



Town of Southern Shores

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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

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

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

17
18 **PART II.** That **Sec. 30-43. Alternatives to Final Plat Approval.** be deleted and
19 replaced in its entirety as follows:

20
21 **Sec. 30-43. - Alternatives to final plat approval.**

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

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

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

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

- 36
- 37 (a) A performance guarantee, prepared in accordance with the standards in this section,
38 shall be required to ensure the completion of public infrastructure improvements
39 that are required as part of an approved preliminary plat, but that are not approved
40 as complete before approval of a final plat.

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

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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

1 deposited cash funds or other security.

2

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

4

5 **Sec. 30-44. – Expedited Review.**

6

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

10

11 (a) The tract or parcel to be divided is not exempted under Section 30-2 in the definition
12 of subdivision;

13

14 (b) No part of the tract or parcel to be divided has been divided under this
15 subsection in the 10 years prior to division;

16

17 (c) The entire area of the tract or parcel to be divided is greater than 5 acres;

18

19 (d) After division, no more than three lots result from the division;

20

21 (e) After division, all resultant lots comply with all of the following.

22

23 (1) All lot dimension size requirements of the applicable land-use
24 regulations, if any;

25

26 (2) The use of the lots is in conformity with the applicable zoning
27 requirements, if any;

28

29 (3) A permanent means of ingress and egress is recorded for each lot.

30

31 **ARTICLE IV. Statement of Consistency with Comprehensive Plan and**
32 **Reasonableness.**

33

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

39

40 **ARTICLE V. Severability.**

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

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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__