

CITY OF MUSKEGON
CITY COMMISSION WORKSESSION

Monday, December 11, 2017
5:30 p.m.
City Commission Chambers

AGENDA

1. Amendment to the Zoning Ordinance – Critical Dunes

Closed Session:

2. Collective Bargaining
3. Attorney/Client Confidential Communication
4. Any Other Business
5. Adjournment

CRC Meeting Immediately Following

Commission Meeting Date: December 12, 2017

Date: December 5, 2017
To: Honorable Mayor and City Commissioners
From: Planning & Economic Development
RE: Amendment to the Zoning Ordinance – Critical Dunes

SUMMARY OF REQUEST:

Staff-initiated request to amend Section 2310 of the zoning ordinance to adopt a local critical dune ordinance. Act 451 of 1994, the Natural Resources and Environmental Protection Act, allows municipalities to enact their own critical dune ordinance and enforce it themselves, rather than relying on the Michigan Department of Environmental Quality to do so. Staff anticipates that this will speed up the approval process for projects located in critical dune areas.

FINANCIAL IMPACT:

None

BUDGET ACTION REQUIRED:

None

STAFF RECOMMENDATION:

To approve the zoning ordinance amendment.

COMMITTEE RECOMMENDATION:

The Planning Commission unanimously recommended approval of the ordinance amendment at their November 16 meeting.

Staff Report (EXCERPT)
CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING

Hearing, Case 2017-30: Request to amend the zoning ordinance by adopting a local critical dune ordinance, per Public Act 451 of 1994, the Natural Resources and Environmental Protection Act.

SUMMARY

1. Critical Dunes in Michigan are regulated by the Michigan Department of Environmental Quality (MDEQ). Anyone doing work in a critical dune must first receive a permit from the MDEQ. These permits can take several months to get approved, so it often times slows down projects.
2. Act 451 of 1994 allows local municipalities to enact their own critical dune ordinance and enforce it themselves. Staff has created the enclosed draft ordinance, which has been reviewed by the MDEQ.
3. Staff plans to either enforce the ordinance in-house by doing our own inspections or possibly contracting with a private firm for inspections.
4. Please see the enclosed map that shows the locations of Critical Dunes in Muskegon.
5. Please see the enclosed proposed ordinance.

NEW LANGUAGE

SECTION 2310: Critical Dune Overlay District

1. Purpose. In keeping with the findings of the Michigan legislature and the authority granted to local government in Public Act 451 of 1994, as amended, the City of Muskegon hereby declares that:
 - a. The critical dune areas within the City of Muskegon are a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits to the people of this community, to the state, and to the people from other states and countries who visit this resource.
 - b. The purpose of this ordinance is to balance for present and future generations the benefits of protecting, preserving, restoring, and enhancing the diversity, quality, functions, and values of the state's critical dunes with the benefits of economic development and multiple human uses of the critical dunes and the benefits of public access to and enjoyment of the critical dunes. To accomplish this purpose, this ordinance is intended to do all of the following:
 - Ensure and enhance the diversity, quality, functions, and values of the critical dunes in a manner that is compatible with private property rights.
 - Ensure sound management of all critical dunes by allowing for compatible economic development and multiple human uses of the critical dunes.
 - Coordinate and streamline governmental decision-making affecting critical dunes through the use of the most comprehensive, accurate, and reliable information and scientific data available.

- c. The benefits derived from alteration, industrial, residential, commercial, agricultural, silvicultural, and the recreational use of critical dune areas shall occur only when the protection of the environment and the ecology of the critical dune areas for the benefit of the present and future generations is assured.
- d. The following regulations embodied in this Dune Overlay Zone are adopted as the minimum measures necessary to achieve these ends.

2. Definitions – As used in this section,

- a. "Contour change" includes any grading, filling, digging, or excavating that significantly alters the physical characteristic of a critical dune area, except that which is involved in sand dune mining.
- b. "Crest" means the line at which the first lakeward facing slope of a critical dune ridge breaks to a slope of less than 1-foot vertical rise in a 5-1/2-foot horizontal plane for a distance of at least 20 feet, if the areal extent where this break occurs is greater than 1/10 acre in size.
- c. "Critical dune area" means a geographic area designated in the "Atlas of Critical Dune Areas" dated February 1989 that was prepared by the Michigan Department of Natural Resources and any other locally designated sand dune areas included on the City of Muskegon Zoning Map.
- d. "Driveway" means a privately owned, constructed, and maintained vehicular access from a road or easement serving the property to the principal building or accessory buildings, that is paved, graveled, or otherwise improved for vehicular access, 16 feet wide or narrower in the sole discretion of the applicant or owner, and may include, in the sole discretion of the applicant or owner, a shared driveway.
- e. "Foredune" means one or more low linear dune ridges that are parallel and adjacent to the shoreline of a Great Lake and are rarely greater than 20 feet in height. The lakeward face of a foredune is often gently sloping and may be vegetated with dune grasses and low shrub vegetation or may have an exposed sand face.
- f. "Permit" means a permit for a use within a critical dune area.
- g. "Restabilization" means restoration of the natural contours of a critical dune to the extent practicable, the restoration of the protective vegetative cover of a critical dune through the establishment of indigenous vegetation, and the placement of snow fencing or other temporary sand trapping measures for the purpose of preventing erosion, drifting, and slumping of sand.
- h. "Sand dune mining" means the removal of sand from sand dune areas for commercial or industrial purposes.
- i. "Special use project" means any of the following:
 - A proposed use in a critical dune area for an industrial or commercial purpose regardless of the size of the site.
 - A multifamily use of more than 3 acres.
 - A multifamily use of 3 acres or less if the density of use is greater than 4 individual residences per acre.
 - A proposed use in a critical dune area, regardless of size of the use, that the planning commission determines would damage or destroy features of archaeological or historical significance.
- j. "Use" means a developmental, silvicultural, or recreational activity done or caused to be done by a person that significantly alters the physical characteristic of a critical dune area or a contour change done or caused to be done by a person. Use does not include sand dune mining.

3. **Area Affected.** The provisions of the Dune Overlay Zone apply to all lands so depicted on the City of Muskegon Zoning Map which is a part of this ordinance. These lands include the entire critical dune area as designated by the Michigan Department of Natural Resources pursuant to Public Act 451 of 1994, and to such other lands as locally designated and depicted thereon. Locally designated sand dunes together with dunes designated under Public Act 451 shall be known as critical dune areas for the purpose of this ordinance. Lands that are within 250 feet of a critical dune area, that are determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area shall also receive all the protection afforded to critical dunes in the Overlay Zone, even if not so depicted on the City of Muskegon Zoning Map.
4. **Nonconforming Building and Lots After the effective date of the adoption of this Section:**
 - a. No subdivision or condominium development shall occur within the Dune Overlay Zone except in compliance with the minimum standards of this ordinance and after review and approval of a site plan and other documents as required herein.
 - b. No structure shall be constructed, reconstructed, altered, or relocated except in strict compliance with the requirements of this ordinance.
 - c. No use which is in existence as of the effective date of this Article shall be expanded, except in strict compliance with the minimum standards of this Ordinance.
 - d. No existing nonconforming building or structure shall be altered except provided in Article XXII, Section 2203.
5. **Application Requirements.** All applications for permits for the use of a critical dune area shall include in writing showing evidence:
 - a. That Muskegon County, which administers Part 91 Soil Erosion and Sedimentation Control, of Public Act 451 of 1994, as amended, finds that the project is in compliance with the act and any applicable soil erosion and sedimentation control ordinance that is in effect in Muskegon County.
 - b. That a proposed sewage treatment or disposal system on the site has been approved by the county health department, if applicable.
 - c. Assuring that the cutting and removing of trees and other vegetation will be performed according to the forestry management guidelines for Michigan prepared by the Society of American Foresters in 1987, as revised in 2010, and will include instructions or plans to provide mitigation for the removal of trees or vegetation by providing assurances that the applicant will plant on the site more trees and other vegetation on the site than were removed by the proposed use.
 - d. Except as otherwise provided in this subsection, a site plan that contains data required by this Section and Article XXIII, Section 2330, concerning the physical development of the site and extent of disruption of the site by the proposed development.
 - e. The Zoning Administrator shall not require an environmental site assessment or environmental impact statement as part of a permit application for a use in a critical dune overlay zone except for a "Special Use" project.
 - f. The Zoning Administrator will require that the applicant supply a contour map of the site with 1-foot contour intervals at or near any proposed structure or roadway for any new construction.
 - g. The payment of any required fees for processing and/or professional review of the submitted site plan.

6. Environmental Assessment. When an environmental assessment is required under a “Special Use” project, it shall include the following information concerning the site of the proposed use:
 - a. The name and address of the applicant.
 - b. A description of the application’s proprietary interest in the site.
 - c. The name, address, and professional qualification of the person preparing the environmental assessment and his/her opinion as to whether the proposed development of the site is consistent with protecting features of environmental sensitivity and archaeological or historical significance that may be located on the site.
 - d. The description and purpose of the proposed use.
 - e. The location of existing utilities and drainage ways.
 - f. The general location and approximate dimensions of proposed structures.
 - g. Major proposed change of land forms such as new lakes, terracing or excavating.
 - h. Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.
 - i. Approximate location and type of proposed drainage, water, and sewage facilities.
 - j. Legal description of property.
 - k. A physical description of the site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.
 - l. A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.
 - m. An erosion review showing how erosion control will be achieved, and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.
7. Environmental Impact Statement. When an environmental assessment is required, it shall include the following information concerning the site of the proposed use:
 - a. The name and address of the applicant.
 - b. A description of the applicant's proprietary interest in the site of the proposed use.
 - c. The name, address, and professional qualifications of the proposed professional design team members, including the designation of the person responsible for the preparation of the environmental impact statement.
 - d. The description and purpose of the proposed use.
 - e. Six copies and one reproducible transparency of a schematic use plan of the proposed use showing the general location of the proposed use and major existing physical and natural features on the site, including, but not limited to, watercourses, rock outcropping, wetlands, and wooded areas.
 - f. The location of the existing utilities and drainage ways.
 - g. The location and notation of public streets, parks, and railroad and utility rights-of-way within or adjacent to the proposed use.
 - h. The general location and dimensions of proposed streets, driveways, sidewalks, pedestrian ways, trails, off-street parking, and loading areas.
 - i. The general location and approximate dimensions of proposed structures.
 - j. Major proposed change of land forms such as new lakes, terracing, or excavating.
 - k. Approximate existing and proposed contours and drainage patterns, showing at least five-foot contour intervals.
 - l. Sketches showing the scale, character, and relationship of structures, streets, or driveways, and open space.

- m. Approximate location and type of proposed drainage, water and sewage treatment and disposal facilities.
- n. A legal description of the property.
- o. An aerial photo and contour map showing the development site in relation to the surrounding area.
- p. A description of the physical site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.
- q. A soil review giving a short descriptive summary of the soil types found on the site and whether the soil permits the use of septic tanks or requires central sewer. The review may be based on the "United Soil Classification System" as adopted by the United States Government Corps of Engineers and Bureau of Reclamation, dated January 1952, or the natural cooperative soil survey classification system, and the standards for the development prospects that have been offered for each portion of the site.
- r. A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.
- s. A substrata review including a descriptive summary of the various geologic bedrock formations underlying the site, including the identification of known aquifers, the approximate depths of the aquifers and, if being tapped for use, the principal uses to be made of these waters, including irrigation, domestic water supply, and industrial usage.
- t. An erosion review showing how erosion control will be achieved, and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.
- u. At a minimum, plans for compliance with all of the following standards shall be required for construction and post-construction periods:
 - Surface drainage designs and structures are erosion proof through control of the direction, volume, and velocities of drainage patterns. These patterns shall promote natural vegetation growth that are included in the design in order that drainage waters may be impeded in their flow and percolation encouraged.
 - The design shall include trash collection devices when handling street and parking drainage to contain solid waste and trash.
 - Watercourse designs, control volumes, and velocities of water to prevent bottom and bank erosion. In particular, changes of direction shall guard against undercutting of banks.
 - If vegetation has been removed or has not been able to occur on surface areas such as infill zones, it shall be the duty of the developer to stabilize and control the impacted surface areas to prevent wind erosion and the blowing of surface material through the planting of grasses, and windbreaks and other similar barriers.

8. Driveways. The construction, improvement, and maintenance of a driveway shall be permitted for any dwelling or other permanent building allowed in a critical dune area, including a dwelling or other permanent building approved under this ordinance or a lawful nonconforming use, subject only to applicable permit requirements under Sections 35312 through 35325 of Part 353 of Public Act 451 of 1999, as amended, and the following:

- a. A driveway shall be permitted either to the principal building or, in the sole discretion of the applicant, to an accessory building, under the provisions of this ordinance. Additional driveways, if any, shall meet the applicable requirements for any other use under this ordinance. The development of a plan for a driveway should include consideration of the use of retaining walls, bridges, or similar measures, if feasible, to minimize the impact of the driveway, parking, and turnaround areas, and the consideration of alternative locations on the same lot of record

- b. Driveways on slopes steeper than a 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the architect or engineer to meet these requirements.
- c. Driveways on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the engineer to meet these requirements. The engineer shall certify under seal that the driveway is not likely to increase erosion or decrease stability.
- d. Temporary construction access for all construction, including new construction, renovation, repairs, rebuilding, or replacement, and repair, improvement, or replacement of septic tanks and systems, shall be allowed for any use allowed in a critical dune area for which a driveway is not already installed by the owner, subject only to the requirements that the temporary access shall not involve a contour change or vegetation removal that increases erosion or decreases stability except as can be restabilized upon completion of the construction. The temporary access shall be maintained in stable condition, and restabilization shall be commenced promptly upon completion of the construction.

9. Utilities. A use needed to maintain, repair, or replace existing utility lines, pipelines, or other utility facilities within a critical dune area that were in existence on July 5, 1989, or were constructed in accordance with a permit under this section or under Part 353 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended, is exempt for purposes for which the permit was issued from the operation of this section if the maintenance, repair, or replacement is completed in compliance with all of the following:

- a. Vehicles shall not be driven on slopes greater than 1-foot vertical rise in a 3-foot horizontal plane.
- b. All disturbed areas shall be immediately stabilized and revegetated with native vegetation following completion of work to prevent erosion.
- c. Any removal of woody vegetation shall be done in a manner to assure that any adverse effect on the dune will be minimized and will not significantly alter the physical characteristics or stability of the dune.
- d. To accomplish replacement of a utility pole, the new pole shall be placed adjacent to the existing pole, and the existing pole shall be removed by cutting at ground level.
- e. In the case of repair of underground utility wires, the repair shall be limited to the minimal excavation necessary to replace the wires by plowing, small trench excavation, or directional boring. Replacement of wires on slopes steeper than 1-foot vertical rise in a 4-foot horizontal plane shall be limited to installation by plowing or directional boring only.

- f. In the cases of repair or replacement of underground pipelines, directional boring shall be utilized, and if excavation is necessary to access and bore the pipeline the excavation area shall be located on slopes 1-foot vertical rise in a 4-foot horizontal plane or less.
10. Accessibility. Notwithstanding any other provision of this section, at the request of the applicant, the construction, improvement and maintenance of accessibility measures shall be permitted for any dwelling or other permanent building allowed in a critical dune area, including a dwelling or other permanent building approved under this section or a lawful nonconforming use, subject only to applicable permit requirements of this section and the following:
 - a. Accessibility measures on slopes steeper than 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot vertical rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgement of the architect or engineer to meet these requirements.
 - b. Accessibility measures on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgement of the architect or engineer to meet these requirements. The engineer shall certify under seal that the accessibility measures are not likely to increase erosion or decrease stability.

The choice of components for an accessible route under American national standards institute standard 402.2 shall be at the option of the applicant.

11. Prohibited Uses. The following uses are not permitted in a critical dune area:
 - a. The disposal of sewage on-site unless the standards of applicable sanitary codes are met or exceeded.
 - b. A use that does not comply with the minimum setback requirements required by rules that are promulgated under part 323 of Public Act 451 of 1994.
 - c. A surface drilling operation that is utilized for the purpose of exploring for or producing hydrocarbons or natural brine or for the disposal of the waste or by-products of the operation, except those that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the Planning Commission.
 - d. Production facilities regulated under parts 615 and 625 of Act 451 of 1994, except those that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the Planning Commission.

12. Non-Permitted Uses, Unless a Variance is Granted. Unless a variance is granted, the following uses are not permitted in a critical dune area:
 - a. A structure and access to the structure on a slope within a critical dune area that has a slope that measures from a 1-foot vertical rise in a 4-foot horizontal plane to less than a 1-foot vertical rise in a 3-foot horizontal plane, unless the structure and access to the structure are in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan provides for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.
 - b. A use on a slope within a critical dune area that has a slope steeper than a 1-foot vertical rise in a 3-foot horizontal plane.
 - c. A use involving a contour change if the Zoning Administrator determines that it is more likely than not to increase erosion or decrease stability.
 - d. Sylvicultural practices, as described in the "Forest Management Guidelines for Michigan", prepared by the Society of American Foresters as revised in 2010, if the City of Muskegon determines that they are more likely than not to increase erosion or decrease stability.
 - e. A use that involves a vegetation removal if the Zoning Administrator determines that it is more likely than not to increase erosion or decrease stability.
13. Site Plan Review. When reviewing a site plan submitted, along with all the application information required, the Zoning Administrator shall:
 - a. Ensure that the requirements of the zoning ordinance have been met and the plan is consistent with existing laws.
 - b. Determine whether the advice or assistance of Muskegon County will be helpful in reviewing a site plan, and if so, to so seek it.
 - c. Recommend alterations of a proposed development to minimize adverse effects anticipated if the development is approved and to ensure compliance with all applicable state and local requirements.
 - d. Determine that the proposed use will ensure and enhance the diversity, quality, function and values of the critical dune in a manner that is compatible with private property rights; allows for compatible economic development and multiple human uses of the critical dune, using the most competent, accurate and reliable information and scientific data available.
14. Use Standards. Any lot or parcel which in whole or part which falls within the Dune Overlay Zone and/or within 250 feet outside the Dune Overlay Zone that is determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area shall not be used except upon receipt of a permit from the Zoning Administrator. No zoning permit shall be issued for the use of land within this zone or within 250 feet outside the zone that is determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area until a site plan meeting the requirements of this Section and those of Article XXIII, Section 2330, have been met. If requested, the Planning Commission will make the final determination as to whether or not these standards have been met and shall exercise its lawful discretion in all cases in favor of protection of the critical dune area.
15. Prohibition of Construction Without Permit. No grading or clearing of a site shall be done prior to issuance of a zoning permit as required in this Ordinance.

16. Special Use Project Review Procedures. A proposed special use project shall be reviewed and a recommendation for approval, approval with conditions, or denial is made by the Planning Commission pursuant to the special use procedures of this ordinance shall be completed.
17. Department of Environmental Quality Review. Prior to issuing a permit allowing a special use project within a critical dune area, the Planning Commission shall submit the special use project application and site plan and their proposed decision to the Department of Environmental Quality, Land and Water Management Division following the procedures of this ordinance.
18. Nonconforming Uses. The lawful use of land or a structure, as existing and lawful within a critical dune area in the time of the adoption of this overlay zone, may be continued although the use of that land or structure does not conform to the provisions of this overlay zone. The continuance, completion, restoration, reconstruction, extension or substitution of existing nonconforming uses of land or a structure may continue consistent with the nonconforming use requirements of this Ordinance. See Article XXII, Section 2202.
19. Rebuilding of Lawful Structures. A structure or use located in a critical dune area that is destroyed by fire, other than arson for which the owner is found to be responsible, or an act of nature, except for erosion, may be rebuilt or replaced if the structure or use was lawful at the time it was constructed or commenced; and a replacement structure and its use may differ from that which was destroyed if it does not exceed in size or scope that which was destroyed.
20. Variance. The Zoning Board of Appeals may grant a variance from the requirements of this overlay zone if an unreasonable hardship will occur to the owner of the property if the variance is not granted. The procedural requirements of Article XXIII (Site Plan Review) and Article XXV (Zoning Board of Appeals) shall be adhered to. A variance shall be subject to the following limitations:
 - a. The Zoning Board of Appeals may issue variances under Article XXV of the zoning ordinance if a practical difficulty will occur to the owner of the property if the variance is not granted. In determining whether a practical difficulty will occur if a variance is not granted, primary consideration shall be given to assuring that human health and safety are protected by the determination and that the determination complies with applicable local zoning, other state laws, and federal law. If a practical difficulty will occur to the owner of the property if the variance is not granted, a variance shall be granted under this Section unless the Zoning Board of Appeals determines that the use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:
 - The diversity of the critical dune areas within the local unit of government.
 - The quality of the critical dune areas within the local unit of government.
 - The functions of the critical dune areas within the local unit of government.
 - b. The decision of the Zoning Board of Appeals shall be in writing and shall be based upon evidence that would meet the standards in Section 75 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.275. A decision denying a variance shall document, and any review upholding the decision shall determine, all of the following:
 - That the City of Muskegon has met the burden of proof under subsections 1A through 1C.
 - That the decision is based upon sufficient facts or data.

- That the decision is the product of reliable scientific principles and methods.
 - That the decision has applied the principles and methods reliably to the facts.
 - That the facts or data upon which the decision is based are recorded in the file.
- c. The City of Muskegon shall not require an environmental site assessment or environmental impact statement for a variance except for a special use project.
- d. A variance shall not be granted from a setback requirement provided for under Section 35034 pursuant to Part 353 of the Public Act 451 of 1994 unless the property for which the variance is requested is one of the following:
- A nonconforming lot of record that is recorded prior to July 5, 1989, and that becomes nonconforming due to the operation of Part 353.
 - A lot legally created after July 5, 1989 that later becomes nonconforming due to natural shoreline erosion.
 - Property on which the base of the first landward critical dune of at least 20 feet in height that is not a foredune is located at least 500 feet inland from the first foredune crest or line of vegetation on the property. However, the setback shall be a minimum of 200 feet measured from the foredune crest or line of vegetation.
21. Penalties. In addition to the penalty provisions of this Ordinance, the provisions of Public Act 451 of 1994 shall apply in the event of any violation. Pursuant to the Public Act, a court may impose on a person who violates any provision of this Dune Overlay Zone, or a provision of a permit issued hereunder, a civil fine of not more than \$5,000 for each day of violation, or order a violator to pay the full cost of the full cost of restabilization of a critical dune area or other natural resource that is damaged or destroyed as a result of a violation, or both. If a person is ordered by the Zoning Administrator to restore a critical dune that has been degraded by that person, the Zoning Administrator shall establish a procedure by which the restoration of the critical dune area is monitored to assure that the restoration is completed in a satisfactory manner.
22. Applicable Law. Incorporated by reference herein is Part 353, Michigan Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.
23. Severability. If any section, clause, or provision of this Ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the remainder of the Ordinance. The City Commission hereby declares that it would have passed this Ordinance and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences or clauses be declared invalid. However, if any provision of the Ordinance is declared invalid, the City must seek written confirmation from the DEQ that the Ordinance still complies with Part 353, Michigan Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.

CITY OF MUSKEGON
MUSKEGON COUNTY, MICHIGAN

ORDINANCE NO. _____

An ordinance to amend section 2310 of the zoning ordinance to adopt a local critical dune ordinance.

THE CITY COMMISSION OF THE CITY OF MUSKEGON HEREBY ORDAINS:

NEW LANGUAGE

SECTION 2310: Critical Dune Overlay District

1. Purpose. In keeping with the findings of the Michigan legislature and the authority granted to local government in Public Act 451 of 1994, as amended, the City of Muskegon hereby declares that:
 - a. The critical dune areas within the City of Muskegon are a unique, irreplaceable, and fragile resource that provide significant recreational, economic, scientific, geological, scenic, botanical, educational, agricultural, and ecological benefits to the people of this community, to the state, and to the people from other states and countries who visit this resource.
 - b. The purpose of this ordinance is to balance for present and future generations the benefits of protecting, preserving, restoring, and enhancing the diversity, quality, functions, and values of the state's critical dunes with the benefits of economic development and multiple human uses of the critical dunes and the benefits of public access to and enjoyment of the critical dunes. To accomplish this purpose, this ordinance is intended to do all of the following:
 - Ensure and enhance the diversity, quality, functions, and values of the critical dunes in a manner that is compatible with private property rights.
 - Ensure sound management of all critical dunes by allowing for compatible economic development and multiple human uses of the critical dunes.
 - Coordinate and streamline governmental decision-making affecting critical dunes through the use of the most comprehensive, accurate, and reliable information and scientific data available.
 - c. The benefits derived from alteration, industrial, residential, commercial, agricultural, sylvicultural, and the recreational use of critical dune areas shall occur only when the protection of the environment and the ecology of the critical dune areas for the benefit of the present and future generations is assured.
 - d. The following regulations embodied in this Dune Overlay Zone are adopted as the minimum measures necessary to achieve these ends.
2. Definitions – As used in this section,
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 - b. "Crest" means the line at which the first lakeward facing slope of a critical dune ridge breaks to a slope of less than 1-foot vertical rise in a 5-1/2-foot horizontal plane for a distance of at least 20 feet, if the areal extent where this break occurs is greater than 1/10 acre in size.

- c. "Critical dune area" means a geographic area designated in the "Atlas of Critical Dune Areas" dated February 1989 that was prepared by the Michigan Department of Natural Resources and any other locally designated sand dune areas included on the City of Muskegon Zoning Map.
- d. "Driveway" means a privately owned, constructed, and maintained vehicular access from a road or easement serving the property to the principal building or accessory buildings, that is paved, graveled, or otherwise improved for vehicular access, 16 feet wide or narrower in the sole discretion of the applicant or owner, and may include, in the sole discretion of the applicant or owner, a shared driveway.
- e. "Foredune" means one or more low linear dune ridges that are parallel and adjacent to the shoreline of a Great Lake and are rarely greater than 20 feet in height. The lakeward face of a foredune is often gently sloping and may be vegetated with dune grasses and low shrub vegetation or may have an exposed sand face.
- f. "Permit" means a permit for a use within a critical dune area.
- g. "Restabilization" means restoration of the natural contours of a critical dune to the extent practicable, the restoration of the protective vegetative cover of a critical dune through the establishment of indigenous vegetation, and the placement of snow fencing or other temporary sand trapping measures for the purpose of preventing erosion, drifting, and slumping of sand.
- h. "Sand dune mining" means the removal of sand from sand dune areas for commercial or industrial purposes.
- i. "Special use project" means any of the following:
 - A proposed use in a critical dune area for an industrial or commercial purpose regardless of the size of the site.
 - A multifamily use of more than 3 acres.
 - A multifamily use of 3 acres or less if the density of use is greater than 4 individual residences per acre.
 - A proposed use in a critical dune area, regardless of size of the use, that the planning commission determines would damage or destroy features of archaeological or historical significance.
- j. "Use" means a developmental, silvicultural, or recreational activity done or caused to be done by a person that significantly alters the physical characteristic of a critical dune area or a contour change done or caused to be done by a person. Use does not include sand dune mining.

3. Area Affected. The provisions of the Dune Overlay Zone apply to all lands so depicted on the City of Muskegon Zoning Map which is a part of this ordinance. These lands include the entire critical dune area as designated by the Michigan Department of Natural Resources pursuant to Public Act 451 of 1994, and to such other lands as locally designated and depicted thereon. Locally designated sand dunes together with dunes designated under Public Act 451 shall be known as critical dune areas for the purpose of this ordinance. Lands that are within 250 feet of a critical dune area, that are determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area shall also receive all the protection afforded to critical dunes in the Overlay Zone, even if not so depicted on the City of Muskegon Zoning Map.

4. Nonconforming Building and Lots After the effective date of the adoption of this Section:

- a. No subdivision or condominium development shall occur within the Dune Overlay Zone except in compliance with the minimum standards of this ordinance and after review and approval of a site plan and other documents as required herein.
 - b. No structure shall be constructed, reconstructed, altered, or relocated except in strict compliance with the requirements of this ordinance.
 - c. No use which is in existence as of the effective date of this Article shall be expanded, except in strict compliance with the minimum standards of this Ordinance.
 - d. No existing nonconforming building or structure shall be altered except provided in Article XXII, Section 2203.
5. Application Requirements. All applications for permits for the use of a critical dune area shall include in writing showing evidence:
 - a. That Muskegon County, which administers Part 91 Soil Erosion and Sedimentation Control, of Public Act 451 of 1994, as amended, finds that the project is in compliance with the act and any applicable soil erosion and sedimentation control ordinance that is in effect in Muskegon County.
 - b. That a proposed sewage treatment or disposal system on the site has been approved by the county health department, if applicable.
 - c. Assuring that the cutting and removing of trees and other vegetation will be performed according to the forestry management guidelines for Michigan prepared by the Society of American Foresters in 1987, as revised in 2010, and will include instructions or plans to provide mitigation for the removal of trees or vegetation by providing assurances that the applicant will plant on the site more trees and other vegetation on the site than were removed by the proposed use.
 - d. Except as otherwise provided in this subsection, a site plan that contains data required by this Section and Article XXIII, Section 2330, concerning the physical development of the site and extent of disruption of the site by the proposed development.
 - e. The Zoning Administrator shall not require an environmental site assessment or environmental impact statement as part of a permit application for a use in a critical dune overlay zone except for a "Special Use" project.
 - f. The Zoning Administrator will require that the applicant supply a contour map of the site with 1-foot contour intervals at or near any proposed structure or roadway for any new construction.
 - g. The payment of any required fees for processing and/or professional review of the submitted site plan.
6. Environmental Assessment. When an environmental assessment is required under a "Special Use" project, it shall include the following information concerning the site of the proposed use:
 - a. The name and address of the applicant.
 - b. A description of the application's proprietary interest in the site.
 - c. The name, address, and professional qualification of the person preparing the environmental assessment and his/her opinion as to whether the proposed development of the site is consistent with protecting features of environmental sensitivity and archaeological or historical significance that may be located on the site.
 - d. The description and purpose of the proposed use.
 - e. The location of existing utilities and drainage ways.
 - f. The general location and approximate dimensions of proposed structures.
 - g. Major proposed change of land forms such as new lakes, terracing or excavating.

- h. Sketches showing the scale, character, and relationship of structures, streets or driveways, and open space.
- i. Approximate location and type of proposed drainage, water, and sewage facilities.
- j. Legal description of property.
- k. A physical description of the site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.
- l. A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.
- m. An erosion review showing how erosion control will be achieved, and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.

7. Environmental Impact Statement. When an environmental assessment is required, it shall include the following information concerning the site of the proposed use:

- a. The name and address of the applicant.
- b. A description of the applicant's proprietary interest in the site of the proposed use.
- c. The name, address, and professional qualifications of the proposed professional design team members, including the designation of the person responsible for the preparation of the environmental impact statement.
- d. The description and purpose of the proposed use.
- e. Six copies and one reproducible transparency of a schematic use plan of the proposed use showing the general location of the proposed use and major existing physical and natural features on the site, including, but not limited to, watercourses, rock outcropping, wetlands, and wooded areas.
- f. The location of the existing utilities and drainage ways.
- g. The location and notation of public streets, parks, and railroad and utility rights-of-way within or adjacent to the proposed use.
- h. The general location and dimensions of proposed streets, driveways, sidewalks, pedestrian ways, trails, off-street parking, and loading areas.
- i. The general location and approximate dimensions of proposed structures.
- j. Major proposed change of land forms such as new lakes, terracing, or excavating.
- k. Approximate existing and proposed contours and drainage patterns, showing at least five-foot contour intervals.
- l. Sketches showing the scale, character, and relationship of structures, streets, or driveways, and open space.
- m. Approximate location and type of proposed drainage, water and sewage treatment and disposal facilities.
- n. A legal description of the property.
- o. An aerial photo and contour map showing the development site in relation to the surrounding area.
- p. A description of the physical site, including its dominant characteristics, its vegetative character, its present use, and other relevant information.
- q. A soil review giving a short descriptive summary of the soil types found on the site and whether the soil permits the use of septic tanks or requires central sewer. The review may be based on the "United Soil Classification System" as adopted by the United States Government Corps of Engineers and Bureau of Reclamation, dated January 1952, or the natural cooperative soil survey classification system, and the standards for the development prospects that have been offered for each portion of the site.

- r. A natural hazards review consisting of a list of natural hazards such as periodic flooding, poor soil bearing conditions, and any other hazards peculiar to the site.
- s. A substrata review including a descriptive summary of the various geologic bedrock formations underlying the site, including the identification of known aquifers, the approximate depths of the aquifers and, if being tapped for use, the principal uses to be made of these waters, including irrigation, domestic water supply, and industrial usage.
- t. An erosion review showing how erosion control will be achieved, and illustrating plans or programs that may be required by any existing soil erosion and sedimentation ordinance.
- u. At a minimum, plans for compliance with all of the following standards shall be required for construction and post-construction periods:
 - Surface drainage designs and structures are erosion proof through control of the direction, volume, and velocities of drainage patterns. These patterns shall promote natural vegetation growth that are included in the design in order that drainage waters may be impeded in their flow and percolation encouraged.
 - The design shall include trash collection devices when handling street and parking drainage to contain solid waste and trash.
 - Watercourse designs, control volumes, and velocities of water to prevent bottom and bank erosion. In particular, changes of direction shall guard against undercutting of banks.
 - If vegetation has been removed or has not been able to occur on surface areas such as infill zones, it shall be the duty of the developer to stabilize and control the impacted surface areas to prevent wind erosion and the blowing of surface material through the planting of grasses, and windbreaks and other similar barriers.

8. Driveways. The construction, improvement, and maintenance of a driveway shall be permitted for any dwelling or other permanent building allowed in a critical dune area, including a dwelling or other permanent building approved under this ordinance or a lawful nonconforming use, subject only to applicable permit requirements under Sections 35312 through 35325 of Part 353 of Public Act 451 of 1999, as amended, and the following:

- a. A driveway shall be permitted either to the principal building or, in the sole discretion of the applicant, to an accessory building, under the provisions of this ordinance. Additional driveways, if any, shall meet the applicable requirements for any other use under this ordinance. The development of a plan for a driveway should include consideration of the use of retaining walls, bridges, or similar measures, if feasible, to minimize the impact of the driveway, parking, and turnaround areas, and the consideration of alternative locations on the same lot of record
- b. Driveways on slopes steeper than a 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include:
 - Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the architect or engineer to meet these requirements.
- c. Driveways on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include:

- Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restabilization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgment of the engineer to meet these requirements. The engineer shall certify under seal that the driveway is not likely to increase erosion or decrease stability.
- d. Temporary construction access for all construction, including new construction, renovation, repairs, rebuilding, or replacement, and repair, improvement, or replacement of septic tanks and systems, shall be allowed for any use allowed in a critical dune area for which a driveway is not already installed by the owner, subject only to the requirements that the temporary access shall not involve a contour change or vegetation removal that increases erosion or decreases stability except as can be restabilized upon completion of the construction. The temporary access shall be maintained in stable condition, and restabilization shall be commenced promptly upon completion of the construction.
9. Utilities. A use needed to maintain, repair, or replace existing utility lines, pipelines, or other utility facilities within a critical dune area that were in existence on July 5, 1989, or were constructed in accordance with a permit under this section or under Part 353 of the Natural Resources and Environmental Protection Act, being Act 451 of the Public Acts of 1994, as amended, is exempt for purposes for which the permit was issued from the operation of this section if the maintenance, repair, or replacement is completed in compliance with all of the following:
- a. Vehicles shall not be driven on slopes greater than 1-foot vertical rise in a 3-foot horizontal plane.
 - b. All disturbed areas shall be immediately stabilized and revegetated with native vegetation following completion of work to prevent erosion.
 - c. Any removal of woody vegetation shall be done in a manner to assure that any adverse effect on the dune will be minimized and will not significantly alter the physical characteristics or stability of the dune.
 - d. To accomplish replacement of a utility pole, the new pole shall be placed adjacent to the existing pole, and the existing pole shall be removed by cutting at ground level.
 - e. In the case of repair of underground utility wires, the repair shall be limited to the minimal excavation necessary to replace the wires by plowing, small trench excavation, or directional boring. Replacement of wires on slopes steeper than 1-foot vertical rise in a 4-foot horizontal plane shall be limited to installation by plowing or directional boring only.
 - f. In the cases of repair or replacement of underground pipelines, directional boring shall be utilized, and if excavation is necessary to access and bore the pipeline the excavation area shall be located on slopes 1-foot vertical rise in a 4-foot horizontal plane or less.
10. Accessibility. Notwithstanding any other provision of this section, at the request of the applicant, the construction, improvement and maintenance of accessibility measures shall be permitted for any dwelling or other permanent building allowed in a critical dune area, including a dwelling or other permanent building approved under this section or a lawful nonconforming use, subject only to applicable permit requirements of this section and the following:
- a. Accessibility measures on slopes steeper than 1-foot vertical rise in a 4-foot horizontal plane, but not steeper than a 1-foot vertical rise in a 3-foot horizontal plane, shall be in accordance with a site plan submitted with the permit application and prepared for the site by a registered professional architect or licensed professional engineer. The site plan shall include:

- Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restablization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgement of the architect or engineer to meet these requirements.
- b. Accessibility measures on slopes steeper than a 1-foot vertical rise in a 3-foot horizontal plane shall be in accordance with a site plan submitted with the permit application and prepared for the site by a licensed professional engineer. The site plan shall include:
- Storm water drainage that provides for disposal of storm water without serious erosion,
 - Methods for controlling erosion from wind and water, and
 - Restablization, by design elements including vegetation, cut-and-fill, bridges, traverses, and such other elements as are required in the judgement of the architect or engineer to meet these requirements. The engineer shall certify under seal that the accessibility measures are not likely to increase erosion or decrease stability.

The choice of components for an accessible route under American national standards institute standard 402.2 shall be at the option of the applicant.

11. Prohibited Uses. The following uses are not permitted in a critical dune area:

- a. The disposal of sewage on-site unless the standards of applicable sanitary codes are met or exceeded.
- b. A use that does not comply with the minimum setback requirements required by rules that are promulgated under part 323 of Public Act 451 of 1994.
- c. A surface drilling operation that is utilized for the purpose of exploring for or producing hydrocarbons or natural brine or for the disposal of the waste or by-products of the operation, except those that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the Planning Commission.
- d. Production facilities regulated under parts 615 and 625 of Act 451 of 1994, except those that are lawfully in existence at a site on July 5, 1989 may be continued. The continuance, completion, restoration, reconstruction, extension, or substitution of those existing uses shall be permitted upon reasonable terms prescribed by the Planning Commission.

12. Non-Permitted Uses, Unless a Variance is Granted. Unless a variance is granted, the following uses are not permitted in a critical dune area:

- a. A structure and access to the structure on a slope within a critical dune area that has a slope that measures from a 1-foot vertical rise in a 4-foot horizontal plane to less than a 1-foot vertical rise in a 3-foot horizontal plane, unless the structure and access to the structure are in accordance with a site plan prepared for the site by a registered professional architect or a licensed professional engineer and the site plan provides for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water.
- b. A use on a slope within a critical dune area that has a slope steeper than a 1-foot vertical rise in a 3-foot horizontal plane.
- c. A use involving a contour change if the Zoning Administrator determines that it is more likely than not to increase erosion or decrease stability.

- d. Sylvicultural practices, as described in the "Forest Management Guidelines for Michigan", prepared by the Society of American Foresters as revised in 2010, if the City of Muskegon determines that they are more likely than not to increase erosion or decrease stability.
 - e. A use that involves a vegetation removal if the Zoning Administrator determines that it is more likely than not to increase erosion or decrease stability.
- 13. Site Plan Review. When reviewing a site plan submitted, along with all the application information required, the Zoning Administrator shall:
 - a. Ensure that the requirements of the zoning ordinance have been met and the plan is consistent with existing laws.
 - b. Determine whether the advice or assistance of Muskegon County will be helpful in reviewing a site plan, and if so, to so seek it.
 - c. Recommend alterations of a proposed development to minimize adverse effects anticipated if the development is approved and to ensure compliance with all applicable state and local requirements.
 - d. Determine that the proposed use will ensure and enhance the diversity, quality, function and values of the critical dune in a manner that is compatible with private property rights; allows for compatible economic development and multiple human uses of the critical dune, using the most competent, accurate and reliable information and scientific data available.
- 14. Use Standards. Any lot or parcel which in whole or part which falls within the Dune Overlay Zone and/or within 250 feet outside the Dune Overlay Zone that is determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area shall not be used except upon receipt of a permit from the Zoning Administrator. No zoning permit shall be issued for the use of land within this zone or within 250 feet outside the zone that is determined by the Planning Commission to be essential to the hydrology, ecology, topography, or integrity of a critical dune area until a site plan meeting the requirements of this Section and those of Article XXIII, Section 2330, have been met. If requested, the Planning Commission will make the final determination as to whether or not these standards have been met and shall exercise its lawful discretion in all cases in favor of protection of the critical dune area.
- 15. Prohibition of Construction Without Permit. No grading or clearing of a site shall be done prior to issuance of a zoning permit as required in this Ordinance.
- 16. Special Use Project Review Procedures. A proposed special use project shall be reviewed and a recommendation for approval, approval with conditions, or denial is made by the Planning Commission pursuant to the special use procedures of this ordinance shall be completed.
- 17. Department of Environmental Quality Review. Prior to issuing a permit allowing a special use project within a critical dune area, the Planning Commission shall submit the special use project application and site plan and their proposed decision to the Department of Environmental Quality, Land and Water Management Division following the procedures of this ordinance.
- 18. Nonconforming Uses. The lawful use of land or a structure, as existing and lawful within a critical dune area in the time of the adoption of this overlay zone, may be continued although the use of that land or structure does not conform to the provisions of this overlay zone. The continuance, completion, restoration,

reconstruction, extension or substitution of existing nonconforming uses of land or a structure may continue consistent with the nonconforming use requirements of this Ordinance. See Article XXII, Section 2202.

19. **Rebuilding of Lawful Structures.** A structure or use located in a critical dune area that is destroyed by fire, other than arson for which the owner is found to be responsible, or an act of nature, except for erosion, may be rebuilt or replaced if the structure or use was lawful at the time it was constructed or commenced; and a replacement structure and its use may differ from that which was destroyed if it does not exceed in size or scope that which was destroyed.
20. **Variance.** The Zoning Board of Appeals may grant a variance from the requirements of this overlay zone if an unreasonable hardship will occur to the owner of the property if the variance is not granted. The procedural requirements of Article XXIII (Site Plan Review) and Article XXV (Zoning Board of Appeals) shall be adhered to. A variance shall be subject to the following limitations:
 - a. The Zoning Board of Appeals may issue variances under Article XXV of the zoning ordinance if a practical difficulty will occur to the owner of the property if the variance is not granted. In determining whether a practical difficulty will occur if a variance is not granted, primary consideration shall be given to assuring that human health and safety are protected by the determination and that the determination complies with applicable local zoning, other state laws, and federal law. If a practical difficulty will occur to the owner of the property if the variance is not granted, a variance shall be granted under this Section unless the Zoning Board of Appeals determines that the use will significantly damage the public interest on the privately owned land, or, if the land is publicly owned, the public interest in the publicly owned land, by significant and unreasonable depletion or degradation of any of the following:
 - The diversity of the critical dune areas within the local unit of government.
 - The quality of the critical dune areas within the local unit of government.
 - The functions of the critical dune areas within the local unit of government.
 - b. The decision of the Zoning Board of Appeals shall be in writing and shall be based upon evidence that would meet the standards in Section 75 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.275. A decision denying a variance shall document, and any review upholding the decision shall determine, all of the following:
 - That the City of Muskegon has met the burden of proof under subsections 1A through 1C.
 - That the decision is based upon sufficient facts or data.
 - That the decision is the product of reliable scientific principles and methods.
 - That the decision has applied the principles and methods reliably to the facts.
 - That the facts or data upon which the decision is based are recorded in the file.
 - c. The City of Muskegon shall not require an environmental site assessment or environmental impact statement for a variance except for a special use project.
 - d. A variance shall not be granted from a setback requirement provided for under Section 35034 pursuant to Part 353 of the Public Act 451 of 1994 unless the property for which the variance is requested is one of the following:
 - A nonconforming lot of record that is recorded prior to July 5, 1989, and that becomes nonconforming due to the operation of Part 353.

- A lot legally created after July 5, 1989 that later becomes nonconforming due to natural shoreline erosion.
- Property on which the base of the first landward critical dune of at least 20 feet in height that is not a foredune is located at least 500 feet inland from the first foredune crest or line of vegetation on the property. However, the setback shall be a minimum of 200 feet measured from the foredune crest or line of vegetation.

21. Penalties. In addition to the penalty provisions of this Ordinance, the provisions of Public Act 451 of 1994 shall apply in the event of any violation. Pursuant to the Public Act, a court may impose on a person who violates any provision of this Dune Overlay Zone, or a provision of a permit issued hereunder, a civil fine of not more than \$5,000 for each day of violation, or order a violator to pay the full cost of the full cost of restabilization of a critical dune area or other natural resource that is damaged or destroyed as a result of a violation, or both. If a person is ordered by the Zoning Administrator to restore a critical dune that has been degraded by that person, the Zoning Administrator shall establish a procedure by which the restoration of the critical dune area is monitored to assure that the restoration is completed in a satisfactory manner.

22. Applicable Law. Incorporated by reference herein is Part 353, Michigan Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.

23. Severability. If any section, clause, or provision of this Ordinance be declared unconstitutional or otherwise invalid by a court of competent jurisdiction, said declaration shall not affect the remainder of the Ordinance. The City Commission hereby declares that it would have passed this Ordinance and each part, section, subsection, phrase, sentence and clause irrespective of the fact that any one or more parts, sections, subsections, phrases, sentences or clauses be declared invalid. However, if any provision of the Ordinance is declared invalid, the City must seek written confirmation from the DEQ that the Ordinance still complies with Part 353, Michigan Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended.

This ordinance adopted:

Ayes: _____

Nays: _____

Adoption Date: _____

Effective Date: _____

First Reading: _____

Second Reading: _____

CITY OF MUSKEGON

By: _____

Ann Meisch, MMC, City Clerk

CERTIFICATE

The undersigned, being the duly qualified clerk of the City of Muskegon, Muskegon County, Michigan, does hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the City Commission of the City of Muskegon, at a regular meeting of the City Commission on the 12th day of December, 2017, at which meeting a quorum was present and remained throughout, and that the original of said ordinance is on file in the records of the City of Muskegon. I further certify that the meeting was conducted and public notice was given pursuant to and in full compliance with the Michigan Zoning Enabling Act, Public Acts of Michigan No. 33 of 2006, and that minutes were kept and will be or have been made available as required thereby.

DATED: _____, 2017.

Ann Meisch, MMC
Clerk, City of Muskegon

Publish: Notice of Adoption to be published once within ten (10) days of final adoption.

**CITY OF MUSKEGON
NOTICE OF ADOPTION**

Please take notice that on December 12, 2017, the City Commission of the City of Muskegon adopted an ordinance to amend Section 2310 of the zoning ordinance to adopt a local critical dune ordinance. Copies of the ordinance may be viewed and purchased at reasonable cost at the Office of the City Clerk in the City Hall, 933 Terrace Street, Muskegon, Michigan, during regular business hours.

This ordinance amendment is effective ten days from the date of this publication.

Published _____, 2017.

CITY OF MUSKEGON

By _____
Ann Meisch, MMC
City Clerk

PUBLISH ONCE WITHIN TEN (10) DAYS OF FINAL PASSAGE.

Account No. 101-80400-5354



CRITICAL DUNE AREAS

Muskegon City Limits
Critical Dunes

