

ORDINANCE NO. 11-2008
AN ORDINANCE TO AMEND THE CODE OF ORDINANCES
REPEALING SECTION 5-010(J) AND ESTABLISHING A NEW ARTICLE 17 REGARDING
SHORE PROTECTION FOR THE CITY OF TYBEE ISLAND, GEORGIA

WHEREAS, the duly elected governing authority for the City of Tybee Island, Georgia, is authorized under Article 9, Section 2, Paragraph 3 of the Constitution of the State of Georgia to adopt reasonable ordinances to protect and improve the public health, safety, and welfare of the citizens of Tybee Island, Georgia, and

WHEREAS, the duly elected governing authority for the City of Tybee Island, Georgia, is the Mayor and Council thereof, and

WHEREAS, the governing authority desires to adopt ordinances under its police, zoning, and home rule powers,

WHEREAS, the City of Tybee Island desires to amend the Code of Ordinances in order to establish a shore protection ordinance and repeal any inconsistent ordinance, however, Section 3-100 is not to be repealed as amended simultaneously with the amendment hereto.

NOW, THEREFORE, be it ordained by the governing authority of the City of Tybee Island that the code of ordinances is amended so that hereafter an article shall be created and read as follows:

Article 17 Shore Protection

1. **TITLE**

This ordinance shall be known as the Shore Protection Ordinance for the City of Tybee Island.

2. **AUTHORITY**

This ordinance is established as a new chapter/section of the City of Tybee Island code. The authority for this chapter is based on the home rule provisions of the Georgia Constitution, 1983, Article IX, Section II, ¶2, 1983.

3. **FINDINGS**

Coastal sand dunes, beaches, sandbars, and shoals comprise a vital, unique, irreplaceable and fragile natural resource system, known as the sand sharing system which acts as a buffer to protect real and personal property and natural resources from the damaging effects of floods, winds, tides and erosion. The Mayor and Council further find that the preservation of the sand dunes, even when isolated from the sand sharing system is critical to the prevention flooding and drainage problems in the City and it is therefore advisable that the City establish laws and guidelines for the construction, maintenance, and establishment of structures and for activities in or near sand dunes and/or the sand sharing system. It is necessary to protect the vital resource system that only certain activities and alterations of the sand dunes, beaches, and areas adjacent thereto which are considered to be in the best interest of the City and which do not substantially impair the values and functions of the dunes and sandsharing system are allowed.

The Mayor and Council further find that the shorelines near the City are different or have different characteristics in various areas of the City and that therefore it is appropriate that zones be established for setting appropriate protections in each unique area. It is necessary to evaluate on a recurring basis changes in erosion, dune fields, and natural characteristics to reassess the appropriate manner and level of protection.

4. **DEFINITIONS**

All words and phrases used herein shall have those definitions established in the Shore Protection Act, O.C.G.A. § 12-5-230. Even if a particular word or term is defined differently in the City Land Development Code, in the interpretation of this Ordinance, the definition of the Shore Protection Act is to control, however, the “areas of operation/zones of applicability” are to be established as set forth in this ordinance.

5. **AREAS OF OPERATION/ZONES OF APPLICABILITY**

The City hereby establishes areas for shore protection. The areas will be reflected as shown on a map, a written description, aerial photographs, or any combination thereof to be retained permanently in the designated offices of the of the City of Tybee Island. Photographic, typed or other copies of such map or descriptions or photographs may be certified by the Clerk of Council and shall be admitted as evidence in all courts and shall have the same force and effect as would the original map, description or photograph. The shore protection area(s) may be reviewed and reestablished at such times as directed by the Mayor and Council in all zones or in any particular zone, as the Mayor and Council deems advisable at that time.

For areas of operation determined by reference to the ordinary high water mark, such area shall be identified as the baseline template as designed on behalf of the City dated the ____ day of _____ before the renourishment plan for 2008-2009 and the area established as the area of operation shall remain the same regardless of the renourishment.

A) **Front Beach Zone**

The area of the City designated as “the front beach” is represented generally by the area between the northern federal groin and the southern federal groin. Within this zone there is a seawall running generally in a north-south direction. This area shall be classified as the “front beach” zone and depicted on a map or photograph. In this front beach zone, the following rules shall be applicable to construction applications therein for locating the appropriate shore protection area of operation:

In such zone there shall be a setback and no building activity within 18 feet of the landward most line of the seawall unless the toe of the dune, as delineated by the Department of Natural Resources, encroaches landward of the seawall in which event there shall be a 10 foot

setback from the landward toe of the dune or 18 feet of the seawall, whichever is greater (most landward).

In the front beach zone, the described area is a “no build” area, where no building activities for the construction of a structure shall be permissible without a variance from the Mayor and Council. For land disturbing activities other than construction of or modification of a structure, special review is required before a permit may be issued.

B) South Beach Zone

In the area southwest of federal groin on the south end of Tybee Island to be classified as the “South Beach” zone, the following rules shall apply for establishing the appropriate shore protection area of operation:

1) For areas where there is no dune (within the projected boundary lines of the parcel involved), any building activity within 250 feet of the ordinary high water mark requires special review **as set forth in Section § 5-070 of the Tybee Island Land Development Code.**

2) For areas where dunes are present, there shall be no building activity within 10 feet of the landward toe of the landward most dune as designated by the Department of Natural Resources.

3) In areas where there is no beach but, rather, the coast is a stream or river buffer, then those laws applicable to buffers in and around state waters including Erosion and Sedimentation Control (O.C.G.A. § 12-7-1, et seq., Tybee Ordinance LDC 15-020, et seq.) and the Coastal Marshlands Protection Act (O.C.G.A. § 12-5-280, et seq.) **shall be applied and the more stringent requirements will be enforced.**

C) North Beach Zone

In areas north of the northern federal groin, to be classified as the “North Beach” zone, the following rules shall apply for establishing the appropriate shore protection area of operation:

1) For areas where there are no dunes, any building activity within 250 feet of the ordinary high water mark requires special review **as set forth in Section § 5-070 of the Tybee Island Land Development Code.**

2) For areas where dunes are present, there shall be no building activity within 10 feet of the landward toe of the landward most dune as designated by the Department of Natural Resources.

3) In areas where there is no beach but, rather, the coast is a stream or river buffer, then those laws applicable to buffers in and around state waters including Erosion and Sedimentation Control (O.C.G.A. § 12-7-1, et seq., Tybee Ordinance LDC 15-020, et seq.) and the Coastal Marshlands Protection Act (O.C.G.A. § 12-5-280, et seq.) shall be applied.

6. **PERMIT REQUIRED**

A) Where building activity is permissible hereunder, no person shall construct or erect any structure or construct, erect, conduct, or engage in any shoreline engineering activity or engage in any land alteration which alters the natural topography or vegetation of any area within the Area of Operation as defined in this ordinance, except in accordance with the terms and conditions of a permit therefore issued in accordance with the Shore Protection Act and a permit issued by the Mayor and Council of the City of Tybee Island. A permit may authorize the construction or maintenance of the project proposed in an application. After construction of a project pursuant to a permit, the project may be maintained without a permit so long as it does not further alter the natural topography or vegetation of the site or increase the size or scope of

the project. Permits hereunder shall only be granted as a conditional permit subject to special review under the zoning ordinances of the city.

B) No permit shall be required for a structure, shoreline engineering activity, or land alteration which existed as of July 1, 1979 with respect to permits under the Shore Protection Act and as of ____ day of _____, 2010 with respect to permits from the City provided that a permit must be obtained subject to the restrictions of the other provisions of this ordinance and following any review required for any modification or expansion which would increase the encroachment into the shore protection area. Provided further, that if any structure, shoreline engineering activity, or land alteration is more than ____% destroyed by wind, water, or erosion as determined by an appraisal of the fair market value by a real estate appraiser certified pursuant to Chapter 39A of Title 43 of the Code of Georgia, a permit is required for reconstruction.

7. **CRITERIA FOR GRANTING PERMIT**

A) An applicant shall first secure any necessary permit from the Mayor and Council of the City and may then apply for any necessary permit under the Shore Protection Act, and/or any other applicable law.

1) If the applicant is seeking a variance, the provisions of Land Development Code § 5-090 shall apply in addition to the criteria set forth below.

2) If the applicant is seeking special review, the provisions of the Land Development Code § 5-070 shall apply, in addition to the criteria set forth below.

B) In considering applications for permits hereunder, the Mayor and Council should consider in addition to the provisions in the Shore Protection Act, specifically, O.C.G.A. §§ 12-5-231, 12-5-232, and 12-5-239, which are hereby incorporated herein, the following criteria:

1) The applicant shall provide data sufficient to indicate to the Mayor and Council that the proposed activity or project will maintain the normal functions of the beach, sand dunes or vegetation thereon. Consider O.C.G.A. § 12-5-239(c)(1)(E).

2) The applicant shall provide sufficient data for the Mayor and Council to conclude that the proposed structure or activity will not materially reduce the normal functions of the beach and dunes as a means of protection from the effect of high winds and water.

3) The project must comply with applicable zoning district requirements.

8. NON-CONFORMING USES AND EXEMPTIONS

A. Any lawful use of land or building existing on the effective date of this article or on the effective date of any subsequent amendment hereto located within the area to which this ordinance applies is hereby declared to be a **legal** non-conforming use. A **legal** non-conforming use of buildings, structures or land may be continued with the following limitations:

1) No extension of use - shall be extended to occupy a greater area of land or space seaward of the shore protection line previously established.

2) Vacant use - a tract or structure of land which has housed a non-conforming use may not continue in use after it has remained vacant for a period of 12 months.

3) Damaged use - a building or structure which has housed or houses a non-conforming use shall not be reoccupied by a non-conforming use after it has been damaged to the extent of ____% or more of the total fair market value prior to the damage unless a permit is issued pursuant to Section 7 hereof and **a permit as required for all construction activities pursuant to Section 5-010 of the Tybee Island Land Development Code is issued.**

B. Exemptions - the provisions of this article shall not apply to **permitted** or **legal non-conforming** dune crossovers, public or private, to public structures, access roads, parking facilities constructed or maintained by the City, or to educational facilities approved by the City.

Routine maintenance activities within the area of operation, including a “no build zone,” are exempt from the provisions of this Ordinance, however permits for all such activities must be secured from the designated department of the City and, if the applied for activity is such that the head of the designated department of the City believes that special review should be appropriate for such activity, the matter may be referred to the Planning Commission and Mayor and Council for consideration. **Under no circumstances shall any land-disturbing activity be allowed to occur seaward of a line 10 feet landward of the landward toe of the landward most dune as determined by the Georgia Department of Natural Resources.**

9. **FORM AND CONTENTS OF APPLICATION FOR PERMIT**

Those provisions of the Shore Protection Act, O.C.G.A. §12-5-230 et seq. relating to the contents of applications for a permit, the completion of a permit and notice requirements and restrictions regarding issuance of a permit, shall be complied with in connection with permits required hereunder and for proposed structures or shoreline engineering activity within the City and in addition thereto, in order for a permit to be issued by the Mayor and Council, a public hearing must be held following publication and posting of the location for the proposed project. The procedures established in the Land Development Code **Section 5-060** for conducting public hearings and notice thereof shall be applicable to such applications and hearings thereon.

10. **SEVERABILITY AND CONFLICT**

If any section, subsection, clause, or provision of these regulations shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holdings shall not effect

any other section, subsection, clause, provision or portion of these regulations which is not invalid or unconstitutional. Where the enforcement of the provisions of this ordinance would result in conflict with other ordinances, or with each other the most restrictive provision shall be enforced.

11. REPEALER

All other laws and parts of laws in conflict with this Ordinance are hereby repealed, however, LDC 3-100 as modified simultaneously with the adoption hereof is not to be repealed.

Ordinances controlling beach equipment rental, beach rules and non-development activities are not in conflict herewith and therefore remain in force.

It is the intention of the governing body, and it is hereby ordained, that the provisions of this ordinance shall become and be made a part of the Code of Ordinances, City of Tybee Island, Georgia, and the sections of this ordinance may be renumbered to accomplish such intention.

This Ordinance shall become effective on _____ day of _____, 2010.

ADOPTED THIS ___ DAY OF _____, 2010.

MAYOR

ATTEST:

CLERK OF COUNCIL

FIRST READING: _____

SECOND READING: _____

ENACTED: _____

DRAFT