

TITLE I: GENERAL PROVISIONS

Chapter

10. GENERAL PROVISIONS

CHAPTER 10: GENERAL PROVISIONS

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§ 10.01 TITLE OF CODE.

This codification of ordinances by and for the Town of Long View shall be designated as the Code of Long View, North Carolina, and may be so cited.

§ 10.02 INTERPRETATION.

Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this code as those governing the interpretation of state law.

§ 10.03 APPLICATION TO FUTURE ORDINANCES.

All provisions of Title I compatible with future legislation shall apply to ordinances hereafter adopted amending or supplementing this code unless otherwise specifically provided.

§ 10.04 CAPTIONS.

Headings and captions used in this code other than the title, chapter, and section numbers are employed for reference purposes only and shall not be deemed a part of the text of any section.

§ 10.05 DEFINITIONS.

(A) *General rule.*

(1) Words and phrases shall be taken in their plain, or ordinary and usual sense.

(2) However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

(B) *Definitions.* For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOARD OF ALDERPERSONS. The governing body of the Town of Long View, North Carolina.

CHARTER. The Charter of the Town of Long View, North Carolina.

CODE, THIS CODE, or THIS CODE OF ORDINANCES. This municipal code as modified by amendment, revision, and adoption of new titles, chapters, or sections.

COUNTY. Catawba County and Burke County, North Carolina.

GOVERNOR. The Governor of North Carolina.

JOINT AUTHORITY. All words giving a joint authority to 3 or more persons or officers shall be construed as giving that authority to a majority of the persons or officers.

MAY. The act referred to is permissive.

MONTH. A calendar month.

OATH. An affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in those cases the words **SWEAR** and **SWORN** shall be equivalent to the words **AFFIRM** and **AFFIRMED**.

OFFICER, OFFICE, EMPLOYEE, COMMISSION, or DEPARTMENT. An officer, office, employee, commission, or department of this municipality unless the context clearly requires otherwise.

OWNER. Applied to any property, shall include any part owner, joint owner, tenant in common, joint tenant, or tenant by the entirety, of the whole or a part of the property.

PERSON. Extends to and includes person, persons, firm, corporation, copartnership, trustee, lessee, or receiver. Whenever used in any clause prescribing and imposing a penalty, the terms **PERSON** or **WHOEVER** as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

PERSONAL PROPERTY. Every species of property except real property.

PRECEDING or FOLLOWING. Next before or next after, respectively.

PROPERTY. Includes real and personal property.

REAL PROPERTY. Includes lands, tenements, and hereditaments.

SHALL. The act referred to is mandatory.

SIDEWALK. Any portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.

SIGNATURE or SUBSCRIPTION. Includes a mark when the person cannot write.

STATE. The State of North Carolina.

STREET. Any public way, road, highway, street, avenue, boulevard, parkway, dedicated alley, lane, viaduct, bridge, and the approaches thereto within the city and shall mean the entire width of the right-of-way between abutting property lines.

SUBCHAPTER. A division of a chapter, designated in this code by a heading in the chapter analysis and a capitalized heading in the body of the chapter, setting apart a group of sections related by the subject matter of the heading. Not all chapters have **SUBCHAPTERS**.

TENANT or OCCUPANT. When applied to a building or land, shall include any person who occupies the whole or a part of the building or land, whether alone or with others.

TOWN. The Town of Long View, North Carolina.

WRITTEN. Any representation of words, letters, or figures, whether by printing or otherwise.

YEAR. A calendar year, unless otherwise expressed.

§ 10.06 RULES OF INTERPRETATION.

The construction of all ordinances of this city shall be by the following rules, unless the construction is plainly repugnant to the intent of the legislative body or of the context of the same ordinance.

(A) *AND or OR.* Either conjunction shall include the other as if written "and/or," if the sense requires it.

(B) *Acts by assistants.* When a statute or ordinance requires an act to be done which, by law, an agent or deputy as well may do as the principal, the requisition shall be satisfied by the performance of the act by an authorized agent or deputy.

(C) *Gender; singular and plural; tenses.* Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

(D) *General term.* A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

§ 10.07 SEVERABILITY.

If any provision of this code as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

§ 10.08 REFERENCE TO OTHER SECTIONS.

Whenever in 1 section reference is made to another section hereof, the reference shall extend and apply to the section referred to as subsequently amended, revised, recodified, or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

§ 10.09 REFERENCE TO OFFICES.

Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of this city exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

§ 10.10 ERRORS AND OMISSIONS.

If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express the intent, the spelling shall be corrected and the word or words supplied, omitted, or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

§ 10.11 OFFICIAL TIME.

The official time, as established by applicable state and federal laws, shall be the official time within this city for the transaction of all municipal business.

§ 10.12 REASONABLE TIME; COMPUTING TIME.

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of the act or the giving of the notice.

(B) The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day be Sunday, it shall be excluded.

§ 10.13 ORDINANCES REPEALED.

This code, from and after its effective date, shall contain all of the provisions of a general nature pertaining to the subjects herein enumerated and embraced. All prior ordinances pertaining to the subjects treated by this code shall be deemed repealed from and after the effective date of this code.

§ 10.14 ORDINANCES UNAFFECTED.

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

§ 10.15 EFFECTIVE DATE OF ORDINANCES.

All ordinances passed by the legislative body requiring publication shall take effect from and after the due publication thereof, unless otherwise expressly provided. Ordinances not requiring publication shall take effect from their passage, unless otherwise expressly provided.

§ 10.16 REPEAL OR MODIFICATION OF ORDINANCES.

(A) Whenever any ordinance or part of an ordinance shall be repealed or modified by a subsequent ordinance, the ordinance or part of an ordinance thus repealed or modified shall continue in force until the due publication of the ordinance repealing or modifying it when publication is required to give effect thereto, unless otherwise expressly provided.

(B) No suit, proceedings, right, fine, forfeiture, or penalty instituted, created, given, secured, or accrued under any ordinance previous to its repeal shall in any way be affected, released, or discharged, but may be prosecuted, enjoyed, and recovered as

fully as if the ordinance had continued in force unless it is otherwise expressly provided.

(C) When any ordinance repealing a former ordinance, clause, or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause, or provision, unless it is expressly provided.

§ 10.17 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.

(A) (1) All ordinances passed subsequent to this code which amend, repeal, or in any way affect this code may be numbered in accordance with the numbering system hereof and printed for inclusion herein.

(2) When subsequent ordinances repeal any chapter, section, or subsection, or any portion thereof, the repealed portions may be excluded from this code by omission from reprinted pages.

(3) The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence that the subsequent ordinances numbered or omitted are readopted as a new code by the town.

(B) Amendments to any of the provisions of the code shall be made by amending the provisions by specific reference to the section number of this code in language substantially similar to the following: "Section _____ of the Code of Ordinances, Town of Long View, North Carolina, is hereby amended as follows...." The new provisions shall then be set out in full as desired.

(C) If a new section not heretofore existing in the code is to be added, language substantially similar to the following shall be used: "The Code of Ordinances, Town of Long View, North Carolina, is hereby amended by adding a section, to be numbered _____, which section shall read as follows...." The new section shall then be set out in full as desired.

(D) All sections, articles, chapters, or provisions desired to be repealed must be specifically repealed by section, article, or chapter number, as the case may be.

§ 10.18 SECTION HISTORIES; STATUTORY REFERENCES.

(A) As histories for the code sections, the specific number and passage date of the original ordinance and the amending ordinances, if any, are listed following the text of the code section. *Example:* (Ord. 10, passed 5-13-1960; Am. Ord. 15, passed 1-1-1970; Am. Ord. 20, passed 1-1-1980; Am. Ord. 25, passed 1-1-1985)

(B) (1) A statutory cite included in the history indicates that the text of the section reads substantially the same as the statute. *Example:* (G.S. § 160A-11) (Ord. 10, passed 1-17-1980; Am. Ord. 20, passed 1-1-1985).

(2) A statutory cite set forth as a "statutory reference" following the text of the section indicates that the reader should refer to that statute for further information. *Example:*

§ 39.01 PUBLIC RECORDS AVAILABLE.

This municipality shall make available to any person for inspection or copying all public records, unless otherwise exempted by state law.

Statutory reference:

For provisions concerning the inspection of public records, see G.S. §§ 139-1 et seq.

(C) If a section of this code is derived from the previous code of ordinances of the town published in 1994 and subsequently amended, the 1994 code section number shall be indicated in the history by "(1994 Code, § ____)."

§ 10.99 GENERAL PENALTY.

(A) *Enforcement of ordinances; other infractions.*

(1) Except as otherwise specifically set forth in this code, a violation of any provision of the Town of Long View Code of Ordinances, the Town of Long View Land Development Code or any other town ordinance shall be a misdemeanor as provided by G.S. 14-4(a), unless it is an infraction as provided by G.S. 14-4(b). For each such violation, a criminal citation or citations may be issued by the enforcement authority, to be processed through the criminal courts of the State of North Carolina

(2) Violation of any provision or sections of the Town of Long View Code of Ordinances, the Town of Long View Land Development Code or any other town ordinance may subject the offender to civil penalties as established herein.

(3) Nothing contained herein is to imply that any town representative shall have more authority than allowed by the laws of the State of North Carolina regarding criminal citations and enforcement proceedings.

(B) *Infractions either criminal misdemeanor or civil infractions.*

(1) Any person who shall violate an ordinance of the town shall be guilty of a Class 3 misdemeanor and may be fined not more than \$500, or such other maximum amount as shall be authorized by North Carolina General Statutes or specifically established in this code, whichever is less.

(2) A violation of any provision of this code may subject the offender to a civil penalty in the amount of not more than \$500, unless some other amount shall be specifically delineated, which may be recovered by the town in a civil action in the nature of

debt if the offender does not pay the penalty within a period of 72 hours after he has been cited for violation of the ordinance.

(C) *Notice of violation.* All citations shall be in writing, signed by the Town Manager or any designee of the Town Manager charged with the enforcement of any ordinance of the town which has been violated, and shall be delivered to the offender either at the location of the alleged violation, at any other place where he may be found within the corporate limits of the town, or mailed to the offender either at his residence, his place of business or any other place where such individual regularly receives mail.

(D) *Frequency of violation.*

(1) Any individual who shall continue to violate any provision of the Town of Long View Code of Ordinances, the Town of Long View Land Development Code or any other town ordinance after receipt of notice of such alleged violation through issuance of any written notice of infraction or criminal citation shall be deemed to have committed a separate and distinct offense from the original infraction, regardless of the frequency of the occurrence if an individual acting with reasonable diligence could cease the action or undertake the action, as appropriate, which is the underlying cause of the offense, or correct the condition so that no violation continues to exist.

(2) Each day's continuing violation of the following chapters of this code shall be a separate and distinct offense, unless otherwise specifically delineated in the Town of Long View Code of Ordinances, the Town of Long View Land Development Code:

- (a) Title V - Garbage and Waste;
- (b) Title VII - Traffic Code;
- (c) Title IX - General Regulations;
- (d) Title XI - Business Regulations;

(e) Title XIII - General Offenses;

(f) Title XV - Land Usage.

Violations of the designated titles shall include violations of the regulatory codes adopted therein by reference.

(E) *Fines and civil penalties.* Unless otherwise specifically provided in this code and authorized by state law, no violation of the Town of Long View Code of Ordinances, the Town of Long View Land Development Code may be punished by a fine or civil penalty in excess of \$500. Unless otherwise specifically provided in this code, the Town of Long View Land Development Code or the Town of Long View Fee Schedule (attached as Exhibit B to Ordinance Co-02-2013 and incorporated herein by reference), fines or civil penalties shall be established for all offenses as follows:

(1) The penalty for the first violation of any code provision within a period of 12 consecutive months preceding the date of violation shall be punished by a fine or civil penalty of \$50.

(2) The penalty for the second through fourth violation of any code provision within a period of 12 consecutive months preceding the date of violation shall be punished by a fine or civil penalty of \$100.

(3) The penalty for the fifth through tenth violation of any code provision within a period of 12 consecutive months preceding the date of violation shall be punished by a fine or civil penalty of \$250.

(4) The penalty for the violation of any code provision beyond the tenth violation within a period of 12 consecutive months preceding the date of violation shall be punished by a fine or civil penalty of \$500.

(5) If any person shall violate an ordinance of the town regulating the operation or parking of

vehicles, such person shall be responsible for an infraction and shall be required to pay a civil penalty of not more than \$50.

(F) *General provisions.*

(1) Nothing provided in this chapter shall limit the town's ability to secure injunctions and abatement orders to further insure compliance with its ordinances as provided by this section.

(a) Any action to recover a civil penalty may be joined in an action for appropriate equitable remedy, including injunctions and orders of abatement and including an action to recover damages owing to the town by reason of expenses incurred by the town in abating, correcting, limiting and otherwise dealing with the harmful effects of the offending action.

(b) Any provision of this code or any other 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. Any provision of this code or any other town 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.

(c) When a violation of such a provision 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.

(d) In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the case. 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 this code or such 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 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.

(B) A violation of any provision of the Town of Long View Code of Ordinances, the Town of Long View Land Development Code or any other town ordinance may be enforced by any remedy provided by G.S. 160A-175.

(C) The provisions of this code and any other town ordinance may be enforced by any one, all or a combination of the remedies authorized and prescribed by this section.

(Am. Ord. passed 10-13-2008; Am. Ord. CO-02-2013, passed 12-12-2013)

Statutory reference:

For provisions concerning enforcement of ordinances, see G.S. § 160A-175

TITLE III: ADMINISTRATION

Chapter

- 30. FIRE DEPARTMENT**
- 31. POLICE DEPARTMENT**
- 32. TOWN OFFICIALS AND EMPLOYEES**
- 33. TAXATION**

CHAPTER 30: FIRE DEPARTMENT

Section

- | | | |
|-------|---|--|
| 30.01 | Powers and duties of Chief of Fire Department | upon police officers and are authorized to make arrests without warrants for interferences with or obstructions to their operations. |
| 30.02 | Rules and regulations of the Fire Department | (1994 Code, § 30.03) |
| 30.03 | Powers of firefighters on duty during fires | |

§ 30.01 POWERS AND DUTIES OF CHIEF OF FIRE DEPARTMENT.

The Chief of the Fire Department shall be the executive officer of the Department, under direction of the Town Administrator, and shall perform all the duties prescribed for the Chief.
(1994 Code, § 30.01)

§ 30.02 RULES AND REGULATIONS OF THE FIRE DEPARTMENT.

The members of the Fire Department, with the approval of the Town Administrator, shall have power to adopt the rules and regulations as are necessary and proper for the government of the companies; provided, that the rules and regulations shall not be inconsistent with state law, the charter of the town, or this code of ordinances.
(1994 Code, § 30.02)

§ 30.03 POWERS OF FIREFIGHTERS ON DUTY DURING FIRES.

The Fire Chief and his or her assistants, while on duty during fires, shall have the powers conferred

CHAPTER 31: POLICE DEPARTMENT

Section

- 31.01 Police Department established
- 31.02 Composition of Department
- 31.03 Police Chief; powers and duties; jurisdiction
- 31.04 Duties of officers
- 31.05 Notice of failure to report for duty
- 31.06 Auxiliary Police Unit

§ 31.01 POLICE DEPARTMENT ESTABLISHED.

There shall be a Town Police Department, which shall be maintained in accordance with the relative provisions of the charter of the town. The duties of the police officers shall be prescribed by and their conduct regulated by the rules and regulations as may be established by the Chief of Police, with the approval of the Town Administrator.
(1994 Code, § 31.01)

§ 31.02 COMPOSITION OF DEPARTMENT.

The Police Department shall consist of a Chief and as many more police officers as the Board of Alderpersons, from time to time, shall determine.
(1994 Code, § 31.02) ('75 Code, § 17-1)

§ 31.03 POLICE CHIEF; POWERS AND DUTIES; JURISDICTION.

(A) (1) The Chief of Police, acting under the Town Administrator, shall have control of the police force and shall enforce discipline therein.

(2) The Chief of Police shall supervise and direct the work of the Police Department, under the supervision of and in cooperation with the Town Administrator. It shall be his or her duty at all times to preserve the public peace, prevent the commission of crimes, enforce the criminal laws of the state and this code and any other ordinances of the town, and perform the other duties as may be assigned to him or her by the Town Administrator.

(B) The Chief of Police and each member of the police force shall have the powers of peace officers vested in the sheriffs and constables, for the following purposes:

(1) Enforcing the code of ordinances and any other ordinances and regulations of the town;

(2) Preserving the peace of the town; and

(3) Suppressing disturbances and apprehending offenders, and for serving civil process.

(C) The powers set forth in this section may be exercised within the corporate limits of the town and 1 mile beyond and upon town real property wherever located.

(1994 Code, § 31.03)

§ 31.04 DUTIES OF OFFICERS.

It shall be the duty of police officers to:

(A) Especially preserve public peace, prevent crimes, detect and arrest offenders, and suppress riots and unlawful gatherings which obstruct the free passage of public streets, sidewalks, parks, and public places;

(B) Protect the rights of persons and property;

(C) Guard the public health;

(D) Preserve order at elections and all public meetings and assemblages;

(E) Regulate the movements of vehicles in the streets, bridges, parks, public squares, and highways;

(F) Provide property police attendance at fires;

(G) Prevent, as far as possible, injury to town property and buildings, streets, and sidewalks;

(H) Serve all processes issued to them;

(I) Perform any and all other duties that may be assigned to them either by the Board of Alderpersons or Police Chief;

(J) Carefully observe and inspect all places of public amusement, all places of businesses having licenses to carry on the business, and to suppress and restrain all unlawful and disorderly conduct or practices therein;

(K) Enforce and preserve the laws and ordinances of the town; and

(L) Arrest all persons guilty of violating any provision of this code, other ordinances of the town, or state law.

(1994 Code, § 31.04)

§ 31.05 NOTICE OF FAILURE TO REPORT FOR DUTY.

When any member of the Police Department temporarily shall be unable to go on duty from sickness of other unavoidable cause, he or she shall give notice thereof to the Police Chief.

(1994 Code, § 31.05)

§ 31.06 AUXILIARY POLICE UNIT.

(A) *Unit created.* There is hereby created within the Police Department a Police Auxiliary Unit, each member of which shall be appointed by the Chief of Police and shall serve so long as he or she shall direct or until the member submits his or her resignation. Members of this Unit shall assist and aid the regular police force of the town.

(B) *Composition; qualification of members.* The Police Auxiliary Unit shall be composed of deputy police auxiliary in a number not to exceed 8 qualified volunteers. The volunteers shall be not less than 20 years of age at the time of their appointment and shall have the other qualifications as the Chief of Police may determine. At the discretion of the Chief, a screening board may be created to determine the qualifications.

(C) *Powers and duties.*

(1) The Police Auxiliary Unit shall have full police powers while on duty or while under the control and direction of the Chief of Police or his or her designated agent. Its members shall perform only the police duties as may be assigned by the Chief of Police, and then only when dressed or uniformed as prescribed by the Chief or his or her agent, and shall be available for any departmental emergencies as the Chief of Police may determine. The duties shall be performed only within the corporate limits or on property outside the town limits which is owned by the town.

(2) Members of the Auxiliary Police Unit shall obey all lawful orders of any members of the Police Department.

(D) *Chief of Police to prescribe rules, regulations, and the like.* The Chief of Police shall prescribe rules and regulations for the conduct, control, and administration of the Auxiliary Police Unit. Each auxiliary member's record shall be subject to inspection and review for approval at 6-month intervals by the Chief of Police.

(E) *Team leader.* Within the Police Auxiliary Unit there shall be a team leader of the Unit who, subject to the orders and control of the Chief, shall exercise supervision of the Auxiliary Unit. The Team Leader shall be appointed by the Chief of Police.

(F) *Disciplinary action.* All disciplinary action shall be for cause, require notice, and be administered by the Chief of Police.

(G) *Uniforms and equipment.* The Chief of Police shall prescribe the uniform to be worn by the members of the Police Auxiliary Unit.
(1994 Code, § 31.06)

CHAPTER 32: TOWN OFFICIALS AND EMPLOYEES

Section

General Provisions

- 32.001 Oath
- 32.002 Bond
- 32.003 Filing vacancies
- 32.004 Conflicts of interest

Board of Alderpersons

- 32.015 Elections
- 32.016 Regular and special meetings
- 32.017 Quorum
- 32.018 Minutes; roll call votes
- 32.019 Powers and duties

Mayor

- 32.030 Powers and duties

Town Attorney

- 32.045 Office established; appointment
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- 32.047 Compensation

Town Clerk

- 32.060 Appointment
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Town Administrator

- 32.075 Appointment; qualifications; term; compensation; oath
- 32.076 Powers and duties
- 32.077 Absence or disability

Tax Collector

- 32.090 Tax Collector

GENERAL PROVISIONS

§ 32.001 OATH.

All elective and appointive officers of the town shall take the oath of office as prescribed by law. The oaths then shall be filed with the Town Clerk.
(1994 Code, § 32.01)

§ 32.002 BOND.

The Board of Alderpersons may prescribe fidelity bonds for town officers payable to the town and conditioned on the faithful performance of the duties of the office and the rendering of a true accounting for all town funds. The bonds, when approved, shall be deposited with the Town Clerk.
(1994 Code, § 32.02)

§ 32.003 FILLING VACANCIES.

(A) A vacancy that occurs in an elective office of the town shall be filled by appointment of the Board of Alderpersons. If the term of the office expires immediately following the next regular town election, or if the next regular town election will be held within 90 days after the vacancy occurs, the person appointed to fill the vacancy shall serve the remainder of the

unexpired term. Otherwise, a successor shall be elected at the next regularly scheduled town election that is held more than 90 days after the vacancy occurs, and the person appointed to fill the vacancy shall serve only until the elected successor takes office. The elected successor shall then serve the remainder of the unexpired term. If the number of vacancies on the Board of Alderpersons is so that a quorum of the Board cannot be obtained, the Mayor shall appoint enough members to make up a quorum, and the Board shall then proceed to fill the remaining vacancies. If the number of vacancies on the Board is so that a quorum of the Board cannot be obtained and office of Mayor is vacant, the Governor may fill the vacancies upon the request of any remaining member of the Board, or upon the petition of any 5 registered voters of the town.

(B) Vacancies in appointive offices shall be filled by the same authority that made the initial appointment.

(C) This section shall not apply to vacancies in the town if the town has not held an election, levied any taxes, or engaged in any municipal functions for a period of 5 years or more.

(D) If the town's elections are conducted on a partisan basis, a person appointed to fill a vacancy in an elective office shall be a member of the same political party as the person whom he or she replaces if that person was elected as the nominee of a political party.

(G.S. § 160A-63) (1994 Code, § 32.03)

§ 32.004 CONFLICTS OF INTEREST.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS ENTITY. Any business, proprietorship, firm, partnership, limited liability company, person in representative or fiduciary capacity, association, venture, trust, or corporation which is organized for financial gain or for profit.

IMMEDIATE HOUSEHOLD. The Town Official, his or her spouse, and all dependent children of the Town Official.

INTEREST. Direct or indirect pecuniary or material benefit accruing to a Town Official as a result of a contract or transaction which is or may be the subject of an official act or action by or with the town. For purposes of this section, a Town Official shall be deemed to have an interest in the affairs of:

(a) Any person in his or her immediate household as the term is defined in this section;

(b) Any business entity in which the Town Official is an officer or director;

(c) Any business entity in which an excess of 5% of the stock of or legal or beneficial ownership of is controlled or owned directly or indirectly by the Town Official; and/or

(d) Any non-profit organization on which the Mayor or any member of the Town Board currently serves as an officer, director, or board member.

OFFICIAL ACT or ACTION. Any legislative, administrative, appointive, or discretionary act of any Town Official.

TOWN OFFICIAL. The Mayor, members of the Town Board, Town Administrator, Town Attorney, and Department Heads.

(B) *Standards of conduct.*

(1) *Scope.* All town officials as defined in this section shall be subject to and abide by the following standards of conduct.

(2) *Interest in contract or agreement.* No Town Official shall have or thereafter acquire an interest in any contract or agreement with the town. This section does not prevent employment contracts between the Town Official and the town.

(3) *Use of official position.* No Town Official shall use his or her official position or the town's facilities for his or her private gain. In addition, Town Officials shall not misuse their status in a way as to require, expect, or accept favors from subordinate employees.

(4) *Disclosure of information.* No Town Official shall use or disclose confidential information gained in the course of or by reason of his or her official position for purposes of advancing his or her financial or personal interest; a business entity in which he or she is an owner in part or in whole, an officer or director; the financial or personal interest of a member of his or her immediate household or that of any other person.

(5) *Incompatible service.* No Town Official shall engage in or accept private employment or render service to private or other public interests when the employment or service is incompatible with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties unless otherwise permitted by law and unless disclosure is made as provided in this ordinance. Before accepting private employment, the Town Official should consider whether the employment would impact the town negatively. A Town Official who accepts private employment should not represent himself or herself as an employee or agent of the Town of Long View.

(6) *Gifts.* No Town Official shall directly or indirectly solicit any gift or accept or receive any gift having a value of \$25 or more whether in the form of money, services loaned, travel, entertainment, hospitality, thing, or promise or any other form under circumstances in which it could reasonably be inferred that the gift was intended to influence him or her or could reasonably be expected to influence him or her in the performance of official duties or is intended as a reward for any official action on his or her part. Legitimate political contributions shall not be considered as gifts under the provisions of this division (B)(6).

(7) *Special treatment.* No Town Official shall grant any special consideration, treatment, or advantage to any citizen or public or private entity beyond that which is available to every other citizen or entity.

(C) *Disclosure of interest in legislative action.* The Mayor or any member of the Town Board who has an interest in the official act or action before the Board shall publicly disclose on the record of the Board the nature and extent of the interest and shall withdraw from any consideration of the matter if excused by the Board pursuant to the North Carolina General Statutes.

(D) *Investigations instigated by Town Board, Town Administrator, or any other person.*

(1) The Town Board may direct the Town Attorney to investigate any apparent violation of this section as it applies to the Mayor, any member of the Town Board, or Town Administrator, and to report the findings of the investigation to the Board.

(2) The Town Administrator may direct the Town Attorney to investigate any apparent violation of this ordinance as it applies to the Department Heads and to report the findings of the investigation to the Town Administrator.

(3) The Town Board may direct the Town Administrator to investigate any apparent violation of this ordinance by the Town Attorney and to report the findings of the investigation to the Board.

(4) Any person who believes that a violation of this section has occurred may file a complaint in writing with the Town Board when the Mayor and members of the Town Board, Town Administrator, or Town Attorney are the subjects of the complaint, or with the Town Administrator when the Department Heads are the subjects of the complaint and may thereafter proceed as provided in divisions (D)(1) through (D)(3) above.

(E) *Sanctions by Town Administrator and Town Board; rights of accused at hearings.*

(1) If the Town Administrator, after receipt of the findings of an investigation, has cause to believe a violation has occurred by a Department Head, a hearing shall be scheduled on the matter. The Department Head who is charged with the violation shall have the right to present evidence, cross-examine witnesses, including the complainant or complainants, and be represented by counsel at the hearing. If after the hearing and a review of all the evidence the Town Administrator finds that a violation of this section has occurred, he or she shall take whatever lawful disciplinary action he or she deems appropriate, including but not limited to reprimand, suspension, demotion, or termination.

(2) If the Board, after receipt of the findings of an investigation, has cause to believe a violation has occurred by the Mayor or Member of the Town Board, the Board shall schedule a hearing on the matter, the hearing may be held as a Closed Session. The Town Official who is charged with the violation shall have the right to present evidence, cross-examine witnesses, including the complainant or complainants, and be represented by counsel at the hearing. If upon the conclusion of the hearing, the majority vote of the Board finds a violation has occurred, the Board may adopt a resolution of censure which shall be placed as a matter of record in the minutes of an official Board meeting.

(F) *Advisory opinions.*

(1) When a Town Official has a doubt as to the applicability of any provision of this subchapter to a particular situation or to the definition of terms used in this section, he or she may apply to the Town Attorney for an advisory opinion, and the Attorney shall issue an opinion in writing and file same with the Town Board.

(2) The Town Official shall have the opportunity to present his or her interpretation of the facts at issue and of the application of provisions of this section before the advisory opinion is made.

(3) In addition, the Town Official shall publicly disclose to the Town Board or Town Administrator the facts at issue in a particular situation and shall rely upon any resolution adopted by the Town Board or Town Administrator regarding that particular situation.

(Ord. 1-98, passed 1-6-1998) Penalty, see § 10.99

BOARD OF ALDERPERSONS

§ 32.015 ELECTIONS.

(A) Biennially, the Alderpersons from Wards 1, 2, 3, 4, and 5 shall be nominated and elected for terms of 4 years each and until their successors are elected and qualified.

(B) Each Alderman shall be elected and qualified by a simple plurality of the voters from the ward in which he or she is nominated and will represent.
(1994 Code, § 32.15)

§ 32.016 REGULAR AND SPECIAL MEETINGS.

(A) The Board of Alderpersons shall hold its regular meetings at 7:30 p.m. on the second Monday of each month in the town's Council Chambers or at other times as the Board, from time to time, may designate.

(Am. Ord. 01-04, passed 6-29-2004)

(B) (1) The Mayor, Mayor Pro Tempore, or any 2 members of the Board of Alderpersons may call a special meeting at any time by signing a written notice stating the time and place of the meeting and the subjects to be considered.

(2) The notice shall be delivered to the Mayor and each Alderman at his or her usual dwelling place at least 6 hours before the meeting.

(3) Only those items of business specified in the notice may be transacted at a special meeting, unless all members are present or have signed a written waiver of notice.

(4) In addition to the procedures set out in this division (B), a person or persons calling a special meeting shall comply with the notice requirements of G.S. §§ 143-318.9 *et seq.*

(C) Special meetings may be held at any time when the Mayor and all members of the Board are present and consent thereto or when those not present have signed a written waiver of notice.

(D) During any regular meeting or duly called special meeting, the Board may call or schedule a special meeting, provided that the motion or resolution calling or scheduling any such special meeting shall specify the time, place, and purpose or purposes of the meeting and shall be adopted during an open session.

(E) Any regular or duly called special meeting may be recessed to reconvene at a time and place certain, or may be adjourned to reconvene at a time and place certain, by the Board.
(G.S. § 160A-71) (1994 Code, § 32.16)

§ 32.017 QUORUM.

(A) A majority of the membership of the Board of Aldermen plus the Mayor, excluding vacant seats, shall constitute a quorum.

(B) A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.
(G.S. § 160A-74) (1994 Code, § 32.17)

§ 32.018 MINUTES; ROLL CALL VOTES.

(A) A full and accurate journal of the proceedings of the Board of Alderpersons shall be kept and shall be open to the inspection of the public.

(B) On request of 1 member, the vote on any matter shall be by yeas and nays and shall be entered upon the record.
(G.S. § 160A-72) (1994 Code, § 32.18)

§ 32.019 POWERS AND DUTIES.

Except as otherwise provided by the laws of the state, the provisions of this code or by other ordinances of the town, the Board of Alderpersons shall have all the legislative powers of the town and shall have control of the direction of the government and the general management of the town.
(1994 Code, § 32.19)

MAYOR

§ 32.030 POWERS AND DUTIES.

(A) The powers and duties of the Mayor shall be as are conferred by law, together with other powers and duties as may be conferred by the Board of Alderpersons pursuant to law.

(B) The Mayor shall be recognized as the official head of the town for the purpose of service of civil process and for all ceremonial purposes.
(G.S. § 160A-67) (1994 Code, § 32.30)

TOWN ATTORNEY

§ 32.045 OFFICE ESTABLISHED; APPOINTMENT.

The Office of Town Attorney is hereby created. The Town Attorney shall be appointed by the Board of Alderpersons and shall serve at its pleasure.
(G.S. § 160A-173) (1994 Code, § 32.40)

§ 32.046 DUTIES.

It shall be the duty of the Town Attorney:

(A) To prosecute and defend suits for and against the town;

(B) To draw or to approve all deeds, contracts, bonds, notes, or other legal papers required for the proper conduct of the business of the town;

(C) To approve all ordinances as to form before their passage;

(D) To attend regular meetings of the Board of Alderpersons;

(E) To advise any officer of the town in regard to legal matters concerning the town; and

(F) To perform other duties as the Board, from time to time, may prescribe or as otherwise required by law.
(1994 Code, § 32.41)

§ 32.047 COMPENSATION.

The compensation of the Town Attorney shall be fixed by the Board of Alderpersons.
(1994 Code, § 32.42)

TOWN CLERK**§ 32.060 APPOINTMENT.**

The Town Clerk shall be appointed by the Board of Alderpersons and shall serve at the pleasure of the Board until a successor has been appointed.
(G.S. § 160A-171) (1994 Code, § 32.55)

§ 32.061 DUTIES.

It shall be the duty of the Town Clerk:

(A) To give notice of special meetings of the Board of Alderpersons;

(B) To keep a journal of the proceedings of the Board;

(C) To be the custodian of all town records; and

(D) To perform all other duties which may be required by law or by the direction of the Board.
(1994 Code, § 32.56)

TOWN ADMINISTRATOR**§ 32.075 APPOINTMENT; QUALIFICATIONS; TERM; COMPENSATION; OATH.**

(A) There shall be appointed by the Board of Alderpersons an officer to known as the Town Administrator, who shall be the administrative head of the town government. He or she shall be appointed with regard to merit only and need not be a resident of the town when appointed.

(B) The term of the Town Administrator shall be at the discretion of the Board of Alderpersons, and he or she shall receive the compensation as it may fix.

(C) Before entering upon the duties of his or her office, the Town Administrator shall take and subscribe an oath to perform faithfully the duties of his or her office and the oaths of office required by statute.
(1994 Code, § 32.65)

§ 32.076 POWERS AND DUTIES.

The Town Administrator shall:

(A) Be the administrative head of the town government and shall be responsible for the administration of the town offices, positions, and departments, created by or under this code or any other applicable ordinance of the town;

(B) See that within the jurisdiction of the town the laws of the state and this code, the ordinances, resolutions, and regulations of the town are faithfully executed;

(C) Attend all meetings of the Board of Alderpersons, and recommend for adoption the measures as he or she shall deem expedient;

(D) Make reports to the Board of Alderpersons from time to time upon the affairs of the town, and keep the Board fully advised of the town's financial condition and its future financial needs; and

(E) Transmit to the heads of several departments notice of all acts of the Board of Alderpersons relating to the duties of their departments, and make designation of officers to perform duties ordered to be performed by the Board.

(1994 Code, § 32.66)

§ 32.077 ABSENCE OR DISABILITY.

(A) The Town Administrator may:

(1) Designate a deputy to perform his or her functions temporarily when he or she, the Administrator, is absent from the town, sick, or otherwise unable to act; or

(2) From time to time designate a deputy or deputies to perform his or her functions during any particular absence or disability.

(B) The persons so designated shall have all the powers and duties of the Town Administrator when acting in the place of the Administrator.

(1994 Code, § 62.67)

TAX COLLECTOR

§ 32.090 TAX COLLECTOR.

The town's taxes are collected by the Catawba County Tax Office.

(1994 Code, § 32.75)

CHAPTER 33: TAXATION

Section

33.01 Tax on gross receipts derived from retail short-term lease or rental of vehicles

33.99 Penalty

§ 33.01 TAX ON GROSS RECEIPTS DERIVED FROM RETAIL SHORT-TERM LEASE OR RENTAL OF VEHICLES.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CUSTOMER. Any person that leases or rents a vehicle on a short-term lease or rental basis.

GENERAL STATUTES. The North Carolina General Statutes and any reference to a particular section thereof shall include the same as may be from time to time amended, modified, supplemented, revised, or superseded.

GROSS RECEIPTS. The amount that is or would be reported as gross receipts on a business's state income tax return, or on the federal income tax return filed with the state income tax return if the state return does not separately state gross receipts for the most recently completed tax year. Taxes collected hereunder are not subject to the tax herein imposed and are not included in gross receipts.

LEASE OR RENTAL. A transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. The term does not include any of the following:

(a) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.

(b) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of \$100 or 1% of the total required payments.

(c) The providing of tangible personal property along with an operator for a fixed or indeterminate period of time if the operator is necessary for the equipment to perform as designed. For the purpose of this section, an operator must do more than maintain, inspect, or set up the tangible personal property.
(G.S. § 105-164.3(17))

LONG-TERM LEASE OR RENTAL. A lease or rental made under a written agreement to lease or rent property to the same person for a period of at least 365 continuous days.
(G.S. § 105-187.1(3))

PERSON. Any individual, trustee, executor, other fiduciary, corporation, unincorporated association, partnership, sole proprietorship, company, firm, or other legal entity.

SHORT-TERM LEASE OR RENTAL. A lease or rental of a vehicle that is not a long-term lease or rental.
(G.S. §§ 160A-215.1(e)(1) and 105-164.1(7))

TAX COLLECTOR. The individual appointed by the governing body pursuant to G.S. § 105-349 and the provisions of the municipal charter, to collect taxes on behalf of the Town of Long View and any other person authorized to carry out the duties and functions of the individual.

TAXPAYER. Any person liable for the taxes imposed by this section.

VEHICLE. Any of the following:

(a) A motor vehicle of the private passenger type, including a passenger van, minivan, or sport utility vehicle;

(b) A motor vehicle of the cargo type, including a cargo van, pickup truck, or truck with a gross vehicle weight of 26,000 pounds or less used predominantly in the transportation of property for other than commercial freight, and that does not require the operator to possess a commercial drivers license; or

(c) A trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less.
(G.S. § 160A-215.1(e)(2))

(B) *Levy of tax.* A tax is hereby imposed and levied in an amount equal to 1.5% of the gross receipts derived from the short-term lease or rental of vehicles at retail to the general public. This tax on gross receipts is in addition to the privilege taxes authorized by G.S. § 160A-211.

(C) *Collection of the tax.* Every person engaged in the business of the short-term lease or rental of vehicles at retail to the general public shall collect at the time of the lease or rental the tax herein levied, place the tax so collected in a segregated account, and thereafter remit the tax to the Tax Collector in accordance with the provisions of this section. The taxpayer shall include a provision in each retail short-term lease or rental agreement stating that the percentage amount enacted by this section of the total lease or rental price, excluding sales tax, is being charged as a tax on gross receipts. The amount of the

tax shall be stated separately from the lease or rental and shown separately on the taxpayer's records. The tax shall be paid by the customer to the taxpayer as trustee for and on account of the Town of Long View. The taxpayer shall be liable for the collection thereof and for its payment to the Tax Collector and the taxpayer's failure to charge or to collect the tax from the customer shall not affect the liability.

(D) *Report and payment of tax.* Taxes levied under this section are due and payable when a return is required to be filed. Every taxpayer shall, within the time specified, submit a return to the Tax Collector on the form prescribed by the Tax Collector. A return must be signed by the taxpayer or the taxpayer's agent. Returns of taxpayers are due to the Tax Collector each month on or before the fifteenth day of the month following the month in which the tax accrues. As provided in G.S. § 160A-208.1, a return shall not be considered a public record and information contained in a return may be disclosed only in accordance therewith.

(E) *Taxpayer to keep records.* The taxpayer shall keep and preserve suitable records of the gross receipts received by the taxpayer in the conduct of business and the other books or accounts as may be necessary to determine the amount of the tax for which the taxpayer is liable under the provisions of this section. It shall be the duty of the taxpayer to keep and preserve for a period of 3 years all the records of gross receipts and other books and accounts described. All records, books, and accounts herein described shall be open for examination at all reasonable hours during the day by the Tax Collector or his or her duly authorized agent.

(F) *Tax Collector to provide forms.* The Tax Collector shall design, prepare, print, and make available to all taxpayers operating within the municipal boundaries of the Town of Long View forms and instructions for filing returns to insure a full collection of and an accounting for taxes due. The failure of any taxpayer to obtain or receive forms shall not relieve the taxpayer from the payment of the tax at the time and in the manner provided.

(G) *Situs*. The transaction giving rise to the tax herein levied shall be deemed to have occurred at the location of the entity from which the customer takes delivery of the vehicle.
(G.S. § 160A-215.1(b))

(H) *Administration*. In addition to the provisions herein, the levy and collection of the taxes herein imposed shall be otherwise administered in the same manner as the Sales and Use Tax as provided in G.S. § 105-164.4(a)(2).
(G.S. § 160A-215.1(d))

(I) *Authority*. This section is enacted pursuant to the provisions of G.S. § 160A-215.1.

(J) *Effective date*. This section and the taxes thereby levied and imposed shall become effective 7-1-2000.
(Ord. 4-2000, passed 6-6-2000)

§ 33.99 PENALTY.

The provisions with respect to remedies and penalties applicable to G.S. Ch. 105, Subchapter VIII, as contained in G.S. §§ 105-228.90 *et seq.*, shall be applicable in like manner to the tax authorized to be levied and collected under this section, to the extent that the same are not inconsistent with the provisions hereof. The governing body of the Town of Long View may exercise any power the Secretary of Revenue may exercise in collecting sales and use taxes.
(G.S. § 160A-215.1(f)) (Ord. 4-2000, passed 6-6-2000)

TITLE IX: GENERAL REGULATIONS

Chapter

- 90. ABANDONED, NUISANCE, AND JUNKED MOTOR VEHICLES**
- 91. ANIMALS**
- 92. FIRE PREVENTION AND PROTECTION**
- 93. NOISE CONTROL**
- 94. PARADES; PICKETS; DEMONSTRATIONS**
- 95. STREETS AND SIDEWALKS**
- 96. FALSE AND ACCIDENTAL ALARMS**
- 97. GRAFFITI**

CHAPTER 90: ABANDONED, NUISANCE, AND JUNKED MOTOR VEHICLES

Section

- 90.01 Administration
- 90.02 Definitions
- 90.03 Abandoned vehicle unlawful, removal authorized
- 90.04 Nuisance vehicle unlawful, removal authorized
- 90.05 Junked motor vehicle regulated, removal authorized
- 90.06 Removal of abandoned, nuisance, or junked motor vehicles; pre-towing notice requirements
- 90.07 Exceptions to prior notice requirement
- 90.08 Removal of vehicles; post-towing notice requirements
- 90.09 Right to probable cause hearing before sale or final disposition of vehicle
- 90.10 Redemption of vehicle during proceedings
- 90.11 Sale and disposition of unclaimed vehicle
- 90.12 Conditions on removal of vehicles from private property
- 90.13 Protection against criminal or civil liability
- 90.14 Exceptions
- 90.15 Unlawful removal of impounded vehicle

§ 90.01 ADMINISTRATION.

The Police Department and the Town Code Administrator shall be responsible for the administration and enforcement of this chapter. The Police Department shall be responsible for administering the removal and disposition of vehicles determined to be "abandoned" on the public streets

and highways within the town, and on property owned by the town. The Town Code Administrator shall be responsible for administering the removal and disposal of "abandoned", "nuisance" and "junked" motor vehicles located on private property. The town may, on an annual basis, contract with private tow truck operators or towing businesses to remove, store, and dispose of abandoned vehicles, nuisance vehicles, and junked motor vehicles in compliance with this chapter and applicable state laws. Nothing in this chapter shall be construed to limit the legal authority or powers of officers of the Town Police Department and Volunteer Fire Department in enforcing other laws or in otherwise carrying out their duties.
(Ord. passed 9-8-2008)

§ 90.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED VEHICLE. As authorized and defined in G.S. § 160A-303, an abandoned vehicle is one that:

- (1) Is left upon a public street or highway in violation of a law or ordinance prohibiting parking;
- (2) Is left upon a public street or highway for longer than 7 days;
- (3) Is left upon property owned or operated by the town for longer than 24 hours; or
- (4) Is left upon private property without the consent of the owner, occupant, or lessee thereof for longer than 2 hours.

AUTHORIZED OFFICIAL. The supervisory employee of the Police Department or the Town Code Administrator, respectively, designated to order the removal of vehicles under the provisions of this chapter.

JUNKED MOTOR VEHICLE. As authorized and defined in G.S. § 160A-303.2, a vehicle that does not display a current license plate lawfully upon that vehicle and that:

- (1) Is partially dismantled or wrecked;
- (2) Cannot be self-propelled or move in the manner in which it originally was intended to move; or
- (3) Is more than 5 years old and appears to be worth less than \$100.

MOTOR VEHICLE or **VEHICLE.** All machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

NUISANCE VEHICLE. A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:

- (1) A breeding ground or harbor for mosquitos, other insects, rats or other pests;
- (2) A point of heavy growth of weeds or other noxious vegetation which exceeds 8 inches in height;
- (3) In a condition allowing the collection of pools or ponds of water;
- (4) A concentration of quantities of gasoline, oil, or other flammable or explosive materials as evidenced by odor;
- (5) An area of confinement which cannot be operated from the inside, such as, but not limited to, trunks or hoods;

(6) So situated or located that there is a danger of it falling or turning over;

(7) A collection of garbage, food waste, animal waste, or any other rotten or putrescent matter of any kind; or

(8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass.

(Ord. passed 9-8-2008)

§ 90.03 ABANDONED VEHICLE UNLAWFUL, REMOVAL AUTHORIZED.

(A) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow such vehicle to be abandoned as the term is defined herein.

(B) Upon investigation, the authorized officials of the town may determine that a vehicle is an abandoned vehicle and order the vehicle removed.
(Ord. passed 9-8-2008) Penalty, see § 10.99

§ 90.04 NUISANCE VEHICLE UNLAWFUL, REMOVAL AUTHORIZED.

(A) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle, or for the owner, lessee, or occupant of the real property upon which the vehicle is located to leave or allow the vehicle to remain on the property after it has been declared a nuisance vehicle.

(B) Upon investigation, the Town Code Administrator may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle as defined above, and order the vehicle removed.
(Ord. passed 9-8-2008) Penalty, see § 10.99

**§ 90.05 JUNKED MOTOR VEHICLE
REGULATED, REMOVAL AUTHORIZED.**

(A) It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked motor vehicle is located to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.

(B) It shall be unlawful to have more than one junked motor vehicle, as defined herein, on the premises of private property. A single, permitted junked motor vehicle must strictly comply with the location and concealment requirements of this section.

(C) It shall be unlawful for the owner, person entitled to the possession of a junked motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked motor vehicle is located to fail to comply with the location requirements or the concealment requirements of this section.

(D) Subject to the provisions of division (E) of this section, the Town Code Administrator may order the removal of a junked motor vehicle found in violation of this chapter to a storage garage or area. No such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the Code Administrator finds in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. The finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood, or area appearance. The following, among other relevant factors, may be considered:

- (1) Protection of property values;
- (2) Promotion of tourism and other economic development opportunities;
- (3) Indirect protection of public health and safety;

(4) Preservation of the character and integrity of the community; and

(5) Promotion of the comfort, happiness and emotional stability of the residents.

(E) Permitted concealment or enclosure of junked motor vehicles.

(1) One junked motor vehicle, in its entirety, may be located in the rear yard, as defined in the Town of Long View Zoning Ordinance, provided the junked motor vehicle is entirely concealed from public view from a public street and/or abutting premises by an acceptable covering for not more than 60 calendar days. Junked motor vehicles kept on the premises more than 60 calendar days shall be kept inside a completely enclosed building. The Town Code Administrator has the authority to determine whether any junked motor vehicle is adequately concealed as required by this division. The covering must remain in good repair and must not be allowed to deteriorate. The covering or enclosure must be compatible with the objectives stated in the preamble of the ordinance codified herein.

(2) Any 1 or more junked motor vehicles kept for a period exceeding 60 calendar days shall be kept within a completely enclosed building, as defined in the Town of Long View Zoning Ordinance. (Ord. passed 9-8-2008) Penalty, see § 10.99

**§ 90.06 REMOVAL OF ABANDONED,
NUISANCE, OR JUNKED MOTOR
VEHICLES; PRE-TOWING NOTICE
REQUIREMENTS.**

(A) Except as set forth in § 90.07, an abandoned, nuisance, or junked motor vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle. In the case of a nuisance vehicle or a junked motor vehicle, if the names and addresses of the registered owner or person entitled to the possession of the vehicle, or the owner, lessee, or occupant of the real property upon which the vehicle

is located can be ascertained in the exercise of reasonable diligence, the notice shall be given by first class mail. The person who mails the notice(s) shall retain a written record to show the name(s) and address(es) to whom and to which mailed, and the date mailed. If such names and addresses cannot be ascertained or if the vehicle to be removed is an abandoned motor vehicle, notice shall be given by affixing on the windshield or some other conspicuous place on the vehicle a notice indicating that the vehicle will be removed by the town on a specified date (no sooner than 7 days after the notice is affixed). The notice shall state that the vehicle will be removed by the town on a specified date, no sooner than 7 days after the notice is mailed or affixed, unless the vehicle is moved by the owner or legal possessor prior to that time.

(B) With respect to abandoned vehicles on private property, nuisance vehicles and junked vehicles to which notice is required to be given, if the registered owner or person entitled to possession does not remove the vehicle but chooses to appeal the determination that the vehicle is abandoned, a nuisance vehicle or in the case of a junked motor vehicle that the aesthetic benefits of removing the vehicle outweigh the burdens, such appeal shall be made to the Board of Aldermen in writing, heard at the next regularly scheduled meeting of the Board of Aldermen, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

(Ord. passed 9-8-2008)

§ 90.07 EXCEPTIONS TO PRIOR NOTICE REQUIREMENT.

(A) The requirement that notice be given prior to the removal of an abandoned, nuisance, or junked motor vehicle may, as determined by the authorized official, be omitted in those circumstances where there is a special need for prompt action to eliminate traffic obstructions or to otherwise maintain and protect the public safety and welfare. Such findings shall, in all cases, be entered by the authorized official in the appropriate daily records.

(B) Circumstances justifying the removal of vehicles without prior notice include:

(1) *Vehicles abandoned on the streets.* For vehicles left on the public streets and highways, the Board of Aldermen hereby determines that the immediate removal of such vehicles may be warranted when they are:

- (a) Obstructing traffic;
- (b) Parked in violation of an ordinance prohibiting or restricting parking;
- (c) Parked in a no-stopping or standing zone;
- (d) Parked in loading zones;
- (e) Parked in bus zones; or
- (f) Parked in violation of temporary parking restrictions.

(2) *Other abandoned or nuisance vehicles.* With respect to abandoned or nuisance vehicle left on town-owned property other than the streets or highways, and on private property, such vehicles may be removed without giving prior notice only in those circumstances where the authorized official finds a special need for prompt action to protect and maintain the public health, safety, and welfare. By way of illustration and not of limitation, such circumstances include vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles parked in such location or manner as to pose a traffic hazard, and vehicles causing damage to public or private property.

(Ord. passed 9-8-2008)

§ 90.08 REMOVAL OF VEHICLES; POST-TOWING NOTICE REQUIREMENTS.

(A) Any abandoned, nuisance, or junked motor vehicle which has been ordered removed may, as directed by the town, be removed to a storage garage

or area by a tow truck operator or towing business contracted to perform such services for the town. Whenever such a vehicle is removed, the authorized town official shall immediately notify the last known registered owner of the vehicle, with the notice to include the following:

- (1) The description of the removed vehicle;
- (2) The location where the vehicle is stored;
- (3) The violation with which the owner is charged, if any;
- (4) The procedure the owner must follow to redeem the vehicle; and
- (5) The procedure the owner must follow to request a probable cause hearing on the removal.

(B) The town shall attempt to give notice to the vehicle owner by telephone; however, whether or not the owner is reached by telephone, written notice, indicating the information set forth in divisions (A)(1) through (5) above, shall also be mailed to the registered owner's last known address, unless this notice is waived in writing by the vehicle owner or his or her agent.

(C) If the vehicle is registered in North Carolina, notice shall be given within 24 hours. If the vehicle is not registered in the state, notice shall be given to the registered owner within 72 hours from the removal of the vehicle.

(D) Whenever an abandoned, nuisance, or junked motor vehicle is removed and the vehicle has no valid registration or registration plates, the authorized town official shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him or her of the information set forth in divisions (A)(1) through (5) above.
(Ord. passed 9-8-2008)

§ 90.09 RIGHT TO PROBABLE CAUSE HEARING BEFORE SALE OR FINAL DISPOSITION OF VEHICLE.

After the removal of an abandoned vehicle, nuisance vehicle, or junked motor vehicle, the owner or any person entitled to possession is entitled to a hearing for the purpose of determining if probable cause existed for removing the vehicle. A request for hearing must be filed in writing with the county magistrate designated by the chief district court judge to receive such hearing requests. The magistrate will set the hearing within 72 hours of receipt of the request, and the hearing will be conducted in accordance with the provisions of G.S. § 20-219.11, as amended.

(Ord. passed 9-8-2008)

§ 90.10 REDEMPTION OF VEHICLE DURING PROCEEDINGS.

At any stage in the proceedings, including before the probable cause hearing, the owner may obtain possession of the removed vehicle by paying the towing fees, including any storage charges, or by posting a bond for double the amount of such fees and charges to the tow truck operator or towing business having custody of the removed vehicle. Upon regaining possession of a vehicle, the owner or person entitled to the possession of the vehicle shall not allow or engage in further violations of this chapter.

(Ord. passed 9-8-2008) Penalty, see § 10.99

§ 90.11 SALE AND DISPOSITION OF UNCLAIMED VEHICLE.

Any abandoned, nuisance, or junked motor vehicle which is not claimed by the owner or other party entitled to possession will be disposed of by the tow truck operator or towing business having custody of the vehicle. Disposition of such a vehicle shall be carried out in coordination with the town and in accordance with G.S. Ch. 44A, Art. 1.

(Ord. passed 9-8-2008)

§ 90.12 CONDITIONS ON REMOVAL OF VEHICLES FROM PRIVATE PROPERTY.

As a general policy, the town will not remove a vehicle from private property if the owner, occupant or lessee of the property could have the vehicle removed under applicable state law procedures. In no case will a vehicle be removed by the town from private property without a written request of the owner, occupant or lessee, except in those cases where the vehicle is a nuisance vehicle or is a junked motor vehicle which has been ordered removed by the Town Code Administrator. The town may require any person requesting the removal of an abandoned, nuisance, or junked motor vehicle from private property to indemnify the town against any loss, expense or liability incurred because of the removal, storage, or sale thereof.

(Ord. passed 9-8-2008)

§ 90.13 PROTECTION AGAINST CRIMINAL OR CIVIL LIABILITY.

No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of an abandoned, nuisance, or junked motor vehicle, for disposing of the vehicle as provided in this chapter.

(Ord. passed 9-8-2008)

§ 90.14 EXCEPTIONS.

Nothing in this chapter shall apply to any vehicle:

(A) Which is located in a bona fide "automobile graveyard" or "junkyard" as defined in G.S. § 136-143, in accordance with the "Junkyard Control Act", G.S. §§ 136-141, *et seq.*;

(B) Which is in an enclosed building;

(C) Which is on the premises of a business enterprise being operated in a lawful place and manner; or

(D) Which is in an appropriate storage place or depository maintained in a lawful place and manner by the town.

(Ord. passed 9-8-2008)

§ 90.15 UNLAWFUL REMOVAL OF IMPOUNDED VEHICLE.

It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the town, any vehicle which has been impounded pursuant to the provisions of this chapter unless and until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid.

(Ord. passed 9-8-2008) Penalty, see § 10.99

CHAPTER 91: ANIMALS

Section

General Provisions

- 91.01 Bird sanctuary
- 91.02 Keeping of fowl and livestock regulated; dangerous or offensive animals
- 91.03 Abuse prohibited
- 91.04 Rabies inoculation required for dogs and cats
- 91.05 Pets on town property prohibited

Dogs

- 91.20 Running at large prohibited
- 91.21 Capture and confinement of at-large dogs
- 91.22 Excessive barking
- 91.23 Vicious dogs
- 91.24 Teasing, molesting, and baiting
- 91.25 Enforcement

Cats

- 91.40 Duty of owner to restrain
- 91.41 Running at large; capture; disposal

Statutory reference:

Dangerous dogs, see G.S. §§ 67-4.1 through 67-4.4

Rabies, see G.S. §§ 130A-184 et seq.

GENERAL PROVISIONS

(B) It shall be unlawful to trap, hunt, shoot, or attempt to shoot or molest any bird or wild fowl or to rob bird nests or wild fowl nests; provided, if starlings, pigeons, or similar birds are found congregating in a particular area and constitute a nuisance or menace to health or property in the opinion of town authorities, those birds may be destroyed by or under the supervision of the Police Chief.

(1994 Code, § 91.01) Penalty, see § 10.99

§ 91.02 KEEPING OF FOWL AND LIVESTOCK REGULATED; DANGEROUS OR OFFENSIVE ANIMALS.

(A) *Fowl.* No person shall maintain, harbor, or keep within the town limits any fowl, meaning any chicken, game rooster, goose, duck, guinea, or any other fowl.

(B) *Livestock.* No person shall maintain, harbor, or keep within the town limits any pig, hog, goat, sheep, horse, or other livestock.

(Ord. passed 6-28-1988; Am. Ord. passed 6-13-2011)

(C) *Dangerous or offensive animals.* No person shall maintain or harbor within the town limits any animal dangerous to persons or property or offensive to the senses, except by written authorization of the Board of Alderpersons.

(1994 Code, § 91.02) Penalty, see § 10.99

§ 91.01 BIRD SANCTUARY.

(A) The entire area embraced within the corporate limits of the town is hereby designated a bird sanctuary.

§ 91.03 ABUSE PROHIBITED.

It shall be unlawful for any person to physically torture or abuse any animal.

(1994 Code, § 91.03) Penalty, see § 10.99

§ 91.04 RABIES INOCULATION REQUIRED FOR DOGS AND CATS.

No dog or cat shall be permitted within the corporate limits of the town unless it has been inoculated against rabies as required by the General Statutes and proof of the inoculation shall be attached to the dog or cat.

(1994 Code, § 91.04) (Ord. passed 6-28-1988) Penalty, see § 10.99

§ 91.05 PETS ON TOWN PROPERTY PROHIBITED.

(A) It shall be unlawful for the owner of any pet to allow it to be on the grounds of any town property where signs prohibiting the presence of the animals are erected or posted and the signs are unobstructed and clearly visible.

(B) This section does not apply to animals that are specifically trained to assist handicapped persons. (Ord. passed 4-5-94)

DOGS**§ 91.20 RUNNING AT LARGE PROHIBITED.**

(A) It shall be unlawful for the owner of a dog, male or female, to permit it to be off the owner's premises and not under control either by a leash, cord, chain, or some other mechanical device whereby the dog is physically held under the immediate control of the owner or other responsible person who is placed in charge of the dog.

(B) For the purpose of §§ 91.20 *et seq.*, the following definition shall apply unless the context clearly indicates or requires a different meaning.

OWNER. Any person owning, keeping, or harboring a dog.

(1994 Code, § 91.15) Penalty, see § 10.99

§ 91.21 CAPTURE AND CONFINEMENT OF AT-LARGE DOGS.

All dogs within the corporate limits of the town which are found running at large without being under control, as defined in § 91.20, shall be captured by the duly authorized personnel of the town and confined in the Catawba County animal shelter to be confined and disposed of as provided by the ordinances of the county.

(1994 Code, § 91.16)

§ 91.22 EXCESSIVE BARKING.

It shall be unlawful for the owner of a dog or the owner of a premises wherein a dog is kept within the town to keep a dog that habitually and repeatedly barks in a manner or to the extent it becomes a public nuisance.

(1994 Code, § 91.17) Penalty, see § 10.99

§ 91.23 VICIOUS DOGS.

(A) It shall be unlawful for any person to own, keep, have charge of, shelter, feed, harbor, or take care of any vicious dog within the corporate limits of the town.

(B) A vicious dog is any dog which has bitten 1 or more persons or a dog which has shown on at least 2 or more occasions a propensity to attack humans and that propensity is known or reasonably should be known to the owner.

(1994 Code, § 91.18) Penalty, see § 10.99

§ 91.24 TEASING, MOLESTING, AND BAITING.

It shall be unlawful for any person to tease, molest, bait, or in any way bother any dog not belonging to him or her or legally under his or her control, unless it is in the act of injuring the property of the person.

(1994 Code, § 91.19) Penalty, see § 10.99

§ 91.25 ENFORCEMENT.

The Town Administrator is hereby authorized and directed to employ the methods and means as he or she may deem necessary to implement and enforce this subchapter and to employ the personnel and make the expenditures as may be necessary in order to fully carry out the meaning and intent of this subchapter.

(1994 Code, § 91.21)

§ 91.41 RUNNING AT LARGE; CAPTURE; DISPOSAL.

All cats within the corporate limits of the town which are found running at large without being under control, as defined by § 91.40, shall be captured by the duly authorized personnel of the town and confined and disposed of in the same manner as dogs may be disposed of in the preceding subchapter.

(1994 Code, § 91.31) (Ord. passed 3-1-1977)

CATS**§ 91.40 DUTY OF OWNER TO RESTRAIN.**

(A) It shall be unlawful for the owner of a cat, male or female, to permit it to be off the owner's premises and not under control either by a leash, cord, chain, or by some other mechanical device whereby it is physically held under the immediate control of the owner or other responsible person who is placed in charge of it.

(B) For the purpose of §§ 91.40 *et seq.*, the following definition shall apply unless the context clearly indicates or requires a different meaning.

OWNER. Any person owning, keeping, or harboring a cat.

(1994 Code, § 91.30) (Ord. passed 3-1-1977)
Penalty, see § 10.99

CHAPTER 92: FIRE PREVENTION AND PROTECTION

Section

General Provisions

- 92.01 Fire limits
- 92.02 Primary fire limits

Structure Burning

- 92.15 Request to town by owner
- 92.16 Distribution to town officials; title search; approval by Board of Alderpersons
- 92.17 Fire Chief to oversee
- 92.18 Bond or security to be posted for particularly dangerous instances
- 92.19 Asbestos inspection
- 92.20 State Fire Prevention Code adopted by reference

Permits for Burning

- 92.35 Issuance; fee
- 92.36 Responsibility

GENERAL PROVISIONS

§ 92.01 FIRE LIMITS.

The fire limits, described by metes and bounds, shall be constituted as follows: beginning at the middle of the intersection of 2nd Avenue Southwest and 24th Street Southwest and runs thence with the center line of 24th Street in a northerly direction until it intersects with the center line of the Southern Railway; thence with the center line of the Southern

Railway right-of-way in a westerly direction until the center line intersects with 27th Street Southwest as extended; thence in a southerly direction with the center line of 27th Street Southwest until it intersects with the center line of 2nd Avenue Southwest as the Avenue is extended westerly, near the southwestern corner of number 213-27th Street Southwest; thence in an easterly direction with the center line of 2nd Avenue Southwest and as same extends westerly to the point of beginning.
(1994 Code, § 92.01) (Am. Ord. passed 5-4-1993)

§ 92.02 PRIMARY FIRE LIMITS.

(A) There is hereby established a primary fire limits within the town limits of the Town of Long View, the primary fire limits described as that area shown in blue on map on file with the town which the map bears the notation "Long View Fire District 1."

(B) Within the primary fire limits, the restrictions of G.S. § 160A-436 shall apply.
(Ord. 5-02, passed 9-3-2002)

STRUCTURE BURNING

§ 92.15 REQUEST TO TOWN BY OWNER.

A written request by the lawful owner of the building to be burned shall be presented to the Fire Chief. The request shall specify the exact location of the building to be burned, a statement of indemnity to protect the town from any and all claims from

damages or liabilities arising from the burning of the proposed building. The written request shall be furnished by the Fire Chief and may contain other and further information as the Chief may designate from time to time.

(1994 Code, § 92.15)

§ 92.16 DISTRIBUTION TO TOWN OFFICIALS; TITLE SEARCH; APPROVAL BY BOARD OF ALDERPERSONS.

(A) Upon receipt of the request to burn, the Fire Chief immediately shall furnish a copy of it to the Town Administrator, the Mayor, the Town Clerk, Town Attorney, and each Alderman.

(B) (1) Upon receipt of a copy of the request, the Town Attorney immediately shall check the title to the property to be destroyed and shall certify the results of the title check to the Fire Chief in writing.

(2) If the certificate of title shows the owners requesting the burning indeed are the lawful owners of the property, the Chief shall present a written request to the next called or regularly scheduled meeting of the Board of Alderpersons.

(3) The request shall ask the Board to approve the request for the burning of the structure in question.

(C) If the Board is satisfied the request is in order and the proper safeguards have been followed and will be followed in the burning of the property, the Board may approve the request for burning.

(1994 Code, § 92.16)

§ 92.17 FIRE CHIEF TO OVERSEE.

If the Board of Alderpersons approves the burning, as provided in § 92.16, the Fire Chief shall proceed with the burning, taking into consideration the safety of the lives and property of all citizens and, in particular, the lives and property of adjoining landowners or occupants.

(1994 Code, § 92.17)

§ 92.18 BOND OR SECURITY TO BE POSTED FOR PARTICULARLY DANGEROUS INSTANCES.

If the requested burning appears to be particularly dangerous, the Fire Chief, in his or her sole discretion, may require the requesting party to post bond or other security to indemnify the town against all claims for damages arising from the burning.

(1994 Code, § 92.18)

§ 92.19 ASBESTOS INSPECTION.

Due to state requirements, asbestos inspections and sample fee to be paid by owner.

(1994 Code, § 92.19)

§ 92.20 STATE FIRE PREVENTION CODE ADOPTED BY REFERENCE.

The town hereby adopts the State Fire Prevention Code, Volume 5, and the 2002 Edition of the North Carolina Building Code (2000 International Fire Code with North Carolina amendments), and any amendment thereto by reference and shall be construed to be a part of this code as if fully set forth herein.

(1994 Code, § 92.20) (Ord. passed 12-5-1989; Am. Ord. 7-1-1991)

PERMITS FOR BURNING

§ 92.35 ISSUANCE; FEE.

(A) Burning permits will be issued by the Fire Chief, Fire Marshal, or his or her assistant on Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. at the Fire Department offices. A fee of \$5 will be charged for a residential burning permit and a fee of \$10 for a commercial or industrial burning permit. The burning permit is good for 2 weeks from date of issuance.

(1994 Code, § 92.30) (Ord. passed 5-2-1989; Am. Ord. passed 5-4-1993)

(B) No person shall kindle or maintain any bonfire or other outdoor fire or authorize the fire to be kindled or maintained without a permit or other proper authorization. No permit shall be issued for the burning of refuse that is in violation of any state or local air quality open burning regulation.

(Ord. 9-96, passed 8-6-1996) Penalty, see § 10.99

§ 92.36 RESPONSIBILITY.

The person conducting the burning is responsible for any damage which may result from that burning. The authority to conduct open burning under the provisions of state and local ordinances does not excuse any person from the consequences, damages, or injuries resulting from the burning.

(1994 Code, § 92.31) (Ord. passed 5-2-1989)

CHAPTER 93: NOISE CONTROL

Section

General Provisions

- 93.01 Certain noises prohibited
- 93.02 Certain acts prohibited
- 93.03 Unreasonable sound amplification

Sound Emission Standards

- 93.15 Definitions
- 93.16 Noise pollution prohibited; compliance
- 93.17 Measurement techniques
- 93.18 Burden of persuasion
- 93.19 Sound emission standards
- 93.20 Exceptions
- 93.21 Compliance
- 93.99 Penalty
- Appendix A: Noise standards and allowable octave band sound pressure levels

GENERAL PROVISIONS

§ 93.01 CERTAIN NOISES PROHIBITED.

(A) It shall be unlawful for any person to create or assist in creating, to permit, continue, or permit the continuance of any unreasonably loud, disturbing, and unnecessary noise in the town.

(B) Noise of a character, intensity, and duration as to be detrimental to the life or health of any individual is prohibited.

(1994 Code, § 93.01) Penalty, see § 93.99

§ 93.02 CERTAIN ACTS PROHIBITED.

The following acts, among others, are declared unreasonably loud, disturbing, and unnecessary noises in violation of this section, but it shall not be deemed exclusive; namely:

(A) The sounding of any horn or signal device or any device on any automobile, motorcycle, bus, or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control or if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any signal device of any unreasonably loud or harsh sound and the sounding of the device for an unnecessary and unreasonable period of time;

(B) The use of any gong or siren upon any vehicle, other than police, fire, or other emergency vehicle;

(C) (1) The use or operation of any piano, manual or automatic, phonograph, radio, loud speaker, or any other instrument or sound amplifying devices so loudly as to disturb persons in the vicinity thereof.

(2) Permits may be granted to responsible organizations to produce programs in music, speeches or general entertainment;

(D) The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the comfort and repose of any person in the vicinity;

(E) The use of any automobile, motorcycle, or other vehicle so out of repair, so loaded, or in a manner as to create loud or unnecessary grating, grinding, rattling, or other noise or in the manner as to cause squealing or screeching of tires, or in the manner as to cause the tires to propel rock, sand, or gravel;

(F) The blowing of any steam whistle attached to any stationary boiler except to give notice of the time to begin or stop work or as a warning of danger;

(G) The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, or motor vehicle, except through a muffler or other device which effectively will prevent loud or explosive noises therefrom;

(H) The use of any mechanical device operated by compressed air unless the noise created is effectively muffled and reduced;

(I) The erection, including excavation, demolition, alteration, or repair of any building in a residential or business district other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, except in the case of urgent necessity in the interest of public safety and then only with a permit from the Code Enforcement Officer, which may be renewed for a period of 3 days or fewer while the emergency continues;

(J) The creation of any excessive noise on any street adjacent to any school, institution of learning, or court, while the same is in session, or within 150 feet of any hospital, which unreasonably interferes with the working of the institution; provided, conspicuous signs are displayed in the streets indicating the same is a school, court, or hospital street;

(K) The creation of any excessive noise on Sundays on any street adjacent to any church; provided, conspicuous signs are displayed in the streets adjacent to churches indicating they are church streets;

(L) The creation of loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates, and containers;

(M) The sounding of any bell or gong attached to any building or premises which disturbs the quiet or repose of persons in the vicinity thereof;

(N) The shouting and crying of peddlers, barkers, hawkers, and vendors which disturbs the quiet and peace of the neighborhood;

(O) The use of any drum, loud speaker, or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show, or sale or display of merchandise;

(P) The use of any mechanical loud speakers or amplifiers on trucks or other moving vehicles for advertising purposes except where the specific license is received from the Board of Alderpersons;

(Q) The conducting, operating, or maintaining of any garage or service station in any residential district so as to cause loud or offensive noises to be emitted therefrom between the hours of 11:00 p.m. and 7:00 a.m.;

(R) The firing or discharging of a gun, squibs, crackers, gunpowder, or other combustible substance in the streets or elsewhere for the purpose of making noise or disturbance, except by permit from the Board of Alderpersons; and/or

(S) The crying, yelling, and/or shouting of any persons that disturbs the peace and quiet of the neighborhood.

(1994 Code, § 93.02) (Ord. passed 12-4-1973; Am. Ord. passed 6- -1988) Penalty, see § 93.99

§ 93.03 UNREASONABLE SOUND AMPLIFICATION.

(A) (1) Excessive and unnecessary noise creates a significant threat to the public health, safety, and welfare.

(2) There has been an alarming increase in the frequency and volume of noise from the many sound-reproducing devices available today.

(3) It is the intent of this section to strike an appropriate balance between the right of individuals to obtain information and derive pleasure by listening to radios and other devices, and the right of the public to a peaceful and healthful environment.

(B) Noise described in division (C) below is hereby declared unreasonable, dangerous to the public health, safety, and welfare, and shall be illegal unless exempted herein.

(C) It shall be unlawful for any person to play, use, or otherwise operate, either from a motor vehicle, as a pedestrian, or from a residential property, any radio, tape player, or other sound amplification device emitting sound that is audible from a distance of 50 or more feet from the source of the sound, unless the device is being used to request assistance or warn against an unsafe condition.

(D) This section shall not apply to any of the following:

(1) Public safety personnel, when responding to an emergency call or engaged in other official business;

(2) Persons engaged in a lawful assembly, procession, or community event;

(3) The operator of a public utility vehicle, when utilizing 2-way communications equipment;

(4) The operator of a vehicle being used for advertising purposes in accordance with existing ordinances; and/or

(5) The activation of a theft alarm signal device.

(1994 Code, § 93.03) (Ord. passed 6-22-1993)
Penalty, see § 93.99

SOUND EMISSION STANDARDS

§ 93.15 DEFINITIONS.

(A) All definitions of acoustical terminology shall be in conformance with those contained in A.N.S.I. S1.1-1960, "Acoustical Terminology."

(B) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A.N.S.I. American National Standards Institute or its successor bodies.

BOUNDARY, INDUSTRIAL. Outer markers or boundary lines encompassing a tract or parcel of land used or zoned for industrial use.

BOUNDARY, RESIDENTIAL. Outer marker or boundary lines encompassing a tract or parcel of land used or zoned for residential use.

CONSTRUCTION. On-site erection, fabrication, installation, alteration, demolition, or removal of any structure, facility, or addition thereto, including all related activities, including but not restricted to clearing of land, earth moving, blasting, and landscaping.

DAYTIME HOURS. 7:00 a.m. to 10:00 p.m., local time.

dB(A). Sound level in decibels determined by the A-weighting of a sound level meter.

DECIBEL (dB). A unit of measure, on a logarithmic scale, of the ratio of the magnitude of a particular sound pressure to a standard reference pressure which, for the purpose of this chapter, shall be 0.0002 microbars.

EXISTING PROPERTY LINE NOISE SOURCE. Any property line noise source, the construction or reestablishment of which began before 12-4-1973.

IMPULSIVE SOUND. Either a single pressure peak or a single burst (multiple pressure peaks) for a duration less than one second.

NEW PROPERTY LINE NOISE SOURCE. Any property line noise source, the establishment of which began on or after 12-4-1973.

NIGHTTIME HOURS. 10:00 p.m. to 7:00 a.m., local time.

NOISE POLLUTION. The emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity.

OCTAVE BAND SOUND PRESSURE LEVEL. The sound pressure level for the sound being measured contained within the specified octave band. The reference pressure is 0.0002 microbars.

PREFERRED FREQUENCIES. Those frequencies, in Hertz, preferred for acoustical measurements which, for the purpose of this chapter, consist of the following set of values: 20, 25, 31.5, 40, 50, 63, 80, 100, 125, 160, 200, 250, 315, 400, 500, 630, 800, 1,000, 1,250, 1,600, 2,000, 2,500, 3,150, 4,000, 5,000, 6,300, 8,000, 10,000, and 12,500.

PROMINENT DISCRETE TONE. Sound, having a 1/3 octave band sound pressure level which, when measured in a 1/3 octave band at the preferred frequencies, exceeds the arithmetic average of the sound pressure levels of the 2 adjacent 1/3 octave bands on either side of the 1/3 octave band by:

(1) Five dB for the 1/3 octave band with a center frequency from 500 Hertz to 10,000 Hertz, inclusive, provided, the 1/3 octave band sound pressure level exceeds the sound pressure level of each adjacent 1/3 octave band;

(2) Eight dB for the 1/3 octave band with a center frequency from 160 Hertz to 400 Hertz, inclusive, provided, the 1/3 octave band sound pressure level exceeds the sound pressure level of each adjacent 1/3 octave band; or

(3) Fifteen dB for the 1/3 octave and with a center frequency from 25 Hertz to 125 Hertz, inclusive, provided, the 1/3 octave band sound pressure level exceeds the sound pressure level of each adjacent 1/3 octave band.

PROPERTY LINE NOISE SOURCE. Any equipment of facility or combination thereof which operates within any land use as specified by this chapter. The equipment or facility or combination thereof must be capable of emitting sound beyond the property line on the land on which operated.

SOUND. An oscillation in pressure in air.

SOUND LEVEL. In decibels, a weighted sound pressure level, determined by the use of metering characteristics and frequency weightings specified in A.N.S.I. S1.4-1971 "Specification for Sound Level Meters."

SOUND PRESSURE LEVEL. In decibels, 20 times the logarithm to the base ten of the ratio of the magnitude of a particular sound pressure to the standard reference pressure. The standard reference pressure is 0.0002 microbars.
(1994 Code, § 93.10) (Ord. passed 12-4-1973)

§ 93.16 NOISE POLLUTION PROHIBITED; COMPLIANCE.

No person shall cause or allow the emission of sound beyond the boundaries of his or her property so as to cause noise pollution in, or so as to violate any provisions of this chapter.
(1994 Code, § 93.11) (Ord. passed 12-4-1973)
Penalty, see § 93.99

§ 93.17 MEASUREMENT TECHNIQUES.

Test procedures to determine whether emission of sound is in conformance with this chapter shall be in substantial conformity with Standards and Recommended Practices established by the American National Standards Institute, Inc. (A.N.S.I.), and the

Society of Automotive Engineers, Inc. (SAE) and the latest revisions thereof, including A.N.S.I. S1.1-1960, A.N.S.I. S1.6-1967, A.N.S.I. S1.8-1969, A.N.S.I. S1.1-1962, A.N.S.I. S1.4-1971-Type 1 Precision, A.N.S.I. S1.11-1966, A.N.S.I. S1.13-1971-Field Method, SAE J-184.

(1994 Code, § 93.12) (Ord. passed 12-4-1973)

§ 93.18 BURDEN OF PERSUASION.

In any proceeding pursuant to this chapter, if any exception stated in this chapter would limit an obligation, limit a liability, or eliminate either an obligation or a liability, the person who would benefit from the application of the exception shall have the burden of persuasion that the exception applies and that the terms of the exception have been met. The appropriate town officials and their designees shall cooperate with and assist persons in determining the application of the provisions of this chapter.

(1994 Code, § 93.13) (Ord. passed 12-4-1973)

§ 93.19 SOUND EMISSION STANDARDS.

(A) No person shall cause or allow the emission of sound during daytime or nighttime hours from any property line noise source which exceeds the sound level values specified in division (A) of Appendix A at the end of this chapter when measured at any point on the adjoining property boundary line.

(B) No person shall cause or allow the emission of sound during daytime or nighttime hours from any property line noise source which exceeds the sound pressure levels specified in division (B) of Appendix A at the end of this chapter when measured at any point on the adjoining property boundary line.

(C) No person shall cause or allow the emission of any prominent discrete tone from any property line noise source location.

(D) The limitation in division (C) above shall not apply to discrete tones having a 1/3 octave band sound pressure level 5 decibels or more below the equivalent

levels indicated in division (B) of Appendix A at the end of this chapter, when measured at the indicated preferred frequencies at any point on the adjoining property boundary line.

(E) No person shall cause or allow the emission of impulsive sound from any noise source that exceeds the dB(A) sound levels specified in division (A) of Appendix A at the end of this chapter, when measured at any point along the boundary.

(1994 Code, § 93.14) (Ord. passed 12-4-1973)
Penalty, see § 93.99

§ 93.20 EXCEPTIONS.

The sound emission standards defined herein shall not apply to the following sources:

(A) Emergency warning devices;

(B) Lawn care equipment and agricultural field equipment used during the daytime hours; and

(C) Equipment being used for construction.
(1994 Code, § 93.15) (Ord. passed 12-4-1973)

§ 93.21 COMPLIANCE.

(A) Every owner or operator of a new property line noise source shall comply with the standards and limitations defined herein on and after the indicated effective date of passage.

(B) The owner or operator of an existing property line noise source shall comply with the standards and limitations defined herein on or after 12-12-1974.

(C) Every owner or operator of an existing property line noise source that exists along a residential boundary and exceeds the allowed octave band sound pressure levels by 10 decibels in any 1 band shall comply with the standards and limitations defined herein on or 6 months from 12-12-1973.

(1994 Code, § 93.16) (Ord. passed 12-4-1973)
Penalty, see § 93.99

§ 93.99 PENALTY.

(A) Any person violating any provision of this chapter for which no penalty is prescribed shall be subject to § 10.99.

(B) A violation of § 93.03 shall be a misdemeanor. The first offense shall result in the offender being issued a uniform citation from the charging officer and the penalty will be court costs. Second and all subsequent offenses will be court costs plus \$50.

(1994 Code, § 93.99) (Ord. passed 6-22-1993)

**APPENDIX A: NOISE STANDARDS AND
ALLOWABLE OCTAVE BAND SOUND PRESSURE LEVELS**

(A) *Recommended boundary noise standards.*

<i>Type of Boundary</i>					
<i>Residential-Residential</i>		<i>Residential-Industrial</i>		<i>Industrial-Industrial</i>	
<i>Day</i>	<i>Night</i>	<i>Day</i>	<i>Night</i>	<i>Day</i>	<i>Night</i>
55 dB(A)	50 dB(A)	60 dB(A)	55 dB(A)	70 dB(A)	70 dB(A)

(B) *Allowable octave band sound pressure levels emitted at the defined boundary.*

<i>Octave Band Center Frequency (Hz)</i>	<i>Type of Boundary</i>					
	<i>Residential-Residential</i>		<i>Commercial-Residential</i>		<i>Commercial-Commercial</i>	
	<i>Day</i>	<i>Night</i>	<i>Day</i>	<i>Night</i>	<i>Day</i>	<i>Night</i>
31.5	72	67	77	72	87	87
63	71	66	76	71	86	86
125	65	60	70	65	80	80
250	57	52	62	57	72	72
500	51	46	56	51	66	66
1,000	45	40	50	45	60	60
2,000	40	35	45	40	55	55
4,000	38	33	43	38	53	53
8,000	37	32	42	37	52	52

(1994 Code, Chapter 93, App. A)

CHAPTER 94: PARADES; PICKETS; DEMONSTRATIONS

Section

Parades; Processions and Meetings

- 94.01 Definitions
- 94.02 Permit required
- 94.03 Application; designation of route
- 94.04 Restricted hours for parades and processions
- 94.05 Interfering with and addressing abusive language to participants
- 94.06 Conducting or participating in to create public disturbance
- 94.07 Use of abusive language by participants and like behavior

Picketing

- 94.20 Permitted; conditions
- 94.21 Interfering with or addressing abusive language and the like toward pickets
- 94.22 Authority of police to disperse assemblies
- 94.23 Duty to disperse upon police order

PARADES; PROCESSIONS AND MEETINGS

§ 94.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

MEETING. Any assembly, together or concert of action between or among 5 or more persons, for the purpose of protesting any matter or of making known any position or promotion of the persons, or of

or on behalf of any organization or class of persons, or for the purpose of attracting attention to the assembly.

PARADE or PROCESSION. Any assembly of 5 or more persons participating in or 3 or more vehicles being operated in any march, ceremony, show, exhibition, or procession of any kind in or upon the public streets, sidewalks, alleys, parks, or other public grounds or places, not including a bona fide funeral procession.
(1994 Code, § 94.01) (Ord. passed 11-1-1988)

§ 94.02 PERMIT REQUIRED.

No procession or parade shall occupy, march, or proceed along any street, sidewalk, or any other public place, nor shall any person conduct any public or private meeting on any street, sidewalk, or other public place in the town except in accordance with a permit issued by the Chief of Police and other regulations set forth in this subchapter that may apply.
(1994 Code, § 94.02) (Ord. passed 11-1-1988)
Penalty, see § 10.99

§ 94.03 APPLICATION; DESIGNATION OF ROUTE.

(A) A written application shall be made to the Police Chief by any person desiring to have a parade, procession, or meeting, setting forth the object, time, place, and route of the parade or procession or the object, time, and place of the meeting.

(B) The Police Chief shall have the authority to designate the route of the parade or procession and the

portion of the streets or other public places to be used to avoid as much as possible the obstruction or impediment of public travel or public business.

(C) The Chief may refuse to issue a permit for a parade, procession, or meeting unless the application is filed with him or her at least 72 hours before the time thereof.

(D) In the absence of the Chief, the ranking officer of the Police Department shall act in the Chief's name and stead.

(1994 Code, § 94.03) (Ord. passed 11-1-1988)

§ 94.04 RESTRICTED HOURS FOR PARADES AND PROCESSIONS.

(A) No parade or procession shall be permitted between the hours of 11:30 a.m. and 1:00 p.m. or between the hours of 5:00 p.m. and 6:00 p.m., local time.

(B) No parade or procession shall commence or continue after sunset or commence before sunrise.

(1994 Code, § 94.04) (Ord. passed 11-1-1988)
Penalty, see § 10.99

§ 94.05 INTERFERING WITH AND ADDRESSING ABUSIVE LANGUAGE TO PARTICIPANTS.

It shall be unlawful for any person to physically interfere with processions, marches, or meetings or with the persons lawfully engaged therein in the use of any street, sidewalk, or other public place or to address profane, indecent, abusive, or threatening language or other fighting words to or at the participants which would tend to provoke them or others to a breach of the peace.

(1994 Code, § 94.05) (Ord. passed 11-1-1988)
Penalty, see § 10.99

§ 94.06 CONDUCTING OR PARTICIPATING IN TO CREATE PUBLIC DISTURBANCE.

It shall be unlawful for any person to conduct or participate in any parade, procession, or meeting of a character, extent, and duration or of the nature to create a public disturbance, or to operate as a nuisance, or to tend to create or threaten rioting, disorderly conduct, or public or private mischief.

(1994 Code, § 94.06) (Ord. passed 11-1-1988)
Penalty, see § 10.99

§ 94.07 USE OF ABUSIVE LANGUAGE BY PARTICIPANTS AND LIKE BEHAVIOR.

It shall be unlawful for any person conducting or participating in any parade, procession, or meeting to address profane, indecent, abusive, or threatening language or other fighting words to or at any person which would intend to provoke the person or others to a breach of the peace.

(1994 Code, § 94.07) (Ord. passed 11-1-1988)
Penalty, see § 10.99

PICKETING

§ 94.20 PERMITTED; CONDITIONS.

Peaceful picketing, including demonstrating, in the furtherance of a lawful purpose shall be permitted in the town, provided it is done under the following conditions.

(A) Picketing shall be conducted only on the sidewalks or other town-owned area normally used or reserved for pedestrian movement, including easements and rights-of-way and shall not be conducted on the portion of a street used primarily for vehicular traffic.

(B) Not more than 10 pickets promoting the same objective shall be permitted to use the sidewalks within 1 block in the town at any 1 time.

(C) The pickets may carry written or printed placards or signs not exceeding 2 feet in width and 2 feet in height promoting the objective for which the picketing is done; provided, the words used are not defamatory in nature or would tend to produce violence. The staff on which the placard is carried shall not exceed 40 inches in length, must be made of wood, shall not exceed 3/4 of an inch in diameter at any point and must be blunt at each end.

(D) Picketers must march single file, not abreast, and may not march closer together than 15 feet, except in passing one another.

(E) If pickets promoting different objectives desire to use the same sidewalk for picketing and the use would result in the presence of more than 10 pickets thereon, the Police Chief shall allot time to each group of picketers for the use of the sidewalk on an equitable basis, but each group shall be permitted to picket subject to the provisions of this section at least once every 2 hours.

(F) It shall be unlawful for any picketer to address profane, indecent, abusive, or threatening language to or at any person which would tend to provoke the person or others to a breach of the peace. (1994 Code, § 94.15) (Ord. passed 11-1-1988) Penalty, see § 10.99

§ 94.21 INTERFERING WITH OR ADDRESSING ABUSIVE LANGUAGE AND THE LIKE TOWARD PICKETS.

It shall be unlawful for any person to physically interfere with any lawful pickets in the use of the sidewalks or to address profane, indecent, abusive, or threatening language to or at the pickets, which would tend to provoke the pickets or others to a breach of the peace.

(1994 Code, § 94.16) (Ord. passed 11-1-1988) Penalty, see § 10.99

§ 94.22 AUTHORITY OF POLICE TO DISPERSE ASSEMBLIES.

Police officers of the town may, in the event of the assembly of persons in numbers that tend to intimidate picketers pursuing their lawful objective, through numbers alone or use of inflammatory words, direct the dispersal of persons so assembled and may arrest any person who fails to remove himself or herself from the assembly when so directed by the officers.

(1994 Code, § 94.17) (Ord. passed 11-1-1988)

§ 94.23 DUTY TO DISPERSE UPON POLICE ORDER.

When the free passage of any street or sidewalk in the town is obstructed by a crowd, the persons composing the crowd shall disperse or move on when so directed by a police officer, as provided in this subchapter.

(1994 Code, § 94.18) (Ord. passed 11-1-1988) Penalty, see § 10.99

CHAPTER 95: STREETS AND SIDEWALKS

Section

General Provisions

- 95.01 Defacing streets and sidewalks
- 95.02 Snow and ice removal
- 95.03 Sidewalks to be kept free of weeds
- 95.04 Lot abutting sidewalk to be mowed
- 95.05 Cellar doors and the like to be kept in good repair
- 95.06 Congregating on streets and like behavior
- 95.07 Discharge of rain water
- 95.08 Construction near sidewalks
- 95.09 Toy vehicles

Excavations

- 95.20 Permit required
- 95.21 Sidewalk construction permit
- 95.22 Restoration of surface
- 95.23 Safety precautions

Cross-reference:

Traffic Code, see Title VII

GENERAL PROVISIONS

§ 95.01 DEFACING STREETS AND SIDEWALKS.

It shall be unlawful for any person to write, print, paint, or stamp any words, pictures, or advertisements upon any street or sidewalk, official traffic signs excepted.

(1994 Code, § 95.01) Penalty, see § 10.99

§ 95.02 SNOW AND ICE REMOVAL.

Every occupant of a store building, in front of which the sidewalk is paved with stone, brick, asphalt, or cement, shall remove snow, ice, or other obstructions from the sidewalk at the earliest possible time and as soon as the weather permits.

(1994 Code, § 95.02) Penalty, see § 10.99

§ 95.03 SIDEWALKS TO BE KEPT FREE OF WEEDS.

It shall be the duty of all property owners to keep the sidewalks abutting their property clean and free from weeds.

(1994 Code, § 95.03) Penalty, see § 10.99

§ 95.04 LOT ABUTTING SIDEWALK TO BE MOWED.

It shall be the duty of the occupant of any lot abutting any sidewalk to keep the grass plot adjoining it neatly mowed.

(1994 Code, § 95.04) Penalty, see § 10.99

§ 95.05 CELLAR DOORS AND THE LIKE TO BE KEPT IN GOOD REPAIR.

The owner of any building or other structure having a cellar door or vault capable of obstructing a sidewalk shall keep it in good repair and level with the plane of the sidewalk.

(1994 Code, § 95.05) Penalty, see § 10.99

§ 95.06 CONGREGATING ON STREETS AND LIKE BEHAVIOR.

It shall be unlawful for any person to loiter or congregate on the sidewalk or street or in any manner block the sidewalks or streets by stopping and interfering with pedestrians or vehicles.

(1994 Code, § 95.06) Penalty, see § 10.99

§ 95.07 DISCHARGE OF RAIN WATER.

(A) It shall be unlawful for any person to permit or allow storm water from his or her premises to be discharged from any collecting pipe or drain upon any sidewalk within the town.

(B) All those pipes and drains shall be constructed below the sidewalk level.

(1994 Code, § 95.07) Penalty, see § 10.99

§ 95.08 CONSTRUCTION NEAR SIDEWALKS.

(A) Before building or remodeling at any place that is close to the sidewalk, a passageway shall be constructed so as to leave the sidewalk unobstructed and provide safe and easy passage for pedestrians.

(B) The passageway shall be covered if deemed necessary by the Town Administrator.

(1994 Code, § 95.08) Penalty, see § 10.99

§ 95.09 TOY VEHICLES.

It shall be unlawful for any person to ride or operate any skateboard, bicycle, scooter, roller skate, moped, cart, or similar device so as to block or impede traffic or as to create a traffic hazard on any street, sidewalk, or public vehicular area inside the corporate limits of the town.

(1994 Code, § 95.09) (Ord. passed 6-7-1988) Penalty, see § 10.99

EXCAVATIONS**§ 95.20 PERMIT REQUIRED.**

It shall be unlawful for any person to dig any hole, ditch, or excavation of any kind on any street or sidewalk in the town without first securing a permit therefor in writing from the Town Administrator.

(1994 Code, § 95.20) Penalty, see § 10.99

§ 95.21 SIDEWALK CONSTRUCTION PERMIT.

No sidewalk or street of any description shall be built by any person without a written permit from the Town Administrator. The construction shall be in accordance with plans and specifications established by the Town Administrator.

(1994 Code, § 95.21) Penalty, see § 10.99

§ 95.22 RESTORATION OF SURFACE.

All openings made in any street or sidewalk under the provisions of this subchapter, immediately upon completion of the work, shall be filled in and the surface thereof made flush with the adjacent surfaces. Any hard surface, macadam, or asphalt removed shall be replaced by the town at the expense of the applicant granted permission to open the street or sidewalk, unless the construction is authorized by the Town Administrator under the standards he or she may specify.

(1994 Code, § 95.22) Penalty, see § 10.99

§ 95.23 SAFETY PRECAUTIONS.

It shall be unlawful for any person making an excavation for any purpose in any street or sidewalk to fail to:

(A) Keep red flags around the excavation during the day; and/or

(B) Place a sufficient number of red lights around it before dark and to keep the lights burning all night, every night the excavation is open.
(1994 Code, § 95.23) Penalty, see § 10.99

CHAPTER 96: FALSE AND ACCIDENTAL ALARMS

Section

- 96.01 Fines and penalties for false and accidental alarms
- 96.02 False alarm responses

because police officers are being taken away from other duties and/or could be delayed from responding to an actual need for police assistance.

§ 96.01 FINES AND PENALTIES FOR FALSE AND ACCIDENTAL ALARMS.

(A) This section addresses companies that have sprinkler systems and/or fire alarm systems. Also, it addresses residences that have fire alarm systems which send an alarm to a monitoring company.

(B) During any 30-day period, if the Fire Department has to respond to 2 or more calls to a business or residence, the Fire Department will advise the business or residence to get the system checked and/or fixed. When the Fire Department receives the third call, and every call thereafter during that 30-day period, a charge up to \$200 may be issued to the business or residence; also, a fine of \$50 per day may be issued at the discretion of the Fire Marshal under the direction of the Fire Chief until the system has been corrected as required by the State Fire Prevention Code.

(1994 Code, § 96.01) (Ord. passed 6-22-1993)

(B) If officers from the Police Department respond to false alarms at the same property more than twice in a 30-day period a civil penalty, to be paid by the property owner(s) or the person in control of the property (as applicable), in the amount of \$50 for the third and all subsequent false alarms during the same 30-day period will be paid to the town.

(C) The property owner(s) or the person in control of the property (as applicable) will be notified by being issued a civil summons by the Chief of Police or his or her agent.

(1994 Code, § 96.02) (Ord. passed 6-22-1993)

§ 96.02 FALSE ALARM RESPONSES.

(A) It is the intent of this section to strike an appropriate balance between the property owners' right to have additional security measures and the public's right to expect prompt police response to emergency situations without them being delayed needlessly and excessively. An unnecessary false alarm creates a threat to the public safety and welfare

CHAPTER 97: GRAFFITI

Section

- 97.01 Definitions
- 97.02 Graffiti prohibited
- 97.03 Abatement procedures
- 97.04 Enforcement/remedies
- 97.05 Severability

§ 97.01 DEFINITIONS.

For purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMERCIAL PROPERTY. Any structure or area, which is not defined in this section as a governmental or residential property.

DEFACE. To cover, mark, write on, paint, color, etch, scratch, engrave, or otherwise mar, disfigure, or draw whatsoever on any governmental, commercial, or private property, being real or personal property of any nature, without the express consent or authorization of the owner.

GOVERNMENTAL PROPERTY. A structure or area operated by a government entity.

GRAFFITI. Any inscription, word, writing, drawing, figure, mark of paint, ink, chalk, dye or other similar substance, etching, engraving or other defacement (collectively "defacement") by a graffiti implement or chalk or by the application of any material, gum label, paper, fabric or other matter (collectively "matter") with adhesive or other substance which is intended to make the application of the matter permanent or difficult to remove, on public or private property. **GRAFFITI** does not include

temporary, easily removable chalks or other water soluble markings which are used in connection with traditional children's activities such as drawings of bases for ball games, hopscotch and similar activities, nor does it include temporary, easily removable markings used in connection with any lawful business or public purpose or activity and markings used to denote the location of underground utility infrastructure and those used in conjunction with establishing survey control data and location points by survey crews.

GRAFFITI IMPLEMENT. Any aerosol paint container or paint applicator or brush, indelible marker containing ink or other pigmented liquid that is not water soluble, stick on label, paint stick, etching equipment or any other device capable of defacing or leaving a visible mark on public or private property.

PAINT. Paint, wax, epoxy or similar substance capable of being applied to a surface and leaving defacement.

PROPERTY OWNER(S). The owner and such owner's agent or manager, or any other person in lawful control or possession of property if known to the town. The owner of the property shall be deemed to be those persons whose names appear on the tax records as having a financial interest in the property.

RESIDENTIAL PROPERTY. Any structure serving as a home, residence, or sleeping place.

TOWN. The Town of Long View or its agent.
(Ord. passed 1-11-2010)

§ 97.02 GRAFFITI PROHIBITED.

(A) *Placing graffiti prohibited.* It shall be unlawful for any person, without the express permission or authority of the owner of the property, to deface with graffiti any governmental, commercial, or residential property or any other real property or personal property. Any individual defacing property in violation of this chapter may also be subject to prosecution for such offenses as permitted within the statutes of the State of North Carolina, including but not limited to restitution costs for abatement of the nuisance and damage to property.

(B) *Exemption.* Division (A) above shall not be construed to prohibit temporary, easily removable chalk or other water soluble markings on public or private sidewalks, streets, or other paved surfaces which are used in connection with traditional children's activities, such as drawings or bases for stickball, kickball, handball, hopscotch, or similar activities, nor shall it be construed to prohibit temporary, easily removable chalk or other easily removable water soluble markings used in connection with any lawful business, public purpose or activity.

(C) *Removing graffiti required.* It shall be unlawful for the owner of any real or personal property or any person acting as manager or agent for the owner of property to fail to remove or effectively obscure any graffiti upon such property. Failure to abate any nuisances shall be deemed unlawful. (Ord. passed 1-11-2010)

§ 97.03 ABATEMENT PROCEDURES.

(A) The owner of record of any governmental, commercial, or residential property, being real or personal in nature, or their agents or managers, which has any form of graffiti on any building, structure, or apparatus owned, managed, or operated by the owner or owner's managers, agents, tenants, and employees, shall be required to restore the defaced surface(s) by removing or concealing the graffiti within 10 calendar days after receipt of written notice, by any code

enforcement officer, requiring such removal. Notifications shall be made by personal service or certified mail and regular mail.

(B) *Right of entry on private property.* Prior to entering upon private property or property owned by a public entity other than the town for the purpose of this section, the town shall make a reasonable attempt to secure the consent of the property owner or manager for release of the town from liability for property damage or personal injury. If the property owner or manager fails to remove the offending graffiti within the time specified herein, or the town has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the town and consistent with the terms of this section, the town shall commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified herein. When any graffiti as defined in this chapter is found on any property, including rights-of-way and easements, within the town or within one mile of the town limits, a code enforcement officer shall have the following authority:

- (1) To enter upon property;
- (2) To obtain an administrative search and inspection warrant, if necessary, as provided in G.S. 15-27.2;
- (3) To issue a notice of violation and impose civil penalties;
- (4) To enter upon or authorize an agent to enter upon and clean up property in violation of this chapter;
- (5) To utilize the services of an outside contractor to remove the graffiti from the property in violation of this chapter.

(C) Notices or orders issued by the code enforcement officer under this chapter shall be served on the owner or property manager of the identified

property by either hand delivery or by certified mail and regular mail. Service by mail shall be deemed complete by depositing the notice or order in the mail at the address listed in the county tax records. When the manner of service is by certified mail and regular mail and the certified mail is unclaimed or refused but the regular mail is not returned by the post office within 10 days of mailing, service is deemed sufficient. The person mailing the notice or order by regular mail shall certify that fact and the date of the mailing, and such certification shall be conclusive evidence of service in the absence of fraud. The notice to remove shall provide:

(1) The street address or other description of the property sufficient for property identification;

(2) A description and general location of the graffiti;

(3) A statement that the property is a public nuisance due to the existence of the graffiti;

(4) A statement that the graffiti must be removed or effectively obscured within 5 business days after receiving notice to remove and that if the nuisance is not so abated within that time the town will abate the public nuisance at the cost of the property owner as set forth herein;

(5) Information identifying any graffiti removal assistance available through the town; and

(6) Information concerning procedures for appeal of the notice.

(D) *Notification.* Notification to the property owner will advise that the conditions that exist on the identified property constitute graffiti and such shall be abated within 10 calendar days of the date of the notification and that failure to abate or remove the graffiti shall result in the assessment of the costs of abatement or removal, imposition of administrative fees, and the assessment of a civil penalty as identified in this chapter. The code enforcement officer may afford the owner additional time to remove or abate

the graffiti if such failure was caused by weather conditions or other factors as determined by the code enforcement officer not to have been within the control of the owner.

(E) *Removal by the town.* When the owner of the property, property manager, or agent fails or refuses to abate the declared nuisance, then the code enforcement officer shall issue to the owner a civil penalty in the amounts stated herein and shall forward to the Revenue Division of the Finance Department a report and invoice for the costs of the abatement of the nuisance, administrative fees and a copy of the civil citation for collection. Such charges shall be assessed against the property owner and shall become a lien upon the property, subject only to the town and county ad valorem taxes thereon. Such charges shall be collected and enforced in the same manner as unpaid taxes.

(F) *Appeals process.* Any property owner who receives a notice to remove may appeal the notice within 5 business days of receipt of notice to the Town Manager. The appeal shall be in writing and shall state with the town reasons for the appeal ("appeal notice"). The Manager or designee shall set a hearing date within ten (10) days of receipt of the appeal notice, and shall render a decision within a reasonable time after the hearing date. If, on appeal, the Manager or designee determines that the graffiti is a public nuisance and must be removed, the Manager shall establish a new date for such removal or obscuring.

(G) *Emergency removal.* Where any public nuisance as set forth in this chapter requires immediate abatement to avoid and prevent the degradation of adjoining properties as determined by the code enforcement officer, the nuisance may be summarily removed and abated by the town without prior notice to the property owner, but the owner shall be responsible for all abatement costs, administrative fees, and civil penalties.

(H) *Removal by perpetrator.* It shall be unlawful for any person placing graffiti on public or private

property to fail to remove such graffiti or cause such graffiti to be removed within 72 hours after notice from the town. If graffiti is applied by a person under the age of 18 years of age, the parents or legal guardians of such minor shall be responsible for removal of the graffiti within 72 hours after notice from the town.

(I) *Removal/obscuring.* The town shall not clean, paint or obscure or repair any property containing graffiti more extensively than where the graffiti itself is located. The town shall not be required to restore the area that contained graffiti, or any obscured area, to its original condition including conditions of color, texture, and finish. Notwithstanding the preceding, if the Town Manager determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, the town or its authorized private contractor is expressly permitted to perform the work necessary to do more extensive repainting or repairing.
(Ord. passed 1-11-2010)

§ 97.04 ENFORCEMENT/REMEDIES.

(A) *Civil penalties.* In addition to or in lieu of the other remedies provided by this chapter, any owner of a property whose property shall be declared a public nuisance, and who fails to abate the nuisance after notice as provided in this chapter shall be subject to a civil penalty in the amount of \$50 for the first offense, \$100 for the second offense in the calendar year, and \$250 for the third and subsequent offenses in the calendar year. An administrative fee in the amount of \$50 per offense shall be assessed for each violation of this chapter. If a person fails to pay the civil penalty plus an administrative fees and abatement costs within 30 days after being notified of the amount due, the town may recover the penalty together with all costs by filing a civil action in the general court of justice in the nature of a suit to collect a debt in addition to any other remedy available under this chapter.

(B) *Criminal penalty.* In addition to or in lieu of civil penalties or other remedies, violation of division (A) above shall constitute a misdemeanor. Any person convicted of a violation of this section shall be fined not less than \$250 for a first offense and \$500 for a second or subsequent offense. In addition to any other remedy, the court shall order any person convicted of a violation of division (A) above to make restitution to the victim and/or to the town for the damage or loss suffered by the victim and/or to the town as a result of the offense. The court may determine the amount, terms, and conditions of the restitution.

(C) *Collection/use of civil/criminal fees and penalties.* Unless provided for or directed by some other provision of law, the fees collected for violations of this chapter shall be held separately for use as payment for contacted graffiti removal services.
(Ord. passed 1-11-2010)

§ 97.05 SEVERABILITY.

The provisions of this chapter shall be deemed severable. If any portion of this chapter is deemed unconstitutional, it shall not affect the constitutionality of any other portions of this chapter.
(Ord. passed 1-11-2010)

TITLE V: PUBLIC WORKS

Chapter

- 50. GARBAGE AND REFUSE**
- 51. WATER AND SEWERS**
- 52. EMERGENCY WATER
CONSERVATION PLAN**

CHAPTER 50: GARBAGE AND REFUSE

Section

General Provisions

- 50.01 Intent
- 50.02 Definitions
- 50.03 Depositing garbage in streets, lots,
and the like prohibited; accumulation
of garbage
- 50.04 Landfills
- 50.05 Litter from vehicles; spilling of
vehicle loads
- 50.06 Unlawful conditions on private
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Outdoor Storage

- 50.10 General provisions
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Administration and Enforcement

- 50.20 Notice from Town Administrator
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lien
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Pickup

- 50.35 Responsibility of town
- 50.36 Tree and shrub trimmings and the like
- 50.37 Regulating dangerous, injurious,
unhealthy matter on streets or
sidewalks
- 50.99 Penalty

GENERAL PROVISIONS

§ 50.01 INTENT.

(A) It is the intent of the town to set forth rules and regulations for the orderly collections of solid waste. The aim is to cover any and all aspects of the collection and disposal of solid waste.

(B) The town reserves the right to make any decision not covered by this chapter.

(C) All rules and regulations of the county and the state will be observed.
(1994 Code, § 50.01)

§ 50.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

GARBAGE. All putrescible waste, including animal and vegetable matter and recognizable industrial byproducts. **GARBAGE** excludes sewage and human wastes.

LITTER. Refuse and all other waste materials which, if thrown or deposited on any premises, vacant lot, street, or sidewalk, tends to create a danger to public health and safety or any unsightly appearance.

REFUSE. All non-putrescible wastes.
(1994 Code, § 50.02)

§ 50.03 DEPOSITING GARBAGE IN STREETS, LOTS, AND THE LIKE PROHIBITED; ACCUMULATION OF GARBAGE.

(A) It shall be unlawful for any person to throw or sweep into any street or public place of the town any garbage or refuse or to scatter any matter on any premises or vacant lot of his or her own or that of another than as set forth in this chapter.

(B) No garbage that has become decayed or that otherwise shall be a menace to health or cleanliness shall be allowed to remain in any residence, business, or industry or any premises for a longer time than shall be reasonably necessary to remove or deposit it in a proper receptacle.

(1994 Code, § 50.03) Penalty, see § 50.99

§ 50.04 LANDFILLS.

(A) It shall be permissible for dirt, rocks, brick, concrete, leaves, and small limbs to be used for landfills. Garbage is not permitted for that use, nor is material or an offensive or unsightly nature.

(B) The owner is responsible for keeping the site in a neat and orderly manner.

(1994 Code, § 50.04) Penalty, see § 50.99

§ 50.05 LITTER FROM VEHICLES; SPILLING OF VEHICLE LOADS.

No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any private property or upon any street or other public place within the town. No person shall drive or move any truck or other vehicle within the town unless it is constructed or loaded so as to prevent any load of dirt, litter, or other matter being spilled therefrom or deposited upon any street or other public or private place.

(1994 Code, § 50.05) Penalty, see § 50.99

§ 50.06 UNLAWFUL CONDITIONS ON PRIVATE PROPERTY.

(A) *Unlawful conditions enumerated.* The following enumerated and described conditions, or any combination thereof, are hereby found, deemed, and declared to constitute a detriment, danger and hazard to the health, safety, morals and general welfare of the inhabitants of the town and are found, deemed and declared to be public nuisances wherever the conditions may exist and the creation, maintenance or failure to abate any nuisances is hereby declared unlawful:

(1) Any weeds or other vegetation having an overall height of more than 18 inches above the surrounding ground provided that the following shall not be considered to be a part of this condition: trees and ornamental shrubs; cultured plants; natural vegetation on undeveloped property that is not a threat to the character of surrounding properties; and flowers and growing and producing vegetable plants;

(2) Any accumulation of trash and/or garbage which is the result of the absence or of overflowing or improperly closed trash or garbage containers;

(3) Accumulation in an open place of hazardous or toxic materials and chemicals;

(4) An open place of concentration of combustible items such as mattresses, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes, rags, or any other combustible materials or objects of a like nature;

(5) Any accumulation of garbage, rubbish, trash, or junk causing or threatening to cause a fire hazard, or causing or threatening to cause the accumulation of stagnant water, or causing or threatening to cause the inhabitation therein of rats, mice, snakes, mosquitoes, or vermin prejudicial to the public health;

(6) Any accumulation of animal or vegetable matter that is offensive by virtue of odors or vapors or by the inhabitation therein of rats, mice, snakes, or vermin of any kind which is or may be dangerous or prejudicial to the public health;

(7) The open storage of any discarded ice box, furniture, refrigerator, stove, glass, building materials, building rubbish or similar items;

(8) Any condition detrimental to the public health which violates the rules and regulations of the Catawba or Burke County Health Departments;

(9) Any building or other structure which has been burned, partially burned or otherwise partially destroyed and which is unsightly or hazardous to the safety of any person, is a continuing fire hazard or which is structurally unsound to the extent that the Town Manager or his or her designee can reasonably determine that there is a likelihood of personal or property injury to any person or property entering the premises;

(10) Any condition which blocks, hinders, or obstructs in any way the natural flow of branches, streams, creeks, surface waters, ditches, or drains, to the extent that the premises is not free from standing water;

(10a) Drainage issues on private property. The town shall not engage in the repair, maintenance, modification, or correction of any drainage issues on private property unless it is determined by the Town Administrator, or his designee, that either:

(a) Conditions existing on town property, town streets or roads, or other public property (collectively "town assets") require action by the town on private property in order to alleviate and/or remedy the conditions existing, or

(b) That the repair, maintenance, modification, or correction of the drainage issues on private property is necessary for the protection of town assets or the general public; and/or

(11) The outside or outdoors use of any furniture originally designed or intended for interior use such as, but not limited to, couches, sofas, chairs, recliners or other like items.

(B) When any condition in violation of this section is found to exist, the housing inspector or such persons as may be designated by the Town Manager, or the Town Manager, himself or herself, shall give notice to the owner of the premises to abate or remove such conditions within 10 days. The notice shall be in writing, shall include a description of the premises sufficient for identification and shall set forth the violation and state that, if the violation is not corrected within ten days, the town may proceed to correct the same as authorized by this section. Service of the notice shall be by any one of the following methods.

(1) By delivery to any owner personally or by leaving the notice at the usual place of abode of the owner with a person who is over the age of 16 years and a member of the family of the owner.

(2) By depositing the notice in the United States Post Office addressed to the owner at his or her last known address with postage prepaid thereon.

(3) By posting and keeping posted, for ten days, a copy of the notice, in placard form, in a conspicuous place on the premises on which the violation exists, when notice cannot be served as described in divisions (B)(1) and (2).

(C) If the owner of any property fails to comply with a notice given pursuant to this section, within 10 days after the service of the notice, he or she shall be subject to prosecution for violation of this section in accordance with law and each day that such failure continues shall be a separate offense. In addition, the Town Manager may have the condition described in the notice abated, removed or otherwise corrected and all expenses incurred thereby shall be chargeable to and paid by the owner of the property and shall be collected as taxes and levies are collected. All such expenses shall constitute a lien against the property on which the work was done.

(D) The procedure set forth in this section shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances, and this section shall not prevent the town from proceeding in a criminal action against any person, firm or corporation violating the provisions of this section as provided in G.S. § 14-4.

(1994 Code, § 50.06) (Ord. passed 9-4-1990; Am. Ord. passed 9-8-2008; Am. Ord. CO-04-2014, passed 12-8-2014) Penalty, see § 50.99

§ 50.07 STORAGE OF GARBAGE RECEPTACLES.

(A) All garbage receptacles shall be stored in the rear yard or the side yard of the lot (as defined in the Town of Long View Zoning Ordinance) except for that 48-hour period beginning 24 hours before 6:00 a.m. on the garbage pickup day for the lot (as determined by the town) and ending 24 hours after 6:00 a.m. of the garbage pickup day for the lot.

(B) This section is not intended to be a zoning ordinance.

(C) This section shall be effective 10-1-2000. (Ord. 10-2000, passed 9-5-2000)

OUTDOOR STORAGE

§ 50.10 GENERAL PROVISIONS.

(A) *Construction material.* It shall be unlawful to allow outside storage of construction material, unless located on a construction site and stored in a manner to protect and prevent deterioration or is stored for the duration of a valid building permit.

(B) *Firewood.* It shall be unlawful to have firewood on premises, unless it is evenly piled or stacked in a rear or side yard so that materials will not afford a harborage for rodents, snakes or other vermin.

(C) *Indoor upholstered furniture.* It shall be unlawful to store any indoor upholstered furniture outside, except when said indoor upholstered furniture is placed at the curb on the customary collection day for it to be removed as part of the town's waste removal service, or when said indoor upholstered furniture is placed outdoors as part of a garage sale.

(D) *Laundry.* It shall be unlawful to hang laundry including, without limitation, clothes, sheets, blankets and towels at any location within a front yard. Said laundry may be hung on a wire, or similar apparatus in a rear or side yard, that is elevated and secured at one or both ends by a post, structure or tree.

(E) *Storage of machinery.* It shall be unlawful to store, maintain or leave as outside storage worn out, wrecked, abandoned or inoperable machinery such as; but not limited to; tractors, lawnmowers, bicycles or any parts thereof unless items are placed at the curb on the customary collection day to be removed as part of the town's waste removal service.

(F) *Unenclosed structure.* Outside storage shall be prohibited in open or unenclosed structures, unless such structures are wholly located in a rear or side yard and all items are in enclosed bins, receptacles, properly stacked or bundled and otherwise in compliance with other provisions of this chapter.

(G) *White goods.* It shall be unlawful to allow with goods and similar appliances or appliance parts not specifically designed and manufactured for outdoor use to be discarded, abandoned or stored on premises unless white goods are placed at the curb on the customary collection day to be removed as part of the town's waste removal service.

(Ord. passed 5-12-2008)

§ 50.11 DEFINITIONS.

For purposes of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FIREWOOD. Logs or kindling material that have more wood than rot, not exceeding 24 inches in length and suitable for use in a fireplace or other wood-burning appliance. **FIREWOOD** shall not include pressure treated lumber of any type, wood framing components of any size or glue laminated lumbar components.

INDOOR UPHOLSTERED FURNITURE. Any furniture not manufactured for outdoor use, including but not limited to upholstered chairs and couches.

OUTSIDE STORAGE. The placing, keeping, using, maintaining or leaving of items customarily associated with the residential use of a dwelling, including, but not limited to, machinery, clothing, firewood, vehicle parts and tires, construction or demolition debris, indoor upholstered furniture, shopping carts or other similar personal property or fixtures in unenclosed structures or areas exposed to precipitation.

UNENCLOSED STRUCTURE. An area not totally surrounded with a combination of walls, windows, doors, floor and roof, such as carports, garages with no doors, porches, decks, patios, rooftops and balconies.

WHITE GOODS. Appliances, including stoves washers, dryers, refrigerators, freezers, water heaters, air conditioners, dehumidifiers and any appliance commonly used for house purposes.
(Ord. passed 5-12-2008)

ADMINISTRATION AND ENFORCEMENT

§ 50.20 NOTICE FROM TOWN ADMINISTRATOR.

The Town Administrator, upon notice of any person to the existence of any of the conditions described in § 50.06, shall cause to be made by the appropriate County Health Department official or

town official an investigation as may be necessary to determine whether the conditions exist as shall constitute a public nuisance. Upon a determination the conditions do exist, the Administrator shall notify the owner, occupant, or person in possession of the premises in question of the conditions constituting the public nuisance and shall order the prompt abatement thereof within 15 days from the receipt of the written notice.

(1994 Code, § 50.15)

§ 50.21 FAILURE TO COMPLY.

Any person who fails to comply with the order of the Town Administrator within 15 days after the receipt of the order shall be subject to criminal prosecution and shall be subject to having the town abate the nuisance and charging the actual cost of the abatement to the owner or other person in possession of the premises with instructions that the charges are due and payable within 30 days from the receipt thereof.

(1994 Code, § 50.16) Penalty, see § 50.99

§ 50.22 CHARGES AGAINST PROPERTY TO CONSTITUTE LIEN.

In the event the charges mentioned in § 50.21 have not been paid within 30 days after the receipt of the statement of the charges as provided in that section, the charges shall become a lien upon the land or premises where the public nuisance existed and shall be collected as unpaid taxes as provided by G.S. § 160A-193.

(1994 Code, § 50.17)

§ 50.23 PROVISIONS SUPPLEMENTAL.

(A) The procedures set forth in this subchapter shall be in addition to any other remedy that now or hereafter may exist under the law for the abatement of public nuisances.

(B) The procedures provided by this subchapter in no way shall constitute a waiver of the right of the town to proceed in criminal action against those persons creating public nuisances.

(1994 Code, § 50.18)

PICKUP

§ 50.35 RESPONSIBILITY OF TOWN.

The town shall be responsible for picking up garbage and all junk items at non-commercial properties if it is placed along the curb of an accessible street, provided the garbage is placed in proper containers or in bulk that can be easily handled by town employees or contractors. All small items shall be placed in containers. All commercial properties, mobile home parks and apartment buildings with more than 6 units shall be required to place their garbage and junk items in dumpsters at all times and work out arrangements for pickup with a private contractor.

(1994 Code, § 50.30) (Ord. passed - -; Am. Ord. passed - -; Am. Ord. passed 10-8-2007)

§ 50.36 TREE AND SHRUB TRIMMINGS AND THE LIKE.

(A) Tree, shrubbery, or other trimmings shall be picked up as garbage if they are placed in proper containers. All other trimmings shall be picked up only by special request of the owner, and provided they are placed next to but not in the street, so as they are reasonably accessible and not more than 6 feet in length.

(B) No trimmings, grubblings, or scrapings of trees, underbrush, garbage, rubbish, or shrubbery made by professional contractors or tree trimmers in the trimming of trees or the clearing of land or site

preparation shall be picked up or removed by the town; it shall be the sole responsibility of the professional tree trimmer or contractor to remove the garbage.

(1994 Code, § 50.31) (Ord. passed - -) Penalty, see § 50.99

§ 50.37 REGULATING DANGEROUS, INJURIOUS, UNHEALTHY MATTER ON STREETS OR SIDEWALKS.

(A) It shall be unlawful to spill, pour, place, deposit, or allow to drip, fall or run upon the pavement or sidewalk of any street, alley or other public place in the town any brine, chemical, oil, grease, liquid or substance which tends to disintegrate the pavement or make it slippery or otherwise dangerous for pedestrians, horses or vehicles.

(B) It shall be unlawful for any person to throw, cast, place or deposit on any sidewalk or crossing, in any street or public place in the town, any portion or part of any fruit, vegetable or other substance which, when stepped upon by any person, is liable to cause such person to slip or fall.

(C) No person shall throw or deposit upon any highway or street within the town any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle.

(D) Any person who drops, or permits to be dropped or thrown, upon any highway or street any destructive or injurious material shall immediately remove the same or cause it to be removed.

(E) Any person removing a wrecked or damaged vehicle from a highway or street shall remove any glass or other injurious substance dropped upon the highway or street from such vehicle.

(F) It shall be unlawful to throw, spill, place or deposit in or upon any street, highway, alley,

sidewalk, park or other public place any dirt, filth, shells, garbage, vegetables, dead carcasses, sewage, slops, excrement, compost, stable manure, ashes, soot, tin cans, rags, waste paper, leaves, brush, weeds, grass, hay, excelsior, shavings, barrels, crates, boxes, litter, or loose combustible material, materials subject to be carried by the wind, or unwholesome, noxious to the smell, or putrescible matter of any kind.

(G) Any violation of this section shall be a misdemeanor punishable under G.S § 14-4.
(Ord. CO-01-2013, passed 8-12-2013)

(C) Any person who shall violate § 50.05 shall be guilty of a misdemeanor and shall be fined not more than \$500 or imprisoned for not more than 30 days.

(G.S. § 14-4(a)) (1994 Code, § 50.99)

(D) A violation of § 50.07 may result in a civil penalty or criminal prosecution all as set forth in § 10.99 of the Town of Long View Code of Ordinances.

(Ord. 10-2000, passed 9-5-2000)

§ 50.99 PENALTY.

(A) (1) Any violation of any provision of this chapter for which another penalty is not otherwise provided shall subject the violator to a civil penalty in the sum of not more than \$500 per day.

(a) A citation for the civil penalty shall be issued by the Code Enforcement Officer.

(b) Each citation for a civil penalty must be paid within 120 hours of issuance.

(2) Each and every day that the violator continues in violation shall be a separate and distinct offense.

(3) The town may also, and in addition, seek any and all appropriate equitable remedies, injunctions, and/or abatement orders from the appropriate court of competent jurisdiction.
(1994 Code, § 50.99)

(B) A violation of § 50.03 constitutes a misdemeanor with a fine not to exceed \$500; a civil penalty may also be imposed.
(Ord. 3-96, passed 5-7-1996)

CHAPTER 51: WATER AND SEWERS

Section

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- 51.66 Discontinuance of services for failure to pay; renewal procedure
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GENERAL PROVISIONS

§ 51.01 ASSENT OF ALDERPERSONS REQUIRED FOR INSTALLATION AND OTHER WORK TO WATER AND SEWER LINES.

No water lines or sewer lines shall be installed by the town, nor shall any funds be spent for them, until a majority of the members of the Board of Alderpersons shall have assented thereto by appropriate action of the Board, either at a regular meeting or at a special meeting of the Board.
(1994 Code, § 51.01) (Ord. passed 11-4-1958)

§ 51.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPROVING AUTHORITY. The Town Administrator.

B.O.D. Biochemical oxygen demand. The quantity of oxygen in the biochemical oxidation of organic matter as measured by standard laboratory methods, as set out herein, expressed in mg/l.

C.O.D. Chemical oxygen demand. The quantity of equivalent oxygen used in the chemical oxidation of organic matter, as measured by standard laboratory methods, as set forth herein, expressed in mg/l.

COLOR. The true color, due to substances in solution which cause any variation in the hue of the receiving stream.

DEPARTMENT. Public Utilities Department of the town.

DIRECTOR. Director of Public Utilities.

DOMESTIC SEWAGE. Water-carried wastes from bathrooms, kitchens, and home laundries.

EXCESSIVE RADIATION DOSE. A dose of radiation in excess of the maximum permissible dose. See **MAXIMUM PERMISSIBLE DOSE**.

GARBAGE. Solid wastes from the preparation, cooking, and dispensing of food that has been shredded to the degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 3/4 inch in any dimension.

GRAVITY SEWER. An underground carriage system specifically for transporting sewage in which flow occurs under natural pressure due to gravity.

INDUSTRIAL WASTES. The water-carried wastes from institutional, commercial, and industrial processes and operations, as distinct from domestic sewage.

I.O.D. Immediate oxygen demand. The quantity of oxygen used by an industrial waste in excess of that normally attributable to sewage, as measured by using standard laboratory methods. **I.O.D.** is expressed in mg/l.

MAXIMUM PERMISSIBLE DOSE.

(1) A dose of radiation to any part of the body, internal, external, or both, that in the light of present knowledge is not expected to cause appreciable bodily injury to a person at any time during his or her lifetime.

(2) See **EXCESSIVE RADIATION DOSE**.

mg/l. Milligrams per liter.

PATRON. Any person receiving, upon premises occupied by him or her, the benefit of the town's water and sewer service

pH. The logarithm, base 10, of the reciprocal of the hydrogen ion concentration. **pH** indicates the degree of acidity or alkalinity of a substance. A **pH** value of 7.0 is neutral, above 7.0 is alkaline, and below 7.0 is acid.

RECEIVING STREAM. The body of water, stream, or watercourse receiving the discharge of waters from the waste treatment plant or formed by the water discharges from the waste treatment plant.

SEWAGE. A combination of the water-carried wastes from residences, business building, institutions, and industrial establishments.

SEWER MAIN. Any sewer line from which run service lateral sewer pipes.

SUSPENDED SOLIDS. Solids that either float on the surface of or are in suspension in water, sewer, or other liquids and which are removable by laboratory filtering.

WATER MAIN. Any water supply line from which runs service lateral water pipes.
(1994 Code, § 51.02) (Ord. passed 2-2-1982; Am. Ord. CO-02-2014, passed 11-10-2014)

§ 51.03 SYSTEMS TO BE OPERATED AS SINGLE UNIT.

The water and sewer systems of the town shall be operated as a unit, which shall be designated as the Public Utilities Department.
(1994 Code, § 51.03)

§ 51.04 TOWN ADMINISTRATOR TO BE CHIEF EXECUTIVE.

(A) *Generally.* The chief executive of the Public Utilities Department shall be the Town Administrator.

(B) Powers and duties.

(1) The Town Administrator shall:

(a) See that all charges for water and sewer services are correctly made and promptly collected;

(b) Keep an accurate record of the Department's receipts and disbursements;

(c) Enforce all provisions of this code and any other ordinances, rules and regulations adopted by the Board of Alderpersons in so far as they apply to the Public Utilities Department; and

(d) Require the Director of Public Utilities to perform efficiently the duties of this position.

(2) The Town Administrator shall, from time to time, submit reports to the Board of Alderpersons covering the operations of the Public Utilities Department, its receipts and disbursements, and the efficiency of the operation of the same.
(1994 Code, § 51.04)

§ 51.05 PERMITS; CONNECTIONS TO WATER SYSTEM.

(A) No person shall make any connection to the town's water system or in any way take water for his or her or another's use from any town water line, without first applying for and receiving a permit from the Town Administrator, unless the taking is through a spigot legally in use on the premises of a person who has obtained a permit.

(B) No person shall make any sewer connection for his or her or another's use without first applying for and receiving a permit from the Town Administrator.

(C) Any person desiring a water and sewer connection made so as to receive water and sewer services shall file with the Town Administrator an application in writing, approved by the Director, and shall pay the fees required.

(1994 Code, § 51.05) Penalty, see § 51.99

§ 51.06 MANDATORY CONNECTIONS.

(A) Each person owning a lot and building in the town, which lot abuts or adjoins a street or alley along which are a water main and a public sewer line, shall make water and sewer connections with his or her premises. No person shall be required to construct connecting lines across the private property of another or to construct connecting lines of more than 200 feet in length.

(B) Within 30 days after any water or sewer main is completed and ready for use, the owner of every abutting lot whereon water is supplied from other sources for human use shall cause the lot to be connected with the water or sewer main; provided, that the town shall notify the property owner in writing of the installation of the main. Residential property owners with drilled, properly capped wells that meet the standards of the State Board of Health are exempt from a mandatory connection for water. Commercial and business property owners with drilled, properly capped wells that meet the standards of the State Board of Health are exempt from a mandatory connection for water but must pay a tap fee for the well to meter the flow for sewer service charges.

(C) In the event of a broad and general annexation to the town, the 30-day period referred to in division (B) above shall be increased to 12 months. (1994 Code, § 51.06) Penalty, see § 51.99

Statutory reference:

Authority of town to require water and sewer connection, see G.S. § 160A-317

§ 51.07 TOWN TO TAP LINES AND EXTEND SERVICE PIPES TO CURBING.

The town reserves the exclusive right of tapping the water mains and sewer lines for all connections and of extending all service pipes to the nearest curbing.

(1994 Code, § 51.07)

§ 51.08 CONSTRUCTION OF SERVICE PIPES ACROSS PRIVATE PROPERTY.

Water and sewer service pipes shall not be constructed across the private property of 1 person for the purpose of providing water and sewer services to another person, without first obtaining a written instrument conveying to the town a perpetual right-of-way for the construction, repair, and maintenance of the service line.

(1994 Code, § 51.08) Penalty, see § 51.99

§ 51.09 CURB BOX AND CURB COCK; TURNING WATER ON OR OFF AT CURB COCK.

A curb box shall be placed over a curb cock, which shall be under the exclusive control of the town. No person shall turn the water on or off at the curb cock, except the Director of Public Utilities or some employee of the town acting under the express orders of the Director.

(1994 Code, § 51.09) Penalty, see § 51.99

§ 51.10 LOCATION AND OWNERSHIP OF WATER METERS.

Each residence, building, manufacturing plant, or other place where town water is used shall have at least 1 water meter, the location of which may be changed from time to time as the Director may direct. The water meter shall remain the property of and be under the exclusive control of the town.

(1994 Code, § 51.10) Penalty, see § 51.99

**§ 51.11 DISPOSITION OF PRIVIES AND
UNUSED WELLS AFTER WATER AND
SEWER CONNECTIONS.**

Within 30 days after a sewer connection is made, any pit privy, after being cleaned, shall be fixed with clean, compacted earth to the level of the ground surface. Within 30 days after a water connection is made, any open, dug, bored, or drilled shall be filled with clean, compacted earth to the level of the ground surface.

(1994 Code, § 51.11) Penalty, see § 51.99

**§ 51.12 USE OF PRIVATE WELL IN
ADDITION TO TOWN WATER.**

If a property owner wishes to maintain a well in addition to a town tap, he or she must register the same and have the installation approved by the Public Utilities Department. No direct connection will be allowed between the town supply and the well.

(1994 Code, § 51.12) Penalty, see § 51.99

§ 51.13 INSPECTION AND APPROVAL OF PLUMBING PREREQUISITE TO SERVICE.

Water shall not be supplied to any premises, nor shall the use of a sewer connection be permitted, until all plumbing has been inspected and approved by the Director.

(1994 Code, § 51.13) Penalty, see § 51.99

§ 51.14 SHUTTING OFF WATER IN CASE OF ACCIDENT, MAKING CONNECTIONS, REPAIRS, AND THE LIKE.

The town reserves the right at any time to shut off the water in the mains in the case of accident or for the purpose of making connections, alterations, or repairs, and it shall be the duty of the Director of Public Utilities to give 1-hour's notice, if possible, to all patrons within the district who will be temporarily deprived of water. In case of emergency, the water may be cut off without notice.

(1994 Code, § 51.14)

§ 51.15 MAINTENANCE OF LINES AND FIXTURES IN GOOD REPAIR.

(A) The owner and occupant of any building, place, or other premises having water and sewer connections shall keep the water and sewer pipelines or fixtures in proper condition and repair.

(B) Upon the failure of any owner or occupant to make the necessary repairs within 5 days after notice of the defective condition, the service shall be discontinued by the Director.

(1994 Code, § 51.15) Penalty, see § 51.99

§ 51.16 TAKING WATER FROM PUBLIC HYDRANT, FOUNTAIN, AND THE LIKE.

No person, except the Town Administrator, the Director of Public Utilities, the Chief of the Fire Department, or someone authorized by 1 or more of them, shall take water from any public hydrant, pipe

or fountain, plug, street washer, drawcock, or hose, except for firefighting purposes or for the use of the Fire Department.

(1994 Code, § 51.16) Penalty, see § 51.99

§ 51.17 INDUSTRIAL WASTE AND SEWAGE NOT TO BE DUMPED INTO WATERWAYS.

It shall be unlawful for any person, directly or indirectly, to dump industrial waste or industrial sewage into any branch, creek, or stream within the corporate limits.

(1994 Code, § 51.17) Penalty, see § 51.99

§ 51.18 ENTERING PUMPING STATION OR FILTERING PLANT.

No person shall enter any pumping station or filtering plant of the town, without being accompanied by the engineer on duty at the station or plant or by an official of the town.

(1994 Code, § 51.18) Penalty, see § 51.99

§ 51.19 RIGHT OF ENTRY FOR INSPECTION AND READING OF METERS.

The Town Administrator, the Director, or an Inspector designated by either of them shall have the right to enter any dwelling, apartment house, store, business building, hotel, or other premises between the hours of 8:00 a.m. and 7:00 p.m., for the purpose of inspecting and reading the meters. No person shall oppose, obstruct, or interfere with the officer entering the premises or with the inspection.

(1994 Code, § 51.19) Penalty, see § 51.99

§ 51.20 DISCHARGING RESIDUE FROM WASHING OF MOTOR VEHICLES INTO SANITARY SEWERS.

No person shall discharge into the sanitary sewers of the town residue from the washing of motor vehicles, except from wash pits constructed and

maintained in accordance with the plans and specifications for the construction and maintenance on file in the office of the Town Clerk.

(1994 Code, § 51.20) Penalty, see § 51.99

§ 51.21 FIRE HYDRANTS ON PRIVATE PROPERTY.

(A) Any person desiring to run a large pipe from the town main to his or her premises within the town for the purpose of providing a hydrant for use in case of fire shall be permitted to connect with the street main at his or her own expense and shall be permitted to use water therefrom, for fire purposes only, at no charge.

(B) All hydrants so constructed on premises of patrons shall be sealed with suitable material.

(C) Any person breaking or permitting another to break the seal, except for the purpose of obtaining water for firefighting purposes, shall be deemed guilty of a misdemeanor.

(D) Each week the seal remains broken shall be construed to be a separate and distinct offense.

(1994 Code, § 51.21) Penalty, see § 51.99

SEWERS

§ 51.35 DISCHARGES.

(A) No person shall pour, throw, or discharge any substance, either solid or liquid, into any sanitary or storm sewer at any manhole or at any opening therein other than a sewer connection.

(B) No person shall discharge or cause to be discharged any storm water, surface water, ground water, roof runoff, subsurface drainage, swimming pool drainage, cooling water, or unpolluted industrial or commercial process water into any sanitary sewer.

(C) No person shall connect or cause to be connected to the sanitary sewer system any pipe or conduit which will allow the discharge of the inflow sources listed in divisions (A) and (B) above into the sanitary sewer system.

(1994 Code, § 51.30) (Ord. passed 2-2-1982) Penalty, see § 51.99

§ 51.36 DEPOSIT OF CERTAIN WASTES PROHIBITED.

(A) No person shall discharge or deposit any of the following waste materials into any town sanitary sewer:

(1) Any clothing, rags, textile remnants or waste, cloth, scraps - except fibers of scraps that will passed through a 3/4-inch mesh screen or its equivalent in screening ability;

(2) Any liquid or vapor having a temperature higher than 130°F;

(3) Any water or waste which may contain more than 100 mg/l of fat, oil or grease;

(4) Any gasoline, benzene, naphtha, fuel oil, motor oil, or other flammable or explosive liquid, solid, or gas;

(5) Any garbage that has not been properly shredded;

(6) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, or other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewage works;

(7) Any waters or wastes in which the suspended solids exceed 300 mg/l;

(8) Any waters or wastes in which the total fixed exceed 2,000 mg/l;

(9) Any waters or wastes in which the B.O.D. exceeds 300 mg/l;

(10) Any waters or wastes in which the C.O.D. exceeds 700 mg/l;

(11) Any waters or wastes in which the I.O.D. exceeds 5.0 mg/l;

(12) Any waters or wastes having a stabilized pH lower than 5.5 or higher than 11.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works;

(13) Any waters or wastes containing measurable amounts of chromium, zinc, nickel, copper, or other heavy metals which are in an ionic or chemically active state;

(14) Any waters or wastes containing cyanide or other poisonous substances;

(15) Any waste containing toxic, poisonous or other substances in sufficient quantities to interfere with the biological process used in the waste treatment works or that will pass through the waste treatment works and harm persons, livestock, or aquatic life using the receiving stream;

(16) Any noxious or malodorous gas or substance capable of creating a public nuisance;

(17) Any solid radioactive materials or radioactive materials in solution which can be removed by chemical means and disposed of in solid form;

(18) Any radioactive materials in soluble ion form in sufficient quantities to create a hazard to sewage works personnel or the biological life in the waste treatment plant or receiving stream;

(19) Any materials which form excessive amounts of scum that may interfere with the operation of the waste treatment works or cause undue additional labor in connection with its operation;

(20) Any waters or wastes containing suspended solids of a character and quality that unusual attention or expense is required to handle the materials at the waste treatment plant;

(21) Any waters or wastes containing dyes or other color of the character or in the quantity as to require special chemical treatment; and/or

(22) Any waters or wastes which, in concentration of any given constituent or in quantity of flow exceeds, for any period of duration longer than 15 minutes, more than 5 times the average 24-hour concentrations or flows during normal operation.

(B) The Town Administrator may exclude and prevent from being discharged into the town's sewer system any water materials which violate this chapter. (1994 Code, § 51.31) (Ord. passed 2-2-1982) Penalty, see § 51.99

§ 51.37 DETERMINATION OF EXCESSIVE FLOWS OR CHARACTERISTICS.

(A) In order to prevent overloading the sewage treatment plant by periodic discharges of wastes at high levels or by discharges having excessively fluctuating biological or chemical characteristics, the approving authority shall determine when the following conditions exist at the point of discharge to the town sewer.

(B) (1) The B.O.D. is in excess of 300 mg/l for 2 successive days.

(2) The pH is lower than 5.5 or higher than 11.0 for a continuous period of 20 minutes.

(3) The suspended solids are in excess of 300 mg/l for 2 successive days.

(4) The rate of flow is in excess of 5 times the average 24-hour flow for a period exceeding 15 minutes.

(5) The C.O.D. is in excess of 700 mg/l for 2 successive days.
(1994 Code, § 51.32) (Ord. passed 2-2-1982)

§ 51.38 REDUCTION OF EXCESSIVE FLOWS.

(A) After the determination described in § 51.37, the approving authority shall, by the procedures available, determine the source of industrial waste violations.

(B) Thereupon he or she shall notify the persons responsible therefore to cease the discharges or to take 1 or more of the following steps to alleviate the condition:

(1) Construct a storage tank, holding pond, or other device which, with suitable flow control, will equalize the flow over a 24-hour period;

(2) Treat the wastes to prevent the industrial discharge from exceeding the limits of pH as set out in § 51.37(B)(2);

(3) Reduce the B.O.D. of the waste to a level that the discharge into the town's sewer system is not in excess of 300 mg/l for any day; and/or

(4) Reduce the suspended solids of the waste so the C.O.D. is not in excess of 700 mg/l for any 1 day.
(1994 Code, § 51.33) (Ord. passed 2-2-1982)

§ 51.39 OVERLOADS BY SPECIAL CONTRACT.

(A) At the discretion of the approving authority and with approval of the Board, in the case where compliance with § 51.38 would create undue hardship upon the person discharging the excessive wastes, the approving authority may execute a special contract with the person, whereby he or she will be permitted to continue discharge of the wastes uncontrolled or in part.

(B) The contract shall provide for the surcharges as may be determined to compensate the town for treating the uncontrolled wastes.
(1994 Code, § 51.34) (Ord. passed 2-2-1982)

§ 51.40 METHODS OF SAMPLING.

(A) A sewer surcharge may be made for excess B.O.D., C.O.D., or suspended solids and shall be determined by the town through representative sampling of the wastes at intervals as outlined below.

(1) Sampling shall be done by the town 4 times each year at the customer's expense.

(2) If more frequent sampling is requested by the person, the town will do the additional sampling and analysis at the cost to the person requesting it.

(B) Analysis of the waste shall be by laboratory methods as set out in the latest edition of *Standard Methods for the Examination of Water and Sewage*, as published by the American Public Health Association.

(C) A surcharge for excess B.O.D., C.O.D., or suspended solids shall be in accordance with § 51.41.
(1994 Code, § 51.35) (Ord. passed 2-2-1982)

§ 51.41 METHOD OF CALCULATING SURCHARGE.

(A) When the concentration of B.O.D., C.O.D., or suspended solids in the industrial waste discharge to the town's sanitary sewers exceed the limits hereinbefore prescribed, a monthly surcharge may be imposed upon the offending industrial user's sewage flow when the excess is calculated using the industrial plant water flow and the difference between the greater charge for the actual B.O.D., C.O.D., or suspended solids concentration and the permissible limits of 300 mg/l, 700 mg/l, and 300 mg/l respectively.

(1) This surcharge shall be invoked as herein provided in addition to the existing regular sewer service charge.

(2) The surcharge shall reflect the total cost of treating the excess pounds of industrial waste including necessary costs of administration of the sewage plant and this chapter.

(a) The method used to determine the surcharge amount shall consist of dividing the audited budget cost for operating the town's sewage treatment plant for the preceding fiscal year by the total treatment plant design poundage of B.O.D., C.O.D., or suspended solids.

(b) This unit cost for treatment then shall be applied to the excess poundage of B.O.D., C.O.D., or suspended solids.

(B) The Director of Public Utilities shall make a report to the Town Administrator each quarter of all activities conducted concerning this section.
(1994 Code, § 51.36) (Ord. passed 2-2-1982)

§ 51.42 DEPOSIT OR SURCHARGE PERMITS.

Any person desiring to deposit or discharge any industrial waste into the town sanitary sewers shall make application to the approving authority in the manner prescribed by him or her. The approving authority shall approve the applications only when evidence is submitted by the applicant that the discharge into the sanitary sewer will comply with all of the regulations of this chapter.
(1994 Code, § 51.37) (Ord. passed 2-2-1982)
Penalty, see § 51.99

§ 51.43 OUTSIDE CONNECTIONS.

Any person owning or controlling premises located beyond the corporate limits of the town and desiring to install a plumbing system for the purpose of discharging domestic sewage and/or industrial waste into the sanitary sewers of the town may do so

by complying with the requirements of this chapter and by paying an additional permit fee and a yearly sewer rental charge fixed or to be fixed by the Board of Alderpersons.
(1994 Code, § 51.38) (Ord. passed 2-2-1982)

§ 51.44 INSPECTIONS.

The approving authority and other duly authorized employees of the town, while bearing proper credentials and identification, shall be permitted to enter upon all properties of persons discharging domestic sewage, wastes, or industrial wastes into the sewerage system, for the purpose of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this chapter.
(1994 Code, § 51.39) (Ord. passed 2-2-1982)

§ 51.45 TEMPORARY STOPPAGE OF WASTE DISCHARGE.

Authority is hereby granted to the Town Administrator to temporarily stop or exclude any flow of industrial waste, whether pre-treated or not, into the sanitary sewers whenever, in his or her opinion, the action is necessary for the purpose of determining the effects of the wastes upon the sewers, sewage treatment works, or sewage treatment plants.
(1994 Code, § 51.40) (Ord. passed 2-2-1982)

§ 51.46 DAMAGING OR DEFACING EQUIPMENT.

(A) It shall be unlawful for any person to maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any equipment or materials belonging to the town used for the purpose of making tests or examinations and left upon the premises of a person discharging wastes into the sewers or to tamper with any equipment belonging to the town used in providing utility service to the person.

(B) Any person desiring to appeal any decision of the approving authority pertaining to this chapter may do so before the Board of Alderpersons, if the notice of appeal is presented in writing within 2 weeks of the approving authority's decision.

(1994 Code, § 51.41) (Ord. passed 2-2-1982) Penalty, see § 51.99

§ 51.47 MANAGEMENT POLICY.

(A) Industrial customers who have a discharge in excess of 1,000,000 gallons per month or who have been issued a National Pollution Discharge Elimination System permit by the Environmental Protection Agency or North Carolina Department of Natural and Economic Resources, or who propose to discharge any of those controlled elements or compounds specified in the federal pretreatment regulations shall construct or cause to be constructed a manhole or similar thing for specific purpose of sampling the industrial discharge.

(1) The sampling point shall be totally accessible, contain a ladder or stairs, and be equipped with a primary measuring device such as a Parshall flume, Kenniston nozzle, or other approved system.

(2) Both the design and location of the sampling point shall be approved by the town before construction.

(B) Waste flow from industrial customers shall be determined at 100% of water usage, except an industrial discharger, at his or her own expense, may construct or cause to be constructed an approved measuring device.

(1) In that case, billing will be based on actual metered discharge, provided the town is furnished with an actual certificate of accuracy certified by the equipment manufacturer or other approved agency.

(2) Any malfunction or inaccuracy of the metering equipment shall cause the basis for billing to revert to water usage until corrected.

(C) Industrial customers described in division (A) above shall be surveyed at least annually to determine if violations to this code exist. Should a violation be found, the town will:

(1) Invoke a surcharge and initiate a sampling program as outlined in §§ 51.40 and 51.41;

(2) Issue to the industry a deadline by which the violating concentration or element must be reduced or removed; or

(3) Refuse to accept any further discharge, should the severity of the violation so dictate.

(4) Industrial dischargers who, by virtue of volume, concentration, or waste characteristics have been issued a permit through the N.P.D.E.S. program or are subject to federal pretreatment regulations shall be required to comply with all the requirements of those programs. Should a conflict exist between the federal and state discharge parameters and those specified in this code, the more stringent requirement shall take precedent.

(1994 Code, § 51.42) (Ord. passed 2-2-1982) Penalty, see § 51.99

§ 51.48 GUARANTEED SEWER SERVICE AND GRINDER PUMPS.

The town shall make sanitary sewer available to all lots that exist within the town at the time of construction. Availability shall be defined as accessible to the building with reasonable means of either gravity sewer to the first floor or above or installation of a single building service grinder style lift pump. Any lot that requires a single building service grinder style lift pump will be installed at the property owner's expense. The property owner shall also be responsible for all operational, maintenance and/or replacement costs associated with any single building service grinder style lift pump on the property.

(Ord. CO-02-2014, passed 11-10-2014)

SERVICE CHARGES**§ 51.60 CONNECTION CHARGES.**

Any person desiring or required to connect to the town's water or sewer system shall pay for each connection the charges as are fixed, from time to time, by resolution of the Board of Alderpersons. Water shall not be supplied to any premises, nor shall the use of a sewer connection be permitted, until all the charges have been paid to the Town Administrator and a receipt therefor obtained from him or her. (1994 Code, § 51.50) Penalty, see § 51.99

Statutory reference:

Authority of town to fix charges for water and sewer connections, see G.S. § 160A-317

§ 51.61 RATES.

Service charges to be collected from patrons of the town's water and sewer systems shall be at the rates as are fixed from time to time by resolution of the Board of Alderpersons. (1994 Code, § 51.51)

§ 51.62 DEPOSIT TO SECURE PAYMENT.

All new applicants for water and sewer service who do not own property in the town shall post a deposit in the amount as the Board of Alderpersons shall from time to time establish, at no interest, prior to receiving water or sewer service from the town. (1994 Code, § 51.52)

§ 51.63 DETERMINATION OF SEWER CHARGE BY METER ON PRIVATE WATER SUPPLY.

Where a patron of the town's sewer system uses his or her own water supply in accordance with the provisions of this chapter and there is disagreement as to the quantity of water used, the Town Administrator

may require the patron to install a meter on his or her supply line for the purpose of determining the amount of the sewer service charge. (1994 Code, § 51.53)

§ 51.64 RESPONSIBILITY FOR PAYMENT IN CASE OF MULTIPLE DWELLING.

(A) The owner of an apartment house, duplex house, or other premises occupied by more than 1 tenant may, if he or she so desires, within 30 days after the completion of the same, file with the Town Administrator a written statement to the effect that he or she will personally pay for all water and sewer services thereafter furnished to all occupants of the apartment house, duplex house, or other premises. Thereupon, only 1 meter shall be required for the apartment house, duplex house, or other premises. In that event, the owner shall pay for all water and sewer service at the rates as shall be established by resolution of the Board of Alderpersons. The owner, if he or she occupies the building or any part thereof, shall be construed to be a tenant under the provisions of this section.

(B) If the owner does not file the written statement provided for in division (A) of this section, the owner shall have installed a separate meter for each apartment, suite of rooms, or other space occupied or arranged for occupancy by a separate tenant in the apartment house, duplex, or other premises.

(C) If any owner of any apartment house, duplex house, or other premises arranged for occupancy by 2 or more tenants does not file with the Town Administrator the written statement provided for in division (A) or does not have installed separate meters as required by division (B), the Director shall discontinue water service to the apartment house, duplex house, or other premises. (1994 Code, § 51.54) Penalty, see § 51.99

**§ 51.65 WHEN AND WHERE PAYABLE;
CHARGES FOR FRACTIONAL PART OF
BILLING PERIOD.**

(A) All patrons of the water and sewer services of the town shall pay their water and sewer service charges at the office of the town within 10 days after the bill therefor is mailed.

(B) Charges for water and sewer services for a fractional part of a billing period shall be payable on demand.

(1994 Code, § 51.55) Penalty, see § 51.99

**§ 51.66 DISCONTINUANCE OF SERVICES
FOR FAILURE TO PAY; RENEWAL
PROCEDURE.**

(A) If water and sewer charges are not paid within 10 days after the due date, the Town Administrator may instruct the Director to discontinue the services to the delinquent patron.

(B) If water and sewer services are discontinued by reason of the failure to pay the charges therefor, the services shall not be renewed until all charges for cutting on the water are paid in full.

(C) Any person whose water and sewer services have been discontinued by the Director as provided in this section who shall thereafter cut on the water or otherwise make the services available, except by renewal as provided above, shall be deemed guilty of a misdemeanor.

(1994 Code, § 51.56) Penalty, see § 51.99

Statutory reference:

*Service for failure to pay service charge, see
G.S. § 160A-314(b)*

**§ 51.67 PROCEDURES TO ESTABLISH
UTILITY SERVICES.**

(A) It shall be required that renters and/or non-property owners complete a utility application with

all requested information, provide a rental or lease agreement and provide a valid North Carolina driver's license or identification card.

(B) It shall be required that property owners complete a utility application with all requested information, provide a purchase agreement and provide a valid North Carolina driver's license or identification card.

(Ord. passed 4-11-2011)

§ 51.99 PENALTY.

(A) Any violation of any provision of this chapter for which another penalty is not otherwise provided shall subject the violator to a civil penalty in the sum of not more than \$500 per day.

(1) A citation for the civil penalty shall be issued by the Code Enforcement Officer.

(2) Each citation for a civil penalty must be paid within 120 hours of issuance.

(B) Each and every day that the violator continues in violation shall be a separate and distinct offense.

(C) The town may also, and in addition, seek any and all appropriate equitable remedies, injunctions, and/or abatement orders from the appropriate court of competent jurisdiction.

(1994 Code, § 51.99)

CHAPTER 52: EMERGENCY WATER CONSERVATION PLAN

Section

- 52.01 Declaration of shortage
- 52.02 Stage I; guidelines
- 52.03 Stage II; terms, further restrictions
- 52.04 Lifting restrictions

- 52.99 Penalty

(1) An extensive publicity campaign will be initiated using public media and specialized methods to inform the public of an impending or existing water shortage.

(2) Conservation measures will be encouraged and recommended.

§ 52.01 DECLARATION OF SHORTAGE.

In the event it appears that water demand on the town's water system may exceed supply and transmission capabilities, the ORC (Operator in Responsible Charge) may recommend to the Town Administrator that voluntary water conservation measures be implemented. The Town Administrator, following consultation with the Board of Alderpersons, may declare a Stage I Water Shortage Condition Advisory requesting voluntary water conservation by consumers. In the event that voluntary conservation measures fail to relieve the demand on the system, the town may advance to a Stage II or Stage III Water Shortage Condition. The Town Administrator, following consultation with the Board of Alderpersons, may, with or without the recommendation of the ORC, declare that a Stage II or Stage III Water Shortage Condition exists. (Ord. 4-02, passed 9-3-2002)

§ 52.02 STAGE I; GUIDELINES.

(A) In the event a Stage I Water Shortage Condition is declared, the following guidelines shall apply.

(B) In the event a Stage I Water Shortage Condition is declared, the following guidelines shall apply and the public shall be encouraged to adhere to the following:

- (1) Limit car washing to the minimum;
- (2) Limit lawn and garden watering to that, which is necessary for the plants to survive;
- (3) Do not wash outside areas such as sidewalks, patios, parking lots, service bays or aprons, or the like;
- (4) Do not leave faucets running while shaving or rinsing dishes;
- (5) Water shrubbery to the minimum required, reusing household water when possible;
- (6) Limit the use of clothes washers and dishwashers and, when needed, operate fully loaded;
- (7) Use of showers, rather than bathtub, for bathing and limit showers to no more than 4 minutes;
- (8) Limit flushing of toilets by multiple usage;

(9) The use of disposable and biodegradable dishes is encouraged;

(10) The use of flow-restrictive and water-saving devices;

(11) Limit hours of operation of water-cooled air conditioners;

(12) All residents, businesses, and institutions are requested to delay temporarily new landscape work until the water shortage has ended; and

(13) Limit use for industrial purposes.
(Ord. 4-02, passed 9-3-2002)

§ 52.03 STAGE II; TERMS, FURTHER RESTRICTIONS.

(A) In the event the Town Administrator issues a declaration of a Stage II Water Shortage Condition, it shall be unlawful for any person, firm, or corporation to use or permit the use of water from the town system for any purpose hereinafter set forth until the time as the declaration of water shortage has been rescinded. In exercising the authority for declaring a Water Shortage Condition, consideration shall be given to water storage levels and available sources of supply, available usable storage on hand, draw-down rates, the projected supply capability, outlook for precipitations, daily water use patterns, and availability of water from other sources.

(B) In the event that a Stage I Water Shortage Condition is in effect and any town storage tank drops to 5 feet or less of storage, a Stage II water shortage may be declared. In addition to the voluntary guidelines already in effect, it shall be unlawful to use water supplied by the town's water system in the following manner:

(1) To water lawns, grass, shrubbery, trees, flowers, and vegetable gardens except by hand-held hose or container or drip irrigation system;

(2) To fill newly constructed swimming and/or wading pools or refill swimming and/or wading pools which have been drained; and/or

(3) To operate an evaporative air conditioner which recycles water, except during operating hours of business.
(Ord. 4-02, passed 9-3-2002) Penalty, see § 52.99

§ 52.04 LIFTING RESTRICTIONS.

(A) Water Shortage Conditions will expire when the Town Administrator, after consultation with the Board of Alderpersons and upon recommendation of the ORC, deems that the condition which caused the alert has abated.

(B) The expiration or cancellation of a water shortage declaration shall be promptly and extensively publicized.
(Ord. 4-02, passed 9-3-2002)

§ 52.99 PENALTY.

(A) Any violation of this chapter may also subject the offender to a civil penalty in the amount of \$50. Violators shall be issued a written citation by registered mail or by hand delivery, which must be paid within 72 hours of receipt. Each day's continuing violation shall be considered a separate and distinct offense.

(B) Pursuant to the provisions of G.S. § 160A-314 and this chapter, service may be temporarily discontinued for willful disregard of this chapter and a \$25 reconnect fee may be imposed before restoration of service. In the event of continued gross noncompliance of this chapter, the removal of meter will be deemed proper and service will be discontinued and all tap fees and deposits forfeited. Reconnection will be made only by payment of current due amounts, and new tap fees and deposits shall be paid.
(Ord. 4-02, passed 9-3-2002)

(C) (1) It is the policy of the town to discontinue utility service to customers by reason of nonpayment of bills only after notice and a meaningful opportunity to be heard on disputed bills. The town's form for application for utility service and all bills shall contain, in addition to the title, address, room number, and telephone number of the official in charge of billing, clearly visible and easily readable provisions to the effect:

(a) That all bills are due and payable on or before the date set forth on the bill; and

(b) That if any bill is not paid by or before that date, a second bill will be mailed containing a cutoff notice that if the bill is not paid within 10 days of the mailing of the second bill, service will be discontinued for nonpayment; and

(c) That any customer disputing the correctness of his or her bill shall have a right to a hearing at which time he or she may be represented in person and by counsel or any other person of his or her choosing and may present orally or in writing his or her complaint and contentions to the town official in charge of utility billing. This official shall be authorized to order that the customer's service not be discontinued and shall have the authority to make a final determination of the customer's complaint.

(2) Requests for delays or waiver of payment will not be entertained; only questions of proper and correct billing will be considered. In the absence of payment of the bill rendered or resort to the hearing procedure provided herein, service will be discontinued at the time specified, but in no event until the charges have been due and unpaid for at least 30 days.

(3) When it becomes necessary for the town to discontinue utility service to a customer for nonpayment of bills, service will be reinstated only after all bills for service then due have been paid, along with a turn-on charge in the sum of \$25.

TITLE VII: TRAFFIC CODE

Chapter

- 70. GENERAL TRAFFIC REGULATIONS;
TRAFFIC-CONTROL DEVICES**
- 71. GENERAL PARKING REGULATIONS**
- 72. TRAFFIC SCHEDULES**

CHAPTER 70: GENERAL TRAFFIC REGULATIONS; TRAFFIC-CONTROL DEVICES

Section

General Provisions

- 70.01 Official traffic maps
- 70.02 Authority of police to direct traffic; enforcement of state regulations
- 70.03 Clinging to motor vehicles
- 70.04 Body not to protrude from vehicle
- 70.05 Use of roller skates, skateboards, and the like on roadways
- 70.06 Closed vehicles required for hauling loose material; improperly loaded vehicles
- 70.07 Barricades; driving past, around, or over
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Truck Traffic on Town Streets

- 70.25 Definitions
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Traffic-Control Devices

- 70.40 Compliance required
- 70.41 When signs required for enforcement
- 70.99 Penalty

GENERAL PROVISIONS

§ 70.01 OFFICIAL TRAFFIC MAPS.

(A) There shall be kept on file in the office of the Town Clerk traffic maps on which shall be shown:

- (1) The location of traffic-control devices;
- (2) The location of areas or zones where certain regulations are applicable to the parking of vehicles;
- (3) The location of stop intersections;
- (4) The location of yield intersections;
- (5) The location of one way streets;
- (6) The location of loading areas, bus stops and taxicab stands;
- (7) Speed limits applicable to certain streets; and
- (8) The location of streets where certain regulations are applicable to trucks or trailers.

(B) The official traffic maps of the town shall constitute the official codification of the town's ordinances relative to those areas of traffic regulations set forth in division (A) above.

(1994 Code, § 70.01)

Cross-reference:

Traffic-Control Devices, see §§ 70.40 et seq.

§ 70.02 AUTHORITY OF POLICE TO DIRECT TRAFFIC; ENFORCEMENT OF STATE REGULATIONS.

(A) In the event of a fire or other emergency or when necessary to expedite traffic or safeguard pedestrians, police officers may direct traffic as conditions may require, notwithstanding the provisions of this chapter.

(B) The Police Department will enforce any traffic regulations placed by the Department of Transportation of the state upon any right-of-way of state-maintained road.
(1994 Code, § 70.02)

§ 70.03 CLINGING TO MOTOR VEHICLES.

No person riding upon any bicycle, motorcycle, coaster, sled, roller skates, or any toy vehicle shall attach the same or himself or herself to any public conveyance or moving vehicle upon any roadway.
(1994 Code, § 70.03) Penalty, see § 70.99

§ 70.04 BODY NOT TO PROTRUDE FROM VEHICLE.

No person shall allow any part of his or her body to protrude beyond the limits of the vehicle in which he or she is riding, except to give the signals as by law required, and no person shall hang onto any vehicle whatsoever.
(1994 Code, § 70.04) Penalty, see § 70.99

§ 70.05 USE OF ROLLER SKATES, SKATEBOARDS, AND THE LIKE ON ROADWAYS.

No person upon roller skates, skateboards, scooters, or riding in or by means of any coaster, wagon, toy vehicle, or similar device being propelled solely by momentum or by thrusting of the rider's foot against the ground or pavement shall go upon any

roadway, street, or alley, except while crossing a street at a crosswalk or intersection.

(1994 Code, § 70.05) Penalty, see § 70.99

§ 70.06 CLOSED VEHICLES REQUIRED FOR HAULING LOOSE MATERIAL; IMPROPERLY LOADED VEHICLES.

(A) No person shall haul or carry loose dirt, gravel, shavings, sawdust, or any other substance or material likely to render the streets unclean or unsightly, except in vehicles so closed as to prevent the leakage or dropping of the substance or materials upon the streets or sidewalks.

(B) No person shall operate upon the town streets a motor vehicle carrying dirt, stone, wood, sand, or paper that is loaded in a manner that its contents are likely to be spilled upon the streets.
(1994 Code, § 70.06) Penalty, see § 70.99

§ 70.07 BARRICADES; DRIVING PAST, AROUND, OR OVER.

No person shall drive any vehicle or animal past, around, or over any barricade lawfully placed upon any street by town officials or employees, which street has been closed by the barricades, except by consent of persons authorized to give the consent.
(1994 Code, § 70.07) Penalty, see § 70.99

§ 70.08 REMOVING OR DESTROYING BARRICADES.

No person, other than an employee of the town, shall remove, tear down, or destroy any barricade that has been erected by the town.
(1994 Code, § 70.08) Penalty, see § 70.99

§ 70.09 OBSTRUCTING INTERSECTIONS OR CROSSWALKS.

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other

side of the intersection or crosswalk to accommodate the vehicle he or she is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed.

(1994 Code, § 70.09) Penalty, see § 70.99

§ 70.10 DRIVING THROUGH FUNERAL PROCESSIONS.

No vehicle shall be driven through a funeral procession except Fire Department vehicles, police patrols, and ambulances when the same are responding to calls.

(1994 Code, § 70.10) Penalty, see § 70.99

§ 70.11 PROHIBITED VEHICLES ON TOWN PROPERTY.

It shall be unlawful to ride or operate any bicycle, scooter, skateboard, go-cart, moped, motorcycle, or similar conveyance on any town park, recreational facility, or other town property where duly erected signs prohibiting the activities are in place and clearly visible by the public.

(Ord. passed 4-5-1994) Penalty, see § 70.99

TRUCK TRAFFIC ON TOWN STREETS

§ 70.25 DEFINITIONS.

For the purpose of §§ 70.25 *et seq.*, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CARGO. Any property transported by truck.

OPERATOR. The person physically operating a truck or person therein and directing its operation.

TRUCK or TRUCKS. Any motor vehicle used or designed to be used for the transportation of cargo and

passengers, including, but not limited to the following: inter-city buses; truck-drawn trailers when the truck is designed primarily for use in towing a trailer. The following motor vehicles are excluded from this meaning: passenger automobiles; pick-up trucks; vehicle drawn trailers when the vehicle drawing the trailer is not designed primarily for drawing a trailer; motorcycles; motor scooters; school and church buses; emergency vehicles; maintenance trucks belonging to the Town of Long View or public utilities.

TRUCK ROUTE. All U.S. highways, N.C. highways, or other state-maintained highways within the town limits, those town streets designated by signs, or town streets not designated as prohibiting truck traffic.

(Ord. 05-97, passed 6-24-1997)

§ 70.26 DESIGNATION OF TOWN STREETS PROHIBITING TRUCKS AND ALLOWING TRUCKS.

(A) The Board of Aldermen shall cause all town streets upon which truck traffic is prohibited to be clearly posted by appropriate signs.

(B) No person shall be charged with violating the provisions of §§ 70.25 *et seq.* unless appropriate signs are posted on the street on which truck traffic is prohibited.

(Ord. 05-97, passed 6-24-1997; Am. Ord. passed 6-28-2010; Am. Ord. CO-03-2010, passed 11-8-2010)

§ 70.27 MOVEMENT OF TRUCKS WITHIN TOWN LIMITS.

Trucks restricted on certain streets.

(A) It shall be unlawful for any person to drive or operate a truck having a gross weight of greater than 7500 pounds (3¾ tons) over or upon any of the streets listed in Chapter 72, Schedule II.

(B) Trucks excluded from these restrictions include town vehicles, vehicles contracted by the town and school buses.

(Ord. 05-97, passed 6-24-1997; Am. Ord. passed 6-28-2010; Am. Ord. CO-03-2010, passed 11-8-2010)
Penalty, see § 70.99

§ 70.28 TOWN CLERK TO MAINTAIN SCHEDULES OR MAPS OF TRUCK ROUTES.

The Town Clerk shall keep and maintain accurate schedules or maps setting forth where truck traffic is prohibited. The schedules or maps shall be kept on file in the office of the Town Clerk and made available to the public.

(Ord. 05-97, passed 6-24-1997; Am. Ord. passed 6-28-2010; Am. Ord. CO-03-2010, passed 11-8-2010)

TRAFFIC-CONTROL DEVICES

§ 70.40 COMPLIANCE REQUIRED.

The driver of any vehicle shall obey the directions of any official traffic-control device applicable thereto and placed in accordance with this chapter, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.

(1994 Code, § 70.15) Penalty, see § 70.99

§ 70.41 WHEN SIGNS REQUIRED FOR ENFORCEMENT.

No provision of this subchapter for which signs are required shall be enforced against an alleged violator if, at the time and place of the alleged violation, an official sign is not in proper position and sufficiently legible to an ordinarily observant person.

Whenever a particular section does not state that signs are required, the section shall be effective without signs being placed to give notice thereof.

(1994 Code, § 70.16)

§ 70.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

(B) If any person shall violate an ordinance regulating the operation or parking of vehicles, he or she shall be responsible for an infraction and shall be required to pay a penalty of not more than \$50.

(G.S. § 14-4(b))

(C) (1) Any law enforcement officer of the town is hereby empowered to enforce the provisions of §§ 70.25 *et seq.*

(2) Any truck deviating from a designated truck route and operating on a town street posted as prohibiting trucks shall subject the operator of the truck to a fine of \$50 in addition to the costs of the court and shall be a misdemeanor.

(3) Law enforcement officers may require truck operators to show a bill of lading or other proof of destination.

(4) A warning shall be issued to violators during the first 60 days after enactment.

(Ord. 05-97, passed 6-24-1997)

CHAPTER 71: GENERAL PARKING REGULATIONS

Section

General Provisions

71.01	Title
71.02	Definitions
71.03	Authority of Police Department
71.04	Tickets

Offenses

71.15	Parking in no parking zones
71.16	Blocking streets
71.17	Parking of vehicles that weigh more than 1 ton
71.18	Parking prohibited for certain purposes
71.19	Stopping in street
71.20	Standing not to interfere with other vehicles
71.21	Method of parking
71.99	Penalty

GENERAL PROVISIONS

§ 71.01 TITLE.

This chapter shall be known as the "Parking Ordinance" of the town.
(1994 Code, § 71.01) (Ord. passed 8-3-03)

§ 71.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DESIGNATED STREETS. Any street way which has been dedicated for public use.

LOADING ZONE. An area as the Police Department may designate for use by commercial vehicles or for business use.

MOTOR VEHICLE. Every vehicle that is self-propelled and every vehicle designed to run upon the highways that is pulled by a self-propelled vehicle. This term shall not include mopeds as defined by state statute.

NO PARKING ZONE. Any area on or off designated streets which are so defined and designated by appropriate signs erected by the Police Department of the town.

TICKET. A written notice to the registered or actual owner of any vehicle that the vehicle has been parked in violation of this chapter.

VEHICLE.

(1) Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks; provided, that for the purposes of this chapter, "bicycles" shall be deemed vehicles and every rider of a bicycle upon a highway shall be subject to the provisions of this chapter applicable to the driver of a vehicle except those that by their nature can have no application.

(2) This term shall not include a device that is designed for and intended to be used as a means of transportation for a person with a mobility impairment, is suitable for use both inside and outside

a building, and whose maximum speed does not exceed 12 mph when the device is being operated by a person with a mobility impairment.

(1994 Code, § 71.02) (Ord. passed 8-3-03)

Statutory reference:

Definitions applicable to motor vehicles, see § G.S. 20-4.01

§ 71.03 AUTHORITY OF POLICE DEPARTMENT.

(A) The Police Department, under the supervision and direction of the Board of Alderpersons, from time to time may designate parking spaces in which vehicles may be parked and also may designate loading zones for commercial vehicles. In cases involving designated spaces or loading zones, parking in those areas shall be exempt from this chapter.

(B) The Police Department may grant temporary parking which otherwise would be in violation, for special occurrences or circumstances, on a temporary basis. In those cases, the parking would not be a violation of this chapter.

(1994 Code, § 71.03) (Ord. passed 8-3-03; Am. Ord. passed 6-22-1993)

§ 71.04 TICKETS.

(A) Any person found in violation of this chapter shall be issued a ticket stating thereon the notice of a violation, the amount of the fine, if paid within 5 days, and the action to be taken in the event the fine is not paid.

(B) Tickets shall be worded and printed under the direction of the Police Department, subject to the limitation that the parking fine, if paid within 5 days, shall be limited to the amount of \$15 per violation.

(C) The registered owner of the vehicle shall be considered the violator of this chapter and liable for the payment of the parking fine.

(1994 Code, § 71.04) (Ord. passed - -; Am. Ord. passed 8-3-03) Penalty, see § 71.99

OFFENSES

§ 71.15 PARKING IN NO PARKING ZONES.

It shall be unlawful for any person to park any vehicle in a No Parking zone designated in the town. (1994 Code, § 71.15) (Ord. passed 8-3-03) Penalty, see § 71.99

§ 71.16 BLOCKING STREETS.

It shall be unlawful for any person to park a vehicle or place an object on any street, alley way, or public way so as to block any lane of traffic located in the street or public way located in the town.

(1994 Code, § 71.16) (Ord. passed 8-3-03) Penalty, see § 71.99

§ 71.17 PARKING OF VEHICLES THAT WEIGH MORE THAN 1 TON.

It shall be unlawful for any firm, person, or corporation to park or allow to be parked on any public street or highway for a continuous period of more than 1 hour any vehicle with more than a 1-ton rating, including straight trucks, tractors, trailers, and vans.

(1994 Code, § 71.17) (Ord. passed 5- -1978) Penalty, see § 71.99

§ 71.18 PARKING PROHIBITED FOR CERTAIN PURPOSES.

No person shall stand or park a vehicle upon any street for the principal purpose of:

(A) Displaying it for sale;

(B) Washing, greasing, or repairing the vehicle, except repairs necessitated by an emergency;

(C) Storage thereof by garages, dealers, or other persons, when the storage is not incident to the bona fide use and operation of the automobiles or other vehicles;

(D) Storage of any detached trailer or van, when the towing unit has been disconnected or for the purpose of transferring merchandise or freight from one vehicle to another; and/or

(E) Advertising.

(1994 Code, § 71.18) Penalty, see § 71.99

§ 71.19 STOPPING IN STREET.

No person shall stop any vehicle in any street so as to obstruct any footway, pedestrian aisle, safety zone, crossing, or street intersection, if the same can be avoided.

(1994 Code, § 71.19) Penalty, see § 71.99

§ 71.20 STANDING NOT TO INTERFERE WITH OTHER VEHICLES.

No vehicle shall so stand on any street or alley as to interrupt or interfere with the passage of public conveyances or other vehicles.

(1994 Code, § 71.20) Penalty, see § 71.99

§ 71.21 METHOD OF PARKING.

(A) *Generally.* Where not otherwise indicated by this chapter and where the street is not marked with lines to show how vehicles shall park, all vehicles shall park parallel to the curb and not more than 12 inches therefrom.

(B) *Vehicle backed up to curb.* In no case shall a vehicle remain backed up to the curb, except when actually loading or unloading.

(C) *Left side of curb.* No vehicle shall stop with its left side to the curb. Vehicles shall stop headed in the direction of traffic.

(1994 Code, § 71.21) (Ord. passed 6-22-1993)
Penalty, see § 71.99

§ 71.99 PENALTY.

(A) Any person violating any provision of this chapter for which no penalty is prescribed shall be subject to § 70.99.

(B) Any violation for which the parking fine is not paid in the time prescribed in this code or in any other applicable ordinance of the town shall result in issuance of a warrant and for the purpose of the warrant, the violation shall be considered a misdemeanor and subject the violator to a fine of not more than \$50 for each offense plus any court costs. (1994 Code, § 71.99) (Ord. passed 8-3-03)

(C) Anyone violating § 71.17 shall be fined \$15 for each hour as specified by a parking ticket, the form of which and method of payment shall be in the discretion of the Police Chief. Failure to pay the fine shall result in issuance of a warrant and for the purpose of the warrant, the violation shall be considered a misdemeanor.

(1994 Code, § 71.99) (Ord. passed 8-3-03; Am. Ord. 13-03, passed 9-2-2003)

CHAPTER 72: TRAFFIC SCHEDULES

Schedule

- I. Speed limits
- II. Truck routes

SCHEDULE I. SPEED LIMITS.

(A) The speed limit shall be 20 mph at the following locations:

<i>Description</i>
2nd Ave SW from 27th St SW to 30th St SW
30th St SW from 1st Ave to 2nd Ave SW

(Ord. CO-02-2010, passed 6-28-2010)

(B) The speed limit shall be 25 mph at the following locations:

<i>Description</i>
Main Ave Dr NW from 23rd St NW to 26th St NW
29th St Pl SW from 2nd Ave SW to 6th Ave SW
29th St SW from 4th Ave SW to 6th Ave SW
6th Ave SW from 29th St SW to 29th St Pl SW
30th St SW from 2nd Ave Pl SW to 31st St SW
31st St SW from 2nd Ave SW to 30th St SW
15th Ave SW from 33rd St SW to 1580 32nd St SW (Southwest Elementary)
37th St SW from 2nd Ave SW to 829 27th St SW (Dead End)

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<i>Description</i>
28th St NW from Main Ave NW to 1st Ave NW
28th St SW from US Hwy 70 to 2nd Ave SW behind Shuford Mills and Shuford Yarns
31st SW south from 1st Ave SW to 2nd Ave SW

(Am. Ord. CO-02-2010, passed 6-28-2010; Am. Ord. CO-05-2014; passed 2-9-2015)

(C) The speed limit shall be 35 mph at the following locations:

<i>Description</i>
1st Ave SW from 23rd St SW to 25th Pl SW
8th Ave NW (SR 1313) from 27th St NW (SR 1307) to the eastern corporate limit at SR 1305

(Ord. CO-01-2014, passed 10-13-2014; Am. Ord. CO-03-2014)

(D) The speed limit shall be 45 mph at the following locations:

<i>Description</i>
1st Avenue southwest (SR 1007) from 39th Street southwest to a point 0.05 mile west of 28th Street southwest

(Am. Ord. 7, passed 12-2-1975; Am. Ord. CO-03-2014, passed 12-8-2014)

(E) The speed limit shall be 55 mph at the following locations:

<i>Description</i>
Highway U.S. 70 from the western corporate limit to a point 0.08 mile east of 33rd Street southwest (SR 1124) to the southern corporate limit, a point 0.27 mile west of 22nd Street southwest (SR 1196)
Highway U.S. 70 from a point 0.20 mile west of SR 1196 to SR 1196, the eastern corporate limit of the town

(Ord. 2, passed 12-4-1984; Am. Ord. 3, passed 12-4-1984; Am. Ord. CO-01-2014, passed 10-13-2014) Penalty, see § 70.99

SCHEDULE II. TRUCK ROUTES.

The following streets will be designated as "No Thru Truck" routes:

<i>Description</i>
27th St SW from 2nd Ave SW to 5th Ave SW
2nd Ave SW from 37th St SW to 36th St SW
23rd St SW from 13th Ave SW to 15th Ave SW
36th St SW from 1st Ave SW to 2nd Ave SW
1st Ave NW from house number 1921 1st Ave NW to house number 1851 1st Ave NW
19th St NW from 1st Ave NW to house number 164 19th St NW
1st Ave NW from 28th St NW to house number 3043 1st Ave NW
30th St NW from 40 30th St NW to 1st Ave NW
3rd Ave NW from 27th St NW to 25th St NW
5th Ave NW from 26th St NW to 23rd St NW
5th Ave NW from 23rd St NW to 20th St NW
4th Ave NW from 23rd St NW to 25th St NW
4th Ave NW from 23rd St NW to 20th St NW
3rd Ave NW from 19th St NW to 20th St NW
3rd Ave NW from 23rd St NW to 20th St NW
2nd Ave SW from 33rd St SW to 29th St SW
4th Ave SW from 26th St SW to 29th St SW
28th St NW from a point 607 feet North of the railroad tracks to the intersection with 1st Ave NW
19th St SW from 8th Ave SW to 3rd Ave SW
31st SW from 1st Ave SW to 30th St SW
30th St SW from 2nd Ave South to 31st St SW

(Ord. CO-02, passed 6-28-2010; Am. Ord. CO-01-2011, passed 2-14-2011; Am. Ord. CO-03-2011, passed 9-12-2011; Am. Ord. CO-04-2011, passed 2-12-2011; Am. Ord. CO-03-2014, passed 12-8-2014) Penalty, see § 70.99

TITLE XI: BUSINESS REGULATIONS

Chapter

- 110. PRIVILEGE LICENSE TAX**
- 111. ALCOHOLIC BEVERAGES**
- 112. COMMUNITY ANTENNA TELEVISION
SYSTEMS**
- 113. MASSAGE ESTABLISHMENTS**
- 114. SOLICITORS**
- 115. TAXICABS**
- 116. WRECKER SERVICES USED BY TOWN**
- 117. GARAGE SALES**
- 118. SEXUALLY-ORIENTED BUSINESS**

CHAPTER 110: PRIVILEGE LICENSE TAX

Section

General Provisions

- 110.01 Definitions
- 110.02 Interpretation
- 110.03 Compliance
- 110.04 Exemptions
- 110.05 Payment required by all business operators

- 110.51 Collection of deficiency
- 110.52 Appeals
- 110.99 Penalty
- Appendix A: Schedule of license taxes

Licenses

- 110.20 Period
- 110.21 Application
- 110.22 Separate businesses; multiple businesses
- 110.23 Reasons for refusal or revocation
- 110.24 Unqualified applicants' right to a conference
- 110.25 Revocation
- 110.26 Form and contents
- 110.27 Assignments
- 110.28 Changes in business conducted by licensee during tax year
- 110.29 Duplicates
- 110.30 Providing notice to applicant or licensee
- 110.31 Refusal to issue beer and wine licenses

Enforcement; Collections

- 110.45 Duty to determine whether tax due
- 110.46 Dispute of amount
- 110.47 Duty to post license
- 110.48 Notice of deficiency
- 110.49 Request for a conference
- 110.50 Deficiency to become final

GENERAL PROVISIONS

§ 110.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS. Any trade, occupation, profession, or other activity engaged in by any person or caused to be engaged in by any person or caused to be engaged in by him or her with the object of gain, profit, benefit, or advantage either direct or indirect. **BUSINESS** does not include occasional and isolated sales or transactions by a person who does not hold himself out as engaged in business.

(1) A person **CONDUCTS A BUSINESS** when he or she engages in 1 act of any business. If a person is listed in the yellow pages of the telephone directory issued by the telephone system serving the town, that shall be prima facie evidence the person is **CONDUCTING A BUSINESS**.

(2) A person conducts a business **WITHIN THE TOWN** when he or she maintains a business location within the town or when, either personally or through agents:

Long View - Business Regulations

(a) Solicits business within the town;
or

(b) Picks up or delivers goods or services within the town.

(3) A business is *SEASONAL* in nature when it is conducted for profit 6 months out of the year or fewer.

(1994 Code, § 110.01) (Ord. passed 3-6-1990)

§ 110.02 INTERPRETATION.

(A) This chapter is enacted for revenue purposes only. Therefore, it should be construed to require payment of the maximum tax permitted under its terms.

(B) Issuance of a license pursuant to this chapter does not excuse a licensee from compliance with any other applicable ordinance or statute.

(C) This chapter does not prevent the town from imposing license taxes on additional businesses, from increasing or decreasing the amount of any license tax, or from regulating any business taxed.

(1994 Code, § 110.02) (Ord. passed 3-6-1990)

§ 110.03 COMPLIANCE.

Subject to § 110.04, no person may conduct any business within the town without having paid the tax required by this chapter or without a valid privilege license issued pursuant to this chapter.

(1994 Code, § 110.03) (Ord. passed 3-6-1990)
Penalty, see § 110.99

§ 110.04 EXEMPTIONS.

(A) If a person conducts a business as a partner in a partnership or as an officer or employee of a corporation, or as an employee or member of any other business entity, that person is not required to obtain a privilege license or pay a privilege license

tax. However, the partnership, corporation, or other business entity must obtain the license and pay the tax unless exempted by this section.

(B) Owners of real property who lease it need not obtain a privilege license or pay a privilege license tax solely for acting as lessor of that property.

(C) A person who operates a business for a religious, educational, civic, patriotic, charitable, or fraternal purpose is exempt from obtaining a privilege license or paying a privilege license tax.

(D) Blind persons and person who serve in the United States armed forces or Merchant Marine are exempt from obtaining a privilege license or paying any privilege license tax.

(E) Persons who solicit business or pick up or deliver goods or services within the town are not required to obtain a privilege license or pay a privilege license tax levied by this chapter.

(F) The following businesses are exempt from obtaining a privilege license or paying a privilege license tax as provided by the indicated section of the General Statutes. A more complete and detailed description of the exempt businesses is contained in the cited sections of the General Statutes.

(1) G.S. § 105-41 - Attorneys, physicians, land surveyors, engineers, architects, photographers, real estate brokers, accountants, morticians, and similar professionals;

(2) G.S. § 105-102.1 - Certain cooperative associations;

(3) G.S. § 105-102.4 - Persons opting for retail variety store license;

(4) G.S. § 105-116 - Utility companies (electrical power, gas, water, and sewer);

(5) G.S. § 105-120.1 - Bus companies;

(6) G.S. § 105-120.2 - Holding companies;

(7) G.S. § 105-122 - Domestic and foreign corporations;

(8) G.S. § 105-228.10 - Insurance companies and associations;

(9) G.S. § 105-130.5(b)(13) - an international banking facility.
(1994 Code, § 110.04) (Ord. passed 3-6-1990)
Penalty, see § 110.99

recent decennial census, as provided by state statute. It is the intent of this chapter that if the population changes in a subsequent census, the tax rates shall shift accordingly. The schedule of license taxes for businesses commonly found within the town is contained in Appendix A and shall be updated periodically to include new business or rate changes. (1994 Code, § 110.05) (Ord. passed 3-6-1990)
Penalty, see § 110.99

§ 110.05 PAYMENT REQUIRED BY ALL BUSINESS OPERATORS.

(A) Except as otherwise provided in this section, all persons who conduct a business within the town shall pay a privilege license tax of \$20.

(B) The businesses described in Appendix A of this chapter may not be taxed in any amount that exceeds the statutorily established maximum. Those businesses shall pay a privilege license tax equal to the amount of the maximum fixed by statute, subject to division (C) below. If a person conducts a business that falls within more than 1 of the categories described in the appendix, he or she shall pay a privilege license tax equal to the total of the maximum amounts authorized for all the categories his or her business falls under, subject to division (C) below.

(C) If a person conducts a business that falls within 1 or more of the categories described in Appendix A also conducts business at the same location that does not fall within any of the categories described in the appendix and the amount of privilege license tax the person is required to pay (in accordance with division (B) above) for that portion of the business which falls within the described categories is less than \$20, the person shall pay a privilege license tax which, when added to the tax the person is required to pay in accordance with division (B), will equal \$20.

(D) The businesses licensed shall be subject to the maximum tax permitted therein. Whenever a tax depends upon the population of the town, the population shall be determined according to the most

LICENSES

§ 110.20 PERIOD.

(A) Unless otherwise provided in § 110.05, a license issued pursuant to this subchapter is valid for that 12-month period beginning July 1 and ending June 30. The tax is due July 1 each year; if a person begins business after July 1 in any year, the tax for that year is due before the business is begun.

(B) If, pursuant to § 110.05, a license is issued for a period of 1 day, 1 week, or some comparable period of less than a full license year, the licensee may not continue the business beyond the period for which the license is issued. The tax on the business is due not later than the day before commencement of the business.

(C) If a business is begun after January 31 and before July 1, the amount of tax due is half the amount otherwise due.

(D) If, for any reason, a licensee discontinues business during a license year, he or she is not entitled to a refund.
(1994 Code, § 110.15) (Ord. passed 3-6-1990)
Penalty, see § 110.99

§ 110.21 APPLICATION.

(A) With respect to annual licenses, a person shall apply to the Tax Collector for the license at least 30 days before the tax is due. With respect to licenses

issued for 1 day, 1 week, or a similar period less than 1 year, application shall be made at least 10 days before the tax is due. These time limitations may be waived by the Tax Collector for good cause shown.

(B) The application, which shall be submitted on forms provided by the Tax Collector, shall contain:

(1) The name of the applicant and whether he or she or it is an individual, partnership, corporation, or other entity;

(2) The nature of the business, including the duration the business intends to operate;

(3) Where the business is conducted;

(4) An address to which may be mailed notices and statements required by this chapter;

(5) Whether the business is one regulated by a state occupational licensing board, subject to G.S. Chapter 93B, and if so, the serial numbers of the state licenses to be held by all those who are part of the applicant's business; and

(6) Any other information the Tax Collector determines to be necessary to issue the privilege license in accordance with this subchapter. (1994 Code, § 110.16) (Ord. passed 3-6-1990) Penalty, see § 110.99

§ 110.22 SEPARATE BUSINESSES; MULTIPLE BUSINESSES.

A license issued for the privilege of conducting a business is valid only for the business conducted at the place and by the licensee named therein. Every person doing business as more than 1 factory, mill, warehouse, store, stall, or stand, or other place of business, shall secure a separate license for each place of business, unless the places of business are contiguous to each other, communicate directly with and upon and to each other, and are operated as a unit.

(1994 Code, § 110.17) (Ord. passed 3-6-1990) Penalty, see § 110.99

§ 110.23 REASONS FOR REFUSAL OR REVOCATION.

The Tax Collector shall refuse to issue a license or shall revoke a license for any of the following reasons.

(A) The applicant misrepresents a fact relevant to the amount of tax due or his or her qualifications for a license.

(B) The applicant refuses to provide information necessary to compute the amount of tax due.

(C) The applicant has not obtained a certificate of occupancy when required to do so by local ordinance.

(D) The administrator charged with the enforcement of the following codes or ordinances has certified to the Tax Collector that the applicant has been found in violation of the law enforced by the administrator and either has failed to appeal that determination within the time provided or has exhausted all administrative and judicial appeal as set forth in the North Carolina State Building Code, Chapters 153 and 154 of this code, or other applicable state statute or federal law.

(1994 Code, § 110.18) (Ord. passed 3-6-1990)

§ 110.24 UNQUALIFIED APPLICANTS' RIGHT TO A CONFERENCE.

(A) After receipt of the completed application, if the Tax Collector believes a reason exists for refusing a license under § 110.23, he or she shall refuse to accept payment of the tax and shall not issue the license. At the applicant's request, the Tax Collector shall, pursuant to § 110.31, give him or her a written statement of the reason for refusing the license. The applicant, within 10 days after the day of receipt of this statement, may request a conference to discuss the refusal. In the request, the applicant shall specify why his or her application for a license should not be refused. The Tax collector shall arrange the conference within a reasonable time, not to exceed 30 days.

(B) If the Tax Collector refuses to issue a license, the applicant may reapply for one at any time thereafter. If the reason for which the application was refused no longer exists, and if no other reason exists for refusing to issue a license, the Tax Collector shall issue the license.

(1994 Code, § 110.19) (Ord. passed 3-6-1990)

§ 110.25 REVOCATION.

(A) The Tax Collector shall revoke a license if a reason exists to revoke it, as set forth in § 110.23. Before the Tax Collector may revoke a license, he or she shall give the licensee written notice of the grounds for revocation, pursuant to § 110.31. The licensee, within 10 days after the day on which the notice is served, may request in writing a conference with the Tax Collector. The request shall specify the reasons why the license should not be revoked. The Tax Collector shall arrange the conference within a reasonable time, not to exceed 30 days.

(B) If the licensee fails to request a conference within 10 days after the day on which the notice is served, the Tax Collector shall revoke the license. If the licensee requests a conference, the Tax Collector may not revoke the license until after the conference.

(C) If the Tax Collector revokes a license, the former licensee may apply for a new license at any time thereafter. If the reason for which the license was revoked no longer exists, and if no other reason exists for refusing to issue a license, the Tax Collector shall issue the license.

(1994 Code, § 110.20) (Ord. passed 3-6-1990)

§ 110.26 FORM AND CONTENTS.

A license shall show the name of the person licensed, the place where the business is conducted (if it is to be conducted at 1 place), the nature of the business licensed, the period for which the license is issued and the amount of tax paid. In addition, if a

machine is licensed, the license shall show the serial number of the machine. The Tax Collector shall keep a copy of each license issued.

(1994 Code, § 110.21) (Ord. passed 3-6-1990)

§ 110.27 ASSIGNMENTS.

A license may be assigned if:

(A) A business licensed under this chapter and carried on at a fixed place is sold as a unit to any person; and

(B) The purchaser is to carry on the same business at the same place. Otherwise, each license issued under this chapter is a personal privilege and is not assignable.

(1994 Code, § 110.22) (Ord. passed 3-6-1990)

§ 110.28 CHANGES IN BUSINESS CONDUCTED BY LICENSEE DURING TAX YEAR.

(A) (1) A licensee or licensee's assignee shall report a change in the information contained in the license application to the Tax Collector within 10 days after the change occurs.

(2) If information shown on the license itself is affected thereby, the licensee or licensee's assignee shall surrender the license to the Tax Collector, when reporting the change.

(B) If there are no reasons for revoking the license under § 110.23 and the change results in the imposition of a separate or additional tax, the Tax Collector shall reissue a license reflecting the change upon payment of the separate or additional tax.

(C) If there are no reasons for revoking the license under § 110.23 and the change does not result in an imposition of a separate or additional tax, the Tax Collector shall reissue a license reflecting the change upon payment of a fee of \$5.

(D) If there is reason for revoking the license under § 110.23, the Tax Collector shall refuse to reissue a license and instead shall begin proceedings to revoke it, pursuant to § 110.25.
(1994 Code, § 110.23) (Ord. passed 3-6-1990)

§ 110.29 DUPLICATES.

Upon satisfactory proof that a license has been lost or destroyed, the Tax Collector shall furnish a duplicate for a fee of \$2.
(1994 Code, § 110.24) (Ord. passed 3-6-1990)

§ 110.30 PROVIDING NOTICE TO APPLICANT OR LICENSEE.

Whenever this chapter requires the Tax Collector to give a written statement or notice to an applicant or licensee, he or she may do so in any 1 of the following ways:

(A) By personally delivering the statement or notice to the applicant or licensee;

(B) By mailing the statement or notice by registered or certified mail, return receipt requested, to the address specified for that purpose in the license application; and/or

(C) By causing the statement or notice to be served on the applicant or licensee in accordance with the procedures for service or process under the North Carolina Rules of Civil Procedure, Rule 4.
(1994 Code, § 110.26) (Ord. passed 3-6-1990)

§ 110.31 REFUSAL TO ISSUE BEER AND WINE LICENSES.

(A) If an applicant for a privilege license authorizing the retail or wholesale sale of malt beverages or fortified or unfortified wines holds the corresponding ABC permit, issuance of the local license is mandatory upon proper application and payment of the prescribed tax.

(B) Notwithstanding division (A) above, the Board may refuse to issue the license if it finds the applicant committed any act or permitted any activity in the preceding year that would be grounds for suspension or revocation of the ABC permit under G.S. § 18B-104. Before denying the license, the Board shall give the applicant an opportunity to appear at a hearing before the Board and to offer evidence. At the conclusion of the hearing, the Board shall make written findings of fact based on the evidence at the hearing. The applicant may appeal the denial of a license to the Catawba County Superior Court if notice of appeal is given within 10 days of the denial.
(1994 Code, § 110.27) (Ord. passed 3-6-1990)

ENFORCEMENT; COLLECTIONS

§ 110.45 DUTY TO DETERMINE WHETHER TAX DUE.

(A) Each person has the duty to determine whether the business he or she conducts is taxed under this chapter and if so, whether that tax has been paid for the current tax year.

(B) If the Tax Collector has reason to believe that a person is conducting a business in the town in violation of this chapter, he or she shall conduct an investigation to determine the person's tax liability.
(1994 Code, § 110.40) (Ord. passed 3-6-1990)

§ 110.46 DISPUTE OF AMOUNT.

If the applicant disputes the amount the Tax Collector determines due, he or she may refuse to pay the tax and request a conference with the Tax Collector to discuss the determination, or pay the amount and request a conference to discuss the right for a refund. If a conference is requested, the Tax Collector shall arrange it in a reasonable time, not to exceed 30 days.
(1994 Code, § 110.41) (Ord. passed 3-6-1990)

§ 110.47 DUTY TO POST LICENSE.

A licensee shall post his or her license conspicuously in the place of business licensed. If he or she has no regular place of business, the license must be kept where it may be inspected at all times by the proper town officials. If a machine is licensed, the license shall be affixed to the machine.

(1994 Code, § 110.42) (Ord. passed 3-6-1990)
Penalty, see § 110.99

§ 110.48 NOTICE OF DEFICIENCY.

(A) If the Tax Collector determines a person has not paid the full amount of tax due under this chapter, either for the current license year or a prior license year, he or she shall give the person written notice of the deficiency, pursuant to § 110.31.

(B) The notice of deficiency shall specify:

- (1) The total amount of tax due;
 - (2) The section of this chapter upon which the tax is based;
 - (3) The amount of tax paid;
 - (4) Any interest due;
 - (5) The balance owed;
 - (6) The manner and time period in which the person may respond to the notice of deficiency; and
 - (7) The consequences of the person if he or she fails to respond as specified.
- (1994 Code, § 110.43) (Ord. passed 3-6-1990)

§ 110.49 REQUEST FOR A CONFERENCE.

(A) The person identified in § 110.48, within 10 days after the day on which notice is served, may

request in writing a conference. The request shall specify the person's objections to the notice of deficiency.

(B) By way of illustration but not limitation, a person who receives notice of deficiency may object on the following grounds:

- (1) That the tax due already has been paid;
 - (2) That the Tax Collector miscalculated the amount of tax due; and/or
 - (3) That the Tax Collector based his or her calculation on incorrect or insufficient information concerning either the nature or amount of business conducted.
- (1994 Code, § 110.44) (Ord. passed 3-6-1990)

§ 110.50 DEFICIENCY TO BECOME FINAL.

If the taxpayer fails to request a conference under § 110.49, the deficiency becomes final and the Tax Collector shall proceed to collect the deficiency.
(1994 Code, § 110.45) (Ord. passed 3-6-1990)

§ 110.51 COLLECTION OF DEFICIENCY.

(A) The Tax Collector may use any of the following methods to collect a deficiency:

- (1) Criminal prosecution in accordance with § 110.99;
- (2) Civil penalties in connection with § 110.99;
- (3) Equitable relief in accordance with § 110.99;
- (4) The remedies of levy and sale and attachment and garnishment in accordance with G.S. § 160A-207; and/or

(5) The remedies of levy and sale of real and personal property of the taxpayer within the town in accordance with the provisions of G.S. § 105-109.

(B) Any person who commences or continues to conduct a business taxed under this chapter without payment of the tax is liable for the additional tax of 5% each 30 days imposed by G.S. § 105-109. (1994 Code, § 110.47) (Ord. passed 3-6-1990)

§ 110.52 APPEALS.

(A) Subject to the provisions of this section, a person may appeal to the Privilege License Tax Review Board a decision by the Tax Collector:

(1) That an applicant is not entitled to a privilege license;

(2) That a licensee's privilege license should be revoked;

(3) Concerning the amount of tax owed by an applicant; and/or

(4) That a person has not paid the amount of tax due for the current license year or any prior years.

(B) An appeal may be taken only if the applicant has properly pursued and exhausted the right to have a conference with the Tax Collector on any of the matters specified in division (A) above.

(C) An appeal is taken by filing with the Tax Collector a written notice of appeal. This notice of appeal must be filed not later than 10 days after the appellant is served with the record of the conference, as provided in § 110.30 or § 110.51.

(D) The Privilege License Tax Review Board shall hear and decide the appeal within 30 days after notice of appeal is filed, unless the hearing is continued for good cause. The appellant shall be given at least 5 working days' notice of the date and time of the hearing and shall be served with a written

copy of the Board's decision following the hearing. The burden of establishing the correctness of the Tax Collector's decision shall be on the Tax Collector.

(E) The Review Board shall consist of the Mayor and members of the Board of Alderpersons, sitting ex officio. The Board may choose its own Chairperson and adopt its own rules of procedure, except that 3 members shall constitute a quorum and decisions shall be made by a majority of those present and voting. (1994 Code, § 110.48) (Ord. passed 3-6-1990)

§ 110.99 PENALTY.

(A) A violation of § 110.03 constitutes a misdemeanor punishable as provided in G.S. § 14-4 (see § 10.99(A) of this code of ordinances). Payment of a fine imposed in criminal proceedings pursuant to that section does not relieve a person of liability for taxes imposed under this chapter.

(B) The town may seek appropriate equitable relief from a court of competent jurisdiction to prevent or redress violations of this chapter.

(C) Each day a violation of § 110.03 or § 110.47 exists after the person has been notified of the violation shall constitute a separate and distinct offense.

(D) This chapter may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section. (1994 Code, § 110.99) (Ord. passed 3-6-1990)

APPENDIX A: SCHEDULE OF LICENSE TAXES

<i>Business</i>	<i>Amount</i>
Advertising - handbills	\$20
Antique and gift shop	\$20
Art supply dealers	\$20
Auto equipment dealers, wholesale*	\$15
Auto service stations*	\$3.75
Bakery, retail	\$20
Bar, tap room, lounge (in addition to alcoholic beverage license as required)	\$150
Barber shop*	\$2.50 per employee
Beauty shop	\$2.50 per employee
Beer - off premises	\$5
Bicycle dealers*	\$10
Billiard and pool tables*	Not to exceed \$25
Blank cartridge pistols*	\$50
Bookstores	\$20
Building materials	\$20
Cabarets and/or nightclubs (no dancing or floor shows)	\$150
Cabarets and/or nightclubs (with dancing)	\$300
Campground, trailer park*	\$12.50
Carpenter shop	\$20
Carpet and rug cleaners	\$20
Cartridges*	\$5
Ceramics	\$20
Chain stores*	\$50
Cigarette, cigar, tobacco dealers*	\$4
Clothing stores	\$20

<i>Business</i>	<i>Amount</i>
Collection agency*	\$50
Concrete dealers	\$20
Contractors, building*	\$10
Dairies or creameries	\$20
Day-care facilities	Same fees as state (see G.S. § 110-93)
Delivery of packages and parcels	\$20
Dental laboratory	\$20
Department store	\$20
Drug store	\$20
Dry cleaner*	\$25
Electric supply company	\$20
Engraver and lithographer	\$20
Entertainment*	\$10
Express company*	\$20
Exterminator	\$20
Fabric shop	\$20
Farm machinery	\$20
Feed store	\$20
Fertilizer dealer	\$20
Fireworks	\$20
Fish and oyster dealer	\$20
Flea market*	\$100
Floor finisher	\$20
Florist	\$20
Fortune teller, palmist, and the like	\$200
Fruit, vegetable, and produce stand	\$20
Furniture store	\$20

<i>Business</i>	<i>Amount</i>
Gas; bottled and bulk	\$20
Gasoline dealer*	\$25
Golf course	\$20
Grocery store	\$20
Hardware store	\$20
Hobby or pet shop	\$20
Hotel, motel*	\$1 per room
Ice cream dealer and manufacturer*	\$2.50
Ice dealer and manufacturer	\$20
Instruction of dance, music, or exercise	\$20
Insulating company	\$20
Interior decorating	\$20
Itinerant merchant*	\$100
Jewelry store	\$20
Knitting mill	\$50
Knives, daggers*	\$200
Laundry*	\$50
Loan company*	\$100
Locksmith	\$20
Lumber broker and agent	\$20
Machine shop	\$20
Manufacturer	\$50
Meals	\$40
Merchant, dealer (retail)	\$20
Millinery shop	\$20
Mobile home dealer	\$50
Motorcycle dealer*	\$12.50

Long View - Business Regulations

<i>Business</i>	<i>Amount</i>
Motor vehicle dealer*	\$20
Movie rental	\$20
Music machine	\$5 per machine
Musical instruments*	\$5
News stands	\$20
Newspaper publishing	\$20
Nursery (plants)	\$20
Office supplies	\$20
Outdoor advertising*	\$10
Painter	\$20
Peddler of fruits, vegetables, and the like*	\$12.50
Peddler on foot*	\$10
Peddler with vehicle*	\$25
Photo engraving	\$20
Pistol dealer*	\$50
Plumber, heating contractor, and electrician*	\$12.50
Printing company	\$20
Repair shop	\$20
Restaurant, café, cafeteria	\$.50 per chair, \$2.50 minimum
Roof patcher	\$20
Shoe shop	\$20
Sign painting and repair	\$20
Skating rink*	\$10
Soda fountain*	\$4
Soft drink stand and bottled drinks*	\$4
Storage warehouse	\$20
Sundries* (selling sandwiches not taxed as restaurant)	\$4

<i>Business</i>	<i>Amount</i>
Sundries* (vending machines)	\$4
Swimming pool*	\$10
Tailor	\$20
Taxicab*	\$15 per vehicle
Telegraph company	\$10
Undertaker and coffin dealer	\$25
Video game*	\$25
Welder	\$20
Wine - off premises*	\$10
NOTES TO TABLE:	
* - License tax subject to state limits	

(1994 Code, Chapter 110, App. A) (Ord. passed 3-6-1990; Am. Ord. 11-03, passed 8-5-2003)

CHAPTER 111: ALCOHOLIC BEVERAGES

Section

General Provisions

111.01 Consumption of beer in public

GENERAL PROVISIONS

§ 111.01 CONSUMPTION OF BEER IN PUBLIC.

(A) No person shall consume, serve, or drink beer, wine, whiskey, or any other alcoholic beverage or intoxicating liquor of any kind at, in, or upon the following places:

(1) Any public street, highway, alley, driveway, or other area which the public is prohibited from using leading from any public street or highway to any place of business or other place where the public is not prohibited from entering;

(2) Any parking lot or parking area which the public is not prohibited from using, specifically including parking lots and areas provided by industrial, commercial, business, and governmental establishments and agencies; or

(3) The premises of, and any area owned or controlled by, any person, firm, or industrial, commercial, business, or governmental establishment or agency, except:

(a) Residences and related places described by G.S. § 18B-300;

(b) Social establishments described in G.S. § 18B-300;

(c) Facilities used as special occasions described in G.S. § 18B-300;

(d) Restaurants and related places as described in G.S. § 18B-300; and/or

(e) Premises licensed for consumption on the premises of malt beverages and wines, as provided in G.S. Chapter 18B; provided, those exceptions shall apply only within the hours of legal consumption and under the conditions allowed by law and pursuant to lawfully issued permits for consumption of the particular beverage being consumed at the particular place and time and not otherwise.

(B) Any person violating this section, any person who aids, abets, encourages, assists or contributes to the consumption and any person who, having control of the premises where the consumption occurs in violation of this section, willfully permits or allows the consumption to occur shall be guilty of a misdemeanor.

(1994 Code, § 111.01) (Ord. passed 1-7-1975)
Penalty, see § 10.99

CHAPTER 112: COMMUNITY ANTENNA TELEVISION SYSTEMS

Section

General Provisions

- 112.01 Purpose
- 112.02 Definitions
- 112.03 Permits; installation; service
- 112.04 Operational requirements
- 112.05 Operational guidelines
- 112.06 Programming
- 112.07 Conflict of laws
- 112.08 Violations
- 112.09 Rights reserved to town

Franchises

- 112.20 Required; application
- 112.21 Acceptance; indemnification; effective date
- 112.22 Remuneration to town
- 112.23 Duration; termination; transfer
- 112.24 Authority granted; duties
- 112.25 Use of streets
- 112.99 Penalty

GENERAL PROVISIONS

§ 112.01 PURPOSE.

For the better protection of the public interest, health, safety, welfare, and convenience, the following rules and regulations are hereby adopted, setting forth the conditions, requirements, and limitations under which a person may construct, have constructed for him or her, operate and maintain a community antenna television system and engage in

the business of providing a community antenna television service in the town.
(1994 Code, § 112.01)

§ 112.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CATV. Community antenna television.

COMMUNITY ANTENNA TELEVISION SERVICE (CATV SERVICE). The business of providing an improved television reception service to the public for compensation, by means of a master antenna and cables. As a part of the service, AM and FM radio program material received over the air, background music, news, weather, and other information, including public service programming, and civil defense type information as required, shall be furnished to all subscribers without additional charge.

COMMUNITY ANTENNA TELEVISION SYSTEM (CATV SYSTEM). Any facility which:

(1) In whole or in part receives, directly or indirectly, over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by 1 or more television stations and AM and FM radio stations, and distributes those signals by wire or cable to all subscribers; and/or

(2) Distributes by wire or cable, news, weather, and other information, including public service programming and civil defense type

information as required, as a part of CATV to all subscribers without charge.

F.C.C. Federal Communications Commission.

FRANCHISE. Any authorization granted hereunder in terms of a franchise, privilege, permit, license, or otherwise to construct or have constructed, operate, and maintain a CATV system in the town for the purpose of providing a CATV service to citizens of the town.

GRANTEE. The person to whom or which a franchise is granted by the Board of Alderpersons under this chapter and the lawful successor, transferee, or assignee of the person.

GROSS RECEIPTS. All revenue derived directly or indirectly by a grantee, its affiliates, subsidiaries, parents, and any person in which a grantee has a financial interest, from or in connection with the operation of a CATV system in the town including, but not limited to, the compensation received by the grantee from subscribers in the town, with no deductions.

PROPERTY OF GRANTEE. All property owned or installed or used by a grantee in the operation of a CATV system or service in the town under the authority of a franchise granted pursuant to this chapter.

STREET. The surface of and space above and below any publicly owned or maintained property or right-of-way, street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, or drive, no or hereafter existing as the within the town and lawfully usable for public travel.

SUBSCRIBER. Any person or receiving, for any purpose, the CATV service of a grantee.

(1) **COMMERCIAL SUBSCRIBER.** A hotel, motel, television dealer, and repair shop.

(2) **PUBLIC SUBSCRIBER.** The town and any of its buildings use for governmental

purposes. It shall include each public or private school within the franchise area using the service.

(3) **RESIDENTIAL SUBSCRIBER.** A purchaser of service delivered to an individual dwelling unit, including residential apartment units, condominiums, townhouses, detached houses, and the like, whether purchased by the occupant, owner, or operator of the dwelling unit.

(1994 Code, § 112.02) (Ord. passed 9-4-1979)

§ 112.03 PERMITS; INSTALLATION; SERVICE.

(A) Within 30 days after acceptance of any franchise, the grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, licenses, and authorizations required by duly constituted regulatory agencies having jurisdiction over the operation of CATV systems and service.

(B) Within 60 days after obtaining all necessary permits, licenses, and authorizations, the grantee shall commence construction and installation of the CATV system.

(C) Within 8 months after the commencement of construction and installation of the system, the grantee shall proceed to render service to subscribers and in the completion of the system, shall be pursued with reasonable diligence thereafter. In any event, within 1 year after the F.C.C. issues its certificate of compliance, the grantee shall extend energized trunk cable to a least 25 % of the franchise area.

(1) The cable shall be extended to at least 25 % of the area per year thereafter until not less than 90 % of the homes in the area are covered by the cable.

(2) In the event potential subscribers in a sparsely settled section of the area shall request service and the grantee shall be of the opinion that the small number of subscribers shall make it

economically unfeasible to provide the service, both the potential subscriber and the grantee shall appear before the Town Administrator and state their respective positions. The Town Administrator shall determine upon which terms the service shall be extended to the subscriber, including, if the Administrator shall so determine, the reasonable contribution from the subscriber to the cost of the extension.

(D) Failure on the part of the grantee to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein, or failure to commence rendering service to subscribers within 18 months after acceptance of the franchise, shall be grounds for termination of the franchise under and pursuant to the terms of § 112.23. The town may extend the time for the commencement and completion of construction and the installation of service for additional periods in the event the grantee, acting in good faith, experiences delays by reason of circumstances beyond its control.

(E) The grantee shall file a map with the town on or before January 31 of each year, showing the areas and locations of the town being served by the same system and the location and identification of component parts of the system, the map being accurate as to the end of the calendar year immediately before the date of filing.
(1994 Code, § 112.03) Penalty, see § 112.99

§ 112.04 OPERATIONAL REQUIREMENTS.

(A) The grantee shall install and maintain a CATV system which shall be in accordance with the highest and best accepted standards of the industry to the end that subscribers shall receive the best possible service. In addition, the grantee shall comply with all requirements of duly constituted regulatory agencies having jurisdiction over CATV or the operator of CATV systems.

(B) When any portion of the CATV system is to be installed on public utility poles and facilities, a certification that agreements for the joint use have been entered shall be filed with the Town Clerk.

(C) The grantee shall maintain a nearby office for the purpose of handling subscriber complaints and providing prompt maintenance service.
(1994 Code, § 112.04) Penalty, see § 112.99

§ 112.05 OPERATIONAL GUIDELINES.

The grantee shall abide by all federal laws and regulations relative to the operation of a CATV system.
(1994 Code, § 112.05) Penalty, see § 112.99

§ 112.06 PROGRAMMING.

The grantee will provide as many off-air signals of programming as are permitted by F.C.C. regulations and will provide as many channels of service as are required by F.C.C. regulations.
(1994 Code, § 112.06) Penalty, see § 112.99

§ 112.07 CONFLICT OF LAWS.

Where a conflict exists between the provisions of this chapter and regulations of the F.C.C. respecting the operations of the grantee, the latter will control.
(1994 Code, § 112.07) Penalty, see § 112.99

§ 112.08 VIOLATIONS.

(A) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise with any part of a franchised CATV system within this town for the purpose of taking or receiving television signals, radio signals, pictures, programs, or sound.

(B) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a franchised CATV system within this town for the purpose of enabling himself, herself, or others to receive any television signal, radio signal, picture, program, or sound without payment to the owner of the system.

(C) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove, or injure any cables, wires, or equipment used for distribution of television signals, radio signals, pictures, programs, or sound.

(1994 Code, § 112.08) Penalty, see § 112.99

§ 112.09 RIGHTS RESERVED TO TOWN.

(A) The town hereby reserves the right to amend any section or part of this chapter.

(B) At all reasonable times, the grantee shall permit any duly authorized representative of the town:

(1) To examine any and all financial records maintained by or under the control of the grantee, relating to all revenue obtained by it from its operations under the franchise; and

(2) To inspect any and all installations owned, maintained, or used by the grantee in its operation under its permit including all towers, cables, and other components of the grantee's CATV system.

(C) The grantee shall indemnify and save harmless the town, its officers and employees from and against any and all claims, demands, actions, suits, and proceedings by others and against all liability to others arising out of the exercise or enjoyment of its franchise, including but not limited to any liability for damages by reason of or arising out of any failure of the grantee to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the grantee's CATV system and against any loss, cost, expense, and damages resulting therefrom, including reasonable attorney's fees.

(D) Concurrently with the filing of the written acceptance, as required in § 112.21, the grantee shall file with the Town Clerk and at all times thereafter maintain in full force and effect for the term of the permit or any renewal thereof a good, sufficient liability insurance policy providing \$300,000 coverage for personal injuries to each person, \$500,000

coverage for all personal injuries in each accident, and \$300,000 coverage for all property damage in each accident. The policy shall name the town as an additional insured and shall be for the purpose of insuring the town against any and all legal liability, court costs, and costs of defense for any action, including attorney fees, cause of action, claim or demand for personal injury, death or property damage arising out of the operations of the grantee under this chapter or its permit.

(E) Concurrently with the filing of the written acceptance, as required by § 112.21, the grantee shall file with the Town Clerk, and at all times thereafter maintain in full force and effect for the term of the franchise or any renewal thereof, cash bond (deposit) in the amount of \$1,000 or good and sufficient bond in the penal sum of \$1,000, executed by a surety company authorized and qualified to do business in the state. This bond shall be conditioned upon the faithful performance by the grantee of the obligations imposed by the provisions of this chapter and the franchise. This requirement is in addition to and not in lieu of the requirements of division (D) above.

(F) The grantee shall pay to the town a sum of money sufficient to reimburse it for all publication expenses, including costs of printing ordinances in this code, incurred by it in connection with the granting of a franchise pursuant to the provisions of this chapter. The payment shall be made within 30 days after the town furnishes the grantee with a written statement of the expenses.

(1994 Code, § 112.09) Penalty, see § 112.99

FRANCHISES

§ 112.20 REQUIRED; APPLICATION.

(A) It shall be unlawful for any person to engage in or otherwise participate in the operation or maintenance of a CATV system in the town unless the person or the person for whom the work is being done first shall have obtained and shall hold a currently

valid franchise granted pursuant to the provisions of this chapter. It also shall be unlawful for any person to engage in the business of providing a CATV service in the town unless the person first shall have obtained and shall hold a currently valid franchise granted pursuant to the provision of this chapter. This chapter shall not apply to any person who provides only master antenna service to property owned or leased by the person.

(B) A person seeking issuance of a franchise hereunder shall file a written application, in duplicate, with the Town Administrator. The application shall contain the following information:

(1) The name and address of the applicant. If the applicant is a partnership, the name and address of each partner. If the applicant is a corporation, the application also shall state the names and addresses of its directors and officers and shall include a certified copy of the articles of incorporation;

(2) A statement showing the applicant's experience, if any, in establishing a CATV system and in providing a CATV service;

(3) A statement showing the applicant's financial ability to complete the construction and installation of the proposed CATV system and to provide a CATV service. All financial data submitted in compliance with the requirement of this division (B)(3) shall be confidential and shall not be regarded as public information;

(4) A statement and description of the CATV system proposed to be constructed, installed, maintained, or operated by the applicant, the manner in which the applicant proposed to construct, install, maintain, and operate it and particularly the extent and manner in which existing or future poles or other facilities of other public utilities will be used for the system;

(5) A copy of any arrangement, agreement, or contract, if existing, between the applicant and any public utility providing for the use of facilities of the public utility, such as poles, lines, cables, or conduits;

(6) A statement setting forth all agreements and understandings, whether written, oral, or implied, existing between the applicant and any person, firm, or corporation with respect to the ownership, control, or transfer of the proposed franchise or the proposed CATV system and service. If a franchise is granted to a person posing as a front or as the representative of another person and the information is not disclosed in the original application, the franchise shall be deemed void and of no force and effect;

(7) A statement or schedule of proposed rates and charges to residential and commercial subscribers for installation and services; and

(8) A statement setting forth details as to service the applicant proposes to furnish to public subscribers.

(C) Each application shall be accompanied by a non-refundable case fee of \$500, which shall be paid to the Town Finance Director.

(D) Upon consideration of any application, the town shall determine the applicant qualifications to construct, operate, and maintain a CATV system and to provide a CATV service in accordance with the provision of this chapter, using the following criteria.

(1) *Installation plan.* Preference may be given an installation plan that would provide flexibility needed to adjust to new developments, maintenance practices, and services that would be available to the subscriber and the community immediately and in the future.

(2) *Rate schedule.* Preference may be given to applicants with the most reasonable installation and subscriber rate schedule.

(3) *Financial soundness and capability.* The evidence of financial ability required in the applicant's proposal shall be so as to assure ability to complete the entire system within a minimum of 5 years of the date the franchisee receives the F.C.C. certificate of compliance.

(4) *Demonstrated experience in operating a CATV system under town franchise.* Preference may be given upon evidence of the applicant's experience in operating a CATV system under town franchise, where the evidence would show or tend to show or confirm the ability of the applicant to furnish sufficient and dependable service to the potential public and private users.

(E) If the town determines the applicant is so qualified it may, by ordinance, grant a nonexclusive franchise to the applicant.

(1994 Code, § 112.20) Penalty, see § 112.99

§ 112.21 ACCEPTANCE; INDEMNIFICATION; EFFECTIVE DATE.

(A) Within 60 days after the town has taken final action to approve the granting of a franchise, the grantee shall file a written acceptance of the franchise, acknowledged before a notary public, with the Town Clerk. The acceptance shall acknowledge that the grantee agrees to be bound by and to comply with the provisions of this chapter and the franchise and shall be in the form and content as to be satisfactory to and approved by the Town Attorney.

(B) Concurrently with the filing of the written acceptance, the grantee shall file with the Town Clerk the bond and insurance policies as required by § 112.09.

(C) The effective date of the franchise shall be the date on which the grantee files the acceptance, bond, and insurance policies as required herein.

(1994 Code, § 112.21) Penalty, see § 112.99

§ 112.22 REMUNERATION TO TOWN.

(A) Upon acceptance of a franchise and in consideration of the rights and privileges granted thereunder, the grantee shall pay to the town an initial franchise fee equal to \$25 per month for each month or major fraction of a month remaining between the date of acceptance of the franchise and the next June 30. Thereafter, during the life of the franchise, the

grantee shall pay to the town on or before July 1 each year a franchise fee to cover the 12-month period beginning July 1 and ending the following June 30, the amount of the franchise fee to be \$200 or 3% of the grantee's gross receipt derived from its operation in the town for the grantee's most recent fiscal year ending on or before April 15, whichever is greater. The fee for the last year of the grantee's franchise shall be computed on the same basis even though the term of the franchise is due to expire during the year.

(B) Within 120 days after the expiration of the grantee's fiscal year, the grantee shall file with the town a financial statement prepared by a certified public accountant or other person satisfactory to the town, showing in detail the gross receipts, as defined herein, of the grantee during the fiscal year. The payment of this fee is in addition to any ad valorem taxes which the town may be entitled to receive by reason of the existence of the grantee's real and personal property.

(C) At any time during the 3 fiscal years following the payment of the annual fee, the town shall have the right to inspect the grantee's records showing the gross receipts from which these payments are computed and the right of audit and recomputation of any and all amounts under this chapter. Acceptance of payments hereunder shall not be construed as a release or as an accord and satisfaction of any claim the town may have for further or additional sums payable under this chapter or for the performance of any other obligations hereunder.

(1994 Code, § 112.22) Penalty, see § 112.99

§ 112.23 DURATION; TERMINATION; TRANSFER.

(A) The franchise shall be nonexclusive and shall be for a term not to exceed 15 years from the effective date thereof, as specified in § 112.21.

(B) Except for a mortgage or assignment to secure a loan or loans to construct and operate the system, the grantee shall not sell or transfer its system and the franchise granted herein without first securing approval of the town for the sale or transfer.

(C) In the event the use or any part of the CATV system is discontinued for any reason, or the franchise has been terminated, canceled, or has expired, the grantee promptly shall remove from the streets or public places all property and poles of the system, other than those which the Town Administrator may permit to be abandoned in place, and as directed by the Town Administrator shall either restore the street or pay the town for restoring the street or other area from which the property has been removed to a condition for public use acceptable to the Town Administrator. Any property remaining in place 6 months after the discontinuance, termination, or expiration of the franchise shall be considered permanently abandoned and may be appropriated by the town or removed by it at the expense of the grantee.

(1994 Code, § 112.23) Penalty, see § 112.99

§ 112.24 AUTHORITY GRANTED; DUTIES.

(A) The grantee of any franchise issued pursuant to the provisions of this chapter, subject to conditions and restrictions set out in this subchapter, shall be authorized to construct or have constructed, operate, and maintain a CATV system and to engage in the business of providing a CATV service in the town and for the purpose to erect, install, construct, repair, replace, reconstruct, maintain, and retain in, over, on, under, upon, across, and along any public street the poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenance to the CATV system; and, so to use, operate and provide similar facilities or properties lawfully rented or leased from other persons, including but not limited to any public utility or other grantee franchised or permitted to do business in the town.

(B) It shall be unlawful for any telephone, telegraph, or power company or any other public utility company or person operating in the town to lease or otherwise make available to any other person any poles, lines, facilities, equipment, or other property for use in connection with the operation of a

CATV system or service unless the other person holds a currently valid franchise granted pursuant to the provision of this chapter.

(C) The grantee may make a charge to subscribers for installation or connection to its CATV system and a fixed monthly charge for service in accordance with the schedule of rates and charges filed with the town. No increase in rates and charges may be made unless the grantee has filed a schedule of the charges with the Town Clerk at least 60 days in advance of the effective date thereof and the Board of Alderpersons has approved the increase.

(D) The grantee shall not engage in the sale, service, repair, rental, or leasing of television receivers, radio receivers, parts or accessories and shall not require or attempt to influence its subscribers to deal with any particular person in regard thereto.

(E) Construction and maintenance of the CATV system, including house connections, shall be in accordance with the provision of the National Electrical Safety Code of the American Insurance Association and shall be in accordance with all applicable ordinances and regulations of the town.

(F) The grantee shall not have the authority to engage in offering pay television or other service for additional charges without further authorization and for an amendment of the franchise to be granted by the Board of Alderpersons at the time the need and desire for the services shall be proven to exist.

(G) (1) The grantee shall provide, without charge, 1 outlet to each town-owned building, fire station, police station, and public and private school that is passed by its cable. If more than 1 outlet is requested at any of the locations, the grantee shall install the additional outlet or outlets at the cost of time and materials only. There will be no monthly service charge at those locations.

(2) The grantee shall make its studio facilities, including color cameras and other equipment, available for use by public and private schools for local origination program and for closed

circuit educational films, subject to reasonable rules and regulations pertaining to the use by the grantee, and in that manner as not to unduly interfere with the cable television operations of the grantee.

(H) The grantee shall provide, free of charge, at least 1 dedicated noncommercial public access channel to be available on a nondiscriminatory basis.

(I) The grantee shall reserve at least 1 channel solely for educational use on a developmental basis and upon completion of the basic trunk line, for the next 5 years thereafter, at least 1 channel will be made available free of charge for those purposes.

(J) The grantee shall reserve at least 1 channel solely for use by state and local governments on a development basis, and upon completion of the basic trunk line, for the next 5 years thereafter, at least 1 channel will be made available free of charge of that use.

(K) The grantee shall make available to the town a local government access channel and no charge shall be made of the construction and operation of the coaxial cable between the town studio and the CATV system head-end. There shall be no charge to the town for those services.

(L) All equipment installed by the grantee shall be as advanced as the current state of production technology will allow. The grantee thereafter shall upgrade its facilities, equipment, and service so its system remains as advanced as is practicable.

(M) The grantee shall not make or grant any preferences or advantages to any subscriber or other person to any prejudice or disadvantage.

(1) This provision shall not prohibit promotional campaigns to stimulate subscriptions to the system or other legitimate uses thereof, nor shall it prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming with the classification shall be entitled.

(2) All promotional campaigns to be used during the first year following the granting of the franchise shall be set out in the applicant's application or filed with the Town Clerk within 30 days following grant of the franchise. A statement as to the terms of all other promotional campaigns shall be filed with the Town Clerk before the effective date of the offering of the promotional rates.

(N) All of the terms, conditions, and requirements of this chapter shall be deemed an integral part of each and every franchise granted hereunder, to the same extent as though set forth in full therein.

(1994 Code, § 112.24) Penalty, see § 112.99

§ 112.25 USE OF STREETS.

(A) There is hereby granted the right, privilege, and authority to a grantee to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables, and other equipment and facilities from any and all holders of public licenses, permits, and franchises within the corporate limits of the town and to use the towers, poles, lines, cables, and other equipment and facilities, subject to all existing and future ordinances and regulations of the town.

(B) The installation of lines, including service drops to subscribers, shall be made underground in areas where telephone and power lines are underground. The underground installation shall be made through use of conduits, openings, pipes, cables, or other installations which have been made already by other utilities and without making new excavations or taking up or disturbing any pavement, sidewalks or other improvement of any street, except to the extent it is absolutely necessary to install service drops to subscribers and the installation shall be done in a manner approved by the Town Administrator.

(C) The grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place or remove from the street or other public place any property of the grantee when required by the town by reason of traffic conditions,

public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines or any other type of structures or improvements and the town shall not be liable for any disturbance of the grantee's installation resulting therefrom. The grantee shall carry out the instructions and directions of the Town Administrator whenever it is necessary to raise or remove any of the grantee's wires or cables temporarily, for the purpose of moving or removing buildings or structures on the public streets of the town and shall perform tree trimming or other maintenance work as shall be required or as shall be directed by the Town Administrator, all at the grantee's expense.

(D) Whenever a grantee takes up or disturbs any pavement, sidewalk, or other improvement of any street, it shall be replaced and the surface restored in as good condition as before entry, all in accordance with town ordinances, regulations, technical standards, and fee schedules.

(1) The conditions of the replacement and restoration shall be guaranteed for a period of 1 year following completion of the work and in the event any of the work shall fail within the period of 1 year, it again shall be replaced.

(2) Any opening or obstruction in the streets shall be guarded and protected at all times by the placement of adequate barriers, fences, or boardings, the bounds of which shall be clearly designated by warning lights of approved types.
(1994 Code, § 112.25) Penalty, see § 112.99

§ 112.99 PENALTY.

The violation of any provision of this chapter shall be a misdemeanor punishable by a fine of \$50 and imprisonment of up to 30 days. The existence of this penalty is exclusive of civil remedies for enforcement as otherwise provided by law.
(1994 Code, § 112.99)

CHAPTER 113: MESSAGE ESTABLISHMENTS

Section

General Provisions

- 113.01 Purpose; exemptions
- 113.02 Definitions
- 113.03 Massage of private parts for hire prohibited
- 113.04 Treatment of opposite sex restricted
- 113.05 Patronage by minors; hiring of minors
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Licenses

- 113.20 Required for all massage business operators
- 113.21 Required for massagists
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- 113.23 Posting
- 113.24 Notice; hearing
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GENERAL PROVISIONS

§ 113.01 PURPOSE; EXEMPTIONS.

(A) To protect the public health, safety, welfare, and morals, the following privilege license provisions and regulations are ordained for the privilege of carrying on the business, trades, or professions commonly known as massage parlors, health salons, physical culture studios, or similar establishments wherein massage or physical manipulation of the human body is carried on or practiced.

(B) The provisions of this chapter shall not apply to a regularly established and licensed hospital, sanitarium, or nursing home, nor to an office or clinic operated and regularly used by a duly qualified and licensed medical practitioner, osteopath, or chiropractor in connection with the practice of medicine, chiropractic, or osteopathy.
(1994 Code, § 113.01)

§ 113.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUSINESS or PROFESSION OF MESSAGE.

The message or treatment of any person for a fee or in expectation of a gratuity from the person massaged.

MESSAGE. Manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping by hand or mechanical device.

MESSAGE BUSINESS.

(1) Any establishment or business wherein message is practiced or any establishment which offers in the form of message, exercise, or similar services in combination to club members or to the public for a charge.

(2) The term does not include:

(a) Hospitals, nursing homes, medical clinics, or the offices or quarters of a physician, surgeon, or chiropractor;

(b) Exercise clubs exclusively for members or clientele of 1 sex alone where the service without massage in any form is performed by persons of the same sex as members of the clientele; and/or

(c) Barber shops and beauty salons.

MASSAGIST. Any person engaged in the business or profession of massage.

PRIVATE PARTS. The penis, scrotum, mons veneris, vulva, or vaginal area.
(1994 Code, § 113.02)

§ 113.03 MASSAGE OF PRIVATE PARTS FOR HIRE PROHIBITED.

It shall be unlawful for any person to massage or to offer to massage the private parts of another for hire.

(1994 Code, § 113.03) Penalty, see § 113.99

§ 113.04 TREATMENT OF OPPOSITE SEX RESTRICTED.

(A) The treatment of persons of the opposite sex under and by virtue of the granting of a license for massage parlors, health salons, and related businesses shall be restricted.

(B) (1) It shall be unlawful for any person holding a license under and by virtue of this chapter to treat a person of the opposite sex except upon the signed order of a licensed physician, chiropractor, or registered physical therapist, which order shall be dated and shall specifically state the number of treatments not to exceed 10.

(2) The date and the hour of each treatment given and the name of the operator shall be entered on the order by the establishment where the treatments are given and shall be subject to inspection by the Sheriff at any reasonable time.

(1994 Code, § 113.04) Penalty, see § 113.99

§ 113.05 PATRONAGE BY MINORS; HIRING OF MINORS.

(A) No person licensed as a masseur or masseuse under this chapter shall massage or treat any person under the age of 18 years upon the licensed premises, except upon written order by a licensed physician, osteopath, chiropractor, or registered physical therapist, the order being dated and in the possession of the masseur or masseuse giving the massage or treatment. A violation of this division (A) shall be grounds for revocation of any license issued to the violator pursuant to this chapter.

(B) No person, corporation, partnership, or association licensed under this chapter shall allow, permit, or condone the massage or treatment of any person under the age of 18 years upon the licensed premises, except upon written order by a licensed physician, osteopath, chiropractor, or registered physical therapist, the order being dated, and a true copy of it being in the possession of the licensee before administration of any massage or treatment. A violation of this division (B) shall be grounds for revocation of any license issued to the violator, pursuant to this chapter.

(C) No person, corporation, partnership, or association licensed pursuant to this chapter shall employ any person under the age of 18 years in the operation of a massage business.
(1994 Code, § 113.05) Penalty, see § 113.99

§ 113.06 HOURS OF OPERATION.

(A) No person licensed as a massagist hereof shall massage or treat any person, or engage in the business or profession of massage, before 9:00 a.m. or after 11:00 p.m., prevailing time.

(B) No person, corporation, partnership, or association licensed under this chapter shall admit customers or prospective customers, or remain open for business, or allow, permit, or condone any massage or treatment of any person upon the premises before 9:00 a.m. or after 11:00 p.m., prevailing time.

(C) No person in charge of managing a massage business upon the premises shall allow, permit, or condone any massage or treatment of any person before 9:00 a.m. or after 11:00 p.m. prevailing time. (1994 Code, § 113.06) Penalty, see § 113.99

LICENSES

§ 113.20 REQUIRED FOR ALL MASSAGE BUSINESS OPERATORS.

(A) No person, partnership, corporation, or association shall operate a massage business within the corporate limits of the town unless the person, partnership, corporation, or association first has applied for and received the privilege license provided by this section.

(B) Every application for the privilege license prescribed herein shall be upon a form approved by the Town Administrator and shall be filed in the office of the Town Clerk. Each application shall be made under oath and shall contain the following information:

(1) If the applicant is a person, the name and residence address of the person; if the applicant is a partnership, corporation, or association, the name and residence address of all persons having any legal or beneficial interest in the application;

(2) The address of the premises where the massage business shall be located;

(3) A complete statement of all convictions of any person whose name is required to be given in division (B)(1) above for any felony, prostitution, or any violation of any law relative to prostitution;

(4) A complete statement of any revocation, by any governmental unit, of any license to operate a massage business or to engage in the business or profession of massage held by any person whose name is required to be given in division (B)(1) above;

(5) A complete statement of any conviction of any person whose name is required to be given in division (B)(1) above, for violation of any statute, law, ordinance, or regulation of any government concerning the operation of a massage business or the business or profession of massage;

(6) The name and address of any massage business or other establishment owned or operated by any person whose name is required to be given in division (B)(1) above wherein the business or profession of massage is carried on; and

(7) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.

(C) The Town Administrator shall transmit a copy of the application to the Police Chief for an investigative report, to the Building Inspector to determine compliance with all zoning and building regulations and ordinances and to the Fire Chief to determine compliance with any law relating to fire protection. Within 45 days, these parties shall report the results of their examinations to the Town Administrator.

(D) An application in proper form, accompanied by all reports required by this section, shall be submitted to the Board of Alderpersons, which shall approve the application if the Board determines:

(1) The application contains no misstatement of fact;

(2) The applicant, or any person having legal or beneficial ownership interest in the applicant, has not been convicted of any crime involving sexual misconduct, including but not limited to G.S. §§ 14-177 through 14-202.1, (offenses against public morality and decency), and G.S. §§ 14-203 through 14-208, (prostitution), or of any federal statute relating to prostitution, or of any violation of any law or ordinance of any governmental unit concerning or related to the business or profession of massage;

(3) The applicant conforms to all requirements of applicable zoning, building, and fire prevention codes; and

(4) The applicant or any person having a legal or beneficial ownership interest in the applicant has not, for the 3-year period preceding the application, had a previously issued license revoked for engaging in the business or profession of massage.

(E) Upon approval of the application by the Board of Alderpersons and upon receipt of a \$100 license fee, the Tax Collector shall issue a privilege license to the applicant.

(F) A license issued pursuant to this section shall be revoked by action of the Board of Alderpersons if the Board determines:

(1) The licensee has violated any provision of this chapter;

(2) The licensee, or any agent of the licensee, employs or permits to be on the premises of the applicant's massage business any person practicing the business or profession of massage who has not been issued the privilege license required by this chapter or whose license under this chapter has been revoked;

(3) The licensee or the legal or beneficial owner of any interest in the licensee is convicted of any crime involving sexual misconduct, including, but not limited to, G.S. §§ 14-177 through 14-208;

(4) Any employee of the licensee is convicted of any felony in connection with his or her employment or is convicted of any crime involving sexual misconduct, including but not limited to G.S. §§ 14-177 through 14-202.1, and G.S. §§ 14-203 through 14-208, or any ordinance related to the massage business; or

(5) The licensee violates any zoning, building, or fire prevention ordinance.

(G) A license issued pursuant to this chapter is void if the licensee moves or ceases operating a massage parlor at the location required to be stated in the application for license pursuant to this chapter. (1994 Code, § 113.15) Penalty, see § 113.99

§ 113.21 REQUIRED FOR MASSAGISTS.

(A) No person shall engage in the business or profession of massage unless he or she first has applied for and received the privilege license provided by this section.

(B) The application for the license required by this section shall be upon a form approved by the Town Administrator and shall be filed with the office of the Town Clerk. It shall be given under oath and shall contain the following information:

(1) The name, age, and residence address of the applicant;

(2) A complete statement of the previous business or occupation of the applicant for the 2 years immediately preceding the date of application, including any massage establishment experience;

(3) A complete statement of all convictions of the applicant for a felony or misdemeanor or violation of a local ordinance;

(4) A complete statement of any revocation of any license granted by any governmental unit to the applicant to engage in the business or profession of massage; and

(5) The date and place of applicant's birth, the name of the applicant's parents, and the residence address or addresses of the applicant for the 5 years immediately preceding the date of application.

(C) (1) The applicant shall submit, as part of the application required in division (B) above, the following:

(a) Fingerprints of the applicant taken by the Police Chief;

(b) Two recent photographs of the applicant's head and shoulders, of a size and quality prescribed by the Town Administrator; and

(c) A medical certificate signed by a physician, licensed to practice in North Carolina, within 7 days of the date of the application. The certificate shall state that the applicant was examined by the certifying physician and that the applicant is free of communicable disease.

(2) The additional information required by this division shall be provided at the applicant's expense.

(D) The Town Administrator shall transmit a copy of the application to the Police Chief for an investigative report. The Police Chief shall, within a reasonable time, not to exceed 45 days, report the results of the investigation to the Town Administrator.

(E) An application, in proper form, shall be submitted to the Board of Alderpersons, together with all reports required by this section. The Board shall approve the application if it determines:

(1) The applicant is at least 18 years of age;

(2) The application contains no misstatements of fact;

(3) The applicant has not been convicted of any crime involving sexual misconduct, including, but not limited to, G.S. §§ 14-177 through 14-202.4, and G.S. §§ 14-203 through 14-208, or of any federal statute relating to prostitution, or violation of any law or ordinance of any governmental unit related to the business or profession of massage;

(4) The applicant, for the 3-year period proceeding the application, has not had revoked a previously issued license for engaging in the business or profession of massage;

(5) The applicant is free from communicable disease as proven by the medical certificate required herein; and

(6) The applicant has not been convicted previously of any violation of any provision of this chapter.

(F) Upon approval of the application by the Board of Alderpersons and upon receipt of a \$50 license fee, the Town Clerk shall issue a privilege license to the applicant.

(G) (1) The Board of Alderpersons shall have authority to direct any person licensed under this section to submit to a medical examination by a licensed physician approved by the Board of Alderpersons.

(a) This authority shall be exercised only when the Board has reason to believe the person has contracted a communicable disease.

(b) Refusal to submit to the examination shall be grounds for revocation of the license, as provided in division (H) below.

(2) Notwithstanding the provisions of this division, every person licensed under this section shall file and continue to file with the Town Administrator a new medical certificate with each application for renewal of the license prescribed by this section. Failure to file those updated certificates shall be grounds for revocation of the license, as provided in division (H) below.

(H) A license issued pursuant to this section shall be revoked by action of the Board of Alderpersons if the Board determines:

(1) The licensee has violated any provision of this chapter;

(2) The licensee is afflicted with a communicable disease;

(3) The licensee has failed to be examined by a licensed physician when required by the Board of Alderpersons pursuant to division (G) above or has failed to file any medical certificate required by division (G) above; or

(4) The licensee has been convicted of a felony or any crime involving sexual misconduct, including, but not limited to, G.S. §§ 14-177 through 14-202.1, Art. 26 (offenses against public morality and decency), and G.S. §§ 14-203 through 14-208, Art. 27 (prostitution), or under any federal statute relating to prostitution or for violation of any law or ordinance of any governmental unit related to the business or profession of massage.

(1994 Code, § 113.16) Penalty, see § 113.99

§ 113.22 REQUIRED FOR ALL EMPLOYEES.

No person, corporation, partnership, or association licensed under this chapter shall allow or permit any person to massage or treat any person upon the premises operated by the licensee unless the person giving the massage or treatment has complied with all requirements of licensing under this subchapter, including periodic medical examinations by a licensed physician. Violation of this section shall be grounds for revocation of the license.

(1994 Code, § 113.17) Penalty, see § 113.99

§ 113.23 POSTING.

(A) Every massagist shall post the license required by this chapter in his or her work area.

(B) Every person, corporation, partnership, or association licensed under this chapter shall display the license in a prominent place.

(1994 Code, § 113.18) Penalty, see § 113.99

§ 113.24 NOTICE; HEARING.

Before the Board of Alderpersons revokes a license issued pursuant to this chapter, or if the Board

determines reasonable grounds exist to deny an application for a license pursuant to this subchapter, it shall cause a written notice to be sent by certified mail to the licensee affected or applicant affected, at the address stated in the license or application. The notice shall advise the affected party of a right to appear before the Board, with or without legal counsel, at a stated time and place, for the purpose of presenting any evidence relevant to the revocation or denial, and for the purpose of hearing all evidence submitted and examining or cross-examining any person providing the evidence.

(1994 Code, § 113.19) Penalty, see § 113.99

§ 113.25 ANNUAL PRIVILEGE.

The licenses required under this subchapter are annual privilege licenses. They shall be due and payable in the same manner and as prescribed for other privilege licenses issued by the town.

(1994 Code, § 113.20) Penalty, see § 113.99

§ 113.99 PENALTY.

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). (1994 Code, § 113.99)

CHAPTER 114: SOLICITORS

Section

- 114.01 Definitions
- 114.02 Exceptions
- 114.03 Permission of homeowner or occupant to enter premises
- 114.04 Refusal to leave premises
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- 114.09 Permit required
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- 114.20 Appeal of decisions

- 114.99 Penalty

§ 114.01 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGENT. A person engaged in telephone canvassing or solicitation, or in a house-to-house canvass demonstrating or taking orders for any goods, wares, or merchandise, or taking orders from samples where goods are to be delivered later.

CANVASSER or SOLICITOR. Any individual, whether or not a resident of the town, soliciting by telephone or traveling, either by foot, wagon, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from state to state, taking or attempting to take orders for sale of goods, wares, or merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed at certain times, or in the future, whether or not the individual has, carries, or exposes for sale a sample of the subject for sale or whether he or she is collecting advance payments on sales or not. Provided, however, that this definition shall include any person who, for himself or herself or for another person, firm, or corporation, hires, leases, uses, or occupies any building, structure, tent, boat, hotel room, lodging house, apartment, shop, or any other place within the town for the sole purpose of exhibiting samples and taking orders for future delivery.

GOODS, WARES, and MERCHANDISE. Includes, but is not to be restricted to, a photograph and coupons to tickets good in whole or in part for a photograph, magazine article, or other merchandise.

ITINERANT PEDDLER or HAWKER. A nonresident of the town, who, by telephone sales or by going from house to house or place to place, exposes for sale and sells goods, wares, and merchandise under the conditions and circumstances stated for a peddler.

PEDDLER. A person who solicits by telephone or who brings goods, wares, and merchandise from outside the town or state, or where the goods, wares, or merchandise are manufactured in the town for sale

at retail and is in this state at the time that all negotiations prior to and at the sale thereof are had, and the goods, wares, or merchandise are not sold in the original packages in interstate commerce, but at retail in small quantities by means of telephone solicitation or house to house, or place to place canvass. Goods ordered or in transit which were so ordered without reference to particular sales shall be deemed to be in the state.

(1994 Code, § 114.01)

§ 114.02 EXCEPTIONS.

Any nonprofit organization, upon petition to the Board of Alderpersons, may be granted a waiver of any of the provisions of this chapter by a majority vote of the Board. The organization shall be restricted in the manner as the Board may direct, but in no event will any restrictions be more than those restrictions contained in this chapter.

(1994 Code, § 114.02)

§ 114.03 PERMISSION OF HOMEOWNER OR OCCUPANT TO ENTER PREMISES.

It shall be unlawful for any person regulated by this chapter to enter upon any private premises without permission or invitation from the occupant or homeowner.

(1994 Code, § 114.03) Penalty, see § 114.99

§ 114.04 REFUSAL TO LEAVE PREMISES.

It shall be unlawful for any solicitor or peddler to refuse or fail to leave any private premises in the town upon being requested by the owner, occupant, or person in charge of the premises.

(1994 Code, § 114.04) Penalty, see § 114.99

§ 114.05 HARASSMENT.

No solicitor or peddler shall vex, annoy, harass, any person by importuning the person to purchase or look at his or her goods or wares.

(1994 Code, § 114.05) Penalty, see § 114.99

§ 114.06 POSTING OF SIGNS.

No solicitor or peddler shall enter in or upon any house, building, or other structure upon any land or property without the prior consent of the owner or occupant thereof where there is placed or posted on the premises in a conspicuous position, at or the usual means of ingress, a sign or other form of notice stating or indicating that owner or occupant forbids or otherwise does not desire persons engaged in soliciting or any similar activity to enter upon premises.

(1994 Code, § 114.06) Penalty, see § 114.99

§ 114.07 ENFORCEMENT.

It shall be the duty of any police officer of the town to enforce the provisions of this chapter against any person found to be soliciting and to require any person seen soliciting or canvassing to produce a solicitor's or canvasser's license if the person is not known by the officer to be duly licensed.

(1994 Code, § 114.08) Penalty, see § 114.99

§ 114.08 RECORD OF PERMITS ISSUED; VIOLATIONS TO BE RECORDED.

(A) The Clerk shall maintain a record of the permits issued and record the reports of any applicable actions therein.

(B) The Chief of Police shall report to the Town Clerk all convictions for violations of this chapter, which shall be entered into the record described in division (A) of this section.

(1994 Code, § 114.09)

§ 114.09 PERMIT REQUIRED.

It shall be unlawful for any solicitor, canvasser, peddler, hawker, itinerant merchant, transient vendor of merchandise, agent to engage in the businesses within the town without first obtaining a permit in compliance with the provisions of this chapter.

(1994 Code, § 114.10) Penalty, see § 114.99

§ 114.10 APPLICATION; FEE FOR INVESTIGATION.

(A) Applicants for permits under this chapter must file with the Town Clerk a sworn application in writing, in duplicate, which shall give the following information:

- (1) Name and description of applicant;
- (2) Permanent home address and full local address of applicant;
- (3) A brief description of the nature of the business and the goods to be sold;
- (4) If employed, the name and address of their employer, together with credentials establishing the exact relationship;
- (5) The length of time in which the right to do business is desired;
- (6) The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where the goods or products are located at the time the application is filed, and the proposed method of delivery;
- (7) A photograph of the applicant taken within 60 days immediately prior to the date of the filing of the application; the photograph shall be 2 by 2 inches showing the head and shoulders of the applicant in a clear and distinguishing manner;
- (8) A statement as to whether the applicant has been convicted of any crime, misdemeanor, or violation of this code or any other ordinances of the town, the nature of the offense, and the punishment of assessed therefor; and

(B) At the time an applicant requests permission to solicit within the town, a fee, as established by the Board of Alderpersons, for each applicant shall be paid to the Town Clerk to cover the cost of the

investigation of the facts stated therein, but in no event shall the application fee be refunded.
(1994 Code, § 114.11)

§ 114.11 INVESTIGATION.

Upon receipt of the completed application by the Town Clerk under § 114.10, the original shall be referred to the Chief of Police who shall cause an investigation of the applicant's business and moral character to be made as he or she deems necessary for the protection of the public good. A minimum of at least 10 days shall be allowed for the investigation.
(1994 Code, § 114.12)

§ 114.12 DENIAL OF PERMIT.

If, as a result of the investigation, the applicant's character is found to be unsatisfactory, the Chief of Police shall endorse on the application his or her disapproval and his or her reasons for the same and return the application to the Town Clerk who shall notify the applicant that his or her application is disapproved and that no permit will be issued.
(1994 Code, § 114.13)

§ 114.13 ISSUANCE; IDENTIFICATION CARD.

(A) If, as a result of the investigation, the character and business responsibility of the applicant are found to be satisfactory, the Chief of Police shall endorse on the application his or her approval. The application, signed by the Chief of Police or his or her designated subordinate, along with a permit (such as identification card), shall be returned by the Chief of Police to the Town Clerk. The Clerk shall, upon payment of the prescribed license fee, if any, deliver to the applicant his or her permit (such as identification card).

(B) The permit (such as identification card) shall contain the following:

- (1) A photograph of the applicant;

(2) The fingerprints of the applicant;

(3) The date of issuance and the date of expiration;

(4) The name and address of the applicant and the business which the applicant is representing;

(5) A statement that the permit may be revoked at the discretion of the Clerk or the Board of Alderpersons;

(6) A statement that the permit is not transferable;

(7) A statement that the permit may be carried on the person and shown upon request;

(8) A statement that the solicitor may not go to back or rear doors; and

(9) A statement that the issuance of the permit is not an endorsement of the bearer of the merchandise, the service offered, nor the business methods used in selling the merchandise;

(10) The signature of the Clerk.
(1994 Code, § 114.14)

§ 114.14 FEE; ADJUSTMENT BY TOWN.

(A) The fee for a permit under this chapter shall be as established by the Board of Alderpersons from time to time.

(B) None of the fees provided for under this section shall be so applied as to occasion an undue burden upon interstate commerce. In any case where a fee is believed, by an applicant for a permit, to place an undue burden upon interstate commerce, he or she may apply to the town for an adjustment of the fee so that it shall not be discriminatory as to interstate commerce. The application may be made before, at, or within 6 months after payment of the prescribed fee. The applicant shall, by affidavit and supporting testimony, show his or her method of business and the

gross volume or estimated gross volume of business and the other information as the town may deem necessary in order to determine the extent, if any, of the undue burden on interstate commerce.

(1) The town shall then conduct an investigation comparing the applicant's business with other businesses of like nature, and shall make findings of fact from which the town shall determine whether the fee fixed under this section is unfair, unreasonable, or discriminatory as to the applicant's business, and shall fix as the fee for the applicant an amount that is fair, reasonable, and nondiscriminatory. If the fee has already been paid, the town shall order a refund of the amount over and above the fixed fee.

(2) In fixing the fee to be charged, the town shall have the power to base the fee upon a percentage of the gross sales, or any other method which will assure that the fee assessed shall be uniform and in agreement with that assessed on businesses of like nature, so long as the amount assessed does not exceed the fee as established by the Board of Alderpersons.

(3) Should the town determine the gross sales measure of fee to be the fair basis, the town may require the applicant to submit, either at the time of the termination of the applicant's business in the town or at the end of each month period, a sworn statement of gross sales and to pay the amount of the fee therefor; provided that no additional fee during any 1 calendar year shall be required after the permittee shall have paid an amount equal to the annual fee as prescribed by the Board of Alderpersons.
(1994 Code, § 114.15)

§ 114.15 APPLICANT TO FILE BOND.

Every applicant for a permit under this chapter not a resident of the town or who, being a resident of the town, represents a firm whose principal place of business is located outside the state, shall file with the Town Clerk a surety bond running to the town in the amount of \$1,000 with surety acceptable to and

approved by the Town Attorney. The bond shall be contingent upon the applicant's full compliance with all the provisions of this code and any other applicable ordinances, regulations, and rules of the town. The bond shall further guarantee to any citizen of the town that all money paid as a down payment will be accounted for and applied according to the representations of the solicitor and that the property purchased shall be delivered according to the representations of the solicitor. Action on the bond may be brought in the name of the town for the use or benefit of an aggrieved person.

(1994 Code, § 114.16) Penalty, see § 114.99

§ 114.16 EXPIRATION.

All permits issued under this chapter shall expire on September 30 of each year.

(1994 Code, § 114.17)

§ 114.17 BADGE TO BE WORN.

The Town Clerk may issue to each permittee under this chapter, at the time of the delivery of his or her permit, a badge which shall contain the words "Licensed Solicitor," the period for which the permit is issued, and the number of the permit in letters and figures easily discernible from a distance of 10 feet. The badge shall, during the time the permittee is engaged in soliciting, be worn constantly by the permittee on the front of his or her outer garment in a way as to be conspicuous.

(1994 Code, § 114.18) Penalty, see § 114.99

§ 114.18 EXHIBITION OF PERMIT UPON REQUEST.

Solicitors, canvassers, hawkers, itinerant merchant vendors of merchandise are required to exhibit their permits at the request of any police officer, deputy sheriff, or any person being solicited.

(1994 Code, § 114.19) Penalty, see § 114.99

§ 114.19 REVOCATION; NOTICE AND HEARING.

(A) Permits issued under the provisions of this chapter may be revoked by the Chief of Police after notice and hearing for any of the following causes:

(1) Fraud, misrepresentation, or false statement contained in the application for a permit;

(2) Fraud, misrepresentation, or false statement made in the course of carrying on his or her business of solicitor, canvasser, agent, peddler, hawker, itinerant merchant, or transient vendor;

(3) Any violation of this chapter;

(4) Conviction of any crime or misdemeanor involving moral turpitude; or

(5) Conducting the business of solicitor, canvasser, or peddler in an unlawful manner as to constitute a breach of peace or a menace to the health, safety, or general welfare of the public.

(B) Notice of hearing for the revocation of permits shall be given in writing setting forth specifically the ground of complaint and the time and place of the hearing. The notice shall be mailed, postage prepaid, to the permittee at his or her last known address at least 5 days prior to the date set for a hearing.

(1994 Code, § 114.20)

§ 114.20 APPEAL OF DECISIONS.

(A) Any person aggrieved by the action of the Chief of Police or the Town Clerk in the denial of a permit as provided in § 114.12, the revocation by the Town Clerk as provided in § 114.19, or the action of the town in the assessing of the fee as provided in § 114.14, shall have the right of appeal to the Town Board of Alderpersons. The appeal shall be taken by filing, with the Board within 14 days after the notice of the action complained of has been mailed to the person's last known address, a written statement setting for the grounds for the appeal.

(B) The Board of Alderpersons shall set a time and place for the appeal and notice of the hearing shall be given to the applicant in the same manner as provided in § 114.19 for notice of hearing on revocation. The decision and order of the Board of Alderpersons on the appeal shall be final and conclusive.

(1994 Code, § 114.21)

§ 114.99 PENALTY.

Any person who shall be convicted of any violation of the provisions of this chapter or of any fraud, cheating, or misrepresentation whether through himself or herself or any employee while acting as a solicitor, peddler, or the like in the town or who shall barter, sell, or peddle any goods or merchandise other than those specified in his or her application for permit shall be fined not more than \$500 or imprisoned for not more than 30 days or both. In addition, he or she shall have the permit revoked at the discretion of the court.

(1994 Code, § 114.99)

Statutory reference:

*Violation of local ordinances a misdemeanor,
see G.S. § 14-4(a)*

CHAPTER 115: TAXICABS

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GENERAL PROVISIONS

§ 115.001 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CERTIFICATE. A Certificate of Public Convenience and Necessity, issued by the Board of Alderpersons, licensing the operation of taxicabs.

CRUISING. The movement of a taxicab, unoccupied except for the driver, over the public streets in search of or soliciting prospective passengers for hire. A taxicab proceeding to answer a telephone call for taxicab service from an intended passenger or a taxicab returning to the garage where it is housed or to its depot or terminal nearest to the place of discharge of the passenger is not **CRUISING**.

DRIVER. Any person who drives a taxicab.

INSPECTOR. The Town Taxicab Inspector.

MANIFEST. A daily record, prepared by the driver, of all trips made by the taxicab which he or she operates, showing the time and place of origin and destination of each trip and the amount of fare.

MEMORANDUM CERTIFICATE. The card issued by the Inspector to a taxicab owner for display within a taxicab, indicating it has been granted a Certificate of Public Convenience and Necessity.

OWNER. Any person to whom a Certificate of Public Convenience and Necessity for the operation of a taxicab has been issued.

TAXICAB. Any motor vehicle seating 9 or fewer passengers including the driver, operating upon any street on call or demand, accepting or soliciting passengers indiscriminately for hire between points along the streets and highways as may be directed by the passengers being transported. **TAXICAB** shall not include motor vehicles or motor carriers, as defined in G.S. §§ 62-259 through 62.279. (1994 Code, § 115.01)

§ 115.002 STATE REGISTRATION AND LICENSES REQUIRED.

No person shall operate a motor vehicle as a taxicab until it has been registered in accordance with state requirements and all proper licenses have been obtained therefor.

(1994 Code, § 115.02) Penalty, see § 10.99

§ 115.003 GENERAL OPERATING REQUIREMENTS.

(A) Every taxicab shall be operated in accordance with the laws of the state and applicable town ordinances, and with due regard to the safety, comfort, and convenience of the passengers, the safe and careful transportation of property and the safety of the general public.

(B) No taxicab shall be operated at a rate of speed greater than that established by state law or town ordinances, without proper regard for the traffic, surface, and width of the highway and the hazards at intersections and other conditions then existing; nor shall it be operated in the manner or condition as to endanger or be likely to endanger the safety of passengers, pedestrians, vehicles, or the person and property of others.

(1994 Code, § 115.03) Penalty, see § 10.99

§ 115.004 INSURANCE OR OTHER SECURITY REQUIRED BY OWNER OR OPERATOR.

(A) Every owner or operator of a taxicab engaged in the business of transporting passengers for hire in the town, other than those operated under the jurisdiction of the state Utilities Commission, shall secure and keep in effect for each taxicab so operated a policy of liability and property damage insurance in a company duly authorized to do business in the state or, in lieu thereof, deposits of cash or approved securities or surety bond with sureties who are residents of the state or duly authorized to transact business therein, whose solvency, at all times, shall be subject to the approval of the Board of Alderpersons, in the sum of not less than \$100,000 for death or injury to 1 person in case of 1 accident, \$300,000 for death and injury of more than 1 person in case of 1 accident and \$50,000 for property damage in cases of 1 accident, and conditioned upon the operator or owner of the taxicab responding in damages for any liability incurred on account of death or any injury to person or damage to property resulting from the negligent operation of the taxicab.

(B) The owner or operator of any taxicab in the town shall deposit evidence of compliance with this section with the Town Administrator before beginning the operation of any taxicab.

(1994 Code, § 115.04) Penalty, see § 10.99

§ 115.005 INFORMATION TO BE FILED BY OWNER AND OPERATOR.

Every owner and operator of a taxicab shall file with the Taxicab Inspector his or her name, business and home addresses, business and home telephone numbers, a list showing the serial numbers and makes of all taxicabs owned and operated by him or her, and the names of all drivers and their permit numbers and addresses. Within 48 hours after any changes in connection therewith, the owner and operator shall report the change to the Inspector.

(1994 Code, § 115.05) Penalty, see § 10.99

§ 115.006 OPERATOR TO MAKE REPORTS WHERE MORE THAN 1 OWNER OPERATES UNDER THE SAME NAME.

In case more than 1 owner operates under the same name, the operator shall make all reports required by this chapter in behalf of all owners operating under his or her name.

(1994 Code, § 115.06) Penalty, see § 10.99

§ 115.007 SEATS; DOORS; FLOOR MATS; SAFETY GLASS.

No vehicle shall be operated as a taxicab in the town unless it conforms with the following provisions.

(A) *Seats.* All taxicab bodies shall have 2 seats.

(B) *Doors.* The doors of all taxicabs shall be so constructed that they may be opened from the inside and outside and shall be constructed with a double or safety lock.

(C) *Floor mats.* Removable floor mats of rubber or other nonabsorbent and washable material shall be provided for all taxicabs.

(D) *Safety glass.* The windshield and all windows in taxicabs shall be of non-shatterable or safety glass.

(1994 Code, § 115.07) Penalty, see § 10.99

§ 115.008 IDENTIFICATION OF VEHICLE.

(A) (1) Each taxicab operated in the town shall have the name of the company operating it and the taxicab number painted, with permanent paint, on both sides and the rear thereof, with letters and numbers at least 4 inches high on the sides and at least 6 inches high on the rear.

(2) Colors shall be contrasting, so as to be easily visible at a reasonable distance.

(B) No banner, card, or other advertising matter shall be displayed on either side or the rear of a taxicab in a manner so as to cover or obscure the lettering required by this section.

(1994 Code, § 115.08) Penalty, see § 10.99

§ 115.009 TRANSPORTATION OF INTOXICANTS.

No person shall transport whiskey, gin, rum, or any other intoxicant in a vehicle which is being operated as a taxicab unless the whiskey, gin, rum, or other intoxicant is the property of and in the possession of a bona fide passenger for hire.

(1994 Code, § 155.09) Penalty, see § 10.99

§ 115.010 TERMINAL OR DEPOT ON PRIVATE PROPERTY REQUIRED.

No taxicab shall operate in the town unless it shall have a depot or terminal on private property.

(1994 Code, § 115.10) Penalty, see § 10.99

§ 115.011 RECORDS AND REPORTS OF ACCIDENTS INVOLVING TAXICABS.

(A) All accidents from or in connection with the operation of taxicabs shall be reported immediately to the Police Department.

(B) It shall be the duty of the Police Department to investigate and keep proper records of all accidents in which taxicabs are involved.

(1994 Code, § 115.11) Penalty, see § 10.99

ADMINISTRATION AND ENFORCEMENT**§ 115.025 OFFICE OF TAXICAB INSPECTOR ESTABLISHED; INSPECTOR APPOINTED.**

There is hereby created the Office of Taxicab Inspector, who shall be appointed by the Police Chief and approved by the Town Administrator. The Inspector, with the Administrator's approval, may hold the position in conjunction with any other town office or position.

(1994 Code, § 115.20)

§ 115.026 DUTIES OF INSPECTOR.

(A) The Taxicab Inspector is charged with the duties required under this chapter and, in general, shall be responsible for the inspection of taxicabs and shall make all investigations relative to licensing of drivers thereof.

(B) The Inspector shall advise the Town Administrator and Board of Alderpersons with respect to matters covered or incidentally involved in the operation or administration of this chapter.

(C) The Inspector shall make recommendations with respect to the adequacy of taxicab service and whether or not there are too many or too few taxicabs to serve the public's convenience and necessity.

(D) The Inspector shall make other reports and furnish other information to the Town Administrator and Board of Alderpersons as, from time to time, may be requested.

(1994 Code, § 115.21)

§ 115.027 RIGHT OF ENTRY.

The Taxicab Inspector or the Inspector's agent shall have the right, at any time after displaying proper identification, to enter into or upon any taxicab being operated under the provisions of this chapter for the purpose of reinspecting or ascertaining compliance with this chapter or other town ordinances.

(1994 Code, § 115.22)

METERS; RATES**§ 115.040 METERS AND RATES REQUIRED.**

(A) *Meters.* Every taxicab operated under the provisions of this chapter shall have affixed thereto, in a position visible to the driver and passenger, a taximeter, which shall conform to the following specifications.

(1) A taximeter is a mechanical instrument or device by which the charge for hire of a taxicab is mechanically calculated for distance traveled, for waiting time or for both, and upon which the charge shall be indicated by means of legible figures which are electrically lighted each time the taximeter flag is thrown from the non-earning to earning position.

(2) Taximeters must register upon visual counters the following items:

- (a) Total miles;
- (b) Paid miles;
- (c) Number of units; and
- (d) Number of trips.

(3) No person shall use or permit to be used upon any taxicab a taximeter which is in such a condition as to be more than 5% incorrect to the prejudice of the owner or an passenger.

(4) No certificate shall be issued for a taxicab until the taximeter attached thereto shall have been inspected and found accurate.

(5) No person shall use or permit to be used or driven for hire a taxicab equipped with a taximeter with an unsealed case and which does not have its cover and gear intact.

(6) No driver of a taxicab equipped with a taximeter while carrying passengers or under employment, shall display the signal affixed to it in a position as to denote it is not employed or in a position to denote it is employed at a rate of fare different from that to which the operator is entitled under the provisions of this chapter. It shall be the duty of the driver to call the attention of passengers to the amount registered and the taxicab flag shall not be changed to the vacant position until after the fare is paid. If demanded by the passenger, the driver in charge of a taxicab shall give the person paying for the hiring of it, at the time of payment, his or her name, permit number, taxicab number, and the name of the owner.

(7) No person shall drive a taxicab to which is attached a taximeter that has not been duly inspected and approved. It shall be unlawful to change the size of the wheels or tires of a taxicab in a manner that would cause 5% tolerance to be exceeded or to change the gears operating the taximeter from 1 taxicab to another, unless the taximeter is retested and approved by the Taxicab Inspector.

(B) *Rates.* No person owning, operating, or controlling a taxicab shall charge a rate therefor in excess of the following provisions; the rate shall take effect at the time the passenger enters the taxicab.

(1) One dollar and thirty cents for the first 1/8 mile, plus \$.10 for each 1/8 mile thereafter. A driver may stop at 1 or more points on the trip and pick up additional passengers to be transported in accordance with these rates; provided, the original or any other passenger shall not be charged for any distance traveled beyond the direct line of his or her destination.

(2) Waiting time caused by the passenger shall be charged at the rate of \$.20 for each minute or fraction thereof.

(3) The driver may charge, in addition to the above rates, \$.25 per trip for handling of any parcels by the taxicab operator. A passenger who can enter or exit the taxicab and handle his or her parcels, without undue delay, will not be charged. Where assistance is needed in order to prevent an unusual delay, the taxicab operator shall assist and shall, therefor, make the above charge.

(1994 Code, § 115.30) Penalty, see § 10.99

§ 115.041 CHARGING OR PAYING OTHER THAN PRESCRIBED RATES; FAILURE TO PAY RATES.

It shall be unlawful for the driver, owner, or operator of a taxicab to charge rates not in accordance with those provided in § 115.040 or for any passenger to pay rates not in accordance therewith or to refuse to pay the fares as may be charged in accordance therewith.

(1994 Code, § 115.31) Penalty, see § 10.99

§ 115.042 DISPLAY OF RATES.

Every taxicab operated within the town at all times shall have displayed prominently, so as to be visible to the passengers therein, the rates charged for the use of the taxicab.

(1994 Code, § 115.32) Penalty, see § 10.99

INSPECTIONS

§ 115.055 BY TOWN.

(A) No person owning, operating, or controlling any motor vehicle within the town shall cause or suffer it to be operated as a taxicab, unless he or she first shall submit it to the Taxicab Inspector for inspection and obtain a written statement from the

Inspector to the effect that the vehicle conforms to the requirements of this chapter and all other ordinances of the town. The Inspector shall examine the taxicab, particularly, on the following points:

- (1) Foot brakes and hand or parking brakes;
- (2) Front and rear bumper;
- (3) Spare tire properly inflated;
- (4) Heater sufficient to heat the interior of the cab;
- (5) Rear view mirror for driver;
- (6) Speedometer in good order;
- (7) Dual windshield wiper; and
- (8) Lights, as approved by the state Division of Motor Vehicles, and a passenger compartment light with an accessible switch.

(B) Any taxicab which is found, after an inspection authorized by this section, to be unsafe or in any way unsuitable, or to be operated in violation of any of the provisions of this chapter may be ordered out of service immediately by the Inspector and, before again being placed in service, shall be reinspected and approved.

(1994 Code, § 115.40) Penalty, see § 10.99

§ 115.056 BY OWNER OR OPERATOR.

(A) Every taxicab owner or operator shall make an inspection, at least once each week, of all taxicabs owned and operated by him or her and shall keep all taxicabs in proper repair and sanitary condition at all times.

(B) Any taxicab found by the owner or operator to be unsafe or unsanitary shall have the repairs, alterations, and cleaning as may be necessary and shall not be operated until safe and sanitary.

(1994 Code, § 115.41) Penalty, see § 10.99

***CERTIFICATES OF PUBLIC CONVENIENCE
AND NECESSITY***

§ 115.070 REQUIRED.

No person shall operate any taxicab in the town without first having obtained a Certificate of Public Convenience and Necessity from the Board of Alderpersons authorizing the operation.
(1994 Code, § 115.50) Penalty, see § 10.99

§ 115.071 APPLICATION REQUIRED.

Any person desiring a certificate for the operation of a taxicab shall file with the Board of Alderpersons a sworn application, in triplicate, on a form provided by the Board and shall furnish information the Board, in its discretion, may require.
(1994 Code, § 115.51)

§ 115.072 ACTION ON APPLICATION.

(A) No certificate applied for under this subchapter shall be granted until the Board of Alderpersons, after a hearing, declares by resolution that public convenience and necessity require the proposed taxicab service.

(B) In determining whether public convenience and necessity require the operation of a taxicab for which application for a certificate is made, the Board shall consider and investigate:

(1) Whether the demand of the public requires additional taxicab service;

(2) The adequacy of existing mass transportation and taxicab service;

(3) The financial responsibility and experience of the applicant;

(4) The ability of the applicant to earn a fair return on the capital invested;

(5) The number, kind, and type of equipment and the color scheme to be used;

(6) The effect additional taxicab service may have upon traffic congestion and parking;

(7) Whether the additional taxicab service will result in a greater hazard to the public; and

(8) Other relevant facts as the Board may deem advisable or necessary.
(1994 Code, § 115.52)

§ 115.073 FEE.

The owner of each taxicab which is granted a certificate under this subchapter shall pay into the general treasury of the town \$15 for each taxicab covered thereby. The fee shall be in addition to, and not in lieu of, any other license fees and charges established by proper authority and applicable to taxicabs in this town.
(1994 Code, § 115.53) Penalty, see § 10.99

§ 115.074 ISSUANCE.

Having declared that public convenience and necessity require the proposed taxicab service, the Board of Alderpersons shall grant to every person who has filed application therefor, as provided in this subchapter, a Certificate of Public Convenience and Necessity for the taxicab, subject to conditions the Board may deem the public convenience and necessity require, provided:

(A) The owner thereof shall have complied with all the provisions of this chapter;

(B) The vehicle for which application for a certificate is made is found in strict compliance with this chapter; and

(C) The court record of the applicant would not make it against the public interest for the application to be granted.
(1994 Code, § 115.54)

§ 115.075 ISSUANCE AND DISPLAY OF MEMORANDUM CERTIFICATE.

(A) For each taxicab for which a Certificate of Public Convenience and Necessity has been granted, a memorandum of Certificate of Public Convenience and Necessity shall be issued in a form as the Board of Alderpersons may, from time to time, prescribe.

(B) The memorandum certificate shall be displayed at all times in a conspicuous place in the taxicab for which it was issued.

(1994 Code, § 115.55)

§ 115.076 TERM.

Each Certificate of Public Convenience and Necessity issued under this subchapter shall expire on June 30 of the fiscal year during which it was granted.

(1994 Code, § 115.56)

§ 115.077 RENEWAL.

Upon application before termination of each fiscal year, the Board of Alderpersons may renew any certificate issued under this subchapter or cause a new certificate to be issued for the ensuing year, in the absence of any contrary evidence and finding of the Board regarding the continued necessity for the taxicab service.

(1994 Code, § 115.57)

§ 115.078 ASSIGNMENT OR TRANSFER.

No Certificate of Public Convenience and Necessity issued under this subchapter may be assigned or transferred, except upon written application to the Board of Alderpersons setting forth the purpose, terms, and conditions of the assignment or transfer. The Board, after investigation, shall approve or disapprove the application.

(1994 Code, § 115.58)

§ 115.079 NEW CERTIFICATES FOR REPLACEMENT VEHICLES; PERMITTING STATE LICENSE TO BE USED ON PRIVATE VEHICLE.

(A) When an owner sells or transfers title to any taxicabs for which certificates have been granted under this subchapter and retires them from use as taxicabs and, within 30 days after the sale or transfer, purchases other taxicabs, the Board of Alderpersons, as a matter of right, upon written application to the Board within 30 days of the purchase, shall issue new certificates for the operation of no greater number of taxicabs than those so sold or transferred; provided, the owner has complied with all the provisions of this chapter.

(B) Any owner whose taxicabs for which certificates have been granted, have been destroyed involuntarily or who voluntarily destroys any taxicabs will, as a matter of right, upon written application to the Board within 30 days after the destruction, be issued new certificates for the operation of no greater number of taxicabs than those destroyed, upon satisfactory evidence presented to the Board of the destruction; provided, the owner has complied with all the provisions of this chapter.

(C) No owner shall permit his or her taxicab license issued by the state to be used on any private vehicle.

(1994 Code, § 115.59) Penalty, see § 10.99

§ 115.080 SUSPENSION; REVOCATION.

(A) Certificates issued under this subchapter may be suspended or revoked by the Board of Alderpersons at any time in case:

(1) The Board finds the owner's past record to be unsatisfactory;

(2) The owner fails to operate the taxicab in accordance with the provisions of this subchapter;

(3) The owner ceases to operate any taxicab for a period of 30 consecutive days, without having obtained permission for cessation of the operation from the Board;

(4) The owner permits or authorizes the transportation of whiskey, gin, rum, or any other intoxicant in any taxicab by any driver employed by him, unless the whiskey, gin, rum, or other intoxicant is the property of and in the possession of a bona fide passenger for hire; or

(5) For any other reason deemed by the Board to warrant suspension or revocation.

(B) No certificate shall be revoked or suspended under this section unless 48-hours' notice of hearing shall have been given the holder of the certificate and the hearing is duly held thereon.

(C) Certificates which are suspended or revoked by the Board shall be surrendered and the operation of any taxicab covered by the certificates shall cease.
(1994 Code, § 115.60)

§ 115.081 AUTOMATIC REVOCATION UPON CHANGE OF VEHICLE OWNERSHIP OR TITLE.

(A) (1) Change of ownership of or title to any taxicab automatically shall revoke any certificate previously granted under this subchapter.

(2) The purchaser of any vehicle may not operate it as a taxicab until he or she has applied for and been granted a new certificate in the manner provided in this subchapter.

(B) For the purpose of this section, a change of ownership is deemed to have taken place, in addition to other methods usually employed, if the owner of any taxicab leases it to any person under any lease or other arrangement whereby the person shall have the right, upon the payment of an amount of money or other consideration, to acquire title at any future date to the taxicab or any other thing of value.
(1994 Code, § 115.61)

§ 115.082 SURRENDER OF CERTIFICATE WHEN TAXICAB RETIRED AND NOT REPLACED.

(A) Any owner who permanently retires any taxicab from service and does not replace it within 30 days thereof immediately shall surrender any certificate granted for the operation to the Board of Alderpersons.

(B) The owner may not secure an additional certificate for the operation of any taxicab, without having first made application therefor in the manner provided in this subchapter.
(1994 Code, § 115.62) Penalty, see § 10.99

§ 115.083 NUMBER OF TAXICABS REQUIRED BY PUBLIC CONVENIENCE AND NECESSITY.

For the purpose of administering this subchapter, it is hereby determined and declared that 10 taxicabs are all the public convenience and necessity require at this time and until the Board of Alderpersons shall determine that public convenience and necessity require a greater number.
(1994 Code, § 115.63)

DRIVERS

§ 115.095 CLEANLINESS; APPEARANCE.

All drivers of taxicabs shall be cleanly and neatly dressed while operating a taxicab.
(1994 Code, § 115.70) Penalty, see § 10.99

§ 115.096 PERMITTING MORE PASSENGERS THAN CAB'S SEATING CAPACITY.

(A) No taxicab shall permit more persons than the seating capacity of the taxicab, including the driver, to be carried in a taxicab in the town at any 1 time.

(B) Children in arms are exempt from the provisions of this section.

(1994 Code, § 115.71) Penalty, see § 10.99

§ 115.097 PERMITTING ADDITIONAL PASSENGERS OVER OBJECTION OF ORIGINAL PASSENGER.

When any taxicab is occupied by a passenger, the driver shall not permit any other person to occupy or ride in the taxicab if the original passenger objects thereto.

(1994 Code, § 115.72) Penalty, see § 10.99

§ 115.098 UNAUTHORIZED REFUSAL OF PASSENGER.

No taxicab driver shall refuse or neglect to convey any person upon request, unless previously engaged or unable to or forbidden by the provisions of this chapter to do so.

(1994 Code, § 115.73) Penalty, see § 10.99

§ 115.099 DECEPTION OF PASSENGER AS TO DESTINATION OR FARES.

No taxicab driver shall deceive or attempt to deceive any passenger or prospective passenger as to the destination or rate of fare to be charged.

(1994 Code, § 115.74) Penalty, see § 10.99

§ 115.100 CONVEYANCE OF PASSENGER TO DIRECTED DESTINATION.

No taxicab driver shall convey any passenger to a place other than the one directed by the passenger.

(1994 Code, § 115.75) Penalty, see § 10.99

§ 115.101 USE OF SHORTEST ROUTE.

No taxicab driver shall take a longer route to the destination directed by the passenger than necessary, unless requested to do so by the passenger.

(1994 Code, § 115.76) Penalty, see § 10.99

§ 115.102 COMPLIANCE WITH PASSENGERS' REQUESTS AS TO SPEED AND ROUTES.

All taxicab drivers shall comply with all reasonable and lawful requests of passengers as to speed and routes to be taken.

(1994 Code, § 115.77) Penalty, see § 10.99

§ 115.103 SEARCH FOR AND DISPOSITION OF LOST ARTICLES.

(A) Every taxicab driver shall thoroughly search his or her taxicab at the termination of each trip for lost articles which may be left in the cab by passengers; any article found shall be returned immediately to its rightful owner, if known.

(B) Otherwise, it should be deposited with the owner or operator of the taxicab and shall, within 24 hours, be reported and turned over to the Taxicab Inspector.

(1994 Code, § 115.78) Penalty, see § 10.99

§ 115.104 CRUISING.

No taxicab driver shall cruise in search of passengers at any time.

(1994 Code, § 115.79) Penalty, see § 10.99

§ 115.105 DUTY TO RETURN TO TERMINAL OR DEPOT WHEN CAB UNOCCUPIED.

Whenever a taxicab is unoccupied, the driver shall proceed at once, by the most direct route, to the terminal or depot.

(1994 Code, § 115.80) Penalty, see § 10.99

§ 115.106 OPERATION ALONG BUS ROUTES.

(A) No owner, operator, or driver of a taxicab shall cause or permit it to be operated along or over established bus routes for the purpose of picking up passengers who are waiting for buses.

(B) This section shall not be construed to prohibit or interfere with the response to any call for a taxicab.

(1994 Code, § 115.81) Penalty, see § 10.99

PERMITS**§ 115.120 REQUIRED.**

No person shall drive any taxicab carrying passengers for hire from place to place within the corporate limits or within a distance of 1 mile thereof, without first having applied for and obtained a taxicab driver's permit.

(1994 Code, § 115.90) Penalty, see § 10.99

§ 115.121 APPLICATION.

Application for a taxicab driver's permit shall be filed with the Taxicab Inspector, shall be made upon blanks furnished by the town for that purpose and shall state, among other things, the name, address, physical condition, physical description, former employers, present or prospective employer, court record, and state chauffeur's license number of the applicant.

(1994 Code, § 115.91)

§ 115.122 PHOTOGRAPH AND FINGERPRINTS.

The applicant for a taxicab driver's permit shall attach to the application his or her photograph, which shall constitute a part of the application, and shall impress his or her fingerprints on the back of the application.

(1994 Code, § 115.92) Penalty, see § 10.99

§ 115.123 INVESTIGATION.

The Taxicab Inspector shall investigate and confirm the facts stated in each application for a taxicab driver's permit.

(1994 Code, § 115.93)

§ 115.124 ISSUANCE OR REFUSAL.

(A) If the Taxicab Inspector shall find that the applicant for a permit required by this subchapter is of good moral character, sound physique and mind, without infirmities which might render him or her unfit for the safe operation of a taxicab, is a citizen of the United States, is not a habitual user of intoxicating liquors or narcotic drugs and has not been a habitual violator of the traffic laws, the Inspector shall, subject to the provisions of division (B) below, issue to the applicant a permit to operate a taxicab within the town.

(B) The Inspector shall refuse an application for a taxicab driver's permit if the applicant has been convicted of any of the offenses set forth in § 115.127 as grounds for suspension or revocation within a period of time before application for a permit that is the same period of time as the period of suspension or revocation set forth in § 115.127(A).

(1) In any such refusal, the Inspector shall specify the grounds for refusal and the applicant then shall have the right to appeal to the Board of Alderpersons, following the procedure set forth in § 115.127(B).

(2) Any applicant who has been convicted of any offense set forth in § 115.127(A) for which the period of suspension or revocation is listed as "permanent" and at least 5 years have passed since the conviction of the offense, and who can submit the sworn proof required by § 115.127(D) may receive a permit upon proof of the same facts set forth for restoration of a permanently revoked permit, as set forth therein. The conviction shall mean a final conviction upon appeal, if any, and the date of the conviction shall be the date upon which it became final.

(1994 Code, § 115.94)

§ 115.125 DISPLAY.

The driver of every taxicab, at all times while operating it, shall display in the cab, so as to be easily visible to the passengers therein, a current permit issued under this subchapter.

(1994 Code, § 115.95) Penalty, see § 10.99

§ 115.126 EXPIRATION; RENEWAL.

All taxicab drivers' permits then outstanding shall expire on June 30 biennially. Upon application before each expiration date, the Taxicab Inspector, upon application being filed at least 10 days before the expiration, shall renew any taxicab driver's permit then outstanding or cause a new one to be issued for the ensuing biennium. Every person holding a taxicab driver's permit on each ensuing expiration date shall be presumed, in the absence of contrary evidence and finding of the Taxicab Inspector, to have established prima facie evidence of his or her right to receive a renewal of the permit or a new permit for the ensuing biennial period.

(1994 Code, § 115.96)

§ 115.127 SUSPENSION; REVOCATION.

(A) (1) The Taxicab Inspector, at any time after the issuance of a permit to any person to drive a taxicab, shall revoke or suspend it if the permit holder shall be convicted, and that conviction is upheld, of any of the following offenses, for the periods as follows:

(a) Manslaughter by automobile - first offense, 12 months; second offense, permanent;

(b) Assault with automobile - first offense, 12 months; second offense, permanent;

(c) Speeding - first conviction, letter of warning; second conviction, 15 mph over the limit, 6 months suspension; third conviction, 15 mph over limit, 12 months suspension; any subsequent conviction 15 mph over limit, 12 months suspension for each conviction;

(d) Reckless driving - first conviction, 12 months; second offense, permanent;

(e) Violation of prohibition laws - first conviction, 12 months; second offense, permanent;

(f) Aiding and abetting in violation of prohibition laws - first conviction, 6 months; second conviction, 12 months; third conviction, 2 years. Any subsequent convictions result in a 24-month suspension for each conviction;

(g) Operation of automobile while under the influence of an intoxicant - first conviction, 12 months; second conviction, permanent;

(h) Violation of any provisions of G.S. § 14-204 in regard to prostitution and assignation - first conviction, 12 months; second conviction, 2 years; third conviction, permanent;

(i) Operating after taxicab operator's permit has been suspended or revoked and before it has been reinstated - an additional 12-month period of suspension of the taxicab operator's permit;

(j) Cruising; picking up passengers and charging less than the prescribed fares - first offense, 60 days; second offense, 12 months;

(k) Felony other than manslaughter by automobile - permanent;

(l) Conviction of violation of a federal or state statute relating to the use, possession, or sale of narcotic drugs or controlled substances and that conviction is upheld - permanent; and/or

(m) Knowingly making a false statement in an application to obtain a taxicab driver's permit - permanent.

(2) The Taxicab Inspector shall suspend or revoke the permit of any driver for the violation of any provision of this section. The Inspector shall have the right to refuse the grant of any permit or to revoke it upon the violation of any other provision of this chapter.

(B) Upon revocation or suspension by the Taxicab Inspector of a permit to drive a taxicab, the permittee shall have the right to an appeal.

(1) The appeal shall be taken within 10 days after the Inspector informs the person of the decision by filing with the Inspector and Town Administrator a notice of appeal, specifying the grounds thereof.

(2) Following receipt of the notice of appeal, the Administrator shall place the appeal on the agenda of the next regular meeting of the Board, at which meeting, or any later meeting designated by the Board, the appeal shall be heard and decision rendered by the Board thereon.

(3) In the event the appeal is decided unfavorably to the appellant, he or she may submit the matter to the Inspector for consideration and action again, but not before the lapse of 9 months next following the date of the hearing of the appeal.

(4) At the hearing, the permittee shall be entitled to submit sworn evidence he or she has not violated the provisions of this chapter, as found by the Taxicab Inspector. The permittee also shall be entitled to present evidence that the violations he or she has committed are not grounds for suspension or revocation. Unless the permittee satisfies the Board of Alderpersons that the Inspector was in error either to the violations or else in interpretation of the grounds, the action of the Inspector shall remain in effect. The same right of appeal, as set forth herein, shall apply to any applicant for permit whose permit shall be refused under § 115.124. Upon unfavorable action by the Board, the appellant shall have the right to have the matter determined by the courts, as provided by the General Statutes.

(C) If any driver holding a permit under the provisions of this division shall be convicted of any of the offenses outlined in division (A) above, and shall appeal therefrom to any superior court of the state, the Taxicab Inspector shall suspend the permit following the conviction, pending the outcome of the appeal. If the judgement or conviction shall be affirmed, the

permit shall be revoked but the period of suspension shall be included in computing the length of time set forth in division (A) above. In the event the driver is acquitted in the superior court, the suspension shall be terminated and the permit restored.

(D) (1) Any person whose permit has been revoked permanently under this section, when the revocation has been in effect for at least 5 years, make application the Inspector for restoration of the permit. The Inspector may restore the permit upon receipt of the application in writing, duly sworn to by the applicant, and upon:

(a) Proof by the applicant that the applicant has committed none of the offenses listed above as grounds for suspension or revocation from the date of the revocation until the date of the application, or if the applicant has committed the offense following the date of revocation, that the last the offense occurred at least 5 years before the date of the application; and

(b) The proof the Taxicab Inspector may require from the Police Department, State Division of Motor Vehicles, County Sheriff's Department, and any other law enforcement agency in the jurisdiction where the applicant has resided or has been during the period between the date of the revocation and the date of the application for restoration.

(2) Any permit which once has been restored under this division shall be revoked permanently upon any 1 conviction of any offense set forth in division (A) above; provided, no permit once permanently revoked ever shall be restored more than 1 time.

(1994 Code, § 115.97)

CHAPTER 116: WRECKER SERVICES USED BY TOWN

Section

- 116.01 Placement on Police Department's rotation schedule
- 116.02 Procedure for rotation
- 116.03 Compliance
- 116.04 Distance of responding wrecker from center of town
- 116.05 Constant availability
- 116.06 Minimum equipment
- 116.07 Charges
- 116.08 Operator's responsibility for cleanup at accident site
- 116.09 Storage of towed vehicles
- 116.10 Inspections

§ 116.01 PLACEMENT ON POLICE DEPARTMENT'S ROTATION SCHEDULE.

Any wrecker service falling within the guidelines of the policy and approved by the Police Chief and Town Administrator may be placed on the Police Department's rotation schedule.
(1994 Code, § 116.01) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989)

§ 116.02 PROCEDURE FOR ROTATION.

In the event there is no available wrecker service on the town's rotation list, the Police Chief is authorized to have officers contact the Catawba County Communications Center and have it dispatch its next rotation wrecker.
(1994 Code, § 116.02) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989)

§ 116.03 COMPLIANCE.

Failure to comply with any of the requirements of this chapter may result in removal of that company by the Police Chief from the wrecker rotation schedule and later confirmed by the Board of Alderpersons.
(1994 Code, § 116.03) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989)

§ 116.04 DISTANCE OF RESPONDING WRECKER FROM CENTER OF TOWN.

The location of the responding wrecker must be no more than 20 minutes from the approximate center of town designated as First Avenue SW and 26th Street SW. This measure of time will be under normal traffic conditions and obeying all traffic laws.
(1994 Code, § 116.04) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989) Penalty, see § 10.99

§ 116.05 CONSTANT AVAILABILITY.

Each wrecker service must offer 24-hour, 7-day-a-week service. Contracts between rotation wreckers and other wrecker companies must be known to the Police Department and a copy of the contract furnished to them.
(1994 Code, § 116.05) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989) Penalty, see § 10.99

§ 116.06 MINIMUM EQUIPMENT.

Each rotation wrecker will have a minimum of the following equipment:

(A) Shovel, broom, and ax;

(B) Dollies;

(C) 100-foot cables;

(D) One 10 pound dry chemical fire extinguisher;

(E) Jumper cables;

(F) Three or more 30-minute flares and electric lamps or lanterns;

(G) Double boom wreckers; and

(H) No fewer than 5 gallons of clay-based oil absorbent compound.

(1994 Code, § 116.06) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989) Penalty, see § 10.99

§ 116.07 CHARGES.

Only a reasonable charge shall be made for tow-in services. Each wrecker service should maintain records to justify charges levied. No recommendations as to the appropriate charges will be issued from the town.

(1994 Code, § 116.07) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989)

§ 116.08 OPERATOR'S RESPONSIBILITY FOR CLEANUP AT ACCIDENT SITE.

Operators of wreckers will be responsible for cleanup of the scene of each accident they service, including removal of all glass and debris from the roadway and right-of-way.

(1994 Code, § 116.08) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989) Penalty, see § 10.99

§ 116.09 STORAGE OF TOWED VEHICLES.

All rotation wrecker services will provide a secure fenced in or inside location for the storage of vehicles towed.

(1994 Code, § 116.09) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989) Penalty, see § 10.99

§ 116.10 INSPECTIONS.

All rotation wrecker services will allow periodic inspections by designated members of the Police Department to assure compliance with all state and local statutes and rules and regulations assuring safe and suitable service. The Police Chief will designate members of the department to conduct this inspection.

(1994 Code, § 116.10) (Ord. passed 4-7-1987; Am. Ord. passed 6-6-1989) Penalty, see § 10.99

CHAPTER 117: GARAGE SALES

Section

117.01 Garage sales and the like

§ 117.01 GARAGE SALES AND THE LIKE.

Garage, yard, patio, and apartment sales are permitted as accessory uses within the town. The sales shall be limited to 2 during each calendar year period, for a maximum duration of 2 days per sale. All apparatus, racks, shelves, tables, signs, and other appurtenances associated with the sale shall be removed the same day as the sale.

(1994 Code, § 117.01) Penalty, see § 10.99

CHAPTER 118: SEXUALLY-ORIENTED BUSINESS

Section

General Provisions

- 118.01 Purpose; exemptions
- 118.02 Definitions
- 118.03 Classification
- 118.04 Liability for the conduct of others
- 118.05 Effective and compliance dates

Regulations

- 118.20 License required
- 118.21 Issuance of license
- 118.22 Appeal
- 118.23 Fees
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- 118.25 Expiration of license
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- 118.30 Hours of operation
- 118.31 Additional regulations for escort agencies
- 118.32 Additional regulations for adult theaters, adult cabarets, and adult motion picture theaters
- 118.33 Additional regulations for adult motels
- 118.34 Additional regulations for all sexually-oriented businesses
- 118.35 Regulations pertaining to sexually-oriented businesses with viewing or other rooms

- 118.99 Penalty

Cross-reference:

Zoning Code, see Chapter 154

GENERAL PROVISIONS

§ 118.01 PURPOSE; EXEMPTIONS.

The Town of Long View Board of Alderpersons is committed to protecting the general welfare of the Town through the enforcement of laws prohibiting obscenity, indecency, and sexual offenses. It seeks to reduce and eliminate the deleterious effects of sexually-oriented businesses while preserving constitutionally protected forms of expression. The Town Board of Alderpersons finds that sexually-oriented businesses in certain locations contribute to neighborhood deterioration and blight through an increase in crime and diminution of property values, among other adverse consequences, and finds that the effects are contrary to the general welfare of the town. The Town Board of Alderpersons recognizes that important and substantial government interests provide a constitutional basis for reasonable regulation of the time, place, and manner under which sexually-oriented businesses operate; and that, therefore, the Town Board of Alderpersons has determined that persons seeking to operate sexually-oriented businesses shall be required to observe specific locational requirements before they commence business, as provided for in this chapter. The Town Board of Alderpersons finds that the licensing of sexually-oriented businesses is necessary to ensure compliance with the locational and zoning requirements of the businesses. The Town Board of Alderpersons finds that sexually-oriented businesses in other communities have been used for unlawful sexual activities, including prostitution, and sexual encounters of a casual nature. The concern over sexually-transmitted diseases is a legitimate health

concern of the town. The provisions of this chapter shall not be construed as permitting any use, activity, or structure that is otherwise prohibited, illegal, or made punishable by law, nor shall it be construed so as to prohibit conduct or expression that is subject to constitutional protection.

(Ord. 9-03, passed 5-6-2003)

§ 118.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADULT ARCADE. Also known as "peep show," means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed depict or describe "specified sexual activities" or "specified anatomical areas."

ADULT BOOKSTORE or ADULT VIDEO STORE. A commercial establishment:

(1) Which receives a majority of its gross income during any calendar month from the sale of or rental of any 1 or more of the following:

(a) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, or video reproductions, slides, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas"; or

(b) Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

(2) Having as a preponderance of its books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, or video reproductions, slides, or other visual

representations that depict or describe "specified sexual activities" or "specified anatomical areas."

ADULT CABARET. A nightclub, bar, restaurant, or other commercial establishment that regularly features, exhibits, or displays as 1 of its principal business purposes:

(1) Persons who appear nude or semi-nude;

(2) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(3) Films, motion pictures, video cassettes, slides, or other photographic reproductions which depict or describe "specified sexual activities" or "specified anatomical areas."

ADULT MOTEL. A hotel, motel, or similar commercial establishment that:

(1) Offers accommodations to the public for any form of consideration, provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that depict or describe "specified sexual activities" or "specified anatomical areas" as 1 of its principal business purposes;

(2) Offers a sleeping room for rent for a period of time that is less than 10 hours; or

(3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

ADULT MOTION PICTURE THEATER. A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown as 1 of its principal business purposes that depict or describe "specified sexual activities" or "specified anatomical areas."

ADULT THEATER. A theater, concert hall, auditorium, or similar commercial establishment which regularly features, exhibits, or displays, as 1 of

its principal business purposes, persons who appear in a state of nudity or semi-nude, or live performances that expose or depict "specified anatomical areas" or "specified sexual activities."

APPLICANT. The person who will operate the sexually-oriented business, and shall include each of the following persons associated with that business:

- (1) The owner of a sole proprietorship;
- (2) Each member of a firm, association, or limited liability company;
- (3) Each general partner in a general or limited partnership;
- (4) Each officer and director of a corporation;
- (5) The proposed manager(s) of any sexually-oriented business;
- (6) Any manager who has been empowered as attorney-in-fact for a nonresident individual or partnership.

EMPLOY, EMPLOYEE, and EMPLOYMENT. Describe and pertain to any person who performs any service on the premises of a sexually-oriented business on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. **EMPLOYEE** does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

ESCORT. A person who, for tips or any other form of consideration, agrees or offers to act as a date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY. A person or business that furnishes, offers to furnish, or advertises to furnish escorts as 1 of its principal business purposes, for a fee, tip, or other consideration.

ESTABLISHMENT. Any of the following:

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

LICENSEE. Person(s) in whose name a license to operate a sexually-oriented business has been issued.

NUDE MODEL STUDIO. Any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. **NUDE MODEL STUDIO** shall not include a proprietary school licensed by the State of North Carolina or a college, junior college, or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

- (1) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;
- (2) Where in order to participate in a class a student must enroll at least 3 days in advance of the class; and
- (3) Where no more than 1 nude or semi-nude model is on the premises at any 1 time.

NUDITY or A STATE OF NUDITY.

(1) The appearance of a human anus, male genitals, or female genitals; or

(2) A state of dress which fails to opaquely cover a human anus, male genitals, or female genitals.

OPERATES or CAUSES TO BE OPERATED.

To cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually-oriented business whether or not that person is an owner, part owner, or licensee of the business.

PERSON. An individual, proprietorship, partnership, corporation, association, limited liability company, or other legal entity.

SEMI-NUDE. A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER CENTER. A business or commercial enterprise that, as 1 of its principal business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex, or activities between male and female persons and/or persons of the same sex when 1 or more of the persons is in a state of nudity or semi-nude.

SEXUALLY-ORIENTED BUSINESS. An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center, or any combination of the foregoing.

SPECIFIED ANATOMICAL AREAS. Human genitals in a state of sexual arousal.

SPECIFIED SEXUAL ACTIVITIES. Any of the following:

(1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

(3) Masturbation, actual or simulated; or

(4) Excretory functions as part of or in connection with any of the activities set forth in divisions (1) through (3) above.

TOWN ADMINISTRATOR. The Town of Long View Town Administrator or his or her designee.

TOWN CLERK. The Town of Long View Clerk.

TRANSFER OF OWNERSHIP OR CONTROL. Of a sexually-oriented business means and includes any of the following:

(1) The sale, lease, or sublease of the business;

(2) Persons other than those named as applicants for a license becoming associated with the business, as provided in the definition of applicant; except that a mere substitution of a person as manager of an establishment shall only require filing with the Town Administrator as provided in § 118.23; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. 9-03, passed 5-6-2003)

§ 118.03 CLASSIFICATION.

Sexually-oriented businesses are classified as follows:

- (A) Adult arcades;
- (B) Adult bookstores or adult video stores;
- (C) Adult cabarets;
- (D) Adult motels;
- (E) Adult motion picture theaters;
- (F) Adult theaters;
- (G) Escort agencies;
- (H) Nude model studios; and
- (I) Sexual encounter centers.

(Ord. 9-03, passed 5-6-2003)

§ 118.04 LIABILITY FOR THE CONDUCT OF OTHERS.

A licensee of a sexually-oriented business is jointly and individually liable for violations of and offenses under this chapter by the employees of the sexually-oriented business, and for all civil and criminal sanctions or remedies for the violations and offenses, including but not limited to license suspension or revocation, prescribed herein.

(Ord. 9-03, passed 5-6-2003)

§ 118.05 EFFECTIVE AND COMPLIANCE DATES.

This chapter shall be effective 5-6-2003. All sexually-oriented businesses in existence at the effective date must come into compliance with this chapter on or before 8-1-2003.

(Ord. 9-03, passed 5-6-2003)

REGULATIONS

§ 118.20 LICENSE REQUIRED.

(A) It is unlawful for any person to operate a sexually-oriented business without a valid sexually-oriented business license issued by the Town Administrator pursuant to this section.

(B) An application for a license must be made on a form prescribed by the Town Administrator and the application shall be made under oath and contain the following information:

(1) If the applicant is an individual, the name and residence address of the individual. If the applicant is a partnership (limited or general) the name and residence address of each general partner. If the applicant is a firm, association, or limited liability company, the name and residence address of each member. If the applicant is a corporation, the name and residence address of each officer and director. The names of the manager(s) of the establishment along with their residence address;

(2) The address of the premises where the establishment shall be located;

(3) A complete statement of all convictions of any persons whose name is required to be given in division (B)(1) above for any felony for prostitution or any violation of law relative to prostitution;

(4) A complete statement of any revocation by any governmental unit of any license to operate a sexually-oriented business;

(5) A complete statement of any conviction of any person whose name is required to be given in division (B)(1) above for violation of any statute, law, ordinance, or regulation of any government concerning sexually-oriented businesses;

(6) The name and address of any sexually-oriented business or other establishment owned or operated by any person whose name is required to be given in division (B)(1) above;

(7) A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant; and

(8) An application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale with marked dimensions of the interior of the premises. For reference see § 118.35 for additional requirements for businesses with viewing or other rooms.

(C) The application may request and the applicant shall provide the information as to enable the Town Administrator to determine whether each applicant meets the qualifications established in this chapter.

(D) Each applicant must be qualified under § 118.20 and each applicant shall be considered a licensee if a license is granted.

(E) The Town Administrator shall transmit a copy of the application to the Police Department for an investigative report, to the Planning Department to determine compliance with all zoning and building regulations and ordinances, and to the Fire Department to determine compliance with any law relating to fire protection. The Police and Fire Departments and the Planning Department shall within a reasonable time report the results of their examinations to the Town Administrator.

(F) No license shall be issued for any sexually-oriented business to operate at any building, premises, structure, or other facility that contains any other kind of sexually-oriented business.
(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

§ 118.21 ISSUANCE OF LICENSE.

(A) Within 30 days after receipt of a completed application, the Town Administrator will approve or deny the issuance of a license to an applicant for a sexually-oriented business license.

(B) The Town Administrator will approve the issuance of a license to an applicant unless the Town Administrator finds 1 or more of the following to be true.

(1) An applicant is under 18 years of age.

(2) The license fee required by this section has not been paid.

(3) An applicant is overdue in payment to the town of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to a sexually-oriented business.

(4) An applicant has failed to provide information required in order to determine the qualifications of the applicant under this section for issuance of the license, or has falsely answered a question or request for information on the application form.

(5) An applicant or the proposed establishment is in violation of or is not in compliance with this section or other provisions of the Town of Long View Code, including local zoning requirements.

(6) An applicant has been convicted of a violation of a provision of this section, other than the offense of operating a sexually-oriented business without a license, within 2 years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(7) An applicant has been convicted of a crime involving:

(a) Any offense described in G.S. Chapter 14, Arts. 7A, 26, 26A, 27, 37, and 39; or any similar offenses to those described above under the criminal or penal code of North Carolina, other states, Town of Long View, other cities, or other countries; or facilitation, attempt, conspiracy, or solicitation to commit any of the foregoing offenses; for which:

1. Less than 2 years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than 5 years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

3. Less than 5 years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of 2 or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

(c) An applicant who has been convicted of an offense listed above may qualify for a sexually-oriented business license only when the time period required by this section has lapsed.

(d) The license, if granted, shall state on its face the legal name of the person or persons to whom it is granted, the classification of sexually-oriented business for which it is granted, the expiration date, and the address of the sexually-oriented business. Licenses shall be posted in a conspicuous place at or near the entrance to the sexually-oriented business so that they may be easily read at any time.

(8) The applicant has failed to make application using a legal name or has failed to produce a valid North Carolina Driver's License or a valid North Carolina Identification Card.

(Ord. 9-03, passed 5-6-2003)

§ 118.22 APPEAL.

(A) An applicant whose application is denied (unless the applicant is an existing sexually-oriented business as of 5-6-2003, then and in that case the appeal rights for denial of a license are set out in division (B)), suspended, or revoked by the Town Administrator may appeal the action in writing within 30 days to the Town Board of Alderpersons. The Town Board of Alderpersons shall decide either to uphold the action or to issue the license no later than the second regular Town Board of Alderpersons meeting after receipt of the appeal. The applicant or licensee shall have the right to present evidence before the Town Board of Alderpersons. The decision to uphold the action of the Town Administrator or issue the license shall be based solely on the criteria established herein for the action by the Town Administrator. A suspension or revocation shall be stayed during the pendency of an appeal to the Town Board of Alderpersons. If the Town Board of Alderpersons upholds the action of the Town Administrator, the decision of the Town Board of Alderpersons shall become final within 30 days. If a licensee whose license has been suspended or revoked brings, within 30 days of the decision of the Town Board of Alderpersons, an action in any court of competent jurisdiction challenging the decision of the Town Board of Alderpersons, the action stays further action by the town to enforce the suspension or revocation until there has been a final determination by the court.

(B) If the applicant is an existing sexually-oriented business as of 5-6-2003, then the denial of the issuance of a license by the Town Administrator becomes final within 30 days unless the denial has been appealed in writing to the Town Board of Alderpersons within the 30-day period. An appeal to the Town Board of Alderpersons stays an action by the Town to enforce this section until the decision of the Town Board of Alderpersons becomes final. The Town Board of Alderpersons shall decide either to uphold the action or to issue the license no later than the second regular Town Board of Alderpersons meeting after receipt of the appeal. The applicant shall have the right to present evidence before the

Town Board of Alderpersons. The decision to uphold the action of the Town Administrator or issue the license shall be based solely on the criteria established herein for the action by the Town Administrator. If the Town Board of Alderpersons shall uphold the action of the Town Administrator, then the decision of the Town Board of Alderpersons shall become final within 30 days. If an existing sexually-oriented business (that is one existing as of 5-6-2003), brings, within 30 days of the decision of the Town Board of Alderpersons, an action in any court of competent jurisdiction challenging the decision of the Town Board of Alderpersons the action stays further action by the Town to enforce this section until there has been a final determination by the court. This division (B) shall apply to all pending applications for a license as of the day of its adoption.
(Ord. 9-03, passed 5-6-2003)

§ 118.23 FEES.

(A) Every sexually-oriented business that applies for a new license shall pay to the Town a fee of \$1,000, which shall be nonrefundable if the license is issued. If the license is denied, then ½ shall be refunded to the applicant. An application for renewal must be accompanied by a nonrefundable fee of \$500. The fee required by this section is imposed for regulatory purposes and not intended to be a tax.

(B) A substitution of a manager of the business which occurs during the license year shall be filed with the Town Administrator within 30 days of its occurrence, and a \$100 investigation fee paid.
(Ord. 9-03, passed 5-6-2003)

§ 118.24 INSPECTION.

(A) A sexually-oriented business license applicant or licensee shall permit representatives of the Police Department or any other town, county, state, or federal department, division, or agency that enforces codes, regulations, or statutes relating to human health, safety, or welfare or structural safety to

inspect the premises of a sexually-oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(B) A person who operates a sexually-oriented business or his or her agent or employee commits an offense if the person refuses to permit a lawful inspection of the premises by persons designated above.

(C) The provisions of this section do not apply to areas of an adult motel which are currently being rented by the customer for use as a permanent or temporary habitation.
(Ord. 9-03, passed 5-6-2003)

§ 118.25 EXPIRATION OF LICENSE.

All licenses shall expire 1 year from the date of issuance and may be renewed only by making application as provided in § 118.20 and paying the renewal fee as provided in § 118.23. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 before the expiration date, the expiration of the license will not be affected.
(Ord. 9-03, passed 5-6-2003)

§ 118.26 SUSPENSION.

The Town Administrator is authorized to, and will, suspend a sexually-oriented business license for a period not to exceed 30 days if the Police Department and/or Inspections Department determines that a business licensee has:

(A) Violated or is not in compliance with this chapter or with any other requirements of the Town of Long View Code, including those relating to buildings, electricity, plumbing, fire safety, and mechanical equipment;

(B) Refused to allow an inspection of the sexually-oriented business premises as authorized by this chapter;

(C) Permitted illegal gambling by any person on the sexually-oriented business premises; or

(D) Demonstrated an inability to operate or manage a sexually-oriented business in a peaceful and lawabiding manner thus necessitating action by law enforcement officers.

(Ord. 9-03, passed 5-6-2003)

§ 118.27 REVOCATION.

(A) The Town Administrator is authorized to, and will, revoke a license if a cause for suspension in § 118.26 occurs and the license has been suspended within the preceding 12 months.

(B) The Town Administrator is authorized to, and will, revoke a sexually-oriented business license if the Town Administrator determines that a business licensee:

(1) Gave false or misleading information in the material submitted to the town during the application process, including, but not limited to, the use of a name other than a legal name to procure a license;

(2) Has allowed the possession, use, or sale of controlled substances on the premises;

(3) Has allowed prostitution on the premises;

(4) Has operated or worked in the sexually-oriented business during a period of time when the licensee's license was suspended;

(5) Has been convicted of an offense named in § 118.21(B)(6) or (B)(7) for which the time period required in § 118.21(B)(6) or (B)(7) has not lapsed;

(6) On 2 or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime named in § 118.21(B)(7) for which a conviction

has been obtained, and the person or persons were employees of the sexually-oriented business at the time the offenses were committed;

(7) Has allowed any act of sexual intercourse, masturbation, oral copulation, or sodomy to occur in or on the licensed premises; or

(8) Is delinquent in payment to the town of ad valorem taxes, sales taxes, or the annual license fee, or any other fee or tax related to the sexually-oriented business or other business of the licensee.

(C) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(D) Division (B)(7) above does not apply to adult motels as a ground for revoking the license unless the business licensee or employee allowed the act of sexual intercourse, masturbation, oral copulation, sodomy, or sexual contact to occur in a public place or within public view.

(E) When the Town Administrator revokes a license, the revocation shall continue for 1 year and the licensee shall not be issued a sexually-oriented business license for 1 year from the date revocation became effective. If, subsequent to revocation, the Town Administrator finds that the basis for the revocation has been corrected or abated, the licensee may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under the authority of division (B)(5) or (B)(6) above an applicant may not be granted another license until the appropriate number of years required under § 118.21(B)(6) or (B)(7), as the case may be, have elapsed.

(Ord. 9-03, passed 5-6-2003)

§ 118.28 DENIAL.

If the town denies the issuance of a license, or suspends or revokes a license, or denies an appeal, the town will send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action.

(Ord. 9-03, passed 5-6-2003)

§ 118.29 TRANSFER OF LICENSE.

Unless a new application for a license is made, a licensee shall not transfer a license to another, nor shall a business licensee operate a different classification of a sexually-oriented business than that designated in the application, or transfer ownership or control to another person(s), or operate a sexually-oriented business under the authority of a license at any place other than the address designated in the application. No sexually-oriented business shall be operated under any name or conducted under any designation or classification not specified in the license for that business.

(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

§ 118.30 HOURS OF OPERATION.

No sexually-oriented business, except for an adult motel, may remain open at any time between the hours of 1:00 a.m. and 6:00 a.m. on weekdays and Saturdays, and 1:00 a.m. and 10:00 a.m. on Sundays, except to the extent allowed by North Carolina law and regulations pertaining to the sale of alcoholic beverages by the business if the sexually-oriented business has a state ABC permit.

(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

§ 118.31 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

§ 118.32 ADDITIONAL REGULATIONS FOR ADULT THEATERS, ADULT CABARETS, AND ADULT MOTION PICTURE THEATERS.

(A) A person commits an offense if the person appears in a state of nudity in an adult cabaret, adult theater, or adult motion picture theater, or adult arcade.

(B) A licensee or employee commits an offense if the licensee or employee allows a person to appear in a state of nudity in an adult cabaret, adult theater, or adult motion picture theater, or adult arcade.

(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

§ 118.33 ADDITIONAL REGULATIONS FOR ADULT MOTELS.

(A) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated 2 or more times in a period of time that is less than 10 hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.

(B) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually-oriented business license, the person rents or subrents a sleeping room to another and, within 10 hours from the time the room is rented, the person rents or subrents the same sleeping room again.

(C) For the purpose of division (B) above, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

RENT or SUBRENT. The act of permitting a room to be occupied for any form of consideration.
(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

§ 118.34 ADDITIONAL REGULATIONS FOR ALL SEXUALLY-ORIENTED BUSINESSES.

A person commits an offense if the person allows another person under the age of 18 years to enter or remain on or in the enclosed portion of a sexually-oriented business, or for a person under the age of 18 years to enter or remain on or in the enclosed portion of a sexually-oriented business.

(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

§ 118.35 REGULATIONS PERTAINING TO SEXUALLY-ORIENTED BUSINESSES WITH VIEWING OR OTHER ROOMS.

(A) A person who operates or causes to be operated a sexually-oriented business, other than an adult motel, which either exhibits on the premises in a viewing room of less than 150 square feet of floor spaces, a film, videocassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas; or has a room or booth (excluding restrooms) of less than 150 square feet to which patrons are admitted for any reason, shall comply with the following requirements.

(1) Upon application for a sexually-oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of 1 or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required, however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises. The Town Administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) The application shall be sworn to be true and correct by the applicant(s).

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Town Administrator or his or her designee.

(4) It is the duty of the owners and operator of the premises to ensure that at least 1 employee is on duty and situated in each manager's station at all times that any patron is present inside the premises. It is the duty of the owners and operator of the premises and the employees who are present to ensure that no more than 1 person occupies a room or booth at any time, and that all other entrances to rooms, booths or viewing areas (and to the aisles, walkways, and hallways leading to rooms, booths, or viewing areas) are maintained free of any obstruction such as a door, curtain, panel, board, slat, ribbon, cord, rope, chain, or other device.

(5) The interior of the premises shall be configured in a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment, cameras, or any other kind of photographic equipment. If the premises have 2 or more manager's stations designated, then the interior of the premises shall be configured in a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least 1 of the manager's stations. The view required must be by direct line of sight from the manager's station.

(6) It shall be the duty of the owners and operator, and it shall also be the duty of all employees present in the premises to ensure that the line of sight and view area specified in division (A)(5) above remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted in the application filed pursuant to division (A)(1) above.

(7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 1 foot candle as measured at the floor level.

(8) It shall be the duty of the owners and operator and it shall also be the duty of all employees

present on the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(9) No operator, owner, or employee shall allow openings of any kind to exist between rooms or booths.

(10) No person shall make or attempt to make an opening of any kind between rooms or booths.

(11) The operator or owner, shall, during each business day, regularly inspect the walls between the rooms or booths to determine if any openings or holes exist.

(12) The owner or operator shall cause all floor coverings in rooms, booths, and viewing areas to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(13) The owner or operator shall cause all wall surfaces and seating surfaces in rooms, booths, and viewing areas to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.

(B) A person having a duty under division (A) above commits an offense if the person fails to fulfill that duty.

(Ord. 9-03, passed 5-6-2003) Penalty, see § 118.99

(B) *Civil injunction.* Any person who violates this chapter is subject to a civil suit for injunction as well as prosecution for criminal violations and liability for licensing sanctions such as suspension or revocation.

(Ord. 9-03, passed 5-6-2003)

§ 118.99 PENALTY.

(A) *Criminal penalty.* Any person who violates any provision of this chapter shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of \$500, or imprisonment, or both; provided however, beginning 1-1-1995, a violation of this chapter shall be deemed to be a Class III misdemeanor and the person who violates this chapter shall be subject to a fine of \$500, or imprisonment, or both.

TITLE XIII: GENERAL OFFENSES

Chapter

130. GENERAL OFFENSES

CHAPTER 130: GENERAL OFFENSES

Section

General Offenses

- 130.01 Obedience to police
- 130.02 Affixing advertisements and the like
- 130.03 Begging
- 130.04 Malt beverages, wine; consumption on town property
- 130.05 Trespassing on town property

Curfew for Minors

- 130.20 Imposed; hours
- 130.21 Parent or guardian not to permit violation
- 130.22 Investigation of violation; return of minor to parent or guardian

Firearms

- 130.35 Discharge
- 130.36 Seizure by police

GENERAL OFFENSES

§ 130.01 OBEDIENCE TO POLICE.

No person shall refuse to comply with any lawful order or direction of a police officer.
(1994 Code, § 130.01)

§ 130.02 AFFIXING ADVERTISEMENTS AND THE LIKE.

It shall be unlawful for any person to affix advertisements, bills, or notices to any telephone pole, telegraph pole or electric light or power pole, fence, wall or post, tree or underpass or building or structure, upon any town street or right-of-way, or upon private property without the consent of the owner.

(1994 Code, § 130.02) Penalty, see § 10.99

Statutory reference:

*Unlawful posting of advertisements, see
G.S. § 14-145*

§ 130.03 BEGGING.

It shall be unlawful for any person to engage in systematic begging upon the streets, public places, or public buildings of the town.

(1994 Code, § 130.03) Penalty, see § 10.99

Statutory reference:

*Authority of town to regulate begging, see
G.S. § 160A-179*

§ 130.04 MALT BEVERAGES, WINE; CONSUMPTION ON TOWN PROPERTY.

(A) No person shall consume malt beverages or unfortified wine on property owned or occupied by the town, unless a location is licensed under state law for the consumption on the premises of the beverages. The exception and under the conditions allowed by law and pursuant to lawfully issued permits for consumption of the particular beverage being consumed at the particular place and time, and not otherwise.

Long View - General Offenses

(B) Any person violating this section, and any person who aids, abets, encourages, assists, or contributes to the consumption, and any person who, having control of the premises where the consumption occurs in violation of this section, willfully permits or allows the consumption to occur shall be guilty of a misdemeanor.

(1994 Code, § 130.04) Penalty, see § 10.99

§ 130.05 TRESPASSING ON TOWN PROPERTY.

A person commits the offense of trespass on Town of Long View property, if, without authorization, he or she enters or remains on Town of Long View property:

(A) After he or she has been notified not to enter or remain there by a Town of Long View police officer, or any other official of the town, having the authority to make the request; or

(B) That is posted, in a manner reasonably likely to come to the attention of intruders, with notice not to enter the premises.

(Ord. 11-96, passed 11-5-1996) Penalty, see § 10.99

CURFEW FOR MINORS

§ 130.20 IMPOSED; HOURS.

(A) It is a curfew violation for a child 15, 16, or 17 years of age to be in a public place:

(1) Between 1:00 a.m. and 5:00 a.m. on Saturday or Sunday;

(2) After 11:00 p.m. on Sunday, Monday, Tuesday, Wednesday, or Thursday; or

(3) Before 5:00 a.m. on Monday, Tuesday, Wednesday, Thursday, or Friday.

(B) It is a curfew violation for a child under 15 years of age to be in a public place after 11:00 p.m. or before 5:00 a.m. on any day.

(C) This section does not apply to a child who is:

(1) Accompanied by his or her parent, guardian, or custodian;

(2) Accompanied by an adult specified by his or her parent, guardian, or custodian; or

(3) Participating in, going to, or returning from:

(a) Lawful employment;

(b) A school-sanctioned activity; or

(c) A religious event.

(D) Whenever the town determines that the curfew time established by divisions (A) or (B) above is later than is reasonable for public safety under the conditions found to exist in the town, the town may, by ordinance, advance the curfew time within its jurisdiction by not more than 1 hour.

(1994 Code, § 130.15) Penalty, see § 10.99

§ 130.21 PARENT OR GUARDIAN NOT TO PERMIT VIOLATION.

No parent, guardian, or other person having the care, custody, or control of any minor under the age of 16 years shall permit the minor to violate any of the provisions of § 130.20.

(1994 Code, § 130.16) Penalty, see § 10.99

§ 130.22 INVESTIGATION OF VIOLATION; RETURN OF MINOR TO PARENT OR GUARDIAN.

(A) Whenever any law enforcement officer discovers or has his or her attention called to the fact a minor is violating any of the provisions of § 130.20, the duty officer shall investigate immediately.

(B) If the investigation reveals § 130.20 is being violated by the minor, the officer shall take the minor into custody and cause him or her to be taken or delivered to his or her home or place of residence and placed in the care and control of the parent, guardian, or other person having control of the minor.

(C) Any parent, guardian, or other person having the care, custody, or control of any minor who, after delivery of the minor to his or her custody under the provisions of divisions (A) and (B) above, shall permit the minor to violate the provisions of this subchapter again shall be guilty of a misdemeanor and punished as provided by state law.

(1994 Code, § 130.17) Penalty, see § 10.99

FIREARMS

§ 130.35 DISCHARGE.

(A) It is hereby specifically prohibited and it shall be unlawful for any person to shoot or discharge within the corporate limits of the town any firearm, gun or pistol, air rifle, spring gun or pistol, compressed air rifle or pistol, or other similar devices which impels with force a shot or pellets of any kind.

(B) This section shall not be applicable to police officers or other law enforcement officers while discharging their official duties.

(1994 Code, § 130.25) Penalty, see § 10.99

§ 130.36 SEIZURE BY POLICE.

The Police Chief or any member of the Police Department or County Sheriff's Office is hereby authorized to seize and hold, subject to the order of the court, any gun or pistol, air rifle, spring gun or pistol, compressed air rifle or pistol, or other similar devices referred to in § 130.35 which impels with force any shot or pellets of any kind which shall be used, shot, or discharged within the town in violation of § 130.35.

(1994 Code, § 130.26)

TITLE XV: LAND USAGE

Chapter

- 150. BUILDING REGULATIONS**
- 151. FLOOD DAMAGE PREVENTION**
- 152. HOUSING STANDARDS**
- 153. SUBDIVISION REGULATIONS**
- 154. ZONING CODE**
- 155. NONRESIDENTIAL BUILDING MAINTENANCE
STANDARDS**

CHAPTER 150: BUILDING REGULATIONS

Section

General Provisions

- 150.01 County Building Inspector; inspection fees adopted
- 150.02 Permit required; approval; issuance
- 150.03 House numbering required
- 150.04 Adoption of laws concerning building, general remodeling, and construction of all types
- 150.99 Penalty

GENERAL PROVISIONS

§ 150.01 COUNTY BUILDING INSPECTOR; INSPECTION FEES ADOPTED.

(A) The Catawba County Building Inspector is directed to exercise the powers of Building Inspector within the town, effective immediately, and continue to exercise the powers until the time as the Board of Alderpersons officially withdraws its request.

(B) The present fee schedule for building inspections in Catawba County shall also apply to the town, and the fee schedule as adopted by Catawba County for building inspections from time to time shall also apply to the town until the time as the town shall officially adopt a different fee schedule and officially communicate same to the county.
(1994 Code, § 150.01)

§ 150.02 PERMIT REQUIRED; APPROVAL; ISSUANCE.

No building or structure shall be built, enlarged, altered, or moved without a permit from the town, which may require a plan of the proposed work, together with a statement of the materials shall be used. All applications for building permits shall be approved by the Building Inspector before the permit is issued.

(1994 Code, § 150.02) Penalty, see § 150.99

§ 150.03 HOUSE NUMBERING REQUIRED.

(A) It shall be the duty of the owner of each house or building in the town to properly display on the front thereof, in a position easily observed, the proper number of his or her house or building as shown upon the official town map and/or as designated by the Town Engineer, for the ascertainment of which the owner shall apply to the Town Clerk or his or her designee.

(B) Upon notice by the Town Administrator to any owner or occupant of any house or building, it shall be the duty of the owner or occupant within 10 days after the notice shall have been given assigning to the house or building a number or numbers, to cause the house or building to be numbered as required, at the expense of the owners or occupant.
(1994 Code, § 150.03) Penalty, see § 150.99

**§ 150.04 ADOPTION OF LAWS
CONCERNING BUILDING, GENERAL
REMODELING, AND CONSTRUCTION OF
ALL TYPES.**

The provisions of G.S. §§ 143-136 through 143-143.4, Building Code Council and Building Code, are hereby adopted as the laws governing and applying to building, general remodeling, and construction of all types within the Town of Long View, G.S. § 143-138(e).

§ 150.99 PENALTY.

Any person who shall violate any of the provisions of this chapter and the codes adopted herein shall be punished as provided in § 10.99 of this code of ordinances. Each day that the violation shall continue shall be deemed to be a separate offense.
(1994 Code, § 150.99)

CHAPTER 151: FLOOD DAMAGE PREVENTION

Section

General Provisions

- 151.01 Findings of fact
- 151.02 Statement of purpose
- 151.03 Objectives
- 151.04 Definitions
- 151.05 Lands to which these regulations apply
- 151.06 Basis for establishing the areas of special flood hazard
- 151.07 Establishment of development permit
- 151.08 Compliance
- 151.09 Abrogation and greater restrictions
- 151.10 Interpretation
- 151.11 Warning and disclaimer of liability

Provisions for Flood Hazard Reduction

- 151.25 General standards
- 151.26 Nonconforming buildings or uses
- 151.27 Specific standards
- 151.28 Floodways
- 151.29 Standards for streams without established base flood elevations or floodways
- 151.30 Standards for subdivision proposals
- 151.31 Standards for areas of shallow flooding (AO zones)

Administration and Enforcement

- 151.45 Designation of Local Administrator
- 151.46 Development permit and certification requirements
- 151.47 Duties and responsibilities of the Local Administrator
- 151.48 Administrative procedures

- 151.49 Variance procedures
- 151.50 Conditions for variances

- 151.99 Penalty

Cross-reference:

Building Regulations, see Chapter 150

GENERAL PROVISIONS

§ 151.01 FINDINGS OF FACT.

(A) The flood hazard areas of the town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(B) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.
(1994 Code, § 151.01)

§ 151.02 STATEMENT OF PURPOSE.

It is the purpose of this chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(A) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

(B) Require that uses vulnerable to floods, including facilities which serve the uses, be protected against flood damage at the time of initial construction;

(C) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;

(D) Control filling, grading, dredging, and other development which may increase erosion or flood damage; and

(E) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.
(1994 Code, § 151.02)

§ 151.03 OBJECTIVES.

The objectives of this chapter are:

(A) To protect human life and health;

(B) To minimize expenditure of public money for costly flood control projects;

(C) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) To minimize prolonged business interruptions;

(E) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in floodplains;

(F) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in a manner as to minimize flood blight areas; and

(G) To insure that potential home buyers are notified that property is in a flood area.
(1994 Code, § 151.03)

§ 151.04 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADDITION (TO AN EXISTING BUILDING).

An extension or increase in the floor area or height of a building or structure. Additions to existing buildings shall comply with the requirements for new construction, unless the addition, renovation, or reconstruction to any building, that was constructed prior to the initial Flood Insurance Study for that area, and the addition, renovation, or reconstruction does not equal 50% of the present market value of the structure. Where a fire wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and must comply with the standards for new construction.

APPEAL. A request from a review of the Local Administrator's interpretation of any provision of this chapter.

AREA OF SHALLOW FLOODING. A designated AO or VO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

AREA OF SPECIAL FLOOD HAZARD. The land in the floodplain within a community subject to a 1% or greater chance of being equaled or exceeded in any given year.

BASE FLOOD. The flood having a 1% chance of being equaled or exceeded in any given year.

BASEMENT. The lowest level or story which has its floor subgrade on all sides.

BREAKAWAY WALL. A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system. A **BREAKAWAY WALL** shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. A wall with loading resistance of more than 20 pounds per square foot requires a professional engineer or architect's certificate.

BUILDING. Any structure built for support, shelter, or enclosure for any occupancy or storage.

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

ELEVATED BUILDING. A non-basement building built, in the case of a building in Zones A1-A30, AE, A, A99, AO, AH, B, C, or X to have the top of the elevated floor, or in the case of a building in Zones V1-V30, VE, or V to have the bottom of the lowest horizontal structural member of the elevated floor above the ground by means of pilings, columns (posts and piers), shear walls parallel to the flow of water and adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In the case of Zones A1-A30, AE, A, A99, AO, AH, B, C, and X, **ELEVATED BUILDING** also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-V30, VE, or V, **ELEVATED BUILDING** also includes a building otherwise meeting the definition of **ELEVATED BUILDING**,

even though the area below is enclosed by means of breakaway walls if the breakaway walls meet the standards of § 151.46(B)(5).

EXISTING MANUFACTURED HOME PARK or MANUFACTURED HOME SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of this chapter.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK or SUBDIVISION. The preparation of the additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs).

FLOOD or FLOODING. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

FLOOD HAZARD BOUNDARY MAP (FHBM). An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.

FLOOD INSURANCE RATE MAP (FIRM). An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY. The official report provided by the Federal Emergency

Management Agency. The report contains flood profiles, as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 1 foot.

FLOOR. The top surface of an enclosed area in a building (including basement), such as top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

FUNCTIONALLY DEPENDENT FACILITY. A facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

HIGHEST ADJACENT GRADE. The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

HISTORIC STRUCTURE. Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places; and/or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by an approved state program as determined by the Secretary of Interior, or directly by the Secretary of Interior in states without approved programs.

LEVEE. A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

LOWEST FLOOR. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided that the enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

MANUFACTURED HOME. A structure as defined in G.S. § 143-145(7).

MANUFACTURED HOME PARK or SUBDIVISION. A parcel (or contiguous parcels) of land divided into 2 or more manufactured home lots for rent or sale.

MEAN SEA LEVEL. The average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this chapter, the term is synonymous with National Geodetic Vertical Datum (N.G.V.D.).

NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D.). As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

NEW CONSTRUCTION. Structures for which the "start of construction" commenced on or after the effective date of this chapter and includes any subsequent improvements to the structures.

NEW MANUFACTURED HOME PARK or SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs) is completed on or after the effective date of this chapter.

NONCONFORMING BUILDING or USE. Any legally existing building or use which fails to comply with the provisions of the chapter.

RECREATIONAL VEHICLE. A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

REMEDY A VIOLATION. To bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the chapter or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

START OF CONSTRUCTION. For other than new construction or substantial improvements under the Coastal Barrier Resources Act, Pub. L. No. 97-348, being U.S.C. §§ 3501 *et seq.*, includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation,

addition, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE. For floodplain management purposes, a walled and roofed building, a manufactured home, including a gas or liquid storage tank, or other man-made facilities or infrastructures that are principally above ground.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. See definition of "substantial improvement."

SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project of improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which

have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

SUBSTANTIALLY IMPROVED EXISTING MANUFACTURED HOME PARK or SUBDIVISION. Where the repair, reconstruction, rehabilitation, or improvement of the streets, utilities, and pads equals or exceeds 50% of the value of the streets, utilities and pads before the repair, reconstruction, or improvement commenced.

VARIANCE. A grant of relief to a person from the requirements of this chapter which permits construction in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship.

VIOLATION. The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in § 151.25 *et seq.* is presumed to be in violation until the time as that documentation is provided.
(1994 Code, § 151.04)

§ 151.05 LANDS TO WHICH THESE REGULATIONS APPLY.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the town.
(1994 Code, § 151.05)

§ 151.06 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

The areas of special flood hazard identified by the Federal Emergency Management Agency in its Flood Plain Insurance Study, dated 11-12-1979, with

accompanying maps and other supporting data, and any revision thereto are adopted by reference and declared to be a part of this chapter.
(1994 Code, § 151.06)

§ 151.07 ESTABLISHMENT OF DEVELOPMENT PERMIT.

A development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities.
(1994 Code, § 151.07) Penalty, see § 151.99

§ 151.08 COMPLIANCE.

No structure or land shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this chapter and other applicable regulations.
(1994 Code, § 151.08) Penalty, see § 151.99

§ 151.09 ABROGATION AND GREATER RESTRICTIONS.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
(1994 Code, § 151.09)

§ 151.10 INTERPRETATION.

In the interpretation and application of this chapter all provisions shall be:

(A) Considered as minimum requirements;

(B) Liberally construed in favor of the governing body; and

(C) Deemed neither to limit nor repeal any other powers granted under state statutes.
(1994 Code, § 151.10)

§ 151.11 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within the areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the town or by any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder. (1994 Code, § 151.11)

PROVISIONS FOR FLOOD HAZARD REDUCTION**§ 151.25 GENERAL STANDARDS.**

In all areas of special flood hazard the following provisions are required:

(A) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure;

(B) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

(C) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages;

(D) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;

(G) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding; and

(H) Any alteration, repair, reconstruction or improvements to a structure, which is in compliance with the provisions of this chapter, shall meet the requirements of "new construction" as contained in this chapter.

(1994 Code, § 151.20) Penalty, see § 151.99

§ 151.26 NONCONFORMING BUILDINGS OR USES.

Nonconforming buildings or uses may not be enlarged, replaced, or rebuilt unless the enlargement or reconstruction is accomplished in conformance with the provisions of this chapter. Provided, however, nothing in this chapter shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this chapter and located totally or partially within the Floodway Zone, provided that the bulk of the building or structure below base flood elevation in the Floodway Zone is not increased and provided that the repair, reconstruction, or replacement meets all of the other requirements of this chapter.

(1994 Code, § 151.21) Penalty, see § 151.99

§ 151.27 SPECIFIC STANDARDS.

In all areas of special flood hazard where base flood elevation data has been provided, as set forth in §§ 151.06 or 151.47(J), the following provisions are required.

(A) *Residential construction.* New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated no lower than 1 foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided.

(B) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial, or nonresidential structure (including manufactured homes) shall have the lowest floor, including basement, elevated no lower than 1 foot above the level of the base flood elevation. Structures located in A-zones may be floodproofed in lieu of elevation provided that all areas of the structure below the required elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this division are satisfied. The certification shall be provided to the official as set forth in § 151.46(B)(5).

(C) *Manufactured homes.*

(1) Manufactured homes that are placed or substantially improved on sites outside a manufactured home park or subdivision; in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated no lower than 1 foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(2) Manufactured homes that are to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of division (C)(1) herein must

be elevated so that the lowest floor of the manufactured home is elevated no lower than 1 foot above the base flood elevation, and be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement.

(3) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. For the purpose of this requirement, manufactured homes must be anchored to resist flotation, collapse, or lateral movement in accordance with the Regulations for Mobile Homes and Modular Housing adopted by the Commissioner of Insurance pursuant to G.S. § 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis at least 36 inches or less above the grade at the sight, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above 36 inches in height an engineering certification is required.

(4) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved, or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Local Administrator and the local Emergency Management Coordinator.

(D) *Recreational vehicles.* A recreational vehicle is ready for highway use if it is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions. Recreation vehicles placed on sites shall either:

(1) Be on site for fewer than 180 consecutive days;

(2) Be fully licensed and ready for highway use; or

(3) Meet the requirements of §§ 151.25, 151.26, 151.27(C), and 151.46(B)(3).

(E) *Elevated buildings.* New construction or substantial improvements of elevated buildings that

include fully enclosed areas that are usable solely for the parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to preclude finished living space and be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

(1) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

(a) Provide a minimum of 2 openings having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding;

(b) The bottom of all openings shall be no higher than 1 foot above grade; and

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

(2) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).

(3) The interior portion of the enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.

(F) *Temporary structures.* Prior to the issuance of a development permit, for a temporary structure, the following requirements must be met.

(1) All applicants must submit to the Local Administrator a plan for the removal of the structure(s) in the event of a hurricane or flash flood notification. The plan must include the following information:

(a) The name, address, and phone number of the individual responsible for the removal of the temporary structure;

(b) The time frame prior to the event at which a structure will be removed;

(c) A copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and

(d) Designation, accompanied by documentation, of a location outside the floodplain to which the temporary structure will be moved.

(2) The above information shall be submitted in writing to the Local Administrator for review and written approval.

(G) *Accessory structures.* When accessory structures (sheds, detached garages, and the like) with a value of \$3,000 or less, are to be placed in the floodplain the following criteria shall be met:

(1) Accessory structures shall not be used for human habitation;

(2) Accessory structures shall be designed to have low flood damage potential;

(3) Accessory structures shall be firmly anchored in accordance with § 151.25(A);

(4) Service facilities such as electrical and heating equipment shall be elevated in accordance with § 151.25(D);

(5) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance of the flow of floodwaters; and

(6) Openings to relieve hydrostatic pressure during a flood shall be provided above BFE in conformance with §§ 151.25 and 151.26.

(1994 Code, § 151.22) Penalty, see § 151.99

§ 151.28 FLOODWAYS.

(A) Located within areas of special flood hazard established in § 151.06, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of flood waters which carry debris and potential projectiles and has erosion potential.

(B) The following provisions shall apply within the areas.

(1) No encroachments, including fill, new construction, substantial improvements, and other developments shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood. The certification and technical data shall be presented to the Local Administrator.

(2) If § 151.27(F)(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of §§ 151.25 *et seq.*

(3) No manufactured homes shall be permitted, except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and the elevation standards of § 151.27(C) are met.

(1994 Code, § 151.23) Penalty, see § 151.99

§ 151.29 STANDARDS FOR STREAMS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS OR FLOODWAYS.

Located within the areas of special flood hazard established in § 151.06 are small streams where no base flood data has been provided or where no floodways have been identified. The following provisions apply within the areas.

(A) No encroachments, including fill, new construction, substantial improvements, or new development shall be permitted within a distance of the stream bank equal to 4 times the width of the stream at the top of the bank or 20 feet each side from top of bank, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(B) If division (A) of this section is satisfied and base flood elevation data is available from other sources, all new construction and substantial improvements within the areas shall comply with all applicable flood hazard chapter provisions of §§ 151.25 *et seq.* and shall be elevated or floodproofed in accordance with elevations established in accordance with § 151.47(J). When base flood elevation data is not available from a federal, state, or other source, the lowest floor, including basement, shall be elevated at least 2 feet above the highest adjacent grade.

(1994 Code, § 151.24) Penalty, see § 151.99

§ 151.30 STANDARDS FOR SUBDIVISION PROPOSALS.

(A) All subdivision proposals shall be consistent with the need to minimize flood damage;

(B) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

(C) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and

(D) Base flood elevation data shall be provided for subdivision proposals and other proposed development which is greater than the lesser of 50 lots or 5 acres.

(1994 Code, § 151.25) Penalty, see § 151.99

§ 151.31 STANDARDS FOR AREAS OF SHALLOW FLOODING (AO ZONES).

(A) Located within the areas of special flood hazard established in § 151.06 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate.

(B) The following provisions shall apply within the areas.

(1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least 2 feet above the highest adjacent grade.

(2) All new construction and substantial improvements of non-residential structures shall:

(a) Have the lowest floor, including basement, elevated to the depth number specified on the Flood Insurance Rate Map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least 2 feet above the highest adjacent grade; or

(b) Be completely floodproofed together with attendant utility and sanitary facilities to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(1994 Code, § 151.26) Penalty, see § 151.99

ADMINISTRATION AND ENFORCEMENT**§ 151.45 DESIGNATION OF LOCAL ADMINISTRATOR.**

The Town Administrator or other appropriately designated person or agency by the Board of Alderpersons is hereby appointed to administer and implement the provisions of this chapter. (1994 Code, § 151.35)

§ 151.46 DEVELOPMENT PERMIT AND CERTIFICATION REQUIREMENTS.

(A) Application for a development permit shall be made to the Local Administrator on forms furnished by him or her prior to any development activities. The development permit may include, but not be limited to, plans in duplicate drawn to scale showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures; and the location of fill materials, storage areas, and drainage facilities.

(B) Specifically, the following information is required.

(1) Where base flood elevation data is provided in accordance with § 151.47(J), the application for a development permit within the Zone A on the Flood Insurance Rate Map shall show:

(a) The elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures; and

(b) If the structure has been floodproofed in accordance with § 151.27(B), the elevation (in relation to mean sea level) to which the structure was floodproofed.

(2) Where the base flood elevation data is not provided, the application for a development permit must show construction of the lowest floor at least 2 feet above the highest adjacent grade.

(3) Where any watercourse will be altered or relocated as a result of proposed development, the application for a development permit shall include: a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation.

(4) When a structure is floodproofed, the applicant shall provide a certificate from a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in § 151.27(B).

(5) A floor elevation or floodproofing certification is required after the lowest floor is completed. Within 21 calendar days of establishment of the lowest floor elevation, or floodproofing by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the Local Administrator a certification of the elevation of the lowest floor, or floodproofed elevation, whichever is applicable, as built, in relation to mean sea level. The certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized for a particular building, the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Local Administrator shall review the floor elevation survey data submitted. Deficiencies detected by the review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make the corrections required hereby shall be cause to issue a stop-work order for the project.

(1994 Code, § 151.36)

§ 151.47 DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR.

Duties of the Local Administrator shall include, but not be limited to:

(A) Review all development permits to assure that the requirements of this chapter have been satisfied;

(B) Advise permittee that additional federal or state permits may be required, and if specific federal or state permits are known, require that copies of the permits be provided and maintained on file with the 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 the notification to the Federal Emergency Management Agency;

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

(E) Prevent encroachments within floodways unless the certification and flood hazard reduction provisions of §§ 151.25 *et seq.* are met;

(F) Obtain actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, in accordance with § 151.46(B)(5);

(G) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed, in accordance with § 151.46(B)(5);

(H) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with § 151.27(B);

(I) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (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 base flood elevation data or floodway data has not been provided in accordance with § 151.06, obtain, review, and reasonably utilize any base flood elevation data and floodway data available from a federal, state, or other source, including data developed pursuant to § 151.30(D), in order to administer the provisions of this chapter;

(K) Make on-site inspections of projects in accordance with § 151.48;

(L) Serve notices of violations, issue stop-work orders, revoke permits, and take corrective actions in accordance with § 151.48;

(M) Maintain all records pertaining to the administration of this chapter and make these records available for public inspection; and

(N) Provide the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program with 2 copies of the maps delineating new corporate limits within 6 months from date of annexation or change in corporate boundaries.
(1994 Code, § 151.37)

§ 151.48 ADMINISTRATIVE PROCEDURES.

(A) *Inspections of work in progress.* As the work pursuant to a permit progresses, the Local 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 local regulations and the terms of the permit. In exercising this power, the Administrator has a right, upon

presentation of proper credentials, to enter on any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.

(B) *Stop-work orders.* Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this chapter, the 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 reasons for the stoppage, and the conditions under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

(C) *Revocation of permits.* The Local Administrator may revoke and require the return of the development permit by notifying the permit holder in writing stating the reason 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 permit mistakenly issued in violation of an applicable state or local law may also be revoked.

(D) *Periodic inspections.* The Local 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.

(E) *Violations to be corrected.* When the Local 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 in the property he or she owns.

(F) *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

Administrator shall give him or her written notice, by certified or registered mail to his or her last known address or by personal service:

(1) That the building or property is in violation of the Flood Damage Prevention Chapter;

(2) That a hearing will be held before the Local Administrator at a designated place and time, not later than 10 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 Local Administrator may issue the order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

(G) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, the Administrator shall find that the building or development is in violation of the Flood Damage Prevention Chapter, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within the period, not less than 60 days, the Administrator may prescribe; provided that where the Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in the lesser period as may be feasible.

(H) *Appeal.* Any owner who has received an order to take corrective action may appeal from the order to the local elected governing body by giving notice of appeal in writing to the Administrator and the Clerk within 10 days following issuance of the final order. In the absence of an appeal, the order of the Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

(I) *Failure to comply with order.* If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he or she shall

be guilty of a misdemeanor and shall be punished in the discretion of the court.

(1994 Code, § 151.38) Penalty, see § 151.99

§ 151.49 VARIANCE PROCEDURES.

(A) The Board of Adjustment as established by the town shall hear and decide requests for variances from the requirements of this chapter.

(B) Any person aggrieved by the decision of the Appeal Board or any taxpayer may appeal the decision to the Court, as provided in G.S. Chapter 7A.

(C) Variances may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(D) In passing upon the applications, the Appeal Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:

(1) The danger that materials may be swept onto other lands to the injury of others;

(2) The danger to life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage and the effect of the damage on the individual owner;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity to the facility of a waterfront location, where applicable;

(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The compatibility of the proposed use with existing and anticipated development;

(8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

(11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(E) Upon consideration of the factors listed above and the purposes of this chapter, the Appeal Board may attach the conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(F) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
(1994 Code, § 151.39)

§ 151.50 CONDITIONS FOR VARIANCES.

(A) Variances may not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or chapters.

(B) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(C) Variances shall only be issued upon a showing of good and sufficient cause; a determination that failure to grant the variance would result in

exceptional hardship; and, a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or chapters.

(D) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. The notification shall be maintained with a record of all variance actions.

(E) The Local Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

(1994 Code, § 151.40)

§ 151.99 PENALTY.

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 the violation continues shall be considered a separate offense. Nothing herein contained shall prevent the town from taking the other lawful action as is necessary to prevent or remedy any violation.
(1994 Code, § 151.99)

CHAPTER 152: HOUSING STANDARDS

Section

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§ 152.01 FINDINGS; PURPOSE; AUTHORITY.

(A) Pursuant to G.S. § 160A-441, it is hereby found and declared that there exist in the town's corporate limits, dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents and other calamities, lack of ventilation, light and sanitary facilities, and due to other conditions rendering such dwellings unsafe and unsanitary, and dangerous and detrimental to the health, safety and morals, and otherwise inimical to the welfare of the residents of the town.

(B) In order to protect the health, safety and welfare of the residents of the town, as authorized by G.S. Ch. 160A, Art. 19, Part 6, it is the purpose of this chapter to establish minimum standards of fitness for the initial and continued occupancy of all buildings

used for human habitation, as expressly authorized by G.S. § 160A-444.

(C) In addition, it is hereby found and declared, under the authority of G.S. § 160A-174, that there exist in the town dwellings which, although not meeting the classification as unfit for human habitation, fail to fully comply with all the minimum standards for housing fitness as established herein and therefore have present 1 or more conditions which are inimical to the public health, safety and general welfare. Such conditions, if not corrected can lead to deterioration and dilapidation of dwellings which render them unfit for human habitation.

(Ord. passed 9-8-2008)

§ 152.02 SCOPE.

(A) This chapter is hereby declared to be remedial and shall be construed to secure the beneficial interests and purposes thereof which are public safety, health and general welfare through structural strength, stability, sanitation, adequate light and ventilation and safety to life and property from fire and other hazards incident to the construction, alteration, repair, removal, demolition, use and occupancy of dwellings, apartment houses, rooming houses or buildings, structures or premises used or intended for use as such.

(B) The provisions of this chapter shall apply to all existing housing and to all housing hereafter constructed within the town. Portable, mobile or demountable buildings or structures, including trailers, manufactured homes and mobile homes when used or intended for use for housing within the town, shall be subject to the applicable provisions of this chapter.

This chapter establishes minimum requirements for the initial and continued occupancy of all buildings used for human habitation and does not replace or modify requirements otherwise established for the construction, repair, alteration or use of buildings, equipment or facilities except as provided in this chapter.

(C) The provisions of this chapter shall also apply to abandoned structures which are found by the Board of Aldermen to be a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary conditions.

(Ord. passed 9-8-2008)

§ 152.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED STRUCTURE. Any structure, whether designed and intended for residential or other uses, which has been vacant or not in active use, regardless of purpose or reason, for the past 2-year period and which is determined by the Housing Inspector to be unfit for human habitation or occupancy based upon the standards as set forth in this chapter.

BASEMENT. A portion of a building which is located partly underground, having access to light and air from windows located above the level of the adjoining ground.

CELLAR. A portion of a building located partly or wholly underground having inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.

DETERIORATED DWELLING. A dwelling that is unfit for human habitation and can be repaired, altered or improved to comply with all of the

minimum standards established by this chapter, at a cost not in excess of 50% of its value, as determined by finding of the Housing Inspector.

DILAPIDATED DWELLING. A dwelling that is unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards established by this chapter at a cost not in excess of 50% of its value, as determined by finding of the Housing Inspector.

DWELLING. Any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any accessory buildings and structures and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home or mobile home, which is used solely for a seasonal vacation purpose.

DWELLING UNIT. Any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

EXTERMINATION. The control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination methods approved by the Housing Inspector.

GARBAGE. The animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

HABITABLE ROOM. A room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, heater rooms, foyers or communicating corridors, closets and storage spaces.

HOUSING INSPECTOR. The person appointed by the Town Manager to carry out the administration and enforcement of this chapter.

INFESTATION. The presence, within or around a dwelling, of any insects, rodents or other pests in such number as to constitute a menace to the health, safety or welfare of the occupants or to the public.

MANUFACTURED HOME (MOBILE HOME).
A structure as defined in G.S. § 143-145(7).

MULTIPLE DWELLING. Any dwelling containing more than 2 dwelling units.

OCCUPANT. Any person over 1 year of age living, sleeping, cooking or eating in, or having actual possession of a dwelling unit or rooming unit.

OPERATOR. Any person who has charge, care or control of a building or part thereof, in which dwelling units or rooming units are let.

OWNER. The holder of the title in fee simple and every mortgage of record.

PARTIES IN INTEREST. All individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

PUBLIC AUTHORITY. Any housing authority or any officer who is in charge of any department or branch of the government of the town, county, or state relating to health, fire, building regulations, or other activities concerning dwellings in the town.

ROOMING HOUSE. Any dwelling, or that part of any dwelling containing 1 or more rooming units, in which space is let by the owner or operator to 3 or more persons who are not husband and wife, son or daughter, mother or father or sister or brother of the owner or operator.

ROOMING UNIT. Any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

RUBBISH. Combustible and noncombustible waste materials except garbage and ashes, and the

term shall include, but not be limited to, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass crockery and dust.

SUPPLIED. Paid for, furnished or provided by, or under the control of, the owner or operator.

Whenever the words "dwelling", "dwelling unit", "rooming house", "rooming unit" or "premises" are used in this chapter, they shall be construed as though they were followed by the words "or any part thereof".
(Ord. passed 9-8-2008)

§ 152.04 OFFICE OF HOUSING INSPECTOR CREATED; POWERS AND DUTIES.

For the purposes of administering and enforcing the provisions of this chapter the office of Housing Inspector is hereby created. The Housing Inspector shall be appointed by the Town Manager, and shall have such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, without limiting the generality of the foregoing, in addition to others herein granted, the following powers:

(A) *Investigations.* To investigate the dwelling and building conditions in the town in order to determine which dwellings therein are unfit for human habitation and dangerous, being guided in such examination of dwellings and buildings by the requirements set forth in this chapter.

(B) *Oaths, witnesses, and the like.* To administer oaths and affirmations and to examine witnesses and receive evidence.

(C) *Right of entry.* To enter upon and within premises and dwellings for the purpose of making examinations and investigations; provided, that such entries shall be made in such a manner as to cause the least possible inconvenience to the persons in possession.

(D) *Warrants; Citations, and the like.* To swear criminal warrants, issue civil citations and to take such other actions as may be necessary to carry out the enforcement procedures of this section.

(E) *Delegation of functions, and the like.* To delegate any of his or her functions and powers under this section to such officers and agents as he or she may designate.

(Ord. passed 9-8-2008)

§ 152.05 INSPECTIONS.

For the purpose of carrying out the intent of this chapter, the Housing Inspector, upon proper identification, is hereby authorized to enter, examine and survey at all reasonable times all dwellings, dwelling units, rooming houses, rooming units and premises, including abandoned structures. The owners or occupants or every dwelling, dwelling unit, rooming unit, or rooming house, or the person in charge thereof, shall give the Housing Inspector free access to the dwelling, dwelling unit, rooming house or rooming unit, and its premises, at all reasonable times for the purposes of the inspection, examination and survey. Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his or her agent or employee, access to any part of the dwelling or dwelling unit, and its premises, at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this chapter or with any lawful order issued pursuant to the provisions of this chapter.

(Ord. passed 9-8-2008)

§ 152.06 PRELIMINARY INVESTIGATIONS; NOTICES; HEARINGS.

(A) Whenever a petition is filed with the Housing Inspector by a public authority or by at least 5 residents of the town charging that any dwelling is unfit for human habitation or whenever it appears to the Housing Inspector (on his or her own motion) that any dwelling is unfit for human habitation, the

Housing Inspector shall, if his or her preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Housing Inspector (or his or her designated agent) at a place within the town therein fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Housing Inspector.

(B) Upon the issuance of a complaint and notice of hearing pursuant to this section, the Inspector may cause the filing of a notice of lis pendens, with a copy of the complaint and notice of hearing attached thereto, in the Office of the Clerk of Superior Court of the County, to be indexed and cross-indexed in accordance with the indexing procedures of the North Carolina General Statutes. The Inspector shall cause a copy of the notice of lis pendens to be served upon the owners and parties in interest in the dwelling at the time of filing in accordance with G.S. § 160A-445, as applicable. Upon compliance with the requirements of any order issued based upon such complaint and hearing, the Inspector shall direct the Clerk of Superior Court to cancel the notice of lis pendens.

(Ord. passed 9-8-2008)

§ 152.07 DWELLING UNFIT FOR HUMAN HABITATION.

(A) The Housing Inspector shall determine that a dwelling is unfit for human habitation if he or she finds that any 1 of the following conditions exist in such dwelling:

(1) Interior walls or vertical studs which seriously list, lean or buckle to such an extent as to render the dwelling unsafe.

(2) Supporting member or members which show 33% or more damage or deterioration, or non-supporting, enclosing or outside walls or covering which shows 50% or more of damage or deterioration.

(3) Floors or roofs which have improperly distributed loads, which are overloaded or which have insufficient strength to be reasonably safe for the purpose used.

(4) Such damage by fire, wind or other causes as to render the dwelling unsafe.

(5) Dilapidation, decay, unsanitary conditions or disrepair which is dangerous to the health, safety or welfare of the occupants or other people in the town.

(6) Inadequate facilities for egress in case of fire or panic.

(7) Defects significantly increasing the hazards of fire, accident or other calamities.

(8) Lack of adequate ventilation, light, heating or sanitary facilities to such extent as to endanger the health, safety or general welfare of the occupants or other residents of the town.

(9) Lack of proper electrical, heating or plumbing facilities required by this chapter which constitutes a definite health or safety hazard.

(10) Lack of connection to a potable water supply and/or to the public sewer or other approved sewage disposal system, the lack of either 1 of which renders a dwelling unfit for human habitation. For the purposes of this standard, a dwelling is not connected to a potable water supply if the water supply has been "cut off" because of nonpayment of the water bill or otherwise or if the system for any reason is not receiving a flow of potable water to the tap.

(B) In addition to the ten conditions stated above, any 1 of which renders a dwelling unfit for human habitation, the Housing Inspector shall

determine that a dwelling is unfit for human habitation if he or she finds that a dwelling fails to fully comply with 7 or more of the following enumerated standards of dwelling fitness:

(1) *Structural standards.*

(a) *Structural integrity.* Walls, partitions, supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle, shall not be rotted, deteriorated or damaged, and shall not have holes or cracks which might admit rodents.

(b) *Supports.* Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.

(c) *Foundations.* Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.

(d) *Steps.* Steps, stairs, landings, porches or other parts or appurtenances shall be maintained in such condition that they will not fail or collapse.

(e) *Egress.* Adequate facilities for egress in case of fire or panic shall be provided.

(f) *Interior materials.* Interior walls and ceilings of all rooms, closets and hallways shall be furnished of suitable materials which will, by use of reasonable household methods, promote sanitation and cleanliness, and shall be maintained in such a manner so as to enable the occupants to maintain reasonable privacy between various spaces.

(g) *Weatherization.* The roof, flashings, exterior walls, basement walls, floors and all doors and windows exposed to the weather shall be constructed and maintained so as to be weather and watertight.

(h) *Chimneys.* There shall be no chimneys or parts thereof which are defective, deteriorated or in danger of falling, or in such condition or location as to constitute a fire hazard.

(i) *Floors.* There shall be no use of the ground for floors or wood floors on the ground.

(2) *Plumbing standards.*

(a) *Facilities.* Each dwelling unit shall contain not less than a kitchen, sink, lavatory, tub or shower, water closet, and an adequate supply of both cold water and hot water. All water shall be supplied through an approved pipe distribution system connected to a potable water supply. For the purposes of this standard, a dwelling is not connected to a potable water supply if the water supply has been "cut off" because of non-payment of the water bill or otherwise or if the system for any reason is not receiving a flow of potable water to the tap.

(b) *Maintenance.* All plumbing fixtures shall meet the standards of the Town Plumbing Code and shall be maintained in a state of good repair and in good working order.

(c) *Accessible.* All required plumbing fixtures shall be located within the dwelling and be accessible to the occupants of the same. The water closet and tub or shower shall be located in a room or rooms affording privacy to the use.

(3) *Heating standards.* Generally, every dwelling shall have facilities for providing heat in accordance with either division (a) or (b) below. Such facilities shall be maintained in a state of good repair and good working order.

(a) *Central and electrical heating systems.* Every central or electric heating system shall be of sufficient capacity so as to heat all habitable rooms, bathrooms and water closet compartments in every dwelling to which it is connected with a minimum temperature of 70°F measured at a point 3 feet above the floor during average winter conditions.

(b) *Other heating facilities.* Where a central or electric heating system is not provided, each dwelling shall be provided with sufficient electrical receptacles, fireplaces, chimneys, flues or gas vents

whereby heating appliances may be connected so as to heat all habitable rooms, bathrooms and water closet compartments with a minimum temperature of 70°F measured 3 feet above, the floor during average winter conditions.

(4) *Electrical standards.*

(a) *Wiring.* Every dwelling shall be wired for electric lights and convenience receptacles. Every habitable room shall contain at least 2 floor or wall type electrical convenience receptacles, connected in such manner as determined by the state Electric Code. There shall be installed in every bathroom, water closet room, laundry room and furnace room at least 1 supplied ceiling or wall type electric light fixture. In the event wall or ceiling light fixtures are not provided in any habitable room, then each such habitable room shall contain at least 3 floor or wall type electric convenience receptacles.

(b) *Hall lights.* Every public hall and stairway in every multiple dwelling shall be adequately lighted by electric lights at all times when natural light is not sufficient.

(c) *Maintenance.* All fixtures, receptacles, equipment and wiring shall be maintained in a state of good repair, safe, capable of being used, and installed in accordance with the state Electric Code.

(5) *Ventilation standards.*

(a) *Generally.* Every habitable room shall have at least 1 window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be 10% of the floor area of such room. Whenever walls or other portions of structures face a window of any such room and such light obstructions are located less than 5 feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight

type window in the top of such a room, the total window area of the skylight shall equal at least 15 % of the total floor area of the room.

(b) *Habitable rooms.* Every habitable room shall have at least 1 window or skylight which can easily be opened, or such other device as will adequately ventilate the room. The total openable window area in every habitable room shall be equal to at least 45% of the minimum, window area size or minimum skylight type window size as required, or shall have other approved equivalent ventilation.

(c) *Bathroom and water closet room.* Every bathroom equipped with more than 1 water closet compartment shall comply with the light and ventilation requirements for habitable rooms.

(6) *Space, use and location standards.*

(a) *Room sizes.* Every dwelling unit shall contain at least the minimum room size in each habitable room as required by the town Residential Building Code. (Floor area shall be calculated on the basis of habitable room area. However, closet area and wall area within the dwelling may count for not more than 10% of the required habitable floor area. The floor area of any part of any room where the ceiling height is less than four and one-half feet shall not be considered as a part of the floor area in computing the total area of the room to determine maximum permissible occupancy.) Every dwelling unit shall contain at least 150 square feet of habitable floor area for the first occupant, at least 100 square feet of additional habitable area for each of the next 3 occupants, and at least 75 square feet of additional habitable floor area for each additional occupant. In every dwelling unit and in every rooming unit, every room occupied for sleeping purposes by 1 occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than 1 occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over, and at least 35 square feet of floor area for each occupant under 12 years of age.

(b) *Ceiling height.* At least one-half of the floor area of every habitable room shall have a ceiling height of not less than 7 feet and 6 inches.

(c) *Cellar.* No cellar shall be used for living purposes unless:

1. The floor and walls are substantially watertight;

2. The total window area, total openable window area and ceiling height are equal to those required for a habitable room; and

3. The required minimum window area of every habitable room is entirely above the grade adjoining such window area, except where the windows face a stairwell, window well or accessory.

(7) *Safe and sanitary maintenance standards.*

(a) *Exterior foundation, walls and roofs.* Every foundation wall, exterior wall and exterior roof shall be substantially weather tight and rodent proof; shall be kept in sound condition and good repair; shall be capable of affording privacy; shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon. Every exterior wall shall be protected with paint or other protective covering to prevent the entrance of penetration of moisture or the weather.

(b) *Interior floors, walls and ceilings.* Every floor, interior wall and ceiling shall be substantially rodent proof; shall be kept in sound condition and good repair; and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon.

(c) *Windows and doors.* Every window, exterior door, basement or cellar door and hatchway shall be substantially weather tight, water tight and rodent proof; and shall be kept in sound working condition and good repair.

(d) *Stairs porches and appurtenances.*

Every inside and outside stair, porch and any appurtenances thereto shall be safe to use and capable of supporting the load that normal use may cause to be placed thereon; and shall be kept in sound condition and good repair.

(e) *Bathroom and kitchen floors.*

Every bathroom and kitchen floor surface and water closet compartment floor surface shall be constructed and maintained so as to be reasonably impervious to water and so as to permit such floor to be easily kept in sound condition and good repair.

(f) *Supplied facilities.* Every supplied facility, piece of equipment or utility which is required under this chapter shall be so constructed or installed that it will function safely and effectively and shall be maintained in satisfactory working condition.

(g) *Drainage.* Every yard shall be properly graded so as to obtain thorough drainage and so as to prevent the accumulation of stagnant water.

(h) *Smoke detector systems.* Every dwelling unit shall be provided with an approved listed smoke detector installed in accordance with the manufacturer's recommendations and listing. When activated, the detector shall provide an audible alarm. The detector shall be tested in accordance with and meet the requirements of UL 217, single and multiple station smoke detectors.

(8) *Insect, rodent and infestation control standards.*

(a) *Screens.* For protection against mosquitoes, flies and other insects every dwelling shall have:

1. Supplied and installed screens on every door opening leading directly from the dwelling to outdoor space. Except, that sliding doors, doors with self-closing devices, doors on mobile homes with self-closing devices and doors that open into rooms of living spaces that are artificially ventilated or air conditioned are exempt from this provision.

2. Supplied and installed screens on every window or other device with an opening to outdoor space, except that this requirement shall not apply for any room or rooms of a dwelling that are ventilated year round with an operable and installed heating and air conditioning system.

(b) *Rodent control.* Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide an entry for rodents, shall be supplied with screens installed or such other approved device as will effectively prevent their entrance.

(c) *Infestation.* Every dwelling shall be maintained in a manner to be free of any infestation of insects, rodents or other pests. Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than 1 dwelling unit shall be responsible for such extermination whenever his or her dwelling unit is the only one infested. Whenever infestation exists in 2 or more of the dwelling units in any dwelling or in the shared or public parts of any dwelling containing 2 or more dwelling units, extermination shall be the responsibility of the owner.

(d) *Rubbish storage and disposal.* Every dwelling shall be supplied with approved containers and covers for storage of rubbish as required by town ordinances, and the owner, operator or agent in control of such dwelling or dwelling unit shall be responsible for the removal of rubbish.

(e) *Garbage storage and disposal.* Every dwelling shall be supplied with an approved garbage disposal facility, which may be an adequate mechanical garbage disposal unit (mechanical sink grinder) in each dwelling unit or an incinerator unit, to be approved by the Inspector, in the structure for the use of the occupants of each dwelling unit, or an approved outside garbage container as required by town ordinances.

(9) *Rooming house standards.* All of the provisions of this chapter, and all of the minimum standards and requirements of this chapter, shall be applicable to rooming houses and to every person who operates a rooming house or who occupies or lets to another for occupancy any rooming unit in any rooming house, except as provided in the following divisions:

(a) *Water closet, hand lavatory and bath facilities.* At least 1 water closet, lavatory basin and bathtub or shower, properly connected to an approved water and sewer system and in good working condition, shall be supplied for each 4 rooms within a rooming house wherever such facilities are shared. All such facilities shall be located within the residence building served, shall be directly accessible from a common hall or passageway and shall not be more than 1 story removed from any of the persons sharing, the facilities. Every lavatory basin and bathtub or shower shall be supplied with hot and cold water at all times. Such required facilities shall not be located in a cellar.

(b) *Minimum floor area for sleeping purposes.* Every room occupied for sleeping purposes by 1 occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than 1 occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over and at least 35 square feet of floor area for each occupant under 12 years of age.

(c) *Sanitary conditions.* The operator of every rooming house shall be responsible for the sanitary maintenance of all walls, floors and ceilings, and for the sanitary maintenance of every other part of the rooming house; and shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building within which the rooming house is contained is leased or occupied by the operator.

(d) *Sanitary facilities.* Every water closet, flush urinal lavatory basin and bathtub or shower required by division (B)(9)(a) of this section shall be located within the rooming house and within a room or rooms which afford privacy and are separate from the habitable rooms, and which are accessible from a common hall and without going outside the rooming house or through any other room therein.

(C) Note: full compliance with a standard means that if any part of the stated standard is not complied with by a particular dwelling then that dwelling has failed to fully comply with the enumerated standard. For example, in regard to the standard in division (B)(2)(a), if all standards are met in a dwelling except that a supply of hot water is not provided, then the dwelling fails to fully comply with standard set forth in division (B)(2)(a).
(Ord. passed 9-8-2008)

§ 152.08 DWELLINGS NOT IN COMPLIANCE BUT NOT UNFIT FOR HUMAN HABITATION.

In any case where the Housing Inspector determines that a dwelling fails to fully comply with 1 or more but less than 7 of the above enumerated standards of dwelling fitness, such dwelling shall not be found to be unfit for human habitation and shall not be subject to the procedures and remedies as provided for in this chapter for dwellings unfit for human habitation. Each such failure of noncompliance, however, shall constitute a violation of the terms of this chapter and shall subject the violator to the penalties and enforcement procedures, civil or criminal or both, of § 10.99 of this code. In making the determination as described in this section, the Housing Inspector shall not be required to make notice and hold the hearing as called for in § 152.06, but the Housing Inspector may do so if the determination of the severity and classification of dwelling fitness is not clear to the Housing Inspector upon preliminary investigation.
(Ord. passed 9-8-2008)

§ 152.09 PROCEDURE AFTER HEARING; ORDER.

(A) If, after notice and hearing, the Housing Inspector determines that the dwelling under consideration is unfit for human habitation in accordance with the standards set forth above, he or she shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order:

(1) If the repair, alteration or improvement of the dwelling can be made at a cost of less than 50% of the value of the dwelling, requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation or to vacate and close the dwelling as a human habitation, based upon the Housing Inspector's standards for closing dwellings; or

(2) If the repair, alteration or improvement of the dwelling cannot be made at a cost of less than 50% of the value of the dwelling, requiring the owner, within the time specified in the order, to repair, alter or improve the dwelling in order to render it fit for human habitation or to remove or demolish such dwelling.

(B) If, after notice and hearing the Housing Inspector determines that the dwelling under consideration is not unfit for human habitation but is not in full compliance with 1 or more standards of dwelling fitness as set forth above, he or she may proceed with the enforcement procedures of this code, civil or criminal or both.

(C) Whenever a determination is made pursuant to this section that a dwelling must be vacated and closed, or removed or demolished, under the provisions of the section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of the notice shall be given before removal or demolition by action of the Inspector, to allow the opportunity for any organization to negotiate with the

owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The Inspector shall certify the mailing of the notices, and the certifications shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail the notices, and the sole remedy shall be an order requiring the Inspector to wait 45 days before causing removal or demolition.

(Ord. passed 9-8-2008)

§ 152.10 FAILURE TO COMPLY WITH ORDER.

(A) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the Housing Inspector may:

(1) Cause the dwelling to be repaired, altered or improved or to be vacated and closed; or

(2) Cause to be posted on the main entrance of any such dwelling, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a violation of this chapter.

(B) If the owner fails to comply with an order to repair, alter, or improve or remove or demolish the dwelling, the Housing Inspector may:

(1) Cause such dwelling to be vacated and removed or demolished; or

(2) Cause to be posted on the main entrance of any such dwelling, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a violation of this chapter.

(C) The duties of the Housing Inspector set forth in divisions (A) and (B) of this section shall not be exercised until the Board of Aldermen shall have by

ordinance ordered the Housing Inspector to proceed to effectuate the purpose of this chapter with respect to the particular property or properties which the Housing Inspector shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the Housing Code. For the purposes of this division a period of 90 days following the date of the Housing Inspector's order shall constitute a reasonable opportunity. This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(D) The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the Housing Inspector shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in G.S. Ch. 160A, Art. 10. If the dwelling is removed or demolished by the Housing Inspector, he or she shall sell the materials of the dwelling, and any personal property, fixture or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the Superior Court by the Housing Inspector, shall be secured in a manner directed by the Court, and shall be disbursed by the Court to the persons found to be entitled thereto by final order of the decree of the Court.

(E) If any occupant fails to comply with an order to vacate dwelling, the Housing Inspector may file a civil action in the name of the town to remove that occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any persons occupying the dwelling. The Clerk of Superior Court shall issue a summons requiring the defendant to appear before a magistrate

at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. § 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the Housing Inspector produces the certified copy of an ordinance adopted by the Board of Aldermen pursuant to division (C) authorizing the Housing Inspector to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. § 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. § 7A-228, and the execution of such judgment may be stayed as provided in G.S. § 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the Board of Aldermen has ordered the Housing Inspector to proceed to exercise his or her duties under divisions (A), (B) and (C) of this section to vacate and close or remove and demolish the dwelling.

(F) If the Board of Aldermen shall have adopted an ordinance, or the Housing Inspector shall have issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in § 152.09(A), and if the owner has vacated and closed the dwelling and kept the dwelling vacated and closed for a period of 1 year pursuant to the ordinance or order, then if the Board of Aldermen shall find that the owner has abandoned the intent and purpose to repair, alter, or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, moral, and welfare of the town in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would

attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in the town, then in such circumstances, the Board of Aldermen may, after the expiration of such 1-year period, enact an ordinance and serve the ordinance on the owner, setting forth the following:

(1) If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding 50% of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

(2) If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding 50% of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

(G) This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the Housing Inspector shall effect the purpose of the ordinance.

(Ord. passed 9-8-2008)

§ 152.11 SERVICE OF COMPLAINTS AND ORDERS.

(A) Complaints or orders issued by the Housing Inspector pursuant to an ordinance adopted under this chapter, except those being prosecuted under the penalty section of this code, shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed

sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(B) If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the Housing Inspector in the exercise of reasonable diligence, and the Housing Inspector makes an affidavit to that effect, then the serving of the complaint or order upon the unknown owners or other persons may be made by publication in a newspaper having general circulation in the town at least once no later than the time at which personal service would be required under the provisions of this chapter. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected. (Ord. passed 9-8-2008)

§ 152.12 APPEALS.

(A) The Board of Adjustment is hereby appointed as the Housing Appeals Board to which appeals from any decision or order of the Housing Inspector may be taken. Except where this chapter provides for different rules or procedures, the Board of Adjustment acting as the Housing Appeals Board shall follow its rules of procedure, which may be amended to provide specifically for this function.

(B) An appeal from any decision or order of the Housing Inspector may be taken by any person aggrieved thereby or by any officer, board or commission of the town. Any appeal from the Housing Inspector shall be taken within 10 days from the rendering of the decision or service of the order by filing with the Housing Inspector and with the Board a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Housing Inspector shall forthwith transmit to the Board all the papers constituting the record upon which the decision

appealed from was made. When an appeal is from a decision of the Housing Inspector refusing to allow the person aggrieved thereby to do any such act, his or her decision shall remain in force until modified or reversed. When any appeal is from a decision of the Housing Inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board, unless the Housing Inspector certifies to the Board after the notice of appeal is filed with him or her, that because of facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his or her requirement would cause imminent peril to life or property. In that case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than 1 day's written notice to the Housing Inspector, by the Board, or by a court of record upon petition made pursuant to division (E) of this section.

(C) The Board of Adjustment shall fix a reasonable time for hearing appeals, shall give due notice to the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The Board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order that in its opinion ought to be made in the matter, and to that end it shall have all the powers of the Housing Inspector, but the concurring vote of four-fifths of the members of the Board shall be necessary to reverse or modify any decision or order of the Housing Inspector. The Board shall have power also in passing upon appeals, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of the chapter, to adapt the application of the chapter to the necessities of the case to the end that the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done.

(D) Every decision of the Board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the Board, but not otherwise.

(E) Any person aggrieved by an order issued by the Housing Inspector or a decision rendered by the Board may petition the Superior Court for an injunction, restraining the Housing Inspector from carrying out the order or decision and the Court may, upon such petition, issue a temporary injunction restraining the Housing Inspector pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be had by the Court on a petition within 20 days, and shall be given preference over other matters on the Court's calendar. The Court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. It shall not be necessary to file bond in any amount before obtaining a temporary injunction under this division.

(Ord. passed 9-8-2008)

§ 152.13 ALTERNATIVE REMEDIES.

(A) Nothing in this chapter 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 removal or abatement by summary proceedings or otherwise nor shall enforcement of 1 remedy provided herein prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws. In addition to the remedies provided for herein, any violation of the terms of this chapter shall subject the violator to the penalties and remedies, either criminal or civil or both, as set forth in § 10.99.

(B) No dwelling shall be hereafter erected, altered, moved, or changed in occupancy without a certificate of occupancy. In any case where the Housing Inspector, after notice and hearing as required herein, finds that a dwelling or dwelling unit is unfit for human habitation, he or she shall withhold issuance of a certificate of occupancy for the dwelling or dwelling unit until such time that he or she determines that it is fit for human habitation. In addition, in any case where the Housing Inspector, after preliminary investigation as provided for herein,

concludes, based upon that investigation, that a dwelling or dwelling unit is unfit for human habitation and believes that the occupancy of the dwelling or dwelling unit could cause imminent peril to life or property from fire or other hazards, he or she shall withhold issuance of a certificate of occupancy for the dwelling or dwelling unit until such time that he or she determines that it is fit for human habitation.

(C) If any dwelling is erected, constructed, altered, repaired, converted, maintained, or used in violation of this chapter or of any valid order or decision of the Housing Inspector or Board made pursuant to any ordinance or code adopted under authority of this chapter, the Housing Inspector may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration or occupancy, to restrain, correct or abate the violation, to prevent the occupancy of the dwellings, or to prevent any illegal act, conduct or use in or about the premises of the dwelling.

(Ord. passed 9-8-2008)

§ 152.14 CONFLICT WITH OTHER PROVISIONS.

In the event any provision, standard or requirement of this chapter is found to be in conflict with any provision of any other ordinance or code of the town, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the town's jurisdiction shall prevail. The North Carolina Building Code, current edition, shall serve as the standard for all alterations, repairs, additions, removals, demolitions and other acts of building made or required pursuant to this chapter.

(Ord. passed 9-8-2008)

§ 152.15 VIOLATIONS.

In addition to the conditions, acts or failures to act that constitute violations specified in this chapter above, 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 or vacate and remove or demolish the same, upon order of the Inspector duly made and served as herein provided, within the time specified in the order. It shall be unlawful for the owner of any dwelling, with respect to which an order has been issued pursuant to § 152.09, to occupy or permit the occupancy of the same after the time prescribed in the order for its repair, alteration or improvement or its vacation and closing, or vacation and removal or demolition.

(Ord. passed 9-8-2008) Penalty, see § 10.99

CHAPTER 153: SUBDIVISION REGULATIONS

Section

153.01 Adoption by reference

§ 153.01 ADOPTION BY REFERENCE.

The subdivision regulations are hereby adopted by reference and incorporated herein as fully as if set out at length in this code of ordinances.

(Ord. 02-96, passed 2-6-1996; Am. Ord. 3-03, passed 4-1-2003; Am. Ord. 14-03, passed 9-2-2003)

CHAPTER 154: ZONING CODE

Section

154.01 Adoption by reference

§ 154.01 ADOPTION BY REFERENCE.

The zoning code of the town is hereby adopted by reference and incorporated herein as fully as if set out at length in this code of ordinances.

(Ord. 4-95, passed 8-1-1995; Am. Ord. 01-96, passed 2-6-1996; Am. Ord. 02-96, passed 2-6-1996; Am. Ord. 07-96, passed 8-6-1996; Am. Ord. 10-96, passed 11-5-1996; Am. Ord. 1-97, passed 1-7-1997; Am. Ord. 3-97, passed 6-3-1997; Am. Ord. 2-98, passed 4-7-1998; Am. Ord. 4-98, passed 6-23-1998; Am. Ord. 5-98, passed 10-6-1998; Am. Ord. 10-99, passed 12-7-1999; Am. Ord. 6-00, passed 6-27-2000; Am. Ord. 1-03, passed 1-7-2003; Am. Ord. 15-03, passed 10-7-2003)

CHAPTER 155: NONRESIDENTIAL BUILDING MAINTENANCE STANDARDS

Section

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GENERAL PROVISIONS

§ 155.01 TITLE.

This chapter shall be known as the "Nonresidential Building Maintenance Standards" for the Town of Long View, and may be cited as such, and will be referred to hereafter as "this chapter." (Ord. passed 10-12-2009)

§ 155.02 PURPOSE.

It is the purpose of the provisions of this chapter to provide a just, equitable and practicable method whereby nonresidential buildings and premises which from any cause, endanger the life, limb, health, morals, property, safety or welfare of the general public or their occupants, diminish property values or detract excessively from the appropriate appearance of the area in which they are located, may be required to be repaired, closed, vacated or demolished. The provisions of this chapter are cumulative with and in addition to any other remedy provided by law including the current editions of standard codes adopted by the town.

(Ord. passed 10-12-2009)

§ 155.03 FINDINGS: AUTHORITY.

(A) Pursuant to G.S. § 160A-174, it is hereby found and declared that there exist in the town nonresidential buildings and premises which are unsafe and especially dangerous to life because of liability to fire or because of bad conditions of walls, overloaded floors, defective construction, decay, unsafe wiring or heating systems, inadequate means of egress and other causes.

(B) In addition, it is hereby found and declared, that there exist in the town nonresidential buildings and premises which, although not meeting the classification of unsafe and especially dangerous to life, fail to fully comply with all the minimum standards for nonresidential buildings and premises fitness as established herein and, therefore, have present one or more conditions which are inimical to the public health, safety and general welfare. Such conditions, if not corrected, can lead to deterioration and dilapidation of nonresidential buildings and premises which render them unsafe and especially dangerous to life.

Ord. passed 10-12-2009)

§ 155.04 SCOPE; JURISDICTION.

The provisions of this chapter shall apply to all existing nonresidential buildings and premises and to all nonresidential buildings and premises hereafter constructed within the town limits, as now or hereafter established.

(Ord. passed 10-12-2009)

§ 155.05 GENERAL DEFINITIONS AND INTERPRETATIONS.

Unless specifically defined in § 155.06, words used in this chapter shall have their respective customary dictionary definitions. For the purpose of these regulations certain words, terms or phrases used herein are interpreted and defined as follows.

(A) Words used in the present tense shall include the future tense.

(B) Words used in the singular shall include the plural and words used in the plural shall include the singular.

(C) The words **SHALL** and **WILL** always indicate mandatory; the words **SHOULD** and **MAY** always indicate optional.

(D) The word **LOT** includes the words **PLOT** and/or **PARCEL**.

(E) The word **BUILDING** includes the word **STRUCTURE**.

(F) The word **PERSON** includes a firm, association, organization, partnership, trust, company, corporation and/or individual.

(G) The word **USE** includes the terms **ARRANGED**, **DESIGNED**, and/or **INTENDED** for a use, activity and/or purpose.

(H) The term **BOARD OF ADJUSTMENT** shall always indicate the Board of Adjustment of the town as created and appointed by the Town Board of Aldermen of said town.

(I) The term **BOARD OF ALDERMEN** shall always indicate the Town Council of the town.
(Ord. passed 10-12-2009)

§ 155.06 SPECIAL DEFINITIONS AND INTERPRETATIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter.

BUILDING. Any covered structure intended for shelter, housing or enclosure of persons, animals, facilities, equipment or chattels, the term **BUILDING** shall be construed to include the term **STRUCTURE**. Furthermore, it shall be construed as if followed by the term "or part thereof."

BUILDING, ACCESSORY. A detached subordinate building located on a lot, parcel or tract whose use is incidental to that of the principal building. A building cannot be considered accessory unless it accompanies a principal building on the same lot, parcel or tract.

BUILDING, PRINCIPAL. A building in which the principal use of the lot, parcel or tract is conducted.

BUILDING OF HISTORICAL VALUE. A building within the town which is listed on the National Register, or constituting special significance to the general citizenry of the town due to age, history, architectural design, human occurrence, culture and possessing integrity of design, setting, materials, feeling and association.

BUILDING CODE. The North Carolina State Building Code.

DETERIORATION. The condition of a building or part thereof, characterized by holes, breaks, rot, crumbling, rusting, peeling paint or other evidence of physical decay or loss of structural integrity.

FIRE HAZARD (See also NUISANCE). Any thing or act which increases, or may cause an increase of, the hazard, likelihood or menace of fire to a greater degree than reasonable for the conduct of the nonresidential use on the premises, or which may unreasonably obstruct, delay, or hinder, or may unreasonably become the cause of an obstruction, a delay, a hazard or an unreasonable hindrance to the prevention, suppression or extinguishment of fire.

GARBAGE. The animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

INFESTATION. The haunting or overrunning by rats, snakes, birds, insects or other destructive vermin or animals that endanger the public health and safety.

NONRESIDENTIAL BUILDING MAINTENANCE STANDARDS INSPECTOR. The person delegated as such by the Board of Alderman of the town (hereinafter referred to as "the Inspector").

NUISANCE.

(1) Any public nuisance known in common law or in equity jurisprudence, or as provided by the statutes of the State of North Carolina, or the ordinances of the town; or

(2) Any condition including an attractive nuisance which may prove detrimental to human health or safety whether in a building, on the premises of a building, or part of a building or upon an occupied lot; or

(3) Physical conditions dangerous to human life or detrimental to health of persons in, on or near the premises where the condition exists; or

(4) Unsanitary conditions or conditions that are dangerous to public health, well-being or the general welfare; or

(5) Fire hazards or other safety hazards.

OCCUPANT. Any person who has charge, care or control of a nonresidential building and/or premises or a part thereof, whether with or without the knowledge and consent of the owner, or any person, individually or jointly, entitled to possession regardless of whether the building and/or premises are actually occupied or not.

OWNER. The holder of the title in fee simple and every mortgagee of record of a property.

PHYSICAL VALUATION. The estimated cost to replace a building in kind.

PLUMBING. All of the following supplies, facilities and equipment: gas pipes, gas burning equipment, water pipes, water heaters, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catch basins, vents and other similar fixtures, together with all connections to water, sewer or gas lines, and water pipes and lines utilized in conjunction with HVAC equipment.

PREMISES. A lot, plot or parcel of land including the buildings or structures thereon, under control by the same owner or occupant, devoted to or zoned for nonresidential use.

PUBLIC SANITARY SEWER. Any sanitary sewer owned, operated and maintained by the town and available for public use for the disposal of sewage.

RUBBISH. Combustible and noncombustible waste materials, except garbage and ashes, including, but not limited to, paper, rags, cartons, boxes, wood,

excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass crockery and dust.

SEWAGE. Waste from a flush toilet, bathtub, sink, lavatory, dishwashing or laundry machine, or water-carried waste from any other fixture, equipment or machine.

STRUCTURALLY SOUND. Substantially free from flaw, defect, decay or deterioration to the extent that such structure or structural member is capable of adequately or safely accomplishing the purpose for which it was intended or designed.

STRUCTURE. Anything constructed or erected which requires location on the ground. (Refer to the definition of **BUILDING** herein.)

SUPPLIED. Paid for, furnished or provided by, or under control of, the owner or occupant.
(Ord. passed 10-12-2009)

§ 155.07 DUTIES AND RESPONSIBILITIES OF THE OWNER.

It shall be the duty and responsibility of the owner to maintain all nonresidential buildings and premises in accordance with all standards for nonresidential buildings and premises fitness as stated herein.

(Ord. passed 10-12-2009)

§ 155.08 DUTIES AND RESPONSIBILITIES OF THE OCCUPANT.

It shall be the duty and responsibility of the occupant to ensure that:

(A) All parts of the premises under the control of the occupant shall be kept in a safe, clean and sanitary condition consistent with the nonresidential use and

the occupant shall refrain from performing any acts which would render any parts of the building or premises unsafe or unsanitary or which would obstruct any adjacent owner/occupant from performing any duty required, or from maintaining his building or premises in a safe and sanitary condition.

(B) Every occupant shall be responsible for the elimination of infestation in and on the premises, subject to his control.

(C) Every occupant shall maintain all supplied plumbing fixtures in a safe and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation of same.

(D) No garbage or solid waste shall be stored or allowed by the occupant to accumulate on the premises unless contained in a trash receptacle(s) which is in accordance with the Code of Ordinances of the Town of Long View.

(E) Damage to public sidewalks and/or curb and gutter located in the public right-of-way shall be repaired or replaced at no expense to the town when such damage is caused by vehicle deliveries to the nonresidential use under the control of the occupant.

(F) Where the owner would not otherwise know of a defect of any facility, utility or equipment required to be furnished hereunder and the same is found to be defective or inoperable, the occupant affected thereby shall, upon learning of such defect, provide notice to the owner.
(Ord. passed 10-12-2009)

§ 155.09 RELATIONSHIP OF DUTIES AND RESPONSIBILITIES TO OCCUPANCY.

The provisions of this chapter that apply to the exterior or exterior components of a structure or building or to the premises shall be complied with whether the structure or building is occupied or vacant. All unoccupied or vacant structures or

buildings shall be secured by their owners to prevent the entry of unauthorized persons or the formation of nuisance conditions such as infestation.
(Ord. passed 10-12-2009)

§ 155.10 VALIDITY.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this chapter. The Board of Aldermen hereby declares that it would have passed this chapter and each section, subsection, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections sentences, clauses or phrases be declared invalid.
(Ord. passed 10-12-2009)

§ 155.11 CONFLICT WITH OTHER PROVISIONS.

In the event any provision, standard or requirement of this chapter is found to be in conflict with any provision of any other ordinance or code of the town, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the jurisdiction shall prevail. The North Carolina State Building Code, current edition, shall serve as the standard for all alterations, repairs, additions, removals, demolitions and other acts of building made or required pursuant to this chapter.
(Ord. passed 10-12-2009)

§ 155.12 AMENDMENTS.

The Board of Aldermen may, from time to time amend, supplement, or change the provisions and requirements of this chapter. Any such amendment shall be by ordinance of the Board of Aldermen.
(Ord. passed 10-12-2009)

***STANDARDS FOR NONRESIDENTIAL
BUILDINGS AND PREMISES FITNESS***

**§ 155.13 UNLAWFUL TO OWN UNSAFE
BUILDINGS AND STRUCTURES.**

(A) It shall be unlawful for any firm, person or corporation to own a building or a structure situated in the jurisdiction of the town which is in such a defective or hazardous condition that it is unsafe and especially dangerous to life. The Board of Alderman has determined that unsafe and especially dangerous buildings and structures are detrimental to the health, safety and welfare of the citizens of the town, that such unsafe and especially dangerous buildings and structures shall be condemned, and that the owners of such unsafe and especially dangerous buildings and structures shall immediately remedy the unsafe, dangerous, hazardous or unlawful conditions or demolish such buildings or structures.

(B) A building or structure shall be found to be especially dangerous to life and held unsafe by the Inspector if the Inspector finds that any one of the following conditions exists in such building or structure:

(1) Interior walls or vertical studs which seriously list, lean or buckle to an extent as to render the building unsafe.

(2) Supporting member or members which show 33% or more damage or deterioration, or non-supporting, enclosing or outside walls or covering which shows 50% or more of damage or deterioration.

(3) Floors or roofs which have improperly distributed loads, which are overloaded or which have insufficient strength to be reasonably safe for the purpose used.

(4) Such damage by fire, wind or other causes as to render the building unsafe.

(5) Dilapidation, decay, unsanitary conditions or disrepair which is dangerous to the health, safety or welfare of the occupants or other people of the jurisdiction.

(6) Inadequate facilities for egress in case of fire or panic.

(7) Defects significantly increasing the hazards of fire, accident or other calamities.

(8) Lack of adequate ventilation, light, heating or sanitary facilities to such extent as to endanger the health, safety or general welfare of the occupants or other residents of the jurisdiction.

(9) Lack of proper electrical, heating or plumbing facilities required by this chapter which constitutes a health or a definite safety hazard.

(10) For any building whose occupancy classification requires it, lack of connection to a potable water supply and/or to the public sanitary sewer or other approved sewage disposal system. For the purposes of this standard, a building is not connected to a potable water supply if the water supply has been "cut off" because of nonpayment of the water bill or otherwise or if the system for any reason is not receiving a flow of potable water to the tap.

(11) Any violation of the State Fire Prevention Code which constitutes a condition which is unsafe and especially dangerous to life.

(12) Any abandoned nonresidential building which is found to be a health or safety hazard by the Inspector as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in the absence of sanitary facilities.

(C) In addition to conditions (B)(1) through (12) above, any one of which renders a building or

structure unsafe, the Inspector shall determine that a nonresidential building or structure is unsafe if he finds that a building or structure fails to fully comply with any 5 or more of the following enumerated standards of building and premises fitness. Full compliance with a standard means that if any part of the stated standard is not complied with by a particular building and premises, then that building and premises has failed to fully comply with the enumerated standards.

(1) *General.*

(a) Buildings and premises shall be kept clear of accumulations of garbage, trash, or rubbish which create health and sanitation problems. All garbage and solid waste shall be in approved containers or stored in a safe and sanitary way.

(b) Flammable, combustible, explosive or other dangerous or hazardous materials shall be stored in a manner approved for such materials and consistent with the State Fire Prevention Code.

(c) Buildings and premises shall be kept free of loose and insufficiently anchored overhanging objects which constitute a danger of falling on persons or property.

(d) The premises shall be kept free of insufficiently protected holes, excavations, breaks, projections, obstructions and other such dangerous impediments on and around fences, walls, walks, driveways, parking lots and other areas which are accessible to and generally used by persons on the premises.

(e) Buildings and premises surfaces shall be kept clear of cracked or broken glass, loose shingles, loose wood, crumbling stone or brick, loose or broken plastic or other dangerous objects or similar hazardous conditions exterior surfaces shall be maintained in such material or treated in such a manner as to prevent deterioration.

(f) Buildings and premises shall be kept free of objects and elements protruding from building walls, roof or premises which are unsafe or not properly secured or which can create a hazard such as abandoned electrical boxes and conditions, wires, sign brackets and other brackets, and similar objects.

(2) *Appurtenances.*

(a) All chimneys, flues and vent attachments thereto shall be maintained structurally sound. Chimneys, flues, gas vents or other draft-producing equipment which are in use shall provide sufficient draft to develop the rated output of the connected equipment, shall be structurally safe, durable, smoke-tight and capable of withstanding the action of flue gases.

(b) All exterior porches, landings, balconies, stairs and fire escapes shall be provided with banisters or railings properly designed and maintained to minimize the hazard of falling, and the same shall be kept structurally sound, in good repair, and free of defects.

(c) All cornices shall be made structurally sound. Rotten or weakened portions shall be removed and/or replaced. All exposed wood shall be treated or painted.

(d) Gutters and down spouts shall be replaced or repaired as necessary and shall be appropriately located and securely installed so as not to cause a hazard to pedestrians, vehicular traffic or property.

(e) Attached and unattached accessory structures shall be maintained in a state of good repair.

(f) Advertising sign structures, attached or freestanding, awnings, marquees and their supporting members and other similar attachments and structures shall be maintained in good repair and shall not cause a nuisance or safety hazard.

(3) *Structural.*

(a) Walls, partitions, supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle, shall not be rotted, deteriorated or damaged, and shall not have holes or cracks which might admit rodents.

(b) Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.

(c) Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.

(d) Interior steps, railings, landings, porches or other parts or appurtenances shall be maintained in such condition that they will not fall or collapse.

(e) Where a wall of a building has become exposed as a result of demolition of an adjacent building said wall must have all doors, windows, vents or other similar openings closed with material of the type comprising the wall unless such doors, windows, vents or other similar openings are to be maintained in accordance with the provisions of this chapter. No protrusions or loose material shall be in the wall. The exposed wall shall be painted, stuccoed or bricked so as not to detract from the aesthetics and value of adjacent property and weatherproofed if necessary to prevent deterioration of the wall.

(4) *Plumbing, electrical and supplied facilities.*

(a) All plumbing fixtures and pipes shall meet the standards of the State Plumbing Code and shall be maintained in a state of good repair and in good working order.

(b) All electrical fixtures, receptacles, equipment and wiring shall be maintained in a state of good repair, safe, capable of being used, and installed in accordance with the State Electric Code.

(c) Every supplied facility, piece of equipment or utility which is required under this chapter or the State Building Code for occupancy or use shall be so constructed or installed that it will function safely and effectively and shall be maintained in satisfactory working condition.

(5) *Egress.*

(a) Facilities for egress in case of fire or panic shall be adequate and shall remain clear for such purposes.

(b) All windows must be tight-fitting and have sashes of proper size and design and free from rotten wood, broken joints, or broken or loose mullions.

(c) All windows shall be maintained free of broken glass that could be dangerous to the public, invitees or third parties ordinarily expected to use the premises, from falling or shattering.

(d) All openings originally designed as windows shall be maintained as windows, unless specifically approved by the Inspector for enclosure.

(6) *Drainage.*

(a) All yards and premises shall be properly graded and maintained so as to obtain thorough drainage and so as to prevent the accumulation of stagnant water.
(Ord. passed 10-12-2009)

§ 155.14 BUILDINGS AND PREMISES NOT DECLARED UNSAFE BUT WHICH ARE NOT IN COMPLIANCE WITH ALL STANDARDS.

In any case where the Inspector determines that a nonresidential building and/or premises fails to fully comply with one or more but less than 5 of the standards of nonresidential buildings and premises fitness set forth in § 155.13(C) such building and/or premises shall not be found to be unsafe and shall not

be subject to the procedures and remedies as provided for in this chapter for unsafe buildings and premises. Each such failure of noncompliance, however, shall constitute a violation of the terms of this chapter and shall subject the violator to the penalties and enforcement procedures, civil or criminal or both, of § 155.29. In such case the Inspector shall notify the owner as provided for in § 155.19.
(Ord. passed 10-12-2009)

PROCEDURES FOR ENFORCEMENT

§ 155.15 UNSAFE BUILDINGS SHALL BE CONDEMNED BY THE INSPECTOR.

If a building or structure shall appear to the Inspector to be especially dangerous to life and unsafe under § 155.13, the Inspector shall:

(A) Make a written findings that the building or structure appears to be unsafe and is condemned; and

(B) Affix a condemned notice of the dangerous character or conditions of the building or structure to a conspicuous place on the exterior wall of such building or structure.
(Ord. passed 10-12-2009)

§ 155.16 REMOVAL OF CONDEMNATION NOTICE UNLAWFUL.

It shall be unlawful for any person to remove a condemned notice from a building or structure after such condemned notice has been affixed to it by the Inspector pursuant to the provisions of § 155.19.
(Ord. passed 10-12-2009)

§ 155.17 COMPLAINT AND NOTICE OF HEARING.

(A) If a building or structure has been condemned by the Inspector as unsafe pursuant to § 155.15, the Inspector should serve the owner with a written complaint and notice of hearing which notice shall state that:

(1) The building or structure is condemned due to its condition that appears to constitute a fire or safety hazard or appears to be dangerous to life, health or other property and that it is held to be unsafe; and

(2) A hearing will be held before the Inspector at a designated place and time, which time should be not less than 10 days nor more than 30 days after the date of such notice, and that at such hearing 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) Following the hearing, the Inspector may issue such order to repair, close, vacate or demolish the building or structure as the Inspector deems to be appropriate under the existing conditions.

(B) Upon the issuance of a complaint and notice of hearing pursuant to this section, the Inspector may cause the filing of a notice of lis pendens, with a copy of the complaint and notice of hearing attached thereto, in the office of the Clerk of Superior Court of Catawba or Burke County, as applicable, to be indexed and cross-indexed in accordance with the indexing procedures of the North Carolina General Statutes. The Inspector shall cause a copy of the notice of lis pendens to be served upon the owner of the building or structure at the time of filing in accordance with G.S. § 160A-428 as applicable. Upon compliance with the requirements of any order issued based upon such complaint and hearing, the Inspector shall direct the Clerk of Superior Court to cancel the notice of lis pendens.
(Ord. passed 10-12-2009)

§ 155.18 ORDER TO TAKE CORRECTION ACTION; CONTENTS; ISSUANCE.

(A) If, upon a hearing held pursuant to the notice prescribed in § 155.17, the Inspector shall find that the building or structure is in an unsafe condition which constitutes a fire or safety hazard or renders it dangerous to life, health or other property, the Inspector shall issue an order in writing, directed to the owner or owners of such building or structure, directing the owner or owners to remedy the defective condition by repairing, closing, vacating or demolishing the building or structure or taking other necessary steps within such a period as the Inspector may prescribe, which period may not be less than 60 days from the service of the order, provided that, where the Inspector finds that there is imminent danger to life, health or other property, the order may require that corrective action be taken in such lesser period as may be feasible.

(B) Buildings of historical value may be granted exemption from this section by the Board of Adjustment. In granting an exemption the Board must make a finding that the building is a building of historical value to the town, that the owner will repair the damage on a timely basis, with compliance not to exceed 6 months, and that the building will be reconstructed and/or repaired in such a way as to keep the historical character of the building.
(Ord. passed 10-12-2009)

§ 155.19 SERVICE OF WRITTEN NOTICE OR ORDER OF INSPECTOR.

In any case where this chapter requires service of a written notice or order by the Inspector, such notice or order shall be made in the following manner:

(A) The written notice or order shall be served upon each owner by mailing the same by certified or registered mail, return receipt requested, and first class mail, to the owner's last known address or by personal service of the notice or order upon each owner.

(B) If the name or whereabouts of an owner are unknown and cannot after due diligence be discovered, the notice or order shall be considered properly and adequately served upon such owner if a copy thereof is posted on the outside of the building or structure in question at least 10 days prior to the hearing. If a hearing is required, and a notice of the hearing published in a newspaper having general circulation in the jurisdiction at least once not later than 1 week prior to the hearing.
(Ord. passed 10-12-2009)

§ 155.20 APPEAL OF ORDER OF INSPECTOR; FINALITY IF NOT APPEALED.

Any owner who has received an order under § 155.17 may appeal from the order to the Board of Adjustment by giving notice of appeal in writing to the Inspector and to the Town Clerk within 10 days following issuance of the order. In the absence of an appeal to the Board of Adjustment within the prescribed time, the order of the Inspector shall be final. The Board of Adjustment shall hear appeals within a reasonable time after receipt of the notice of appeal and it may modify and affirm or revoke the order.
(Ord. passed 10-12-2009)

§ 155.21 FAILURE TO COMPLY WITH ORDER OF INSPECTOR.

It shall be unlawful for the owner of a building or structure to fail to comply with an order issued pursuant to § 155.18 from which no appeal has been taken or fail to comply with an order of the Board of Adjustment following an appeal, unless the owner shall, within 10 days following issuance of the order by the Board of Adjustment, appeal from that order as by law provided.
(Ord. passed 10-12-2009)

§ 155.22 REMEDIES; LIEN FOR COST OF DEMOLITION AND REMOVAL.

(A) In the event of such failure to comply, in addition to the penalties, remedies and enforcement procedures contained in § 10.99 and § 155.29, the Inspector may cause such building and premises to be repaired, closed, vacated or demolished as appears appropriate.

(B) The Inspector, however, shall not take such action until the Town Aldermen shall have by ordinance ordered the Inspector to proceed with such action with respect to the particular property or properties which the Inspector shall have found to be unsafe or not in compliance with all standards of nonresidential building and premises fitness and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a building until the owner has first been given a reasonable opportunity to bring it into conformity with this chapter. The ordinance adopted pursuant to this section shall be recorded in the office of the Register of Deeds of the appropriate county and shall be indexed in the name of the property owner or owners in the grantor index.

(C) The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the Inspector shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as a lien for special assessments provided in G. S. Chapter 160A, Article 10. If the building is removed or demolished by the Inspector, he shall sell the materials of the building, and the personal property, fixtures or appurtenances found in or attached to the building, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the Superior Court by the Inspector, shall be secured in a manner directed by the Court, and shall be disbursed by the Court to the persons found to be entitled thereto by final order of the decree of the Court.

(Ord. passed 10-12-2009)

§ 155.23 FAILURE OF OCCUPANT TO COMPLY WITH ORDER TO VACATE.

If any occupant fails to comply with an order to vacate a building, the Inspector may file a civil action in the name of the town to remove such occupant. The action to vacate the building shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any persons occupying such building. The Clerk of Superior Court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. § 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the Inspector produces a certified copy of an ordinance adopted by the Town Aldermen pursuant to this section authorizing the Inspector to proceed to vacate the occupied building, the magistrate shall enter judgement ordering that the premises be vacated and that all persons be removed. The judgement ordering that the building be vacated shall be enforced in the same manner as the judgement for summary ejectment entered under G. S. § 42-30. An appeal from any judgement entered hereunder by the magistrate may be taken as provided in G.S. § 7A-228, and the execution of such judgement may be stayed as provided in G. S. § 7 A-227. An action to remove an occupant of a building who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this section unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the Town Aldermen has ordered the Inspector to proceed to exercise his duties under this section to vacate and close or remove and demolish the building. (Ord. passed 10-12-2009)

§ 155.24 DEMOLITION OF NONRESIDENTIAL BUILDINGS BY OWNER.

Where a nonresidential building is under the jurisdiction of this chapter, the building may be

demolished by the owner provided that the following requirements are met:

(A) The owner obtain a demolition permit from the Inspections Department of Catawba or Burke County;

(B) All sewer, gas, water and similar taps or connections be properly closed and disconnected;

(C) All debris from the building be removed from the site. This requirement is for the removal of all debris that is above the street level of the building;

(D) The lot be graded to a smooth, even, finished grade, free from building material, debris, holes, and/or depressions. Where building debris remains on the site below street level, the owner must back fill the lot with 12 inches of clean fill which shall be graded to a smooth, even finished grade;

(E) Where walls of adjacent buildings become exposed as a result of the demolition, said walls must have all doors, windows, vents or other similar openings closed with material of the type comprising the wall, unless such doors, windows, vents, or other similar openings are to be maintained in accordance with the provisions of this chapter. No protrusions or loose material shall be in the wall. The exposed wall shall be painted, stuccoed or bricked so as not to detract from the aesthetics and value of the adjacent property and weatherproofed if necessary to prevent deterioration of the wall.

(Ord. passed 10-12-2009)

ADMINISTRATION

§ 155.25 OFFICE OF THE NONRESIDENTIAL BUILDING MAINTENANCE STANDARDS INSPECTOR CREATED; POWERS AND DUTIES.

(A) For the purposes of administering and enforcing the provisions of this section the office of Nonresidential Building Maintenance Standards Inspector, (herein called "Inspector"), is hereby created.

(B) The Inspector shall be appointed by the Board of Aldermen shall take and subscribe to the oath of office administered by the Town Clerk, and shall have such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including without limiting the generality of the foregoing, in addition to others herein granted, the following powers:

(1) To investigate the nonresidential building conditions in the jurisdiction in order to determine which buildings therein are unsafe, being guided in such examinations of buildings by the requirements set forth in this chapter and for the purpose of carrying out the objectives of this chapter with respect to such nonresidential buildings.

(2) To administer oaths and affirmations and to examine witnesses and receive evidence.

(3) To enter upon and within premises and buildings for the purpose of making examinations and investigations, provided that such entries shall be made at reasonable hours in such a manner as to cause the least possible inconvenience to the persons in possession.

(4) To delegate any of his functions and powers under this chapter to such officers and agents as he may designate.

(Ord. passed 10-12-2009)

§ 155.26 INSPECTIONS.

(A) For the purpose of carrying out the intent of this chapter, the Inspector is hereby authorized to enter, examine and survey at all reasonable times all nonresidential buildings and premises, including abandoned structures. The owner or occupant of every nonresidential building or the person in charge thereof, shall give the Inspector free access to such building and its premises, at all reasonable times for the purposes of such inspection, examination and survey. Every occupant of a nonresidential building shall give the owner thereof, or his agent or employee, access to any part of such building and its premises at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this chapter or with any lawful order issued pursuant to the provisions of this chapter.

(B) The Inspector may make periodic inspections for unsafe, unsanitary or otherwise hazardous and unlawful conditions in nonresidential structures within the jurisdiction. In addition, he may make inspections when he has reason to believe that such conditions may exist in a particular structure or premises.
(Ord. passed 10-12-2009)

§ 155.27 DEFECTS IN BUILDINGS TO BE CORRECTED.

When the Inspector finds any defects in a nonresidential building, or finds that a building has not been constructed in accordance with applicable state and town laws, or that a building because of its condition is dangerous or contains fire hazardous conditions, it shall be his duty to notify the owner or occupant of the building of its defects, hazardous conditions or failure to comply with law. The owner or occupant shall each immediately remedy the defects, hazardous conditions or violations of law in the property he owns. Failure to do so shall constitute

a violation of this chapter. Each day any violation of this chapter shall continue shall constitute a separate offense.

(Ord. passed 10-12-2009)

§ 155.28 VIOLATIONS.

In addition to the conditions, acts or failure to act that constitute violations specified in this chapter, it shall be unlawful for the owner of any building and premises to fail, neglect or refuse to repair, alter or improve the same, or to vacate and close or vacate and remove or demolish the same, upon order of the Inspector duly made and served as herein provided, within the time specified in such order. It shall be unlawful for the owner of any building, with respect to which an order has been issued pursuant to § 155.18, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration or improvement or its vacation and closing, or vacation and removal or demolition.
(Ord. passed 10-12-2009)

§ 155.29 PENALTIES FOR VIOLATIONS; ALTERNATIVE REMEDIES.

In addition to other penalties and remedies provided by this chapter, violation of this chapter shall constitute either a misdemeanor punishable by fine or imprisonment as provided by G.S. § 14-4, as amended, or at the election of the town, shall subject the offender to a civil penalties, remedies, and enforcement procedures contained in § 10.99.
(Ord. passed 10-12-2009)

