



AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, the United States Government has exclusive sovereignty of airspace in the United States and has placed management authority of the nation's airspace with the Federal Aviation Administration (FAA) according to Title 49 of the United States Code, Part A, Section 40103, Sovereignty and Use of Airspace, and the Public Right of Transit; and

WHEREAS, while the United States Government has exclusive sovereignty of airspace in the United States, it has not preempted all regulation of that airspace by state and local governments; and

WHEREAS, Section 160A-180 of the North Carolina General Statutes provides that a municipality may by ordinance regulate the operation of aircraft over the municipality; and

WHEREAS, the FAA, is prohibited by Congress from regulating the use of certain unmanned aircraft systems for recreational or hobby purposes; and

WHEREAS, the FAA currently prohibits most instances of the commercial use of unmanned aircraft systems, commonly known as drones; and

WHEREAS, in February 2015, the FAA initiated a rulemaking proposal for the operation and certification for small unmanned aircraft systems used for commercial purposes, but it may take years until regulations are finalized and adopted; and

WHEREAS, the Town finds that the rapidly increasing popularity of small, unmanned aircraft systems for video or photography purposes and for other purposes has the potential to negatively impact the health, safety, and/or welfare of Nags Head's citizens, visitors, and businesses; and

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, the Town 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.

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 a section, to be numbered **Town Code Sec. 26-14. Unmanned aircraft systems**, which such section reads as follows:

- (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.

Aircraft means a device that is used or intended to be used for flight in the air.

Small unmanned aircraft (SUA) means an unmanned aircraft weighing less than 55 pounds (all-up take-off weight).

Small unmanned aircraft system (SUAS) means an unmanned aircraft system for small unmanned aircraft.

Spotter, or visual observer means a person, or persons, who assist the operator in seeing and avoiding other air traffic or objects aloft or on the ground, and in maintaining visual line-of-sight to the SUA.

Unmanned aircraft means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

Unmanned aircraft system means an unmanned aircraft and associated elements (including communication links and the components that control the unmanned aircraft) that are required for the operator/pilot in command to operate the aircraft safely and efficiently.

- (b) Operation of unmanned aircraft by government agencies. Operation of unmanned aircraft by government agencies for law enforcement, scientific investigation/research, mapping and evaluating the earth's surface, and investigation/evaluation of agriculture, forestry, and wildlife will be governed by the laws of the State of North Carolina and these United States and only the safety aspects of part (f) of this Section 26-14. The agencies and

institutions mentioned in this paragraph shall coordinate with the town manager prior to all operations, in addition to complying with the safety aspects of this ordinance. However, if said agencies are operating during a state of emergency called by the federal, state, or local government, the agencies may operate without prior coordination with the town manager.

- (c) Responsibility to see and avoid all other flight. It is the responsibility of all unmanned aircraft operators/pilots and spotters to see and avoid all other aircraft, especially manned aircraft. The unmanned aircraft must yield the right of way to other aircraft, must turn away from the path/area in which they are operating, and must immediately land, regardless of possible damage to the unmanned aircraft, if no alternative to avoid conflict is available.
- (d) Operation in and around The Outer Banks Hospital. The use of unmanned aircraft is prohibited, without prior approval from The Outer Banks Hospital, within 250 yards of the hospital's helicopter landing pad or any manned aircraft inbound toward or departing from the said helicopter landing pad.
- (e) General operation prohibitions for small unmanned aircraft.
1. Operation of small unmanned aircraft between dusk and dawn is prohibited.
 2. Operation of small unmanned aircraft on or over the ocean, beach and the State's estuarine waters, is prohibited without prior written approval from the town manager. Requests for approval must include proof of required state and federal licenses, permits, or certificates as appropriate. When considering such requests, the town manager may consider, without limitation, the potential benefits and/or risks to the Town, the public, and/or the proposed operator from the proposed use of the small unmanned aircraft on or over the ocean, beach, and/or the State's estuarine waters.
 3. Operation of small unmanned aircraft on or over public property, is prohibited without prior written approval from the town manager. Requests for approval must include proof of required state and federal licenses, permits, or certificates as appropriate. When considering such requests, the town manager may consider, without limitation, the potential benefits and/or risks to the Town, and the safety and welfare of the public, and/or the proposed operator from the proposed use of the small unmanned aircraft on or over public property.
 4. Operation within 200 feet of any public safety incident is prohibited. This zone can be extended to 500 feet or the small unmanned aircraft can be grounded by the public safety agency in command of the incident during the said public safety incident and if reasonably necessary to preserve the public's health, safety, and/or welfare, or as

deemed necessary for efficient and safe operation of Town staff in responding to a public safety incident.

(f) *Safe operation of small unmanned aircraft.*

1. Operators of small unmanned aircraft must be 17 years or older, unless they hold a current Academy of Model Aeronautics membership or are directly supervised and assisted by a current Academy member, and/or are licensed, certified, or permitted by the State of North Carolina or the Federal Aviation Administration.
2. Operators of small unmanned aircraft must have at least one spotter during all operations.
3. Operators of small unmanned aircraft shall avoid flying directly over unprotected people, vessels, vehicles, and structures and shall avoid endangerment of life and property belonging to others.
4. Operation of small unmanned aircraft must not occur within 25 feet of any individual, except for the operator, the spotter, and those affiliated with the operation or are observing the flight.
5. The launch and recovery area for small unmanned aircraft must be clear of all individuals except for the operator, the spotter, or any other person affiliated with the operation of the small unmanned aircraft.
6. The small unmanned aircraft is prohibited from being operated within 50 feet of any above-ground utilities.
7. Operators and spotters of small unmanned aircraft are prohibited from flying aircraft or acting as spotters, as applicable, while under the influence of alcohol or any drug that could adversely affect the operator's and/or the spotter's ability to safely control the aircraft, observe the aircraft, and/or communicate.

(g) *Operating requirements for small unmanned aircraft.*

1. Small unmanned aircraft are prohibited from operating more than 500 feet above ground.
2. All small unmanned aircraft, if not already marked with required federal or state identification, must be identified with the name and address, or Academy of Model Aeronautics number, of the owner either on the inside or outside of the aircraft.
3. Small unmanned aircraft with metal-blade propellers are prohibited.

4. Small unmanned aircraft that carry pyrotechnic devices that explode, burn, or produce smoke and small unmanned aircraft that propel a projectile or drop any objects are prohibited.
5. The following are permitted: small unmanned aircraft that are unpowered or are powered by electric or rubber power sources.
6. The following power sources are prohibited: all rocket, missile, turbine, jet, and fossil fuel-powered aircraft.
7. Radio/remote control aircraft requirements for small unmanned aircraft:
 - a. A successful radio equipment ground-range check in accordance with manufacturer's recommendations must be completed before the first flight daily and of any new or newly repaired small unmanned aircraft.
 - b. Remote controlled small unmanned operating systems must use radio-control frequencies currently allowed by the Federal Communications Commission. In Nags Head, only the 2.4 GHz spread spectrum frequency system may be used by small unmanned aircraft systems.
 - c. Operators of remote controlled small unmanned aircraft shall not knowingly operate within three miles of any other remote controlled system, vehicle, or vessel without a frequency-management agreement.
 - d. The operator of a small unmanned aircraft system shall maintain control during the entire flight. The operator and spotter of a small unmanned aircraft shall maintain visual contact with the aircraft without visual enhancement other than by corrective lenses prescribed for the operator or spotter, as applicable.
 - e. Operations with the assistance of a camera or first person view system are only permitted if a spotter is in visual-line-of-sight of the operator and the aircraft and has the clear ability to communicate directly with the operator.
 - f. Operations using autopilot systems are prohibited.

(h) Remedies. Violations of this section shall be subject to the penalties described in Town Code section 1-6 (b).

(i) Exceptions. The town manager may grant exceptions to this Section 26-14 for limited duration special events or other reasons in the general public interest

upon presentation of a written request outlining the reasons for the exception and providing a plan for addressing safety issues associated with the request. When considering such requests, the town manager may consider, without limitation, the potential benefits and/or risks to the Town, the public, and/or the proposed operator from the use of the unmanned aircraft for the proposed exception.

(j) EXCEPT AS OTHERWISE SPECIFICALLY PERMITTED BY THIS SECTION 26-14, OR AS ALLOWED BY CONTROLLING PROVISIONS OF FEDERAL OR STATE LAW, THE USE OF POWERED UNMANNED AIRCRAFT IS PROHIBITED.

(k) To the extent that applicable authority of these United States or the State of North Carolina adopts rules or regulations that conflict with this Section 26-14, the said rules or regulations shall control.

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 ____ day of _____, 2015.

Robert C. Edwards, Mayor
Town of Nags Head

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS