

**ORDINANCE NO. 2015 - 3**

**TOWNSHIP OF DOWNE**

**AN ORDINANCE FOR DUNE PRESERVATION**

**BE IT ORDAINED** by the Township Committee of the Township of Downe, County of Cumberland and State of New Jersey as follows:

**Section 1.1 Declaration and Purpose**

A. Effective protection of oceanfront and adjacent coastal areas against high tides and flooding and against damage by the ocean under storm conditions require elevation and breadth in beach and dune areas in order to provide protection and dissipate wave forces. The dunes should provide an uninterrupted barrier and a source of sand to mitigate the effect of storm waves which protection inures to the benefit of the Township and its residents. The Township has a vital interest in the maintenance and protection of beach and dune areas and in the right to cause their restoration in the event of damage or destruction.

B. Dunes are vulnerable to erosion by wind, water and the absence of good care. Indiscriminate trespass, construction or other acts or negligence can destroy or damage dunes.

C. Proven means of protecting areas against dune erosion include preventing indiscriminate trespass, construction or other acts which might damage or destroy them and through the use of native plantings supplemented, when and where appropriate, by sand fencing and other protective devices or combinations thereof.

D. Beach areas and dune areas are dynamic and are not capable of rigid delineation or from stabilization. It is known that dunes do migrate as a result of natural forces.

E. It is the purpose of this chapter to define areas so affected and to establish regulations to assure the continued health and effectiveness of dunes in Downe Township.

F. This Ordinance does not attempt to define and regulate all parameters of dunes, dune delineation, function or management and the Township Committee declares its intent to review and update this Ordinance periodically to reflect appropriately new and beneficial knowledge of treatment to the dunes including but not limited to elevated walkways, building setback requirements and beach replenishment projects.

G. This Ordinance is declared to be an exercise of police power in the interest of safety and welfare for the protection of persons and property based upon the protections which dunes provide.

## **Section 1.2 Definitions**

For purposes of this Ordinance, the following terms shall have the meanings given herein:

**Beach Area** – That area between the mean high water line of the Delaware Bay as established by the United States Coast and Geodetic Survey and the seaward edge of the dune hereinafter defined.

### **Beaches**

(a) Gently sloping unvegetated areas of sand or other unconsolidated materials that extend landward from the mean high water line to either:

(1) The vegetation line;

(2) A man-made feature generally parallel to the ocean, inlet or bay waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that the sandy areas that extend fully under the landward of an elevated boardwalk are considered to be beach areas; or

(3) The seaward or bayward foot of dunes, whichever is closest to the bay, inlet or ocean waters.

(b) Beaches can be found on all tidal shorelines including ocean, bay and river shorelines.

**Dune** – A wind or wave deposited or man-made formation of vegetated or drifting windblown 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 snow 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. A small mound of loose, windblown sand found in a street or on a part of a structure as a result of storm activity is not considered to be a dune.

**Dune Area** – That area between the seaward edge of the dune and the landward edge of the dune.

**Dune Reference Line** – That line designated, if any, as such on the revised Tax Map of the Township of Downe.

**Landward Edge of the Dune** – The intersecting line of the back slope of the dune and the grade of the land extending from the boundary of adjacent road beds (if any) or the line adjoining

the average landward edge of the dune of the adjoining waterfront properties or a line parallel to and 30 feet inland of the seaward edge of the dune, whichever is applicable.

**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 japonicas*), salt spray rose (*Rosa rugosa*) or 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.

**Sand Fence** – Includes 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 a light wooden fence held together by wire and secured by posts; or

(b) Such other material as may be designated and approved for the purpose.

**Seaward Edge of the Dune** – The intersecting line of the foreslope of the dune and the gradient of the beach area or the contour line at the vegetation line or the upper drift line, whichever is the most seaward, except when the Township Engineer may have caused stakes to be driven to mark the seaward edge of the dune, in which case it is the line between such stakes.

**Setback Line** – That line parallel to the dune reference line and located shoreward therefrom by the setback distances variously specified by the Township.

**Vegetation Line** – That line connecting the most seaward naturally occurring perennial plants with other such plants.

**Walkway** – A constructed means of crossing the dune area in accordance with drawings approved by the Township Council and on file with the Township Engineer.

### **Section 1.3 Development on Beaches and Dunes**

A. Development is prohibited on beaches except where it is specifically approved. Acceptable activities on beaches include dune creation and related sand fencing and planting of vegetation for dune stabilization. In limited circumstances, stairs, pathways and boardwalks to permit access across dunes to beaches provided they are constructed to cause a minimum of interference with the beach and dune system and sand fencing to accumulate sand and aid in dune formation. Reconstruction of existing piers, boardwalks and bulkheads is an acknowledged construction activity as is demolition and removal of existing structures.

B. The municipality acknowledges a duty to continue to promote public access as has been its past practice pertaining to beach access.

#### **Section 1.4 Regulation of Dune Areas**

A. No person shall be in the dune area unless:

(1) Upon an approved pathway, walkway or platform;

(2) In the performance of such activities as may be reasonably and necessarily required to construct or maintain the dune or allowed structures;

(3) For purposes of enforcement of this Ordinance.

B. The removal of sand or plants from the beach or dune area is prohibited.

C. No new walkways across the dune areas are permitted except in areas delineated by the Township Engineer. Such walkways shall be generally the shortest practical course between the road and the seaward edge of the dune and shall not be of excessive width but shall be as delineated by the Township Engineer.

D. Sand deposited upon any improved street shall be restored into the beach and dune area.

E. As the purpose of the sand dune maintenance is to achieve the highest practical height, no dune shall be directly or indirectly lowered or reduced in height by the action or inaction of any party.

#### **Section 1.5 Enforcement**

Code Enforcement and in all events the Township Committee shall enforce the affirmative duty of all to comply with the terms of this Ordinance. As to property owners, a written notice shall be made to the address of the record owner as set forth in the Township tax rolls requesting compliance with the obligations relating to dune protection in the event activities or inactivities damaging the dunes not consonant with this Ordinance are noted as related to the property owner.

Upon notice being made, the property owner shall have 30 days from the mailing of said notice to undertake such acts of protection and/or restoration as may be necessary for purposes of dune maintenance. In the event, for whatever reason, the homeowner fails or refuses to act then the Township is authorized to do so however.

**Section 1.6 Operation of Vehicles**

No person shall operate a motor vehicle across or upon any dune area except as may be necessitated or allowed for dune maintenance and/or emergency rescue by the authorized emergency services serving Downe Township.

**Section 1.7 Administration**

A copy of this Ordinance shall be furnished to all on request and shall be made available specifically to waterfront property owners. Compliance with this Section shall not be a jurisdictional prerequisite in any enforcement proceeding.

**Section 1.8 Violations and Penalties**

For each and every violation of this Ordinance, the trespasser or violator shall be subject to a penalty and shall be punishable by one or more of the following:

(1) Imprisonment in the County jail for a term not exceeding 90 days; or by a fine not exceeding \$2,000.00;

(2) It is contemplated that as to specific damages to dune areas related to specific actions of parties are noted, it is appropriate that parties be sentenced to the cost of rejuvenating and repairing the damaged dune area in the event of a violation of this Ordinance in addition to any penalties therefore.

**Section One. Repealer.** All former Ordinances of the Township of Downe which are in conflict with the provisions contained in this Ordinance are hereby repealed upon the adoption of this Ordinance.

**Section Two. Severability.** If any part or parts of this Ordinance are held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance.

**Section Three.** This Ordinance shall take effect after final approval and publication as required by law.

**NOTICE**

**PLEASE TAKE NOTICE** that the above Ordinance was passed on first reading by the Township Committee of the Township of Downe on April 6, 2015. A Public Hearing and second reading for final adoption of same will be held on May 4, 2015 at 7:00 p.m. at the Municipal Complex located at 288 Main Street, Newport, New Jersey 08345.

A handwritten signature in blue ink, appearing to read "Constance S. Garton", written over a horizontal line.

Constance S. Garton, Clerk