

(DRAFT)
**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO
TEMPORARY USE PERMITS DURING DECLARED EMERGENCIES**

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; pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160A-363, which allows the Town to combine certain land development ordinances into a unified ordinance; and

WHEREAS, pursuant to applicable provisions of Chapter 14, Emergency Management, of the Nags Head Town Code, and N.C.G.S. § 166A, the Town, through the Mayor, has the authority to declare the existence of state of emergency; and

WHEREAS, the Board of Commissioners find that it is necessary to enact provisions allowing for temporary uses or the temporary modification of uses to address conditions during declared states of emergency or resulting from such emergencies; and

WHEREAS, the Town of Nags Head 2017 Comprehensive Plan includes policies that seek to ensure that the Town is a disaster resilient community that can survive, recover from, and thrive after a disaster event; and

WHEREAS, the Board of Commissioners finds that these text 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 Unified Development Ordinance 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 the Unified Development Ordinance.

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

PART I. That **Section A.4, Definitions, of Appendix A, Definitions, of the UDO**, be amended by adding the following term and definition in the appropriate alphabetical order:

Temporary use permit means a permit issued by the Town Manager and UDO Administrator that allows for reasonable accommodations in zoning regulations for the temporary use or temporary modification of use of property.

PART II. That the definition of **Site Plan, and specifically Site Plan, Minor, as contained in Section A.4, Definitions, of Appendix A, Definitions, of the UDO**, be amended as follows:

Site plan means a plan provided that reflects existing and proposed conditions on a site that is intended for construction. This may include but is not limited to topography, structures or additions, grading, drainage, erosion control measures, trees to be saved or planted to comply with the applicable standards of this UDO as well as other requirements of the Town Code of Ordinances.

- (1) **Site plan, major** means all site plans not meeting the requirements for a minor site plan.
- (2) **Site plan, minor** includes the following: increases in lot coverage or building floor area not greater than 1,000 square feet, changes to stormwater management measures, landscape buffering, vegetation preservation area, signage, or site lighting for existing development, and/or any temporary changes to sites as part of activities eligible for and subject to the issuance of a Temporary Use Permit.

PART III. That **Section 3.8.6., Binding Effect, as contained in Article 3., Legislative/Quasi-Judicial Procedures, Part III., Quasi-Judicial Procedures, Section 3.8, Conditional Use Permits, of the UDO**, be amended as follows:

3.8.6. Binding Effect.

Any conditional use permit shall be binding to the property included in the permit unless subsequently changed or amended by the Board of Commissioners. Uses subject to a conditional use permit and the conditions thereof may be temporarily modified pursuant to Section 4.11.5. and Section 6.4.6. in a manner that would not be in compliance with the issued conditional use permit; such temporary modification shall not constitute a modification or change of the conditional use permit pursuant to Section 3.8.8., Change in Conditional Use Permit.

PART IV. That **Section 4.4., Applications Reviewed by Staff, as contained in Article 4., Development Review Process, Part II., Development Review Process, of the UDO**, be amended as follows:

SECTION 4.4 APPLICATIONS REVIEWED BY STAFF

Administrative approval includes the following types of development:

- Minor Site Plans (increases in lot coverage or building floor area not greater than 1,000 square feet, changes to stormwater management measures, landscape buffering, vegetation preservation area, signage, or site lighting for existing development, and/or any temporary changes to sites as part of activities eligible for and subject to the issuance of a Temporary Use Permit).
- Change of use applications not involving establishment of a new conditional use.
- Administrative Adjustments (see Section 4.14).
- Temporary Use Permits (see Section 4.11.5).
- Minor Subdivisions.
- Major Subdivision Final Plats.

The UDO Administrator has the authority to determine when projects meeting the above requirements shall require Major Site Plan review due to other project activities or unique circumstances; the UDO Administrator shall make such a determination in writing.

PART V. That **Section 4.9., Purpose and Intent, as contained in Article 4., Development Review Process, Part III., Development Permitting Requirements, of the UDO**, be amended by adding a thirteenth bullet to the bulleted list, as follows:

- Temporary uses or temporary modification of uses.

PART VI. That **Section 4.11., Permit Types, as contained in Article 4., Development Review Process, Part III., Development Permitting Requirements, of the UDO**, be amended by adding Section 4.11.5., as follows:

4.11.5. Temporary Use Permit.

In the event of an emergency declared by the Mayor pursuant to Chapter 14, Emergency Management, of the Nags Head Town Code and/or NCGS 166A-19.22, or owing to impacts associated with a declared emergency, the Mayor may authorize the Town Manager and UDO Administrator, jointly, or their designees, to allow for reasonable temporary accommodations in zoning regulations consistent with and furthering the purposes of the emergency declaration and in the interests of public health, safety, and welfare. Such

accommodations shall be in the form of the issuance of a Temporary Use Permit.

4.11.5.1. Applicability. Temporary accommodations eligible for the issuance of a Temporary Use Permit include:

- The allowance of uses on a temporary basis, pursuant to Section 6.4., and specifically Section 6.4.6.1.;
- The modification of uses on a temporary basis, pursuant to Section 6.4., and specifically Section 6.4.6.2.; and/or
- The waiving or varying of any applicable provision contained in Article 8, Article 9, or Article 10 of the UDO, except as limited by Section 4.11.5.2.

4.11.5.2. Prohibited Activities. The following activities or accommodations are ineligible for the issuance of a Temporary Use Permit:

- The increase of floor area and/or the construction or installation of permanent structures or buildings;
- The reduction of required parking by greater than twenty (20%);
- The elimination of required landscaping or trees;
- The installation of more than one (1) additional temporary sign, limited in size and location pursuant to Part III., Sign Regulations, of Article 10, or signage beyond that which is necessary to provide for traffic control or public notices;
- The elimination, modification, or installation of driveways, except as necessary in the opinion of the Town Manager and UDO Administrator to accommodate the safe and efficient circulation of vehicles;
- The commencement of any water-dependent uses or activities;
- Any activity or accommodation, in the opinion of the Town Manager and UDO Administrator, that would be contrary to the purposes of the emergency declaration and/or the interests of the public health, safety, and welfare; and/or
- Any activity or accommodation that would not comply with applicable local, State, or Federal laws and regulations.

4.11.5.3. Duration and Extension. Temporary Use Permits shall be issued with an expiration date, not to exceed ninety (90) days from the date of issuance. Generally, at the discretion of the Town Manager and UDO Administrator, such temporary use permits shall expire upon the termination of the declaration of emergency, the end of the circumstances under the declaration causing the need for the accommodations, or upon the timeframe set by the Mayor, whichever is sooner. Upon expiration, all temporary accommodations shall cease or otherwise be considered violations of the UDO, as applicable. Subject to the same limitations and discretion, the expiration date of a Temporary Use Permit may be

extended, with such requests submitted no later than ten (10) business days prior to the pending expiration date.

PART VII. That **Section 5.1., Intent, as contained in Article 5., Nonconformities, of the UDO**, be amended by adding Section 5.1.5., as follows:

5.1.5. Temporary uses or uses modified on a temporary basis subject to a Temporary Use Permit as authorized and limited by Section 4.11.5. shall have no effect on nonconforming status as established by the sections of this Article.

PART VIII. That **Section 6.4., Permitted Types, as contained in Article 6., Zoning Districts, of the UDO**, be amended as follows:

SECTION 6.4 PERMITTED TYPES.

Zoning districts have uses specified as permitted by right, conditional uses, and uses permitted with supplemental regulations. Detailed use tables are provided in Section 6.6, Table of Uses and Activities, showing the uses allowed in each district. Additionally, as authorized under Section 4.11.5., and Section 6.4.6. herein, uses may be temporarily permitted or modified on a temporary basis subject to a Temporary Use Permit. The following describes the processes of each of the categories that the uses are subject to:

PART IX. That **Section 6.4., Permitted Types, as contained in Article 6., Zoning Districts, of the UDO**, be amended by adding Section 6.4.6., as follows:

6.4.6. Uses or Modification of Uses with Temporary Use Permit. As authorized under and limited by **Section 4.11.5.**, uses may be temporarily permitted or modified on a temporary basis, subject to a Temporary Use Permit, as follows:

6.4.6.1. Temporary Use. Any use identified in Section 6.6, Table of Uses and Activities, may be temporarily permitted pursuant to **Section 4.11.5.** in any zoning district, except that uses not identified as Residential or Residential - Group in Section 6.6. may not be permitted in the Residential Districts or Special Districts identified in Table 6-1, Zoning Districts Established, unless otherwise permitted or allowed with a conditional use permit within such districts.

6.4.6.2. Temporary Modification of Use. Any use identified in Section 6.6., Table of Uses and Activities, as requiring a conditional use permit or being subject to supplemental regulations outlined in Article 7, Supplemental Regulations, may be temporarily modified pursuant to **Section 4.11.5.** in manner that would not be in compliance with any issued conditional use permit and/or supplemental standards, as applicable.

PART X. That **Part I., Introduction, as contained in Article 7., Supplemental Regulations, of the UDO**, be amended as follows:

PART I. INTRODUCTION

The following supplemental regulations shall pertain to the uses listed in the Table of Uses and Activities located in Article 6, Zoning Districts which are identified as a permitted use with supplemental regulations (PS) or a conditional use with supplemental regulations (CS).

For any use which requires the issuance of a conditional use permit, the supplemental use regulations listed herein may be in addition to any other conditions placed on the use by the Board of Commissioners in accordance with the standards in Section 3.8, Conditional Use Permits. The conditions may impose greater restrictions on a particular use than those which are listed herein.

Notwithstanding the foregoing, any use identified in Section 6.6., Table of Uses and Activities, as being subject to supplemental regulations listed herein, may be temporarily modified pursuant to and limited by Sections 4.11.5 and 6.4.6. in a manner that would not be in compliance these supplemental standards, as applicable.

All uses include in these supplemental regulations must also comply with all other requirements of this UDO. Where the requirements of these supplemental regulations may conflict with other provisions of the UDO, the requirements contained within the supplemental regulations shall prevail.

PART XI. That the **Table of Contents to Article 4 and Article 6 be updated to reflect Parts VI and IX of the Ordinance, respectively.**

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 Unified Development 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 upon the date of adoption by the Board of Commissioners.

Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST:

Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:
Town Attorney _____
Date adopted: _____
Motion to adopt by Commissioner _____
Motion seconded by Commissioner _____
Vote: _____ AYES _____ NAYS