

EMERGENCY ORDINANCE NO. 2024-01

AN ORDINANCE PERMITTING RESIDENTS NEAR BREACH INLET TO INSTALL A REVETMENT/SEAWALL FOR EMERGENCY EROSION CONTROL

WHEREAS, emergency erosion conditions have and continue to occur on beaches facing the Atlantic Ocean between Breach Inlet and 10th Avenue on Isle of Palms associated with Hurricane Idalia, coastal flooding, storm surge and subsequent king tides, wind and wave events;

WHEREAS, due to Hurricane Idalia, South Carolina received an emergency declaration on August 31, 2023, and the Mayor of the City of Isle of Palms (“City”) also declared a state of emergency due to Hurricane Idalia on the same day;

WHEREAS, these conditions have and will continue to expose and create an imminent threat to the existing structures and critical infrastructure on front beach properties located within the City;

WHEREAS, this continued imminent threat constitutes temporary emergency conditions that endanger the health, safety, welfare, resources, and property of residents of the coastal zone as well as the general population of the State of South Carolina;

WHEREAS, the City received an emergency order from the South Carolina Department of Health and Environmental Control’s Office of Ocean and Coastal Resource Management (“OCRM”) and approved an emergency contract to restore the dunes in the erosion area by scraping sand between 100 and 314 Ocean Blvd after Hurricane Idalia;

WHEREAS, continued king high tides, northeastern winds, and increased wave sizes have kept water levels high and completely eroded the newly restored dune installed by the contractor;

WHEREAS, the City received a new OCRM emergency order allowing another round of scraping in the affected area;

WHEREAS, on December 17, 2023, a weather event with strong northeastern winds and record high tides caused significant erosion due to high tides, wind and waves;

WHEREAS, these temporary emergency conditions are expected to be alleviated when the US Army Corps of Engineers initiates a project in 2024 that will result in approximately 550,000 cubic yards of sand being placed in this area and providing protection for public interests and the welfare and property of residents;

WHEREAS, City Ordinance, Section 5-4-15, entitled “Beach Regulations,” prohibits any seawalls, revetments, bulkheads, groins, rip-rap or any other hard erosion control structures to be situated in whole or in part landward of the critical area as defined in S.C. Code 1976, § 48-39-10,

as amended, within a two hundred fifty-foot (250') radius of the mean high-water mark of the Atlantic Ocean, Breach Inlet, or Dewees Inlet;

WHEREAS, the City Council of the City of Isle of Palms ("City Council") now desires to authorize and to establish a temporary emergency protocol for beach front property owners that own property in the erosion area between 100 Ocean Blvd. and 914 Ocean Blvd (hereinafter defined as "Residents") that desire to place a revetment or seawall on the Resident's property, entirely landward of the critical area as defined in S.C. Code Ann § 48-39-10, as more specifically set forth below;

WHEREAS, City Ordinance, Section 1-3-53(e) allows for the enactment of emergency ordinances pursuant to S.C. Code § 5-7-250(d), which provides "[t]o meet public emergencies affecting life, health, safety or the property of the people, council may adopt emergency ordinances; but such ordinances shall not levy taxes, grant, renew or extend a franchise or impose or change a service rate. Every emergency ordinance shall be enacted by the affirmative vote of at least two-thirds of the members of council present. An emergency ordinance is effective immediately upon its enactment without regard to any reading, public hearing, publication requirements, or public notice requirements. Emergency ordinances shall expire automatically as of the sixty-first day following the date of enactment;"

WHEREAS, this Ordinance has been approved by at least two-thirds of the City Council members present at the meeting in which it was considered; and

NOW, THEREFORE, be it ordained by the City Council of the City of Isle of Palms as follows:

Section 1 –Revetment and Seawall Requirements and Installation. City Ordinance, Section 5-4-15, entitled "Beach Regulations," is hereby temporarily amended to permit Residents (defined above) to install a revetment or seawall entirely landward of the critical area, subject to the following specifications and restrictions:

- (a) This Emergency Ordinance only applies to owners of beach front properties located in the erosion area between 100 Ocean Blvd. and 914 Ocean Blvd, which are defined above as Residents;
- (b) For purposes of this Ordinance, the term "revetment" shall mean a sloping structure built entirely landward of the critical area as determined by OCRM, as defined in S.C. Code Ann § 48-39-10, to protect the Resident's home from erosion damage;
- (c) For purposes of this Ordinance, the term "seawall" shall mean a vertical structure built entirely landward of the critical area as determined by OCRM, as defined in S.C. Code Ann § 48-39-10, to protect the Resident's home from erosion damage;
- (d) For purposes of this Ordinance, the term "maximum building line" shall mean the setback created by Section 5-4-51(3)(a) of the City Code and labeled as such on that certain plat prepared by E.M. Seabrook, Jr., C.E. and L.S., dated January 8, 1988, and entitled "FINAL PLAT, CITY OF ISLE OF PALMS, CHARLESTON

COUNTY, S.C." and duly recorded at the County RMC Office on February 16, 1988, in Plat Book BQ, at Pages 111,112, and 113;

- (e) No revetment or seawall shall be constructed or altered without first obtaining approval of the City and the issuance of a valid permit pursuant to the conditions and limitations set forth in the Ordinance, and a copy of the issued permit shall be in possession of anyone performing work associated with the seawall or revetment;
- (f) Prior to obtaining a permit from the City, the Resident shall comply with all applicable state and federal laws in procuring any additional permits required prior to construction, including a National Pollution Discharge Elimination System (NPDES) permit and a Coastal Zone Consistency review from the State if applicable.
- (g) In the event of construction of any such seawall or revetment, it shall comply with the requirements in the Ordinance and shall be the sole responsibility of the property owner and contractor to use materials and construction techniques that will minimize the possibility of damage or danger to other properties, public or private, or to persons on the beach or adjacent properties. It shall be the responsibility of the property owner to maintain such structures in a manner so as to prevent their floating or washing away and endangering other persons or property;
- (h) Prior to the installation of any seawall or revetment, the Resident shall notify any adjacent property owners in writing and copy Douglas Kerr, Deputy City Administrator at dkerr@iop.net;
- (i) Prior to the issuance of a permit from the City, the Resident shall first coordinate with OCRM and have OCRM staff physically place markers on the Resident's Property to confirm the then existing location of the critical area, as defined in S.C. Code Ann § 48-39-10, and as solely determined by OCRM.

If OCRM staff determines that the critical area should be established using the coordinates under the Data Download tab of OCRM's SC Beachfront Jurisdictional Lines viewer: <https://gis.dhec.sc.gov/shoreline/>, the Resident shall hire a surveyor to physically place markers on OCRM's Setback Line.

- (j) The following are requirements for seawalls and revetments:
 - (1) seawalls and revetments shall be designed by a registered, qualified engineer and include a certification from the engineer that the seawall or revetment will not accelerate erosion or negatively impact adjacent or down-drift lots and be designed/built to withstand a storm event;
 - (2) seawalls and revetments shall be installed entirely landward of the critical area markers placed by OCRM or the setback line marked by a surveyor, whichever is farther landward, on the Resident's property and shall not be installed more than twenty feet (20') seaward of the maximum building line;
 - (3) revetments shall be designed and installed with no greater than a 1:2 slope to reduce scour from adjacent properties;

- (4) seawalls and revetments shall have a maximum height of no more than ten (10) feet above mean sea level using NAVD88 datum;
 - (5) seawalls and revetments shall not be made of recycled concrete/materials, unless specifically designed for the purpose of marine construction;
 - (6) revetments and seawalls shall be covered by beach compatible sand when not directly exposed to water during an erosion event;
 - (7) seawalls shall be installed so as to not be visible;
 - (8) All excavations shall occur entirely landward of the critical area as marked by OCRM on the Resident's Property; and
 - (9) seawalls and revetments shall be designed so as to be continuous with any existing or planned revetments installed on adjacent properties, to the extent possible;
- (k) The Resident's contractor shall access the Resident's property through the Resident's property as OCRM prohibits heavy machinery, equipment, or materials within the critical area for the purpose of installing a seawall or revetment;
 - (l) The sand covering the revetment or wall must be from an upland source (i.e. not originating from the beach) and compatible in grain size and color with the native beach sand and should contain no more than a minimal amount of organic material. Only clean sand from an approved OCRM source may be placed on the seawall or revetment; and
 - (m) The Resident shall be responsible for the day-to-day maintenance of the revetment or wall to ensure it is covered with beach compatible sand, remains in good repair, and is serving its intended purpose. If the revetment is not properly installed, maintained, or becomes compromised, as determined by the City and the City's coastal engineer, the revetment shall be removed at the direction of the City and at the Resident's sole expense. The City shall have the authority to remove revetments that are not installed or maintained in accordance with this Ordinance. Residents that elect to install a seawall or revetment shall assume all responsibility over impacts to adjacent property owners.

Section 2 – OCRM Guidance. OCRM has informed the City that if a seawall or revetment is built entirely landward of the critical area, as marked by OCRM, but then later enters into the critical area due to erosion, it would be subject to OCRM's usual structural inventory and damage assessment activities. If the structure becomes "destroyed beyond repair" (as that term is used in OCRM regulations), OCRM will require the seawall or revetment to be removed at the expense of the property owner. The shoreline in the erosion area can drastically change in a matter of hours or days. As such, OCRM suggests that an erosion control structure should be installed within 7 days of OCRM flagging the critical area. If at any time prior to completion of the seawall or revetment, the partially completed seawall or revetment becomes located in whole or in part in the critical area, as marked by OCRM, OCRM will issue a Cease and Desist Directive and require the seawall or revetment to be removed from the critical area at the sole expense of the Resident.

OCRM has indicated that no emergency scraping will be allowed in front of areas where seawalls or revetments are located pursuant to state law. OCRM has indicated that all work must occur on the Resident's upland property and landward of the critical area as marked by OCRM. OCRM prohibits heavy machinery, equipment, and materials within the critical area for the purpose of installing a seawall or revetment. Also, per S.C. Code Ann. § 48-39-120(C): "The department shall have the authority to remove all erosion control structures which have an adverse effect on the public interest." The City encourages Residents to contact OCRM with any questions.

Section 3 - Removal of Seawalls and Revetments. If a Resident fails to comply with City Ordinance, Section 5-4-15, as amended herein, or any of the specifications or requirements of this Emergency Ordinance, including building a seawall or revetment without first obtaining a City issued permit, the City is entitled to require the Resident to remove the seawall or revetment, at the Resident's sole expense. Any seawalls or revetments installed in violation of Section 5-4-15, as amended herein, or this Emergency Ordinance shall be removed within forty-five (45) days after the Resident receives notice from the City to remove the seawall or revetment. In the event the City is required to enforce compliance with Section 5-4-15, as amended herein, or this Emergency Ordinance, the Resident shall pay the City any additional costs, expenses, or legal fees incurred by the City to ensure compliance with Section 5-4-15, as amended herein, and this Emergency Ordinance.

Additionally, pursuant to S.C. Code Ann. §§ 48-39-20(C) and 48-39-160, the City is authorized to file an action in Charleston County Circuit Court to prevent or eliminate a violation the Coastal Zone Management Act (S.C. Code Ann. §§ 48-39-10 to -360), including the non-permitted installation of hard erosion control devices, such as seawalls and revetments in the critical area as defined in S.C. Code Ann. § 48-39-10.

Section 4. Suspension of Contrary Local Provisions. During the emergency term, any ordinance (including City Ordinance Sections 5-4-15 and 5-4-51), resolution, policy, or bylaw of the City that conflicts with the provisions hereof shall be and is hereby temporarily suspended and superseded to allow for the Resident's installation of a seawall or revetment in strict accordance with all of the requirements and specifications as set forth in this Emergency Ordinance. However, except as expressly provided herein concerning installation of seawalls and revetments, nothing contained in this Emergency Ordinance suspends or supersedes the City's prohibition of (1) erosion control structures situated in whole or on part in the critical area; and (2) bulkheads, groins, rip-rap, concrete, clay, gravel or any other prohibited erosion control structures situated in whole or in part landward of the critical area within a two hundred fifty-foot (250') radius of the mean high-water mark of the Atlantic Ocean, Breach Inlet, or Dewees Inlet.

Section 5. Immediate Application Due to Emergency. Given the immediate threat to the welfare, safety, and property of the City's affected Residents near Breach Inlet caused by severe erosion and storm damage, this Ordinance has been enacted and shall be effective immediately.

Section 6. Expiration of Ordinance; Extension of Emergency Term. As provided by S.C. Code § 5-7-250(d), this Emergency Ordinance shall expire automatically as of the sixty-first day following the date of enactment. Notwithstanding the foregoing, however, Council may extend the emergency term by ordinance enacted in accordance with S.C. Code § 5-7-250(d) for one or more

additional terms, each of no more than sixty days, provided that the aggregate duration of the emergency term, including all such extensions, does not exceed six months.


PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, ON THE 20th DAY OF FEBRUARY, 2024.



Phillip Pounds, Mayor

(Seal)

Attest:


Nicole DeNeane, City Clerk



First Reading and Ratification of Emergency Ordinance: February 20, 2024
(Date)