

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO BEACH DRIVING
AND PERSONAL WATERCRAFT**

Sec. 8-61. Definitions.

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

Sand dune means any mound, hill, ridge or pile of sand which has an overall height, at its highest point from the mean or average level or elevation of the area from which the slope of the dune begins, of at least ten feet.

~~*Vehicle* means automobiles, trucks, jeeps, beach buggies, motorcycles, bicycles, go-carts, helicopters and aircraft, extra terrain vehicles or any other automotive or motor-driven machine, by whatsoever name called.~~

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

Sec. 8-62. Prohibited generally; exception.

It shall be unlawful to operate, drive or cause to be driven any vehicle or other means or type of transportation over any sand dune in the town, except over, upon and along a highway or street put in place and maintained by the state department of transportation, division of motor vehicles, or the town. It shall also be unlawful to carry to, place upon or deposit any vehicle or other automotive equipment on any sand dune in the town and to operate the same by use of such devices as tracks, cables, winches or any other means.

Sec. 8-63. Exemptions from division provisions.

This division shall not apply to vehicles or other devices used by employees or officials of the authorized utility companies, necessary and essential to and when used in connection with necessary and essential repairs, maintenance and construction of utility facilities along rights-of-way and easements acquired by such companies for such purpose. This division shall likewise not apply to sand dunes or hills which are wooded and covered with vegetation, or where vehicles are operated thereon by the owners of the property or their agents, servants, employees or invitees according to such lawful use as they may make of the same. This division shall also not apply to vehicles or other devices being used by authorized military personnel, public safety personnel or authorized persons conducting scientific research or animal preservation studies or operations.

Sec. 8-81. Definitions.

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

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

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

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

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

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

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

~~Vehicle means all kinds of motor driven and wind powered vehicles including fishing boats and amphibious vehicles but excluding sailboats used for sport, surfboards and amphibious vehicles which are afloat and no portion of which is beached, aground or operating on wheels or tracks.~~

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

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

Sec. 8-82. Generally.

~~Except as provided in this division, it shall be unlawful to operate any automobile, "off the road" vehicle, motorcycle, wind powered or motor powered vehicle or other vehicle on the beaches of the town. Notwithstanding the provisions governing permits as provided in this division, no vehicle shall be operated on the beach of the town between 12:01 a.m. on May 1 and 12:00 midnight on September 30 of each and every year.~~

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

~~Sec. 8-83. Permits.~~

~~(a) Eligible vehicles. Permits shall be issued only for properly registered and licensed vehicles having a four-wheel drive and which shall have passed inspection by the department of motor vehicles of the state or by the equivalent department or agency of the state in which such vehicle is licensed, if applicable. Any boat transported onto the beach must be properly registered and marked according to the licensing jurisdiction.~~

~~(b) Applications; period of validity.~~

~~(1) Any person desiring to operate a permitted vehicle on the beach of the town shall make application to the appropriately designated employee of the town or at designated fishing tackle shops in the town. The requesting party shall present the vehicle for inspection at town hall between the hours of 8:30 a.m. and 5:00 p.m. daily Monday through Friday or at the designated fishing tackle shops during normal business hours. The applicant's name, address, driver's license number, registration number and type of vehicle for which such permit is sought must be submitted in order to obtain a permit. A~~

permit issued hereunder shall be valid from 12:01 a.m. October 1 and shall expire at midnight on April 30 of the following year.

- (2) ~~It is further provided that there shall be a separate permit for each vehicle for which a permit is desired under the terms of this division; except, that for commercial fishermen holding a valid state commercial fishermen's license, operating one or more vehicles in the business of commercial fishing, upon inspection of all vehicles so used when owned and titled in the same name and upon payment of the fee for the issuance of a single permit, duplicate permits shall be issued for all vehicles so used and owned as hereinabove stated; provided, that all such vehicles meet the inspection requirements as set out in subsection (a) of this section.~~
- (3) ~~It is further provided that short term permits up to 14 days duration may be issued for a bona fide fishing tournament. Such permits may be issued after application by an organization meeting the requirements of this division sponsoring a bona fide fishing tournament. Such application shall be made three weeks in advance of the tournament and shall include the inclusive dates, not exceeding 14 days, and the number of permits required.~~
- (c) ~~Fee. An applicant for a permit will pay a fee in accordance with the regularly adopted fee schedule of the town at the time of issuance of the permit and will receive a device or insignia which must be permanently affixed and displayed on the left front bumper of the vehicle; except, however, that in the case of a bona fide fishing tournament a temporary permit signed and sealed by the town clerk may substitute for a device or insignia which must be in the vehicle when being operated on the beach.~~
- (d) ~~Issuance not deemed authority to operate on private property. No permit issued under this section shall be construed to authorize a vehicle or the owner or operator thereof to operate on private property without the permission of the owner of such property.~~

Sec. 8-83. Beach Driving by Permit.

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

- (a) Eligible vehicles. Permits shall be issued only for properly registered and licensed vehicles owned by the person signing the permit having a four-wheel drive and which shall have passed inspection by the Department of Motor Vehicles of the state or by the equivalent department or agency of the state in which such vehicle is licensed, if applicable.
- (b) Applications; period of validity.
- (1) Any person desiring to operate a permitted vehicle on the beach of the town shall make application to the appropriately designated employee of the town or at designated fishing tackle shops in the town. The applicant's name, address, phone number, driver's license number, license plate number, and year and type of vehicle that is owned and titled by requesting applicant for which such permit is sought must be submitted in order to obtain a permit. A permit issued hereunder shall be valid between one-half-hour prior to sunrise on October 1 and one-half hour past sunset on April 30 the following year.
- (2) It is further provided that there shall be a separate permit for each vehicle for which a permit is desired under the terms of this division; except, that for commercial fishermen holding a valid state commercial fishermen's license, duplicate permits may be issued for all vehicles so used and owned as hereinabove stated; provided, that all such vehicles used and operated by such a commercial fisherman must meet the inspection requirements as set out in subsection (a) of this section.
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- (3) It is further provided that short term permits up to 14 days duration may be issued for a bona fide fishing tournament. Such permits may be issued after application by an organization meeting the requirements of this division sponsoring a bona fide fishing tournament. Such application shall be made three weeks in advance of the tournament and shall include the inclusive dates, not exceeding 14 days, and the number of permits required. Applications shall be forwarded to the Board of Commissioners for approval.
- (c) Fee. An applicant for a permit will pay a fee in accordance with the regularly adopted fee schedule of the town at the time of issuance of the permit and will receive a device or insignia which must be permanently affixed and displayed on the left front bumper of the vehicle; except, however, that in the case of a bona fide fishing tournament a temporary permit signed and sealed by the town clerk may substitute for a device or insignia which must be displayed in front dash of the vehicle when being operated on the beach.
- (d) Issuance not deemed authority to operate on private property. No permit issued under this section shall be construed to authorize a vehicle or the owner or operator thereof to operate on private property that is not part of the "ocean beach" and subject to public trust rights as provided by North Carolina General Statute Sec. 77-20(d) and 77-20(e) without the permission of the owner of such property.

Sec. 8-84. Rules of operation; operation on beaches.

Vehicles for which a permit is obtained pursuant to this division shall be operated in accordance with the following rules:

- (1) No vehicle shall be operated on the beach at a speed in excess of ~~25~~ 15 miles per hour.
- (2) No vehicle shall be operated on the beach during the period outside of the beach driving season as set out forth in section ~~8-82~~ 81.
- (3) No vehicle shall be operated west or landward of the "toe of slope" of the dune except in going to and from the beach area at authorized vehicular beach access points. ~~However, nothing contained in this section shall be construed to permit driving on the barrier dunes or driving on private property without the express permission of the owner, even though the "toe of slope" may be located west of the private property east boundary which extends to the mean high water mark of the ocean.~~
- (4) Permitted vehicles going to and from the beach area shall use as an entrance and exit only the designated vehicular beach access points which shall be designated as such by the board of commissioners of the town and appropriately marked.
- (5) Vehicles having permits may be operated on the beach only from one-half hour prior to sunrise to one-half hour following sunset daily. Vehicles engaged in permitted beach restoration or protection work, ~~including but not limited to approved beach push and sand bag installation and maintenance,~~ may only be operated on the beach from one-half hour prior to sunrise to one-half hour following sunset Monday through Friday.
- (6) Pedestrians, swimmers and bathers shall have the right-of-way over all vehicles being operated on the beach.
- ~~(7) Any person who drives any vehicle upon the beach area carelessly and heedlessly in willful or wanton disregard of the rights or safety of others or who drives any vehicle upon the beach without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving and punished pursuant to section 1-6.~~

- ~~(8)~~ Any person who is under the influence of intoxicating liquor or other drug or who has a blood alcohol level of 0.08 percent or more by weight, who drives on the beach area or going to and from the beach, shall be guilty of driving while under the influence of intoxicating liquor or other drug and shall be punished as provided in section 1-6.
- (7) The ordinances adopted herein and the provisions of G.S. Chapter 20 shall be enforced on the ocean beaches within the boundaries of Nags Head as provided by G.S. §§ 160A-205, 160A-175, and Chapter 20.
- ~~(9)~~(8) Any operator of any vehicle on the beach area or going to and from the beach must have a current and valid motor vehicle operator's license issued by the state of his residence.

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

~~Disabled individuals as defined herein may be allowed to operate an all-terrain vehicle ("ATV") on areas covered by this section if they meet the requirements of chapter 8. A disabled individual must first obtain a permit from the chief of police or his designee. Permits may be obtained at the town police department during normal office hours.~~

- (a) ~~"Disabled individual" is defined as a person who is physically disabled because:~~
- ~~(1) The person is 50 percent or more disabled veteran as determined by the U.S. Department of Veteran Affairs; or~~
 - ~~(2) The person has at least one of the following disabilities:~~
 - ~~a. The person is missing 50 percent or more of one or more of their legs, whether by amputation or natural causes;~~
 - ~~b. The person has paralysis of one or more legs;~~
 - ~~c. The person has permanent dysfunction of one or more legs rendering the individual unable to walk without mechanical assistance, other than a cane; or~~
 - ~~d. The person is confined to a wheelchair, walker or crutches due to disease, injury or defect.~~
- ~~The application for a permit shall be accompanied by a certification from a licensed physician that the applicant has a disability that meets the criteria set forth above. A disabled veteran must submit with the application a certification from the department of veteran affairs to that person's eligibility.~~
- (b) ~~A disabled individual may only obtain a permit to operate an ATV during the "beach driving season" which is defined as the time period when beach driving is permitted from 12:01 a.m. October 1 through midnight on April 30 of the following year.~~
- (c) ~~A disabled individual, after providing information on an application that meets the requirements of this section, may be issued a permit. The permit is limited to one "beach driving season". Applicants may seek a permit for each "beach driving season".~~
- (d) ~~Disabled individuals holding an ATV permit are only permitted to use a registered ATV's under this section. To register an ATV, the applicant must demonstrate their ownership of the ATV and proof of insurance on the ATV. Upon providing such satisfactory proof, the chief of police or his designee shall issue a "disabled person's ATV registration" which shall be affixed to the qualifying ATV. Such registrations are not transferable, and do not allow operation by anyone other than a disabled individual.~~
- (e) ~~Application fee is \$25.00.~~
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- ~~(f) The town chief of police or his designee is directed and authorized to establish forms, procedures and directives as may be required to implement this permit system and registration process and to ensure that it is run in an effective, safe and fair manner.~~
- ~~(g) Law enforcement officers are authorized to issue any disabled individual a citation for any unsafe operation of an ATV. Upon being cited for unsafe operation, the disabled individual's permit shall be revoked.~~
- ~~(h) It shall be a class III misdemeanor for any person to operate an ATV in violation of this section.~~

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

- (a) The application for a permit shall be accompanied by a certification from a licensed physician that the applicant has a disability that prevents them from obtaining a permit to operate a vehicle as defined in Section 8-81 on the ocean beach.
- (b) A disabled individual may only obtain a permit to operate an ATV/UTV during the "beach driving season" which is defined in section 8-81.
- (c) A disabled individual, after providing information on an application that meets the requirements of this section, may be issued a permit. The permit is limited to one "beach driving season". Applicants may seek a permit for each "beach driving season".
- (d) Disabled individuals holding an ATV/UTV permit are only permitted to use a registered ATV/UTV's under this section. To register an ATV/UTV, the applicant must demonstrate their ownership of the ATV/UTV and proof of insurance on the ATV/UTV. Upon providing such satisfactory proof, the chief of police or his designee shall issue a "disabled person's ATV/UTV registration" which shall be affixed to the qualifying ATV/UTV. Such registrations are not transferable, and do not allow operation by anyone other than a disabled individual.
- (e) Application fee is \$25.00.
- (f) The town chief of police or his designee is directed and authorized to establish forms, procedures and directives as may be required to implement this permit system and registration process and to ensure that it is run in an effective, safe and fair manner.
- (g) Law enforcement officers are authorized to issue any disabled individual a citation for any unsafe operation of an ATV/UTV. Upon being cited for unsafe operation, the disabled individual's permit shall be revoked.
- (h) It shall be a class III misdemeanor for any person to operate an ATV/UTV in violation of this section.

Sec.8-86. Operation of boats and personal watercraft.

- (a) See Town Code Sec.8-4 for regulations governing the use of personal watercraft.
 - (b) Any boat transported onto the beach must be properly registered and marked according to the licensing jurisdiction.
 - (c) Boats may only be launched from the ocean shoreline during the beach driving season as defined in Sec. 8-81.
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- (d) Boat operators must go straight in and straight out within 100 yards from the shoreline and must do so at a speed no faster than necessary to maintain control of the vessel, but in no case shall the speed generate or cause a wake or exceed five miles per hour (mph), whichever is less

Sec. 8-86 87. Exceptions.

- (a) The provisions of this division shall not apply to municipal vehicles or emergency vehicles or the drivers thereof, when they are operated upon the ocean beach in the performance of their duties nor shall this division apply to vehicles when being operated by a governmental agency, its employees, agents, contractors and subcontractors when engaged in beach restoration or protection work. The provisions of this division shall also not apply to authorized military personnel, public safety personnel or authorized persons conducting scientific research or animal preservation studies or operations.
- (b) The provisions of this division shall also not apply to any person owning, lawfully residing at, or leasing, whether short- or long-term, property located in the following area: All that north-south portion of Seagull Drive identified as extending from the property line between Lot 56 (10200 Seagull Drive) and Lot 55 (10204 Seagull Drive) to the north - and running to the property line between Lot 21 (216 Seagull Drive) and Lot 22 (214 Seagull Drive) to the south - of the Goose Wing Subdivision - from using the town's former right-of-way on Seagull Drive to access their property.
- ~~(b)~~(c) The date and time limitation provided in sections 8-82~~1~~ and 8-83 shall not apply to commercial fishermen holding a valid state commercial fishermen's license when engaged in commercial fishing activities.
- ~~(c)~~(d) The town manager shall have the authority to close any portion of the beach or all of the beach at such times and places that extensive beach erosion occurs. This authority may be exercised by the town manager when, as a result of inspections by him or the town employees subject to his authority, it is determined that the width of the beach between the toe of the slope of the dune and the area affected by ocean wash and waves is such that driving would either be dangerous or increase the effects of erosion, or the beach is not sufficiently wide or stable to support vehicular traffic. ~~At any time that the ocean wave wash is less than 40 feet eastward of the "toe of the slope" that portion of the beach shall be closed. The closure area shall extend to the next beach access point in each direction.~~ Additionally, the town manager or his designee has authority to close the beach at times and in areas where there is significant beach usage occurring that, when combined with other factors such as beach width and slope, would create the potential for conflicts between beachgoers and vehicles. Any person operating a vehicle on the beach in a closed area shall be subject to the penalties provided in this division.
- ~~(d)~~(e) The town manager, on a case-by-case basis, shall have the authority to review and decide written requests for temporary beach driving permits submitted by individuals seeking to perform specific construction activities requiring access to the beach by vehicles when access by such vehicles is otherwise prohibited by this chapter. Written requests for temporary beach driving permits shall include the following information:
- (1) Address of the construction site and identification of the beach access location.
 - (2) The start date and ending date of requested beach access.
 - (3) Copy of the issued building permit for the construction project and copies of any other local, state and/or federal permits and authorizations as may be required to lawfully conduct the described construction and access onto the beach.

- (4) A description as to the hardship that will be created if the temporary permit is not authorized and how such hardship is not the result of the applicant's own actions or inactions to perform the work in strict compliance with this chapter.
- (5) Any other information as may be deemed necessary by the town manager for proper consideration of the request.

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

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

If the county or any town within the county shall adopt an ordinance regulating the operation of vehicles on its beaches, the board of commissioners may enter into a reciprocity agreement with that town or the county; provided, however, that the board of commissioners finds that the ordinance contains similar provisions to this division. The Town of Nags Head has entered into a reciprocal agreement with the Town of Kill Devil Hills - a valid beach driving permit issued by the Town of Kill Devil Hills is hereby authorized.

Sec. 8-4. Personal watercraft.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Personal watercraft means a personal watercraft as defined in G.S. 75A-13.2 ~~3~~.

Vessel means a vessel as defined in G.S. 765A-2.

- (b) *Launching and landing of jet skis and all motorized craft.* The launching and landing of all motorized craft, including personal watercraft, is prohibited at the Danube Street Sound Access.
 - (c) *Speed.*
 - (1) Operators of personal watercraft must go straight in and straight out within 600 feet from any shoreline (sound or ocean) and must do so at a speed no faster than necessary to maintain control of the vessel, but in no case shall the speed generate or cause a wake or exceed five miles per hour (mph), whichever is less. This section shall not apply to watercraft operating within the commercial-outdoor recreational use overlay zoning district.
 - (2) Operators of personal watercraft, while within 50 feet of a person or persons in the water, or within 50 feet of a nonmotorized vessel, shall operate at a speed no faster than necessary to maintain control of the vessel, but in no case shall the speed generate or cause a wake or exceed five miles per hour (mph), whichever is less.
 - (d) *Use of personal watercraft.*
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- (1) Except to go straight in and straight out from the shoreline at speeds not exceeding the limitations provided in sec. 8-4 (c)(1), No personal watercraft may be operated within 600 feet of the shoreline (sound or ocean), except in the commercial outdoor recreational use overlay zoning district. This limitation shall not apply to the commercial outdoor recreational use overlay zoning district.
- (2) No personal watercraft may be operated within 600 feet of any fishing pier.
- (3) No personal watercraft may be launched from the ocean shoreline from one-half hour prior to sunrise on May 1 until one-half hour past sunset on September 30 of each year.
- ~~(3)~~(4) No person shall rent, lease, or let for hire a personal watercraft to any person under the age of 16 years, nor shall they knowingly allow a person under the age of 16 years to use a personal watercraft rented by another person on the waters under the jurisdiction of the town, as specified in G.S. 160A-176.2.
- ~~(4)~~(5) Each boat rental establishment shall be limited to a maximum number of eight authorized personal watercraft rental units and two personal watercraft that may be available for control, supervision, or rescue purposes per site. Further, no personal watercraft shall be located waterward of the nearest principal or accessory building other than authorized personal watercraft identified for rental use and two personal watercraft that may be available for control, supervision, or rescue purposes.
- (e) *Wildlife.* In accordance with G.S. 113-291.1, it shall be unlawful for an operator of a personal watercraft on the waters in this town to chase, harass, molest, worry, or disturb any wildlife except for lawfully angling for, hunting or trapping such fish and/or wildlife.
- (f) *Knowledge.* It is unlawful for a person who owns a personal watercraft, or who has charge over or control of a personal watercraft to authorize or knowingly to permit the personal watercraft to be operated in violation of this section or state law.
- (g) *Exceptions.* This section does not apply to the operation of personal watercraft by the following persons while in performance of their official duties:
 - (1) Federal, state and local public safety officers;
 - (2) The military;
 - (3) State and federal wildlife personnel; or
 - (4) Personnel involved in bona fide biological research programs.
- (h) *Penalty.* Any person who shall violate the provisions of this section shall be guilty of a class 3 misdemeanor punishable in accordance with section 1-6.

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:

John Leidy, Town Attorney

Date adopted: September 1, 2021

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS