



**An Amendment to Article 3  
Administrative/Legislative Authority  
of the Unified Development Ordinance (UDO)  
of the Town of Sunset Beach, North Carolina**

**THAT WHEREAS**, the Town has enacted a Unified Development Ordinance that control land development within both the Town’s incorporated areas and within its extraterritorial area; and

**WHEREAS**, in order to promote the public health, safety and general welfare and to promote the best interests of the town and community, it is necessary from time to time for the Town Council to consider appropriate revisions, modifications and additions to the Town’s Unified Development Ordinance; and

**WHEREAS**, Town staff has initiated a text amendment requesting a review of Article 3 of the Town’s Unified Development Ordinance concerning Administrative/Legislative Authority; and

**WHEREAS**, the Town staff reviewed Article 3 of the Unified Development Ordinance and made a recommendation to the Planning Board for amendments; and

**WHEREAS**, the Planning Board reviewed, deliberated and accepted staff’s recommendation and reached a 5 to 0 vote to recommend to the Town Council that an amendment to repeal and replace Article 3 in its entirety; and

**WHEREAS**, pursuant to N. C. General Statutes and Town ordinances, a public hearing, properly noticed, was held on September 8, 2015, where public comment was heard and considered by the Town Council regarding this issue; and

**WHEREAS**, the Planning Board and Town Council finds that the proposed amendment to Unified Development Ordinance Article 3 is consistent with the Sunset Beach Comprehensive Land Use Plan; and

**WHEREAS**, the Town Council further finds that the approval of this proposed amendment is reasonable and in the public interest in that the amendment: (i) provides for compliance with the State statutes concerning governance of its boards, (ii) ensures that reasonable review and approval processes are established to ensure compatibility and enhance the town’s character, and (iii) will not compromise safety or enjoyment of private property.

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of Sunset Beach that Unified Development Ordinance Article 3 Administrative/Legislative Authority is hereby repealed and replaced with the following:

PART I. UDO ADMINISTRATOR 3-2  
Section 3.01 Powers and Duties ..... 3-2

PART II. TECHNICAL REVIEW PROCEDURE ..... 3-3  
Section 3.02 Purpose ..... 3-3  
Section 3.03 Procedures; Composition ..... 3-3

PART III. CONFLICTS OF INTEREST ..... 3-4  
Section 3.04 Conflicts of Interest ..... 3-4

PART IV. TOWN COUNCIL ..... 3-5  
Section 3.05 Powers and Duties ..... 3-5

PART V. PLANNING BOARD ..... 3-5  
Section 3.06 Creation ..... 3-5  
Section 3.07 Membership and Vacancies; Attendance ..... 3-5  
Section 3.08 Operation; Rules; Meetings; Records ..... 3-6  
Section 3.09 Jurisdiction and Voting ..... 3-6  
Section 3.10 Powers and Duties ..... 3-7  
Section 3.11 Gathering Background Information; Special Studies; Records Upon Request .. 3-7  
Section 3.12 CAMA Land Use Plan ..... 3-8  
Section 3.13 Zoning Amendments ..... 3-8  
Section 3.14 Subdivision Regulations ..... 3-9  
Section 3.15 Public Facilities ..... 3-9  
Section 3.16 Public Hearings; Recommendations ..... 3-9

PART VI. BOARD OF ADJUSTMENT ..... 3-9  
Section 3.17 Establishment of Board of Adjustment ..... 3-9

**Agenda Item 11a**

Section 3.18 Powers of the Board of Adjustment ..... 3-10  
Section 3.19 Organization; Meetings ..... 3-12  
Section 3.20 Quorum and Voting ..... 3-13  
Section 3.21 Oaths and Subpoenas ..... 3-13

**PART I. UDO ADMINISTRATOR**

**SECTION 3.01 POWERS AND DUTIES**

- (A) The ***UDO Administrator***, to be designated by the Town Administrator, is hereby authorized and it shall be his/her duty to enforce the provisions of this Ordinance. This official shall have the right to enter upon the ***premises*** at any reasonable time necessary to carry out his/her duties. It is the intention of this Ordinance that all questions arising in connection with enforcement and interpretation shall be presented first to the ***UDO Administrator*** and/or designated agent. ***Appeal*** of his/her decision may be made to the Board of Adjustment.
- (B) In administering the provisions of this Ordinance, the ***UDO Administrator*** and/or designated agent shall:
- (1) Make and maintain records of all applications for permits, special uses, and requests listed herein, and records of all permits issued or denied, with notations of all special conditions or modifications involved.
  - (2) File and safely keep copies of all plans submitted, and the same shall form a part of the records of his/her office and shall be available for inspection at reasonable times by any interested party.
  - (3) Transmit to the ***Planning Board, Town Council***, and/or the Board of Adjustment all applications and plans for which their review and approval is required.
  - (4) Conduct inspections of ***premises*** and, upon finding that any of the provisions of this Ordinance are being violated, notify in writing the person responsible for such ***violations***, indicating the nature of the ***violation*** and ordering the action necessary to correct it. The ***UDO Administrator*** shall order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or of ***additions***, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent ***violation*** of its provisions.
- (C) In addition, the ***UDO Administrator*** shall have the following duties:
- (1) Prepare a report of the Technical Review Procedure and recommendations for the ***Planning Board***, Board of Adjustment, or ***Town Council*** as may be required.
  - (2) Provide administrative interpretations of the UDO.

- (3) Provide nonconformity determinations, including expansions of *nonconforming uses* and structures.
- (4) Review and approve *zoning* compliance permits.
- (5) Chair the Technical Review Committee.
- (6) Coordinate with the Town's Chief Building Inspectors regarding issuance of certificates of occupancy.
- (7) Conduct concept meetings with *applicants* for *development* approval as necessary or appropriate.
- (8) Maintain the official *zoning* map and the public records of the Planning and Inspections Department, *Planning Board*, and Board of Adjustment.
- (9) Perform site inspections.

## **PART II. TECHNICAL REVIEW PROCEDURE**

### **SECTION 3.02 PURPOSE**

The purpose of the Technical Review Procedure is to facilitate communication and coordination between departments responsible for *development* review.

### **SECTION 3.03 PROCEDURES; COMPOSITION**

- (A) The Technical Review Procedure may be used to review all applications for any application for *development* approval. The Technical Review Procedure shall provide recommendations, as provided herein, regarding the application under its review.
- (B) The Technical Review Procedure may include, but not necessarily be limited to, the following individuals/departments: *UDO Administrator*, Building Inspector, Town Administrator, Fire Department, Police Department, Public Works Department.
- (C) The *UDO Administrator* may request the participation of professional experts or a representative from *County*, regional, or State agencies if the *UDO Administrator* determines that such entities can provide expertise concerning the proposed *development*.

## **PART III. CONFLICTS OF INTEREST**

### **SECTION 3.04 CONFLICTS OF INTEREST**

(A) Members of the **Town Council** or any appointed Board identified in this ordinance must act in the public interest and not to advance their own financial interests. A member of the elected or appointed Board may not vote on a UDO action where there is a potential financial conflict of interest. If the outcome of the vote is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member, the member must not vote on it.

(B) If a Board of Adjustment member is required to vote on any item, the member shall not participate in or vote on any matter in a manner that would violate the affected person's constitutional rights to an impartial decision maker. Members shall not participate in the discussion or voting if he/she has a personal bias or a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a predetermined opinion on the matter, a close **family** or business tie to a party, or a financial interest in the outcome.

(C) When a member is disqualified for a conflict of interest, that member must not participate in the hearing in any way, neither asking questions, nor debating, nor voting on the case. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

#### **PART IV. TOWN COUNCIL**

##### **SECTION 3.05 POWERS AND DUTIES**

- (A) The Sunset Beach **Town Council** has those powers and duties as provided herein and by Article 5 of Chapter 160A of the North Carolina General Statutes.
- (B) In considering proposed changes in the text of this Ordinance or in the **zoning** map, the **Town Council** acts in its legislative capacity and must proceed in accordance with the requirements of Article 4.
- (C) Unless otherwise specifically provided in this Ordinance, in considering amendments to this Ordinance or the **zoning** map, the **Town Council** shall follow the regular voting and other requirements as set forth in other provisions of the Town code.
- (D) The **Town Council** has the authority to adopt temporary moratoria on any Town **development** approval required by law (refer to Section 4.03).

#### **PART V. PLANNING BOARD**

##### **SECTION 3.06 CREATION**

Pursuant to North Carolina General Statutes 160A-361 and 160A-362, there is created a **Planning Board** of the Town, to perform the functions and duties herein prescribed.

**SECTION 3.07 MEMBERSHIP AND VACANCIES; ATTENDANCE**

- (A) The ***Planning Board*** shall consist of five (5) members and one (1) alternate member. Four (4) members and the one (1) alternate shall be citizens and residents of the Town, and shall be appointed by the ***Town Council***.  
One (1) member shall be a citizen of the ***County*** who resides outside the Town but within the Extraterritorial Jurisdiction (ETJ) of the Town as specified by an extraterritorial boundary ordinance adopted pursuant to North Carolina General Statute 160A-360(b), and shall be appointed by the ***County*** Board of Commissioners. Beginning June 1<sup>st</sup>, 2016, the alternate position shall not be reappointed and the subsequent membership shall be five (5) members; four (4) members who are citizens and reside within the Town limits and one (1) ETJ member. The members of the ***Planning Board*** shall serve for terms of three (3) years with no more than two (2) members being scheduled for replacement due to the expiration of a term in any one (1) year.
- (B) Vacancies occurring for reasons other than expiration of term may be filled as they occur for the unexpired remainder of the term by the Town Council.
- (C) Faithful attendance at meetings of the ***Planning Board*** shall be a prerequisite to continued membership. The ***Town Council*** may remove and replace any member who is absent from two (2) consecutive monthly meetings for reasons other than illness.

**SECTION 3.08 OPERATION; RULES; MEETINGS; RECORDS**

The ***Planning Board*** shall elect a Chairperson and create and fill such other offices as it may determine. The term of the Chairperson and other officers shall be one (1) year, with eligibility for reelection. The ***Planning Board*** may adopt rules for transaction of its business and shall keep a record of its members' attendance and of its resolutions, discussions, findings, and recommendations, which record shall be a public record. The ***Planning Board*** shall hold at least one (1) meeting monthly, and all of its meetings shall be open to the public. There shall be a quorum of three (3) members for the purpose of taking any official action.

**SECTION 3.09 JURISDICTION AND VOTING**

- (A) The member appointed to the ***Planning Board*** by the Board of ***County*** Commissioners as representatives of the extraterritorial ***zoning*** area outside the Town shall have equal rights, privileges, and duties with the other members of the ***Planning Board*** in all matters pertaining to the regulation of both the extraterritorial area and the area within the corporate limits.

- (B) When a member of the **Planning Board** is absent from a meeting, the alternate member for the Town shall have all the rights, privileges, and duties of a member of the **Planning Board**.

**SECTION 3.10 POWERS AND DUTIES**

It shall be the duty of the **Planning Board**, in general:

- (A) To make studies of the area within its jurisdiction and surrounding areas;
- (B) To determine objectives to be sought in the **development** of the study area;
- (C) To prepare and adopt plans for achieving these objectives;
- (D) To develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans that the **Town Council** may direct;
- (E) To advise the **Town Council** concerning the use and amendment of means for carrying out plans;
- (F) To exercise any functions in the administration and enforcement of various means for carrying out plans that the **Town Council** may direct;
- (G) To perform any other related duties that the **Town Council** may direct related to this ordinance or other pertinent matters related to land use;

**SECTION 3.11 GATHERING BACKGROUND INFORMATION; SPECIAL STUDIES; RECORDS UPON REQUEST**

- (A) As background for its **CAMA** Land Use Plan and any ordinances it may prepare, the **Planning Board** may gather maps and aerial photographs of man-made and natural physical features of the area, statistics on past trends and present conditions with respect to population, property values, the economic base of the community, land use, and such other information as is important or likely to be important in determining the amount, direction, and kind of **development** to be expected in the area and its various parts.
- (B) In addition, the **Planning Board** may make, cause to be made, or obtain special studies on the location, condition, and adequacy of special facilities, which may include but are not limited to studies of housing, commercial and **industrial** facilities, parks, playgrounds and recreational facilities, public and private utilities, and traffic transportation and parking facilities.

- (C) All officials of the Town shall, upon request, furnish to the **Planning Board** such available records or information as it may require in its work. The **Planning Board** or its agents may, in the performance of its official duties, enter upon lands and make examination or surveys and maintain necessary monuments thereon.

**SECTION 3.12 CAMA LAND USE PLAN**

- (A) The **CAMA** Land Use Plan, with the accompanying maps, **plats**, charts, and descriptive matter, shall show the **Planning Board's** recommendations to the **Town Council** for the **development** of any proposed area.
- (B) The **CAMA** Land Use Plan and any ordinances or other measures to effectuate the plans shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious **development** of the Town and its environs which will, in accordance with present and future needs, best promote health, safety, morals, and the general welfare, as well as efficiency and economy in the process of **development**.

**SECTION 3.13 ZONING AMENDMENTS**

The **Planning Board** may initiate, from time to time, proposals for amendments of the **zoning** code and map based upon its studies and plans. In addition, it shall review and make recommendations to the **Town Council** concerning all proposed amendments to the **zoning** code and map.

**SECTION 3.14 SUBDIVISION REGULATIONS**

- (A) The **Planning Board** shall review, from time to time, the existing **regulations** for the control of land **subdivision** in the area and submit to the **Town Council** its recommendations, if any, for the revision of these **regulations**.
- (B) The **Planning Board** shall review all proposed **plats** of land **subdivision** in accordance with Article 13 of this ordinance.

**SECTION 3.15 PUBLIC FACILITIES**

The **Planning Board** may review with the Town Administrator and other Town officials and report its recommendations to the **Town Council** upon the extent, location, and design of all public structures and facilities, on the acquisition and disposal of public properties, on the establishment of building lines, mapped **street** lines, and proposals to change existing **street** lines. However, whether or not there is a recommendation from the **Planning Board**, the **Town Council** may, if it deems wise, take final action on any such matter at any time.

**SECTION 3.16 PUBLIC HEARINGS; RECOMMENDATIONS**

- (A) The ***Planning Board*** may conduct such public hearings as may be required to gather information necessary for the drafting, establishment, and maintenance of the plans. Before recommending any such plans to the ***Town Council***, the ***Planning Board*** shall hold at least one (1) public hearing thereon.
- (B) The ***Planning Board*** shall have the power to promote public interest in and an understanding of its recommendations, and to that end, it may publish and distribute copies of its recommendations and may employ such other means of publicity and education as it may determine.

**PART VI. BOARD OF ADJUSTMENT**

**SECTION 3.17 ESTABLISHMENT OF BOARD OF ADJUSTMENT**

- (A) The Board of Adjustment of the Town is hereby established to fulfill the duties and powers described to it by this Ordinance, other applicable provisions of the Town Code, and by North Carolina General Statute, Chapter 160A-388.
- (B) The Board of Adjustment shall consist of five (5) regular members and two (2) alternate members. Five (5) members shall be citizens and residents of the Town, and shall be appointed by the ***Town Council***; two (2) members shall be citizens of the ***County*** who reside outside the Town but within the ETJ of the Town as specified by an extraterritorial boundary ordinance adopted pursuant to North Carolina General Statute 160A-360(b), and shall be appointed by the ***County*** Board of Commissioners. The members of the Board of Adjustment, both regular and alternates, shall serve for terms of three (3) years, such term to be staggered as follows: no more than two (2) members will be scheduled for replacement due to the expiration of term in any one (1) year. Alternates only vote when needed to fill a quorum.
- (C) The Board of Adjustment may adopt rules of procedure for the conduct of its affairs and in keeping with the provisions of this Ordinance. All meetings held by the Board of Adjustment shall be held in accordance with North Carolina General Statute Chapter 143, Article 33C or as may be amended.

**SECTION 3.18 POWERS OF THE BOARD OF ADJUSTMENT**

- (A) The Board of Adjustment shall hear and decide ***appeals*** from and review any order, requirement, decision, or determination made by a public official or employee charged with the enforcement of this Ordinance. In exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, modify the order, requirement, decision, or determination ***appealed*** from and may make such order, requirement, decision, or

determination that in its opinion ought to be made, and to that end shall have the power of the official from whom the *appeal* is taken.

- (B) The Board of Adjustment shall hear and decide *variances*. When practical difficulties or unnecessary hardships would result from carrying out the strict letter of this Ordinance, the Board of Adjustment shall have the power to vary provisions of this Ordinance relating to the use, construction, or alteration of buildings or structures or the use of land, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done, provided that no change in permitted uses may be authorized by *variance*.
- (C) The Board of Adjustment is authorized to grant Special Use Permits as specified in this ordinance and following procedures stated in Article 4, Section 4.05.
- (D) The Board of Adjustment is authorized to approve applications for Vested Rights as specified in this ordinance and following procedures stated in Article 4, Section 4.02.

**SECTION 3.19 ORGANIZATION; MEETINGS**

- (A) The Board of Adjustment shall elect one (1) member to serve as Chairperson and preside over its meetings and shall elect one (1) member to serve as Vice-Chairperson to fulfill the responsibilities of the Chairperson when the Chairperson cannot. The Board of Adjustment shall appoint a clerk, who may be a Town officer or employee, a member of the Board, or such other person who is qualified to fulfill the requirements of the position. The Board of Adjustment may create and fill such offices and committees as it may deem necessary. The term of the Chairperson and other offices shall be one (1) year with eligibility for reelection.
- (B) The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it may take action as expeditiously as reasonably possible. All meetings of the Board of Adjustment shall be open to the public, and reasonable notice of the time and place thereof shall be given to the public in accordance with the North Carolina General Statutes. The Board of Adjustment shall keep a record of its meetings, including attendance of its members, the vote of each member on every question, a complete summary of the evidence submitted to it, documents submitted to it, and all official actions.
- (C) Any member of the Board of Adjustment who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the Board and shall be replaced or reappointed by the ***Town Council*** or Board of ***County*** Commissioners, as appropriate. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the Board of Adjustment, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

**SECTION 3.20 QUORUM AND VOTING**

- (A) The concurring vote of four-fifths (4/5) of the members of the Board of Adjustment shall be necessary to grant a variance.
- (B) A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.
- (C) For the purposes of this section, vacant positions on the Board of Adjustment and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board of Adjustment for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

**SECTION 3.21 OATHS AND SUBPOENAS**

- (A) The Chairperson or his/her designee are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

- (B) The Board of Adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The Chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

Adopted this the \_\_\_\_ day of \_\_\_\_\_, 2015.

Town of Sunset Beach

\_\_\_\_\_  
By: Mayor

ATTEST:

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