

**REQUEST FOR CITY COUNCIL CONSIDERATION**

Meeting Date: December 5, 2022

Agenda Item: 5B	Prepared by: Chris Noury, City Attorney
Agenda Section: Consent: Resolution	Date: December 1, 2022
Subject: A resolution regarding appeals from decisions of the City Engineer involving rights-of-way and construction within areas where the City is managing land under Federal and/or state jurisdiction	Division: Legal

**Background:**

A resolution authorizing the City Manager to conduct an appeal of decisions of the City Engineer regarding rights-of-way and construction within areas where the City is managing land under Federal and/or state jurisdiction including, but not limited to, requests for construction in areas utilized by heavy equipment for sand distribution during renourishment projects.

**Recommended Action:**

Adoption of the Resolution

Reviewed by City Manager		Reviewed by City Attorney
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Council Action:  
Motion By \_\_\_\_\_ 2<sup>nd</sup> By \_\_\_\_\_ To \_\_\_\_\_

## RESOLUTION

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO CONDUCT AN APPEAL OF DECISIONS OF THE CITY ENGINEER REGARDING RIGHTS-OF-WAY AND CONSTRUCTION WITHIN AREAS SUBJECT TO OCRM'S AND/OR THE CORPS' PERMITTING JURISDICTION, AND FOR CONSTRUCTION IN THE BEACH RENOURISHMENT CONSTRUCTION ZONE.**

**WHEREAS**, the United States Army Corps of Engineers (“Corps”) is the federal sponsor of ongoing efforts to nourish and renourish the beaches in North Myrtle Beach and the City of North Myrtle Beach (“City”) is a non-federal sponsor of ongoing efforts to nourish and renourish the beaches in North Myrtle Beach; and

**WHEREAS**, the Corps is committed to ongoing renourishment of the City’s beaches every eight to ten years, unless the schedule is accelerated by storm damage, and

**WHEREAS**, the City and the Corps executed a “Project Cooperation Agreement” (“Agreement”) which is in effect for at least 50 years; and

**WHEREAS**, the renourishment has resulted in establishing a protective dune system along the City’s beaches but the dune system requires periodic restoration; and

**WHEREAS**, the Agreement requires that the City provide all lands, easements, rights-of-way ... and shall perform or ensure performance of all relocations that the Government determines to be necessary for the iteration of periodic nourishment (Agreement para G. 1 p. 7.); and

**WHEREAS**, the City requires renourishment easements from property owners with mean high water property boundaries, where the renourishment construction zone occurs on private property. In other instances, where the seaward boundary of private property terminates at or before the location of the beach renourishment construction zone, no easement is required as there is no evidence of private ownership of areas within the construction zone but there are restrictions on what adjacent upland owners can build within the construction zone; and

**WHEREAS**, the City must protect the construction zone from obstructions that interfere with heavy equipment moving sand within the construction area; and

**WHEREAS**, in addition to responsibility for renourishment easements and for keeping the beach renourishment construction zone unimpeded, the City Engineer is also responsible for decisions regarding the location of curb cuts for driveways and encroachments into state, county, and city rights-of-way (“ROW”), and proposed construction impacting critical area and requiring permits from the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (“OCRM”) and, in some instances, from the Corps.

**NOW, THEREFORE, IT IS RESOLVED BY THE MAYOR AND COUNCIL FOR THE CITY OF NORTH MYRTLE BEACH SOUTH CAROLINA:**

**Section 1:** That notification of the determination of the City Engineer to property owners who seek authorization to construct within a) the beach renourishment construction zone but do not have a sufficient property interest to support an easement; b) areas subject to the jurisdiction of OCRM and the Corps; and c) state, county and city ROWs; shall include information regarding internal review procedures for decisions of the City’s engineering or permitting department.

**Section 2:** Review of beachfront property owners’ concerns regarding the City Engineer’s decisions related to construction referenced in Section 1 above shall be conducted by the City Manager as authorized by City Council in this Resolution. S. C. Code Ann. Sec. 5-1-19 authorizes the City Manager to perform such other duties as may be prescribed by law or required of him by the municipal council. City Ordinance 2-56 authorizes the City Manager to perform such duties and exercise such other authority as City Council may authorize by resolution or ordinance.

**Section 3:** It is the intent of City Council, through enactment of this Resolution, to authorize the City Manager to conduct reviews of the City Engineer’s decisions related to State, County and City ROWs, construction in the beach renourishment construction zone, and/or within areas subject to OCRM’s or the Corps’ permitting jurisdiction. The City Engineer is hereby directed to include the following information in a permitting decision related to ROWs, areas subject to OCRM’s and the Corps’ permitting jurisdiction, and construction in the renourishment zone. *“An applicant aggrieved by a permit decision may request review from the City Manager within 30 days of notification of such permit decision. The applicant shall provide in writing the basis for seeking review and attach any documents or exhibits that are relevant to the applicant’s position. The City Manager will respond to the appeal, in writing, within 30 days of receipt of the appeal. All appeals shall be addressed to the City Manager at the City of North Myrtle Beach, 1018 2<sup>nd</sup> Ave S. North Myrtle Beach SC 29582.”*

DONE, RATIFIED AND PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022

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Marilyn Hatley, Mayor

ATTEST:

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Allison K. Galbreath, City Clerk

Resolution: RES 22-12