

Chapter 57
BEACH PROTECTION

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[HISTORY: adopted by the Board of Commissioners of the Borough of Beach Haven as indicated in article histories. Amendments noted when applicable.]

ARTICLE I
Protection of Beaches and Dunes
[Adopted 8-9-1971 as Ch. 38,
Art. 1, of the 1971 Code]

§ 57-1. Short title.

This article shall be known as the "Borough of Beach Haven Beach Protection Ordinance."

§ 57-2. Legislative findings and declaration.

- A. It has been clearly demonstrated that well-established and protected sand dunes, together with berms, beaches and underwater slopes of suitable configuration and of proper grade and height, are a durable and effective protection against high tides and flooding and against damage by the ocean under storm conditions and are the natural protections of the coastal areas adjacent thereto, and true state and its subdivisions and their inhabitants have an interest in the continued protection thereof and in the right to restore them in the event of damage or destruction.

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B. Said dunes are vulnerable to erosion by both wind and water, but primarily by wind, since its attacks against the dunes are sustained for substantial and frequently recurring periods of time, whereas, if protected by typical berms, beaches and underwater slopes, the dunes are attacked by water only at infrequent intervals. The best available means of protecting said dunes against wind erosion is by preventing indiscriminate trespassing, construction or other acts which might destroy or damage said dunes, and through the use of native plantings, supplemented by sand fencing and other devices designed to prevent the free blowing of sand and the maintenance of the surface tensions, root accumulations, normal contours and other features found in typical natural dunes.

C. The immediate dune and beach area is not capable of rigid definition or delineation, or of completely firm stabilization, so that particular sites, at one time free of dunes, may, as the result of natural forces, become part of the dune area necessary for the continuation of the protection above outlined, and persons purchasing or owning such property do so subject to the public interest therein.

D. It is a purpose of this article to define the areas so affected and to establish regulations to assure their continued effectiveness. This article is declared to be an exercise of the police power in the interest of safety and welfare and for the protection of persons and property.

E. The erosion of the beachfront during the storm of March 6 and 7, 1962, has created an immediate and imminent threat and danger to life of persons and property in the Borough of Beach Haven by reason of the destruction of the sand barriers which protect the borough's oceanfront, to the end that it has become necessary to the health, safety and welfare of the borough to, repair, restore, replace or construct protective barriers on both public and private property within the Borough of Beach Haven.

F. The interference with or the depletion of the beach and sand dunes tends to permit encroachment by the sea, and the conditions above recited make it imperative that the governing body regulate and control the removal of sand from the beach or dunes or any other interference with or depletion of the protective barrier on the oceanfront of the Borough of Beach Haven.

§ 57-3. **Definitions.**

As used in this article, the following terms shall have the meanings indicated:

BACKSHORE-That zone of the shore or beach lying between the foreshore and dune area and normally acted upon by waves only during severe storms, especially when combined with exceptionally high water,

BEACH - The zone of unconsolidated material that extends landward from the low water line to the place where there is marked change in material or physiographic form, i.e., dune or bulkhead. Includes foreshore and backshore.

BEACH-DUNE AREA-.. The district set off by this article to include the dunes, beaches, strand, backshore and foreshore and the areas where, according to a normal beach profile, the same would or should exist. The beach-dune area, as defined herein, has been established by Taylor, Wiseman, Taylor & Sleeper, Consulting Engineers, and constitutes all that area lying eastwardly of the building line as hereinafter defined.

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BOARDWALK- This shall include the term "walkway" and shall mean a walk or promenade of planking built across the dune line or berm(s) to connect the street ends or other property with the open beach- These shall be perpendicular to the western boundary of the dune zone, and in no case shall a wooden promenade parallel to or along the beach be permitted. The height, width, length and type of construction of these must be approved by the Borough Engineer.

BULKHEAD LINE and BUILDING LM - The lines so designated on maps entitled "Bulkhead and Building Line at Atlantic Ocean, Chatsworth Avenue to North Borough Line, Borough of Beach Haven, Ocean County, N.J.," and "Bulkhead and Building Line at Atlantic Ocean, Chatsworth Avenue to South Borough Line, Borough of Beach Haven, Ocean County, N.J.," both prepared by Taylor, Wiseman, Taylor & Sleeper, Consulting Engineers, dated June 1964 and on file in the office of the Borough Clerk.

DUNE AREA - The area actually or normally occupied by dunes. For purposes of this article, it shall be construed to include its actual dimensions or according to a computed profile with a height of 14 feet above mean sea level; a crest of 20 feet and a leeward slope of 1 to 5, whichever shall be greater, but not greater than 50 feet from the average seaward side of the dune crest as computed by the Borough Engineer, and provided further that the leeward slope shall in no case be made steeper than 1 to 5.

DUNE LINE - This shall mean a row of dunes, which may blend in with a berm or berms, which blend in with each other, are roughly parallel to the ocean, and serve as a protective barrier against the elements.

DUNES - A hill of sand accumulated along the beachfront, usually by natural means. It shall extend from the backshore to the line where the normal leeward slope intersects the established grade of the hinterland.

FORESHORE-The part of the shore, lying between the crest of the seaward berm and the ordinary low-water mark, that is ordinarily traversed by the uprush and backrush of the waves.

MEAN SEA LEVEL --- This shall include the term "sea level" and shall refer to the 1929 Sea Level Datum established by the United States Coast and Geodetic Survey, or such other datum as may be established by the United States Army Corps of Engineers or other properly authorized agencies.

NATURAL DUNE - A dune created by natural forces, or one that has developed the contours, vegetation, root systems, etc., characteristic of dunes so created.

NATURAL VEGETATION - This shall include the terms "native vegetation" or "indigenous vegetation." Specifically, it shall mean such plants as beachgrass (*Ammophila breviligulata*), dusty miller (*Artemisia stelleriana*), hudsonia (*Hudsonia tomentosa*), sea rocket (*Cakile edentula*), seaside goldenrod (*Solidago sempervirens* bayberry (*Myrica Pennsylvanica*) or beach plum (*Prunus maritima*) which normally grow or may be planted on the slopes of dunes or behind them; no distinction is made as to how such plants are introduced into their locations.

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SAND FENCE -- This shall include the term "snow fence" and may mean either of two types of barricade established in a line or a pattern to accumulate sand and aid in the formation of a dune.

A. BRUSH TYPE - This consists of dead bushes, trees, reeds or similar debris collected in bundles and fixed by stakes or similar means

B. PICKET TYPE - This shall be the commercial variety of light wooden fence held together by wire and secured by posts.

SLOPE, LEEWARD - This shall be the face or surface of the dune or beret, going from its crest or plateau away from the ocean.

STRAND -- The same area included within the definition of "beach."

§ 57-4. Regulatory provisions

A. This article shall be applicable to the beach-dune area as hereinbefore defined.

B. No construction of any sort shall be allowed in the foreshore or backshore areas thereof excepting protective works undertaken by the borough, with the approval of the Bureau of Navigation of the State of New Jersey and/or the U.S. Army Corps of Engineers, as applicable.

C. [Amended 5-24-1993 by Ord. No. 93-x6] No construction of any sort shall be allowed in the remainder of the beach-dune area except the following:

(1) Any use mentioned in Paragraph B above.

(2) Access to the open beach in this zone shall be obtained only across street ends. The construction of walkovers, ramps, steps and pavilions shall only be permitted at street ends. No private walkways, ramps, steps or pavilions to provide access to the open beach will be allowed within the Borough of Beach Haven. [Amended 12-8-1997 by Ord. No. 97.20]

(3) Sand fences to encourage the accumulation of sand.

(4) (Amended 12-8-1997 by Ord. No. 97-201) Cantilever decks or porches may be permitted to extend oceanward from the building line not more than four feet, provided that:

(a) The floor elevation of the house is a minimum of 19 feet above mean sea level (0.00 elevation as established by the United States Coast and Geodetic Survey datum) or four feet above the existing top level of the dune, whichever measurement provides the greater distance above the existing top level of the dune.

(b) The distance between the first floor and the cantilever deck or porch does not exceed eight inches.

D. Access to the open beach in this zone shall be obtained only across street ends. Where boardwalks and steps are constructed on street end extensions, access shall be across such boardwalks and steps only. [Amended 12-8-1997 by Ord. No. 97.20]

E. The borough may erect or require construction of fencing along the western limits of the backshore and dune areas and provide or require suitable markings to identify the same. Persons may enter such areas only to carry out the purposes of this article. [Amended 12.8.1.997 by Ord. No. 97-20]

F. Moving or displacement of sand.

(1) No individual, firm or corporation shall authorize or participate in any manner in the moving or displacement of sand within the beach-dune, area unless a permit therefor shall have been issued pursuant to an application in writing to the Board of Commissioners. Said application shall contain the following information:

- (a) Name and address of the applicant.
- (b) Location of sand to be moved or displaced.
- (c) The nature and purpose of the proposed moving or displacement.
- (d) Proposed method by which the applicant desires to move or displace the sand, including a description of the equipment, machinery or other apparatus to be used.
- (e) Estimate in terms of cubic yards as to the quantity of sand to be moved or displaced.
- (f) Such other information as may be required by the Board of Commissioners.

(2) No such permit shall be issued without a determination by the Board of Commissioners, based upon an inspection of the area involved and a report thereon by the Borough Engineer, that such removal will not create or increase a danger or hazard to life or property. No permit will be granted if the proposed moving or displacement will:

- (a) Adversely affect the littoral drift of the beach-dune area;
- (b) Result in a reduction of dune protection and in the dune area as defined in § 57-3; and
- (c) Interfere with the general configuration of the beach-dune area of the subject property or neighboring properties.

G. No permit will be granted and it shall be unlawful for any individual, or corporation to authorize or participate in:

- (1) The removal of sand from the beach-dune area or from any street end.
- (2) The removal or destruction of natural vegetation within the beach-dune area.

H. Where by action of high winds and/or tides, sand is blown or washed upon lands, including street ends, lying westwardly from the dune line, such sand shall not be removed from said lands unless a permit therefor shall have been issued pursuant to and in full compliance with the requirements set out in Subsection F above.

§ 57-5. Administration.

A. The Borough Engineer shall, by such surveys and calculations as he finds necessary, locate the beach and dune areas as defined in this article and plot the same on a plan of the borough, which plotting, or a copy

thereof, shall be on file in the office of the Borough Clerk and available for inspection. He shall from time to time make any corrections in his findings and plottings that changes in the natural or artificial features of the terrain may justify or require.

B. The Building inspector is designated as the person responsible for the enforcement of this article.¹

§ 57-6. Power of eminent domain.

Should any provision of this article as applied to any specific parcel of land be adjudged by any court of competent jurisdiction to be a taking within the meaning of the statutes relating to the exercise of the power of eminent domain, the borough may, at its option, if the public safety, welfare or need so require, pay into court or otherwise secure the value of such land and proceed to take title to the same in accordance with the procedure then provided by law.

ARTICLE II
Beach Protection Devices
[Adopted 8-9-1971 as Ch. 38,
Art. II, of the 1971 Code]

§ 57-7. Injury or destruction of protection devices.

The removal, cutting, burning or other destruction of snow fencing and other types of beach protection devices placed on the beachfront or any portion of the dunes in the Borough of Beach Haven is prohibited.

§ 57-8. Trespassing upon protection devices.

The trespassing on or passing through such beach protection devices, except at *openings* maintained by the Borough of Beach Haven, is prohibited.²

1 Editor's Note: Former Subsection C, which immediately followed this subsection and contained penalties for violations of this article, was repealed 5-26-1981 by Ord. No. 81-6. For current penalty provisions, see § 1.16, General penalty provisions, of this Code.

Editor's Note: Former 38-9, Violations and penalties, which immediately followed this section, was repealed 5-26-1981 by Ord No. 81-6. For current penalty provisions, see 1-16, General penalty provisions, of this Code.

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ARTICLE III
Fences on Beaches
[Adopted 8-9-1971 as Ch. 39 of the 1971 Code]

57-9. Fences prohibited on public beaches.

A. It shall be unlawful for any person, firm or corporation to erect, cause to be erected or maintain on any public beach in the Borough of Beach Haven any fence, wall or other structure which interferes with the unobstructed use of such beach by the public.

B. Each day that a violation of this article exists shall constitute a separate violation.³

§ 57-10. Permit required for fence on private beach.

A. It shall be unlawful for any person, firm or corporation to erect, to cause to be erected or to maintain on any privately owned beach in the Borough of Beach Haven, east of the dune line as established by the borough's engineers, any fence, wall, post, piling, stake or structure of any sort which will in any way interfere with or impede any public official, public employee or contractor employed by any public body *in* the performance of work on any such beach to repair or prevent storm damage, without first obtaining a permit therefor from the Board of Commissioners of the Borough of Beach Haven.

B. Public hearing prior to issuance of permit; notice. The permit referred to in Subsection A hereof may be issued only after public hearing at a regular meeting of said governing body held at least seven days after publication of notice of such hearing in the Beach Haven Times.

C. Expense of notice of hearing. The notice required by Subsection B of this section shall be published at the expense of the applicant and shall specifically state the location and the erection which the applicant desires.

D. Surveyor's stakes permitted. This article shall not be construed to prevent surveyors from placing survey stakes to survey property boundaries, provided that such stakes are of no greater dimensions than two inches by two inches and not more than two feet high.⁴

3 Editor's Note: Former 39-3, Violations and penalties, which immediately followed this subsection was repealed

5-26-1981 by Ord. No. 81-6. For current penalty provisions, see 1-16, General penalty provisions, of this code.

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itor's Note: Former § 39-8. Violations and penalties, which immediately followed this subsection, was repealed

5-26-1981 by Ord. No. 81-6. For current penalty provisions, see 1-16, General penalty provisions, of this Code.