

**TOWNSHIP OF CHIKAMING
BERRIEN COUNTY, MICHIGAN**

ORDINANCE NO. 147
Adopted: February 25, 2021

**AN ORDINANCE TO SECURE THE PUBLIC HEALTH, SAFETY, AND
GENERAL WELFARE OF THE PROPERTY OWNERS, RESIDENTS,
AND VISITORS OF CHIKAMING TOWNSHIP BY PROHIBITING THE
INSTALLATION AND MAINTENANCE OF HARDENED SHORELINE
ARMORING THAT INTERFERE WITH AND DEGRADE THE NATURAL
AND DYNAMIC CHARACTERISTICS OF THE LAKE MICHIGAN
SHORELINE AND INFRINGE ON THE PUBLIC TRUST AND THEREBY
_____ ENSURING THE USE AND ENJOYMENT OF PRIVATE SHORELAND -----
PROPERTIES.**

WHEREAS, the Township finds, based on the best available science, that:

Standing water levels of Lake Michigan fluctuate naturally over the course of seasons, years, and decades in a way that cannot be significantly mitigated through engineered systems or otherwise;

All of the Great Lakes are geologically young features comprised primarily of sands and gravels, especially along the reach of Lake Michigan encompassing Chikaming Township, such that Lake Michigan shoreline is readily eroded when subjected to high-energy wave action;

Because of fluctuating lake levels, in combination with the geological composition and geomorphology of Lake Michigan dunes, shoreline, and submerged bottomlands, the Lake Michigan shoreline within Chikaming Township is erosive and slowly receding landward over time, a process that is very likely to continue if not accelerate into the future given the increasingly frequent and severe storminess and high lake levels occurring throughout the Great Lakes Basin;

If left unaltered by human modifications, the Lake Michigan shoreline responds naturally over time to coastal dynamics through cross-shore and longshore movement of sands, gravels, and others sediments, and through the natural erosion of shoreline dunes and beaches, such that the shoreline retains a relatively shallow slope with expansive, walkable natural beaches;

Activities that modify the Lake Michigan shoreline through the placement of boulders, stone, rock, steel or other similar hard shoreline armoring in an effort to arrest natural shoreline erosional processes represents a substantial financial investment, both for the initial installation of shoreline armoring and for the ongoing maintenance or removal of shoreline armoring over time given the impacts of high-energy wave action upon them;

The installation of shoreline armoring results in increased erosional forces that move sediment within the nearshore system further offshore, diminishing the availability of those sediments to naturally replenish the beach during low lake level periods;

The installation of shoreline armoring generates increased erosional processes that can result in the accelerated erosion and recession of shoreline adjacent to the armoring;

The installation of shoreline armoring ultimately results in the erosion and permanent loss of natural sandy beach lakeward of the armoring, creating public health and safety hazards for users of the shoreline;

Inland waterbodies are similarly subject to natural changes, including reliction and accretion, that are impacted by water levels that vary seasonally and year to year;

_____The installation of armoring on inland waterbodies impacts these water bodies in a similar fashion as with the Great Lakes by impairing natural processes and increasing erosional processes that can create public health and safety hazards for riparian landowners and users of the inland waterbodies; and

Unless maintained in perpetuity, shoreline armoring ultimately fails and breaks apart because of high-energy waves, high water levels, and other natural forces acting upon the shoreline armoring, leaving debris that continually degrades the natural shoreline and creates public health and safety hazards for users of the shoreline and public safety and navigational hazards for users of nearshore waters.

WHEREAS, the Township finds, based on engagement with the Township's citizens, that:

The defining character of Chikaming Township is its attractive natural features, the most significant of which is the Lake Michigan shoreline, with its wooded sand dunes and expansive beaches;

The mission of Chikaming Township is to provide accessible, fiscally responsible government that promotes a safe and economically vigorous community, while protecting and enhancing the township's character and environment; and

The most appropriate, effective, and reasonable means to preserve the economic, environmental, and cultural well-being of the community; to protect the public health, safety, and the general welfare of the community; and to steward and enhance public and private property values along Lake Michigan and throughout the Township is to prohibit the placement of hardened shoreline armoring on the shoreline of Lake Michigan.

WHEREAS, the Township finds, based on well-established precedent in the laws of the State of Michigan, that:

The State of Michigan enjoys a public trust doctrine that:

Places ownership of the submerged bottomlands of the Great Lakes in the State of Michigan, held in trust for the benefit of the people of Michigan. *Glass v Goeckel*, 473 Mich 667 (2005);

Establishes a public trust interest in reasonable public access to and use of Great Lakes foreshore beaches and dunes lakeward of the natural ordinary high water mark. *Id.*;

Imposes a duty upon shoreland property owners not to modify their shoreland properties in such a way that would impose a nuisance upon the general public or neighboring shoreland property owners, which townships are empowered to prosecute and enjoin. *Norton Shores v Carr*, 81 Mich App 715 (1978)).

WHEREAS, pursuant to the township ordinance act, townships in the state of Michigan may adopt ordinances regulating activities for the protection of the public health, safety, and general welfare of persons and property. MCL 41.181, *et seq.*; *Square Lake Hills Condo Ass'n v Bloomfield Twp*, 437 Mich. 310 (1991)).

WHEREAS, the purpose of this Ordinance is to regulate the activity of installing, placing, or maintaining shoreline armoring on the shoreline of Lake Michigan or along inland lakes and streams within the Township.

NOW, THEREFORE, THE TOWNSHIP OF CHIKAMING, BERRIEN COUNTY, MICHIGAN ORDAINS:

**SECTION I
TITLE**

This Ordinance shall be known as and may be cited as the Chikaming Township Shoreline Armoring Ordinance.

**SECTION II
DEFINITIONS**

As used in this Ordinance, the following terms shall be defined as follows:

(1) "Shoreline armoring" means armoring comprised of concrete, boulders, stone, gravel, steel, iron, timber, or other similar materials that are designed and intended, either as the principal purpose or an incidental purpose, to interrupt the natural cross-shore or longshore movement of sand, gravel, and other sediments within or along a shoreline or watercourse. Shoreline armoring includes, but is not limited to, the placement of seawalls, bulkheads, riprap, revetments, groins, and breakwaters. Shoreline armoring does not include sandbags, Geotubes®, and sand fences as defined below.

(2) "Sandbag" is a fabric bag or container system (including sand-filled Hesco® bags or containers made by HESCO® or similar sand-filled container systems) filled with clean, uncontaminated sand from an upland source outside of a Critical Dune Area or within a Critical

Dune Area from open dune areas on the property, but not sand from dredging the lake bottom without permission from the Department of Environment, Great Lakes, and Energy.

(3) "Geotube®" is a container made of flexible, permeable material that is significantly longer than it is wide and filled with clean, uncontaminated sand from an upland source outside of a Critical Dune Area or within a Critical Dune Area from open dune areas on the property, but not sand from dredging the lake bottom without permission from the Department of Environment, Great Lakes, and Energy.

(4) "Primary shoreland structure" includes, but is not limited to a home, cottage, office, or similar habitable structure on the property in question. The primary shoreline structure includes an attached garage; an attached deck; an attached gazebo; stairway(s); an inground swimming pool attached by decking, fencing or other material; an attached septic system; or other similar improvement that is attached to the primary residence such that the destruction or damage to the improvement will impair the integrity of the primary residence on the property. Unattached accessory structures such as a guest house, storage sheds, detached garage, detached gazebo, or pole barn are included as primary shoreland structures.

(5) "Sand fence" is an artificial barrier of evenly spaced slats or fabric erected perpendicular to the prevailing wind and supported by posts.

SECTION III
PROHIBITION ON SHORELINE ARMORING AND PERMITTING REQUIREMENTS
FOR SANDBAGS AND GEOTUBES

(1) It shall be unlawful to in any way commence installation of, actually install, or place shoreline armoring upon or within the ground anywhere within Chikaming Township.

(2) A permit must be obtained for installation or placement of sandbags or Geotubes® on property in Chikaming Township. If any other local, state, and federal permits are required, in addition to a permit from the Township Supervisor or his or her designee, the property owner or application must obtain such permits prior to placement of sandbags or Geotubes®. The Township Supervisor or his or her designee shall issue a permit allowing the installation or placement of sandbags or geotubes, to minimize the risk of erosion and damage to property including shoreland structures, subject to all of the following:

(a) The Property Owner (or their designated representative) establishes that one or more primary shoreland structures are in danger of damage from shoreline erosion;

(b) The Property Owner establishes that placement of sandbags or Geotubes® would be capable of slowing erosional or flooding processes;

(c) The sand contained within the sandbags or Geotubes® is of sufficient quality that it can be released to the ground without presenting a public health or safety risk or causing ecological harm. The sand used in the sandbags shall be sand that reasonably matches

quality, size, and texture as the existing sand such that it supplements the existing sand on the beach; and

(d) The Property Owner, its successors and assigns, shall hold the Township of Chikaming harmless from any and all claims for damages to persons or property arising out of the installation, existence and maintenance of sandbags or Geotubes®, which the Township shall or may become legally obligated to pay. However, this provision shall not apply to claims, losses and expenses arising out of the adjudicated negligence of the Township or claims related to the lawfulness, validity, or constitutionality of this ordinance brought by the Property Owner against the Township.

(3) A permit for sandbags or Geotubes® shall be valid for a period of one year from the date of issuance. The permit will automatically renew each year for a total of five years unless the Township determines that

(a) Water levels have receded significantly enough that the primary shoreline structure is no longer in danger and the sandbags or Geotubes® may be removed without damage to the primary shoreline structure; or

(b) The Township determines that the sandbags or Geotubes® have been damaged so that they are no longer preventing erosion or are otherwise determined to be a nuisance, dangerous, or hazardous condition.

The Township may, in its discretion, monitor the sandbags or Geotubes® to assess their integrity and any damage. If the Township determines that the permit should not automatically renew for another year and the sandbags or Geotubes® should be removed, it shall provide the permittee with at least 60 days to release the sand and remove the sandbags or Geotubes® at the property owner's expense. Upon expiration of the permit, the Property Owner shall release the sand and remove the sandbags or Geotubes® at the Property Owner's expense.

(4) If the sandbags or Geotubes® cause substantial damage to the shoreline or bluff, the property owner or applicant shall be responsible for removing the sandbags and/or Geotubes®, restoring any damage they caused to the shoreline or bluff, and paying the cost of said removal and restoration.

(5) The property owner or applicant must obtain all necessary local, state, and federal permits in addition to a permit from the Township Supervisor or his or her designee prior to placement of sandbags or Geotubes®.

SECTION IV VIOLATIONS AND PENALTIES

(1) Any person who disobeys neglects or refuses to comply with any provision of this ordinance or who causes, or take any action in installation of armoring, allows, or consents to any of the same shall be deemed to be responsible for the violation of this ordinance. Maintaining shoreline armoring that is a danger to persons, properties, and the natural resources of this state is deemed to be a nuisance. A violation of this ordinance is also deemed to be a nuisance per se.

(2) A violation of this ordinance is a municipal civil infraction, for which the fines shall not be less than \$100 nor more than \$500, in the discretion of the Court. The foregoing sanctions shall be in addition to the rights of the Township to proceed at law or equity with other appropriate and proper remedies. Additionally, the violator shall pay costs which may include all expenses, direct and indirect, which the Township incurs in connection with the municipal civil infraction.

(3) Each day during which any violation continues shall be deemed a separate offense.

(4) In addition, the Township may seek injunctive relief against persons alleged to be in violation of this ordinance, and such other relief as may be provided by law.

(5) This ordinance shall be administered and enforced by the Police Department of the Township or by such other person (s) as designated by the Township Board from time to time.

(6) As used herein, "person" means any individual, partnership, association, trust, estate, LLC, or corporation.

SECTION V PERMIT DENIAL; APPEALS

If an application is denied, the Township Supervisor or his or her designee's notice of denial shall explain the reasons for the denial. After denial of an application, the applicant may seek prompt review of the Township Supervisor or his or her designee's denial through the Township Board. If the denial is affirmed upon review by the Township Board, the Township Board's action shall be reviewable by a Berrien County Court of competent jurisdiction.

SECTION VI SEVERABILITY

The provisions of this ordinance are hereby declared to be severable. If any clause, sentence, word, section or provision is hereafter declared void or unenforceable for any reason by a court of competent jurisdiction, it shall not affect the remainder of such ordinance which shall continue in full force and effect.

SECTION VII CONFLICTING ORDINANCES

All ordinances or parts of ordinances in conflict with this ordinance are, to the extent of such conflict, hereby repealed.

**SECTION VIII
ADOPTION**

This ordinance was enacted on the 25th day of February, 2021 by the Township Board of Chikaming Township, Berrien County, Michigan, and ordered to take effect on the 5th day of April, 2021, the same being more than thirty (30) days after the date of publication.

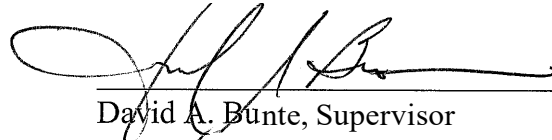
Dated: February 25, 2021



Paula Dudiak, Clerk
Township of Chikaming

Attest

Dated: February 25, 2021



David A. Bunte, Supervisor
Township of Chikaming

CERTIFICATION

I do hereby certify that the foregoing constitutes a true and complete copy of Ordinance No. 147, duly adopted by the Township Board of the Township of Chikaming, Berrien County, Michigan, at a special meeting held on the 25th day of February, 2021. I further certify that Dudiak moved the adoption of said ordinance and Sullivan supported said motion. The names and the members of the Township Board and their vote on the foregoing ordinance were as follows:

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Rettig	<u> X </u>	_____	_____	_____
Bunte	<u> X </u>	_____	_____	_____
Dudiak	X	_____	_____	_____
Marske - -	_____X	_____	_____	_____
Sullivan	<u> X </u>	_____	_____	_____

I further certify that the aforesaid ordinance was recorded in the Ordinance Book for the Township of Chikaming on the 25th day of April 2021, and such recording has been authenticated by the signatures of the Supervisor and Township Clerk. I further certify that a synopsis of the foregoing ordinance was published in full in the Harbor Country News, a newspaper circulated in the Township of Chikaming, Berrien County, Michigan, on the 4th day of March, 2021.