

Memo

To: Rep. Jonathan C. Jordan and Sen. Andy Wells – Co-Chairs of the Joint Legislative Administrative Procedure Oversight Committee

Rep. James L. Boles, Jr., Rep. Ted Davis, Jr., and Sen. Shirley B. Randleman –
Co-Chairs of the Joint Legislative Oversight Committee on Justice and Public
Safety

From: Eddie Madden, Town Manager



Date: November 9, 2018

Re: Response to the Requirements Set Forth in Section 3 of Session Law 2018-69
(House Bill 379) for the Town of Elizabethtown, N.C.

Attached is response from Town of Elizabethtown, North Carolina to the requirements set forth in Section 3 of Session Law 2018-69 for local governmental units. The attachment contains a list of all the Town of Elizabethtown's Code of Ordinances that create criminal offenses pursuant to G.S. 14-4(a).

If there are questions, please contact my office. We ask that you please acknowledge receipt of this information and its sufficiency in complying with Session Law 2018-69, Section 3.

Attachment

TOWN OF ELIZABETHTOWN, N.C. - CODE OF ORDINANCES VIOLATION MISDEMEANORS
November 2018

ORDINANCE TITLE	CHAPTER/SECTION	DESCRIPTION
General Penalty	10.99	<p>(A) Whenever in this code or any ordinance of the town any act is prohibited or is made or declared to be unlawful, an offense or a misdemeanor, or whenever in this code or any ordinance the doing of any act is required or the failure to do such act is declared to be unlawful, where no specific penalty is provided therefor, the violation of any such provision of this code or other ordinance shall be punished as described therein or by a fine not exceeding \$50 or by imprisonment for a term not exceeding 30 days.</p> <p>(B) A violation of this code or any ordinance shall also subject the offender to liability for a civil penalty to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within ten days after he has been cited for violation of this code or any ordinance. The penalty shall be issued in the form of a civil citation by any sworn police officer of the Town of Elizabethtown or the Fire Chief.</p> <p>(C) Any provision of this code or any ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the town for equitable relief that there is an adequate remedy at law.</p> <p>(D) Any provision of this code or any ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement, and the general court of justice shall have jurisdiction to issue such orders. When a violation of such a provision of this code or an ordinance occurs, the town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon, or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.</p> <p>(E) In addition to an injunction, the court may enter an order of abatement as a part of the judgement in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the code or other ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the town may execute the order of abatement. The town shall have a lien on the property for the cost of executing the order of abatement in the nature of a mechanic's and materialmen's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard, and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.</p> <p>(F) The terms of this code or any ordinance may be enforced by any one, all or a combination of the remedies authorized and prescribed by this section. The procedure herein prescribed for abatement of a nuisance shall not be deemed to be exclusive.</p>

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ORDINANCE TITLE	CHAPTER/SECTION	DESCRIPTION
Malt Beverages and Wine	111.99 (A)(1)	Whoever violates any provision of this chapter shall subject the violator to punishment as provided in 10.99 of this code of ordinances.
	2	A citation for said criminal penalty shall be issued by the Elizabethtown Police Department.
	(B)	This chapter may also be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.
Civil Emergencies	93.99	Any person violating any prohibition or restriction imposed by a proclamation authorized in this chapter shall be guilty of a misdemeanor, punishable upon conviction as provided in 10.99 of this code of ordinances.
Fire Prevention	94.99 (A)(1)	Whoever violates any provision of this chapter shall subject the violator to punishment as provided in 10.99 of this code of ordinances.
	2	A citation for said criminal penalty shall be issued by the Elizabethtown Police Department.
	(B)	This chapter may also be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.
Flood Damage Prevention	151.99	Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50 or imprisoned for not more than 30 days, or both. Each day a violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Elizabethtown from taking such other lawful action as is necessary to prevent or remedy any violation.
Housing Standards, Minimum	154.21 (A)	It shall be unlawful for the owner of any dwelling or dwelling unit to fail, neglect, or refuse to repair, alter, or improve the same, or to vacate and close and remove or demolish the same, upon order of the Housing Administrator duly made and served as herein provided, within the time specified in such order. Each day that any such failure, neglect, or refusal to comply with such order continues shall constitute a separate and distinct offense.
	(B)	It shall be unlawful for the owner of any dwelling or dwelling unit, with respect to which an order has been issued pursuant to 154.14, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alternation or improvement or its vacation and closing. Each day that such occupancy continues after such prescribed time shall constitute a separate and distinct offense.
	(C)	The violation of any provision of this chapter shall constitute a misdemeanor, as provided by G.S. 14-4.
	(D)	In addition to the penalty established by division (C) above, and the remedies provided by other provisions of this chapter, this chapter may be enforced by an appropriate equitable remedy issued by a court of competent jurisdiction.
Massage Establishments	112.99	Any person convicted of violating any provisions of this chapter shall be punished by a fine or imprisoned as provided by G.S. 14-4 (see 10.99(A) of this code of ordinances).
Noise	97.99	Any person, firm or corporation violating the provisions of this chapter shall upon conviction be guilty of a mis-
	<i>continued</i>	demeanor and shall be punished in accordance with the

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ORDINANCE TITLE	CHAPTER/SECTION	DESCRIPTION
Noise	97.99	provision of G.S. 14-4.
Privilege License Tax	110.99 (A)(1)	Any violation of any provision of this chapter for which this penalty applies shall subject the violator to a civil penalty in the sum of \$500 per day.
Now Business Registration Fee of \$25.00 rather than Privilege License Tax		
	(a)	A citation for said civil penalty shall be issued by the Elizabethtown Police Department.
	(b)	Each citation for a civil penalty must be paid within 72 hours of issuance.
	2	Each and every day that the violator continues in violation shall be a separate and distinct offense.
	(B)	This chapter may also be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.
Streets and Sidewalks	100.99	Whoever violates any provision of this chapter shall subject the violator to punishment as provided in 10.99 of this code of ordinances.
Wastewater Collection and Treatment	52.999 (A)	Any user who is found to have failed to comply with any provision of this chapter, or the orders, rules, regulations and permits issued hereunder, may be fined up to \$10,000 per day per violation.
	(B)	In determining the amount of the civil penalty, the POTW Director/Superintendent shall consider the following:
	1	The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
	2	The duration and gravity of the violation;
	3	The effect on ground or surface water quantity or quality or on air quality;
	4	The cost of rectifying the damage;
	5	The amount of money saved by noncompliance;
	6	Whether the violation was committed willfully or intentionally;
	7	The prior record of the violator in complying or failing to comply with the pretreatment program;
	8	The costs of enforcement to the town.
	(C)	Appeals of civil penalties assessed in accordance with this section shall be as provided in 52.051(H).
Wastewater Collection and Treatment	52.111	Remedies, in addition to those previously mentioned in this chapter, are available to the POTW Director/Superintendent who may use any single one or combination against a noncompliant user. Additional available remedies include, but are not limited to:
	(A)	Civil penalties:
	1	Any user who is found to have failed to comply with any provision of this chapter, or the orders, rules, regulations and permits issued hereunder, may be fined up to \$25,000 per day per violation.
	2	Penalties between \$10,000 and \$25,000 per day per violation may be assessed against a violator only if:
	(a)	For any class of violation, only if a civil penalty has been imposed against the violator within the five years preceding the violation;
		or
	(b)	In the case of failure to file, submit or make available, as the case may be, any documents, data, or reports required by this chapter, or the orders, rules, regulations and permits issued hereunder, only if the POTW Director determines that the violation was intentional and a civil penalty has been imposed against the
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ORDINANCE TITLE	CHAPTER/SECTION	DESCRIPTION
Wastewater Collection and Treatment	52.111	violator within the five years preceding the violation.
		(B) Criminal violations. The District Attorney for the Bladen County Judicial District may, at the request of the town, prosecute non-compliant users who violate the provisions of G.S. 143-215.6B.
		(C) Injunctive relief. Whenever an industrial user is in violation of the provisions of this chapter or an order or permit issued hereunder, the POTW Director/superintendent, through the City Attorney, may petition the Superior Court of Justice for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.
		(D) Water supply severance. Whenever an industrial user is in violation of the provisions of this chapter or an order or permit issued hereunder, water service to the industrial user may be severed and service will only recommence, at the user's expense after it has satisfactorily demonstrated ability to comply.
		(E) Public nuisances. Any violation of the prohibitions or effluent limitations of this chapter or of a permit or order, issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the POTW Director/Superintendent. Any person(s) creating a public nuisance shall be subject to the provisions of the town code of ordinances; Chapter 98 governing such nuisances, including reimbursing the POTW for any costs incurred in removing, abating or remedying said nuisance.
Wastewater Collection and Treatment	52.112	The remedies provided for in this chapter are not exclusive. The POTW Director/Superintendent may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the town's enforcement response plan. However, the POTW Director/Superintendent is empowered to take more than one enforcement action against any noncompliant user.
Parking Time Limit; Early Payment of Fine	71.34	Parking on the public streets and highways within the town limits is hereby regulated as follows: All vehicles using said parking spaces are hereby limited to two consecutive hours parking in a single space on any one occasion. Any vehicle parking for longer than two consecutive hours in a single space on any one occasion shall be subject, upon citation under this section, which citation shall be placed in a prominent place upon said vehicle, to a fine of \$10 for each individual offense. The fine will be due and payable within 48 hours after the time of the dating of said citation, and shall be paid by depositing said fine in an envelope provided by the town (which may be a part of the citation itself) and placing said envelope and fine in boxes provided and designated therefor in the town. A penalty fee of \$25 plus fine will be imposed if the parking fine is not paid within 30 days from date of citation. Thereafter, the penalty for violation of this section shall be set out as provided in this chapter, and thereupon a warrant may issue.
Parking in Cape Fear Farmer's Market Parking Lot	71.38	Parking in the town's parking lot located at the Cape Fear Farmer's Market is hereby regulated as follows: All vehicles using said parking spaces are hereby limited to two consecutive hours parking in a single space on any one occasion. Any vehicle parking for longer than two consecutive hours in a single space on any one occasion shall be subject upon citation under this section, which citation shall be placed in a prominent place upon said vehicle, to a fine of \$10 for each individual offense. The fine shall be due and payable within 48 hours after the time of the dating of said citation, and shall be paid by depositing said fine in an envelope provided by the town (which may be a part of the
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ORDINANCE TITLE	CHAPTER/SECTION	DESCRIPTION
Parking in Cape Fear Farmer's Market	71.38	citation itself) and placing said envelope and fine in boxes provided and designated therefor in the town; thereafter, the penalty for violation of this section shall be set out as provided in this chapter, and thereupon a warrant may issue. Vendors and employees of the Cape Fear Farmer's Market are hereby exempt from this two-hour limitation while parking in the Cape Fear Farmer's Market parking lot for work related duties.
Parking Lot		Violation of the provisions of this chapter shall constitute an infraction in accordance with G.S. Ch. 20, the maximum penalty for which shall be \$50.
Golf Carts	75.99	
Youth Protection	131.99	(A) When a juvenile is found to be in violation of this chapter, a police officer will check with the records of the Elizabethtown Police Department to determine if the juvenile is a first offender. If the juvenile is a first time offender he or she will be taken to the residence of his or her custodian. A written warning will be given to the custodian and an information report will be taken by the officer. The report shall include the name of the juvenile and the custodian, the time, date, and location of the offense. This report will be turned into the Police Department Records Division.
		(B) A juvenile who violates any provision of this chapter and who is not a first offender of this chapter is subject to being adjudicated delinquent. The court may, in its discretion, impose any dispositional alternative(s) that are provided in the North Carolina Juvenile Code for any juvenile who is delinquent.
		(C) Any person other than a juvenile who violates any provision of this chapter shall be guilty of a misdemeanor and shall be subject to a fine not to exceed \$100 and imprisonment in the discretion of the court in accordance with G.S. 14-4.
Prohibiting Sex Offenders	132.99	Anyone who is found in violation of this chapter shall be subject to a fine of not less than \$500 per offense and or 30 days in jail. Each and every entrance into the parks, regardless of the time period involved shall constitute a separate offense under this chapter.
Subdivision Regulations	152.99	(A) Violations. After adoption of this chapter, any person who, being the owner or agent of the owner of any land located within the territorial jurisdiction of this chapter, thereafter subdivides his land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the terms of this chapter and recorded in the office of the County Register of Deeds (excepting the pre-sale and pre-lease of unrecorded lots referencing an approved preliminary plat and subject to the requirements of 152.33(D)), shall be guilty of a violation and guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty.
		(B) Criminal penalties. The violation of any provision of this chapter shall subject the offender to criminal prosecution and, upon conviction, to fine and/or imprisonment set to the maximum allowed by 14-4.
		(C) Civil penalties.
	1	Any violation of any provision of this chapter shall subject the violator to a civil penalty in the sum of \$500 per violation.
	2	A citation for said civil penalty shall be issued by the Police Department.
	3	Each citation for a civil penalty must be paid within 72 hours of issuance.
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ORDINANCE TITLE	CHAPTER/SECTION	DESCRIPTION
Subdivision Regulations	152.99 4	The town, through its attorney or other official designated by the Town Council, may enjoin illegal subdivision transfer, or sale of land by action for injunction or ensure compliance through an order of abatement. If the violator fails or refuses to comply with an injunction or order of abatement within the time allowed by the court, he may be cited for contempt and the town may execute the order of abatement. The town shall have a lien on the property for the cost of executing an order of abatement.
	(D)	<i>Denial of building permits.</i> The town may cause building permits to be denied for lots that that have been illegally subdivided.
	(E)	<i>Continuing violation.</i> Each day's continuing violation of this chapter after notification of such violation shall be a separate and distinct offense and subject to additional fine or civil penalty.
	(F)	<i>Equitable remedies.</i> Notwithstanding division (C) above, this ordinance may be enforced by appropriate equitable remedies issuing from a court of competent jurisdiction.
	(G)	<i>Combination of remedies.</i> Nothing in this section shall be construed to limit the use of remedies available to the town. The town may seek to enforce this ordinance by using any one, all, or a combination of remedies.
Trees	155.99	Any person violating any provision of this chapter shall be subject to a civil penalty not to exceed \$1,000.
Water and Sewers	51.75	Enforcement of mandatory conservation and associated fines will be the responsibility of the Town Manager under the direction of the Town's Mayor.
	(A)	Phase I - Voluntary Conservation. Continued water consumption by Class III, non-essential users will result in a written notice of violation for the first offense, a \$25 fine, and a \$25 fine for each subsequent offense.
	(B)	Phase II - Mandatory Reductions. Failure to adhere to the Phase II (Mandatory) required conditions will result in a written notice of violation for the first offense and a \$50 fine. Thereafter, each violation increases by a factor of \$50. Any violation past a fourth offense shall result in a disruption of water service to the offending party until Phase II has been rescinded.
	(C)	Phase III - Emergency Reductions. Failure to comply with the mandates during Phase III will require the offending party to pay \$100 fine for the first offense, \$350 fine for the second offense and disruption of service for the third offense.

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ORDINANCE TITLE	CHAPTER/SECTION	DESCRIPTION
Truck Route	70.52 (A)	Law enforcement officers may require truck operators to show a bill of lading or other proof of destination.
	(B)	If any person shall violate any provision of this Traffic Code, he shall be responsible for an infraction and shall be required to pay a penalty of not more than \$60.00.
Truck Route	70.99	If any person shall violate any provision of this Traffic Code for which another penalty is not already provided, he shall be responsible for an infraction and shall be required to pay a penalty of not more than \$50.
Nuisances	98.10	The procedure set forth 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, firm or corporation violating the provisions of this chapter, as provided in G.S. 14-4.
Building Regulations	150.54	Neither this subchapter nor any of its provisions shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this subchapter by criminal process, and the enforcement of any other remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws.