**

- (a) The following activities shall be unlawful within the primary dune system without a permit as set out in Section \_\_\_\_\_ of this ordinance “Beach Activity Permits”:
- (1) Any activity other than mere foot (pedestrian) traffic to access the beach where a dune walkover structure or other designated access point exists.
  - (2) Vehicular traffic not associated with beach patrols, dune restoration, maintenance and monitoring.
  - (3) Pet traffic.
  - (4) Digging, shelling, mining, or mechanical alteration of the dune topography;
  - (5) Staging of construction materials or construction activity;
  - (6) Installation of vegetation not listed below:  
  
 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).
  - (7) Littering, including the disposal of anthropogenic materials.
  - (8) Discharge of stormwater or other point-source discharges that may cause scouring or erosion of the dune feature or system;
  - (9) Harvesting of Sea Oats (Uniola paniculata) seeds, or plants or parts of plants identified in subsection 30-162(a)(6).
- (b) The following shall be unlawful on the sandy beach areas, seaward of the primary dune system without a Beach Activity Permit:
- (1) Possession of glass containers, including, but not limited to glass bottles, drinking glasses, pitchers or trays;
  - (2) Placement of beach rental chairs or loungers within 35 feet of the Gulf of Mexico shoreline;
  - (3) Any open fires or use of flammable items, including but not limited to charcoal or gas grills, torches (e.g., Tiki torches, etc.) and/or fireworks;
  - (4) Installation of inflatable or above-ground swimming pools, with the exception of “kiddie” pools five feet or less in diameter, but which must not remain on the sandy beach overnight, or during any time between dusk and dawn;
  - (5) Substantially affecting the contour or shape of the flat beach area by excessive digging (including grade changes in excess of one foot elevation) or alteration of the shoreline exceeding one foot.
- (c) The following activities will be considered inappropriate and shall be unlawful on the sandy beach areas seaward of the fixed Mean High Tide without a Beach Activity Permit:
- (1) Placement or erection of tents or shelters;
  - (2) Pet traffic;

- (3) Any open fires or use of flammable items, including but not limited to charcoal or gas grills, torches, (e.g., Tiki torches, etc.) and/or fireworks;
  - (4) Installation of inflatable or “above-ground” swimming pools, with the exception of “kiddie” pools five feet (5’) or less in diameter, but which must not remain on the sandy beach overnight, or during any time between dusk and dawn;
  - (5) Erection or placement of any tent exceeding 144 square feet in areas without a Coastal Permit and Special Events permit from the City;
- (d) It shall be unlawful to obstruct emergency access corridor.

**Section 30-\_\_\_\_. Beach Activity Permits.**

Upon request, the Department may grant Beach Activity Permits for certain projects or activities that would otherwise be in violation of this ordinance. All requests for Beach Activities Permits must be made in writing to the Director of the City of Orange Beach Department of Community Development prior to the proposed activity. The applicant must provide details of the proposed activity, including:

- (1) Full and accurate written description of the proposed activity; and, if requested by the Department, detailed engineering schematics;
- (2) Location of the project parcel, including street address, project name, property owner and/or authorized official; and
- (3) Such other information as may be required by the Department.

Exceptions: Any proposed project or development, or component of a project or development which is properly the subject of the U.S. Army Corps of Engineers’ Regional Sediment Management Program, U.S. Fish and Wildlife Service, or Alabama Department of Conservation and Natural Resources’ programs and is not otherwise subject to this article.

**Section 30-\_\_\_\_. Abrogation and Greater Restrictions.**

Where this article and another conflict or overlap, whichever poses the most stringent restrictions shall prevail.

**Section 30-\_\_\_\_. Penalties for Violation.**

Any person, firm, partnership or corporation that violates any provision of this article shall upon conviction be punished by a fine of not less than \$50.00 nor more than \$500.00 or imprisonment for a term not to exceed thirty (30) days or both, at the discretion of the Court for each day the violation continues.

**Section 30-\_\_\_\_. Reserved.”**

**SECTION 2. 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.

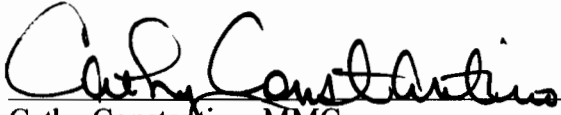
**SECTION 3.**

This ordinance repeals Ordinance 2005-906 and 2005-946.


**SECTION 4.**

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

**ADOPTED** this 20<sup>th</sup> day of March, 2012.

  
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Cathy Constantino, MMC  
City Clerk

The City Clerk of the City of Orange Beach, Alabama hereby certifies that the foregoing Ordinance 2012-1141 was posted on 03/23/12 in the following three (3) public places:  
Orange Beach City Hall \_\_\_\_\_  
Orange Beach Post Office \_\_\_\_\_  
Orange Beach Public Library \_\_\_\_\_

  
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Cathy Constantino, City Clerk