

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

ORDINANCE #2018-03

Title: **ORDINANCE REVISING AND RESTATING ARTICLE 1 OF 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 Article 1 of Chapter 178 of the Code of the Township of Lower concerning Beach Regulations.

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, Article 1 titled BEACH REGULATIONS is hereby stricken and replaced with the following:

Chapter 178: Beaches  
Article I: Beach Regulations

**§ 178-1: Findings; applicability; access rights through 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 chapter 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 1970s 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 chapter, 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.

**DUNE**

A wind- or wave-deposited formation of vegetated or drifting windblown sand, generally parallel to and landward between the inland limit to the beach and the foot of the most inland dune slope, including primary, secondary and

tertiary dunes where they exist. Formations of sand immediately adjacent to beaches that are stabilized by retaining structures, such as snow fences, planted and natural vegetation and other measures are considered to be natural dunes, regardless of the degree of modification of the dune by wind or wave action or disturbance by development. A dune shall not include loose windblown sand found in a street or on a part of a structure as a result of wind or storm activity.

#### **DUNE AREA**

That area between the seaward edge of the dune and the landward edge of the dune.

#### **IN-SEASON**

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.

#### **Natural Vegetation**

Includes the terms "native vegetation" or "indigenous vegetation." Specifically, it shall include such plants as beach grass (*Ammophila breviligulata*), dusty miller (*Artemisia stelleriana*), sea rocket (*Cakile edentula*), seaside goldenrod (*Solidago sempervirens*), bayberry (*Myrica pensylvanica*), beach pea (*Lathyrus japonicus*), salt spray rose (*Rosa rugosa*) or seaside spurge (*Euphorbia polygonifolia*) and any other species of vegetation recognized by the New Jersey Department of Environmental Protection, 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.

#### **OFF-SEASON**

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. The following activities are hereby prohibited:

- 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. To introduce, place or plant any plants, shrubs, trees, bushes and/ or vegetation, with the exception of natural vegetation, on the dune or within the dune area. Any proposed natural vegetation shall be planted under the supervision of the Lower Township Superintendent of Parks and Recreation as set forth within the current New Jersey Department of Environmental Protection CAFRA permit, in accordance with the guidelines and standards promulgated by the New Jersey Department of Environmental Protection.
- I. Dig, damage, trample or remove any dune vegetation from the beach or dune. Nor dig or remove sand from any dune with exception of authority of the Township.
- J. To trespass upon any dunes, except as paths are designated and marked for public use.

**§ 178-4: Violations and penalties.**

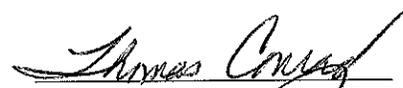
Anyone found to have violated any of the provisions of this article shall be a guilty of a disorderly person's offense and, upon conviction thereof by any court authorized by law to hear and determine the matter, be subject to a fine in any sum not exceeding \$1,000, and in default of payment of said 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

In addition to the above penalties, the Lower Township Police Department, the Construction Official, the Code Enforcement Officer or any other duly authorized officers or employees are hereby empowered to pursue such legal and equitable relief as may be necessary to abate any violation or enforce any condition of this article

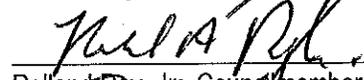
**Section 2.** If any portion of this ordinance is determined to be invalid by a Court of competent jurisdiction, that determination shall have no effect upon the remainder of this Ordinance, which shall remain valid and operable.

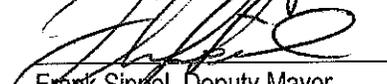
**Section 3.** All Ordinances or parts of Ordinances inconsistent with this Ordinance, to the extent of such inconsistencies only, are hereby repealed.

**Section 4.** This Ordinance shall take effect 20 days after final passage and publication as provided by law.

  
Thomas Conrad, Councilmember

  
David Perry, Councilmember

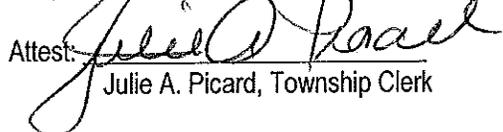
  
Rolland Roy, Jr., Councilmember

  
Frank Sippel, Deputy Mayor

  
Erik Simonsen, Mayor

First Reading: March 5, 2018

Adopted:  March 19, 2018

Attest:   
Julie A. Picard, Township Clerk