

Sec. 1-45. - General penalty; enforcement of Code.

- (a) *Civil penalty.* Any person who violates any provision of this Code shall be subject to a civil penalty in the amount of \$500.00 payable to the town; however, if a different civil penalty is provided in this Code for a violation of a specific chapter or provision, the specific penalty will apply.
- (1) Civil penalties shall be assessed by written notice from the town manager, or his designee, to the offender describing the violation and the amount of the penalty. The town manager has the authority to reduce the amount of civil penalty if he determines that the prescriptive penalty exceeds the amount necessary to compensate the public for the violation or to encourage future compliance. Where applicable, the notice shall state that each day the violation continues shall be an additional and separate violation subject to the same daily civil penalty set forth in the notice. The notice shall further state that no additional notice will be sent for continuing violations and penalties.
 - (2) The notice shall inform the recipient that he, within ten days of receipt of notice of the violation, may, in writing, request a hearing before the town manager on the notice of violation and assessment of the penalty. If a request for a hearing is made, the town manager shall schedule the hearing as soon as practical. Following the hearing, the town manager, in writing, shall affirm, reverse, or modify the notice of violation and shall have the authority to reduce or reverse the imposition of the penalty assessed.
 - (3) The decision of the town manager may be appealed by written notice to the board of commissioners. Notice of appeal to the board must be given within ten days of the date of the town manager's written decision. If an appeal is made, a hearing shall be held before the board of commissioners as soon as practical. The board, by a written order entered as soon after the hearing as practical, shall affirm, reverse, or modify the notice of violation and shall have the authority to reduce or reverse the imposition of the penalty assessed.
 - (4) Civil penalties shall be paid to the town within 30 days after the assessment is made if no hearing is requested, or within 30 days after the assessment is affirmed if a hearing by the town manager is requested or an appeal to the town board is made. If not so paid, the town may initiate a civil action in the nature of collection of a debt to collect any unpaid penalty.

- (5) The person, firm or corporation who violates any provision of this Code shall be subject to the civil penalty provided herein; however, there is a rebuttable presumption that the owner of property where a violation occurs is responsible for the violation.
- (6) Payment of a civil penalty shall not be evidence of, or an admission of, criminal guilt.
- (b) *Misdemeanor offense.* Except as set forth in a specific chapter or provision of this Code, if any person shall violate any provision of this Code, he shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.00.
- (c) *Equitable remedies.* Any provision of this Code or other town ordinance may be enforced by injunction, order of abatement, or any other appropriate equitable remedy. When a violation of this Code occurs, the town may apply to the appropriate division of the general court of justice for an appropriate equitable remedy and it shall not be a defense to the application of the town for equitable relief that there is an adequate remedy at law.
- (d) *Injunction and abatement.*
 - (1) Any provision of this Code making 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 this Code 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.
 - (2) In addition to an injunction, the court may enter an order of abatement as a part of the judgment 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. 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 an order of abatement in the nature of a mechanic's and materialman'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.

(e) *Enforcement of ordinances.* The provisions of this Code may be enforced by any one, all or a combination of the remedies authorized and prescribed by this section except when a chapter or section provides otherwise.

(f) *Continuing violation.* Except as otherwise specifically provided, each day's continuing violation of this Code shall be a separate and distinct offense.

(Ord. of 6-14-2017 , Pt. I)

Chapter 4 - ANIMALS

Sec. 4-1. - Definitions.

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

Dog having dangerous or destructive propensities means a dog which reasonable persons believe to be a physical threat to humans or other animals, or a dog which habitually turns over garbage receptacles, habitually destroys shrubs, flowers, grass, and other plant growth, habitually kills other animals, habitually attacks or attempts to attack persons, habitually chases cars, or habitually performs other similar acts.

Livestock means all animals, poultry, reptiles, serpents, and rodents, except for dogs, traditional house cats, birds customarily confined to cages and birds indigenous to the town, hamsters, turtles and gerbils, and miniature domesticated pot bellied pigs. The definition of livestock shall specifically include, but not be limited to, horses, ponies, donkeys, mules, cows, sheep, goats, hogs, chickens, turkeys, geese, birds of prey, snakes and rodents.

Proper enclosure means a building or other structure from which a dog cannot escape, or an outside area enclosed by a fence at least six feet in height secured to the ground in a manner so that a dog cannot escape its immediate premises.

(Code 1988, art. XVI, § 1)

Sec. 4-2. - Dogs.

- (a) *Dangerous and destructive dogs.* It shall be illegal to keep or maintain outside a proper enclosure any dog having dangerous or destructive propensities. Any dog maintained in violation of this provision shall be deemed a public nuisance and may be abated as provided in this chapter.
- (b) *Barking dogs.* The keeping or maintenance of any dog which by prolonged and habitual barking, howling, or whining causes annoyance to neighboring residents and interference with the reasonable use and enjoyment of the premises occupied by such residents, or with the reasonable use and enjoyment of the public streets, sidewalks or other public areas, is declared to be a public nuisance, and shall be abated as provided in this chapter.

(Code 1988, art. XVI, § 2)

Sec. 4-3. - Livestock and poultry.

It shall be unlawful to keep any livestock within the town limits. In addition to criminal penalties against the violator of this section, such livestock kept in violation of this section is declared to be a public nuisance and may be abated as provided in this chapter.

(Code 1988, art. XVI, § 3)

Sec. 4-4. - Animals at large and on the beach strand.

- (a) No animals, except as expressly allowed herein, shall be permitted by their owners to roam within the town. However, dogs which are household pets may, when accompanied by a responsible individual controlling said dog on a leash, be allowed on public rights-of-way and on the beach strand. Nothing contained herein shall prohibit traditional household pets from being retained on the owner's private property, subject to limitations and restrictions contained within this Code.
- (b) No horses or other equines, beef and dairy cattle, hogs, sheep, goats, and other livestock shall at any time be allowed on the beach strand or within the town, except on a public street or road during a parade authorized in this Code's provisions and except as permitted in this chapter. This prohibition includes the prohibition of such animals, or any other similar animals, from entering or remaining on the beach strand whether or not said animals are being ridden, led, or otherwise under the control of the owner or possessor of the animals. As used herein, the term "beach strand" means all land between the mean low watermark of the Atlantic Ocean and the first line of stable vegetation as defined in the regulations of the coastal resources commission of the state.
- (c) No resident shall be authorized to cage, house, or retain more than three dogs or three cats on their premises, except that litters of puppies or kittens shall be allowed for a period not to exceed 12 weeks. This subsection does not restrict the retention of those animals exceeding the limits established herein on private property in the town at time of adoption of this section.
- (d) No person owning, harboring, keeping or in charge of any dog shall cause or allow the dog to defecate on any street, sidewalk, park, beach strand, municipal right-of-way or other publicly owned area, or upon any private property without

permission of the owner of the property, without such excrement being immediately removed by the person owning, harboring or keeping the dog responsible for the excrement, and depositing such excrement in an appropriate waste container. Additionally no person owning, harboring, keeping or in charge of any dog shall cause or allow the dog to create a nuisance on any street, sidewalk, park, beach strand, municipal right-of-way or other publicly owned area, or upon any private property.

- (e) Animals found roaming in public areas or on private property in violation of this chapter may be impounded by either the police department, or by the animal control officer for the county, and, unless claimed in four days after impoundment, shall be disposed of as the police department, or animal control officer for the county, deems best, including destroying said animals. The owners or keepers of such livestock or house pets, if known, shall be charged with the cost of impoundment and disposal.

(Code 1988, art. XVI, § 4)

Sec. 4-5. - Bird sanctuary.

- (a) The territory within the corporate limits of the town is declared to be a bird sanctuary.
- (b) It shall be unlawful for any person to kill, trap, or otherwise take any bird within the corporate limits of the town.

(Code 1988, art. XVI, § 5)

Sec. 4-6. - Horses on the beach.

- (a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Beach area means all land landward of the low water mark of the Atlantic Ocean, to include the foreshore beach strand, barrier dune system, single sand dunes, dune ridges, dune systems, and any parts thereof, both old and new, including the vegetative cover relating to such dunes.

Peak season means that time period beginning at midnight on the third Friday of May until the Thursday following Labor Day.

Weekend means that time period beginning at 10:00 p.m. on Friday and extending until 4:00 a.m. on Monday.

- (b) *Horses prohibited during peak season and weekends in May*. It shall be unlawful for any person to ride, walk, possess, or have a horse, mule or donkey or other member of the Equidae or Equus asinus families on any portion of the beach within the corporate limits of town during the peak season. Additionally, during the month of May it shall be unlawful for any person to ride, walk, possess, or have a horse, mule or donkey or other member of the Equidae or Equus asinus families on any portion of the beach on the weekend.
- (c) *Horses prohibited on dunes*. It shall be unlawful for a horse, mule, donkey or other members of the Equidae or Equus asinus families to traverse the barrier dune system, single sand dunes, dune ridges, dune systems, and any parts thereof, both old and new, including the vegetative cover relating to such dunes, with the exception of the use of designated access locations.
- (d) *Horse access locations*. Horses, mules, donkeys, or other members of the Equidae or Equus asinus families shall access the beach areas only at the vehicle access point located at S.R. 1192.
- (e) *Horses not permitted on town street rights-of-ways, except for temporary use*. Horses, mules, donkeys, or other members of the Equidae or Equus asinus families are not permitted on town street rights-of-way. Temporary use of street rights-of-way to travel from the nearest vehicle access point or a private residence to the nearest authorized access location is permitted, provided such use is of limited duration and strictly to travel to the access location.
- (f) *Mandatory removal of feces*. It shall be unlawful for the rider of a horse, mule, donkey, or other member of the Equidae or Equus asinus families to allow said animal to deposit feces on the beach areas, town street rights-of-way, or another person's private property without immediately removing all feces deposited by such animal. Burying feces in the sand or depositing feces in the ocean is prohibited and constitutes a violation of this section.
- (g) *Responsible riding required*. The rider of a horse, mule, donkey, or other member of the Equidae or Equus asinus families shall be of suitable age and discretion, and shall ride in a manner so as not to cause a danger to other persons or vehicular

traffic. The horse, mule, donkey, or other member of the Equidae or Equus asinus families shall be thoroughly trained and properly restrained, and ridden with due care, and shall not be allowed to go unattended.

(Ord. of 12-8-2004, § 1 (§ 8))

ARTICLE II. - PUBLIC HEALTH NUISANCES

Sec. 12-19. - Definitions.

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

Notice means a written statement specifying the public health nuisance and specifying its location under the signature of the building inspector or any other official the town board designates. Notice shall be deemed given by personally delivering the notice to the owner of the property, or the person maintaining the public health nuisance, if different from the owner of the property, by mailing a copy of the notice by first class mail addressed to the last known address of the owner of the property or of the person maintaining the public health nuisance, if different from the owner, or by posting the notice on the property.

Public health nuisance means everything in the town limits or within one mile thereof, except within the city limits of adjoining municipalities, that is dangerous or prejudicial to the public health or public safety, including, but not limited to, the following:

- (1) Accumulation of rubbish, trash, or junk that may reasonably be deemed a fire hazard, hazard to the environment, or that may result in an accumulation of stagnant water, or may reasonably result in an infestation of rats, and other rodents, snakes, or vermin of any kind.
- (2) Accumulation of animal or vegetable matter that emits offensive odors or vapors, or that is in a state of decay.
- (3) Storage within reach of children of any abandoned icebox, refrigerator, freezer, stove, building material, rubbish, or similar item.
- (4) Structures that have been damaged or destroyed by fire or other disaster that have not been removed within 90 days after the disaster.
- (5) Accumulation of building materials when construction is not imminent, when the same are stored in a way which reasonably constitutes a fire hazard or be an attractive nuisance to children.
- (6) Grass or weeds infested with rats, vermin, or dangerous reptiles.
- (7) Any condition which violates the rules and regulations of the county health department.

(Code 1988, art. XVII, § 1)

Sec. 12-20. - Prohibition of public health nuisances.

Public health nuisances are prohibited within the town limits and within one mile thereof, except within the corporate limits of other municipalities, and the town shall have authority to summarily remove, abate, or remedy public health nuisances pursuant to G.S. 160A-193.

(Code 1988, art. XVII, § 2)

Sec. 12-21. - Procedure for declaration of public health nuisances.

- (a) Any person may bring the existence of a public health nuisance, or the fact that said person has probable cause to believe that a public health nuisance exists, to a regular or special meeting of the town board.
- (b) If the town board finds the activity or condition reported to be a public health nuisance, it shall direct the building inspector to issue an order requiring the owner of the property and the person maintaining the public health nuisance, if not the same, to remove and abate the activity or condition constituting the public health nuisance. To the extent that the property owner fails to eliminate the public health nuisance within seven days after notice of violation of this article is issued, the town shall have authority to summarily remove, abate or remedy the public health nuisance. The expense of such removal, abatement or remedial action, including attorneys' fees incurred by the town in connection therewith, shall be paid by the person in default, and, if not paid, shall be a lien upon the land or premises where the public health nuisance existed, and shall be collected as unpaid taxes.

(Code 1988, art. XVII, § 3)

Sec. 12-22. - Additional enforcement measures.

Any person maintaining a public health nuisance in the town is subject to the penalties and enforcement provisions of this article.

Secs. 12-23—12-47. - Reserved.

ARTICLE II. - MISCELLANEOUS OFFENSES

Sec. 20-19. - Discharge of firearms and fireworks.

- (a) It shall be unlawful for any person to fire or discharge any rifle, gun, pistol, pellet gun, pellet pistol, air gun, air pistol, BB gun, BB pistol or air rifle within the town limits or to knowingly or willfully allow his minor child or any other child under his supervision to do the same.
- (b) It shall be unlawful to discharge firecrackers, fireworks, gun powder, explosives of any kind, and other pyrotechnics, except by a permit from the town board issued pursuant to state law.

(Code 1988, art. XVIII, § 1)

Sec. 20-20. - Injuring town property.

It shall be unlawful to injure, damage, deface, trespass upon, break or injure any property belonging to the town.

(Code 1988, art. XVIII, § 2)

Sec. 20-21. - Loud noises.

- (a) *Prohibited.* Subject to the provisions of this section, the creation of any unreasonably loud, disturbing, noise in the town is prohibited. Noise of such character, intensity, and duration as to be detrimental to the life or health of any individual is prohibited.
- (b) *Acts declared loud noises.* The following acts, among others, are declared to be loud, disturbing noises in violation of this section, but enumeration shall not be deemed to be exclusive, namely:
 - (1) *Blowing horns.* The sounding of any horn or signal device on any automobile, motorcycle, bus, or other vehicle, except as a danger signal, so as to create any unreasonable loud or harsh sound, or the sounding of such device for an unnecessary and unreasonable period of time.
 - (2)

Radios, phonographs, etc. The playing of any radio, phonograph, musical instrument, or any electronic device wherein sound is amplified in such manner or in such volume, particularly during hours between 11:00 p.m. and 7:00 a.m. as to annoy or disturb the quiet, comfort, or repose of any person in any dwelling, hotel, or other type of residence.

- (3) *Pets.* The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any person in the vicinity.
- (4) *Use of vehicle.* The use of any automobile, motorcycle, or vehicle so out of repair, so loaded, or in such manner as to create loud grating, grinding, rattling, or other noise.
- (5) *Decibel levels exceeding specified limits.* The emission of sound from any source or sources which, when measured pursuant to the procedures outlined in this subsection, exceed the ambient base noise level in decibel as follows:
 - a. Between 7:00 a.m. and 11:00 p.m. daily: 65 dB(A) in excess of the ambient base noise level.
 - b. Between 11:00 p.m. and 7:00 a.m. of the following day: 50 dB(A) in excess of the ambient base noise level.

(c) *Noise measurement procedures.*

- (1) Noise measurement shall be made with a sound level meter operated on the A-weighting network scale at a distance of 100 feet from the source of the noise or the building from which the noise emanates, but when the measurements in these locations are not practical, noise measurements shall be made at a point 100 feet from the closest public right-of-way to the property on which the noise is emanating.
- (2) Sound measurements shall be conducted at that time of day or night when the suspect noise source is emitting sound.
- (3) The ambient base noise level shall be determined with the noise source not in operation, prior to or after a measurement of the noise source, as follows:
Without the noise source in operation, the operator of the sound level meter shall record the meter's reading observed at 15-second intervals for a period, whenever possible, of two minutes, but if such time period is not possible, the

operator shall obtain measurements for a reasonable period of time. The average noise level reading obtained over the period shall constitute the ambient base noise level.

- (d) *Definitions*. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

A-weighting scale means the sound pressure level in decibels, as measured with the sound level meter using the A-weighted network (scale). The standard unit notation is dB(A).

Ambient base noise level means the average sound pressure level in dB(A) during a reasonable period of time, as determined by employing a sound level meter as described in this section.

dB(A) means the sound level in decibels determined by the A-weighting scale of a standard sound level meter having characteristics defined by the American National Standards Institute (ANSI).

Decibel or *dB* means a standard unit of the measurement of sound according to the generally accepted definition of the same.

Sound level in decibels, means a weighted sound pressure level determined by the use of a sound level meter whose characteristics and frequency weightings are specified in ANSI standards.

Sound level meter means an instrument which includes a microphone an output meter and frequency-weighting network for the measurement of sound level.

- (e) *Unlawful refusal to cease noise*. It shall be unlawful for any person to refuse to cease making any sound when ordered to do so by duly authorized personnel for purpose of measuring the ambient base noise level.
- (f) *Special permits for meetings and assemblies*. If noise emitted as a result of a meeting or assembly can reasonably be expected to be a violation of this article, the person responsible for conducting the meeting or assembly may apply to the town board for a limited special noise permit. Such application will contain the date and requested times of the meeting or assembly and the location of the meeting or assembly. Such permit will be freely granted when it shall appear to the town board that the applicant will need exemption from the prohibition contained

in this article to enjoy his constitutionally protected rights of free expression and assembly, and when the constitutional rights of privacy of the residents disturbed by the noise of the meeting or assembly will be compromised to only a minor degree. The town board, however, may issue a permit under this section only for meetings and assemblies between 7:00 a.m. and 9:00 p.m. A \$10.00 application fee will be charged of each applicant to defray the expenses of processing the application.

(Code 1988, art. XVIII, § 3; Ord. of 5-10-1995, art. XVIII, § 3)

State Law reference— Municipal authority to regulate loud noises, G.S. 160A-184.

Sec. 20-22. - Camping prohibited.

It shall be unlawful for any person, other than in private or public camp grounds, to erect or maintain or occupy tents, recreational trailers, or other temporary facilities for the purpose of dwelling or camping therein, or to otherwise camp within the town limits. Exempt from this section is overnight camping by children in their families' yards.

(Code 1988, art. XVIII, § 4)

Sec. 20-23. - Human waste.

No person shall urinate or deposit any human waste of any kind on any street, public area including beaches, and on any property, except in facilities approved by the county health department.

- (1) Any person who violates this section by urination only shall pay to the town a civil penalty of \$50.00. The civil penalty may be reduced per section 1-45(a)(1) of this Code. The offender shall not, however, be subject to criminal proceedings or penalties for such violation.
- (2) Any person who violates this section by means other than urination is subject to all the penalties provided in section 1-45.

(Code 1988, art. XVIII, § 5; Ord. of 6-14-2017, Pt. III)

Sec. 20-24. - Beach bulldozing restricted.

On the ocean beaches, bulldozing sand, pushing of sand by mechanical means, or other mechanical change to the topography is prohibited, except in the following situations:

- (1) When such work is performed as a part of a hurricane or erosion protection project or beach renourishment project sponsored by the town or any local, state, or federal governmental agency;
- (2) When such work is performed at the direction of the town for purpose of beach maintenance;
- (3) When such work is performed by any non-governmental person or entity to protect structures, other than walkways to the ocean beach, that are imminently threatened as a result of severe erosion of the ocean beaches or the sand dune structure, but only upon receipt of a permit for such work from the town clerk after a finding by inspection that the structure is imminently threatened (the term "imminently threatened" means that a structure is expected to experience significant structural damage within 14 days); or
- (4) When such work is authorized by the issuance of a general waiver of this section by the board of commissioners following a natural disaster.

(Ord. of 2-13-2002, § I)

Sec. 20-25. - Littering.

- (a) It shall be unlawful for any person to throw or deposit any trash, refuse, garbage, building material, cans, bottles, broken glass, paper, or any other type of litter on the public trust beach area as defined by G.S. 77-20, in the Atlantic Ocean and in Bogue Sound and its tributaries.
- (b) Any person who violates this section shall pay to the town a civil penalty of \$250.00. The civil penalty may be reduced per section 1-45(a)(1) of this Code. The offender shall not, however, be subject to criminal proceedings or penalties for such violation.

(Ord. of 7-12-2017(2), Pt. I)

Sec. 20-26. - Failure to fill large holes on the public trust beach areas.

- (a)

It shall be unlawful for any person to dig a hole, trench, or depression on the public trust beach areas, as defined in G.S. 77-20, deeper than 12 inches and then depart the beach strand without having first completely filled such hole, trench, or depression.

(b) Any person who violates this section shall pay to the town a civil penalty of \$50.00.

(Ord. of 7-12-2017(2), Pt. II)

Sec. 20-27. - Unattended beach equipment prohibited during certain hours.

(a) It shall be unlawful for any person to leave unattended beach tents, canopies, umbrellas, awnings, chairs, sporting nets, and other similar items on the public trust beach areas between 8:00 p.m. and 8:00 a.m. daily.

(b) Violations of this section shall result in the classification of unattended beach equipment as abandoned property and said equipment will be removed and disposed of by the town.

(c) Oceanfront property owners shall, upon presentation of a written request and proof of oceanfront property ownership, be exempted from this section.

(d) The town manager shall have the authority to grant exceptions to this section for limited duration special events or other reasons in the general public interest upon presentation of a written request outlining the reasons for said exception.

(Ord. of 7-12-2017(2), Pt. III)

Secs. 20-28—20-51. - Reserved.

ARTICLE III. - SURFBOARDING

Sec. 20-52. - General restrictions.

No person shall use or operate a surfboard in the waters of the Atlantic Ocean within the town limits within a distance of 500 feet on either side of any fishing pier hereafter to be constructed in said waters, provided that the police department shall not enforce the provisions of this section until the owner or operator of such pier clearly designates or marks a line on each side of said pier at a distance of 500 feet from said pier with suitable markers either on the beach or by buoys placed in the waters of the Atlantic Ocean, or both. Said markers or buoys shall be clearly visible and when so located shall delineate an imaginary line a distance of 500 feet parallel to each side of the fishing pier within which area surfing is expressly prohibited herein, provided that where fishing piers are in closer proximity to each other than 1,000 feet, such markers or buoys need not be placed between said piers, but notice of surfing prohibition shall be given by the posting of a suitable sign or marker indicating such prohibition which sign shall be located between the piers.

(Code 1988, art. XIX, § 1)

Sec. 20-53. - Leashes on surfboards.

No person shall use or operate a surfboard within the waters of the Atlantic Ocean within the town limits unless a rope or leash having a minimum length of four feet is physically attached to the surface of the surfboard and the opposite end of the leash or rope is looped so that the leash may be placed around the person's ankle or wrist for control of the surfboard while in operation or use within the waters of the Atlantic Ocean. Additionally, every person using or operating a surfboard within the waters of the Atlantic Ocean and within the town limits shall be required to physically maintain control of the surfboard by use of the leash at all times.

(Code 1988, art. XIX, § 2)

Sec. 20-54. - Windsurfers.

Any person using or riding on any surfboard which contains a mast and sail or using or riding upon any device generally known as a "windsurfer" shall not be allowed to use the same or to be in the water with such device within 500 feet of any fishing pier or within any swimming area which is enclosed by ropes.

(Code 1988, art. XIX, § 3)

Sec. 20-55. - Exemptions.

Sections 20-52 and 20-53 shall not apply to activities commonly known as body surfing or to surfing with plastic or soft rubber rafts.

(Code 1988, art. XIX, § 4)

Sec. 20-56. - Right-of-way.

Swimmers, persons wading in the oceans, and surf fishermen shall be deemed to have the right-of-way over surfers at all times.

(Code 1988, art. XIX, § 5)

Secs. 20-57—20-85. - Reserved.

ARTICLE IV. - SMOKING IN RETAIL BUSINESSES PROHIBITED

Sec. 20-86. - Findings, purpose, and authority.

(a) The town council does hereby find that:

- (1) Reliable studies have shown that breathing secondhand smoke is a cause of disease, including lung cancer, in healthy nonsmokers. At special risk are elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and
- (2) Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function, bronchoconstriction, and bronchospasm.

(b) Accordingly, the town council finds and declares that the purpose of this article is to protect the public health and welfare by prohibiting smoking in retail stores as defined herein.

(c) This article is adopted under the authority of G.S. 130A-498.

(Ord. of 2-13-2013, § I(art. XVIIIA, § 1)

Sec. 20-87. - Definitions.

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

Retail store means any sole proprietorship, partnership, joint venture, corporation or other business entity where goods or services are sold to members of the public.

- (1) Grocery stores and convenience stores are considered to be retail stores. A retail store is a public place as defined in G.S. 130A-492(14).
- (2) Excluded from the definition of retail store are tobacco shops and cigar bars that meet the definitions of the same in G.S. 130A-492 as long as these establishments conform to the restrictions on migrating smoke set forth in G.S. 130A-498(b1).

Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or other combustible tobacco product in any manner or in any form.

(Ord. of 2-13-2013, § I(art. XVIIIA, § 2)

Sec. 20-88. - Prohibition.

Smoking is prohibited in retail stores.

(Ord. of 2-13-2013, § I(art. XVIIIA, § 3)

Sec. 20-89. - Other prohibitions unaffected.

Nothing in this article repeals or modifies any state law or municipal ordinance prohibiting or regulating smoking. This article is in addition to such other laws or ordinances.

(Ord. of 2-13-2013, § I(art. XVIIIA, § 4)

Sec. 20-90. - No smoking signs.

The owners or operators of retail stores are encouraged, but not required, to post signs at or near all entrance doors indicating that smoking is prohibited. The town will make such signs available to retail stores at no cost. However, posting of signs is not a prerequisite to enforcement of, or violation of, this article.

(Ord. of 2-13-2013, § I(art. XVIIIA, § 5)

Sec. 20-91. - Penalty.

Violation of this article is an infraction, and the person committing the infraction may be punished by a fine of not more than \$50.00. Conviction of an infraction under this article has no consequence other than payment of a penalty. A person smoking in violation of this article may not be assessed court costs.

(Ord. of 2-13-2013, § I(art. XVIIIA, § 6)