



TOWN OF SOUTHERN SHORES

"A Town of Volunteers"

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Ordinance No. 2004-07-02

AN ORDINANCE OF THE SOUTHERN SHORES TOWN COUNCIL RELATING TO OBSTRUCTIONS WITHIN THE TOWN RIGHTS-OF-WAY

Dare County, North Carolina

Be It Ordained by the Southern Shores Town Council as follows:

Article I: Purpose

The purpose of this Ordinance is to amend the Town Code of Southern Shores, Dare County, North Carolina, which was originally adopted by the Town Council on June 7, 1988 and subsequently amended.

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. Language of the adopted Town Code shall be shown in italics (*italics*).

Article III. Amend Section 6-201, Southern Shores Town Code - Obstructions in street and highway right-of-way ~~prohibited~~ declared public nuisances.

Section 6-201 of the Southern Shores Town Code is hereby amended as follows:

a. All obstructions ~~are prohibited from~~ within the right-of-way of all streets and highways in the town are hereby declared public nuisances. All obstructions located within four (4) feet of any asphalt or otherwise improved roadway owned or maintained by the Town is hereby prohibited and shall be removed immediately upon written notification from the town manager. For purposes of this Article, right-of-way is defined as any street or that area between a two or more property line lines and the portion of a street improved, designed, or ordinarily used for vehicular traffic that is owned or maintained by the Town and is regularly used wholly or in part for pedestrian or non-vehicular traffic (including but not limited to a multi-use path). ~~Excepted from this prohibition are existing trees and anything installed by the town, county, state or utility on approved easements or as allowed by other sections of the Town Code of Ordinances.~~

The Town is not responsible for any damage incurred to ~~obstructions~~ any obstruction, plantings or underground irrigation systems placed in the town owned right-of-way in any street or that area between two or more property lines that is owned or maintained by the Town and is regularly used wholly or in part for pedestrian or non-vehicular traffic (including but not limited to a multi-use path).

(b) ~~There is further excepted from this section the following~~ The following obstructions are exempt from this section:

- (1) Commercially available newspaper and mailboxes.*
- (2) Garbage / recycling containers, branches / brush, and other items temporarily placed on the right-of-way for scheduled pickup at times designated times by the town.*
- (3) Temporary storage of Town provided wood chips requested by property owners is allowed for no more than 30 days after delivery. Failure to remove or spread chips will result in action specified in Section 6-203 of this Chapter. Violators will no longer be provided chips.*
- (4) Property numbers on posts as allowed by Chapter VII, Article III, Section 7-38 of the Town Code.*
- (5) Driveway aprons and any minimum necessary accessory structures.*

(c) For the purposes of this section, "obstruction" means and is defined as any object, building or sign, whether man made or natural, including, without limitation, ~~tall ornamental grasses, bushes, shrubs,~~ vehicles and trailers, dirt and sand berms, fences, yard decorations, stakes, poles, posts, bulkheads, large stones/rocks and concrete or other masonry walls.

(d) This section shall not apply to self-propelled motor vehicles displaying Town parking permits, which may be legally parked in designated right-of-way parking areas established in accordance with Section 5-104 of this Code.

(e) Placement of signs on the Town right-of way and private property is regulated by Section 6-30, Article VI, Zoning Ordinance for the Town of Southern Shores.

(f) Except for those obstructions listed in subsection (b) above, no obstruction may be placed within four (4) feet of the improved surface of a public roadway.

Article IV. Create Section 6-201.1, Southern Shores Town Code - Encroachment Agreements

Section 6-201.1 of the Southern Shores Town Code is hereby created, which shall read as follows:

- (a) Notwithstanding the provisions of Section 6-201, property owners, or their agents, may apply for an encroachment agreement providing for the placement of obstructions within*

the right-of-way. Encroachment agreements shall be divided into three categories and a property owner, or his agent, may apply for more than one type of encroachment agreement.

- (1) Construction Encroachment Agreement: A property owner, or his agent, may apply to the Town for a Construction Encroachment Agreement. If approved by the town manager, the applicant may park construction related vehicles within the right-of-way, but no closer than four feet from the paved road surface or from any travel lane. Application may only be approved after finding that the applicant cannot practicably park on the property during the construction period. The street shall not be used for the storage of any construction materials, equipment, tools or supplies, including but not limited to temporary water and toilet facilities. A Construction Encroachment Agreement may be issued for a term no longer than six months and may be extended for two (2) additional consecutive three-month terms so long as the applicant shall have generally been in conformity with the ordinances of the Town. No certificate of occupancy may be issued until the town manager has made a written finding that any road surface is in the same or better condition than upon commencement of the construction process.
- (2) Special Events Encroachment Agreement: A property owner, or his agent, may apply to the Town for a Special Events Encroachment Agreement. If approved by the town manager, the applicant may park vehicles related to a special event within the street, but no closer than one (1) foot from the paved road surface or from any roadway. A special event is hereby defined as a previously scheduled event having a duration of not longer than twenty (20) hours in any forty-eight (48) hour period. Except for vehicles, the applicant of an approved Special Events Encroachment Agreement may not place any other obstruction within the street, except for traffic cones or small flexible flags (which shall be required to be in place during the duration of the permit term) indicating the boundaries of the area covered by the Special Events Encroachment Agreement. A Special Events Encroachment Agreement may be issued for the same section of a street for a term no longer than twenty (20) hours in any forty-eight (48) hour period and may not be extended beyond the approved duration without prior approval by the town manager.
- (3) Right-of-Way Encroachment Agreement: A property owner, or his agent, may apply to the Town for a Right-of-Way Encroachment Agreement. If approved by the Town Council, the applicant may place an obstruction within the street as approved by the Town Council. Except where the Town Council makes written findings showing no practicable alternative, the obstruction shall not be closer than four feet from the paved road surface or four (4) feet from any roadway. No other obstruction may be placed within the street, except as otherwise provided by law. A Right-of-Way Encroachment Agreement shall be executed in such a format that it shall be recorded in the Dare County Registry and shall be made available by the applicant and any subsequent property owner to any future property owner. Any obstruction authorized by a Right-of-Way Encroachment Agreement shall be installed no sooner than the date the Agreement has been

recorded in the Dare County Registry and the Agreement shall automatically expire thirty (30) days after the obstruction has been removed.

Article V. Amend Section 6-202, Southern Shores Town Code - Trees

Section 6-202 of the Southern Shores Town Code is hereby amended as follows:

- (a) The town at its discretion may remove existing trees on town right-of-way any obstruction within any street or that area between two or more property lines that is owned or maintained by the Town and is regularly used wholly or in part for pedestrian or non-vehicular traffic (including but not limited to a multi-use path).
- (b) No person, except upon written permission from the town manager, may remove from within the public right-of-way a living dogwood tree (genus *Cornus*) that has a trunk diameter equal to or great than one (1) inch at a point one (1) foot above normal grade may be removed from within the public only right-of-way. This prohibition shall not apply to any dogwood tree (genus *Cornus*) located within four (4) feet of an improved roadway.
- (c) Except as provided in subsection (b), property owners or their agents may also remove trees, vegetation within a street with the written permission of the town manager except that brush. Brush, vines, and trees and other vegetation having a diameter of less than four (4) inches at a point two feet above normal average grade may be removed without restriction at the discretion and expense of the property owner.

Article VI. Amend Section 6-203, Southern Shores Town Code – Abatement by Town - Generally

Section 6-203 of the Southern Shores Town Code is hereby amended as follows:

- (a) If, in the course of providing a public safety service, any employee or volunteer of public safety service provider finds that an obstruction within the street hinders the ability in any way the provision of a public safety service, then the town manager, the police chief, the fire chief, or the authorized person on scene and in charge of providing the public safety service may order the removal of the obstruction. Any cost for the removal and clean-up of the obstruction shall be due and payable by the person, if known, placing the obstruction in the street. ~~The Town recognizes the fact that some obstructions have been placed on the Town right-of-way prior to the enactment of this Article. Such obstructions are allowed to temporarily remain on the right-of-way at the sole discretion of the Town.~~ In all other cases, ~~The Town~~ may order the removal of any obstructions at any time as provided in paragraph (b) of this section.
- (b) If any person, having been ordered to abate an obstruction in a street right-of-way, fails, neglects or refuses to abate or remove the condition constituting the obstruction within fifteen (15) days from receipt of an order to remove a obstruction, the Town Manager ~~or his designee~~ may cause such condition to be removed or otherwise remedied by having employees of the town or independent contractors remove or otherwise abate such nuisance at the owners expense.

(d) Any person causing, permitting, or allowing an obstruction to exist who has been ordered to abate or remove the obstruction, may within the time allowed by this chapter, request the town in writing to suggest possible contractors to remove such condition, the cost of which shall be paid directly to the contractor.

Article VII. Amend Section 6-204, Southern Shores Town Code – Costs

Section 6-204 of the Southern Shores Town Code is hereby amended as follows:

The actual cost incurred by the town in removing an obstruction from a street right-of-way shall be charged to the owner of such lot or parcel of land that caused, permitted, or allowed the obstruction to exist; and it shall be the duty of the tax collector to mail a statement of such charges to the owner or other person in possession of such premises with instructions that such charges are due and payable within thirty (30) days from the mailing thereof. If such costs charged in accordance with this section are not paid as herein stated, the costs shall be a lien upon the land or premises and shall be collected as unpaid taxes.

Article VIII. Amend Section 6-205, Southern Shores Town Code – Remedies and Penalties

Section 6-205 of the Southern Shores Town Code is hereby amended as follows:

In addition to the remedies provided in Sections 6-203 and 6-204, the Town may enforce the provisions of this Article using any remedies set out in Chapter 1, Section 1-6, but excluding those remedies and punishments set out in Subsections (b), (c) and (d-1).

Article IX. Definitions

Section 1-2 of the Southern Shores Town Code is hereby amended to add the following definition:

Town Manager. The appointed town manager of Southern Shores or his designee.

Article X. Administration and Fees

The Town Manager is hereby authorized and directed to promulgate such rules, regulations and forms and other matters related to the administration and enforcement of this Ordinance as may be necessary.

An initial fee of \$100 is hereby charged for a Construction Encroachment Agreement and \$100 fee for a Right-of-Way Encroachment Agreement, plus the cost of recording. There shall be a charge of \$25 for a Special Events Encroachment Agreement. These fees may be changed periodically by resolution or other action of the Town Council.

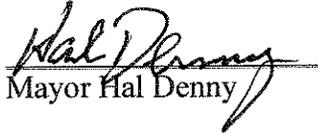
Article XI. Severability

If any words, phrases, language, section or other portion of this Ordinance is held invalid by a court of competent jurisdiction, then all remaining words, phrases, language, section or other portion of this Ordinance shall remain in full force and effect.

Article XII: Effective Date

This Ordinance is effective immediately upon adoption.

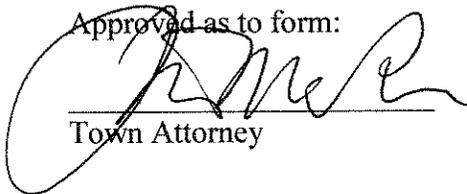
Adopted this the 3rd day of August, 2004.

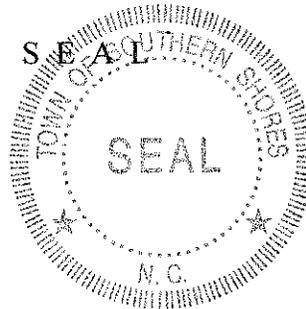

Mayor Hal Denny

ATTEST:


Town Clerk

Approved as to form:


Town Attorney



Date Introduced: July 20, 2004.