

**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, 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,

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

1. The following definitions shall be amended or added, as applicable to Chapter 154, Section 154.201:

“Coastal Engineer” A professional engineer with experience building shore protection structures on the Great Lakes. The Building Commission shall maintain a list of Town-approved Coastal Engineers and shall have full authority to approve or reject the inclusion of any prospective engineer on such list.

“Natural Ordinary High Water Mark (NOHWM)” <insert as the last sentence in this definition the following language> The DNR has determined that the foot of an existing seawall on a property constitutes the NOHWM on the subject property. **NOTE: consider review of the use of NOHWM throughout for consistency.**

2. Chapter 154, Section 154.203 shall be amended and restated as follows:

154.203 Permissible Shoreline Preservation Structures and Specifications

The Town of Long Beach acknowledges that seawalls, revetments, retaining walls, groins, and other such structural methods designed with the intention of forestalling erosion also alter natural shoreline processes that result in a variety of negative effects on coastal resources, including but not limited to effects on sand supply, public access, coastal views, natural landforms, and overall beach dynamics. See Coastal Planning Guide and “Natural and Structural Measures for Shoreline Stabilization,” developed with support and funding by NOAA and the US Army Corps of Engineers.

Only after the property owner and Coastal Engineer (post review and approval by the Town’s Engineer) establish that the proposed Protection Structure is in fact required and is the minimum necessary to reasonably preserve the shoreline and protect the property, complies with the terms of all Long Beach Town Ordinances and is in receipt of all applicable federal, state, county, and Town permit(s) and approval(s), shall a Building Permit for the construction of a Protection Structure be issued.

The following conditions shall apply to the issuance of Building Permits or variances within the Coastal Zone:

1. No Protection Structure or structure of any kind---except Town information signs---is to be located greater than 106.6’ lakeward from the northern boundary of Lake Shore Drive or lakeward of the Natural Ordinary High Water Mark (OHWM), whichever is most restrictive.
2. The installation of a seawall is not permitted as the first line of protection between Lake Michigan and the Principal Use Structure.
3. **On a lot without an existing seawall, a** new seawall may only be installed between a revetment and the Principal Use Structure. A new seawall may not be installed greater than five (5) feet from the lakeward foundation of the primary structure and not greater than eighteen inches (18”) from the side property line. Except where the Contiguous Seawall Ordinance (*See*, Section 154.160) applies, a seawall may not extend into the side setback by more than eighteen inches (18”).
4. A revetment may be installed on a private property for the purpose of protecting the property. Any such revetment shall be installed with the lakeward toe of the structure not to extend greater than 106.6’ from the northern boundary of Lake Shore Drive or lakeward of the Natural Ordinary High Water Mark (OHWM), whichever is most restrictive.

5. The slope of any revetment shall be 1.5:1 or less for dumped stone or rip rap and 1:5:1 or less for hand-placed stone or rip rap. The stone size shall be based on the determination and recommendation of a Coastal Engineer.
6. The crest elevation of a Protection Structure shall not exceed the elevation of the existing grade with no fill. The height of a Protection Structure shall not exceed the lesser of 590' or the current elevation.
7. The revetment may be constructed within the traditional side setback for the purpose of connecting to a neighboring Protection Structure with the permission of the abutting or adjoining neighbor.

3. Chapter 154, Section 204(3), shall be amended and restated as follows:

3. All required pre-/post-construction elevations shall be current (within ~~thirty (30)~~ **sixty (60)** days) and shall be Certified on the site plan by a licensed Indiana Professional Surveyor. Pre-construction grades are to be maintained. However, in the event a storm or other natural event causes damage to the existing topography, a property owner may only restore the damaged topography to the elevation existing prior to such storm or event. Except as otherwise allowed under the Town Code, sand shall not be moved to increase the view from any property nor shall it be removed from any property. Wind-blown sand may be removed from patios and other living areas; however, it may not be moved off the subject property nor moved into Lake Michigan or onto the Public Trust Lands.

~~All applicable~~ **All required** authorizations and permits for access for heavy equipment to properties within the Coastal Zone and to the Public Trust Lands shall be obtained from the Town, the U.S. Army Corps of Engineers, and the Indiana Department of Natural Resources prior to the access or operation any heavy equipment within the Coastal Zone **and/or the Public Trust Lands**, and copies of all such permits or approvals shall be provided to the Town with the application for a Heavy Equipment access permit.

Heavy Equipment access permits must be obtained from the Town regardless of the method of access to the Coastal Zone. Photographs of the proposed construction site shall be submitted to the Building Commission before the access permit is issued. No work other than the work specified in the access permit application shall be performed. Permits are restricted to certain calendar days. Heavy equipment may remain within the Coastal Zone for no more than thirty (30) days. Extensions may only be granted for periods longer than thirty (30) days and in such case will only be effective between Labor Day and Memorial Day.

4. Chapter 154, Sections 205(4) and (8)(A), shall be amended and restated as follows:

4. In the event the Town deems it necessary to hire a Coastal Engineer, Delineation Consultant, and/or Structural Engineer, a deposit of \$7,500.00 shall also be payable to at the time of application and shall be used to pay for the review and approval process performed by such professionals. If the Town's expense is less than the \$7,500.00 deposit, the balance will be refunded. In the event the Town's expenses exceed the deposit amount, the applicant shall be responsible for and pay the amount of any such overage. The applicant shall be responsible for all fees for the applicant's chosen Coastal Engineer, who must be approved by the Building Commission.

8. Additional Requirements:

A. Project plans must be prepared according to USACE Coastal Engineering Manual and certified by a Coastal Engineer approved by the Building Commission.

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 June, 2020.

LONG BEACH TOWN COUNCIL

By:

Robert LeMay, President

Nick Meyer

John Kocher

Mary Lou McFadden

John Wall

ATTEST:

_____ Date: _____
William DeFuniak, Clerk