

ORDINANCE NO. 09-2020

AN ORDINANCE AMENDING CHAPTER 130, "LAND USE", ARTICLE IX, "DESIGN STANDARDS FOR SPECIFIC USES", OF THE CODE OF THE BOROUGH OF SEA BRIGHT, TO ESTABLISH BULKHEAD MAINTENANCE REGULATIONS.

WHEREAS, pursuant to N.J.S.A. § 40:48-1 and N.J.S.A. § 40:68-4, the governing body of every municipality may make, amend, repeal and enforce ordinances pertaining to the construction and maintenance of bulkheads; and

WHEREAS, the Borough of Sea Bright has a substantial interest in protecting the health, safety and welfare of its residents; preserving the public use and enjoyment of navigable waterways and waterfront property; and in limiting erosion by tidal forces in the Borough; and

WHEREAS, the existing Borough regulations are currently insufficient to ensure the maintenance of safe and protective bulkheads in the Borough of Sea Bright;

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of the Borough of Sea Bright, County of Monmouth in the State of New Jersey, as follows:

SECTION ONE.

Chapter 130, "Land Use", Article IX "Design Standards", of the Code of the Borough of Sea Bright be and the same is hereby amended and supplemented by the addition thereto of the following section:

"§ 130-59H Bulkhead maintenance.

- (1) Maintenance and duty to repair.
 - A. The owner of any property upon which any bulkhead has been or will be constructed hereafter along any navigable waters within the Borough shall keep and maintain the same in such a state of repair so that it shall not pose a danger to the public health, safety and welfare or to the public use of navigable waterways.
 - B. All bulkheads shall be kept in a state of repair which will prevent erosion or damage to abutting, adjoining, or adjacent properties or to the navigable waterway on which it fronts.
 - C. The owner of any such property shall make necessary repairs and maintain the bulkhead, including but not limited to, filling in of land around and about the same to the grade above mean high tide as established in that area so as to prevent tidal erosion and damage thereto.

- D. Indications that a bulkhead has deteriorated shall include but shall not be not limited to:
- i. Members which are bowed, bent, leaning or leaking;
 - ii. Holes in the sheet piles;
 - iii. Settlement or sinkholes in the ground landward of the bulkhead;
 - iv. Bulkhead backfill deposited in the lagoon seaward of the bulkhead; and
 - v. Any other indications that it is structurally unsafe or unsound.
- E. Whenever a bulkhead has deteriorated to such a degree that it poses a danger to the property or to abutting, adjacent, or adjoining properties, or to the navigable waterway on which it fronts, the owner shall be required to make necessary repairs to correct such conditions.

(2) Inspection by Borough Engineer.

- A. It shall be the duty of the Borough Engineer, from time to time, to inspect all waterfront bulkheads in the Borough and to report to the Council and notify the owners and occupants of the property on which the bulkhead is located of the existence of any dangerous or defective condition therein; thereafter, it shall be the duty of the owner of said property to replace, remedy or repair any such dangerous and defective condition.
- B. When notified by the Borough Engineer of a defective or deteriorated bulkhead, the property owner shall submit a plan of corrective action to the Borough Engineer no later than 30 days from the receipt of the notice.
- C. Upon approval of the plan of corrective action, the property owner shall complete all necessary repairs within sixty (60) days.
- D. If permits are required from state or federal government agencies, such permits shall be immediately applied for, prior to Township approval. In the event the property owner fails to submit a corrective action plan or fails to implement such plan following approval by the Township, he shall be liable for the penalties and violations contained herein.
- E. Upon the neglect or failure of any such owner to repair or remedy such dangerous or defective condition within a reasonable time to be determined by the Borough Engineer, the Borough Engineer shall give written notice of the work required to be done to the owner or owners of such lands by mail, if their address be known, or if not known, then by posting such notice upon the property affected thereby, or by leaving the same with any occupant thereof;

or by personal service, if the owner be a resident of and present within the Borough.

- F. Such notice shall provide for allowing the owner sixty (60) days' within which to perform the work thereby required. In the event that the owner is required to obtain a permit or approval from the New Jersey Department of Environmental Protection (NJ DEP), the owner must provide proof within the sixty-day period that such permit or approval is required and that the appropriate permit has been applied for. The owner must further provide documentation to the Borough that any required permits are being diligently pursued. Failure to complete the required repairs within thirty (30) days after receipt of the appropriate permit from the NJ DEP shall constitute a violation of this article.

(3) Repair by Borough; costs established as a lien.

- A. If the owner in question fails to abate the condition described in a notice from the Borough Engineer, after receipt of notice and within the timeframes herein established, the Borough Engineer shall cause the condition to be abated and shall certify the cost to the Borough Council, which shall examine the certificate and, if it is correct, cause the cost as shown thereon to be charged against the lands. The amount so charged shall become a lien upon the lands and shall be added to and become a part of the taxes next to be assessed and levied upon the lands, shall bear interest at the same rate as taxes, and shall be collected and enforced by the same officer and in the same manner as taxes.
- B. The costs of abatement shall be in addition to any penalties imposed for any violation of this section. In addition to the actual costs incurred by the Borough for labor and the use of Borough equipment, or the costs of contractors procured by the Borough, the lien shall also include an administrative fee in the amount of \$2,500, which shall be included in said lien to cover the Borough's administrative and legal costs in addressing and abating the aforesaid conditions.

(4) Violations and penalties. Any person violating any of the provisions of this section shall be subject of a fine not to exceed the sum of \$2,000 and/or imprisonment not to exceed ninety (90) days for each violation. Each day of a violation shall be a separate offense and shall be punishable as a separate offense.

(5) Appeals. Any person aggrieved by any ruling of the Construction Department may appeal from any such ruling to the Borough Council, within thirty (30) days from the date of the ruling."

SECTION TWO. All Ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION THREE. Should any section, paragraph, clause or other portion of this Ordinance be adjudged by a Court of competent jurisdiction to be invalid, such judgment shall not affect or impair the remainder of this Ordinance.

SECTION FOUR. This Ordinance shall take effect upon its passage and publication according to law.

I HEREBY CERTIFY this to be a true and correct Ordinance of the Mayor and Borough Council of the Borough of Sea Bright, introduced on September 15, 2020 and will be further considered after a Public Hearing at the virtual meeting of the Borough Council held on October 6, 2020 at 7:00 pm. Meeting access instructions will be published accordingly.

INTRODUCED: September 15, 2020
PUBLIC HEARING: October 6, 2020
ADOPTED: October 20, 2020

Witness

Christine Pfeiffer
CHRISTINE PFEIFFER, CLERK

BOROUGH OF SEA BRIGHT,

Brian Kelly
BRIAN KELLY, MAYOR