

EMERGENCY ORDINANCE NO. 2023-01

AN ORDINANCE PROVIDING EMERGENCY PROCEDURES PERMITTING RESIDENTS NEAR BREACH INLET TO INSTALL SAND BAGS ON A TEMPORARY BASIS 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 also declared 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 habitable structures and critical infrastructure on front beach properties located within the City of Isle of Palms (“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 continued scraping in the affected area;

WHEREAS, these temporary emergency conditions are expected to be alleviated when the US Army Corps of Engineers initiates a project in early 2024 that will result in approximately 350,000 to 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 Sea walls, 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, City Ordinance, Section 5-4-15, entitled “Beach Regulations,” currently only permits sand bags with a capacity not greater than five (5) gallons;

WHEREAS, the City Council of the City of Isle of Palms (“City Council”) now desires to authorize and to establish temporary emergency protocols 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 sand bags with a capacity of one (1) cubic yard on the Resident’s property, landward of OCRM’s jurisdiction, 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 – Temporary Sand Bag Requirements and Installation. City Ordinance, Section 5-4-15, entitled “Beach Regulations,” is hereby temporarily amended to permit Residents (defined above) to install temporary sand bags of one (1) cubic yard per bag containing beach-compatible sand, originating from an inland source (i.e. not from the beach), within a trench on the resident’s property, landward of OCRM’s jurisdiction, subject to the following specifications and restrictions:

- (a) This Emergency Ordinance only applies to owners of front beach properties in the erosion area – specifically, front beach property owners located at or between 100 Ocean Blvd. and 914 Ocean Blvd., which are defined above as Residents;
- (b) Prior to installation of any temporary sand bags, the Resident shall obtain an emergency permit from the City, and a copy of the issued emergency permit shall be in possession of anyone performing work associated with the temporary sandbags;
- (c) Prior to the issuance of any emergency permit from the City, the Resident shall first contact OCRM and shall coordinate with OCRM staff and as surveyor to physically place markers to confirm the then existing location of OCRM’s jurisdiction as set forth below:

(1) The surveyor hired by the Resident must mark the OCRM Setback Line using the coordinates under the Data Download tab of OCRM's SC Beachfront Jurisdictional Lines viewer: <https://gis.dhec.sc.gov/shoreline/>;

(2) At properties where the beach has eroded landward of the OCRM Setback Line or where unauthorized materials have been placed within OCRM's beaches critical area jurisdiction, the landward limit of the beaches critical area must be marked by OCRM staff, or a surveyor must mark the landward limit of the beaches critical area using coordinates provided by OCRM;

(d) Temporary Sand bags shall be:

(1) installed by a qualified contractor/landscaper;

(2) placed parallel to the shoreline, not perpendicular;

(3) limited to a maximum height of six feet, as measured from the bottom of the trench;

(4) stacked at an angle no steeper than 45 degrees;

(5) installed in a trench, at a depth equivalent to the bottom of the then existing escarpment (i.e., the elevation of the active beach);

(i) Installing sandbags at this elevation will require excavation. All excavation must be done at least 15' from the then existing escarpment to ensure the existing escarpment is not weakened. Any collapse of the escarpment will cause OCRM's jurisdiction to expand into the excavation, which will preclude the installation of any temporary sandbags;

(ii) the trench shall be placed at least fifteen (15') feet landward from the then existing location of the escarpment and outside of OCRM's jurisdiction;

(e) The Resident's contractor shall access the Resident's property through the Resident's property. However, to the extent this is not possible, the Resident's contractor shall coordinate with the City to access the Resident's Property through an approved public access point, and, to the extent any damage is caused to the public access by the Resident or their agents, the Resident shall be responsible for all costs and expenses to restore the access to its pre-project condition;

(f) No soldier piles or any other structural members shall be used support any sand bags in place;

(g) No filter cloth, mats or other underlayments shall be placed in conjunction with the use of any sand bags;

(h) All sandbags shall be one (1) cubic yard and commercially manufactured for the purpose of holding sand, be tan, off-white or white in color;

(i) Sandbag fill material 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 may be placed in the bags. The sand samples labeled “Blue 1” and “Grey 1” submitted to OCRM by Coastal Science and Engineering (CSE) in July 2023 from a sand mine in Awendaw, SC satisfy this requirement; and

- (j) The Resident is responsible for the day-to-day maintenance of the temporary sandbags to ensure that they remain in the location authorized by the emergency permit and in good repair. Any sandbags which are in disrepair and/or not serving their intended purpose shall be removed at the direction of the City. Failure to maintain the sandbags may result in the City requiring the removal of the sandbags at the property owner’s expense.

Section 2 - Removal of Temporary Sand Bags. All temporary sandbags installed under this Emergency Ordinance shall be removed and disposed at the earlier of (1) the completion of the US Army Corps of Engineer project in early 2024 that will likely result in approximately 350,000 to 550,000 cubic yards of sand being placed in the erosion area; or (2) within forty-five (45) days after the Resident receives notice from the City to remove the temporary sand bags. If a Resident fails to comply with the specifications and requirements of this Emergency Ordinance, the City may require the Resident to remove the temporary sandbags, at the Resident’s sole expense.

Section 3 – Escrow Agreement/Escrow of Funds. Prior to the issuance of an emergency permit for installation of any temporary sand bags and to ensure that the temporary sandbags are timely removed and not abandoned and that public beach access points are not damaged during installation, the Resident must provide the City with three written quotes that reasonably estimate the cost of the removal and disposal of all sandbags placed on the Resident’s Property. The Resident shall send these written quotes for temporary sandbag removal/disposal to Douglas Kerr, Deputy City Administrator at dkerr@iop.net. Based on these quotes, the City will determine an amount to be held in escrow and notify the Resident of the amount. Within 30 days and prior to the issuance of an emergency permit, the Resident shall sign an escrow agreement with the City and deposit the amount determined by the City in escrow pursuant the terms of the escrow agreement. As set forth more fully in the escrow agreement, in the event the resident installs temporary sand bags in accordance with the requirements of this Emergency Ordinance and timely removes the temporary sandbags, the funds held in escrow shall be returned to the Resident. As set forth more fully in the escrow agreement, in the event the Resident fails to comply with the requirements of this Emergency Ordinance or fails to timely remove the temporary sand bags, the City is authorized to retain the escrowed funds to ensure compliance with the Emergency Ordinance and to remove the temporary sandbags from the Resident’s property. In the event the escrowed funds are not sufficient to ensure compliance with this Emergency Ordinance, the Resident shall pay the City any additional costs, expenses, or legal fees incurred by the City to ensure compliance with the Emergency Ordinance.

Section 3 – Temporary Sand Bag Count and Maintenance. Prior to installation, all sandbags to be installed at the Resident’s property shall be counted, recorded, and approved by the City. Documentation of the count must be maintained and provided to the City in writing two business

days prior to placement. Weekly reports outlining efforts to monitor and maintain the bags at the location are required. These reports should include date, time and general outline of actions taken to maintain the bags. All the information must be submitted in the form of an email to Douglas Kerr, Deputy City Administrator at dkerr@iop.net.

Section 4. Suspension of Contrary Local Provisions. During the emergency term, any ordinance, 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 temporary sand bags of one (1) cubic yard per bag. However, except as expressly provided herein, nothing contained in this Emergency Ordinance suspends or supersedes the City's prohibition of sea walls, revetments, bulkheads, groins, rip-rap, concrete, clay, gravel or any other prohibited 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.


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 10th DAY OF OCTOBER, 2023.


Phillip Pounds, Mayor

(Seal)
Attest:


Nicole DeNeane, City Clerk



First Reading and Ratification of Emergency Ordinance: October 10, 2023
(Date)