

AN ORDINANCE AMENDING ORDINANCE 13-03, AMENDING THE TOWN CODE OF THE TOWN OF DUCK, NORTH CAROLINA, RELATED TO BEACH AND DUNE MANAGEMENT

Ordinance 23-15

WHEREAS, pursuant to N.C General Statutes §160A-174 a town may by ordinance 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, in furtherance of the public's health, safety and welfare it is necessary to regulate certain activities upon the primary and frontal dune areas of the Town which degrade the ability of these systems to protect real property from the detrimental effects of the Atlantic Ocean; and

WHEREAS, it is further necessary to regulate certain activities on the ocean beaches of the Town to ensure the public enjoyment and safe recreation upon the public beaches; and

WHEREAS, the Duck Town Council found these amendments to be consistent with the goals and objectives of the Town of Duck Comprehensive & CAMA Land Use Plan.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Duck, North Carolina:

PART I. Subsection 94.04, 94.05 of the Duck Town Code shall be amended to read as follows:

§ 94.04 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADVERSE IMPACT. Anything that would destroy, harm, impair, diminish, or degrade the value or integrity of a sand dune for storm protection or wildlife habitat.

BARRIER DUNE. 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. The lands consisting of unconsolidated soil materials that extend for a distance of 100 yards east of the mean low water mark into the Atlantic Ocean landward to a point where either the growth of stable natural vegetation occurs or a distinct change in slope or elevation alters the configuration, whichever is farther landward.

BEACH EQUIPMENT. This may include but is not limited to, beach tents, beach umbrellas, beach chairs, coolers, or recreation equipment.

BEACH EQUIPMENT VENDOR SERVICE. 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 vendor service. Equipment provided may include but is not limited to beach tents, beach umbrellas, beach chairs, coolers, or recreation equipment.

BEACH TENT. A temporary, portable shelter supported by a framework of multiple poles commonly used by individuals or groups for protection from sun or other outdoor conditions. For the purposes of this article, beach tent shall include such items as cabanas, pavilions, sportsbrellas, tarps or similar devices or any material mounted on a support. (this is not to include beach umbrellas, which have a single supporting pole in the center of the shelter).

BEACH UMBRELLA. A temporary, portable shelter 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 vendor service, or indirectly as a part of a vacation rental accommodation.

COMMERCIAL BEACH EQUIPMENT. Equipment that is rented, either directly through a beach equipment vendor service or indirectly as part of a vacation rental accommodation.

COMMERCIAL BEACH TENT. A beach tent that is rented, either directly through a beach equipment vendor service or indirectly as part of a vacation rental accommodation.

COMMERCIAL BEACH UMBRELLA. A beach umbrella that is rented, either directly through a beach equipment vendor service or indirectly as a part of a vacation rental accommodation.

DUNE SYSTEM, FRONTAL DUNE. The first mound of sand located landward of the beach having sufficient vegetation, height, continuity, and configuration to offer protective value.

DUNE SYSTEM, PRIMARY DUNE. The first mounds of sand located landward of the beach having an elevation equal to the mean flood level for the area plus 6 feet. The primary dune extends landward to the lowest elevation in the depression behind the same mound of sand.

DUNE WALKOVER ACCESS, IMPROVED. A raised walkway constructed for the purpose of providing access to the beach from points landward of the dune system. Improved walkover structures shall be no more than 4 feet in width for single-family dwellings and 6 feet in width for commercial or publicly owned structures. Dune walkover structures shall be constructed without a roof or walls, and shall be elevated at least 18 inches above the dune when the dune is determined to be a frontal dune. If the walkover structure extends over a primary dune, no elevation above the dune is required. Dune elevations may be determined through use of current contour data or surveyed elevations.

DUNE WALKOVER ACCESS, UNIMPROVED. A sand walkway or path used for the purposes of providing pedestrian access to the beach which is no more than 6 feet in width and located in an area where there is no escarpment present between the dune structure and the beach.

ESCARPMENT. The vertical drop or steep slope in the beach profile separating 2 comparatively level or more gentle sloping surfaces caused from high tide or storm tide erosion. ESCARPMENTS for the purposes of this chapter shall only be determined to exist in areas where the height and slope of the escarpment would preclude reasonable pedestrian access to the beach without causing an adverse impact to the dune structure.

GUY LINE. A grounding wire, rope, cord, tether, string, or strap that is used to secure a beach tent, beach umbrella, or tarp to the ground.

INVASIVE EXOTIC SPECIES. A non-native or invasive vegetation, which, if left undisturbed by manmade forces, will create a landscape comprised of a singular plant species.

SHIPWRECK. The remains of a ship, in whole or in part, which was wrecked or destroyed upon the water and subsequently abandoned, to which title voluntarily has been given up by the owner with the intent of never claiming a right or interest in the future and without vesting ownership in any other person, that is discovered or identified by some archaeological endeavor, natural exposure, or documented archeological site number.

TOE OF SLOPE. That point between the beach and the dune system where the uniform line of slope from the ocean toward the barrier dune begins an abrupt change upward and becomes the slope of the barrier dune.

VACATION RENTAL ACCOMMODATION or VACATION RENTAL. A vacation rental as defined in the North Carolina Vacation Rental Act.

VEHICLE. Motor-driven or 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.

VEHICULAR BEACH ACCESS POINT.

(1) An access for use by vehicles at a designated location on a town street. Vehicle access is permitted at these points and at no other location.

(2) If the vehicular beach access point is not maintained by the town, users must have and possess written permission from the entity that owns or maintains the vehicular beach access point before using the vehicular beach access point.

§ 94.05 BEACH AND DUNE PROTECTION.

(A) The following activities shall be considered unlawful within the dune system:

(1) Walking or traversing on the dunes outside of an improved or unimproved dune walkover access as defined in § 94.04;

(2) Utilizing an improved dune walkover structure that has been damaged and officially posted by the town's Building Inspector as an unsafe structure;

(3) Removing, damaging, or destroying healthy, non-invasive dune plant species including, but not limited to, Sea Oats (*Uniola paniculata*), Bitter Panicum (*Panicum amarum*), Seashore Elder (*Iva imbricata*), and American Beachgrass (*Ammophila breviligulata*);

(4) Installation of vegetation inconsistent with sand dune systems, such as lawn grasses or sod, or herbaceous varieties that are not commonly known as "salt-tolerant" dune varieties or that may be determined to be "invasive exotic species";

(5) Degrading, disturbing, or compromising the integrity of the dune structure. These prohibited activities include, but shall not be limited to:

(a) Digging, shelling, mining, or mechanical alteration of the dune topography;

(b) Playing, sliding, climbing, or rappelling on the frontal or primary dune or the dune escarpment;
and

(c) Discharging water into the dune where it will cause significant scouring or erosion or otherwise affect the integrity of the dune.

(6) Development activities without a valid building permit, Health Department approval, or CAMA authorization;

(7) Storing objects, equipment or construction materials; and

(8) Littering.

(B) The following activities shall be considered unlawful on the beach, as defined in § 94.04:

(1) Erection of a beach tent, beach umbrella or similar device that meets any of the following conditions as determined by Ocean Rescue Personnel:

(a) When, due to beach width, tide levels, crowd conditions, or other factors, placement of beach tents, beach umbrellas or similar devices will obstruct the passage of emergency or Ocean Rescue vehicles

or the line of sight from lifeguard stands or other surveillance areas.

1. In such instances, areas may be designated by Ocean Rescue Personnel where the use of beach tents, beach umbrellas or similar devices shall be temporarily prohibited.

2. At any time when beach tents, beach umbrellas or similar devices are prohibited in designated areas, an identifier shall be placed at each end of the subject area so as to be readily visible to all person within the area.

3. To allow for emergency vehicle access:

(i) Beach tents, beach umbrellas or similar devices shall not be placed within 15 feet of the base of the seaward toe of the primary dune. 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.

(ii) Beach tents, beach umbrellas or similar devices may not be located any closer than 10 feet from dune vegetation or a sea turtle nest.

(iii) All community beach accessway points and lifeguard stands shall be free and clear of all obstructions.

(iv) Beach tents or commercial beach equipment may not be located any closer than 50 feet in any direction from a lifeguard stand, or emergency or community beach accessway. For community beach accessways, the minimum distance shall be measured from a straight line extending from the beach accessway structure or primary foot path extending to the waters of the ocean.

(b) Beach tents or similar devices shall not be greater than 12 feet by 12 feet in area or higher than 9 feet above the surface of the beach when installed. No guy lines may extend beyond the 12 feet x 12 feet maximum perimeter of a beach tent, beach umbrella or similar device.

(c) Beach tents or similar devices may not be tied together unless they are placed perpendicular to the shore. No more than two beach tents or similar devices may be tied together. All other beach tents and similar devices shall be placed no closer than 10 feet apart parallel to the shore.

(d) Beach tents, beach umbrellas or similar devices shall only be permitted provided they are secured in such a fashion as to restrict uncontrolled movement of the device. They must be secured with fasteners, stakes, weights, or the like that will not endanger beach patrons. In no instance shall guy lines extend beyond the perimeter of the shading device.

(2) Leaving unattended personal articles on the beach between the hours of 6:30 p.m. and 6:30 a.m. These items may include, but shall not be limited to, volleyball, badminton and tennis nets, poles, beach tents, beach umbrellas or similar devices, chairs, cabanas, sunshades, horseshoe stakes, croquet courses, umbrellas or any other personal property items. Unattended items left on the beach between these hours shall be considered litter and may be subject to removal and disposal.

(3) A business that rents beach equipment may not place or erect said equipment solely for advertising purposes. Such business shall abide by all rules and regulations pertaining to their particular license that has been issued to them and must adhere to the installation and removal policies outlined in Chapter 94.04.

(4) Beach fires as prohibited in § 91.21.

(5) Substantially altering the contour or shape of the flat beach area by excessive digging or mounding of sand whereby, in the opinion of Public Safety Personnel, such alteration presents a dangerous condition. Persons responsible for altering the contour or shape of the beach to any extent shall restore the beach to its original condition prior to leaving the area unattended for any period of time.

- (6) Littering.
- (7) Violations of § 90.06 related to mandatory removal of dog feces on the ocean beach.

(C) Beach equipment vendor services shall comply with the following regulations:

- (1) Commercial beach equipment must contain vendor identification.
 - (a) Commercial beach equipment shall be limited to incidental commercial signage. Specifically, individual beach tents, beach umbrellas, similar devices and equipment signs shall not exceed 144 square inches in area. There shall not be more than two signs on any individual piece of equipment.
 - (b) Sign area means the area of signs composed, in whole or in part, of freestanding letters, devices or sculptured matter not mounted on a measurable surface shall be construed to be the area of the least square, rectangle or circle that will enclose the letters, devices and/or sculptured matter.
 - (c) Commercial beach equipment signage shall be submitted by the beach equipment vendor to the Department of Community Development as part of the annual licensing approval. In addition to the 144 square inches of sign area allowed, beach equipment vendors may have a maximum three-digit property identification number not to exceed six inches in height on equipment. Property identifiers shall be located on the interior or underside of any beach equipment.
- (2) All transactions/solicitations of business related to the operation of the beach equipment vendor service, including tips, shall occur off the beach, i.e., west of the dune, and shall not occur at any beach accessway. Beach equipment shall not be placed on the beach without an advance request for such service by the customer. Beach equipment vendors shall not place beach equipment on the beach without an advance request for such service by the beachgoers to be served or someone that has requested on their behalf.
- (3) Any violation of these regulations may result in any of the following actions:
 - (a) Removal and disposal of beach equipment (left on the beach overnight);
 - (b) Issuance of civil penalty pursuant to Subsection 10.99 of this Code; or
 - (c) Revocation of the license. Three separate violations in one calendar year shall result in immediate revocation of the license for the remainder of the calendar year or a period of nine (9) months, whichever is greater. If any license is revoked by the Department of Community Development, the license holder may appeal to the Town Council by filing a notice of appeal with the Town Clerk within ten days of the adverse action being appealed. Appeals shall be made on a form prescribed by the Town. Appeals shall be scheduled for a hearing at the next regular meeting of the Town Council held more than 20 days after the appeal is filed with the Town Clerk.


(D) Beach Vitex (*Vitex rotundifolia*). The plant known as Beach Vitex (*Vitex rotundifolia*) is hereby found and declared to be a public nuisance due to the significant negative impacts this plant will have upon the beaches and dune system, nesting sea turtles, and native vegetation such as Sea Oats, Bitter Panicum, Seashore Elder, and American Beachgrass. It shall be unlawful for any person to plant or cause to be planted Beach Vitex (*Vitex rotundifolia*) on any property located within the corporate limits of the town.

(E) Exemptions: The Town hereby encourages responsible dune management activities including proper construction and maintenance of improved dune walkover structures, the use of shared and/or community beach accesses, the proper installation and maintenance of sand fencing, and planting of native, salt-

tolerant dune vegetation. Therefore, this section shall not apply to the following activities:

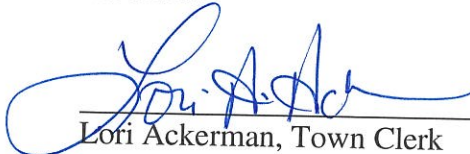
- (1) Development activities authorized or permitted by the Town, the Dare County Department of Environmental Health, or CAMA;
- (2) Dune or property maintenance activities including planting or fertilization of vegetation, sand fence installation, minor dune repairs, and removal of litter or debris;
- (3) Activities within the developed portion of the dune system;
- (4) Federal, state, and local officials engaged in official regulatory activities; and
- (5) Persons engaged in research, conservation, or extension activities as authorized by the Town Manager.

PART II. This ordinance shall be effective upon its adoption.



Don Kingston, Mayor

ATTEST:



Lori Ackerman, Town Clerk

Date adopted: December 19 2023

Motion to adopt by: Sandy Whitman

Vote: 5 AYES 0 NAYS

