

ORDINANCE NO. 2005-946

**BEACH AND DUNE PROTECTION AND PRESERVATION ORDINANCE
FOR THE CITY OF ORANGE BEACH, ALABAMA**

AN ORDINANCE PROTECTING BEACH AND DUNE RESOURCES OF THE CITY
OF ORANGE BEACH, ALABAMA AND REPEALING ORDINANCE 2005-906

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORANGE
BEACH**, as follows:

**ARTICLE 1: STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE
AND OBJECTIVE**

Section A. DEFINITIONS

WHEREAS, the legislature of 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, the City of Orange Beach does ordain as follows:

Section B.

- (1) The City has recently funded and constructed a comprehensive beach nourishment and dune restoration project; and
- (2) The natural and restored beach and dune resources of the City protect both public and private infrastructure, and are vital defenses against storm surge and high waves; and
- (3) Sand dunes hold and store replacement sand for eroded beaches during storm events; and
- (4) When sand dunes are adversely affected by avoidable impacts including foot traffic, digging, construction activities, contour alteration, sand mining or vehicular traffic, these aforementioned values remain lost to the city; and
- (5) Beaches are areas of significant public and private use.

Section C. STATEMENT OF PURPOSE

- A. The purpose of this subchapter is protect the public investment and the public and private infrastructure by preventing harm or degradation to the valuable and protective sand dune resources from unauthorized foot or vehicular traffic, unauthorized digging, mining or other unnatural alternation 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 subchapter 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;
- B. Furthermore, the purpose of this subchapter is to protect the public health safety and welfare by:

- (1) Prohibiting potential dangerous material (i.e., glass container, etc.) from being utilized on the sandy beach area south of the CCL, and minimizing potentially dangerous activities on the sandy beach area; and
- (2) Maintaining an open access way along the beach for beach management and emergency personnel; and
- (3) Requiring the sustainable use of beach-quality sand resources.

Section D. OBJECTIVES

The objectives of this ordinance 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;

ARTICLE 2. GENERAL PROVISIONS

Section A. LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to that land lying south of the Alabama Department of Environmental Management (ADEM) Coastal Construction Line (CCL) within the planning and zoning jurisdiction of Orange Beach, not otherwise within a neighboring incorporated jurisdiction or State.

Section B. PROHIBITED ACTIVITIES

- A. The following activities will be considered inappropriate and unlawful within the primary dune system:
- (1) Any activity other than mere foot (pedestrian) traffic to access the beach front unless a dune walkover structure exists on said property – in which said dune walkover shall be the exclusive method allowed to access the beachfront or to exit the beach;
 - (2) Vehicular traffic not associated with dune restoration, maintenance and monitoring;
 - (3) Pet traffic (e.g., dogs, horses, etc.);
 - (4) Unauthorized digging, shelling, mining, or mechanical alteration of the dune topography;
 - (5) Unauthorized staging of construction materials or construction activity;
 - (6) Installation of vegetation inconsistent with sand dune systems, such as lawn grasses or sod, or herbaceous varieties that are not commonly known as “salt-tolerant” dune varieties or that may be determined to be “invasive exotic species”, according to the Department;
 - (7) Littering, or the unauthorized disposal of anthropogenic materials within the dune system;
 - (8) Unauthorized discharge of stormwater or other point-source discharges that may cause scouring or erosion of the dune feature or system;

- (9) Unauthorized harvesting of Sea Oats' (*Uniola paniculata*) seeds, or plants or parts of plants included in Article 5(5); any authority to collect such seeds or species shall be obtained, in writing, from the City of Orange Beach or if on State lands, then from the State Department of Conservation and Natural Resources.
- B. The following activities will be considered inappropriate and unlawful on the sandy beach areas, seaward of the primary dune system:
- (1) Possession of glass containers, including, but not limited to glass bottles, drinking glasses, pitchers or trays;
 - (2) Possession of beach tent/cabana larger than eight feet by eight feet (8' x 8'), or longer than eight feet (8') on a side.
 - (3) Erection of a beach tent/cabana/sunshade within fifty feet (50') of the shoreline of the Gulf of Mexico;
 - (4) Allowing a beach tent/cabana to remain on the beach overnight, whether erected or collapsed;
 - (5) 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;
 - (6) 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;
 - (7) Substantially affecting the contour or shape of the flat beach area by excessive digging, etc.

ARTICLE 3. COMPLIANCE AND VARIANCES

Any requests for a project or activity listed in Article 2 (Section B) above must be made in writing to the Director of the City of Orange Beach Department of Community Development or the State Department of Conservation if on State lands, prior to the proposed activity. A request for permission consists of the following:

- (1) Full and accurate written description of the proposed activity; furthermore, the Department may require detailed engineering schematics or surveys if the impact is deemed by the Department to be significant
- (2) Location of the project parcel, including street address, project name, property owner and/or authorized official;

However, 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 objectionable to any state agency with regulatory authority, shall be considered approved by right and does not require Department or Council consideration, provided all federal and state agency approvals are obtained.

Section C. ABROGATION AND GREATER RESTRICTIONS

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

Section D. INTERPRETATION

In the interpretation and application of this ordinance, all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body and where due varying interpretation the City Council shall be the final arbiter of the meaning of and application of said ordinance.

Section E. PENALTIES FOR VIOLATION

Any person, firm, partnership or corporation that violates any provision of this ordinance 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.

ARTICLE 4. ADMINISTRATION/ENFORCEMENT

- (1) The Director of Community Development or the Mayor's designee shall administer enforce the provisions of this ordinance in the manner and form and with the powers/provided by the City of Orange Beach and this Ordinance.
- (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 ordinance 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 ordinance.

ARTICLE 5. DEFINITIONS

Words used in this ordinance are intended to have their common-sense meanings unless defined otherwise. The definitions and rules of construction that apply to the Orange Beach Zoning Ordinance are intended to apply to this ordinance unless a different definition or rule is provided for.

- (1) *Adverse Impact* – 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 sand portion of land lying seaward of the landward of the mean high tide line.
- (3) *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.
- (4) *Invasive Exotic Species* means non-native or invasive vegetation, which, if left undisturbed by manmade forces, will create a monoculture
- (5) *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).
- (6) Tents (including cabanas) means a portable shelter supported by a framework of multiple poles (this is not to include umbrellas, which have one supporting pole in the center of the shelter).

ARTICLE 6: 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 no way effect the validity of the remaining portions of this ordinance.


ARTICLE 7:

This ordinance repeals Ordinance 2005-906 and all ordinances or parts of ordinances in conflict herewith.

ARTICLE 8:

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

ADOPTED this 20th day of December, 2005.



Steve Russo, Mayor

ATTEST:

Cathy Constantino
Cathy Constantino, City Clerk