

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LONG BEACH,
LAPORTE COUNTY, INDIANA AMENDING PROVISIONS OF TITLE XV, CHAPTER
154.200, ET SEQ. GENERALLY KNOWN AS THE LAKE MICHIGAN SHORELINE
PRESERVATION OVERLAY ZONING DISTRICT**

WHEREAS, on June 10, 2002, the Town Council of the Town of Long Beach, LaPorte County, Indiana (the “Town Council”), adopted a Zoning Code of the Town of Long Beach, LaPorte County, Indiana (the “Town”), which is located at Chapter 154 of the Long Beach Town Code; and

WHEREAS, Chapter 154 of the Long Beach Town Code remains in full force and effect; and

WHEREAS, in accordance with Indiana Code § 36-7-4-600, et. seq., the Advisory Plan Commission of the Town previously initiated an amendment to the Zoning Code to establish regulations concerning the installation of Shoreline Preservation Structures and removal of shoreline vegetation within the Town; and

WHEREAS, in conjunction with the Town’s 2016 Comprehensive Plan Update and in recognition that the economic and environmental well-being of the Town of Long Beach is directly related to the protection of its Lake Michigan shoreline and in recognition that the scenic views of Lake Michigan are one of our communities most valued assets; and

WHEREAS, the shoreline of Lake Michigan in Long Beach is a valuable natural resource that has for generations been enjoyed by the citizens of Long Beach and the State of Indiana as well as providing significant economic value to Northwest Indiana; and

WHEREAS, it is the intent of this Ordinance to add additional provisions to Chapter 154 that will adequately address the necessity for property owners to continue to protect their property while balancing the public interest in the conservation and enhancement of the natural shoreline environment and the adjacent Public Trust Lands; and

WHEREAS, this amending Ordinance has been drafted to protect the public health, safety, and welfare and preserve the natural scenic beauty and environmental health of Lake Michigan and the shoreline; and

WHEREAS, the State of Indiana Supreme Court in Case No. 46S03-1706-PL-423 has affirmed that the State of Indiana owns in its sovereign capacity and holds in trust for the public all lands on the shore of Lake Michigan in the State of Indiana lakeward of the common law Natural Ordinary High Water Mark, whether or not submerged at any given time (“Public Trust

Lands”), and that the State of Indiana has not relinquished its title to such lands, except as to certain parcels not adjacent to properties within the jurisdiction of the Town of Long Beach; and

WHEREAS, the Town of Long Beach seeks not to usurp the power or authority of the State and its various departments or enforcement agencies to protect and regulate the public trust but rather seeks to ensure that its policies and ordinances enable the Town to work in conjunction with the State in matters related to and affecting the shoreline; and

WHEREAS, the Advisory Plan Commission and the Town Council have given reasonable regard to the provisions and considerations set forth in Indiana Code § 36-7-4-603; and

~~**WHEREAS**, the State of Indiana Supreme Court in Case No. 46S03-1706-PL-423 has affirmed that the State of Indiana owns in its sovereign capacity and holds in trust for the public all lands on the shore of Lake Michigan in the State of Indiana lakeward of the common law Natural Ordinary High Water Mark, whether or not submerged at any given time (“Public Trust Lands”), and that the State of Indiana has not relinquished its title to such lands, except as to certain parcels not adjacent to properties within the jurisdiction of the Town of Long Beach; and (MOVED, ABOVE)~~

WHEREAS, a public hearing has been held before the Town of Long Beach Advisory Plan Commission, which has certified this proposal to amend the text of Title XV of the Zoning Code to the Long Beach Town Council; and

WHEREAS, public notice has been given in accordance with Indiana Code of all proceedings concerning this text amendment to Title XV of the Zoning Code; and

WHEREAS, the Long Beach Town Council concurs with its Advisory Plan Commission and has received this proposal regarding amending the text of the Zoning Code; and

NOW, THEREFORE, BE IT AND IT IS HEREBY ORDAINED by the Town Council of Long Beach, Indiana as follows:

1. Chapter 154, Section 154.206.1 shall be added and read as follows:

Section 154.206.1 Stairs onto ~~or over~~ the Public Trust

- (A) The construction of new permanent stairs or the repair or replacement of legally, existing permanent stairs that are above the Natural Ordinary High Water Mark are all strictly prohibited unless all applicable permits have been approved and issued by the Town. Stairs that protrude or encroach onto the public trust shall be subject to all federal, state and local requirements, and no permits subject to the Town’s jurisdiction will be issued unless the property owner provides the Town with written authorization from appropriate

governing bodies or agencies, including, but not limited to, the Indiana Department of Natural Resources and the Army Corps of Engineers.

~~Property owners are prohibited from constructing permanent stairs over existing seawalls if the stairs project onto or otherwise touch the public trust property. However, retractable ladders shall be permissible to the extent otherwise permissible under the law provided that any such ladder does not extend more than three feet (3') from the base of an existing seawall.~~

~~Existing, non-conforming but permitted stairs shall not be repaired or replaced. Any such stairs that are in a state of disrepair or have otherwise exceeded their useful life shall be removed within thirty (30) days of receiving written notice from the Building Inspector's to do so.~~

(B) ~~Notwithstanding the foregoing provisions,~~ Stairs over dunes on properties without seawalls are permissible as these stairs tend to protect the natural dunes that protect lakeshore properties ~~provided these stairs are above the Natural Ordinary High Water Mark and all applicable permits have been approved and issued by the Town. Stairs that protrude or encroach onto the public trust shall be subject to all federal, state and local requirements, and no permits subject to the Town's jurisdiction will be issued unless the property owner provides the Town with written authorization from appropriate governing bodies or agencies, including, but not limited to, the Indiana Department of Natural Resources and the Army Corps of Engineers.~~

~~The intrusion of these stairs onto the public trust should be minimized. All construction of this type of stairs shall be subject to all federal, state, and local requirements, including the Town's topography and other similar, related, and/or applicable ordinance(s)~~

2. Chapter 154.299 shall be amended to add Subparagraph (d) as follows:

(d) In view of the critical role that the natural dunes play in the protection of the Town's Lake Michigan shoreline, any non-permitted alteration of the topography or sand moving beyond what is allowed in this Ordinance will require, at the violating person's or entity's expense, restoration to the pre-violation condition, including restoration of vegetation. Additionally, any person or entity that violates this provision shall incur a Two Hundred Fifty Dollar (\$250) fine. This fine will accumulate daily at that same amount until full restoration, including, but not limited to, replanting of vegetation, is completed as determined and required by the Town and shall be in addition to other applicable fines or penalties for violations of other sections of the Town Code.

The Sections of this Ordinance shall be codified and made part of the Town of Long Beach Code of Ordinances and all sections and subsections may be renumbered or re-lettered as necessary to achieve such purpose.

It is the intent of the Town Council of the Town of Long Beach, LaPorte County, Indiana, and is hereby provided, that if any section, subsection, sentence, clause or phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed to render invalid or unconstitutional the remaining provisions of this Ordinance.

This Ordinance shall become effective upon adoption by the Town Council and publication as required by Indiana Code.

ALL OF WHICH IS PASSED AND ADOPTED by the Town Council of the Town of Long Beach, LaPorte County, Indiana, this _____ day of _____, 2019.

LONG BEACH TOWN COUNCIL

By: _____

Robert LeMay, President

Nicholas Meyer, Vice-President

Peter Byvoets

Joy Schmitt

Jane Neulieb

ATTEST: _____ Date: _____
William DeFuniak, Clerk-Treasurer