



**AN ORDINANCE AMENDING THE TOWN CODE AND UNIFIED DEVELOPMENT
 ORDINANCE OF THE TOWN OF NAGS HEAD, NORTH CAROLINA AS IT
 PERTAINS TO THE USE
 "RESTAURANT, DRIVE-THROUGH"**

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160D-701, the Town of Nags Head (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land; pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160D-702, the Town has adopted comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160D-103, which allows the Town to combine certain land development ordinances into a unified ordinance;

WHEREAS, Section 2.4.4.3 of the Unified Development Ordinance provides that the powers and duties of the Planning Board include developing and recommending policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

WHEREAS, Section 3.5.1. of the Town Code makes clear that a zoning ordinance text amendment may be initiated by motion of the Board of Commissioners, by motion of the Planning Board, or by application by any person within the zoning jurisdiction of the Town;

WHEREAS, The Board of Commissioners made a motion requesting consideration be given to removing the use "Restaurant, Drive-Through" from within the Unified Development Ordinance, including the supplemental regulations associated with them; and

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein but are instead replaced by an ellipsis ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of the Unified Development Ordinance.

PART I. That **Section 6.6, Table of Uses and Activities**, be amended as follows

	Use Category/ Class	Use Type	R - 1	R - 2	R - 3	C R	C- 1 *	C- 2	C - 3	C- 4	C- 5	S P D- 20	SE D- 80	S P D- C *	O & S	C O	H O	SR O	Regulations
4	Food Service	Restaurant - Drive In					S R	S R			S R								Section 7.28
4	Food Service	Restaurant - Drive Through						S R											Section 7.29
4	Food Service	Restaurant-Neighborhood				P R	P R	P R		P R	P R								Section 7.30

PART II. That **Section 7.29- Restaurant, Drive-Through**, be removed as follows:

~~Restaurant, drive-through, is permitted in accordance with Section 6.6, Table of Uses and Activities, subject to other requirements of this UDO and provided that the following conditions are met:~~

~~7.29.1. In addition to the buffering requirements of Section 10.93, Landscaping, Buffering, and Vegetation Preservation, the site shall be buffered from all adjacent properties utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Section 10.93.~~

~~7.29.2. The drive-through restaurant must front on the US 158 right-of-way.~~

PART III. That **Section 7.30 - Restaurant, Neighborhood** be amended as follows:

7.30.3. A restaurant site may contain more than one principal restaurant building, or one principal restaurant building in combination with another principal drive-in restaurant, ~~drive through restaurant~~, or takeout restaurant building.

Part IV. That **Section 7.31- Restaurant, Sit Down** be amended as follows:

7.31.1. A restaurant site may contain more than one principal restaurant building, or one principal restaurant building in combination with another principal drive-in restaurant, ~~drive through restaurant~~, or takeout restaurant building.

Part V. That **Section 9.36 - Table of Uses and Activities for the SPD-C District** be amended as follows:

Use Category/Class	Use Type	C1	C2	I	Hotel	SF-DET	SF-ATT	MF	TH	REC	Supplemental Regulations
4-Food-Service	Restaurant, drive-through	CS	CS								Sect. 9.37.5

Part VI. That **Section 9.37.5 - Restaurant, Drive-Through**, be removed as follows:

~~Drive-through restaurants are allowed as a special use in accordance with Section 9.36, Table of Uses and Activities for the SPD-C District, provided that the boundaries of the entire site, if located within fifty (50) feet of an existing residential use or district, shall be buffered from all adjacent properties and rights-of-way utilizing a 10-foot wide Commercial Transitional Protective Yard as prescribed in Article 10, Part VI, Commercial Design Standards.~~

Part VII. That **Table 10-2: Required Parking by Use** be amended as follows:

Use Category/Class	Use Type	Required Parking
Food-Service	Restaurant - Drive-Through	A minimum of 10 additional parking spaces, plus required parking spaces for any other use including, but not limited to, restaurant customer service area or drive-in-restaurant

Part VIII. 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 March 2024.

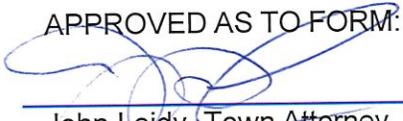

Benjamin Cahoon, Mayor

ATTEST:


Carolyn F. Morris, Town Clerk



APPROVED AS TO FORM:


John Leidy, Town Attorney

Date adopted: March 6, 2024

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS

APPENDIX A

SECTION 3.5.4. ACTION BY THE BOARD OF COMMISSIONERS

Pursuant to Section 3.5.4.2. of the UDO, 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.

Pursuant to Section 3.5.4.5. of the UDO, prior to voting to adopt or reject the proposed text amendment, the Board should adopt a statement approving the amendment and describing the amendment's consistency with the Town's adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest, 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, or a statement approving the amendment and containing at least all of the following:

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