



Town of Southern Shores
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2012-08-01

**OBSTRUCTIONS IN STREET AND HIGHWAY
RIGHT-OF-WAY DECLARED PUBLIC NUISANCES ORDINANCE
AMENDING THE TOWN CODE
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 Council finds that it is in the interest of the public's health, safety and general welfare that the Town Code be amended as stated below; and

WHEREAS, the Town of Southern Shores has the additional authority to regulate obstructions within its street right-of-ways pursuant to North Carolina General Statute § 160A-296.

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. Town Code.

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 28, Section 28-2 be amended as follows:

Sec. 28-2. Obstructions in ~~street and highway~~ right-of-way declared public nuisances.

(a) All obstructions within the right-of-way of all streets and highways in the town are hereby declared public nuisances. ~~All obstructions located within four 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 chapter, the term "right-of-way" is defined as any street, or that area adjacent to any street ~~between two or more property lines~~, that is owned or

~~maintained by dedicated to, and accepted by, the town. -and is regularly used, wholly or in part, for pedestrian or nonvehicular traffic (including, but not limited to, a multiuse path). The town is not responsible for any damage incurred to any obstruction 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 nonvehicular traffic (including, but not limited to, a multiuse path) right-of-way.~~

(b) 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 by the town.
- (3) Reserved.
- (4) Property numbers on posts, as allowed by section 24-60.
- (5) Driveway aprons and any minimum necessary accessory structures.
- (6) Landscaped beds at grade which may include sand, mulch, or dirt, but excludes trees and shrubs.

(c) For the purposes of this section, the term "obstruction" means and is defined as any object, building or sign, whether manmade or natural including, without limitation, vehicles and trailers, dirt and sand berms, wood chip and/or mulch piles, 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~~ and legally parked in right-of-way parking areas, established in accordance with section 20-146.

(e) Placement of signs on the town right-of-way and private property is regulated by section 36-165.

(f) Except for those obstructions listed in subsection (b) of this section, no obstruction may be placed within ~~four feet of the improved surface of a public roadway~~ any right-of-way.

(Code 1988, § 6-201; Ord. No. 02-09-021, pt. 2, 9-3-2002; Ord. No. 04-07-02, art. III, 8-3-2004; Ord. No. 2011-07-01, pt. II, 7-5-2011)

PART II. That Chapter 28, Section 28-3 be amended as follows:

Sec. 28-3. Encroachment agreements.

Notwithstanding the provisions of section 28-2, 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 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 on the side of the street, but no closer than one 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 20 hours in any 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 20 hours in any 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~~ manager, the applicant may place an obstruction within the street right-of-way. Except where the town ~~council~~ manager, or his designee, makes written findings showing no practicable alternative, the obstruction shall not be closer than four feet from the paved road surface or four feet from any roadway. No other obstructions 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 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 county registry and the agreement shall automatically expire 30 days after the obstruction has been removed.

(Code 1988, § 6-201.1; Ord. No. 04-07-02, art. IV, 8-3-2004)

PART III. That Chapter 28, Section 28-4 be amended as follows:

Sec. 28-4. Trees.

(a) ~~The town, at its discretion, may remove 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 nonvehicular traffic (including, but not limited to, a multiuse path).~~

(ba) 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*). ~~This prohibition shall not apply to any dogwood tree (genus *Cornus*) located within four feet of an improved roadway.~~

(eb) Except as provided in subsection (a) of this section, property owners or their agents may also remove vegetation within a street right-of-way with the written permission of the town manager. Brush, vines, trees and other vegetation having a diameter of less than four inches, at a point two feet above normal average grade, may be removed without restriction at the discretion and expense of the property owner.

(Code 1988, § 6-202; Ord. No. 02-09-021, pt. 2, 9-3-2002; Ord. No. 04-07-02, art. V, 8-3-2004)

PART IV. That Chapter 28, Section 28-5 be amended as follows:

Sec. 28-5. Abatement by town

(a) If, in the course of providing a public safety service, any employee or volunteer of a public safety service provider finds that an obstruction within the street right-of-way hinders the ability, in any way, of the provision of a public safety service, then the town manager, police chief, fire chief, or authorized person on the scene and in charge of providing the public safety service may order the removal of the obstruction. Any cost for the removal and cleanup of the obstruction shall be due and payable by the person, if known, placing the obstruction in the street. In all other cases, the town may order the removal of any obstructions at any time, as provided in subsection (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 15 days from receipt of an order to remove an obstruction, the town manager 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 owner's expense.

(c) 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.

(Code 1988, § 6-203; Ord. No. 02-09-021, pt. 2, 9-3-2002; Ord. No. 04-07-02, art. VI, 8-3-2004)

PART V. That Chapter 28, Section 28-6 be amended as follows:

Sec. 28-6. Costs

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 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.

(Code 1988, § 6-204; Ord. No. 02-09-021, pt. 2, 9-3-2002; Ord. No. 04-07-02, art. VII, 8-3-2004)

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 effective from and after the 7th day of August, 2012.

ATTEST


Carrice Jordan
Town Clerk

Approved as to form

[Signature]
Town Attorney

[Signature]
Mayor

Date: 8/7/2012

Vote: 5 Ayes 0 Nayes