



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 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; and

WHEREAS, Town Code section 8-8, adopted on September 17, 2014 and amended on June 6, 2018, establishes regulations pertaining to the placement, removal, and abandonment of personal property on the Town's beaches; and

WHEREAS, the Town has held a longstanding tradition of restricting commercialization of the beach and has adopted numerous policies and ordinances to achieve this goal. The Town's Comprehensive Plan states that the Town shall "Prevent commercialization of the ocean beaches (NR-22)" and shall "Clarify and strengthen regulations on non-commercialization of the ocean beaches to include the activities that are prohibited (NR-22a)"; and

WHEREAS, it is critical to the Town's vision and long range goals to preserve our community's distinctive heritage and unique lifestyle, such as a relaxed-paced, family beach community comprised of low density development and open spaces; a healthy, well maintained oceanfront beach that is visually and physically accessible and usable, aesthetically attractive and not blocked by large structures or other obstacles; and ocean shorelines that are carefully managed to preserve, to the extent practical, the natural and beneficial functions and visual appearance of the environment while balancing the need to respect private property rights with the rights of the public to freely access and use the beach; and

WHEREAS, the Town has observed that an increasing number of tents and canopies and other beach equipment are being placed on the ocean beaches within the Town, and this increases the number and density of obstacles on the beach; these have a tendency to restrict or interfere with the ability of emergency service personnel to access and use the ocean beaches, and to observe safety hazards that may exist along the ocean beaches or in the waters of the Atlantic Ocean; and

WHEREAS, the Town finds that when the actual user of beach equipment is responsible for the set-up of the equipment, the user is more likely to actually use, control and be in the vicinity of the beach equipment, than when the beach equipment is set up by a third party commercial service; and that having the actual user of beach equipment in the vicinity of their beach equipment enhances and facilitates public safety by making the removal, relocation, or other arrangement of the beach equipment more expeditious and efficient in the event lifesaving or other emergency services personnel have to use or travel through the area where the beach equipment is located; and

WHEREAS, the Town has observed the proliferation of tents, canopies, and other beach equipment on the beach that are being pre set-up by available commercial services. The Town has observed that often this equipment is used for only a small portion of the day or is not used at all. The placement of such

equipment on the beach has the effect of interfering with or limiting the use of the beach by other active beachgoers; and

WHEREAS, the proliferation of beach equipment set-up by businesses and not by the actual users of the equipment tends to result in beach goers being excluded from using certain areas of the beach, and otherwise restricting beach goers from accessing or using certain areas of the beach; and

WHEREAS, the Town finds that commercial businesses providing these services should be regulated to better serve and protect the public safety and welfare; and to ensure their activities are consistent with the Town’s goals for minimizing commercialization, including the times at which they may operate, the signage that is placed on the equipment, the location of the equipment, and the maintenance and cleanliness of areas where they are operating; and

WHEREAS, The Town wishes to minimize the practice of unnecessarily encumbering the beach through the placement of equipment by commercial beach equipment concierge services; and

WHEREAS, during the height of the summer and tourist season, lifeguard service personnel are assigned to the Town’s beaches from 10:00 A.M. to 6:00 P.M., and that there is a greater number of people present on and using the beach than at other times; and

WHEREAS, the Town finds that it is necessary and desirable to regulate businesses that provide for the delivery and set up of beach equipment in order to protect the public safety, health and welfare; and will help protect or promote public safety; health and welfare; and

WHEREAS, the Town finds that the regulations adopted herein will create greater uniformity and consistency in the use, set up, placement and removal of beach equipment; 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 **Article VII, Beach Equipment Concierge Services**, to Chapter 12 – Businesses and Licensing, which reads as follows:

CHAPTER 12 – BUSINESSES AND LICENSING

Sec. 12-224. - Definitions.

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

Beach equipment shall include but is not limited to, beach canopies, tents, umbrellas, beach chairs, coolers, or recreation equipment.

Beach equipment concierge service means the activity of providing setup and/or removal of beach equipment for a fee. This may also include the rental of such equipment however the rental of equipment is not required to be considered a beach equipment concierge service. Equipment provided may include but is not limited to, beach canopies, tents, umbrellas, beach chairs, coolers, or recreation equipment.

Beach canopy means a temporary, portable shelter commonly used by individuals or groups for protection from sun or other outdoor conditions. A beach canopy commonly consists of a four sided

structure with a metal frame and four corner supports covered by a fabric shade. A beach canopy may also consist of a fabric shade having multiple sides supported by a frame and/or poles. For the purposes of this ordinance, beach canopy and beach tent shall have the same meaning.

Commercial Beach Canopy means a beach canopy that is rented, either directly through a beach concierge service or indirectly as part of a vacation rental accommodation.

Beach umbrella means a shade structure commonly used on the beach consisting of a single, center pole with a shade fabric affixed to a frame that can be lowered or raised along the pole. Commercial beach umbrellas are rented, either directly through a beach concierge service, or indirectly as a part of a vacation rental accommodation.

Commercial Beach Umbrella means a beach umbrella that is rented, either directly through a beach concierge service or directly as a part of a vacation rental accommodation.

Ocean Beach means the area adjacent to the ocean and ocean inlets as described in N.C.G.S. 77-20(e).

Sign, beach canopy/umbrella means a sign affixed, located on or otherwise displayed on any surface of a beach canopy or umbrella in such a manner as to be visible to the public and which conveys a commercial message advertising, marketing, promoting, or describing a business that is providing a service to individuals using the beach canopy, including but not limited to, the placement of beach equipment, the rental of beach equipment, vacation rentals, or other services.

Sec. 12-225. - Permit and registration required.

No beach equipment concierge service shall engage in business within the town without first obtaining a permit from the planning director as well as registering the business with the town's tax collector. Issuance of a permit authorizes the permittee to engage in beach equipment concierge services only in compliance with the requirements and provision of §12-226.

Sec. 12-226. – Beach equipment concierge service regulations.

Beach equipment concierge services shall comply with the following regulations:

1. Beach Equipment shall not be set up before 7 am and shall be removed by 6 pm.
2. Beach equipment shall contain only incidental commercial signage. Specifically, individual beach canopy/umbrella signs shall not exceed 144 square inches in area. There shall not be more than two beach canopy/umbrella signs on any individual piece of equipment. Property identifiers such as initials and numbering shall be located on the interior or underside of a shade structure. Any other signage shall not be visible from the beach.
3. Placement of beach equipment upon the ocean beach shall not restrict or impede the flow of vehicular, pedestrian or emergency services traffic. All public access points and lifeguard stands shall be free and clear of all obstructions and rental equipment for a minimum distance of 50 feet. For beach accesses, the minimum distance shall be measure from a straight line extending from the dune walkover structure or primary foot path extending to the waters of the ocean.
4. All transactions related to the operation of this service, including tips, shall occur off the beach, i.e. west of the dune, and shall not occur at a public beach access.
5. Under no circumstance shall beach equipment be left on the beach or within the dunes overnight.
6. At 6 pm each day, the area upon which beach equipment has been placed by the permittee shall be cleaned of all trash and debris.
7. The Town prohibits any person from leaving beach equipment on the beach overnight. Generally no beach equipment should be placed on the beach unless it will be used that day. Beach equipment should not be placed on the beach for prospective beachgoers solely as part of a pre-ordered weekly or multi-day arrangement. Beach equipment shall only be set up upon order/request of the customer each day; beach equipment shall not be pre-set.
8. Emergency services personnel have the right to move beach equipment as necessary to ensure a clear path for travel and access and a clear line of sight for safety purposes.
9. Any violation of these regulations may result in any of the following actions:

- i. Removal of beach equipment (left on the beach overnight);
- ii. Issuance of civil penalty pursuant to section 1-6 of this Code; or
- iii. Immediate revocation of the permit.

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 5th day of December 2018.

Benjamin Cahoon, Mayor

ATTEST:

Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

John Leidy, Town Attorney

Date adopted: December 5, 2018

Motion to adopt by Commissioner Webb Fuller
Motion seconded by Commissioner Michael Siers

Vote: **4** AYES **1** NAYS

AYES Mayor Ben Cahoon; Comr. Webb Fuller; Comr. Michael Siers; Comr. Renée Cahoon
NAYS Mayor Pro Tem Susie Walters