

**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 certified to provide coastal engineering services and experienced in coastal engineering for projects on the shore of the Great Lakes. The Town of Long Beach shall maintain a list of pre-approved Coastal Engineers.

“Emergency” A situation that: (1) requires immediate action; (2) is induced by weather or high lake levels; AND (3) either: (A) creates the potential for imminent structural damage to private property in an area adjacent to Lake Michigan; or (B) threatens or creates an imminent risk to the public health, welfare, or safety in areas adjacent to Lake Michigan. This determination is to be made by the Long Beach Building Commissioner, and/or the Commissioner’s designee, at each individual property.

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. 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, shall be amended and restated as follows:

154.204 SITE PLAN AND ADDITIONAL STANDARDS FOR DEVELOPMENT ACTIVITIES WITHIN THE COASTAL ZONE

In addition to the usual site plan requirements set forth in Title XV of the Town Code, the following standards will be required in the Coastal Zone:

1. A site plan for Development within the Coastal Zone shall include a survey depicting the current location of the Natural Ordinary High Water Mark (OHWM), as located, delineated, and Certified by a Delineation Consultant approved by the Town. The site plan shall be accompanied by written evidence that the delineation of the Natural Ordinary High Water as depicted in the survey has been reviewed and determined to be an accurate representation by the U.S. Army Corps of Engineers.
2. The site plan must comply with the Town's Flood Hazard Areas Ordinance(s) as set forth in Title IV, Chapter 155 of the Town Code.
3. All required pre-/post-construction elevations shall be current (within thirty (30) 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 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 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, Section 206, shall be amended and restated as follows:

154.206 SPECIAL EXCEPTION FOR EXISTING NONCONFORMING USES OR STRUCTURES

Upon application by a prospective permittee, an exception to certain provisions of the Shoreline Protection Zoning Overlay District Ordinance may be granted by the Building Commission for the repair or replacement of legally existing Protection Structures if the Building Commission finds adequate evidence that the proposed Protection Structure will be: a) designed, constructed, and maintained so as to be as protective of the shoreline as the provisions of that provision of that Ordinance, b) will not be located lakeward of the existing structure; and c) will not be located lakeward the Natural Ordinary High Water Mark (OHWM) as demonstrated in the permit application by a delineation of the physical characteristics stated in the definition of “Natural Ordinary High Water Mark (OHWM)” in Section 154.201 and “Ordinary High Water Mark” in IC § 14-26-2.1(2) by a qualified Delineation Consultant.

Upon application by a prospective permittee, an exception may be granted by the Building Commission from the requirement that the installation of a seawall be located no greater than five (5) feet from an existing foundation of a property owner’s Primary Use Structure if the Building Commission finds adequate evidence that the proposed Protection Structure will be: a) designed, constructed, and maintained so as to be as protective of the shoreline as that requirement, and b) the foundation is determined to be more than 106.6’ lakeward from the northern boundary of Lake Shore Drive and c) the all other requirements set forth in this

Ordinance as well as the provisions of Title XV, Chapter 154, Section 154.125, *et. seq.* of the Town Code are met.

5. Chapter 154, Section 207, shall be replaced with the following new Section addressing Emergency Repairs:

154.207 EMERGENCY REPAIRS

(A) As of July 1, 2020, the Town Clerk shall accept Emergency Permit Applications pursuant to Indiana Code § 36-1-29(10) for the repair of an existing seawall or revetment or the construction of a new seawall or revetment on property owned by the permit applicant only if such application is:

- (1) Clearly marked on the cover page as an “EMERGENCY PERMIT APPLICATION”,
- (2) Submitted in both (i) electronic form via email to the Town Clerk and (ii) hardcopy to the Clerk in person during business hours; and
- (3) Accompanied by payment of the required permit application fee (See, Section 154.205).

(B) Upon receipt of a clearly marked Emergency Permit Application submitted as required by Subsection (A) above, the Town Clerk shall promptly:

- (1) Notify Town residents and homeowners on the Town’s email list-serve list of the receipt of an Emergency Permit Application using the email list-serve system;
- (2) Post the Emergency Permit Application and all materials submitted with it on the Town’s website; and
- (3) Forward the Emergency Permit Application and all materials submitted with it to the Building Commissioner (or his designee) and all other members of the Building Commission.

(C) Upon receipt of an Emergency Permit Application from the Town Clerk, the Building Commissioner (or his designee) shall promptly make initial determinations of the following and forward such determinations to the Building Commission:

- (1) Whether the application includes Certified information and evidence demonstrating that an “emergency” situation exists pursuant to the factors stated in the definition of “emergency” in Section 154.201; and
- (2) Whether the permit application is complete, i.e., contains Certified information and evidence addressing compliance with each applicable provision of this Ordinance and each other applicable Town ordinance, including, but not limited to:

- (a) A delineation of the location of the Natural Ordinary High Water Mark (OHWM), as defined by the characteristics stated in Section 154.201 and IC § 14-26-2.1(2), by a Delineation Consultant with the qualifications stated in Section 154.201 and utilizing the techniques and guidance stated therein; and
- (b) A Certified and to scale plat or scaled drawing of the property and proposed seawall or revetment repair or construction which depicts the location of the delineated Natural Ordinary High Water Mark (OHWM) and (i) in the case of a new seawall or new revetment, shows that the proposed seawall will be located landward of the Natural Ordinary High Water Mark (OHWM), or (ii) in the case of an existing seawall or revetment, shows that the seawall repair, revetment repair or construction is (A) landward of the Natural Ordinary High Water Mark (OHWM), and located entirely on the applicant's private property as required by IC§ 14-26-2.1(10), and (B) if the existing seawall is in the waters of Lake Michigan, landward of, and as close to, the existing seawall or revetment as reasonably possible as required by IC § 14-26-2.1(11).

(D) If the Building Commissioner determines that an application demonstrates an emergency and the application is complete pursuant to Subsection (A) above, the Building Commission shall, within 10 Business Days, hold a Building Commission Meeting and make a final determination to approve or deny the Emergency Permit Application based on each and all of the following:

- (1) Whether the Building Commission concurs or does not concur in the Building Commissioner's (or his designee's) initial determination of the existence of an "emergency" and of the completeness of the permit application;
- (2) In the case of the proposed construction of a new or replacement seawall or revetment, whether the property on which the proposed new seawall or revetment is to be located is landward of the Natural Ordinary High Water Mark (OHWM) and located entirely on the applicant's private property; or
- (3) In the case of the repair of an existing seawall or revetment, whether the property on which the proposed repaired seawall or revetment is to be located is (a) landward of the Natural Ordinary High Water Mark (OHWM) and located entirely on the applicant's private property as required by IC § 14-26-2.1(10), and (b) if the existing seawall is in the waters of Lake Michigan, is landward of, and as close to, the existing seawall or revetment as reasonably possible as required by IC 14-26-2.1(11); and
- (4) Whether the application contains certified information and evidence adequate to demonstrate that the proposed repaired or new seawall or revetment will comply with all applicable provisions of the Shoreline Protection Zoning Overlay District ordinances and all other Town ordinances.

(E) Unless the Building Commission finds adequate evidence to concur in determinations of the Building Commissioner and also finds that: (1) the proposed seawall or revetment will be located entirely landward of the Natural Ordinary High Water Mark (OHWM) and on the permit applicant's private property, and (2) that the Emergency Permit Application contains Certified information and evidence demonstrating compliance with each applicable provision of this Ordinance and each other applicable Town ordinance, the Building Commission shall, within the 10 Business Days set forth in Subection (D) above, deny the Emergency Permit Application.

(F) Pursuant to IC § 36-1-29(15), the permit applicant may submit not more than one (1) completed reapplication for an emergency repair or construction of a seawall or revetment that lists reasons why the Building Commission should approve its application. The provisions of Subsections (A) through (E) above shall govern the review of such reapplication.

(G) If the Building Commission overrules the Building Commissioner and determines that the situation is not an emergency, the permit application will be treated as nonemergency application.

6. Given that the former Chapter 154, Section 154.207, was replaced with the preceding provision, Chapter 154, Section 254.208 shall be added and read as follows:

154.208 MISCELLANEOUS PROVISIONS

(a) This Ordinance and the below listed Chapters of the Long Beach Town Code are interrelated and should be understood before preparing any plan submissions:

- Ch. 34.30 Enforcement of Town Ordinances on Properties in the Coastal Zone
- Ch. 154.020 Definitions
- Ch. 154.048 Maximum Building Height
- Ch. 154.060 Waterfront Setback And View Protection
- Ch. 154.111 Sand mining and mineral extraction prohibited
- Ch. 154.112 Permit required for earth changes and to alter topography
- Ch. 154.125, *et. seq.* Nonconforming Uses and Structures
- Ch. 154 Appendix A, Zoning District Regulations (Note: In the R-1 Zoning District, the 20' rear setback shall not apply to Protection Structures that otherwise fully comply with the terms of this Ordinance)
- Ch. 155 Flood Hazard Areas

(b) All costs associated with the retention of and services to be provided by the Town’s engineer and the applicant’s engineer(s), including, but not limited to, coastal, geotechnical, and structural engineers and Delineation Consultants, shall be borne solely by the applicant.

(c) The Town will maintain and provide a list of Coastal Engineers and Delineation Consultants which shall be reviewed and updated from time to time and shall serve as the exclusive list of acceptable engineers to provide services under this Ordinance. It is available in the Office of 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