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ORDINANCE 1993-8

AN ORDINANCE TO REGULATE, PRESERVE AND PROTECT THE BEACHES AND DUNES WITHIN THE BOROUGH OF BAY HEAD, OCEAN COUNTY, NEW JERSEY, AND TO PROVIDE PENALTIES FOR VIOLATIONS OF THE ORDINANCE.

BE IT ORDAINED, by the Borough Council of the Borough of Bay Head, in the County of Ocean and State of New Jersey, as follows:

Article I. Findings, Declarations and Purpose.

1-1. Although there may be no long term defense for fixed oceanfront structures against a constantly rising ocean level, effective protection of the oceanfront and adjacent coastal areas in the intermediate term against high tides and flooding and against damage by the ocean under storm conditions requires sufficient elevation and breadth in the beach and dune areas to dissipate the force of the waves. The dunes should provide a continuous barrier and a source of sand to mitigate the effect of storm waves for the benefit of interior lands as well as oceanfront premises and the recreational beach area. Beach erosion will be less damaging if the dune area is protected by sand fencing and the planting of dune grass. Accordingly, the Borough has a vital interest in the continued maintenance and protection of the beach and dune areas and in the right to cause their restoration in the event of damage or destruction.

1-2. Dune areas are vulnerable to erosion by wind, water, the absence of husbandry by those responsible for their maintenance and preservation, and by indiscriminate trespass, construction or other acts which might destroy or damage them.

A proven and available means of protecting dune areas against erosion is by preventing indiscriminate trespassing, construction or other acts which might destroy or damage them, and through the aggressive use of indigenous plantings supplemented, when necessary, by sand fencing and other protective devices, or combinations thereof, designed to prevent the erosion of dune areas and to promote the root accumulations, normal contours and other features found in natural dune systems.

1-3. The beach area and dune area are dynamic and are not capable of rigid definition or delineation, or of completely firm stabilization. They can and do migrate, so that particular sites, at one time free of dunes may, as the result of natural or other forces, become a part of the dune area declared to be in the interest of the Borough to protect. Persons owning, using or purchasing such property do so subject to the public interest therein.

1-4. It is the purpose of this ordinance to define the areas so affected and to establish regulations to assure their continued effectiveness and provide storm and flood protection.

1-5. This ordinance does not attempt to define and regulate all parameters of dune delineation, function or management and the Borough Council declares its intent to review and update this ordinance periodically to reflect appropriately new and beneficial knowledge relating to the objectives of this ordinance.

1-6. This ordinance is declared to be an exercise of the police power in the interest of safety and welfare for the protection of persons and property.

Article II. Definitions.

For the purpose of this ordinance, the following words shall have the

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meaning given herein.

2-1. **Beach Area** is that area between the mean high water line of the Atlantic Ocean, in the reference to the 1929 Sea Level Datum as established by the United States Coast and Geodetic Survey, and the Seaward Edge of the Dune as hereinafter defined.

2-2. **Crest Gap** is the vertical distance between the bottom of any path to the beach and a line connecting the highest points of the dune crest within 20 feet to either side of the midpoint of the path.

2-3. **Dune** is a wind or wave deposited or man-made formation of vegetated or drifting wind blown sand, that lies generally parallel to, and landward of the beach, and between the upland limit of the beach and the foot of the most inland dune slope. "Dune" includes the foredune, secondary and tertiary dune ridges, as well as man-made dunes, where they exist. Formations of sand immediately adjacent to beaches that are stabilized by retaining structures, and/or sand fences, planted vegetation, and other measures are considered to be dunes regardless of the degree of modification of the dune by wind or wave action or disturbance by development.

2-4. **Dune Consultant** shall mean an expert on dunes and their care recommended by the Environmental Commission and approved by the Mayor and Council of the Borough of Bay Head. The Dune Consultant shall be retained on a consulting basis and will not be a full-time employee.

2-5. **Dune Inspector** shall mean that person recommended by the Environmental Commission and approved by the Mayor and Council of the Borough of Bay Head.

2-6. **Landward Edge of the Dune** is the foot of the most inland dune slope. For the purpose of this ordinance and for establishing controls in the Land Use Ordinance, the Landward Edge of the Dune shall be 20 feet from the center of the rock revetment. For those portions of the beachfront which do not have a rock revetment, namely north of Karge Street and at the south end of the Borough, the Landward Edge of the Dune shall be the following distances from East Avenue:

North of Karge Street to Borough Line	125 feet
South of Egbert Street to Borough Line	120 feet

2-7. **Natural Vegetation** shall include the terms "native vegetation" or "indigenous vegetation." Specifically, it shall include such plants as beachgrass (*Ammophila breviligulata*), dust miller (*Artemisia stelleriana*), sea rocket (*Cakile edentula*), seaside goldenrod (*Solidago sempervirens*), bayberry (*Myrica pensylvanica*), beach pea (*Lathyrus japonicus*), beach salt spray rose (*Rosa rugosa*), shore juniper (*Juniperus conferta*) and seaside spurge (*Euphorbia polygonifolia*), which normally grow or may be planted on the slopes of dunes or behind them, no distinction being made as to how such plants are introduced into their location.

2-8. **Sand Fence** shall include the term "snow fence" of a barricade type established in a line or a pattern to accumulate sand and aid in the formation of a dune, such as:

a. Picket type consisting of light wooden fence held together by wire, which may be supported by posts.

b. Such other material as may be designed and approved by the Dune Inspector or Dune Consultant.

2-9. **Seaward Edge of the Dune** is the intersection line of the foreslope of the dune and the gradient of the Beach Area, or the vegetation line, or the upper drift line, whichever is the more easterly.

2-10. **Setback Line** is that line within any lot parallel to the Landward Edge of the Dune and located westwardly therefrom by the setback distance established under Chapter

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18 (Land Use Ordinance); provided however, any existing structure that is partially damaged may be restored or repaired in its existing location. If the partially damaged area proposed for restoration or repair is located between the Landward Edge of the Dune and the Setback Line, the matter shall be handled by the Construction Official under normal permitting procedures. If the partially damaged area proposed for restoration or repair is located east of the Landward Edge of the Dune as defined herein, the matter shall be referred to the Planning Board for review and approval prior to the issuance of a permit. The purpose of the Planning Board review shall be to determine whether alternatives exist to the restoration or repair of that portion of the structure which lies east of the Landward Edge of the Dune in order to protect the integrity of the Dune.

2-11. **Upper Driftline** is that line produced by the winter spring tides (highest tides of the year) which contains oceanic debris (flotsam such as seaweed, etc.) and the seeds, rhizomes, or detached plants which can germinate and/or grow to produce a zone of new dune vegetation.

2-12. **Walkway** is a constructed means of crossing the Dune Area.

2-13. **Walkover** is an elevated boardwalk over the dunes (Specifications for an approved boardwalk are available from the Municipal Clerk at Borough Hall).

2-14. **Pathway** is a natural passage over the dunes.

#### Article III. Beach and Dune Areas: Regulations.

3-1. Construction east of the Setback Line is prohibited, except as provided in subsection 3-7, and except as specifically allowed herein or by the present Land Use regulations of the Borough and in accordance with the present Flood Plain regulations of the Borough.

3-2. No person shall be in the Dune Area unless:

- a. upon an approved pathway, walkway or dune platform; or
- b. in the performance of such activities as may be reasonably and necessarily required to construct or maintain the dune or allowed structures with the permission of the owner.

3-3. The removal, cutting, burning, or destruction of Natural Vegetation, Sand Fence or such other types of dune protection devices as may be approved by the Borough Council in the Dune Area is prohibited, except as necessary for construction authorized pursuant to subsections 3-1 and 3-7.

3-4. The removal of sand from the Beach or Dune Area is prohibited.

3-5. Sand which is transported upon lands by action of winds, tides, storms or any combination thereof shall not be removed from the lot upon which it is deposited by such action. To the extent practicable, considering the utilization of the premises, such sand as may be relocated by the owner upon the lot shall be moved eastwardly. Sand deposited upon any improved street ends shall be restored into the Beach and Dune Area.

3-6. One of the purposes of this ordinance is to achieve the maintenance of sand dunes at the highest practical height. To this end, no dune shall be directly or indirectly lowered or reduced in height by the action or inaction of any owner or his agent. If any dune, through natural causes, shall be or become lower than the elevation deemed materially significant by the Dune Consultant, applying recognized criteria, with due regard to the intent of this ordinance and reasonable use of the premises, the owner thereof, shall be obliged to install Sand Fence and plantings. The owner shall have an obligation to maintain and replace, if necessary, these fences and plantings but shall not be obligated to take any other affirmative action, except as may be specified elsewhere in this ordinance. If the dune is lowered or caused to be lowered by the



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direct or indirect action of any owner, then the dune shall, upon due notice to the owner, be restored as soon as reasonably possible to its pre-existing elevation by the owner or at his expense. The restored dune shall be planted and sand fenced in accordance with specifications promulgated under this ordinance.

3-7. One pathway or walkway across the Dune Area is permitted for each residence. It shall run, generally, the shortest practical course between the residence and the Seaward Edge of the Dune, and shall not exceed four feet in width. At street ends, wider walkways may be delineated by the Dune Inspector or Consultant. In the event that any pathway or walkway shall be or become, in the opinion of the Dune Inspector or Consultant, a substantial detriment to the development and maintenance of the continuous protective dune sought to be achieved by this ordinance, the owner of the premises shall be subject to the provisions of subsection 3-13.

A walkway is exempt from any provisions requiring a construction permit provided that it: does not extend westward of the Landward Edge of the Dune or to the eastward of the Seaward Edge of the Dune; is at least four inches above the highest point of the Dune over which it passes; is not wider than four feet; provides at least 16% of the walkway surface as gap space between the walkway surface boards in order to permit dune grass to grow underneath; has a walkway surface including lateral supporting members with a vertical cross-section of not more than five inches.

The construction of elevated walkways over the crest of the dune is encouraged to preserve the Dune Area. Where the Crest Gap is more than two feet, the Dune Inspector shall serve written notice, certified mail return receipt requested, upon the record owner westward of the dune at his last known address, requiring that an elevated walkway be constructed and, if such walkway is not in place within a period of six months from the date of such notice, the Borough may construct an elevated walkway at the expense of the owner. In such case, the cost of construction shall become a lien on the real property situate immediately westward of the Dune.

3-8. Where an elevated walkway is constructed and sand has accreted to a point where the walkway is on the surface of the sand at the dune crest and is below the adjacent crest, the natural accretion of the dune is impeded, unless the dune height exceeds the height established in Subsection 3-9. In such case, the Dune Inspector shall serve written notice, certified mail return receipt requested, upon the record owner westward of the dune at his last known address, directing that the walkway be raised in compliance with the standards of this ordinance and, if the walkway is not raised within a period of six months from the date of such notice, the Borough may raise the walkway at the expense of the owner. In such case, the cost of construction shall become a lien on the real property situate immediately westward of the Dune.

3-9. Acceptable dune height is defined as 16 feet elevation above sea level. In any case where a dune is below the acceptable dune height, the Dune Inspector is directed to serve written notice, certified mail return receipt requested, upon the record owner westward of the dune at his last known address, directing that sand fencing or other means of dune enhancement be in place, and if the dune enhancement is not in place within a period of six months from the date of such notice, the Borough may construct the dune enhancement at the expense of the owner. In such case, the cost of construction shall become a lien on the real property situate immediately westward of the Dune.

3-10. Each oceanfront lot shall be allowed a "dune platform" not to exceed 200 square feet, situated within the Dune Area and specifically located and delineated by the owner of the premises. Flagpoles located on or immediately adjacent to a dune platform are permitted structures which are not subject to these provisions. Preexisting platforms may exceed a length or depth of 20 feet; however in the event of their destruction, any replacement platform shall not exceed a length or depth of 20 feet. The dune platform shall, in all events, be maintained in the same fashion and subject to the same regulations as may govern use of pathways and walkways. Dune platforms may not be constructed without a construction permit to be issued by the

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Construction Official upon payment of a \$15.00 fee. Prior to the issuance of a dune platform permit, the owner shall submit a sketch showing the location of the platform with respect to the property sideline and crest of the dune. The Construction Official shall have the authority to require the submission of an accurate plot plan to show compliance with the side line setback or the requirement that the edge of the platform be at least 10 feet westward of the crest of the dune; provided however, if the dune height exceeds the height established under subsection 3-9, the dune platform may be located on the dune crest. No detailed drawing of the dune platform is required if the platform is: at least 18 inches above the highest point of the dune directly beneath it; has either a length or depth not to exceed 20 feet with a total area not to exceed 200 square feet; is constructed with its surface containing gap area of at least 16% to promote the growth of the dune grass beneath; has a platform with a vertical cross-section including lateral supporting members of not more than six inches. A walkway or path not to exceed four feet shall be provided for access east and west of the platform to minimize damage to vegetation by pedestrian traffic.

The Borough Council finds that a dune platform which is not constructed in accordance with the above specifications is a detriment to the dune protection system. In a storm, as the dune erodes back, the platforms existing in declivities in the dune become gaps in the dune frontal system. Further, the dune platform, being undercut by the ocean storm current, interrupts the flow of sand and causes increased erosion at that point, representing a potentially serious battering hazard. Accordingly, where the surface of a dune platform is two feet or more below a line connecting the highest points of the dune, within 50 feet to the north or south parallel to the Dune Crest Line, and on the surface of the sand at any point, it must be removed. The Dune Inspector shall serve written notice, certified mail return receipt requested, upon the record owner westward of the dune at his last known address. Immediately following its removal, the area must be protected by sand fencing. Such property owner may apply to reconstruct a dune platform in accordance with the specifications in this ordinance. If such dune platform is not removed within a period of six months from the date of such notice, the Borough may remove the dune platform at the expense of the owner. In such case, the cost of the removal shall become a lien on the real property situate immediately westward of the Dune.

3-11. In order to provide for effective protection and/or restoration of the Dune Area, each owner shall plant or cause to be planted in the Dune Area adjoining his property suitable vegetation and erect, or cause to be erected, suitable sand fencing all in accordance with acceptable standards.

3-12. No person shall engage in mechanical replenishment or ocean beach dunes within the Borough without first obtaining approval from the Dune Inspector and a municipal permit for such activity. Permits issued under this section shall authorize replenishment of sand only from areas above the mean high water level. Mechanical replenishment shall be broadly defined to include the transport of sand from the beach area, above mean high water, by any mechanical means (bulldozing or like activity) to or into the Dune Area.

Dune replenishment permits shall be issued by the Borough Clerk and be conditioned as follows:

- a. No mechanical dune replenishment activity is allowed from June 1st to September 1st, except in case of emergent circumstances which constitute an immediate threat to the public health, safety and welfare;
- b. No scraping or bulldozing of sand from the beach area at a depth greater than one (1) foot from the grade existing prior to activity under the permit;
- c. Transport of sand from below the high water line is prohibited, except such removal as may be authorized by a permit issued by the New Jersey Department of Environmental Protection and Energy;
- d. Permits shall be issued for a six (6) month term;

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c. All replenished dunes shall be immediately protected by the erection of Sand Fence;

f. A permit may, in the event of violation of the terms of the permit or in the event of conditions of the beach and dune systems and weather, which are not, at the time, consistent with the attainment and maintenance of a proper dune system, be suspended by the Dune Inspector. The action of the Dune Inspector shall be subject to review by the Borough Council upon written application of the property owner. The Borough Council shall promptly, after public hearing, affirm, reverse or modify the determination of the Dune Inspector;

g. The failure of any owner to obtain a permit for dune replenishment activities or to abide the terms and conditions of the permit shall be deemed a violation of this ordinance.

3-13. The Borough Dune Inspector, and in his absence, the Chief of Police and in all events the Borough Council, shall enforce the affirmative duty of each oceanfront owner, as set forth in this ordinance, by service of a written notice, certified mail return receipt requested, upon the record owner westward of the dune at his last known address requiring specific compliance with obligations concerning dune protection and/or restoration. The notice shall also advise that unless the owner shall take appropriate corrective action and complete the same within six months from the date of mailing said notice, the Borough may perform such acts of protection and/or restoration at the expense of the owner. Such expenditures by the Borough, if any, shall be due and payable upon demand. In the event that any such owner shall fail to pay, then the sum together with interest at the highest legal rate thereon shall become a lien upon the property and be collected in the same manner as delinquent real property taxes.

In addition to the action described above, the owner may, at the election of the enforcement officials or the Borough Council, be prosecuted for violation of this ordinance in accordance with article 4.

3-14. No person shall operate a motor vehicle (as defined in Borough Ordinance #1992-6) across or upon any Dune Area except as may be necessitated for allowed construction or for dune maintenance or at North Street where sailboats are permitted to gain entry to the beach on a trailer.

3-15. No person shall walk across or upon any Dune Area except as may be necessitated for allowed construction or for dune maintenance or at designated beach access areas.

3-16. Administration. A copy of this ordinance shall be furnished to all oceanfront property owners and to each applicant for a building permit for any construction east of East Avenue from Osborne Avenue to the southerly Borough line and east of New Jersey Route 35 from Osborne Avenue to the northerly Borough line. compliance with this provision shall not be a jurisdictional prerequisite in any enforcement proceeding.

Article 4. Penalties.

4-1. For any and every violation of this ordinance, the owner of lands abutting the Beach or Dune Area where such violation has been committed, or the trespasser if the violation is of subsection 3-2, or any violator, shall for each and every violation shall be subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment for a term not to exceed ninety (90) days, or both, at the discretion of the Court having jurisdiction in this matter. Each and every day that a violation continues shall be deemed a separate offense.

Article 5. Effect of Ordinance

5-1. Effect of Ordinance. If any part or parts of this ordinance are for any reason held to be invalid, such adjudication shall not affect the validity of the remaining portions

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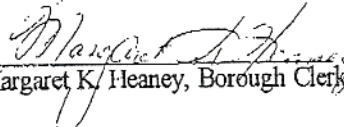
of this ordinance.

5-2. Repeal. All ordinances or parts of ordinance in conflict with or inconsistent with the provisions of this ordinance are hereby repealed except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this ordinance.

5-3. Effective Date of Ordinance. This ordinance shall take effect upon its final adoption and publication as required by law.

ATTEST:

APPROVED:

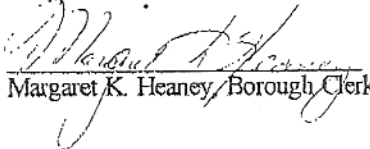
  
Margaret K. Heaney, Borough Clerk

  
Edward F. Johnson, Mayor

Introduced on First Reading: August 3, 1993  
Introduced on Second Reading: September 7, 1993  
Passed on Second Reading: September 7, 1993

ATTEST:

APPROVED:

  
Margaret K. Heaney, Borough Clerk

  
Edward F. Johnson, Mayor