

**ARTICLE 1. PURPOSE AND APPLICABILITY**

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## SECTION 1.1 SHORT TITLE.

This Ordinance shall be known as the Town of Nags Head Unified Development Ordinance (UDO) and may be referred to as “the Unified Development Ordinance” or “this Ordinance” or “UDO”.

## SECTION 1.2 AUTHORITY.

**1.2.1.** Zoning and other land use regulatory provisions enacted herein are under the authority of North Carolina General Statutes (NCGS) Chapter 160D, which extends to towns/cities the authority to enact regulations which promote the health, safety, morals, or the general welfare of the community. This UDO is further enacted pursuant to NCGS 160D-702 which authorizes the adoption of zoning regulations within the Town’s jurisdiction, as it may from time to time exist, which regulate and restrict:

**1.2.1.1.** the height, number of stories, and size of buildings and other structures;

**1.2.1.2.** the percentage of a lot or site that may be occupied, the size of yards, courts, and other open spaces;

**1.2.1.3.** the density of population;

**1.2.1.4.** the location and use of buildings, structures, and land; and

**1.2.1.5.** To do all other things authorized by law in these matters.

**1.2.2.** NCGS 160D-703 authorizes the Town’s jurisdiction to be divided into zoning districts of any number, shape, and area deemed best suited to carry out the purposes as authorized, and within those districts the Town may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land; such districts may include, but shall not be limited to, conventional districts, conditional districts, form-based districts, overlay districts, districts allowed by the Town’s Charter, and conditional districts. Except as authorized, all regulations shall be uniform for each class or kind of building and/or land use throughout each district, but that the regulations in one district may differ from those in other districts; and further, the Town may impose development standards that apply uniformly, jurisdiction-wide, rather than being applicable only in particular zoning districts.

**1.2.3.** Provisions enacted herein regulating the subdivision of land within the Town’s jurisdiction are under the authority of NCGS 160D-801 to 160D-808.

**1.2.4.** This UDO is further enacted under NCGS 160D-103, which allows the Town to combine any of the land development ordinances regulations authorized by Chapter 160D into a unified ordinance.

## **SECTION 1.3 PURPOSE AND INTENT.**

**1.3.1.** The purpose of this Ordinance is to protect the public health, safety, and general welfare of the citizens of the Town and is developed in accordance with the policies and actions of the 2017 Town of Nags Head Comprehensive Plan. The intent of this Ordinance more specifically is to:

- 1.3.1.1.** Preserve our community's distinctive heritage and unique lifestyle;
- 1.3.1.2.** Protect our critical natural resources and coastal ecosystem;
- 1.3.1.3.** Build and promote a sustainable economy that supports residents and visitors;
- 1.3.1.4.** Facilitate the adequate provision of transportation, utilities, parks, recreation, emergency services, stormwater management, and other public facilities;
- 1.3.1.5.** Better manage or lessen congestion in the streets;
- 1.3.1.6.** Plan for orderly and sustainable growth and redevelopment;
- 1.3.1.7.** Ensure the provision of adequate open space between uses for light, air, and fire safety;
- 1.3.1.8.** Protect development and residents from flooding and other natural hazards; and
- 1.3.1.9.** Maintain a well-run and efficient government that provides high quality and cost-effective services.

**1.3.2.** The regulations are made with reasonable consideration as to the character of the Town, its peculiar suitability for particular uses, and with a desire to conserve the value of buildings while encouraging the most appropriate use of land throughout the Town. This UDO is one of the instruments for the implementation of the Town's Comprehensive Plan.

**1.3.3.** The existing land development regulations of the Town relating to use of land, water, structures and buildings, the provision of off-street parking and loading and related matters, including flood damage prevention, stormwater management, sedimentation and erosion control, are replaced by this UDO, effective October 7, 2019. The adoption of this UDO shall not affect nor prevent any pending or future prosecution of, or action to abate, violations of the previous land development ordinances of the Town which occurred prior to October 7, 2019.

## **SECTION 1.4 JURISDICTION, ZONING MAP, AND EXEMPTIONS.**

**1.4.1.** This UDO shall be effective throughout the corporate boundaries of the Town. The regulations and provisions found in this UDO shall apply to all the properties within the corporate limits of the Town of Nags Head, North Carolina, and the Town's extraterritorial jurisdiction (ETJ) as delineated on the Town of Nags Head Official Zoning Map.

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**1.4.2.** Pursuant to NCGS Section 160D-105 (a), the boundaries of all zoning districts established within this UDO are drawn and depicted on the Town of Nags Head Official Zoning Map, adopted and incorporated as part of this UDO. In addition to other locations required by law, a copy of the Official Zoning Map showing the boundaries of the Town's planning jurisdiction and zoning districts is maintained and available for public inspection in the Town's Planning and Development Department.

**1.4.3.** Except as hereinafter provided, no building or structure shall be erected, moved, altered, or extended, and no land, building, or structure or part thereof shall be occupied or used unless in conformity with the regulations specified for the district in which it is located. Additionally, no use of land shall be initiated or changed, and no building or other structure shall be erected, moved, added to, or structurally altered, without having either a special use permit approved by the Board of Commissioners as provided for under Section 3.8, Special Use Permits, or a zoning permit approved and issued by the UDO Administrator.

**1.4.4.** Excepting the provisions contained in Section 3.6, Establishment of Vested Rights, nothing contained in this Ordinance shall require any change in the plans, construction, size or designated use of any building, structure or part of one for which a building permit has been legally granted by the Town prior to the time of passage of this Ordinance.

### **1.4.5. Exemptions.**

**1.4.5.1.** These regulations shall not apply to any land or structure for which, prior to the effective date hereof, there is a properly approved site specific plan as required by the requirements previously adopted or previously approved vested rights in accordance with NCGS 160D-108. Any preliminary or final subdivision plat approvals required for such approved or exempted site specific plans shall be conducted in accordance with the requirements of the previous Zoning Ordinance or Subdivision Ordinance.

**1.4.5.2.** In accordance with NCGS 160D-913, all provisions of this UDO are hereby made applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions. Notwithstanding the provisions of any general or local law or ordinance, no land owned by the State of North Carolina may be included within an overlay district or a special use or conditional use district without approval of the Council of State.

### **SECTION 1.5 SEVERABILITY.**

If any section or specific provision or standard of this Ordinance or any regulating district boundary arising from it is found by a court to be invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, standard, or district boundary of these regulations except the provision in question. The other portions of these regulations not affected by the decision of the court shall remain in full force and effect.

## **SECTION 1.6 CONFLICTS WITH OTHER REGULATIONS/LAWS.**

In interpreting and applying the provisions of this Ordinance, the regulations shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity, and general welfare. It is not intended by this Ordinance to interfere with, repeal, or annul any easements, covenants, or other agreements between parties; provided, however, that where this Ordinance imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations, restrictive covenants, or agreements, the provisions of this Ordinance shall govern.

## **SECTION 1.7 CONFORMANCE WITH ADOPTED PLANS.**

**1.7.1.** It is the intent of this UDO to ensure that all development within the Town's jurisdiction is consistent with the vision, goals, and actions of the Comprehensive Plan.

**1.7.2.** To the extent this UDO becomes or is inconsistent with adopted plans, it should be amended to remain consistent with the Comprehensive Plan.

## **SECTION 1.8 NORTH CAROLINA STATE BUILDING CODE.**

**1.8.1.** The North Carolina State Building Code is incorporated herein by reference and serves as the basis for Building Inspector authority to regulate building construction and repair.

**1.8.2.** This UDO is not intended to conflict with or supersede the North Carolina State Building Code regulations.

## **SECTION 1.9 FEES.**

**1.9.1.** Reasonable fees, sufficient to cover the costs of administration, inspection, publication of notice, and similar matters, may be charged to applicants for the following permits and processes including but not limited to; zoning permits, sign permits, special use permits, major and minor subdivision plat approval, zoning amendments, variances, appeals, and other administrative relief, and site plan review.

**1.9.2.** The amount of the fees charged shall be determined by the Town's consolidated fee schedule which is available in the Office of the Town Clerk.

## **SECTION 1.10 VIOLATION OF UDO REGULATIONS.**

### ***1.10.1. Violations Generally.***

When the UDO Administrator receives a complaint, the UDO Administrator shall investigate the complaint and take whatever action is warranted to resolve any violation.

### **1.10.2. Enforcement.**

Enforcement is through warning, notice of violation, civil penalty, injunctive relief, and any other equitable remedy as provided for in Section 1.10.4 of this UDO.

### **1.10.3. Persons Liable for Violations.**

The owner, tenant, or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance may jointly and/or independently be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

### **1.10.4. Penalties and Remedies for Violations of the UDO.**

**1.10.4.1.** Unless otherwise specifically provided, violation of any provision of this UDO shall subject the offender to the remedies hereinafter provided, except, that where the General Statutes of North Carolina provide specific civil remedies for violations of provisions of this UDO adopted pursuant to such statutes, such remedies available to the Town for enforcement of this UDO shall be in addition to the remedies stated in this section, provided, however, that no criminal penalties shall be applicable unless hereinafter stated in this section as being applicable to specific articles or provisions of this UDO.

**1.10.4.2.** Violations of this UDO shall subject the offender to a civil penalty upon the issuance of a citation for such violation as provided herein. The civil penalty, if not paid within fifteen (15) days of the issuance of a citation, may be recovered by the Town in a civil action in the nature of debt. Such penalty amounts shall be determined by the Town's consolidated fee schedule and is available in the Town Clerk's office. Unless otherwise provided by a specific provision of this UDO, 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.

**1.10.4.3.** In addition to any civil penalties set out in this section, any provision of this UDO or any other Town ordinance may be enforced by an appropriate equitable remedy issued from a court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.

**1.10.4.4.** In addition to any civil and criminal penalties set out in this section, any provision of this UDO or any other Town ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the general court of justice shall have jurisdiction to issue such orders. When a violation of such a provision occurs, the Town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition or cease the unlawful use of the property. The action shall be

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governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and NCGS Rule 65 in particular.

**1.10.4.5.** In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that:

**1.10.4.5.1.** Buildings or other structures on the property be closed, demolished or removed;

**1.10.4.5.2.** Fixtures, furniture or other movable property be removed from buildings on the property;

**1.10.4.5.3.** Grass and weeds be cut;

**1.10.4.5.4.** Improvements or repairs be made; or

**1.10.4.5.5.** Any other action be taken that is necessary to bring the property into compliance with this UDO.

If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, the defendant may be cited for contempt, and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

**1.10.4.6.** The provisions of this UDO and any other Town ordinances may be enforced by one, all or a combination of the remedies authorized and prescribed by this section; except, that any provision the violation of which incurs a civil penalty shall not be enforced by criminal penalties.

**1.10.4.7.** Except as otherwise specifically provided, each day's continuing violation of any provision of this UDO or any other Town ordinance shall be a separate and distinct offense.

**1.10.4.8.** Any ordinances hereafter adopted by the Board of Commissioners of the Town, the violation of which shall incur a penalty, shall specify whether the enforcement shall be pursuant to the civil penalty or criminal penal provisions of this section.

**1.10.4.9.** A violation of this UDO, the penalty for which is a civil penalty, shall be enforced as provided in subsections 1.10.4.10, 1.10.4.11, and 1.10.4.12 of this section.

**1.10.4.10.** Upon determination of a violation of any section of this UDO, the penalty for which is a civil penalty, the Town shall cause a written notice of violation may be issued. The notice of

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violation shall be delivered to the holder of the development approval and/or to the landowner of the property involved, if the landowner is not the holder of the development approval or if there is no such development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The notice of violation shall set 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 person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by NCGS 160D-1123 or 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to NCGS 160D-405.

**1.10.4.11.** Upon failure of the violator to obey the warning citation, a civil citation shall be issued by the appropriate official of the Town and either served directly on the violator or his duly designated agent, or registered agent if a corporation, in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the Dare County property tax listing, or obtained from the violator at the time of the issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of such citation. The citation shall direct the violator to appear before the Town Finance Director, located in the Town Hall, within 15 days of the date of the citation or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected by the time the citation is paid; otherwise, further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated. Within a 12-month period, any repeat violation for which a notice of violation, warning citation, or civil citation has been issued shall be considered a continuation of the original violation.

**1.10.4.12.** If the violator fails to respond to a citation within 15 days of its issuance and pay the penalty prescribed therein, the Town may institute a civil action in the nature of debt in the appropriate division of the state general court of justice for the collection of the penalty.

**1.10.4.13.** The assessment of a civil penalty may be appealed to the Board of Adjustment.

### **1.10.5. Penalties and Remedies for Violation of Article 11, Part II, Soil Erosion and Sedimentation Control.**

#### **1.10.5.1. Civil Penalties.**

**1.10.5.1.1. Civil Penalty for a Violation.** Any person who violates any of the provisions of Article 11, Part II, Soil Erosion and Sedimentation Control, or rule or order adopted or

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issued pursuant to Article 11, Part II, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions and provisions of an approved plan, shall be subject to a civil penalty. The maximum civil penalty amount that the Town may assess per violation is \$5,000.00. A civil penalty may be assessed from the date of the violation. Each day of continuing violation shall constitute a separate violation.

**1.10.5.1.2. Civil Penalty Assessment Factors.** The Board of Commissioners shall determine the amount of the civil penalty based upon the following factors:

**1.10.5.1.2.1.** The degree and extent of harm caused by the violation;

**1.10.5.1.2.2.** The cost of rectifying the damage;

**1.10.5.1.2.3.** The amount of money the violator saved by noncompliance;

**1.10.5.1.2.4.** Whether the violation was committed willfully; and

**1.10.5.1.2.5.** The prior record of the violator in complying or failing to comply with the Article 11, Part II, Soil Erosion and Sedimentation Control.

**1.10.5.1.3. Notice of Civil Penalty Assessment.** Notice of assessment shall be by either registered or certified mail, return receipt requested, or other means reasonably calculated to give notice and shall direct the violator to either pay the assessment or contest the assessment, within 30 days after receipt of the notice of assessment, by written demand for a hearing.

**1.10.5.1.4. Hearing.** Hearings held pursuant to this section shall be conducted by the Board of Commissioners within 45 days after the receipt of a request for a hearing.

**1.10.5.1.5. Final Decision.** Within 45 days after the hearing, the Board of Commissioners of the Town will render its final decision on the erosion control plan upon which a hearing was requested.

**1.10.5.1.6. Appeal of Final Decision.** Appeal from the final decision of the Board of Commissioners shall be to the Superior Court of the County where the violation occurred. Such appeals must be made within 30 days of the final decision.

**1.10.5.1.7. Collection.** If the payment is not received within 30 days after demand for payment is made, the Town may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the County where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a

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notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

**1.10.5.1.8. Credit of Civil Penalties.** Civil penalties collected pursuant to Article 11, Part II, Soil Erosion and Sedimentation Control shall be credited to civil penalty and forfeiture fund.

**1.10.5.2. Criminal Penalties.** Any person who knowingly or willfully violates any provision of Article 11, Part II, Soil Erosion and Sedimentation Control, or rule or order adopted or issued pursuant to Article 11, Part II, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor, which may include a fine not to exceed \$5,000.00, as provided in NCGS 113A-64.

**1.10.5.3. Injunctive Relief.**

**1.10.5.3.1. Violation of Local Program.** Whenever the Board of Commissioners has reasonable cause to believe that any person is violating or threatening to violate Article 11, Part II, Sedimentation & Erosion Control, or any rule or order adopted or issued by the Town, or any term, condition or provision of an approved erosion control plan, it may, either before or after the institution of any other action or proceeding authorized by Article 11, Part II, institute a civil action in the name of the Town, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of the County.

**1.10.5.3.2. Abatement of Violation.** Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of Article 11, Part II Soil Erosion and Sedimentation Control.

**1.10.6. Permit Revocation.**

**1.10.6.1.** Any development approvals or permits issued under this UDO, including special use permits, may be revoked by the permit-issuing authority (in accordance with the provisions of this section) for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked.

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**1.10.6.2.** Before development approvals and/or permits other than may be revoked, the UDO Administrator shall give the permit recipient, in writing, ten (10) days' notice of intent to revoke the permit, shall inform the recipient of the reasons for the revocation, and of the recipient's right to obtain a hearing before the Board of Adjustment on the revocation of the permit, and shall comply with the notice and hearing requirements set forth in Section 3.4, Notice of Hearing. The UDO Administrator shall provide to the permittee a written statement of the decision and the reasons therefor.

**1.10.6.3.** No person may continue to make use of land or building in the manner authorized by any permit issued under this Ordinance after such permit has been revoked in accordance with this Ordinance.

### SECTION 1.11 EFFECTIVE DATE.

The provisions of this Ordinance were originally adopted and became effective on October 7, 2019.