



AN ORDINANCE AMENDING THE TOWN CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA AS IT PERTAINS TO BEACH DRIVING

PART I. That Chapter 8 – be amended as follows:

Sec. 8-81. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Barrier dune means the easternmost sand dune or system of sand dunes which lies just west of the mean high water mark of the Atlantic Ocean and forms a protective barrier from the actions of the Atlantic Ocean.

Beach means all that area from the easternmost edge of the barrier dune line eastward and protruding into the Atlantic Ocean for a distance of 100 yards east of the mean low water mark.

Beach Driving Season means the period of time from one-half hour prior to sunrise on October 1 until one-half hour past sunset on April 30 of the following year.

Boat means any motor-driven or wind-powered boat including motor boats, fishing boats, and any amphibious vehicles, aground or operating on wheels or tracks. This shall exclude surfboards, sailboats, kiteboards, kayaks, canoes or other non-motorized recreational equipment.

Bona fide fishing tournament means a fishing tournament sponsored by a nonprofit organization or by any other group, where a minimum of \$500.00 is given to a recognized charity. Any such organization or group must have existed for more than the calendar year preceding the submission of their application for beach driving permits. Such tournament must have a minimum number of 25 participants.

Toe of slope means that point between the ocean and the barrier sand dune where the uniform line of slope from the ocean toward the barrier dune begins an abrupt change of angle of direction upward and becomes the slope of the barrier dune.

Vehicle means all kinds of motor driven and wind powered vehicles including any type of automobile, truck, jeep, beach buggy, motorcycle, bicycle, go-cart, aircraft or wind-powered vehicle, ATV/UTV or any other machine motor-driven or physically propelled, by whatsoever name called.

Vehicular beach access point means an access maintained by the Town of Nags Head for use by vehicles at a designated location, usually on a Town of Nags Head street. Vehicle access is permitted at these points and at no other location.

Sec. 8-82. Generally.

Only vehicles eligible for a permit, or, as otherwise authorized by this division, shall be operated on the beaches of the Town of Nags Head.

Sec. 8-83. Beach Driving by Permit.

Eligible vehicles may be operated on the beaches of the Town of Nags Head during the beach driving season (as defined in sec. 8-81) with a valid beach driving permit.

- (a) Eligible vehicles. Permits shall be issued only for properly registered and licensed vehicles owned by the person signing the permit having a four-wheel drive and which shall have passed inspection by the Department of Motor Vehicles of the state or by the equivalent department or agency of the state in which such vehicle is licensed, if applicable. Modified utility vehicles ("MUTV") as described in N.C.G.S. 20-4.01(27) shall not be considered an "eligible" vehicle regardless of whether the MUTV is registered or licensed in any state.
- (b) Applications; period of validity.
 - (1) Any person desiring to operate a permitted vehicle on the beach of the Town of Nags Head shall make application to the appropriately designated employee at the Town of

Nags Head Municipal Complex, or online purchase, or at designated fishing tackle shops in the town . The applicant's name, address (and indicate if owner or resident of the Town of Nags Head if applicable), phone number, driver's license number, license plate number, and year and type of vehicle that is owned and titled by requesting applicant for which such permit is sought must be submitted in order to obtain a permit. A permit issued hereunder shall be valid only in the Town of Nags Head jurisdiction and only between one-half-hour prior to sunrise on October 1 and one-half hour past sunset on April 30 the following year. The Town of Nags Head permit is not valid in any other town jurisdiction or National Park Beach areas.

- (2) It is further provided that there shall be a separate permit for each vehicle for which a permit is desired under the terms of this division; except, that for commercial fishermen holding a valid state commercial fishermen's license, duplicate permits may be issued for all vehicles so used and owned as hereinabove stated; provided, that all such vehicles used and operated by such a commercial fisherman must meet the inspection requirements as set out in subsection (a) of this section.
 - (3) It is further provided that short term permits up to 14 days duration may be issued for a bona fide fishing tournament. Such permits may be issued after application by an organization meeting the requirements of this division sponsoring a bona fide fishing tournament. Such application shall be made three weeks in advance of the tournament and shall include the inclusive dates, not exceeding 14 days, and the number of permits required. Applications shall be forwarded to the Board of Commissioners for approval.
- (c) Fee. An applicant for a permit will pay a fee at the time of issuance of the permit. The fee is \$100 per season or \$50 per season for those applicants with proof of Town of Nags Head property ownership or residency (driver's license with Nags Head address, tax bill or utility bill of property with name of owner or resident). The \$50 permit is only available for purchase at the Town of Nags Head Municipal Complex (the \$50 permit cannot be purchased online or at designated tackle shops). The applicant will receive a permit and a sticker which must be permanently affixed and displayed on the left front bumper of the vehicle; except, however, that in the case of an online permit purchase or a bona fide fishing tournament a temporary paper permit may substitute for a permit and sticker which must be displayed in front dash of the vehicle when being operated on the beach.
- (d) Issuance not deemed authority to operate on private property. No permit issued under this section shall be construed to authorize a vehicle or the owner or operator thereof to operate on private property that is not part of the "ocean beach" and subject to public trust rights as provided by North Carolina General Statute Sec. 77-20(d) and 77-20(e) without the permission of the owner of such property.

Sec. 8-84. Rules of operation on Town of Nags Head beaches.

Eligible vehicles may be operated on the beaches of the Town of Nags Head during the beach driving season (as defined in sec. 8-81) with a valid beach driving permit.

- (a) Eligible vehicles. Permits shall be issued only for properly registered and licensed vehicles owned by the person signing the permit having a four-wheel drive and which shall have passed inspection by the Department of Motor Vehicles of the state or by the equivalent department or agency of the state in which such vehicle is licensed, if applicable. Modified utility vehicles ("MUTV") as described in N.C.G.S. 20-4.01(27) shall not be considered an "eligible" vehicle regardless of whether the MUTV is registered or licensed in any state.
- (b) Applications; period of validity.
 - (1) Any person desiring to operate a permitted vehicle on the beach of the Town of Nags Head shall make application to the appropriately designated employee at the Town of Nags Head Municipal Complex, or online purchase, or at designated fishing tackle shops in the town . The applicant's name, address (and indicate if owner or resident of the Town of Nags Head if applicable), phone number, driver's license number, license plate number, and year and type of vehicle that is owned and titled by requesting applicant for which such permit is sought must be submitted in order to obtain a permit. A permit issued hereunder shall be valid only in the Town of Nags Head jurisdiction and only between one-half-hour prior to sunrise on October 1 and one-half hour past sunset on April 30 the following year. The Town of Nags Head permit is not valid in any other town jurisdiction or National Park Beach areas.
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be issued for all vehicles so used and owned as hereinabove stated; provided, that all such vehicles used and operated by such a commercial fisherman must meet the inspection requirements as set out in subsection (a) of this section.

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- (d) Issuance not deemed authority to operate on private property. No permit issued under this section shall be construed to authorize a vehicle or the owner or operator thereof to operate on private property that is not part of the "ocean beach" and subject to public trust rights as provided by North Carolina General Statute Sec. 77-20(d) and 77-20(e) without the permission of the owner of such property.

Sec. 8-85. Beach driving privileges for disabled individuals.

The chief of police or his designee may issue permits allowing for the use of an all-terrain vehicle ("ATV/UTV") on areas covered by this section when such use constitutes a reasonable accommodation under the Americans with Disabilities Act as Amended to enable a disabled person to operate a vehicle as otherwise authorized under this Chapter 8. Permits may be obtained at the town police department during normal office hours.

- (a) The application for a permit shall be accompanied by a certification from a licensed physician that the applicant has a disability that prevents them from obtaining a permit to operate a vehicle as defined in Section 8-81 on the ocean beach.
- (b) A disabled individual may only obtain a permit to operate an ATV/UTV during the "beach driving season" which is defined in section 8-81.
- (c) A disabled individual, after providing information on an application that meets the requirements of this section, may be issued a permit. The permit is limited to one "beach driving season". Applicants may seek a permit for each "beach driving season".
- (d) Disabled individuals holding an ATV/UTV permit are only permitted to use a registered ATV/UTV's under this section. To register an ATV/UTV, the applicant must demonstrate their ownership of the ATV/UTV and proof of insurance on the ATV/UTV. Upon providing such satisfactory proof, the chief of police or his designee shall issue a "disabled person's ATV/UTV registration" which shall be affixed to the qualifying ATV/UTV. Such registrations are not transferable, and do not allow operation by anyone other than a disabled individual.
- (e) Fee. An applicant for a permit will pay a fee at the time of issuance of the permit. The fee is \$100 per season or \$50 per season for those applicants with proof of Town of Nags Head property ownership or residency (driver's license with Nags Head address, tax bill or utility bill of property with name of owner or resident). The \$50 fee is only available for purchase at the Town of Nags Head Municipal Complex (the \$50 permit cannot be purchased online or at designated tackle shops).
- (f) The town chief of police or his designee is directed and authorized to establish forms, procedures and directives as may be required to implement this permit system and registration process and to ensure that it is run in an effective, safe and fair manner.
- (g) Law enforcement officers are authorized to issue any disabled individual a citation for any unsafe operation of an ATV/UTV. Upon being cited for unsafe operation, the disabled individual's permit shall be revoked.

- (h) It shall be a class III misdemeanor for any person to operate an ATV/UTV in violation of this section.

Sec. 8-86. Operation of boats.

- (a) Boats may only be launched from the ocean shoreline if being operated by a commercial fisherman holding a valid state commercial fisherman's license when engaged in commercial fishing activities or by those entities listed in sec. 8-87 (a).
- (b) Any boat transported onto the beach must be properly registered and marked according to the licensing jurisdiction.
- (c) Boat operators must go straight in and straight out within 100 yards from the shoreline and must do so at a speed no faster than necessary to maintain control of the vessel, but in no case shall the speed generate or cause a wake or exceed five miles per hour (mph), whichever is less.
- (d) See Town Code section 8-4 for regulations governing the use of personal watercraft.

Sec. 8-87. Exceptions.

- (a) The provisions of this division shall not apply to municipal vehicles or emergency vehicles or the drivers thereof, when they are operated upon the ocean beach in the performance of their duties nor shall this division apply to vehicles when being operated by a governmental agency, its employees, agents, contractors and subcontractors when engaged in beach restoration or protection work, which may include work authorized by Town Code sec. 8-7. The provisions of this division shall also not apply to authorized military personnel, public safety personnel or authorized persons conducting scientific research or animal preservation studies or operations.
- (b) The provisions of this division shall also not apply to any person owning, lawfully residing at, or leasing, whether short- or long-term, property located in the following area: All that north-south portion of Seagull Drive identified as extending from the property line between Lot 56 (10200 Seagull Drive) and Lot 55 (10204 Seagull Drive) to the north - and running to the property line between Lot 21 (216 Seagull Drive) and Lot 22 (214 Seagull Drive) to the south - of the Goose Wing Subdivision - from using the town's former right-of-way on Seagull Drive to access their property.
- (c) The date and time limitation provided in sections 8-81 and 8-83 shall not apply to commercial fishermen holding a valid state commercial fishermen's license when engaged in commercial fishing activities.
- (d) The town manager shall have the authority to close any portion of the beach or all of the beach at such times and places that extensive beach erosion occurs. This authority may be exercised by the town manager when, as a result of inspections by him or the town employees subject to his authority, it is determined that the width of the beach between the toe of the slope of the dune and the area affected by ocean wash and waves is such that driving would either be dangerous or increase the effects of erosion, or the beach is not sufficiently wide or stable to support vehicular traffic. Additionally, the town manager or his designee has authority to close the beach at times and in areas where there is significant beach usage occurring that, when combined with other factors such as beach width and slope, would create the potential for conflicts between beachgoers and vehicles. Any person operating a vehicle on the beach in a closed area shall be subject to the penalties provided in this division.
- (e) The town manager, on a case-by-case basis, shall have the authority to review and decide written requests for temporary beach driving permits submitted by individuals seeking to perform specific construction activities requiring access to the beach by vehicles when access by such vehicles is otherwise prohibited by this chapter. Written requests for temporary beach driving permits shall include the following information:
 - (1) Address of the construction site and identification of the beach access location.
 - (2) The start date and ending date of requested beach access.
 - (3) Copy of the issued building permit for the construction project and copies of any other local, state and/or federal permits and authorizations as may be required to lawfully conduct the described construction and access onto the beach.
 - (4) A description as to the hardship that will be created if the temporary permit is not authorized and how such hardship is not the result of the applicant's own actions or inactions to perform the work in strict compliance with this chapter.
 - (5) Any other information as may be deemed necessary by the town manager for proper consideration of the request.

Upon finding that the permit request has (i) secured all necessary local, state, and federal permit approvals and authorizations; (ii) that the strict application of this chapter would create an undue and unnecessary hardship created by no fault of the applicant; and (iii) that the approval of the request would not be contrary to the public interest, the town manager may issue the temporary beach driving permit. The town manager shall have the authority to approve the request as presented or with modifications and shall furthermore have the authority to impose conditions in connection with such approval. The written permit authorization shall include the name of the property owner, the address of the construction site, the approved beach access location, date(s) and time(s) for which access onto the beach has been temporarily authorized, and any conditions of the permit approval. The permit approval must be kept by the vehicle operator during the conduct of work and available for inspection by town enforcement officials upon demand.

Sec. 8-87[8]. Reciprocal agreements with county or other towns.

If the county or any town within the county shall adopt an ordinance regulating the operation of vehicles on its beaches, the board of commissioners may enter into a reciprocity agreement with that town or the county; provided, however, that the board of commissioners finds that the ordinance contains similar provisions to this division.

Secs. 8-89—8-110. Reserved.

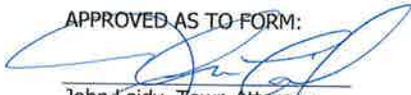
PART III. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the 6th day of July 2022.


Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST:


Michelle H Gray, Dep. Town Clerk

APPROVED AS TO FORM:


John Leidy, Town Attorney

Date adopted: July 6, 2022

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

