

**TOWN OF ATLANTIC BEACH, SOUTH CAROLINA**

**AN ORDINANCE AMENDING AND REINSTATING  
THE ZONING ORDINANCE OF THE TOWN OF ATLANTIC BEACH, 1985,  
AS AMENDED, EXTENDING THE MORATORIUM CONTAINED IN  
ORDINANCE NO. 6-99 AND REPEALING ORDINANCE NO. 4-99**

WHEREAS, the Town of Atlantic Beach (the "Town") has heretofore, pursuant to Ordinance No. 4-99 amended the Zoning Ordinance of 1985, as amended (the "Zoning Ordinance");

WHEREAS, the Mayor and Town Council of the Town believe that it is in the best interests of the Town to reenact by restatement the Zoning Ordinance and to further amend said Zoning Ordinance, as provided for herein;

WHEREAS, all procedural requirements including notices and public hearing hearings have been met;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and the Town Council of the Town of Atlantic Beach, South Carolina as follows:

1. The Zoning Ordinance is reenacted, reaffirmed and restated as fully as if set forth herein. A copy of said Zoning Ordinance is attached hereto.

2. Article III of the Zoning Ordinance is amended to add the following definition:

333. Zoning Administrator. The Town Manager or his designee shall serve as the Zoning Administrator.

3. Article IV of the Zoning Ordinance is hereby amended to read as follows:

For the purpose of this Ordinance, the Town of Atlantic Beach, South Carolina, is hereby divided into six (6) zoning districts as follows:

Residential – R-1 District – Low Density, Single Family

Residential – R-2 District – Medium Density

Residential – R-3 District - High Density

Commercial – C-1 District – Highway Commercial

MPH District – Mobile Home

PD - Planned Development District

4. Article XII of the Zoning Ordinance entitled "Zoning Board of Appeals" is amended by substituting new Article XII entitled "Board of Zoning Appeals" which is attached hereto and incorporated herein by reference.

5. Article XIII of the Zoning Ordinance entitled "Amendments" is amended by substituting new Article XIV which is attached hereto and incorporated herein by reference.

6. The Zoning Ordinance is further amended by adding new Article XIII entitled "Local Planning Commission," Article XV entitled "Sexually Oriented Businesses; Adult Entertainment Establishments," and Article XVI entitled "Antennas and Commercial Towers" which are attached hereto and incorporated herein by reference.

7. Any amendments to the Zoning Ordinance in conflict or inconsistent with the amendments contained herein are hereby repealed to the extent of such conflict or inconsistency.

8. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this Ordinance and the amendments to the Zoning Ordinance attached hereto is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of any remaining portions of this Ordinance and the amendments to the Zoning Ordinance attached hereto, the Town Council hereby declaring that it would have passed this Ordinance and adopted these Amendments, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

9. The moratorium provision contained in Ordinance No. 6-99 enacted by the Town Council on July 6, 1999, is hereby extended without interruption until the enactment of this Ordinance No. 13-99.

10. Ordinance No. 4-99 previously enacted by the Town Council on May 4, 1999 is hereby repealed.

### ARTICLE III

#### DEFINITIONS

333 Zoning Administrator. The Town Manager or his designee shall serve as the Zoning Administrator.

### ARTICLE XII

#### BOARD OF ZONING APPEALS

##### **Sec. 1200. Organization and procedures.**

(a) *Establishment; membership.* A board of adjustment is hereby established, which shall consist of not less than five (5), nor more than seven (7) members appointed by the Town Council, a majority of which shall constitute a quorum. The members shall be appointed for staggered terms of four (4) years and until their successors are appointed and qualified. Members may be removed for cause by the Town Council upon written charges and after a public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board shall elect one of its members chairman for a one-year term with such chairman to serve until a successor is qualified.

(b) *Meetings and rules of procedure; records.*

(1) The board shall adopt rules necessary to the conduct of its affairs in accordance with the provisions of this article. Meetings of the board shall be held at the call of the chairman and at those other times as the board may determine. The chairman, or, in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.

(2) The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such facts, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be a public record.

(c) *Appeal procedure.* Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, or board of the town affected by any decision of the Zoning Administrator. That appeal shall be taken within 30 days by filing with the Zoning Administrator from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board of adjustment shall fix a reasonable time for hearing the appeal, give public notice thereof as well

as due notice to the parties in interest, and decide the appeal within a reasonable time. At the hearing, any party may appear in person or by agent or attorney.

(d) *Stay of proceedings pending appeal.* An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator from whom the appeal is taken certifies to the board of adjustment, after notice of appeal is filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the Zoning Administrator from whom the appeal is taken and on due cause shown.

#### **Sec. 1201. Powers and duties.**

The board of adjustment shall have the following powers and duties:

- (1) *Administrative review.* The board of adjustment shall hear and decide appeals when it is alleged that there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this zoning ordinance, provided that those appeals must be taken within 30 days after the order, requirement, decision or determination which is alleged to be in error is made.
- (2) *Special exceptions.*
  - a. *Duties.* Duties of the board are as follows:
    1. Hear and decide only the applications for special exceptions as the board of adjustment is specifically authorized to pass upon by terms of this article;
    2. Decide the questions as are involved in determining whether special exceptions should be granted;
    3. Prescribe appropriate conditions and safeguards in conformity with this zoning ordinance; and
    4. Deny special exceptions when not in harmony with the intent and purpose of this zoning ordinance.
  - b. *Procedures in consideration of special exception applications.*
    1. A written application for a special exception shall be submitted indicating the section of this zoning ordinance under which the special exception is sought and stating the grounds on which it is requested.
    2. Notice of public hearing shall be posted on the property for which special exception is sought and shall be published at least 15 days prior to the public hearing in a newspaper of general circulation in the town.
    3. The public hearing shall be held. Any party may appear in person, or by agent or attorney.

4. The board of adjustment shall make a finding that it is empowered under the section of this zoning ordinance described in the application to grant the special exception and that the special exception will not adversely affect the public interest.
  5. The regulations of this zoning ordinance setting forth specific standards to be met prior to the establishment of any special exception shall be binding upon the board of adjustment.
  6. The board of adjustment may prescribe a time limit within which the action for which the special exception is required shall be begun or completed, or both.
- c. *Criteria for special exceptions.* In addition to definitive standards in this zoning ordinance, the board of adjustment shall consider the following:
1. Traffic impact;
  2. Vehicle and pedestrian safety;
  3. Potential impact of noise, lights, fumes, or obstruction of air flow on adjoining property;
  4. Adverse impact of the proposed use on the aesthetic character of the environs, to include the possible need for screening from view; and
  5. Orientation and spacing of improvements or buildings.
- d. *Effect of failure to meet conditions.*
1. Violation of conditions and safeguards prescribed in conformity with this article, when made a part of the terms under which a special exception is granted, shall be deemed a violation of this article, punishable under the penalties established in this zoning ordinance.
  2. Failure to begin or complete, or begin and complete, an action for which a special exception is required, within the time limit specified, when such time limit is made a part of the terms under which the special exception is granted, shall void the special exception.

(3) *Variances.*

a. *Duties.* Duties of the board are as follows:

1. It shall be the duty of the board to authorize upon appeal in specific cases a variance from the terms of this zoning ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this article will, in an individual case, result in unnecessary hardship, so that the spirit of this article shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the board of appeals that the conditions listed under subsection (3)b of this section have been met.

2. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of lands, structures or buildings in other districts, shall be considered grounds for the issuance of a variance.
  3. In granting any variance, the board may prescribe conditions and safeguards in conformity with this zoning ordinance.
- b. *Procedures in consideration of request for variance.*
1. A written application for a variance shall be submitted demonstrating that:
    - (i) there are extraordinary and exceptional conditions pertaining to the piece of property;
    - (ii) these conditions do not generally apply to other property in the vicinity;
    - (iii) because of these conditions, the application of this ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and,
    - (iv) the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.
  2. The board may not grant a variance the effects of which would be to allow the establishment of use not otherwise permitted in a zoning district, to extent physically a non-conforming use of land, or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably should a variance be granted may not be considered grounds for a variance.
  3. Notice of public hearing shall be given as described in subsection (2)b.2 of this section.
  4. The hearing shall be held. Any party may appear in person, or by agent or by attorney.
  5. The board of adjustment shall make findings that the requirements of subsection (3)b.1 of this section have been met by the applicant for a variance.
  6. The board of adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.
  7. The board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

8. The board of adjustment may prescribe a time limit within which the action for the which the variance is requested shall be begun or completed, or both.
- c. *Effect of failure to meet conditions.*
1. Violation of conditions and safeguards prescribed in conformity with this article, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article, punishable under penalties established in this article.
  2. Failure to begin or complete, or begin and complete, an action for which a variance is granted, within the time limit specified, when such time limit is made a part of the terms under which the variance is granted, shall void the variance.

**Sec. 1202. Actions and decisions of board in favor of applicant.**

**1202.1** Upon appeal of a decision of the Zoning Administrator, the board of adjustment may, in conformity with the provisions of this article, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the Zoning Administrator from whom the appeal is taken.

**1202.2** All final decisions and orders of the board shall be in writing and be permanently filed in the office of the Zoning Administrator as a proper record. All findings of fact and conclusions of law shall be separately stated in final decisions or orders of the board.

**Sec. 1203. Appeals from decisions of board.**

Any person who may have a substantial interest in any decision of the board of adjustment, or any officer or bureau of the town having authority, may appeal from any decision of the board to the circuit court in and for the county by filing with the clerk of such court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within 30 days after the decision of the board is rendered.

## ARTICLE XIII

### LOCAL PLANNING COMMISSION

#### **Sec. 1300.     **Organization and procedures.****

**1300.1**       *Establishment; membership.* A planning commission is hereby established, which shall consist of 5 members appointed by the Town Council, a majority of which shall constitute a quorum. No member of the planning commission may hold an elected public office in the municipality or county from which appointed. Members shall be appointed by Town Council for staggered terms of four (4) years and shall serve until their successors are appointed and qualified. The compensation of the members, if any, must be determined by the governing authority or authorities creating the commission. A vacancy in the membership of a planning commission must be filled for the unexpired term in the same manner as the original appointment. Members may be removed for cause by the Town Council upon written charges and after a public hearing. A local planning commission shall organize itself electing one of its members as chairman and one as vice-chairman whose terms must be for one year. It shall appoint a secretary who may be an officer or an employee of the governing authority or of the planning commission. The planning commission shall meet at the call of the chairman and at such times as the chairman or commission may determine.

**1300.2**       *Meetings and rules of procedure; records.* The Planning Commission shall adopt rules of organizational procedure and shall keep a record of its resolutions, findings, and determinations, which record must be a public record. The planning commission may purchase equipment and supplies and may employ or contract for such staff and such experts as it considers necessary and consistent with funds appropriated.

**1300.3**       *Function and Duties.* The Planning Commission has a duty to develop and carry out a continuing planning program for the physical, social, and economic growth, development and redevelopment of the area within its authority. The minimum seven elements of the comprehensive plan and any other elements prepared for the particular jurisdiction must be designed to promote the public health, safety, morals, convenience, prosperity, general welfare, efficiency and economy of its area of concern. Each element of the comprehensive plan must be based upon careful and comprehensive surveys and studies of existing conditions and probable future development and include recommended means of implementing the plans.

#### **Sec. 1301     **Special Planning Activities****

In carrying out its responsibilities, the local planning commission can do all of the following things. Beyond the items outlined in the 1994 Planning Act, the Town Council or the planning commission may add activities.

1.     Comprehensive plan.   Prepare and periodically revise development and/or redevelopment plans and programs.



2. **Implementation.** Prepare and recommend measures for carrying out the plan. The appropriate governing bodies must approve the measures. They include the following.
- a. Zoning ordinances that include zoning district maps and any necessary revisions.
  - b. Regulations for land subdivision or development. The planning commission is responsible for overseeing the administration of the regulations once they are adopted by the local governing body.
  - c. An official map and appropriate revisions showing the exact location of existing or proposed public streets, highways, utility rights-of-way, and public building sites. The commission is responsible for developing regulations and procedures for administering the official map ordinance.
  - d. A landscaping ordinance providing required standards for planting, tree preservation and other aesthetic considerations.
  - e. A capital improvements program listing required projects to carry out the adopted plans. Also, the planning commission must submit an annual list of priority projects to the appropriate governmental bodies for consideration when they prepare their annual capital budgets. The commission should take these priority projects from the adopted plans.
  - f. Policies and procedures to help carry out the adopted comprehensive plan elements. These policies and procedures could cover such things as expanding the corporate limits, extending the public water and sewer systems, accepting dedicated streets, accepting drainage easements and offering economic development incentive packages.
  - g. Such other activities as may duly and lawfully assigned in this Ordinance and otherwise by the Town Council.

## ARTICLE XIV

### AMENDMENTS

#### **Sec. 1400. Authorized.**

The Town Council may, from time to time, amend any part of the text or map of this zoning ordinance.

#### **Sec. 1401. Initiation.**

(a) *Text amendments.* Amendments to the zoning text may be initiated by:

- (1) Adoption of a motion by the planning commission.
- (2) Application by a member of the Town Council.
- (3) The Zoning Administrator or town administrator.

(b) *Map amendments.* An amendment to the zoning map may be initiated by:

- (1) Adoption of a motion by the town planning commission.
- (2) Application by a member of the Town Council.
- (3) The Zoning Administrator or town administrator.
- (4) The filing of an application by the property owner or his authorized agent.

#### **Sec. 1402. Contents of application.**

The application for amendment shall contain at least the following information:

- (1) Name, address and telephone number of the applicant;
- (2) Tax map reference (sheet, block and lot numbers) and street address of the property;
- (3) Proposed amendment to the text or property map reference;
- (4) Present use;
- (5) Present zoning district;
- (6) Proposed zoning;
- (7) A fee as established by the Town Council; and
- (8) Signature of the applicant and/or written certification of his authorized agent.

#### **Sec. 1403. Application procedure.**

(a) Applications for amendments shall be submitted in writing to the Zoning Administrator.

(b) Applications for amendment must be submitted, in proper form, at least two weeks prior to a planning commission meeting in order to be heard at the meeting.

(c) All proposed amendments and any supporting material shall be submitted to the planning commission for study and recommendation. The planning commission shall study such proposals to determine:

- (1) The need and justification for the change;

- (2) When pertaining to a change in the district classification of the property, the effect of the change, if any, on the property and on surrounding neighborhoods;
- (3) When pertaining to a change in the district classification of property, the amount of land in the general area and in the town having the same district classification as that requested; and
- (4) The relationship of the proposed amendment to the purposes of the general planning 9 program, with appropriate consideration as to whether the proposed change will further the purposes of this article and the comprehensive plan.

**Sec. 1404. Planning commission recommendation to Town Council.**

Within 30 days from the date that any proposed zoning amendment is referred to it, the planning commission shall submit its report and recommendation to Town Council. The recommendation of the planning commission shall be advisory only. If the planning commission does not submit its report within the prescribed time, the Town Council may proceed to act on the amendment without further awaiting the recommendations of the planning commission.

**Sec. 1405. Hearing dates.**

(a) Regular public hearings on zoning amendments shall be held at those times specified by the Town Council, at which times all active zoning amendment proposals shall be considered.

(b) Special meetings may be called when, due to extraordinary circumstances as determined by the Town Council, further delay would be detrimental to the welfare of the community. At that time all preceding zoning change requests acted upon by the planning commission shall also be considered.

**Sec. 1406. Notice of hearings.**

(a) Publication.

(1) In scheduling a public hearing for proposed zoning map and text amendments, the Town Council shall publish two notices, one at least 30 days and one at least 15 days prior to the public hearing, in a daily newspaper of general circulation in the town.

(2) When a proposed zoning amendment affects the district classification of property, such notice shall contain the following information:

- a. The date, time and place of the hearing.
- b. A description to inform the public of the location of the property for which action is pending, including but not limited to use of a map or street address and a metes and bounds description or the tax map reference.
- c. The substance of the proposed ordinance, specifying the nature of the issue being considered.
- d. The sections of the Code that are pertinent to the hearing procedure.
- e. Where information may be examined and when and how written comments addressing findings required for a decision by the hearing body

may be submitted. A copy of the proposed ordinance shall be available in the office of the town clerk and Zoning Administrator.

**(b) *Posting of property.***

- (1) When a proposed amendment affects the district classification of particular pieces of property, the Zoning Administrator shall cause to be conspicuously located, on or adjacent to the property affected, one hearing notice for every 100 feet of street frontage or portion thereof. At least one such notice shall be visible from each public thoroughfare that abuts the property. Such notice shall be posted at least 30 days prior to the hearing and shall indicate the nature of the change proposed, identification of the property affected, and the time, date and place of the hearing.
- (2) Written notice of the hearing shall be mailed by the Zoning Administrator at least 30 days before the date of the public hearing to all owners of property within, contiguous to and directly across the thoroughfare from such area proposed to be rezoned to the address of such owners appearing on the latest published tax list, to neighborhood associations and to such other lists that may be specified by the Town Council. The notice shall contain the same information as required of notices published in newspapers.

**(c) *Notice to property owners and neighborhood associations.***

- (1) Before holding the public hearing as required by this article on a map amendment, written notice of the hearing shall be mailed by the Zoning Administrator, by first class mail, at least 30 days before the day of the public hearing to all owners of property within, contiguous to or directly across the street from such area to the address of such owner appearing on the latest published tax map ownership list, and to other groups such as neighborhood associations requesting that they receive such notification, and to other such lists that may be specified by the council.
- (2) The failure to deliver the notification as provided in this section shall not invalidate any such amendment. The notice shall contain the same information as required of notices published in newspapers as specified in subsection (a)(2) of this section.

**Sec. 1407. Action by Town Council; withdrawal of applications; reapplication.**

(a) *Time limit.* Within 180 days after the public hearing on a proposed amendment under this division, the Town Council shall either adopt or deny the rezoning. If no action is taken by the Town Council within 180 days after the public hearing, the proposed amendment shall be considered denied.

(b) *Effective date.* An amendment adopted by the Town Council shall become effective immediately after such adoption.

(c) *Withdrawal of application.* Withdrawal of an amendment application by the applicant prior to the public hearing or final action by council shall be considered as a termination of the application. Resubmission shall be processed as a new application with prescribed fees.

(d) *Reapplication.* When an application for a change in land use classification has been disapproved by the Town Council, reapplication for a change in land use for the same parcel of land, in whole or in part, for the same change, shall not be permitted until one year has expired from the date of the official action by the Town Council.

**Sec. 1408.     Reconsideration of proposed amendments after denial.**

The Town Council shall not reconsider a proposed amendment under this division that has been denied unless the planning commission recommends to the Town Council that the reconsideration be given, after the planning commission has found that either (i) there has been a substantial change in the character of the area, or (ii) evidence, factors or conditions exist which were not considered by the planning commission or the Town Council in previous deliberation which might substantially alter the basis upon which the previous determination was reached.

## ARTICLE XV

### SEXUALLY ORIENTED BUSINESSES; ADULT ENTERTAINMENT ESTABLISHMENTS

#### **Sec. 1501. Purpose and intent of Article.**

It is the purpose of this article to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the town. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market, neither is it the intent or effect of this article to condone or legitimize the distribution of obscene material.

#### **Sec. 1502. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**1502.1** *Adult arcade* means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

**1502.2** *Adult bookstore* and *adult video* store mean a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes or video reproductions, slides or other visual representations, which depict or describe specified sexual activities or specified anatomical areas; or

(2) Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

(3) A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishment from being

categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe specified sexual activities or specified anatomical areas.

**1502.3**        *Adult cabaret* means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

- (1)        Persons who appear in a state of nudity;
- (2)        Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- (3)        Films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**1502.4**        *Adult Entertainment Establishment* shall mean a sexually-oriented business.

**1502.5**        *Adult motel* means a hotel, motel or similar commercial establishment which:

- (1)        Offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;
- (2)        Offers a sleeping room for rent for a period of time that is less than ten hours; or
- (3)        Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.

**1502.6**        *Adult motion picture theater* means a commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**1502.7**        *Adult theater* means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

**1502.8**        *Escort* means a person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

**1502.9**        *Escort agency* means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

**1502.10**        *Establishment* means and includes any of the following:

- (1)    The opening or commencement of any sexually oriented business as a new business;
- (2)    The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3)    The addition of any sexually oriented business to any other existing sexually oriented business; or
- (4)    The relocation of any sexually oriented business.

**1502.11**        *Nude model studio* means any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration.

**1502.12**        *Nudity and state of nudity* mean the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast.

**1502.13**        *Permittee and licensee* mean a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

**1502.14**        *Semi-nude* means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

**1502.15**        *Sexual encounter center* means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

- (1)    Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (2)    Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

**1502.16**        *Sexually oriented business* means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.



**1502.17**      *Specified anatomical areas* means the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

**1502.18**      *Specified sexual activities* means and includes any of the following:

- (1)      The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
- (2)      Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- (3)      Masturbation, actual or simulated; or
- (4)      Excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (3) of this definition.

**1502.19**      *Substantial enlargement of a sexually oriented business* means the increase in floor areas occupied by the business by more than 25 percent, as the floor areas exist on July 1, 1990.

**1502.20**      *Transfer of ownership or control of a sexually oriented business* means any of the following:

- (1)      The sale, lease or sublease of the business;
- (2)      The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- (3)      The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

**1502.21**      *Zoning Administrator* means the Town Manager or his designee.

**Sec. 1503.      Classification.**

Sexually oriented businesses are classified as follows:

- (a)      Adult arcades;
- (b )     Adult bookstores or adult video stores;
- (c)      Adult cabarets;
- (d)      Adult motels;
- (e)      Adult motion picture theaters;
- (f)      Adult theaters;
- (g)      Escort agencies;
- (h)      Nude model studios; and

- (i) Sexual encounter centers.

**Sec. 1504. Permit required; application for permit.**

**1504.1** A person commits a misdemeanor, punishable, upon conviction, in accordance with the provisions of the Code of Ordinances for the Town of Atlantic Beach, if he operates a sexually oriented business without a valid permit issued by the town for the particular type of business.

**1504.2** An application for a permit must be made on a form provided by the Zoning Administrator. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floorspace occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

**1504.3** The applicant must be qualified according to the provisions of this article and the premises must be inspected and found to be in compliance with the law by the health department, fire department and building official.

**1504.4** If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a permit as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten percent or greater interest in the business must sign the application for a permit as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity which wishes to operate such a business, each individual having a ten percent or greater interest in the corporation must sign the application for a permit as applicant.

**1504.5** The fact that a person possesses other types of state, county or town permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business permit.

**1504.6** An application for a permit must be accompanied by a written statement signed by the owner of the real property upon which the sexually oriented business is to be located disclosing the name and address of the owner and acknowledging that the owner has been informed of the fact that the property is to be used as a sexually oriented business and that the owner consents to such use of the property.

**Sec. 1505. Issuance of permit; permit fee.**

**1505.1** The Zoning Administrator shall approve the issuance of a permit to an applicant under this article within 60 days after receipt of an application unless he finds one or more of the following to be true:

- (a) An applicant is under 18 years of age.

(b) An applicant or an applicant's spouse is overdue in his payment to the town of taxes, fees, fines or penalties assessed against him or imposed upon him in relation to a sexually oriented business.

(c) An applicant has failed to provide information reasonably necessary for issuance of the permit or has falsely answered a question or request for information on the application form.

(d) An applicant is residing with a person who has been denied a permit by the town to operate a sexually oriented business within the preceding 12 months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months.

(e) The premises to be used for the sexually oriented business have not been approved by the health department, the fire department and the building official as being in compliance with applicable laws and ordinances.

(f) The permit fee required by this section has not been paid.

(g) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this article.

**1505.2** The permit, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

**1505.3** The annual fee for a sexually oriented business permit is \$500.00.

#### **Sec. 1506. Inspections.**

An applicant or permittee under this article shall permit representatives of the police department, health department, fire department, zoning department, other town agencies, and departments to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business, and it is unlawful to refuse to permit such inspection of the premises at any time it is occupied or open for business.

#### **Sec. 1507. Expiration of permit; reapplication for permit after denial.**

**1507.1** Each permit issued under this article shall expire one year from the date of issuance and may be renewed only by making application as provided in this article. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the permit will not be affected except for good cause shown.

**1507.2** When the Zoning Administrator denies renewal of a permit, the applicant shall not be issued a permit for one year from the date of denial. If, subsequent to denial, the Zoning Administrator finds that the basis for denial of the renewal permit has been corrected or abated, the applicant may be granted a permit.

**Sec. 1508. Suspension of permit.**

The Zoning Administrator may suspend a permit issued under this article for a period not to exceed 30 days if he determines that a permittee or an employee of a permittee has:

- (a) Violated or is not in compliance with any section of this article.
- (b) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises.
- (c) Refused to allow an inspection of the sexually oriented business premises as authorized by this article.
- (d) Knowingly permitted gambling by any person on the sexually oriented business premises.

**Sec. 1509. Revocation of permit.**

**1509.1** The Zoning Administrator shall revoke a permit issued under this article if a cause for suspension listed in section 1508 occurs and the permit has been suspended within the preceding 12 months for willful and knowing violation of this article.

**1509.2** The Zoning Administrator shall revoke a permit if he determines that:

- (a) A permittee knowingly gave false or misleading material information in the application submitted to the zoning department during the application process;
- (b) A permittee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;
- (c) A permittee or an employee has knowingly allowed prostitution on the premises;
- (d) A permittee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's permit was suspended;
- (e) A permittee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sexual conduct to occur in or on the permitted premises;
- (f) A permittee is delinquent in payments to the town, county or state for any taxes or fees past due related to the sexually oriented business.

**1509.3** When the Zoning Administrator revokes a permit, the revocation shall continue for one year, and the permittee shall not be issued a sexually oriented business permit for one year from the date revocation became effective. If, subsequent to revocation, the Zoning Administrator finds that the basis for the revocation has been corrected or abated, the applicant may be granted a permit if at least 90 days have elapsed since the date the revocation became effective.

**Sec. 1510. Transfer of permit.**

A permittee under this article shall not transfer his permit to another, nor shall a permittee operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application.

**Sec. 1511. Location.**

**1511.1** No variance from any of the provisions of this section may be granted by the zoning board of adjustment. No special exception regarding any of the requirements of this section may be granted by the zoning board of adjustment.

**1511.2** A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business outside of a designated HC (Highway Commercial) district. All sexually oriented businesses shall be located within a HC (Highway Commercial) district.

**1511.3** A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business within five hundred feet (500') of

- (a) A church.
- (b) A public or private elementary or secondary school, day care and child care facility.
- (c) Any outdoor recreational facility, park or community center at which minor children are likely to congregate.
- (d) The property line of a lot in an HC (Highway Commercial) district devoted to residential use.

**1511.4** A person commits a misdemeanor if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 500 feet of another sexually oriented business.

**1511.5** A person commits a misdemeanor if he causes or permits the operation, establishment or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

**1511.6** For the purpose of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church or public or private elementary or secondary school, or to the nearest boundary of an affected public park, or residential lot.

**1511.7** For purposes of subsection 1511.4, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

**1511.8** Any sexually oriented business lawfully operating as of the date of the ordinance from which this section is derived that is in violation of subsections (a) through (d) of Section 1511.3 shall be deemed a nonconforming use. The nonconforming use will be permitted to continue until and through December 31, 2005, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 500 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

**1511.9** A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit, of a church, a public or private elementary or secondary school, day care, or child care facility; any outdoor recreational facility, park or community center, or a residential use in a HC (Highway Commercial) district within five hundred (500') feet of the sexually oriented business. This provision applies only to the renewal of a valid permit, and does not apply when an application for a permit is submitted after a permit has expired or has been revoked.

## **Sec. 1512. Exterior Portions of Regulated Businesses.**

**1512.1** It shall be unlawful for an owner or operator of a sexually-oriented business to allow the merchandise or activities of the sexually-oriented business to be visible from any point outside such sexually-oriented business.

**1512.2** It shall be unlawful for the owner or operator of a sexually-oriented business to allow the exterior portions of the sexually-oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except as to the extent permitted by the provisions of this Article.

**1512.3** It shall be unlawful for the owner or operator of a sexually-oriented business to allow exterior portions of the sexually-oriented business to be painted any color other than a single achromatic color. This provision shall not apply to any sexually-oriented business if the following conditions are met:

- (a) the sexually-oriented business is a part of a commercial multi-unit center;  
and
- (b) the exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the sexually-oriented business are

Painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

**1512.4** Nothing in this Article shall be construed to require the painting of an otherwise unpainted exterior portion of a regulated business.

**1512.5** Any sexually-oriented business in lawful operation on November 1, 1999, shall be deemed a non-conforming use, if not in compliance with these provisions of Section 1512, and shall have until December 31, 2005, to conform to the provisions of this Section 1512.

**Sec. 1513. Signage.**

**1513.1** It shall be unlawful for the owner or operator of any sexually-oriented business or any other person to erect, construct, or maintain any sign for the sexually-oriented business other than one "primary sign" and one "secondary sign," as provided herein.

**1513.2** Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

- (a) not contain any flashing lights;
- (b) be a flat plane, rectangular in shape;
- (c) not exceed seventy-five (75) square feet in area; and
- (d) not exceed ten (10) feet in height or ten (10) feet in length.

**1513.3** Primary signs shall contain no photographs, silhouettes, drawings, or pictorial representations of any manner, and may contain only:

- (a) the name of the sexually-oriented business and/or
- (b) one or more of the following phrases:
  - (a) "Adult Bookstore"
  - (b) "Adult Movie Theater"
  - (c) "Adult Cabaret"
  - (d) "Adult Entertainment"
  - (e) "Adult Model Studio"
- (c) Primary signs for Adult Movie Theaters may contain the additional phrase, "Movie Titles Posted on Premises."

**1513.4** Each letter forming a word on a primary sign shall be of a solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

**1513.5** Secondary signs shall have only one (1) display surface. Such display surface shall:

- (a) be a flat plane, rectangular in shape;
- (b) not exceed 20 square feet in area;
- (c) not exceed five (5) feet in height and four (4) in width; and
- (d) be affixed or attached to any wall or door of the business.

**1513.6** The provisions contained in this Section 1513 are intended to supplement the sign requirements established by the Zoning Ordinance.

**Sec. 1514. Parking.**

Sexually-oriented businesses shall be required to provide one (1) on-premise parking space for each 100 square feet of gross floor area of the structure or one (1) on-premise parking space per every 3 persons of maximum seating capacity, whichever is greater, plus one (1) space per employee. Maximum seating capacity shall be determined by the Zoning Administrator upon information supplied by the County Fire Department and/or Building Inspection Department.

**Sec. 1515. Adult motels.**

**1515.1** Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this article.

**1515.2** A person commits a misdemeanor, punishable, upon conviction, in accordance with the Code of Ordinances for the Town of Atlantic Beach, if, as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have a sexually oriented permit, he rents or subrents a sleeping room to a person and, within ten hours from the time the room is rented, he rents or subrents the same sleeping room again.

**1515.3** For purposes of Section 1515.2, the terms "rent" and "subrent" mean the act of permitting a room to be occupied for any form of consideration.

**Sec. 1516. Exhibition of sexually explicit films or videos.**

**1516.1** A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises, in a viewing room of less than 150 square feet of floorspace, a film, videocassette or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (a) Upon application for a sexually oriented permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting



fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Zoning Administrator may waive the requirement for this diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

- (b) The application shall be sworn to be true and correct by the applicant.
- (c) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Zoning Administrator or his designee.
- (d) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- (e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises have two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
- (f) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection 1516.1(e) of this section remains unobstructed by any walls, merchandise, display racks or other materials at all times, and in every booth or room in which viewing of videos, as defined in subsection 1516.1, is taking place, the bottom of the door must be at least 18 inches above the floor level; and it shall also be the duty of such persons to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection 1516.1.
- (g) No viewing room may be occupied by more than one person at any time.
- (h) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot-candle as measured at the floor level.
- (i) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination

described in subsection 1516.1(h) of this section is maintained at all times that any patron is present in the premises.

**1516.2** A person having a duty under subsections 1516.1 (a)-(i) of this section commits a misdemeanor, punishable, upon conviction, in accordance with the Code of Ordinances of the Town of Atlantic Beach, if he knowingly fails to perform that duty.

**Sec. 1517. Exemptions.**

**1517.1** It is a defense to prosecution under this article that a person appearing in a state of nudity did so in a modeling class operated:

- (a) By a proprietary school, licensed by the state; or a college, junior college or university supported entirely or partly by taxation;
- (b) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or
- (c) In a structure:
  - (i) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
  - (ii) Where, in order to participate in a class, a student must enroll at least three days in advance of the class; and
  - (iii) Where no more than one nude model is on the premises at any one time.

## ARTICLE XVI

### ANTENNAS AND COMMERCIAL TOWERS

#### **Sec. 1600.     Antennas.**

**1600.1** In all zoning districts, any antenna of any height shall comply with all yard and setback requirements.

**1600.2** In the HC (Highway Commercial) zoning district, antennas may be placed at any location not visible from any adjacent public street. Antennas may be placed on top of a principal structure less than 30 feet in height provided that screening is provided with materials compatible with the principal structure at least equal in height to the antenna. Antennas may be placed on top of flat-roofed structures which exceed 30 feet in height. Antennas erected upon any pitched-roof structure, regardless of the height of the structure, must be screened with materials compatible with the principal structure, the screening to be not less than equal in height to the antenna. In these districts, dish type antenna measuring less than three feet in diameter may be placed at any location on a principal structure except for the building facade or any street-oriented side wall.

**1600.3** In Residential zoning districts, and MPH zoning districts, no antenna shall be permitted between the front of a principal structure and any adjacent public street, and in the case of corner lots, the side of a principal structure and the street. No dish type antenna more than 18 inches in diameter shall be placed on the roof or other portion of a building so as to be visible from any adjacent public street.

#### **Sec. 1601.     Communication towers.**

**1601.1**       *Intent.* It is the intent of this section to provide a definition of communication towers and to provide regulations for placement of them.

**1601.2**       *Definition.* The term "communication tower," for purposes of this section, means a tower or other structure that supports one or more antennas utilized for radio or television broadcasting or for two-way radio or television communication, but does not include any structure or device that is less than ten feet in height as measured from the base.

**1601.3**       *Height.* Communication towers shall have a maximum height of 300 feet. For towers on buildings, the maximum height shall be 20 feet above the roofline of buildings 40 feet (four stories) or less in height, and 40 feet above the roofline of buildings 50 feet (five stories) in height or greater.

**1601.4**      *Setback.* The minimum setback shall be as follows:

- a) In no case shall a communication tower be located within 50 feet of a residential zoning district.
- b) For communication towers 150 feet in height or less, the setback from any residential zoning district shall be one foot per one foot of tower height, as measured from the base of the tower.
- c) For communication towers greater than 150 feet in height, the setback from any residential zoning district shall increased by two feet per one foot of tower height in excess of 150 feet, as measured from the base of the tower.
- d) No communication tower, except for a tower on a building or a tower to be located in a HC (Highway Commercial) zoning district, shall be located within 50 feet of any public right-of-way. Towers proposed to be located within HC (Highway Commercial) zoning districts which cannot meet this setback may be permitted by special exception.
- e) Districts where permitted.
  - i) Communication towers are allocated as principal or accessory uses in HC (Highway Commercial) districts subject to the setback requirements of the district in which they are located.
  - ii) Communication towers erected on the tops of buildings or other existing structures and which meet the height requirements as stated in subsection 1601.3 of this section do not require special exception approval and may be approved by the Zoning Administrator. Communication equipment added to existing communication towers by collocation does not require a special exception approval and may be approved by the Zoning Administrator provided that the height of the existing tower is not increased.

**1601.5**      *Special exception criteria.*

- a) Standards for approval. In addition to the criteria for special exceptions set forth in section 1201(2), zoning board of adjustment shall, in consider applications for special exceptions relating to communication towers, consider the following factors:
  - i) The proposed structure will not endanger the health and safety of residents, employees or travelers, including but not limited to the likelihood of the failure of such structure;

- ii) The proposed tower if located in an area where it will not substantially detract from aesthetics and neighborhood character or impair the use of neighboring properties, with additional consideration for properties designated as historic either locally or by listing in the National Register of Historic Places;
  - iii) Within residential zones, the proposed tower is not located within 1,000 feet of another tower unless on the same property; and
  - iv) The proposed user has attempted to collocate on existing communication towers and is willing to allow other users to collocate on the proposed tower in the future subject to engineering capabilities of the structure.
- b) Site plan and other documentation. A site plan, evaluation drawing, photographs and other appropriate documentation must be submitted with the request for special exception which provide the following information:
- i) The site plan must include the location of the tower, guy anchors (if any), the transmission building and other accessory uses, parking access, fences, and adjacent land use. Landscaping and required buffering must also be shown.
  - ii) Elevation drawings must clearly show the design of the tower and materials to be used.
  - iii) Photographs must show the proposed site and the immediate area. Submittal of other detailed information which supports the request, such as topography and aerial views, is encouraged at the option of the applicant.

**1601.6**  
follows:

*Landscaping and fencing.* Landscaping and fencing are to provided as

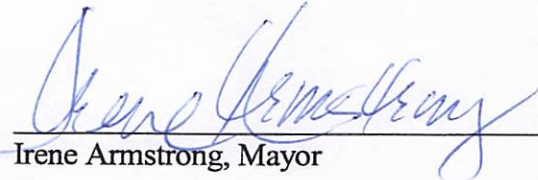
- 1) Eight-foot-high fencing shall be provided around the tower and any associated building.
- 2) Around the base of the tower, outside of the fencing, at least one row or evergreen shrubs forming a continuous hedge at least five feet in height shall be provided, with individual plantings spaced not more than five feet apart. Additional landscaping, to include that associated with parking, is to be provided as required by all other relevant provisions of this article.

- 1601.7**        *Illumination.* Towers shall be illuminated only to the extent required by applicable federal or state statute or regulation.
- 1601.8**        *Signage.* No signage is permitted except as is required by applicable state or federal law, rule or regulation. Signs for the purpose of identification, warning, emergency function or contact may be placed as required by standard industry practice.
- 1601.9**        *Abandonment.* A tower that is no longer used for communication purposes must be removed within 120 days of the date it is taken out of service.
- 1601.10**       *Permit required.* A zoning permit is required to be issued prior to the beginning of any site work or tower construction.
- 1601.11**       *Collocation.* At the time of the zoning permit application for a freestanding tower, satisfactory evidence shall be submitted that alternative towers, buildings or other structures are not available for use within the applicant's tower site search area that are structurally capable of supporting the intended antenna or meeting the applicant's necessary height criteria, or provide a location free of interference from other communications towers.
- 1601.12**       *Color.* Towers shall be light gray, except as otherwise required by applicable federal or state statute or regulation.

This Ordinance shall be in full force and effect from and after the date of its enactment as provided by law and shall be included in the comprehensive Code of Ordinances of the Town of Atlantic Beach.

November, 16, 1999.

  
Mervyl McMillan, Town Manager

  
Irene Armstrong, Mayor

First Reading: November 1, 1999

Second Reading: November 16, 1999

Eva McMillan, Mayor Pro-tem

  
Gloria Lance, Council Member

  
Vander Gore, Council Member

John Sketers, Council Member

