

Town of North Topsail Beach

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Aldermen:
Richard Farley
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Steven H. Foster
Town Manager

Carin Z. Faulkner, MPA
Town Clerk

ORDINANCE NO. 2010-4

AN ORDINANCE AMENDING SECTION 7-132 ACCESSORY USES TO INCLUDE THE REGULATION OF PERMANENT SWIMMING POOLS, SPAS AND HOT TUBS WITH A DEPTH IN EXCESS OF 24 INCHES

WHEREAS, it is in the best interest of the health, safety and welfare of the citizens of North Topsail Beach that permanent outdoor structures intended for swimming or recreational bathing with a depth in excess of 24 inches be subject to uniform fence and gate design regulations; and

WHEREAS, the North Carolina Building Code currently regulates the construction of new outdoor swimming pools, spas and hot tubs; and

WHEREAS, this ordinance is consistent with the North Carolina Building Code regarding the fencing of outdoor pools, spas and hot tubs; and

WHEREAS, it is reasonable to provide owners of existing outdoor swimming pools, spas and hot tubs 90 days to come into compliance with the provisions of the ordinance.

NOW, THEREFORE, the North Topsail Beach Board of Aldermen hereby ordains:

That Chapter 7 of the North Topsail Beach Town Code is hereby amended to include new Sec. 7-132 Accessory Uses (b) OUTDOOR SWIMMING POOLS, SPAS, AND HOT TUBS

Sec 7-132 (b) OUTDOOR SWIMMING POOLS, SPAS, AND HOT TUBS

1. Definitions.

For the purposes of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section:

Swimming Pool: Any permanent outdoor structure intended for swimming or recreational bathing that contains water over 24 inches deep including in-ground, above-ground, and on-ground swimming pools, hot tubs, and spas, but not including temporary or inflatable pools having a depth of 24 inches or less. A structure is considered "outdoor" if it is not totally contained within a roofed structure and surrounded on all four sides by the walls of the enclosing structure.

2. Setbacks.

All swimming pools shall meet the following requirements in addition to setbacks and other requirements specified elsewhere:

- a. That the setback for an aboveground swimming pool from any lot line equals the required setback for accessory structures in the district in which it is located plus one (1) foot for each foot over five (5) of pool height.
- b. That all mechanical equipment be located a minimum of five (5) feet from any property line.
- c. Swimming pools are not allowed within the CAMA setback of the Ocean Area of Environmental Concern. (Ord. of 9-24-08)

3. Prohibited.

It shall be unlawful for any person to cause, permit, maintain or allow a swimming pool to be a nuisance as defined herein.

4. Fence required; Gates

All swimming pools shall be completely surrounded by a fence not less than four (4) feet in height. If a fence is erected, the width between any opening or pickets shall not exceed four (4) inches. Openings in any such fence, gate, or wall may not exceed four (4) inches. The wall(s) of a principal or accessory building may be used to meet this enclosure requirement. All gates or doors opening through such fence, wall, house, or building shall have self-closing and self-latching devices for keeping the gate or door closed at all times when not in actual use. Fence gates shall open outward away from the swimming pool.

5. Modifications and exceptions.

The Administrator may make modifications in writing with respect to the height, nature or location of the fence, wall, gates or latches, in individual cases, upon a showing of good cause provided the protection as sought hereunder is not reduced thereby. The Administrator may permit in writing other protective devices or structures to be used so long as the degree of protection afforded by the substitute devices or structures is not less than the protection afforded by the wall, fence, gate and latch described herein.

6. Spas and Hot Tubs; Covers

Spas or hot tubs with a safety cover must comply with ASTM F 1346 as required in Appendix G of the State Building Code and shall be exempt from Sec.7-132 (b) 4. Covers must be closed and locked when the spa or hot tub is not in use.

7. Enforcement

- (a) Notice to abate.

Whenever a violation of this Chapter exists, the violation shall be considered a public nuisance and the Administrator shall give written notice to the owner, occupant, tenant, manager, or property management company of the property upon which such nuisance exists and/or upon the owner, occupant, tenant, manager, or property management company causing, maintaining, or allowing the nuisance to exist. If, upon reasonable diligence, the owner, occupant, tenant, manager, or property management company responsible for the nuisance cannot be determined or located, then the Administrator shall post the notice on the property.

(b) Contents of notice. The notice to abate shall contain:

- (1) An order to abate the nuisance within a stated time, not to exceed ten (10) days from the date of mailing or the date of posting.
- (2) An order allowing the violator to request a hearing within a stated time, not to exceed ten (10) days from the date of receipt of the mailing or, if the owner, occupant, tenant, manager, or property management company responsible for the nuisance cannot be determined or located, then no later than ten (10) days from the date of posting.
- (3) The location of the nuisance, if the same is stationary.
- (4) A description of what constitutes the nuisance.
- (5) A statement of acts necessary to abate the nuisance.
- (6) A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the Town will abate such nuisance, assess the cost thereof against such person, and pursue appropriate criminal and /or civil penalties.

(c) Service of notice.

The notice to abate a nuisance shall be served by certified mail or personally delivered to the violator. If, upon reasonable diligence, the owner, occupant, tenant, manager, or property Management Company responsible for the nuisance cannot be determined or located, then the Administrator shall post the notice on the property in a location visible from the nearest street.

(d) Persons liable.

The owner, tenant, occupant, manager, or land management company of any building or land or part thereof who participates or acts in concert, assists, directs, creates, or maintains a nuisance (the "violator") may be held responsible for the violation and subject to the fines, penalties, or remedies herein provided.

(e) Hearing and Appeal

At any time before the expiration of the abatement period specified, the respondent may request a hearing before the Administrator or his/her designee to appeal the finding that a public nuisance exists. The request for a hearing must be in writing and must be filed in the office of the Administrator. The Administrator shall fix a time for the hearing which shall be no greater than seven (7) days beyond the expiration of the abatement period, and the initial abatement order shall be temporarily suspended pending such hearing. Failure to request a hearing shall waive the right to do so after the abatement period has elapsed. At the hearing, the individual affected by the order shall be given the opportunity to present evidence to refute the findings which supported the abatement order. No later than five (5) days following completion of the hearing, the Administrator or his/her designee shall render a decision either revoking the initial order, issuing a final order which differs from the initial order, or affirming the initial order.

(f) Abatement by the Town

Upon the failure of the violator to abate the nuisance following a hearing, or upon the failure of the violator to request a hearing, the Administrator may enter the property, take action to abate the nuisance, and prepare a statement of costs incurred in the abatement thereof.

(g) Payment of costs.

Upon completion of the abatement of any nuisance under the provisions of this chapter, the Administrator shall deliver to the finance officer a statement including the costs of labor, hauling and other necessary items of expense for such abatement. The finance officer shall thereupon mail a bill to the violator for the costs. When the violator is the property owner, the amount of the bill may be collected in a civil action or may become a lien upon said property and if not paid within thirty (30) days shall be collected in the same manner as provided for the collection of delinquent taxes. If the violator is not the property owner, the amount shall be recovered by the city in a civil action in the nature of debt.

(h) Civil remedies.

A violator who fails to abate a nuisance in the time specified shall be subject to a fine of two hundred dollars (\$200.00). No fine shall be assessed until the person alleged to be in violation has been notified of the violation by certified mail, return receipt requested, or by personal service. For each day the violation is not corrected, the violator shall be liable for a new and separate offense and subject to additional civil fines. If the violator fails to pay a fine within ten (10) days after being cited for violation, the fine may be recovered by the Town in a civil action.

In addition to or in lieu of any fine, the Town may seek a mandatory injunction or order of abatement to enforce the provisions of this chapter.

(i) Criminal Remedies.

Any person violating the provisions of this Chapter shall be guilty of a misdemeanor and shall be subject to a fine of \$200.00 or imprisonment of not more than 30 days as specified by NCGS 14.4. Each day of violation of this Article shall be a separate and cumulative violation.

This ordinance shall be effective upon adoption.

Adopted on motion of Alderman Swantek, seconded by Mayor Pro Tem Yawn, and approved on vote of three in favor and two against.

This the 1st day of July, 2010.

APPROVED:

Daniel Tuman, Mayor

ATTEST:

Carin Z. Faulkner, Town Clerk