



**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA**

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-174, the Town of Nags Head (the "Town") may enact and amend ordinance provisions that define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the Town; and

WHEREAS, pursuant to 1983 N.C. Sess. Law 1026, the Town may by ordinance define, prohibit, or regulate acts, omissions, or conditions that damage, destroy, or remove any sand dune or kill, destroy, or remove any vegetation growing on any sand dune; and

WHEREAS, pursuant to N.C.G.S. 160A-205 the Town may, by ordinance, define, prohibit, regulate, or abate acts, omissions, or conditions upon the State's ocean beaches and prevent or abate any unreasonable restriction of the public's rights to use the State's ocean beaches; may regulate, restrict, or prohibit the placement, maintenance, location, or use of equipment, personal property, or debris upon the State's ocean beaches; and may otherwise enforce any ordinance adopted pursuant to this section or any other provision of law upon the State's ocean beaches located within or adjacent to the city's jurisdictional boundaries to the same extent that a city may enforce ordinances within the city's jurisdictional boundaries; and

WHEREAS, pursuant to N.C.G.S. 160A-303.1, 160A-176.1 and 160A-176.2 the Town may regulate littering, trash disposal and the abandonment of personal property within the Town, on the ocean beaches of the Town and within the Atlantic Ocean.

WHEREAS, pursuant to N.C.G.S. 160A-308, the Town may regulate, restrict and prohibit the use of dune or beach buggies, jeeps, motorcycles, cars, trucks, or any other form of power-driven vehicle specified by the governing body of the municipality on the foreshore, beach strand and the barrier dune system, but must allow for commercial fishermen to use the same for commercial activities; and

WHEREAS, the Town finds that personal property and equipment abandoned overnight on the ocean beaches of the Town affects the health, safety and welfare of the Town's citizens and visitors: (1) by creating hazards for those traveling the ocean beaches during times of reduced visibility; (2) by unreasonably restricting the ability of public works, emergency and lifesaving vehicles to travel the ocean beach; (3) by creating hazards for the endangered and protected species such as sea turtles which use the ocean beach at night; and (4) by being destroyed or washed into the Atlantic Ocean or covered by sand to become a hidden danger to users of the ocean beach; and

WHEREAS, the Town further finds that that personal property and equipment abandoned overnight on the ocean beaches of the Town unreasonably restricts the public's rights to the customary free use and enjoyment of the State's ocean beaches, which rights remain reserved to the people of this State as provided in G.S. 77-20(d); and

WHEREAS, the Town further finds that personal property and equipment abandoned overnight on the ocean beaches of the Town is a form of littering; and

WHEREAS, the Town further finds that personal property, equipment and debris on the ocean beach adversely affects the public health, safety and welfare when the property, equipment or debris: (1) unreasonably restricts the ability of public works, emergency and lifesaving vehicles to travel the ocean beach; or (2) impedes the Town's ability to provide adequate ocean rescue service by obstructing the line of sight to the water from lifeguard stands or other surveillance areas; and

WHEREAS, the Town further finds that excessive piling of sand or digging of holes in the sand of the ocean beaches of the Town affects the health, safety and welfare of the Town's citizens and visitors: (1) by creating hazards for those traveling the ocean beaches during times of reduced visibility; (2) by unreasonably restricting the ability of public works, emergency and lifesaving vehicles to travel the ocean beach; (3) by creating hazards for endangered and protected species such as sea turtles which use the beach at night; and (4) by creating the possibility of collapse of the sand upon users of the ocean beach, particularly children; and

WHEREAS, the Town further finds that in accordance with the findings above it 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 Code of Ordinances (the "Town Code") as stated below.

ARTICLE II. Construction.

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

ARTICLE III. Amendment of Town Code.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina:

PART I. That the Town Code, is hereby amended by adding a section, to be numbered Town Code Sec. 8-8. Unattended and unsafe equipment, personal property and debris on the ocean beach prohibited., which such section reads as follows:

(a) It shall be prohibited for any person to leave unattended equipment, personal property, or debris, including, but not limited to, beach tents, canopies, umbrellas, awnings, chairs, and sporting nets, on the ocean beaches of the Town between 8 p.m. and 7 a.m. daily.

(b) It shall be prohibited for any person to place any item on the beach which:

1. Unreasonably restricts, prevents or disrupts the passage of public works, emergency or ocean rescue vehicles, or the public; or
2. Impedes or obstructs the line of sight to the Atlantic Ocean from lifeguard stands or other surveillance areas used by ocean rescue personnel.

(c) *Remedies.* Violations of this section shall be subject to the penalties described in Town Code section 1-6 (b). Additionally, violations of this section shall result in the classification of unattended equipment, personal property or debris as abandoned property, litter or unsafe property and said property may be removed by the Town.

(d) *Exceptions.* The town manager may grant exceptions to this section for limited duration special events or other reasons in the general public interest upon presentation of a written request outlining the reasons for the exception and providing a plan for addressing safety issues associated with the request. This section shall not be applicable to development, beach restoration or nourishment, construction or similar activities occurring upon the ocean beach pursuant to and in compliance with all necessary permits issued by the local, state and/or federal agencies having jurisdiction over the work. This section shall not be construed to apply to the removal of permanent residential or commercial structures and appurtenances thereto.

PART II. That the Town Code, is hereby amended by adding a section, to be numbered **Town Code Sec. 8-9. Excessive and unsafe digging or piling of sand on the ocean beach prohibited.**, which reads as follows:

(a) It shall be prohibited for any person to alter the ocean beach by digging or mounding of sand that:

1. Substantially or permanently alters the contour or shape of the ocean beach or any sand dune;
2. Remains unattended at night for any period of time or during the day for more than one (1) hour without restoring the beach to its original condition;
3. Unreasonably restricts, prevents or disrupts the passage of public works, emergency or ocean rescue vehicles, or the public; or
4. Creates a hazard for those traveling the ocean beach during times of reduced visibility or otherwise cannot reasonably be seen and recognized as a hazard by users of the ocean beach;
5. Creates hazards for endangered and protected species such as sea turtles which use the beach at night;
6. Creates the possibility of collapse of the sand upon users of the ocean beach, particularly children; or
7. Otherwise creates an unreasonably dangerous condition for the users of the ocean beach.

(b) *Exceptions.* The town manager may grant exceptions to this section for limited duration special events or other reasons in the general public interest upon presentation of a written request outlining the reasons for the exception and providing a plan for addressing safety issues associated with the request. This section shall not be applicable to development, beach restoration or nourishment, construction or similar activities occurring upon the ocean beach pursuant to and in compliance with all necessary permits issued by the local, state and/or federal agencies having jurisdiction over the work.

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 Zoning 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 from and after the **17th** day of **September 2014**.

Robert C. Edwards, Mayor

ATTEST:

Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

John Leidy, Town Attorney

Date adopted: September 17, 2014

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS _____