

ARTICLE VI. - BEACH AND DUNE PROTECTION AND PRESERVATION^[8]

Sec. 30-151. - Statutory authorization.

The City of Orange Beach is an Alabama Class 8 municipality that has been vested with a portion of the state's sovereign power to protect the public health safety and welfare. Alabama Code §§ 11-40-1, 11-45-1 et seq. (1975). The city has additional power authority over coastal beaches adjacent to its corporate limits pursuant to Alabama Code § 11-47-250 et seq. (1975).

(Ord. No. 2015-1208, 11-3-2015)

Sec. 30-152. - Findings of fact.

- (a) Orange Beach is a resort island community where beaches have significant public and private use.
- (b) The city has funded, constructed and currently maintains a comprehensively engineered beach and dune restoration system.
- (c) The natural and restored beach and dune resources protect both public and private infrastructure by providing vital defenses against storm surge and high waves.
- (d) Sand dunes hold and store replacement sand for eroded beaches during storm events.
- (e) 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.

(Ord. No. 2015-1208, 11-3-2015)

Sec. 30-153. - Statement of purpose.

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 potentially 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;
- (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.

(Ord. No. 2015-1208, 11-3-2015)

Sec. 30-154. - 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;
- (7) To protect and preserve critical habitat of threatened, endangered, or species of special concern as defined or listed by the U.S. Fish and Wildlife Service or State of Alabama.

(Ord. No. 2015-1208, 11-3-2015; Ord. No. 2017-1246, § 1, 2-7-2017.)

Sec. 30-155. - 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.

(Ord. No. 2015-1208, 11-3-2015)

Sec. 30-156. - Administration; enforcement.

- (a) The director of the community development/engineering and 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.
- (b) 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.

(Ord. No. 2015-1208, 11-3-2015)

Sec. 30-157. - Definitions.

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

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.

Beach means a sandy shoreline area abutting the Gulf of Mexico, characterized by low relief, generally of gentle slope and some vegetation, extending into the abutting waters to a distance 1,000 feet seaward of the mean high tide line.

Beach activity permit means the permits issued by the department pursuant to section 30-160 of the Code.

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 service.

Beach service means a business licensed by the city to engage in the onsite rental of beach chairs, loungers, umbrellas and other equipment (hereafter referred to as "rental equipment"). Other equipment would include, but is not limited to, paddleboards, surfboards, kayaks, sailing vessels, fishing equipment and the like.

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.

Department means the City of Orange Beach Community Development/Engineering and Environmental Department.

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 feet in width, constructed without roof or walls, elevated at least one foot above the dune, and extends seaward of the seaward vegetation line.

Emergency access corridor means an area that is ten feet wide which extends from the terminus of each dune walkover seaward to the shoreline or any east-west corridor designated by the city as may be necessary for passage of vehicles and equipment.

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.

Lines (or sets) means a structured row of beach rental equipment such as chairs or loungers.

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 at the Baldwin County Satellite Courthouse in Foley, Alabama.

Onsite storage facilities means a wooden or other approved material box constructed for the purpose of storing rental equipment on the beach. The box must be all white in color, be no larger than six and a half feet high, five feet wide and 12 feet long. The box must be identified by a suitable marking of contrasting color on the north and south facing ends so as to render the item identifiable as the licensee's storage facility.

Operations plan means a plan for each licensed beach service detailing at a minimum the points of contact, all services to be provided at their sites, ingress and egress points, description/images of any vehicles or motorized equipment to be utilized, copy of property owner agreements to provide service at the site, private property access/easements to cross properties not serviced by the vendor, an evacuation plan and any additional information required by city staff.

Pets mean any nonindigenous or domesticated animal such as dogs, cats, horses, etc. with the exception of "service animals."

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).

Service animal means a dog that is individually trained to work or to perform tasks for people with disabilities, such as guiding people who are blind, alteration people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure; reminding a person with mental illness to take prescribed medications, calming a person with post traumatic street disorder (PTSD). Service animals are working animals, not pets. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals.

Site plan means a plan specific to a facility that includes the location, size, quantity, spacing, description and any additional information deemed necessary by city staff to determine that a beach service complies with this and all other applicable ordinances.

Tent or shelter means any tent, shelter, canopy, cabana, windscreen, or other supported ground cover or enclosure with more than one point of contact with the ground and shall include the frame support poles, guy lines, and other support features whether or not the cover is attached; 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 feet and no height dimension greater than four feet.

(Ord. No. 2015-1208, 11-3-2015; Ord. No. 2017-1246, § 2, 2-7-2017.)

Sec. 30-158. - Prohibited activities.

- (a) It shall be unlawful for any person to engage in the following activities within the primary dune system without a beach activity permit:
- (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 primary dune system 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 storm water or other point-source discharges that may cause scouring or erosion of the beach-dune feature or primary dune system;
 - (9) Harvesting of sea oats (*Uniola paniculata*) seeds, or plants or parts of plants identified in subsection (a) (6);
 - (10) Unauthorized storage of beach equipment, tents, or other materials in the vegetated dune area.
- (b) It shall be unlawful for any person to engage in the following activities on the beach 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 lines or sets of beach rental equipment 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) Excavating, digging, or removing sand in such quantities that causes a grade change in excess of one foot elevation or otherwise altering the shoreline exceeding one foot;
 - (6) Holes of 12 inches or less must be attended by a responsible person over the age of 16 or appropriately marked to prevent injury. Holes must also be filled no later than 30 minutes before sunset.

- (7) Possessing a metal shovel or other digging apparatus of the type customarily sold in hardware stores (not a or any shovel or other digging apparatus that has handle that, when fully extended, is longer than 23 inches
 - (8) Erection or placement of any tent exceeding 144 square feet (e.g., 12 feet by 12 feet) in area without a coastal permit and special events permit from the city;
 - (9) Leaving any beach equipment as defined herein unattended beginning one hour after sunset until sunrise as defined by NOAA for Orange Beach, Alabama, each day;
 - (10) Camping or sleeping on the beach between 8:00 p.m. and 6:00 a.m.;
 - (11) Music, either live or recorded, that can be heard greater than 100 feet from the source without a permit;
 - (12) Erection or placement of any structure with the exception of onsite rental storage facilities for licensed beach services approved in a facility site/operations plan;
 - (13) Pet traffic.
- (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 "aboveground" 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.
- (d) It shall be unlawful to obstruct emergency access corridor.

(Ord. No. 2015-1208, 11-3-2015; Ord. No. 2017-1246, § 3, 2-7-2017)

Sec. 30-159. - Property deemed abandoned.

Any beach equipment left unattended on the beach one hour after sunset until sunrise as defined by NOAA for Orange Beach, Alabama, each day will be deemed abandoned, and shall be disposed of accordingly.

(Ord. No. 2015-1208, 11-3-2015; Ord. No. 2017-1246, § 4, 2-7-2017)

Sec. 30-160. - 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 article. All requests for beach activity 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.

(Ord. No. 2015-1208, 11-3-2015)

Sec. 30-160.1. - Provisions applicable to all beach services.

A business license issued to any beach services business is expressly conditioned on compliance with all the following requirements:

- (1) The licensee's business shall be operated only at a site properly zoned for such business, owned by, leased in writing to, or licensed in writing to the licensee and specifically designated on the license as issued.
- (2) Rental equipment lines or sets at each site must maintain a minimum landward setback of 35 feet from the water's edge and a sufficient minimum north setback to avoid contact with any existing berm or dune. Rental equipment must be spaced so as to leave one aisle not less than ten feet wide seaward from the terminus of each dune walkover. Additionally, rental equipment must be spaced so as to provide a ten-foot setback from the east and west property lines of the site except when said beach service manages contiguous sites in which case a setback of only five feet on each side of the line is required forming a ten-foot north/south aisle along the contiguous site property line.
- (3) Onsite storage facilities may be utilized on the beach between the months of March and October and must be removed no later than November 15 each year.
- (4) Beginning in license year 2017 each approved site that was licensed in 2016 shall be allowed a maximum number of wooden lounge sets and temporary on site storage facilities that can remain on the beach overnight established by the city based on surveys taken in 2015.
 - a. Each site will reduce the number of wooden lounge sets by 14 percent of the original total per year beginning in 2017, with the discontinuance of all wooden lounge sets from all sites by 2023:
 1. 2017 86 percent of 2015 survey;
 2. 2018 72 percent;
 3. 2019 58 percent;
 4. 2020 44 percent;
 5. 2021 30 percent;
 6. 2022 16 percent;
 7. 2023 two percent.
 - b. Reductions will be globally calculated based on the overall inventory of each licensee annually. A licensee having more than one licensed site in year 2016 may allocate the reduction of allowable permitted lounge sets among its licensed sites provided no such allocation shall apply to any additional site not licensed in license year 2016.
 - c. No wooden lounge sets may be utilized at any site that was not duly licensed for the onsite rental of beach loungers in license year 2016, and any such additional or different site must strictly comply with the overnight removal requirements of all beach equipment.
- (5) Prior to operation on any site the licensee must submit in writing a site plan and operations plan specific to the site on or before February 1 of each license year. One plan may be submitted for contiguous sites

as long as sufficient detail is provided. The site plan must include at a minimum the proposed location of rental equipment lines or sets (maximum capacity setup) and onsite storage facilities. The licensee must also submit an operations plan that outlines points of contact, all services to be provided at the site, ingress and egress points, description/images of any vehicles or motorized equipment to be utilized, copy of property owner agreement to provide service at the site and an evacuation plan. The evacuation plan must demonstrate to the reasonable satisfaction of the city that the licensee has adequate storage off site and is capable of removing and storing all equipment and facilities within 24 hours of notification from the city or after the posting of any tropical storm or hurricane warning by NOAA that includes the location of the licensed site.

- (6) Any beach service that operates any motorized vehicle south of the coastal construction line (CCL) must be required to have insurance in accordance with this section. Each license under this section shall at all times maintain a comprehensive general liability and property damage insurance coverage in an amount of not less than \$200,000.00 for damage or loss of property arising out of any single occurrence, \$500,000.00 for bodily injury or death for one person in any single occurrence, \$1,000,000.00 in aggregate for all claims arising out of a single occurrence, and name the city as an additional insured. The licensee shall maintain a copy of its current policy or a current certificate of insurance on file with the finance department at all times, and the terms of coverage shall prohibit termination or cancellation without at least 30 days' prior written notice to the finance division.
- (7) *License not in active use subject to revocation.* Any license issued for a site shall be subject to revocation upon a determination by the city that the licensee is not actively engaging in the business activity at the site under the license.

(Ord. No. 2017-1246, § 5, 2-7-2017)

Sec. 30-161. - Abrogation and greater restrictions.

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

(Ord. No. 2015-1208, 11-3-2015)

Sec. 30-162. - 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 30 days or both, at the discretion of the court for each day the violation continues.

(Ord. No. 2015-1208, 11-3-2015)

Secs. 30-163—30-180. - Reserved.