



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

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land; and

WHEREAS, pursuant to N.C.G.S. § 160A-174, the Town may also enact and amend ordinances that define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the Town; and

WHEREAS, pursuant to N.C.G.S. § 160A-371 to 160A-377, the Town may also enact provisions to address the subdivision of land; and

WHEREAS, under the enabling authority granted by other state statutes, the Town may also enact ordinances regulating and addressing flood prevention, soil erosion and sedimentation, stormwater, and grading; and

WHEREAS, pursuant to N.C.G.S. § 160A-363, the Town may elect to combine certain land development ordinances into a unified ordinance; and

WHEREAS, the Town initiated the FOCUS Nags Head project in 2015 to assess progress toward the town's long-term goals, determine emerging needs, and unify the town's goals and actions as it moves forward; FOCUS Nags Head had two main components: the development of a comprehensive plan and the preparation of a unified development ordinance (UDO) to help implement many of the comprehensive plan goals and policies; and

WHEREAS, the FOCUS Nags Head Comprehensive Plan is an official policy document adopted by the Town to strategically plan for and enhance the quality of life and physical character of the community and is built upon many common community values; and

WHEREAS, the town is committed to the implementation of the Comprehensive Plan and desires to address the policy objectives of the plan; and

WHEREAS, in June 2017, the Town of Nags Head initiated the development of a Unified Development Ordinance, as a furtherance of the FOCUS Nags Head planning process; and

WHEREAS, the town finds that the regulations adopted herein will preserve and protect the Nags Head character, environment, tourism-based economy, and sense of place as described in the town's vision; and

WHEREAS, the Town finds that these amendments are consistent with the goals, objectives and policies of the Town's adopted Comprehensive Plan, and that this action is reasonable and in the public interest, and is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's ordinances as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipsis ("..."), shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of Town Code.

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

PART I. That Chapter 22, *Floods*, Chapter 28, *Soil Erosion and Sedimentation Control*, Chapter 34, *Stormwater, Fill, and Runoff Management*, Chapter 38, *Subdivisions*, and Chapter 48, *Zoning*,

including the *Town of Nags Head Residential Design Guidelines* appendix, are hereby repealed and removed, to be marked as "Reserved", said chapters to be recodified, with modification in some instances, into a Unified Development Ordinance with appendices, dated "Published: July 19, 2019," attached hereto and incorporated herein, to be adopted and incorporated into the Town Code as Part II, Unified Development Ordinance.

PART II. That Section 1-6, *General penalty; enforcement of ordinances; continuing violations*, (b), be amended as follows:

- (b) Violations of any provision of the following chapters and sections of this Code or the Unified Development Ordinance shall be a misdemeanor and punishable as provided by G.S. 14-4:
- (1) Chapter 4, Articles II, III, and VI and chapter 26, subsection 26-8(b);
 - (2) Chapter 8, all sections with the exception of sections 8-1, 8-2, 8-4, and 8-62. As to any violation of sections 8-82, 8-83, or 8-84, such violation shall be a class III misdemeanor punishable by a fine of up to \$200.00;
 - (3) Chapter 10, subsection 10-252(d);
 - (4) Chapter 14, all provisions;
 - (5) Chapter 20, section 20-2;
 - (6) Chapter 42, Articles I, II and III, all sections except sections 42-41 and 42-92;
 - (7) Chapter 26, all sections with the exception of sections 26-1, 26-5 and 26-6 and Chapter 16, section 16-1;
 - (8) ~~Chapter 34, Section 34-11~~ Section 11.10, Discharge of Stormwater, Pool Water, Hot Tub Water, and De-Watering Effluent, of the Unified Development Ordinance;
 - (9) Chapter 32, subsections 32-3(c) and (d).

PART III. That Section 1-6, *General penalty; enforcement of ordinances; continuing violations*, (c), be amended as follows:

- (c) Violations of the following provisions of this Code or the Unified Development Ordinance shall subject the offender to a civil penalty upon the issuance of a citation for such violation as hereinafter provided. The civil penalty, if not paid to the town treasurer within 15 days of the issuance of a citation, may be recovered by the town in a civil action in the nature of debt. Unless otherwise provided by a specific provision of this Code or the Unified Development Ordinance, such civil penalties shall be no more than \$500.00 for each violation, and each day any single violation continues shall be a separate violation; except, that for violations of parking ordinances as set out in section 42-163, the civil penalty provisions and procedures therein shall apply:
- (1) Chapter 10, all sections with the exception of subsection 10-252(d);
 - (2) Chapter 18;
 - (3) Chapter 20; all sections with the exception of section 20-2;
 - (4) Chapters 12 and 40;
 - (5) Chapter 42, Article IV and Chapter 16, Article IV;
 - (6) Chapter 16, Article II;
 - (7) Chapter 26, sections 26-5, 26-6 and 26-9 and Chapter 16, section 16-1;
 - (8) Chapter 22, Article II, ~~and Chapter 34;~~
 - (9) Chapter 30;
 - (10) Chapter 32, all sections with the exception of subsection 32-3(c) and (d);
 - (11) Chapter 36;

~~(12) Chapter 38;~~

~~(13) Chapter 24;~~

~~(14)(12)~~ Chapter 44, all sections with the exception of section 44-76;

~~(15)(13)~~ Chapter 48, Zoning Unified Development Ordinance, with the exception of Article 11, Part II, Sedimentation and Erosion Control.

PART IV. That Section 1-6, *General penalty; enforcement of ordinances; continuing violations*, (d), be amended as follows:

- (d) Violations of the following provisions of this Code or the Unified Development Ordinance shall subject the offender to either a civil penalty or a criminal penalty, or both, in accordance with the penalty provisions of subsections (b) and (c) of this section, or in accordance with the specific penalty provisions contained within the respective chapter and article, where applicable:
- (1) Chapter 6;
 - (2) Chapter 8, sections 8-1, 8-2, 8-4, 8-7, and 8-62;
 - (3) Chapter 40, Article II;
 - (4) Chapter 16, Article III;
 - (5) Chapter 20, section 20-85;
 - (6) Chapter 26, sections 26-1, 26-2.1, and 26-13;
 - (7) Chapter 28 Article 11, Part II, Sedimentation and Erosion Control, of the Unified Development Ordinance;
 - (8) Chapter 42, sections 42-41 and 42-92;
 - (9) Chapter 44, section 44-76;
 - (10) Chapter 46.

PART V. That Section 1-6, *General penalty; enforcement of ordinances; continuing violations*, (m), be amended as follows:

- (m) Upon determination of a violation of any section of this Code or any other town ordinances, the penalty for which is a civil penalty, the town shall cause a warning citation to be issued to the violator, setting out the nature of the violation, the date of the violation and an order to immediately cease the violation or, if the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, stating a reasonable period of time in which the violation must be abated. The warning citation shall specify that a second citation shall incur a civil penalty. The initial issuance of a warning citation upon a violator as provided above shall not be required for the immediate imposition of civil penalties for a determination of a violation of any of the provisions of Chapter 48, Zoning the Unified Development Ordinance.

PART VI. That Sections 2-231 through 2-234, of Chapter 2, *Administration, Article IV, Boards, Commissions and Committees*, Division 2, *Planning Board*, are deleted in their entirety and replaced with the following:

Refer to Section 2.4, Planning Board, of the Unified Development Ordinance; Secs. 2-231—2-234. - Reserved

PART VII. That the definition of "temporary sign", as contained in Section 4-1, *Definitions*, of Chapter 4, *Amusements, Entertainments, Mass Gatherings and Commercial Outdoor Recreational Uses*, be amended as follows:

Temporary sign means a banner or other advertising device constructed of cloth, canvas, fabric, or other material, which is displayed for a limited period of time. The following signs shall be prohibited:

(1) Prohibited signs as outlined in ~~article VIII, chapter 48 of this Code~~ Article 10, Part III, Sign Regulations, of the Unified Development Ordinance.

(2) Air or gas inflated signs.

(3) Air supported signs including, but not limited to, kites and balloons.

PART VIII. That Article VI, *Commercial-Outdoor Recreational Uses*, of Chapter 4, *Amusements, Entertainments, Mass Gatherings and Commercial Outdoor Recreational Uses*, be deleted in its entirety.

PART IX. That references to "chapter 48, zoning" as contained in Section 4-82, *Additional requirements*, paragraphs (2) and (5), be amended to read "the Unified Development Ordinance".

PART X. That Section 10-1, *Building inspector*, (b) be amended as follows:

(b) *Right of entry for inspection purposes.* The building inspector of the town has the right at any hour of the day and any day of the week to enter upon and on a lot or site for which a building permit has been requested or issued but for which a certificate of occupancy has not yet been issued, for the purposes of inspection of the premises in accordance with this chapter, ~~the zoning chapter and~~ the building code of the town, and applicable zoning provisions contained in the Unified Development Ordinance.

PART XI. That Section 10-72, *Application*, paragraph (a), (3) be amended as follows:

(3) An approved zoning permit pursuant to ~~section 48-522~~ the Unified Development Ordinance.

PART XII. That Section 10-72, *Application*, paragraph (b), be amended to replace the words "town zoning ordinance" with "Unified Development Ordinance".

PART XIII. That the definition of "zoning districts", as contained in Section 10-332, *Definitions*, of Chapter 10, *Buildings and Building Regulations*, be amended as follows:

Zoning districts means those districts depicted on the official zoning map and described in ~~the zoning chapter, chapter 48 of this Code~~ Article 6, Zoning Districts/Table of Uses and Activities, of the Unified Development Ordinance.

PART XIV. That the term "zoning chapter" and definition thereof, as contained in Section 10-332, *Definitions*, of Chapter 10, *Buildings and Building Regulations*, be deleted in its entirety.

PART XV. That Article II, *Massage Therapy Centers and Related Businesses*, contained in Chapter 12, *Businesses and Licensing*, be deleted in its entirety, to be replaced with the following:

ARTICLE II. - RESERVED

Secs. 12-61—12-100. - Reserved.

PART XVI. That the first paragraph of Section 12-142, *Definitions*, be amended as follows:

As incorporated in ~~section 48-2~~ Appendix A, Definitions, of the Unified Development Ordinance, 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:

PART XVII. That the definition of "nonadult use businesses", as contained in Section 12-142, *Definitions*, be amended as follows:

Nonadult use businesses means any business or establishment not defined as a sexually oriented business in this section and in ~~section 48-2, definitions and specific terms, of the zoning ordinance~~ Appendix A, Definitions, of the Unified Development Ordinance. The term...

PART XVIII. That Section 12-143, *Licensing of sexually oriented businesses*, paragraph (1) be amended as follows:

(1) No person shall operate a sexually oriented business unless such person has received conditional use and site plan approval in accordance with ~~chapter 48 of this Code~~ the

applicable requirements of the Unified Development Ordinance and received a sexually oriented business license as provided by this section.

PART XIX. That Section 12-143, *Licensing of sexually oriented businesses*, paragraph (2), h., be amended as follows:

- h. A site plan showing the floor layout, customer area, and location of the structure to be used as a sexually oriented business on the property in accordance with all the requirements outlined in this article ~~and in section 48-525~~.

PART XX. That Section 12-144, *Issuance of license*, paragraph (c), be amended as follows:

- (c) The planning and development department's report will include the recommendation of the town planning board on the approval or denial of the conditional use site plan application as outlined in ~~section 48-525~~ Section 3.8.3., Planning Board Review and Comment, of the Unified Development Ordinance.

PART XXI. That Section 12-146, *Fees*, paragraph (b), be amended as follows:

- (b) In addition to the application and investigation fee required in subsection (a) of this section, the applicant shall be required to pay a one-time nonrefundable conditional use application fee in accordance with ~~section 48-525~~ the town's Consolidated Fee Schedule.

PART XXII. That Section 12-149, *Location of a sexually oriented business*, paragraph (a), be amended as follows:

- (a) As specified in ~~section 48-433(c)(8)~~ Section 7.23, Sexually Oriented Businesses, of the Unified Development Ordinance, a sexually oriented business...

PART XXIII. That the definition of "zoning districts", as contained in Section 16-71, *Definitions*, be amended as follows:

Zoning districts means land classifications within the town that regulate the uses and the locations of structures. Zoning districts are established in ~~chapter 48 of this Code~~ Article 6, Zoning Districts/Table of Uses and Activities of the Unified Development Ordinance.

PART XXIV. That Section 18-1, *Purpose of chapter*, be amended as follows:

The purpose of this chapter is to provide excavation regulations which are consistent with stormwater management regulations of ~~chapter 34 of this Code~~ Article 11, Part I, Stormwater, Fill, and Runoff Management, of the Unified Development Ordinance.

PART XXV. That Section 18-5, *Manmade ponds and stormwater basin, wet*, (1), be amended as follows:

- (1) Defined. The term "manmade pond" shall mean any regularly inundated manmade impoundment containing or designed to contain 200 cubic feet or more of water, and having or designed to have standing water for any period of more than five consecutive days after a rainfall of 4.3 inches in a two-hour period. This definition is not intended to include swimming pool structures, whether in-ground or above ground ~~or stormwater basin, wet as defined in section 34-3~~.

PART XXVI. That Section 18-5, *Manmade ponds and stormwater basin, wet*, (2) be amended as follows:

- (2) *Where permitted*.
 - a. Manmade ponds shall be allowed in all zoning districts where such manmade ponds are approved as part of any site plan or development pursuant to ~~other chapters of this Code~~ the Unified Development Ordinance.
 - b. Stormwater basin, wet shall be allowed in any zoning district where such basin has been approved as part of any site plan, subdivision, or development pursuant to ~~other chapters of this Code~~ the Unified Development Ordinance.

PART XXVII. That Chapter 24, *Mobile Homes, Mobile Home Parks and Trailers*, be deleted in its entirety, to be noted as "Reserved."

PART XXVIII. That Section 26-7, *Camping*, (a) *Definitions*, be amended by inserting the following terms and definitions for "mobile home" and "travel trailer," in alphabetical order, and that the definition of the term "open air camping" as contained therein be amended as follows:

Mobile home means a modular unit built on a chassis, with body width exceeding eight feet or body length exceeding 32 feet, designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities. A travel trailer is not to be considered as a mobile home.

Open air camping means any act of living, residing or sleeping at night, in the open air or in an automobile or vehicle which does not meet the requirements of a mobile home, as defined in ~~chapter 24 of this Code~~. The term "camping in the open air" includes, but is not limited to, sleeping out of doors in a tent, sleeping bag, blanket or hammock, or without any paraphernalia other than the clothes worn on the body.

Travel trailer means a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational and vacation uses, and, when factory equipped for the roads, it shall have a body width not exceeding eight feet and a body length not exceeding 32 feet.

PART XXIX. That Section 26-10, Sexually oriented businesses, paragraph (a), be amended as follows:

- (a) It shall be unlawful for any person, partnership, corporation, association, or other entity to operate a sexually oriented business, except as specifically permitted by ~~chapter 48~~ the Unified Development Ordinance and licensed in accordance with chapter 12 of this Code.

PART XXX. That Section 32-3, paragraph (c) is amended to change all references to "chapter 48", "sections of chapter 48, zoning", "sections of the chapter 48, zoning", and "sections of the zoning chapter of this Code" to read "provisions of the Unified Development Ordinance".

PART XXXI. Article XX, *Hurricane and Storm Reconstruction and Redevelopment; General Use Standards for Ocean Hazard Areas*, as contained in Chapter 48, *Zoning*, shall be readopted as an appendix to Chapter 32, Storm Reconstruction, without changes to the numbering of Article XX; all references to "article xx of chapter 48" or "article xx of Chapter 48, zoning" as contained in Section 32-3, Hurricane and storm reconstruction, paragraph (c), shall be amended to read "Article XX, Hurricane and Storm Reconstruction and Redevelopment, an Appendix to this Chapter".

PART XXXII. That Section 36-2, *Applicability of chapter provisions*, be amended as follows:

This chapter shall apply to the creation, design, construction and paving of all streets in the town; except, that the provisions of ~~chapter 38 of this Code Article 10, Part V, Subdivision Regulations, of the Unified Development Ordinance~~ shall apply within all subdivisions proposed for development under such ~~chapter provisions~~ and the ~~zoning provisions of the zoning ordinance~~ Unified Development Ordinance shall apply to developments, construction, and uses for which a permit is required under ~~such chapter~~ the Unified Development Ordinance.

PART XXXIII. That paragraphs (1) and (3) of Section 36-4, *Design standards*, (d), *Erosion considerations*, be amended as follows:

- (1) Procedures and requirements of ~~chapter 28 of this Code Article 11, Part II, Sedimentation and Erosion Control, of the Unified Development Ordinance~~ shall apply in the construction of street improvements where land disturbing activity exceeds 5,000 square feet.
- (3) As a result of street construction, all disturbed areas shall be treated with stabilizing material to prevent wind or water erosion and such materials shall be in accordance with the approved soil erosion and sedimentation control plan, if required. If a soil erosion and sedimentation control plan is not required the town engineer or public works director may approve, at the request of the developer, street construction, providing that soil erosion and sedimentation basic control objectives contained in ~~chapter 28 of this Code Article 11, Part II, Sedimentation and Erosion Control, of the Unified Development Ordinance~~ have been met.

PART XXXIV. That Section 36-4, *Design standards, (f) Driveway connections*, paragraph (3) be amended as follows:

In accordance with ~~chapter 34, Stormwater, Fill, and Runoff Management Article 11, Part I, Stormwater, Fill, and Runoff Management, of the Unified Development Ordinance~~, on-site permanent runoff control measures shall be installed, in conjunction with other on-site stormwater management practices, to intercept rainfall runoff from driveways that are sloped or graded towards the street or right-of-way. On-site permanent runoff control practices include, but are not limited to, slotted drains, driveway speed bumps or other approved methods of diverting, collecting and managing on-site runoff.

PART XXXV. That references to "chapter 38, Subdivisions, of this Code" and "Chapter 38 of this Code" as contained in Section 44-63, *Connection to town system required; exception, (2)*, Section 44-103, *Approval generally*, and Section 44-109, *Subdivider of subdivision proposed or under development to bear cost*, be amended to read "Article 10, Part V, Subdivision Regulations, of the Unified Development Ordinance".

PART XXXVI. That Section 44-187, *Execution; installation, (c), (3), a.*, be amended as follows:

- a. Hydrants shall be installed where shown on drawings or as directed by the town and in accordance with ~~section 38-154~~ Section 10.69 of the Unified Development Ordinance. Locations shall be within the right-of-way as shown on Schedule III.

ARTICLE IV. Severability.

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the Town of Nags Head, North Carolina which shall remain in full force and effect.

ARTICLE V. Effective Date.

This ordinance amendment shall be in full force and effect 60 days from the date of adoption by the Board of Commissioners. Complete applications for land development, such applications or development subject to ordinances or regulations incorporated within the Unified Development, received prior to 60 days from the date of adoption shall be subject to the applicable regulations in effect as of the date of the application, unless the applicant elects in writing that the application or development be subject to the Unified Development Ordinance.


Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST:

Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

John Leidy, Town Attorney

Date adopted: August 7, 2019

Date effective: October 7, 2019



Motion to adopt by Commissioner _____
Motion seconded by Commissioner _____
Vote: 5 AYES 0 NAYS