

DRAFT NO. 1 –06/07/2018     **THE BOROUGH OF MANTOLOKING**  
**MAYOR AND COUNCIL**

**MINUTES - COUNCIL AGENDA SETTING MEETING**

**June 6, 2018**  
**Mantoloking Yacht Club**  
**1224 Bay Avenue**  
**Mantoloking, New Jersey**

The Council Agenda Setting Meeting of the Mayor and Council was be held this day in the Mantoloking Yacht Club, Mantoloking, New Jersey.

1. **CALL TO ORDER:** Mayor George C. Nebel called the meeting to order at 5:30 p.m.
2. **OPEN PUBLIC MEETING STATEMENT:** Mayor George C. Nebel read the following statement:

In compliance with the provisions of the New Jersey Open Public Meetings Act, adequate notice of this meeting of the Mantoloking Borough Council has been advertised in the manner provided by law.

3. **ROLL CALL:**

<b><u>COUNCIL</u></b>	<b><u>PRESENT</u></b>	<b><u>ABSENT</u></b>	<b><u>LATE</u></b>	<b><u>DIAL -IN</u></b>
Council President White	X			
Councilman Gillingham	X			
Councilman Amarante	X			
Councilman Nelson				X
Councilwoman O'Mealia	X			
Councilman Rzemieniewski	X			
Mayor George C. Nebel	X			
<b><u>ALSO PRESENT</u></b>				
Beverley A. Konopada, Borough Clerk	X			
Robin Labue, Borough Attorney	X			
Lynne Hazelet, Deputy Clerk	X			
April Yezzi, CFO, CTC, QPA	X			
Chief Stacy Ferris	X			
Robert Mainberger, P.E. Mott MacDonald	X			

4. **PLEDGE OF ALLEGIANCE:** Mayor George C. Nebel led the assembly in the Pledge of Allegiance.

**5. RESOLUTION: MINUTES OF PREVIOUS MEETINGS**

**RESOLVED**, the Mantoloking Borough Council approves the following minutes as printed and distributed.

Council Agenda Setting Meeting- May 8, 2018  
Council Regular Business Meeting- May 15, 2018

- 6. PRIVILEGE OF THE FLOOR:** Mayor George C. Nebel will open the meeting for public comment and questions about the agenda.
- 7. MUNICIPAL SERVICES COMMITTEE,** Council President White will present the monthly reports from the Public Works Superintendent, Construction Official, Land Use Officer and Building Committee and moves the following resolutions:

**A. RESOLUTION OF THE BOROUGH OF MANTOLOKING, COUNTY OF OCEAN, STATE OF NEW JERSEY, AUTHORIZING THE EXECUTION OF CHANGE ORDER NUMBER 1 AND NUMBER 2 TO THE CONTRACT WITH WALLACE BROTHERS FOR THE PROPOSED MANTOLOKING MUNICIPAL BUILDING (INCREASE \$59,286.39)**

**WHEREAS**, a contract was previously awarded to Wallace Brothers for the Proposed Mantoloking Municipal Building for the Borough of Mantoloking; and

**WHEREAS**, the original contract for said project was in the amount of \$4,193,980.00; and

**WHEREAS**, Change Order Number 1 has been submitted by Wallace Brothers to the Borough Architect and Construction Manager for a net contract increase of \$7,314.48, due to a request by New Jersey Natural Gas for a dedicated gas service and meter for the new generator; and

**WHEREAS**, Change Order Number 2 has been submitted by Wallace Brothers to the Borough Architect and the Construction Project Manager for a net contract increase of \$51,971.91, due to a request by the utility company to mount the CT Cabinet on the exterior of the building; and

**WHEREAS**, the Change Order Number 1 and Number 2 amounts to a total less than 20% of the original contract awarded to Wallace Brothers; and

**WHEREAS**, this change order has been recommended by the Borough Architect and Construction Project Manager and agreed to by the contractor; and

**WHEREAS**, it is the desire of the governing body to authorize the execution of this change order.

**NOW, THEREFORE, BE IT RESOLVED**, by the governing body of the Borough of Mantoloking as follows,

1. That the governing body does hereby authorize the execution of the Change Order Number 1 submitted by Wallace Brothers to the Borough Architect and Construction Project Manager.
2. That the governing body does hereby authorize the execution of the Change Order Number 2 submitted by Wallace Brothers to the Borough Architect and Construction Project Manager.
3. That the Mayor and Municipal Clerk are hereby authorized to execute these documents.

4. That certificates of availability of funds executed by the Chief Financial Officer is annexed hereto. The following are the line item appropriations or ordinances which constitute the availability of funds for these contracts:
- \_\_\_\_\_
- \_\_\_\_\_.

5. That the governing body specifically approves the bid specifications, designs and plans prepared in connection with the Proposed Municipal Building.

6. A copy of this resolution shall be provided to Wallace Brothers, B.L.D.G Architecture, LLC and Sibilia Construction Services, LLC, and the Chief Financial Officer.

**PUBLIC HEARING:** Mayor Nebel will open the meeting to the public on Ordinance No. 679

**B. ADOPTION OF ORDINANCE 679- AN ORDINANCE OF THE BOROUGH OF MANTOLOKING, COUNTY OF OCEAN, STATE OF NEW JERSEY AMENDING THE BOROUGH CODE OF THE BOROUGH OF MANTOLOKING, SO AS TO AMEND CHAPTER 2, ENTITLED “ADMINISTRATION”**

“SEE ATTACHED”

**ROLL CALL VOTE:**

8. **DUNE & BEACH COMMITTEE:** Councilman Nelson will present the reports of the Dune & Beach Committee and Ocean County Block Grant Program and moves the following resolution.

**PUBLIC HEARING:** Mayor Nebel will open the meeting to the public on Ordinance No. 678

**A. ADOPTION ORDINANCE 678 -AN ORDINANCE OF THE BOROUGH OF MANTOLOKING, COUNTY OF OCEAN, STATE OF NEW JERSEY AMENDING THE BOROUGH CODE OF THE BOROUGH OF MANTOLOKING, SO AS TO AMEND CHAPTER 10, ENTITLED “BEACH REGULATIONS”**

“SEE ATTACHED”

**ROLL CALL VOTE:**



9. **FINANCE COMMITTEE**, Councilman Gillingham will present the monthly finance report and moves the following resolutions:

- A. **RESOLUTION: ACCEPT THE REPORT OF THE MUNICIPAL FINANCE OFFICER**
- B. **RESOLUTION: PAYMENT OF BILLS**
- C. **RESOLUTION: GOVERNING BODY CERTIFICATION OF COMPLIANCE WITH THE UNITED STATES EQUAL OPPORTUNITY EMPLOYMENT OPPORTUNITY COMMISSION'S "ENFORCEMENT GUIDANCE ON THE CONSIDERATION OF ARREST AND CONVICTION RECORDS IN EMPLOYMENT DECISIONS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964"**

WHEREAS, N.J.S.A. 40A:4-5 as amended by P.L. 2017, c.183 requires the governing body of each municipality and county to certify that their local unit's hiring practices comply with the United States Equal Employment Opportunity Commission's "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964," *as amended*, 42 U.S.C. § 2000e *et seq.*, (April 25, 2012) before submitting its approved annual budget to the Division of Local Government Services in the New Jersey Department of Community Affairs; and

WHEREAS, the members of the governing body have familiarized themselves with the contents of the above-referenced enforcement guidance and with their local unit's hiring practices as they pertain to the consideration of an individual's criminal history, as evidenced by the group affidavit form of the governing body attached hereto.

NOW, THEREFORE BE IT RESOLVED, That the Mayor and Council of the Borough of Mantoloking, hereby states that it has complied with N.J.S.A. 40A:4-5, as amended by P.L. 2017, c.183, by certifying that the local unit's hiring practices comply with the above-referenced enforcement guidance and hereby directs the Clerk to cause to be maintained and available for inspection a certified copy of this resolution and the required affidavit to show evidence of said compliance.

- D. **ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATIONS LIMITS AND TO ESTABLISH A CAP BANK (COLA ORDINANCE)**
- E. **RESOLUTION: INTRODUCTION OF THE BUDGET**

10. **PUBLIC SAFETY COMMITTEE**, Councilman Rzemieniewski will present the monthly reports of the Police Department, Municipal Court, Fire Company, and Emergency Management and moves the following resolution.

**A. RESOLUTION: APPOINTMENT OF PERSONNEL – SEASONAL PART TIME HELP**

**RESOLVED**, the Mayor and Council of the Borough of Mantoloking, County of Ocean, State of New Jersey hereby approves the following appointments with the terms and conditions indicated. Appointment of Lifeguards is contingent upon successful completion of required testing:

Name	Position	Effective Date	Salary
Carolyn Hazard	Lifeguard	6/15/18-9/15/18	\$12.50
Maxwell Hazard	Lifeguard	6/15/18-9/15/18	\$12.50
Jack Miller	Lifeguard	6/15/18-9/15/18	\$12.50
Griffin Fitzgerald	Lifeguard	6/15/18-9/15/18	\$12.50
Alexander D'Alessandro	Lifeguard	6/15/18-9/15/18	\$12.50
Sean Wosleger	Lifeguard	6/15/18-9/15/18	\$12.50
Tim Miller	Asst. Head Lifeguard	6/1/18-9/15/18	\$15.00
Samuel Harris	Lifeguard	6/15/18-9/15/18	\$12.50
Kevin Miller	Lifeguard	6/15/18-9/15/18	\$12.50
Grace Gargiulo	Lifeguard	6/27/18-9/15/18	\$12.50
Joseph Rebholz	Lifeguard	6/15/18-9/15/18	\$12.50
Julianne Crepezzi	Badge Checker	6/15/18-9/15/18	\$10.00
Samantha Urso	Badge Checker	6/15/18-9/15/18	\$10.00
Alexander Hoffman	Beach Patrol	6/15/18-9/15/18	\$12.50

11. **ENVIRONMENTAL COMMITTEE** Councilwoman O'Mealia will present the report of the Environmental Committee as moves the following resolution.

**A. RESOLUTION: APPOINTMENT OF MEMBER TO THE ENVIRONMENTAL COMMISSION**

**RESOLVED**, the Mayor and Council of the Borough of Mantoloking, County of Ocean, State of New Jersey hereby appoints the following individual to the Environmental Commission:

Name	Effective Date	Term Expiration
Doreen Duggan	June 12, 2018	12/31/2018

12. **MUNICIPAL RELATIONS COMMITTEE** Councilman Amarante will present the report of the Mantoloking Relations Committee.

13. **MAYOR AND COUNCIL COMMENTS**

Councilman Rzemieniewski asked Chief Ferris about the purchase of a 4 wheeler for the Police Department. Chief Ferris responded that one will go to the lifeguards and one will be used by the Police. She further explained that this vehicle will allow responders to load patients on and off the beach. Councilman White explained that this new vehicle will be very helpful to us.

Councilwoman O'Mealia advised that vehicle will be used all year long. She also inquired if the Borough could pre-sell beach badges.

Borough Attorney, Robin Labue, advised that you can, however, the ordinance says the badges go on sale on June 15<sup>th</sup>.

14. **PUBLIC COMMENTS PERIOD**

On behalf of Mayor Nebel, Debbie Rzemieniewski read a Proclamation making June 2018 Tick Awareness Month.

Nancy Ness, 1057 Barnegat Lane, is very concerned about bike riders and how they are not familiar with the rules of the road. Walk against traffic and ride with traffic. She made a request that signs be installed with the regulations.

Peter Flihan, 1105 Barnegat Lane, agrees with Nancy Ness regarding the bike riders. He expressed his disappointment in the price of beach badges. Mr. Flihan advised that maybe he will be buying the daily badges for \$10 instead of paying \$75 for seasonal badge.

Bob Post, 4 Carpenter Lane, inquired if the Borough accepts checks and credit cards when purchasing badges. Chief Ferris responded that we accept cash and checks with a driver's license.

Joan Lygas, 970 Barnegat Lane, had a question regarding the change orders and thought the original contract had money set aside for unexpected circumstances.

Councilwoman O'Mealia explained that there is a contingency fund that can be use in a variety of ways, one way could be used for change orders.

Councilman White said it is his understanding that the money will be taken out of the contingency.

Joann Lygas, 970 Barnegat Lane, said we used to get updates on the building and we haven't seen that in a long time.

Councilman Rzemieniewski advised that he had thought Mr. McIntyre came to a meeting within the last two months and gave a status update.



**15. NEXT MEETING:**

Council Regular Business Meeting, Tuesday, June 12, 2018 at 5:30 p.m. at the Mantoloking Yacht Club,  
1224 Bay Avenue, Mantoloking, NJ

**16. ADJOURNMENT**

There being no further business for this meeting, Councilman Rzemieniewski motioned to adjourn. The motion was seconded by Councilman White and approved by unanimous voice vote at 5:48 p.m.

Respectfully submitted

Beverley A. Konopada  
Borough Clerk

**ORDINANCE 679**

**AN ORDINANCE OF THE BOROUGH OF  
MANTOLOKING, COUNTY OF OCEAN, STATE OF  
NEW JERSEY AMENDING THE BOROUGH CODE OF  
THE BOROUGH OF MANTOLOKING, SO AS TO  
AMEND CHAPTER 2, ENTITLED  
"ADMINISTRATION"**

**BE IT ORDAINED** by the Mayor and Borough Council of the Borough of Mantoloking, County of Ocean, and State of New Jersey, as follows:

**SECTION 1.** Section 2-16 of the Borough Code of the Borough of Mantoloking, is hereby amended and supplemented so that it shall be entitled, "Beach Patrol," and so that it shall read in its entirety as follows:

**§ 2-16 Beach Patrol.**

**A.** The Borough shall employ a Beach Patrol consisting of a Head Lifeguard and lifeguards and other seasonal employees as may be required for the proper supervision of public bathing at designated public beaches within the Borough of Mantoloking.

**B.** The Chief of Police shall determine the required qualifications of the lifeguards, badge, checkers, and other personnel, and shall set forth the scope and nature of their duties and hours of employment, except that all lifeguards shall be required to be lifeguard, CPR, and first aid certified.

**C.** Lifeguards shall have charge, control, and supervision of the bathing, swimming, and surfing at the respective beaches for the individual designated sports and generally on all the beaches and beachfront of the Borough and in the waters adjoining the same.

**SECTION 2.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**SECTION 3.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.



**SECTION 4.** This ordinance shall take effect after second reading and publication as required by law.

**NOTICE**

**NOTICE IS HEREBY GIVEN** that the foregoing ordinance was introduced and passed by the Borough Council on first reading at a meeting of the Borough Council of the Borough of Mantoloking held on the **15<sup>th</sup>** day of **May, 2018**, and will be considered for second reading and final passage at a regular meeting of the Borough Council to be held on the **12<sup>th</sup>** day of **June, 2018**, at 5:30 p.m., at the Mantoloking Yacht Club located at 1228 Bay Ave in Mantoloking, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

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Beverley A. Konopada, RMC, CMR  
BOROUGH OF MANTOLOKING

## ORDINANCE 678

### **AN ORDINANCE OF THE BOROUGH OF MANTOLOKING, COUNTY OF OCEAN, STATE OF NEW JERSEY AMENDING THE BOROUGH CODE OF THE BOROUGH OF MANTOLOKING, SO AS TO AMEND CHAPTER 10, ENTITLED "BEACH REGULATIONS"**

**BE IT ORDAINED** by the Mayor and Borough Council of the Borough of Mantoloking, County of Ocean, and State of New Jersey, as follows:

**SECTION 1.** Chapter 10 of the Borough Code of the Borough of Mantoloking, entitled, "Beach Regulations" is hereby amended and supplemented so as to read in its entirety as follows:

#### **10-1 TITLE AND PURPOSE.**

##### **10-1.1 Short Title.**

This chapter may be cited and referred to as "The Beach Ordinance of the Borough of Mantoloking.

##### **10-1.2 Findings, Declaration and Purpose.**

This chapter is declared to be an exercise of the Police power in the interest of safety and welfare for the protection of persons and of property.

Access to the Atlantic Ocean beaches within and abutting the Borough of Mantoloking has, with increased population and improved transportation, become a matter of public concern. The character and quality of the access and use of the beach under the Public Trust Doctrine, as applied in New Jersey and proclaimed in various decisions of our Courts, necessitates that each community bordering on the Atlantic Ocean continuously review its policies, facilities, and procedures, together with an evaluation of the use and demand for use of beaches within the community by members of the public. The Borough is a small, fully developed, single-family, tranquil, noncommercial resort and year-round residential community on a very narrow portion of the barrier beach. Except for certain public access routes, the oceanfront at Mantoloking is privately owned, dedicated and restricted to residential use, up to the mean highwater line. These private property rights are, of course, subject to the rights of the public under the Public Trust Doctrine.

The Borough of Mantoloking recognizes its obligation to provide public access to the ocean under the Public Trust Doctrine. In furtherance of this obligation, the Borough will provide lifeguarding services at a limited number of locations for the summer of 2018, Persons utilizing the beach for bathing or swimming at unguarded areas or when lifeguards are not present do so at their own risk. Persons using the beach for surfing, kayaking or any other recreational use are strongly cautioned that they perform such activities at their own risk.

In order to evaluate and implement such participation by the Borough as is deemed appropriate, the Borough has acquired and will continue to acquire relevant data concerning the use of the beaches by requiring those who use the ocean beaches to apply for a seasonal beach badge. Beaches within the Borough are receiving increased use by members of the public who do not reside in the Borough and who may, therefore, not be familiar with local conditions and beach regulations. Further, the increased utilization of the beach by surfers and kayakers necessitates specific regulation of these activities. Surfing presents inherent risks to its participants and to others; surfers and bathers cannot safely co-exist in close proximity to each other. It is, therefore, deemed necessary to control and regulate surfing so that, to the extent reasonably possible, the interests of all persons using the ocean may be reasonably accommodated.

The Borough of Mantoloking does, by the adoption of this chapter, express its continuing intention to establish and maintain a viable and balanced response to judicial determinations concerning rights, both public and private, to the utilization and enjoyment of the ocean and bay beaches. The procedures, rules and regulations, as set forth and authorized herein, are deemed necessary and appropriate to provide for the health, safety and welfare of all concerned.

This chapter is not intended to be administered, enforced or interpreted in any manner that will expand public rights upon private property within the Borough, but rather to provide for access by the public pursuant to the Public Trust Doctrine and to exercise the Borough's general Police power over areas within its jurisdiction.

## **10-2 DEFINITIONS.**

All terms and language utilized in this chapter shall be accorded their common and customary meaning, except where specifically defined herein as follows:

**Access Ways** shall mean any public route, way or path providing ingress and egress to the Public Trust Lands to seaward of the Mean High-Water Line.

**Bathe** shall mean to enter a body of water and to become immersed therein.

**Beach** shall mean that area between the Mean High-Water Line and the Seaward Edge of the Dune or upland vegetation along the bay front.

**Beach Area** shall mean that area between the Mean High-Water Line of the Atlantic Ocean, in reference to the North American Vertical Datum of 1988 (NAVD 88) as established by the U.S. Army Corps of Engineers (USACE) and the seaward edge of the dune.

**Beach Badges** shall mean any badges issued by the Borough or by a private beach association operating upon beaches within the Borough which provide lifeguard services.

**Beaches** shall mean the areas defined above ("beach" and "beach area") and any Bay beaches.

**Boat** shall mean a watercraft or vessel of any size, and propelled by paddles, oars, sails or an engine.

**Cooler** shall mean a device, container or apparatus which is utilized to keep things cool.

**Household** shall mean all occupants of a residential unit.



**Litter** shall mean garbage, rubbish, and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare, or which will degrade the aesthetics of the **beach**.

**Mean High-Water Line** shall mean the line formed by the intersection of the tidal plane of mean high tide with the shore (mean high tide being a mean of all high tides over a period of 18.6 years).

**Oceanfront** shall mean abutting the Atlantic Ocean.

**Ocean** shall mean the Atlantic Ocean.

**Person** shall mean any individual, firm, partnership, corporation or association of persons.

**Public Trust Doctrine** shall mean the common law doctrine establishing the public's right to access and use navigable waters and tidally flowed lands seaward of the mean high water line which is held in trust by the State for the use by all citizens.

**Public Trust Doctrine Area** shall be the area seaward of the mean high water line.

**Riparian Lands** shall mean lands traversed or covered by flowing navigable waters.

**Surf** shall mean being in the water accompanied by a surfboard or other rigid device capable of being ridden erect on a breaking wave. The utilization of a kayak or similar vessel to repeatedly traverse or cross through the surf line, as opposed to the mere launching and landing of same for purposes other than riding waves, shall also be deemed surfing.

**Surfboard** shall mean a long narrow board utilized for surfing equipped with a tethering device to fasten the board to the rider.

### **10-3 BEACH BADGES.**

#### **10-3.1 When Required.**

**Beach** badges are required for persons **over** twelve (12) years of age, from June 15<sup>th</sup> to Labor Day of each year, inclusive, between the hours of 10:00 a.m. and 5:00 p.m.

#### **10-3.2 Application and Fee.**

Badges may be purchased at the municipal facilities on Downer Avenue, or such other location(s) as may be advertised, **from 10:00 a.m. and 5:00 p.m. The cost will be \$75.00** dollars per badge for a seasonal badge. The beach badge shall be valid for the entire summer season of the year it is issued. Daily badges will be sold for \$10.00 dollars per badge. No replacement badges will be issued without payment of the entire, then current, badge fee.

#### **10-3.3 Display of Badge; Nontransferability.**

Mantoloking beach badges are not transferable **except within households** and must be prominently displayed at all times while upon the access routes, beach or adjacent waters during such hours as access to public trust doctrine areas is managed by the Borough and/or its agents.

#### **10-3.4 Badges Issued by Private Beach Associations.**

Persons wearing badges issued by private beach associations shall be accorded the same rights and shall be subject to the same regulations as registrants wearing municipal beach

badges.

#### **10-3.5 Surfers, kayakers and fisherman.**

Surfers, kayakers, paddleboarders and fisherman using only the beach area or waters covered under the public trust doctrine at Mantoloking are not required to obtain Borough beach badges **during such time as they are actively engaging in surfing, kayaking, paddleboarding and fishing.** Surfers shall not pay any additional fee for a surfing permit or badge. Surfers are not required to display permits or decals on surfboards.

#### **10-3.6 Promotional badges.**

**The Borough Council may authorize by resolution promotions consisting of a certain free daily or seasonal beach badges to be distributed by the Mayor or Chief of Police to enhance tourism.**

### **10-4 RULES AND REGULATIONS GOVERNING BEACH ACTIVITIES.**

#### **10-4.1 Public Recreational Bathing Beaches**

The Borough or Mantoloking will operate one or more Public Recreational Bathing Beaches pursuant to N.J.A.C. 8:26 Persons utilizing the beach for bathing or swimming at unguarded areas or when lifeguards are not present do so at their own risk. Persons using the beach for surfing, kayaking or any other recreational use are strongly cautioned that they perform such activities at their own risk.

#### **10-4.2 Trespass on Private Property.**

Persons shall not trespass on private beach property not subject to the public trust doctrine or lands covered under Perpetual Easement Agreement with the Borough and the NJDEP.

#### **10-4.3 Beach Badges.**

- a. *Display of Badge.* All persons upon the beach and access ways or in or upon adjacent waters, as the case may be, shall wear and prominently display an approved current badge which has been registered in the name of that person, or in the name of that person's household.
- b. *Enforcement.* All persons upon the **beach** and access ways or in or upon adjacent water during the hours of **10:00 a.m. to 5 p.m.** from June 15th through Labor Day shall, if not in immediate possession of an appropriate beach badge, promptly leave the beach upon the request of authorized enforcement personnel

#### **10-4.4 Littering.**

No person upon the beach and access ways or in or upon adjacent waters shall throw or deposit litter except in public receptacles and in such a manner that the litter will be prevented from being carried or deposited by the elements. Where public receptacles are not provided, all such litter shall be carried away by the person responsible for its presence and properly disposed of elsewhere. No person shall throw or deposit litter into the bay or ocean or lands adjacent to same.



#### **10-4.5 Food and Beverages on the Beach.**

No person upon the beach and access ways or in or upon adjacent waters shall picnic on the beach or otherwise possess, carry or consume food or beverages on the beach. The possession or consumption of water or any other nonalcoholic beverage in a nondisposable, durable-reusable container is, however, permitted.

#### **10-4.6 Fires.**

No person upon the beach and access ways shall ignite, maintain or allow open fires.

#### **10-4.7 Noise**

No person upon the beach and access ways shall play sound reproduction devices of any nature, which are operated so as to be audible beyond a range of six (6) feet from the device.

#### **10-4.8 Nudity and Disrobing.**

No person upon the beach and access ways or in or upon adjacent waters shall:

- a. *Appear in State of Nudity.* A person shall be found in a state of nudity when his clothing or absence of clothing exposes to public view a person's anus, genitals, public area or female areolae.
- b. change clothes, dress, undress or otherwise to disrobe, except outer wraps.

#### **10-4.9 Games**

No person upon the beach and access ways or in or upon adjacent waters shall play paddleball, beach tennis, skim board or throw, bat or catch a baseball, football, tennis, basketball, softball, rubber ball, beach ball, Frisbee or any other object or to fly kites or any other object so close to nonparticipants as to constitute a hazard to them or to disturb the general tranquility of other persons upon the beach.

#### **10-4.10 Animals.**

- a. Unless otherwise permitted by this chapter, no person who owns, keeps or harbors any dog or other animal shall suffer or permit such animal upon any premises, public or private, other than those owned or occupied by such person or upon which private premises the owner shall have a right of presence, unless, leashed, and under the direct and immediate control of a responsible person.
- b. No dogs or other animals shall be permitted upon Borough-owned beaches or upon beaches under Borough jurisdiction, i.e. lands below the mean highwater line; except however:
  1. Leashed dogs and other animals when accompanied by a responsible person shall be permitted on beaches between May 15<sup>th</sup> and October 1<sup>st</sup>, only between sunrise and 10:00 a.m. and from 5:00 p.m. to sunset, however no dog or other animal shall be suffered or permitted to be in or upon the area known as North Lagoon (adjacent to Bergen Avenue) between May 15<sup>th</sup> and October 1<sup>st</sup>. This ban and prohibition shall and does extend to and include the entire area from the northerly edge of the street pavement to the water's edge and on the east and west by the lines formed by the extension of the bulkheads, southerly, to the points of intersection with the northern



edge of pavement.

2. From October 2<sup>nd</sup> to May 14<sup>th</sup> dogs and other animals shall be permitted upon beaches and access ways unleashed, but only when under the direct and immediate control of a responsible person.

3. An owner, tenant or occupant of oceanfront property shall not be deemed in violation of the chapter, at any time, while in the act of permitting his or her dog or other animal to transit from the lot to or from the ocean abutting the upland lot. Owners, tenants or occupants of private property (beaches) shall not be required to leash their animals while on said property.

4. Dogs and other animals may be permitted to swim unleashed when under the direct and immediate control of a responsible person.

c. Notwithstanding the foregoing, no person owning, harboring, keeping or in charge of any dog or other animal upon any oceanfront lot owned or occupied by such person shall fail to remove from the beach and to dispose of in a sanitary manner, any feces deposited by any such animal.

d. Any person in charge of and accompanying a dog or other animal in the Borough except on private property owned or occupied by the owner of the animal shall have, in his or her immediate possession, a container suitable for removal of any feces which may be deposited by the animal.

#### **10-4.11 Fishing.**

No person upon the beach and access ways or in or upon adjacent waters shall fish within two hundred (200) feet of any swimmer or person in the water.

#### **10-4.12 Boats.**

No person upon the beach and access ways or in or upon adjacent waters shall launch, operate or retrieve any boat within two hundred (200) feet of any swimmer or person in the water.

#### **10-4.13 Vehicles.**

No person upon the beach and access ways or in or upon adjacent waters shall operate vehicles of any nature whatsoever with the exception of **Borough-owned or sponsored** vehicles and life-saving emergency vehicles operated by beach associations.

#### **10-4.14 Swimming Under the Influence.**

No person upon the beach and access ways or in or upon adjacent waters shall swim, enter or remain in the water while under the influence of any substance which will increase the natural hazard of such activity.

#### **10-4.15 Dangerous Conditions.**

No person upon the beach and access ways or in or upon adjacent waters shall enter the water, swim or attempt to swim or surf under conditions which are beyond the apparent capacity of the person and which may endanger others.

#### **10-4.18 Response to Borough Personnel.**

No person upon the beach and access ways or in or upon adjacent waters shall fail to

respond to directions of Borough personnel **or agents** consistent with the enforcement of this chapter.

#### **10-4.19 Restrictions on the use of umbrellas and other fixtures on the beach.**

- A. Umbrellas with a collapsible circular shade no greater than eight feet in diameter stretched over hinged ribs radiating from a center pole no greater than 7 feet 6 inches in height, and without grounding lines, ropes, or sides are permitted on the beach.
- B. Devices designed or used to shade infants and small children, also known as "baby tents," no larger than 36 inches high by 36 inches wide by 36 inches deep, are permitted on the beach.
- C. Umbrellas and baby tents shall be secured such that uncontrolled movement of the device is restricted. Baby tents and canopies when secured with fasteners, stakes, weights, or the like shall not endanger beach patrons. Anchoring lines, tethers, or the like shall not extend beyond the perimeter of the baby tent or canopy.
- D. Umbrellas and baby tents shall be removed from the beach daily.
- F. Excluding umbrellas and, baby tents described above in this section, other shading devices including, without limitation, tents, tarps, canopies, cabanas, pavilions, temporary restroom facilities, and similar devices, or any materials mounted on supports are prohibited except in connection with an approved special event or ceremony.

#### **10-4.20 Other prohibited acts**

- A. No person shall sleep upon the beach between the hours of 5p.m. and 10 a.m.
- B. Smoking is not permitted on the beach or access ways.

### **10-5 SURFING RULES AND REGULATIONS.**

#### **10-5.1 Date and Time Limitations.**

Surfing regulations shall be enforced during the same dates and times that the Borough enforces beach regulations regarding bathers and swimmers, i.e., from June 15<sup>th</sup> to Labor Day of each year, inclusive, between the hours of 10:00 a.m. and 5:00 p.m.

#### **10-5.2 Assumption of Risk.**

Surfing will be permitted at all times year round without regard to date or time of day, or to conditions of wind, waves, or weather. Surfing shall, at all times, be at the sole risk of the surfer.

### **10-5.3 Distance from Swimmers and Bathers.**

Surfing within two hundred (200) feet of a bather or swimmer is prohibited. In the event of conflict or doubt, as to the separation distance or as to priority, surfers shall give way to bathers or swimmers in recognition of the inherent potential for injury in the event of contact or close proximity.

### **10-5.4 Display of Badge.**

Surfers shall at all times, possess and display, upon request, a current Borough beach badge or a current badge issued by the Mantoloking Beach Association or South Beach Association if they are not actively engaging in surfing.

### **10-5.5 Tether Devices.**

Surfers shall at all times, utilize a tether device while surfing.

### **10-5.6 Compliance with Regulations.**

Surfers shall at all times comply with all other provisions of this chapter, as amended, and all other regulations not inconsistent with this chapter.

## **10-6 ADMINISTRATION AND ENFORCEMENT.**

### **10-6.1 Enforcement by Borough Police.**

This chapter and the rules and regulations set forth herein or as may hereafter be adopted by resolution of the Borough Council shall be enforced by the Chief of Police utilizing law enforcement officers and/or such other Borough personnel as may be made available for this purpose. The complaint of any person who may allege a violation of this chapter shall be accepted and prosecuted in the same manner, as though initiated by the within described enforcement personnel.

## **10-7 PENALTIES.**

### **10-7.1 Violations and Penalties.**

**Fines shall be assessed for violations consistent with Borough Ordinance Chapter 7:12-4.** Upon conviction of a first violation of any provision of this chapter, the violator shall be subject to a fine of not more than one hundred (\$100.00) dollars but not less than twenty-five (\$25.00) dollars or detention for not more than five (5) days, at the discretion of the Court. Upon conviction of a second and/or subsequent violation of this chapter the violator shall be subject to a fine of not more than five hundred (\$500.00) dollars but not less than fifty (\$50.00) dollars or detention for any more than ninety (90) days, at the discretion of the Court.

### **10-7.2 First Offense.**

For a first alleged violation of any provision of this chapter and, unless the summons and complaint shall specifically mandate "court appearance required", a defendant may enter a guilty plea by mail or upon appearance in the office of the Court Administrator of the Municipal Court. Upon entry of the guilty plea and payment of a fine in the sum of twenty-



five (\$25.00) dollars, the matter shall be concluded without the necessity of a court appearance by the defendant.

**SECTION 2.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**SECTION 3.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 4.** This ordinance shall take effect after second reading and publication as required by law.

### **NOTICE**

**NOTICE IS HEREBY GIVEN** that the foregoing ordinance was introduced and passed by the Borough Council on first reading at a meeting of the Borough Council of the Borough of Mantoloking held on the **15th** day of **May, 2018**, and will be considered for second reading and final passage at a regular meeting of the Borough Council to be held on the **12th** day of **June, 2018**, at 5:30 p.m., at the Mantoloking Yacht Club located at 1228 Bay Ave in Mantoloking, New Jersey, at which time and place any persons desiring to be heard upon the same will be given the opportunity to be so heard.

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Beverley A. Konopada, RMC, CMR  
BOROUGH OF MANTOLOKING

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Honorable George C. Nebel  
MAYOR