

**WHITE RIVER TOWNSHIP
MUSKEGON COUNTY, MICHIGAN
(Ordinance No.52-2020)**

At a _____ meeting of the Township Board for White River Township held at the White River Township offices on March ____, 2020 beginning at 7:00 p.m., this Ordinance was offered for adoption by Township Board Member _____ and was seconded by Township Board Member _____:

AN ORDINANCE TO REGULATE BUILDINGS, DWELLINGS, STRUCTURES AND DEBRIS LIKELY TO FALL INTO LAKE MICHIGAN; TO PREVENT SUCH ITEMS FROM FALLING INTO LAKE MICHIGAN; TO PROVIDE REMEDIES AND PENALTIES FOR VIOLATIONS OF THIS ORDINANCE.

THE TOWNSHIP OF WHITE RIVER (“Township”) ORDAINS:

Section 1. Title

This Ordinance shall be known and may be cited as the “White River Township Lake Michigan High Water Shoreline Protection Ordinance.”

Section 2. Purpose and Intent

The Township Board hereby finds that structures such as dwellings, accessory buildings, sheds, tennis courts, pools, landscaping items, stairs and similar items that fall, slide or migrate into Lake Michigan (or onto the shore, bluff, beach or bottomlands thereof) due to high lake levels, wind or waves are a significant threat to the public health, safety and welfare. Such resulting debris pollutes and degrades Lake Michigan. Debris entering the lake can include such dangerous items as jagged glass, rusty nails, sharp metal and similar items that are threats to human beings, fish and wildlife. Debris from ruined buildings and structures can also include, but is not necessarily limited to, plastics, asbestos, PFAS, sewage and other hazardous materials. Buildings

and structures falling into Lake Michigan can also potentially threaten and undermine buildings, structures and other items on adjoining or nearby lakefront properties. Remediation and removal or the moving of threatened buildings and structures cannot wait until they fall into the lake due to the resulting harm of debris, nails, glass, jagged metal, harmful chemicals, etc. getting into Lake Michigan. By the enactment and enforcement of this Ordinance, the Township Board believes that threatened buildings, structures, stairs, decks and other items will be prevented from falling into Lake Michigan due to high lake levels, strong winds and/or destructive wave action.

Section 3. Definitions

For purposes of this Ordinance, the following words, phrases and terms shall have the following definitions and meanings:

- A. “Lake Michigan” or “Lake” – Means the portion of Lake Michigan located within White River Township and/or adjacent thereto, including any and all portions of the lake such as the shoreline, lakeward dune slope, adjoining bluff, bottom lands, waters and beaches thereof.
- B. “Owner” – Means the owner, co-owners, land contract buyer, possessor and/or long-term lessee of the lot or parcel involved.
- C. “Waterfront Lot or Parcel” – Means any lot, parcel or property with frontage on Lake Michigan, that adjoins Lake Michigan or which has access to Lake Michigan.
- D. “Into Lake Michigan” – Means that the building, structure, debris, wreckage or item has either migrated, fallen or moved into or onto the waters, shore or bottomlands of Lake Michigan or has moved at least 30 feet closer to Lake Michigan or begun a descent downward towards Lake Michigan on or along the lakeside dune, cliff or

hill. This definition also includes situations where the waters of Lake Michigan touch or cover any portion of a stationary building, structure, deck or stairs.

Section 4. Responsibility and Prohibitions

- A. The Owner of a waterfront lot or parcel shall ensure that no building, dwelling, structure, stairs, deck, item or debris on or from that waterfront lot or parcel ever falls, slides, migrates or disintegrates into Lake Michigan.
- B. The Owner of a waterfront lot or parcel shall prevent any building, stairs, deck, dwelling, structure, item or debris on or from that lot or parcel from ever falling, sliding, migrating or disintegrating into Lake Michigan.
- C. The Owner of a lot or parcel which has frontage on, abuts, adjoins or has access to Lake Michigan shall not:
 - 1. Permit or allow any dwelling, building, structure, stairs, deck, item or debris on the waterfront lot or parcel owned by the Owner to migrate into, fall into, slide into or disintegrate into Lake Michigan or to remain therein; or
 - 2. Permit or allow any debris, remnants of a building, any discarded structure, lumber, junk or trash to be deposited into, fall into, slide into or migrate into Lake Michigan or to remain therein.

Section 5. Preventative Actions

- A. If it is likely that any building, structure, stairs, deck, debris or other item will fall into, slide into, be deposited into or migrate into Lake Michigan within the upcoming 6 months time period, the Owner of the waterfront lot or parcel involved shall immediately either move such building, structure or item further away from Lake Michigan (so that the building, structure or item will not fall into Lake

Michigan within the 5 years time period thereafter) or completely remove the building, structure or item from the waterfront lot or parcel involved so that it will not fall into, slide into, be deposited into or migrate into Lake Michigan.

- B. If any part of a building or dwelling (including a deck or patio) is located within 15 feet of the edge of a cleaved away dune at the lake, a portion of the dune that has fallen away to the lake or a cliff or hill along the lake, the building or dwelling must be moved or removed immediately pursuant to Subsection 5A of this Ordinance. That shall not prevent, however, the requirement that a dwelling or building located further away from such cleaved dune, fallen away dune area or cliff must also be removed pursuant to Subsection 5A of this Ordinance.
- C. The Township may allow a building or dwelling located within 15 feet of the edge of a cleaved away dune at the lake, a portion of a dune that has fallen away to the lake or a cliff or hill along the lake to remain in place (at least temporarily) if the Owner provides written certification to the Township from a Michigan licensed engineer that the building or dwelling is unlikely to fall into, slide into, be deposited into or migrate into Lake Michigan (or move closer to Lake Michigan) within the upcoming two-year time period, either based upon engineering calculations or the effectiveness of a seawall, revetment, riprap or other water and wave shield existing along the shore of the lake adjacent to the waterfront lot or parcel involved.

Section 6. Removal Notice.

If it appears reasonably likely that a dwelling, building, structure, landscaping item, deck, stairs or similar item on a waterfront lot or parcel will slide, fall or migrate into Lake Michigan within six months, the Township Building Inspector or Zoning Administrator may serve a written

Notice of Removal on the Owner of the lot or parcel involved. The Notice of Removal shall be served on the Owner of the lot or parcel by physically posting a copy of the Notice of Removal on the waterfront lot or property involved in a visible location and also by mailing (via U.S. Mail) a copy of the Notice of Removal to the Owner of the lot or parcel at the current address on the property tax roll for the lot or parcel involved. The Notice of Removal shall require either (i) the immediate removal of the dwelling, building, structure, stairs or other items entirely from the waterfront lot or parcel involved, or (ii) that the dwelling, building, structure, stairs or other items be moved immediately a safe distance to the east, all within 30 days of the date of the Notice of Removal. If the dwelling, building, structure, stairs or other item on the waterfront lot or parcel involved is not fully moved as required within 30 days of the date of the Notice of Removal or fully removed from that lot or parcel within 30 days of the date of the Notice of Removal, that shall constitute also a violation of this Ordinance.

Section 7. Impact Upon Adjoining Properties

No Owner of a waterfront lot or parcel of land shall do anything or cause anything to be done on the Owner’s waterfront lot or parcel that would unreasonably threaten or endanger any of the following located on an adjoining or nearby waterfront lot or parcel:

- A. A dwelling, structure or building.
- B. A hill, sand dune, lawn or landscaping.
- C. The structural integrity of any building or structure.

Such prohibitions in Subsections A, B and C (above) shall not apply to the reasonable and lawful installation and maintenance of seawalls, groins, revetments or similar shore protection devices along the Lake Michigan shoreline.

Section 8. Removal of items and remediation

Should any dwelling, building, structure, item or debris on or from the waterfront lot or parcel owned by the Owner fall into, slide into, be deposited into or migrate into Lake Michigan (or be flooded by lake waters), then the Owner of the waterfront lot or parcel involved shall:

- A. Remove each such dwelling, building, structure, item and debris from Lake Michigan and from the lot or parcel involved within ten (10) days of any such fall, collapse or migration or flooding if reasonably possible.
- B. Notify all of the following agencies of any such fall, collapse or migration or flooding within ten (10) days thereof:
 - 1. The Michigan Department of Environment, Great Lakes and Energy.
 - 2. The United States Army Corps of Engineers.
 - 3. The Muskegon County Health Department.
 - 4. Consumers Energy or Great Lakes Energy (whichever serves the dwelling with electricity).
 - 5. White River Township.
- C. Within ten (10) days of any such fall, collapse or migration or flooding, notify the owners of the parcels or lots adjoining the waterfront lot or parcel involved of the occurrence.

Section 9. Strict liability

The Owner of any waterfront lot or parcel in violation of this Ordinance shall be strictly liable for any damages, injury, debris, litter, clean up and removal costs, remediation costs, nuisance or other matter or condition caused or made worse by any action, inaction, state or occurrence that constitutes a violation of this Ordinance.

Section 10. Severability

If any sentence, section, paragraph or part of this Ordinance is determined to be unconstitutional or unenforceable by a court of competent jurisdiction, it shall be severed from the remainder of the Ordinance and such determination shall not affect the remainder of the Ordinance which shall remain valid and in effect.

Section 11. Penalties; Enforcement; Interpretations and Appeals

- A. A violation of this Ordinance constitutes a municipal civil infraction. Any person who violates, disobeys, omits, neglects, or refuses to comply with any provision of this Ordinance, or any amendment thereof, or any person who knowingly or intentionally aids or abets another person in a violation of this Ordinance, shall also be in violation of this Ordinance and shall be responsible for a civil infraction. The civil fine for a municipal civil infraction shall be not less than one hundred dollars (\$100.00) for the first offense and not less than two hundred dollars (\$200.00) for subsequent offenses, in the discretion of the court, in addition to all other costs, damages, expenses and remedies provided by law. For purposes of this section, “subsequent offense” means a violation of the provisions of this Ordinance committed by the same person within twelve (12) months of a previous violation of the same provision of this Ordinance or similar provision of this Ordinance for which said person admitted responsibility or was adjudged to be responsible. Each day during which any violation continues shall be deemed a separate offense.
- B. Anyone who assists another in violating this Ordinance, or who aids and abets another in violation of this Ordinance, shall also be deemed to be in violation of this Ordinance.

- C. All Owners and co-owners of any waterfront lot or parcel covered by or in violation of this Ordinance shall be jointly and severally liable and responsible for complying with this Ordinance and for any and all violations of this Ordinance and consequences thereof.
- D. Any and all costs and expenses associated with removing any intact, destroyed or dilapidated dwelling, building, structure, debris, stairs or similar item pursuant to this Ordinance shall be a lien on the waterfront lot or parcel involved and shall also be the personal obligation of the Owner until all such costs and expenses are paid in full.
- E. In addition to the above-mentioned remedies, the Township is also authorized (at its option and discretion) to pursue a civil lawsuit to enforce and/or ensure compliance with this Ordinance in the Muskegon County Circuit Court. The remedies and penalties provided in this Ordinance are cumulative and not exclusive.
- F. This Ordinance may be enforced by the Township Zoning Administrator, the Township Building Inspector, the Township Zoning Enforcement Officer, a Deputy County Sheriff, a State Police officer, and such other Township officials or agents as the Township Board may designate from time to time by resolution.
- G. A violation of this Ordinance is also hereby declared to be a nuisance *per se* (which should be abated) and is also declared to be offensive to the public health, safety and welfare.
- H. This Ordinance shall be interpreted by the Township Zoning Administrator. If an Owner of a waterfront lot or parcel disagrees with any interpretation or

determination by the Township Zoning Administrator pursuant to this Ordinance regarding the Owner’s property, the Owner may appeal such interpretation or determination to the White River Township Zoning Board of Appeals (“ZBA”) so long as the Owner files a written appeal (together with any fees set by the Township Board for an appeal) with the Township within ten (10) days of such determination/interpretation by the Zoning Administrator. The ZBA shall hold a public hearing on such an expedited appeal, with written notices of the public hearing appearing in the newspaper at least 10 days before the day of the hearing and with the public hearing notice also being mailed to the owners of all lots and parcels (as shown on the Township property tax roll) within 300 feet of the waterfront lot or parcel involved at least 10 days before the day of the public hearing. The ZBA shall have the authority to uphold the interpretation/determination of the Zoning Administrator, uphold the interpretation/determination with additional conditions or reverse the interpretation/determination of the Zoning Administrator (with or without additional conditions).

Section 12. Effective Date

This Ordinance shall take effect upon the expiration of thirty (30) days after its publication (or a summary thereof) in the manner provided by law.

The vote to adopt this Ordinance was as follows:

YEAS: _____

NAYS: _____

ABSENT/ABSTAIN: _____

ORDINANCE DECLARED ADOPTED.

CERTIFICATION

I hereby certify that the above is a true copy of an Ordinance adopted by the Township Board for White River Township at the time, date and place as specified above, pursuant to the required statutory procedures.

Respectfully submitted,

By _____
Patti Sargent
White River Township Clerk