

TOWN OF SEABROOK ISLAND

ORDINANCE NO. 2020-09

ADOPTED _____

AN ORDINANCE AMENDING THE TOWN CODE FOR THE TOWN OF SEABROOK ISLAND, SOUTH CAROLINA; CHAPTER 32, WATERWAYS AND BEACHES; ARTICLE II, BEACHFRONT MANAGEMENT; DIVISION 2, RESTRICTIONS; SECTION 32-43, WILDLIFE AND MARINE LIFE PROTECTION; SO AS TO PROHIBIT THE HARASSMENT OF MARINE MAMMALS ON THE BEACHES OF SEABROOK ISLAND AND TO RESTRICT SWIMMING IN CAPTAIN SAMS INLET AT TIMES WHEN DOLPHINS ARE PRESENT OR MOST LIKELY TO BE PRESENT

WHEREAS, in an effort to protect the health, safety and welfare of residents, visitors, wildlife, marine life and the environment, Section 32-41 et seq of the Town Code for the Town of Seabrook Island (the "Town Code") prohibits or restricts certain activities on the beaches and waterways of the Town of Seabrook Island; and

WHEREAS, the beaches of Seabrook Island have been designated by the United States Fish and Wildlife Service as a critical habitat of the loggerhead turtle and the wintering population of the piping plover; and

WHEREAS, Section 32-43 of the Town Code currently prohibits the harming, harassing or disturbing of loggerhead sea turtles, as well as certain species of birds which have been designated as "endangered" or "threatened," on the beaches and waterways of Seabrook Island; and

WHEREAS, the Town is also home to an active population of Atlantic bottlenose dolphins which regularly engage in a unique feeding behavior commonly referred to as "strand feeding" on the beaches and waterways of Seabrook Island, specifically including Captain Sams Inlet; and

WHEREAS, while dolphins and other marine mammals are protected under the U.S. Marine Mammal Protection Act of 1972, as amended, the Mayor and Council for the Town of Seabrook Island desire to enact local protections for dolphins and other species of marine mammals on the beaches and waterways of Seabrook Island, similar to those already in place for loggerhead sea turtles and threatened and endangered bird species; and

WHEREAS, the Mayor and Council advertised and held a public hearing on the proposed amendments during a duly called meeting on October 27, 2020; and

WHEREAS, the Mayor and Council believe it is fitting and proper to amend the Town Code to achieve the objectives referenced herein;

NOW, THEREFORE, pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, **BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE TOWN OF SEABROOK ISLAND:**

SECTION 1. Amending Section 32-43 of the Town Code. The Town Code for the Town of Seabrook Island, South Carolina; Chapter 32, Waterways and Beaches; Article II, Beachfront Management; Division 2, Restrictions; Section 32-43, Wildlife and Marine Life Protection; is hereby amended to read as follows:

Sec. 32-43. Wildlife and marine life protection.

~~The beaches of Seabrook Island have been designated by the United States Fish and Wildlife Service as a critical habitat of the loggerhead turtle and the wintering population of the piping plover. Accordingly, no person shall physically harm, harass or otherwise disturb any loggerhead turtle or loggerhead turtle nest. Similarly, no person shall harm, harass or disturb any bird designated by any state or federal agency with applicable jurisdiction as an endangered or threatened species, including eggs and young, or its nest. Beached or stranded sea turtles, whales or dolphins shall be reported immediately to the town, SIPOA or county police department. Nothing herein contained shall preclude or otherwise limit the SCDNR permitted activities of the members of the Seabrook Island Turtle Patrol and the members of the Turtle Stranding Team and all activities ancillary thereto.~~

(a) Harassment of wildlife and marine life prohibited.

(1) In addition to any other applicable state or federal laws, no person shall harass any of the following species of wildlife and marine life:

- a. any species of sea turtle which has been designated as an “endangered” or “threatened” species by any state or federal agency with applicable jurisdiction, including the nests, eggs and young of such species;
- b. any species of bird which has been designated as an “endangered” or “threatened” species by any state or federal agency with applicable jurisdiction, including the nests, eggs and young of such species; and
- c. any species of marine mammal which is protected by the U.S. Marine Mammal Protection Act of 1972, as amended, or which has been designated as an “endangered” or “threatened” species by any state or federal agency with applicable jurisdiction, including, but not limited to, Atlantic bottlenose dolphins.

(2) For the purpose of this section, the term “harass” shall mean:

- a. any act of pursuit, torment, or annoyance that kills or injures, or has the potential to kill or injure, any protected species listed in subsection (a)(1); and
- b. any act that has the potential to harm or otherwise disturb (but not kill or injure) any protected species listed in subsection (a)(1) by disrupting behavioral patterns, including, but not limited to: migration, breathing, nursing, breeding, feeding, or sheltering.

(3) Nothing herein shall preclude or otherwise limit the activities of any individual, employee, group or organization which has been duly authorized by an agency or department of the state or federal government, including, but not limited to, employees or members of the Avian Conservation Center, the Seabrook Island Turtle Patrol, the Sea Turtle Stranding and Salvage Network, and the South Carolina Marine Mammal Stranding Network.

(b) Restrictions on swimming in Captain Sams Inlet.

(1) Except in the case of emergency, it shall be unlawful for any person to swim in the waters of Captain Sam's Inlet:

a. during the period two hours before to two hours after low tide, as predicted by the National Ocean and Atmospheric Administration (NOAA) for the Kiawah River Bridge Tide Station (NOAA Station ID #8667062); and

b. when one or more Atlantic bottlenose dolphins are present in the inlet.

(2) In instances when an individual is swimming in Captain Sams Inlet outside of those times where swimming is prohibited pursuant to subsection (b)(1), and one or more dolphins subsequently enter the inlet, the individual swimming in the inlet shall immediately return to the shore and cease swimming upon observing the dolphins or being made aware of their presence in the inlet.

(c) Beached, injured or stranded animals.

(1) Beached, injured or stranded animals shall be reported immediately to the town, Seabrook Island Property Owners Association (SIPOA) security, the Charleston County Sheriff's Office or the South Carolina Department of Natural Resources (SCDNR).

SECTION 2. Severability.

If any section, subsection, paragraph, clause, or provision of this ordinance shall be deemed to be unconstitutional, unenforceable, or otherwise invalid by the final decision of a court of competent jurisdiction, it shall be construed to have been the legislative intent of Town Council to pass said ordinance without such unconstitutional provision, and the validity of all remaining sections, subsections, paragraphs, clauses, or provisions of said ordinance shall not be affected thereby. If said ordinance, or any provision thereof, is held by the final decision of a court of competent jurisdiction to be inapplicable to any person, group of persons, property, kind of property, circumstances or set of circumstances, such holding shall not affect the applicability thereof to any other persons, property or circumstances.

SECTION 3. Conflicting Ordinances Repealed.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. Effective Date.

This ordinance shall be effective from and after the date of adoption.

SIGNED AND SEALED this ____ day of _____, 2020, having been duly adopted by the Town Council for the Town of Seabrook Island on the ____ day of _____, 2020.

First Reading: September 22, 2020
Public Hearing: October 27, 2020
Second Reading: October 27, 2020

TOWN OF SEABROOK ISLAND

John Gregg, Mayor

ATTEST

Faye Allbritton, Town Clerk