TOWN OF NAGS HEAD

AGENDA

TOWN OF NAGS HEAD BOARD OF COMMISSIONERS

NAGS HEAD MUNICIPAL COMPLEX – BOARD ROOM

WEDNESDAY, MAY 20, 2020; 9:00 A.M.

RECESSED SESSION

In order to view and listen to the Board meeting remotely, please register here:
https://nagsheadnc.zoom.us/webinar/register/WN_jlicFozNRWGf7jWCx87jkw

Please email your comments for the Public Comment portion here:
publiccomment052020@nagsheadnc.gov

(Emailed comments will also be accepted during the Board meeting until the end of the Public Comment portion of the meeting)

Comments should include your name and address and
Should be limited to five minutes when read aloud.

A. CALL TO ORDER

B. ADOPTION OF AGENDA

C. NATIONAL PARK SERVICE YEAR IN REVIEW - Superintendent Dave Hallac

1. NATIONAL PARK SERVICE YEAR IN REVIEW
   – Superintendent Dave Hallac

   Documents:

   5 MM C NPS YEAR IN REVIEW SUMMARY.PDF

D. PUBLIC COMMENT

E. OLD BUSINESS / ITEMS TABLED FROM PREVIOUS MEETINGS

1. From May 6th Board Meeting
   - Report from Planning Dept re: plans for restaurant outdoor dining/food trucks for the Phase II re-opening of the State's Stay at Home Order; Request for public hearing to consider a text amendment to the UDO pertaining to temporary uses or temporary alteration of uses related to declared emergencies

   Documents:

5 MM E1 RESTAURANT OUTDOOR DINING SUMMARY.PDF
5 MM E1 RESTAURANT DINING TEMP USE PERMIT MEMO TO PB.PDF
5 MM E1 RESTAURANT DINING UDO ORD.PDF
5 MM E1 RESTAURANT DINING ASSOCIATION EMAIL.PDF
5 MM E1 RESTAURANT DINING APA RESPONSE.PDF

F. NEW BUSINESS

1. Consideration Of NC Statewide Emergency Management Mutual Aid And Assistance Agreement (Revision 2017)

   Documents:

   5 MM F1 NC STATEWIDE EM MUTUAL AID ASSIS AGREE SUMMARY.PDF
   5 MM F1 NC STATEWIDE EM MUTUAL AID ASSIS AGREEMENT.PDF

G. ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

1. Request For Closed Session
   to confer with the Town Attorney regarding a matter within attorney/client privilege in accordance with GS 143-318.11(a)(3)

   Documents:

   5 MM G1 TN ATT RCS SUMMARY.PDF

H. ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

1. Distribution/Presentation Of Recommended FY 20/21 Budget

   Documents:

   5 MM H1 TM REC BUDGET PRES SUMMARY.PDF

2. Discussion Of Parking At Little Bridge Site

   Documents:

   5 MM H2 LITTLE BRIDGE PARKING SUMMARY1.PDF

3. Request For Closed Session
   to discuss a personnel matter in accordance with GS 143-318.11(a)(6)

   Documents:

   5 MM H3 TM RCS SUMMARY.PDF

I. BOARD OF COMMISSIONERS AGENDA

1. Comr. Webb Fuller
   - Discussion about the Town allowing for an individual subscription for recycling

   Documents:

   5 MM I1 FULLER RECYCLE SUMMARY.PDF

J. MAYOR'S AGENDA

K. OTHER BUSINESS

L. ADJOURNMENT

M. FULL AGENDA In .PDF Format With Bookmarks

5401 S. Croatan Hwy, Nags Head, NC 27959
252-441-5508

Agenda Item Summary Sheet

Item No: **C**
Meeting Date: **May 20, 2020**

Item Title: National Park Service Year In Review – Superintendent Dave Hallac

Item Summary:

Superintendent of the National Park Service, Cape Hatteras National Seashore and the Outer Banks Group, Dave Hallac, will present highlights of the past year at the Board of Commissioners May 20, 2020 meeting.

Number of Attachments: 0

Specific Action Requested:

Provided for Board information and update.

Submitted By: Administrative Services Date: May 14, 2020

Finance Officer Comment:

N/A

Signature: Amy Miller Date: May 14, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: May 14, 2020

Town Manager Comment and/or Recommendation:

N/A

Signature: Cliff Ogburn Date: May 14, 2020

Agenda Item Summary Sheet

Item No: **E-1**
Meeting Date: **March 4, 2020**

Item Title: Report from Planning Dept re: plans for restaurant outdoor dining/food trucks for the Phase II re-opening of the State's Stay at Home Order; Request for public hearing to consider a text amendment to the UDO pertaining to temporary uses or temporary alteration of uses related to declared emergencies *(Attachment E-1)*

Item Summary:
In response to communication from the Outer Banks Restaurant Association, as well as discussion with other businesses, Planning Staff has prepared the proposed text amendment intending to enact provisions within the Unified Development Ordinance allowing for temporary uses or the temporary modification of uses to address conditions during declared states of emergency or resulting from such emergencies.

Planning Board/Staff Recommendation
Planning Staff recommends adoption of the amendments as proposed, but welcomes and will take into consideration questions and feedback from the boards.

The Planning Board is reviewing the proposed text amendment on May 19, 2020.

Number of Attachments: 4

Specific Action Requested:
Schedule public hearing.

Submitted By: Planning and Development Date: May 15, 2020

Finance Officer Comment:

Signature: Amy Miller Date: May 15, 2020

Town Attorney Comment:

Signature: John Leidy Date: May 15, 2020

Town Manager Comment and/or Recommendation:

Signature: Cliff Ogburn Date: May 15, 2020

MEMORANDUM
Town of Nags Head
Planning & Development Department

To: Planning Board

cc: Mayor and Board of Commissioners

From: Michael Zehner, Director of Planning & Development

Kelly Wyatt, Deputy Director of Planning & Development

Date: May 15, 2020

Subject: Consideration of a text amendment to the UDO pertaining to temporary uses or temporary alteration of uses related to declared emergencies

OVERVIEW AND BACKGROUND

The proposed text amendment is intended to enact provisions within the Unified Development Ordinance allowing for temporary uses or the temporary modification of uses to address conditions during declared states of emergency or resulting from such emergencies. As the Board may be aware, Dan Lewis, President of the Outer Banks Restaurant Association, had emailed the mayors of the towns of Nags Head, Duck, Kill Devil Hills, Kitty Hawk, Manteo, and Southern Shores (attached) requesting the towns' consideration of regulatory changes that would allow for flexibility in restaurant operations in response to the COVID-19 Pandemic. This proposed text amendment is in response to that request, but has also been informed by further discussions between Staff and Mr. Lewis, Mark Ballog (owner of Lucky 12), and John Harris (owner of Kitty Hawk Kites); additionally, while in response to this immediate emergency, Staff believes that this provision will have application during other emergencies.

In short, this text amendment would allow for the issuance of a Temporary Use Permit only during an emergency declared by the Mayor (pursuant to Town and State laws) or due to impacts associated with a declared emergency. In these instances, Temporary Use Permits would be authorized to be issued jointly by the Town Manager and UDO Administrator for temporary uses or the temporary modification of uses; the drafted provisions allow for broad latitude in their application, however, there are limitations on eligible uses and modifications, and ultimately, a Permit could be rejected for 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.

Obviously, the Town of Nags Head and the other Outer Banks' municipalities are not unique in the need to address this issue. Please find attached a blog post from the American Planning Association titled *7 Ways to Respond to Regulation Rollbacks*, intended to present perspectives and options for municipalities to address the Pandemic, while complying with applicable regulations and statutes.

POLICY CONSIDERATIONS

The most direct policy in the Comprehensive Plan pertaining to the proposed text amendment and the basis for the amendment is policy NR-11, as follows:

> *NR-11 Ensure that the town is a disaster resilient community that can survive, recover from, and thrive after a natural or man-made disaster event.*

In Staff's opinion, the proposed amendment is consistent with the intent of this policy, despite a lack of expectation for the current circumstances.

STAFF RECOMMENDATION

Staff intends to review the provisions in more detail with the Board at their meeting on May 19, 2020. Staff is scheduled to present the proposed amendments to the Board of Commissioners or May 20, 2020, and if the Planning Board has issued a recommendation, request that the Board of Commissioners consider the scheduling of a public hearing for June 3, 2020. Planning Staff recommends adoption of the amendments as proposed, but welcomes and will take into consideration the Planning Board's questions and feedback.

With regard to the Planning Board and Board of Commissioners' review and action, Staff recommends consideration of the following UDO provisions:

> *3.5.3. Action by the Planning Board.*
>
> > *3.5.3.1. Every proposed amendment, UDO text amendment or zoning map amendment, shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.*
> >
> > *3.5.3.2. Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the UDO Administrator, to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.*
> >
> > *3.5.3.3. Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the mater being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.*

3.5.4. Action by the Board of Commissioners.
Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.

3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.

3.5.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

3.5.4.3. The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time. Final action on an UDO text amendment or zoning map amendment submitted by third parties will be taken within a reasonable time. Final action taken within 90 days of the public hearing before the Board of Commissioners shall be presumptively reasonable.

3.5.4.4. No member of the Board of Commissioners shall vote on any zoning map amendment or UDO text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact.

3.5.4.5. Prior to adopting or rejecting any UDO text and/or map amendment, the Board of Commissioners shall adopt one of the following statements which shall not be subject to judicial review.

3.5.4.5.1. A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.

3.5.4.5.2. A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and

explaining why the action taken is reasonable and in the public interest.

3.5.4.5.3. A statement approving the amendment and containing at least all of the following:

3.5.4.5.3.1. A declaration that the approval is also deemed an amendment to the Comprehensive Plan. The Board of Commissioners shall not require any additional request or application for amendment to the Comprehensive Plan.

3.5.4.5.3.2. An explanation of the change in conditions the Board of Commissioners took into account in amending the UDO to meet the development needs of the community.

3.5.4.5.3.3. Why the action was reasonable and in the public interest.

3.5.4.6. In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:

3.5.4.6.1. The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.

Attachments:

1. Proposed Text Amendment Ordinance;
2. Email from Dan Lewis, President, Outer Banks Restaurant Association; and
3. American Planning Association blog post *7 Ways to Respond to Regulation Rollbacks*

(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 (<u>underline</u>) 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 ##, 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 Sec. 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 Sec ## 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 Sec ## 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

Michael Zehner

From: Michael Zehner
Sent: Friday, May 15, 2020 1:17 PM
To: Michael Zehner
Subject: RE: Control Group

From: dlewis coastalprovisionsmarket.com <dlewis@coastalprovisionsmarket.com>
Date: May 3, 2020 at 12:25:13 PM EDT
To: Don Kingston <don.kingston@townofduck.com>, Tom Bennett <tbennett@southernshores-nc.gov>, Ben Cahoon <ben.cahoon@nagsheadnc.gov>, Benjamin Sproul <ben.sproul@kdhnc.com>, Gary Perry <gperry@kittyhawktown.net>, Bobby Owens <owens@townofmanteo.com>
Cc: Sheila Davies <sheila.davies@darenc.com>, "dcboc@darenc.com" <dcboc@darenc.com>
Subject: COVID Recovery Ordinance Compatibility

First, I would like to thank you all for you efforts on the Control Board in seeing our community through this current crisis. I'm sure it has been difficult balancing a variety of concerns and not being able to please everyone with these tough decisions.

I am reaching out to you all as head of the Outer Banks Restaurant Association (OBRA), a member of the NC Restaurant & Lodging Association's (NCRLA) Government Affairs Committee, and a member of the recently formed NCRLA COVID-19 Recovery Task Force. NCRLA has been in daily contact with Governor Cooper's office since the crisis began, and is now working with them on a reopening timeline and procedures, including the NC Restaurant Promise and COVID-19 training programs for restaurant personnel in conjunction with DHHS and NCSU Extension. Based on the task force's recent recommendation to the governor's office, we are expecting NC phase two to occur in late May, and will include among other things, restaurants opening at 50% capacity seating inside and on patios, and/or maintaining separation of tabes/chairs to comply with social distancing expectations. This would be expected to last at least 4-6 weeks in a best case scenario. Regardless of the timeline, our industry expects that outdoor dining, takeout and curbside delivery options will continue to play a much larger role in our business model for a much longer time. And the fact of the matter is, without other support or stimulus options, many restaurants here and across the country with not make it through this crisis.

With that said, I ask that all our municipalities take a look at two areas in their zoning that may work against efforts to service our guests in options other than inside dining. First is the itinerant/mobile vending ordinances that prohibit the use of carts, kiosks, and food trucks in most towns. I fully understand and agree with the intent of these ordinances: to not allow just anyone set up shop anywhere. But, especially now, with the tremendous need to serve guests for takeout, I would ask that all towns create an exception for restaurants to be able to use their own carts/kiosks/trucks on their own operational premises.

The second area of concern is the outdoor dining ordinances, many of which set a limited amount of square footage based on things such as lot coverage, parking, etc...., but don't necessarily take into account the number of people. In our new era, I would ask that all towns consider modifications to those limits in order to allow restaurants to space their tables in compliance with social distancing standards while still maintaining a viable number of seats with those spacing expectations.

I understand that most of these asks require either a text amendment, a zoning variance, and/or a conditional use application, along with a fee and a timeline that may take 2-3 months for any movement. But during these extremely trying times, I would ask if there is any way to expedite the

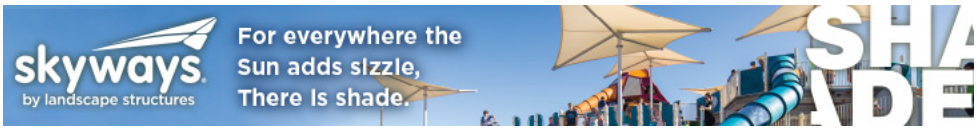
process, and the possibility of waving any fees that might be incurred. I would also be happy to have an OBRA member point person from each town work with all of you individually on these matters.

As many are having upcoming town council meetings shortly, I ask that the above be read in public comments, or added to the agenda, with exception of Town of Duck, as I have my own specific business interest there and will draft a separate version for their meeting on May 6.

Thank you again for your service to our community, and your consideration.

Dan Lewis

Daniel Lewis, CS, CSW
Chef/Owner, Coastal Provisions Restaurants
President, Outer Banks Restaurant Association
252-489-3171



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7 Ways to Respond to Regulation Rollbacks

Recently, a friend and colleague called me up and asked my advice. My ears perked up when he said that maybe I could help him before he lost his job. He was getting serious pressure from his elected officials to circumvent or roll back land use regulations to help local businesses impacted by the pandemic-induced economic downturn.

My colleague said that a quarter to a third of local businesses were projected to fold, and the local government was losing millions of dollars in revenue every month. Understandably, these were issues of the highest concern to local leaders.

> In his efforts to uphold the community's land-use requirements and the importance of public involvement, my colleague was at risk of being viewed as an obstacle to mitigating them.

How then can we offer strategies to be part of the solution, without exceeding our statutory and regulatory authority and while ensuring we do so in a manner consistent with our ethical principles?

Here are seven suggestions to consider:

1. PRIORITIZE MEASURES THAT ARE EASY FOR CUSTOMERS TO ACT ON

Planners can work with elected officials and community leaders in an expeditious manner to modify requirements, while still following procedural rules.

Simpler measures such as expanding the uses allowed in home occupations to enable businesses to work out of the home until social distancing requirements can be relaxed are often easier for businesses to act on and translate into meaningful economic activity that can help them stay afloat. Then, if these strategies yield positive benefits with limited side effects, communities can continue them after the crisis is over.

Planners should consider resisting efforts to waive design and development standards for projects that won't be completed for another 12 to 24 months. Such waivers may have limited value in helping businesses weather the short-term economic crisis. If inconsistent with community goals, such waivers could compromise the quality and functionality of the built environment for years to come.

2. IMPLEMENT IMPACTFUL ADMINISTRATIVE SOLUTIONS

Instead of changing their rules, some communities are taking action administratively wherever they can. For example, the City of Wilson, North Carolina, has stepped up its customer service (https://www.wilsonnc.org/home/showdocument?id=2761) with measures such as encouraging clients to schedule one-on-one phone calls with staff, opening a drive-through permitting window, and repurposing on-street parking spaces to facilitate pick-up of restaurant take-out orders.

In addition, planners should consider using appropriate administrative authority to prioritize projects and code revisions needed to protect the health, safety, and welfare of community members.

For example, we might prioritize the review of site plans needed to authorize drive-through testing sites and emergency housing. It may be prudent to work with the city or county manager's office to vet these in an expedited manner with governing boards and key stakeholders to confirm support.

Then, once the new administrative procedures are in place, planners should publicize them broadly to inform community stakeholders of the temporary change in operations. A good example of this is provided by the City of Portland's Planning and Sustainability Department (https://www.portlandoregon.gov/bds/article/756804).

3. FIND WAYS TO IMPLEMENT ONLINE PERMITTING

A potentially more complicated project is moving to online permitting. Yet, even if you have not had the time or money to implement such a system in the past (and have even less time or money in the present), there may be simple ways to begin shifting planning functions online.

For example, the City of Wilson, North Carolina, has made online forms "fillable" electronically so that customers don't have to print them out and instead can submit them digitally. In addition, software licenses for other functions such as online plan intake and electronic plan review can cost less than $1,000 a year and be installed relatively easily, while improving customer convenience and keeping development projects moving forward while social distancing measures are in place.

While lower in cost, such solutions often require good internal project management as well as strong collaboration with the Information Technology Department and may necessitate more trouble-shooting over time to configure and integrate future modules.

The City of Asheville has done a nice job building its own online permitting system (https://develop.plans.ashevillenc.gov/) one component at a time and creating a simple interface that guides users through the steps they need to take to make an electronic submittal. The city now handles about 90 percent of its plan reviews electronically.

> A full-service software vendor can provide an integrated solution for online permitting, including online plan intake and fee payment, internal workflow management, activity tracking by property, and ready integration with GIS.

While more comprehensive, such solutions can cost tens or hundreds of thousands of dollars and take six to 18 months, depending on whether or not your module is part of a larger organization-wide financial management system.

Even so, now may be the time when your organization is willing to make this investment. With the possibility of future waves of infection and more social distancing until a vaccine is developed, it may be worth the effort.

4. ADJUST PLANS TO RESPOND TO CHANGING NEEDS, BUT RESIST MEASURES THAT WILL UNDERMINE STILL-DESIRABLE LONG-TERM COMMUNITY GOALS

Flexibility is important to respond to changing community needs. Sometimes this can spark a long-needed reevaluation of long-term goals and strategies. However, rushed actions that undermine a still-desirable community vision can set back civic progress in significant ways.

5. MAKE SURE TO EVALUATE PROPOSED MEASURES FROM A DIVERSITY OF STAKEHOLDER PERSPECTIVES

Chances are, if a measure was unpopular before the pandemic, it will still be unpopular afterwards.

Efforts to overturn hard-earned community solutions may bring political consequences once the crisis is over, especially if they leave unpopular and lasting changes to the built environment. If pressure continues for such measures, we might work to implement a multi-channel public involvement strategy to give stakeholders as much opportunity as possible to provide input within the constraints of social distancing.

6. REMIND OTHERS THAT THE RULE OF LAW IS A FUNDAMENTAL ASPECT OF OUR DEMOCRACY

If the governing board is willing to tap emergency powers that it may possess to circumvent current development standards, then it is free to do so. Otherwise, we as planners need to stay within the limits of our authority, carry out our responsibilities, and work to maintain the integrity of local laws, despite the pressure we might experience to circumvent them.

7. ADVANCE EXPERIMENTAL MEASURES THAT COULD HELP DURING THE PANDEMIC AND BEYOND

The disruption to traditional operating procedures caused by the pandemic can also create a window of opportunity to advance new measures you have always wanted to try that are consistent with good planning principles. The best initiatives to advance may be those that help with short-term pandemic-related issues *and* bring lasting community benefits.

> Have you always wanted to expand administrative review of proposed development projects, especially for less-controversial decisions, to improve the efficiency of the development review process and free up public resources to handle other community planning needs?

Now might be the time for a pilot project, both to streamline review processes during the pandemic and to test this as a long-term procedural change.

Have you always wanted to allow a demonstration project for package delivery by aerial or terrestrial drones? Now might be a good time to try it, with social distancing measures heightening demand for home delivery, and fewer people on the roads.

Have you always wanted to create more safe places for pedestrians and bicyclists in your community? Now may be your chance. Seattle, for example, has just announced that it is making at least 20 miles of streets in its Stay Healthy Streets pilot initiative permanently car-free (https://sdotblog.seattle.gov/2020/05/07/2020-bike-investments-to-accelerate-including-20-miles-of-stay-healthy-streets-to-become-permanent-in-seattle/).

Pressure to roll back development standards in times of crisis can trap planners between professional ethics and political efficacy. With luck, these suggestions can help you focus the discussion on solutions that address the challenge at hand without creating lasting harmful impacts on the community or ethical dilemmas for public servants. And maybe the pandemic will even create an opportunity for you to try some thoughtful experiments that bring lasting improvements.

Top image: *Getty Images photo.*

ABOUT THE AUTHOR

Ben Hitchings, FAICP, CZO, is principal of Green Heron Planning based in Durham, North Carolina, and is a member of the APA Board of Directors.

MAY 12, 2020

By Benjamin Hitchings, FAICP

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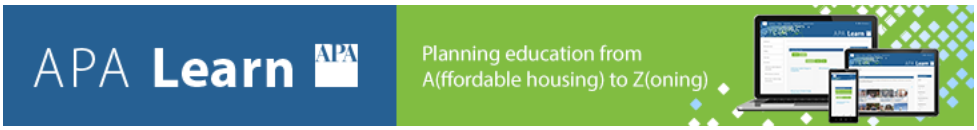

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ways-to-respond-to-regulation-rollbacks%2f&go=https%3a%2f%2flearn.planning.org%2fcatalog%2f)

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Agenda Item Summary Sheet

Item No: **F-1**
Meeting Date: **May 20, 2020**

Item Title: Consideration of NC Statewide Emergency Management Mutual Aid and Assistance Agreement (Revision 2017)

Item Summary:

Attached please find the latest version of the NC Statewide Emergency Management Mutual Aid and Assistance Agreement (Revision 2017) provided for Board consideration at the May 20, 2020 Board of Commissioners meeting.

The agreement, if adopted, encourages the coordination of mutual aid between the State and local governments when appropriate – such as in an emergency/disaster situation.

Number of Attachments: 1

Specific Action Requested:

Request Board consideration of attached agreement which is being circulated among Dare County entities for consideration.

Submitted By: Randy Wells, Fire Chief Date: May 14, 2020

Finance Officer Comment:

Insufficient information to determine precise fiscal impact.

Signature: Amy Miller Date: May 14, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: May 14, 2020

Town Manager Comment and/or Recommendation:

I concur with staff's request.

Signature: Cliff Ogburn Date: May 14, 2020

NORTH CAROLINA STATEWIDE EMERGENCY MANAGEMENT MUTUAL AID AND ASSISTANCE AGREEMENT REVISION 2017

FOR THE

Agency of Nags Head

THIS AGREEMENT IS ENTERED INTO BETWEEN THE NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, AND ITS DIVISION OF EMERGENCY MANAGEMENT OF THE STATE OF NORTH CAROLINA AND BY EACH OF THE ENTITIES THAT EXECUTES AND ADOPTS THE UNDERSTANDINGS, COMMITMENTS, TERMS, AND CONDITIONS CONTAINED HEREIN:

WHEREAS, the State of North Carolina is geographically vulnerable to a variety of natural disasters;

WHEREAS, Chapter 166A of the North Carolina General Statutes, entitled the North Carolina Emergency Management Act, recognizes this vulnerability and provides that its intended purposes are to:

1. Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;

2. Prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons;

3. Provide for the rapid and orderly rehabilitation of persons and restoration of property;

4. Provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response, and recovery;

WHEREAS, in addition to the State, the Federal Emergency Management Agency (FEMA) has recognized the importance of the concept of coordination between the State and local governments;

WHEREAS, under Chapter 166A and other chapters of the North Carolina General Statutes, entities entering into mutual aid and assistance agreements may include provisions for the furnishing and exchanging of supplies, equipment, facilities, personnel and services; and

WHEREAS, the entities which have chosen to become signatories to this Agreement wish to provide mutual aid and assistance amongst one another at the appropriate times;

THEREFORE, pursuant to G.S. 166A-19.72, these entities agree to enter into this Agreement for reciprocal emergency management aid and assistance, with this Agreement embodying the understandings, commitments, terms, and conditions for said aid and assistance, as follows:

SECTION I. DEFINITIONS

"Agreement" means this document, the North Carolina Statewide Emergency Management Mutual Aid and Assistance Agreement.

"Aid and assistance" includes personnel, equipment, facilities, services, and supplies.

"Authorized Representative" means a party's employee who has been authorized, in writing by that party, to request, to offer, or to otherwise provide assistance under the terms of this Agreement. The list of Authorized Representatives for each party executing this Agreement shall be attached to the executed copy of this Agreement. (In the event of a change in personnel, unless otherwise notified, the presumption will be that the successor to that position will be the authorized representative.)

"Disaster declaration" means a gubernatorial declaration that the impact or anticipated impact of an emergency constitutes a Type I, II, III disaster as defined in G.S. 166A-19.21(b)

"Emergency" means an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property, resulting from any natural or man-made accidental, military, or paramilitary cause.

"Local Agency" means a county agency charged with coordination of all emergency management activities for its geographical limits pursuant to G.S. 166A-19.15.

"Party" means a governmental entity which has adopted and executed this Agreement.

"Provider" means the party which has received a request to furnish aid and assistance from another party in need (the "Recipient").

"Recipient" means the party setting forth a request for aid and assistance to another party (the "Provider").

SECTION II. INITIAL RECOGNITION OF PRINCIPLE BY ALL PARTIES; AGREEMENT PROVIDES NO RIGHT OF ACTION FOR THIRD PARTIES

As this is a reciprocal contract, it is recognized that any party to this Agreement may be requested by another party to be a Provider. It is mutually understood that each party's foremost responsibility is to its own citizens. The provisions of this Agreement shall not be construed to impose an unconditional obligation on any party to this Agreement to provide aid and assistance pursuant to a request from another party. Accordingly, when aid and assistance have been requested, a party may in good faith withhold the resources necessary to provide reasonable and adequate protection for its own community, by deeming itself unavailable to respond and so informing the party setting forth the request.

Given the finite resources of any jurisdiction and the potential for each party to be unavailable for aid and assistance at a given point in time, the parties mutually encourage

each other to enlist other entities in mutual aid and assistance efforts and to enter into such agreements accordingly. Concomitantly, the parties fully recognize that there is a highly meritorious reason for entering into this Agreement, and accordingly shall attempt to render assistance in accordance with the terms of this Agreement to the fullest extent possible.

Pursuant to G.S. 166A-19.60 and as elaborated upon in Section X of this Agreement, all functions and activities performed under this Agreement are hereby declared to be governmental functions. Functions and activities performed under this Agreement are carried out for the benefit of the general public and not for the benefit of any specific individual or individuals. Accordingly, this Agreement shall not be construed as or deemed to be an Agreement for the benefit of any third parties or persons and no third parties or persons shall have any right of action under this Agreement for any cause whatsoever. All immunities provided by law shall be fully applicable as elaborated upon in Section X of this Agreement.

SECTION III. PROCEDURES FOR REQUESTING ASSISTANCE

Mutual aid and assistance shall not be requested unless the resources available within the stricken area are deemed inadequate by Recipient. When Recipient becomes affected by a emergency and deems its resources inadequate, it may request mutual aid and assistance by communicating the request to Provider, indicating the request is made pursuant to this Agreement. The request shall be followed as soon as practicable by a written confirmation of that request, including the transmission of a proclamation of local state of emergency under G.S. 166A-19.22, and a completed form describing recipient's projected needs in light of the emergency. All requests for mutual aid and assistance shall be transmitted by the party's *Authorized Representative* or to the *Coordinator of the Local Agency* as set forth below.

A. METHOD OF REQUEST FOR MUTUAL AID AND ASSISTANCE: Recipient shall set forth requests as follows:

(i) REQUESTS ROUTED THROUGH THE RECIPIENT'S LOCAL AGENCY: Recipient may directly contact the Local Agency, in which case it shall provide the Local Agency with the information in paragraph B of this Section (Section III). The Local Agency shall then contact other parties on behalf of Recipient to coordinate the provision of mutual aid and assistance. Recipient shall be responsible for the costs and expenses incurred by any Provider in providing aid and assistance pursuant to Section VII of this Agreement.

(ii) REQUESTS MADE DIRECTLY TO PROVIDER: Recipient may directly contact Provider's authorized representative, setting forth the information in paragraph B of this Section (Section III). All communications shall be conducted directly between Recipient and Provider. Recipient shall be responsible for the costs and expenses incurred by any Provider in providing aid and assistance pursuant to the provisions of this Agreement as noted in Section VII of this Agreement. Provider and Recipient shall be responsible for keeping Local Agencies advised of the status of response activities, in a timely manner.

(iii) RECORD OF REQUESTS TO BE PROVIDED: A record of the request for assistance shall be provided by the Recipient to the Director of the Division of Emergency Management in the NC Department of Public Safety, in a timely manner.

B. REQUIRED INFORMATION: Each request for assistance shall include the following information, in writing or by any other available means, to the extent known:

1. Stricken Area and Status: A general description summarizing the condition of the community or emergency area (i.e., whether the emergency and/or disaster declaration is imminent, in progress, or has already occurred) and of the damage sustained to date;

2. Services: Identification of the service function(s) for which assistance is needed and the particular type of assistance needed;

3. Infrastructure Systems: Identification of the type(s) of public infrastructure system for which assistance is needed (water and sewer, storm water systems, streets) and the type of work assistance needed;

4. Aid and Assistance: The amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time they will be needed;

5. Provider's Traveling Employee Needs--Unless otherwise specified by Recipient, it is mutually understood that Recipient will provide for the basic needs of Provider's traveling employees. Recipient shall pay for all reasonable out-of-pocket costs and expenses of Provider's traveling employees, including, without limitation, transportation expenses for travel to and from the stricken area. Further, Recipient shall house and feed Provider's traveling employees at its (Recipient's) sole cost and expense. If Recipient cannot provide such food and/or housing at the emergency area, Recipient shall specify in its request for assistance that the Provider’s traveling employees be self-sufficient.

6. Facilities: The need for sites, structures, or buildings outside Recipient's geographical limits to serve as relief centers or staging areas for incoming emergency goods and services; and

7. Meeting Time and Place: An estimated time and a specific place for a representative of Recipient to meet the personnel and resources of any Provider.

C. STATE AND FEDERAL ASSISTANCE: Recipient shall be responsible for coordinating requests for state or federal assistance with its (Recipient's) Local Agency.

SECTION IV. PROVIDER’S ASSESSMENT OF AVAILABILITY OF RESOURCES AND ABILITY TO RENDER ASSISTANCE

When contacted by the Recipient/Local Agency, Provider's authorized representative shall assess Provider's own local situation in order to determine available personnel, equipment, and other resources. If Provider's authorized representative determines that Provider has available resources, Provider's authorized representative shall so notify the

Recipient/Local Agency (whichever communicated the request). Provider shall complete a written acknowledgment, whether on the request form received from Recipient or on another form, regarding the assistance to be rendered (or a rejection of the request) and shall transmit it by the most efficient practical means to the Recipient/Local Agency for a final response. Provider's acknowledgment shall contain the following information:

1. In response to the items contained in the request, a description of the personnel, equipment, and other resources available;

2. The projected length of time such personnel, equipment, and other resources will be available to serve Recipient, particularly if the period is projected to be shorter than one week (as provided in the "Length of Time for Aid and Assistance" section [Section VI] of this Agreement.)

3. The estimated time when the assistance provided will arrive at the location designated by the Authorized Representative of the Requesting Party; and

4. The name of the person(s) to be designated as Provider's supervisor (pursuant to the "Supervision and Control" section [Section V] of this Agreement.)
Where a request has been submitted to the Local Agency, the Local Agency shall notify Recipient's authorized representative and forward the information from Provider. The Recipient/Local Agency shall respond to Provider's written acknowledgment by signing and returning a copy of the form to Provider by the most efficient practical means, maintaining a copy for its file.

SECTION V. SUPERVISION AND CONTROL

Provider shall designate one of its employees sent to render aid and assistance to Recipient as a supervisor. As soon as practicable, Recipient shall assign work tasks to Provider's supervisor, and unless specifically instructed otherwise, Recipient shall have the responsibility for coordinating communications between Provider's supervisor and Recipient. Recipient shall provide necessary credentials to Provider's personnel authorizing them to operate on behalf of Recipient.

Based upon such assignments from the Recipient, Provider's supervisor shall:

1. Have the authority to assign work and establish work schedules for Provider's personnel. Further, supervisor shall retain direct supervision and control of Provider's personnel, equipment, and other resources. Provider should be prepared to furnish communications equipment sufficient to maintain communications among its respective operating units, and if this is not possible, Provider shall notify Recipient accordingly;

2. Maintain daily personnel time records, material records, and a log of equipment hours;

3. Report work progress to Recipient at mutually agreed upon intervals.

SECTION VI. LENGTH OF TIME FOR AID AND ASSISTANCE; RENEWABILITY; RECALL

Unless otherwise provided, the duration of Provider's assistance shall be for an initial period of seven days, starting from the time of arrival. Thereafter, assistance may be extended in daily or weekly increments as the situation warrants, for a period agreed upon by the authorized representatives of Provider and Recipient.

As noted in Section II of this Agreement, Provider's personnel, equipment, and other resources shall remain subject to recall by Provider to provide for its own citizens if circumstances so warrant. Provider shall make a good faith effort to provide at least twenty-four (24) hours advance notification to Recipient of Provider's intent to terminate mission, unless such notice is not practicable, in which case as much notice as is reasonable under the circumstances shall be provided.

SECTION VII. REIMBURSEMENTS

Except as otherwise provided below, it is understood that Recipient shall pay to Provider all documented costs and expenses incurred by Provider as a result of extending aid and assistance to Recipient. The terms and conditions governing reimbursement for any assistance provided under this Agreement shall be in accordance with the following provisions, unless otherwise agreed in writing by Recipient and Provider. Recipient shall be ultimately responsible for reimbursement of all eligible expenses.

A. Personnel-- During the period of assistance, Provider shall continue to pay its employees according to its then prevailing ordinances, rules, and regulations. Recipient shall reimburse Provider for all direct and indirect payroll costs and expenses including travel expenses incurred during the period of assistance, including, but not limited to, employee retirement benefits as provided by Generally Accepted Accounting Principles (GAAP). However, as stated in Section IX of this Agreement, Recipient shall not be responsible for reimbursing any amounts paid or due as benefits to Provider's personnel under the terms of the North Carolina Workers' Compensation Act (Chapter 97 of the North Carolina General Statutes).

B. Equipment-- Recipient shall reimburse the Providers for the use of equipment during the period of assistance according to either a pre-established local or state hourly rate or according to the actual replacement, operation, and maintenance expenses incurred. For those instances in which costs are reimbursed by the Federal Emergency Management Agency (FEMA), the FEMA-eligible direct costs shall be determined in accordance with 44 C.F.R. 206.228. Provider shall pay for all repairs to its equipment as determined necessary by its on-site supervisor(s) to maintain such equipment in safe and operational condition. At the request of Provider, fuels, miscellaneous supplies, and minor repairs may be provided by Recipient, if practical. The total equipment charges to Recipient shall be reduced by the total value of the fuels, supplies, and repairs furnished by Recipient and by the amount of any insurance proceeds received by Provider.

C. Materials And Supplies—Recipient shall reimburse Provider for all materials and supplies furnished and that are used or damaged by Recipient during the period of assistance, except for the costs of equipment, fuel and maintenance materials, labor, and supplies, which shall be included in the equipment rate established in subsection B of this

section (Section VII), Recipient will not be responsible for costs where such damage is caused by gross negligence, willful and wanton misconduct, intentional misuse, or recklessness of Provider's personnel. Provider's personnel shall use reasonable care under the circumstances in the operation and control of all materials and supplies used during the period of assistance. The measure of reimbursement shall be determined in accordance with 44 C.F.R. 206.228. In the alternative, the parties may agree that Recipient will replace, with like kind and quality as determined by Provider, Provider's materials and supplies used or damaged in a reasonable time. If such an agreement is made, it shall be reduced to writing and transmitted to the North Carolina Division of Emergency Management.

D. Record Keeping-- Recipient and North Carolina Division of Emergency Management personnel shall provide information, directions, and assistance for record-keeping to Provider's personnel. Provider shall maintain records and submit invoices for reimbursement by Recipient or the North Carolina Division of Emergency Management using the format used or required by FEMA publications, 2 C.F.R. Part 200 and applicable Office of Management and Budget (OMB) Circulars.

E. Payment; Other Miscellaneous Matters as to Reimbursements-- The reimbursable costs and expenses with an itemized notice shall be forwarded as soon as practicable after the costs and expenses are incurred, but not later than sixty (60) days following the period of assistance, unless the deadline for identifying damage is extended in accordance with 44 C.F.R. part 206. Recipient shall pay the bill or advise of any disputed items, not later than sixty (60) days following the billing date. These time frames may be modified in writing signed by both parties by mutual agreement. This shall not preclude Provider or Recipient from assuming or donating, in whole or in part, the costs and expenses associated with any loss, damage, or use of personnel, equipment, and resources provided to Recipient.

F. Contracting – If recipient or provider contracts with a third party to perform any aid or assistance under the provisions of this agreement, then the entity shall follow any applicable local, state, or federal contracting requirements.

SECTION VIII. RIGHTS AND PRIVILEGED OF PROVIDER'S EMPLOYEES

Pursuant to G.S. 166A-19.60 whenever Provider's employees are rendering aid and assistance pursuant to this Agreement, such employees shall retain the same powers, duties, immunities, and privileges they would ordinarily possess if performing their duties within the geographical limits of Provider.

SECTION IX. PROVIDER'S EMPLOYEES COVERED AT ALL TIMES BY PROVIDER'S WORKER'S COMPENSATION POLICY

Recipient shall not be responsible for reimbursing any amounts paid or due as benefits to Provider's employees under the terms of the North Carolina Workers' Compensation Act, Chapter 97 of the General Statutes, due to personal injury or death occurring during the period of time such employees are engaged in the rendering of aid and assistance under this Agreement. It is mutually understood that Recipient and Provider shall be responsible for payment of such workers' compensation benefits only to their own respective employees. Further, it is mutually understood that Provider will be entirely responsible for

the payment of workers' compensation benefits to its own respective employees pursuant to G.S. 97-51.

SECTION X. IMMUNITY

Pursuant to G.S. 166A-19.60 all activities performed under this Agreement are hereby declared to be governmental functions. Neither the parties to this Agreement, nor, except in cases of willful misconduct, gross negligence, or bad faith, their personnel complying with or reasonably attempting to comply with this Agreement or any ordinance, order, rule, or regulation enacted or promulgated pursuant to the provisions of this Agreement shall be liable for the death of or injury to persons or for damage to property as a result of any such activity.

SECTION XI. PARTIES MUTUALLY AGREE TO HOLD EACH OTHER HARMLESS FROM LIABILITY

To the extent allowed by applicable law, each party (as indemnitor) agrees to protect, defend, indemnify, and hold the other party (as indemnitee), and its officers, employees and agents, free and harmless from and against any and all losses, penalties, damages, assessments, costs, charges, professional fees, and other expenses or liabilities of every kind and arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of indemnitor's negligent acts, errors and/or omissions. Indemnitor further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, etc. at indemnitor's sole expense and agrees to bear all other costs and expenses related thereto. To the extent that immunity does not apply, each party shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself what kinds of insurance, and in what amounts, it should carry. Each party understands and agrees that any insurance protection obtained shall in no way limit the responsibility to indemnify, keep, and save harmless the other parties to this Agreement. Notwithstanding the foregoing, to the extent that each party does not purchase insurance, it shall not be deemed to have waived its governmental immunity by law.

SECTION XII. ROLE OF THE DIVISION OF EMERGENCY MANAGEMENT

Pursuant to GS 166A-19.12(19) and under this agreement, the responsibilities of the North Carolina Division of Emergency Management are: (1) to serve as the central depository for executed Agreements, to maintain a current listing of entities with their authorized representatives and contact information, and to provide this listing to each of the entities on an annual basis; (2) to coordinate the provision of mutual aid and assistance to a requesting party, pursuant to the provisions of this Agreement; (3) to keep a record of all requests for assistance and acknowledgments; (4) to report on the status of ongoing emergency or disaster-related mutual aid and assistance as appropriate; and (5) if the parties so designate, to serve as the eligible entity for requesting reimbursement of eligible costs from FEMA and provide information, directions, and assistance for record keeping pursuant thereto.

SECTION XIII. AMENDMENTS

Manner-- This Agreement may be modified at any time upon the mutual written consent of

the Recipient and Provider.

Addition of Other Entities--Additional entities may become parties to this Agreement upon: (1) acceptance and execution of this Agreement; and (2) sending an executed copy of the Agreement to the North Carolina Division of Emergency Management.

SECTION XIV. INITIAL DURATION OF AGREEMENT; RENEWAL; TERMINATION

This Agreement shall be binding for not less than one (1) year from its effective date, unless terminated upon at least sixty (60) days advance written notice by a party as set forth below. Thereafter, this Agreement shall continue to be binding upon the parties in subsequent years, unless canceled by written notification served personally or by registered mail upon the Director of North Carolina Division of Emergency Management, which shall provide copies to all other parties. The withdrawal shall not be effective until sixty (60) days after notice thereof has been sent by the Director of the North Carolina Division of Emergency Management to all other parties. A party's withdrawal from this Agreement shall not affect a party's reimbursement obligations or any other liability or obligation under the terms of this Agreement incurred prior to withdrawal hereunder. Once the withdrawal is effective, the withdrawing entity shall no longer be a party to this Agreement, but this Agreement shall continue to exist among the remaining parties.

SECTION XV. HEADINGS

The headings of various sections and subsections of this Agreement have been inserted for convenient reference only and shall not be construed as modifying, amending, or affecting in any way the express terms and provisions of this Agreement.

SECTION XVI. SEVERABILITY: EFFECT ON OTHER AGREEMENTS

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement. Each of the parties declares that it would have entered into this Agreement irrespective of the fact that any one or more of this Agreement's clauses, sentences, provisions, paragraphs, or other parts have been so declared invalid. Accordingly, it is the intention of the parties that the remaining portions of this Agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s), or other part(s) invalidated.

In the event that parties to this Agreement have entered into other mutual aid and assistance contracts, for example pursuant to Chapter 160A of the North Carolina General Statutes, those parties agree that to the extent a request for mutual assistance is made pursuant to this Agreement, those other mutual aid and assistance contracts are superseded by this Agreement.

SECTION XVII. EFFECTIVE DATE

This Agreement shall take effect upon its approval by the entity seeking to become a signatory to this Agreement and upon proper execution hereof.

IN WITNESS WHEREOF, each of the parties have caused this North Carolina Statewide Emergency Management Mutual Aid and Assistance Agreement to be duly executed in its name and behalf by its Chief Executive Officer, who has signed accordingly with seals affixed and attested with concurrence of a majority of its governing board, as of the date set forth in this Agreement.

DIVISION OF EMERGENCY MANAGEMENT
DEPARTMENT OF PUBLIC SAFETY

BY:

Erik A. Hooks, Secretary

Department of Public Safety

Date:

BY:

Michael A. Sprayberry, Director

Division of Emergency Management

Date:

BY: _____ WITNESS: _____

Chief Executive Officer/Local Government

Name: **Ben Cahoon**

Title: **Mayor**

Name of Unit: **Town of Nags Head**

Date: **May 5, 2020**

APPROVED AS TO PROCEDURES:

BY:

Office of General Counsel

Department of Public Safety

Date:

List of Authorized Representatives to Contact for Emergency Assistance

For the Agency of Nags Head

Mailing Address:
PO Box 99
Nags Head, NC 27959

Date: **May 5, 2020**

Primary Representative

Name: **Cliff Ogburn**
Title: **Town Manager**
Day Phone: **252.441.5508** Night Phone: **252.216.8146**
Cell Phone: **252.216.8146** Fax:

First Alternate Representative

Name: **Randy C. Wells**
Title: **Fire Chief**
Day Phone: **252.441.5909** Night Phone: **843.321.2480**
Cell Phone: **843.321.2480** Fax:

Second Alternate Representative

Name: J Phillip Webster
Title: **Chief of Police**
Day Phone: 252.449.2012 Night Phone: 843.241-5438
Cell Phone: 843.241-5438 Fax:

Agenda Item Summary Sheet

Item No: **G-1**
Meeting Date: **May 20, 2020**

Item Title: Town Attorney John Leidy – Request for Closed Session

Item Summary:

At the May 20th Board of Commissioners meeting, Attorney John Leidy will request a Closed Session to discuss with Board members a matter within the attorney/client privilege in accordance with GS 143-318.11(a)(3).

Number of Attachments: 0

Specific Action Requested:

Provided for Board discussion.

Submitted By: Administration Date: May 14, 2019

Finance Officer Comment:

N/A

Signature: Amy Miller Date: May 14, 2019

Town Attorney Comment:

N/A

Signature: John Leidy Date: May 14, 2019

Town Manager Comment and/or Recommendation:

N/A

Signature: Cliff Ogburn Date: May 14, 2019

Agenda Item Summary Sheet

Item No: **H-1**
Meeting Date: **May 20, 2020**

Item Title: Town Manager Ogburn – Distribution/Presentation of Town Manager's Recommended Budget for FY 20/21

Item Summary:

At the May 20th Board of Commissioners meeting, Town Manager Ogburn will distribute/present to Board members his recommended budget for FY 20/21.

A Public Hearing on the proposed budget has been scheduled for the June 3rd Board of Commissioners meeting.

Number of Attachments: 0

Specific Action Requested:

Provided for Board information and review.

Submitted By: Administration Date: May 14, 2020

Finance Officer Comment:

Finance Officer Amy Miller will be available for questions.

Signature: Amy Miller Date: May 14, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: May 14, 2020

Town Manager Comment and/or Recommendation:

Provided for Board information and review.

Signature: Cliff Ogburn Date: May 14, 2020

Agenda Item Summary Sheet

Item No: **H-2**
Meeting Date: **May 20, 2020**

Item Title: Town Manager Ogburn – Discussion of parking at Little Bridge site

Item Summary:

At the May 20th Board of Commissioners meeting, Town Manager Ogburn will discuss a potential need for No Parking at the Little Bridge site on the Nags Head/Manteo Causeway. Specifically, the northeast side of the bridge.

Number of Attachments: 0

Specific Action Requested:

Provided for Board discussion.

Submitted By: Administration Date: May 14, 2020

Finance Officer Comment:

Insufficient information to determine fiscal impact.

Signature: Amy Miller Date: May 14, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: May 14, 2020

Town Manager Comment and/or Recommendation:

Provided for discussion.

Signature: Cliff Ogburn Date: May 14, 2020

Agenda Item Summary Sheet

Item No: **H-3**
Meeting Date: **May 20, 2020**

Item Title: Town Manager Ogburn – Request for Closed Session

Item Summary:

At the May 20th Board of Commissioners meeting, Town Manager Ogburn will request a Closed Session to discuss with Board members a personnel matter in accordance with GS 143-318.11(a)(6).

Number of Attachments: 0

Specific Action Requested:

Request Closed Session for Board information and discussion.

Submitted By: Administration Date: May 14, 2020

Finance Officer Comment:

No unbudgeted fiscal impact.

Signature: Amy Miller Date: May 14, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: May 14, 2020

Town Manager Comment and/or Recommendation:

Provided for Board information and discussion.

Signature: Cliff Ogburn Date: May 14, 2020

Agenda Item Summary Sheet

Item No: **I-1**
Meeting Date: **May 20, 2020**

Item Title: Comr. Webb Fuller – Discussion about the Town allowing for an individual subscription for recycling

Item Summary:

At the May 20th Board of Commissioners meeting, Comr. Fuller will discuss with Board members allowing the Town to coordinate with the recycling company, Bay Disposal, for individual recycling subscriptions.

Number of Attachments: 0

Specific Action Requested:

Provided for Board discussion.

Submitted By: Administration Date: May 14, 2020

Finance Officer Comment:

No unbudgeted fiscal impact.

Signature: Amy Miller Date: May 14, 2020

Town Attorney Comment:

N/A

Signature: John Leidy Date: May 14, 2020

Town Manager Comment and/or Recommendation:

I will participate in the discussion.

Signature: Cliff Ogburn Date: May 14, 2020