



**AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA
AS IT PERTAINS TO TEMPORARY ACCOMMODATIONS FOR OUTDOOR DINING**

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160D-701, 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. 160D-702, 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. § 160D-103, which allows the Town to combine certain land development ordinances into a unified ordinance; and

WHEREAS, a text amendment has been prepared by staff to address temporary accommodations for outdoor dining within the Town; and

WHEREAS, the Town of Nags Head 2017 Comprehensive Plan includes an action supportive of increasing opportunities for outdoor dining which states, "Focus on activating the front of commercial structures along the NC 12 corridor with uses that blend the private sphere of the business with the public sphere of the sidewalk and street. This can be accomplished through outdoor seating or dining" (LU-2c).

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.

PART I. That **Section 4.11.5, Temporary Use Permit** be amended as follows:

4.11.5. Temporary Use Permit.

Temporary use permits may be issued in the following circumstances:

4.11.5.1. To allow for temporary outdoor dining that qualifies as customer service area in association with a restaurant use, or to allow for the temporary use of parking areas for outdoor dining; such allowance shall not preclude similar requests being made pursuant and subject to Section 4.11.5.2. As part of such requests, parking shall not be reduced below that which is required for the use, nor seating/occupancy increased in excess of required parking or wastewater capacity. Such permits shall be issued jointly by the Town Manager and UDO Administrator, and shall be issued with an expiration date, not to exceed one hundred eighty (180) days from the date of issuance. Extensions of the originally granted temporary use permit shall be authorized, except that no temporary use permit shall be effective for greater than two hundred ten (210) consecutive days. Restaurant uses shall not be eligible for the issuance of a temporary use permit pursuant to this Section, where a temporary use permit pursuant to this Section was effective for the same site in each of the two (2) preceding calendar years; or

4.11.5.2. 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.

4.11.5.2.1 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.

4.11.5.2.2 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 existing parking by greater than twenty-five percent (25%);
- 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.

4.11.5.2.3 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 or impacts associated with the declaration causing the need for the accommodations, or upon the timeframe set by the Mayor, whichever is later. 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 II. That **Section 6.4.6, Uses or Modification of Uses with Temporary Use Permit**, be amended 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, or temporary outdoor dining may be allowed, 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 4.11.5.2 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 4.11.5.2 in manner that would not be in compliance with any issued conditional use permit and/or supplemental standards, as applicable.

6.4.6.3. Temporary Outdoor Dining. Any existing restaurant use may provide temporary outdoor dining qualifying as customer service area, or make use of parking areas, pursuant to 4.11.5.1.

PART III. 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 3rd day of **November 2021**.


Benjamin Cahoon, Mayor

ATTEST:

Carolyn F. Morris, Town Clerk



APPROVED AS TO FORM:

John Leidy, Town Attorney

Date adopted: November 3, 2021

Motion to adopt by Commissioner _____
Motion seconded by Commissioner _____
Vote: ____AYES ____NAYS