

**ORDINANCE**

**ADOPTING THE JOINT EROSION RESPONSE PLAN FOR NUECES COUNTY AND THE CITY OF CORPUS CHRISTI 2012; AMENDING THE CODE OF ORDINANCES, CITY OF CORPUS CHRISTI, CHAPTER 10, BEACHFRONT MANAGEMENT AND CONSTRUCTION, BY DESIGNATING THE EROSION RESPONSE BUILDING SET-BACK LINE OR EROSION SET-BACK LINE, REQUIRING AN EROSION RESPONSE PERMIT FOR CONSTRUCTION SEAWARD OF THE EROSION SET-BACK LINE, AND MAKING OTHER CONFORMING CHANGES TO THE CHAPTER; ADDING THE CITY'S EROSION RESPONSE PLAN AS AN APPENDIX TO THE CITY OF CORPUS CHRISTI, TEXAS, DUNE PROTECTION AND BEACH ACCESS REGULATIONS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERANCE; PROVIDING FOR PUBLICATION; AND PROVIDING A DELAYED EFFECTIVE DATE.**

**WHEREAS**, a provision of the Coastal Public Lands Act, codified as Section 33.607(e), Texas Natural Resources Code, requires the City to prepare a local erosion response plan for reducing public expenditures for erosion and storm damage losses to public and private property, including public beaches;

**WHEREAS**, the local erosion response plan is required to include a building set-back line that will accommodate shoreline retreat;

**WHEREAS**, the local erosion response plan may:

- (1) Preserve and enhance the public's right of access to and use of the public beach;
- (2) Preserve critical sand dunes for natural storm protection and conservation purposes;
- (3) Establish a building set-back line no further landward than the dune protection line established by the local government;
- (4) Provide for the prohibition of new construction seaward of the building set-back line; and
- (5) Provide for the acquisition of fee title to or a lesser interest in property seaward of the building set-back line;

**WHEREAS**, under the implementing rules adopted by the Texas General Land Office in 31 TAC 15-17, the local erosion response plan may include:

- (1) A building set-back line that will accommodate a shoreline retreat based upon historical erosion rates as determined by the University of Texas at Austin,

Bureau of Economic Geology, or other source approved by the General Land Office;

(2) A prohibition on new construction seaward of the building set-back line to ensure that to the maximum extent practicable, all structures should be constructed landward of the building set-back line;

(3) Consideration of exemptions from the prohibition of residential and commercial construction seaward of the building set-back line for properties for which the owner has demonstrated to the satisfaction of the local government that no practicable alternatives to construction seaward of the building set-back line exist and properties with structures constructed or permitted prior to August 31, 2010;

(4) Construction requirements for exempt properties, where the local government allows an exemption from the prohibition for building seaward of the building set-back line;

(5) Procedures for preserving and enhancing the public's right of access to and use of the public beach from losses due to erosion and storm damage;

(6) Procedures for preserving, restoring, and enhancing critical sand dunes for natural storm protection and conservation purposes;

(7) Criteria for voluntary acquisition of property seaward of the building setback line, and procedures for prioritizing properties to be acquired;

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS, THAT:**

**SECTION 1.** The Joint Erosion Response Plan for Nueces County and the City of Corpus Christi 2012, which is attached to and incorporated into this ordinance as Exhibit A, is adopted.

**SECTION 2.** The list of sections for Chapter 10, Code of Ordinances is revised to read as follows:

**"Chapter 10 BEACHFRONT MANAGEMENT AND CONSTRUCTION\***

*"Article I. Definitions*

*"Sec. 10-1. Definitions.*

*"Secs. 10-2--10-10. Reserved.*

*"Article II. Administration*

*"Sec. 10-11. Purpose, adoption, compliance, and amendment.*

*"Sec. 10-12. Areas exempt.*

*"Sec. 10-13. Dune protection line, ~~and~~ beachfront construction line, and erosion set-back line.*

*"Sec. 10-14. Alteration of dunes prohibited without permit.*

- "Sec. 10-15. Acts prohibited without a beachfront construction certificate.
- "Sec. 10-16. Master planned developments.
- "Sec. 10-17. Concurrent beach/dune committee.
- "Sec. 10-18. Application process for beachfront construction certificates and concurrent dune protection permit/beachfront construction certificates.
- "Sec. 10-19. Contents of applications.
- "Sec. 10-20. State agency comments.
- "Sec. 10-21. Issuance or denial of permit/certificate.
- "Sec. 10-22. Terms and renewal of permits/certificates.
- "Sec. 10-23. Termination of permits/certificates.
- "Sec. 10-24. Administrative record.
- "Sec. 10-25. Reserved.
- "Article III. Requirements for Dune Protection Permits
  - "Sec. 10-26. Required findings.
  - "Sec. 10-27. Prohibited activities.
  - "Sec. 10-28. No material weakening.
  - "Sec. 10-29. Mitigation of other adverse effects.
  - "Sec. 10-30. Application fees.
  - "Secs. 10-31--10-35. Reserved.
- "Article IV. Requirements for Beachfront Construction Certificates
  - "Sec. 10-36. Required findings.
  - "Sec. 10-37. Dedication of equivalent or better access.
  - "Sec. 10-38. Application fees.
  - "Secs. 10-39, 10-40. Reserved.
- "Article V. Concurrent Requirements for Both Dune Protection Permits and Beachfront Construction Certificates
  - "Sec. 10-41. General erosion protection requirements.
  - "Sec. 10-42. General flood protection requirements.
  - "Sec. 10-43. Variances from federal requirements.
  - "Sec. 10-44. Special requirements for eroding areas.
  - "Sec. 10-45. Application fees.
  - "Secs. 10-46--10-50. Reserved.
- "Article VI. Management of the Public Beach
  - "Sec. 10-51. General access policies.
  - "Sec. 10-52. Designation of access ways, parking areas, and beaches closed to motor vehicles.
  - "Sec. 10-53. Abandonments of public access or parking areas prohibited.
  - "Sec. 10-54. Interfering with access prohibited.
  - "Sec. 10-55. Post-storm assessment.
  - "Sec. 10-56. Beach closures.
  - "Sec. 10-57. Littering prohibited.
  - "Sec. 10-58. Camping.
  - "Sec. 10-59. Animal control.
  - "Sec. 10-60. Monitoring.
  - "Sec. 10-61. Beach nourishment standards.

- "Sec. 10-62. *Dune restoration standards.*
- "Sec. 10-63. *Dune walkovers.*
- "Sec. 10-64. *Standards for beach maintenance and other activities.*
- "Sec. 10-65. *Glass bottles and glass containers prohibited.*
- "Sec. 10-66. *Vessel operating from Gulf beaches restricted.*
- "Sec. 10-67. *Fires regulated.*
- "Sec. 10-68. *Gulf of Mexico beach vendors--Special regulations.*
- "Secs. 10-69, 10-70. *Reserved.*

"Article VII. *Traffic*

- "Sec. 10-71. *Public beach as a street right-of-way.*
- "Sec. 10-72. *Obstruction of the main traveled roadway.*
- "Sec. 10-73. *Vehicular operation.*
- "Sec. 10-74. *Speed limits.*
- "Sec. 10-75. *Parking.*
- "Sec. 10-76. *Pedestrian crossings.*
- "Sec. 10-77. *Vehicle-restricted areas and pedestrian safe areas.*
- "Sec. 10-78. *Authorized and emergency vehicles.*
- "Sec. 10-79. *Two-way traffic on beach and access roads.*
- "Sec. 10-80. *One-way traffic on beach and access roads.*
- "Sec. 10-81. *Portions of the beach closed.*
- "Sec. 10-82. *Limits on number of vehicles allowed on beach during special events.*
- "Secs. 10-83--10-85. *Reserved.*

"Article VIII. *Fees*

- "Sec. 10-86. *Beach user fees.*
- "Sec. 10-87. *Use of fee revenue.*
- "Sec. 10-88. *Indirect costs and accounting.*
- "Sec. 10-89. *Beach parking prohibited without beach parking permit.*
- "Sec. 10-90. *Sale of beach parking permits.*
- "Secs. 10-91--10-96. *Reserved.*

"Article IX. *Penalties*

- "Sec. 10-97. *Penalties.*
- "Secs. 10-98--10-100. *Reserved.*

"Article X. *General Provisions*

- "Sec. 10-101. *Construction.*
- "Sec. 10-102. *Boundary determinations.*
- "Sec. 10-103. *Beaches presumed to be public.*
- "Sec. 10-104. *General prohibition.*
- "Sec. 10-105. *Appeals and declaratory judgment suits.*
- "Secs. 10-106--10-110. *Reserved.*

"Article XI. *Beach Festivals*

- "Sec. 10-111. *Definitions.*
- "Sec. 10-112. *Registration and permit required.*
- "Sec. 10-113. *Application for permit--Filing; contents; fee.*
- "Sec. 10-114. *Health, sanitation, and fire control requirements.*
- "Sec. 10-115. *Agreement as to use of public beach.*

"Sec. 10-116. *Review and processing of applications.*

"Sec. 10-117. *Hearing.*

"Sec. 10-118. *Denial of permit; grounds.*

"Sec. 10-119. *Scope of permit.*

"Sec. 10-120. *Revocation of permit.*

"Secs. 10-121--10-130. *Reserved.*

"Article XII. Requirements for Erosion Response Permits

"Sec. 10-131. Application process for erosion response permit.

"Sec. 10-132. Contents of applications.

"Sec. 10-133. Issuance or denial of permit/certificate.

"Sec. 10-134. Required findings.

"Sec. 10-135. Prohibited activities.

"Sec. 10-136. No material weakening.

"Sec. 10-137. Mitigation of other adverse effects.

"Sec. 10-138. Application fees.

"Sec. 10-139. Terms and renewal of permits/certificates.

"Sec. 10-140. Termination of permits/certificates.

"Sec. 10-141. Administrative record."

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**SECTION 3.** Section 10-1 is amended by adding definitions for the terms "erosion response building set-back line or erosion set-back line," "erosion response permit," and "erosion response plan," to read as follows:

**"Sec. 10-1. Definitions.**

"The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

"Erosion response building set-back line or erosion set-back line means an imaginary line at least 350 feet landward of the line of vegetation that is established by Texas Natural Resources Code Definition 61.006.

"Erosion response permit means a permit for the construction of any structure seaward of the erosion set-back line that certifies that the structure is authorized under the City's erosion response plan.

"Erosion response plan means the City's plan for reducing public expenditures for erosion and storm damage losses to public and private property, including public beaches, as mandated by Section 33.607, Texas Natural Resources Code, and 31 TAC 15.17, which is attached to an incorporated into this chapter as appendix XVIII."

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**SECTION 4.** Section 10-11(a) and (b), Code of Ordinances, is revised to read as follows:

**"Sec. 10-11. Purpose, adoption, compliance, and amendment.**

"(a) These regulations are adopted pursuant to the authority granted local governments under the Open Beaches Act, Chapter 61, Texas Natural Resources Code, the Dune Protection Act, Chapter 63, Texas Natural Resources Code, the Coastal Public Lands Act, Chapter 33, Texas Natural Resources Code, Subchapter I of Chapter 16, Texas Water Code, V.T.C.A., Local Government Code Chapters 211 and 212, V.T.C.S art. 6701d (Motor Vehicles), the City of Corpus Christi's Comprehensive Plan and Flood Hazard Prevention Code and other statutes of general applicability.

"(b) All persons shall comply with these regulations in authorizing or undertaking any activity affecting dunes seaward of the dune protection line, or any activity affecting public use of the public beach or any activity affecting public access to and from the public beach, and activity affecting the preservation, restoration, or enhancement of critical sand dunes that provide natural storm protection. A dune protection permit application is required if the site is located seaward of the dune protection line and a beachfront construction certificate is required if the site is located seaward of the beachfront construction line, and an erosion response permit is required if the site is located seaward of the erosion set-back line."

\* \* \* \* \*

**SECTION 5.** Section 10-13, Code of Ordinances, is amended by revising the caption, redesignating subsections (c) – (e) as subsections (d) – (f), and adding a new subsection (c), to read as follows:

**"Sec. 10-13. Dune protection line, and beachfront construction line, and erosion set-back line.**

\* \* \* \* \*

"(c) Erosion set-back line. The land area seaward of this line is subject to the Coastal Public Lands Act and associated state and local regulations. The following line is established as the erosion set-back line for the purpose of delineating areas in which construction is likely to effect the ability of the dunes to offer substantial protection from storm surge damage to structures landward of the line or increase the risks that structures may end up on the public beach due to shoreline retreat:

"A line running parallel to the beach that is 350 feet landward of the line of vegetation, except in the area landward of the seawall in North Padre Island, line is depicted on maps in Appendix XVIII.

"(d) Maps. The dune protection line is depicted on the map attached to these regulations as Appendix II. The beachfront construction line is depicted on the map attached to these regulations as Appendix III. The erosion set-back line is depicted on maps attached to these regulations in Appendix XVIII.

"(d)-(e) Review. The location of the dune protection line and beachfront construction line shall be reviewed by the concurrent beach/dune committee (section 10-17) at least once every five (5) years to determine whether the lines are adequately located to achieve their stated purposes. In addition, the adequacy of the location of the lines shall be reviewed by the committee within ninety (90) days after a tropical storm or hurricane affects the portion of the coast lying within the city's jurisdiction.

"(e)-(f) Public hearing. Should the concurrent beach/dune committee determine that either the dune protection or beachfront construction line should be adjusted, the committee shall hold a public hearing to consider adjustments to the lines no sooner than fifteen (15) days after public notice in the newspaper with the largest circulation in the county. The committee shall forward its recommendation and reasons for the recommended adjustment to the City of Corpus Christi City Council. Subsequent to receiving the committee's recommendation, the city council shall hold a public hearing to consider the modifications. Not less than one (1) week nor more than three (3) weeks before the date of the hearing, the city will publish notice of the hearing at least three (3) times in the newspaper with the largest circulation in the county. Written notice will be given the general land office in writing no less than one (1) week nor more than three (3) weeks before the date of the hearing. The notice to the general land office shall include a map or drawing of the proposed line, a written description of the line, or both (including Texas State Plane Coordinates)."

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**SECTION 6.** Section 10-14(b), Code of Ordinances, is revised to read as follows:

**"Sec. 10-14. Alteration of dunes prohibited without permit.**

\* \* \* \* \*

"(b) Pursuant to the Dune Protection Act, § 63.052, the following activities are exempt from the requirement for a dune protection permit, but are subject to the requirements of the Open Beaches Act, the Coastal Public Lands Act, and the rules promulgated under the Open Beaches Act and Coastal Public Lands Act, and may include a beachfront construction certificate or a permit pursuant to other city ordinances:"

\* \* \* \* \*

**SECTION 7.** Section 10-15, Code of Ordinances, is revised to read as follows:

**"Sec. 10-15. Acts prohibited without a beachfront construction certificate.**

"No person shall cause, engage in, or allow construction on land adjacent to and landward of public beaches within the area seaward of the beachfront construction line without a beachfront construction certificate. Construction not affecting public beach access and use may nevertheless require a dune protection permit, erosion response permit, or a permit pursuant to other city ordinances."

**SECTION 8.** Chapter 10, Code of Ordinances, is amended by adding a new Section 10-15A to read as follows:

**"Sec. 10-15A. Acts prohibited without an erosion response permit.**

"No person may cause, engage in, or allow construction of any structure on land adjacent to and landward of public beaches within the area seaward of the erosion set-back line without an erosion response permit. Construction may also require a dune protection permit, beachfront construction certificate, or another permit under other city ordinances.

**SECTION 9.** Section 10-44(b), Code of Ordinances, is amended by adding paragraphs (1) and (2), to read as follows:

**"Sec. 10-44. Special requirements for eroding areas.**

\* \* \* \* \*

"(b) In addition to the other requirements of these regulations, in eroding areas, permittees shall:

(1) Require that structures built in eroding areas be elevated on pilings under FEMA minimum standards or above the natural elevation (whichever is greater).

(2) Require that structures located on property adjacent to the public beach be designed for feasible relocation.

\* \* \* \* \*

**SECTION 10.** Chapter 10, Code of Ordinances, is amended by adding a new Article XII to read as follows:

**"Article XII. Requirements for Erosion Response Permits**

**"Sec. 10-131. Application process for erosion response permit.**



"(a) Prior to submission of any erosion response permit application, the applicant is encouraged to confer with the planning director's staff on an informal basis to discuss the proposed application and its conformity with the comprehensive plan; the applicable dune protection and beach access plans; the erosion response plan; dune protection, beach access, and erosion response regulations; state law and regulations; and the proposed development's relationship to surrounding property, streets, existing drainage patterns, existing and proposed utilities, etc.

"(b) In order to obtain an erosion response permit, the applicant shall make an erosion response permit application, as outlined in section 10-132, if the proposed construction is seaward of the erosion set-back line (including an elevated dune walkover; paved walkways, parking areas, and patios; storage sheds; swimming pools, gazebos, and other accessory structures).

"(c) Potential applicants proposing construction seaward of the erosion set-back line may submit descriptions of proposed construction to the planning director as outlined in Appendix XIX.

"(d) If the potential applicant seeks to establish that no erosion response permit is required the description shall explain why. The planning director shall determine whether the construction requires an erosion response permit under these regulations. Upon determination that a project does or does not require an erosion response permit under these regulations, the planning director shall notify the potential applicant in writing of such action.

"(e) Within three (3) working days of receipt of a erosion response permit application, the planning director shall review the application for completeness.

"(1) If an application is incomplete the planning director will notify the applicant of the deficiencies and offer the applicant the opportunity to provide all required information and drawings.

"(2) An application for an erosion response permit shall be deemed to have been abandoned two (2) months from the date of filing for the permit, unless all required information and drawings are provided before then.

"(f) An application must be considered complete when information requested by planning director has been provided.

"(g) Within five (5) days of determining that the application is complete the planning director shall review the completed application.

"(h) Within three (3) working days of the date the planning director takes final action on an application, the planning director shall notify the applicant whether the erosion response permit was approved or denied and what conditions, if any, are required.

**"Sec. 10-132. Contents of applications.**

"(a) Application forms may be obtained from the planning director.

"(b) All of the required information must be submitted with the application before the application is considered submitted for approval. Incomplete applications must be returned to the applicant without action by the planning director.

"(c) For a erosion response permit, the applicant shall submit three (3) copies of the erosion response permit application. The erosion response permit application shall consist of:

"(1) The name, address, phone number, and, if applicable, fax number of the applicant, and the name of the property owner, if different from the applicant.

"(2) A complete legal description of the tract and a statement of its size in acres or square feet.

"(3) A description of the proposed construction, including the number of proposed structures and whether the structures are amenities or habitable structures.

"(4) Whether the proposed construction will include a dune walkover and whether the dune walkover will be constructed under the dune walkover construction standards in the Texas General Land Office's Dune Protection and Improvement Manual for the Texas Gulf Coast.

"(5) The height of the lowest habitable floor of the proposed structures and whether it is at or above the FEMA base flood elevation.

"(6) A scalable site plan that includes the following:

"a. Legal description of the tract, including, where applicable, the subdivision, block, and lot designations.

"b. Location of the property lines and a notation of the legal description of adjoining tracts.

"c. Location, footprint, and perimeter of the existing and proposed structures on the tract (the location, footprint, or perimeter of a proposed structure is not required for proposed structures located landward of the erosion set-back line).

"d. Location of proposed roadways and driveways on the tract (the location of proposed roadways and driveways is not required for proposed structures located landward of erosion set-back line).

"e. Location of any seawalls or any other erosion response structures on the tract or any seawalls or other erosion response

structures within two hundred (200) feet of the tract, which are located on the properties adjoining the tract.

"f. Location of the beachfront construction line, dune protection line, vegetation line, erosion set-back line, erosion area line, or erosion area restriction line, mean high tide line, and mean low tide line.

"g. Location of any existing beach access ways that are located either on the property or adjacent to the tract.

"h. Location of any future beach access ways, based on elements of the city's comprehensive plan, including the transportation plan or applicable area development plan, that are located either on the property or adjacent to the tract.

"i. Location of any existing or proposed walkways, parking areas, patios, or dune walkovers on the tract.

"j. Proposed landscaping activities on the tract seaward of the erosion set-back line.

"k. If known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

"l. The location and extent of wetlands.

"(7) A grading and layout plan identifying all existing and proposed structures and paved areas, all elevations (in reference to the National Oceanic and Atmospheric Administration datum), existing contours of the project area (including the location of dunes and swales), and proposed contours for the final grade.

" (8) The approximate percentage of existing and finished open spaces (those areas completely free of structures) seaward of the erosion set-back line.

"(9) The floor plan and elevation view of any structures proposed to be constructed or expanded seaward of the erosion set-back line.

"(10) The approximate duration of the construction.

"(11) Photographs of the site which clearly show the current location of the vegetation line and the existing dunes on the tract.

"(12) The effects of the proposed activity on the beach/dune system which cannot be avoided should the proposed activity be permitted, including,

but not limited to, damage to dune vegetation, alteration of dune size and shape, and changes in dune hydrology.

"(13) A comprehensive mitigation plan which includes a detailed description of the methods which will be used to avoid, minimize, mitigate, and compensate for any adverse effects on dunes or dune vegetation.

"(14) For all proposed construction, if applicant already has the following items and information, the applicant shall, in addition, submit a copy of a topographical survey (two-foot contour intervals) of the site.

"(d) For all proposed construction, if applicant for an erosion response permit already has the following items and information, the applicant shall, in addition, submit with the other information required above:

"(1) The most recent local historical erosion rate data (as determined by the University of Texas at Austin, Bureau of Economic Geology) (usually located in the department) and the activity's potential impact on coastal erosion.

"(2) A copy of the FEMA "elevation certificate."

**"Sec. 10-133. Issuance or denial of erosion response permit.**

"(a) To determine whether to issue or deny an erosion response permit, the planning director shall review and consider:

"(1) The information in the permit or certificate application.

"(2) The proposed activity's consistency with these regulations, state law, and the beach/dune rules.

"(3) Any other law relevant to dune protection and public beach use and access that affects the activity under review.

"(4) The comments, if any, of the City of Corpus Christi staff and the Texas General Land Office.

"(5) With respect to dunes and dune vegetation and erosion response permits:

"a. Cumulative, direct and indirect effects of the proposed construction on all dunes and dune vegetation seaward of the erosion set-back line.

"b. Cumulative, direct and indirect effects of other activities on dunes and dune vegetation located seaward of the erosion set-back line.

"c. The pre-construction type, height, width, slope, volume, and continuity of the dunes, the pre-construction condition of the dunes, the type of dune vegetation, and per cent of vegetative cover on the site.

"d. The local historical erosion rate as determined by the University of Texas at Austin, Bureau of Economic Geology, and whether the proposed construction may alter dunes and dune vegetation in a manner that may aggravate erosion.

"e. All practicable alternatives to the proposed activity, proposed site, or proposed methods of construction.

"f. The applicant's mitigation plan for any unavoidable adverse effects on dunes and dune vegetation and the effectiveness, feasibility, and desirability of any proposed dune reconstruction and revegetation.

"g. The impacts on the natural drainage patterns of the site and adjacent property.

"h. Any significant environmental features of the potentially affected dunes and dune vegetation such as their value and function as floral or faunal habitat or any other benefits the dunes and dune vegetation provide to other natural resources.

"i. Wind and storm patterns, including a history of washover patterns.

"j. Location of the site on the flood insurance rate map.

"k. Success rates of dune stabilization projects in the area.

"(6) Any other information the planning director considers useful, including resource information made available to them by federal and state natural resource entities.

"(b) An erosion response permit that is inconsistent with these regulations, General Land Office rules for Management of the Beach/Dune System (31 TAC §§ 15.1-15.17), the Open Beaches Act (Chapter 61, Texas Natural Resources Code), the Dune Protection Act (Chapter 63, Texas Natural Resources Code), the Coastal Public Lands Act (Chapter 33, Texas Natural Resources Code), and other state, local, and federal laws related to the requirements of the Dune Protection Act, the Open Beaches Act, and the Coastal Public Lands Act, the requirements of which are incorporated into these regulations by reference, may not be issued.

**"Sec. 10-134. Required findings.**

"Before issuing an erosion response permit, the planning director must find that:

"(1) Any new construction seaward of the erosion set-back line includes the following criteria:

"(A) The proposed construction is for or related to a public or private elevated dune walkover, a beach access roadway, public parking facility, or associated public facilities and amenities, which will be constructed under the Texas General Land Office construction standards.

"(B) New construction on a lot platted prior to August 31, 2010, and there are no practicable alternatives to the construction of the structure or a portion of the structure seaward of the erosion set-back line exist. For purposes of this subparagraph, practicable means available and capable of being done after taking into consideration existing building practices, siting alternatives, FEMA requirements, and the footprint of the structure in relation to the area of the buildable portion of the lot, and considering the overall development scheme for the property.

"(C) The applicant will comply with any compensatory mitigation requirements for unavoidable adverse effects on dunes and dune vegetation.

"(D) The construction relates to the repair, reconstruction, or modification of an existing structure located seaward of the erosion set-back line prior to August 31, 2010, if any modifications do not increase the footprint of the structure. Structures seaward of Building Setback Line that have been damaged more than 50% of their value or destroyed, or have been abandoned (e.g., not occupied or used) for more than 12 months shall be subject to the construction standards in Section 10.134(2).

"(2) The following construction requirements have been met:

"a. The plans and certifications for the structure have been prepared and sealed by a registered professional engineer licensed in the State of Texas providing evidence of the following:

"1. There is a minimum two-foot freeboard above base flood elevation ("BFE")

"2. There are no enclosures exceeding 300 square feet below BFE.

"3. The elevated building foundations are adequate and there is proper placement, compaction, and protection of fill

when used as construction for all newly constructed, substantially damaged, and substantially improved buildings elevated on pilings, posts, piers, or columns in accordance with the latest edition of specifications outlined in American Society of Civil Engineers, Structural Engineering Institute, Flood Resistant Design and Construction, ASCE 24-05.

"4. It is not feasible to relocation of a habitable structure seaward of the erosion set-back line.

"5. All construction is designed to minimize impacts on natural hydrology.

"b. All construction will be landward of the landward toe of the foredune ridge, where practicable.

"(3) The applicant is taking all steps necessary to preserve, restore, and enhance any critical sand dunes for natural storm protection and conservation purposes that are located on the applicants property, including any common areas in which the applicant has an interest.. The necessary steps must include the following:

"a. Restoring and filling in gaps and blowouts in the foredune ridge.

"b. Planting dune vegetation, using appropriate native plant species.

"c. Limiting the use of fertilizer and mowing.

"(4) The proposed construction does not involve a prohibited activity as defined in section 10-136.

"(5) The proposed construction activity will not materially weaken dunes or materially damage dune vegetation seaward of the erosion response line based on substantive findings under section 10-137.

"(6) There are no practicable alternatives to the proposed activity and adverse effects cannot be avoided as provided in section 10-138.

"(7) The applicant's mitigation plan will adequately minimize, mitigate, and compensate for any unavoidable adverse effects, as provided in section 10-138.

"(8) The proposed activity complies with any applicable requirements of article IV (requirements for beachfront construction certificates), article V (concurrent requirements for both dune protection permits and beachfront construction certificates), and article VI (management of the public beach) of these regulations.

**"Sec. 10-135. Exemptions.**

"The following construction seaward of the erosion set-back line do not require an erosion response permit:

"(1) The construction has been previously permitted under a dune protection and beach access plan establishing a erosion set-back line certified by the General Land Office prior to August 31, 2010.

"(2) The construction relates to a structure located seaward of the erosion set-back line prior to August 31, 2010, for which modifications are sought that do not increase the footprint of the structure. However, an erosion response permit is required for structures seaward of the erosion set-back line that are damaged more than 50% or destroyed before they are repaired or reconstructed.

**"Sec. 10-136. Prohibited activities.**

"Erosion response permits authorizing the following actions seaward of the dune protection line may not be issued for:

"(1) Activities that are likely to result in the temporary or permanent removal of sand from the portion of the beach/dune system located on or adjacent to the construction site, including:

"a. Moving sand to a location landward of the erosion set-back line.

"b. Temporarily or permanently moving sand off the site, except for purposes of permitted mitigation, compensation, or an approved dune restoration or beach nourishment project and then only from areas where the historical accretion rate is greater than one (1) foot per year, and the project does not cause any adverse effects on the sediment budget.

"(2) Depositing sand, soil, sediment, or dredged spoil which contains any of the toxic materials listed in Title 40 of the Code of Federal Regulations, § 302.4, in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments.

"(3) Depositing sand, soil, sediment, or dredged spoil which is of an unacceptable mineralogy or grain size when compared to the sediments found on the site (this prohibition does not apply to materials related to the installation or maintenance of public beach access roads running generally perpendicular to the public beach).



"(4) Creating dredged spoil disposal sites, such as levees and weirs, without the appropriate local, state, and federal permits.

"(5) Constructing or operating industrial facilities not in full compliance with all relevant laws and permitting requirements prior to the effective date of these regulations.

"(6) Mining dunes.

"(7) Constructing concrete slabs or other impervious surfaces within two hundred (350) feet landward of the natural vegetation line, except for such a surface that (1) supports and does not extend beyond the perimeter of an existing habitable structure elevated on pilings, provided no walls are erected that prohibit the natural transfer of sand, or (2) does not exceed five (5) per cent of the footprint of the permitted habitable structure it serves.

"(8) Depositing trash, waste, or debris including inert materials such as concrete, stone, and bricks that are not part of the permitted on-site construction.

"(9) Constructing cisterns, septic tanks, and septic fields seaward of any structure serviced by the cisterns, septic tanks, and septic fields.

"(10) Detonating bombs or explosives.

**"Sec. 10-137. No material weakening.**

"The planning director may issue an erosion response permit only if it finds as a fact, after a full investigation, that the particular conduct proposed will not materially weaken any dune or materially damage dune vegetation or reduce the effectiveness of any dune as a means of protection against erosion and high wind and water. In making the finding as to whether such material weakening or damage will occur, the committee shall use the following technical standards. Failure to meet any one (1) of these standards will result in a denial of the application:

"(1) The activity will not result in the potential for increased flood damage to the proposed construction site or adjacent property.

"(2) The activity will not result in runoff or drainage patterns that aggravate shoreline erosion.

"(3) The activity will not result in significant changes to the natural permeability of a dune or its ability to transmit rainwater to the water table.

"(4) The activity will not adversely affect unique flora or fauna or result in significant adverse effects on dune complexes or dune vegetation.

"(5) The activity will not significantly increase the potential for washovers or blowouts to occur.

**"Sec. 10-138. Mitigation of other adverse effects.**

"(a) The applicant bears the burden of proving no material weakening or damage of critical sand dunes. If the planning director finds that no material weakening of critical sand dunes or material damage to critical sand dunes will occur, as demonstrated by the applicant, the planning director shall then determine whether any adverse effects will result from the activity. If the planning director finds there will be adverse effects on critical dunes or dune vegetation seaward of the erosion set-back line or in critical dune areas, the planning director may issue an erosion response permit only if the applicant demonstrates that adverse effects can be mitigated as required by the mitigation sequence. If the planning director issues an erosion response permit, it must include appropriate permit conditions incorporating the requirements of this article.

"(b) The mitigation sequence consists of the following requirements:

"(1) Avoidance.

"a. Avoidance means avoiding adverse effects altogether by not taking a certain action or parts of an action. An erosion response permit may not be issued allowing any adverse effects on critical sand dunes or dune vegetation seaward of the erosion set-back line unless the applicant proves there is no practicable alternative to the proposed activity, proposed site, or proposed methods for conducting the activity, and the activity will not materially weaken the critical sand dunes or dune vegetation. The applicant shall include information as to practicable alternatives in the erosion response permit application.

"b. To avoid adverse effects on critical sand dunes and dune vegetation seaward of the erosion set-back line as required by subsection (b)(1)a. of this subsection, applicants may not:

"1. Construct pipelines, except those that are exempt, seaward of the erosion set-back line unless there is no practicable alternative.

"2. Engage in any construction unless it is located as far landward of the critical sand dunes as practicable, except construction providing access to and from a public beach.

"3. Construct any road parallel to the beach seaward of the erosion set-back line, nor construct any other road parallel to the beach seaward of the erosion set-back line.

"4. Construct new artificial channels, including stormwater runoff channels, unless there is no practicable alternative.

"5. Cause any such adverse effects for which the planning director determines there is a practicable alternative that would avoid such adverse effects.

"(2) Minimization.

"a. Minimization means minimizing effects on critical sand dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. Applicants shall minimize adverse impacts to critical sand dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. If the planning director determines that adverse effects on critical sand dunes or dune vegetation seaward of the erosion set-back line cannot be avoided, the planning director may issue an erosion response permit allowing the proposed alteration, provided that the permit contains a condition requiring the applicant to minimize such adverse effects to the greatest extent practicable.

"b. To minimize unavoidable adverse effects as required by subsection (b)(2)a. of this section, applicants shall:

"1. Locate nonexempt pipelines across previously disturbed areas, such as blowout areas, and minimize disturbance of dune surfaces where use of previously disturbed areas is not practicable.

"2. Minimize construction and pedestrian traffic on or across dune areas to the greatest extent practicable, accounting for trends of dune movement and beach erosion in that area.

"3. Route all pedestrian access to and from beaches through washover areas or over elevated walkways, and conspicuously mark all such access that is public with permanent signs so indicating.

"4. Minimize the number of private access ways from any proposed subdivision, multiple dwelling, or commercial facility. In some cases, the minimum beach access may be only one (1) access way. In determining the appropriate grouping of access ways, the planning director shall consider the size and scope of the development.

"5. Post signs in areas where pedestrian traffic is high explaining the functions of dunes and the importance of vegetation in preserving dunes.

"6. Where practicable, provide vehicular access to and from beaches by using existing roads or from roads constructed in accordance with subsection (b)(1)b.3. of this section, unless public beach access is restricted, and where possible, improve existing access roads with elevated berms near the beach that prevent channelization of floodwaters.

"7. Where practicable, locate new beach access roads in washover areas, blowout areas or other areas where dune vegetation has already been disturbed, construct such roads along the natural land contours, and minimize their width.

"8. Where practicable, locate new beach access roads at an oblique angle to the prevailing wind direction.

"9. Prohibit persons from using or parking any motor vehicle on, through, or across dunes outside designated access ways.

"10. Maximize use of natural or existing drainage patterns when providing for stormwater runoff and retention.

"11. Locate and construct new artificial stormwater runoff channels and retention basins so as to avoid erosion and unnecessary construction of additional channels and to direct all runoff inland and not to the Gulf of Mexico through dune areas.

"(3) Mitigation.

"a. Mitigation means repairing, rehabilitating, or restoring affected dunes and dune vegetation. Where adverse effects on critical sand dunes and dune vegetation cannot be avoided or minimized, the planning director shall set appropriate permit conditions requiring that applicants repair, rehabilitate, or restore affected critical sand dunes to at least the same volume as the pre-existing dunes and dune vegetation so that affected dunes will be superior or equal to the pre-existing dunes in their ability to protect adjacent public and private property from potential flood damage, nuisance, and erosion and to protect natural resources. The planning director shall consider the comments from the general land office, federal and state natural resource agencies, and dune vegetation experts in determining the appropriate mitigation method.

"b. Applicants may mitigate adverse effects on critical sand dunes using appropriate vegetative or mechanical means. Applicants shall:

"1. Restore dunes to approximate the naturally formed dune position or location, contour, volume, elevation, vegetative cover, and sediment content in the area.

"2. Allow for the natural dynamics and migration of dunes.

"3. Use discontinuous or continuous temporary sand fences or a planning director approved method of dune restoration, where appropriate, considering the characteristics of the site.

"4. Restore or repair dunes using indigenous vegetation that will achieve the same protective capability as or greater capability than the surrounding natural dunes.

"c. In authorizing or requiring restoration of dunes, the planning director shall give priority to stabilization of blowouts and breaches and priority dune mitigation locations identified in the erosion response plan. Before permitting stabilization of washover areas, the planning director shall:

"1. Assess the overall impact of the project on the beach/dune system.

"2. Consider any adverse effects on hydrology and drainage which will result from the project.

"3. Require that equal or better public beach access be provided to compensate for impairment of any public beach access previously provided by the washover area.

"(4) Compensation.

"a. Compensation means compensating for effects on dunes and dune vegetation by replacing or providing substitute critical sand dunes and dune vegetation. Compensation consists of replacement of the affected critical sand dunes or dune vegetation on the site where the critical sand dunes and dune vegetation were originally located. The planning director shall set appropriate permit conditions requiring applicants to compensate for all adverse effects on critical sand dunes and dune vegetation that cannot be avoided, minimized, or otherwise mitigated. In setting appropriate conditions, the planning director shall consider recommendations of the general land office, federal and state natural resource agencies, and dune vegetation experts. Preference must shall be given to stabilization of blowouts and breaches and priority dune mitigation locations identified in the erosion response plan.

"b. Applicants shall follow the requirements of subsections (3)b. -- c. and (4)e.3.-- 5. of this subsection when replacing critical sand dunes or dune vegetation.

"c. On-site compensation consists of replacement of the affected dunes or dune vegetation on the site where the dunes and dune vegetation were originally located or filling in voids in the existing critical foredunes. Applicants shall locate compensation efforts on the construction site, where practicable.

"d. An applicant may locate compensation efforts off the construction site if the applicant demonstrates that:

"1. On-site compensation is not practicable.

"2. The off-site compensation will be located as close to the construction site as practicable.

"3. The off-site compensation has achieved a 1:1 ratio of proposed adverse effects on successful, completed, and stabilized restoration prior to beginning construction.

"4. The applicant has notified FEMA, Region 6, of the proposed off-site compensation.

"e. Applicants shall provide the following information when proposing off-site compensation:

"1. The name, address, phone number, and fax number, if applicable, of the owner of the property where the off-site compensation will be located.

"2. A legal description of property intended to be used for the proposed off-site compensation.

"3. The source of the sand and dune vegetation to be used.

"4. All information regarding permits and certificates issued for the restoration of dunes and dune vegetation on the compensation site.

"5. All relevant information regarding the success, current status, and stabilization of the dune restoration efforts on the compensation site.

"6. Any increase in potential flood damage to the site where the adverse effects on dunes and dune vegetation will occur and to the public and private property adjacent to that site.

"7. The proposed date of initiation of the compensation.

"f. Applicants shall compensate for adverse effects on dune vegetation by planting indigenous native vegetation on the affected dunes. Applicants may not remove existing vegetation from property not owned by the applicant unless the applicant includes in the permit application written permission from the property owner. The permit application must identify the source of any sand and vegetation which will be used in compensation.

"g. Applicants shall begin compensation prior to or concurrently with the commencement of construction. If compensation is not to be completed prior to commencement of construction, the applicant shall provide proof of financial responsibility in an amount necessary to complete the compensation, in the form of an irrevocable letter of credit, performance bond, or any other instrument acceptable to the city.

"h. Applicants shall notify the department in writing of the actual date of initiation within ten (10) working days after compensation is initiated. If the applicant fails to begin compensation on the date proposed in the application, the applicant shall state the reason for the delay. The planning director shall take this reason into account when determining whether an applicant has violated the compensation deadline.

"i. Applicants shall conduct compensation efforts continuously until the repaired, rehabilitated, and restored dunes and dune vegetation are equal or superior to the pre-existing dunes and dune vegetation. These efforts shall include preservation and maintenance pending completion of compensation.

"j. A compensation project is deemed complete when the position, contour, volume, elevation, and vegetative cover of the restored dunes are equal or superior to the pre-existing dunes and dune vegetation.

"k. The applicant shall be deemed to have failed to achieve compensation if a 1:1 ratio has not been achieved within three (3) years after the beginning of compensation efforts.

**"Sec. 10-139. Application fees.**

"(a) The application fees for an erosion response protection permit is \$500.00.

"(b) The application fees must be paid before an application is accepted for review.

**"Sec. 10-140. Terms and renewal of erosion response permits.**

"(a) An erosion response permit is valid for one (1) year from the date of issuance of the erosion response permit or the date of issuance of the first building, electrical, gas, mechanical, or plumbing permit by the Building Official.

"(b) The planning director may renew an erosion response permit for a period not exceeding ninety (90) days if the activity as proposed in the application for renewal complies with these regulations and the applicant supplements the original application materials with additional information indicating any changes to the activity or information. Only two (2) renewals shall be issued for each permit or certificate. Thereafter, the applicant must apply for an erosion response new permit.

"(c) If the proposed construction is changed in any manner that causes or increases adverse effects on dunes, dune vegetation, or public beach use and access, the applicant is not be eligible for a renewal but must apply for a new permit or certificate.

"(d) For the purposes of this section, a plat is required for property located with the extraterritorial jurisdiction of the city, if the property on which the project will be developed is a portion of a tract of land that has been subdivided since the tract was last platted or replatted, if the owner of the tract of land, at the time the property was subdivided was required to file a plat under an applicable state law.

"(e) For the purposes of this section, a plat is required for property located within the city limits, if the property on which the project will be developed is a portion of a tract of land that has been subdivided since the tract was last platted or replatted.

**"Sec. 10-141. Termination of erosion response permits.**

"(a) An erosion response permit is voidable if the planning director finds that:

"(1) The erosion response permit is inconsistent with state law, the erosion response rules, this subchapter or the city's comprehensive plan at the time the permit was issued.

"(2) A material change occurs after the erosion response permit is issued.

"(3) An applicant fails to disclose any material fact in the application.

"(b) "Material change" includes, in the opinion of the planning director, human or natural conditions which have adversely affected dunes, dune vegetation, or beach access and use that either did not exist at the time of the original application, or were not considered by the planning director in making the permitting decision because the applicant did not provide information regarding the site condition in the original application.



"(c) An erosion response permit automatically terminates if construction comes to lie within the boundaries of the public beach by artificial means or by natural causes.

"(d) Every erosion response permit, which does not require the platting of property or issuance of a building, electrical, gas, mechanical, or plumbing permit, becomes invalid if the work authorized by the permit or certificate is not commenced within two (2) months after the issuance of the erosion response permit.

"(e) Every erosion response permit, which requires the platting of property or issuance of a building, electrical, gas, mechanical, or plumbing permit, becomes invalid unless the plat, if required, is filed and any required building, electrical, gas, mechanical, or plumbing permit obtained within six (6) months of the issuance of the erosion response permit.

"(f) An erosion response permit becomes invalid if the work authorized by the erosion response permit is suspended or abandoned for a period of six (6) months after the time the work is commenced.

**"Sec. 10-142. Administrative record.**

"(a) The planning director shall compile and maintain an administrative record which demonstrates the basis for each final decision regarding issuance or denial of an erosion response permit. The administrative record shall include copies of the following:

"(1) All materials received from the applicant as part of or regarding the erosion response permit.

"(2) The transcripts, if any, or the minutes and/or tape of all meetings during which the erosion response permit was considered.

"(3) All comments received regarding the erosion response permit.

"(b) The planning director shall keep the administrative record for three (3) years from the date of a final decision on an erosion response permit. The planning director shall, upon request of the Texas General Land Office, send to the Texas General Land Office, upon request by either agency, a copy of those portions of the administrative record that are requested for review. The planning director shall provide to the applicant upon request copies of any materials in the administrative record regarding the erosion response permit not submitted to the department by the applicant in the application."

**SECTION 11.** The City of Corpus Christi Dune Protection and Beach Access Plan, codified as Chapter 10, Beachfront Management and Construction, Code of Ordinances, is amended by adding the Joint Erosion Response Plan for Nueces County

and the City of Corpus Christi 2012 as adopted by Section 1 of this ordinance, as Appendix XVIII.

**SECTION 12.** A violation of this ordinance or requirements implemented under this ordinance constitutes an offense punishable under Section 10-97 of the City Code of Ordinances.

**SECTION 13.** If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word, or provision of this ordinance, for it is the definite intent of this City Council that every section, paragraph, subdivision, clause, phrase, word or provision of this ordinance be given full force and effect for its purpose.

**SECTION 14.** Publication shall be made in the official publication of the City of Corpus Christi as required by the City Charter of the City of Corpus Christi.

**SECTION 15.** This ordinance takes effect on the approval of these changes to the City of Corpus Christi's Dune Protection and Beach Access Plan by the General Land Office.

That the foregoing ordinance was read for the first time and passed to its second reading on this the 19<sup>th</sup> day of June, 2012, by the following vote:

Joe Adame	<u>Aye</u>	David Loeb	<u>Aye</u>
Chris N. Adler	<u>Aye</u>	John E. Marez	<u>Aye</u>
Kelley Allen	<u>Aye</u>	Nelda Martinez	<u>Aye</u>
Larry Elizondo	<u>Absent</u>	Mark Scott	<u>Aye</u>
Priscilla G. Leal	<u>Aye</u>		

That the foregoing ordinance was read for the second time and passed finally on this the 26<sup>th</sup> day of June, 2012, by the following vote:

Joe Adame	<u>Aye</u>	David Loeb	<u>Aye</u>
Chris N. Adler	<u>Aye</u>	John E. Marez	<u>Aye</u>
Kelley Allen	<u>Aye</u>	Nelda Martinez	<u>Aye</u>
Larry Elizondo	<u>Aye</u>	Mark Scott	<u>Aye</u>
Priscilla G. Leal	<u>Aye</u>		

PASSED AND APPROVED, this the 26<sup>th</sup> day of June, 2012.

ATTEST:

Armando Chapa  
 Armando Chapa  
 City Secretary

Joe Adame  
 Joe Adame  
 Mayor

**EFFECTIVE DATE**  
Delayed