

## **ORDINANCE 1231**

### **AN ORDINANCE AUTHORIZING EXECUTION OF A DEED OF DEDICATION AND PERPETUAL PUBLIC ACCESS EASEMENT OVER STREET ENDS AND BEACH FOR PUBLIC ACCESS TO TIDAL WATERS IN THE BOROUGH OF DEAL, COUNTY OF MONMOUTH, STATE OF NEW JERSEY**

WHEREAS, the State Department of Environmental Protection ("DEP") is requiring a Deed of Dedication and Perpetual Public Access Easement for municipally owned right of ways providing visual or actual public access to the tidal waterways in the Borough of Deal; and

WHEREAS, these easements are a part of the Municipal Public Access Plan (MPAP) between the Borough of Deal and the DEP.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Borough of Deal that the easement be granted and allow the Mayor to sign the easement on behalf of the Borough of Deal

Section 1. The terms and conditions of the easement is hereby as follows:

#### **WITNESSETH**

**WHEREAS**, Grantor is the owner of that certain tract of land, located in the Borough of Deal, County of Monmouth, State of New Jersey, and/or identified as public street ends located at Roosevelt Avenue, Phillips Avenue, Darlington Road, Deal Esplanade, Marine Place, Hathaway Avenue and Neptune Avenue as identified in Addendum A (Street End Descriptions) and Addendum B (Key Map on the official 2010 tax map of the Borough of Deal, hereinafter the "Property(s)," and Grantor holds the requisite interest to grant this Deed of Easement; and

**WHEREAS**, the Grantee recognize that tidal waterways and their coastlines at the Borough of Deal, New Jersey are valuable economic resources to the municipality and the State of New Jersey; and

**WHEREAS**, access to tidal waterways at the Borough of Deal, New Jersey is a right provided to the public under the Public Trust Doctrine; and

**WHEREAS**, in order for the public to access tidal waterways, perpendicular access to these areas must be secured for public use; and

**WHEREAS**, in order to ensure public access, Grantees need a Perpetual Public Access Easement on portions of said Property(s) herein described; and

**WHEREAS**, the Borough of Deal shall consider this Deed of Easement in establishing the assessed value of any lands subject to such restrictions; and

**WHEREAS**, this Deed of Dedication and Perpetual Public Access Easement shall be subject to and consistent with any existing public access agreement or easement entered into by the Municipality with the United States Army Corps of Engineers; and

**WHEREAS**, this Deed of Easement will also serve to implement the Public Trust Doctrine and ensure permanent public access, use and enjoyment of tidal waterways and their shores.

**NOW, THEREFORE**, the Grantor grants and conveys to Grantee an irrevocable, assignable, perpetual and permanent easement as set forth herein:

**GRANT OF EASEMENT:** A perpetual and assignable easement and right-of-way across that land of the Property(s) described as public street ends located at Roosevelt Avenue, Phillips Avenue, Darlington Road, Deal Esplanade, Marine Place, Hathaway Avenue and Neptune Avenue as identified in Addendum A (Approximate Street End Descriptions)

and Addendum B (Key Map on the official 2010 tax map of the Borough of Deal, hereinafter the "Property(s)," and Grantor holds the requisite interest to grant this Deed of Easement listed above for use by the State of New Jersey and the Borough of Deal, their representatives, agents, contractors and assigns to:

- a. Construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public access area to allow the public access to tidal waterways;
- b. Post signs;

The easement reserves to the Grantor, the Grantor's, successors and assigns the right and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby conveyed to the Grantee, subject however to existing easements for utilities and pipelines, existing public highways, existing paved public roads and existing public streets.

**Duration of Easement:** The easement granted hereby shall be in perpetuity, and in the event that the Borough of Deal or the State of New Jersey shall become merged with any other geopolitical entity or entities, the easement granted hereby shall run in favor of surviving entities. The covenants, terms, conditions and restrictions of this Deed of Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective representatives, successors and assigns and shall continue as a servitude running in perpetuity with the land.

**Municipality to Maintain Public Access:** The Municipality agrees, consistent with all Federal, State and local statutes and regulations, that at all times it shall use its best, good-faith efforts to preserve, cause and ensure the public access areas to be maintained, consistent with all applicable Federal, State or local laws or regulations, notwithstanding any action or inaction of the State of New Jersey.

**Character of Property(s):** Notwithstanding the foregoing, nothing herein is intended or shall be deemed to grant the Grantees or otherwise permit the Grantee to any other person to cross over or use any part of the Property(s) which is not within the Easement Area; nothing herein is intended or shall be deemed to alter the boundary lines or setback lines of the Property(s).

By the acceptance of this Deed of Easement, the Municipality agrees, to the extent allowed by applicable law, that the Property(s) burdened by the easement herein described shall not be excluded from the calculations of minimum square footage requirements when construing applications under the Zoning Ordinance of the Municipality.

**Miscellaneous:**

1. The enforcement of the terms of this Easement shall be at the discretion of the Grantee and any forbearance by Grantee to exercise their rights under this Easement in the event of any violation by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent violation or of any of Grantee rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any violation by Grantor shall impair such rights or remedies or be construed as a waiver of such rights or remedies.
2. The interpretation and performance of this Deed of Easement shall be governed by the laws of the State of New Jersey.
3. If any provisions of this Deed of Easement or the application thereof to any person or circumstance is found to invalid, the remainder of the provision of this Easement or the application of such provisions to person or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
4. Any notice, demand, request, consent, approval or communication under this Deed of Easement shall be sent by regular first-class mail, postage prepaid and by Certified Mail, Return Receipt Requested, addressed to the mailing addresses

set forth above or any other address of which the relocation party shall notify the other, in writing.

5. The captions in this Deed of Easement have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.
6. Structures no part of the project are not authorized.

SECTION 2. That all Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION 3. If any section, subsection, paragraph, sentence or any part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance not directly involved in the controversy in which such judgment shall have been rendered.

SECTION 4. This Ordinance shall take effect upon final passage and publication in accordance with law.

Introduced by Commissioner Simhon on February 5, 2021

Seconded by Commissioner Ades

Roll Call: Ayes 3; Cohen, Ades and Simhon

Motion to Adopt by Commissioner Simhon on March 3, 2021

Seconded by Commissioner Ades

Roll Call: Ayes 3; Cohen, Ades & Simhon

**Borough of Deal**  
**Approximate Street End Descriptions**

**Roosevelt Avenue**

Beginning from the easterly terminus of Roosevelt Avenue (10’ wide) extending approximately 75 feet to the west.

**Phillips Avenue**

Beginning from the easterly terminus of Phillips Avenue (10’ wide) extending approximately 150 feet to the west.

**Darlington Road**

Beginning from the easterly terminus of Darlington Road (10’ wide) extending approximately 125 feet to the west.

**Deal Esplanade**

Beginning from the easterly terminus of Deal Esplanade (10’ wide) extending approximately 150 feet to the west.

**Marine Place**

Beginning from the easterly terminus of Marine Place (10’ wide) extending approximately 25 feet to the west.

**Hathaway Avenue**

Beginning from the easterly terminus of Hathaway Avenue (10’ wide) extending approximately 150 feet to the west.

**Neptune Avenue**

Beginning from the easterly terminus of Neptune Avenue (10’ wide) extending approximately 150 feet to the west.

