



TOWN OF KILL DEVIL HILLS

Land Where Flight Began

MEMORANDUM

August 8, 2022

TO: Mayor and Board of Commissioners

FROM: Debora P. Díaz, Town Manager 

REF: New Business

2. Chapter 96, Seaside Regulations ordinance update (Attached NB-2)

Since its inception, the Town's beach driving program has been very popular with KDH citizens and visitors during the October 1 to April 30 beach driving season. On July 6, 2022, the Town of Nags Head terminated its reciprocal agreement for the cooperative beach driving program between our two towns. Its notice stated that references to its agreement with Kill Devil Hills had been removed from its ordinances.

As a result of the agreement termination, Staff has drafted for Board consideration an updated Seaside Regulations ordinance to reflect the changes to the Town's beach driving program, along with general updates to sections of the ordinance for clarification. Staff recommends approval of the Seaside Regulations ordinance update and a motion would be in order.



Ben Cahoon
Mayor

Michael Siers
Mayor Pro Tem

Andy Garman
Town Manager

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M. Renée Cahoon
Commissioner

Kevin Brinkley
Commissioner

Bob Sanders
Commissioner

July 8, 2022

Ms. Charlene Allen
Assistant Town Manager
Town of Kill Devil Hills

RE: Town of Nags Head ordinance change

Dear Charlene:

On July 6, 2022, Town of Nags Head Board of Commissioners adopted changes to Chapter 8, Article II, Division 3 of the Nags Head Town Code. The ordinance change removes reference to the reciprocal agreement with the Town of Kill Devil Hills

In accordance with section 9 of the Inter Local Agreement dated July 1, 2015, the Town of Nags Head has terminated the agreement by action of the governing council.

Should you require any additional information, please let me know.

Respectfully,

Amy Miller
Deputy Town Manager/Finance Officer

Cc: Mr. Andy Garman, Nags Head Town Manager
Ms. Debbie Diaz, Kill Devil Hills Town Manager
Ms. Carolyn Morris, Nags Head Town Clerk
Mr. Michael O'Dell, Kill Devil Hills Town Clerk

AN ORDINANCE AMENDING THE KILL DEVIL HILLS TOWN CODE,
CHAPTER 96, SEASIDE REGULATIONS

BE IT HEREBY ORDAINED BY THE Kill Devil Hills Board of Commissioners that Chapter 153, Zoning, of the Kill Devil Hills Town Code, shall be amended by adding the underlined language and deleting the following ~~stricken~~ language to the sections identified below, as follows:

§ 96.06 ANIMALS ON THE BEACH.

Time. Between Memorial Day and Labor Day of each year, no dogs shall be permitted on the public beach between the hours of 9:00 a.m. and 6:00 p.m. unless being used as a service animal to accompany the handler ~~to aid a handicapped person~~. At all other times, no dogs shall be permitted on the public beaches except upon a leash and under the control of owner or handler.

§ 96.20 GENERALLY.

(A) No person shall operate any vehicle of any type, such as a beach buggy, jeep, motorcycle, bicycle, dirt-bike, any one-, two-, three-, four- or more wheeled vehicle powered by any type of motor or physically propelled on the ocean beach area from May 1 through September 30.

(B) This section shall not prohibit the use of specified vehicles from that area seaward of and including the frontal dune system by commercial anglers engaged in commercial fishing activities.

§ 96.21 PERMITS.

(A) *Eligible vehicles.* Permits shall be issued only for properly registered and licensed vehicles having a four-wheel drive or an all-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. Modified utility vehicles (“MUTV”) as described in N.C.G.S. 20-4.01(27) shall not be considered an “eligible” vehicle regardless of whether the MUTV is registered or licensed in any state. 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 or agent(s) of the Town of Kill Devil Hills; ~~or, the appropriately designated employee of the Town of Nags Head; or, at fishing tackle shops designated by the Town of Nags Head.~~ A permit issued hereunder shall be valid from 12:01 a.m. October 1 and shall expire at ~~12:00 a~~ 11:59 p.m. 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~~ holders of a valid state commercial ~~fishermen's~~ fishermen's fishing 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 licensing, inspection; and financial requirements as set out in division (A) of this section.

(3) Short-term permits up to 14 days duration may be issued.

(C) *Fee.* An applicant for a permit will pay a non-refundable 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, in the case of a short-term/up to 14 days duration permit, a paper permit may substitute for a device or insignia which must be visibly placed on the dashboard when the vehicle is 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.

§ 96.22 RULES OF OPERATION; OPERATION ON BEACHES.

Vehicles operated on the ocean beach in Kill Devil Hills shall be operated in accordance with the following rules:

(A) 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 Manager and appropriately marked. No vehicle shall at any time cross to the beach unless crossing at designated accesses.

(B) No vehicle shall be operated on the beach at a speed in excess of 15 miles per hour.

(C) 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 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.

(D) No vehicle shall be operated between the waterline and the high tide mark (commonly referred to as the "wet sand" area).

(E) Vehicles having permits may be operated on the beach only from one-half hour prior to sunrise to one-half hour following sunset daily.

(F) Pedestrians, including swimmers, bathers, and sunbathers shall have the right-of-way over all vehicles being operated on the beach.

(G) The ordinances adopted herein and the provisions of G.S. Chapter 20 shall be enforced on the ocean beaches within the boundaries of Kill Devil Hills as provided by G.S. §§ 160A-205, 160A-175, and Chapter 20.

(H) 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 their state of ~~his~~ residence and be operating an eligible vehicle as defined in §96.21(A).

§ 96.23 BEACH DRIVING PRIVILEGES FOR DISABLED INDIVIDUALS.

The Police Chief or designee may issue permits allowing for the use of an all-terrain vehicle 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. Permits may be obtained at ~~either~~ the Town of Kill Devil Hills Police Department ~~or the Town of Nags Head 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 this Chapter on the ocean beach.

(B) Beach driving for all persons is permitted only from October 1 through April 30, annually.

(C) Upon receiving an application for a beach driving permit that meets the requirement of this ordinance, the Police Department may issue a beach driving permit which shall be limited to one beach driving season. Applicants may seek a permit for each beach driving season.

§ 96.24 EXCEPTIONS.

(A) Agencies of the United States government, law enforcement agencies, fire departments, ocean rescue services, wildlife protection and/or conservation organizations, emergency medical services, and employees, agents, contractors and subcontractors for the Town of Kill Devil Hills, including those conducting beach restoration or protection work, engaged in their official duties are exempt from the provisions of this chapter. The Police Chief or ~~his~~ designee may, from time to time, allow such other services and/or governmental agencies to utilize town beaches with such conditions as may be established on a case by case basis provided that such utilization is for the public benefit.

(B) The date and time limitation provided in § 96.21 shall not apply to commercial anglers holding a valid state commercial angler's fishing license when engaged in commercial fishing activities.

§ 96.25 CLOSURE.

The Town Manager shall have the authority to close any vehicular beach access points, 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 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.

§ 96.26 VIOLATIONS, REVOCATION OF PERMIT.

(A) Violations of town ordinances shall subject the offender to a criminal misdemeanor under G.S. § 14-4. Violations of G.S. Chapter 20 shall be punished as provided by the North Carolina General Statutes.

(B) Violations of this subchapter involving threatened or endangered species shall subject the offender to civil and criminal penalties imposed by the United States Fish and Wildlife Service. The town will forward all enforcement actions to the United States Fish and Wildlife Service for maximum enforcement action.

(C) The Police Chief or his designee shall have the authority to revoke a permit issued under this subchapter for one or more violations of this subchapter. The Police Chief or his designee shall consider the number, nature, and intent associated with the violations in making a determination to revoke a permit; and shall also determine the time frame said permit is revoked.

This amendment to Chapter 153, Zoning, shall be in full force and effect from and after the ____ day of _____, 2022. Adopted and approved by the Board of Commissioners of the Town of Kill Devil Hills at a regular meeting held on the ____ day of _____, 2022, by a vote of ____ in favor and ____ opposed.

SEAL

Ben Sproul
Mayor

ATTEST:

James Michael O'Dell
Town Clerk

APPROVED AS TO FORM:

Casey C. Varnell
Town Attorney

The undersigned hereby certifies that the foregoing official amendment, designated AN ORDINANCE AMENDING CHAPTER 96, Seaside Regulations, was placed in the Kill Devil Hills Town Code Book on the _____ day of _____, 2022 at _____ .m.

James Michael O'Dell
Town Clerk