

**ORDINANCE 2017-XXX**

**Lake Michigan Coastal Overlay Zoning District**

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

**WHEREAS, the Long Beach Advisory Plan Commission has initiated an amendment to the text portion of the Zoning Code in order to address sections concerning view protection standard (2017-05 passed 6/17/2017); and**

**WHEREAS, a public hearing has been held before the Town of Long Beach Advisory Plan Commission, which has certified its proposal to amend the text of the Zoning Code to the Long Beach Town Council ( a copy of this certification is attached hereto and marked as exhibit A); and**

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

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

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

**Chapter 154.200 is hereby added to the Town of Long Beach's zoning code which chapter shall read as follows:**

**Lake Michigan Coastal District Overlay Zone**

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## Lake Michigan Coastal District Overlay Zone

### 154.200 Purpose and Intent of the Lake Michigan Coastal District Overlay Zone

The Town of Long Beach is committed to protecting life and property, reducing costs to the public, and minimizing damage to the natural resources of the coastal zone that might result from inappropriate development of environmentally sensitive areas. The purpose of the [Lake Michigan Coastal Overlay District Ordinance](#) is based on the 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 areas. These areas have traditionally been enjoyed by visitors and property owners alike.
- The Lake Michigan shoreline has unique physical, biological, economic and cultural attributes.
- Future land development and redevelopment should not be conducted at the expense of these attributes.
- Pollution, impairment and/or destruction of the shoreline areas should be minimized.

It is widely recognized that armored shore protection can have deleterious effects on beaches especially in areas like Long Beach which has a limited supply of natural beach replenishment and decisions regarding shoreline development are best made by local communities with input from certified coastal engineers.

It is the purpose of the Lake Michigan Coastal District (the "District") to promote and protect the public health, safety, comfort, convenience and general welfare by providing for consistent and coordinated treatment of the properties in the designated Lake Michigan Coastal District Overlay Zone in Michigan Township, LaPorte County Indiana. The Advisory Plan Commission and Town Council, in establishing this overlay zone, are relying on IC 36-7-4-600 et seq and IC 36-7-4-1400 et seq. The Overlay Zone establishes regulations in addition to the zoning. In the case of conflicts between the Overlay Zone District Ordinance and the Zoning Code, the provisions of this ordinance will prevail. The Lake Michigan Coastal District is an important residential area to the Town of Long Beach and Michigan Township. In order to protect this important area, this Overlay Zone has been developed to provide for consistent and coordinated treatment of the properties in the District by establishing standards for structures, landscaping, and other improvements.

The provisions of this Beach Protection Ordinance are established with the following intent:

- To protect the integrity of the coastal area that is a distinctive feature of the community and the region.
- To ensure that development is consistent with the natural limitations of the coastal ecosystem.
- To ensure that public access, areas of cultural significance to the region, wildlife, natural habitat, and other resources are not negatively impacted by inappropriate development of the area.
- To conserve, protect develop, or restore natural resources and ecosystems of the beach and dunes.
- To recognize the potential for coastal hazards to affect life and property.
- To protect the stability of the Lake Michigan shoreline and thereby reduce the risk of coastal erosion.

- To protect property values in the Town of Long Beach.

These goals are supported in the 2016 update of the Comprehensive Plan of the Town of Long Beach, IN. They are also supported by the Coastal Hazards Planning Guide for Indiana Coastal Communities (July 2016). Section IV of that guide served as a template for the development of this ordinance. They are further supported in the 2015 publication by the National Oceanic and Atmospheric Administration entitled “Guidance for Consideration of Living Shorelines”.

#### **154.201 Lake Michigan Coastal District Boundaries**

All lands lying north of the northern end of the dedicated right of way known as Lake Shore Drive. This boundary extends across the R1 and R2 zoning districts. ( see appendix A)

#### **154.202 Definitions**

**“Accessory Structure ”** means a detached structure that that is clearly incidental to, and customarily found in connection with, the principal structure or use to which it is related, and is located on the same zoning lot as the principal structure or use. Including but not limited to patios, gazebos, garages, workshops, sheds, and carports.

**“Coastal Slope”** refers to the first major slope or biggest drop north of Lake Shore Drive

**“Development”** means any manmade change to improved or unimproved real estate, including but not limited to the construction of buildings, structures, or accessory structures; the construction of additions or substantial alterations of buildings, structures or accessory structures; the placement of mobile homes; ditching, dredging, filling, grading, paving, excavation, or drilling operations, and the deposition or extraction of earthen materials .

**“Hard Structure”** includes hybrid of riprap and natural methods, riprap, 45 degree slanted seawall with toe stones at the base, and vertical structures such as revetments or seawalls and groins.

**“Living Shoreline”** is a broad term that encompasses a range of shoreline stabilization techniques along coasts. It has a footprint that is made up of mostly native material. It incorporates vegetation or other living, natural “soft” elements alone or in combination with some type of harder shoreline structure such as rock sills for added stability. Living shorelines maintain continuity of the natural land-water interface and reduce erosion while providing habitual value and enhancing coastal resilience.

**“Loma Letter”** is a letter of map amendment obtained from FEMA verifying an amendment to FEMA’s flood plain map.

**Principal Use or Structure”** means any primary living quarters, main commercial buildings, and any functional appurtenances to those structures such as septic systems and infrastructure. Not included area: roads, utilities, and accessory structures.

**“Lake Shore Drive”** shall mean the dedicated public way which is the entire width between the dedicated street boundary. Lake Shore Drive dedicated street is 50 feet [wide](#). The measurement of 106.6 feet shall be taken from the zoning lot line abutting the public right of way known as Lake Shore Drive.

**“Protective Structure”** includes any and all structures designed to protect properties adjacent to the shoreline.

#### **154.203 Applicability**

This ordinance shall apply to the Lake Michigan Coastal Overlay Zone, that is all lands lying north of the northern edge of the dedicated right of way of the street known as Lake Shore Drive in Long Beach, IN. This boundary extends across R-1 and R-2 zoning districts. All development within this overlay district shall be subject to the requirements of this ordinance. Any alteration or new construction within the Lake Michigan Coastal District that requires a building permit must be reviewed for conformity with these guidelines. Redevelopment or reconstruction of a property where the existing building has been demolished will be considered reconstruction, regardless of the classification of the building previously existing on that site.

#### **157.204 Uses Not Allowed**

A. No Principal Structure or Accessory Structure shall be built lakeward at a distance greater than 106.6 feet from the lot line abutting the public right of way known as Lake Shore Drive. This distance is consistent with the existing View Protection Ordinance (154.060 B 6/17/2017). The permit application for any construction in the Coastal Protection Zone must include a survey including the northerly (lakeward) property line clearly showing the property line and the 106.6' setback line. All structures shall abide by the rules and regulations of FEMA.

#### **B. Exceptions**

1. Public Service Signs as permitted by the Long Beach Town Council.

#### **154.205 Encroachment**

A. A construction permit for any construction shall be obtained from the Indiana Dept of Natural Resources.

B. No permit shall be granted if the encroachment adversely affects the public's use or access to the beach.

C. Existing encroachments shall not be enlarged, extended or added to.

#### **154.206 LOMA Letter Requirement**

Before any construction permits for construction in the floodplain or flood fringe zone can be issued, LOMA letters from FEMA must be obtained and be included with the permit to the Long Beach Building Commission.

#### **154.207 Shoreline Protection Structures**

The Town of Long Beach and the Indiana Department of Natural Resources in their “Coastal Planning Guidance for Indiana Coastal Communities” July 2016 acknowledges that seawalls, revetments, retaining walls, groins and other such structural or “hard” methods designed with the intention of forestalling erosion also alter natural shoreline processes 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. This concept is further supported in a document developed with support and funding

by NOAA and the US Army Corps of Engineers entitled "Natural and Structural Measures for Shoreline Stabilization".

Therefore the preferable shoreline protection methods from highest to lowest are:

1. Proper maintenance of existing vegetation (preferably native plants)
2. Planting or restoration of riparian vegetation
3. Edging which is a combination of natural and hard methods involving erosion control blankets, geotextile tubes or rock gabion baskets to hold the toe of existing vegetated slope in place. If the slope is not vegetated prior to construction, riparian vegetation should be planted along with the construction.
4. Sills which consist of stones or rock gabion baskets parallel to existing vegetated shoreline
5. Revetment
6. Bulkhead
7. Seawall

These shoreline protective methods are described in greater detail in the publication produced by NOAA and the Army Corps of Engineers entitled "Natural and Structural Measures for Shoreline Stabilization". ( see appendix B)

Protective structures may be developed on private property within 106.6' of the lot line abutting the public right of way street known as Lake Shore Drive ( 154.060 B) upon receipt of a Building Permit from the Long Beach Building Commission.

The standard for construction of shoreline protective structures in the Lake Michigan Coastal Protection Zone shall be levels 1-4 above. However recognizing that many portions of the Zone already have hard protection and that hard protection may not be adequate to protect those and adjoining properties and that every property within the Coastal protection Zone has unique properties:

The following requirements apply to construction or modification proposals for the above shoreline protection methods 5-7 above:

- The applicant must first establish that there is no feasible and prudent non-structural alternative to the construction of the proposed shoreline structure, including the inability to relocate any structure threatened because of coastal erosion on the applicant's zoning lot of record.
- The proposed structure is the minimum necessary to provide for the level of protection that is necessary to achieve the purpose and intent of this ordinance and is placed as far landward as is practical. This needs to be confirmed by a certified coastal engineer in letter form( see below).
- Adverse impact on adjacent private and public property and/or public beach stops access is minimized. The proposed structure must 1) Not be likely to cause a measureable increase in erosion,including lakebed erosion at the development site or at other locations along the coast. 2) Minimize and, if possible prevent adverse effects upon natural protective features, existing erosion protection structures and natural resources, such as significant wildlife habitats. This includes the impact of the structure on the movement of sand along the shore (littoral flow).

- All erosion protection structures (5-7 above) must be designed and constructed according to generally accepted engineering principles. The design and construction shall be certified by a professional engineer (chosen by the Building Commission) as having a reasonable probability of controlling the erosion on the immediate site for at least 30 years. The cost of this opinion is to be born by the applicant. A letter from the coastal engineer confirming that the structure is the minimum necessary and that the design of the structure is sound must accompany the permit application. A long term maintenance plan with specifications regarding how to maintain the integrity of the structure, shoreline and neighboring property must be included with the permit application. This responsibility is to be recorded on the deed and is transferable into perpetuity with the sale of the property.
- All necessary permits have been received from the DNR, US Army Corps of Engineers, and FEMA (LOMA letter).
- In the event that the Building Commission denies the permit application, the applicant has the right to appeal to the Long Beach Board of Zoning Appeals.
- The BZA will decide whether or not to recommend that the Building Commission grant the variance from the standard (1-4 above).
- The opinion letter from the above mentioned coastal engineer shall be included with the appeal application.
- The plan must also be approved by the Long BeachTown Engineer the cost of which is to be born by the applicant.

Given the reality that many coastal properties in Long Beach already have “hard” protection, and that continuous seawalls are less prone to erosion than discontinuous or crenellated ones, a property owner **building a seawall** with an adjacent seawall extending to the property line can connect to the neighboring seawall (with the neighbor’s permission). A legal document documenting this permission must be included in the permit application. **Note however the connection must be approved by the above mentioned coastal engineer to ensure that the entire seawall is constructed utilizing best practices to maximize beach protection. Under no circumstances is the height of this connection to exceed the height of the higher of the two connecting seawalls. A recommendation as to the height of this connection is to be addressed by the coastal engineer’s letter to the Building Commission.** **This connection to the the neighboring seawall must be a straight line extending from the 6’ setback line to the end of the neighboring seawall.**

If a proposed seawall does not connect to an adjoining seawall, it must have a straight tie back wall connected to a toe stone at the base of the Coastal Slope.

- This wall must abide by the 6’ setback ( Chapter 154 Appendix A Town Schedule of Zoning District Regulations) on the lakeward corner however it may extend **by a straight line** to the property line **at the base of the coastal slope** with the permission of the owner of the adjoining property on that side. If the property adjoins town property, the Town Council must first grant it’s approval. Then the applicant must apply for variance from the BZA. **This incursion into the 6’ side setback must also be approved by the above**

referenced coastal engineer to ensure that it's construction also utilizes best practices to minimize beach erosion. It can be no higher than the rest of the seawall.

Under no circumstances are stairs to be constructed from above the natural high water mark to the public trust property (below the natural high water mark). Where the topography permits, a beach access pathway following the natural contours of the existing dune can be constructed. It must end at the natural high water mark and can be no wider than 4'.

#### **154.208 Vegetative Buffer Strips within the Coastal Zone**

Vegetative buffers protect water quality and shoreline habitat, preserve scenic and aesthetic character, and control coastal erosion and flooding. To preserve the fragile ecosystem, vegetative standards will apply to the Lake Michigan Coastal Overlay Zone.

The following standards apply to the Lake Michigan Coastal Overlay Zone beyond 106.6 feet from the northerly edge of Lakeshore Drive. .

- Vegetation removal will be limited to the amount necessary for Development of the site.
- Protection of tree crowns and root zones shall be required for all trees planned for retention.
- Removal of trees and ground cover shall require review and approval by the by the Building Commission to ensure that impacts on the coastal ecosystem are minimized. To stabilize the soil with root structures, stumps of trees cleared or harvested must remain undisturbed in the ground.
- Vegetation shall be restored in areas affected by construction activities.
- Pictures documenting that vegetation need to be supplied to the Building Commission before construction begins.
- New plantings must be native to the Lake Michigan Shoreline.
- Post construction, only minimal alteration of vegetation using selective pruning or thinning techniques necessary to obtaining a filtered view of the water shall be acceptable.
- Tree removal shall be limited to fallen ,dead or dangerous trees and again stumps shall be left in place.
- In cases where there is no previously existing vegetative buffer zone, the landowner is encouraged to plant a buffer zone with native vegetation.

#### **154.209 Site Plan Standards within the Lake Michigan Coastal Overlay Zone**

In addition to the usual site plan requirements of the Town of Long Beach (151.03), the following standards will be required in the Lake Michigan Coastal Overlay Zone

- The Long Beach topographic ordinance (154.112) shall be followed and all permits for access for heavy equipment to the Lake Michigan Coastal Overlay shall be obtained. Sand shall not be moved to increase the view from residences. It shall be allowed with a permit from the DNR to facilitate drainage from weep holes in seawalls but no more than necessary to allow that process.
- Pre-construction grades are to be maintained.
- Heavy Equipment access permits must be obtained no matter the method of access to the Lake Michigan Coastal Overlay Zone.
- Pictures of the site need to be submitted to the building commissioner before the access permit is issued.

- Fine for unauthorized alteration of topography will be \$500.00 dollars / day starting on the day after notification of the property owner. They will end when the building commissioner or inspector inspects the property and declares the violation rectified.
- The heavy equipment may remain within the shore protection zone for no more than 30 days. Under no circumstances is heavy equipment to be parked below the natural ordinary high water mark from Memorial Day to Labor Day as it creates a potential hazard to children at the beach.
- No other work other than the work for which the access permit was obtained can be done by that equipment.
- Violation of any of the rules in [these](#) bullet points shall result in revocation of the access permit and the heavy equipment shall be removed from the Coastal Overlay Zone immediately. Failure to do so shall result in a fine of \$500.00 / day.
- Site plans shall include location and descriptions of all shoreline types and natural coastal resources, including but not limited to soil type, dune crests, ordinary high water mark, tree line.

**154.201 Penalties For Non-Compliance.**

Any person violating any of the provisions of Chapter 157 where not otherwise specified shall be fined:

(A) Not less than One-hundred dollars (\$100) and not more than Two thousand-five hundred dollars (\$2,500) for the first violation of the ordinance and

(B) Not less than five hundred dollars (\$500) and not more than Seven thousand five hundred dollars (\$7500) for the second violation of the ordinance and each subsequent violation.

(C.) Each day that any violation continues shall be a separate offense punishable as described herein.

ALL OF WHICH IS PASSED AND ADOPTED by the Town Council of the Town of Long Beach, LaPorte County, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

**LONG BEACH TOWN COUNCIL**

By:

\_\_\_\_\_  
Peter Byvoets, President

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Robert Lemay

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Joy Schmitt

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Jane Neulieb

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Nick Meyer

ATTEST:

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William deFuniak : Clerk-Treasurer