



**AN ORDINANCE AMENDING THE CODE OF ORDINANCES  
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA**

WHEREAS, the Town finds that Chapter 12, Sections 101 through 108, needs to be updated in order to be consistent with changes in other sections of the Town's Zoning Ordinance in order to avoid confusion; and

WHEREAS, the Town finds that since it already regulates itinerant merchants as part of Crowd Gathering Permits, Special Events Permits, and Outdoor Stands in other sections of the ordinance, that Section 12 is now out of date and not helpful to someone seeking guidance from Town Codes; and

WHEREAS, the Town finds that peddling in which a sales person would go door-to-door in a neighborhood has not been practiced in the Town in the last five years and is not desirable in Town neighborhoods unless conducted by children under the age of 18 for school or non-profit activities; and

NOW THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that Chapter 12, Businesses and Licensing of the Code of Ordinances shall be amended as follows:

**PART I.** That Section 12-101 Definitions be amended as follows:

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Articles of merchandising* means anything of value offered for sale to the public by any person.

*Itinerant merchant* means any person who shall expose for sale, either on the street or in a building occupied in whole or in part for such purpose, any goods, wares or articles of merchandise for less than 6 consecutive months and is not a merchant with an established retail store within the Town. This definition shall include any person or group who exposes goods for sale in a flea market, a parking lot or an unused portion of a building or from any fixed location within the town.

*Peddler* means any person engaged in the act of peddling of articles of merchandise. *Peddling* means the sale or offering for sale from house to house by any persons from a cart, truck, automobile or other vehicle operated over and upon the streets and highways any goods, wares or articles of merchandise. and shall include, without limitation, fresh fruits and vegetables, farm products, household medicines, remedies and other articles.

**PART II.** That Section 12-102 be replaced with Exemptions, moved from Section 107, and amended as follows:

The following individuals and activities are exempted from the provisions of this article:

1. Churches, civic organizations and nonprofit organizations that are tax exempt under the provisions of the Internal Revenue Code are exempt for activities involving craft fairs, flea markets and yard sales; provided that such activities will not be held on more than four days in any 12-month period. Further, a permit must be obtained at no cost, and the activity must comply with the provisions of section 12-102.

2. Children under the age of 18 years who are students in a public or private school and who conduct door to door solicitations, requests for donations, or temporary sales for magazine subscriptions or donations for extra-curricular, school or nonprofit activities.

**PART III.** That Sections 12-103 and 104 regarding licensing and permitting for Itinerant Merchants and Peddlers be combined, simplified, and the requirements allowing peddling be eliminated as follows:

**Sec. 12-103. - License and Permitting required.**

- A. It shall be unlawful for any peddler or itinerant merchant- anyone to peddle any articles of merchandise within the Town unless as exempted in this Section.
- B. ~~until such person shall have first secured a business privilege license and permit to peddle the same and such itinerant merchant or peddler shall keep and produce and exhibit the permit to any official of the Town upon demand.~~ It shall be unlawful for any itinerant merchant to offer for sale any articles of merchandising within the Town, unless:
  1. Included in a Crowd Gathering permit or Special Events permit and licensed individually or as part of a Specialty Market License taken out on behalf of the merchants associated with the event, or
  2. Licensed and permitted as an Outdoor Stand, or as
  3. Exempted under this Section.
- C. The Tax Collector shall issue to such person a Business Privilege License upon approval as an Outdoor stand by the Zoning Administrator, or shall issue a Specialty Market License or individual license upon approval of the Crowd Gathering or Special Events permit by the Town Manager's Office, as set out in the schedule of licensed taxes required by section 12-9.

**Sec. 12-103. — Licensing and Permit procedures for Peddlers.**

~~(a) Every peddler or itinerant merchant desiring to sell articles of merchandise and any person operating a flea market for itinerant merchants, before so doing, shall apply and make a sworn affidavit as appears in this section before the tax collector of the town, and upon making application and swearing to such affidavit, the tax collector shall issue to such person a business license as set out in the schedule of licensed taxes required by section 12-9; provided, however, that if, under the provisions of such schedule of license taxes, the applicant is deemed to be exempted from the payment of a license tax, the tax collector shall issue to such person a free permit to sell such articles of merchandise as are permitted to be sold free of such license tax. The application of an itinerant merchant must be submitted not later than the fourth working day of the town prior to commencing business. The affidavit sworn to by such applicant shall be in a format as follows:~~

~~"I, \_\_\_\_\_, residing at \_\_\_\_\_, being duly sworn, depose and say:~~

~~"1. That all of the articles of merchandise to be sold or proposed to be sold or offered for sale by me in the Town of Nags Head are as follows: (delete descriptions not applicable) (Circle all that apply)~~

~~(a) Fruits and farm products;~~

~~(b) Books, periodicals, printed music, other printed material;~~

~~(c) ice, wood for fuel;~~

- (d) fish;
- (e) beef, mutton, pork, bread, cakes, pies, dairy products, poultry, livestock or articles produced and manufactured by the applicant;
- (f) Medicines, drugs or
- (g) Other assembled (manufactured) articles.

"2. I am/am not (strike one) a disabled veteran, or blind person.

"3. I intend to sell my goods, wares and merchandise: (check appropriate categories)

- (a) On foot;
- (b) From a motor vehicle (automobile, truck, etc.) of one half ton capacity or less;
- (c) From a motor vehicle of more than one half ton capacity;
- (d) By solicitation from house to house;
- (e) From a temporary location, flea market or pavilion within the Town of Nags Head;
- (f) (If applicable) the location within the Town of Nags Head at which I intend to sell my goods, wares and merchandise is described as follows:

"4. I have/have not (strike one) paid a license tax to the North Carolina Department of Revenue.

"This the \_\_\_\_\_ day of \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
20\_\_\_\_\_.

	Notary Public
My Commission Expires:	"

(b) Prior to issuing the business license, the tax collector shall require the applicant to exhibit:

1. A business license issued by the state, unless such state license is not required by the General Statutes; and
2. If articles are to be sold from a temporary location, the permission, in writing, of the property owner as required by section 12-104.

(e) The license provided for by this section shall not be issued until the state license is presented and exhibited to the tax collector, unless exempt as provided in subsection (a) of this section.

**PART IV.** That Sections 12-104 and 105 be amended as follows:

**Sec. 12-104. – Regulations generally.**

- A. It shall be unlawful for any person to expose for sale, offer to sell, barter or exchange, or sell any foods, wares or articles of merchandise within the public street and highway rights-of-way, or on the ocean beaches of the Town.
- ~~B. It shall be unlawful for any person to expose for sale, offer to sell, barter or exchange, or sell any foods, wares or articles of merchandise to peddle any articles of merchandise from any vehicle or on foot or by any other means between the hours of 8:00 p.m. and 8:00 a.m. in any residential zoning or commercial district within the corporate limits of the Town.~~
- C. Licensed and permitted itinerant merchants must adhere to the location, signage and any other conditional requirements of the Crowd Gathering, Special Events, or Outdoor Stand permit under which they operate.
  - ~~(a) Any person selling articles of merchandise from a temporary location shall obtain from the owner of that location permission to temporarily locate himself on the property of such person for the purpose of selling articles of merchandise. Such permission shall be in writing and signed by the owner or lessee of the premises. No person holding a peddler's license shall offer merchandise for sale from a temporary location as an itinerant merchant.~~
  - ~~(b) Any person selling articles of merchandise from a vehicle shall not place or locate his vehicle in a parking lot of a business establishment, unless and excepting the remaining parking spaces in such parking lot, not occupied by the itinerant merchant, are at least equal to and not less than the parking required for that business establishment under the zoning laws of the town.~~
  - ~~(c) Any itinerant merchant selling articles of merchandise shall locate only in those areas in which there is sufficient room for the merchant's vehicle and the parking of a minimum of three automobiles for customers on the premises where such itinerant merchant is located or in designated on-street parking areas.~~
  - ~~(d) An itinerant merchant shall remove his vehicle from the premises after his normal business hours, and it shall be unlawful for any person selling articles of merchandise to allow his vehicle or trailer to remain on the premises between the hours of 12:00 midnight and 6:00 a.m.~~
  - ~~(e) It shall be unlawful to peddle any articles of merchandise from any vehicle or on foot or by any other means between the hours of 8:00 p.m. and 8:00 a.m. in any residential zoning district within the corporate limits of the Town.~~
  - ~~(f) An itinerant merchant shall locate for the purpose of selling merchandise only in a C-1 or C-2 zoning district of the town. It shall be unlawful for an itinerant merchant to locate in any other zoning district.~~
  - ~~(g) The vehicle from which an itinerant merchant sells articles of merchandise shall not be located within the minimum front, side or rear yards required in the zoning district in which the vehicle is located.~~
  - ~~(h) Except as provided in section 12-107, one attached, freestanding or sandwich sign may be used to advertise, identify or locate an itinerant merchant. The sign may be attached to the vehicle or structure from which the merchant operates or placed on the ground within five feet of the merchant's vehicle or structure. If the sign is attached to the~~

vehicle or structure, it shall not exceed ten square feet in area. In the case of the freestanding or sandwich sign placed on the ground, the sign shall not exceed ten square feet in the area on each side or four feet in height. The sign shall be exhibited only during the time that the itinerant merchant is operating.

**Sec. 12-105. - Revocation.**

Any license or permit issued pursuant to this article is automatically revoked and terminated in the event of violation of any provision of this Section. ~~section 12-103 or 104 or in the event of providing of false information in the affidavit required by section 12-103.~~

**PART V.** That Section 12- 106 regarding craft fairs and flea markets be struck entirely, and that Section 12-107, be moved to the beginning of the ordinance as section 102:

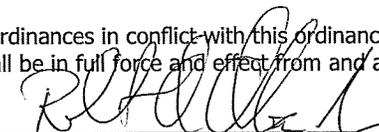
**Sec. 12-106. - Craft fairs and flea markets.**

~~Itinerant merchants may be grouped together or occupy, from time to time, outdoor spaces, pavilions and other structures, whether permanent or temporary, as part of craft fairs and flea markets, when associated as part of a Crowd-Gathering or Special-Events permit and subject to the following rules and regulations specifications of the associated permit:~~

- ~~1. The pavilions or other structures shall be located only in a CR, C-1 or C-2 zoning district of the town. Further, any such structure must meet all requirements of the uniform state building code and the town zoning ordinance for a commercial structure. Further, parking areas meeting the requirements of chapter 48, zoning, must be provided.~~
- ~~2. All signs advertising, identifying or locating the various itinerant merchants located in a structure must be contained wholly within the structure in which the itinerant merchants are located. One commercial sign identifying the craft fair, flea market or pavilion may be constructed pursuant to the sign regulations contained in chapter 48, zoning.~~
- ~~3. Articles of merchandise offered to be sold shall be permitted to remain on the premises of such structure during the term of the occupancy thereof by the itinerant merchant.~~
- ~~4. Except as provided in section 12-107, all itinerant merchants must comply with the applicable provisions of this article including, without limitation, the permit procedures.~~

**Sec. 12-107. - Exemptions. - (Moved)**

**PART VI.** That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the 1<sup>st</sup> day of August 2012.

  
Robert O. Oakes, Jr., Mayor

ATTEST:

  
Carolyn E. Morris, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
John Leidy, Town Attorney



Date adopted: August 1, 2012

Motion to adopt by Commissioner \_\_\_\_\_

Motion seconded by Commissioner \_\_\_\_\_

Vote: \_\_\_\_\_ AYES \_\_\_\_\_ NAYS



**TOWN OF NAGS HEAD  
STATEMENT OF CONSISTENCY  
WITH THE LAND USE PLAN FOR A ZONING TEXT AMENDMENT**

**BE IT HEREBY RESOLVED** by the Board of Commissioners for the Town of Nags Head, that in accordance with provisions of North Carolina General Statute 160A-383, the Board of Commissioners hereby finds and determines that the adoption of the requested zoning text amendment regarding itinerant merchants and peddlers is consistent with the goals, objectives and policies of the Town's adopted Land Use Plan, and that this action is reasonable and in the public interest because it addresses an emerging concern related to the ability of the public to understand the Town's Code of Ordinances and to eliminate any conflicts therein, and supports the desire to "maintain an economy based on family-vacation tourism" (Nags Head Land Use Plan p. 87)

**READ, APPROVED AND ADOPTED** by a vote of 5 to 0 this the 1<sup>st</sup> day of August 2012.

A handwritten signature in black ink, appearing to read "Robert O. Oakes Jr.", written over a horizontal line.

Robert O. Oakes Jr., Mayor

A handwritten signature in black ink, appearing to read "Carolyn F. Morris", written over a horizontal line.

Carolyn F. Morris, Town Clerk



A handwritten signature in black ink, appearing to read "Cliff Ogburn", written over a horizontal line.

Cliff Ogburn, Town Manager