



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

**ARTICLE I. Purpose(s) and Authority.**

**WHEREAS**, pursuant to North Carolina General Statutes § 160A-174 the Town of Nags Head (the "Town") may 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 may define and abate nuisances; and

**WHEREAS**, pursuant to North Carolina General Statutes § 160A-381 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 North Carolina General Statutes § 160A-175 and the Town's police power as provided by the common law of the State of North Carolina the Town may enact and amend ordinances which provide procedures and remedies for violations of its ordinances and to abate nuisances; and

**WHEREAS**, pursuant to North Carolina General Statutes § 160A-389 and the common law of the State of North Carolina the Town may enact and amend ordinances which institute any appropriate action or proceedings necessary to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about a premises being erected, constructed, reconstructed, altered, repaired, converted, or maintained in a manner which violates the Town's zoning ordinance(s); and

**WHEREAS**, the Town finds that the location of buildings and other structures on the wet sand beach and the dry sand beach subject to the public trust of North Carolina are a nuisance because such structures restrict the public use and enjoyment of the public trust beach area, create a danger to the public, create a danger to the property of others, act as a trespass upon the property of the State of North Carolina and the public, cause sewage to be discharged into the Atlantic Ocean during and after storm events, restrict the travel of emergency vehicles and lifesaving services, reduce the value of land and structures in their vicinity, and cause an unsightly situation which harms the local tourist economy and casts unfavorable light upon the Town; and

**WHEREAS**, the Town further finds that the location of buildings and other structures on the wet sand beach and the dry sand beach subject to the public trust of North Carolina is not a desired or appropriate use of land within the Town for the reasons stated above; and

**WHEREAS**, the Town further finds that continued maintenance and repair of buildings and structures within the public trust beach area expand the nuisance conditions caused by the location of the structures and increase the time that such structures remain a nuisance; and

**WHEREAS**, the Town further finds that continued maintenance and repair of buildings and structures within the public trust beach area should be an unlawful land use practice; and

**WHEREAS**, the Town further finds that it is not in the interest of the public's health, safety or general welfare to allow buildings or structures to be located wholly or impeding traffic upon the public trust beach area, that the Town should disallow the erection, construction, reconstruction, alteration of buildings and structures within the public trust beach area and that the Town should take action to limit the maintenance and repair of such buildings and structures which are located within the public trust beach area; and

**WHEREAS**, the Town further finds that in order to prevent such actions being taken with regards to buildings and structures located wholly or impeding traffic upon the public trust beach area the Town should adopt a zoning prohibition of such actions, should deny development permits to applicants for buildings or structures located or to be located wholly or impeding traffic within the public trust beach area and should recognize that any such actions upon nonconforming structures would be an expansion of the structure's nonconformity; and

**WHEREAS**, the Town further finds that immediate application of the zoning ordinance amendments herein to the property owners within the Town who have buildings or structures located wholly or impeding traffic within the public trust beach area at the time of the adoption of said amendments may cause limited economic harm to those property owners. Such harm is minimal because most such structures have been and remain uninhabitable, have no prospect for future use, are imminently dangerous and prejudicial to the public health and safety and have already been declared to be nuisances. In recognition of the limited potential economic harm to said property owners, the Town finds that a ninety (90) day amortization period is necessary prior to application of the zoning ordinance amendments provided for herein; and

**WHEREAS**, the Town further finds that in accordance with the findings above it is in the interest of the public's health, safety, morals and general welfare that the Town's Zoning Ordinance and Town Code of Ordinances be amended as stated below.

#### **ARTICLE II. Construction.**

For purposes of this Ordinance, 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 a "... " shall remain as they currently exist within the Town Code.

#### **ARTICLE III. Amendment of Zoning Ordinance.**

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

**PART I.** That **Section 48-7. Definitions of Specific Words and Terms**, be amended to add the following in the appropriate alphabetical position:

Public trust beach area means the area adjacent to the Atlantic Ocean that is subject to public trust rights. This area is in constant flux due to the action of wind, waves, tides, and storms and includes the wet sand area of the beach that is subject to regular flooding by tides, i.e. State owned property seaward of the mean high water mark, and the dry sand area of the beach that is subject to occasional flooding by tides, including wind tides other than those resulting from a hurricane or tropical storm. Natural indicators of the landward extent of the public trust beach area include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line.

**PART II.** That **Section 48-87. Prohibitions**, be amended to add:

(c) Buildings or other structures are prohibited if they are located:

- (i) Wholly within the wet sand area of the public trust beach area, i.e. on the State owned property seaward of the mean high water mark; or
- (ii) Wholly or partially within any portion of the public trust beach area in such a manner that the building or structure impedes the flow of vehicular, pedestrian, or emergency services traffic at normal high tide.

No erection, construction, reconstruction, alteration, repair, maintenance or other work for which the General Statutes or the State Building Code would require a building permit be issued may be performed upon any oceanfront building or structure until a zoning permit has been issued in

compliance with this section. Building permits for oceanfront buildings or structure shall not be issued unless a zoning permit has been issued pursuant to this section. Only work performed to prepare for or to actually demolish or remove a prohibited building or structure from the public trust beach area may be permitted for structures prohibited by this section. If the oceanfront building or structure upon which work is to be performed is not prohibited by this section, zoning permits for work upon the building or structure shall not be denied by use of this provision.

Declaration that a building or structure is a public nuisance via the issuance of a notice of violation or order of abatement by the town manager pursuant to sections 16-33 and 16-31(6)(c) shall establish that a building or structure is subject to this prohibition. The lack of an issuance of such a notice of violation or order of abatement shall not prevent the application of this section. The burden shall be on an applicant for a zoning permit to prove that any work to be performed will be in compliance with this section. If a notice of violation or order of abatement issued by the Town Manager directs that certain work be performed on a building or structure to which this section applies, a zoning permit may also be issued for the performance of that work.

Nothing in this section is meant to prevent a property owner from taking action necessary to immediately correct an existing and imminent danger and safety hazard to the public.

This prohibition shall not be applicable to fishing piers, public or private beach accesses or other such similar structures which are otherwise lawful.

**PART III. That Section 48-123. Nonconforming structure with conforming use, be amended to add:**

(a) A nonconforming structure may be continued, subject to the following provisions:

(1) A nonconforming structure may not be enlarged or altered in a way which increases the degree of nonconformity. An example of an increase in the degree of nonconformity would be to enclose above or below a nonconforming deck whether or not the footprint is increased. Additions above or below nonconforming portions of enclosed habitable floor space shall not constitute an increase in the degree of nonconformity. Any work performed upon a building or structure prohibited by section 48-87(c) shall be considered an expansion of any existing nonconformity.

(2) Should such nonconforming structure with conforming use, be destroyed by any means other than accidental loss and where such destruction exceeds 50 percent of the physical value of the structure based upon either the annually adjusted assessed tax value or an independent appraisal prepared by a certified professional appraiser, at the time of destruction, it shall not thereafter be reconstructed except in conformity with the provisions of the regulations of the district in which it is located.

"Accidental loss" for purposes of this section shall not include any act or omission by the owner of a structure that causes damage to that structure.

A nonconforming structure occupied by a conforming principal use destroyed by accidental loss may be repaired or replaced with an identical or similar structure regardless of value provided the repair or replacement does not create any new structural nonconformities or increase the degree of existing structural nonconformities. Such repair or replacement shall not be allowed if the existing or replacement structure would be prohibited by section 48-87(c).

(3) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved, except as provided in subsection (a)(4) of this section.

(4) Any nonconforming structure located on a lot adjacent to the Atlantic Ocean or Roanoke Sound may be moved on the same lot, provided that such movement does not increase the degree of nonconformity of the structure in any way and the structure will not be located in a manner prohibited by section 48-87(c) after being moved. However, when

dimensional requirements can be met, they shall be met except as provided in section 48-83.

(b) A nonconforming structure with a conforming use may be repaired and maintained, subject to the following provisions:

(1) Work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of nonloadbearing walls, fixtures, wiring or plumbing to an extent not exceeding 50 percent of either the annually adjusted assessed tax value or independent appraisal value of the nonconforming structure. Regardless of the value of the structure or the cost of the repair or maintenance, no work may be performed on a structure prohibited by section 48-87(c) except for work associated with the demolition, removal or movement of the structure or associated with actions necessary to immediately correct an existing and imminent danger and safety hazard to the public.

(2) If a nonconforming structure becomes dangerous to life or unlawful due to lack of repairs and maintenance, where such lack of repairs and maintenance exceeds 50 percent of either the annually adjusted assessed tax value or independent appraisal value, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

(3) Nothing in this chapter shall prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be dangerous to life by any official charged with protecting the public safety, or upon order of such official when he has determined that there is a clear and immediate danger to the public safety. However, when required repairs and maintenance exceed 50 percent of either the annually assessed tax value or independent appraisal value, the building inspector shall condemn the structure in accordance with G.S. 160A-426, and the structure shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

### **ARTICLE III. Amendment of Town Code of Ordinances.**

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

**PART I.** That **Section 16-33, Notice and order to abate on finding of existence**, be amended as follows:

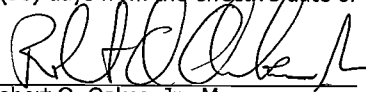
(c) No work shall be performed upon and no development permits shall be approved or issued relating to any building or structure having been declared a public nuisance pursuant to section 16-31(6)(c) except as expressly provided by this section. Any work required in order to demolish or remove such a building or structure from the public trust area or public land or required to perform specific work necessary to comply with directions contained within the town manager's notice of violation or order of abatement may be performed upon issuance of any permits necessary for the work. Upon the town manager's withdrawal, cancellation or retraction of a declaration of public nuisance pursuant to section 16-31(6)(c), this section shall no longer apply.

### **ARTICLE IV. Severability.**

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

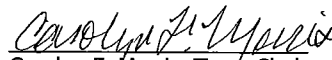
**ARTICLE V. Effective Date.**

This ordinance shall be in full force and effect from and after the **7th** day of **July 2010**. The amendments to the Zoning Ordinance contained herein shall not apply to otherwise lawful buildings or structures which were made unlawful by and at the time of the adoption of this ordinance for an amortization period of ninety (90) days from the effective date of this ordinance.



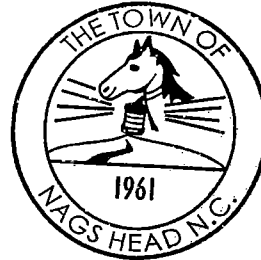
Robert O. Oakes, Jr., Mayor  
Town of Nags Head

ATTEST:

  
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

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



Date adopted: July 7, 2010

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

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

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