

FINAL  
5/4/15  
5/18/15  
6/8/15

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

ORDINANCE #2015- 04

TITLE: ORDINANCE REVISING AND RESTATING CHAPTER 178, BEACHES  
OF THE CODE OF THE TOWNSHIP OF LOWER

WHEREAS, the Township Council of the Township of Lower desires to amend and restate Chapter 178 of the Code of the Township of Lower concerning Beaches and Beach Regulations; and

WHEREAS, the Lower Township Recreation Advisory Board has requested that Chapter 178 be expanded to regulate the Beaches in the Township of Lower.

NOW, THEREFORE, BE IT ORDAINED that the Township Council of the Township of Lower, County of Cape May, State of New Jersey hereby determines and declares as follows:

Section 1. Chapter 178, titled BEACHES is hereby stricken and replaced with the following:

**Chapter 178. BEACHES**

**ARTICLE 1. Beach Regulations**

§ 178-1. **Findings, Applicability and Designation of Approving Agency, Public Trust Doctrine.**

- A. The Township controls for the use of the general public the beach and approaches thereto and the bathing area adjacent to the beach for the enjoyment, recreation, pleasure, safety, health, peace and quiet of all persons seeking the privilege of such facilities; and it is deemed advisable and expedient for the preservation of order and public health and safety, and for the best interests of those persons seeking such privileges and facilities, to ordain rules and regulations for the government, supervision, use and policing of the beaches, bathing areas in the ocean, bay and canal adjacent thereto, and the approaches thereto.
- B. This article shall apply to all beaches, dunes, beach access and supporting facilities under the jurisdiction of the Township, unless expressly exempted.
- C. The public's right of access to tidal waters for fishing, commerce and navigation embodied in the "Public Trust Doctrine" have long been recognized by New Jersey's Courts. A series of court decisions beginning in the 1970's extended those rights to include recreation, access to municipally controlled beaches and in some settings, to privately owned beaches. Public access rights have historically been enforced through litigation, through New Jersey Department of Environmental Protection (NJDEP)

permitting actions or through conditions on State Aid for shore protection.

§ 178-2. Definitions.

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

BEACHES: Includes beaches, dunes, designated public access paths and structures, outfalls, restroom(s), parking or other public facilities or parts or appurtenances whatsoever, whether real or personal property of the Township at the following areas

- A. All that area from the Township line in the Villas Section southward to the north border of the Borough of Cape May Point
- B. From the east border of the Borough of Cape May Point to the west border of the City of Cape May.
- C. From the south border of the Borough of Wildwood Crest to the Cape May Inlet.
- D. The beaches on both sides of the Cape May Canal from the Delaware Bay to Cold Spring Harbor together with the bathing areas adjacent thereto.

In-season: Means use of the beaches beginning on the last Friday prior to Memorial Day weekend through to and including the first Monday following Labor Day weekend of any given year.

Off -season: Means use of the beaches beginning on the first Tuesday following Labor Day weekend through to and including the last Thursday prior to Memorial Day weekend of any given year.

§ 178-3. Rules and regulations

It shall be unlawful and an offensive course of conduct to violate or participate in the violation of any rule or regulation hereinafter set forth, which rules and regulations are hereby adopted for and shall apply to the government, supervision, policing and use of the aforesaid areas.

1. Personal Conduct, Waste, Structures and Vegetation
  - A. To engage in the playing of any game which endangers the health and safety of others, including but not limited to the use of surfboards from the center line of Rochester Avenue north to the dividing line between the Township of Lower and the Borough of Wildwood Crest, on the Atlantic Ocean.
  - B. To transport or place any rubbish, refuse, garbage or other material that pollutes or interferes with the use and enjoyment of the beach. Such items shall be deposited in receptacles so

provided. Where receptacles are not provided, all waste will be carried away from the beach by the person(s) responsible for its presence and such waste shall be properly disposed of elsewhere.

- C. To dress, undress or change clothing for bathing or other purpose in any passenger automobile, bus, truck or vehicle of any kind regardless of whether the doing thereof is in public view or can be seen by any other person or persons.
- D. To possess either in opened or unopened containers and/or to consume alcoholic beverages within the areas defined as the beach and approaches thereof Nor shall any person be under the influence of intoxicating liquor or drugs.
- E. To revel, disport, or behave in a noisy or boisterous manner, emitting loud cries and other noises, or playing of loud music so as to inconvenience others, or otherwise disrupt and disturb the public peace and dignity within the areas defined as the beach or approaches thereto.
- F. To act in a loud, indecent, obscene, or offensive manner within the defined areas.
- G. Mark, deface, disfigure, injure, tamper with or displace or remove any tables, benches, public access structures, outfalls, restroom or other public facilities or parts or appurtenances whatsoever, whether real or personal property of the Township.
- H. Dig, damage, trample or remove any vegetation from the beach or dune. Nor dig or remove sand from any dune with exception of authority of the Township.
- I. To trespass upon any dunes, except as paths are designated and marked for public use.

#### **§ 178-4. Violations and penalties. [Amended by Ord. No. 81-2]**

Anyone violating any of the provisions of this article shall be a disorderly person and, upon conviction thereof before a proper officer having jurisdiction, be subject to a fine in any sum not exceeding \$500, and in default of payment of said fine be imprisoned in the county jail for a term not exceeding 30 days; and any repetition of any act herein prohibited shall be deemed a separate and distinct offense.

## ARTICLE II **Vehicles on Beaches**

#### **§ 178-5. Operation of motor vehicles**

It shall be unlawful for any person on a beach to:

- A. Operate a motor vehicle, including an automobile, motorcycle, truck or any other similar type of conveyance driven by power, on any of the beaches within the Township.

- B. Permit the operation of any motor vehicle, including an automobile, motorcycle, truck or any other similar type of conveyance driven by power, owned by him on any of the beaches of the Township.
- C. Occupy any motor vehicle, including an automobile, motorcycle, truck or any other similar type of conveyance driven by power, on any of the beaches of the Township.
- D. Nothing herein contained shall apply with respect to ambulances, life-saving vehicles, or other similar vehicles, nor shall anything herein contained apply to any bona fide construction equipment or equipment used in the maintenance or cleaning of any of the aforesaid beaches.

ARTICLE III  
**Animals on Beaches**

**178-6 Control and care of animals.**

It shall be unlawful for any person on a beach to:

- A. Cause or permit any animal to run loose.
- B. Have animals other than service animals on the beach between the hours of 11:00 am and 4:00 pm in-season.
- C. Leashed animals are permitted anytime of the day during the off-season.
- D. Leave dropping from an animal on a beach or dune. All such waste shall be picked up by the person(s) in charge of that animal. Such waste shall be deposited in receptacles so provided. Where receptacles are not provided, all waste will be carried away from the beach by the person(s) responsible for its presence and such waste shall be properly disposed of elsewhere.

ARTICLE IV  
**Fires, Firearms, Fireworks and  
Weapons on Beaches**

**178-7 Have or use fires, firearms, fireworks and weapons**

It shall be unlawful for any person on a beach to:

- A. Kindle, build, maintain or use a fire or ANY OPEN FLAME.
- B. Have in their possession, sell, distribute or set off fireworks or explosives.
- C. For any person other than law enforcement officers to carry or otherwise possess or control a destructive device or weapon.
- D. Destructive devices or weapons include but are not limited to all firearms, knives and other items used for the purpose of harm to another person or property.

ARTICLE V  
Advertising, Soliciting, Assemblages, Entertainment and Sale of Merchandise

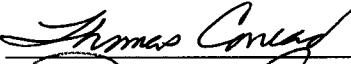
**178-9 Advertise, solicit, assemble, entertain and sell merchandise.**

It shall be unlawful for any person on a beach to:

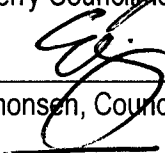
- A. Post, paint, affix, distribute, place, cast or leave any bill, billboard, placard, ticket, handbill, circular or advertisement without prior approval by the Township.
- B. Operate for advertising or entertainment purposes a musical instrument or soundtrack.
- C. Hold or conduct political assemblages or campaigning activities.
- D. Expose or offer for sale any article without a license and written permission from the Township.

**Section 3.** Should any section, paragraph, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason, the remaining portions of this Ordinance shall not be affected thereby and shall remain in full force and effect, and to this end the provision of this Ordinance are hereby declared to be severable.

**Section 4.** This Ordinance shall become effective immediately upon final passage and publication, according to law.

  
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Thomas Conrad, Councilmember

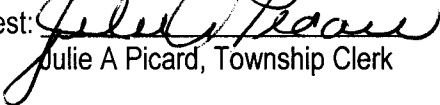
  
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Dave Perry Councilmember

  
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Erik Simonsen, Councilmember

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Norris Clark, Deputy Mayor

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Michael E Beck, Mayor

Adopted: June 8, 2015

Attest:   
Julie A Picard, Township Clerk