

Agenda & Meeting Packet

<https://southernshores-nc.municodemeetings.com/>



TOWN OF SOUTHERN SHORES
TOWN COUNCIL REGULAR MEETING

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

www.southernshores-nc.gov

PITTS CENTER

Tuesday, May 04, 2021 at 5:30 PM

AGENDA

Call Meeting to Order

Pledge of Allegiance

Moment of Silence

Amendments to / Approval of Agenda

Consent Agenda

1. Council Meeting Minutes-Emailed to Council
- [2.](#) Resolution 2021-05-01 Thanks Outer Banks
- [3.](#) Budget Amendment-Sanitation

Presentations

4. Status Update on the Mid-Currituck Bridge- Jennifer Harris, NCDOT

Staff Reports

5. Deputy Town Manager/ Planning Director
6. Police Chief
7. Staff Report-Fire Chief
8. Town Manager
9. Town Attorney

General Public Comment (Limit: 3 minutes per speaker.)

Old Business

- [10.](#) Ordinance 2021-04-01 Establishing and Creating The Southern Shores Beach Erosion Control And Flood And Hurricane Works Municipal Service Districts (Second Vote)

New Business

11. Filing of Manager's Proposed Operating Budget for FY 2021-22 and Public Hearing Date (distributed at meeting)
- [12.](#) Budget Amendment-Police Dept. Radio Replacement/Upgrade to Comply with NC VIPER Project
- [13.](#) Public Works Equipment Purchase
- [14.](#) Public Hearing-Town Code Amendment -21-03 Subdivisions
- [15.](#) Public Hearing-Town Code Amendment -21-04 AO Zone RFPE

[16.](#) Public Hearing-Zoning Text Amendment -21-01 Minimum Living Space and Protest Petitions

[17.](#) Public Hearing-Zoning Text Amendment- 21-02 Temporary Healthcare Structures

[18.](#) Public Hearing-Zoning Text Amendment-21-03 Manufactured Homes

[19.](#) Public Hearing-Zoning Text Amendment -21-04 Prohibited Uses

[20.](#) Service Contract Renewal-Trash (Bay Disposal)

[21.](#) Service Contract Renewal-Recycle (Bay Disposal)

[22.](#) Service Contract Renewal-Surf Rescue (Sandski)

[23.](#) Service Contract Renewal-Auditor (Teresa Osborne, Dowdy & Osborne)

General Public Comment (Limit: 3 minutes per speaker.)

Council Business

Adjourn

File Attachments for Item:

2. Resolution 2021-05-01 Thanks Outer Banks



Celebrating Gratitude | May 9 -15, 2021

**A RESOLUTION THANKING CITIZENS, BUSINESSES
AND DARE COUNTY /SOUTHERN SHORES EMPLOYEES FOR THEIR
HELP DURING THE PANDEMIC AND DECLARING
“THANKS, OUTER BANKS!” – A WEEK OF GRATITUDE**

Whereas, the Outer Banks has a 434-year history of resilience and strength coupled with a powerful sense of community; and,

Whereas, the world has suffered a horrible pandemic with over 500,000 people dying from COVID-19 in the United States alone; and,

Whereas, Dare County has not been spared the ravages of the pandemic to our personal health, to our personal lives, our lifestyles, and to our economy; and,

Whereas, vaccines are now being provided that give us hope for our future health and well-being; and,

Whereas, the Outer Banks has pulled through together – from families to first responders to front line workers to medical facilities – with Courage, Compassion and Strength to get past the worst of the pandemic;

Now, Therefore, be it Resolved, that the Southern Shores Town Council does hereby declare May 9 – 15, 2021 as “Thanks, Outer Banks!” – A Week of Gratitude and urges all citizens and businesses to participate to show their gratitude; and,

Be It Further Resolved that Southern Shores officials and employees are encouraged to support the efforts of “Thanks, Outer Banks!” showing the County’s gratitude to our employees and citizens.

Approved this 4th of May, 2021

Mayor, Tom Bennett

ATTEST:

Clerk

File Attachments for Item:

3. Budget Amendment-Sanitation

**Town of Southern Shores
Budget Amendment Number # 25**

[illegible]

Explanation: 3 additional commercial dumpsters added increasing the monthly collection rate and the tonnage going to the landfill has increased by 25% over last fiscal year, resulting in an increase in tipping fees.

Recommended By:

Cliff Ogburn, Town Manager

Approved By:

Tom Bennett, Mayor

Date _____

File Attachments for Item:

10. Ordinance 2021-04-01 Establishing and Creating The Southern Shores Beach Erosion Control And Flood And Hurricane Works Municipal Service Districts (Second Vote)



AGENDA ITEM SUMMARY FORM

MEETING DATE: May 4, 2021

ITEM TITLE: Ordinance 2021-04-01 Establishing and Creating The Southern Shores Beach Erosion Control And Flood And Hurricane Works Municipal Service Districts (Second Vote)

ITEM SUMMARY:

Beach Nourishment 2022 Project – Second Reading of Ordinance defining Municipal Service Districts

NCGS 160A-537(f) states that no ordinance defining a service district as provided for in this section shall be finally adopted until it has been passed at two meetings of the city council by majority vote of the voting members present, and no service district shall be defined except by ordinance. The draft ordinance was amended to read:

District 1-

- i. ~~All properties east of Ocean Blvd/NC 12 beginning at the southern town limit extending to Ocean Blvd; and that abut the ocean beach of the Atlantic Ocean having an eastern boundary greater than or equal to 25 feet, beginning at the southern town limit and extending to the northern town limit.~~
- ii. ~~All properties east of Ocean Blvd. from the split at Ocean Blvd/NC 12 extending to Hickory Trail; and~~
- iii. ~~All properties north of Hickory Trail that abut the Atlantic Ocean extending to the northern town limit.~~

District 2-

- i. All properties in District 1; and
- ii. All properties located east of Ocean Blvd/NC 12 and Duck Road/NC12 beginning at the southern town limit extending north to the northern town line; and
- iii. All properties located west of and abutting Ocean Blvd/NC 12. beginning at the southern town line extending north to 137 Ocean Blvd, and abutting Duck Road/NC 12 beginning at 139 Duck Road extending north to 149 Duck Road.

The Town Council adopted the attached ordinance on the first reading at its April 13, 2021 meeting.

STAFF RECOMMENDATION:

Staff recommends approval of the amended ordinance.

REQUESTED ACTION:

A motion to adopt Ordinance 2021-04-01 – An Ordinance Establishing and creating the Town of Southern Shores Beach Erosion Control and Flood and Hurricane Works Municipal Service Districts - as amended and approved at the April 13, 2021 meeting.



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

Ordinance # 2021-04-01

AN ORDINANCE ESTABLISHING AND CREATING THE SOUTHERN SHORES BEACH EROSION CONTROL AND FLOOD AND HURRICANE WORKS MUNICIPAL SERVICE DISTRICTS OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, Chapter 160A, Article 23 of the North Carolina General Statutes authorizes towns within North Carolina to define service districts to finance, provide, or maintain for such districts one or more services, facilities, or functions in addition to or to a greater extent than those financed, provided or maintained for the entire town; and

WHEREAS, said statutes further provide that the town may define a service district for the purpose of beach erosion control and flood and hurricane protection works; and

WHEREAS, acting in response to a need for action due to long term erosion of the Town's oceanfront due to storms, tides, sea level rise and wave action, the Town is committed to a beach nourishment project in order to maintain a wide recreation beach strand and protective sandbar system, to protect the public's ability to use the beach, to protect structures of historic significance, to maintain a tax and economic base, and to protect infrastructure including facilities for public recreational access. The Town Council for the Town of Southern Shores has determined that the creation of two (2) municipal service districts for erosion control and hurricane protection works will be for the benefit of those properties located within the service district boundaries which are in need of such services to a demonstrably greater extent than the remainder of the town; and

WHEREAS, the Town Council for the Town of Southern Shores further finds that each of the proposed districts is in need of projects and programs to the standards of N.C.G.S. 160A-537(a) to a demonstrably greater extent than the remainder of the town to meet the needs and goals set forth above due to, among other things, their increased need for beach erosion, flood control and hurricane protection works; their proximity to the Atlantic Ocean; their general elevation and topography; the influence of the ocean on the use of the properties within each district; their substantial tax base; their location seaward of the primary thoroughfare, NC12, and associated infrastructure; and the historic significance of some of area and some of the particular properties within the districts; and

1 **WHEREAS**, pursuant to such determinations and in accordance with applicable
 2 provision of the General Statutes, the Town Council for the Town of Southern Shores has
 3 defined such districts, and does determine, as a fact, that the proposed districts are in need
 4 of one or more of the services, facilities, or functions listed in G.S. 160A-536(a) to a
 5 demonstrably greater extent than the remainder of the town; and,

6
 7 **WHEREAS**, a map of the proposed districts showing their proposed boundaries,
 8 a copy of which is attached hereto and incorporated by reference, a statement showing
 9 that the proposed district meets the standards set out in G.S.160A-357(a), and a plan for
 10 providing in the district one or more of the services listed in G.S. 160A-536 has been
 11 created; all of which has been incorporated into a report which has been available for
 12 public inspection in the office of the Town Clerk for four (4) weeks prior to the public
 13 hearing on the matter of the establishment of the service districts; and

14
 15 **WHEREAS**, the Town Council for the Town of Southern Shores caused a notice
 16 of such hearing to be duly published in the Coastland Times, a newspaper having general
 17 circulation in the Town of Southern Shores and Dare County, said hearing having been
 18 conducted on March 16, 2021, and the Town Clerk duly certified to the Town Council
 19 that the required mailing of notice of the hearing was completed, all in conformity to
 20 G.S.160A-537(c); and

21
 22 **WHEREAS**, pursuant to N.C.G.S. 160A-537(c1), the Town received three (3)
 23 timely written requests for exclusion of a tract or parcel from the proposed municipal
 24 service districts from the following property owners: (i) Thomas Peabody; (ii) Charles L.
 25 and Janan B. Usher; and (iii) the Southern Shores Civic Association. Upon review of the
 26 owners' reasons for the associated parcels to be excluded, the Town Council finds that
 27 the tracts or parcels requested for exclusion are in need of the services, facilities, or
 28 functions of the proposed districts in which they lie to a demonstrably greater extent than
 29 the remainder of the town, and the Town Council declines to exclude the requested tracts
 30 or parcels from the proposed districts; and

31
 32 **WHEREAS**, the Town further finds that in accordance with the findings above it
 33 is in the interest of and not contrary to the public's health, safety, morals and general
 34 welfare for the Town to adopt this ordinance.

35 36 **ARTICLE II. Ordinance.**

37
 38 **NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town
 39 of Southern Shores, North Carolina, that:

- 40
 41 1. The Town of Southern Shores has fully complied with each and every
 42 requirement of Chapter 160A, Article 23 of the North Carolina General
 43 Statutes and determines and finds same as a fact.
 44
 45 2. The Southern Shores Beach Erosion Control and Flood and Hurricane Works
 46 Municipal Service Districts for erosion control and flood and hurricane works

is hereby established and created in accordance with the following description:

District 1-

- i. All properties ~~east of Ocean Blvd/NC 12 beginning at the southern town limit extending to Ocean Blvd; and that abut the ocean beach~~ of the Atlantic Ocean having an eastern boundary greater than or equal to 25 feet, beginning at the southern town limit and extending to the northern town limit.
- ii. ~~All properties east of Ocean Blvd. from the split at Ocean Blvd/NC 12 extending to Hickory Trail; and~~
- iii. ~~All properties north of Hickory Trail that abut the Atlantic Ocean extending to the northern town limit.~~

District 2-

- i. All properties in District 1; and
 - ii. All properties located east of Ocean Blvd/NC 12 and Duck Road/NC12 beginning at the southern town limit extending north to the northern town line; and
 - iii. All properties located west of and abutting Ocean Blvd/NC 12. beginning at the southern town line extending north to 137 Ocean Blvd, and abutting Duck Road/NC 12 beginning at 139 Duck Road extending north to 149 Duck Road.
3. The Town of Southern Shores may levy property taxes within each of the service districts in addition to those throughout the town in order to finance, provide or maintain for the district, services provided therein, in addition to or to a greater extent than those financed, provided or maintained for the entire town.
4. This ordinance shall take effect at the beginning of fiscal year for 2021-2022 on July 1, 2021.

ARTICLE III. Severability.

All Town ordinances or parts of ordinances in conflict with this ordinance amendment 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 Town Code 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 1st day of July, 2021.

Tom Bennett, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date of First Vote: 04/13/2021

Motion to adopt by Councilmember: Councilman Neal

Motion seconded by Councilmember: Mayor pro tem Morey

Vote: 4 AYES 0 NAYS

Date of Second Vote: _____

Motion to adopt by Councilmember:

Motion seconded by Councilmember:

Vote: ___AYES___NAYS



Item 10.

TOWN OF SOUTHERN SHORES

5275 N. Virginia Dare Trail

Southern Shores, North Carolina 27949-3600



BEACH EROSION CONTROL AND FLOOD AND HURRICANE PROTECTION WORKS MUNICIPAL SERVICE DISTRICTS



Item 10.

TOWN OF SOUTHERN SHORES

9375 N. Virginia Drive Trail
Southern Shores, North Carolina 27549-3600



BEACH EROSION CONTROL AND FLOOD AND HURRICANE PROTECTION WORKS MUNICIPAL SERVICE DISTRICTS

File Attachments for Item:

12. Budget Amendment-Police Dept. Radio Replacement/Upgrade to Comply with NC VIPER Project



AGENDA ITEM SUMMARY FORM

MEETING DATE: May 4, 2021

ITEM TITLE: Police Dept. Radio Replacement/Upgrade to Comply with NC VIPER Project

ITEM SUMMARY: Just over 10 years ago, all Dare County First Responders Agencies switched to 800mhz radios on a P25 platform. In 2018 we were informed that our current radios would be obsolete by 2025 (see attached VIPER letter). We also found that obtaining parts for our current 10+ year old radios is very difficult and expensive if you can find those needed parts. In 2019 we established a 6 year plan to gradually replace our radios with new compatible ones. We have been purchasing 2, sometimes 3 radios (mobil/car and portable/handheld radios) each year (see attached replacement schedule) in an effort to be in compliance by 2025, We also established this schedule so that it would not over burden our town budget all in one year. I have recently been advised that there may be funds available out of this FY 2020-21 budget to purchase the radios currently being requested in next years FY budget (2021-22) (see attached request).

STAFF RECOMMENDATION: If funds are currently available, I would like to request approval for the purchase of the radios listed in attachment "Radio Replacement/Upgrade through 2025" for FY 2021-22 which include 3-mobil radios-\$ 11,900.00, 4 portable radios-\$14,800.00, 1- Base station-7desk set \$27,250.00. (Installation included) total-\$53,950.00.

REQUESTED ACTION: Motion to authorize police department to purchase 3-mobil radios @\$ 11,900.00, 4 portable radios@\$14,800.00, 1- Base station-7 desk set @\$27,250.00. for a total of \$53,950.00, this includes installation costs.

Southern Shores Police Department
Radio Replacement/Upgrade through 2025

21- 2022

3 Mobile car radios – \$11,300 (\$3,376.00 each) + \$600.00 (total install)

4 portable radios – \$14,800 (\$3700.00 each)

Base stations at PD – \$27,000.00 (includes Base Station - Multiband Consulate, 7 Desk set systems, and \$250.00 Install)

Total = \$53,950.00

2023

3 Mobile car radios – 11,700 (3,900.00 each)

3 portable radios – 11,100 (3700.00 each)

Total = 22,800

2024

3 Mobile car radios – 11,700 (3,900.00 each)

3 portable radios – 11,100 (3700.00 each)

Total = 22,800

2025 (Year that all radios need to be TDMA compliant)

2 Mobile car radio – 7,800 (3,900 each)

1 portable radio – 3,700 (3,700.00 each)

Total = 11,500

North Carolina VIPER Radio Communication 2025

As the North Carolina Voice Interoperability Project for Emergency Responders (VIPER) continues to grow in size, it is important that the system remains at the forefront of the technological improvements afforded to our end users. In order to maintain our technological timelines and to be able to make the most efficient use of the resources that we have available, VIPER must begin to address our ability to implement new capabilities to ensure that we are ready for not only the continued growth of the system but also for future system enhancements.

Under our current Project 25 (P25) system architecture, we support digital operation using the Frequency Division Multiple Access or FDMA technology. As VIPER completes the migration of our current Motorola Quantar base stations to the replacement GTR base stations, VIPER will be in a position to support P25 Phase 2 operation utilizing Time Division Multiple Access or TDMA operation. TDMA would allow us to divide each channel on the system that supports voice radio traffic into two separate talk “paths”, each supporting a unique voice radio conversation. This capability would allow VIPER to potentially support more concurrent voice conversations without adding additional base stations to address the need for growth.

A transition to TDMA is still some years away and many radios from both Motorola and EF Johnson that operated on the VIPER system during the years that we were operating as a Motorola SmartZone-OmniLink 4.1 system and prior to our conversion to P25 in June, 2014, are not capable of operating in a TDMA system environment. VIPER does however need to begin to plan for the future and to address the fact that end user agencies are continuing to purchase non TDMA radios on the used market and submit activation requests to add them to the VIPER system.

Effective 1 January, 2020, VIPER will no longer allow current or new VIPER end user agencies to activate non TDMA radios on the system. This would include all models from the below list of manufacturer radios;

Motorola – XTS1500, 2500 and 5000 portable radios

Motorola – XTL1500, 2500 and 5000 mobile radios

EF Johnson – 51SL/51ES portable radios

EF Johnson – 53SL/53ES mobile radios

If a current end user can demonstrate that they already had a radio of the type listed above in their inventory prior to 1 January, 2020, exceptions may be considered to activate single radios, but only as a short term swap in the case of a stolen, damaged or missing radio that was already active on the system.

****Note****, this step in our continued effort to provide the best statewide, public safety radio system possible does **not** affect any radios currently in operation on the VIPER system.

Whereas a defined timeline for a system wide transition to TDMA has yet to be finalized, VIPER feels that it would be in the best interest of all end user agencies to afford them with as much advance notice and to provide some target timelines as it relates to current and future end user subscriber devices and their capabilities for TDMA operation.

Beyond the 1 January, 2020 date and the termination of the ability to add non TDMA radios to the VIPER system, there are two other future dates along with certain technical requirements associated with those dates that must be considered;

- Effective 1 July, 2022 all radios being added to the VIPER system must be ready to receive TDMA programming. It is extremely important that our end users understand exactly what this means. Many manufacturers radios may be capable of TDMA operation but were not ordered with the “feature” enabled from the factory. These radios will need to be modified in the field to add the TDMA feature, so as to be “ready” for a transition to TDMA in the future.
- Effective 1 July, 2025 all radios currently active on the VIPER system, along with all future additions to the system shall be ready to receive TDMA programming.

VIPER respects that these dates may represent challenges to our end users, especially in the area of funding since replacement radios or upgrades to existing radios will be necessary. However it is also important to consider that the system continues to grow and in order to maintain VIPER’s current level of system busies, that a move to TDMA operation would be the most cost effective manner to address future growth and system health.

VIPER would strongly recommend that as soon as feasibly possible, that end user agencies consider purchasing new radios with the TDMA operation already included in the radios features, so that it is not necessary to have to revisit radios to add the TDMA feature in advance of the above listed dates.

VIPER has created a new email address specifically for TDMA related questions regarding this memorandum and any other VIPER TDMA related items. Please utilize vipер-tdma@ncshp.org for any TDMA related inquiries.

**Town of Southern Shores
Budget Amendment Number # 27**

Police Increases			Police Decreases		
Account Number	Description	Amount	Account Number	Description	Amount
40-34400	<u>Revenues</u> Land Transfer Tax	\$53,950			
51-50151	<u>Expenditures</u> Equipment Purchase	\$53,950			

Explanation: To purchase Police Dept. radio replacement/upgrade to comply with NC VIPER project

Recommended By:

Cliff Ogburn, Town Manager

Approved By:

Tom Bennett, Mayor

Date _____

File Attachments for Item:

13. Public Works Equipment Purchase



AGENDA ITEM SUMMARY FORM

MEETING DATE: May 4, 2021

ITEM TITLE: Public Works Equipment Purchase

ITEM SUMMARY:

Public Works would like to purchase a Toro Dingo TX 1000 Wide Track, 4-in-1 bucket, grapple rake, brush mower, and dump trailer with ramps. This piece of equipment is a skid steer loader with the operator riding at the rear. The 4-in-1 bucket functions like a standard bucket but can open and close for more versatility. The grapple rake is a heavy-duty attachment capable of lifting logs, brush and other materials. The brush mower handles vegetation that a regular mower is not designed for. The dump trailer with ramps will serve as transportation for the equipment and will be used to move material/debris. This piece of equipment will allow Public Works to work more efficiently and safely.

STAFF RECOMMENDATION:

I recommend that the Council approve staff to purchase the requested equipment and attachments.

REQUESTED ACTION:

Motion for Council approve staff to purchase the requested equipment and attachments.

**Town of Southern Shores
Budget Amendment Number # 26**

Public Works Increases			Public Works Decreases		
Account Number	Description	Amount	Account Number	Description	Amount
40-34400	<u>Revenues</u> Land Transfer Tax	\$53,000			
59-50151	<u>Expenditures</u> Equipment Purchase	\$53,000			

Explanation: To purchase a mini skid steer and attachments and also a trailer for skid steer

Recommended By:

Cliff Ogburn, Town Manager

Approved By:

Tom Bennett, Mayor

Date _____

File Attachments for Item:

14. Public Hearing-Town Code Amendment -21-03 Subdivisions



AGENDA ITEM SUMMARY FORM

MEETING DATE: May 4, 2021

ITEM TITLE: Town Code Amendment -21-03 Subdivisions

ITEM SUMMARY:

At the March 2, 2021 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. The proposed amendments to Chapter 30, Subdivisions are a result of State Law changes. The first is an amendment as a result of S.L. 2017-10 to the current definition of Subdivision which establishes an exemption for the division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes. The second amendment is a replacement of Section 30-43, Alternatives to Final Plat Approval as a result of S.L. 2015-187 that addresses performance guarantees. The third amendment is the addition of Section 30-44, Expedited Review which is a result of S.L. 2017-10 that establishes an expedited review of qualifying subdivisions that can be reviewed and approved by the Zoning Administrator.

STAFF RECOMMENDATION:

Approval of TCA-21-03 Subdivisions.

REQUESTED ACTION:

If Council is inclined to approve TCA-21-03, a motion to do so is requested.

STAFF REPORT

To: Southern Shores Town Council
Date: May 4, 2021
Case: TCA-21-03
Prepared By: Wes Haskett, Deputy Town Manager/Planning Director

GENERAL INFORMATION

Applicant: Town of Southern Shores

Requested Action: Amendment of the Town Subdivision Ordinance by amending Section 30-2, Definitions; Section 30-43, Alternatives to Final Plat Approval; and addition of Section 30-44, Expedited Review.

ANALYSIS

At the March 2, 2021 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. The proposed amendments to Chapter 30, Subdivisions are a result of State Law changes. The first is an amendment as a result of S.L. 2017-10 to the current definition of Subdivision which establishes an exemption for the division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes. The second amendment is a replacement of Section 30-43, Alternatives to Final Plat Approval as a result of S.L. 2015-187 that addresses performance guarantees. The third amendment is the addition of Section 30-44, Expedited Review which is a result of S.L. 2017-10 that establishes an expedited review of qualifying subdivisions that can be reviewed and approved by the Zoning Administrator.

The Town's currently adopted Land Use Plan contains the following Policy that is applicable to the proposed TCA:

- **Policy 2:** The community values and the Town will continue to comply with the founder's original vision for Southern Shores: a low-density residential community comprised of single-family dwellings on large lots (served by a small commercial district for convenience shopping and services located at the southern end of the Town. This blueprint for land use naturally protects environmental resources and fragile areas by limiting development and growth.

RECOMMENDATION

Town Staff has determined that the proposed amendments are consistent with the Town's currently adopted Land Use Plan and Town Staff recommends approval of the proposed TCA. The Town Planning Board unanimously (6-0) recommended approval of the application with amendments at the April 19, 2021 Planning Board meeting.



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

PB TCA-21-03

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160D-801, the Town of Southern Shores (the "Town") may enact and amend ordinances regulating the subdivision of land within its planning and development regulation jurisdiction. Pursuant to this authority, the Town has adopted a comprehensive subdivision ordinance (the "Town's Subdivision Ordinance") and has codified the same as Chapter 30 of the Town's Code of Ordinances (the "Town Code"); and

WHEREAS, the Town further finds that in accordance with the finding above it is in the interest of and not contrary to the public's health, safety, and general welfare for the Town to amend the Town's Subdivision Ordinance and Town Code of Ordinances as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, 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 an ellipses ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of Subdivision Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Southern Shores, North Carolina, that the Town Code shall be amended as follows:

PART I. That **Sec. 30-2. Definitions.** Be amended as follows:

Sec. 30-2. Definitions.

Subdivision means all divisions of a tract or parcel of land into two or more lots, building sites or other divisions when any one or more of those divisions are created for the purpose of sale or building development (whether immediate or future), and shall include all divisions of land involving the dedication of a new street or a change in

existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this chapter:

- (1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the town as required by this chapter.
- (2) The division of land into parcels greater than ten acres if no street right-of-way dedication is involved.
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets.
- (4) The division of a tract of land in single ownership, the entire area of which is no greater than two acres, into not more than three lots, where no street right-of-way dedication is involved, and if the resultant lots are equal to or exceed the standards of the town as required by this chapter.
- (5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

PART II. That **Sec. 30-43. Alternatives to Final Plat Approval.** be deleted and replaced in its entirety as follows:

Sec. 30-43. - Alternatives to final plat approval.

~~As an alternative to complying with the provisions of this article prior to approval of the final plat, the town council may accept one of the following as guarantee that required improvements will be completed prior to offering lots in subject subdivision for sale:~~

- ~~(1) — Surety bond, with a corporation licensed to do business in the state.~~
- ~~(2) — Guaranteed letter of credit.~~
- ~~(3) — Cash deposit.~~

~~The amount of guarantee instrument shall be equal to the estimated cost of improvements plus 20 percent of that amount. Only the above three alternatives are acceptable as guarantees of improvements and no others.~~

As an alternative to complying with the provisions of this article prior to approval of the final plat, the Town Council may accept a guarantee that required improvements will be completed prior to offering lots in subject subdivision for sale. The standards in this section shall set out the procedures and requirements for posting and completing installation of required public improvements in accordance with this Town Code.

- (a) A performance guarantee, prepared in accordance with the standards in this section, shall be required to ensure the completion of public infrastructure improvements that are required as part of an approved preliminary plat, but that are not approved as complete before approval of a final plat.

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
- (b) The term of the performance guarantee shall reflect any time limit for completing installation of required improvements that is included in the preliminary or final plat, as appropriate, but in any case, the term shall not exceed 18 months. The Town Manager (or a designee), for good cause shown, may grant up to one extension of time, for a time period not exceeding one year.
 - (c) The applicant shall propose the form(s) of the performance guarantee, which shall be provided in one or more of the following forms:
 - (1) Cash, irrevocable letter of credit, or equivalent security
 - (a) The developer shall deposit cash, or other instrument readily convertible into cash at face value, such as an irrevocable letter of credit, either with the Town or in escrow with a financial institution.
 - (b) If cash or other instrument is deposited in escrow with a financial institution, an agreement between the financial institution and the developer shall be filed with the Town guaranteeing the following:
 - (i) That the escrow account shall be held in trust until released by the Town and may not be used or pledged by the developer for any other matter during the term of the escrow; and
 - (ii) That in case of a failure on the part of the developer to complete or repair the improvements, the financial institution shall, upon notification by the Town, immediately pay the funds deemed necessary by the Town to complete or repair the improvements up to the full balance of the escrow account, or deliver to the Town any other instruments fully endorsed or otherwise made payable in full to the Town.
 - (c) The financial institution holding the cash or other instrument shall indicate to the Town its notification requirements for release or payment of funds.
 - (2) Surety bond
 - (a) The developer shall obtain a surety bond from a surety bonding company authorized to issue surety bonds in North Carolina.
 - (b) The bond shall be payable to the Town and shall be in an amount as required by this section.
 - (d) The performance guarantee shall distinguish between the portion of the guarantee provided for public improvements as well as the portion of the guarantee provided for private improvements, as appropriate.
 - (e) The performance guarantee shall be conditioned on the performance of all work necessary to complete the installation of the required improvements within the term of the financial guarantee.

- 1
2 (f) The performance guarantee shall be conditioned on the performance of all work
3 necessary to complete the installation of the required improvements within the term
4 of the performance guarantee.
5
- 6 (g) Performance guarantees shall be in an amount equal to 125 percent of the estimated
7 cost of completing the installation of the required improvements, including the
8 costs of materials, labor, and project management.
9
- 10 (h) Estimated costs of completing installation of required public improvements shall
11 be itemized by improvement type and certified by the developer's licensed
12 professional engineer, and is subject to approval by the Town Manager (or a
13 designee).
14
- 15 (i) The Town Manager (or a designee), as appropriate, shall release or reduce a
16 performance guarantee only after:
17
- 18 (1) The owner or developer has submitted to the Town a written request for
19 a release or reduction of the performance guarantee that includes
20 certification by the owner's or developer's engineer or contractor,
21 whichever is appropriate, that installation of the guaranteed
22 improvements has been completed in accordance with approved plans
23 and specifications, and as-builts (if applicable);
24
- 25 (2) The Town Manager (or a designee) has performed an inspection of the
26 improvements and certified in writing that installation of the guaranteed
27 improvements is completed in accordance with approved plans and
28 specifications; and
29
- 30 (3) No release or reduction in performance guarantee amounts will be
31 considered until more than 25 percent of the work is in place and
32 approved.
33
- 34 (j) The Town Manager (or a designee) shall provide written notice of the Town's final
35 acceptance of the improvements subject to performance guarantees.
36
- 37 (k) If the owner or developer fails to complete installation of the guaranteed
38 improvements within the term of the performance guarantee (as may be extended),
39 the Town Manager (or a designee) shall give the owner or developer 30 days written
40 notice of the scope and degree of the default, by certified mail.
41
- 42 (l) After the 30-day notice period expires, the Town may draw on the guarantee and
43 use the funds to perform work necessary to complete installation of the guaranteed
44 improvements. After completing such work, the Town shall provide a complete
45 accounting of the expenditures to the owner or developer. In the event of a default
46 triggering the use of the financial guarantee, the Town shall return any of the unused

deposited cash funds or other security.

PART III. That **Sec. 30-44. Expedited Review.** be added as follows:

Sec. 30-44. – Expedited Review.

The Town may require only a final plat, subject to review and approval by the Zoning Administrator, for the division of a tract or parcel of land in single ownership if all of the following criteria are met:

- (a) The tract or parcel to be divided is not exempted under Section 30-2 in the definition of subdivision;
- (b) No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division;
- (c) The entire area of the tract or parcel to be divided is greater than 5 acres;
- (d) After division, no more than three lots result from the division;
- (e) After division, all resultant lots comply with all of the following.
 - (1) All lot dimension size requirements of the applicable land-use regulations, if any;
 - (2) The use of the lots is in conformity with the applicable zoning requirements, if any;
 - (3) A permanent means of ingress and egress is recorded for each lot.

ARTICLE IV. Statement of Consistency with Comprehensive Plan and Reasonableness.

The Town's adoption of this ordinance amendment is consistent with the Town's adopted comprehensive zoning ordinance, land use plan and any other officially adopted plan that is applicable. For all of the above-stated reasons and any additional reasons supporting the Town's adoption of this ordinance amendment, the Town considers the adoption of this ordinance amendment to be reasonable and in the public interest.

ARTICLE V. Severability.

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

ARTICLE VI. Effective Date.

This ordinance amendment shall be in full force and effect from and after the ____ day of _____, 2021.

Tom Bennett, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted:

Motion to adopt by Councilmember:

Motion seconded by Councilmember:

Vote: __AYES__NAYS

File Attachments for Item:

15. Public Hearing-Town Code Amendment -21-04 AO Zone RFPE



AGENDA ITEM SUMMARY FORM

MEETING DATE: May 4, 2021

ITEM TITLE: Town Code Amendment -21-04 AO Zone RFPE

ITEM SUMMARY:

The Town is currently in the process of preparing for a CRS (Community Rating System) cycle visit that typically occurs every five years. The Town's last cycle visit was in 2015 and the Town's current CRS rating is a Class 6 which allows for a 20% discount on flood policies in the Town. The reviewing agency recently brought to our attention that there is an issue with our current flood ordinance that would limit us to a Class 9 community which are only allowed a 5% discount on flood policies. The issue is an addendum to the CRS requirements that went into effect on January 1, 2021 that requires communities to have at least one foot of freeboard in flood ordinances in order to qualify as a Class 8 or better community. For AE and VE flood zones, our current elevation requirements satisfy the new CRS requirement, but our AO flood zone elevation requirements do not. Town Staff has confirmed with the reviewing agency that the proposed amendment would satisfy the new freeboard requirement and make us eligible to maintain or improve our current CRS rating.

STAFF RECOMMENDATION:

Approval of TCA-21-04 AO Zone RFPE.

REQUESTED ACTION:

If Council is inclined to approve TCA-21-04, a motion to do so is requested.

STAFF REPORT

To: Southern Shores Town Council
Date: May 4, 2021
Case: TCA-21-04
Prepared By: Wes Haskett, Deputy Town Manager/Planning Director

GENERAL INFORMATION

Applicant: Town of Southern Shores

Requested Action: Amendment of the Town Flood Damage Prevention Ordinance by amending Section 16-2, Definitions.

ANALYSIS

The Town is currently in the process of preparing for a CRS (Community Rating System) cycle visit that typically occurs every five years. The Town's last cycle visit was in 2015 and the Town's current CRS rating is a Class 6 which allows for a 20% discount on flood policies in the Town. The reviewing agency recently brought to our attention that there is an issue with our current flood ordinance that would limit us to a Class 9 community which are only allowed a 5% discount on flood policies. The issue is an addendum to the CRS requirements that went into effect on January 1, 2021 that requires communities to have at least one foot of freeboard in flood ordinances in order to qualify as a Class 8 or better community. For AE and VE flood zones, our current elevation requirements satisfy the new CRS requirement, but our AO flood zone elevation requirements do not. Town Staff has confirmed with the reviewing agency that the proposed amendment would satisfy the new freeboard requirement and make us eligible to maintain or improve our current CRS rating.

The Town's currently adopted Land Use Plan contains the following Policy and Action Item that are applicable to the proposed TCA:

- **Policy 18:** Minimize and mitigate potential damages to individual properties from natural hazards.
- **Action Item 18-b:** While considering resources needed, seek the most points available from the Community Rating System to keep flood insurance costs to the citizens as low as possible.

RECOMMENDATION

Town Staff has determined that the proposed amendment is consistent with the Town's currently adopted Land Use Plan and Town Staff recommends approval of the proposed TCA. The Town Planning Board unanimously (6-0) recommended approval of the application at the April 19, 2021 Planning Board meeting.



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

TCA-21-04

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, the Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare; and

WHEREAS, the floodprone areas within the jurisdiction of the Town of Southern Shores are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare; and

WHEREAS, these flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in floodprone areas of uses vulnerable to floods or other hazards; and

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, and general welfare for the Town to amend the Town's Subdivision Ordinance and Town Code of Ordinances as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, 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 an ellipses ("...") 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 of the Town of Southern Shores, North Carolina, that the Town Code shall be amended as follows:

PART I. That **Sec. 16-2. Definitions.** Be amended as follows:

Sec. 16-2. Definitions.

...

Regulatory flood protection elevation (RFPE) means in special flood hazard areas, the "base flood elevation" plus the "freeboard" for those areas where base flood elevations have been determined on the FIRM. It also means the base flood depth above the highest adjacent grade or local elevation standards for those areas identified as AO zones of the FIRM, or the local elevation standard for those areas identified as shaded X or X zones on the FIRM.

For Southern Shores the RFPE is as follows:

◦In VE zones, the RFPE is the base flood elevation as designated on the effective FIRM plus three feet of freeboard or an elevation to a minimum of 14 feet NAVD 1988.

◦In AE zones, the RFPE is the Base Flood Elevation as designated on the effective FIRM plus three feet of freeboard or an elevation to or above eight feet NAVD 1988, whichever is greater.

◦In AO zones, the RFPE is the designated base flood depth on the effective FIRM above the highest natural adjacent grade plus one foot of freeboard OR an elevation to or above eight feet NAVD 1988, whichever is greater.

◦In shaded X and X zones, the RFPE is eight feet NAVD 1988 or the natural grade elevation if the natural grade is greater than eight feet NAVD 1988.

ARTICLE IV. Statement of Consistency with Comprehensive Plan and Reasonableness.

The Town's adoption of this ordinance amendment is consistent with the Town's adopted comprehensive zoning ordinance, land use plan and any other officially adopted plan that is applicable. For all of the above-stated reasons and any additional reasons supporting the Town's adoption of this ordinance amendment, the Town considers the adoption of this ordinance amendment to be reasonable and in the public interest.

ARTICLE V. Severability.

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

ARTICLE VI. Effective Date.

1 This ordinance amendment shall be in full force and effect from and after the ____ day of
2 _____, 2021.

3
4
5 _____
6 Tom Bennett, Mayor

7 ATTEST:

8 _____
9 Town Clerk

10
11
12 APPROVED AS TO FORM:

13
14 _____
15 Town Attorney

16
17 Date adopted:

18
19 _____
20 Motion to adopt by Councilmember:

21 _____
22 Motion seconded by Councilmember:

23
24
25
26 Vote: __AYES__NAYS

File Attachments for Item:

16. Public Hearing-Zoning Text Amendment -21-01 Minimum Living Space and Protest Petitions



AGENDA ITEM SUMMARY FORM

MEETING DATE: May 4, 2021

ITEM TITLE: Zoning Text Amendment -21-01 Minimum Living Space and Protest Petitions

ITEM SUMMARY:

At the March 2, 2021 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. The proposed amendments to Section 36-202, RS-1 Single Family Residential District; Section 36-203, RS-8, Multifamily Residential District; 36-204, RS-10 Residential District; Section 36-205, R-1 Low-density Residential District; and Chapter 36, Article XIV, Changes and Amendments are a result of State Law changes. The first proposed amendment is an amendment as a result of S.L. 2019-174 which states that zoning ordinances may not set a minimum square footage of any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings. The proposed amendment to Chapter 36, Article XIV, Changes and Amendments is an amendment as a result of S.L. 2015-160 which eliminated protest petitions.

STAFF RECOMMENDATION:

Approval of ZTA-21-01 Minimum Living Space and Protest Petitions.

REQUESTED ACTION:

If Council is inclined to approve ZTA-21-01, a motion to do so is requested.

STAFF REPORT

To: Southern Shores Town Council
Date: May 4, 2021
Case: ZTA-21-01
Prepared By: Wes Haskett, Deputy Town Manager/Planning Director

GENERAL INFORMATION

Applicant: Town of Southern Shores

Requested Action: Amendment of the Town Zoning Ordinance by amending Section 36-202, RS-1 Single Family Residential District; Section 36-203, RS-8, Multifamily Residential District; 36-204, RS-10 Residential District; Section 36-205, R-1 Low-density Residential District; and Chapter 36, Article XIV, Changes and Amendments.

ANALYSIS

At the March 2, 2021 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. The proposed amendments to Section 36-202, RS-1 Single Family Residential District; Section 36-203, RS-8, Multifamily Residential District; 36-204, RS-10 Residential District; Section 36-205, R-1 Low-density Residential District; and Chapter 36, Article XIV, Changes and Amendments are a result of State Law changes. The first proposed amendment is an amendment as a result of S.L. 2019-174 which states that zoning ordinances may not set a minimum square footage of any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings. The proposed amendment to Chapter 36, Article XIV, Changes and Amendments is an amendment as a result of S.L. 2015-160 which eliminated protest petitions.

The Town's currently adopted Land Use Plan contains the following Policy and that is applicable to the proposed ZTA:

- **Policy 2:** The community values and the Town will continue to comply with the founder's original vision for Southern Shores: a low-density residential community comprised of single-family dwellings on large lots (served by a small commercial district for convenience shopping and services located at the southern end of the Town. This blueprint for land use naturally protects environmental resources and fragile areas by limiting development and growth.

RECOMMENDATION

Town Staff has determined that the proposed amendments are consistent with the Town's currently adopted Land Use Plan and Town Staff recommends approval of the proposed ZTA. The Town Planning Board unanimously (6-0) recommended approval of the application at the April 19, 2021 Planning Board meeting.



Town of Southern Shores

Item 16.

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

PLANNING BOARD GENERAL APPLICATION FORM TOWN OF SOUTHERN SHORES, NC 27949

Date: 4 / 5 / 21

Filing Fee: \$200

Receipt No. N/A

Application No. ZTA-21-01

NOTE: The Planning Board will follow the specific provisions of the Zoning Ordinance Chapter 36. Article X Administration and Enforcement, Section 36-299.

Please check the applicable Chapter/Article:

- ☐ Chapter 30. Subdivisions-Town Code
- ☐ Chapter 36. Article VII. Schedule of District Regulations. Section 36-207 C-General Commercial District
- ☐ Chapter 36. Article IX. Planned Unit Development (PUD)
- ☐ Chapter 36. Article X. Administration and Enforcement, Section 36-299 (b) Application for Building Permits and Site Plan Review other than one and two family dwelling units *
- ☐ Chapter 36. Article X. Section 36-300-Application for Permit for Conditional Use
- ☐ Chapter 36. Article X. Section 36-303 Fees
- ☒ Chapter 36. Article X. Section 36-304-Vested Rights
- ☒ Chapter 36. Article XIV. Changes and Amendments

Certification and Standing: As applicant of standing for project to be reviewed I certify that the information on this application is complete and accurate.

Applicant

Name Town of Southern Shores

Address: 5375 N. Virginia Dare Trl.
Southern Shores, NC 27949

Phone (252) 261-2394 Email whaskett@southernshores-nc.gov

Applicant's Representative (if any)

Name _____

Agent, Contractor, Other (Circle one)

Address _____

Phone _____ Email _____

Property Involved: ___ Southern Shores ___ Martin's Point (Commercial only)

Address: _____ Zoning district _____

Section _____ Block _____ Lot _____ Lot size (sq.ft.) _____

Request: ___ Site Plan Review ___ Final Site Plan Review ___ Conditional Use ___ Permitted Use
___ PUD (Planned Unit Development) ___ Subdivision Ordinance ___ Vested Right ___ Variance

Change To: ___ Zoning Map ☒ Zoning Ordinance

W. H. Hunt
Signature

4-5-21
Date

* Attach supporting documentation.



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

ZTA-21-01

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160D-701, the Town of Southern Shores (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction. Pursuant to this authority and the additional authority granted by N.C.G.S. § 160D-702, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 36 of the Town's Code of Ordinances (the "Town Code"); and

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, and general welfare for the Town to amend the Town's Zoning Ordinance as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, 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 an ellipses ("...") 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 of the Town of Southern Shores, North Carolina, that the Town Code shall be amended as follows:

PART I. That **Sec. 36-202. RS-1 single family residential district.** Be amended as follows:

...

(d) Dimensional requirements

...

(8) ~~Minimum living space: 1,000 square feet of enclosed living space.~~

(98) Maximum size of single-family dwelling: Single-family dwellings shall not exceed 6,000 square feet of enclosed living space.

...

PART II. That **Sec. 36-203. RS-8 multifamily residential district.** Be amended as follows:

...

(d) Dimensional requirements

...

~~(9) Minimum living space: 1,000 square feet of enclosed living space.~~

(109) Maximum size of single-family dwelling: Single-family dwellings shall not exceed 6,000 square feet of enclosed living space.

PART III. That **Sec. 36-204. RS-10 residential district.** Be amended as follows:

...

(d) Dimensional requirements

...

~~(9) Minimum living space: 1,000 square feet of enclosed living space.~~

(109) Maximum size of single-family dwelling: Single-family dwellings shall not exceed 6,000 square feet of enclosed living space.

PART IV. That **Sec. 36-205. R-1 low-density residential district.** Be amended as follows:

...

(d) Dimensional requirements

...

~~(9) Minimum living space: 1,000 square feet of enclosed living space.~~

(109) Maximum size of single-family dwelling: Single-family dwellings shall not exceed 6,000 square feet of enclosed living space.

PART IV. That **Chapter 36, Article XIV. CHANGES AND AMENDMENTS.** Be deleted in its entirety as follows:

~~Sec. 36-415. -- Protest to zoning district changes.~~

~~If a petition opposing a change in the zoning classification of any property is filed with the town, then the proposed amendment may be adopted only by a favorable vote of three-fourths of the council membership. For purposes of this section, vacant positions on the council and members who are excused from voting shall not be considered "members of the council" for calculation for the requisite supermajority. To trigger the three-fourths vote requirement, the petition must:~~

~~(1) -- Be signed by the owners of either:~~

~~a. -- Twenty percent or more of the area included in the proposed change; or~~

~~b. -- Five percent of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100-foot wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel.~~

~~In the absence of evidence to the contrary, the town may rely on the county tax listing to determine the "owners" of potentially qualifying areas.~~

~~(2) -- Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.~~

~~(3) -- Be received by the town clerk in sufficient time to allow the town at least two normal working days before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.~~

~~A person who has signed a protest petition may withdraw his name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.~~

~~...~~

PART V. That **Chapter 36, Article XIV. CHANGES AND AMENDMENTS.** Be amended as follows:

Sec. 36-4165. - Planning board action.

~~...~~

PART VI. That Chapter 36, Article XIV. CHANGES AND AMENDMENTS. Be amended as follows:

Sec. 36-4176. - Fee.

...

ARTICLE IV. Statement of Consistency with Comprehensive Plan and Reasonableness.

The Town's adoption of this ordinance amendment is consistent with the Town's adopted comprehensive zoning ordinance, land use plan and any other officially adopted plan that is applicable. For all of the above-stated reasons and any additional reasons supporting the Town's adoption of this ordinance amendment, the Town considers the adoption of this ordinance amendment to be reasonable and in the public interest.

ARTICLE V. Severability.

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

ARTICLE VI. Effective Date.

This ordinance amendment shall be in full force and effect from and after the ____ day of _____, 2021.

Tom Bennett, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted:

1
2
3
4
5
6
7
8
9

Motion to adopt by Councilmember:

Motion seconded by Councilmember:

Vote:___AYES___NAYS

File Attachments for Item:

17. Public Hearing-Zoning Text Amendment- 21-02 Temporary Healthcare Structures



AGENDA ITEM SUMMARY FORM

MEETING DATE: May 4, 2021

ITEM TITLE: Zoning Text Amendment -21-02 Temporary Healthcare Structures

ITEM SUMMARY:

At the March 2, 2021 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. The proposed amendments to Section 36-168, Temporary Uses are a result of State Law changes from S.L. 2014-94 which establishes temporary health care structures as permitted accessory uses in any single-family residential zoning district on lots zoned for single-family detached dwellings.

STAFF RECOMMENDATION:

Approval of ZTA-21-02 Temporary Healthcare Structures

REQUESTED ACTION:

If Council is inclined to approve ZTA-21-02, a motion to do so is requested.

STAFF REPORT

To: Southern Shores Town Council
Date: May 4, 2021
Case: ZTA-21-02
Prepared By: Wes Haskett, Deputy Town Manager/Planning Director

GENERAL INFORMATION

Applicant: Town of Southern Shores

Requested Action: Amendment of the Town Zoning Ordinance by amending Section 36-168, Temporary Uses.

ANALYSIS

At the March 2, 2021 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. The proposed amendments to Section 36-168, Temporary Uses are a result of State Law changes from S.L. 2014-94 which establishes temporary health care structures as permitted accessory uses in any single-family residential zoning district on lots zoned for single-family detached dwellings.

The Town's currently adopted Land Use Plan contains the following Policy that is applicable to the proposed ZTA:

- **Policy 2:** The community values and the Town will continue to comply with the founder's original vision for Southern Shores: a low-density residential community comprised of single-family dwellings on large lots (served by a small commercial district for convenience shopping and services located at the southern end of the Town. This blueprint for land use naturally protects environmental resources and fragile areas by limiting development and growth.

RECOMMENDATION

Town Staff has determined that the proposed amendments are consistent with the Town's currently adopted Land Use Plan and Town Staff recommends approval of the proposed ZTA. The Town Planning Board unanimously (5-0) recommended approval of the application with amendments at the April 19, 2021 Planning Board meeting.



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

PLANNING BOARD GENERAL APPLICATION FORM TOWN OF SOUTHERN SHORES, NC 27949

Date: 4 / 5 / 21 Filing Fee: \$200 Receipt No. N/A Application No. ZTA-21-02

NOTE: The Planning Board will follow the specific provisions of the Zoning Ordinance Chapter 36. Article X Administration and Enforcement, Section 36-299.

Please check the applicable Chapter/Article:

- ☐ Chapter 30. Subdivisions-Town Code
- ☐ Chapter 36. Article VII. Schedule of District Regulations. Section 36-207 C-General Commercial District
- ☐ Chapter 36. Article IX. Planned Unit Development (PUD)
- ☐ Chapter 36. Article X. Administration and Enforcement, Section 36-299 (b) Application for Building Permits and Site Plan Review other than one and two family dwelling units *
- ☐ Chapter 36. Article X. Section 36-300-Application for Permit for Conditional Use
- ☐ Chapter 36. Article X. Section 36-303 Fees
- ☐ Chapter 36. Article X. Section 36-304-Vested Rights
- ☒ Chapter 36. Article XIV. Changes and Amendments

Certification and Standing: As applicant of standing for project to be reviewed I certify that the information on this application is complete and accurate.

Applicant

Name Town of Southern Shores

Address: 5375 N. Virginia Dare Trl.
Southern Shores, NC 27949

Phone (252) 261-2394 Email whaskett@southernshores-nc.gov

Applicant's Representative (if any)

Name _____

Agent, Contractor, Other (Circle one)

Address _____

Phone _____ Email _____

Property Involved: ☐ Southern Shores ☐ Martin's Point (Commercial only)

Address: _____ Zoning district _____

Section _____ Block _____ Lot _____ Lot size (sq.ft.) _____

Request: ☐ Site Plan Review ☐ Final Site Plan Review ☐ Conditional Use ☐ Permitted Use
☐ PUD (Planned Unit Development) ☐ Subdivision Ordinance ☐ Vested Right ☐ Variance

Change To: ☐ Zoning Map ☒ Zoning Ordinance

Wm Hunt
Signature

4-5-21
Date

* Attach supporting documentation.



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

PB ZTA-21-02

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160D-701, the Town of Southern Shores (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction. Pursuant to this authority and the additional authority granted by N.C.G.S. § 160D-702, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 36 of the Town's Code of Ordinances (the "Town Code"); and

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, and general welfare for the Town to amend the Town's Zoning Ordinance as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, 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 an ellipses ("...") 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 of the Town of Southern Shores, North Carolina, that the Town Code shall be amended as follows:

PART I. That **Sec. 36-168. Temporary uses.** Be amended as follows:

Sec. 36-168. Temporary uses.

...

(5) Temporary health care structures

(a) Structure

A temporary health care structure is one that:

- (i) Is transportable and primarily assembled at a location other than the site of installation;
- (ii) Is located on a lot with an existing single-family detached dwelling;
- (iii) Is limited to one occupant who is a mentally or physically impaired person related to the caregiver;
- (iv) Is used by a caregiver or legal guardian in providing care for one mentally or physically impaired person on property owned or occupied as the caregiver's or guardian's residence;
- (v) Has no more than 300 square feet of gross floor area;
- (vi) Is connected with water, a septic/private wastewater system, and electricity by branching service from the single-family detached dwelling;
- (vii) Has the same street address and mailbox as the existing single-family detached dwelling;
- (viii) Uses the same driveway as the existing single-family dwelling, unless the structure is accessed from a right-of-way not used by the dwelling (e.g., a rear alley or separate street access on a corner or through lot);
- (ix) Meets the dimensional standards of the zoning district for a single-family detached dwelling; and
- (x) Meets the applicable provisions in the NC State Building Code; however, is not located on a permanent foundation.

(b) Need and relationship

- (i) The occupant of the structure must be a mentally or physically impaired person that is a resident of the State who requires assistance with two or more activities of daily living (bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating) as certified in writing by a physician licensed to practice in this State.
- (ii) The caregiver must be a licensed health care professional or an individual 18 years of age or older who provides care for the mentally or physically impaired person and is a first or second degree relative of the impaired person. A first or second degree relative is a spouse, lineal ascendant, lineal descendant, sibling, uncle, aunt, nephew or niece, including half, step, and in-law relationships.

(a) Permit Conditions

- (i) Once the applicant provides sufficient proof that the temporary health care structure meets all local, State, and Federal requirements, then the temporary structure shall be permitted for a period of 12 months.
- (ii) The applicant may renew the zoning permit for a 12-month period and continue to renew it provided the applicant provides evidence of continued need and compliance with these standards.

- (iii) The Town may make permit renewal and periodic inspections of the temporary structure at reasonable times convenient to the applicant.
- (iv) No signage shall be permitted on the exterior of the temporary structure or on the lot that identifies or promotes the existence of the structure.
- (v) The temporary structure shall not be subdivided or otherwise separated in ownership from the single-family detached dwelling.
- (vi) The temporary structure shall be removed within 60 days if the impaired occupant is no longer receiving or in need of assistance.
- (vii) The temporary use permit may be revoked or other enforcement actions taken if these standards are violated.
- (viii) If the temporary health care structure is a manufactured home, it must meet all requirements established in Section 36-177.

ARTICLE IV. Statement of Consistency with Comprehensive Plan and Reasonableness.

The Town's adoption of this ordinance amendment is consistent with the Town's adopted comprehensive zoning ordinance, land use plan and any other officially adopted plan that is applicable. For all of the above-stated reasons and any additional reasons supporting the Town's adoption of this ordinance amendment, the Town considers the adoption of this ordinance amendment to be reasonable and in the public interest.

ARTICLE V. Severability.

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

ARTICLE VI. Effective Date.

This ordinance amendment shall be in full force and effect from and after the ____ day of _____, 2021.

Tom Bennett, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12

2
3
4
5
6
7
8
9
10
11
12

4
5
6
7
8
9
10
11
12

6
7
8
9
10
11
12

9
10
11
12

File Attachments for Item:

18. Public Hearing-Zoning Text Amendment-21-03 Manufactured Homes



AGENDA ITEM SUMMARY FORM

MEETING DATE: May 4, 2021

ITEM TITLE: Zoning Text Amendment -21-03 Manufactured Homes

ITEM SUMMARY:

At the March 2, 2021 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. The proposed amendments in new Section 36-177, Manufactured Homes are a result of State Law changes found in N.C.G.S. 160D-910 that establishes that manufactured housing offers affordable housing opportunities for low- and moderate-income residents of this State who could not otherwise afford to own their own home. The proposed amendment to Section 36-203, R-1 Low Density Residential District establishes Manufactured Homes as a Conditional Use in the R-1 Low Density Residential District.

STAFF RECOMMENDATION:

Approval of ZTA-21-03 Manufactured Homes

REQUESTED ACTION:

If Council is inclined to approve ZTA-21-03, a motion to do so is requested.

STAFF REPORT

To: Southern Shores Town Council
Date: May 4, 2021
Case: ZTA-21-03
Prepared By: Wes Haskett, Deputy Town Manager/Planning Director

GENERAL INFORMATION

Applicant: Town of Southern Shores

Requested Action: Amendment of the Town Zoning Ordinance by amending Section 36-203, R-1 Low Density Residential District and adding Section 36-177, Manufactured Homes.

ANALYSIS

At the March 2, 2021 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. The proposed amendments in new Section 36-177, Manufactured Homes are a result of State Law changes found in N.C.G.S. 160D-910 that establishes that manufactured housing offers affordable housing opportunities for low- and moderate-income residents of this State who could not otherwise afford to own their own home. The proposed amendment to Section 36-203, R-1 Low Density Residential District establishes Manufactured Homes as a Conditional Use in the R-1 Low Density Residential District.

The Town's currently adopted Land Use Plan contains the following Policy that is applicable to the proposed ZTA:

- **Policy 2:** The community values and the Town will continue to comply with the founder's original vision for Southern Shores: a low-density residential community comprised of single-family dwellings on large lots (served by a small commercial district for convenience shopping and services located at the southern end of the Town. This blueprint for land use naturally protects environmental resources and fragile areas by limiting development and growth.

RECOMMENDATION

Town Staff has determined that the proposed amendments are consistent with the Town's currently adopted Land Use Plan and Town Staff recommends approval of the proposed ZTA. The Town Planning Board unanimously (5-0) recommended approval of the application with amendments at the April 19, 2021 Planning Board meeting.



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

PLANNING BOARD GENERAL APPLICATION FORM TOWN OF SOUTHERN SHORES, NC 27949

Date: 4 / 5 / 21 **Filing Fee:** \$200 **Receipt No.** N/A **Application No.** ZTA-21-03

NOTE: The Planning Board will follow the specific provisions of the Zoning Ordinance Chapter 36. Article X Administration and Enforcement, Section 36-299.

Please check the applicable Chapter/Article:

- ☐ Chapter 30. Subdivisions-Town Code
- ☐ Chapter 36. Article VII. Schedule of District Regulations. Section 36-207 C-General Commercial District
- ☐ Chapter 36. Article IX. Planned Unit Development (PUD)
- ☐ Chapter 36. Article X. Administration and Enforcement, Section 36-299 (b) Application for Building Permits and Site Plan Review other than one and two family dwelling units *
- ☐ Chapter 36. Article X. Section 36-300-Application for Permit for Conditional Use
- ☐ Chapter 36. Article X. Section 36-303 Fees
- ☒ Chapter 36. Article X. Section 36-304-Vested Rights
- ☒ Chapter 36. Article XIV. Changes and Amendments

Certification and Standing: As applicant of standing for project to be reviewed I certify that the information on this application is complete and accurate.

Applicant

Name Town of Southern Shores

Address: 5375 N. Virginia Dare Trl.

Southern Shores, NC 27949

Phone (252) 261-2394 Email whaskett@southernshores-nc.gov

Applicant's Representative (if any)

Name _____

Agent, Contractor, Other (Circle one)

Address _____

Phone _____ Email _____

Property Involved: ___ Southern Shores ___ Martin's Point (Commercial only)

Address: _____ Zoning district _____

Section _____ Block _____ Lot _____ Lot size (sq.ft.) _____

Request: ___ Site Plan Review ___ Final Site Plan Review ___ Conditional Use ___ Permitted Use
___ PUD (Planned Unit Development) ___ Subdivision Ordinance ___ Vested Right ___ Variance

Change To: ___ Zoning Map **X** ___ Zoning Ordinance

W. W. H. H.
Signature

4-5-21
Date

* Attach supporting documentation.



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

PB ZTA-21-03

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160D-701, the Town of Southern Shores (the “Town”) may enact and amend ordinances regulating the zoning and development of land within its jurisdiction. Pursuant to this authority and the additional authority granted by N.C.G.S. § 160D-702, the Town has adopted a comprehensive zoning ordinance (the “Town’s Zoning Ordinance”) and has codified the same as Chapter 36 of the Town’s Code of Ordinances (the “Town Code”); and

WHEREAS, pursuant to N.C.G.S. § 160D-910, a local government may not adopt or enforce zoning regulations or other provisions that have the effect of excluding manufactured homes from the entire zoning jurisdiction or that exclude manufactured homes based on the age of the home; and

WHEREAS, also pursuant to N.C.G.S. § 160D-910, a local government may adopt and enforce appearance and dimensional criteria for manufactured homes; and

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, and general welfare for the Town to amend the Town’s Zoning Ordinance as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, 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 an ellipses (“...”) 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 of the Town of Southern Shores, North Carolina, that the Town Code shall be amended as follows:

PART I. That **Sec. 36-203. R-1 low density residential district.** be amended as follows:

1
2 **Sec. 36-203. R-1 low density residential district.**

3
4 ...

5
6 (c) *Conditional uses permitted.*

7
8 ...

9
10 (9) Manufactured homes in compliance with the requirements of section 36-177.

11
12 **PART II.** That **Sec. 36-177. Manufacture homes.** be added as follows:

13
14 **Sec. 36-177. – Manufactured homes.**

15
16 (a) Generally

17 A manufactured home on an individual lot shall comply with the following
18 requirements:

- 19
20 (1) It shall be occupied only as a single-family dwelling;
21 (2) It shall not be used solely for the purposes of storage;
22 (3) It shall be set up in accordance with the standards established by the North
23 Carolina Department of Insurance and the most current version of the State
24 of North Carolina Regulations for Manufactured/Mobile Homes;
25 (4) It shall maintain a minimum width of 16 feet;
26 (5) It shall be oriented with the longest axis parallel to the lot frontage, to the
27 maximum extent practicable;
28 (6) Towing apparatus, wheels, axles, and transporting lights shall be removed;
29 (7) With the exception of temporary health care structures, it shall include a
30 continuous, permanent masonry foundation or masonry curtain wall of solid
31 brick or brick veneer, unpierced except for required ventilation and access,
32 installed under the perimeter;
33 (8) It shall include stairs, porches, entrance platforms, ramps, and other means
34 of entrance and exit that are installed or constructed in accordance with the
35 standards set by the North Carolina State Building Code. They shall be
36 attached to the primary structure and anchored in accordance with all local,
37 State, and Federal requirements;
38 (9) It shall maintain exterior siding comparable in composition, appearance,
39 and durability to the exterior siding commonly used in standard residential
40 construction, which consists of one or more of the following: 1) Vinyl or
41 aluminum lap siding (whose reflectivity does not exceed that of flat white
42 paint); 2) Cedar or other wood siding; 3) Stucco siding; 4) Brick or stone
43 siding.
44 (10) It shall maintain a roof pitch with a minimum vertical rise of at least three
45 feet for each 12 feet of horizontal run;

(11) It shall include a roof finished with a Class C or better roofing material that is commonly used in standard residential construction;

(12) It shall provide an eave projection of no less than six inches and not greater than the other Town requirements for eaves, which may include a gutter; and

(13) Shall also comply with the requirements established in Chapter 16, Flood Damage Prevention.

ARTICLE IV. Statement of Consistency with Comprehensive Plan and Reasonableness.

The Town's adoption of this ordinance amendment is consistent with the Town's adopted comprehensive zoning ordinance, land use plan and any other officially adopted plan that is applicable. For all of the above-stated reasons and any additional reasons supporting the Town's adoption of this ordinance amendment, the Town considers the adoption of this ordinance amendment to be reasonable and in the public interest.

ARTICLE V. Severability.

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

ARTICLE VI. Effective Date.

This ordinance amendment shall be in full force and effect from and after the ____ day of _____, 2021.

Tom Bennett, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted:

1 Motion to adopt by Councilmember:
2 _____
3 Motion seconded by Councilmember:
4
5
6
7

Vote:___AYES___NAYS

File Attachments for Item:

19. Public Hearing-Zoning Text Amendment -21-04 Prohibited Uses



AGENDA ITEM SUMMARY FORM

MEETING DATE: May 4, 2021

ITEM TITLE: Zoning Text Amendment -21-04 Prohibited Uses

ITEM SUMMARY:

At the March 2, 2021 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. The proposed amendment to Section 36-163, Off-street Parking Requirements deletes the parking requirements for nursing homes since they are recommended to be prohibited. The proposed amendments in new Section 36-209, Prohibited Uses in all Districts are a result of NC Court of Appeals rulings regarding the need to identify prohibited uses. The proposed amendments include a list of prohibited uses, how to address unlisted uses, and rejection of proposals for uses that are not clearly prohibited.

STAFF RECOMMENDATION:

Approval of ZTA-21-04 Prohibited Uses

REQUESTED ACTION:

If Council is inclined to approve ZTA-21-04, a motion to do so is requested.

STAFF REPORT

To: Southern Shores Town Council
Date: May 4, 2021
Case: ZTA-21-04
Prepared By: Wes Haskett, Deputy Town Manager/Planning Director

GENERAL INFORMATION

Applicant: Town of Southern Shores

Requested Action: Amendment of the Town Zoning Ordinance by amending Section 36-163, Off-street Parking Requirements and adding Section 36-209, Prohibited Uses in all Districts.

ANALYSIS

At the March 2, 2021 Town Council meeting, the Town Council instructed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. The proposed amendment to Section 36-163, Off-street Parking Requirements deletes the parking requirements for nursing homes since they are recommended to be prohibited. The proposed amendments in new Section 36-209, Prohibited Uses in all Districts are a result of NC Court of Appeals rulings regarding the need to identify prohibited uses. The proposed amendments include a list of prohibited uses, how to address unlisted uses, and rejection of proposals for uses that are not clearly prohibited.

The Town's currently adopted Land Use Plan contains the following Policy that is applicable to the proposed ZTA:

- **Policy 2:** The community values and the Town will continue to comply with the founder's original vision for Southern Shores: a low-density residential community comprised of single-family dwellings on large lots (served by a small commercial district for convenience shopping and services located at the southern end of the Town. This blueprint for land use naturally protects environmental resources and fragile areas by limiting development and growth.

RECOMMENDATION

Town Staff has determined that the proposed amendments are consistent with the Town's currently adopted Land Use Plan and Town Staff recommends approval of the proposed ZTA. The Town Planning Board unanimously (6-0) recommended approval of the application with amendments at the April 19, 2021 Planning Board meeting. The Board also recommended that the Town consider allowing produce stands and requirements for them.



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

PLANNING BOARD GENERAL APPLICATION FORM TOWN OF SOUTHERN SHORES, NC 27949

Date: 4 / 5 / 21 Filing Fee: \$200 Receipt No. N/A Application No. ZTA-21-04

NOTE: The Planning Board will follow the specific provisions of the Zoning Ordinance Chapter 36. Article X Administration and Enforcement, Section 36-299.

Please check the applicable Chapter/Article:

- ☐ Chapter 30. Subdivisions-Town Code
- ☐ Chapter 36. Article VII. Schedule of District Regulations. Section 36-207 C-General Commercial District
- ☐ Chapter 36. Article IX. Planned Unit Development (PUD)
- ☐ Chapter 36. Article X. Administration and Enforcement, Section 36-299 (b) Application for Building Permits and Site Plan Review other than one and two family dwelling units *
- ☐ Chapter 36. Article X. Section 36-300-Application for Permit for Conditional Use
- ☐ Chapter 36. Article X. Section 36-303 Fees
- ☒ Chapter 36. Article X. Section 36-304-Vested Rights
- ☒ Chapter 36. Article XIV. Changes and Amendments

Certification and Standing: As applicant of standing for project to be reviewed I certify that the information on this application is complete and accurate.

Applicant

Name Town of Southern Shores

Address: 5375 N. Virginia Dare Trl.
Southern Shores, NC 27949

Phone (252) 261-2394 Email whaskett@southernshores-nc.gov

Applicant's Representative (if any)

Name _____

Agent, Contractor, Other (Circle one)

Address _____

Phone _____ Email _____

Property Involved: ___ Southern Shores ___ Martin's Point (Commercial only)

Address: _____ Zoning district _____

Section _____ Block _____ Lot _____ Lot size (sq.ft.) _____

Request: ___ Site Plan Review ___ Final Site Plan Review ___ Conditional Use ___ Permitted Use
___ PUD (Planned Unit Development) ___ Subdivision Ordinance ___ Vested Right ___ Variance

Change To: ___ Zoning Map ☒ Zoning Ordinance

W. Whaskett
Signature

4-5-21
Date

* Attach supporting documentation.



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

PB ZTA-21-04

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160D-701, the Town of Southern Shores (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction. Pursuant to this authority and the additional authority granted by N.C.G.S. § 160D-702, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 36 of the Town's Code of Ordinances (the "Town Code"); and

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, and general welfare for the Town to amend the Town's Zoning Ordinance as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, 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 an ellipses ("...") 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 of the Town of Southern Shores, North Carolina, that the Town Code shall be amended as follows:

PART I. That Sec. 36-163. - Off-street parking requirements. be amended as follows:

Sec. 36-163. Off-street parking requirements.

...

(4) *Minimum parking requirements.* The number of off-street parking spaces required by this section shall be provided on the same lot with the principal use, or in combination with adjacent lots, provided the applicant has secured a shared parking agreement, and

conditional use permit, as described in subsection 36-163(1)j., and the required number of off-street parking spaces specified for each use shall be considered as the absolute minimum. Where a fraction of a space is required by this article, the next whole number shall be provided. In addition, a developer shall evaluate his own needs to determine if they are greater than the minimum specified by this article.

...

b. Public and semipublic uses.

...

~~5. Nursing home: one parking space for each five beds intended for patient use, and one space for each three employees.~~

56. Public or private clubs: one parking space for each 200 square feet of gross floor space.

67. Telephone switching stations or electric substations: one parking space for each employee.

...

PART II. That **Sec. 36-209. Prohibited uses in all districts.** be added as follows:

Sec. 36-209. Prohibited uses in all districts.

(a) The following uses shall be prohibited in all districts:

1. Alcohol and Drug Detoxification, Rehabilitation, and Treatment Facilities;
2. Asphalt and Concrete Plants;
3. Bail Bond Services;
4. Bed and Breakfasts;
5. Bus, Truck, and Transportation Terminals, Yards, and Parking Lots;
6. Campgrounds;
7. Concentrated animal feeding operations;
8. Crematoriums (Human and Animal);
9. Dormitories and Residence Halls;
10. Drug Paraphernalia;
11. Electronic Gaming Operations;
12. Explosives, ammunition, fireworks, or gunpowder manufacture;
13. Fat rendering, or production of fats and oils from animal or vegetable products by boiling or distillation;
14. Fraternity and Sorority Houses;
15. Garbage, offal, or animal reduction and processing;
16. Gasoline Pumps and Sales;

17. Halfway Houses;
18. Hazardous materials handling or storage;
19. Hospitals;
20. Hotels/Resorts;
21. Jails and Prisons;
22. Jetpack rentals;
23. Junk Yards, Scrap Yards, and Salvage Facilities;
24. Landfills;
25. Manufacturing, Processing, Assembly and Other Industrial Facilities;
26. Motor Vehicle Body and Paint Establishments;
27. Motor Vehicle Dealerships;
28. Motor Vehicle Washing Establishments;
29. Night Clubs;
30. Nitrogenous tankage, fish meal or manufacture, of any fertilizer materials carrying an objectionable odor;
31. Nursing homes;
32. Outdoor advertising or billboards except where prohibition is preempted by State or federal law;
33. Outdoor shooting ranges;
34. Package treatment plant wastewater disposal systems that discharge to surface waters;
35. Pawn Shops;
36. Produce Stands;
37. Satellite Dish Farms;
38. Sexually oriented businesses;
39. Shooting Ranges;
40. Slaughterhouses;
41. Smoke and Vapor Shops;
42. Solar Energy Farms;
43. Storage or processing of radioactive or infectious waste;
44. Tattoo, Body Piercing, and Body Art Establishments;
45. Taxi and Pedicab Storage and Dispatch; or
46. Use of a boat, houseboat, or other floating structure as a temporary or permanent residence (this shall not prevent the overnight occupancy of a vessel temporarily moored while in transit on navigable waters).

(b) Classification and review of unlisted uses

The Zoning Administrator shall determine whether or not an unlisted use is substantially similar to an already defined use category or use type. A proposed use will not be denied solely because it is not included in this section. An unlisted use will be denied if the Zoning Administrator determines that the unlisted use is substantially similar to a use which is expressly prohibited. The Zoning Administrator shall use the following factors as a guideline when classifying a new or unlisted use to determine if such use is classified in a manner consistent with other similar uses in the zoning jurisdiction of the town:

1. Consistency with the stated intent of the zoning district;
2. Consistency with the adopted vision statement and policies of the Town's Land Use Plan;
3. Density of development (number of units, square footage, etc.);
4. Intensity of use consistent with the zoning district in which the use is to be located;
5. Type of activity associated with the use;
6. Number of customers and length of stay;
7. Generation of pedestrian and vehicular traffic;
8. Potential impacts such as noise, light, odor, etc.;
9. Public safety;
10. Environmental effects; and
11. Negative impacts on adjacent land uses.

(c) If the Zoning Administrator rejects a proposal for a use that is not clearly prohibited, then the Zoning Administrator will:

1. Ensure that the citizen is provided with a copy of the interpretation in writing;
2. Inform the citizen of the right to appeal the decision to the Board of Adjustment, as specified in section 36-366 of this chapter, Appeals of Administrative Decisions; and
3. Advise the applicant on the requirements for the preparation of a proposed zoning text amendment for consideration by the Planning Board and Town Council allowing policy-makers to determine whether the proposed use should be an allowable use in the district or not. Financial responsibility for a proposed zoning text change shall be on the applicant.

ARTICLE IV. Statement of Consistency with Comprehensive Plan and Reasonableness.

The Town's adoption of this ordinance amendment is consistent with the Town's adopted comprehensive zoning ordinance, land use plan and any other officially adopted plan that is applicable. For all of the above-stated reasons and any additional reasons supporting the Town's adoption of this ordinance amendment, the Town considers the adoption of this ordinance amendment to be reasonable and in the public interest.

ARTICLE V. Severability.

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining

provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the Town of Southern Shores, North Carolina which shall remain in full force and effect.

ARTICLE VI. Effective Date.

This ordinance amendment shall be in full force and effect from and after the ____ day of _____, 2021.

Tom Bennett, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted:

Motion to adopt by Councilmember:

Motion seconded by Councilmember:

Vote: __AYES__NAYS

File Attachments for Item:

20. Service Contract Renewal-Trash (Bay Disposal)



AGENDA ITEM SUMMARY FORM

MEETING DATE: May 4, 2021

ITEM TITLE: Service Contract Renewal-Trash (Bay Disposal)

ITEM SUMMARY:

The Town's current contract with Bay Disposal for collection and disposal of solid waste will expire on June 30, 2021. The contract states that it will automatically terminate at midnight on June 30, 2021, unless the Town elects to renew under negotiated terms and conditions. Bay Disposal has no objections to renewing the contract with a term expiration of June 30, 2022 and cost updates to reflect the current cost for residential and commercial collections (\$5.59 per residential unit collection stop per month and \$4,352.25 for all commercial collections).

STAFF RECOMMENDATION:

Approval of solid waste contract renewal.

REQUESTED ACTION:

If Council is inclined to approve the solid waste contract renewal, a motion to do so is requested.

THIS CONTRACT RENEWAL (the "Contract") is made and entered into this ____ day of _____, 2021, by and between Bay Disposal, LLC, a Virginia limited liability company ("Bay"); and the TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation (the "Town") (Bay and the Town may be referred to individually as a "Party and collectively as the "Parties"):

WITNESSETH:

WHEREAS the Town and Bay entered into a contract on May 16, 2016 for refuse collection services ("the Contract"); and,

WHEREAS, the Town and Bay have entered into negotiations and the parties hereto desire to renew the Contract for a term of one (1) year;

NOW THEREFORE, in consideration of these premises the parties agree as follows:

I. Bay shall collect, haul, transport, remove and dispose (hereinafter collectively referred to as "disposal") of all trash, garbage, debris, refuse and other waste matter and materials (hereinafter collectively referred to as "trash") from all residential, commercial, business, municipal and governmental premises within the corporate limits of the Town of Southern Shores, North Carolina, subject to the terms and conditions set forth herein below. Bay shall acquire title to the Waste Material when it is loaded into a Bay truck. Title to and liability for any Excluded Waste shall remain with the Town and the Town expressly agrees to defend, indemnify and hold harmless Bay from and against any and all damages, penalties, fines and liabilities resulting from or arising out of the deposit of Excluded Waste in Bay trucks, containers or other equipment. Excluded Waste includes hazardous materials, batteries, propane, paint, oil, charcoal and other flammable chemicals. The parties hereto acknowledge the solid waste disposal fees ("tipping fees") are to be paid by the Town of Southern Shores to another entity separately from this contract and are not to be paid by Bay. Any additional fees, costs or taxes imposed on the disposal of solid waste shall be the responsibility of the Town. The parties acknowledge that the consideration paid by the Town to Bay pursuant to the provisions of this contract is for the collection and disposal of solid waste.

Contractor shall furnish all personnel, labor, equipment and supervision necessary to fulfill satisfactory performance of this agreement. Contractor shall use only personnel qualified to perform the work assigned and shall see that all work is performed in an efficient and workmanlike manner.

2. The term of the contract for the disposal of such trash, shall be for a period of 12

months, commencing on **July 1, 2021** and ending at midnight on **June 30, 2022**. During such period, collection and disposal of residential trash shall be made between the hours of **3:00 A.M. and 6:00 P.M.** on the following schedule: Collection and disposal of residential trash shall be made once per week on Monday for the period of Labor Day to Memorial Day, and two days per week on Monday and Friday for the period of Memorial Day to Labor Day. Collection and disposal of commercial trash shall be made two days per week on Monday and Wednesday for the period of Labor Day to Memorial Day, and three days per week on Monday, Wednesday and Friday for the period of Memorial Day to Labor Day. If any collection day falls on a legal holiday, then such collection shall be made the next business working day. Legal holidays for the purpose of this agreement are New Year's Day, Thanksgiving Day, and Christmas Day. Other legal holidays which cause the transfer stations to be closed shall also be observed, and no collection will occur on those days; such collection will be made the next business working day. Bay will advise the Town at least four weeks in advance that collection will not occur on a day observed as a legal holiday and on which date the transfer stations will not be open to receive trash. The Town Manager and Public Works Director shall be notified immediately in the event that scheduled collection cannot be met due to mechanical or other unforeseen delays. Bay agrees that in the event of equipment breakdown, strike or any other occurrence which would delay or prevent timely performance of its obligations that it shall take all actions reasonably necessary, including but not limited to, replacement of equipment and personnel in order to assure restoration of normal service within six (6) hours from the time of occurrence.

3. The consideration for the term of this contract shall be \$5.59 per residential unit collection stop per month, and \$4,352.25 per month for the collection of all commercial customer-owned containers. Payment shall be made by the Town in equal monthly payments by the 20th day of each month, commencing July 1, 2021. The number of residential units for which the contractor shall be paid during the first year of service of this contract is 2,600. On the first anniversary date of this contract and on each subsequent anniversary date thereafter during the term of this contract, the annual consideration paid to Bay shall be increased by an amount necessary to compensate the Bay for any additional residential units.

Further, on the first anniversary date of this contract and on each subsequent anniversary date thereafter during the term of this contract, the annual consideration paid to Bay shall be increased by a percentage at least equal to the percentage change in the CPI-U "All Items"

category of the Consumer Price Index published for the most recent period prior to the date of the proposed change.

4. a} All trash will be placed in containers or receptacles owned by the property owners with lids securely closed and placed in the right-of-way adjacent to the premises of the owner or occupant, at the edge or curb of the street at a reasonably accessible location for collection.

b) Bay will not be required to dispose of trash resulting from construction of buildings and structures, land clearing debris or building demolition.

c} No trash shall be collected from steel drum containers.

d} The Town shall publish rules and regulations governing the manner in which owners or occupants of residences and businesses within the town shall store and place trash for disposal pursuant to this agreement.

5. Residential, heavy duty, two-wheeled 96-gallon lidded trash receptacles shall be provided by Bay to residents upon request for a flat fee of \$90.00 per receptacle, including delivery to the residence.

6. Where containers are rusted or otherwise so badly damaged as to be unsanitary or unsafe for handling, or not placed properly for pickup, a warning notice shall be given to the owner or occupant of the premises by the attaching of an appropriate notice to the container, and that if correction of the said condition is not made within seven (7) days by the owner or occupant, then the container and the contents will not be picked up.

7. Trash containers shall not be thrown or handled in a rough or careless manner during pickup, but shall be used and handled with care, usual wear and tear excepted, and Bay shall be liable for negligent and unnecessary damages caused to such containers and receptacles.

8. Bay shall make the trash collection in enclosed trucks or vehicles. The vehicles shall be in good working order, shall be cleaned regularly in accordance with any applicable Health Department regulations (at sites suitable, appropriate and approved for cleaning said trucks or vehicles), and shall have presentable appearance.

9. Bay shall dispose of all trash under the contract only in such manner as is permitted and authorized by law, and shall comply with all rules, regulations, and laws applicable to the disposal of trash.

10. Bay recognizes that the Town is contractually obligated, during the initial term of this contract, to commit its Waste through the Albemarle Regional Solid Waste Management Authority (of which Dare County, NC is a member) to the East Carolina Environmental Landfill

in Bertie County, North Carolina, owned and operated by Republic Services of North Carolina, LLC. Accordingly, Bay shall dispose of the Town's Waste only in such transfer or landfill facilities through which it will be committed for final disposal at the East Carolina Environmental Landfill in Bertie County, North Carolina and in compliance with the Town's aforementioned contractual obligation.

11. Bay shall maintain an office within thirty miles of the Town of Southern Shores at which a responsible person can be reached by telephone during regular working hours of 8:00 A.M. to 4:30 P.M. to answer questions about pick-up service with personnel sufficient to receive and handle complaints and to receive communication from the Town Manager or his representative. Contractor shall supply an emergency telephone number for use in the event of after hour emergencies.

Bay will maintain a complaint log form and a copy of this completed form and corrective actions taken will be submitted to the Town Manager upon request. The Bay office personnel answering the phone will take the call and receive appropriate information from each resident (name, date, phone number, address, time, comment section). The person taking the message will immediately contact the driver and receive the driver's input. The Operations Manager will also be notified by the office, and he or she will either return the phone call or go to the site of the complaint and address the complaint the same service day. Supervisors and/or the Operations Manager will be present in the service area each service day.

12. This contract is for the collection of all trash within the Town of Southern Shores from residential, commercial, business and municipal places or locations, subject to the conditions specified herein. Should the current boundaries of the Town of Southern Shores change during the term of this contract and should the number of stops increase then this contract shall be adjusted accordingly to reflect any increase in the residential, commercial, business premises receiving trash collection.

13. Bay shall be deemed an independent contractor and shall assume all liability and responsibility for any and all damages to persons and/or property resulting from the disposal of such trash, and the Town of Southern Shores shall not be liable and responsible for any such damages, from all of which Bay shall save, protect, and hold the Town harmless.

14. Changes to the type, size, and amount of equipment, the type of frequency of service, and corresponding adjustments to the rates, may be made by agreement of the parties, evidenced either in writing or by the practices and actions of the parties, without affecting the validity of this Agreement and this Agreement shall be deemed amended accordingly. This Agreement

shall continue in effect for the term provided herein and shall apply to changes of and new service address location of the Town within the area in which Bay provides collection service.

15. Bay shall remove and dispose of all trash pursuant to this Contract only in such a manner as is permitted and authorized by law, and shall comply with all rules, regulations, and laws applicable to the collection and removal of trash.

16. Bay Disposal is responsible for picking up and removing any materials that have blown out or dropped from trucks or the collection receptacles for any reason, even if a return trip is required. Leaks and spills shall be handled quickly and appropriately based on the type and amount and according to State and Federal spill response guidelines. Equipment shall be well maintained so as not to allow liquid or trash to leak or blow out of the collection equipment, understanding that even with preventative maintenance, mechanical failures will still occur and BD will respond immediately to any incidents that occur due to such failures

17. Town recognizes the difficulty of ensuring that the Town's pavement or driving surface is adequate to bear the weight of Bay vehicles. Therefore, Town agrees that Town will be responsible for any damage to Town's pavement, curbing or other driving surfaces resulting from the weight of Bay vehicles providing service at the Town location. Bay shall not be responsible for damage to any pavement surfaces within the Town's rights-of-way caused by the weight of Bay vehicles.

18. Bay shall carry the following insurance which shall be with a reputable company duly licensed to do business in North Carolina:

a) Workmen's Compensation of all employees who may be involved in any way in the performance of this contract or in services in connection therewith.

b) Commercial general liability insurance in the amount of \$1,000,000.00 combined single limit.

c) Vehicle fleet liability (business automobile coverage) in the amount of \$1,000,000.00 combined single limit.

19. If, during the term of this Agreement, either party shall be in breach of any provision of this Agreement, the other party may suspend or terminate its performance hereunder until such breach has been corrected; provided, however, that no termination shall be effective unless and until the complaining party has given written notice of such breach to the other party and the other party has failed to cure such breach within at least ten (10) days thereafter. In the event any such breach remains uncured for a period of ten (10) days, the complaining party may terminate this Agreement by giving the other party written notice of such termination; which

shall become effective upon receipt of such notice.

Item 20.

20. As of midnight, June 30, 2022, this contract shall automatically terminate unless the Town elects to renew under negotiated terms and conditions.

21. This contract shall be binding upon the parties hereto, their successors and assigns. This contract may not be assigned by Bay without prior written approval of the Town.

22. Bay values the opportunity to meet all of Town's non-hazardous waste collection and disposal needs. Town will provide Bay the opportunity to meet those needs and to provide, on a competitive basis, any additional non-hazardous waste collection and disposal services during the term of this Agreement.

23. Neither party hereto shall be liable for its failure to perform or delay in performance hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, compliance with laws or governmental orders, fires and acts of God and such failure shall not constitute a Default under this Agreement.

SIGNATURE PAGE TO FOLLOW

WITNESS the following signatures and seals, the Town of Southern Shores having caused these present to be executed by its Town Manager pursuant to a motion of the Town Council of the Town of Southern Shores duly adopted on _____, 2021.

Both the Town of Southern Shores and Bay Disposal, LLC agree to the above contract.

Bay Disposal, LLC, a Virginia limited liability company

By: _____

Name: _____

Title: _____

Town of Southern Shores, a North Carolina Municipal Corporation

By: _____

Name: _____

Title: _____

File Attachments for Item:

21. Service Contract Renewal-Recycle (Bay Disposal)



AGENDA ITEM SUMMARY FORM

MEETING DATE: May 4, 2021

ITEM TITLE: Service Contract Renewal-Recycle (Bay Disposal)

ITEM SUMMARY:

The Town's current contract with Bay Disposal for recycling collection and delivery will expire on June 30, 2021. The contract states that the term shall commence when executed and shall continue until midnight on June 30, 2021. The contract also states that it may be renewed by mutual agreement of the parties for consecutive additional one (1) year periods. Bay Disposal has agreed to renewing the contract for another one year period until June 30, 2022 with no change in price.

STAFF RECOMMENDATION:

Approval of recycling contract renewal.

REQUESTED ACTION:

If Council is inclined to approve the recycling contract renewal, a motion to do so is requested.

CONTRACT RENEWAL

THIS CONTRACT RENEWAL (the “Contract”) is made and entered into this ____ day of _____, 2021, by and between Bay Disposal, LLC, a Virginia limited liability company (“BD”); and the TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation (the “Town”) (BD and the Town may be referred to individually as a “Party and collectively as the “Parties”):

WITNESSETH:

WHEREAS, the Town and BD entered into a contract dated August 18, 2020 pursuant to which BD has been collecting and removing recycling materials from the Town (the “Original Contract”);

WHEREAS, the Original Contract allows for the contract to be renewed for one year periods;

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Services Generally.

(a) BD shall collect and remove recycling materials from all residential, commercial, business, municipal, and governmental premises within the corporate limits of the Town of Southern Shores, North Carolina, subject to the terms and conditions set forth in this Contract. BD shall acquire title to the recycling material that it collects pursuant to this Contract when BD takes possession of such material by loading it into its truck. The consideration paid by the Town to BD pursuant to this Contract is for BD (i) to collect and remove the recycling materials from the Town ; and (ii) perform such other services as are set forth in this Contract (collectively the “Services”).

(b)

(i) (A) BD shall deliver all non-contaminated recyclable materials (defined below) to RDS of Virginia, LLC, a Virginia limited liability company, with principal offices located at 623 N Witchduck Rd, Suite 108, Virginia Beach, Virginia (“RDS”), so long as RDS shall “recycle” such materials by placing them into the recycling stream, or, if RDS is not available to receive and recycle the recyclable materials, to some other recycling facility that will recycle the materials by placing them into the recycling stream, if available. If such a recycling facility is available, but BD will incur more than 10% additional cost per ton of materials to use such recycling facility, then BD shall provide the Town with sufficient information and an opportunity to decide if the Town desires for BD to use the proposed recycling facility at an additional cost per unit per month to the Town. If the cost for BD to dispose of recyclable materials decreases by more than 10% per ton, then BD shall adjust the base rate charged to the Town accordingly and make the Town aware of the change.

(B) BD shall provide the Town with at least 30-days written notice of any proposed increase in the costs to BD for the disposal of recyclable materials in a manner consistent with this Contract for which BD expects to request an increase in the base rate charged to the Town. The Town shall not be required to accept any proposed increase in the base rate.

(ii) If no recycling facility is available, as set forth in the above Section 1(b)(i), then BD may deliver the non-contaminated recycling materials to a duly permitted waste-to-energy facility, such as the Wheelabrator facility.

(iii) BD shall not dispose of any non-contaminated recyclable materials in a landfill.

(iv) For the purposes of this Contract:

(1) “Non-contaminated recycling materials” shall mean recycling materials that are sufficiently free from contamination so as to be accepted for recycling by RDS or such other recycling facility to whom BD is delivering the said materials.

(c) BD shall furnish all personnel, labor, equipment and supervision necessary to fulfill its duties under this Contract. BD shall use only personnel qualified to perform its duties under this Contract and shall see that all work is performed in an efficient and workmanlike manner. BD shall require each employee to be courteous at all times, to work quietly and shall not allow the use of loud or profane language. BD shall require each employee to work in a

diligent manner. BD shall immediately investigate any notice of employee misbehavior and take prompt and appropriate action. Any official or employee of BD who is under the influence of alcohol or drugs or demands pay from any resident of the Town for services rendered, or verbally or physically abuses any resident of a dwelling unit or an employee or agent of the Town, shall be immediately removed from work under this Contract and shall provide no other service to the Town.

(d) BD shall be responsible for payment of any and all fees, costs, or taxes imposed on the disposal of recycling materials that are collected by BD from the Town pursuant to this Contract. BD shall be entitled to retain any payments received for recycling materials collected pursuant to this Contract from RDS or such other entity to whom BD may deliver the recycling materials pursuant to the terms of this Contract.

2. **Term.** The term of the Contract shall commence when executed and shall continue until midnight on June 30, 2022. Thereafter, the term of this Contract may be renewed by mutual agreement of the parties for consecutive additional one (1) year periods.

3. **Scheduling of Recycling Collection and Bulk Pickup.**

(a) During the term of this Contract, collection and removal of all recycling materials shall be made between the hours of 3:00 a.m. and 6:00 p.m. on Wednesday, year-round. If any collection day falls on a legal holiday, then such collection shall be made the next business working day. Legal holidays for the purpose of this Contract are Memorial Day, Independence Day, Labor Day, New Year's Day, Thanksgiving Day, and Christmas Day. BD will advise the Town at least four weeks in advance that collection will not occur on a day observed as a legal holiday and on which date collection will occur. The Town Manager and Public Works Director shall be notified immediately in the event that scheduled collection cannot be met due to mechanical or other unforeseen delays. BD agrees that in the event of equipment breakdown, strike or any other occurrence which would delay or prevent timely performance of its obligations under this Contract, that it shall take all actions reasonably necessary, including but not limited to, replacement of equipment and personnel in order to assure restoration of normal service within twenty-four (24) hours from the time of occurrence.

(b) BD will perform bulk item pickup on behalf of the Town twice per year, once in the Spring and once in the Fall. Exact dates of bulk item pickup are to be scheduled with input from Town officials at a minimum of one month ahead of schedule so that the Town has adequate time to notify residents of the impending event. Items included in bulk item pickup are furniture, mattresses, appliances that do NOT contain CFCs, exercise equipment, hot tub covers, and yard and vegetative debris bagged in clear or brown paper bags. Items not included in bulk item pickup include recycling materials, basketball goal posts, televisions, construction and demolition debris including paint, gasoline, oil and other chemicals, tires, soil, rocks, concrete, and tree stumps. BD will make every attempt to complete large item pickup in one business day,

but may return to complete it on a second day immediately following the first scheduled day if it is not possible to complete the event in one day due to volume. The Town will post rules and regulations instructing residents and business owners on what is eligible for bulk item pickup.

4. **Consideration.** The consideration to be paid by the Town for the Services, other than the bulk item pickup services, provided by BD under this contract, shall be: (a) **\$5.21** per month per residential or commercial unit/location located within the Town's corporate boundaries; plus (b) **\$80.80** per ton of recyclable material collected. The consideration to be paid by the Town for each of bulk item pickup conducted pursuant to Section 3(b) shall be \$3,500 per bulk item pickup conducted throughout the Town. The cost of the bulk pickup will be revaluated based on tonnage from the two collections made in 2018-2019, and the compensation to be paid by the Town for each bulk item pickup conducted after the execution of this Contract may be altered by agreement of the parties, provided however, the price for each bulk item pickup shall not exceed \$10,258. The foregoing pricing is based on 2,395 total estimated units/locations that are providing recycle materials within the Town's corporate boundaries to be collected by BD. Either party may request that a unit/location count be performed at any time during the term of this Contract and if such revised unit/location count reflects more or fewer units, all billing for the following fiscal year shall be adjusted to apply the new total number of units/locations. BD shall invoice the Town on a monthly basis for the Services provided during the prior month. Once the Town approves each such invoice, it shall pay said invoice.

5. **Recycling Receptacles.**

(a) Residential, heavy duty, two-wheeled 95 gallon lidded recycling receptacles shall be provided by BD to residents of the Town upon request for a flat fee of \$90.00 per receptacle. BD will provide a list of property owners who have purchased receptacles to the Town upon request, including street address, name and date of purchase, and quantity of cans purchased. Extra recycling receptacles may be purchased at a cost of \$90.00 each.

(b) Any recycling receptacles provided by BD to residents under this Contract will become the property of the residents who purchase the receptacles.

(c) All recycling will be placed in proper receptacles owned by the property owners with lids securely closed and placed in the right-of-way adjacent to the premises of the owner or occupant, at the edge or curb of the street at a reasonably accessible location for collection.

(d) BD will not be required to dispose of non-recycling materials except during times of bulk item pickup.

(e) The Town shall publish rules and regulations governing the manner in which owners or occupants of residences and businesses within the Town shall store and place recycling for pickup pursuant to this Contract.

(f) Recycling receptacles shall not be thrown or handled in a rough or careless manner during collection, but shall be used and handled with care, usual wear and tear excepted, and BD shall be liable for negligent and unnecessary damages caused to such receptacles.

(g) Where receptacles containers are rusted or otherwise so badly damaged as to be unsanitary or unsafe for handling, or not placed properly for pickup, a warning notice shall be given to the owner or occupant of the premises by the attaching of an appropriate notice to the receptacle, and that if correction of the said condition is not made within seven (7) days by the owner or occupant, then the container and the contents will not be picked up; *provided, however*, if the container is so badly damaged so as to be too unsafe to be serviced, said warning notice may be provided and then the container may be omitted from pick up until such unsafe condition is corrected.

6. Office Hours; Complaints; Refusal or Failure to Collect:

(a) BD shall maintain an office at which a responsible person can be reached by telephone during regular working hours of 8:00 a.m. to 4:30 p.m. to answer questions about recycling pick-up service with personnel sufficient to receive and handle complaints and to receive communication from the Town Manager or Public Works Director. BD shall supply an emergency telephone number for use in the event of after-hour emergencies.

(b) In the event of a complaint to BD that a receptacle has not been collected or has been missed, it shall be the duty of BD to address such complaints. BD shall then take whatever steps may be necessary to remedy the complaint and steps to remedy the complaint must be taken on or before 9:30a.m. on the next business day after the complaint has been received. BD will maintain a complaint log form, and a copy of this completed form and corrective actions taken will be submitted to the Town upon request. BD office personnel answering the phone will receive call and record appropriate information from each resident (name, date, phone number, address, time, comments). The person taking the message will immediately contact the driver and receive the driver's input. BD's Operations Manager will also be notified by the office, and he or she will either return the phone call or go to the site of the complaint and address the complaint the same service day.

(c) When service is refused at any eligible dwelling unit, information shall be provided to that dwelling unit by BD describing the reasons for the refusal, included as provide in Section 5(g), and the appropriate remedial action which must be taken in order to have the bin collected in the future. BD shall also contact the Town by the end of the day when services have been refused and provide the Town the reasons for the refusal. This notice may be by fax, electronic mail or other written communication. BD may telephone the Town and follow the oral notice with written communication provided the oral and written notices are made on the same day as the refusal.

7. Weighing Material; Records; Scales.

(a) BD shall be responsible for operating and maintaining in good condition its truck scales and associated equipment.

(b) BD shall maintain accurate weigh scales records for the purposes of determining the total weight of recycling material leaving the Town and shall keep detailed daily records of the same. BD shall provide a copy of this record each month to Town for billing purposes and shall provide a copy of this record to the RDS or such other entity to whom BD is delivering recycling materials pursuant to this Contract.

8. Trucks, Routes, and Dumpsters.

(a) BD shall make the recycling collection in enclosed trucks or vehicles. The vehicles shall be in good working order, shall be cleaned regularly in accordance with any applicable Health Department regulations (at sites suitable, appropriate and approved for cleaning said trucks or vehicles), shall have a presentable appearance, and shall be marked with recycling signage for identification purposes.

(b) Collection routes within the Town may include private streets which may be too narrow for a side loading vehicle to collect and empty recycling receptacles. In addition, the available turning radius may not accommodate standard collection vehicles. BD shall collect recyclables from the said private streets as part of the Services provided pursuant to this Contract. BD will be responsible for determining an acceptable method of collection for these private streets and arranging for any special accommodations that may be necessary to collect recyclables in these areas.

(c) Collection routes may also include locations that currently receive garbage collection services via dumpster due to neighborhood configuration. BD shall collect recyclables from the residences identified in this paragraph as part of the Services provided pursuant to this Contract. BD will be responsible for determining an acceptable method of collection and arranging for any special accommodations that may be necessary to collect recyclables in these areas.

9. Compliance with Laws, Spillage.

(a) BD shall remove and dispose of all recycling materials pursuant to this Contract only in such manner as is permitted and authorized by law, and shall comply with all rules, regulations, and laws applicable to the collection and removal of recycling materials.

(b) BD is responsible for picking up and removing any materials that have blown out or dropped from trucks or the collection receptacles for any reason, even if a return trip is required. Leaks and spills shall be handled quickly and appropriately based on the type and amount and according to State and Federal spill response guidelines. Equipment shall be well

maintained so as not to allow liquid or solid waste to leak or blow out of the collection equipment.

10. **Public Information Program.** BD shall design and implement a program for the purpose of informing those who will be receiving curbside recycling services concerning the proper method for preparing recyclable materials, use of the recycling container, role of curbside recycling, date and time of program initiation. This program will include distribution of informational brochures to eligible dwelling units. The cost for this program shall be borne by BD and all proposed activities, brochures, mailings, advertisements, etc. shall be approved by the Town prior to use. BD will deliver brochures or such other information on residential curbside recycling, which is produced by the Town on request by the Town.

11. **Change in Service Area and Equipment.**

(a) Should the current boundaries of the Town change during the term of this Contract, then this Contract shall be adjusted accordingly to reflect any increase or decrease in the residential, commercial, and business premises receiving recycling collection services under this Contract.

(b) Changes to the type, size, and amount of recycling receptacles, the type of frequency of service, and corresponding adjustments to the rates, may be made by mutual written agreement of the Parties. This Contract shall continue in effect for the term provided herein and shall apply to changes of and new service units or locations within the area in which BD provides the collection services under this Contract.

12. **Independent Contractor and Indemnity.**

(a) BD shall be deemed an independent contractor and shall assume all liability and responsibility for any and all damages to persons and/or property resulting from the performance of its duties under this Contract.

(b) To the extent allowed by applicable law, BD shall indemnify, defend and hold harmless the Town and its officers, employees, and agents from and against all liability, claims, suits, losses, damages, costs and demands on account of any personal injury, including death of any person, or property damage, sustained by any person or entity, arising out of or connected with the performance by BD of its duties under this Contract where such injury, death or damage is caused in whole or in part or alleged to have been caused, in whole or in part, by the negligent acts or omissions of BD or its officers, employees, agents or subcontractors.

13. **Insurance.** BD shall carry the following insurance which shall be with a reputable company duly licensed to do business in North Carolina:

(a) Workmen's Compensation of all employees who may be involved in any way in the performance of this Contract or in the Services in connection therewith.

(b) Commercial general liability insurance in the amount of \$1,000,000.00 combined single limit.

(c) Vehicle fleet liability (business automobile coverage) in the amount of \$1,000,000.00 combines single limit.

14. Breach and Termination.

(a) If, during the term of this Contract, either Party shall be in breach of any provision of this Contract, the other Party may suspend or terminate its performance hereunder until such breach has been corrected; provided, however, that no such suspension or termination shall occur unless and until the complaining Party has given written notice of such breach to the other Party and the other Party has failed to cure such breach within at least ten (10) days thereafter. In the event any such breach remains uncured for a period of ten (10) days following the provision of such notice, the complaining Party may then suspend or terminate this Agreement by giving the other Party written notice of such suspension or termination; which shall become effective upon receipt of such notice. Any such suspension shall cease when the breach which led to such suspension is cured and the complaining Party is provided with evidence of such cure.

(b) Either Party may voluntarily terminate this Contract by providing 60-days' notice in writing to the other Party. If either Party desires to terminate this Contract due to costs or pricing, that Party must request in writing to the other Party that negotiations occur regarding costs and pricing. Upon the failure of negotiations to reach a resolution satisfying both Parties or upon the expiration of fifteen (15) days or such other amount of time agreed upon by the Parties from the date of the request, the Party desiring to terminate may terminate the Contract upon 30-days written notice to the other Party.

15. Binding Effect. This Contract shall be binding upon the Parties hereto, their successors and assigns. This Contract may not be assigned by BD without prior written approval of the Town.

16. Force Majeure. Neither Party hereto shall be liable for its failure to perform or delay in performance hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, compliance with laws or governmental order, fires, severe weather events, and acts of God and such failure shall not constitute a default under this Contract.

17. Amendment and Restatement of Existing Contract. This Contract shall amend and restate the Existing Contract in its entirety; thus, upon the execution of this Contract, the terms and conditions of this Contract shall govern and replace the Existing Contract in its entirety.

18. E-Verification. BD represents and warrants that it has ensured and will ensure for itself and each subcontractor that it uses to perform obligations under this Contract, that either:

(a) BD or subcontractor employs less than 25 employees who are employed for 9 months or more during a 12-consecutive-month period; or

(1) BD or subcontractor: (a) employs 25 or more employees who are employed for 9 months or more during a 12-consecutive-month period; and (b) has used the E-Verify program, which program is operated by the United States Department of Homeland Security and is defined in N.C. Gen. Stat. § 64-25(5), to verify the work authorization of each employee.

19. **Governing Law.** This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice of the State of North Carolina or in the Federal District Court for the Eastern District of North Carolina, and the parties hereby submit to venue in and the personal jurisdiction of the said Courts.

20. **Miscellaneous.**

(a) This document constitutes the entire contract between the Parties and may only be modified by a written mutual agreement signed by the Parties.

(b) The provisions of this Contract are separate and divisible. In the event that any provision of this Contract shall be held invalid, the remaining provisions shall be construed and shall be valid as if the invalid provisions were not a part of this Contract.

(c) This Contract shall not become effective, nor should it be considered binding, until it has been preaudited as evidenced by the finance officer's signature on the preaudit certificate.

SIGNATURE PAGE TO FOLLOW

Both the Town of Southern Shores and Bay Disposal, LLC agree to the above contract.

Bay Disposal, LLC, a Virginia limited
liability company

By: _____
Name: _____
Title: _____

Town of Southern Shores, a North Carolina
municipal corporation

By: _____
Name: _____
Title: _____

“This instrument has been preaudited in the manner required by the Local Government
Budget and Fiscal Control Act.”

Finance Officer

File Attachments for Item:

22. Service Contract Renewal-Surf Rescue (Sandski)



AGENDA ITEM SUMMARY FORM

MEETING DATE: May 4, 2021

ITEM TITLE: Service Contract Renewal-Surf Rescue (Sandski)

ITEM SUMMARY: The present contract for Ocean Rescue Services will expire on June 30, 2021. The draft contract presented for Council consideration would renew the service through December 31, 2026. The previous yearly contract price for this service has remained relatively flat with modest yearly increases. There is a yearly increase of \$8,000 or just below 5%. This increase is mainly due to increased hourly wages, the addition of one guard on an ATV for the fall from Labor Day to October 15, and the need for radio communications to become TDMA compliant.

STAFF RECOMMENDATION: The Town Purchasing and Bid Requirements Policy states that notwithstanding, and consistent with an annual budget authorization, the Town Manager is authorized to renew or extend any service provider contract in effect as of the date of this policy as amended and determined by the Town Manager to be in the best interest of the Town. Contract renewal with Sandski, LLC dba Surf Rescue is recommended.

REQUESTED ACTION: An approved motion to authorize the Town Manager to enter into the attached contract with Sandski, LLC dba Surf Rescue for ocean rescue services through December 2026.

THIS CONTRACT is made and entered into this the ____ day of _____, 20____, by and between TOWN OF SOUTHERN SHORES, a body corporate and politic existing pursuant to the laws of the State of North Carolina, (hereinafter referred to as "the TOWN") party of the first part and SANDSKI, L.L.C. dba SURF RESCUE, SS/EID# 56-2195849, (hereinafter referred to as "CONTRACTOR"), party of the second part.

1. SERVICES TO BE PROVIDED AND AGREED CHARGES

The services and/or material to be furnished under this contract (hereinafter referred to collectively as "SERVICES") and agreed charges are as follows:

- a. CONTRACTOR shall provide ocean rescue services, on behalf of the town, to the members of the public utilizing the Ocean, ocean beaches, and dispatched calls to the sound. CONTRACTOR shall conform to the 911 dispatch protocol for all non-police matters.
- b. CONTRACTOR shall meet all standards set forth by the United States Lifesaving Association (USLA) for ocean lifeguards as detailed in the latest edition of the USLA booklet, "Guidelines for Open Water Lifeguard Training and Standards." A trained lifeguard will meet and maintain the following standards and requirements and will man each lifeguard position:
 1. Will be at least 18 years of age at the time of the first workday.
 2. Will have successfully completed ocean rescue training or have two years of experience as an ocean lifeguard.
 3. Will have completed a basic **CPR** course of instruction.
 4. Will have completed a basic first-aid course of instruction.
 5. Will meet and maintain minimum physical qualifications for running, swimming and general fitness as established by the USLA training and standards guides.
 6. Will be familiar with the operation and use of all rescue equipment and devices provided for use in rescue operations.
 7. Will comply with all rules and regulations set forth by the Town.
- c. CONTRACTOR shall provide a shared supervisor patrolling from 10:00 a.m. to 6:00 p.m. beginning May 1st until October 15th. Two (2) lifeguards will be positioned at two fixed lifeguard stands and two (2) ATV's patrolling beginning Saturday of Memorial Day Weekend through Monday of Labor Day Weekend. A minimum of Two (2) ATV's will be patrolling from Labor Day through October 15th. In addition to the stands starting Memorial Day weekend there will be two (2) more stands that will be manned no later than the Third weekend of June until, and including, the second week of August. The dates for the Stands will be determined prior to the start of each season.

- d. CONTRACTOR shall provide, at a minimum, the following equipment:
1. four (4) wooden towers with an unobstructed view of the water at least six (6) feet above sand grade with an umbrella.
 2. Portable communication equipment approved by the Town.
 3. Personal protective equipment that meets or exceeds OSHA specifications.
 4. a uniform identifying the individual as a "Lifeguard" that is distinctive in color to include: a sweatshirt, and sweatpants.
 5. Binoculars for each Lifeguard
 6. Rescue buoy for each Lifeguard
 7. Swim fins for each Lifeguard
 8. Whistle for each Lifeguard
- e. CONTRACTOR shall implement a "red flag" warning system to alert the public to dangerous surf conditions. To the extent possible the CONTRACTOR shall utilize available flagpoles and flags. If this equipment is not available, the CONTRACTOR shall request funding to purchase such equipment from the Town Manager. Upon making the determination that dangerous surf conditions exist, the supervisor shall alert the Town Manager, the Chief of Police, and Fire Chief.
- f. CONTRACTOR will not allow any advertising, on any equipment or uniform for any organization, business, service, person, or entity without the express permission of the Town Manager.
- g. CONTRACTOR shall be responsible for maintaining and keeping all areas of the beach free of trash and debris, if the amount of debris exceeds normal expected amounts based on the use of the beach, due to a storm or other condition, the Town may negotiate with CONTRACTOR for additional debris removal services. In any event, the Town will provide disposal containers for debris removal when requested by CONTRACTOR and service the same containers.
- h. CONTRACTOR shall coordinate with the Town, including the Chief of Police and the Fire Chief, and the County for adequate radio communications.
- i. TOWN shall pay CONTRACTOR the following amounts for services rendered under this CONTRACT:

FY 2021/22	\$176,000
FY 2022/23	\$184,000
FY 2023/24	\$192,000
FY 2024/25	\$200,000
FY 2025/26	\$208,000

2. TERM OF CONTRACT

The term of the **Contract for Services** is from July 1, 2021 until December 31, 2026. The service periods are listed above under **Services to Be Provided**. This contract is subject to the appropriation of sufficient funds by the Town's governing board to make payment for the specified **Services** during the term of this contract and this contract may be terminated at any time if such funds are not appropriated. In the event the Contractor is unable to provide services in accordance with the terms and conditions of this contract, this contract may be immediately terminated by either party.

3. PAYMENT TO CONTRACTOR

The TOWN agrees to pay at the rates specified for SERVICES satisfactorily performed in accordance with this contract. Each payment will be One sixth the contract amount for that fiscal year. The fiscal year is defined as July 1 in any calendar year to June 30 of the following calendar year. Payments will be made on or around the 15th of each month in these months: July, August, September, October, May, June.

4. INDEPENDENT CONTRACTOR

Both the TOWN and the CONTRACTOR agree that the CONTRACTOR shall act as an independent contractor and shall not represent itself as an agent or employee of the TOWN for any purpose in the performance of the CONTRACTOR'S duties under this contract. Accordingly, the CONTRACTOR shall be responsible for payment of all Federal, State and local taxes arising out of the CONTRACTOR'S activities in accordance with this contract, including by way of illustration but not limitation, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fees as required.

In performing the SERVICES, the CONTRACTOR is acting as an independent contractor and shall perform SERVICES in accordance with currently approved methods and practice in the CONTRACTOR'S professional capacity and in accordance with the standards set forth by the USLA.

5. INSURANCE AND INDEMNITY

The CONTRACTOR shall indemnify and save harmless the TOWN, its agents and employees from and against all actions, liability, claims, suits, damages, cost or expenses of any kind which may be brought or made against the TOWN or which the TOWN must pay and incur by reason of or in any manner resulting from injury, loss or damage to persons or property resulting from negligent performance of or failure to perform any of its obligations under the terms of this CONTRACT.

The CONTRACTOR shall be fully responsible to the TOWN for the acts and omissions of its sub-contractors and of persons either directly or indirectly employed by it, as the CONTRACTOR is for the acts and omissions of persons directly employed by it.

In addition, the CONTRACTOR shall comply with the North Carolina Worker's Compensation Act and shall provide for the payment of workers' compensation to its employees in the manner and to the extent required by such Act. In the event the CONTRACTOR is excluded from the requirements of such Act and does not voluntarily carry workers' compensation coverage, the CONTRACTOR shall carry or cause its employees to carry adequate medical/ accident insurance to cover any injuries sustained by its employees or agents during the performance of SERVICES.

The CONTRACTOR agrees to furnish the TOWN proof of compliance with said Act or adequate minimum accident insurance coverage upon request.

The CONTRACTOR shall acquire commercial general liability insurance coverage with a minimum limit of \$2,000,000.00 general aggregate, products/completed operations aggregate, personal and advertising injury and each occurrence including premises and operations. Independent contractors, products and completed operations, broad form property damage, explosion/collapse/underground coverage, and contractual liability shall be written on an as occurrence basis.

The CONTRACTOR shall acquire Business Auto Liability insurance coverage with a minimum limit of \$1,000,000.00 per occurrence, combined single limit for bodily injury liability and property damage liability, to include owned vehicles, hired and non-owned vehicles, and employee non-ownership.

The TOWN shall be included as an additional named insured on the commercial general liability and business auto liability insurance policies. The CONTRACTOR shall furnish TOWN a Certificate of Insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to the TOWN verifying the existence of any insurance coverage required by the TOWN. The Certificate will provide for sixty (60) days advance notice in the event of termination or cancellation of coverage.

6. HEALTH AND SAFETY

The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to all employees from the work and other persons who may be affected thereby.

7. NON-DISCRIMINATION IN EMPLOYMENT

The CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, or national origin. The CONTRACTOR shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their age, sex, race, creed, or national origin. In the event the CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by the TOWN, and the CONTRACTOR may be declared ineligible for further TOWN contracts.

8. GOVERNING LAW

This contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this contract shall be brought in the General Court of Justice of the State of North Carolina or in the Federal District Court for the Eastern District of North Carolina.

9. OTHER PROVISIONS

This contract is subject to such additional provisions as are set forth in any addendum executed separately by each party and attached hereto.

10. CONTRACT DOCUMENTS/AMENDMENTS

Item 22.

This document together with the purchase order and any attached exhibits constitutes the entire Contract between the said two parties and may only be modified by a written mutual agreement signed by the parties and attached hereto.

12. SIGNATURES

Both the TOWN and the CONTRACTOR agree to the above contract.

Witnessed or Attested By:

(SEAL)

TOWN OF SOUTHERN SHORES

By: _____

Title: _____

Date: _____

Witnessed or Attested By:

CONTRACTOR

By: _____

Title: _____

Date: _____

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Director

File Attachments for Item:

23. Service Contract Renewal-Auditor (Teresa Osborne, Dowdy & Osborne)



AGENDA ITEM SUMMARY FORM

MEETING DATE: May 4, 2021

ITEM TITLE: Service Contract Renewal-Auditor (Teresa Osborne, Dowdy & Osborne)

ITEM SUMMARY:

Teresa Osborne, CPA of Dowdy & Osborne has proposed a three-year fixed rate audit service contract with a rate of \$ 18,000 per year. If the Town incurs a Single audit due to Federal or State grant funding exceeding \$ 750,000, an addition cost would need to be negotiated.

STAFF RECOMMENDATION:

Staff recommends approving the three-year contract with Teresa Osborne for audit services.

REQUESTED ACTION:

Motion to approve a three-year contract with Teresa Osborne for audit services beginning June 30, 2021.

Dowdy & Osborne LLP

CERTIFIED PUBLIC ACCOUNTANTS

Item 23.

Jeff Dowdy, CPA • Teresa Osborne, CPA

April 28, 2021

Mr. Cliff Ogburn, Town Manager
Town of Southern Shores
5375 N. Virginia Dare Trail
Southern Shores, NC 27949

Dear Mr. Ogburn,

It has been a pleasure for my firm to provide audit services to the Town and I look forward to a continued relationship. We are proud of the level of service we offer and believe that to be the reason we have a 100% renewal rate with our government clients. I have 30 years of experience in governmental accounting and auditing and consider government audits to be my specialty. I am constantly updating my skills with continuing education. We are required by auditing standards to maintain independence and we re-invent the audit process each year during the planning stage to make sure we are addressing the pertinent risk areas of the Town's audit. When managed properly, a long audit relationship is a great benefit to the Town. Lastly, I am local and easily accessible to the Town throughout the year. I have provided technical support to the Town finance officer on various accounting questions and reports over the years at no additional charge and this support throughout the year continues to be included in my fixed price contracts. If the Town is pleased with the service, then fees are the only variable and I am happy to offer the following for a three year continued commitment:

We propose a fixed price contract of \$ 18,000 for three years (which is a \$ 1,000 increase over my previous fixed three-year commitment). In the event the Town has a Single audit due to Federal or State grant funding exceeding \$ 750,000 we would need to negotiate a cost for the added work (please note the Town has not had a Single audit for a number of years).

Please do not hesitate to contact me with any questions.

Sincerely,

Teresa Osborne

Teresa Osborne, CPA

103 W. Woodhill Dr., Suite B • P.O. Box 9 • Nags Head, North Carolina 27959
Telephone 252.449.4404 • Facsimile 252.449.6976