

**TITLE I. General Provisions.** – Establishes the Town Code for Kill Devil Hills and lays out general conditions for interpretation, application, penalties and enforcement.

**Chapter 10. General Provisions. § 10.99 GENERAL PENALTY.**

(A) In accordance with G.S. § 160A-175, and unless this code of ordinances provides otherwise, violation of any provision hereof shall be a Class 3 misdemeanor as provided in G.S. § 14-4, punishable upon conviction by a fine not exceeding \$50 or by imprisonment not exceeding 30 days. An ordinance may provide by express statement that the maximum fine or term of imprisonment to imposed for its violation shall be some figure or number of days less than the maximum penalties prescribed by G.S. § 14-4.

(B) (1) As authorized by G.S. § 160A-175, the violation of any of the provisions of this code shall subject the person or entity violating such provisions to a civil penalty of \$50 per day for each of the first 15 days such violation continues after notice of the violation from the town, \$100 per day for the sixteenth through the thirtieth day such violation continues after the initial notice from the town, and \$500 or the maximum amount authorized under the provisions of the North Carolina General Statutes, whichever is greater, for each day after 30 days that such violation continues after the initial notice from the town.

(2) The imposition and collection of the foregoing civil penalties shall be in addition to all other remedies available to the town at law or in equity, authorized under the provisions of the North Carolina General Statutes, including but not limited to the suspensions of licenses and permits and actions to abate, enjoin or otherwise remedy violations of this code and all such remedies shall be cumulative. The imposition of civil penalties or the use of any other civil remedy available to the town shall be in addition to and not exclusive of any criminal proceeding and/or penalties available and/or imposed for the violation of this code.

(C) An ordinance may provide, when appropriate, that each day's continuing violation shall be a separate and distinct offense.

(Am. Ord. 05-02, passed 2-16-05)

**TITLE III. Administration.** – Establishes form of government, various public boards and commissions, including the Planning Board, the Board of Adjustment, the Community Appearance Commission, and the Historic Landmarks Commission. Also the Police ordinance and Civil Emergencies.

**Chapter 32. Police. - § 32.23 PROGRAM PARTICIPATION REGULATIONS.**

(A) All persons interested in becoming a Program participant shall first apply for designation as a McGruff House with the Police Department. Upon receipt of an application for designation as a McGruff House, the Police Chief or Program Coordinator shall conduct a background check investigation of the applicant in accordance with G.S. Ch. 115C, Art. 21A and the regulations promulgated by the North Carolina State Bureau of Investigation, Division of Criminal Information (NCSBI/DCI).

(B) To be accepted into the Program, applicants and their households must meet the following minimum criteria.

(1) *General requirements.*

(a) At least one member of the household shall be 21 years of age.

(b) The applicant shall have and maintain homeowners' liability insurance or, if renting, renters' liability insurance.

(c) The applicant shall have an operable telephone at all times during participation in the Program.

(d) The applicant shall agree to abide by the regulations of the Program as may be established by the Police Department and attend such educational sessions as may be conducted by the Police Department relative to Program participation.

(e) The application must be cleared through a law enforcement background investigation as described in division (A) of this section.

(2) *Application.* All applicants shall complete, date and sign an application form, including an agreement to a law enforcement criminal history background investigation and the submission of fingerprints taken by the Police Department.

(3) *Background check; fingerprinting required.* Every individual 16 years of age or older who lives in the applicant's household shall provide information as determined necessary by the Police Department, sign the application agreeing to a law enforcement criminal history background investigation and submit to fingerprinting by the Police Department.

(a) This information shall include full name, date of birth, social security number, driver's license number, race, sex and fingerprints taken by the Police Department.

(b) Certification of homeowners' or renters' liability insurance information shall be provided as set forth in the list of standard requirements.

(c) The initial background investigation shall include a local, state and national wanted files record check.

(d) A check of the applicant's state of residence for the past five years will be conducted for all residents who have lived in the state for one year or less.

(e) The criminal history background investigation shall include but is not limited to:

1. A check on the State Criminal History Repository;
2. A State Division of Motor Vehicles driver's history check; and
3. An in-house operations report for frequent calls to the applicant's address.

(4) All applications are to be recorded in an Applicant Log for tracking purposes.

('88 Code, § 16-23) (Am. Ord. passed - -) [Penalty, see § 10.99](#)

**TITLE V. Public Services.** – This article establishes three services and the conditions under which these services are provided: garbage collection, water service, and sewer service.

**Chapter 50. Garbage Services. - § 50.03 LITTER.**

(A) It shall be unlawful to litter in the town. If the town determines that there is litter upon a property or within the street right-of-way adjacent to an improved or unimproved property, the property owner shall be notified by return-receipt mailed or hand-delivered written notification and given seven days to remove the litter from the property or right-of-way. **In the event the litter is not removed and abated**

within the allotted seven-day period, the litter shall become a nuisance and the town shall proceed to abate the nuisance in accordance with the provisions of § 10.99.

(B) Upon a property owner's failure to abate the nuisance within the time set forth above, the owner of the improved or unimproved property shall be in violation of the town code and subject to the civil and criminal penalties set forth in the town code. Each 24-hour period that the nuisance remains unabated after notice to the property owner shall constitute a separate violation.

(Ord. 00-08, passed 5-24-00; Am. Ord. 01-06, passed 6-27-01) Penalty, see § 10.99

#### **Chapter 50. Garbage Services. - § 50.15 WASTE COLLECTIONS AND CONTAINERS.**

(A) *Waste collections.* All improved properties in the town shall have a town approved waste container on site which shall be utilized for the collection of rubbish. All rubbish placed in containers shall be securely wrapped or bagged. No loose material such as sawdust, ashes or packing materials shall be placed in any waste container.

(B) *Waste container required.* Any private home, rental cottage or general business, such as a gift shop, real estate office, bank, home occupation or other sales or service business, shall have a town-approved refuse container based upon the volume of refuse generated or anticipated to be generated.

(1) *Roll-out containers.* Each improved residential property in the town shall have at least one roll-out container in which to keep and maintain the rubbish to be disposed of. For any location determined by the Public Services Department to need more than one roll-out container, the owner shall provide up to three roll-out containers. In the event that the Public Services Department determines that three roll-out containers are not sufficient to contain the rubbish generated on-site, the town may require the owner to purchase a dumpster or dumpsters of a sufficient capacity to contain the rubbish generated on-site by the residence. The town will not pick up rubbish, whether bagged or unbagged, that is not within the container, and the placement of such material outside the container is strictly prohibited.

(2) *Dumpsters.* Each improved commercial or residential property for which a dumpster is required in the town shall have a dumpster or dumpsters of sufficient capacity necessary to contain the rubbish generated on-site by the commercial use as determined pursuant to the town-approved site plan and/or solid waste capacity survey. The town will not pick up rubbish, whether bagged or unbagged, that is not within the dumpster and the placement of such material outside the container is strictly prohibited.

(C) *Site reevaluation.* If the volume of solid waste to be collected at a particular site exceeds the capacity of the container on more than two occasions in a 12-month period, the property owner shall be required to purchase an additional container of a size determined to be adequate by the Public Services Department. If a site is determined to be noncompliant with the provisions of this section, prior to exercising the remedies outlined in § 10.99, the town shall give return-receipt mailed or hand-delivered notification of the violation to the property owner at the address shown on the ad valorem tax records. The owner shall have 14 days from the mailing date or hand-delivery date to comply with the provisions of this chapter.

(D) *Noncompliance; procedures.* If any waste container site or container does not meet the town's specifications or should a site or container which complied with the specifications on the effective date of the ordinance from which this chapter was derived subsequently become noncomplying for any reason, prior to exercising the penalties outlined in § 10.99, the town shall give the property owner notification of the location and manner in which a site or container does not comply with this chapter. A copy of the applicable standards shall be attached to the notice or otherwise appear on the face of the notice. This notification of the violation shall be return-receipt mailed or hand-delivered to the property owner at the address shown on the ad valorem tax records. The owner shall have 14 days from the mailing date or hand-delivery date to comply with the provisions of this chapter.

(Ord. 00-08, passed 5-24-00) [Penalty, see § 10.99](#)

**Chapter 50. Garbage Services - § 50.17 MAINTENANCE OF WASTE CONTAINERS AND WASTE CONTAINER SITES.**

(A) *Maintenance of container.* The property owner shall be responsible for the maintenance and repair of all waste containers and for the replacement of such container or containers if damaged, lost, stolen or destroyed. Maintenance of such containers shall include but is not limited to keeping the container rust free, painted, clean and water tight. Lids for roll-out containers and dumpsters shall be required and must be closed at all times. **If a container has been determined to be noncompliant, or upon violation of this section, prior to exercising the remedies outlined in § 10.99, the town shall give return-receipt mailed or hand-delivered written notification of the violation to the property owner at the address shown on the ad valorem tax records.** The owner shall have 14 days from the mailing date or hand-delivery date to comply with the provisions of this chapter.

(B) *Maintenance of container site.* For the purposes of this chapter, container site shall include the pad, enclosure and access or the right-of-way area on which the roll-out container is placed. The property owner shall keep the container site clean, free of overflow materials from the waste container, litter and/or debris. Property owners shall maintain accessibility to the container, pad and enclosure and keep the container, pad and enclosure in good repair. **If a container site has been determined to be noncompliant, or upon violation of this chapter prior to exercising the remedies outlined in § 10.99, the town shall give return-receipt mailed or hand-delivered written notification of the violation to the property owner at the address shown on the ad valorem tax records.** The owner shall have 14 days from the mailing date or hand-delivery date to comply with the provisions of this chapter.

(Ord. 00-08, passed 5-24-00) [Penalty, see § 10.99](#)

**Chapter 51. Water Service. - § 51.55 COMPLIANCE.**

Any person who violates the provisions of this subchapter, who fails to carry out the duties and responsibilities imposed by this subchapter, or who impedes or interferes with any action undertaken or ordered pursuant to this subchapter shall be subject to the following penalties:

(A) Upon discovery of a violation of any water use restriction imposed pursuant to this subchapter, a written notice of the violation shall be affixed to the property where the violation occurred and mailed to the customer at the address listed by the customer for billing and to any other person known to the Town's Public Services Department who is responsible for the violation or its correction. Said notice shall describe the violation and order that it be corrected, cured, or abated immediately or within such specified time as the town determines is reasonable under the circumstances. If the order is not complied with, the town may terminate water service to the customer subject to the following procedures:

(1) The town shall give the customer notice by first class mail that, due to the violation, water services will be discontinued within a specified time not less than five days from the date mailed and that the customer will have the opportunity to appeal the termination by requesting within five days of the date mailed a hearing scheduled before the Town Manager or such person as he or she may designate;

(2) If such a hearing is requested by the customer charged with the violation, the hearing shall be scheduled and heard within five days of the request and customer shall be given an opportunity to be heard before termination is ordered; and

(3) The Town Manager or designee shall make findings of fact and order whether service should continue or be terminated.

(B) A fee of \$50 shall be paid for the reconnection of any water service terminated pursuant to division (A) of this section. In the event of subsequent violations during the same state of emergency, the reconnection fee shall be \$200 for the second violation and \$300 for each additional violation.

(C) Any person may also be charged with a violation of this subchapter and prosecuted in District Court. Any person so charged and found guilty of violating the provisions of this subchapter shall be guilty of a misdemeanor. Each day's violation shall constitute a separate offense. The penalty for violation shall be a maximum fine of \$500 or imprisonment for not more than 30 days.

(D) *Civil penalties.* In addition to or in lieu of **criminal** prosecution, violation of this subchapter may subject the offender to civil penalties in the amount of \$100 per day, for each day's violation collectable in a civil action in the nature of debt.

(E) The town shall have all other remedies available to it by law, including injunctive relief, to enforce this subchapter.

(Ord. 02-12, passed 7-8-02; Am. Ord. 08-23, passed 8-11-08)

#### **Chapter 51. Sewer Service. - § 52.99 PENALTY.**

(A) Any person who shall continue any violation beyond the time limit provided for in the aforementioned notice of violation shall be guilty of a **misdemeanor**. Each day in which any such violation continues shall be deemed a separate offense and shall be turned over to the District Attorney for prosecution.

(B) In addition to the above, any user that continues the violation of this chapter after the ten-day period following notification shall be assessed a penalty of \$100 per day, in addition to any repair costs, as a civil penalty for each day such violation continues beyond the ten-day period, by the Utilities Director or designee and collected as a civil penalty by an action in the General Court of Justice, District Court Division.

(C) Persons who violate this chapter or otherwise damage the town, its water supply, sewer systems, property or otherwise cause damage shall be liable for such damages as may be imposed by a court of law or equity or an administrative tribunal, and the town reserves all rights and privileges to seek damages and other remedies that may be available.

(D) If a public sewer becomes obstructed or damaged because of any substances improperly discharged into it, the person(s) responsible for such discharge shall be billed and shall pay for the expenses incurred by the town in cleaning out, repairing or rebuilding the sewer as well as damages incurred by the town arising from claims of private property owners which are caused by such obstruction or damage.

(Ord. passed - -)

**TITLE VII. Traffic Code.** Provides authorizing language for the Town's Official Traffic Map, regulations for operating and parking motor vehicles both on and off public roadways.

#### **Chapter 71. Traffic Regulations. - § 71.08 OFF-ROAD VEHICLES.**

(A) No person shall operate an off-road vehicle of any type, such as a beach buggy, a jeep, a motorcycle, a scooter bike or a 2-3-4 wheel buggy, powered by any type of motor, on private property within the town without the written permission of the property owner over and upon the property upon

which the vehicle is being operated. The written permission must be in the possession of the operator at the time of inquiry by any law enforcement officer.

(B) No person shall operate an off-road vehicle of any type, such as a beach buggy, a jeep, a motorcycle or a 2-3-4 wheel buggy, powered by any type of motor, upon any public property of the town, meaning platted streets, public areas or access areas to the ocean or sound which are not improved with clay or paved streets for vehicular traffic. Use shall not be prohibited upon public property which is improved and paved for vehicular traffic.

(C) The prohibitions in this section shall not apply to any property owner or citizen using a conventional four-wheel-drive vehicle, such as a jeep, over and across a platted street for ingress or egress to and from paved streets or highways within the town.

(D) Police and duly authorized emergency or rescue vehicles shall be exempt from the prohibitions contained in this section.

(E) Violation of this section shall be punishable as a **misdemeanor** by fine or imprisonment in the discretion of the court.

('88 Code, § 11-14) (Ord. passed 7-12-77) Penalty, see § 70.99

**TITLE IX. General Regulations.** – Ordinances in this title include those on nuisances, streets and sidewalks regulations and construction, abandoned and junked vehicles, fire prevention and protections, animal control, and seaside regulations.

**Chapter 92. Parades, Pickets and Group Demonstrations. - § 92.15 Required.**

No person shall organize, conduct or participate in any parade, picket line or group demonstration in or upon any street, sidewalk, alley or other public place within the town unless a permit therefor has been issued by the town in accordance with the provisions of this chapter.

('88 Code, § 14-26) Penalty, see § 10.99

**Chapter 92. Parades, Pickets and Group Demonstrations. - § 92.20 PROHIBITED ACTS.**

The following acts or activities, when performed or undertaken in conjunction with or as a part of any parade, picket line or group demonstration, are prohibited and declared unlawful:

(A) The carrying on or about the person of any firearm or any weapon or article, including but not limited to blackjacks, nightsticks or flashlights, which by their use might constitute a deadly weapon; and

(B) The taking along of any dog or vicious animal, whether leashed or unleashed. This prohibition shall not apply to an animal trained for and engaged in aiding the handicapped.

('88 Code, § 14-31) Penalty, see § 10.99

**Chapter 93. Nuisances. - § 93.08 CUMULATIVE REMEDIES.**

The procedures in this chapter shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances, and this chapter shall not prevent the town from

proceeding in a **criminal** action against any person violating the provisions of this chapter as provided in G.S. § 14-4 and as authorized by G.S. § 160A-193.

('88 Code, § 12-44) (Ord. passed 11-9-83; Am. Ord. 93-13, passed 12-13-93; Am. Ord. 14-18, passed 10-13-14)

#### **Chapter 94. Animals. - § 94.07 EXOTIC OR WILD ANIMALS.**

(A) *Generally.* The owner of any exotic or wild animal shall notify the animal control officer as soon as practicable, but in no event later than 24 hours, after any of the following events:

(1) The importing, locating or placing of an exotic or wild animal within the corporate limits of the town. The owner shall also provide the animal control officer, for inspection, any required federal or state permits for the exotic or wild animal;

(2) An assault, attack or biting upon any human being committed by an exotic or wild animal;

(3) An attack or biting upon any domesticated animal or pet by an exotic or wild animal if the injured domestic animal or pet is not also the property of the owner of the exotic or wild animal;

(4) The destruction of, or damage to, property of any other person committed by an exotic or wild animal;

(5) The roaming or escape of an exotic or wild animal that is required to be restrained or confined.

(B) *Permit required to own; confinement and control.* It shall be unlawful for any owner of any exotic or wild animal to keep or maintain any such animal within the town unless any required federal and/or state permits have been obtained and are currently valid for the time period and circumstances under which the exotic or wild animal will be maintained within the town, and the animal is:

(1) Confined within a humane and secure enclosure, as approved by the animal control officer, in accordance with humane practices; or

(2) Securely muzzled, if required, and under restraint by a competent person who, by means of a leash, chain, rope or other device suitable to adequately restrain the particular exotic or wild animal, has such animal firmly under control at all times.

(C) *Confiscation.* Any exotic or wild animal which is not properly restrained or secured as required by this section, or which has injured or endangered any person or property, or which does not have currently valid federal or state permits, may be confiscated by any animal control officer or law enforcement officer and kept and harbored at the expense of the owner determined to be in violation of this section.

(D) *Slaying of animal in certain circumstances.* Any exotic or wild animal which has escaped, is running at large, or is otherwise deemed to be a continuing threat to the public safety may be slain by any law enforcement officer or animal control officer if attempts to capture the animal are unsuccessful or if immediate capture is not practical or reasonably possible.

(E) *Penalty.* Notwithstanding any other provision of Chapter 94 to the contrary, and in addition to confiscation of the animal as set forth above, violation of this section shall constitute a **misdemeanor**, punishable for each day the violation continues by a fine of up to \$500 or imprisonment of not more than 30 days. A law enforcement officer or animal control officer may initiate the criminal process.

#### **Chapter 94. Animals. - § 94.08 DEFECATING ON PRIVATE OR PUBLIC PROPERTY.**

Each and every person; keeper or custodian of any dog on any public place, street, sidewalk, parking lot, on the private property of a person other than the owner, keeper or custodian, and on the beach shall immediately remove all feces deposited by the dog, shall carry or have on his person, at all times, an appropriate waste container for the immediate removal of all feces deposited by the dog and shall be responsible for displaying, presenting, showing, or otherwise providing evidence of possession of said

container upon the request of any person responsible for enforcing civil citation offenses of this code upon presentation of proper identification. **Failure to present evidence of such container shall be a violation of this section and penalty shall be imposed as provided in § 10.99.** Such removal shall be accomplished by depositing such feces in an appropriate waste container which does not allow leakage or seepage of the feces and which is ultimately disposed of in a refuse container located on the property of the person, keeper or custodian of the animal or on the premises of which the animal's person, keeper or custodian is in lawful possession. Burying the feces in the sand or depositing the feces in the ocean is prohibited and constitutes a violation of this chapter. (Am. Ord. 05-14, passed 8-8-05)

**Chapter 94. Animals. - § 94.12 ALTERNATE PROCEDURE FOR ABATEMENT OF NUISANCE CREATED BY DOGS.**

(A) *Declaration of nuisance.*

(1) As defined in § [94.01](#), and/or, the running at large of any dog, especially one having dangerous or destructive propensities indicated by the turning over of garbage receptacles, the destruction of shrubs, flowers, grass and other plant growth, the destruction of other property or the killing of other animals or the attacking of persons or other similar acts is hereby declared to be a public nuisance, and shall be abated as provided in this section.

(2) Any person keeping, within the corporate limits of the town, one or more dogs which by prolonged and habitual barking, howling or whining cause serious annoyance to neighboring residents and interfere with the reasonable use and enjoyment of the premises occupied by such residents shall be guilty of maintaining a nuisance.

(B) *Complaint; notice.* Upon written, detailed and signed complaint being made to the Animal Control Division or Police Department by any resident that any person is maintaining a public nuisance as described in division (A) hereof, the Chief of Police shall cause the situation complained of to be investigated and a report and findings thereon to be reduced to writing by the investigating officer.

(C) *Abatement.* If the written findings of the investigating officer indicate that the complaint is justified then the Chief of Police shall cause the owner or keeper of the dog in question to be so notified in writing and ordered to abate such nuisance within 48 hours by destruction or removal of such dog, or by penning, fence or otherwise restraining such dog from running at large at any time. In the event the owner or keeper of the dog is unknown and cannot be ascertained, such notice and order, along with a general description of the dog, shall be posted for 48 hours at the Town Hall.

(D) *Failure to abate—impoundment; destruction.* If any owner or keeper of a dog hereinabove described shall fail or refuse to abate such nuisance upon order of the Chief of Police within the specified time, the Chief of Police shall cause the dog in question to be apprehended and impounded in a suitable place, and the owner or keeper shall be notified in writing of such impoundment. If the owner or keeper shall so request, the dog shall be released to him upon his execution of a written agreement comply with the abatement order. If no such request and execution is made by the owner or keeper within five days after written notice, the Chief of Police shall cause such dog to be destroyed. In the event the owner or keeper of such dog is unknown, the Chief of Police shall cause apprehension and impoundment to be carried out if no one claims such dog within 48 hours after the notice, order and description were posted and shall cause a notice of impoundment, along with a general description of the dog, to be posted for five days at the Town Hall. If no request for release of the dog and execution of agreement to comply with the order and abatement respecting the dog is made within the five-day period the Chief of Police shall cause the dog to be destroyed.

(E) *Same--misdemeanor*. If any owner or keeper of a dog for which an order of abatement has been issued shall fail or refuse to abate the nuisance as ordered, he shall be guilty of a **misdemeanor**.

(F) *Alternate remedy*. This section shall be construed as an alternate remedy for the abatement of a nuisance and shall not be construed to limit other sections of this chapter.

**Chapter 95. Fire Prevention. - § 95.04 AUTOMATIC SMOKE DETECTOR REQUIRED.**

Pursuant to Chapter 911 of the 1989 Session Laws, all rental residential units, including hotel and motel units, shall have an operational automatic smoke detector in each dwelling unit. The fire official shall approve the type and location of all automatic smoke detectors.

Penalty, see § 10.99

**Chapter 95. Fire Prevention. - § 95.05 MOTOR VEHICLE OPERATION AT OR NEAR EMERGENCY SCENE.**

(A) No person shall drive a motor vehicle over a fire hose or any other equipment that is being used at a fire at any time, or block a fire-fighting apparatus or any other equipment from its source of supply regardless of its distance from a fire.

(B) No person shall drive a motor vehicle, other than one on official business, to park and leave standing a vehicle within one block of Police or Fire Department vehicles, public or private ambulances, rescue squad emergency vehicles, or other emergency response vehicles, which are engaged in official emergency response to the scene, engaged in the investigation of an accident, or engaged in rendering assistance to victims at the scene.

Penalty, see § 10.99

**Chapter 95. Fire Prevention. - § 95.06 FOLLOWING FIRE APPARATUS.**

No driver of any vehicle other than one on official business shall follow any fire apparatus traveling in response to a fire alarm closer than 300 feet or drive into or park the vehicle within one block where fire apparatus has stopped in answer to a fire alarm.

Penalty, see § 10.99

**Chapter 95. Fire Prevention. - § 95.07 AERIAL LUMINARY DEVICES, FLYING SKY LANTERNS OR WISH LANTERNS PROHIBITED.**

(A) **AERIAL LUMINARY DEVICES, FLYING SKY LANTERNS, SKY CANDLE, WISH LANTERNS**, and the like, shall be defined as any homemade or manufactured balloon or lantern designed to float in the air, often used to celebrate weddings and other special events, typically constructed of flame-retardant paper or rice paper, that has an open flame, fuel cell or other heating device to heat air as a lifting mechanism thus causing the balloon or lantern to lift into the atmosphere, tethered or untethered, leaving the height and distance it travels to be determined by existing atmospheric conditions. Such devices shall be deemed an aerial luminary device.

(B) All aerial luminary devices shall be deemed a fire hazard.

(C) It shall be unlawful to buy, sell, use, possess, ignite or cause to ignite any such aerial luminary device.

(D) Exception. This section shall not apply to signal flares for emergency use.

(Ord. 13-8, passed 5-13-13) Penalty, see § 10.99

**Chapter 95. Fire Prevention. - § 95.52 AUTOMATIC SPRINKLER SYSTEM NOT TO BE DISABLED.**

Upon the occupancy of any structure subject to this section, no person shall shut off or disable any automatic fire sprinkler system and no owner or resident of the building shall fail to prevent the shutting

off or disabling of the system. A sprinkler system may be shut off in order to perform maintenance work on the system during the time that qualified maintenance personnel are on the premises performing necessary maintenance work. Maintenance work shall only be conducted after notice to and approval by the Fire Department.

[Penalty, see § 10.99](#)

**Chapter 95. Fire Preventions. - § 95.53 GIVING FALSE FIRE ALARMS; MOLESTING FIRE ALARM, FIRE-DETECTION OR FIRE-EXTINGUISHING SYSTEM.**

No person or persons shall wantonly and willfully give or cause to be given, or to advise, counsel, or aid and abet anyone in giving a false alarm of fire, or to break the glass key protector, or to pull the slide, arm or lever of any station or signal box of any fire-alarm system, except in case of fire, or willfully misuse or damage a portable fire extinguisher, or in any way to willfully interfere with, damage, deface, molest, or injure any part or portion of any fire alarm, fire-detection, smoke-detection or fire-extinguishing system.

[Penalty, see § 10.99](#)

**Chapter 96. Seaside Regulations. - § 96.03 GLASS CONTAINERS.**

(A) The use of glass bottles and containers of any type on the beach area, east of the western toe of the dune system is a danger to the public health, comfort, convenience, safety, welfare and prosperity of the residents and visitors of the town. The necessity and the public interest for the provisions and prohibitions of this section are declared as a matter of legislative determination and public policy; it is further declared that the provisions and prohibitions of this section are in pursuance of securing and promoting the public health, safety, comfort, convenience, welfare, peace and quiet and prosperity of the town and its inhabitants and visitors.

(B) No person shall carry, possess, transport or otherwise have in his possession any glass bottle, container or other item which, when broken or shattered into smaller pieces, can or is reasonably likely to cause injury to persons walking or otherwise using the beach area east of the western toe of the dune system.

(C) Violation of this section shall constitute a **misdemeanor** .  
(Ord. 15-1, passed 6-8-15)

**Chapter 96. Seaside Regulations. - § 96.25 [Beach Driving] VIOLATIONS, REVOCATION OF PERMIT.**

(A) Violations of town ordinances shall subject the offender to a criminal **misdemeanor** under G.S. § 14-4. Violations of G.S. Chapter 20 shall be punished as provided by the North Carolina General Statutes.

(B) Violations of this subchapter involving threatened or endangered species shall subject the offender to civil and criminal penalties imposed by the United States Fish and Wildlife Service. The town will forward all enforcement actions to the United States Fish and Wildlife Service for maximum enforcement action.

(C) The Police Chief or his designee shall have the authority to revoke a permit issued under this subchapter for one or more violations of this subchapter. The Police Chief or his designee shall consider the number, nature, and intent associated with the violations in making a determination to revoke a permit; and shall also determine the time frame said permit is revoked.  
(Ord. 15-1, passed 6-8-15)

## **TITLE XI. Business Regulations.** – This Title regulates business operations in Kill Devil Hills, including natural gas franchises, cablevision franchises, taxicab, peddlers and itinerate vendors.

### **Chapter 111. Peddlers and Itinerant Vendors. - § 111.15 PAYMENT OF ACTUAL COSTS REQUIRED.**

If the permittee fails to follow the conditions of the approved permit resulting in expense to the town, or requests the use of town services over and above those provided during a regular workday or shift including but not limited to: off-duty police officers for security, off-duty lifeguards, or failure to collect and dispose of litter and trash, the actual costs of these services will be calculated and billed to the permittee by the town and the permittee shall be responsible for payment within 30 days. **Failure to pay for these services shall be a violation of the Town Code, and the permittee shall be subject to the penalties contained in § 10.99 General Penalty.**

(Ord. 13-13, passed 9-9-13)

### **Chapter 112. Sexually Oriented Businesses. - § 112.37 REGULATIONS PERTAINING TO THE EXTERIOR PORTIONS OF SEXUALLY ORIENTED BUSINESSES.**

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

(Ord. 99-02, passed 2-8-99) **Penalty, see § 112.99**

### **Chapter 112. Sexually Oriented Businesses. - § 112.38 PROHIBITIONS.**

Sexually oriented businesses are permitted only as specifically provided in the town code. Adult motels, adult escorts and adult escort agencies are prohibited.

(Ord. 99-02, passed 2-8-99) **Penalty, see § 112.99**

### **Chapter 112. Sexually Oriented Businesses. - § 112.99 PENALTY.**

**Any violation of the provisions of this chapter shall subject the offender to the penalties provided in § 10.99 of this code of ordinances.**

(Ord. 99-02, passed 2-8-99)

### **Chapter 115. Taxicabs. - § 115.99 PENALTY.**

(A) *Compliance.* All taxicab companies for which a valid 1993/94 fiscal year Kill Devil Hills privilege license was issued on or before the date of adoption of this chapter by the tax collector shall come into compliance with the provisions of this chapter by June 1, 1994. All other taxicab companies that may petition the tax collector for a license to conduct business in Kill Devil Hills after the date of adoption of this chapter shall meet the requirements of this chapter before such license shall be issued.

(B) *Enforcement.* **Violations of this chapter shall be punishable as a misdemeanor offense under G.S. § 14-4 and § 10.99 of the Kill Devil Hills code of ordinances.**

(Ord. 93-14, passed 12-13-93)

### **Chapter 117. Recycling. - § 117.13 DISPOSITION OF RECYCLABLE MATERIALS.**

The franchisee shall be responsible for all recyclables collected in accordance with this subchapter. No more than 5% by weight of all recyclable materials are to be landfilled and/or incinerated without the express, written permission of the Town Administrator.

(Ord. 08-14, passed 4-14-08) **Penalty, see §**

**TITLE XIII. General Offenses.** – This Title includes regulations on smoking in public buildings, noise, disorderly conduct, tents, consumption of alcohol on public property, prohibition of concealed weapons on public property, and skateboard and/or inline skate parks.

**Chapter 130. General Offenses. - § 130.12 CERTAIN ACTIVITIES PROHIBITED ON IMPROVED RECREATIONAL ACCESSES TO OCEANFRONT OR ESTUARINE BEACHES.**

(A) No person shall operate a bicycle, skates, skateboard, "heelies," or any type of moped, scooter, or other vehicle or device intended for recreation or transportation purposes, on town-owned walkways, decks, piers, or gazebos.

(B) This section shall not apply to vehicles or devices aiding or being used by physically challenged persons.

(C) Law enforcement agencies, fire departments and/or other emergency services, or personnel of the town engaged in their official duties are exempt from the provisions of this section.

(Ord. 07-08, passed 5-23-07) [Penalty, see § 130.99](#)

**Chapter 130. General Offenses. - § 130.40 PURPOSE AND FINDINGS.**

The Board of Commissioners finds as follows:

(A) Numerous studies have found that tobacco smoke is major contributor to indoor air pollution;

(B) Reliable studies have shown that breathing sidestream or secondhand smoke is a significant health hazard for certain population groups, including children, elderly people, individuals with cardiovascular disease and individuals with impaired respiratory functions, including asthmatics and those with obstructive airway disease;

(C) Health hazards induced by breathing sidestream or secondhand smoke include lung cancer, respiratory function, bronchial-constriction and bronchial-spasm;

(D) Nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing sidestream or secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same; and

(E) The smoking of tobacco or any other weed or plant is a proven danger to health. Accordingly, it has been determined that the health, safety and general welfare of the residents of, persons employed in and persons who frequent this town would be benefitted by the elimination of smoking in designated enclosed places, including places of employment.

('88 Code, § 13-60) (Ord. 92-01, passed 1-13-92)

**Chapter 130. General Offenses. - § 130.46 VIOLATIONS.**

(A) It shall be unlawful for any person to smoke in any area restricted by the provisions of this subchapter.

(B) It shall be unlawful for any department head or supervisor to permit smoking in the area which may be designated as a no smoking area.

('88 Code, § 13-67) (Ord. 92-01, passed 1-13-92) [Penalty, see § 130.99](#)

**Chapter 130. General Offenses, - § 130.76 RESPONSIBILITY OF USERS.**

(A) All users of skateboard/inline skating parks shall wear a helmet, elbow pads and kneepads at all times while engaging in hazardous recreational activities.

(B) Any person who observes, participates in or assists in hazardous recreational activities assumes the known or unknown inherent risks in these activities, irrespective of age, and is legally responsible for all damages, injury or death to himself or herself or other persons or property that result from these activities.

(C) While engaged in hazardous recreational activities, irrespective of where such activities occur, a participant is responsible for doing all of the following:

- (1) Acting within the limits of his or her ability and the purpose and design of the equipment used.
- (2) Maintaining control of his or her person and equipment used.
- (3) Refraining from acting in any manner that may cause or contribute to death or injury of himself or herself or other persons or property.

(D) Failure to comply with the requirements of division (C) above shall constitute negligence.  
(Ord. 08-24, passed 8-11-08) **Penalty, see § 130.99**

**Chapter 130. General Offenses. - § 130.99 PENALTY.**

(A) **Whoever shall violate any provision of this chapter for which no specific penalty is provided shall be punished as set forth in § 10.99 of this code.**

(B) **Any person who violates any of the provisions of § 130.40 et seq. shall be guilty of a misdemeanor and shall be punished in accordance with the misdemeanor statute.**

('88 Code, § 13-68) (Ord. 92-01, passed 1-13-92)

(C) In addition to other penalties provided for in this code, any person who violates the provisions of §§ [130.75](#) through [130.78](#) may be subject to sanctions imposed by the Town of Kill Devil Hills, including, but not limited to, suspension or permanent revocation of the privilege to use the skateboard/inline skating park and assessment for the full costs of any damages to the skateboard/inline skating park caused by the person.

(Ord. 08-24, passed 8-11-08)

## **TITLE XV. Land Usage. – Building regulations, flood damage prevention regulations, subdivision ordinance, and zoning regulations.**

**Chapter 150. Building Regulations. - § 150.06 BUILDING CODE.**

(A) *Adopted.*

(1) The North Carolina State Building Code, Volume I, General Construction; Volume I-A, Administration and Enforcement; Volume I-C, Accessibility Code; Volume II, Plumbing; Volume III, Mechanical; Volume IV, National Electric Code; Volume V, Fire; Volume VI, Gas; Volume VII, Residential; Volume VIII, Modular Construction Regulations, Regulations for Manufactured/Mobile Homes; Volume IX, Existing Buildings; and Volume X, Energy, as now in effect or as may be subsequently amended, are adopted by reference as if set forth fully herein as the Building Code of the town. It is adopted to the extent such code is applicable for safe and stable design, methods of construction, minimum standards and use of materials in buildings or structures erected, enlarged, altered, repaired or otherwise constructed or reconstructed after December 14, 1987.

(a) Appendix M, International Residential Code/NC, as amended.

(2) A member of the Town Planning and Inspections Department, certified by the North Carolina Code Qualifications Board, shall administer and enforce the provisions of the North Carolina State Building Code, except that in accordance with Ch. 95 of this code, the Fire Department shall administer and enforce the provisions of Volume 5, Fire Prevention.

('88 Code, § 4-61) (Ord. passed 12-14-87; Am. Ord. 91-01, passed 5-13-91; Am. Ord. 05-10, passed 6-22-05; Am. Ord. 09-05, passed 5-27-09; Am. Ord. 11-03, passed 1-26-11)

(B) *Penalties for violation.*

(1) Notwithstanding anything else to the contrary in this chapter, if any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this chapter, the Building Inspector, or any appropriate authority, in addition to other remedies, may institute any appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct or abate such violation, to prevent the occupancy of such building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

(2) Violation of the provisions of these regulations shall be a **misdemeanor** under G.S. § 14-4, and each days continuing violation shall be a separate offense. Notwithstanding the criminal penalties, the Building Inspector or the Zoning Administrator may institute a civil action against the offender seeking enforcement by appropriate equitable remedy, injunction and order of abatement or by any remedy authorized by G.S. §§ 160A-175 and 160A-389, as amended.

('88 Code, § 4-62) (Ord. passed 12-14-87)

#### **Chapter 150. Building Regulations. - § 150.23 PERMIT FOR LAND-DISTURBING ACTIVITY.**

No person shall conduct any land-disturbing activity upon any property within the town without first obtaining a written permit from the Building Inspector, which shall be valid for a period of 60 days. Within 30 days from the expiration date of the permit, the applicant shall seed or plant the disturbed area to minimize the erosion of the entire site.

('88 Code, § 4-84) (Ord. passed 12-14-87) [Penalty, see § 10.99](#)

#### ***Statutory reference:***

*Regulation of land-disturbing activity; Sedimentation Pollution Control Act of 1973, see G.S. §§ 113A-50 et seq.*

#### **Chapter 151. Flood Damage Prevention. - § 151.42 DUTIES AND RESPONSIBILITIES OF FLOODPLAIN ADMINISTRATOR.**

The Floodplain Administrator shall perform, but not be limited to, the following duties.

(A) Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this chapter have been satisfied.

(B) Advise permittee that additional federal or state permits (wetlands, endangered species, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.) may be required, and require that copies of such permits be provided and maintained on file with the floodplain development permit.

(C) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

(D) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(E) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new or substantially improved structures, in accordance with § [151.41\(C\)](#).

(F) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with § [151.41\(C\)](#).

(G) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with § [151.41\(C\)](#).

(H) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with §§ [151.41\(C\)](#) and [151.26\(B\)](#).

(I) Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this subchapter.

(J) When the lowest ground elevation of a parcel or structure in a special flood hazard area is above the base flood elevation, advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file.

(K) Permanently maintain all records that pertain to the administration of this chapter and make these records available for public inspection.

(L) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

**(M) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this chapter, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor .**

(N) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked.

(O) Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(P) Follow through with corrective procedures of § [151.43](#).

(Q) Review, provide input, and make recommendations for variance requests.

(R) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with § 151.07, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify state and FEMA of mapping needs.

(S) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-F) and Letters of Map Revision (LOMR).  
(Ord. 06-15, passed 7-26-06)

**Chapter 151. Flood Damage Prevention. - § 151.43 CORRECTIVE PROCEDURES.**

(A) *Violations to be corrected.* When the Floodplain Administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

(B) *Actions in event of failure to take corrective action.* If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

(1) That the building or property is in violation of the flood damage prevention ordinance;

(2) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than 30 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

(C) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the flood damage prevention ordinance, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.

(D) *Appeal.* Any owner who has received an order to take corrective action may appeal the order to the Zoning Board of Adjustment by giving notice of appeal in writing to the Floodplain Administrator and the Clerk within ten days following issuance of the order to take corrective action (hereby "corrective order"). The appeal shall be heard on the record for the corrective order placed on the property and is not a de novo hearing. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Zoning Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the corrective order.

(E) *Failure to comply with order.* If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a **misdemeanor** and shall be punished at the discretion of the court.

(Ord. 06-15, passed 7-26-06; Am. Ord. 08-30, passed 10-13-08; Am. Ord. 12-05, passed 3-28-12)

**Chapter 151. Flood Damage Prevention. - § 151.99 PENALTY.**

See § 10.99 General Penalty.

(Ord. 06-15, passed 7-26-06)

**Chapter 152. Subdivisions. - § 152.02. AUTHORITY AND PURPOSE.**

(A) *Purpose.* The Board of Commissioners does hereby adopt this chapter under the authority of G.S. Ch. 153A, Art. 18, Part 2.C., Purpose. The purpose of this chapter is to establish procedures and standards for the development and subdivision of real estate within the town in an effort to, among other things, ensure proper legal description, identification, monumentation and recordation of real estate boundaries; further the orderly layout and appropriate use of land; provide safe, convenient and economic circulation of vehicular traffic; provide suitable building sites which drain properly and are readily accessible to emergency vehicles; assure the proper installation of roads and utilities; and help conserve and protect the physical and economic resources of the town.

(B) *Territorial jurisdiction.* The regulations hereinafter shall apply to all of the incorporated areas of the town.

(C) *Required compliance with regulations.* All plats for the subdivision of land shall conform to the requirements of this chapter, and shall be submitted in accordance with the procedures and specifications established herein.

(D) *Fees.* Reasonable fees sufficient to recover incurred costs of review will be charged in accordance with the adopted fee schedule.

(E) *Enforcement and penalties.* It shall be the duty of the Zoning Administrator to enforce the provisions of this chapter and to bring to the attention of the Board of Commissioners any violations or lack of compliance. Violation of the provisions of this chapter shall be deemed a **misdemeanor**, punishable as provided by law and with each day such violation continues constituting a separate offense. The Planning Department shall have recourse to such remedies in law and equity as may be necessary to ensure compliance with the provisions of these regulations.

#### **Chapter 152. Subdivisions. - § 152.58 VIOLATIONS.**

Any person who, being the owner, or agent of the owner of any land located within the jurisdiction of this chapter, transfers or sells such land by reference to, exhibition of, or any other use of a plat showing a subdivision of such land, before such plat has been properly approved in accordance with this chapter and recorded in the Office of the Register of Deeds, shall be guilty of a **misdemeanor**. The description of metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from the penalties provided therefore. The town may also seek injunctive relief for the illegal subdivision, transfer, conveyance or sale of land.

#### **Chapter 153. Zoning. - § 153.071 SOIL EROSION AND SEDIMENTATION CONTROL.**

(A) *Purpose.*

(1) Regulate certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses and other public and private property by sedimentation.

(2) Reduce damage to storm drainage facilities.

(3) Cooperate in the coordination of the related goals expressed by state and federal regulations and that require certain actions with regard to stormwater management, soil erosion and sedimentation control, floodplain management and the like.

(4) Establish procedures through which this regulation can be fulfilled.

(B) *Scope and exclusions.*

(1) Land-disturbing activity geographical scope of regulated. This section shall apply to land-disturbing activity within the territorial jurisdiction of the town and to the extraterritorial jurisdiction of the town as allowed by agreement between local governments, the extent of annexation or other appropriate legal instrument or law.

(2) Exclusions from regulated land-disturbing activity. Notwithstanding the general applicability of this section to all land-disturbing activity, this section shall not apply to the following types of land-disturbing activity:

(a) An activity, including breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:

1. Forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
2. Dairy animals and dairy products.
3. Poultry and poultry products.
4. Livestock, including beef cattle, sheep swine, horses, ponies, mules, and goats.
5. Bees and apiary products.
6. Fur producing animals.

(b) An activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the Department. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this section shall apply to such activity and any related land-disturbing activity on the tract.

(c) An activity for which a permit is required under the Mining Act of 1971, G.S. Ch. 75, Art. 7.

(d) A land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. § 113A-56(a).

(e) An activity which is essential to protect human life during an emergency.

(3) Plan approval exceptions. Notwithstanding the general requirement to obtain a plan approval prior to undertaking land-disturbing activity, a plan approval shall not be required for land-disturbing activity that does not exceed 1/2 acre in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

(C) *General requirements.*

(1) No person shall initiate any land-disturbing activity which uncovers more than 1/2 acre without having an erosion control plan approved by the town.

(2) Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

(3) Whenever conflicts exist between federal, state or local laws, ordinances or rules, the more restrictive provision shall apply.

(D) *Basic control objectives.* An erosion and sedimentation control plan may be disapproved if the plan fails to address the following objectives:

(1) *Identify critical areas.* On-site areas which are subject to severe erosion and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation are to be identified and receive special attention.

(2) *Limit time of exposure.* All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.

(3) *Limit exposed areas.* All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

(4) *Control surface water.* Surface water runoff originating upgrate of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

(5) *Control sedimentation.* All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.

(6) *Manage stormwater runoff.* When the increase in the velocity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include the measures to control the velocity at the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

(E) *Mandatory standards for land-disturbing activity.* No land-disturbing activity subject to the control of this section shall be undertaken except in accordance with the following mandatory standards:

(1) No land-disturbing activity shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25% of the buffer zone nearer the land-disturbing activity, provided that this subsection shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over or under a lake or natural watercourse.

(2) The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 days of any phase of grading, be planted or otherwise provided with ground cover, devices or structures sufficient to restrain erosion. The angle for the graded slopes and gills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.

(3) Whenever land-disturbing activity is undertaken on a tract comprising more than 1/2 acre, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within 15 working days or 90 calendar days, whichever is shorter.

(4) No person shall initiate any land-disturbing activity if more than 1/2 acre is to be uncovered, unless 30 or more days prior to initiating the activity an erosion and sedimentation control plan for such activity is filed with and approved by the town.

(5) Buffer measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25% of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

(6) The land disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

(F) *Design and performance standards.*

(1) Except as provided in this section, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's *National Engineering Field Manual for Conservation Practices*, or other acceptable procedures.

(2) HQW zones. In high quality water (HQW) zones the following design standards shall apply:

(a) Limit on uncovered area. Uncovered areas in HQW zones shall be limited at any time to a maximum total area of 20 areas within the boundaries of the tract. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.

(b) Maximum peak rate of runoff protection. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed and constructed to provide

protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the USDA, Soil Conservation Service's *National Engineering Field Manual for Conservation Practices* or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(c) Settling efficiency. Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40 micron (0.04 millimeter) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the USDA, Soil Conservation Service's *National Engineering Field Manual for Conservation Practices* or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(d) Grade. Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(e) Ground cover. Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development., whichever period is shorter.

(G) *Permanent downstream protection of stream banks and channels.*

(1) Intent. Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.

(2) Persons shall conduct land-disturbing activity such that the post-construction velocity of the ten-year stormwater runoff in the receiving watercourse to the point of discharge shall not exceed the greater of:

(a) The velocity established by the Maximum Permissible Velocities Table set out within this subsection; or

(b) The velocity of the ten-year storm runoff in the receiving watercourse prior to development. If conditions (a) and (b) of this paragraph cannot be met then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by 10%.

**Maximum Permissible Velocities Table**

The following is a table for maximum permissible velocity for stormwater discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<b>MATERIAL</b>	<b>F.P.S.</b>	<b>M.P.S.</b>
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5

<b>MATERIAL</b>	<b>F.P.S.</b>	<b>M.P.S.</b>
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.5
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source – Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

(3) Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. It is recognized that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:

- (a) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
- (b) Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections;
- (c) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities at the point of discharge. These may range from simple rip-rapped sections to complex structures;
- (d) Protect watercourses subject to accelerated erosion by improving cross section and/or providing erosion-resistant lining; and
- (e) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

(4) This rule shall not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

(H) *Borrow and waste areas.* When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and any waste areas for surplus materials other than landfills regulated by the Department of Human Resources, Division of Health Services, shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

(I) *Access and haul roads.* Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

(J) *Operations in lakes or natural watercourses.* Land-disturbing activity in connection with construction in, on, over or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow of characteristics, except when justification for significant alteration to flow characteristic is provided.

(K) *Responsibility for maintenance.* During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this section, the North Carolina Sedimentation Pollution Control Act of 1973 or any order adopted pursuant thereto. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sedimentation control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

(L) *Additional measures.* Whenever the town determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action or cease the activity.

(M) *Existing uncovered areas.*

(1) All uncovered areas existing on the effective date of this section which resulted from land-disturbing activity, exceed ½ contiguous acre, are subject to continued accelerated erosion and are causing off-site damage from sedimentation shall be provided with a ground cover or other protective measures, structures or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

(2) The town shall serve upon the landowner or other person in possession or control of the land a written notice to comply with the Act, this section, a rule or order adopted or issued pursuant to the Act by the Commission or by the town. The notice to comply shall be sent by registered or certified mail, return receipt requested or other means provided in G.S. § 1A-1, Rule 4. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology and quantity of work required and shall set reasonable and attainable time limits of compliance.

(3) The town reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.

(4) This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

(N) *Permits.*

(1) No person shall undertake any land-disturbing activity subject to this section without first obtaining a permit from the town, except that no permit shall be required for any land-disturbing activity that does not exceed 5,500 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

(2) The town may establish a fee on a general or individual basis as may be considered necessary.

(O) *Erosion and sedimentation control plans.*

(1) (a) An erosion control plan shall be prepared for all land-disturbing activities subject to this section whenever the proposed activity is to be undertaken on a tract comprising more than ½ acre, if more than 1/2 acre is to be uncovered. The plan shall be filed with the town and the Dare County Soil and Water Conservation District 30 days prior to the commencement of the proposed activity.

(b) The town shall forward to the Director of the Division of Water Quality a copy of each erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering to lowering the water table of the tract.

(2) Prior plan approval. No persons shall initiate land-disturbing activity if more than 1/2 acre is to be uncovered unless, 30 or more days prior to initiating the activity, a plan for such activity is filed with and approved by the town. The town shall forward to the Director of the Division of Water Quality a copy of each plan for a land-disturbing activity that involves utilization of ditches for the purpose of de-watering or lowering the water table of the tract.

(3) Responsibility and ownership. Plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible, the owner of the land, and any registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this section, or rules or orders issued pursuant to this section. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.

(4) Environmental Policy Act Document. Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environment Policy Act (G.S. § 113A-1, *et seq.*) shall be deemed incomplete until a complete environmental document is available for review. The town shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to this section shall not begin until a complete environmental document is available for review.

(5) Soil and Water Conservation District comments. The District shall review the plan and submit any comments and the District and the town may agree upon recommendations to the town within 20 days after the District received the plan, or within any shorter period of time. Failure of the District to submit its comments within 20 days or within any agreed upon shorter period of time shall not delay final action on the plan.

(6) The Town Department of Planning and Inspections will review each plan submitted to them and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations or disapproved. Failure to approve or disapprove a complete erosion and sedimentation control plan within 30 days of receipt shall be deemed approval. Denial of a plan will specifically state in writing the reasons for denial. The town will approve or deny a revised plan within 15 days of receipt or it is deemed to be approved. If, following commencement of a land-disturbing activity pursuant to an approved plan, the town determines that the plan is inadequate to meet the requirements of this section, it may require such revisions as are necessary to comply with this section.

(7) Other disapprovals. The town may disapprove a plan or draft plans if implementation of the plan would result in a violation of the rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. A local government may disapprove a plan upon finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant:

(a) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to the Act and has not complied with the notice within the time specified in the notice;

(b) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due;

(c) Has been convicted of a misdemeanor pursuant to G.S. § 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act or;

(d) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.

For purposes of this subsection, an applicant's record may be considered for only the two years prior to the application date.

In the event that a plan is disapproved pursuant to this subsection, the town shall notify the Director of such disapproval within ten days. The town shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved.

(8) Notice of activity initiation. No person may initiate a land-disturbing activity before notifying the agency that issued the plan approval of the date that land-disturbing activity will begin.

(9) The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this section. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation will be provided on request.

(10) Preconstruction conference. When deemed necessary by the approving authority a preconstruction conference may be required.

(11) Display of plan approval. A plan approval issued under this article shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed and the site has been stabilized. A copy of the approved plan shall be kept on file at the job site.

(12) Required revisions. After approving a plan, if the town either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the town shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity pursuant to an approved plan, the town determines that the plan is inadequate to meet the requirements of this section, the town may require any revision of the plan that is necessary to comply with this section.

(13) Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as an amendment is approved, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

(14) Any person engaged in land-disturbing activity who fails to file a plan in accordance with this section or who conducts a land-disturbing activity, except in accordance with provisions of an approved plan, shall be deemed in violation of this section.

(P) *Appeals.*

(1) The disapproval or modification of any proposed erosion control plan by the Director of Planning and Inspections shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of a written notice of disapproval or modifications.

(2) Hearings held pursuant to this section shall be conducted by the Board of Commissioners within 20 days after the date of the appeal or request for a hearing.

(3) The Board of Commissioners shall render its final decision within ten days after the date of the hearing.

(4) If the town upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, the applicant shall then be entitled to appeal that decision to the North Carolina Sedimentation Control Commission as provided in G.S. § 113A-61(c) and Title 15 NCAC 4B.0018(b).

(Q) *Inspections and investigations.*

(1) Agents and officials of the town will periodically inspect the sites of land-disturbing activity for which permits have been issued to determine whether the activity is being conducted in accordance with the plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity.

(2) Willful resistance, delay, or obstruction. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the town, while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

(3) Notice of violation. If the town determines that a person engaged in land-disturbing activity has failed to comply with the Act, this section, or rules, or orders adopted or issued pursuant to this section, a notice of violation shall be served upon that person. The notice shall be served by any means authorized under G.S. § 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, this section, or rules or orders adopted pursuant to this section, and inform the person of the actions that need to be taken to comply with the Act, this section, or rules or orders adopted pursuant to this section. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. § 113A-64 and this section.

(4) The town shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this section and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. No person shall refuse entry or access to any authorized representative or agent of the town who requests entry for purposes of inspection, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(5) The town shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

(6) The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. § 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those matters. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. § 113A-61.1.

(R) *Penalties.*

(1) *Civil penalties.*

(a) Civil penalty for a violation. Any person who violates any of the provisions of this section, or rule or order adopted or issued pursuant to this section, or who initiates or continues a land-disturbing activity for which a plan is required except in accordance with the terms conditions and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty that the town may assess is

\$5,000. A civil penalty may be assessed from the date the violation. Each day of a continuing violation shall constitute a separate violation.

(b) Civil penalty assessment factors. The governing body of the town shall determine the amount of the civil penalty based on the following factors:

1. The degree and extent of harm caused by the violation,
2. The cost of rectifying the damage,
3. The amount of money the violator saved by noncompliance,
4. Whether the violation was committed willfully, and the prior record of the violator in failing to

comply with this section.

(c) Any person who fails to submit an erosion control plan for approval as required by this section shall be subject to a single, non-continuing civil penalty of not more than \$5,000. Any person who is subject to a civil penalty under this subsection may be subject to additional civil penalties for violation of any other provision of this section or rules or orders adopted or issued pursuant to this section.

(d) Hearing. A hearing on a civil penalty shall be conducted by the town within 15 days after the date of the written demand for the hearing. The agency conducting the hearing shall make its recommendation to the governing body of the town within 21 days after the date of the hearing.

(e) Final decision. The governing body shall render its final decision on the civil penalty within ten days of the receipt of the recommendation from the agency.

(f) Appeal of final decision. Appeal from the final decision of the governing body shall be to the Superior Court of the county where the violation occurred, or the location of the violator's residence or principal place of business.

(g) Credit of civil penalties. Civil penalties collected pursuant to this section shall be credited to the Civil Penalty and Forfeiture Fund. [Note: Case law on an air quality delegated program determined that civil penalties assessed by local governments pursuant to a state delegation had to be remitted to the Civil Penalty and Forfeiture Fund for the benefit of the local school boards pursuant to the State Constitution's provision on state penalties, fines and forfeitures.]

**(2) Criminal penalties.** Any person who knowingly or willfully violates any provision of this section, or rule or order adopted or issued pursuant to this section, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion control plan is required, except in accordance with the terms, conditions and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000 as provided in G.S. § 113A-64.

### **Chapter 153. Zoning. - § 153.077 SIGNS.**

In an effort to ensure public health and welfare and a pleasing aesthetic environment and to promote traffic safety, the town has adopted the regulations and standards contained in this section.

(A) *Permit required.*

(1) No sign shall be erected, constructed, altered or maintained, except as provided in this section, until a permit for the same has been issued by the Zoning Administrator and the fee paid. A minimum fee for any sign permit shall be determined from time to time by the Board.

(2) Any freestanding or wall sign which will require a permit will also require inspection by the Building Inspector.

(B) *Exempt signs.* The following signs shall be exempt:

(1) Signs bearing only property numbers, names of occupants or premises or other identification of premises not having commercial connotations;

(2) Flags.

(a) Legal governmental flags displayed in a manner compliant with all laws.

(b) Decorative flags no more than 24 square feet located within the property lines and in no case shall any part of the flag be closer than ten feet from the edge of pavement within any right-of-way.

(c) Two decorative flags per single business site or one flag per business if located within a shopping center or office complex with multiple businesses per site (to be effective as of January 1, 2015).

(3) Legal notices or identifications, information or directional signs erected or required by governmental bodies or public utilities;

(4) Integral decorative or architectural features of buildings, except letters, trademarks, moving parts or moving lights;

(5) Electronic message boards displaying time, temperature and wind direction and velocity signs;

(6) "For Sale" or "For Rent" signs that meet the limitations on square footage as defined in subsection (C)(1)(b) of this section shall be exempt from the permit requirements of division (A) of this section;

(7) During the construction, repair or alteration of a structure, a temporary construction sign which denotes the architect, engineer, contractor or builder or which denotes the name of the structure and its use or occupants-to-be may be placed on the site as a ground or wall sign. Such sign shall not exceed 64 square feet and shall not exceed 20 feet in height above street grade. All construction site signs shall be removed when the building has been approved for occupancy by the Building Inspector or within 60 days of termination of work on the site, whichever shall occur first;

(8) Signs on county, municipal or school ballfield fences, provided the signs do not exceed 24 square feet in area, have been given prior approval by the Board of Commissioners, and are valid for a period of four consecutive months;

(9) Advertising messages or symbols painted or constructed on a business vehicle that is used in day-to-day business operations with valid registration, license and inspection. These shall be reviewed by the Zoning Administrator;

(10) Neon signs, provided they are no larger than two square feet and indicate "Open," "Closed" or "No Vacancy." These signs may not suggest movement, be animated in any way or blink on and off.

(11) Strings of electric light bulbs on commercial sites that are not flashing or intermittently illuminated or appear to be flashing or glittering or moving shall be permitted on the following dates and at no other time:

(a) November 22 through January 7; and

(b) July 2 through July 6.

(12) One "Open House" sign that does not exceed 36 square feet and is set back a minimum of seven feet from any property line or one "Open House" banner attached to the primary structure that does not exceed 75 square feet shall be exempt from the permit requirements of division (A) of this section. At no time shall the sign be illuminated.

(13) Signage and/or electronic screens not exceeding 2 square feet on order pedestals at food service establishments.

(C) *Generally allowed.*

(1) The following signs shall be allowed in all zones:

(a) Directional and informational signs may be erected and maintained by public agencies and governmental bodies;

(b) One lease or rent sign and one for sale sign may be used per lot, each of which shall not exceed 6 square feet plus frame. These signs shall be located at least seven feet from the street line and side property lines and shall be removed 14 days after the property has been sold, rented or leased. Sale or

lease signs for commercial property shall be limited to 36 square feet and shall be removed 14 days after the property has been sold, rented or leased.

(c) Places of worship, schools, community centers and other public and institutional uses may erect one sign or bulletin board not exceeding 12 square feet in area for the purpose of displaying the name of the institution and related information. The signs shall be used as wall signs or shall be located at least 7½ feet from property lines. Any sign over 12 square feet will require a permit.

(d) Subdivision signs advertising the sale of lots or buildings within new subdivisions on which they are located are permitted, provided that:

1. They are nonilluminated or indirectly illuminated;
2. They do not exceed 64 square feet;
3. Not more than one such sign shall be located at each major approach to the subdivision;
4. They meet all requirements applying to principal structures with regard to yard, setback and height requirements;
5. Display of such signs shall be limited to a period of two years;
6. A permit is required.

(2) Prior to the expiration date of the permit for subdivision signs, the applicant may request one extension of two years. Signs shall be removed prior to the expiration of the two-year period or extension thereof. If the sign has not been removed, the town may enter the premises upon which the sign is located and remove such sign at no liability to the town and at the expense of the owner.

(3) Permanent subdivision signs without advertising may remain as long as they are adequately maintained. Subdivisions remote from a main thoroughfare may locate one off-premises sign, provided the sign meets the specifications for subdivision signs detailed below:

- (a) They are nonilluminated or indirectly illuminated;
- (b) They do not exceed 64 square feet;
- (c) Not more than one such sign shall be located at each major approach to the subdivision;
- (d) They meet all requirements applying to principal structures with regard to yard, setback and height requirements;
- (e) They are landscaped and well-maintained in the best interest of the developer and the community;
- (f) A permit is required.

(4) In the event a freestanding sign is destroyed by fire, flood or storm and such damage was not caused nor contributed to by the owner, occupant or user, one temporary message board may be permitted, subject to the following conditions:

- (a) It shall be displayed only during daylight hours (sunup to sundown);
- (b) It shall not exceed six square feet in area;
- (c) It shall not be displayed within any highway or local road right-of-way and shall be on the property of the advertising business;
- (d) It shall not be displayed when conditions could cause public injury or property damage;
- (e) It shall not be displayed longer than 60 days;
- (f) No fees or permits are necessary.

(5) Roof signs will be permitted on gambrel and A-frame roofs subject to the following conditions:

- (a) Gambrel roofs and A-frame roofs have a minimum pitch of 29/12;
- (b) Signs only be allowed on the steepest portion of the roof;
- (c) Maximum height of any sign shall be 20 feet from the average finished grade.
- (d) Signs shall not be located on the ridge of the roof.

(D) *Detailed specifications for commercial zone and light industrial zones signs.*

(1) For each lot, tract or parcel, the maximum square footage of signage that may be displayed shall be based on the following formula. (For shopping centers see subsection (D)(11).)

(a) On lots with 100 feet or less of road or highway frontage, 36 square feet of signage, including any combination of freestanding and manual message board, may be displayed on one freestanding sign, such sign not to exceed 20 feet in elevation above street grade, measured from ground elevation to the top of the sign structure. An additional two square feet of wall sign may be displayed on the building for each lineal foot of building frontage. However, no single wall sign shall exceed 100 square feet.

(b) On lots with 101 feet to 150 feet of road or highway frontage, 50 square feet of signage, including any combination of freestanding and manual message board, may be displayed on one freestanding sign, such sign not to exceed 20 feet in elevation above street grade, measured from ground elevation to the top of the sign structure. An additional two square feet of wall sign may be displayed on the building for each lineal foot of building frontage. However, no single wall sign shall exceed 100 square feet.

(c) On lots with 151 feet or more of road frontage, 64 square feet of signage, including any combination of freestanding and manual message board, may be displayed on one freestanding sign, such sign not to exceed 20 feet in elevation above street grade measured from ground elevation to the top of the sign structure. An additional two square feet of wall sign may be displayed on the building for each lineal foot of building frontage. However, no single wall sign shall exceed 100 square feet.

(d) On any lot with 151 feet or more of road frontage, greater than five acres, where the principal building is a minimum of 150 feet from the right-of-way, 64 square feet of signage, including any combination of freestanding and manual message board, may be displayed on one freestanding sign, such sign not to exceed 20 feet in elevation above street grade measured from ground elevation to the top of the sign structure. An additional two square feet of wall sign may be displayed on the building for each lineal foot of building frontage. However, no single wall sign shall exceed 250 square feet. In no case shall total area of wall signs exceed 600 square feet per building frontage.

(e) One flag per business shall be allowed (effective date January 1, 2015).

(2) Measurements of sign size for computation of compliance with this chapter is based on the size of the letters and then the total area of the letters. This total shall be the total signage permitted based upon the business building frontage measurement. (See illustration in Appendix C.) In no case shall the solid surface of base and frame exceed double the permitted sign area.

(3) Lighting shall be shielded so as to prevent a direct view of the light from a residence or a street in a residential district.

(4) Temporary signs, banners, placards, decorations or the like, constructed of light materials, for the promotion of noncommercial enterprises or events taking place in the town, may be displayed in any commercial zone. No such signs may be erected on or affixed to public property nor exceed 100 square feet and must not encroach on the right-of-way. These temporary signs must be removed within five days after the event has taken place. The sign shall be attached to a building.

(5) Temporary signs, banners, placards, decorations or the like, constructed of light materials, for the promotion of commercial enterprises, grand openings or similar uses taking place in the town, may be displayed for a period not to exceed 90 days, upon the responsible party having secured a permit for such from the Zoning Administrator. No such sign shall exceed 100 square feet. The sign shall be attached to a building.

(6) A general informational sign located on site, such as "no parking," "entrance," "loading only," "telephone" or other similar directives shall not exceed 3 square feet, and total square footage of all informational signs shall not exceed 33 square feet.

(7) For each food service business, menu boards and preview boards for each drive-through may be permitted, provided that the menu board does not exceed 35 square feet in total display area and does not exceed 5 feet in height above street or driveway elevation.

(8) For the purpose of determining the number of signs, a sign shall be considered to be a single display surface or display device containing elements organized, related or composed to form a unit. Where matter is displayed in a random manner without organized relationship of elements, each element shall be considered to be a single sign.

(9) The surface area of a sign shall be computed as including the entire area within a regular geometric form comprising all of the informational display area of the sign and all of the elements of the matter displayed. The area of a double-faced sign shall be the area of one face of the sign, provided that the two faces are of the same size and are parallel to one another with no more than 24 inches between each sign face.

(10) Window signs shall be allowed on the inside or the outside of glazing provided that they do not comprise more than 25% of the gross glazing area of the building and are not separately illuminated or backlit by lighting installed for that purpose. Miscellaneous business signs, such as credit card signs, open and closed signs, hours of operation, etc., are not included in this calculation, provided that each group/set of miscellaneous business signs do not exceed two square feet in area and only one group/set of such signs are allowed per entrance. Signs placed on the outside of the window must be made of weatherproof materials and shall be maintained in good order. Window signs shall not contain luminous or fluorescent colors or materials that glow when illuminated by any light source. The signs may not suggest movement, be animated in any way, blink or change when viewed from different angles. All window signs shall be brought into compliance by June 1, 2010.

(11) Neon signs for internal illumination visible from the right-of-way cannot exceed a total area of 20 square feet. These signs may not suggest movement, be animated in any way or blink on and off.

(12) Shopping center/office complex signs.

(a) Areas within a shopping center/office complex shall be identified as primary or secondary areas. Primary areas are those composed of 20,000 square feet or more of retail or office space. Secondary areas are those composed of less than 20,000 square feet of retail or office space.

1. For primary uses within a shopping center/office complex, 2 square feet of business sign area may be displayed for each lineal foot of store/office frontage. However, no sign shall exceed 150 square feet. Multiple signs on the store/office frontage may be displayed, so long as the total area for each individual sign does not exceed 150 square feet and the total area of all combined signs on the face of the store/office does not exceed 2 square feet for each lineal foot of store/office frontage. Stores/offices which are located on a corner with a wall facing a different street or road from the front of the building shall be permitted to display a sign with an area no larger than 36 square feet on the sidewall.

(b) 1. Secondary uses may display 36 square feet of sign area on the front of the building; however, if the store/office frontage exceeds 30 linear feet, permitted sign area shall be calculated at 1¼ square feet of sign area for each linear foot of store frontage, up to a maximum of 50 square feet.

2. Store/office located on a corner with a wall facing a different road or street from the front of the building shall be permitted to display a sign with an area no larger than 36 square feet on the side wall. Total sign area on secondary use corner stores/offices, with a wall facing a different road or street from the front of the building, shall not exceed 72 square feet of signage.

(c) One freestanding sign, including any combination of freestanding and manual message board, not to exceed a total sign area of 64 square feet, will be authorized for a shopping center/office complex. A freestanding sign must identify the name of the shopping center/office complex and may

also identify the names of the individual stores/offices, but may not exceed the square footage set forth above. A freestanding sign may not exceed 20 feet in elevation above street grade, measured from ground elevation to the top of the sign structure.

(d) 1. For the purpose of determining the number of signs, a sign shall be considered to be a single display surface or display device containing elements organized, related or composed to form a unit. Where matter is displayed in a random manner without organized relationship of elements, each element shall be considered to be a single sign.

2. The surface area of a sign shall be computed as including the entire area within a regular geometric form comprising all of the display area of the sign and including frames and all of the elements of the matter displayed. The area of a double-faced sign shall be the area of one face of the sign, provided that the two faces are of the same size and are parallel to one another with no more than 24 inches between each sign face.

(13) Remote parking identification signs shall be located on the remote parking lot and no more than 30 square feet and no greater than ten feet in elevation above street grade, measured from ground to the top of the sign structure.

(14) For event gardens as an accessory use to hotels or motels, the wall sign size allowance for the principal use may be shared between the hotel/motel and the accessory use with no greater than 36 square feet allocated to the accessory use. Wall signage may be placed on permanent entrances ways only, such as an entrance trellis or arch. Signage shall not be placed on fencing.

(E) *Prohibited signs.*

(1) Signs which are flashing or intermittently illuminated or appear to be flashing or glittering or moving and strings of lights are prohibited in commercial and light industrial sites except as exempt in § [153.077](#)(B)(11). No strings of flags shall be permitted in any zone.

(2) Billboards.

(3) Portable signs, except those allowed in division (C)(4).

(4) Roof signs except as permitted in division (C)(5).

(5) No sign shall make use of the words "Stop," "Slow," "Caution," "Danger" or any other word, phrase, symbol or character in such manner as is reasonably likely to be confused with traffic directional and regulatory signs.

(6) Signs that impair vision clearance at intersection.

(7) Vehicular signs.

(8) Signs which advertise an activity, business, product or service no longer produced or conducted on the premises upon which the sign is located. The signs may remain in place for not more than 90 days.

(9) Signs which are attached to utility poles, trees, fences, publicly-owned signs or in an unauthorized manner to walls or other signs.

(10) Off-premises accessory use directional signs are prohibited. Existing off-premises accessory use directional signs and support structures shall be removed by June 25, 2002.

(11) Tourist Oriented Directional Signs (TODS).

(12) Projection signs.

(13) Exposed neon, argon, krypton or similar gas lighting except as outlined in (B)(10) above.

(14) LCD and electronic message boards except as outlined in (B)(5) above.

(15) LED signs or lighting unless used as a light source to internally or directly illuminate wall or freestanding signage.

(16) Flags that are torn greater than two inches or that are frayed (threadbare, worn, tattered, unraveled, etc.) in excess of one inch and flags not hanging in the manner it was designed or not hanging in a legal manner.

(F) *Unsafe signs.* Should any sign become insecure or in danger of falling or otherwise be unsafe, in the opinion of the Building Inspector, then the owner thereof, or the person maintaining the same, shall, upon written notice from the Building Inspector, forthwith in the case of immediate danger or in any case within ten days, secure the same in a manner to be approved by the Building Inspector in conformity with the provisions of this section or remove the sign. If such order is not complied with within ten days, the Building Inspector shall remove such sign at the expense of the owner or lessee thereof.

(G) *Maintenance.* All signs, together with all their supports, braces, guides and anchors, shall be kept in repair and, unless of galvanized or noncorroding metal, shall be thoroughly painted at least once every two years.

(H) *Design standards.* All signs shall be constructed and designed according to generally accepted engineering practices to withstand wind pressures and load distribution as specified in the State Building Code.

(I) *Obstruction of fire escapes, windows, doors and the like.* No outdoor advertising sign shall be installed, erected or constructed so as to obstruct any fire escapes or any window or door opening used as a means of egress or so as to prevent free passage from one part of a roof to any other part thereof. No sign shall be attached in any manner to a fire escape or be placed in such manner as to interfere with any opening required by law for ventilation.

(J) *Alteration or removal of unlawful signs.*

(1) If any sign shall be installed, erected or constructed in violation of any of the terms of this section, the Zoning Administrator shall notify by registered mail or written notice, served personally, the owner or lessee thereof to alter such sign so as to comply with those zoning regulations and to secure the necessary permit therefor or to remove the sign immediately.

(2) Any sign located within a town right-of-way shall be subject to immediate removal by the Zoning Administrator.

(3) **The failure to remove such sign as provided in this section shall be a misdemeanor. Each day the violation exists shall constitute a separate offense.**

(4) The Zoning Administrator shall have the authority to remove and discard any sign in violation of the sign regulations or which is located upon public property.

(5) All signs shall be brought into compliance within three years of February 28, 2001.

(K) *General penalty; enforcement of ordinance; continuing violations.* See § [10.99](#).

(Ord. 91-08, passed 11-18-91; Am. Ord. 92-12, passed 7-22-92; Am. Ord. 94-02, passed 2-14-94; Am. Ord. 94-05, passed 4-11-94; Am. Ord. 94-06, passed 4-11-94; Am. Ord. 97-04, passed 6-25-97; Am. Ord. 99-13, passed 7-12-99; Am. Ord. 00-07, passed 5-24-00; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 01-03, passed 4-25-01; Am. Ord. 01-09, passed 7-25-01; Am. Ord. 02-04, passed 2-11-02; Am. Ord. 03-07, passed 6-25-03; Am. Ord. 04-09, passed 5-26-04; Am. Ord. 04-17, passed 10-11-04; Am. Ord. 06-16, passed 8-14-06; Am. Ord. 08-02, passed 1-14-08; Am. Ord. 09-19, passed 10-28-09; Am. Ord. 10-14, passed 7-12-10; Am. Ord. 11-05, passed 4-11-11; Am. Ord. 11-10, passed 6-13-11; Am. Ord. 11-18, passed 8-8-11; Am. Ord. 12-01, passed 1-25-12; Am. Ord. 12-13, passed 5-23-12; Am. Ord. 13-3, passed 3-20-13; Am. Ord. 14-10, passed 6-9-14) **Penalty, see § 10.99**

### **Chapter 153. Zoning. - § 153.353 CERTIFICATE OF OCCUPANCY.**

No land shall be used or occupied and no building structurally altered, erected, moved, be used or its use changed until an as-built site plan is submitted showing compliance with requirements of federal, state and local government approved plans and the Building Inspector issues a certificate of occupancy stating that the building and land or proposed use thereof complies with the provisions of this chapter and other federal, state and local ordinances as applicable. A certificate of occupancy, either for the whole or a part of a building, shall be applied for coincident with the application for a building permit and shall be issued within three business days after the erection or structural alterations of such building or part shall have been completed in conformity with the provisions of this chapter. A record of all commercial certificates shall be kept on file in the office of the Zoning Administrator or Building Inspector, and copies shall be furnished, on request, to any person having a proprietary or tenancy interest in the building erected. No permit for excavation for or erection of any building or part of a building or for repairs to or alterations of a building shall be issued until after a statement of its intended use has been filed by the applicant.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 05-06, passed 5-25-05; Am. Ord. 07-18, passed 10-24-07) [Penalty, see § 10.99](#)

**Chapter 153. Zoning. - § 153.362 PERMIT APPLICATIONS FOR CONDITIONAL USES.**

(A) *Submission.* Submission of a site plan for conditional use shall be subject to those requirements outlined in §§ [153.355](#) through [153.358](#). The application shall indicate the section of this chapter under which a permit is being sought and shall contain the information required by the appropriate section and such other information as may be required to insure compliance with this chapter.

(B) *Prerequisite filings.*

(1) Prior to the consideration of an item by the Planning Board and the placing of a site plan upon the agenda of the Planning Board for consideration, all town department reports and recommendations shall be filed with the Planning Director.

(2) All evidence of applications and all supplementary, nonlocal permits and approvals necessary for the particular project shall be filed with the Planning Director.

(3) On any site containing more than ½ acre, the necessary land disturbing permit shall have been secured, and the plans approved commensurate with local ordinances shall be filed as a part of the application.

(4) If there is any change in the office of the Planning Department, such items shall be filed with the appropriate municipal official prior to the matter being considered and placed on the agenda of the Planning Board.

(C) *Review.* The Planning Board shall review the application for a conditional use permit or other permits submitted in accordance with this procedure and shall refer the application to the department heads and the town officials referred to in § [153.355](#) for their review. These department heads and town officials designated by the Board of Commissioners shall submit their recommendation in writing to the Planning Board. The Planning Board shall review all recommendations as well as the application for a conditional use permit and shall submit its recommendation as to approval or disapproval along with such conditions as it may deem necessary to the Board of Commissioners.

(D) *Public hearing and required findings.*

(1) When it is deemed desirable by the Planning Board or the Board of Commissioners, a public hearing may be held. Notice shall be given at least 15 days in advance of such public hearing. The owner of the property for which the conditional use is sought or his agent shall be notified by mail. Notice of the hearing shall be posted on such property for at least ten days prior to the public hearing. The cost of

giving any such notice shall be paid by the applicant to the Planning Board prior to the Planning Board meeting at which the application is reviewed.

(2) Any party may appear in person, or by agent or attorney.

(3) Before the Board of Commissioners may grant any conditional use permit, the Board shall make affirmative findings that:

(a) The applicant has met the requirements of this chapter and any other applicable ordinances and state law;

(b) The use will not materially endanger the public health and safety if located where proposed and developed according to the plan as submitted;

(c) The use, as proposed, will not overburden the firefighting capabilities and the municipal water supply capacity of the town as such facilities and capabilities will exist on the completion date of the conditional use for which application is made.

(E) *Granting conditional use permits.* In granting any conditional use permit, the Board of Commissioners may prescribe appropriate conditions and safeguards, including time and deed limitations imposed in conformity with this chapter. Violation of those conditions and safeguards, when made a part of the terms under which the conditional use permit is granted, shall be considered a violation of this chapter and will be punishable under § 10.99. The Board of Commissioners may prescribe a time limit within which the action for which the conditional use permit is required shall be begun or completed. Failure to comply within the time limit set shall void the conditional use permit.

(F) *Approval of conditional use permits.* The Board of Commissioners may approve permits for conditional uses in the zoning districts where such conditional uses are specified by this chapter. Where additional permits are required for group development projects in districts where such development may be allowed, those applications for such permits shall also be processed under the procedures of the subchapter. The Board of Commissioners may impose such reasonable and appropriate conditions and safeguards upon these conditional use permits as to insure that the spirit and intent of this chapter is preserved and that such conditional use will not adversely affect the public interest.

(Ord. 91-08, passed 11-18-91; Am. Ord. 01-02, passed 2-28-01; Am. Ord. 03-17, passed 12-8-03) Penalty, see § 10.99