

AN ORDINANCE AMENDING THE TOWN CODE  
OF THE TOWN OF DUCK, NORTH CAROLINA CREATING A BEACH AND DUNE  
MANAGEMENT ORDINANCE

**Ordinance No. 09-04**

**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**, CAMA land use plan includes the following goal, policy, and objective statements related to protection of the dunes and ocean beaches which serve to reduce vulnerability to natural hazards and provide valuable natural and recreational resources:

*GOAL #1: Preserve, protect, and enhance the Atlantic Ocean Shoreline and ensure future generations are able to enjoy its beauty and bounty and can continue to use the beach and water for active and passive recreation and leisure activities.*

*GOAL #13: Conserve and maintain barrier dunes, beaches, wetlands, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.*

*POLICY #1a: Support the continued management of oceanfront shoreline development to protect and preserve the natural and recreational resources along the oceanfront.*

*OBJECTIVES #1d, #13A, #17C, #23D: Develop policies that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise.*

**WHEREAS**, the Town Council has solicited public input and professional advice regarding a beach and dune management ordinance.

**NOW THEREFORE BE IT ORDAINED** by the Town Council for the Town of Duck, North Carolina that the Town Code shall be amended as follows:

## **PART I.**

### **CHAPTER 94 BEACH AND DUNE MANAGEMENT**

#### **94.01 Purpose.**

The purpose of this chapter is to preserve and enhance the natural function, aesthetic value, and protective qualities of the Town's barrier beach and dune system. This chapter hereby establishes regulations to permit reasonable uses and intrusions into the dune system and the ocean beach, consistent with sound beach and dune conservation practices. This chapter also restricts or prohibits activities which are known to be detrimental to the structural integrity of the primary and frontal dunes, the profile of the ocean beach, and the biological and cultural resources that are present in these areas. Furthermore, this chapter establishes regulations to improve the safety of the general public on the Town's ocean beaches and facilitates ocean rescue and emergency response operations.

#### **94.02 Conflicts with state rules.**

If any provision of this chapter is in conflict with a rule adopted by the State Coastal Resources Commission dealing with oceanfront erosion control or regulation of development as contained in 15A NCAC 07H.300, then the rule or regulation shall control and apply in lieu of the provision of this chapter in conflict therewith.

#### **94.03 Territorial applicability.**

This chapter shall apply to the primary and frontal dune systems as defined in Section 94.04 below and to the ocean beaches located within the corporate limits of the Town.

#### **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.

**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 six 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 six (6) feet in width, shall be constructed without a roof or walls, shall be elevated at least one (1) foot above the dune, and shall extend east of the seaward vegetation line.

**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 six (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 two 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.

**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.

**TENTS.** A portable shelter supported by a framework of multiple poles (this is not to include umbrellas, which have one (1) supporting pole in the center of the shelter).

**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.

**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 section 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 or construction materials; and
  - (8) Littering.
- (B) The following activities shall be considered unlawful on the Beach, as defined in Section 94.04:
  - (1) Erection of a tent, cabana, or sunshade which, in the opinion of Ocean Rescue Personnel:
    - (a) Prevents or disrupts passage of emergency or ocean rescue vehicles. Generally, tents, cabanas, or sunshades shall not be placed within fifteen (15) feet of the base of the seaward toe of the primary dune;
    - (b) Hampers the ability to provide adequate ocean rescue service by obstructing the line of sight to the water from lifeguard stands or other surveillance areas.

- (2) Leaving unattended personal articles on the beach between the hours of sunset and sunrise. These items may include, but shall not be limited to, volleyball, badminton and tennis nets, poles, tents, chairs, cabanas, sunshades, horseshoe stakes, croquet courses, umbrellas or any other personal property items;
  - (3) Beach fires as prohibited in Town Code Section 91.21;
  - (4) Substantially altering the contour or shape of the flat beach area by excessive digging or mounding of sand; and
    - a. In the opinion of Public Safety personnel, such alteration presents a present, dangerous condition, or
    - b. Is left unattended for any period of time without restoring the beach to its original condition.
  - (5) Littering.
  - (6) Violations of Town Code Section 90.06 related to mandatory removal of dog feces on the ocean beach.
- (C) 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 vegetative 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 of Duck.
- (D) 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.

**94.06 Beach Driving Regulations.**

- (A) General Regulations.
  - (1) Except as hereinafter provided, it shall be unlawful to operate any vehicle on the beaches of the Town.

- (2) Vehicles may be operated on the beaches of the Town between 12:01 AM on October 1 until 11:59 PM on April 30 of each and every year, subject to the regulations and rules of operation contained in this chapter.

(B) Rules of Operation.

When permitted by Section 94.06(B)(2) above, vehicles shall be operated on the beaches of the Town in accordance with the following rules:

- (1) No vehicle shall be operated on the beach at a speed in excess of 20 mph;
- (2) Vehicles shall be operated on the beach only during the period set out in subsection (A)(2) above;
- (3) No vehicle shall be operated west 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 herein 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 eastern boundary line of the private property;
- (4) Vehicles going to and from the beach area shall use as an entrance and exit only the vehicular beach access points designated by the Town;
- (5) Vehicles may be operated on the beach only from one-half hour prior to sunrise to one-half hour following sunset daily;
- (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;
- (8) Any person who is under the influence of intoxicating liquor or other drug or who has a blood alcohol level of 0.08% 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
- (9) 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 or her residence.

(C) Exceptions.

- (1) The provisions of this chapter shall not apply to municipal employees, municipal vehicles or emergency vehicles or the drivers thereof, which may be required to enter upon the beach in the performance of their duties nor shall this division apply to a governmental agency, its employees, agents, contractors and subcontractors and their vehicles when engaged in beach restoration or protection work or scientific research.

- (2) The date and time limitation provided in subsection (A)(2) above shall not apply to commercial fishermen holding a valid state commercial fishermen's license when engaged in commercial fishing activities.
- (3) The Town Manager shall have the authority to close any portion of the beach or the entire beach at the times and places where extensive beach erosion occurs. This authority may be exercised by the Town Manager when, as a result of inspections by the Town Manager or the Town employees subject to the Town Manager's 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.
- (4) 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. Any person operating a vehicle on the beach in a closed area shall be subject to the penalties provided in this chapter.
- (5) The provisions of this section shall not apply to persons engaged in research, conservation, or extension activities as authorized by the Town Manager.

**94.07 Protection of Wildlife and Marine Life.**

It shall be unlawful for any person to willfully harm, harass or otherwise disturb any sea turtles, sea turtle nests or eggs; or beached or stranded whales, dolphins, seals, sharks or other wildlife or marine life. Violations shall be reported immediately to the Town.

**94.08 Protection of Cultural Resources.**

- (A) It shall be unlawful to disturb, destroy, or remove in whole or in part any exposed or unburied shipwreck.
- (B) Any authority to disturb, collect or remove such artifacts shall be obtained in writing from the North Carolina Office of State Archeology (NCG.S. 121, Article 3; Abandoned Shipwreck Act of 1987 [P.L. 100-298]).

**94.09 Severability.**

If any section of this chapter shall be decided by a court of competent jurisdiction to be unconstitutional or invalid, it shall not affect the validity of this chapter as a whole or any section thereof other than the section so declared to be unconstitutional or invalid.

**94.99 Penalty.**

- (A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.
- (B) Any person violating the provisions of this chapter shall be subject to a civil penalty in the amount of \$50 per occurrence which shall be paid within five (5) days after the issuance of the violation. In the event the offender does not pay the penalty within the prescribed time, the Town may bring a civil action to recover the penalty, together with the cost of court. Additionally, any violation of this chapter shall constitute a

misdemeanor which shall be punishable as provided by G.S. § 14-4. Each violation shall constitute a separate offense.

**PART II.** Amend Chapter 70 by deleting sections 70.30 through 70.33.

**PART III.** This ordinance shall be effective upon its adoption.

\_\_\_\_\_  
Neil Morrison, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

Date adopted: April 8, 2009

Motion to adopt by: Nancy Caviness

Vote: 5 AYES 0 NAYS