

ARTICLE XX. - COASTAL PROTECTION

20-1 - Purpose.

The intent of this article is to simplify the permitting process in the coastal area and promote the protection and enhancement of coastal area resources by adopting provisions which are consistent with or exceed the provisions of the Alabama Coastal Area Management Program.

20-2 - Statutory authority.

The legislature of the State of Alabama enacted Title 9, Chapter 7, Sections 10 through 22 of the Code of Alabama, entitled "Preservation, Development, etc. of Coastal Areas," for the protection of those resources and for the enhancement of economic development activities. Title 9, Chapter 7, Section 20 stipulates no agency can issue a permit for any activity in the coastal area that the Alabama Department of Environmental Management finds to be inconsistent with the coastal area management program established by the Alabama Department of Economic and Community Affairs Office of State Planning and Federal Programs. This section further stipulates the intent of this article is to avoid duplication whenever possible as to the managing activities within the coastal area and yet to assure compliance with the management program. Now therefore, the City of Daphne, Alabama, as a means of minimizing duplication of permitting activities within the jurisdiction of Daphne, Alabama, does ordain the provisions below as granted under its authority.

20-3 - Finding of fact.

There is a direct and/or indirect relationship between the protection of coastal area resources, the protection and enhancement of lives and property, the economic stability, and the enhancement activity within the jurisdiction of Daphne, Alabama.

As written, the Alabama Coastal Area Management Program contains specific provisions wherein the City of Daphne can be delegated permitting authority under the Alabama Coastal Area Management Program as a means of minimizing duplication of permitting efforts within the coastal area.

20-4 - Objectives.

The objectives of this Ordinance are as follows:

- (a) To protect humans, wildlife, and natural resources.
- (b) To minimize erosion and siltation.
- (c) To assist in the implementation of the Alabama Coastal Area Management Program.

20-5 - Usage.

Unless specifically defined below, words or phrases used in this shall be interpreted so as to give them the meaning described in the Alabama Coastal Area Management Program as approved on September 28, 1979, and amendments thereto, or otherwise have the meanings in common usage and to give the most reasonable application.

20-6 - Words and terms defined.

- (a) *Coastal area:* The coastal waters, including the lands therein and thereunder, and the adjacent shore lands, including the waters therein and thereunder, strongly influenced by each and in proximity to the shorelines of Alabama and including transitional and intertidal areas, salt marshes, wetlands, and beaches within the jurisdiction of Alabama. They extend inland to a point approximately ten (10) feet above mean sea level, and shall include all lands and waters between that point and mean high tide.

- (b) *Coastal resources*: Valuable human, natural, cultural or historical assets within the coastal area, such as water quality, air quality, wetlands and submerged grass bed, beaches and dunes, wildlife habitats, biological resources, cultural resources, public access areas, and water resources.
- (c) *Cultural resources*: Any district, building, site, object or other material in American history, architecture, archaeology, or culture which is of national, state, or local significance.
- (d) *Degrade*: To affect the coastal area in such a manner as to produce a continuing reduction of destruction of present levels of coastal resources.
- (e) *Dredging*: Removal or excavation of any materials from lands underlying coastal waters.
- (f) *Person*: 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, other legal entity, business organization, any state or local governmental entity, and any successor of the foregoing.
- (g) *Substantial improvement*:
 - (1) Any addition to any structure.
 - (2) Any extension, enlargement, or expansion of any structure.
 - (3) Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the fair market value of the structure either:
 - (a) Before the repair, reconstruction, or improvement is started or,
 - (b) If the structure has been damaged and is being restored before the damage occurred.
- (h) *Steep slope*: A steep slope is any area of land along a coastal bluff and coastal ravine where the slope exceeds thirty (30) percent.

20-7 - Lands covered.

This shall apply to all coastal areas in the jurisdiction of Daphne, Alabama.

20-8 - Basis for establishing the coastal area.

The coastal area shall be those areas within Daphne, Alabama, which lies below an elevation of ten (10) feet above mean sea level, as is defined herein and in the Alabama Coastal Area Management Program.

20-9 - Permit required.

A development permit shall be required in conformance with the provisions of this Ordinance.

20-10 - Compliance.

No development, activity, or land shall hereafter be initiated, located, extended, converted, or structurally altered without full compliance with the terms of this Ordinance and other applicable regulations.

20-11 - Abrogation and greater restrictions.

This Ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

20-12 - Interpretation.

In the interpretation and application of this all provisions shall be:

- (a) Considered as minimum requirements.
- (b) Deemed to neither limit nor repeal any other powers granted under state statutes.

20-13 - Warning and disclaimer of liability.

The degree of resource protection and enhancement required by this Ordinance is considered reasonable for regulatory purposes and is based on the requirements of the Alabama Coastal Area Management Program.

20-14 - Monitoring and enforcement.

Activities permitted under this shall be monitored by the environmental programs manager for compliance with the terms and conditions of the permit issued.

In the event the environmental programs manager or code enforcement officer discovers a violation of this, the environmental programs manager and building official may pursue several remedies to the violation.

These are as follows:

- (a) Inform the user of the violation and pursue means for correcting the violation.
- (b) Issue a cease and desist order if the activity is causing degradation to the coastal area.
- (c) Revoke the permit if the activity cannot be brought into compliance with the conditions of the article.
- (d) Pursue judicial remedies and/or levy fines in accordance with the police powers of the city.
- (e) Other means as are deemed necessary to prevent further violations of the ordinance.

20-15 - Administration.

The environmental programs manager is hereby appointed to administer and implement the provisions of this Ordinance and is given the following duties and responsibilities:

- (a) Monitor all coastal activities.
- (b) Review applications and building permits for activities in the coastal area in accordance with the provisions of this [article/Ordinance].
- (c) Notify the Alabama Historical Commission of archaeological and historical finds.
- (d) Where necessary, coordinate with the Alabama Department of Environmental Management and/or other governmental agencies on developments in the coastal area.
- (e) Advise the permittee of other state and/or federal permits that may be required.
- (f) Maintain a record of permit and monitoring activities.
- (g) Issue a public notice of an impending permit, solicit public comments, make the permit application, and related records available to the public for inspection upon request, with the exception of any proprietary information.

20-16 - Permit procedures.

Application for a development or activity permit shall be made to the building inspections department and shall at a minimum include an erosion control plan consisting of a statement or statements delineating the measures that will be taken to prevent and/or retard erosion from the development or activity site.

20-17 - Variance.

Any aggrieved person may pursue an appeal in accordance with the variance provisions contained in the Flood Damage and Prevention Ordinance. 20-18 - Specific provisions.

In all areas of the coast the following provisions are required:

(a) *Erosion control plan:* Any person proposing to conduct a development activity in the coastal area shall submit an erosion control plan to the building inspections department as part of his application for a permit for approval.

(b) *Shoreline erosion mitigation:*

(1) Any use intended to mitigate a shoreline erosion problem in the coastal area shall use nonstructural erosion control methods to the maximum extent practicable, including but not limited to preservation and restoration of dunes, beaches, wetlands, submersed grass beds, shoreline restoration, and nourishment.

(2) The emplacement of groins, jetties and breakwaters as erosion control devices shall be permissible only when no other technically feasible alternative means of control is available and the structure will have to be approved and permitted by the state and federal agencies.

The U.S. Department of Army, Corps of Engineers and the Alabama Department of Environmental Management regulate activities in waters of the United States within the political boundaries of the State of Alabama. Joint application and notification, as required by federal and state regulations, shall be submitted to the U.S. Army Corps of Engineers, Mobile District.

Furthermore, the State of Alabama Department of Conservation and Natural Resources State Lands Division regulates the placement and configuration of piers and other improvements on state submerged lands. Notice of intent to impact state owned submerged lands, as required by State Lands Division Regulation 03-SL-01, Rule 220-4-09, shall be submitted to the Alabama Department of Conservation and Natural Resources State Lands Division, Submerged Lands.

A copy of each applicable permit will be required to be submitted to the city prior to installation of the structure.

(3) Protection of cultural resources.

(4) All development in the coastal area shall, to the maximum extent practicable, avoid adversely affecting historic, cultural, or archaeological resources.

(5) Any person shall notify the environmental programs manager of any historical, cultural, or archaeological resources discovered in the course of conducting a permitted use in the coastal area.

(6) Coastal permitting may be a prerequisite for site plan and/or subdivision plat approval. recommendation of the environmental programs manager shall be considered by the planning commission in making its final decision on all developments in the coastal protection area prior to approval.

(c) *Protection of wildlife and wildlife habitats:* To the maximum extent practicable, all uses within the coastal area shall be undertaken in such a way as to preserve and protect existing wildlife and wildlife habitats. In particular, endangered species and their habitats, as designated by appropriate federal and state agencies, shall be protected to the maximum extent practicable.

(d) *Coastal bluffs and coastal ravines slope protection:* New subdivisions and commercial sites shall provide forty-foot setback for all steep slopes located within the boundary of the coastal bluffs and coastal ravines. This setback is provided in recognition of the potentially negative impacts of construction in steep slope areas in the form of erosion, siltation, excessive removal

of vegetation and soil, flooding, soil slippage, water runoff and destruction of unique land forms. It is further the purpose of this setback requirement to encourage good land use planning and design, maximize optimal use of the natural terrain and maintain ridgelines. Effective and reasonable application of this regulation will protect the health, safety and welfare of the citizens of the City of Daphne, as well as limit the adverse impact on adjoining, downstream properties and Mobile Bay.