Town of Southern Shores
5375 N. Virginia Dare Trail, Southern Shores, NC 27949
Phone 252-261-2394 / Fax 252-255-0876
info@southernshores-nc.gov
www.southernshores-nc.gov

LDA 2009-08-01

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE TOWN OF SOUTHERN SHORES

ARTICLE I. Purpose(s) and Authority.

WHEREAS, the Town of Southern Shores (the "Town") may enact and amend ordinances to protect the health, safety, and welfare of its citizens under North Carolina General Statutes § 160A-174; and

WHEREAS, the Town may enact and amend ordinances regulating the zoning and development of land within its jurisdiction under North Carolina General Statutes § 160A-381; and

WHEREAS, the Town may regulate the use and construction of telecommunications towers and facilities within its jurisdiction under North Carolina General Statutes §§ 160A-400.50 – 400.53; and

WHEREAS, the Town Council for the Town of Southern Shores (the "Town Council") finds that telecommunications and in particular cellular telephone communications are an integral part of today's society and will continue to be an integral part of society including the lives of the citizens of the Town; and

WHEREAS, the Town Council further finds that telecommunications facilities including antennae, towers and other structures may potentially endanger the citizens and visitors of the Town or damage the aesthetics and historical nature of the Town unless regulated; and

WHEREAS, the Town Council finds that it is in the interest of the public's health, safety, morals and general welfare that the Town's Zoning Ordinance be amended as stated below.

ARTICLE II. Construction.

For purposes of this Ordinance, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by a "..." shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of Zoning Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Town Council that the Town's Code of Ordinances shall be amended as follows:

PART I. That Chapter 36 Section 36-202 be amended as follows:

(b) *Permitted uses*. The following uses shall be permitted by right:

. . .

(8) Short Telecommunications Towers in compliance with the requirements of Section 36-175.

(9) Co-Located wireless facilities in compliance with the requirements of Section 36-175.

. . .

(c) *Conditional uses permitted*. The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the town council as provided in article X of this chapter:

. . .

(6) Tall Telecommunications Towers in compliance with the requirements and conditions of Section 36-175.

PART II. That Chapter 36 Section 36-203 be amended as follows:

(b) *Permitted uses*. The following uses shall be permitted by right:

. . .

(10) Short Telecommunications Towers in compliance with the requirements of Section 36-175.

(11) Co-Located wireless facilities in compliance with the requirements of Section 36-175.

. . .

(c) *Conditional uses permitted*. The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the town council as provided in article X of this chapter:

. . .

(4) Tall Telecommunications Towers in compliance with the requirements and conditions of Section 36-175.

PART III. That Chapter 36 Section 36-204 be amended as follows:

(b) *Permitted uses*. The following uses shall be permitted by right:

. . .

(5) Short Telecommunications Towers in compliance with the requirements of Section 36-175.

(6) Co-Located wireless facilities in compliance with the requirements of Section 36-175.

. . .

(c) *Conditional uses permitted*. The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the town council as provided in article X of this chapter:

. . .

(4) Tall Telecommunications Towers in compliance with the requirements and conditions of Section 36-175.

PART IV. That Chapter 36 Section 36-205 be amended as follows:

(b) *Permitted uses*. The following uses shall be permitted by right:

. . .

(7) Short Telecommunications Towers in compliance with the requirements of Section 36-175.

(8) Co-Located wireless facilities in compliance with the requirements of Section 36-175.

. . .

(c) *Conditional uses permitted*. The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the town council as provided in article X of this chapter:

. . .

(6) Telecommunication array and accessory equipment on publicly owned water towers, with the approval of the public entity which owns the water tower ~~and in accordance with section 36-207(c)(8)b and c~~ in compliance with the requirements and conditions of Section 36-175.

(7) Tall Telecommunications Towers in compliance with the requirements and conditions of Section 36-175.

PART V. That Chapter 36 Section 36-206 be amended as follows:

(b) *Permitted uses*. The following uses shall be permitted by right:

. . .

(7) Short Telecommunications Towers in compliance with the requirements of Section 36-175.

(8) Co-Located wireless facilities in compliance with the requirements of Section 36-175.

. . .

(c) *Conditional uses permitted*. The following uses are permitted subject to the requirements of this district and such additional regulations and requirements as may be imposed by the town council as provided in article X of this chapter: ~~community recreation facilities, including golf courses, tennis courts, community centers, libraries, picnic areas, and concessions integral thereto, provided that there is no open commercial activity, and no sign other than a directional noncommercial sign is allowed.~~

. . .

(1) Community recreation facilities, including golf courses, tennis courts, community centers, libraries, picnic areas, and concessions integral thereto, provided that there is no open commercial activity, and no sign other than a directional noncommercial sign is allowed.

(2) Tall Telecommunications Towers in compliance with the requirements and conditions of Section 36-175.

PART VI. That Chapter 36 Section 36-207(b) be amended as follows:

(b) *Permitted uses*. The following uses shall be permitted by right:

. . .

(9) Short Telecommunications Towers in compliance with the requirements of Section 36-175.

(10) Co-Located wireless facilities in compliance with the requirements of Section 36-175.

. . .

PART VII. That Chapter 36 Section 36-207(c)(8) and all of its subsections be replaced in their entirety with the following:

(8) Tall Telecommunications Towers in compliance with the requirements and conditions of Section 6.13 of this Zoning Ordinance.

…

PART VIII. That Chapter 36 Section 36-57 be amended as follows:

Sec. 36-57. Definition of specific terms and words.

. . .

~~*Co-location of telecommunication antennas*: The siting of two (2) or more providers' wireless communication antennas on the same telecommunication tower.~~

. . .

~~*Geographic antenna coverage area*: The general vicinity within which an antenna serves the transmission requirements of a cellular or other broadcasting network.~~

. . .

~~*Telecommunications accessory equipment structure*: A building or cabinet-like structure located adjacent to, or in the immediate vicinity of a wireless telecommunications tower or antenna to house equipment incidental to the receiving or transmitting of wireless broadcasts, cellular telephone calls, voice messaging and paging services.~~

~~*Telecommunication tower*: A freestanding structure intended to support one (1) or more telecommunication antennas.~~

. . .

~~*Tower, monopole*: A slender self-supporting tower used to support telecommunications equipment.~~

. . .

PART IX. That Chapter 36 Section 36-175 be added as follows.

Sec. 36-175. Wireless telecommunications sites and towers.

(a) *Definitions*. The following definitions shall apply to all portions of the Town Code relating to the use or construction of telecommunications towers and facilities within the Town.

(1) *Antenna*: Communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

(2) *Application*: A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.

(3) *Building permit*: An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of NC G.S. 160A-417.

(4) *Collocation*: The installation of new wireless facilities on previously-approved structures, including towers, buildings, utility poles, and water tanks.

(5) *Equipment enclosure*: An enclosed structure, cabinet, or shelter used to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.

(6) *Fall zone*: The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

(7) *Geographic antenna coverage area*: The general vicinity within which an antenna serves the transmission requirements of a cellular or other broadcasting network.

(8) *Land development regulation*: Any ordinance enacted pursuant to this Part.

(9) *Search ring*: The area within which a wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

(10) *Telecommunications accessory equipment structure*: A building or cabinet-like structure located adjacent to, or in the immediate vicinity of a wireless telecommunications tower or antenna to house equipment incidental to the receiving or transmitting of wireless broadcasts, cellular telephone calls, voice messaging and paging services.

(11) *Tower, monopole*: A slender self-supporting telecommunications tower.

(12) *Tower, short telecommunications*: A telecommunications tower with a height that is less than seventy (70) feet.

(13) *Tower, tall telecommunications*: A telecommunications tower with a height that is seventy (70) feet tall or greater up to a height of one hundred ninety five (195) feet tall.

(14) *Tower, telecommunication*: A freestanding wireless support structure intended to support one (1) or more wireless facilities.

(15) *Utility pole*: A structure that is designed for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

(16) *Wireless facility*: The set of equipment and network components, exclusive of the underlying support structure or tower, including antennas, transmitters, receivers base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and telecommunications services to a discrete geographic area.

(17) *Wireless support structure*: A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

(18) *Wireless telecommunications site*: The combination of all of the materials and equipment on a site used to provide wireless telecommunications service including, but not limited to, any wireless support structures, telecommunications towers, wireless facilities, antennae, telecommunications accessory equipment structures and equipment enclosures.

(b) *Streamlined Collocation Procedures*. Applications for collocation entitled to streamlined processing under this section shall be reviewed for conformance with applicable site plan and building permit requirements, but shall not otherwise be subject to zoning requirements, including design or placement requirements, or public hearing review. To be entitled to streamlined collocation procedures an applicant must meet the requirements of subsection (1), subsection (2) or the requirements of both. Otherwise, applications for collocation shall be treated as an application for a new wireless telecommunication site, telecommunication tower or wireless facility.

(1) An application for collocation meets the requirements entitling an applicant to streamlined collocation procedures if the addition of the additional wireless facility does not exceed the number of wireless facilities previously approved for the wireless support structure on which the collocation is proposed and meets all the requirements and conditions of the original approval. This provision applies to wireless support structures which are approved on or after December 1, 2007.

(2) An application for collocation meets the requirements entitling an applicant to streamlined collocation procedures if all of the following conditions exist:

(a) The collocation does not increase the overall height and width of the tower or wireless support structure to which the wireless facilities are to be attached.

(b) The collocation does not increase the ground space area approved in the site plan for equipment enclosures and ancillary facilities.

(c) The wireless facilities in the proposed collocation comply with applicable regulations, restrictions, or conditions, if any, applied to the initial wireless facilities placed on the tower or other wireless support structure.

(d) The additional wireless facilities comply with all federal, State and local safety requirements.

(e) The collocation does not exceed the applicable weight limits for the wireless support structure.

(3) An application for collocation is complete when all the necessary grounds stated in this section for entitlement to streamlined processing have been certified to by the applicant in writing or forty five (45) days after its submittal to the Town if the Town has not provided the applicant with written notice identifying the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

(4) The Town shall issue a written decision approving or denying an application entitled to streamlined processing within forty five (45) days of the date the application is

complete. Failure to issue such a decision shall be deemed an approval of the application.

(c) *Requirements for wireless telecommunications sites.* All wireless telecommunications sites located within the Town must comply with all of the following requirements:

(1) *Safety standards.* All proposed telecommunication towers and wireless facilities shall comply with all applicable federal, state and local laws including specifically the following:

(a) Federal Communications Commission standards, rules and regulations

(b) Federal Aviation Administration standards, rules and regulations

(c) N.C.G.S. § 160-400.50 et seq.

(d) The North Carolina Building Code

(e) Accepted industry standards for wind loading, base stabilization and other critical engineering characteristics as defined by American National Standards Institute (ANSI), Telecommunications Industry Association (TIA) and Electronic Industry Alliance (EIA).

(2) *Use guidelines and dimensional requirements.*

(a) *Collocation and location.*

(i) Collocation of new antennas, wireless facilities and other equipment on an existing structure or structures within the applicant's search ring shall be required whenever reasonably feasible. Collocation is not reasonably feasible if an applicant can show it is technically or commercially impractical for the applicant to collocate or if the owners of all of the telecommunication towers within the applicant's search ring where collocation would be technically practical are unwilling to enter into a contract for such use at fair market value.

(ii) Short telecommunications towers including the structure and fenced compound shall be designed to accommodate the wireless facilities of at least one (1) provider plus space for emergency communication antennas used by the Town's police and fire service provider.

(iii) Tall telecommunications towers including the structure and fenced compound shall be designed to accommodate collocation of the wireless facilities of at least three (3) providers plus space for emergency communication antennas used by the Town's police and fire service provider.

(iv) An existing use or structure on the same lot shall not preclude locating a wireless telecommunications site on that lot. The dimensions of the entire lot shall be used to determine if a telecommunications tower and associated structures meet the dimensional and setback requirements of this section.

(v) Tall telecommunications towers shall not be located within one half (1/2) mile of any other tall telecommunications tower located within the expected geographic antenna coverage area of the proposed telecommunication tower.

(vi) Short telecommunications towers shall not be located within two hundred fifty (250) feet of any other short telecommunications tower located within the expected geographic antenna coverage area of the proposed telecommunication tower unless the applicant can show that locating the tower within the prescribed distance will insure adequate coverage and capacity.

(b) *Height.* The height of a telecommunications tower includes any attached or proposed to be attached wireless facilities and shall be measured vertically from the pre-disturbance ground level at the center of the tower.

(i) The height of tall telecommunications towers shall not exceed one hundred ninety five (195) feet.

(ii) The height of short telecommunications towers shall not exceed seventy (70) feet.

(iii) In no case shall a wireless communication structure, telecommunications tower or any attached wireless facilities exceed the minimum height necessary to accomplish the purpose it is proposed to serve.

(c) *Permitted structures.* Only telecommunications towers utilizing a monopole design may be permitted within the Town. Telecommunications towers using other designs, including, but not limited to guyed towers and lattice type towers shall not be permitted.

(d) *Setbacks.*

(i) The base of a telecommunications tower shall be at least located at least one (1) foot from the nearest property line for every one (1) foot of proposed tower height. The Town Council may reduce the setback requirement from this 1:1 setback ratio to a setback of 1/3 of the height of the proposed tower provided the applicant submits written certification from a accredited risk management professional not employed by the town or any party to the application that the proposed tower installation has a risk of failure no greater than currently established best practice.

(ii) Telecommunications accessory equipment structures, any equipment enclosures and any other structures shall be set back a minimum of fifty (50) feet from all property lines and rights of way.

(e) *General aesthetics.*

(i) Telecommunication towers, wireless facilities, accessory equipment structures and equipment enclosures shall be constructed and maintained to minimize visual obtrusiveness in color and finish.

(ii) Accessory equipment structures, equipment enclosures and related structures at telecommunication tower sites shall be of such design, materials and colors to blend with surrounding structures.

(iii) Outdoor storage of equipment or related items shall be prohibited at all wireless telecommunication sites.

(iv) Electrical and telephone lines serving a wireless telecommunication site shall be installed underground.

(v) Sound emissions, such as alarm bells, buzzers and the like, shall not be permitted.

(f) *Fencing.* All telecommunication towers, their accessory equipment structures and equipment enclosures shall be enclosed by chain link fencing, not less than six (6) feet nor more than ten (10) feet in height. Such fences may be equipped with anti-climbing devices. The gate into the fenced area shall be located so that it is not easily visible from a street or adjacent property.

(g) *Screening/landscaping and buffers.*

(i) The base of a telecommunications tower, to a minimum height of ten (10) feet above average grade at the tower base, shall not be visible from any thoroughfare.

(ii) Screening is required along all exterior sides of the fence described above excluding the gate. Screening shall be a minimum width of twenty (20) feet with two (2) rows of planting material placed ten (10) feet on center, that are a minimum of five (5) feet in height when planted, and that are expected to reach a height of eight (8) feet within three (3) years. Suitable plant types shall be those recommended by the U.S. Department of Agriculture to achieve a mature growth height of eight (8) to ten (10) feet in the coastal area.

(h) *Lighting.*

(i) Telecommunication towers shall be lighted only if specifically required by the Federal Aviation Administration, in which case, Federal Aviation Administration minimum lighting requirements shall be applied.

(ii) When lighting is required by the Federal Aviation Administration, strobe lights shall be avoided unless specified by Federal Aviation Administration. When strobe lights are required on telecommunication towers, a dual lighting system of white strobes for daytime lighting and a red flashing light atop the tower for nighttime lighting shall be used unless other lighting is specifically required by the Federal Aviation Administration.

(iii) Except for lighting described in (b) above, all lighting at a wireless telecommunications site shall be shielded.

(i) *Signage.* Wireless telecommunication sites shall not display signage, logos symbols or any messages of a commercial or non-commercial nature. A sign, not visible from a public right-of-way or adjacent residences, shall be posted on the fence gate identifying the current owner of the tower, emergency contact person or agency, and applicable contact numbers.

(3) *Application requirements.* An application shall not be deemed complete until all of the following items required have been submitted:

(a) Documentation showing the reasonable feasibility of collocating new antennas, wireless facilities and equipment on an existing structure or structures within the applicant's search ring. If an applicant contends that collocation on an existing structure is not reasonably feasible he shall submit documentation that (i) collocation is technically or commercially impractical; or (2) the owner of the telecommunication tower is unwilling to enter into a contract for such use at fair market value. At a minimum, technical documentation shall include a map of the search ring displaying all potential collocation sites and stating why each is suitable or unsuitable. Where an applicant contends that the owner or an existing telecommunications tower or other feasible structure will not contract for its use for fair market value, the applicant must submit, in writing, a declaration from owners of all technically feasible collocation sites stating the price at which they are willing to negotiate space, evidence that the applicant has tried in good faith to negotiate market value terms for the collocation and an expert appraiser or economist’s opinion on what the market value of such a collocation at the site should be.

(b) A scaled site plan, scaled elevation view, and supporting drawings, calculations and other documentation, prepared and sealed by appropriate licensed professionals, showing the location and dimensions of all improvements including topography, telecommunications tower height requirements, setbacks, access driveways or easements, parking, fencing, landscaping, adjacent uses and any other information necessary to assess compliance with this article and compatibility with surrounding uses.

(c) Documentation that Federal Aviation Administration's minimum lighting standards have been applied.

(d) Documentation that the proposed tower, antennas and equipment comply with all applicable FCC regulations.

(e) Documentation, prepared and sealed by a professional engineer registered in North Carolina, that the proposed telecommunication tower and any attached wireless facilities and antennas meet or exceed accepted industry standards for wind loading, base stabilization and other critical engineering characteristics as defined by American National Standards Institute (ANSI), Telecommunications Industry Association (TIA) and Electronic Industry Alliance (EIA).

(f) Documentation, prepared and sealed by a professional engineer registered in North Carolina, that the proposed telecommunication tower and any attached

wireless facilities and antennas do not exceed the minimum height necessary to accomplish the purpose for which they are constructed.

(g) A notarized statement by the owner or an officer of the owner specifying the number of wireless facilities that may be collocated on the telecommunications tower once constructed.

(h) Documentation, prepared and sealed by a professional engineer registered in North Carolina, to demonstrate that the telecommunication tower has sufficient structural integrity for its intended uses. Documentation shall include a certification that all telecommunication towers and attached wireless facilities shall be capable of withstanding sustained winds of at least one hundred thirty five (135) miles per hour.

(i) If the proposed tower or antenna is to be located on lands owned by a party other than the applicant or the town, a copy of the lease agreement with the property owner along with copies of any easement agreements necessary for ingress, egress and use of the property.

(j) Documentation consisting of a certificate of insurance verifying the existence of a general liability insurance coverage of at least one million dollars ($1,000,000.00) at no cost to the town. The certificate shall contain a requirement that the insurance company notify the town thirty (30) days prior to the cancellation, modification, or failure to renew the insurance coverage required.

(k) A copy of the approved National Environmental Policy Act of 1969 (NEPA) compliance report for all telecommunication towers, antennas, wireless facilities, accessory structures or equipment proposed for the site.

(l) A memo of understanding regarding removal of abandoned structures on wireless telecommunication site. Any wireless telecommunications site that is not operated for one hundred eighty (180) continuous days in a twelve (12) month period shall be considered abandoned. The owner of an abandoned wireless telecommunications site shall be responsible for the removal of all structures and equipment on the site within ninety (90) days of receipt of such notification by the town. Failure to remove abandoned equipment will result in its removal by the town at the owner's expense. In its discretion, the town may condition approval of a permit for building of the proposed telecommunications tower on the applicant providing a bond or letter of credit sufficient to allow the town to remove the proposed structure if it is abandoned and not removed within the allowed time period by the applicant.

(m) Any other documentation necessary to ensure compliance with this section.

(4) *Review process.* The planning board will use the following criteria in its review of an application for any wireless telecommunication site, telecommunication tower, wireless facility, antennae or accessory structure.

(a) The use is a public necessity.

(b) The facility will not materially endanger the public health or safety if located where proposed and developed according to the plan submitted.

(c) The required conditions, specifications, and actions described in this article have been met.

(d) The location and character of the facility will be in harmony with the area in which it is to be located.

(5) *Consultants*. The Town may fix and charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application to site or modify wireless support structures or wireless facilities that is based on the costs of the services provided and does not exceed what is usual and customary for such services. Any charges or fees assessed by the Town on account of an outside consultant shall be fixed in advance and incorporated into a permit or application fee and shall be based on the reasonable costs to be incurred by the Town in connection with the regulatory review of an application. The town may impose additional reasonable and cost based fees for costs incurred should an applicant amend its application. On request, the amount of the consultant charges incorporated into the permit or application fee shall be separately identified and disclosed to the applicant.

(6) *Conditions*. The Town Council may place reasonable conditions on the issuance of a conditional use permit pursuant to this section regarding public safety, land use, or zoning issues, including, but not limited to, aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.

(7) *Validity of Permits*. A conditional use permit or zoning permit issued pursuant to this section shall expire if the improvements permitted are not completely constructed within twenty four (24) months of the date of the approval of the permit.

ARTICLE IV. **Severability.**

All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed. Should a court of competent jurisdiction declare this Ordinance or any part thereof to be invalid, such decision shall not affect the remaining provisions of this Ordinance nor the Zoning Ordinance of the Town of Southern Shores, North Carolina which shall remain in full force and effect.

ARTICLE V. Effective Date.

This ordinance shall be in full force and effect from and after the ____day of _____, 2009.

_____
Mayor

ATTEST:
_____
Town Clerk

Date: ___/___/___
Vote: ___Ayes ___Nayes

Approved as to form:

_____

1 Town Attorney