



**GROWTH AND RESOURCE MANAGEMENT DEPARTMENT
PLANNING AND DEVELOPMENT SERVICES DIVISION**
123 West Indiana Avenue, DeLand, Florida 32720
(386) 736-5959

TO: Planning and Land Development Regulation Commission

DATE: June 24, 2019

SUBJECT: Ordinance No. 2019-XX. Amending Chapter 72, Division 15, regarding Beaches and Dunes.

The Volusia County Dynamic Master Plan contains "Action Steps" to improve efficiency of the development review process. Growth and Resource Management staff has completed several of the steps outlined for this department. The continuing effort to improve the process requires updates to the zoning ordinance and the land development code (LDC) which comprises Chapter 72, Land Planning, of the Volusia County Code of Ordinances.

I. BACKGROUND

Division 15 – Environmental Standards for Beach and Dune Protection was established to provide certain standards for the restoration and preservation of the beach and dune system, specifically related to construction activities. Standards were established but there was no mechanism (permit) through which to enforce the standards.

The purpose behind this update is two-fold. The first comes from county council direction for addressing construction activities on the beach following a natural disaster, specifically a hurricane. Once a hurricane passes, the Florida Department of Environmental Protection typically issues an Emergency Order granting local governments the authority to permit repairs to some residential and commercial structures damaged by the storm. During previous emergency orders, the county was unable to take this step due to the lack of a permitting process. This update provides that mechanism.

The second purpose is to ensure adequate county oversight for beach management related to private and commercial development. The emphasis is on protection of the dune system, which is the first line of defense for upland properties. This oversight is also a requirement under the federal Incidental Take Permit issued by the United States Fish and Wildlife Service, and is addressed by the county's Sea Turtle Habitat Conservation Plan. The existing ordinance only addresses walkovers and armoring (seawalls); the proposed changes include standards for dune restoration or sand placement projects. In addition, the proposed changes provide clear standards for the restoration and cleanup of debris on the beach, and establishes a dune restoration trust account to be used in cases where the required dune restoration project has little chance of success.

This ordinance is currently, and will continue to be implemented county wide, and will be administered through Environmental Management, concurrent with any required building permits.

The proposed changes will require a fee resolution. Based on an analysis of the time spent reviewing these projects, the permit fee will be \$174 and a reinspection fee (if needed) will be \$58.

Note: The draft ordinance was sent to the Volusia County Association for Responsible Development (VCARD) and the Volusia Building Industry Association (VBIA) for review. Their comments have not been incorporated into the proposed ordinance at this time, but are attached for reference to this report.

II. ORDINANCE SUMMARY

Staff has reviewed the existing applicable regulations and is suggesting the following revisions to of the zoning code (Chapter 72, Land Planning, County Code of Ordinances):

Section I, Division 15, Environmental Standards for Beach and Dune Protection is repealed in its entirety and replaced. The pertinent sections of the ordinance are as follows:

- Section 72-1051 establishes the purpose and intent.
- Section 72-1052 identifies exemptions to the ordinance.
- Section 72-1053 establishes a beach and dune permit.
- Section 72-1054 establishes the standards for permit issuance.
- Section 72-1055 establishes standards for beach and dune walkovers.
- Section 72-1056 establishes standards for armoring projects.
- Section 72-1057 establishes standards for dune restoration and sand placement projects.
- Section 72-1058 addresses restoration and cleanup.
- Section 72-1059 establishes a dune restoration trust account.

III. CONSISTENCY WITH COMPREHENSIVE PLAN

Staff finds this amendment is consistent with the Volusia County Comprehensive Plan. The following policies of the Coastal Management Element are in support of the intent of the proposed ordinance:

- 11.1.1.1 The Volusia County Environmental Management Division will be responsible for developing management plans and standards that protect and conserve natural systems within the coastal area.

- 11.1.1.5 The County shall continue to implement conservation, management, and development review standards of the development review process. Such reviews are intended to minimize long-term and cumulative impacts on coastal habitat by requiring site specific analysis during the review process.
- 11.2.2.4 Cooperate and coordinate with local governments, state agencies, and special districts in developing consistent standards, criteria, and land development regulations for protection of coastal resources.
- 11.4.1.5 Seawall construction in the County shall be consistent with State requirements and should be of a low profile design that relates to local beach conditions. In addition, all new seawalls shall be designed and constructed to minimize adverse effects to adjacent properties.
- 11.4.1.6 A dune system shall be developed and vegetated with suitable materials to bury all new, and/or reconstruction or replacement seawalls within the County.

IV. STAFF RECOMMENDATIONS

Staff recommends that the PLDRC find Ordinance No. 2019-XX consistent with the comprehensive plan and forward to the county council with a recommendation of approval.

V. ATTACHMENTS

Draft Ordinance 2019-XX
VCARD Comments
VBIA Comments

ORDINANCE 2019-XX

AN ORDINANCE OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE COUNTY OF VOLUSIA, BY REPEALING AND REPLACING DIVISION 15, ENVIRONMENTAL STANDARDS FOR BEACH AND DUNE PROTECTION, ARTICLE III LAND DEVELOPMENT REGULATIONS, CHAPTER 72 LAND PLANNING; BY PROVIDING FOR EXEMPT ACTIVITIES; BY PROVIDING FOR PERMITTING AND PERMIT ISSUANCE STANDARDS; BY PROVIDING FOR BEACH AND DUNE WALKOVER STANDARDS; BY PROVIDING FOR ARMORING PROJECT STANDARDS; BY PROVIDING FOR DUNE RESTORATION AND SAND PLACEMENT; BY PROVIDING FOR RESTORATION AND CLEANUP; BY PROVIDING FOR A DUNE RESTORATION TRUST ACCOUNT; PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AS FOLLOWS:

(Words in ~~strike through~~ type are deletions; words in underscore type are additions.)

SECTION I: Division 15, Environmental Standards for Beach and Dune Protection, Article III Land Development Regulations, Chapter 72 Land Planning, Code of Ordinances, County of Volusia, is repealed in its entirety and replaced as follows:

DIVISION 15. – ENVIRONMENTAL STANDARDS FOR BEACH AND DUNE PROTECTION

SECTION 72-1051 – Purpose and intent.

It is the purpose of this regulation to provide certain standards that promote restoration and preservation of the vital beach and dune system along the Atlantic coast of Volusia County, Florida. The intent is to regulate coastal construction activities that affect the beach and dune system and that may degrade its natural processes and functions. All such standards shall meet or be more restrictive than the Florida Department of Environmental Protection (FDEP) standards.

SECTION 72-1052 – Exemptions.

Activities that are exempted from this division include:

- a) Planting native coastal vegetation on property or lots abutting the Atlantic Ocean.
- b) Removal of debris, unpermitted structures, or non-functioning coastal armoring.
- c) Mechanical beach cleaning, provided that it conforms to the standards contained in division 12 of this article, pertaining to sea turtle protection, if said activity is permitted by FDEP, and does not enter the Conservation Zone or the Natural Beach Management Areas.
- d) Any work performed by the United States Army Corps of Engineers (ACOE), the Florida Inland Navigation District (FIND), the Florida Department of Transportation (FDOT), the Florida Department of Environmental Protection (FDEP), or their designee.
- e) Any maintenance, repair, replacement, improvement or construction activities performed by the county on the beach or on or adjacent to any Volusia County beach approach, as defined in Chapter 20, Beach Code, Volusia County Code of Ordinances.

SECTION 72-1053 – Beach and dune permit.

A permit shall be required for any excavation, erosion control activities, sand placement, dune restoration, armoring, and maintenance, repair, replacement, improvement, or construction activities related to any structure on the beach or beach approach, as defined in Chapter 20, Beach Code, Volusia County Code of Ordinances. An application for a permit shall be submitted with the following information:

- a) Application forms. A complete permit application shall be submitted by a property owner or authorized agent of the owner, on the approved application form(s). Submittal of an application is considered express consent for staff to inspect the property as necessary to process the application and determine compliance with ordinance requirements.
- b) Fees. Each permit application must be accompanied by the appropriate fee(s) as established by the council. The permit application fees are nonrefundable and nontransferable. Beach access fees are required at all public vehicular approaches in accordance with Chapter 20, Article VI, Division 2, and are not included in the permit application fees.
- c) Required application data. The application must be accompanied by:
 - (1) Property boundary survey. Property boundaries must be locatable in the field by the inspectors. As a minimum, property boundaries must be located and so designated to be clearly identifiable and visible on-site.
 - (2) A site plan and cross section view showing all proposed work.
 - (3) A completed copy of the appropriate Florida DEP permit, with supporting

documents.

(4) An issued Joint Coastal Permit (JCP), if applicable, for activities required to get ACOE and FDEP approval, with supporting documents and plans.

(5) A copy of a city building permit or development order, if applicable.

(6) Dune restoration and maintenance plan, if applicable.

(7) Identification of proposed beach access points. Vehicles entering the Conservation Zone or Natural Beach Management Area must obtain Habitat Conservation Plan approval from the Environmental Management Director (EMD) and are responsible for all beach tolls as set forth in Chapter 20 Beach Code.

(8) A cost estimate for the construction of the entire project, including any planting and dune restoration.

(9) Placement and location of any sand extracted during construction and compliance with section 72-1057(a).

(10) Other information, which the EMD may reasonably require to determine whether to approve the permit.

The EMD may waive any of the requirements of the application if, in the opinion of the EMD, such information is found to be unnecessary for a proper evaluation of the proposed work.

d) Action on permit application. The Land Development Division shall, within three (3) working days from the filing, determine if the application is complete. If it is determined that the application is incomplete, it shall be returned to the applicant. If the application is determined to be complete, the Land Development Manager (LDM) shall transmit the application and plans to the EMD. The EMD shall have fifteen (15) working days from the date of receipt from the LDM of a complete application to approve or deny the permit.

e) Issuance of permits. If the application meets the requirements and standards of this article, the LDM shall issue the permit based upon approval by the EMD, as provided in this division, and may attach such appropriate conditions to the said permit in order to comply with the standards of section 72-1056 of this article. The EMD may deny the permit if it does not meet such requirements and standards, stating the reasons therefor. The issuance of a permit does not create or vest any property right in the holder of the construction

activity, nor does it relieve the permittee from obtaining any other permits that may be required by the appropriate authorities.

- f) Termination of Permit. All Beach and Dune permits shall expire one year from the date of issue unless time extensions are granted by the EMD. Applications for extensions of time shall be made in writing to the EMD at least 30 days prior to the expiration of the permit.

SECTION 72-1054 – Standards for permit issuance.

In determining whether the project is permissible under the provisions of this article, the EMD shall consider, but not be limited to, the following criteria:

- a) The necessity to conduct such coastal projects for potential benefits versus adverse impacts to the coastal system.
- b) The degree, if any, of interference or reduction of public access along the beach. There should be no loss or reduction to public access to the beach after construction and the impact to public access during construction must be minimized to the maximum extent practicable.
- c) For armoring projects, the distance (linear feet) of the project from existing adjacent, structurally sound seawall, bulkhead or revetment existing on the effective date of this article to determine if it is located in a predominately natural coastline (PNC) area or a predominately armored (non-PNC) area.
- d) The ability of armoring to achieve the purpose of stabilizing the upland dune system, thus protecting the upland structure from coastal erosion.
- e) The condition and design of armoring on either side of the proposed site.

SECTION 72-1055 – Standards for beach and dune walkovers.

Beach and dune walkovers may be constructed for the purpose of maintaining or enhancing pedestrian access to the beach and to minimize habitat impact where there is currently no walkover. All applicable state and local permits necessary for construction of beach and dune walkovers must be obtained prior to the start of construction. This section applies to new or reconstructed walkovers. A reconstructed walkover is one, which has sustained damage in excess of 50% of its replacement value as determined by the appropriate Building Official.

- a) Walkovers are required at all new public access points and adjacent to all new multi-family dwelling structures, hotel or motel complexes, and other commercial establishments, which

allow ingress and egress to the beach and lack, access to existing walkover structures or ramps.

- b) Walkovers shall be constructed in a manner that minimizes short-term disturbances to the dune system and existing vegetation. Walkovers for public access, multi-family and commercial properties shall be posted by the owner with signs containing information including the laws concerning prohibition of disturbing sea turtle nests, prohibitions against disturbing state protected vegetation and dunes, the dates of the sea turtle nesting season (May 1—October 31), the effective dates of applicable lighting restrictions, and referencing the sea turtle ordinance [division 12 of this article]. Signs shall be aesthetically pleasing and no larger than 2.25 square feet.
- c) Replacement of any vegetation destroyed during construction of the walkover with native coastal vegetation suitable for beach and dune stabilization is required. A replanting plan consistent with Section 72-1057(b) must be approved by the EMD.
- d) Walkovers constructed over vegetated dunes or over vegetated beach berms shall be elevated above the existing vegetation and dune system. The eastern end of the walkover must be within the conservation zone or no more than 10 feet from the existing toe of dune or line of permanent vegetation. Walkovers should be no more than 6 feet in width.
- e) All walkovers shall be designed to protect the conservation zone, natural areas, and beach habitat from construction impacts and long-term pedestrian impacts.
- f) Walkovers shall be constructed in accordance with FDEP regulations, which mandate the preservation and restoration of the associated dune system.

SECTION 72-1056 – Standards for armoring projects.

- a) Coastal armoring shall conform to FDEP's coastal armoring policy in addition to the following criteria:
 - (1) All new and reconstructed armoring projects and emergency repairs must be permitted through the appropriate state and local agencies, and shall comply with this division.
 - (2) All coastal armoring permits will be reviewed by the EMD for consistency with the Volusia County Sea Turtle Habitat Conservation Plan (HCP), Incidental Take Permit (ITP), and this article.
 - (3) All new and reconstructed armoring structures must be buried with an artificial

dune at least four feet above the existing grade, at a slope no greater than three to one, and planted with the appropriate native coastal vegetation.

(4) All new and reconstructed dune systems shall be maintained in perpetuity by the property owner.

(5) Remuneration in lieu of dune restoration. If it is determined by the EMD that the artificial dune restoration requirement is not feasible at the project location due to existing beach conditions, the following applies:

a. The applicant conducting the dune restoration activity shall, in lieu of actual dune creation, pay a replacement contribution into the Volusia County Dune Restoration Trust Account.

b. The replacement contribution will be determined using an engineer's cost estimate of the total cost of the required dune restoration, including placement of sand and native coastal vegetation material and installation costs.

b) Seawall construction in the county shall be consistent with FDEP's rules and regulations and shall be of a low-profile design. In addition, all new seawalls shall be designed and constructed to minimize adverse impacts to adjacent properties.

c) All water discharge onto the beach or beach approaches, except as previously permitted, is prohibited. This includes stormwater outfalls, pool draining pipes and all other types of water discharge onto the beach.

d) New seawalls must be placed at the current line of erosion or in line with adjacent coastal construction, whichever is furthest west.

e) It shall be a violation of this ordinance for a property owner to allow a seawall or armoring to be in such disrepair that it is buckling, in danger of collapse, or causes imminent danger to the public on the beach, as determined by the county engineer.

SECTION 72-1057 – Standards for dune restoration or sand placement projects.

a) Each dune restoration project shall be constructed with habitat compatible materials, such as compatible beach sand and plants native to the region and as authorized by FDEP. A dune restoration project will be required in conjunction with the replacement or reconstruction of any seawalls within the county. The threshold of reconstruction requiring a permit will be based on substantial damage as defined in Article 1.

b) All associated planting plans must show plant spacing acceptable for the size of the

1 proposed plants and in accordance with county approved planting guidelines, and all sand
 2 placed adjacent to the project shall be planted.

- 3 c) Any beach-compatible sand extracted from construction sites on the Volusia County barrier
 4 island shall not be removed from the barrier island. Provided appropriate locations are
 5 available, excess sand from construction sites adjacent to the beach shall be used solely for
 6 dune and beach reconstruction with a valid FDEP permit.
- 7 d) The Volusia County EMD shall determine the compatibility of the sand, including the
 8 acceptable degree of debris, based on FDEP standards.
- 9 e) Compatible sand which is to be used for dune and beach reconstruction or renourishment
 10 may be stockpiled at the discretion and location designated by the EMD, and must be
 11 utilized on the beach.

12 **SECTION 72-1058 – Restoration and cleanup.**

- 13 a) Liability for Damage. The permittee shall be liable for all damage, injury or loss to persons
 14 or property of any character arising from, or resulting from, any act of commission,
 15 omission, neglect or misconduct in the performance of work by the permittee, his/her
 16 employees or agents. The permittee shall be further liable for all damage, injury, or loss to
 17 persons or property arising from, or as a result of, defective work or materials.
- 18 b) Area Outside permitted work area. Where any work disturbs the area outside the permitted
 19 work area, including at the beach access points, the permittee shall ensure that the area is
 20 completely restored in a manner acceptable to the county. Dune sand or vegetation that is
 21 removed or destroyed shall be replaced by the permittee at his/her expense with equal types
 22 and sizes. The county may issue a stop work order to minimize further damage.
- 23 c) Debris and Waste Removal. The permittee shall ensure that project site cleanup and
 24 property restoration follows construction/installation operations without delay. In order to
 25 maintain an acceptable site, debris and waste material shall be removed from the site daily.
 26 Site maintenance, along with ongoing cleanup and final property restoration, shall be
 27 subject to the direction and approval of the Environmental Management Director.
- 28 d) Additional Requirements. Prior to issuance of a permit, the applicant shall provide a one-
 29 year performance guarantee at 115% of the estimated project cost. EMD may waive this
 30 requirement in the event of major damage caused by a natural disaster.

31 **SECTION 72-1059 – Dune restoration trust account.**

- a) Establishment. A Volusia County Dune Restoration Trust Account is hereby established as a depository for dune restoration fees and monies.
- b) Dispersal of assets. The funds in said account shall be expended, utilized and disbursed for the placement of sand, creation of dunes, planting of native dune vegetation, or to cover any other ancillary costs including, but not limited, to items or materials necessary and proper for the preservation, maintenance, relocation or restoration of dune ecosystems on any public land within Volusia County. These monies may also be utilized to engage support elements such as landscape architects and additional personnel, following established county procedures.
- c) All monies deposited for use as specified in Sec.72-1056(a)(5) of this article, shall be deposited in trust, in a separate accounting unit established and maintained apart from the general revenue funds and accounts of Volusia County.

SECTION 72-1060 – Appeals.

The applicant may appeal a determination of the EMD to the Development Review Committee (DRC), in writing, within 30 days of said determination. The DRC may uphold, modify, or reverse the determination of the EMD.

SECTION 72-1061 – Jurisdiction.

This division shall apply to the beach and beach approaches, as defined in Chapter 20, Beach Code, Volusia County Code of Ordinances, whether located in incorporated area or unincorporated area of Volusia County.

SECTION 72-1062 – SECTION 72-1095 – Reserved.

SECTION II: Authorizing Inclusion in Code. The provisions of this ordinance shall be included and incorporated into the Code of Ordinances of the County of Volusia, as additions or amendments thereto, and shall be appropriately numbered to conform to the uniform numbering system of the Code.

SECTION III: Severability. Should any word, phrase, sentence, subsection, or section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word, phrase, sentence, subsection, or section so held shall be severed from this ordinance and all other words, phrases, sentences, subsections, or sections shall remain in full force and effect.

SECTION IV: Conflicting Ordinances. All ordinances, or part thereof, in conflict herewith are, to the extent of such conflict, repealed.

SECTION V: Effective Date. This ordinance shall take effect upon filing of a certified copy by e-mail with the Department of State.

**ADOPTED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, IN
OPEN MEETING DULY ASSEMBLED IN THE COUNTY COUNCIL CHAMBERS AT
THE THOMAS C. KELLY ADMINISTRATION CENTER, 123 WEST INDIANA
AVENUE, DELAND, FLORIDA, THIS ____ DAY OF _____ A.D., 2019.**

ATTEST: COUNTY COUNCIL
COUNTY OF VOLUSIA, FLORIDA

George Recktenwald, County Manager

Ed Kelley, County Chair