

ORDINANCE NO. 1370

**AN ORDINANCE OF THE CITY OF FAIRHOPE, ALABAMA,
RELATING TO THE ISSUANCE OF LAND DISTURBANCE PERMITS
FOR ACTIVITIES THAT MAY RESULT IN THE LOSS, FILL OR
DESTRUCTION OF WETLANDS WITHIN THE CITY LIMITS AND
THE CITY'S BUILDING PERMITTING JURISDICTION**

Be it ordained by the City of Fairhope, Alabama (the "City") as follows:

Section 1: Findings of Fact

The City Council of the City (the "City Council") determines that many of the Wetlands (hereinafter defined) within the City and the Permitting Jurisdiction (hereinafter defined) have already been lost due to drainage or fill. The loss of Wetlands has increased downstream water pollution, flooding, and erosion and resulted in the loss of wildlife habitat. This ordinance is being adopted to conserve and protect remaining Wetlands and other water resources.

Wetlands provide the following functions: (a) flood conveyance and storage; (b) stormwater detention (especially in the case of extraordinary rainfall events) and stormwater purification; (c) living, breeding, nesting and feeding environments for many forms of wildlife and waterfowl; (d) linkage between aquatic systems; (e) water treatment and pollution abatement through biological degradation and chemical oxidation; (f) Buffer (hereinafter defined) areas which filter additional nonpoint pollution; (g) nursery grounds and sanctuaries for fish; and (h) recreation areas for fishing, boating, hiking, bird watching, photography and other recreational uses.

Further loss of wetland quality and quantity endangers the public health, safety, and general welfare of the residents of the City and those residing within the Permitting Jurisdiction.

Section 2: Purposes

The purpose of this ordinance is to protect the health, safety, and general welfare of the residents of the City and the Permitting Jurisdiction, which specifically includes the following: (a) protection of the quality and quantity of all Wetlands and waters; (b) no net loss in the quantity, quality, and biological diversity of Wetlands; (c) avoidance of direct or indirect impacts from activities that destroy or diminish the quantity, quality and biological diversity of Wetlands; and (d) minimization of impacts to existing land uses and properties (including, without limitation, downstream properties) by preventing increases in flood, erosion, and other natural hazards due to destruction of Wetland and/or Buffer areas.

Section 3: Definitions

“Buffer” means an undisturbed area along a Wetland, shoreline or Watercourse where development and/or redevelopment is prohibited by any applicable law, ordinance, rule or regulation.

“City” means the City of Fairhope, Alabama, a municipal corporation organized under the laws of the State of Alabama.

“Compensatory Mitigation” means the replacement of wetland acreage, function, and value to compensate for losses of Wetlands.

“Creation” means a human activity bringing a wetland into existence at a site in which it did not formerly exist.

“Department” means the Fairhope Planning/Building Inspection and Permitting Department.

“Enhancement” means manipulating the physical, chemical or biological characteristics of a Wetland to increase or improve specific functions or to change the growth stage or vegetation present.

“Floodplain” mean areas subject to periodic inundation when a river, stream, or other Watercourse overflows its banks. They are relatively flat areas or lowlands adjoining the channel of a river, stream or Watercourse or other body of water. They include but are not limited to those mapped by the Federal Emergency Management Agency shown as flood hazard areas on the City of Fairhope Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency for the administration of the National Flood Insurance Program numbered 01003C0641L, 01003C0642L, 01003C0643L, 01003C0644L, 01003C0655L, 01003C0665L, 01003C0670L, 01003C0756L, 01003C0757L, 01003C0758L, 01003C0759L, 01003C0766L, 01003C0767L, 01003C0780L, 01003C0785L, 01003C0786L, 01003C0787L and dated July 17, 2007, and/or such other similar maps as may hereafter be issued from time to time by the Federal Emergency Management Agency.

“Floodway” means the channel of any river, stream or other Watercourse and the portions of the adjoining Floodplain required to carry a discharge flood.

“Permitting Jurisdiction” shall mean the building permitting jurisdiction of the City as it exists as of the date of the adoption of this ordinance and as it may be altered and/or amended from time to time hereafter.

“Regulated Activity” means any activity in a regulated Wetland and/or associated Buffer area which involves the filling, excavating, dredging, clear-cutting, dumping, changing of drainage, grading, placing of objects in water, and/or any other alteration or use which will damage or destroy a Wetland or associated Buffer area or downstream property.

“Restoration” means manipulating the physical, chemical or biological characteristics of a site to achieve a former condition with improved wetland functions, values, and acreage.

“Riparian Area” means the area adjacent to rivers, streams, creeks, washes, arroyos, and other bodies of water or channels having banks and bed through which waters flow at least periodically, is subject to periodic flooding, and is generally characterized or distinguished by a difference in plant species composition or an increase in the size and/or density of vegetation as compared to upland areas.

“Watercourses” means rivers, streams, intermittent streams, ditches, brooks, channels, lakes, ponds, manmade ponds, estuarine waters, swamps, bogs, vernal pools, playas, and all other bodies of water, natural or artificial, intermittent or permanent, public or private which have defined banks and water at least a portion of each year.

“Wetlands” means areas and waters that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated conditions. Wetlands generally include, but are not limited to, lands and waters meeting this definition and otherwise often referred to as swamps, marshes, bogs, wetland meadows, ephemeral and tributary streams, grady ponds, vernal pools, banks, reservoirs, ponds, lakes, and lands under water bodies. The primary ecological parameters for identifying Wetlands include hydric soils, hydrophytic vegetation, and hydrologic conditions reflecting temporary or permanent inundation or saturation.

Section 4: Wetlands Regulated by This Ordinance

All Wetlands within the Permitting Jurisdiction are subject to regulation by this ordinance including, but not limited to, all Wetlands shown on National Wetland Inventory maps issued by the United States Fish & Wildlife Service and now in existence or such other similar maps as may hereafter be issued from time to time, and all Wetlands now or hereafter delineated as jurisdictional by the United States Army Corps of Engineers.

Section 5: Delineation of Wetlands

Any property owner who believes that designation of an area as a Wetland or the Wetland boundary is incorrect may petition the Department to clarify or change the designation and/or boundary. All petitions for a clarification or change in designation shall be submitted in writing and shall include all relevant facts and circumstances which support the change. For proposed changes in boundaries, the petitioner shall provide expert proof that the designation is inconsistent with the definition of Wetland provided in this ordinance and the delineation procedures provided by the 1987 Wetlands Delineation Manual of the U.S. Army Corps of Engineers.

Section 6: Activities Requiring a Permit

No person shall fill, excavate, dredge, clear-cut or partially clear-cut timber from, mow grass within, dump any materials in, drain, alter or otherwise conduct any Regulated Activity without a permit issued by the Department in accordance with this ordinance within (a) any Wetland, (b) any established Buffer, or (c) in the absence of any established Buffer, within any area that is within twenty feet (20') of any Wetland.

Section 7: Exemptions

The following uses are exempt from the permitting requirement of Section 6 hereof, provided they do not alter the natural hydrology, destroy Wetland functions and values, or increase flood or erosion hazards on other lands (including, without limitation, downstream properties):

- (a) Conservation of soil, vegetation, water, fish, shellfish and wildlife.
- (b) Outdoor recreation, including nature study, hiking, horseback riding, swimming, camping, boating, trapping, hunting, fishing, and shell fishing where otherwise legally permitted.
- (c) Controlling noxious and/or non-native weeds if the control does not involve the drainage or fill of a Wetland or the use of pesticides.
- (d) Maintaining existing ditches, Watercourses, farm ponds, utilities, and roadways provided the activity does not involve the expansion of roadways, drainage ditches or related improvements into previously unimproved rights of way or portions of rights of way.
- (e) Constructing for nature study and educational purposes trails, walks, viewing platforms, information kiosks, and trail signs.
- (f) Maintaining existing structures consistent with standards set forth herein.

Notwithstanding anything contained in this Section 7 to the contrary, the foregoing activities shall be conducted only in such a manner as to have a minimal impact upon any Wetlands.

Section 8: Coordination With Other Regulatory Agencies

Upon receipt of a permit application, the Department may coordinate with other planning and regulatory agencies with jurisdiction or potential jurisdiction over the proposed activity. The Department shall require that an applicant obtain other federal, state, or local regulatory permits needed for a proposed activity before issuing a permit. The Department may also provide comments to other agencies in their permitting activities.

Section 9: Information to be Provided by the Permit Applicant

An applicant seeking a land disturbance permit for a Regulated Activity within a Wetland shall submit an application to the Department. The Department shall have the authority to prescribe, alter and modify from time to time the form of application to be submitted in accordance with this ordinance.

Notwithstanding anything contained in this Section 9 or any permit application promulgated by the Department from time to time hereunder to the contrary, all applications shall include the following information in writing, in maps, and/or in drawings (as applicable) unless exempted in writing by the Department:

- (a) Name, address, telephone number and e-mail address of owner and permit applicant (if different);
- (b) A description of existing uses of the property including any structures, fills, grading, or drainage;
- (c) Photographs of the proposed project site showing the existing condition of the site;
- (d) A description of the proposed activity including the type of proposed activity, its dimensions, distance from any road or water body, and when and how it will be carried out;
- (e) An explanation why this activity cannot be located at or otherwise conducted upon an upland location;
- (f) A description of all measures proposed to reduce or compensate for project impacts;
- (g) A Wetland map or boundary survey to identify Wetland areas that may be affected by the proposed activity;
- (h) A sketch map showing the entire parcel of land owned by the applicant including lot sizes and property boundaries;
- (i) A description of when the property was acquired and the price paid for the property;
- (j) A description of the zoning classification and restrictions;
- (k) A description of the vegetative cover of the affected area, including dominant species;
- (l) The 100 year flood elevation and Floodplain and Floodway boundaries at the project site if FEMA or other flood maps are available for the area;

Ordinance No. 1370

Page -6-

- (m) The sites and specifications for all proposed drainage, filling, grading, dredging, and vegetation removal that may affect the Wetland or Buffer area;
- (n) A description of any existing or proposed waste disposal or water supply systems located on the property, including septic tanks and soil absorption fields and distances to Wetlands, Wetland Buffers and other water bodies;
- (o) A description of Restoration vegetation now in existence and proposed for all surfaces;
- (p) A description of the construction sequencing and timetable for any proposed activities including description of future phases;
- (q) Evidence of compliance with the City of Fairhope Tree Ordinance;
- (r) An assessment of the impacts of the proposed activity on downstream properties prepared by an engineer licensed in the State of Alabama;
- (s) A best management practices plan;
- (t) A map delineating all Buffers around any existing Wetlands or Watercourses as otherwise required by this Ordinance and/or the City of Fairhope Subdivision Regulations;
- (u) A Wetland Management Plan; and
- (v) A Compensatory Mitigation Plan prepared in accordance with Section 14 hereof.

The Department may require the permit applicant to submit additional information if the Department deems such information necessary to determine compliance of a proposed Regulated Activity with the standards and criteria set forth in this ordinance. Such information may include, but is not limited to, the following:

- (a) More detailed site plans;
- (b) Description of wetland ecological communities and functions;
- (c) Description of how the application will change, diminish, or enhance the ecological functions;
- (d) Engineering reports and analyses where the proposed activity may be subject to flood or erosion hazards or increase such hazards of other types;
- (e) Mapping or more detailed investigation of soil types where onsite waste disposal is proposed;

- (f) Analysis of chemical or physical characteristics of any fill material; and
- (g) A stormwater management plan (if applicable).

Section 10: City Engagement of Third Party Professionals

In connection with reviewing any application and/or application related materials submitted by an applicant in accordance with this ordinance, and making any findings required by this ordinance, and otherwise carrying out its duties and obligations of reviewing and approving or denying any applications made hereunder, the Department shall have the right, but not the obligation, to engage such third party engineers, consultants and other professionals as necessary and appropriate to advise the Department as to whether a particular application complies with and is otherwise in concert with this ordinance (a "Third Party Professional"). See also Section 20.

Section 11: Standards and Criteria for Issuance of Wetland Permits

The Department shall not issue or conditionally issue a permit unless it finds that the proposed activity will not, taking into account individual and cumulative effects, threaten the health, safety or general welfare of the residents of the Permitting Jurisdiction, cause nuisances, impair public rights in public waters, threaten rare or endangered plant or animal species, violate pollution control standards, adversely impact land uses on other properties (including, without limitation, downstream properties), and/or violate other regulations. In addition, the Department shall not issue a permit unless it finds that:

- (a) The permit applicant has, to the extent practical, avoided Wetland and Buffer areas for the proposed activity;
- (b) The permit applicant has, to the extent practical, reduced impacts to the Wetland and Wetland Buffer. The height, width and length of structures will be limited to the minimum dimension necessary to achieve the desired functions;
- (c) The proposed activity will not cause a net loss of Wetland functions specified in Section 1 of this ordinance;
- (d) The proposed activity will not cause a net decrease in Wetland values or acreage, taking into account the cumulative adverse effects of past and reasonably anticipated future activities;
- (e) The proposed activity will have a minimum Buffer in compliance with the City of Fairhope Subdivision Regulations then in effect from the top of the bank of any river, stream, or creek. The Department may require a larger Buffer based upon flooding, erosion, pollution, endangered species, riparian or Wetland functions and values, or other relevant factors;

- (f) The proposed activity will, to the extent practical, avoid fragmentation of Wetlands and the separation of Wetlands from other Wetlands, broader aquatic systems, and uplands by activities such as construction of dikes, levees, ditches, roads, structures, and other impediments to movement of water or biota;
- (g) The proposed activity will not increase flood, erosion, subsidence or other hazard on other lands and the proposed activity will not, in itself, be subject to flood and erosion hazards;
- (h) The proposed activity will not result in adverse modification of habitat for or jeopardize plant, animal, or other wildlife species listed as threatened or endangered by the U.S. Fish and Wildlife Service or Alabama Department of Conservation and Natural Resources; and
- (i) The proposed activity will not violate other applicable federal, state, and local water quality, flood loss reduction, fill and grading, coastal zone management, stream protection, water supply protection, comprehensive zoning, sanitary code, and other statutes, regulations and ordinances.

The Department shall consider all relevant facts in making its decision on any application for a permit including, but not limited to, the following:

- (a) The goals and purposes of this ordinance;
- (b) The environmental impact of the proposed action including:
 - (i) Infilling of the Wetland or other modification of natural topographic contours,
 - (ii) Disturbance or destruction of natural flora and fauna,
 - (iii) Influx of sediments or other materials causing increased water turbidity and/or substrate alteration,
 - (iv) Removal or disturbance of Wetland soils,
 - (v) Reductions in Wetland water supply,
 - (vi) Interference with Wetland water circulation,
 - (vii) Damaging reduction or increases in Wetland nutrients,
 - (viii) Influx of toxic chemicals and/or heavy metals,
 - (ix) Damaging thermal changes in Wetland water supply,
 - (x) Destruction of natural aesthetic values, and

- (xi) Adverse impacts upon land uses on other properties (including, without limitation, downstream properties);
- (c) The impact of the proposed activity and reasonably anticipated similar activities upon flood flows, flood storage, and storm barriers;
- (d) Threats to the proposed activity from flooding, erosion, hurricane winds, subsidence, soil limitations and other hazards;
- (e) The impact of the use and existing and reasonably anticipated similar uses upon neighboring land uses;
- (f) The adequacy of water supply and waste disposal for the proposed activity;
- (g) Alternatives to the proposed action and alternative sites for the activity on the applicant's property or other properties;
- (h) Whether all reasonable and practical measures have been taken to minimize the impact of activities; and
- (i) The consistency of the activity with local, state, and federal comprehensive land use plans and watershed plans.

The Department shall make written findings on any permit application stating the reason why the proposed permit is issued, denied, or conditionally issued or denied. The Department may consider the following in making its decision on the application:

- (a) The application and supporting documentation,
- (b) Public comments,
- (c) Reports or comments from other local, state, tribal, or federal agencies and commissions, and
- (d) Comments on the application from regional planning agencies, soil and water conservation districts, or other regional organizations.

The Department shall issue its written findings issuing or denying the permit application as described above within sixty (60) days of submission by an applicant of all information required by this Ordinance and the application fees and deposits required by Section 20 hereof, including, without limitation, the Application Fee and the Cash Deposit (if applicable).

Section 12: Conditions Which May Be Attached to Permits

The Department may conditionally approve permits. The conditions that may be attached to permit approvals shall include, but shall not be limited to, the following:

- (a) Design measures to reduce project impacts;
- (b) Relocation of the proposed activity to reduce project impacts;
- (c) Compensatory Mitigation measures to offset losses to Wetland acreage, functions, and values as described in Section 14 hereof;
- (d) Flood and erosion loss reduction measures to prevent hazard losses to both proposed activities and activities on other lands. This may include a requirement that structures be elevated, flood-proofed or otherwise protected from hazards including flood heights, velocities, and erosion potential;
- (e) Modification of waste disposal and water supply facilities to reflect flooding, high ground water, and erosion hazards;
- (f) Inclusion in the title records for the property of a warning, in form and content reasonably satisfactory to the Department, that the property contains a Wetland and/or Wetland Buffer area and that any activities in the Wetland or Buffer area are subject to Wetland, Floodplain and other regulatory requirements;
- (g) Deed restrictions, covenants, or execution of conservation easements regarding the future use of lands including, but not limited to, preservation of undeveloped areas and restrictions on vegetation removal;
- (h) Set-backs for structures from any Buffer adjacent to a river, stream, or other water body of a distance appropriate for the proposed activity and the particular Wetland area;
- (i) Erosion control and storm water management measures in accordance with best management practices;
- (j) The clustering of structures or development;
- (k) Erection of Wetland and Buffer area markers and signs including survey stakes delineating the boundary between Wetland and Buffer areas and adjacent lands;
- (l) Long term monitoring and management requirements including control of exotic plant and animal species; and

- (m) Other conditions necessary to protect Wetland functions, offset losses, and prevent increased natural Wetland losses in the Permitting Jurisdiction.

Section 13: Wetland Management Plans

Permit applicants shall submit a written Wetland management plan to the Department as a part of any permit application. Such management plans may include the procedures and timing of the proposed project, water level manipulation, removal of exotic species, replanting (if necessary) and other active management activities over time. It may be combined with a Compensatory Mitigation plan as provided in Section 14 of this ordinance.

The plan shall be consistent with the following:

- (a) The plan shall describe any long term management proposed for the site to minimize or compensate for project impacts, how this management is to be carried out, and who will undertake the management.
- (b) Site development shall be fitted to the topography and soil so as to create the least potential for vegetation loss and site disturbance.
- (c) Vegetation and soil removal shall be limited to the minimum amount necessary for the development of the site.
- (d) Vegetation indigenous to the site or plant community shall be restored in areas affected by construction activities. Temporary vegetation and/or erosion control matting, sufficient to stabilize the soil, may be required on all disturbed areas as needed to prevent soil erosion. New planting shall be given sufficient water, fertilizer and protection to insure reestablishment.

Section 14: Compensatory Mitigation

Permit applicants shall submit a written Compensatory Mitigation plan developed by qualified professionals reasonably acceptable to the Department to achieve no net loss of Wetland functions, values, and acreage to meet the goals and standards of this ordinance including conditions attached to the issuance of a Wetland permit. Compensatory Mitigation may take the form of Wetland and/or Buffer area Restoration, Creation, or Enhancement. Such plans shall include design, implementation, maintenance, and monitoring elements.

A Compensatory Mitigation plan shall:

- (a) Describe any residual impacts to functions, values, or acreage;
- (b) Identify Riparian Areas, Wetlands, and Watercourse areas that are to be protected and those that will be impacted;

- (c) Provide a plan for compensating for impacts;
- (d) Describe proposed habitat manipulation activities in detail;
- (e) Provide replacement of affected vegetation with appropriate plant species in ratios which will result in simulation of pre-alteration vegetation within five years;
- (f) Specify construction methods;
- (g) Provide for periodic monitoring of mitigation; and
- (h) Provide for the posting of performance bonds or other financial assurances of performance.

In general, Compensatory Mitigation shall be onsite and in kind. However, the Department may allow use of offsite and out of kind mitigation including the use of mitigation banks if such use will have net ecological benefits, will not cause nuisances, will not violate other laws, and will not result in fragmentation of the Wetland ecological system. Use of mitigation banks will be allowed to compensate for impacts only where onsite measures are, in addition, applied to insure that flooding, water pollution, erosion, and other problems do not occur at the original site. Where feasible, mitigation projects shall be completed prior to activities that will disturb Wetlands. In other cases, mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity. Notwithstanding anything contained herein to the contrary, all Compensatory Mitigation shall (1) to the extent reasonably possible, be conducted within the watershed in which such Wetlands are being filled, damaged, diminished, destroyed, or otherwise altered, and (2) in any event, be conducted within the Permitting Jurisdiction of the City as in effect from time to time.

There shall be no introduction of any plant or wildlife into a mitigation project for any Wetland or Wetland Buffer which is not native to the area unless authorized by a state or federal permit or approval.

In general the following mitigation ratios shall be provided for Restoration, Creation, and Enhancement of Wetlands: 2:1 for Restoration, 4:1 for Creation, and 6:1 for Enhancement. The Department may increase the mitigation ratios if uncertainties exist with regard to the success of the proposed mitigation, a significant period of time will elapse between impact and replication of Wetland functions, the mitigation will result in reduced Wetland functions relative to the Wetland being impacted, or the impact was an unauthorized impact. The Department may decrease mitigation ratios if the proposed mitigation has a high likelihood of success, the proposed mitigation will provide functions and values significantly greater than the Wetland being impacted, or the proposed mitigation is conducted in advance of the impact and has been shown to be successful.

In evaluating the adequacy of proposed Compensatory Mitigation, the Department shall consider:

- (a) The risk of failure of the proposed mitigation project based upon the difficulty with which this type of Wetland is restored, created, or enhanced, the experience and expertise of the individual or individuals proposing to carry out the mitigation, the proposed Buffer and other protection measures, and the proposed management, monitoring and maintenance,
- (b) The societal importance of Wetland/Buffer functions provided by the mitigation plan in contrast with the societal importance of the functions of the original Wetland/Buffer,
- (c) Whether the proposed mitigation will require long term maintenance and, if so, the adequacy and direct responsibility of any proposed maintenance,
- (d) The need for long term monitoring and whether such monitoring will be provided, and
- (e) Whether there will be offsite impacts of the proposed mitigation such as flooding on adjacent property.

Section 15: Nonconforming Uses

All uses and activities that were lawful before the passage of this ordinance but which do not conform with the provisions of the ordinance, may be continued but may not be expanded, changed, enlarged or altered without a permit as provided above. Nonconforming uses including, but not limited to, buildings, shall not be enlarged or expanded to further encroach into any Wetland. Nonconforming activity which has been discontinued for more than one year shall not be resumed. Any nonconforming structure which has been destroyed or damaged for more than 50% of its value by flooding, wind, fire, or other natural or man-made force may be rebuilt only with issuance of a permit in conformity with the provisions of this ordinance.

Section 16: Bonds and Insurance

Upon approval of the application and prior to issuance of a permit, the Department may require the permit applicant to purchase and provide to the City a bond with such surety in such amount and in a form approved by the Department insuring the completion of all improvements permitted by and that are a condition to or of any such permit.

Release of the bond or surety shall be conditioned on compliance with all provisions of these regulations and the terms, conditions and limitations established in the permit.

Ordinance No. 1370

Page -14-

The Department may require the applicant to certify that it has public liability insurance against liability which might result from the proposed activity covering any and all damage which might occur within two (2) years of completion of such operations, in an amount commensurate with the Regulated Activity, as determined by the Department in its sole and absolute discretion.

Section 17: Inspections, Display of Permit, Revocations of Permits

Every permit issued pursuant to this ordinance shall allow the Department or its designated employee the right to inspect a project at any time and from time to time to determine compliance with conditions and the provisions of this ordinance and the applicable permit. A permit applicant shall notify the Department at least five days before project construction is to begin. The Department may issue a Stop Work Order if it finds that the permittee is violating provisions of the permit or of other applicable laws, ordinances, and/or regulations. The Department may, on written notice to the permittee, suspend or revoke a permit issued pursuant to this ordinance if the permittee has not complied with any term or condition of the permit or has failed to undertake the project in the manner set forth in the permit and this ordinance.

Section 18: Enforcement and Penalties

Any person who commits, takes part in, or assists in any violation of any provision of this ordinance is guilty of a misdemeanor and may be fined not more than Five Hundred and No/100 Dollars (\$500.00) for each offense and subject to imprisonment not exceeding six (6) months or both. Each violation of this ordinance shall be a separate offense, and in the case of a continuing violation, each day's continuance thereof shall be deemed to be a separate and distinct offense.

The City shall have jurisdiction to enjoin a violation of this ordinance. All costs, fees (including without limitation, reasonable attorneys' fees), and expenses in connection with such action shall be assessed as damages against the violator.

In the event of a violation, the City shall have the power to order Restoration of the Wetland area. If the responsible person or agent does not complete such Restoration within a reasonable time following the order of the City, the City shall have the authority to restore the affected Wetlands to the prior condition and the person or agent responsible for the violation shall be held liable to the City for the cost of such Restoration.

Section 19: Conflict and Severance

This ordinance shall be construed as not to conflict with any provision of local, state, or federal law. However, the provisions of this ordinance shall control if more restrictive than other local, state, or federal laws.

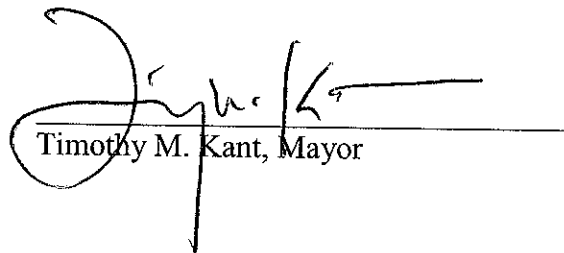
If any portion of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the ordinance shall continue to be of full force and effect.

Section 20: Application Fees

At the time of filing a permit application with the Department, the applicant shall pay to the City a non-refundable filing fee of Five Hundred and No/100 Dollars (\$500.00) (the "Application Fee").

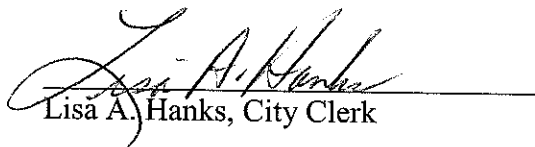
Upon receipt of a complete application, the Department shall have the right to engage a Third Party Professional in accordance with Section 10 hereof for purposes of assisting the Department with its review of the application. In such an event, the Department will forward all application materials to the Third Party Professional along with a request for a cost estimate from the Third Party Professional for his/her role in the review of such application. Upon presentation by the Third Party Professional of a cost estimate to the Department, the Department shall provide same to the applicant, and the applicant shall deposit with the Department a cash sum equal in amount to the cost estimate of the Third Party Professional (the "Cash Deposit"). Upon completion of all work by the Third Party Professional relative to such application and payment by the Department of all fees and expenses of the Third Party Professional from the Cash Deposit, if any portion of the Cash Deposit remains, the Department shall refund it to the applicant. If the Cash Deposit is insufficient to pay the fees and costs of the Third Party Professional, the applicant shall immediately remit to the Department such funds as are necessary to make up any shortfall.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 13TH DAY OF OCTOBER, 2008.




Timothy M. Kant, Mayor

ATTEST:



Lisa A. Hanks, City Clerk

Ord. No. 1370 Published in
THE FAIRHOPE COURIER
on October 18, 2008
 City Clerk