

ARTICLE II. - STATE OF EMERGENCY^[2]

Footnotes:

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State Law reference— Authority to declare state of disaster, G.S. 166A-8.

Sec. 18-31. - Restrictions authorized.

- (a) A state of emergency shall be deemed to exist whenever there is a time of public crisis, disaster, catastrophe or similar public emergency, and for any reason; public safety authorities are unable to maintain public order or afford adequate protection for lives, safety or property; or whenever the occurrence of any such conditions is imminent.
- (b) In the event of an existing or threatened state of emergency endangering the lives, safety, health and welfare of the people within the town or any part of the town, or threatening damage to or destruction of property, the mayor is authorized and empowered under G.S. 14-288.12 and 166A-4 to issue public proclamations declaring to all persons the existence of such a state of emergency, and, in order to more effectively protect the lives and property of people within the town, to place in effect any or all of the restrictions authorized in this article.
- (c) The mayor is authorized and empowered to limit by the proclamation the application of all or any part of such restrictions to any area specifically designated or described within the town limits and to specific hours of the day or night, and to exempt from all or any part of such restrictions, while acting in the line of and within the scope of their respective duties, public safety officers, firefighters, rescue squad members and other public employees, on-duty public utility employees, public transportation companies, and such other classes of persons as may be essential to the preservation of public order and necessary to serve the safety, health and welfare needs of the people within the town.

(Ord. of 12-8-1998, § 1)

Sec. 18-32. - Proclamation imposing prohibitions and restrictions.

- (a) The mayor or his designee, by proclamation, may impose the prohibitions and restrictions specified in sections 18-33 through 18-38 in the manner described in those sections. He may impose as many of those specified prohibitions and restrictions as he deems necessary, because of an emergency, to maintain an acceptable level of public order and services, and to protect lives, safety and property. The mayor or his designee shall recite his finding in the proclamation.
- (b) The proclamation shall be in writing. Reasonable steps shall be taken to give notice of the terms of the proclamation to those affected by it, and a copy of it shall be posted in the town hall. Copies of the text of the proclamation shall be retained and upon request certified copies of it used as evidence.

(Ord. of 12-8-1998, § 2)

Sec. 18-33. - Evacuation.

The mayor or his designee may direct and compel the evacuation of all or part of the population of the town to prescribed routes, modes of transportation and destination in connection with evacuations, and to control ingress and egress of a disaster area, the movement of persons within the area and the

occupancy of premises in the area. Details of the evacuation may be set forth or amended in a subsequent proclamation, which shall be well publicized.

(Ord. of 12-8-1998, § 3)

Sec. 18-34. - Curfew.

- (a) The proclamation of an emergency may impose a curfew prohibiting, in certain areas and during certain periods, the appearance, in public, of anyone who is not a member of an exempted class. The proclamation shall specify the geographical area and the period during each 24-hour day to which the curfew applies. The mayor or his designee may exempt certain classes of people whose exemption is necessary for the preservation of public health, safety and welfare. The proclamation shall state the exempted classes and restrictions from which each is exempted.
- (b) Unless otherwise specified, the proclamation shall apply during the specified period until the proclamation removes the curfew.

(Ord. of 12-8-1998, § 4)

Sec. 18-35. - Restrictions on possession, consumption or transfer of alcoholic beverages.

The proclamation of an emergency may prohibit the possession or consumption of any alcoholic beverage; including beer, wine and spirituous liquor other than on one's own premises and may prohibit the transfer, transportation, sale or purchase of any alcoholic beverage within the proclaimed area of the town.

(Ord. of 12-8-1998, § 5)

Sec. 18-36. - Restrictions on possession, transportation and transfer of dangerous weapons and substances.

- (a) The proclamation of an emergency may prohibit the transportation or possession, off one's own premises, or sale or purchase of any dangerous weapon or substance.
- (b) The term "dangerous weapon or substance" means:
 - (1) Any deadly weapon, ammunition, explosive, incendiary device, radioactive material or device as defined in G.S. 14-288.8(c)(5), gasoline, or other instrument or substance designed for a use that carries a threat of serious bodily injury or destruction of property.
 - (2) Any other instrument or substance that is capable of being used to inflict serious bodily injury or destruction of property, when the circumstances indicate that there is some probability that such instrument or substance will be so used.
- (c) If imposed, the restrictions shall apply throughout the jurisdiction of the town or such part of the town as is designated in the proclamation.

(Ord. of 12-8-1998, § 6)

Cross reference— Offenses against the public peace and safety, § 38-71 et seq.

Sec. 18-37. - Restrictions on access to areas.

- (a) The proclamation of an emergency may prohibit obtaining access or attempting to obtain access to any area designated in the manner described in this section, in violation of any order, clearly posted notice or barricade indicating that access is denied or restricted.
- (b) Areas to which access is denied or restricted shall be appropriately designated and marked by the chief of police or his designee when directed in the proclamation to do so by the mayor. If directed to do so, the chief or his designee may restrict or deny access to any area, street or location within the town. Such restriction or denial shall be reasonably necessary to promote efforts being made to overcome the emergency or to prevent further aggravation of it.

(Ord. of 12-8-1998, § 7)

Sec. 18-38. - Prohibitions, restrictions.

The proclamation of an emergency may prohibit or restrict the following:

- (1) Movements of people in public places.
- (2) Operation of offices, business establishments and other places to or from which people may travel or at which they may congregate.
- (3) Other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency, within the area designated in the proclamation.

(Ord. of 12-8-1998, § 8)

Sec. 18-39. - Removal of prohibition and restrictions.

The mayor shall, by proclamation, terminate the entire declaration of emergency or remove the prohibition and restrictions as the emergency no longer requires them.

(Ord. of 12-8-1998, § 9)

Sec. 18-40. - Superseding and amendatory proclamation.

The mayor, in his discretion, may invoke the restrictions authorized by this article in separate proclamations and may amend any proclamation by means of a superseding proclamation in accordance with the procedures set forth in section 18-32.

(Ord. of 12-8-1998, § 10)

Sec. 18-41. - Termination of proclamation.

Any proclamation issued under this article shall expire five days after its last imposition unless sooner terminated, in writing, under the same procedures set forth in section 18-32 for proclamations.

(Ord. of 12-8-1998, § 11)

Sec. 18-42. - In case of absence of the mayor.

In case of absence of the mayor, the mayor pro tempore or such other person as may be designated by the board of commissioners shall have and exercise all of the powers given the mayor by this article.

(Ord. of 12-8-1998, § 12)

Sec. 18-43. - Penalty for violation.

Any person violating any prohibition or restriction imposed by a proclamation authorized by this article shall be guilty of a misdemeanor, punishable in accordance with section 1-6.

(Ord. of 12-8-1998, § 13)

ARTICLE III. - MOVIE INDUSTRY

Sec. 14-51. - Definitions.

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

News purposes means any filming activity conducted for the purposes of reporting on persons, events, or scenes which are in the news for newspapers, television news, and other news media. News purposes shall not include advertising or publicity films.

Production company means any person, partnership, corporation or other entity engaged in the business of film making activities subject to regulation under the provisions of this article.

Public property means any property owned or controlled by the town. Such property shall include, but not be limited to, public street rights of way and public parking areas within the town.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-52. - Requirement for permit.

Any production company undertaking filming activities within the town shall be required to secure a permit on forms provided by the office of the town administrator and in accordance with the terms and conditions of this article.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-53. - Town administrator to issue permits.

Permits required under the provisions of this article shall be issued by the town administrator or their designee. Applications for permits shall be submitted utilizing forms provided by the office of the town administrator and must be submitted to the town administrator at least seven days in advance of any activities requiring issuance of such permit. Following submission of the application, a pre-production meeting is required between the town administrator, or their designee, and the location manager to review the application.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-54. - Payment of security deposit.

(a) If the activities described in the application are to occur on public property, the applicant shall make a deposit of up to \$7,500.00 as required by the town administrator prior to issuance of a permit along with a certificate of insurance with policy amounts set forth in the table in subsection 14-54(b). Additional requirements will be based on the overall impact production may have on public property. The deposit required under the provisions of this section shall be paid in cash or by certified funds or bank check payable to the town. Such deposit shall be delivered to the town at the time the application described in this article is delivered. The application required in accordance with the terms of this article shall be considered incomplete and shall not be considered by the town administrator until and unless the deposit, as required herein, is made and all other required information furnished.

(b) [Policy amounts.]

Minimum performance deposit	*
Comprehensive general liability insurance	\$1,000,000.00
Automobile liability	1,000,000.00
Worker's compensation and employer's liability	1,000,000.00

* Amount to be determined on a case by case basis by the town administrator based on an estimate of the production's total cost related to town usage.

- (c) In the event the production company damages any public property in the course of carrying out its activities, the town may use the deposit described herein for the purpose of repairing such damages. Further, to the extent the town incurs costs which result solely from the activities pursuant to the permit and the production company fails to reimburse the town for such costs, then the town shall be permitted to utilize the deposit for payment in whole or in part of such expenses. Provided, however, that the giving of the deposit and use thereof as described in this section shall in no way limit the town's rights to recover from the production company for any loss, claim, or damage resulting from the activities undertaken by the production company.
- (d) Upon completion of the activities pursuant to the permit, the deposit shall be returned to the production company in the event there is no damage or loss resulting from the activities of the production company pursuant to the permit. No refund of deposit will be made until appropriate clearance has been received from the town administrator or their designee.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-55. - Use of town equipment, personnel, or likeness.

- (a) The production company may request use of town equipment and/or personnel at the time its application for a permit is submitted. The town administrator shall have the sole discretion to determine whether such equipment and personnel shall be made available in accordance with such request. In the event equipment or personnel are made available, payment by the production company for the use of such equipment or personnel shall be made in accordance with the provisions of a schedule of charges adopted in the current fee schedule approved by the board of commissioners. Payment for such equipment or personnel must be made prior to any refund of deposit. Such requests may be cancelled up to 24 hours prior to the time that such equipment or personnel are required and in such event, the amount paid by the production company shall be refunded in full. In the event the request is cancelled later than 24 hours prior to the time such personnel or equipment is requested, no refund shall be made.
- (b) Town equipment made available pursuant to this section shall be operated only by authorized and qualified town employees.
- (c) The name "Ocean Isle Beach" the town seal or flags shall not be used without written authorization from the town administrator or their designee.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-56. - Issuance of permit, denial of permit and appeal.

- (a) The town administrator or their designee is charged with the responsibility for issuing the permit to a production company as described herein. The town administrator may refuse to issue a permit when the activity described in the request for the permit would create a situation that would prejudice the safety of the town or its residents, would unnecessarily disturb the residents of the town, would unnecessarily impede traffic on streets within the town limits, or would violate any ordinance, statute or regulation of the town, state or United States Government. In the event the administrator denies a request for a permit, the applicant may appeal the administrator's decision to the board of commissioners. Such appeal will be heard by the board of commissioners at the next regularly scheduled meeting at which the appeal can be scheduled consistent with agenda deadlines established by the town administrator. The decision of the board of commissioners shall be final.
- (b) Any application that requires the closing of a street or the beach strand for any period of time whatsoever shall be approved by the board of commissioners. Any proposed closing of a state highway system road shall be approved by the North Carolina Department of Transportation (NCDOT) through a NCDOT special event request form. The decision of the board of commissioners shall be final.
- (c) Each filming location shall require a separate permit application. In cases where a security deposit is required, there shall only be one deposit required.
- (d) The issuance of a permit as described hereinabove does not include the right to use or occupy private property. In addition to the permit required under this article, a production company shall obtain a property owner's notarized written permission to use such private property in any manner whatsoever.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-57. - Changes in permit.

No schedule, proposed activity, filming location or other matter as outlined in the permit application shall be changed by the production company without an amendment to the permit approved by the town administrator. Any request for a permit amendment shall be submitted to the town administrator at least 24 hours before any activity described in the amendment is to occur. Any services contracted under section 14-55 will be billed if 24-hour notification is not received.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-58. - No filming during certain periods.

No permit will be issued to a production company for filming during the weekend of the North Carolina Oyster Festival or on any weekend (Friday after 5:00 p.m., Saturday or Sunday) from May 1 of each year through September 30 unless approval is obtained from the board of commissioners. Steps shall be taken to control noise from generators, slamming doors, engines, etc., in the early morning hours before 7:30 a.m. and after 10:30 p.m.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-59. - Required use of law enforcement officers.

A production company shall be required to utilize the Town of Ocean Isle Beach Police Department law enforcement officers together with appropriate equipment as determined by the town administrator to assist in any circumstance where traffic is affected by the filming activities or where such activities may cause crowd control problems. The determination as to whether law enforcement officers and equipment

are needed and the required number of law enforcement officers and equipment shall be made exclusively by the town administrator. In the event law enforcement officers and associated equipment are required, the cost of such shall be paid by the production company in accordance with the adopted fee schedule. All payments for services must be paid prior to release of any deposit made by the production company.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-60. - Use of explosives, special effects, and similar devices.

No filming activity may be undertaken which involves the use of explosives, pyrotechnics, fire, smoke-making machines, or other special effects designed for simulation of fire or explosion unless specifically approved by the fire chief and police chief acting through the town administrator. The use of such equipment shall be strictly in accordance with any local, state or federal ordinances, statutes and regulations. The permit application submitted in conjunction with any filming activities undertaking the use of such materials shall include a specific description of the plans for the storage, handling and transfer of any explosive devices, pyrotechnics or other incendiary devices or any materials of a hazardous nature that may be used in connection with such filming.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-61. - Changes in structures.

Any alteration of a structure in connection with filming, either, temporarily or permanently, shall be carried out in accordance with the North Carolina State Building Code and shall require any applicable permits from the town's building inspection department.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-62. - Damage to berm; discharge into waterways.

Any production company undertaking filming operations which might cause damage to the berm and dune system adjacent to the Atlantic Ocean, other environmentally sensitive area, or which might result in the discharge of any substances into the waterways surrounding the town will specifically outline in their application a plan for preventing such damage or discharge.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-63. - Notice to adjacent residents.

All residents of premises in any area where filming activities may cause an inconvenience or an interruption of normal activities are required to be notified at least five days prior to the filming of the date and time such filming is to be undertaken. Notification should include information concerning the location and duration of the filming activities in question as well as specifics regarding lights, noise, or any special effects. Such notice shall give the residents the name, local address, and local telephone number of a person employed by the production company that can be contacted concerning such filming. The town administrator, or their designee, may require signed acknowledgements from such residents acknowledging receipt of such notification in the case of unusual filming circumstances or where the residents may be particularly sensitive to filming activities because of the location or configuration of the surrounding area. The town reserves the right to deny or revoke permits where insufficient time has been allowed for proper notification, or when the notification process has been improperly applied.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-64. - Evidence of insurance.

If required as a condition of issuance of the permit, the production company shall submit a policy of insurance naming the town as an additional insured, such policy to be written with a company and in an amount satisfactory to the town.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-65. - Restriction on filming hours.

No filming shall be conducted in residential areas between the hours of 10:00 p.m. and 8:00 a.m. unless specifically allowed in the permitted issued by the town administrator.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-66. - Solid waste disposal.

If required by the permit issued by the town, the production company shall utilize a dumpster or other receptacle as required by the town for the disposition of solid waste, trash, or garbage generated as a result of the filming activities. The production company shall be charged based on the then existing fees charged to the town by the solid waste vendor. The production company shall be required to utilize the solid waste disposal services provided by the town. Any solid waste, trash or garbage generated as a result of the production company activities which is subject to recycling shall be recycled at the town's recycling center located behind town hall.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-67. - Suspension or revocation of permit.

- (a) The film permit may be suspended or revoked by the town administrator, or their designee, if the permittee, its agents, employees or contractors, fails to comply with the requirements as set forth in this article, or with conditions imposed in the filming permit; or, if the town administrator or his designee determines that the permit was issued based on false or misleading information, or that the public safety or welfare is being imperiled by the filming activity.
- (b) If a permit is suspended or revoked, the production company shall cease operations immediately. The permit shall only be reactivated upon approval of the town administrator, or their designee.
- (c) Except for activities necessary to close down the location and remove equipment and other property of the permit holder, no permittee shall allow any filming activity to continue after the suspension or revocation of a film permit pursuant to this section.
- (d) Appeals of the permit suspension or revocation shall be conducted in the manner specified in section 14-56.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-68. - Permit exemptions.

- (a) Filming activities for news purposes as defined in this section.
- (b) Filming activities conducted for use in a criminal investigation or other governmental use.

- (c) Filming activities conducted solely for private or family use.
- (d) Filming activities by students for the purpose of fulfilling class work assignments; filming activities conducted by recognized public or private schools.
- (e) Filming performed by a business entity conducted at the place of business to promote sales events, announcement, or other lawful activities.
- (f) Noncommercial still photography.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-69. - Disclaimer of liability.

In no event shall the approval of an application under this article make or cause the town to be deemed a sponsor of the film. The town shall incur no liability for the injuries or damages to persons or property arising out of any events or activities regulated herein or conducted pursuant hereto. Furthermore, as a condition of approval of the application and by acceptance of the permit issued hereunder, the applicant and production company hereby agree to indemnify and hold the town, its agents, officials, and employees, harmless against any and all claims, demands, causes of action, or other liability, including attorney fees, on account of personal injuries or death or on account of property damages arising out of or relating to the events and activities conducted by or under the direction of the applicant or production company.

(Res. No. 2015-10, 10-13-2015)

Sec. 14-70. - Penalty.

In addition to the penalties and remedies set forth in section 1-6 of this Code, violation of any provision of this article shall be a misdemeanor punishable as provided in G.S. § 14-4, to include, but not be limited to, a fine not to exceed \$500.00.

(Res. No. 2015-10, 10-13-2015)

ARTICLE III. - SEWER SYSTEM^[3]

Footnotes:

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State Law reference— Power to require connections to water or sewer service, G.S. 160A-317.

DIVISION 1. - GENERALLY

Sec. 58-111. - Purpose and policy.

- (a) This article sets forth uniform requirements for direct and indirect discharges into the wastewater disposal system for the town and enables the board of commissioners to comply with all applicable state and federal laws required by the Clean Water Act of 1977 as amended and the general pretreatment regulations (40 CFR 403).
- (b) The objectives of this article are to:
 - (1) Prevent the discharge of pollutants into the wastewater disposal system which will interfere with the operation of the system or contaminate the resulting sludge;
 - (2) Prevent the discharge of pollutants into the wastewater disposal system which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system;
 - (3) Improve the opportunity to recycle and reclaim wastewaters and sludges from the system; and
 - (4) Provide for equitable distribution of the cost of the wastewater disposal system.
- (c) This article provides for the regulation of direct and indirect discharges to the publicly owned treatment works (POTW) through the issuance of permits to certain nondomestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting, assumes that existing customers' capacity will not be preempted, and provides for the setting of fees for the equitable distribution of costs resulting from the program established in this article.
- (d) This article shall apply to the town and to persons outside the town who are, by contract or agreement with the board of commissioners, users of the POTW. Except as otherwise provided in this article, the director of public utilities shall administer, implement and enforce the provisions of this article.

(Code 1983, § 7-6-1(1.1); Ord. of 8-14-2001; Ord. of 5-9-2006(1), § 1C)

Sec. 58-112. - Definitions.

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

Act means the Federal Water Pollution Control Act Amendments of 1972, as amended.

Approving authority means the board of commissioners or their authorized deputy, agent or representative.

Authorized representative of industrial user means:

- (1) A principal executive officer of at least the level of vice-president, if the industrial user is a corporation;

- (2) A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively;
- (3) A duly authorized representative of the individual designated above if such representative is responsible for the overall operation of the facilities from which the indirect discharge originates.

Billable excess biochemical oxygen demand (BOD₅) means a user's loading in pounds of BOD₅ calculated using the billable flow and concentration of BOD₅ in the wastewater in excess of 300 mg/l.

Billable excess chemical oxygen demand (COD) means the user's loading in pounds of COD calculated using the billable flow and concentration of COD in the wastewater in excess of 600 mg/l.

Billable excess total Kjeldahl nitrogen (TKN) means a user's loading in pounds of TKN calculated using the billable flow and concentration of TKN in the wastewater in excess of 50 mg/l.

Billable excess total suspended solids (TSS) means a user's loading in pounds of TSS calculated using the billable flow and concentration of TSS in the wastewater in excess of 300 mg/l.

Billable flow means a user's recorded water usage as metered by the appropriate water utility, plus metered water from wells and other sources, and less any sewer-exempt metered flow data, times the local government approved percentage factor for wastewater entering the wastewater disposal system out of the metered water. Residential users on unmetered wells and users with no history of billable flow shall have their billable flow estimated by averaging the billable flow of other residential users of the same class.

Biochemical oxygen demand (BOD₅) means the quantity of oxygen, expressed in milligrams per liter (mg/l), utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five days at 20 degrees Celsius.

Building drain means that part of the lowest horizontal piping of a drainage system which receives sanitary or industrial wastewater only and is located inside the walls of a building and conveys the wastewater to the building sewer, which begins ten feet outside the building wall.

Building sewer means the extension from the building drain to the public sewer or other place of disposal and conveys only sanitary or industrial wastewater.

Categorical standards means National Categorical Pretreatment Standards or pretreatment standard.

Chemical oxygen demand (COD) means the total amount of oxygen required to oxidize all of the organic matter in a waste to carbon dioxide, water and ammonia nitrogen by potassium dichromate under acid conditions as described in Standard Methods.

Classes of users means the division of POTW customers by waste characteristics and process discharge similarities or function, such as residential, commercial, institutional, industrial or governmental.

Collection sewer means a sewer whose primary purpose is to collect wastewaters from individual point source discharges.

Commercial user means a user engaged in the purchase or sale of goods or in a transaction or business or who otherwise renders a service.

Compatible pollutant means biochemical oxygen demand, suspended solids, pH, and fecal coliform bacteria, plus any additional pollutants identified in the POTW NPDES permit, where the POTW is designed to treat such pollutants and, in fact, does treat such pollutants to the degree required by the NPDES permit.

Cooling water means the water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

Direct discharge means the discharge of treated or untreated wastewater directly to the waters of the state.

Easement means an acquired legal right for the specific use of land owned by others.

Environmental protection agency or *EPA* means the U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the administrator or other duly authorized official of that agency.

Floatable oil means oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in a pretreatment facility. A wastewater shall be considered free of floatable oil if it is properly pretreated and the wastewater does not interfere with the wastewater disposal system.

Garbage means the animal or vegetable wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the commercial handling, storage and sale of produce.

Health officer means any person designated by the local government to be responsible for maintaining sanitary conditions and reporting violations.

Holding tank waste means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum-pump tank trucks.

Incompatible pollutant means all pollutants other than compatible pollutants.

Indirect discharge means the discharge or the introduction of nondomestic pollutants from any source regulated under section 307(b) or (c) of the act (33 USC 1317), into the POTW (including holding tank waste).

Industrial user means a manufacturing or processing facility which is engaged in a production or profit-making venture; a source of indirect discharge which does not constitute a discharge of pollutants under regulations issued pursuant to section 402 of the act (33 USC 1342).

Infiltration means the water unintentionally entering the public sewer system, including sanitary building drains and sewers, from the ground through such means as but not limited to defective pipes, pipe joints, connections or manhole walls.

Infiltration/inflow means the total quantity of water from both infiltration and inflow without distinguishing the source.

Inflow means the water discharged into the public sewer system, including building drains and sewers, from such sources as but not limited to roof leaders; cellar, yard and area drains; foundation drains; unpolluted cooling water discharges; drains from springs and swampy areas; manhole covers; cross connections from storm sewers and/or combined sewers; catchbasins; stormwaters; surface runoff; street wash waters; or drainage.

Interceptor sewer means a sewer whose primary purpose is to transport wastewater to a treatment facility.

Interference means the inhibition or disruption of the POTW treatment processes or operations which contributes to a violation of any requirements of the POTW's NPDES permit. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the act (33 USC 1345) or any criteria, guidelines or regulations developed pursuant to the Solid Waste Disposal Act (SWDA), the Clean Air Act, the Toxic Substances Control Act, or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to title IV of the SWDA) applicable to the method of disposal or use employed by the POTW.

Local government means the town, acting through its mayor and board of commissioners.

National Categorical Pretreatment Standard or *pretreatment standard* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307(b) and (c) of the act (33 USC 1347) which applies to a specific category of industrial users.

National pollutant discharge elimination permit means a permit issued under the National Pollutant Discharge Elimination System (NPDES) for discharge of wastewaters to the navigable waters of the United States.

National Prohibitive Discharge Standard or *prohibitive discharge standard* means any regulation developed under the authority of section 307(b) of the act and 40 CFR 403.5.

Natural outlet means any outlet into a watercourse, pond, ditch, lake or other surface water or groundwater.

pH means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution. A stabilized pH will be considered as pH which does not change beyond the specified limits when the waste is subjected to aeration. A pH value indicates the degree of acidity or alkalinity.

Properly shredded garbage means the wastes from the preparation, cooking and dispensing of food that have been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

Public sewer means a sewer which is owned and controlled by the town and is separate from and does not include sewers owned by other governmental units.

Publicly owned treatment works (POTW) means a treatment works as defined by section 212 of the act (33 USC 1292) owned by the town. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. For the purposes of this article, POTW shall also include any sewers that convey wastewaters from persons outside the town who are, by contract or agreement with the local government, users of the POTW.

Replacement costs means the capital expenditures for obtaining and installing equipment, accessories or appurtenances necessary during the service life of the POTW to maintain the capacity and performance for which such works were designed and constructed.

Sanitary sewer means a sewer which carries sanitary and/or industrial wastewaters from residences, commercial buildings, industrial plants and institutions. Sanitary sewers are separate and distinct from storm sewers and are not intended to carry surface runoff or groundwater.

Significant industrial user means: Any industrial user of the POTW who:

- (1) Has a discharge flow of 25,000 gallons or more per average work day;
- (2) Has a flow greater than five percent of the flow in the POTW;
- (3) Has in his wastes toxic substances as defined pursuant to section 307 of the act or state statutes and rules; or
- (4) Is found by the local government, division of environmental management (DEM) or the EPA to have significant impact, either singly or in combination with other contributing industries, on the wastewater disposal system, the quality of sludge, the system's effluent quality, or air emissions generated by the system.

Slug means any discharge of water or wastewater which, in concentration of any given constituent or in quantity of flow, exceeds for any period duration longer than 15 minutes more than five times the average 24-hour concentration or flow during normal operation and shall adversely affect the wastewater disposal system so as to prevent attainment of effluent limitations or to substantially increase operation and maintenance requirements.

Standard Industrial Classification (SIC) means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972.

Standard Methods means the laboratory procedures set forth in the following sources: Standard Method for the Examination of Water and Wastewater, 14th Edition, as amended, prepared and published jointly by the American Public Health Association, American Water Works Association, and Water Pollution Control Federation; Methods for Chemical Analysis of Water and Wastes, 1971, prepared and published by the Analytical Quality Control Laboratory, U.S. Environmental Protection Agency; Guidelines Establishing Test Procedures for the Analysis of Pollutants, enumerated in 40 CFR 136.1 et seq. (1975), as amended; and/or any other procedures recognized by the EPA and the state division of environmental management.

Storm sewer means a sewer that carries only stormwaters, surface runoff, street wash and drainage, and to which sanitary and/or industrial wastewater is not intentionally admitted.

Superintendent means the board of commissioners or their authorized deputy, agent or representative.

Total Kjeldahl nitrogen (TKN) means the organic nitrogen and ammonia nitrogen content of a wastewater as determined by Standard Methods.

Total suspended solids (TSS) means total suspended matter that either floats on the surface of or is in suspension with water, wastewater or other liquids and is removable by laboratory filtration as prescribed in Standard Methods.

Toxic substances means any substances, whether gaseous, liquid or solid, which, when discharged into the wastewater disposal system in sufficient quantities, may tend to interfere with any wastewater treatment process, or to constitute a hazard to recreation in the receiving waters of the effluent from the POTW. These substances include but are not limited to those listed as toxic in regulations promulgated by the EPA under the provisions of CWA 307(a) or other acts.

Unpolluted water means water of a quality equal to or better than the effluent criteria in effect, or water that is of sufficient quality that it would not be in violation of federal or state water quality standards if such water were discharged into navigable waters of the state.

Useful life means the anticipated term in years of physical and/or functional productivity of elements and/or the whole of the wastewater disposal system.

User means any person who contributes, causes or permits the contribution of wastewater into the POTW.

User charge system means the system of charges levied on users for the cost of operation and maintenance, including replacement reserve requirements on new and old wastewater collection and treatment facilities.

Wastewater means the combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, including polluted cooling water and unintentionally admitted infiltration/inflow.

- (1) *Sanitary wastewater* means the combination of liquid and water-carried wastes discharged from toilet and other sanitary plumbing facilities.
- (2) *Industrial wastewater* means a combination of liquid and water-carried wastes discharged from any industrial establishment and resulting from any trade or process carried on in that establishment, and shall include the wastes from pretreatment facilities and polluted cooling water.

Wastewater disposal system means the structures, equipment and processes owned and controlled by the town (unless specified otherwise) required to collect, transport, and treat domestic and industrial wastes and to dispose of the effluent and accumulated residual solids.

Waters of the state means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion of the state.

(Code 1983, § 7-6-1(1.2))

Cross reference— Definitions generally, § 1-2.

Sec. 58-113. - Abbreviations.

The following abbreviations shall have the designated meanings:

BOD means biochemical oxygen demand.

CFR means Code of Federal Regulations.

COD means chemical oxygen demand.

CWA means Clean Water Act.

DEM means the division of environmental management, department of natural resources and community development of the state.

EPA means the Environmental Protection Agency.

l means liter.

mg means milligrams.

mg/l means milligrams per liter.

NH₃-N means ammonia nitrogen.

NPDES means National Pollutant Discharge Elimination System.

POTW means publicly owned treatment works.

SIC means Standard Industrial Classification.

SWDA means Solid Waste Disposal Act, 42 USC 6901 et seq.

USC means United States Code.

TKN means total Kjeldahl nitrogen.

TSS means total suspended solids.

(Code 1983, § 7-6-1(1.3))

Sec. 58-114. - Applicability of article.

This article shall apply to any person now using the town's existing sewer system as well as any future person tapping on to the town's sewer system.

(Code 1983, § 7-6-1(12))

Sec. 58-115. - Penalty.

Violation of this article shall constitute a misdemeanor, punishable in accordance with section 1-6. In addition to, in lieu of, or together with any criminal penalties, the town shall be entitled to injunctive relief, together with any damages caused by a violation of this article.

(Code 1983, § 7-6-1(14))

Secs. 58-116—58-140. - Reserved.

DIVISION 2. - USE OF PUBLIC SEWERS

Sec. 58-141. - Required.

- (a) It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the town or in any area under the jurisdiction of the town any human excrement, garbage or objectionable waste.
- (b) It shall be unlawful to discharge to any natural outlet within the town or in any area under the jurisdiction of the town any wastewater or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this division and with regulations of the division of environmental management, department of natural resources and community development of the state. Except as otherwise provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater.
- (c) The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes situated within the town and abutting on any street, alley or right-of-way in which there is located a public sanitary sewer of the town is required at the owner's expense to install suitable toilet facilities and to connect such facilities directly with the proper public sewer in accordance with the provisions of this division, within 60 days after date of official notice to do so, provided the public sewer is within 150 feet of the property line and the town deems it reasonable and proper to connect consistent with system design. Sewer user charges will commence within 60 days of official notice to connect or from the date of actual physical connection to the system, whichever comes first.
- (d) Any water discharged into the town's sewer system shall have been purchased from the town or individually metered public water system such as Brunswick County.

(Code 1983, § 7-6-1(2.1); Ord. of 8-14-2001)

Sec. 58-142. - Private wastewater disposal.

- (a) Where a public sanitary sewer is not available, the building sewer shall be connected to a private wastewater disposal system complying with applicable state standards. Before commencement of construction of a private wastewater disposal system, the owner shall first obtain written approval of the state, acting through the county health department. The type, capacities, location and layout of a private wastewater disposal system shall comply with all recommendations of the department of public health and division of environmental management of the state. No septic tank or cesspool shall be permitted to discharge to any natural outlet. The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times at no expense to the town.
- (b) At such time as a public sewer becomes available to a property served by a private wastewater disposal system, a direct connection shall be made to the public sewer within 60 days. Under unusual and/or special circumstances, the local government may extend the time of compliance or waive this provision.

(Code 1983, § 7-6-1(2.2))

Sec. 58-143. - Building sewers and connections.

- (a) Any person desiring to deposit or discharge or who is now depositing or discharging any domestic, commercial or industrial waste into the sanitary sewers shall make application for the disposal of industrial, commercial or domestic waste to the town; and the approving authority shall approve such application only when evidence is submitted by the applicant that the discharge into the sanitary sewer will comply with all of the regulations of this division.

- (b) No person shall make any connection to the sanitary sewer system until a permit has been issued by the town. Permits shall be issued for connections only after the town or the approving authority has determined the type of connection required; the type of waste to be placed in the system; and, if required by the town, an approved plumbing system within the dwelling, building or structure desiring connection.
- (c) All connections to the sanitary sewer system shall be made by authorized employees of the town in accordance with specifications for such connection that may be adopted by the town. If authorized by the board of commissioners, connections may be made by plumbers licensed to perform plumbing work in the town. All construction shall be in conformity with the state plumbing and building codes, as amended. Any sewer connection made by an authorized licensed plumber shall be inspected by the approving authority after such work has been completed and prior to the time such connection is covered.
- (d) No person shall make connection of roof downspouts, foundation drains, areaway drains or other sources of infiltration/inflow to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.
- (e) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the local government.
- (f) It shall be the responsibility of the property owner to keep and maintain the building sewer connected to the public sewer in good repair. The owner shall be responsible for making necessary repairs, at his own expense, to the building sewer when notified in writing by the local government that repairs are necessary. Should the owner fail to repair the building sewer within 30 days after receiving written notification by the local government, the local government may make the necessary repairs to the building sewer and shall assess the owner for the cost of the repairs.
- (g) Grease, oil and sand interceptors (grease traps) shall be provided by the owner when, in the opinion of the approving authority, they are necessary for the proper handling of liquid wastes containing floatable oil in excessive amounts, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the approving authority and shall be located as to be readily and easily accessible for cleaning and inspection. Where installed, all grease, oil and sand interceptors shall be maintained by the owner at his expense in continuously efficient operation at all times. In the maintaining of these interceptors, the owner shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates and means of disposal which are subject to review by the approving authority. Any removal and hauling of the collected materials not performed by owner personnel must be performed by currently licensed waste disposal firms. Violations of this subsection shall entitle the town to discontinue water service pursuant to subsection 58-42(d)(8) until such time that the violation has been corrected by the owner.
- (h) When in the opinion of the approving authority the proposed flow may create a surge or unusual loading condition at the treatment facility, the user shall be required to construct and maintain as a portion of the pretreatment works a flow equalization tank or basin to provide a uniform flow over a period acceptable to the approving authority.
- (i) Any person discharging industrial wastes into the town sanitary sewer system shall construct and maintain a suitable control manhole, downstream from any treatment, storage or other approved works, to facilitate observation, measurements and sampling of all wastes, including domestic sewage, from commercial, business or private industry. The control manhole shall be constructed at a suitable and satisfactory location and built in a manner approved by the approving authority.
- (j) Where a storage tank is not required, the control manhole shall be equipped with a permanent type volume measuring device such as a nozzle, weir or other suitable devices as may be approved by the approving authority. The manhole shall be installed by the person discharging the wastes at his

expense and shall be maintained by him so as to be safe, accessible and in proper operating condition at all times.

- (k) Plans for the construction of the storage tank, control manhole and controlling devices shall be approved by the approving authority prior to the beginning of construction.
- (l) Any increase in sewage discharge from any plant or dwelling which derives from growth or expansion of facilities must be approved by the governing body and the governing body, must be notified of the increase.

(Code 1983, § 7-6-1(2.3); Ord. No. 2010-09, § 1, 5-11-2010)

Sec. 58-144. - Prohibited discharges.

- (a) It shall be unlawful for any person to discharge or cause to be discharged any pollutant or wastewater which will interfere with the operation and/or performance of the POTW. These general prohibitions apply to all such users of the POTW, whether or not the user is subject to National Categorical Pretreatment Standards or any other national, state or local pretreatment standards or requirements. A user may not discharge the following substances to the POTW:
 - (1) Any unpolluted waters such as infiltration/inflow to any sanitary sewer. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designed as storm sewers or to a natural outlet approved by the approving authority and the DEM. Unpolluted industrial cooling water or process waters may be discharged on approval of the approving authority and the DEM to a storm sewer or natural outlet. No untreated sanitary wastewater shall be discharged to any storm sewer or natural outlet.
 - (2) Any liquids, solids or gases which by reason of their nature or quantity are or may be sufficient, either alone or by interaction with other substances, to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. Materials specifically prohibited from discharge into the POTW include gasoline, kerosene, naphtha, fuel oil, and any other substances which the local government, the state or the EPA has notified the user is a fire hazard or a hazard to the system.
 - (3) Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the POTW, such as but not limited to: floatable oil, garbage with particles greater than one-half inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, wood, plastics, gas, tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.
 - (4) Any wastewater having a pH less than 6.0 or greater than 9.0 or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment and/or personnel of the POTW.
 - (5) Any wastewater containing toxic substances in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW, or exceed the limitation set forth in a categorical pretreatment standard.
 - (6) Any noxious or malodorous liquids, gases or solids which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for their maintenance and repair.
 - (7) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges or scums to be unsuitable for reclamation and reuse or to interfere with the reclamation process where the POTW is pursuing a reuse and reclamation program. In no case shall a substance discharged to the POTW cause the POTW to fail to be in compliance with

sludge use or disposal criteria, guidelines or regulations developed under section 405 of the act; any criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the sludge management method being used.

- (8) Any substance which will cause the POTW to violate its NPDES and/or state disposal system permit or the receiving water quality standards.
 - (9) Any wastewater with objectionable color not removed in the treatment process, such as but not limited to dye wastes and vegetable tanning solutions.
 - (10) Any wastewater, liquid or vapors having a temperature higher than 150 degrees Fahrenheit.
 - (11) Any pollutants, including oxygen-demanding pollutants (BOD, etc.), released at a flow and/or pollutant concentration which a user knows or has reason to know will cause interference.
 - (12) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the local government in compliance with applicable state and/or federal regulations.
 - (13) Quantities of flow, concentrations or both which constitute a slug.
- (b) When the approving authority determines that a user is discharging any of the substances enumerated in subsection (a) of this section in such amounts as to interfere with the operation of the POTW, the approving authority shall:
- (1) Advise the user of the impact of the discharge and applicable penalties associated with the continuation of such discharge; and
 - (2) Develop effluent limitations for such user to correct the discharge.
- (c) No statement contained in this section shall be construed as preventing any special agreement or arrangement between the town and any person whereby an industrial waste of unusual strength or character may be admitted into the sanitary sewers by the town after approved pretreatment.

(Code 1983, § 7-6-1(2.4))

Sec. 58-145. - Specific pollutant limitations.

No discharge shall contain pollutant concentrations exceeding the following prohibitive limits (maximum for any day based on composite samples). The local government may require payment to cover the costs of handling and treating the pollutants in excess of that enumerated as follows:

0.01 mg/l arsenic

1.5 mg/l antimony

0.1 mg/l cadmium

5.0 mg/l copper

20.0 mg/l iron

0.5 mg/l lead

0.01 mg/l mercury

5.0 mg/l nickel

0.5 mg/l hexavalent chromium

5.0 mg/l total chromium
0.1 mg/l selenium
0.1 mg/l silver
5.0 mg/l zinc
10.0 mg/l total of above heavy metals (excluding iron)
1.0 mg/l cyanide
5.0 mg/l phenolic compounds
300 mg/l biochemical oxygen demand
600 mg/l chemical oxygen demand
75 mg/l oil and grease
300 mg/l total suspended solids
50 mg/l total Kjeldahl nitrogen

(Code 1983, § 7-6-1(2.5))

Sec. 58-146. - Pretreatment of industrial wastes.

- (a) All applicable industrial users of the POTW shall meet EPA pretreatment requirements if they are discharging incompatible or toxic pollutants. All applicable industrial users shall achieve compliance with all Federal Categorical Pretreatment Standards within the time limitations as specified by the Federal Pretreatment Regulations. Any facilities required to pretreat wastewater to a level acceptable to the local government shall be constructed, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the superintendent for review and shall be acceptable to the local government before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the local government under the provisions of this division. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the local government prior to the user's initiation of the changes.
- (b) All records relating to compliance with pretreatment standards shall be made available to officials of the EPA, the state, or other approval authority upon request.

(Code 1983, § 7-6-1(3))

Sec. 58-147. - Separate connections required.

Each separate dwelling, structure, business or other building shall have a separate connection to the system; however, apartments or other multiuse or multioccupancy buildings may have one combined connection at the discretion of the approving authority.

(Code 1983, § 7-6-1(4))

Sec. 58-148. - Outside connections.

Any person owning or controlling premises beyond the corporate limits of the town and desiring to install a plumbing system for the purpose of discharging domestic and/or industrial waste into the sanitary sewers of the town may do so upon approval and acceptance by the board of commissioners and any state agency involved. All costs associated with such connection shall be the responsibility of the property owner and shall be done under the supervision of the town or its designated agent.

(Code 1983, § 7-6-1(5))

Sec. 58-149. - Powers and authority for inspection.

- (a) The approving authority and other duly authorized employees of the town, bearing proper credentials and identification, shall be permitted to enter upon all properties for the purpose of inspection, observation, measurement, sampling and testing, in accordance with the provisions of this division.
- (b) Authority is granted to the board of commissioners to temporarily exclude any industrial waste, whether pretreated or not, from the sanitary sewers whenever, in their opinion, such action is necessary for the purpose of determining the effects of such wastes upon the sewers, sewage treatment works or sewage treatment plants.

(Code 1983, § 7-6-1(6))

Sec. 58-150. - Measurement of flow.

- (a) The volume of flow used in computing waste charges shall be based upon metered water consumption as shown in the records of meter reading maintained by the town. If a person discharging wastes into the sanitary sewer system produces evidence to the approving authority that more than ten percent of the total annual volume of water used for all purposes does not reach the town sanitary sewer, an estimated percentage of total water consumption to be used in computing charges may be agreed upon between the approving authority and the persons discharging industrial wastes into the sewer.
- (b) Where the person discharging industrial wastes into the sanitary sewer of the town procures any part, or all, of his water supply from sources other than the town, all or part of which is discharged into the sanitary sewer, the person discharging the waste shall install and maintain, at his expense, water meters of a type approved by the approving authority for the purpose of determining the proper volume of flow to be charged.

(Code 1983, § 7-6-1(7))

Sec. 58-151. - Determining of character and concentration of wastes.

- (a) The industrial or commercial waste of each person discharging such waste into the town sanitary sewers shall be subject to periodic inspection; and a determination of character and concentration of such wastes shall be made quarterly, or oftener as may be deemed necessary, by the approving authority or his authorized assistants.
- (b) Samples shall be collected in such a manner as to be representative of the actual quality of the wastes. The laboratory methods used in the examination of the wastes shall be those set forth in Standard Methods, the most recent edition, or any other pertinent method, standards and procedures proposed, published, and as required by the U.S. Environmental Protection Agency.
- (c) The determination of the character and concentration of the industrial or commercial wastes by the approving authority, or his authorized assistants, shall be binding as a basis for charges.

- (d) Total costs incident to the supervision, inspection, sampling and analyzing of wastes shall be included in the charge made to persons discharging wastes into the town sanitary sewers.

(Code 1983, § 7-6-1(8))

Sec. 58-152. - Maintenance and repair of connections/plugging of discontinued connections.

- (a) Whenever any service to any building or premises becomes clogged, broken, out of order, or in any condition detrimental to the use of the sewer service, the owner, agent or occupant having charge of such building or premises shall be held responsible for the immediate renewal or repair of the sewer service necessary to maintain an uninterrupted sanitary disposal system. Renewal or repair of sewer service from the main to the property line shall be made at the expense of the town, while renewal or repair of sewer service from the property line to the source of discharge is the responsibility of the property owner. Such work shall be performed by authorized personnel only.
- (b) Upon the permanent discontinuance of the use of the town sewer system at any premises, including discontinuance caused by abandonment of any premises, tearing down of any building or any other cause, the property owner shall cause the connection to the sewer main of the town to be plugged in a manner which will be strong enough to resist breakage and be watertight enough to prevent any leakage of any fluids. All such plugging shall be subject to inspection and approval by the plumbing inspector of the town, provided that no permit fee, inspection fee or other fee shall be charged for such inspection. If the owner of the property fails to plug the sewer connection in a satisfactory manner within 30 days of the time the owner is notified in writing by the plumbing inspector to plug the sewer service line, the town shall proceed to plug the service line and bill the owner for the costs. The cost may be collected by the town in a civil action filed in court. The collection of the costs in a civil action shall not prevent the filing of an action for a fine for violation of this article.

(Code 1983, § 7-6-1(9))

Sec. 58-153. - Damaging or obstructing system.

It shall be unlawful for any person to damage, tamper with or otherwise do harm to the mains, pipes, manholes, apparatus or other parts of the sanitary sewer system, or to place or cause to be placed any object of any nature whatsoever into the system that blocks or obstructs or impedes the normal flow in the sewer system.

(Code 1983, § 7-6-1(10))

Sec. 58-154. - Charges for connection, sewer service and treatment of industrial waste.

- (a) All persons discharging waste and solids in large commercial quantities or on an industrial basis shall be rendered a monthly bill as a charge covering the entire costs to the town incurred for treatment. This charge shall be evoked on the basis provided in this section; but, if there is BOD over 300 parts per million, the charge shall be by special contract, which shall take into consideration:
 - (1) All fixed charges and amortization cost of additional plant capacity required for treating the industrial wastes; and
 - (2) A charge covering the cost incurred to the town in treating the wastes in the municipal sewage treatment plants.
- (b) No person shall discharge or deposit waste materials of any nature into the town sewer system unless all charges as provided for are paid. There shall be no free use of the sewer system by any person.

(Code 1983, § 7-6-1(11))

Sec. 58-155. - Protection from damages.

No unauthorized person shall 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.

(Code 1983, § 7-6-1(13))

Sec. 58-156. - Extension to sanitary sewer system and services.

- (a) Additions to the towns sanitary sewer system shall be in accordance with policies established by the town board of commissioners.
- (b) Sanitary sewer system improvement to serve undeveloped, previously platted areas, subdivisions or other developments within the jurisdiction area of the town or within the town limits shall be handled in full accord with the following:
 - (1) The developer will submit preliminarily plans for review and approval by the town.
 - (2) Upon review and approval by the town of preliminarily plans, the developer shall submit final plans, technical specifications, applications and all else needed final approval by town and state agencies.
 - (3) Upon approval of final plans, the developer shall have improvements installed by a North Carolina licensed utilities contractor, inspected and certified by the design professional engineer and shall pay all costs for improvements or extensions. All construction of sewer system extensions or improvements shall be completed within three years from date of state and town permit approval. Sanitary sewer allocations will be withdrawn by the town if construction is not completed within above time frame.
 - (4) Upon completion of the improvements the developer will deed the complete facility, to include all rights-of-way, easements, permits, franchises, and authorizations or other instruments needed for the operation and maintenance of the improvements, to the town.
 - (5) All sanitary sewer system improvements shall be designed and constructed in full accord with all materials, construction methods and regulations of the town sanitary sewer standards available from the director of public utilities. All sewer lines and sewer service lines shall be within the street right-of-way. All services shall be installed on the street right-of-way line.
 - (6) In the maintenance of sewer lines and sewer service lines, any landscaping, plants, driveway gravel or either improvements made by property owners shall be replaced and or repaired by the property owner.

(Ord. of 8-14-2001; Ord. of 8-14-2003(3), § 1A.; Ord. of 8-14-2003(4), § 1; Ord. of 5-9-2006(1), § 1C)

Secs. 58-157—58-159. - Reserved.

DIVISION 3. - GREASE AND OIL CONTROL

Sec. 58-160. - Scope and purpose.

To aid in the prevention of sanitary sewer blockages and obstructions from contributions and accumulation of fats, oils, and greases into said sewer system from industrial or commercial establishments, particularly food preparation and serving facilities.

(Ord. of 7-12-2005(1), § 1)

Sec. 58-161. - Definitions.

Cooking establishments. Those establishments primarily engaged in activities of preparing, serving, or otherwise making available for consumption foodstuffs and that use one or more of the following preparation activities: cooking by frying (all methods), baking (all methods), grilling, sauteing, rotisserie cooking, broiling (all methods), boiling, blanching, roasting, toasting, or poaching. Also included are infrared heating, searing, barbecuing, and any other food preparation activity that produces a hot, nondrinkable food product in or on a receptacle that requires washing.

Fats, oils, and greases. Organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 CFR 136, as may be amended from time to time. All are sometimes referred to herein as "grease" or "greases."

Grease trap or interceptor. A device for separating and retaining waterborne greases and grease complexes prior to the wastewater exiting the trap and entering the sanitary sewer collection and treatment system. These devices also serve to collect settleable solids, generated by and from food preparation activities, prior to the water exiting the trap and entering the sanitary sewer collection and treatment system. Grease traps and interceptors are sometimes referred to herein as "grease interceptors."

Minimum design capability. The design features of a grease interceptor and its ability or volume required to effectively intercept and retain greases from grease-laden wastewaters discharged to the public sanitary sewer.

Noncooking establishments. Those establishments primarily engaged in the preparation of precooked foodstuffs that do not include any form of cooking. These include cold dairy and frozen foodstuffs preparation and serving establishments.

User. Any person, including those located outside the jurisdictional limits of the town, who contributes, causes or permits the contribution or discharge of wastewater into the POTW, including persons who contribute such wastewater from mobile sources, such as those who discharge hauled wastewater.

(Ord. of 7-12-2005(1), § 1)

Sec. 58-162. - Grease interceptor maintenance, record keeping, and grease removal.

- (1) Grease interceptors shall be installed by users as required by the director or his designee. Grease interceptors shall be installed at the user's expense, when such user operates a cooking establishment. Grease interceptors may also be required in noncooking or cold dairy and frozen foodstuffs establishments and other industrial or commercial establishments when they are deemed necessary by the director for the proper handling of liquid wastes containing grease. No user shall allow wastewater discharge concentration from subject grease interceptor to exceed 325 milligrams per liter, as identified by method EPA method 1664 or 275 milligrams per liter, as identified by EPA method 413. All grease interceptors shall be of a type, design, and capacity approved by the director or his designee and shall be readily and easily accessible for user cleaning and town inspection. All such grease interceptors shall be serviced and emptied of accumulated waste content as required in order to maintain minimum design capability or effective volume of the grease interceptor, but not less often than every 30 days. Users who are required to pass water through a grease interceptor shall:

- (a) Provide for a minimum hydraulic retention time of 24 minutes at actual peak flow or 12 minutes at the calculated theoretical peak flow rate as predicted by the Uniform Plumbing Code fixture criteria, between the influent and effluent baffles with 20 percent of the total volume of the grease interceptor being allowed for sludge to settle and accumulate, identified hereafter as a "sludge pocket."
 - (b) Remove any accumulated grease cap and sludge pocket as required, but at intervals of not longer than 30 days at the user's expense. Grease interceptors shall be kept free of inorganic solid materials such as grit, rocks, gravel, sand, eating utensils, cigarettes, shells, towels, rags, etc., which could settle into this pocket and thereby reduce the effective volume of the grease interceptor.
 - (c) Accept the following conditions: If any skimmed or pumped wastes or other materials removed from grease interceptor are treated in any fashion on site and reintroduced back into the grease interceptor as an activity of and after said onsite treatment, the user shall be responsible for the attainment of established grease numerical limit consistent with and contained in [subsection] (c)(1) on all discharges of wastewater from said grease interceptor into the town sanitary sewer collection and treatment system.
 - (d) Operate the grease interceptor in a manner so as to maintain said device such that attainment of the grease limit is consistently achieved. "Consistent" shall mean any wastewater sample taken from said grease interceptor shall be subject to terms of numerical limit attainment described in [subsection] (c)(1). If an establishment desires, because of documented space constraints, an alternate to an out-of-building grease interceptor, the request for an alternative location shall contain the following information:
 - 1. Location of town sewer main and easement in relation to available exterior space outside building;
 - 2. Existing plumbing at or in a site that uses common plumbing for all services at that site.
 - (e) Understand and agree that: The use of biological additives as a grease degradation agent is conditionally permissible, upon prior written approval by the director. Any establishment using this method of grease abatement shall maintain the trap or interceptor in such a manner that attainment of the grease wastewater discharge limit, as measured from the trap's outlet, is consistently achieved.
 - (f) Understand and agree that: The use of automatic grease removal systems is conditionally permissible, upon prior written approval by the director, the lead plumbing inspector of the town, and the Brunswick County Department of Health. Any establishment using this equipment shall operate the system in such a manner that attainment of the grease wastewater discharge limit, as measured from the unit's outlet, is consistently achieved.
 - (g) Understand and agree that: The director reserves the right to make determinations of grease interceptor adequacy and need, based on review of all relevant information regarding grease interceptor performance, facility site and building plan review and to require repairs to, or modification or replacement of such traps.
- (2) The user shall maintain a written record of trap maintenance for three years. A copy of all service records must be mailed to the town within 15 days from date of service.
 - (3) No nongrease laden sources are allowed to be connected to sewer lines intended for grease interceptor service.
 - (4) Except as provided herein, for a period of one year following adoption of this ordinance, although installation of grease interceptors will be required, no enforcement actions will be taken under this division for failure to achieve limits on grease discharges from grease interceptors. If, during this one-year period an obstruction of a town sewer main(s) occurs that causes a sewer overflow to the extent that an impact on the environment is realized and that said overflow or failure of the sanitary sewer collection system to convey sewage can be attributed in part or in whole to an accumulation of

grease in the town's sewer main(s), the town will take appropriate enforcement actions, as stipulated in the town's sewer use ordinance, against the generator or contributor of such grease.

- (5) Access manholes, with a minimum diameter of 24 inches, shall be provided over each chamber and sanitary tee. The access manholes shall extend at least to finished grade and be designed and maintained to prevent water inflow or infiltration. The manholes shall also have readily removable covers to facilitate inspection, grease removal, and wastewater sampling activities.

(Ord. of 7-12-2005(1), § 1)

Sec. 58-163. - Penalties.

Violation of section 58-162 of the Code of Ordinances shall entitle the town to recover a civil penalty in the amount of \$250.00 for failure to maintain a trap which results in a blockage; \$700.00 for not properly maintaining a system; and \$150.00 for not pumping the grease interceptor on a monthly basis. Each day's continuing violations shall be a distinct and separate offense. In addition, violation of said section shall entitle the town to discontinue water service pursuant to subsection 58-42(d)(8).

(Ord. of 7-12-2005(1), § 1; Ord. No. 2010-09, § 1, 5-11-2010)

ARTICLE IX. - ADMINISTRATION AND ENFORCEMENT^[9]

Footnotes:

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Cross reference— Administration, ch. 2.

Sec. 66-311. - By zoning administrator.

This chapter shall be administered and enforced by the zoning administrator. All officials and public employees of the town shall comply with the provisions of this chapter and shall issue no permit or license, for any use, building or purpose in conflict with the provisions of this chapter.

(Code 1983, § 7-2-1; Res. of 5-8-2007(2))

Sec. 66-312. - Building permit required.

- (a) No building or structure shall be structurally erected, altered or moved, nor shall any of the normal site clearance preparations be undertaken until the zoning administrator has thoroughly investigated such application and property to determine that the intended use is in compliance with the town codes. The applicant may then request a building permit from the town building inspector. The building permit issued shall be posted in some conspicuous place on the premises.
- (b) An application for a building permit shall be accompanied by such information and documentation as may be necessary for an appropriate determination by the building inspector. This may include plans drawn to scale showing the actual shape and dimensions of the lot to be built upon or changed in its use, in whole or in part; the exact size and location of any building or structure or part; the number of dwellings, housekeeping units or families the building is designed to accommodate; and parking facilities. The building inspector shall retain a copy of the plans and record of permits issued.
- (c) Permits will be considered null and void if work does not commence within 180 days from the date of issuance, and the permit fee shall be forfeited. The building inspector shall have within his authority the power to rescind an issued permit upon which work does not proceed in an orderly or continuous manner until completed.

(Code 1983, § 7-2-1; Res. of 5-8-2007(2))

Cross reference— Building permits, § 10-111 et seq.

Sec. 66-313. - Complaints and remedies.

Whenever a violation of this chapter occurs or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes and basis of the complaint, shall be filed with the zoning administrator; and he shall immediately investigate and take action as provided by this chapter.

(Code 1983, § 7-2-1; Res. of 5-8-2007(2))

Sec. 66-314. - Penalties.

- (a) *Criminal action.* Any person who violates the provisions of this chapter or fails to comply with any of its requirements shall, upon conviction be guilty of a misdemeanor and shall be punished as provided in section 1-6.
- (b) *Civil penalty.* Any act constituting a violation of any requirement of this chapter shall subject the offender to a civil penalty of \$100.00. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by registered or certified mail, delivery restricted to the addressee only, return receipt requested, or other means reasonably calculated to provide actual notice to the alleged offender. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation must be corrected and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty. If the violation is not corrected within the time period provided in the notice, the board of commissioners shall make written demand for payment upon the person responsible for the violation and shall set forth in detail a description of the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the matter shall be referred to the town attorney for institution of a civil action in the name of the town in the appropriate division of the general court of justice for recovery of the penalty. Any sums recovered shall be deposited in the town's general fund.
- (c) *Injunction and abatement.* If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, moved or maintained, or any building, structure or land is used in violation of this chapter, the zoning administrator, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct business or use in or about the premises.
 - (1) Each day's continuing violation of any provision of this chapter is a separate and distinct offense.
 - (2) Any combination of these penalties and remedies may be used to enforce this chapter.

(Code 1983, § 7-2-1; Res. of 5-8-2007(2))

Secs. 66-315—66-350. - Reserved.

ARTICLE V. - REPAIR, CLOSING OR DEMOLITION OF ABANDONED STRUCTURES^[5]

Footnotes:

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State Law reference— Authority to provide by ordinance for the repair, closing or demolition of any abandoned structure which the city finds to be a health or safety hazard, G.S. 160A-441.

Sec. 10-161. - Finding; intent.

It is found that there exist within the town abandoned structures which the board finds to be hazardous to the health, safety and welfare of the residents of the town due to 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. Therefore, pursuant to the authority granted by G.S. 160A-441, it is the intent of this article to provide for the repair, closing or demolition of any such abandoned structures in accordance with the same provisions and procedures as are set forth by law for the repair, closing or demolition of dwellings unfit for human habitation.

(Code 1983, § 7-1-61)

State Law reference— Similar provisions, G.S. 160A-441.

Sec. 10-162. - Duties of the building inspector.

The building inspector is designated as the officer to enforce the provisions of this article. It shall be the duty of the building inspector to:

- (1) Locate abandoned structures within the town and determine which structures are in violation of this article;
- (2) Take such action pursuant to this article as may be necessary to provide for the repair, closing or demolition of the structures;
- (3) Keep an accurate record of all enforcement proceedings begun pursuant to the provision of this article; and
- (4) Perform such other duties as may be prescribed in this article or assigned to him by the board of commissioners.

(Code 1983, § 7-1-62)

Sec. 10-163. - Powers of the building inspector.

The building inspector is authorized to exercise such powers as may be necessary to carry out the intent and the provisions of this article, including the following powers in addition to others granted in this article:

- (1) To investigate the condition of buildings within the town in order to determine which structures are abandoned and in violation of this article;
- (2) To enter upon premises for the purpose of making inspections;
- (3) To administer oaths and affirmations, examine witnesses and receive evidence; and

- (4) To designate such other officers, agents and employees of the town as he deems necessary to carry out the provisions of this article.

(Code 1983, § 7-1-63)

State Law reference— Similar provisions, G.S. 160A-448.

Sec. 10-164. - Standards for enforcement.

- (a) Every abandoned structure within the town shall be deemed in violation of this article whenever the structure constitutes a hazard to the health, safety or welfare of town citizens as a result of:
 - (1) The attraction of insects or rodents;
 - (2) Conditions creating a fire hazard;
 - (3) Dangerous conditions constituting a threat to children; or
 - (4) Frequent use by vagrants as living quarters in the absence of sanitary facilities.
- (b) In making the preliminary determination of whether or not an abandoned structure is in violation of this article, the building inspector may, by way of illustration and not limitation, consider the presence or absence of the following conditions:
 - (1) Holes or cracks in the structure's floors, walls, ceilings or roof which might attract rodents and insects, or become breeding places for rodents and insects;
 - (2) The collection of garbage or rubbish in or near the structure which might attract rodents and insects, or become breeding places for rodents and insects;
 - (3) Violations of the state building code, the state electrical code, or the fire prevention code which constitute a fire hazard in the structure;
 - (4) The collection of garbage, rubbish or combustible material which constitutes a fire hazard in the structure;
 - (5) The use of the structure or nearby grounds or facilities by children as a play area;
 - (6) Violations of the state building code which might result in danger to children using the structure or nearby grounds or facilities as a play area; and
 - (7) Repeated use of the structure by transients and vagrants, in the absence of sanitary facilities, for living, sleeping, cooking or eating.

(Code 1983, § 7-1-64)

Sec. 10-165. - Procedure for enforcement.

- (a) *Preliminary investigation; notice; hearing.* Whenever a petition is filed with the building inspector by at least five residents of the town charging that any structure exists in violation of this article or whenever it appears to the inspector, upon inspection, that any structure exists in violation of this article, he shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such structure, a complaint stating the charges and containing a notice that a hearing will be held before the inspector at a fixed place, not less than ten nor more than 30 days after the serving of the complaint. The owner or any party in interest shall have 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. Notice of the hearing shall also be given to at least one of the persons signing a petition relating to the structure. Any person desiring to

do so may attend the hearing and give evidence relevant to the matter being heard. The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the inspector.

- (b) *Procedure after hearing.* After the notice and hearing, the inspector shall state in writing his determination as to whether the structure violates this article. If the inspector determines that the dwelling is in violation, he shall state in writing his findings of fact to support such determination and shall issue and cause to be served upon the owner an order directing and requiring the owner to either repair, alter and improve the structure or else remove or demolish the structure within a specified period of time not to exceed 90 days. All requirements of G.S. 160A-443(3) shall be complied with before proceeding with any further action.
- (c) *Failure to comply with order.*
 - (1) *In personam remedy.* If the owner of any structure shall fail to comply with an order of the inspector within the time specified in the order, the inspector may submit to the board of commissioners at its next regular meeting a resolution directing the town attorney to petition the superior court for an order directing the owner to comply with the order of the inspector, as authorized by G.S. 160A-446(g).
 - (2) *In rem remedy.* After failure of an owner of a structure to comply with an order of the inspector within the time specified in the order, if injunctive relief has not been sought or has not been granted as provided in subsection (c)(1) of this section, the inspector shall submit to the board an ordinance ordering the inspector to cause the structure to be removed or demolished, as provided in the original order of the inspector, and pending the removal or demolition, to placard such dwelling as provided by G.S. 160A-443(4).
- (d) *Petition to superior court by owner.* Any person aggrieved by an order issued by the inspector shall have the right, within 30 days after issuance of the order, to petition the superior court for a temporary injunction restraining the inspector pending a final disposition of the cause, as provided by G.S. 160A-446(f).

(Code 1983, § 7-1-65)

Sec. 10-166. - Methods of service of complaints and orders.

Complaints or orders issued by the inspector shall be served upon persons either personally or by registered or certified mail; but if the whereabouts of such persons are unknown and cannot be ascertained by the inspector in the exercise of reasonable diligence, the inspector shall make an affidavit to that effect; and the serving of the complaint or order upon such person may be made by publication once at least ten days prior to the date of the hearing in a newspaper having general circulation in the town. Where service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected by the complaint or order.

(Code 1983, § 7-1-66)

State Law reference— Similar provisions, G.S. 160A-445(a).

Sec. 10-167. - In rem action by inspector; placarding.

- (a) After failure of an owner of a structure to comply with an order of the inspector issued pursuant to the provisions of this article, and upon adoption by the board of commissioners of an ordinance authorizing and directing him to do so, as provided by G.S. 160A-443(5) and section 10-165, the inspector shall proceed to cause the structure to be removed or demolished, as directed by the ordinance of the board, and shall cause to be posted on the main entrance of the structure a placard prohibiting the use or occupation of the structure. Use or occupation of a building so posted shall constitute a misdemeanor.

- (b) Each ordinance shall be recorded in the office of the register of deeds of the county and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. 160A-443(5).

(Code 1983, § 7-1-67)

State Law reference— Similar provisions, G.S. 160A-443(4).

Sec. 10-168. - Costs a lien on premises.

As provided by G.S. 160A-443(6), the amount of the cost of any removal or demolition caused to be made or done by the inspector pursuant to this article shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be enforced and the costs collected as provided by G.S. 160A-216 et seq.

(Code 1983, § 7-1-68)

Sec. 10-169. - Alternative remedies.

Neither this article nor any of its provisions shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this article by criminal process; and the enforcement of any remedy provided in this article shall not prevent the enforcement of any other remedy provided in this article or in other ordinances or laws.

(Code 1983, § 7-1-69)

Secs. 10-170—10-200. - Reserved.

Chapter 30 - FLOOD DAMAGE PREVENTION COASTAL REGULAR PHASE^[1]

Footnotes:

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Editor's note— [Ord. No. 2018-15](#), adopted July 10, 2018, amended ch. 30 in its entirety to read as herein set out. Former ch. 30 pertained to the same subject matter, consisted of §§ 30-1—30-4, 30-36, 30-40—30-45, 30-60—30-64, 30-90—30-96, and 30-115—30-118, and derived from an ordinance adopted May 9, 2006; and Res. No. 2008-29, adopted Oct. 14, 2008.

Cross reference— Buildings and building regulations, ch. 10; environment, ch. 22; housing, ch. 34; soil erosion and sedimentation control, ch. 42; subdivision, ch. 50; utilities, ch. 58; waterways, ch. 62; zoning, ch. 66.

State Law reference— Floodway regulations, G.S. 142-225.51 et seq.

ARTICLE I. - STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

Sec. 30-1. - Statutory authorization.

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Board of Commissioners of Ocean Isle Beach, North Carolina, does ordain as follows.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-2. - Findings of fact.

- (1) The floodprone areas within the jurisdiction of Ocean Isle Beach 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.
- (2) 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 floodprone areas of uses vulnerable to floods or other hazards.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-3. - Statement of purpose.

It is the purpose of this chapter to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within floodprone areas by provisions designed to:

- (1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

- (4) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-4. - Objectives.

The objectives of this chapter are to:

- (1) Protect human life, safety, and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business losses and interruptions;
- (5) Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in floodprone areas;
- (6) Minimize damage to private and public property due to flooding;
- (7) Make flood insurance available to the community through the National Flood Insurance Program;
- (8) Maintain the natural and beneficial functions of floodplains;
- (9) Help maintain a stable tax base by providing for the sound use and development of floodprone areas; and
- (10) Ensure that potential buyers are aware that property is in a special flood hazard area.

([Ord. No. 2018-15, 7-10-2018](#))

Secs. 30-5—30-35. - Reserved.

ARTICLE II. - DEFINITIONS

Sec. 30-36. - Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter it's most reasonable application.

Accessory structure (appurtenant structure) means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

Addition (to an existing building) means an extension or increase in the floor area or height of a building or structure.

Alteration of a watercourse means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or

any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this chapter.

Area of special flood hazard. See "special flood hazard area (SFHA)".

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation (CBFE) means a determination of the water surface elevations of the base flood as published in the flood insurance study. When the BFE has not been provided in a "special flood hazard area", it may be obtained from engineering studies available from a federal, state, or other source using FEMA approved engineering methodologies. This elevation, when combined with the "freeboard", establishes the "regulatory flood protection elevation".

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Building: See "structure".

Chemical storage facility means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

Coastal Area Management Act (CAMA) means North Carolina's Coastal Area Management Act, this act, along with the Dredge and Fill Law and the Federal Coastal Zone Management Act, is managed through North Carolina Department of Environmental Quality (NCDEQ) Division of Coastal Management (DCM).

Coastal A zone (CAZ) means an area within a special flood hazard area, landward of a V zone or landward of an open coast without mapped V zones; in a Coastal A zone, the principal source of flooding must be astronomical tides, storm surges, seiches, or tsunamis, not riverine flooding. During the base flood conditions, the potential for wave heights shall be greater than or equal to one and one-half feet. Coastal A zones are not normally designated on FIRMs (see limit of moderate wave action (LiMWA)).

Coastal barrier resources system (CBRS) consists of undeveloped portions of coastal and adjoining areas established by the Coastal Barrier Resources Act (CoBRA) of 1982, the Coastal Barrier Improvement Act (CBIA) of 1990, and subsequent revisions, and includes areas owned by federal or state governments or private conservation organizations identified as otherwise protected areas (OPA).

Coastal high hazard area means a special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM, or other adopted flood map as determined in section 30-41, as zone VE.

Design flood: See "regulatory flood protection elevation."

Development means any manmade 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.

Development activity means any activity defined as development which will necessitate a floodplain development permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

Digital flood insurance rate map (DFIRM) means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

Disposal means, as defined in G.S. 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Elevated building means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Encroachment means the advance or infringement of uses, fill, excavation, buildings, structures or development into a special flood hazard area, which may impede or alter the flow capacity of a floodplain.

Existing building and *existing structure* means any building and/or structure for which the "start of construction" commenced before November 17, 1972.

Existing manufactured home park or *manufactured home subdivision* means 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) was completed before the initial effective date of the floodplain management regulations adopted by the community.

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a) The overflow of inland or tidal waters; and/or
- (b) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood insurance means the insurance coverage provided under the National Flood Insurance Program.

Flood insurance rate map (FIRM) means an official map of a community, issued by the FEMA, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated. (See also DFIRM.)

Flood insurance study (FIS) means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the FEMA. The flood insurance study report includes flood insurance rate maps (FIRMs) and flood boundary and floodway maps (FBFMs), if published.

Floodprone area: See "floodplain".

Flood zone means a geographical area shown on a flood hazard boundary map or flood insurance rate map that reflects the severity or type of flooding in the area.

Floodplain means any land area susceptible to being inundated by water from any source.

Floodplain administrator means the individual appointed to administer and enforce the floodplain management regulations.

Floodplain development permit means any type of permit that is required in conformance with the provisions of this chapter, prior to the commencement of any development activity.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain management regulations means this chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

Flood-resistant material means any building product (material, component or system) capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not

resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbars are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

Floodway means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, 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 one foot.

Floodway encroachment analysis means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and models.

Freeboard means the height added to the BFE to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, and the hydrological effect of urbanization of the watershed. The BFE plus the freeboard establishes the "regulatory flood protection elevation".

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Hazardous waste management facility means, as defined in G.S. 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Highest adjacent grade (HAG) means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

Historic structure means any structure that is:

- (a) 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;
- (b) 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;
- (c) Individually listed on a local inventory of historic landmarks in communities with a "certified local government (CLG) program"; or
- (d) Certified as contributing to the historical significance of a historic district designated by a community with a "certified local government (CLG) program."

Certified local government (CLG) programs are approved by the U.S. Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the state historic preservation officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

Letter of map change (LOMC) means an official determination issued by FEMA that amends or revises an effective flood insurance rate map or flood insurance study. Letters of map change include:

- (a) *Letter of map amendment (LOMA)*: An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective flood insurance rate map

and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

- (b) *Letter of map revision (LOMR)*: A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
- (c) *Letter of map revision based on fill (LOMR-F)*: A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
- (d) *Conditional letter of map revision (CLOMR)*: A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective flood insurance rate map or flood insurance study; upon submission and approval of certified as-built documentation, a letter of map revision may be issued by FEMA to revise the effective FIRM.

Light duty truck means any motor vehicle rated at 8,500 pounds gross vehicular weight rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (c) Available with special features enabling off-street or off-highway operation and use.

Limit of moderate wave action (LiMWA) means the boundary line given by FEMA on coastal map studies marking the extents of coastal A zones (CAZ).

Lowest adjacent grade (LAG) means the lowest elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

Lowest floor means 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 limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (actual cash value); or adjusted tax assessed values.

New construction means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

Non-encroachment area (NEA) means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, 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 one foot as designated in the flood insurance study report.

Otherwise protected area (OPA): See "coastal barrier resources system (CBRS)".

Post-FIRM means construction or other development for which the "start of construction" occurred on or after the effective date of the initial flood insurance rate map.

Pre-FIRM means construction or other development for which the "start of construction" occurred before, the effective date of the initial flood insurance rate map.

Primary frontal dune (PFD) means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

Principally above ground means that at least 51 percent of the actual cash value of the structure is above ground.

Public safety and/or nuisance means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Recreational vehicle (RV) means a vehicle, which is:

- (a) Built on a single chassis;
- (b) Four hundred square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck;
- (d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use; and
- (e) Is fully licensed and ready for highway use.

For the purpose of this chapter, "tiny homes/houses" and park models that do not meet the items listed above are not considered recreational vehicles and should meet the standards of and be permitted as residential structures.

Reference level means the top of the lowest floor for structures within special flood hazard areas designated as zones A, AE, AH, AO, A99. The reference level is the bottom of the lowest horizontal structural member of the lowest floor for structures within special flood hazard areas designated as zone VE.

Regulatory flood protection elevation means the base flood elevation plus the freeboard. In special flood hazard areas where base flood elevations (BFEs) have been determined, this elevation shall be the BFE plus three feet freeboard). Nonresidential floodproofing shall be the BFE plus one foot freeboard.

Remedy a violation means to bring the structure or other development into compliance with state and community 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 ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Salvage yard means any nonresidential property used for the storage, collection, and/or recycling of any type of equipment, and including, but not limited to, vehicles, appliances and related machinery.

Sand dunes means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Shear wall means walls used for structural support but not structurally joined or enclosed at the end (except by breakaway walls). Shear walls are parallel or nearly parallel to the flow of the water.

Solid waste disposal facility means any facility involved in the disposal of solid waste, as defined in G.S. 130A-290(a)(35).

Solid waste disposal site means, as defined in G.S. 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

Special flood hazard area (SFHA) means the land in the floodplain subject to a one percent or greater chance of being flooded in any given year, as determined in section 30-41 of this chapter.

Start of construction includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the 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 means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

Substantial damage means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement".

Substantial improvement means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent 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:

- (a) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (b) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to section 30-64 of this chapter.

Technical bulletin and *technical fact sheet* means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by state and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

It should be noted that technical bulletins and technical fact sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive state or local regulations apply to the building or site in question. All applicable standards of the state or local building code must also be met for any building in a flood hazard area.

Temperature controlled means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

Variance means a grant of relief from the requirements of this chapter.

Violation means 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 articles IV and V is presumed to be in violation until such time as that documentation is provided.

Water surface elevation (WSE) means the height, in relation to NAVD 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

([Ord. No. 2018-15, 7-10-2018](#))

Secs. 30-37—30-39. - Reserved.

ARTICLE III. - GENERAL PROVISIONS

Sec. 30-40. - Lands to which this chapter applies.

This chapter shall apply to all special flood hazard areas within the jurisdiction, including extra-territorial jurisdictions (ETJs), of Ocean Isle Beach.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-41. - Basis for establishing the special flood hazard areas.

The special flood hazard areas are those identified under the cooperating technical state (CTS) agreement between the State of North Carolina and FEMA in its FIS dated August 28, 2018, for Brunswick County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this chapter. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of Ocean Isle Beach are also adopted by reference and declared a part of this chapter. Subsequent letter of map revisions (LOMRs) and/or physical map revisions (PMRs) shall be adopted within three months.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-42. - Establishment of floodplain development permit.

A floodplain development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities within special flood hazard areas determined in accordance with the provisions of section 30-41 of this chapter.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-43. - Compliance.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this chapter and other applicable regulations.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-44. - 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.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-45. - 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.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-46. - 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. Actual flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town of Ocean Isle Beach 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.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-47. - Penalties for violation.

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 Class 1 misdemeanor pursuant to G.S. 143-215.58. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Ocean Isle Beach from taking such other lawful action as is necessary to prevent or remedy any violation.

([Ord. No. 2018-15, 7-10-2018](#))

Secs. 30-48—30-59. - Reserved.

ARTICLE IV. - ADMINISTRATION

Sec. 30-60. - Designation of floodplain administrator.

The planning and zoning administrator, hereinafter referred to as the "floodplain administrator", is hereby appointed to administer and implement the provisions of this chapter. In instances where the floodplain administrator receives assistance from others to complete tasks to administer and implement

this chapter, the floodplain administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this chapter.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-61. - Floodplain development application, permit and certification requirements.

- (1) *Application requirements.* Application for a floodplain development permit shall be made to the floodplain administrator prior to any development activities located within special flood hazard areas. The following items shall be presented to the floodplain administrator to apply for a floodplain development permit:
 - (a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development
 - (i) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - (ii) The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in section 30-41, or a statement that the entire lot is within the special flood hazard area;
 - (iii) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in section 30-41;
 - (iv) The boundary of the floodway(s) or non-encroachment area(s) as determined in section 31-41;
 - (v) The base flood elevation (BFE) where provided as set forth in section 30-41; section 30-62; or section 30-93;
 - (vi) The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
 - (b) Proposed elevation, and method thereof, of all development within a special flood hazard area including, but not limited to:
 - (i) Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;
 - (ii) Elevation in relation to NAVD 1988 to which any non-residential structure in zones A, AE, AH, AO, A99 will be floodproofed; and
 - (iii) Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.
 - (c) If floodproofing, a floodproofing certificate (FEMA Form 086-0-34) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
 - (d) A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this chapter are met. These details include, but are not limited to:
 - (i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
 - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with subsection 30-91(4)(d) when solid foundation perimeter walls are used in zones A, AE, AH, AO, A99.

(iii) The following, in coastal high hazard areas, in accordance with the provisions of subsection 30-91(4)(e), section 30-96 and section 30-97:

1. V-zone certification with accompanying plans and specifications verifying the engineered structure and any breakaway wall designs. In addition, prior to the certificate of compliance/occupancy issuance, a registered professional engineer or architect shall certify the finished construction is compliant with the design, specifications and plans for VE zone construction.
2. Plans for open wood latticework or insect screening, if applicable; and
3. Plans for non-structural fill, if applicable. If non-structural fill is proposed, it must be demonstrated through coastal engineering analysis that the proposed fill would not result in any increase in the BFE or otherwise cause adverse impacts by wave ramping and deflection on to the subject structure or adjacent properties.

- (e) Usage details of any enclosed areas below the lowest floor.
- (f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- (g) Certification that all other local, state and federal permits required prior to floodplain development permit issuance have been received.
- (h) Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure that the provisions of section 30-91, subsections (6) and (7) of this chapter are met.
- (i) A description of proposed watercourse alteration or relocation, when applicable, including 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 (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) *Permit requirements.* The floodplain development permit shall include, but not be limited to:

- (a) A complete description of all the development to be permitted under the floodplain development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).
- (b) The special flood hazard area determination for the proposed development in accordance with available data specified in section 30-41.
- (c) The regulatory flood protection elevation required for the reference level and all attendant utilities.
- (d) The regulatory flood protection elevation required for the protection of all public utilities.
- (e) All certification submittal requirements with timelines.
- (f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse unless the requirements of section 30-95 have been met.
- (g) The flood openings requirements, if in zones A, AE, AH, AO, A99.
- (h) Limitations of below BFE enclosure uses (if applicable) (i.e., parking, building access and limited storage only).
- (i) A statement, if in zone VE, that there shall be no alteration of sand dunes which would increase potential flood damage.
- (j) A statement, if in zone VE, that there shall be no fill used for structural support.

- (k) A statement, that all materials below BFE/RFPE must be flood-resistant materials.
- (3) *Certification requirements.*
- (a) Elevation certificates.
 - (i) An elevation certificate (FEMA Form 086-0-33) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to NAVD 1988. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
 - (ii) An elevation certificate (FEMA Form 086-0-33) is required after the reference level is established. Within seven calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to NAVD 1988. Any work done within the seven-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.
 - (iii) A final finished construction elevation certificate (FEMA Form 086-0-33) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy. The finished construction elevation certificate certifier shall provide at least two photographs showing the front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A [of the elevation certificate]. To the extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least two additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least three inches by three inches. Digital photographs are acceptable.
 - (b) Floodproofing certificate.
 - (i) If nonresidential floodproofing is used to meet the base flood elevation (plus one foot) requirement, a floodproofing certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain

development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.

- (ii) A final finished construction floodproofing certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a certificate of compliance/occupancy. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to certificate of occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to deny a certificate of compliance/occupancy.
 - (c) If a manufactured home is placed within zones A, AE, AH, AO, A99 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of subsection 30-91(3)(b).
 - (d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified 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 shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
 - (e) Certification exemptions. The following structures, if located within zones A, AE, AH, AO, A99, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
 - (i) Recreational vehicles meeting requirements of subsection 30-91(6)(a);
 - (ii) Temporary structures meeting requirements of subsection 30-91(7); and
 - (iii) Accessory structures that are 150 square feet or less or \$3,000.00 or less and meeting requirements of subsection 30-91(8).
 - (f) A V-Zone certification with accompanying design plans and specifications is required prior to issuance of a floodplain development permit within coastal high hazard areas. It shall be the duty of the permit applicant to submit to the floodplain administrator said certification to ensure the design standards of this chapter are met. A registered professional engineer or architect shall develop or review the structural design, plans, and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this chapter. This certification is not a substitute for an elevation certificate. In addition, prior to the certificate of compliance/occupancy issuance, a registered professional engineer or architect shall certify the finished construction is compliant with the design, specifications and plans for VE zone construction.
- (4) *Determinations for existing buildings and structures.* For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the floodplain administrator, in coordination with the building official, shall:
- (a) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

- (b) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (c) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (d) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood-resistant construction requirements of the North Carolina Building Code and this chapter is required.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-62. - Duties and responsibilities of the floodplain administrator.

The floodplain administrator shall perform, but not be limited to, the following duties:

- (1) Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this chapter have been satisfied.
- (2) Review all proposed development within special flood hazard areas to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (3) Notify adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, state Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- (5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of section 30-95 are met.
- (6) Obtain actual elevation (in relation to NAVD 1988) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of subsection 30-61(3).
- (7) Obtain actual elevation (in relation to NAVD 1988) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of subsection 30-61(3).
- (8) Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with the provisions of subsection 30-61(3).
- (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of subsection 30-61(3) and subsection 30-91(2).
- (10) Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (11) When BFE data has not been provided in accordance with the provisions of subsection 30-41, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a federal, state, or other source, including data

developed pursuant to subsection 30-93(2)(c), in order to administer the provisions of this chapter.

- (12) When BFE data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of section 30-41, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, state, or other source in order to administer the provisions of this chapter.
- (13) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a special flood hazard area is above the BFE, advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. However, if the property is to be removed from the V zone it must not be located seaward of the landward toe of the primary frontal dune. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.
- (14) Permanently maintain all records that pertain to the administration of this chapter and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this chapter, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (17) Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked.
- (18) Make periodic inspections throughout the special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (19) Follow through with corrective procedures of section 30-63.
- (20) Review, provide input, and make recommendations for variance requests.
- (21) Maintain a current map repository to include, but not limited to, historical and effective FIS report, historical and effective FIRM and other official flood maps and studies adopted in accordance with the provisions of section 30-41 of this chapter, including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.
- (22) Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-Fs) and letters of map revision (LOMRs).

Sec. 30-63. - Corrective procedures.

- (1) *Violations to be corrected.* When the floodplain administrator finds violations of applicable state and local laws; it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- (2) *Actions in event of failure to take corrective action.* If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - (a) That the building or property is in violation of the floodplain management regulations;
 - (b) That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten 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
 - (c) That following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (3) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the flood damage prevention ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than least 180 calendar days. Where the floodplain administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
- (4) *Appeal.* Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the floodplain 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.
- (5) *Failure to comply with order.* If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a Class I misdemeanor pursuant to G.S. 143-215.58 and shall be punished at the discretion of the court.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-64. - Variance procedures.

- (1) The board of adjustment as established by the Ocean Isle Beach Board of Commissioners, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this chapter.
- (2) Any person aggrieved by the decision of the appeal board may appeal such decision to the court, as provided in G.S. chapter 7A.
- (3) Variances may be issued for:
 - (a) 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 that the variance is the minimum necessary to preserve the historic character and design of the structure;
 - (b) Functionally dependent facilities if determined to meet the definition as stated in article II of this chapter, provided provisions of subsection 30-64(9)(b), (c), and (e) have been satisfied, and

such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

- (c) Any other type of development provided it meets the requirements of this section.
- (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:
 - (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;
 - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) The importance of the services provided by the proposed facility to the community;
 - (e) The necessity to the facility of a waterfront location as defined under article II of this chapter as a functionally dependent facility, where applicable;
 - (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (g) The compatibility of the proposed use with existing and anticipated development;
 - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (k) 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.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (6) Upon consideration of the factors listed above and the purposes of this chapter, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this chapter.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the BFE and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE may result in increased premium rates for flood insurance up to \$25.00 per \$100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (8) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the FEMA and the State of North Carolina upon request.
- (9) Conditions for variances:
 - (a) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
 - (b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (d) Variances shall only be issued prior to development permit approval.

- (e) Variances shall only be issued upon:
 - (i) A showing of good and sufficient cause;
 - (ii) A determination that failure to grant the variance would result in exceptional hardship; and
 - (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (10) A variance may not be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas.

([Ord. No. 2018-15, 7-10-2018](#))

Secs. 30-65—30-89. - Reserved.

ARTICLE V. - PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 30-90. - General standards.

In all special flood hazard areas the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, Flood Damage-Resistant Materials Requirements.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, water heaters, and electric outlets/switches.
 - (a) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
 - (b) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the Code and requirements for the original structure.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) 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, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this chapter.

- (9) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities are prohibited in the special flood hazard areas and shall not be subject to the variance procedures of this chapter. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified in accordance with the provisions of subsection 30-61(3).
- (10) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (11) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (12) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (13) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (14) When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (15) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-91. - Specific standards.

In all special flood hazard areas where BFE data has been provided, as set forth in section 30-41, or section 30-93, the following provisions, in addition to the provisions of section 30-90, are required:

- (1) *Residential construction.* New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in article II of this chapter.
- (2) *Nonresidential construction.* New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in article II of this chapter. Structures located in zones A, AE, AH, AO, A99 may be floodproofed to the base flood elevation (plus one foot) in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the base flood elevation (plus one foot) 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 floodproofing standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in subsection 30-61(3), along with the operational plan and the inspection and maintenance plan.

(3) *Manufactured homes.*

- (a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in article II of this chapter.
- (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for manufactured homes 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 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.
- (c) All enclosures or skirting below the lowest floor shall meet the requirements of subsection 30-91(4).
- (d) 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 floodprone areas. This plan shall be filed with and approved by the floodplain administrator and the local emergency management coordinator.

(4) *Elevated buildings.* Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor or below the lowest horizontal structural member in VE zones:

- (a) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
- (b) Shall not be temperature-controlled or conditioned;
- (c) Shall be constructed entirely of flood resistant materials at least to the regulatory flood protection elevation; and
- (d) Shall include, in zones A, AE, AH, AO, A99 flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
 - (i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
 - (ii) The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding;
 - (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - (iv) The bottom of all required flood openings shall be no higher than one foot above the higher of the interior or exterior adjacent grade;
 - (v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
 - (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood

underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

- (e) Shall, in coastal high hazard areas (zone VE), either be free of obstruction or constructed with breakaway walls, open wood latticework or insect screening, provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action without causing damage to the elevated portion of the building or supporting foundation system or otherwise jeopardizing the structural integrity of the building. The following design specifications shall be met:
 - (i) Material shall consist of open wood or plastic lattice having an opening ratio of at least 40 percent, or insect screening; or
 - (ii) Breakaway walls shall meet the following design specifications:
 - 1. Breakaway walls shall have flood openings that allow for the automatic entry and exit of floodwaters to minimize damage caused by hydrostatic loads, per subsection 30-91(4)(d)(i)—(vi); and
 - 2. Design safe loading resistance shall be not less than ten nor more than 20 pounds per square foot; or
 - 3. Breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by state or local codes) shall be certified by a registered professional engineer or architect that the breakaway wall will collapse from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). The water loading values used shall be those associated with the base flood. The wind loading values used shall be those required by the North Carolina State Building Code.
 - (iii) Concrete pads, including patios, decks, parking pads, walkways, driveways, pool decks, etc., the following is required:
 - 1. Shall be structurally independent of the primary structural foundation system of the structure and shall not adversely affect structures through redirection of floodwaters or debris; and
 - 2. Shall be constructed to breakaway cleanly during design flood conditions, shall be frangible, and shall not produce debris capable of causing damage to any structure. (The installation of concrete in small segments (approximately four feet by four feet) that will easily break up during the base flood event, or score concrete in four feet by four feet maximum segments is acceptable to meet this standard); and
 - 3. Reinforcing, including welded wire fabric, shall not be used in order to minimize the potential for concreted pads being a source of debris; and
 - 4. Pad thickness shall not exceed four inches; or
 - 5. Provide a design professional's certification stating the design and method of construction to be used meet the applicable criteria of this section.
 - 6. The provisions above shall not apply to nonresidential or multifamily construction that is designed by a professional engineer and constructed with self-supporting structural slabs capable of remaining intact and functional under base flood conditions, including expected erosion.
- (f) Fill/grading.

- (i) Minor grading and the placement of minor quantities of nonstructural fill may be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios and walkways.
 - (ii) The fill material must be similar and consistent with the natural soils in the area.
 - (iii) The placement of site-compatible, non-structural fill under or around an elevated building is limited to two feet. Fill greater than two feet must include an analysis prepared by a qualified registered design professional demonstrating no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent elevated buildings and structures.
 - (iv) Nonstructural fill with finished slopes that are steeper than five units horizontal to one unit vertical shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent elevated buildings and structures.
- (5) *Additions/improvements.*
 - (a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (i) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure.
 - (ii) A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition must comply with the standards for new construction.
 - (b) Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall, shall require only the addition to comply with the standards for new construction.
 - (c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (i) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.
 - (ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
 - (d) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one-year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this chapter. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

- (i) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.
 - (ii) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.
- (6) *Recreational vehicles.* Recreational vehicles shall either:
 - (a) *Temporary placement.*
 - (i) Be on site for fewer than 180 consecutive days; or
 - (ii) Be fully licensed and ready for highway use. (A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions.)
 - (b) *Permanent placement.* Recreational vehicles that do not meet the limitations of temporary placement shall meet all the requirements for new construction.
- (7) *Temporary nonresidential structures.* Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the floodplain administrator for review and written approval:
 - (a) A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;
 - (b) The name, address, and phone number of the individual responsible for the removal of the temporary structure;
 - (c) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
 - (d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
 - (e) Designation, accompanied by documentation, of a location outside the special flood hazard area, to which the temporary structure will be moved.
- (8) *Accessory structures.* When accessory structures (sheds, detached garages, etc.) are to be placed within a special flood hazard area, the following criteria shall be met:
 - (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
 - (b) Accessory structures shall not be temperature-controlled;
 - (c) Accessory structures shall be designed to have low flood damage potential;
 - (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - (e) Accessory structures shall be firmly anchored in accordance with the provisions of subsection 30-90(1);
 - (f) All service facilities such as electrical shall be installed in accordance with the provisions of subsection 30-90(4); and
 - (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with the provisions of subsection 30-91(4)(d).

An accessory structure with a footprint less than 150 square feet or that is a minimal investment of \$3,000.00 or less and satisfies the criteria outlined above is not required to meet the

elevation or floodproofing standards of subsection 30-91(2). Elevation or floodproofing certifications are required for all other accessory structures in accordance with subsection 30-61(3).

- (9) *Tanks.* When gas and liquid storage tanks are to be placed within a special flood hazard area, the following criteria shall be met:
- (a) *Underground tanks.* Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;
 - (b) *Above-ground tanks, elevated.* Above-ground tanks in flood hazard areas shall be elevated to or above the regulatory flood protection elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;
 - (c) *Above-ground tanks, not elevated.* Above-ground tanks that do not meet the elevation requirements of subsection 30-91(2) of this chapter shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.
 - (d) *Tank inlets and vents.* Tank inlets, fill openings, outlets and vents shall be:
 - (i) At or above the regulatory flood protection elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
 - (ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.
- (10) *Other development.*
- (a) Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of section 30-95 of this chapter.
 - (b) Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of section 30-95 of this chapter.
 - (c) Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of section 30-95 of this chapter.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-92. - Reserved.

Sec. 30-93. - Reserved.

Sec. 30-94. - Standards for riverine floodplains with base flood elevations but without established floodways or non-encroachment areas.

Along rivers and streams where BFE data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a special flood hazard area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- (1) Standards of sections 30-90 and 30-91; and
- (2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-95. - Floodways and non-encroachment areas.

Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in section 30-41. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in sections 30-90 and 30-91, shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
 - (a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood discharge, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the floodplain administrator prior to issuance of floodplain development permit; or
 - (b) A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) must also be obtained within six months of completion of the proposed encroachment.
- (2) If subsection 30-95(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this chapter.
- (3) Manufactured homes may be permitted provided the following provisions are met:
 - (a) The anchoring and the elevation standards of subsection 30-91(3); and
 - (b) The encroachment standards of subsection 30-95(1).

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-96. - Coastal high hazard area (Zone VE).

Coastal high hazard areas are special flood hazard areas established in section 30-41, and designated as zones VE. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, all new construction and substantial improvements shall meet the following provisions in addition to the provisions of sections 30-90 and 30-91:

- (1) All new construction and substantial improvements shall:

- (a) Be located landward of the reach of mean high tide;
 - (b) Comply with all applicable CAMA setback requirements.
- (2) All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in coastal high hazard areas to satisfy the regulatory flood protection elevation requirements.
- (3) All new construction and substantial improvements shall have the space below the bottom of the lowest horizontal structural member of the lowest floor free of obstruction so as not to impede the flow of flood waters, with the following exceptions:
 - (a) Open wood or plastic latticework or insect screening may be permitted below the lowest floor for aesthetic purposes only and must be designed to wash away in the event of wave impact and in accordance with the provisions of subsection 30-91(4)(e)(i). Design plans shall be submitted in accordance with the provisions of subsection 30-61(1)(d)(iii)2; or
 - (b) Breakaway walls may be permitted provided they meet the criteria set forth in subsections 30-91(4)(a), (b), (c), and (e)(ii). Design plans shall be submitted in accordance with the provisions of subsection 30-61(1)(d)(iii)1.
- (4) All new construction and substantial improvements shall be securely anchored to pile or column foundations. All pilings and columns and the structure attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
 - (a) Water loading values used shall be those associated with the base flood.
 - (b) Wind loading values used shall be those required by the current edition of the North Carolina State Building Code.
- (5) For concrete pads, including patios, decks, parking pads, walkways, driveways, pool decks, etc. the following is required:
 - (a) Shall be structurally independent of the primary structural foundation system of the structure and shall not adversely affect structures through redirection of floodwaters or debris; and
 - (b) Shall be constructed to breakaway cleanly during design flood conditions, shall be frangible, and shall not produce debris capable of causing damage to any structure. (The installation of concrete in small segments (approximately four feet by four feet) that will easily break up during the base flood event, or score concrete in four feet by four feet maximum segments is acceptable to meet this standard); and
 - (c) Reinforcing, including welded wire fabric, shall not be used in order to minimize the potential for concreted pads being a source of debris; and
 - (d) Pad thickness shall not exceed four inches; or
 - (e) Provide a design professional's certification stating the design and method of construction to be used meet the applicable criteria of this section.
 - (f) The provisions above shall not apply to nonresidential or multifamily construction that is designed by a professional engineer and constructed with self-supporting structural slabs capable of remaining intact and functional under base flood conditions, including expected erosion.
- (6) For swimming pools and spas, the following is required:
 - (a) Be designed to withstand all flood-related loads and load combinations;

- (b) Be elevated so that the lowest horizontal structural member is elevated above the RFPE;
or
 - (c) Be designed and constructed to break away during design flood conditions without producing debris capable of causing damage to any structure; or
 - (d) Be sited to remain in the ground during design flood conditions without obstructing flow that results in damage to any structure.
 - (e) Registered design professionals must certify to local officials that a pool or spa beneath or near a VE zone building will not be subject to flotation or displacement that will damage building foundations or elevated portions of the building or any nearby buildings during a coastal flood.
 - (f) Pool equipment shall be located above the RFPE whenever practical.
- (7) All elevators, vertical platform lifts, chair lifts, etc., the following is required:
- (a) Elevator enclosures must be designed to resist hydrodynamic and hydrostatic forces as well as erosion, scour, and waves.
 - (b) Utility equipment in coastal high hazard areas (VE zones) must not be mounted on, pass through, or be located along breakaway walls.
 - (c) The cab, machine/equipment room, hydraulic pump, hydraulic reservoir, counter weight and roller guides, hoist cable, limit switches, electric hoist motor, electrical junction box, circuit panel, and electrical control panel are all required to be above RFPE. When this equipment cannot be located above the RFPE, it must be constructed using flood damage-resistant components.
 - (d) Flood damage-resistant materials can also be used inside and outside the elevator cab to reduce flood damage. Use only stainless steel doors and door frames below the BFE. Grouting in of door frames and sills is recommended.
 - (e) If an elevator is designed to provide access to areas below the BFE, it shall be equipped with a float switch system that will activate during a flood and send the elevator cab to a floor above the RFPE.
- (8) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions of section 30-61 and subsections 30-96(3) and (4), on the current version of the North Carolina V-Zone Certification form or equivalent local version. In addition, prior to the certificate of compliance/occupancy issuance, a registered professional engineer or architect shall certify the finished construction is compliant with the design, specifications and plans for VE zone construction.
- (9) Fill/grading.
- (a) Minor grading and the placement of minor quantities of nonstructural fill may be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios and walkways.
 - (b) The fill material must be similar and consistent with the natural soils in the area.
 - (c) The placement of site-compatible, non-structural fill under or around an elevated building is limited to two feet. Fill greater than two feet must include an analysis prepared by a qualified registered design professional demonstrating no harmful diversion of floodwaters or wave runoff and wave reflection that would increase damage to adjacent elevated buildings and structures.
 - (d) Nonstructural fill with finished slopes that are steeper than five units horizontal to one unit vertical shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runoff and wave reflection that would increase damage to adjacent elevated buildings and structures.

- (10) There shall be no alteration of sand dunes or mangrove stands which would increase potential flood damage.
- (11) 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 elevation standards of this section have been satisfied.
- (12) Recreational vehicles may be permitted in coastal high hazard areas provided that they meet the recreational vehicle criteria of subsection 30-91(6)(a).
- (13) A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the regulatory flood protection elevation and any supporting members that extend below the regulatory flood protection elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck. The increased loads must be considered in the design of the primary structure and included in the V-Zone certification required under subsection 30-61(3)(f).
- (14) A deck or patio that is located below the regulatory flood protection elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.
- (15) In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include, but are not limited to:
 - (a) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
 - (b) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-97. - Standards for Coastal A Zones (zone CAZ) LiMWA.

Nonresidential structures in CAZs shall be designed and constructed to meet V zone requirements, including requirements for breakaway walls. However, the NFIP regulations also require flood openings in walls surrounding enclosures below elevated buildings in CAZs (see Technical Bulletin 1, Openings in Foundation Walls and Walls of Enclosures). Breakaway walls used in CAZs must have flood openings that allow for the automatic entry and exit of floodwaters to minimize damage caused by hydrostatic loads. Openings also function during smaller storms or if anticipated wave loading does not occur with the base flood.

- (1) All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in coastal A zones to satisfy the regulatory flood protection elevation requirements.
- (2) All new construction and substantial improvements shall have the space below the lowest horizontal structural member free of obstruction so as not to impede the flow of floodwaters, with the following exceptions:

- (a) Open wood latticework or insect screening may be permitted below the lowest floor for aesthetic purposes only and must be designed to wash away in the event of wave impact and in accordance with the provisions of subsection 30-91(4)(e)(i). Design plans shall be submitted in accordance with the provisions of subsection 30-61(1)(d)(iii)2; or
- (b) Breakaway walls may be permitted provided they meet the criteria set forth in subsection 30-91(4)(e)(ii). Design plans shall be submitted in accordance with the provisions of subsection 30-61(1)(d)(iii)1.
- (3) All new construction and substantial improvements shall include, in zones CAZ, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the design criteria in subsection 30-91(4)(d).
- (4) Concrete pads, including patios, decks, parking pads, walkways, driveways, etc. must meet the provisions of article V, subsection 30-96(5).
- (5) All new construction and substantial improvements shall meet the provisions of subsection 30-96(3).
- (6) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions of section 30-61 and subsections 30-96(3) and (4), on the current version of the North Carolina V-Zone Certification form or a locally developed V-Zone certification form.
- (7) Recreational vehicles may be permitted in Coastal A Zones provided that they meet the recreational vehicle criteria of subsection 30-91(6)(a).
- (8) Fill/grading must meet the provisions of subsection 30-96(9).
- (9) Decks and patios must meet the provisions of subsections 30-96(13) and (14).
- (10) In coastal high hazard areas, development activities other than buildings and structures must meet the provisions of subsection 30-96(15).

([Ord. No. 2018-15, 7-10-2018](#))

Secs. 30-98—30-114. - Reserved.

ARTICLE VI. - LEGAL STATUS PROVISIONS

Sec 30-115. - Effect on rights and liabilities under the existing flood damage prevention ordinance.

This chapter in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted November 17, 1972, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this chapter shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the Town of Ocean Isle Beach enacted on November 17, 1972, as amended, which are not reenacted herein are repealed.

The date of the initial Flood Damage Prevention Ordinance for Brunswick County is April 1, 1985.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-116. - Effect upon outstanding floodplain development permits.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by

the floodplain administrator or his or her authorized agents before the time of passage of this chapter; provided, however, that when construction is not begun under such outstanding permit within a period of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this chapter.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-117. - Severability.

If any section, clause, sentence, or phrase of the ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this chapter.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-118. - Effective date.

This chapter shall become effective August 28, 2018.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 30-119. - Adoption certification.

I hereby certify that this is a true and correct copy of the Flood Damage Prevention Ordinance as adopted by the Board of Commissioners of the Town of Ocean Isle Beach, North Carolina, on the 10th day of July, 2018.

WITNESS my hand and the official seal of Casey E. Reeves, Town Clerk, this the 10th day of July, 2018.

(signature)

([Ord. No. 2018-15, 7-10-2018](#))

Chapter 42 - SOIL EROSION AND SEDIMENTATION CONTROL^{[41](#)}

Footnotes:

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Cross reference— Buildings and building regulations, ch. 10; environment, ch. 22; floods, ch. 30; waterways, ch. 62.

State Law reference— Sedimentation Pollution Control Act of 1973, G.S. 113A-50 et seq.; local erosion control programs, G.S. 113A-60.

Sec. 42-1. - Purposes.

This chapter is adopted for the purposes of:

- (1) Regulating certain land disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage by sedimentation to lakes, watercourses, and other public and private property; and
- (2) Establishing procedures through which these purposes can be fulfilled.

(Code 1983, § 7-5-1(2))

Sec. 42-2. - Definitions.

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

Accelerated erosion means any increase over the rate of natural erosion as a result of land disturbing activity.

Act means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

Adequate erosion control measure, structure or device means one which controls the soil material within the land area under responsible control of the person conducting the land disturbing activity.

Affiliate means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

Being conducted means a land disturbing activity has been initiated and permanent stabilization of the site has not been completed.

Borrow means fill material which is required for on-site construction and is obtained from other locations.

Buffer zone means the strip of land adjacent to a lake or natural watercourse.

Coastal counties means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.

Commission means the North Carolina Sedimentation Control Commission.

Completion of construction or development means that no further land disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

Cracks means openings in the concrete caused by movement, thermal shrinkage/expansion, which can remain in the same plane or can be offset vertically.

Department means the North Carolina Department of Environment, Health and Natural Resources.

Director means the director of the division of land resources of the department of environment, health and natural resources.

Discharge point means that point at which runoff leaves a tract of land.

District means the Brunswick County Soil and Water Conservation District created pursuant to G.S. ch. 139.

Energy dissipator means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high-velocity flow.

Erosion means the wearing away of land surface by the action of wind, water, gravity, or any combination of such forces.

Ground cover means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

High quality waters means those classified as such in 15A NCAC 2b.0101(e)(5), which is incorporated in this chapter by reference, to include further amendments pursuant to G.S. 150B-14(c).

High-quality water (HQP) zones means areas in the coastal counties that are within 575 feet of high-quality waters and for the remainder of the state areas that are within one mile and drain to HQWs.

Joints means edges in the concrete, created both by pouring an adjacent concrete slab against old concrete or concrete which has already set and by sawing the concrete prior to the hardening of the concrete.

Lake or natural watercourse means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

Land disturbing activity means any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

Live/green concrete. Live concrete shall mean concrete which is initially placed while still flowable fluid state. Green concrete is usually intended to mean concrete which has been placed and is starting to hydrate and harden but has not reached its design compressive strength yet.

Local government means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the act.

Natural erosion means the wearing away of the earth's surface by water, wind or other natural agents under natural environmental conditions undisturbed by man.

Parent means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

Person conducting land disturbing activity means any person who may be held responsible for a violation unless expressly provided otherwise by this chapter, the act, or any order adopted pursuant to this chapter or the act.

Person responsible for the violation, as used in this chapter and G.S. 113A-64, means:

- (1) The developer or other person who has or holds himself out as having financial or operational control over the land disturbing activity; or

- (2) The landowner or person in possession or control of the land when he has directly or indirectly allowed the land disturbing activity or has benefited from it or he has failed to comply with any provision of this chapter, the act, or any order adopted pursuant to this chapter or the act as imposes a duty upon him.

Phase of grading means one of two types of grading, rough or fine.

Plan means an erosion and sedimentation control plan.

Repair means restoring the concrete back to its ideal condition after damage or deterioration has occurred, resulting in broken concrete, spalled concrete, severely cracked concrete (cracks wider than three-eighths inch), concrete which has slid down, concrete with a loss of subgrade due to scouring under the slab, concrete which has dropped due to loss of subgrade, deteriorated concrete, etc.

Scour means erosion or displacement of the subgrade sedimentation under the concrete slabs, primarily as a direct result of concentrated, high velocity water flow through the point of least resistance.

Sediment means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity or ice from its site of origin.

Sedimentation means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land disturbing activity or into a lake or natural watercourse.

Siltation means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed and maintained control measures; and which has been transported from its point of origin within the site of land disturbing activity; and which has been deposited, or is in suspension in water.

Spalling means fragmenting of concrete into one or more pieces greater than two inches (50 mm) in depth and six inches (150 mm) in the greatest dimension, which are detached from a larger mass of concrete in the form of a roughly circular, oval or elongated shape by a blow, the action of weather, pressure, corrosion expansion of reinforcing or expansion within the large mass.

Storm drainage facilities means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

Stormwater runoff means the direct runoff of water resulting from precipitation in any form.

Subsidiary means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

Ten-year storm means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

Tract means all contiguous land and bodies of water, being disturbed or to be disturbed as a unit, regardless of ownership.

25-year storm means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

Uncovered means the removal of ground cover from, on or above the soil surface.

Undertaken means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

Velocity means the average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

Waste means surplus materials resulting from on-site construction and disposed of at other locations.

Working days means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land disturbing activity to be undertaken.

(Code 1983, § 7-5-1(3); Ord. of 12-13-2005(1), §§ 1a.—1f.)

Cross reference— Definitions generally, § 1-2.

Sec. 42-3. - Scope and exclusions.

This chapter shall not apply to the following land disturbing activities:

- (1) Activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to:
 - a. Forages and sod crops, grains and feed crops, tobacco, cotton and peanuts.
 - b. Dairy animals and dairy products.
 - c. Poultry and poultry products.
 - d. Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.
 - e. Bees and apiary products.
 - f. Fur-producing animals.
- (2) Activities undertaken on forest land for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in forest practice guidelines related to water quality, as adopted by the department. If land disturbing activity undertaken on forestland for the production and harvesting of timber and products is not conducted in accordance with forest practice guidelines related to water quality, the provisions of this chapter shall apply to such activity and any related land disturbing activity on the tract.
- (3) Activities for which a permit is required under the Mining Act of 1971, G.S. 74-46 et seq.
- (4) Land disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
- (5) For the duration of any emergency activities essential to protect human life.

(Code 1983, § 7-5-1(4))

Sec. 42-4. - General requirements.

- (a) *Plan required.* No person shall initiate any land disturbing activity which uncovers more than one acre without having an erosion control plan approved by the town.
- (b) *Protection of property.* Persons conducting land disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.
- (c) *More restrictive rules shall apply.* Whenever conflicts exist between federal, state, or local laws, ordinances or rules, the more restrictive provision shall apply.

(Code 1983, § 7-5-1(5))

Sec. 42-5. - Basic control objectives.

An erosion and sedimentation control plan may be disapproved pursuant to section 42-16 if the plan fails to address the following control objectives:

- (1) *Identify critical areas.* On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.
- (2) *Limit time of exposure.* All land disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- (3) *Limit exposed areas.* All land disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- (4) *Control surface water.* Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- (5) *Control sedimentation.* All land disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
- (6) *Manage stormwater runoff.* When the increase in the velocity of stormwater runoff resulting from a land disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

(Code 1983, § 7-5-1(6))

Sec. 42-6. - Mandatory standards for land disturbing activity.

No land disturbing activity subject to the control of this chapter shall be undertaken except in accordance with the following mandatory standards:

- (1) *Buffer zone.*
 - a. No land disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity. Waters that have been classified as trout waters by the environmental management commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity, whichever is greater; however, the town may approve plans which include land disturbing activity along trout waters when the duration of the disturbance would be temporary and the extent of the disturbance would be minimal. This subdivision shall not apply to a land disturbing activity in connection with the construction of facilities to be located on, over or under a lake or natural watercourse.
 - b. Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land disturbing activity containing natural or artificial means of confining visible siltation.
 - c. The 25-foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.
 - d. Where a temporary and minimal disturbance is permitted as an exception by subsection (1)a. of this section, land disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of buffer zone. Larger areas may be disturbed with written approval of the director.

- e. No land disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15 NCAC 2B.0211, "Fresh Surface Water Classification and Standards," in these waters.
- (2) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 30 working days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices or structures sufficient to restrain erosion.
- (3) *Ground cover.* Whenever land disturbing activity is undertaken on a tract comprising more than one acre, if more than one acre is uncovered, the person conducting the land disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in section 42-7, provisions for a ground cover sufficient to restrain erosion must be accomplished within 30 working days or 120 calendar days following completion of construction or development, whichever period is shorter.
- (4) *Prior plan approval.* No person shall initiate any land disturbing activity on a tract if more than one acre is to be uncovered unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with and approved by the town.

(Code 1983, § 7-5-1(7))

Sec. 42-7. - Design and performance standards.

- (a) Except as provided in subsection (b)(2) of this section, erosion and sedimentation control measures, structures and devices shall be so planned, designed and constructed as to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's National Engineering Field Manual for Conservation Practices, or other acceptable calculation procedures.
- (b) In high-quality water (HQW) zones, the following design standards shall apply:
 - (1) Uncovered areas in HQW zones shall be limited to any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land disturbing activity within an HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the director.
 - (2) Erosion and sedimentation control measures, structures and devices within HQW zones shall be so planned, designed and constructed to provide protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's National Engineering Field Manual for Conservation Practices or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
 - (3) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70 percent for the 40-micron (0.04mm) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's National Engineering Field Manual for Conservation Practices or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
 - (4) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than 2 horizontal to 1 vertical if a vegetative cover is used for stabilization

unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

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

(c) Impervious surfaces shall not exceed 50 percent of the total deeded lot area.

(Code 1983, § 7-5-1(8); Ord. of 12-9-2003, § 1; Ord. of 1-13-2004(1), § 1; Ord. of 10-12-2004, § 2; Ord. of 12-12-2006, § 2)

Sec. 42-8. - Stormwater outlet protection.

- (a) *Stormwater runoff.* Persons shall conduct land disturbing activity so that the post-construction velocity of the ten-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:

- (1) The velocity established by the table in subsection (d) of this section; or
- (2) The velocity of the ten-year storm runoff in the receiving watercourse prior to development.

If conditions (1) or (2) of this subsection (a) cannot be met, the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the prior to development velocity by ten percent.

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

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious.
- (2) Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high-velocity paved sections.
- (3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple riprapped sections to complex structures.
- (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.

- (c) *Exceptions.* This section shall not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

- (d) *Velocity.* The following is a table for maximum permissible velocity for stormwater discharges:

MAXIMUM PERMISSIBLE VELOCITIES

Material	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8

Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source. Adapted from recommendations by special committee on irrigation research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous channels, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

(Code 1983, § 7-5-1(9))

Sec. 42-9. - Borrow and waste areas.

When the person conducting the land disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971 (G.S. 74-76 et seq.) and waste areas for surplus materials other than landfills regulated by the department's division of solid waste management shall be considered as part of the land disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land disturbing activity is not the person obtaining the borrowing and/or disposing of the waste, these areas shall be considered a separate land disturbing activity.

(Code 1983, § 7-5-1(10))

Sec. 42-10. - Access and haul roads.

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

(Code 1983, § 7-5-1(11))

Sec. 42-11. - Operations in lakes or natural watercourses.

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

(Code 1983, § 7-5-1(12))

Sec. 42-12. - Responsibility for maintenance.

During the development of a site, the person conducting the land disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this chapter, the act, or any order adopted pursuant to this chapter or the act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

(Code 1983, § 7-5-1(13))

Sec. 42-13. - Additional measures.

Whenever the town determines that significant sedimentation is occurring as a result of land disturbing activity, despite application and maintenance of protective practices, the person conducting the land disturbing activity will be required to and shall take additional protective action.

(Code 1983, § 7-5-1(14))

Sec. 42-14. - Existing uncovered areas.

- (a) All uncovered areas existing on the effective date of the ordinance from which this chapter derives which resulted from land disturbing activity, exceed one acre, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation shall be provided with a ground cover or other protective measures, structures or devices sufficient to restrain accelerated erosion and control off-site sedimentation.
- (b) The town will serve upon the landowner or other person in possession or control of the land a written notice of violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology and quantity of work required, and shall set reasonable and attainable time limits of compliance.

- (c) The town reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.
- (d) This section shall not require ground cover on cleared land forming the future basin of a planned reservoir.

(Code 1983, § 7-5-1(15))

Sec. 42-15. - Permits.

- (a) No person shall undertake any land disturbing activity subject to this chapter without first obtaining a permit from the town, except that no permit shall be required for any land disturbing activity:
 - (1) For the purpose of fighting fires;
 - (2) For the stockpiling of raw or processed sand, stone or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage; or
 - (3) That does not exceed one acre in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.
- (b) The town may establish a fee if considered necessary.

(Code 1983, § 7-5-1(16))

Sec. 42-16. - Erosion and sedimentation control plans.

- (a) An erosion control plan shall be prepared for all land disturbing activities subject to this chapter whenever the proposed activity is to be undertaken on a tract comprising more than one acre if more than one acre is to be uncovered. The plan shall be filed with the town and the county soil and water conservation district at least 30 days prior to the commencement of the proposed activity.
- (b) Persons conducting land disturbing activity on a tract which covers one or more acres shall file three copies of the erosion control plan with the town at least 30 days prior to beginning such activity and shall keep another copy of the plan on file at the jobsite. After approving the plan, if the town, either upon review of such plan or on inspection of the jobsite, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the town will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority.
- (c) Erosion control plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or his registered agents. If the person financially responsible is not a resident of the state, a state agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the act, this chapter, or rules or orders adopted or issued pursuant to this chapter.
- (d) The county soil and water conservation district shall review the plan and submit any comments and recommendations to the town within 20 days after the soil and water conservation district received the erosion control plan, or within any shorter period of time as may be agreed upon by the soil and water conservation district and the town. Failure of the soil and water conservation district to submit its comments and recommendations within 20 days or within any agreed upon shorter period of time shall not delay final action on the plan.

- (e) The town will review each complete plan submitted to it and within 30 days of receipt will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations or disapproved. Failure to approve, approve with modifications or disapprove a complete erosion and sedimentation control plan within 30 days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval. The town must approve, approve with modifications or disapprove a revised plan within 15 days of receipt, or it is deemed to be approved. If following commencement of a land disturbing activity pursuant to an approved plan the town determines that the plan is inadequate to meet the requirements of this chapter, the town may require any revision of the plan that is necessary to comply with this chapter. The town may establish an expiration date for erosion control plans approved under this chapter.
- (f) Any plan submitted for a land disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1 et seq.) shall be deemed incomplete until a complete environmental document is available for review. The town shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to subsection (e) of this section shall not begin until a complete environmental document is available for review.
- (g) The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this chapter. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the town on request.
- (h) The board of commissioners may disapprove an erosion control plan upon a finding that an applicant, parent, subsidiary, or other affiliate of the applicant:
 - (1) Is conducting or has conducted land disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the commission or the board of commissioners pursuant to the act and has not complied with the notice within the time specified in the notice;
 - (2) Has failed to pay a civil penalty assessed pursuant to the act or a local ordinance adopted pursuant to the act by the time the payment is due;
 - (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the act; or
 - (4) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the act. For purposes of this subsection (h), an applicant's record may be considered for only the two years prior to the application date.
- (i) Applications for amendment of an erosion plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as the amendment is approved by the town, the land disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.
- (j) Any person engaged in land disturbing activity who fails to file a plan in accordance with this chapter, or who conducts a land disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this chapter.

(Code 1983, § 7-5-1(17))

Sec. 42-17. - Appeals.

- (a) Except as provided in subsection (b) of this section, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

- (1) The disapproval or modification of any proposed erosion control plan by the town shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modifications.
 - (2) Hearings held pursuant to this section shall be conducted by the town within five working days after the date of the appeal or request for a hearing.
 - (3) The board of commissioners will render its final decision on any erosion control plan upon which a hearing is requested within ten working days of receipt of the recommendations from the agency conducting the hearings.
 - (4) If the town upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, the person submitting the plan shall then be entitled to appeal the board of commissioners' decision to the state sedimentation control commission as provided in G.S. 113A-61(c) and 15A NCAC 4b.0018(d).
- (b) If an erosion control plan is disapproved pursuant to section 42-16, the town shall notify the director of the division of land resources of such disapproval within ten days. The town shall advise the applicant and the director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the town's disapproval of the plan pursuant to section 42-16 directly to the commission.

(Code 1983, § 7-5-1(18))

Sec. 42-18. - Inspections and investigations.

- (a) Agents, officials or other qualified persons authorized by the town will periodically inspect the sites of land disturbing activity to ensure compliance with the act, this chapter, or rules or orders adopted or issued pursuant to this chapter to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each erosion control plan.
- (b) No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of the town while that person is inspecting or attempting to inspect a land disturbing activity under this section.
- (c) If it is determined that a person engaged in land disturbing activity has failed to comply with the act, this chapter, or rules or orders adopted or issued pursuant to this chapter, a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. 1A-1, rule 4. The notice shall specify a date by which the person must comply with the act, this chapter, or rules or orders adopted pursuant to this chapter, and inform the person of the actions that need to be taken to comply with the act, this chapter, or rules or orders adopted pursuant to this chapter. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Any person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this chapter.
- (d) The town shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of land disturbing activity.
- (e) The town shall have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land disturbing activity.

(Code 1983, § 7-5-1(19))

Sec. 42-19. - Penalties.

(a) *Civil penalties.*

- (1) Any person who violates any of the provisions of this chapter, or rules or orders adopted or issued pursuant to this chapter, or who initiates or continues a land disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions and provisions of an approved plan is subject to a civil penalty of \$50.00, together with a fine of \$50.00 per day, shall be assessed. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation as provided in section 42-18. If after the allotted time period has expired the violator has not completed corrective action, a civil penalty may be assessed from the date of service of the notice of violation. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Each day of continuing violation shall constitute a separate violation.
- (2) If payment is not received within 30 days after demand for payment is made, the town may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of the county where the violation occurred or the violator's residence or principal place of business is located. Such civil actions must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

- (b) *Criminal penalties.* Any person who knowingly or willfully violates any provision of this chapter, or rule or order adopted or issued pursuant to this chapter, or who knowingly or willfully initiates or continues a land disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions and provisions of an approved plan shall be guilty of a class 2 misdemeanor, which may include a fine not to exceed \$5,000.00.

(Code 1983, § 7-5-1(20); Res. No. 2010-19, § 1, 8-10-2010)

Sec. 42-20. - Injunctive relief.

- (a) Whenever the board of commissioners has reasonable cause to believe that any person is violating or threatening to violate this chapter or any rule or order adopted or issued pursuant to this chapter, or any term, condition or provision of an approved erosion control plan, it may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the town for injunctive relief to restrain the violation or threatened violation.
- (b) Upon determining by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this chapter.

(Code 1983, § 7-5-1(21); Res. No. 2010-19, § 2, 8-10-2010)

Sec. 42-21. - Restoration of areas affected by failure to comply.

The town may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this chapter.

(Code 1983, § 7-5-1(22))

Sec. 42-22. - Mandatory requirements for bulkheading of natural* (non-concrete) canals.

The intent of this section is to establish uniform standards for construction and maintenance of bulkheads along the natural canals. No construction, repair and/or maintenance shall be undertaken except in accordance with the following mandatory standards:

- (1) Any person performing construction, repair and/or maintenance activities for bulkheads along the natural canals shall obtain all necessary permits from the building inspections department prior to the commencement of work.
- (2) Construction, repair and/or maintenance activities shall be in accordance with the uniform engineered design standards as approved by the board of commissioners. Current design standards include:
 - (a) Vinyl bulkheads with accompanying engineering for the specific lot to which the bulkhead will be installed.
 - (b) Redi-Rock bulkheads in accordance with engineered design standards approved by the town. All Redi-Rock bulkheads shall be limestone in color.
- (3) Existing wooden bulkheads shall be allowed to be repaired as long as the repair cost does not exceed 50 percent of the value of the bulkhead. Total replacement of wooden bulkheads or repairs exceeding 50 percent of the value of the bulkhead shall not be permitted unless the bulkheads are brought into compliance with the current designs standards of the town.
- (4) All owners of property bordering the natural canals (Laurinburg Street, Monroe Street, Fairmont Street, Wilmington Street, and west of Concord Street) without bulkheads shall make satisfactory improvements to the property to construct bulkheads in compliance with this section by November 1, 2000.

(Ord. of 8-8-2000(2), § 1; Res. No. [2016-9](#), § 1, 6-14-2016)

*For the purposes of this section, the natural canals shall consist of the Peninsula, Causeway Drive, Laurinburg Street, Monroe Street, Fairmont Street, Wilmington Street, the west side of Concord Street, Duneside Drive, Isle Plaza, Driftwood Street, and the east side of Asheville Street unless otherwise noted.

Sec. 42-23. - Mandatory requirements for construction and maintenance of concrete bulkheads along concrete canals.

- (1) Any person performing construction, repair and/or maintenance activities for bulkheads along the concrete canals shall obtain necessary permits from the building inspections department.
- (2) Construction, repair and/or maintenance activities shall be in accordance with the uniform design standards approved by the board of commissioners and available in the office of the building inspector, which is included within this section. Said description entitled "Concrete Overlay Repair Rev. 2 9/28/05" or "Alternate Concrete Revetment Wall Retrofit/Repairs 9/3/2009".
- (3) Prior to the start of new construction on canal lots with concrete bulkheads, an inspection must be scheduled to ensure the bulkheads are not in disrepair. If the bulkheads are in need of repair, repairs must be completed prior to setting the pilings for new construction.
- (4) The building inspections department will conduct periodical checks to ensure existing bulkheads are not in need of repair. If the building inspections department determines a bulkhead is in need of repair, repairs must be handled by the property owner within 90 days from the date of notice. Findings by the building inspections department of bulkheads which are in imminent danger of collapse, failure or which create a danger to adjoining properties or the canal system must be repaired within 30 days from the date of the notice. Failure to repair these bulkheads within the

allotted time frame or in conjunction with design standards will result in civil penalties as outlined in section 42-19 and the town shall have the authority pursuant to section 42-20 to seek injunctive relief.

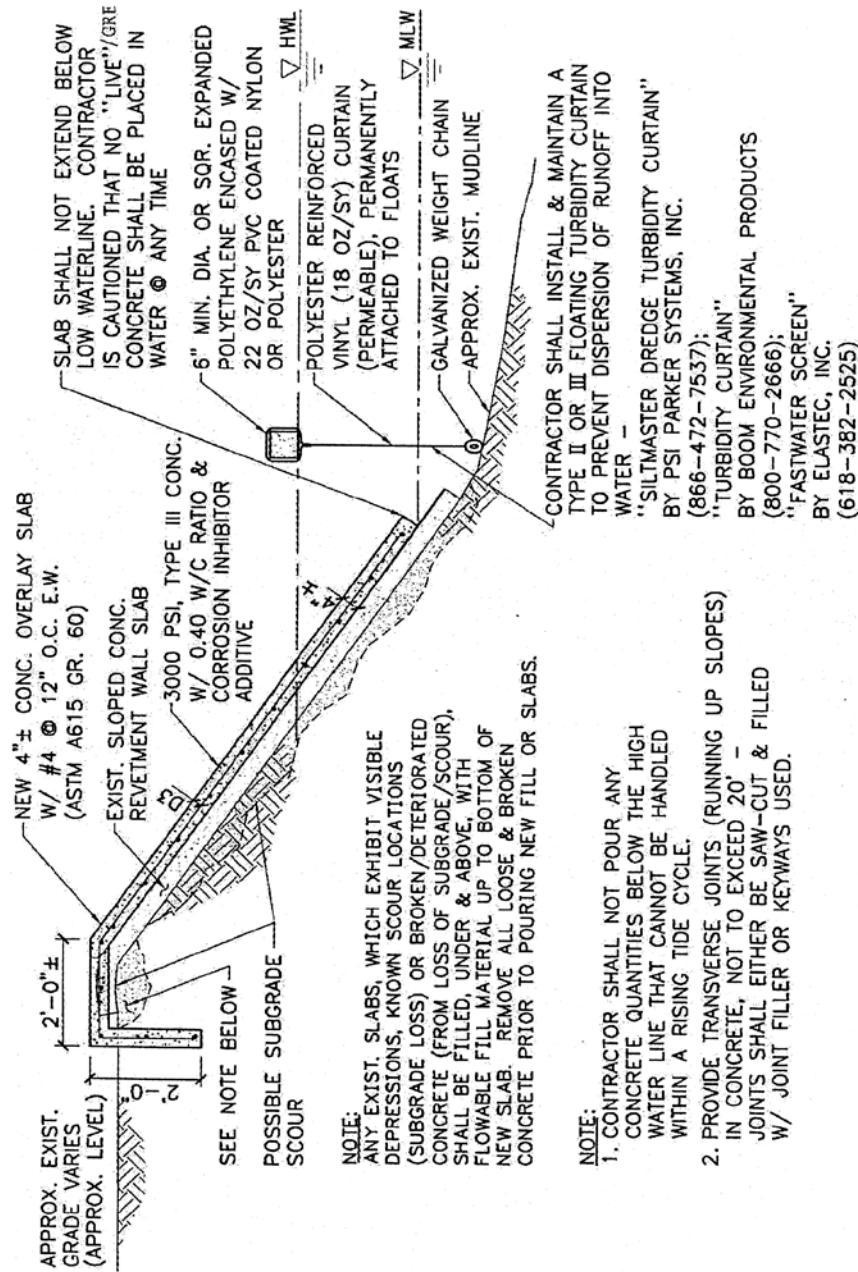
(5) The following criteria will be used to determine the need for concrete bulkhead repair:

- (a) Noticeable spalling or "popping" of concrete, excessive depressions in the sloped wall (slab failure), which are a direct result of a void space created under the slab by sedimentation migrating through spall holes and/or erosion under wall as well as settlement of subgrade. (See Note 1.)
- (b) Concrete slabs or portions thereof, which have completely deteriorated or broken up due to exposure to weather, etc.
- (c) Any cracks or joints, above or below the waterline, in the sloped concrete in excess of three-eighths inch. (See Note 1.)
- (d) Noticeable sections or partial sections of sloped concrete, which have "slid" down and toward the canal from its original location. (See Note 2.)
- (e) Observed holes in the soil subgrade immediately above or below the sloped concrete wall edges, which upon further investigation indicate a loss of subgrade below the slab (void space without slab failure) as well as a direct path for stormwater to flow under the slab. (See Note 3.)

Note 1: This damage may not require a complete slab overlay, but would require localized repairs with a high strength grout at the spall locations.

Note 2: In this situation, concrete will be required to be completely removed and new subgrade established prior to pouring new overlay slab.

Note 3: This damage may not require a complete slab overlay if slab has not failed and if void space can be filled with a flowable fill material, provided concrete slab is not deteriorated/damaged.



SECTION - CONCRETE OVERLAY REPAIR

NTS

REV 2 | 9-28-05

ARTICLE I. - IN GENERAL

Sec. 46-1. - Definitions.

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

Building material scraps means scrap building material from the construction, reconstruction, remodeling or repair of a building, walkway, driveway, sign and other structure, including, but not limited to, excavated earth, tree stumps, rocks, gravel, bricks, plaster, concrete, lumber or any other similar material used in construction or the containers or wrappings for materials.

Garbage means all putrescible wastes, including animal and vegetable matter, animal offal and carcasses and recognizable industrial byproducts but excluding sewage and human wastes.

Long-term rentals means the renting out of a single- or two-family dwelling for a long-term stay (i.e. rentals of three consecutive months or longer).

Refuse means all nonputrescible wastes.

Short-term rentals means the renting out of a single- or two-family dwelling for a short-term stay (i.e. daily or weekly rentals or rentals of less than three consecutive months).

Solid waste means garbage, refuse, rubbish, trash and other discarded solid materials, including solid waste materials resulting from homes, businesses, industrial, commercial and agricultural operations, and from community activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows or other common water pollutants.

Tree trimmings means tree limbs, leaves, shrubbery, weeds, plants or grass.

(Code 1983, § 2-2-1; [Res. No. 2017-27, § 1, 10-10-2017](#); [Res. No. 2018-1, § 1, 2-13-2018](#))

Cross reference— Definitions generally, § 1-2.

Sec. 46-2. - Refuse required to be deposited in approved containers.

It shall be unlawful for any person to throw, place or deposit any garbage or refuse of any kind on any public or private property except in approved containers or as otherwise provided in this chapter.

(Code 1983, § 2-2-2)

Sec. 46-3. - Accumulation of garbage and refuse prohibited.

- (a) All garbage and refuse shall be collected and placed in containers as required by this chapter. It shall be unlawful for any person to permit garbage or refuse to accumulate or remain on any premises longer than is reasonably necessary to remove and deposit the garbage or refuse in approved containers as required in this chapter.
- (b) All businesses shall be responsible for keeping their premises clean and free of trash and debris. Such businesses as are located on the oceanfront shall extend the area of cleanup responsibility to the mean high water mark.

(Code 1983, § 2-2-3)

Sec. 46-4. - Containers required.

- (a) All permanent or long-term rental property owners, shall maintain one waste polycart and one recycling polycart of not more than 90-gallon capacity per container for each single-family or comparably sized dwelling as provided by the sanitation firm serving the town. The town will provide one waste polycart and one recycling polycart per dwelling. Procurement of additional polycarts from the town is the sole responsibility of the property owner.
- (b) Rental properties that are rented week-to-week as part of the summer rental season (defined as short-term rental properties), are subject to high numbers of guests, resulting in abnormally large volumes of household waste. In the interest of public health, sanitation and environmental concerns, all short-term rental property owners are required to provide waste and recycling polycarts at each short-term rental property based on the number of bedrooms per location as outlined in exhibit A. For the purpose of this section, a bedroom is any room which provides a facility for sleeping, including, but not limited to, day beds (or other convertibles), sleeper sofas, hide-a-beds, cots, or roll-away beds:

Exhibit A		
Number of Bedrooms	Waste Polycarts Required	Recycling Polycarts Required
1—4	1	1
5—7	2	1
8—9	3	2
10 or more	4	2

- (c) All mobile polycarts shall be placed within seven feet of the paved road no earlier than 6:00 p.m. on the evening before the trash collection. Polycarts shall be moved from the roadway by 7:00 p.m. on the day of service and placed adjacent to the dwelling house or place of business, except in multifamily developments.
- (d) All waste matter must be contained in the polycart receptacle. Placement of loose or bagged waste items outside of the polycart receptacle will not be picked up by waste collection services and will be considered a littering offense as outlined in article II, section 46-41.
- (e) Owners, custodians and tenants of larger condominium units and commercial establishments shall maintain a steel container to adequately hold the garbage and refuse from the unit involved.
- (f) Upon a violation of this section, the offender shall be issued a written warning by the town requiring the offender to comply with the terms set forth herein within seven days from the mailing of said warning. Any further violation of any provision of this section shall be a misdemeanor pursuant to G.S. 14-4, punishable by a maximum fine of not more than \$100.00. In addition, any violation of any provision of this section after written warning shall subject the offender to a civil penalty in the amount of \$100.00 to be paid within 72 hours after having been cited for violation of this section.

(Code 1983, § 2-2-4; [Res. No. 2017-27, § 1, 10-10-2017](#); [Res. No. 2018-1, § 1, 2-13-2018](#))

Sec. 46-5. - Screening required.

- (a) All steel containers shall be screened by a three-faced enclosure constructed of wood, concrete, block, brick or other material as approved by the building inspector. Such screening shall allow for ventilation and accessibility by the sanitation company. A nonfee permit must be obtained from the building inspector, and the design must be preapproved.
- (b) Each container shall be screened within 60 days from the initial placement of the container.
- (c) It shall be unlawful for anyone to park his vehicle in front of the steel container so as to impede access to the container by the sanitation truck.

(Code 1983, § 2-2-5)

Sec. 46-6. - Building debris.

- (a) It shall be the responsibility of all contractors, subcontractors or property owners who are performing contracting work to contain all trash, scrap building materials and other types of litter in a suitable container on the construction site. The holder of the building permit shall be presumed to be the individual performing the work and therefore the individual who shall comply with this section or be cited for violation of it.
- (b) Construction sites shall mean and include any private or public property upon which repairs to existing buildings, construction of new buildings, or demolition of existing structures is taking place.
- (c) During construction, individuals may use containers other than polycarts, but it shall be their responsibility to dispose of said refuse; the town will only remove garbage or litter from polycarts.
- (d) A suitable container shall mean and include any container which is designed to receive trash, scrap building materials, and litter and to prevent the escape of litter deposited in the container, which is of such size and sufficient capacity to hold all litter generated between the contractor's periods of removal.
- (e) The building inspector shall issue a stop work order at any time work has progressed past the stage of erecting pilings and a suitable container is not maintained on the construction site. The building inspector may also have the permit holder cited for violations of the General Statutes cited in subsection (f) of this section. In addition, in extreme cases the building inspector may void the permit and withhold issuance of a new permit until compliance with this section is complete.
- (f) A violation of any provision in this section shall be an infraction as provided in G.S. 14-4, punishable by a fine not to exceed \$100.00.

(Code 1983, § 2-2-6)

Cross reference— Buildings and building regulations, ch. 10.

Sec. 46-7. - Transportation of garbage and refuse.

Any person who carries or moves building material scraps, garbage, refuse, solid wastes and tree trimmings shall be required to cover all of said debris while in transit to ensure that it does not blow or fall from the vehicle in which it is transported. This section shall not apply to dump trucks used to carry dirt onto the beach for fill.

(Code 1983, § 2-2-8)

Cross reference— Traffic and vehicles, ch. 54.

Sec. 46-8. - Penalty.

Other than as set forth in section 46-4 above, a violation of any part of this article shall be a misdemeanor pursuant to G.S. 14-4, punishable by a maximum fine of not more than \$100.00. In addition, a violation of any provision of this article, other than as set forth in section 46-4 above, shall subject the offender to a civil penalty in the amount of \$100.00 to be paid within 72 hours after having been cited for violation.

(Code 1983, § 2-2-9; Res. No. 2009-22, § 2, 8-11-2009; [Res. No. 2018-1, § 1, 2-13-2018](#))

Secs. 46-9—46-40. - Reserved.

Chapter 50 - SUBDIVISIONS¹¹

Footnotes:

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Cross reference— Buildings and building regulations, ch. 10; environment, ch. 22; floods, ch. 30; standards for subdivision proposals and major development, § 30-103; housing, ch. 34; utilities, ch. 58; waterways, ch. 62; zoning, ch. 66.

State Law reference— Subdivision regulations, G.S. 160A-371 et seq.

ARTICLE I. - IN GENERAL

Sec. 50-1. - Title.

This chapter shall be known and may be cited as the "Subdivision Regulation Ordinance of the Town of Ocean Isle Beach, Brunswick County, North Carolina", and may be referred to as the "subdivision regulations."

(Code 1983, § 7-3-1)

Sec. 50-2. - Purpose.

The purpose of this chapter is to establish procedures and standards for the development and subdivision of land within the territorial jurisdiction of the town. It is further designed to provide for the orderly growth and development of the town; for the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the subdivision and/or the general public, and of rights-of-way or easements for street and utility purposes; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety, and the general welfare. This chapter is designed to further facilitate adequate provision of water, sewerage, parks and recreation areas, and also to facilitate the further resubdivision of larger tracts into smaller parcels of land.

(Code 1983, § 7-3-1)

Sec. 50-3. - Authority.

This chapter is adopted under the authority and provisions of the G.S. 160A-371 et seq.

(Code 1983, § 7-3-1)

Sec. 50-4. - Jurisdiction.

The regulations contained in this chapter, as provided in G.S. 160A-371 et seq. shall govern each and every subdivision within the town and its extraterritorial jurisdiction as shown on the official extraterritorial boundary map.

(Code 1983, § 7-3-1)

Sec. 50-5. - Definitions.

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

Block means a piece of land bounded on one or more sides by streets or roads.

CAMA means the Coastal Area Management Act, G.S. 113A-100 et seq.

Dedication means a gift, by the owner, or a right to use of land for a specified purpose. Because a transfer of property rights is entailed, dedication must be made by written instrument, and is completed with an acceptance.

Density means units per acre, excluding land between the high water mark and first line of stable vegetation, as determined by the division of coastal management. Bordering coastal wetlands or marshlands will also be excluded. Total project area does not include any areas that are designated as ecologically sensitive.

Dwelling unit means a room or group of rooms within a dwelling forming a single independent, habitable unit used or intended to be used for living, sleeping, sanitation, cooking and eating purposes by one family only; for owner occupancy; or for rental, lease or other occupancy and containing independent kitchen, sanitary and sleeping facilities.

Easement means a grant by the property owner of a strip of land for a specified purpose and use by the public, a corporation or persons.

Lot, for the purposes of this chapter, means a portion of a subdivision, or any other parcel of land, intended as a unit of transfer of ownership or for development or both. Any lot platted after June 9, 1998, and which is adjacent to marsh and/or coastal vegetative areas, shall contain at least 5,000 square feet on the uplands side of the coastal vegetative line as defined by CAMA, or the 404 line as determined by the U.S. Army Corps of Engineers.

Lot of record means a lot which is part of a subdivision, a plat of which has been recorded in the office of the register of deeds of the county prior to the adoption of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter.

Minor subdivision means the division of one existing parcel of land involving no new public or private streets or roads, or right-of-way dedication and where five or fewer lots result after the subdivision is completed.

Minor town subdivision shall be defined and identified as the conveyance of real property from the town to either a public utility (herein defined as telephone, electric, cable) or another governmental entity where the property being conveyed is not to be developed for residential purposes, is zoned for the use intended and where the town entity retains an ownership interest in adjacent tracts. (Note: All minor town subdivisions shall be exempt from the requirements within this chapter.)

Official maps or plans means any maps or plans officially adopted by the town.

Planned unit development means development of a parcel of land with a minimum contiguous size of ten acres which was planned as a single entity containing one or more residential clusters and/or one or more public, quasi-public or commercial areas.

Plat means a map or plan of a parcel of land which is to be or has been subdivided.

Private driveway means a roadway serving the internal circulation needs of a planned unit development and not intended to be public ingress or egress.

Private street means a nonpublic right-of-way which affords access to abutting properties and requires a subdivision streets disclosure statement in accordance with G.S. 136-102.6.

Public sewage disposal system means a wastewater collection system owned by the town or any other private or governmentally approved system.

Recreation area or park means an area of land or combination of land and water resources that is developed for active and/or passive recreation pursuits with various manmade features that accommodate such activities.

Reservation means a reservation of land that does not involve any transfer of property rights. It simply constitutes an obligation to keep property free from development for a stated period of time.

Street means a dedicated and accepted public right-of-way for vehicular traffic (or a private street only if permitted by this chapter).

Subdivider means any person who subdivides or develops any land deemed to be a subdivision.

Subdivision means all divisions of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to any regulations enacted pursuant to this chapter:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the town as shown in this chapter;
- (2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets; and
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the town as shown in this chapter.

Technical review committee means a committee of town officials with expertise in various aspects of development that shall review and submit written comments on development plans as required by this chapter. This committee shall be appointed by the board of commissioners.

(Code 1983, § 7-3-1; Ord. of 8-14-2001; Amend. of 12-14-2004, § 2; Ord. of 6-14-2005(6), §§ 1A., 1B.; Ord. of 2-14-2006(2); Res. No. 2009-17, § 1, 6-9-2009; Res. No. 2011-21, § 1, 9-26-2011)

Cross reference— Definitions generally, § 1-2.

Sec. 50-6. - Reserved.

Editor's note— Ord. of 2-14-2006(2) deleted § 50-6, which pertained to prerequisite to plat recordation and derived from Code 1983, § 7-3-1; Ord. of 8-14-2001; and Ord. of 6-8-2004, § 1.

Sec. 50-7. - Acceptance of streets.

No street shall be maintained by the town nor street dedication accepted for ownership and maintenance in any subdivision for which a plat is required to be approved unless and until such final plat has been approved by the town.

Documentation for acceptance of streets shall be prepared and presented by the developer at the time of submission of final plat. Streets located within subdivisions that include land denominated "ocean hazard areas" shall not be accepted by the town as a part of the public street system and shall not be offered for dedication.

(Code 1983, § 7-3-1; Ord. of 8-14-2001; Ord. of 12-13-2005(2), § 1)

Sec. 50-8. - Thoroughfare plans.

Where a proposed subdivision includes any part of a thoroughfare which has been designated as such upon any officially adopted thoroughfare plan of the town, such part of such thoroughfare shall be platted by the subdivider in the location shown on the plan and at the width specified in this chapter.

(Code 1983, § 7-3-1)

Sec. 50-9. - Zoning and other plan.

Proposed subdivisions must comply in all respects with the requirements of the zoning ordinance, chapter 66 of this Code in effect in the area to be subdivided, and any other officially adopted plans.

(Code 1983, § 7-3-1)

Cross reference— Zoning, ch. 66.

Sec. 50-10. - Piecemeal development to circumvent subdivision regulations prohibited.

Piecemeal development of a project undertaken with the intent of circumventing these and other regulations shall not be approved.

(Code 1983, § 7-3-1)

Sec. 50-11. - Reserved.

Editor's note— Ord. of 2-14-2006(2) deleted § 50-11, which pertained to general procedure for plat approval and derived from Code 1983, § 7-3-1; and Ord. of 8-14-2001.

Sec. 50-12. - Statement by owner.

The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether or not any land shown on the plat is within the subdivision regulation jurisdiction of the town.

(Code 1983, § 7-3-1)

Sec. 50-13. - Effect of plat approval on dedications.

Pursuant to G.S. 160A-374, the approval of a plat shall not be deemed to constitute or effect the acceptance by the town or public of the dedication of any street or other ground, public utility line or other public facility shown on the plat. However, the board of commissioners may by resolution accept any dedication made to the public of lands or facilities for streets, parks, recreation areas, public utility lines, or other public purposes, when the lands or facilities are located within its subdivision regulation jurisdiction. Acceptance of dedication of lands or facilities located within the subdivision regulation jurisdiction but outside the corporate limits of the town shall not place on the town any duty to open, operate, repair or maintain any street, utility line or other land of facility; and the town shall in no event be held to answer in any civil action or proceeding for failure to open, repair or maintain any street located outside its corporate limits.

(Code 1983, § 7-3-1)

Sec. 50-14. - Penalties for violation.

- (a) After the effective date of these regulations from which this article derives, any person who, being the owner or agent of the owner of any land located within the territorial jurisdiction of this chapter, thereafter subdivides his land in violation of this chapter or transfers or sells land by reference to, exhibition of or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the terms of this chapter and recorded in the office of the county register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The town through its attorney or other official designated by the board of commissioners may enjoin illegal subdivision, transfer or sale of land by action for injunction. Further, violators of this chapter shall be subject, upon conviction, to fine and/or imprisonment as provided by G.S. 14-4.
- (b) Any act constituting a violation of any requirement of this chapter shall subject the offender to a civil penalty of \$100.00. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by registered or certified mail, delivery restricted to addressee only, return receipt requested, or other means reasonably calculated to provide actual notice to the offender. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty. If the violation is not corrected within the time period provided in the notice, the board of commissioners shall make written demand for payment upon the person responsible for the violation and shall set forth in detail a description of the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the matter shall be referred to the town attorney for institution of a civil action in the name of the town in the appropriate division of the general court of justice for recovery of the penalty. Any sums recovered shall be deposited in the town's general fund.
- (c) Each day's continuing violation of this chapter shall be a separate and distinct offense.
- (d) Nothing in this section shall be construed to limit the use of remedies available to the town. The town may seek to enforce this chapter by using any one, all, or a combination of remedies.

(Code 1983, § 7-3-1; Ord. of 2-14-2006(2))

Sec. 50-15. - Variances.

- (a) The board of commissioners, on recommendation by the planning board, may authorize a variance from this chapter when, in its opinion, undue hardship may result from strict compliance. In recommending any variance, the town planning board shall investigate the following:
 - (1) The nature of the proposed subdivision;
 - (2) The existing use of land in the vicinity;
 - (3) The number of persons to reside or work in the proposed subdivision; and
 - (4) The probable effect of the proposed subdivision upon traffic conditions in the vicinity.
- (b) No variance shall be granted unless the board of commissioners finds that:
 - (1) There are special circumstances or conditions affecting the property such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of his land.
 - (2) The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.

- (3) The circumstances giving rise to the need for the variance are peculiar to the parcel and are not generally characteristic of other parcels in the jurisdiction of this chapter.
- (4) The granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which the property is situated.

(Code 1983, § 7-3-1)

Sec. 50-16. - Amendments.

- (a) The board of commissioners may amend the terms of this chapter, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the planning board for review and recommendation. The planning board shall have 30 days from the time the proposed amendment is submitted to it within which to submit its report.
- (b) No amendment shall be adopted by the board of commissioners until a public hearing has been held on the amendment. Notice of the hearing shall be published in a newspaper of general circulation in the area of the town at least once a week for two successive calendar weeks prior to the hearing. The initial notice shall appear not more than 25 nor less than ten days prior to the hearing date. In computing the ten- to 25-day period, the date of publication is not to be counted, but the date of the hearing is.

(Code 1983, § 7-3-1)

Sec. 50-17. - Abrogation.

It is not intended that this chapter repeal, abrogate, annul, impair or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations or permits previously adopted or issued pursuant to law. However, where this chapter imposes greater restrictions, the provisions of this chapter shall govern.

(Code 1983, § 7-3-1)

Sec. 50-18. - Reenactment and repeal of existing subdivision regulations.

This chapter in part carries forward by reenactment some of the provisions of the subdivision ordinance of the town adopted on June 5, 1975; and it is not the intention to repeal but rather to reenact and continue in force such existing provisions so that all rights and liabilities that have accrued under that ordinance are preserved and may be enforced. All provisions of the former subdivision ordinance which are not reenacted in this chapter are repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of any subdivision ordinance heretofore in effect which are now pending in any of the courts of this state or of the United States shall not be abated or abandoned by reason of the adoption of this chapter but shall be prosecuted to their finality the same as if this chapter had not been adopted; and any and all violations of the existing ordinance, prosecutions for which have not yet been instituted, may be hereafter filed and prosecuted; and nothing in this chapter shall be so construed as to abandon, abate or dismiss any litigation or prosecution now pending and/or which may heretofore have been instituted or prosecuted.

(Code 1983, § 7-3-1)

Sec. 50-19. - Administrator.

The board of commissioners may provide for the appointment of an appropriate person to serve as the subdivision administrator.

(Code 1983, § 7-3-1; Ord. of 2-14-2006(2))

Secs. 50-20—50-50. - Reserved.

ARTICLE II. - PROCEDURE FOR REVIEW AND APPROVAL OF SUBDIVISION PLATS

Sec. 50-51. - Plat shall be required on any subdivision of land.

Pursuant to G.S. 160A-372, a final plat shall be prepared, approved and recorded pursuant to the provisions of this chapter whenever any subdivision of land takes place. When a plan is submitted to the town for approval, it shall be accompanied by a copy of the recorded deed accurately describing the property and demonstrating title ownership. If the deed does not contain a metes and bounds description, a plat map with an appropriate metes and bounds description shall be provided. If the lot description refers to a recorded map, a copy of that map shall also be provided.

(Code 1983, § 7-3-1; Ord. of 9-14-2004, § 4)

Sec. 50-52. - Approval prerequisite to plat recordation.

Pursuant to G.S. 160A-373, no final plat of a subdivision within the jurisdiction of the town as established in section 50-4 shall be recorded by the register of deeds of the county until it has been approved by the board of commissioners (major) or subdivision administrator (minor) as provided in this chapter. To secure such approval of a final plat, the subdivider shall follow the procedures established in this article.

(Code 1983, § 7-3-1; Ord. of 2-14-2006(2))

Sec. 50-53. - Procedure for review of major and minor subdivisions.

- (a) All subdivisions shall be considered major subdivisions except those defined as minor subdivisions in section 50-5. Major subdivisions shall be reviewed in accordance with the procedures in sections 50-55 and 50-56. Minor subdivisions shall be reviewed in accordance with the provisions in section 50-54. Only one minor subdivision shall be permitted within a one year period of time; however, parcels may be divided at different times insofar as the total number of parcels created in a ten year period of time does not exceed five including the original parcel. Once a minor subdivision is approved, the parcel from which it originates cannot be used for another minor subdivision for a minimum of one year.
- (b) A presubmission conference between the applicant and the technical review committee (TRC) shall occur as the initial step in the subdivision approval process. The owner/applicant shall submit five copies of a conceptual subdivision plan to be reviewed by the TRC. The conceptual subdivision plan must show at a minimum; major thoroughfares, acreage and development type (i.e., residential, commercial, open space) of each phase, vicinity map, density, flood zone(s) and proximity of nearest water and/or sewer main. The purpose of this conference is to provide assistance and guidance to the applicant for the efficient review and consideration of the proposed project. Any effort to secure this conference is the sole responsibility of the applicant.

(Code 1983, § 7-3-1; Ord. of 8-14-2001; Ord. of 2-14-2006(2); Res. No. 2011-21, § 1, 9-26-2011)

Sec. 50-54. - Procedure for review of minor subdivisions.

(a) *Sketch plan for minor subdivisions.*

- (1) Prior to submission of a final plat, the subdivider shall submit to the subdivision administrator three copies of a sketch plan of the proposed subdivision containing the following information:
 - a. A sketch vicinity map showing the location of the subdivision in relation to neighboring tracts, subdivisions, roads, and water areas;
 - b. The boundaries of the tract and the portion of the tract to be subdivided;
 - c. The total acreage to be subdivided;
 - d. The existing and proposed uses of the land within the subdivision and the existing uses of land adjoining it, including across any rights-of-way;
 - e. The proposed lot layout and size of lots;
 - f. The name and address of the owner, proof of ownership and, if applicable, a notarized letter from the owner designating the applicant as their agent;
 - g. The name, if any, of the proposed subdivision;
 - h. Streets and lots of adjacent developed or platted properties;
 - i. The zoning classification of the tract and of adjacent properties;
 - j. Building envelopes created by required setbacks; and
 - k. A statement from the county health department that a copy of the sketch plan has been submitted to them, if septic tanks or other on-site water or wastewater systems are to be used in the subdivision.
- (2) The subdivision administrator shall submit the sketch plan to the planning board at least three days prior to the meeting at which it will be reviewed. The planning board shall review the sketch plan for general compliance with the requirements of this chapter and the zoning ordinance, chapter 66 of this Code; the planning board shall advise the subdivider or his authorized agent of the planning board's recommendation. The planning board shall approve, disapprove or table pending further review the sketch plan within 45 days after receipt of the sketch plan or the subdivider may apply to the board of commissioners for approval or disapproval.
- (3) One copy of the sketch plan shall be retained as part of the minutes of the planning board, and one copy shall be returned to the subdivider or his authorized agent. The planning board shall transmit the third copy of the sketch plan to the board of commissioners through the subdivision administrator. The board of commissioners shall review the sketch plan at its next regular meeting that follows at least seven days after the subdivision administrator's receipt of the sketch plan from the planning board. The board of commissioners shall approve, disapprove or table pending further review the sketch plan within 45 days after receipt of the plan; however, either the planning board or the board of commissioners may utilize an additional 45 days for the review process upon notification to the subdivider. (The total review process for the sketch plan shall not exceed 135 days.)

(b) *Final plat for minor subdivisions.*

- (1) Upon approval of the sketch plan by the board of commissioners, the subdivider may proceed with the preparation of the final plat in accordance with the requirements of this chapter.
- (2) The subdivider shall submit the final plat so marked to the subdivision administrator. If there are no deviations from the sketch plan, the subdivision administrator shall grant approval; otherwise, the subdivision administrator shall submit the final plat to the board of commissioners. The board of commissioners may transmit the final plat to the planning board at least three days prior to the meeting at which it will be reviewed.

- (3) The final plat shall be prepared by a registered land surveyor currently licensed and registered in the state by the state board of registration for professional engineers and land surveyors. The final plat shall conform to the provisions for plats, subdivisions and mapping requirements set forth in G.S. 47-30 and the Standards of Practice for Land Surveying in North Carolina.
- (4) Five copies of the final plat shall be submitted. Two of these shall be on reproducible material, and three shall be black or blue line paper prints. Material and drawing medium for the original shall be in accordance with the Standards of Practice for Land Surveying in North Carolina where applicable, and the requirements of the county register of deeds.
- (5) The final plat shall be of a size suitable for recording with the county register of deeds. Maps may be placed on more than one sheet with appropriate match lines. Submission of the final plats shall be accompanied by the currently required filing fee.
- (6) The final plat shall meet the specifications in sections 50-57 and 50-58.
- (7) The following signed certificates shall appear on all five copies of the final plat:

a. *Certificate of ownership and dedication.*

I hereby certify that I am the owner of the property shown and described hereon, which is located in the subdivision jurisdiction of the Town of Ocean Isle Beach and that I hereby adopt this plan of subdivision with my free consent and establish minimum building setback lines as noted.

<div style="border-bottom: 1px solid black; width: 100px; margin: 0 auto; margin-bottom: 5px;"></div> Date	<div style="border-bottom: 1px solid black; width: 100px; margin: 0 auto; margin-bottom: 5px;"></div> Owner
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b. *Certificate of survey and accuracy.*

In accordance with G.S. 47-30:

There shall appear on each plat a certificate by the person under whose supervision such survey or such plat was made, stating the origin of the information shown on the plat, including recorded deed and plat references shown on the plat. The ratio of precision before any adjustments must be shown. Any lines on the plat that were not actually surveyed must be clearly indicated and a statement included revealing the source of information. The execution of such certificate shall be acknowledged before any officer authorized to take acknowledgements by the registered land surveyor preparing the plat. All plats to be recorded shall be probated as required by law for the registration of deeds. Where a plat consists of more than one sheet, only one sheet must contain the certification; and all other sheets must be signed and sealed.

The required certificate shall include the source of information for the survey and data indicating the ratio of precision of the survey before adjustments and shall be in substantially the following form:

I _____, certify that this plat was drawn under my supervision from (an actual survey made under my supervision) (deed description recorded in book _____, page _____, etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in book _____, page _____; that the ratio of precision as calculated is 1: _____; that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, registration number and seal this _____ day of _____ / _____ / _____, A.D. 20 _____.

	_____ Surveyor
Seal or Stamp	
	_____ Registration Number

The certificate of the notary shall read as follows:

North Carolina, _____ County.

I, a notary public of the county and state aforesaid, certify that _____, a registered land surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this _____ day of _____ / _____ / _____, 20____.

	_____ Notary Public
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Seal—Stamp

My commission expires on _____ / _____ / _____.

- (8) The planning board shall review the final plat, if the board of commissioners requests a recommendation, and shall recommend approval, conditional approval with modifications to bring the plat into compliance, table pending further review, or disapproval of the final plat with reasons within 45 days of its first consideration of the final plat.
- (9) If the planning board recommends the approval of the final plat it shall transmit all copies of the plat and its written recommendations to the board of commissioners.
- (10) If the planning board recommends conditional approval of the final plat with modifications to bring the plat into compliance, it shall retain one print of the plat for its minutes, return its written recommendation and two reproducible copies of the plat to the subdivider, and transmit one print of the plat and its written recommendations to the board of commissioners.
- (11) If the planning board recommends disapproval of the final plat, it shall instruct the subdivider concerning resubmission of a revised plat; and the subdivider may make such changes as will bring the plat into compliance with the provisions of this chapter and resubmit the plat for reconsideration by the planning board, or appeal the decision to the board of commissioners.
- (12) Failure of the planning board to make a finding within 45 days after receipt of the final plat shall constitute grounds for the subdivider to apply to the board of commissioners for approval.

- (13) If the subdivider appeals to the board of commissioners, the board of commissioners shall review and approve or disapprove the final plat within 45 days after the plat has been received by the board of commissioners.
- (14) Either the planning board or the board of commissioners may utilize an additional 45 days for the review process, upon notification to the subdivider.
- (15) When the board of commissioners or the subdivision administrator approves the final plat, such approval shall be shown on each copy of the plat by the following signed certificate:

Certificate of Approval for Recording.

I hereby certify that the subdivision plat shown hereon has been found to comply with the subdivision regulations of the Town of Ocean Isle Beach, North Carolina, and that this plat has been approved by the board of commissioners for recording in the office of the register of deeds of Brunswick County.

<p>_____</p> <p>Date</p>	<p>_____</p> <p>Subdivision Administrator or Mayor</p> <p>Town of Ocean Isle Beach, North Carolina</p>
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- (16) If the final plat is disapproved by the planning board the reasons for such disapproval shall be stated in writing, specifying the provisions of this chapter with which the final plat does not comply. One copy of such reasons and one print of the plat shall be retained by the planning board as part of its proceedings; one copy of the reasons and three copies of the plat shall be transmitted to the subdivider. If the final plat is disapproved, the subdivider may make such changes as will bring the final plat into compliance and resubmit the plat for reconsideration by the planning board.
- (17) If the final plat is approved by the board of commissioners or the subdivision administrator, the original tracing and one print of the plat shall be retained by the subdivider. One reproducible tracing and one print shall be filed with the town clerk, and one print shall be returned to the planning board for its records.
- (18) The subdivider shall file the approved final plat with the register of deeds of the county prior to the sale of any lot within the subdivision.

(Code 1983, § 7-3-1; Ord. of 8-14-2001; Ord. of 12-13-2005(2), § 1; Ord. of 2-14-2006(3))

Sec. 50-55. - Sketch plan for major subdivisions.

(a) *Number of copies and contents.*

- (1) Prior to the preliminary plat submission, the subdivider shall submit to the subdivision administrator two copies of a sketch plan of the proposed subdivision containing the following information:
 - a. A sketch vicinity map showing the location of the subdivision in relation to neighboring tracts, subdivisions, roads and water areas;
 - b. The boundaries of the tract and the portion of the tract to be subdivided;
 - c. The total acreage to be subdivided;

- d. The existing and proposed uses of the land within the subdivision and the existing uses of land adjoining it;
 - e. The proposed street layout with approximate pavement and right-of-way widths, lot layout and size of lots;
 - f. The name and address of the owner, proof of ownership and, if applicable, a notarized letter from the owner designating the applicant as their agent;
 - g. The name, if any, of the proposed subdivision;
 - h. Streets and lots of adjacent developed or platted properties;
 - i. The zoning classification of the tract and of adjacent properties;
 - j. Building envelopes created by required setbacks; and
 - k. A statement from the county health department that a copy of the sketch plan has been submitted to them if septic tanks or other on-site water or wastewater systems are to be used in the subdivision.
- (2) An additional nine copies of sketch map shall be submitted in size not to exceed eight and one-half by 11 inches or 11 by 17 inches, for inclusion in the planning board packets.
- (b) *Submission and review procedure.*
- (1) The subdivision administrator shall submit the sketch plan to the planning board at least three days prior to the meeting at which it will be reviewed. The planning board shall review the sketch plan for general compliance with the requirements of this chapter and the zoning ordinance, chapter 66 of this Code; the planning board shall advise the subdivider or his authorized agent of the planning board's recommendation. The planning board shall approve, disapprove, or table pending further review, the sketch plan within 45 days after receipt of the sketch plan or the subdivider may apply to the board of commissioners for approval or disapproval.
 - (2) One copy of the sketch plan shall be retained as a part of the minutes of the planning board, and one copy shall be returned to the subdivider or his authorized agent. The planning board shall transmit the third copy of the sketch plan to the board of commissioners through the subdivision administrator. The board of commissioners shall review the sketch plan at its next regular meeting that follows at least seven days after the subdivision administrator's receipt of the sketch plan from the planning board. The board of commissioners shall approve, disapprove, or table pending further review the sketch plan within 45 days after receipt of the plan; however, either the planning board or the board of commissioners may utilize an additional 45 days for the review process, upon notification to the subdivider.

(Code 1983, § 7-3-1; Ord. of 8-14-2001; Ord. of 12-13-2005, § 2; Ord. of 2-14-2006(2))

Sec. 50-56. - Preliminary plat submission and review.

- (a) *Submission procedure.* For every subdivision within the territorial jurisdiction established by section 50-4 which does not qualify as a minor subdivision, the subdivider shall submit a preliminary plat, which shall be reviewed by the planning board and approved by the board of commissioners before any construction or installation of improvements may begin. Five copies of the preliminary plat (as well as nine copies not to exceed a size of eight and one-half inches or 11 by 17 inches for inclusion in the board of commissioners' agenda packets and any additional copies which the subdivision administrator determines are needed to be sent to other agencies) shall be submitted to the subdivision administrator. The subdivision administrator shall submit the preliminary plat to the planning board at least three days prior to the meeting at which it is to be reviewed. Preliminary plats shall meet the specifications in section 50-58.
- (b) *Review procedure.*

- (1) The planning board shall review the preliminary plat. The planning board shall, in writing, recommend approval, conditional approval with recommended changes to bring the plat into compliance, table pending review or disapproval, with reasons within 45 days of its receipt of the plat.
- (2) If the planning board recommends approval of the preliminary plat, it shall retain one copy of the plat for its minutes and transmit two copies of the plat, to the board of commissioners with its recommendation.
- (3) If the planning board recommends conditional approval of the preliminary plat, it shall keep one copy of the plat for its minutes, transmit two copies of the plat and its recommendation to the board of commissioners and return the remaining copy of the plat and its recommendation to the subdivider.
- (4) If the planning board recommends disapproval of the preliminary plat, it shall retain one copy of the plat for its minutes, transmit one copy of the plat and its recommendation to the board of commissioners, and return the remaining copy of the plat and its recommendation to the subdivider.
- (5) If the preliminary plat is recommended for disapproval, the subdivider may make the recommended changes and submit a revised preliminary plat or appeal the recommendation to the board of commissioners.
- (6) If the planning board does not take action as required in subsection (b)(1), within 45 days after its first consideration of the plat, the subdivider may apply to the board of commissioners for approval or disapproval.
- (7) The board of commissioners shall review the preliminary plat along with the recommendation of the planning board, if requested.
- (8) If the board of commissioners approves the preliminary plat, such approval shall be noted on two copies of the plat. One copy of the plat shall be retained by the board of commissioners, and one copy shall be returned to the subdivider. If the board of commissioners approves the preliminary plat with conditions, approval shall be noted on two copies of the plat, along with a reference to the conditions. One copy of the plat, along with the conditions, shall be retained by the board of commissioners; and one copy of the preliminary plat, along with the conditions, shall be returned to the subdivider. If the board of commissioners disapproves the preliminary plat, the reasons for such disapproval shall be specified in writing. One copy of the plat and the reasons shall be retained by the board of commissioners, and one copy shall be returned to the subdivider.
- (9) The board of commissioners shall approve or disapprove or table pending further review of the preliminary plan within 45 days.
- (10) Either the planning board or the board of commissioners may utilize an additional 45 days for the review process, upon notification to the subdivider.

(Code 1983, § 7-3-1; Ord. of 8-14-2001; Ord. of 2-14-2006(2))

Sec. 50-57. - Final plat submission and review.

- (a) *Preparation of final plat and installation of improvements.* Upon approval of the preliminary plat by the board of commissioners, the subdivider may proceed with the preparation of the final plat, and the installation of or arrangement for required improvements in accordance with the approved preliminary plat and the requirements of this chapter. Prior to approval of a final plat, the subdivider shall have installed the improvements specified in this chapter or guaranteed their installation as provided in this section. No final plat will be accepted for review by the board of commissioners unless accompanied by written notice by the subdivision administrator acknowledging compliance with the improvement and guarantee standards of this chapter and proof that all necessary permits

have been obtained from all applicable federal, state and local agencies. The final plat shall constitute only that portion of the preliminary plat which the subdivider proposes to record and develop at that time; such portion shall conform to all requirements of this chapter.

(b) *Improvements guarantee.*

(1) *Agreement and security required.* In lieu of requiring the completion, installation and dedication of all improvements within a phase of development prior to final plat approval, the town may enter into an agreement with the subdivider whereby the subdivider shall agree to complete all required improvements. Once the agreement is signed by both parties and the security required in this subsection is provided, the final plat may be approved by the board of commissioners if all other requirements of this chapter are met. To secure this agreement, the subdivider shall provide, subject to the approval of the board of commissioners, either one or a combination of the following guarantees not exceeding 1.25 times the entire estimated cost as provided in this section:

a. *Surety performance bond.* The subdivider shall obtain a performance bond from a surety bonding company authorized to do business in the state. The bonds shall be payable to the town and shall be in an amount equal to 1.25 times the entire cost, as estimated by the subdivider's engineer and approved by the board of commissioners, of installing all required improvements. The duration of the bond shall be until such time as the improvements are accepted by the town.

b. *Cash or equivalent security.*

1. The subdivider shall deposit cash, an irrevocable letter of credit or other instrument readily convertible into cash at face value, either with the town or in escrow with a financial institution designated as an official depository of the town. The use of any instrument other than cash shall be subject to the approval of the board of commissioners. The amount of deposit shall be equal to 1.25 times the cost, as estimated by the subdivider's engineer and approved by the board of commissioners, of installing all required improvements.

2. If cash or other instrument is deposited in escrow with a financial institution as provided in subsection (b)(1)b.1. of this section, the subdivider shall file with the board of commissioners an agreement between the financial institution and himself guaranteeing the following:

i. That the escrow account shall be held in trust until released by the board of commissioners and may not be used or pledged by the subdivider in any other matter during the term of the escrow; and

ii. That in the case of a failure on the part of the subdivider to complete the improvements, the financial institution shall, upon notification by the board of commissioners, and submission by the board of commissioners to the financial institution of an engineer's estimate of the amount needed to complete the improvements, immediately either pay to the town the funds estimated to complete the improvements, up to the full balance of the escrow account, or deliver to the town any other instruments fully endorsed or otherwise made payable in full to the town.

(2) *Default.* Upon default, meaning failure on the part of the subdivider to complete the required improvements in a timely manner as spelled out in the performance bond or escrow agreement, the surety or the financial institution holding the escrow account shall, if requested by the board of commissioners, pay all or any portion of the bond or escrow fund to the town up to the amount needed to complete the improvements based on an engineering estimate. Upon payment, the board of commissioners, in its discretion, may expend such portion of the funds as it deems necessary to complete all or any portion of the required improvements. The town shall return to the subdivider any funds not spent in completing the improvements.

- (3) *Release of guarantee.* The board of commissioners may release all or a portion of any security posted as the improvements are completed and recommended for approval by the director of public utilities within 45 days after receiving the director of public utilities' recommendations.
 - (4) *Security guarantee renewal.* The board of commissioners may approve the renewal of any security posted. The renewal submissions shall be made to the board of commissioners at least 60 days prior to the guarantee expiring. All other guaranteed improvements including the sub-layer and one layer of asphalt with a minimum thickness of one inch shall be installed at the time the certificate of occupancy (CO) is issued. All streets shall conform to section 50-95. COs may be issued prior to the top finished layer of asphalt being installed if an approved security guarantee is in place. The top finished layer shall be installed prior to 75 percent completion of the entire development or any phase of the development.
- (c) *Submission procedure.*
- (1) The subdivider shall submit the final plat, so marked, to the subdivision administrator. The subdivision administrator may approve the final plat if no deviations have been made from the preliminary plat; otherwise the subdivision administrator shall submit the final plat to the board of commissioners. The board of commissioners may transmit the final plat to the planning board for review and recommendation at least seven days prior to the meeting at which it is to be considered.
 - (2) The final plat shall be prepared by a registered land surveyor currently licensed and registered in the state by the state board of registration for professional engineers and land surveyors. The final plat shall conform to the provisions for plats, subdivisions and mapping requirements set forth in G.S. 47-30 and the Standards of Practice for Land Surveying in North Carolina.
 - (3) Five copies of the final plat shall be submitted. Two of these shall be on reproducible material, and three shall be black or blue line paper prints. Material and drawing medium for the original shall be in accordance with the Standards of Practice for Land Surveying in North Carolina, where applicable, and the requirements of the county register of deeds.
 - (4) The final plat shall be of a size suitable for recording with the county register of deeds. Maps may be placed on more than one sheet with appropriate match lines. Submission of the final plat shall be accompanied by the currently required filing fee.
 - (5) The final plat shall meet the specifications in section 50-58.
 - (6) The following signed certificates shall appear on all five copies of the final plat:
 - a. *Certificate of ownership and dedication.*

I hereby certify that I am the owner of the property shown and described hereon, which is located in the subdivision jurisdiction of the Town of Ocean Isle Beach and that I hereby adopt this plan of subdivision with my free consent, establish minimum building setback lines, and dedicate all streets, walks, parks, and other sites and easements to public or private use as noted. Furthermore, I hereby dedicate all sanitary sewer, storm sewer and water lines to the Town of Ocean Isle Beach.

	_____ Owners
_____ Date	

b. *Certificate of survey and accuracy.*

In accordance with G.S. 47-30:

There shall appear on each plat a certificate by the person under whose supervision such survey or such plat was made, stating the origin of the information shown on the plat, including recorded deed and plat references shown on the plat. The ratio of precision before any adjustments must be shown. Any lines on the plat that were not actually surveyed must be clearly indicated and a statement included revealing the source of information. The execution of such certificate shall be acknowledged before any officer authorized to take acknowledgements by the registered land surveyor preparing the plat. All plats to be recorded shall be probated as required by law for the registration of deeds. Where a plat consists of more than one sheet, only one sheet must contain the certification; and all other sheets must be signed and sealed.

The required certificate shall include the source of information for the survey and data indicating the ratio of precision of the survey before adjustments and shall be in substantially the following form:

I _____, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in book _____, page _____, etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in book _____, page _____; that the ratio of precision as calculated is 1: _____; that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, registration number, and seal this _____ day of _____ / _____ / _____, A.D., 20 _____.

	_____ Surveyor
Seal or Stamp	_____ Registration Number

The certificate of the notary shall read as follows:

North Carolina, _____ County.

I, a notary public of the county and state aforesaid, certify that _____, a registered land surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this _____ day of _____ / _____ / _____, 20 _____.

Notary Public

Seal or Stamp

My commission expires on _____ / _____ / _____.

- c. *Certificate of approval of the design and installation of streets, utilities, and other required improvements.*

☐ I hereby certify that water and sewer improvements have been certified by the Design Engineer, that streets, water and sanitary sewer improvements have been accepted by the Director of Public Works and that other improvements have been installed as designed and approved by Town and regulatory agencies in the _____ subdivision.

OR

☐ That guarantees of the installation of the required improvements in an amount and manner satisfactory to the Town of Ocean Isle Beach has been received;

And

☐ That the filing fee, as established in the fee schedule, has been paid.

	_____ Subdivision Administrator
_____ Date	

- (7) The planning board may review the final plat, upon request of the board of commissioners, if it deviates from the preliminary plat and shall recommend approval, conditional approval with modifications to bring the plat into compliance, table pending review, or disapproval of the final plat with reasons within 45 days of receipt of the plat.
- (8) If the planning board recommends approval of the final plat, it shall transmit all copies of the plat and its written recommendations to the board of commissioners.
- (9) If the planning board recommends conditional approval of the final plat with modifications to bring the plat into compliance, it shall retain one print of the plat for its minutes, return its written recommendations and two reproducible copies of the plat to the subdivider, and transmit one print of the plat and its written recommendations to the board of commissioners.
- (10) If the planning board recommends disapproval of the final plat, it shall instruct the subdivider concerning resubmission of a revised plat; and the subdivider may make such changes as will bring the plat into compliance with the provisions of this chapter and resubmit the plat for reconsideration by the planning board, or appeal the decision to the board of commissioners.
- (11) Failure of the planning board to make a finding within 45 days shall constitute grounds for the subdivider to apply to the board of commissioners for approval.
- (12) If the subdivider appeals to the board of commissioners, the board of commissioners shall review, approve or disapprove pending further review the final plat within 45 days after the plat has been received by the subdivision administrator.
- (13) If the subdivision administrator or the board of commissioners approves the final plat, such approval shall be shown on each copy of the plat by the following signed certificate:

Certificate of approval for recording.

I hereby certify that the subdivision plat shown hereon has been found to comply with the subdivision regulations of the Town of Ocean Isle Beach, North Carolina, and that this plat has been approved by the board of commissioners for recording in the Office of the Register of Deeds of Brunswick County.

	<p style="text-align: center;">_____ Subdivision Administrator or Mayor Town of Ocean Isle Beach, North Carolina</p>
<p style="text-align: center;">_____ Date</p>	

- (14) If the final plat is disapproved, the reasons for such disapproval shall be stated in writing, specifying the provisions of this chapter with which the final plat does not comply. One copy of such reasons and one print of the plat shall be retained by the planning board as part of its proceedings, and one copy of the reasons and three copies of the plat shall be transmitted to the subdivider. If the final plat is disapproved, the subdivider may make such changes as will bring the final plat into compliance and resubmit the plat for reconsideration by the planning board.
- (15) If the final plat is approved by the planning board, the original tracing and one print of the plat shall be retained by the subdivider. One reproducible tracing and one print shall be filed with the town clerk, and one print shall be returned to the planning board for its records.
- (16) Either the planning board or the board of commissioners may utilize an additional 45 days for the final plat review process, upon notification to the subdivider.
- (17) The subdivider shall file the approved final plat with the register of deeds of the county prior to the sale of any lot within the subdivision.

(Code 1983, § 7-3-1; Ord. of 8-14-2001; Ord. of 12-13-2005(3), §§ 3, 4; Ord. of 2-14-2006(2); Res. No. 2010-16, § 1, 8-10-2010; Res. No. 2010-17, § 1, 8-10-2010)

Sec. 50-58. - Information to be contained in or depicted on preliminary and final plats.

The preliminary and final plats shall depict or contain the information indicated in the table of required information, which may be modified from time to time. A copy of the current table shall be available at the office of the town clerk and the planning department.

- (a) *Required for preliminary and final plat.* The names, addresses and telephone numbers of all owners, registered land surveyors, land planners, architects, landscape architects and professional engineers for the subdivision.
- (b) *Required for final plat.* Where land-disturbing activity is an acre or more in size, a copy of the erosion control plan approved by the appropriate state agency shall be provided prior to submittal of a final plat for approval.
- (c) *Required for preliminary plat.* Topographic maps with contour intervals of no greater than two feet at a scale of no less than one inch equals 100 feet.
- (d) *Required for preliminary and final plat.* 404 wetland areas as determined by the Wilmington District of the U.S. Army Corp of Engineers.

(Code 1983, § 7-3-1; Ord. of 12-13-2005(3), §§ 5, 6)

Sec. 50-59. - Recombination of land.

- (a) Any plat or any part of any plat may be vacated by the owner at any time before the sale of any lot in the subdivision by a written instrument to which a copy of such plat shall be attached, declaring the plat to be vacated.
- (b) Such an instrument shall be approved by the same agencies as approved the final plat. The board of commissioners may reject any such instrument which abridges or destroys any public rights in any of its public uses, improvements, streets or alleys.
- (c) Such an instrument shall be executed, acknowledged or approved and recorded and filed in the same manner as a final plat, and being duly recorded or filed shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys and public grounds, and all dedications laid out or described in such plat.
- (d) When lots have been sold, the plat may be vacated in the manner provided in subsections (a) through (c) of this section by all owners of the lots in such plat joining in the execution of such writing.

(Code 1983, § 7-3-1)

Sec. 50-60. - Resubdivision procedures.

For any replatting or resubdivision of land, the same procedures, rules and regulations shall apply as prescribed in this article for an original subdivision.

(Code 1983, § 7-3-1)

Secs. 50-61—50-90. - Reserved.

ARTICLE III. - REQUIRED IMPROVEMENTS, DEDICATION, RESERVATION, MINIMUM STANDARDS OF DESIGN

Sec. 50-91. - Generally.

Each subdivision shall contain the improvements specified in this article, which shall be installed in accordance with the requirements of this chapter and paid for by the subdivider unless other means of financing is specifically stated in this chapter. Land shall be dedicated and reserved in each subdivision as specified in this article. Each subdivision shall adhere to the minimum standards of design established by this article.

(Code 1983, § 7-3-1)

Sec. 50-92. - Suitability of land.

- (a) *CAMA considerations.* All lots, structures and utilities shall comply with applicable local and state CAMA regulations.
- (b) *Flood damage prevention.* All lots, structures and utilities shall comply with chapter 30.

(Code 1983, § 7-3-1; Ord. of 5-9-2006(1), § 1A)

Sec. 50-93. - Name duplication.

The name of the subdivision shall not duplicate nor closely approximate the name of an existing subdivision within the county.

(Code 1983, § 7-3-1)

Sec. 50-94. - Subdivision design.

(a) *Blocks.*

- (1) The lengths, widths and shapes of blocks shall be determined with due regard to:
 - a. Provision of adequate building sites suitable to the special needs of the type of use contemplated;
 - b. Zoning requirements;
 - c. Needs for vehicular and pedestrian circulation;
 - d. Control and safety of street traffic;
 - e. Limitations and opportunities of the natural environment; and
 - f. Convenient access to water areas.
- (2) Where deemed necessary by the board of commissioners, a pedestrian crosswalk may be required to provide convenient public access to the oceanfront or estuarine area. Furthermore, where deemed necessary by the board of commissioners, pedestrian and bike facilities may be required to promote safety and the use of alternative modes of transportation.

(b) *Lots.*

- (1) All lots in new subdivisions shall conform to the zoning requirements of the district in which the subdivision is located. Conformance to zoning requirements means, among other things, that the smallest lot in the subdivision must meet all dimensional requirements of the zoning ordinance, chapter 66.
- (2) Lots with septic tanks shall meet any applicable county health department requirements.

(c) *Easements.* Easements shall be provided as follows:

(1) *Utility easements.*

- a. Easements for underground or aboveground utilities shall be provided, where necessary, across lots or centered on rear or side lot lines and as required by the companies involved, for telephone lines, power lines, and water and sewer lines.
- b. The director of public utilities will determine whether one easement is sufficient or whether several easements are necessary to accommodate the various facilities, and the subdivider shall provide the required easements.
- c. Easements provided for water and sewer lines shall be located so that the paved portion of the street does not cover any portion of the easement area, except for the provision of service to parcels on the opposite side of the street and lateral crossovers.

- (2) *Drainage easements.* Where a subdivision is traversed by a natural or constructed drainageway, an easement shall be provided conforming with the lines of such drainageway and of sufficient width as determined by the director of public utilities.

(d) *Residential green space requirement.* Green space requirements are applicable only in residential subdivisions. A minimum of 15 percent of the gross acreage shall be reserved as green space. Any area or segment of a green space less than 50 feet in width cannot be calculated as usable green

space. Green space areas shall not include wetlands or any other areas that have been determined to be ecologically sensitive. Provisions for continuous maintenance of green space set aside in accordance with the above regulations shall be made by the developer through establishment of a private homeowner's association or, in the case of commercial subdivisions, a private property owner's association. Open areas that are required as part of a stormwater control device or septic system area shall not be included as provision of green space for the purpose of meeting the requirements of this section. However any part of the stormwater system that is completely underground can be considered when calculating the residential green space requirement. Green space shall not be improved with the placement of any structures including, but not limited to, gazebos, walkways, boardwalks or any impervious surfaces. Required project buffers and setbacks shall not be included in the green space calculation.

(Code 1983, § 7-3-1; Ord. of 8-14-2001; Ord. of 5-9-2006(1), §§ 1B—1D; Ord. of 7-11-2006(2), § 4; Res., No. 2008-17, § 2, 6-10-2008)

Sec. 50-95. - Streets.

(a) *Type of streets required.*

- (1) All subdivision lots shall abut on a public or private street. All new subdivision streets created pursuant to this chapter shall be constructed so that they qualify for acceptance either by the town or the NCDOT, and shall be offered for dedication to the town or NCDOT upon completion. A written maintenance agreement with provisions for maintenance of the street until it is put on the state system shall be included with the final plat.
- (2) Private streets or driveways are allowed only within planned unit developments, either within the town or the town's extraterritorial jurisdiction area, or within subdivisions on the island that contain ocean hazard areas. Any street or street system located within subdivisions that include land denominated "ocean hazard areas" shall not be accepted by the town as a part of the public street system and should not be offered for dedication.

(b) *Subdivision street disclosure statement.* All streets shown on the final plat shall be designated in accordance with G.S. 136-102.6, and designation as public shall be conclusively presumed an offer of dedication to the public. Where streets are dedicated to the public but not accepted into a municipal or the state system, before lots are sold, a statement explaining the status of the street shall be included with the final plat.

(c) *Access to adjacent properties.* Where in the opinion of the board of commissioners it is necessary to provide for street access to an adjoining property, proposed streets shall be extended by dedication to the boundary of such property and a temporary turnaround provided.

(d) *Nonresidential streets.* The subdivider of a nonresidential subdivision shall provide streets in accordance with I.F-4 of the North Carolina Roads, Minimum Construction Standards, July 1, 1985, and the standards in this chapter, whichever are stricter in regard to each particular item.

(e) *Design standards.* The design of all streets and roads within the jurisdiction of this chapter shall be in accordance with the accepted policies of the state department of transportation, division of highways, as taken or modified from the American Association of State Highway Officials (AASHO) manuals. The state department of transportation, division of highways' subdivision roads minimum construction standards, most current revision, shall apply for any items not included in this chapter, or where stricter than this chapter.

(1) *Right-of-way widths.*

- a. In the extraterritorial area of the town, all streets except those in planned unit developments, shall be public rights-of-way and shall conform to NCDOT standards, or the standards of this chapter, whichever are stricter.

- b. Inside the corporate limits all new streets shall have a minimum ROW of 60 feet for two-way traffic and 30 feet for one-way traffic. Cul-de-sac street turnarounds shall have a minimum 50-foot turn radius.
 - c. Reserved.
- (2) *Street widths.*
 - a. For all new streets, the minimum pavement width shall be 20 feet for two-way streets and 12 feet for one-way traffic.
 - b. Streets that are to be accepted into the NCDOT system must comply with the NCDOT standards.
 - c. Reserved.
- (f) *Other requirements.*
 - (1) *Sidewalks.* Sidewalks shall be required by the board of commissioners on one or both sides of the street in areas likely to be subject to heavy pedestrian traffic. Such sidewalks shall be constructed to NCDOT standards. All sidewalks shall be placed in the right-of-way unless the sidewalk is part of the residential green space provision as required by these regulations.
 - (2) *Street names.* Proposed streets which are obviously in alignment with existing streets shall be given the same name. In assigning new names, duplication of existing names shall be avoided; and in no case shall the proposed name be phonetically similar to existing names in the Brunswick County 911 system, irrespective of the use of a suffix such as street, road, drive, place, court, etc. Street names shall be shown on the preliminary and final plat, subject to the approval of the board of commissioners.

(Code 1983, § 7-3-1; Ord. of 8-14-2001; Ord. of 11-9-2004, § 2; Ord. of 12-13-2005(2), §§ 2, 3; Ord. of 4-11-2006(1), §§ 1, 2; Ord. of 5-9-2006(1), §§ 1B, 1E—1L)

Sec. 50-96. - Utilities.

- (a) *Water and sanitary sewer systems.*
 - (1) Each lot in all subdivisions within the corporate limits of the town shall be provided, at the subdivider's expense, with an extension of the municipal water and sanitary sewer systems in full accord with sections 58-38 and 58-156.
 - (2) All lots in subdivisions not connected to municipal or county water and/or sanitary sewer systems must have a suitable source of water supply and sanitary sewage disposal that complies with the regulations of the agencies having jurisdiction.
 - (3) Provision of fire hydrants and fire control devices shall be installed as required by the director of public utilities based on consultation with the town fire chief.
- (b) *Stormwater drainage system.*
 - (1) The subdivider shall provide a surface water drainage system which shall comply with the requirements of the town's stormwater management ordinance in full accord with article II, mandatory standards, sections 49-32 and 49-38 or the applicable NCDOT stormwater rules, whichever is more restrictive.
 - (2) Stream banks and channels downstream from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity in accordance with the state sedimentation pollution control act, G.S. 143-34.12, 113A-50 et seq. and 15 NCAC 4.
 - (3) In all areas of special flood hazards, all subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

- (4) Reserved.
- (c) *Underground wiring.*
 - (1) All subdivisions shall have underground wiring.
 - (2) Such underground wiring shall be installed in accordance with the standards of the town and the electric utility company providing a service. The subdivider shall be required to pay the charges for installation of the underground service, which charges will be made in accordance with the then-effective underground electric service plan as filed with the state utilities commission.
- (d) *Repair and replacement of utilities.* Prior to recording the final plat for any subdivision, the subdivider shall provide the town with a letter of acceptance of responsibility for repairs to any privately owned encumbrances (streets, sidewalks, driveways, etc.) that may be damaged during maintenance, repair or replacement of utilities. Said letter shall identify the responsible party or parties to the satisfaction of the director of public utilities.

(Code 1983, § 7-3-1; Ord. of 7-11-2000(2); Ord. of 8-14-2001; Ord. of 9-9-2003(3), §§ 1, 2)

Cross reference— Utilities, ch. 58.

Sec. 50-97. - Recreation facility requirements.

The board of commissioners may require the dedication of public recreational facilities such as beach or estuarine access facilities as a condition to the approval of any subdivision.

(Code 1983, § 7-3-1)

Sec. 50-98. - Other requirements.

- (a) *Placement of monuments.*
 - (1) Unless otherwise specified by this chapter, the Manual of Practice for Land Surveying as adopted by the state board of registration for professional engineers and land surveyors, under the provisions of 21 NCAC 56, shall apply when conducting surveys and placement of monuments, control corners, markers and property corner ties; to determine the location, design and material of monuments, markers, control corners and property corner ties; and to determine other standards and procedures governing the practice of land surveying for subdivisions.
 - (2) Permanent benchmarks must be located within 1,000 feet of the subdivision.
 - (3) The licensed engineer, whose services are paid for by the developer or owner of the property, will inspect utility construction and shall certify to the town and state agencies that the installation has been in full accord with approved plans and specification. The town shall be permitted access to all utility construction during the construction phase so that it may independently check on the progress of construction.
- (b) *Construction procedures.* Construction procedures as set forth in section 50-57 must be met.
- (c) *Oversized improvements.* The town may require installation of certain oversized utilities or the extension of utilities to adjacent property when it is in the interest of future development. If the town requires the installation of improvements in excess of the standards required in this chapter, including all standards adopted by reference, the town shall pay the cost differential between the improvement required and the standards in this chapter. The town may recoup this cost through reimbursement by development interests when such additional capacity is used by adjoining subdivisions and/or planned unit developments.

- (d) *Buffers for commercial subdivisions.* A distinct buffer that separates and partially obstructs the view between single-family and commercial or between single-family and multi-family uses by a minimum of 50 percent is required. (A buffer for the purposes of this use shall be considered as natural or planted vegetation located between a structure and a property line intended to separate and partially obstruct the view of two adjacent land uses or properties from one another.)
- (e) *Wetlands.* Ecologically sensitive lands such as marsh, Carolina Bays, pocosins and swamps are to be preserved whenever possible for the public interest. Density credit may be applied to these areas upon approval of the planning board and board of commissioners as long as such areas are granted as perpetual conservation easements.

(Code 1983, § 7-3-1; Ord. of 8-14-2001; Ord. of 2-8-2005, § 1; Res. No. 2009-19, § 2, 7-14-2009)

Secs. 50-99—50-114. - Reserved.

ARTICLE IV. - SANITARY SEWER ALLOCATION

Sec. 50-115. - Policy.

- (1.1) The town shall proceed with enforcing the existing rules, regulations, ordinances, permits and reviews of subdivision procedures.
- (1.2) The town shall develop, with the review and approval of the appropriate state regulatory bodies a sanitary sewer allocation program that will provide for orderly growth to continue during planning, construction and implementation of necessary facilities to protect the health, safety and welfare of the citizens of the town.
- (1.3) Projects with approved plats, site plans and/or final zoning approval from the town will have six months from the date of final zoning approval to have their project substantially under way. If they fail to do so they risk the loss of sewer allocation. Substantial[ly] under way is defined as the complete installation of streets, water, sewer and stormwater utilities and/or approved permit(s) from all appropriate state agencies.
- (1.4) The town has prepared and planned for preliminary wastewater improvements needed to continue our orderly growth. Three phases have been prioritized as follows:
 - 1. Additions to spray fields;
 - 2. Additions to treatment plant;
 - 3. Additions to collection system.

(Ord. of 8-17-2005, § 1.0; Res. of 9-20-2005, § 1.0)

Sec. 50-116. - Procedure.

- (2.1) The sewer allocation formula set forth herein is based upon the goal of achieving a maximum day demand coverage. The town shall develop a wastewater allocation formula with due consideration of the following:
 - 1. Planning status of subdivisions;
 - 2. Preliminary flow allocation volume;
 - 3. Schedule of estimated time of final utility plans, construction permit approval and completion of construction improvements;
 - 4. Marketing program of subdivision lots.

(2.2) The wastewater allocation formula shall include three categories of wastewater allocations: residential, commercial and discretionary. The available allocation shall be divided as follows:

Residential—75 percent

Commercial—15 percent

Discretionary—10 percent

Example (1) 2.2.1 The available wastewater allocation for each category (residential, commercial and discretionary) shall be determined by multiplying the total available allocation by 75 percent, 15 percent and 10 percent.

Example (2) 2.2.2 The available allocations for each fiscal year shall be determined by multiplying 2.2.1 numbers by 40 percent for each category.

Example (3) 2.2.3 The yearly allocation volume shall be determined by multiplying the developers total project needs by 33.3 percent.

(2.3) Example wastewater allocation

(1) *Available wastewater allocation: 153,430 gallons.*

Residential	153,430 gal.	x	75%	=	115,073
Commercial	153,430 gal.	x	15%	=	23,015
Discretionary	153,430 gal.	x	10%	=	15,343

(2) *Available to issue each year.*

Residential	115,073	x	40%	=	46,029
Commercial	23,015	x	40%	=	9,206
Discretionary	15,343	x	40%	=	6,137

(3) *Developers' preliminary needs.*

Total Project			Yearly Allocation		
S/D #1	93,120 gallons	x	.333	=	31,009
S/D #2	44,640 gallons	x	.333	=	14,865

S/D #3	<u>14,400</u> gallons	x	.333	=	<u>4,795</u>
TOTAL	152,160 gallons				50,669 gallons

(4) *Available units/year.*

	Total	Yearly
S/D #1	194	65
S/D #2	93	31
S/D #3	30	10

(Ord. of 8-17-2005, § 2.0; Res. of 9-20-2005, § 2.0)

Sec. 50-117. - Accounting and monitoring allocations.

(3.1) Developer shall proceed with obtaining state and town permits for the full wastewater collection system improvements. The town will calculate the annual volume of wastewater allotment for the project. The issuance of building permits will be limited to the calculated annual units available of the development project. Sale of lots may therefore be restricted to some extent. Building permits and certificates of occupancy will therefore be monitored and limited to the annual approved allocations. Sewer demand should not exceed the town's total sewer capacity.

(Ord. of 8-17-2005, § 3.0; Res. of 9-20-2005, § 3.0)

Chapter 54 - TRAFFIC AND VEHICLES^{[1](#)}

Footnotes:

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Cross reference— Offenses and miscellaneous provisions, ch. 38; transportation of garbage and refuse, § 46-7; littering from vehicles, § 46-42; traffic hazards and sign illumination, § 66-235.

State Law reference— Motor vehicles, G.S. ch. 20; power of local authorities, G.S. 20-169; municipal traffic control generally, G.S. 160A-300 et seq.

ARTICLE I. - IN GENERAL

Sec. 54-1. - Traffic and parking regulation ordinance.

Town traffic and parking regulations will be established by ordinance of the board of commissioners. When a new traffic or parking ordinance is adopted, the chief of police shall make certain that the appropriate signs, traffic control signals, or other markings are made to give proper notice of the regulation.

(Code 1983, § 5-1-1)

Sec. 54-2. - Obedience to police officials.

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer.

(Code 1983, § 5-1-2)

Sec. 54-3. - Vehicle decals.

- (a) All motor vehicles operated within the town, by residents and/or property owners of the town, shall be required to permanently display a vehicle decal in order to gain re-entry to the island in the event of an emergency. The purpose of these decals is to protect and ensure the general safety of property owners and their property and to allow access for owners to inspect their property once re-entry is authorized. Limiting the amount of traffic on the island after a voluntary or mandatory evacuation allows town officials to properly inspect infrastructure/utilities for damage, appropriately contain any major safety hazards, and begin clearing debris from roads. It is the intent of the town to strictly limit the entry of sight-seers and the general public.
- (b) In the event of an extended power outage, the bridge will remain closed until power is restored and normal sewer operations can resume.
- (c) Re-entry to island after an evacuation will be accomplished in four levels:
 - Stage 1 - Only damage assessment team and town personnel.
 - Stage 2 - Businesses and property owners with decals.
 - Stage 3 - Contractors with decals.
 - Stage 4 - Normal traffic.
- (d) Decals will be issued and shall remain valid for the calendar year in which they were issued.

- (e) Owners of improved property will be mailed five decals within the first quarter of each year. Properties that have multiple owners should designate which of the owners will receive these decals and distribute accordingly. It is the property owner's responsibility to distribute decals to their long-term rental clients and/or property caretakers from the original allotment of five decals. Once these decals are mailed, town hall will send out push notifications by email, website, and TV Government Channel, etc. to alert property owners that decals have been mailed. It is the responsibility of the property owner to assure that he/she receives their decals. If decals are not received, property owner should contact town hall to discuss replacement procedures. Unless returned by U.S. Postal service, the town will assume decals were delivered successfully. Decals which are lost or misplaced will not be reissued.
- (f) Businesses with storefronts located in the city limits may purchase a maximum of ten decals per calendar year at a rate of \$10.00 per decal. Contractors may purchase a maximum of five decals at a rate of \$20.00 per decal.
- (g) Persons who purchase property following the end of the first quarter of each calendar year may obtain their decals by visiting town hall after their closing proceedings or decals will be mailed once tax records are updated. If you do not receive your decals, please contact town hall.
- (h) Decals must be permanently affixed to the property owner's chosen vehicle(s) prior to entering a roadblock in order to eliminate the transferring of decals from one person to another and to expedite access. Decals should be displayed in the lower left-hand corner (driver's side) of the windshield.

(Code 1983, § 5-1-8; Ord. of 2-20-2001; Ord. of 8-10-2004, § 1; Res. No. [2017-01](#), § 1, 2-14-2017)

State Law reference— General municipal vehicle tax authorized, G.S. 20-97(b).

Sec. 54-4. - Criminal penalty.

In accordance with G.S. 160A-175 unless otherwise stated, violation of any provision of this chapter shall be a misdemeanor as provided in G.S. 14-4 punishable upon conviction in accordance with section 1-6.

(Code 1983, § 5-1-7)

Secs. 54-5—54-40. - Reserved.

ARTICLE II. - OPERATION [\[2\]](#)

Footnotes:

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State Law reference— Authority to regulate the operation of vehicles and rules of the road, G.S. 20-138 et seq.

Sec. 54-41. - Trucks prohibited on certain streets.

- (a) It shall be unlawful to drive any truck that weighs in excess of 1½ tons other than a private pickup vehicle used for passenger travel on East Second Street within the town. Trucks may make

deliveries to houses and lots on East Second Street, but only for distances of one block. Access may be obtained from connector streets running north from East First Street.

- (b) East Second Street shall be designated and posted "No Truck Through Traffic."

(Code 1983, § 5-1-5)

Sec. 54-42. - Roller skates, in-line skates, skateboards and scooters are prohibited in certain areas.

- (a) It shall be unlawful to use the streets within the town for roller skating, in-line skating, skateboarding or motorized scooters.
- (b) It shall be unlawful to use the sidewalks within the town for any motorized scooter or motorized vehicle other than motorized equipment utilized by a disabled person.
- (c) The penalty for violation of this section is as provided in section 54-4.

(Code 1983, § 5-1-6; Amend. of 4-12-2005, § 4)

Secs. 54-43—54-70. - Reserved.

ARTICLE III. - PARKING, STOPPING AND STANDING^[3]

Footnotes:

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Cross reference— Off-street parking requirements, § 66-131 et seq.; off-street loading and unloading, § 66-201 et seq.

State Law reference— Authority to regulate parking generally, G.S. 160A-301.

Sec. 54-71. - Vehicular parking.

- (a) *Parking in the street right-of-way.* It shall be unlawful to park or leave standing any vehicle, whether attended or unattended, upon the paved or maintained surface of the road. No person shall block any sidewalk by obstructing the same so that it is impossible for a pedestrian to travel along the sidewalk.
- (b) Vehicles shall not be permitted to park in any beach access or any municipal designated parking areas, between the hours of midnight and 6:00 a.m.
- (c) Any vehicle in violation of subsections (a) and (b) of this section may be, at the discretion of the officer on duty, removed to an area designated by the board of commissioners for storage. If such vehicle is removed, any cost incurred in removing it shall be charged to and collected from the owner or person in whose possession the vehicle was invested at such time; and the charge shall be collected prior to the release by the town. The cost incurred by the town in having the vehicle removed shall be charged and held against the vehicle. In addition, the current daily charge for storage of such vehicle while in possession of the town shall be collected at such time as the vehicle is released.
- (d) The term "vehicle" means every device in, upon or by which any person or item of property may be transported or drawn upon a highway by mechanical means.

- (e) Any person violating any provision of this section shall be fined the sum of \$25.00 for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(Code 1983, § 5-1-3; Ord. of 10-9-2001, § 1; Ord. of 2-12-2002(2), § 1; Ord. of 8-13-2002(2); Ord. of 3-9-2004(2), § 1; Ord. of 4-13-2004(2), § 1)

Sec. 54-72. - Beach vehicular traffic.

- (a) It shall be unlawful to operate any automobile, off-road vehicle, motorcycle, wind-powered, battery-powered, or motor-powered vehicle, or other vehicle (including but not limited to bicycles, tricycles, golf carts, dune buggies) on the beaches and the dune areas of the town; however, individuals may operate bicycles on the beach strand from a period from October 1 through April 30 of each calendar year.
- (b) The provisions of this section shall not apply to municipal employees, municipal vehicles or their drivers who may be required to enter upon the beach in the performance of their duties; nor shall this section apply to a governmental agency, its employees, agents, contractors and subcontractors, and their vehicles when engaged in beach restoration or protection work.

(Code 1983, § 5-1-4)

Sec. 54-73. - Motor homes, travel trailers and campers.

- (a) No motor home, travel trailer or camper (hereinafter referred to as "vehicle") shall be parked on the island except to accommodate loading and unloading not to exceed a period of seven days. No motor home, travel trailer or camper vehicles shall be connected by electrical cord or jump cord into the power source of any existing permanent structure or structure under construction except in the event of a state of emergency as is declared by public officials.
- (b) Any vehicle in violation of this section, at the discretion of the officer on duty, may be removed to any area designated by the board of commissioners for storage. If such vehicle is removed any cost incurred in removing it shall be charged to and collected from the owner or person in whose possession the vehicle was invested at such time; and the charge shall be collected prior to the release by the town. The cost incurred by the town in having the vehicle removed shall be charged and held against the vehicle. In addition, the current daily charge for storage of such vehicle while in possession of the town shall be collected at such time as the vehicle is released.

(Ord. of 5-13-2003)

Secs. 54-74—54-84. - Reserved.

ARTICLE IV. - ABANDONED AND JUNKED MOTOR VEHICLES

Sec. 54-85. - Abandoned and junked motor vehicles.

- (1) *Title.* This section shall be known and may be cited as the "Ordinance Regulating Abandoned and Junked Motor Vehicles both within the municipal boundaries of the Town of Ocean Isle Beach and upon its property."
- (2) *Purpose and objectives.* The purpose and objective of this section are as follows:
 - (a) To ensure the public health, safety, and general welfare by providing controls on the removal and disposal of abandoned and junked motor vehicles.

- (b) To prohibit abandoned or junked motor vehicles from being disposed of by leaving them on public or private property.
 - (c) To eliminate the present accumulation of abandoned and junked motor vehicles.
 - (d) To prevent future accumulation of abandoned and junked motor vehicles.
 - (e) To promote or enhance community, neighborhood or area appearance.
- (3) *Definitions.* For the purposes of this section, certain terms and words are hereby defined; words used in the present tense shall include the future; words in the singular number shall include the plural number; and the plural the singular; the word "shall" is mandatory and the word "may" is permissive.

Abandoned motor vehicles. An "abandoned motor vehicle" is one that:

- a. Has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or
- b. Is left on property owned or operated by the town for longer than 24 hours; or
- c. Is left on private property without the consent of the owner, occupant, or lessee of the property for longer than two hours;
- d. Is left for longer than seven days on any public street or highway.

Board of commissioners. The term "board of commissioners" shall mean the Board of Commissioners of the Town of Ocean Isle Beach, North Carolina.

County. The word "the county" shall mean Brunswick County, North Carolina.

Health hazard. An abandoned or junked motor vehicle shall be declared by the town's building inspector or his/her designee to be a health hazard when its condition is such that the motor vehicle can or does harbor diseases, furnish shelter and breeding places for mosquitoes and other insects, or become a breeding ground and harbor for rats and other pests.

Junked motor vehicles. Motor vehicles which do not display a current license plate or a current registration sticker and which do not display a current inspection sticker issued by or in the same state as the license plate or registration sticker and:

- a. Are partially dismantled or wrecked; or
- b. Cannot be self-propelled or moved in the manner in which originally intended to move; or
- c. Is more than five years old and appears to be worth less than \$500.00;
- d. Does not display a current license plate.

Motor vehicles. Includes any machine designed or intended to travel over land or water by self-propulsion or while attached to a self-propelled vehicle.

Nuisance vehicle. A motor 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:

- a. A breeding ground or harbor for mosquitoes or other insects or a breeding ground or harbor for rats or other pests; or
- b. A point of heavy growth of weeds or other noxious vegetation over eight inches in height; or
- c. A point of collection of pools or ponds of water; or
- d. A point of concentration of combustible items such as gasoline, oil, other flammable or explosive materials including but not limited to boxes, paper, old clothes, rags, refuse, or any other combustible materials or objects of a like nature; or

- e. One which has parts thereof which fall and injure members of the public or one which may have parts which fall or be closed and become an area of confinement which may not be released for opening from the inside; or
- f. One which is so situated and located that there is a danger of the vehicle falling, rolling, turning over, or creating an unsafe movement such as unattended, blocked or jacked vehicles; or
- g. One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind; or
- h. One which has parts thereof which are jagged or contain sharp edges of metal or glass; or
- i. Any other vehicle specifically declared a health and safety hazard and a public nuisance by the board of commissioners.

Officers, employees, etc. Whenever reference is made herein to a particular officer, employee, department or agency, without further qualification, it shall be construed to be followed by the words "of the Town of Ocean Isle Beach," unless otherwise specifically provided. A reference to an officer shall include such officer's designated representative.

Safety hazard. An abandoned or junked motor vehicle shall be declared to be a safety hazard when its condition is such that the motor vehicle's areas of confinement which cannot be opened from the inside, such as trunk compartments and engine compartments and engine or glass, windows, or any exterior or interior fixtures present physical dangers to the safety and well-being of children or other persons.

Town: The word "the town" or "town" shall refer to the Town of Ocean Isle Beach, North Carolina.

- (4) *Jurisdiction.* This section shall govern the removal and disposal of abandoned or junked motor vehicles on public grounds and private property within the town unless specified below. However, this section shall govern the removal and disposal of abandoned or junked motor vehicles on town-owned property wherever located.
- (5) *Complaints.* Prior to an investigation to determine whether a motor vehicle is an abandoned or junked motor vehicle, a complaint must be submitted in writing with the appropriate town officer or employee.
- (6) *Abandoned motor vehicles.*
 - (a) *Abandonment of motor vehicles prohibited.* It shall be unlawful for any person to abandon a motor vehicle on public grounds and private property within the town and on town-owned property wherever located.
 - (b) *Removal of abandoned motor vehicles.* The town may remove to a storage garage or area abandoned motor vehicles that are found to be in violation of this section. An abandoned motor vehicle may not be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the board of commissioners or a duly authorized town official or employee has declared the vehicle to be a health or safety hazard. Appropriate town officers and employees may, upon presentation of proper credentials, enter on any premises within the county ordinance-making jurisdiction at any reasonable hour in order to determine if any vehicles are health or safety hazards. The town may require a person requesting the removal of an abandoned motor vehicle from private property to indemnify the county against any loss, expense, or liability incurred because of vehicle's removal, storage, or sale.
 - (c) *Notification and probable cause hearing.*
 - 1. Whenever a vehicle with a valid registration plate or registration is towed, the authorizing person shall immediately notify the last known registered owner of the vehicle of the following:

- (i) A description of the vehicle;
- (ii) The place where the vehicle is stored;
- (iii) The violation with which the owner is charged, if any;
- (iv) The possible sale or other disposition of the vehicle;
- (v) The procedure the owner must follow to have the vehicle returned to him/her; and
- (vi) The procedure the owner must follow to request a probable cause hearing on the towing.

If the vehicle has a North Carolina registration plate or registration, notice shall be given to the owner within 24 hours; if the vehicle is not registered in this state, notice shall be given to the owner within 72 hours. This notice shall, if feasible, be given by telephone. Whether or not the owner is reached by telephone, notice shall be mailed to the owner's last known address unless the owner or the owner's agent waives this notice in writing.

- 2. Whenever a vehicle with neither a valid registration plate nor registration is towed, the authorizing person shall make reasonable efforts, including checking the vehicle identification number (VIN), to determine the last known registered owner of the vehicle and notify the owner as required by Article VII, Section 3 (a) of this ordinance [subsection (7)3.a. of this section]. Unless the owner has otherwise been given notice, it is presumed that the authorizing person has not made reasonable efforts, as required under this section, unless notice that the vehicle would be towed was posted on the windshield or some other conspicuous place at the least ten days before the towing actually occurred; except, no pre-towing notice need be given if the vehicle impeded the flow of traffic or otherwise jeopardizing the public welfare so that immediate towing was necessary.
 - 3. The owner or any person entitled to claim possession of the vehicle may regain possession of the motor vehicle by paying to the town all reasonable costs incidental to the removal and storage.
 - 4. The owner or any person entitled to claim possession of the vehicle may request in writing a hearing to determine if probable cause existed for the towing. The request shall be filed with the magistrate's office in Brunswick County. The magistrate shall set the hearing within 72 hours of his/her receiving the request. The owner, the person who requested the hearing if someone other than the owner, the tower, and the person who authorized the towing shall be notified of the time and place of the hearing. The rules of the General Statutes apply to any appeal.
- (d) *Disposal of abandoned motor vehicles.* After holding an abandoned motor vehicle for 30 days after the date of removal, the town may sell or dispose of the vehicle as follows:
- 1. If the vehicle appears to be worth less than \$100.00, the town may dispose of the vehicle as a junked motor vehicle as provided by Article VII, Section 4 of this ordinance [subsection (7)4. of this section]. With the consent of the owner, the town may remove and dispose of a motor vehicle as a junked motor vehicle without regard to the value, condition or age of the vehicle and without holding it for a prescribed period of time.
 - 2. If the vehicle appears to be worth \$100.00 or more, the vehicle shall be sold at public auction. The town shall give 20 days' written notice of the sale to the registered owner at his last-known address, to each holder of a lien of record against the vehicle and to the state division of motor vehicles. Any person having an interest in the vehicle may redeem it at any time before the sale by paying all costs accrued to date. The proceeds of the sale shall be paid to the finance officer of the town, who shall pay to the appropriate officers or persons the cost of removal, storage, investigation, sale and liens in that order. The remainder of the proceeds of sale, if any, shall be paid over to the registered owner, or held by the county for 60 days if the registered owner cannot be located with reasonable diligence. If the owner does not claim the remainder of the proceeds within 60 days after

the day of the sale, the funds shall be deposited in the town's general fund and the owner's rights in the vehicle are extinguished.

(7) *Exceptions.* This article [section] does not apply to any vehicle in an enclosed building, to any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the county.

(8) *Junked motor vehicles.*

a. *Abandonment of junked motor vehicles prohibited.* It shall be unlawful for any person to abandon a junked motor vehicle on public grounds and on private property within the town or upon town-owned property wherever located.

b. *Removal of junked motor vehicles.* Junked motor vehicles found to be in violation of this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the board of commissioners or a duly authorized town officer or employee finds in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such 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 comfort, happiness, and emotional stability of area residents.

The town may require any person requesting the removal of junked motor vehicle from private property to indemnify the town against any loss, expense, or liability incurred because of the removal, storage or sale of the junked motor vehicle.

(c) *Notification and probable cause hearing.*

1. Whenever a vehicle with a valid registration plate or registration is towed, the authorizing person shall immediately notify the last known registered owner of the vehicle of following:
 - (i) A description of the vehicle;
 - (ii) The place where the vehicle is stored;
 - (iii) The violation with which the owner is charged, if any;
 - (iv) The possible sale or other disposition of the vehicle; and
 - (v) The procedure the owner must follow to request a probable cause hearing on the towing.

If the vehicle has a North Carolina registration plate or registration, notice shall be given to the owner within 24 hours; if the vehicle is not registered in this state, notice shall be given to the owner within 72 hours. This notice shall, if feasible, be given by telephone. Whether or not the owner is reached by telephone, notice shall be mailed to his last known address unless he/she or his/her agent waives the notice in writing.

2. Whenever a vehicle with neither a valid registration plate nor registration is towed, the authorizing person shall make reasonable efforts, including checking the vehicle identification number (VIN), to determine the last known registered owner of the vehicle and to notify him of the information as required by Article VII, Section 3 (a) of this

ordinance [subsection (3)3.a. of this section]. Unless the owner has otherwise been given notice, it is presumed that the authorizing person has not made reasonable efforts, as required under this section, unless notice that the vehicle would be towed was posted on the windshield or some other conspicuous place at least ten days before the towing actually occurred; except, no pre-towing notice need be given if the vehicle impeded the flow of traffic or otherwise jeopardized the public welfare so that immediate towing was necessary.

3. The owner or any other person entitled to claim possession of the vehicle may regain possession of the motor vehicle by paying to the town all reasonable costs incidental to the removal and storage.
 4. The owner or any person entitled to claim possession of the vehicle may request in writing a hearing to determine if probable cause existed for the towing. The request shall be filed with the magistrate's office in Brunswick County. The magistrate shall set the hearing within 72 hours of his/her receiving the request. The owner, the person who requested the hearing if someone other than the owner, the tower, and the person who authorized the towing shall be notified of the time and place of the hearing. Any decision by the magistrate may be appealed by either party to district court.
- (d) *Disposal of junked vehicles.* After holding a junked motor vehicle for 15 days, the town may destroy it or sell it at private sale as junk. Within 15 days after the final disposition of a junked motor vehicle, the town shall notify the state division of motor vehicles that the vehicle has been determined to be a junked motor vehicle and disposed of as such. The notice shall contain as full accurate a description of the vehicle as can be reasonably determined. The full proceeds of the sale of the junked vehicle shall be paid to the finance officer of the town, who shall pay to the appropriate officers or persons the cost of removal, storage, investigation, sale and liens, in that order. The remainder of the proceeds of sale, if any, shall be held by the town for 30 days after the day the vehicle is disposed of, the funds shall be deposited in the town's general fund, and the owner's right in the vehicle are extinguished.
- (e) *Disposal of vehicle without plates or identification numbers.* If a junked motor vehicle does not display a current license plate and the vehicle identification numbers have been removed or defaced so as to be illegible, the county may dispose of a junked motor vehicle under this section rather than article VII, section 4 [subsection (7)(4)]. The town may destroy the vehicle or sell it at private sale, without regard to value, after having held the vehicle for 48 hours. The proceeds shall be placed in the town's general fund.
- (f) *Exceptions.* This articles does not apply to the following:
1. Any motor vehicle in the process of repair or restoration on property under the control of the owner of the vehicle or property under the control of the person repairing or restoring the vehicle. Visible evidence of repair or restoration shall be apparent on a monthly basis.
 2. Any motor vehicle that is used on a regular basis for business or personal transportation purposes.
- (g) *Nuisance vehicle unlawful; removal authorized.*
1. 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.
 2. Upon investigation, proper officials may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle as defined in this ordinance, and order the vehicle removed in accordance with the provisions of this section.
- (h) *Enforcement remedies authorized; penalties for violation.*
1. The town may secure injunctions, abatement orders and other appropriate equitable remedies to further ensure compliance as provided in G.S. 160A-175.

2. The violation of this section shall be a misdemeanor and in addition to, or lieu of, remedies authorized in subsection (a) above shall be punishable by a fine not to exceed \$500.00, or imprisonment for not more than 30 days.
3. Any act constituting a violation of this section or a failure to comply with any of its requirements shall subject the offender to civil penalty of \$50.00 for each day the violation continues. If the offender fails to pay this penalty within 15 days after being cited for violation, the penalty may be recovered by the county in a civil action in the nature of debt.
4. Any one, all or any combination of the foregoing penalties and remedies may be used to enforce this ordinance.

(Amend. of 4-12-2005, § 5; Res. No. 2010-01, § 1, 1-12-2010)

DIVISION 2. - CROSS-CONNECTION CONTROL^[2]

Footnotes:

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Editor's note— A resolution adopted Sept. 11, 2007, amended div. 2 in its entirety to read as herein set out. Former div. 2 consisted of §§ 58-71—58-75, pertained to similar subject matter and derived from the 1983 Code.

Sec. 58-71. - Purpose.

The specific purposes of this subchapter are as follows:

- (a) To protect the public potable water supply of the town against actual or potential contamination (for example, cross-connections, backflow, back-siphonage) by isolating within the consumer's water system contaminants or pollutants that could, under adverse conditions, backflow through uncontrolled cross-connections into the public water system.
- (b) To eliminate or control existing cross-connections, actual or potential, (backflow, back-siphonage or any other source of water or process water used for any purpose whatsoever) which may jeopardize the potability of the town's public water supply system.
- (c) Establish and maintain a continuing inspection program of cross-connection and inspection which will systematically and effectively prevent the contamination or pollution, either actual or potential, of all potable water systems connected to the Town's public water supply system.
- (d) Control cross-connections (for example, backflow and back-siphonage) through cooperation between the town and the town's customers (consumers). Responsibilities and duties of each will be set forth in this policy and their applicable regulations.

(Res. of 9-11-2007)

Sec. 58-72. - Responsibilities.

- (a) *Health agency.* The state Department of Environment and Natural Resources has the responsibility for promulgating and enforcing laws, rules, regulations, and policies to be followed in carrying out an effective cross-connection control program. The state Department of Environment and Natural Resources also has the primary responsibility of insuring that Brunswick County operates the public potable water system free of actual or potential sanitary hazards, including unprotected cross-connections. The state Department of Environment and Natural Resources has the further responsibility of insuring that Brunswick County provides an approved water supply at the service to the town's public water system and, further, that it requires the installation, testing, and maintenance of an approved backflow prevention assembly on the service connection when required.
- (b) *Water purveyor.* Except as otherwise provided in this subchapter, Brunswick County has the responsibility to ensure a safe water supply begins at the source and includes all of the public water distribution system, including the service connection, and ends at the point of delivery to the town's water system. In addition, the Department shall exercise reasonable vigilance to insure that the consumer has taken the proper steps to protect the public potable water system. To insure that the proper precautions are taken, the town's utilities director or his duly appointed representative is required to determine the degree of hazard or potential hazard to the public potable water system and to determine the degree of protection required; and to ensure proper containment protection through an on-going inspection program. When it is determined that a backflow prevention assembly is required for the protection of the public system, the department shall require the consumer, at the

consumer's expense, to install an approved backflow prevention assembly at each service connection, to test immediately upon installation and thereafter at a frequency as determined by the department, to properly repair and maintain the assembly or assemblies and to keep adequate records of each test and subsequent maintenance and repair, including materials and/or replacement part. Failure, refusal, or inability on the part of the consumer to install, have tested, and maintain the assembly(ies), shall constitute grounds for enforcement (for example, stipulated penalties, disconnection of water service, and the like) until the requirements have been satisfactorily met. Enforcement of this policy shall be administered by the utilities director or an authorized representative of the town.

(c) *Plumbing inspection.*

- (1) The town's building inspector as part of the permitting process has the responsibility to not only review building plans and inspect plumbing as it is installed, but, he or she has the explicit responsibility of preventing cross-connections from being designed and built into the plumbing system within his jurisdiction.
- (2) Where the review of building plans suggests or detects the potential for cross-connections being made an integral part of the plumbing system, the building inspector has the responsibility, under the state building code, for requiring that such cross-connection be either eliminated or provided with backflow prevention equipment approved by the state building code. The building inspector's responsibility begins at the point of delivery, downstream of the first installed backflow prevention assembly, and continues throughout the entire length of the consumer's water system. The building inspector should inquire about the intended use of water at any point where it is suspected that a cross-connection might be made or where one is actually called for by the plans. When such is discovered it shall be mandatory that a suitable, approved backflow prevention assembly approved by the state building code be required by the plans and be properly installed.
- (3) The primary protection assembly for containment purposes only shall have approval from the town, Brunswick County, the state building code, and the state Department of Environment and Natural Resources.

(d) *Consumer/customer.*

- (1) The consumer has the primary responsibility of preventing pollutants and contaminants from entering his potable water system or the public potable water system. The consumer's responsibility starts at the point of delivery from the public potable water system and includes all of his or her water system.
- (2) The consumer, at his or her own expense, shall install, operate, test, and maintain approved backflow prevention assemblies as directed by the department. The consumer shall maintain accurate records of tests and repairs made to backflow prevention assemblies and shall maintain records for a minimum period of three years. The records shall be on forms approved by the department and shall include the list of materials or replacement parts used.
- (3) Following any repair, overhaul, re-piping or relocation of an assembly, the consumer shall have it tested to insure that it is in good operating condition and will prevent backflow. Tests, maintenance, and repairs of backflow prevention assemblies shall be made by a certified backflow prevention assembly tester.

(e) *Certified backflow prevention assembly testers.* When employed by the consumer to test, repair, overhaul, or maintain backflow prevention assemblies, a backflow prevention assembly tester will have the following responsibilities:

- (1) The tester will be responsible for making competent inspections and for repairing or overhauling backflow prevention assemblies and making reports of such repair to the consumer and responsible authorities on forms approved by the department.
- (2) The tester shall include the list of materials or replacement parts used.

- (3) The tester shall be equipped with and be competent to use all the necessary tools, gauges, manometers and other equipment necessary to properly test, repair, and maintain backflow prevention assemblies.
- (4) It will be the tester's responsibility to insure that original manufactured parts are used in the repair of or replacement of parts in a backflow prevention assembly.
- (5) It will be the tester's further responsibility not to change the design, material or operational characteristics of an assembly during repair or maintenance without prior approval of the department.
- (6) A certified tester shall perform the work and be responsible for the competency and accuracy of all tests and reports.
- (7) A certified tester shall provide a copy of all test and repair reports to the consumer and to the department's staff responsible for cross-connection control within ten business days of any completed test or repair work.
- (8) A certified tester shall maintain such records for a minimum period of three years. All certified backflow prevention assembly testers must obtain and employ backflow prevention assembly test equipment that has been evaluated and/or approved by the department. All test equipment shall be registered with Brunswick County Water Department. All test equipment shall be checked for accuracy annually, at a minimum, calibrated, if necessary, and certified to the department as to the calibration, employing an accuracy/calibration method acceptable to the department.
- (9) All certified backflow prevention assembly testers must become re-certified every two years through an approved backflow prevention certification program.

(Res. of 9-11-2007)

Sec. 58-73. - Definitions.

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

Air-gap separation. A physical separation between the free-flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel. An approved air-gap separation shall be at least double the diameter of the supply pipe measuring vertically from the overflow rim of the receiving vessel, in no case less than one inch.

Approved. As used in reference to a water supply, a water supply that has been approved by the North Carolina Department of Environment, Health, and Natural Resources, or as used in reference to air-gap separation, a pressure vacuum breaker, a double check valve assembly, a double check detector assembly, a reduced pressure principle backflow prevention assembly, a reduced pressure principle detector assembly, or other backflow prevention assemblies or methods; or an approval by the Brunswick County or the town's water department.

Backflow. The undesirable reversal of flow of water or mixtures of water and other liquids, gases, or other substances into the distribution pipes of the consumer or public potable water system from any source or sources.

Backflow prevention assembly—Approved. An assembly used for containment and/or isolation purposes that has been investigated and approved by Brunswick County and has been shown to meet the design and performance standards of the American Society of Sanitary Engineers (ASSE), the American Water Works Association (AWWA), or the Foundation for Cross-Connection Control and Hydraulic Research of the University of Southern California. To be approved, an assembly must be readily accessible for inline testing and maintenance, and shall successfully complete a one-year field evaluation within the Brunswick County water system. The type of assembly used should be based on the

degree of hazard either existing or potential. The following are approved methods for backflow prevention:

- (1) Double check detector assembly (fire system);
- (2) Air gap;
- (3) Reduced pressure principle assembly (RPZ);
- (4) Double check valve assembly (DCVA);
- (5) Reduced pressure principle-detector assembly (fire system);
- (6) Pressure vacuum breaker (PVB).

Backflow prevention assembly—Unapproved. An assembly that has been investigated by Brunswick County and has been determined to be unacceptable for installation within the town's water system.

Backflow prevention assembly tester—Certified. A person who has proven his competency to the satisfaction of the water department. Each person who is certified to make competent tests, or to repair, overhaul, and make reports on backflow prevention assemblies shall be knowledgeable of applicable laws, rules, and regulations, and have qualifications acceptable to the department, and must hold a certificate of completion from an approved training program in the testing and repair of backflow prevention assemblies.

Backflow prevention device—Approved. A device used for isolation purposes that has been shown to meet the design and performance standards of the American Society of Sanitary Engineers (ASSE) and the American Water Works Association (AWWA).

Back-pressure backflow. Any elevation in the consumer water system, by pump, elevation of piping, or steam and/or air pressure, above the supply pressure at the point of delivery which would cause, or tend to cause, a reversal of the normal direction of flow.

Back-siphonage backflow. A reversal of the normal direction of flow in the pipeline due to a negative pressure (vacuum) being created in the supply line with the backflow source subject to atmospheric pressure.

Check valve—Approved. A check valve that is drip-tight in the normal direction of flow when the inlet pressure is at least one psi and the outlet pressure is zero. The check valve shall permit no leakage in a direction reverse to the normal flow. The closure element (for example, clapper, poppet, or other design) shall be internally loaded to promote rapid and positive closure. An approved check valve is only one component of an approved backflow prevention assembly (for example, pressure vacuum breaker, double check valve assembly, double check detector assembly, reduced pressure principle assembly, or reduced pressure detector assembly).

Consumer/customer. Any person, firm, or corporation using or receiving water from the town's water system. In the absence of other parties or the failure of other parties to accept the responsibilities herein set forth, the owner of record shall be ultimately responsible.

Consumer's potable water system. That portion of the privately owned potable water system lying between the point of delivery and point of use and/or isolation protection. This system will include all pipes, conduits, tanks, receptacles, fixtures, equipment, and appurtenances used to produce, convey, store, or use potable water.

Consumer's water system. Any water system commencing at the point of delivery and continuing throughout the consumer's plumbing system, located on the consumer's premises, whether supplied by a public potable water or an auxiliary water supply.

Containment. Preventing the impairment of the public potable water supply by installing an approved backflow prevention assembly at the service connection.

Contamination. An impairment of the quality of the water which creates a potential or actual hazard to the public health through the introduction of hazardous or toxic substances or through the spread of disease by sewage, industrial fluids, or waste.

Cross-connection. Any unprotected actual or potential connection or structural arrangement between a public or a consumer's water system and any other source or system through which it is possible to introduce any contamination or pollution, other than the intended potable water with which the system is supplied. Bypass arrangements, jumper connections, removable sections, swivel or change-over devices, and other temporary or permanent devices through which or because of which "backflow" can or may occur are considered to be cross-connections.

Cross-connection—Controlled. A connection between a potable water system and a non-potable water system with an approved backflow prevention assembly properly installed and maintained so that it will continuously afford the protection commensurate with the degree of hazard.

Department. The Town of Ocean Isle Beach Water Department.

Double check detector assembly. A specially designed assembly composed of a line-size approved double check valve assembly with a specific bypass water meter and a meter-sized approved double check valve assembly. The meter shall register (in U.S. gallons) accurately for only very low rates of flow and shall show a registration for all rates of flow. This assembly shall only be used to protect against a non-health hazard (for example, pollutant).

Double check valve assembly. An assembly composed of two independently acting, approved check valves, including tightly closing shutoff valves attached at each end of the assembly and fitted with properly located test cocks. This assembly shall only be used to protect against a non-health hazard (for example, pollutant).

Dual check valve. A self-closing device designed to permit flow in one direction and close if there is a reversal of flow. A dual check valve is not an in-line testable device and is only allowed for residential use in three inch and one inch meter assemblies, excluding irrigation systems.

Hazard, degree of. This term is derived from the evaluation of conditions within a system which can be classified as either a "pollutional" (non-health) or a "contamination" (health) hazard.

Hazard, health. An actual or potential threat of contamination of a physical, hazardous or toxic nature to the public or consumer's potable water system to such a degree or intensity that there would be a danger to health.

Hazard, non-health. An actual or potential threat to the quality of the public or the consumer's potable water system. A non-health hazard is one that, if introduced into the public water supply system, could be a nuisance to water customers, but would not adversely affect human health.

Hazard, pollutional. An actual or potential threat to the quality or the potability of the public or the consumer's potable water system but which would not constitute a health or a system hazard, as defined. The maximum degree or intensity of pollution to which the potable water system could be degraded under this definition would cause a nuisance or be aesthetically objectionable or could cause minor damage to the system or its appurtenances.

Health agency. The North Carolina State Department of Environment and Natural Resources.

Isolation. The act of confining a localized hazard within a consumer's water system by installing approved backflow prevention assemblies. Disclaimer: The department may make recommendations, upon facility inspection, as to the usages of isolation devices/assemblies, but does not assume or have responsibility whatsoever for installations.

Point of delivery. Generally at the property line of the customer, adjacent to the public or private street where the county or town's water department's mains are located, or at a point on the customer's property where the meter is located. The customer shall be responsible for all water piping and control devices located on the customer's side of the point of delivery.

Pollution. An impairment of the quality of the water to a degree which does not create an actual hazard to the public health but which does adversely and unreasonably affect the aesthetic qualities of such waters for domestic use.

Potable water. Water from any source that has been investigated by the state department of environment and natural resources and which has been approved for human consumption.

Public potable water system. Any publicly or privately owned water system operated as a public utility, under a current state Department of Environment and Natural Resources permit, to supply water for public consumption or use. This system will include all sources, facilities, and appurtenances between the source and the point of delivery such as valves, pumps, pipes, conduits, tanks, receptacles, fixtures, equipment, and appurtenances used to produce, convey, treat, or store a potable water for public consumption or use.

Reduced pressure principle backflow prevention assembly. An assembly containing within its structure a minimum of two independently acting, approved check valves, together with a hydraulically operating, mechanically independent, pressure differential relief valve located between the check valves and at the same time below the first check valve. The first check valve reduces the supply pressure a predetermined amount so that during normal flow and at sensation of normal flow, the pressure between the checks is less than the supply pressure. In case of leakage of either check valve, the pressure differential relief valve, by discharge to atmosphere, shall operate to maintain the pressure between the checks less than the supply pressure. The unit shall include tightly closing shutoff valves located at each end of the assembly and each assembly shall be fitted with properly located test cocks. The assembly is designed to protect against a health hazard (for example, contaminant).

Reduced pressure principle detector assembly. A specially designed assembly composed of a line-size approved reduced pressure principle backflow prevention assembly with a specific bypass water meter and a meter-sized approved reduced pressure principle backflow prevention assembly. The meter shall register, in U.S. gallons, accurately for only very low rates of flow and shall show a registration for all rates of flow. This assembly shall be used to protect against a health hazard (for example, contaminant).

Service connections. The terminal end of a service connection from the public potable water system, for example, where the Department loses jurisdiction and sanitary control over the water at its point of delivery to the consumer's water system.

Town. The Town of Ocean Isle Beach, North Carolina.

Vacuum breaker—Atmospheric type. Also known as the "non-pressure type vacuum breaker," this term means a device containing a float-check, a check seat, and an air inlet port. The flow of water into the body causes the float to close the air inlet port. When the flow of water stops, the float falls and forms a check valve against back-siphonage and at the same time opens the air inlet port to allow air to enter and satisfy the vacuum. A shutoff valve immediately upstream may be an integral part of the device. An atmospheric vacuum breaker is designed to protect against a non-health hazard, isolation protection only, under a back-siphonage condition only.

Vacuum breaker—Pressure type. An assembly containing an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. The assembly is to be equipped with properly located test cocks and tightly closing shutoff valves attached at each end of the assembly. This assembly is designed to protect against a health hazard (for example, contaminant) under a back-siphonage condition only.

Water purveyor. The owner or operator of a public potable water system, providing an approved water supply to the public. Brunswick County is the water purveyor for the Town of Ocean Isle Beach. The Town of Ocean Isle Beach is the water purveyor to its customers.

Water supply—Approved. Any public potable water supply which has been investigated and approved by the state Department of Environment and Natural Resources. The system must be operating under a valid health permit. In determining what constitutes an approved water supply, the state Department of Environment and Natural Resources has reserved the final judgment as to its safety and potability.

Water supply—Auxiliary. Any water supply on or available to the premises other than Brunswick County's approved public potable water supply. These auxiliary waters may include water from another purveyor's public potable water supply or any natural source such as a well, spring, river, stream, and the like, "used water", or industrial fluids. These waters may be polluted, contaminated, or objectionable and constitute an unacceptable water source over which the water purveyor does not have sanitary control.

Water supply—Unapproved. A water supply which has not been approved for human consumption by the state Department of Environment and Natural Resources.

Water—Used. Any water supplied by a water purveyor from a public water system to a consumer's water system after it has passed through the point of delivery and is no longer under the control of the water purveyor.

(Res. of 9-11-2007)

Sec. 58-74. - Intent.

- (a) The intention of this policy to define the authority of the town water department hereinafter referred to as the department, as the water purveyor, in the elimination of all hazards, both actual and potential to potable water within the town's public water supply system.
- (b) This subchapter will comply with the Federal Safe Drinking Water Act (SDWA) (P.L. 93-523), the North Carolina Administrative Code (NCAC) (Title 10, Chapter 10, Subchapter 10-D, paragraph, 1006), and the North Carolina Building Code (Volume II) as they pertain to cross-connections with the public water supply system and will apply the principle that the degree of protection should be commensurate with the degree of the hazard or potential hazard to the public water supply system.

(Res. of 9-11-2007)

Sec. 58-75. - Water system.

The water system shall be considered as made up of three parts: Brunswick County's (water purveyor) system, the town's (water purveyor) system and the consumer's system.

- (a) *Brunswick County's system.* The county is permitted as a treatment and supply system by the State of North Carolina since the county does treat water from a natural source (for example, wells, spring, stream, river, pond, lake, and the like). The county sells some portion of its water to the Town of Ocean Isle Beach. The county's system shall consist of treatment facilities, pumping, storage, and distribution including all those facilities of the water system under the complete control of the county, up to the point where the town's system begins (service connection).
- (b) *Town's system.* The town purchases all its potable water from Brunswick County. The town tests the water as required by the state Department of Environment and Natural Resources but does not treat the water it receives from the county system.
- (c) *Consumer's system.* The consumer's system shall include those parts of the facilities beyond the termination of the town's distribution system (service connection) that are utilized in conveying potable water to points of use.

(Res. of 9-11-2007)

Sec. 58-76. - Right of entry.

- (a) Authorized representatives from the Department and Brunswick County Water Department shall have the right to enter, upon presentation of proper credentials and identification, any building, structure, or premises during normal business hours, or at any time during the event of an emergency, to perform any duty imposed by this subchapter. Those duties may include sampling and testing of water, or inspections and observations of all piping systems connected to the public water supply. Where a user has security measures in force that would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with the security guards so that upon presentation of suitable identification, Department personnel will be

permitted to enter, without delay, for the purposes of performing their specific responsibilities. Refusal to allow entry for these purposes may result in discontinuance of water service.

- (b) On request, the consumer shall furnish to the Department any pertinent information regarding the water supply system on such property where cross-connections and backflow are deemed possible.
- (c) The consumer's system should be open for inspection at all reasonable times to authorized representatives from the county or town to determine whether unprotected cross-connections or other structural or sanitary hazards, including violations of this policy, exist. Refusal to allow entry for these purposes shall result in enforcement action (disconnection of water services, stipulated penalties, and the like). When a condition becomes known, the consumer, his or her agent, occupant, or tenant shall be notified in writing to disconnect the unprotected cross-connection(s) within a time period established in this policy. The degree of protection required and the period of time required for conformance shall be commensurate with the actual or potential degree of hazard to the public potable water supply system.
 - (1) Cross-connection with private wells or other unapproved auxiliary water supplies require immediate disconnection of unapproved sources.
 - (2) Cross-connection requiring correction through:
 - a. Elimination;
 - b. Air gap separation;
 - c. Reduced pressure principle backflow prevention assembly (RPZ) or double check valve assembly (DCVA) for sized three-fourths inch through two-inch require 30-day maximum conformance period.
 - (3) Cross-connection requiring correction through reduced pressure principle backflow prevention assembly (RPZ) or double check valve assembly (DCVA) for sizes greater than two-inch require 120-day maximum conformance period.
 - (4) Upon completion of the above requirement, the consumer shall be required to submit, in writing, notification of compliance to the Department.
 - (5) If, in the judgment of the Department, an imminent health hazard exists, water service to the building or premises where a cross-connection exists may be terminated unless an air gap is immediately provided, or the cross-connection is immediately eliminated.
 - (6) Based upon recommendation from the Department, the consumer is responsible for installing sufficient internal isolation backflow prevention assemblies and/or methods (for example, air gap, pressure vacuum breakers, reduced pressure principle backflow prevention assembly, double check valve assembly).
 - (7) No person shall fill special use tanks or tankers containing pesticides, fertilizers, other toxic chemicals or their residues from the public water system except at a location equipped with an air gap or an approved reduced pressure principle backflow prevention assembly properly installed on the public water supply.

(Res. of 9-11-2007)

Sec. 58-77. - Installation of assemblies.

- (a) All backflow prevention assemblies shall be installed in accordance with manufacturer's installation instructions, on each consumer's water system at or near the property line, but in all cases, before the first branch line leading off the service line wherever the following conditions exist:
 - (1) In the case of premises having an auxiliary water supply that is not, or may not, be of safe bacteriological or chemical quality and which is not acceptable as an additional source by the State of North Carolina, the public water system shall be protected against backflow from the

premises by installing an approved backflow prevention assembly in the service line commensurate with the degree of hazard.

- (2) In the case of premises on which any industrial fluid or any other objectionable substance is handled in such a manner as to create an actual or potential hazard to the public water system, the public system shall be protected against backflow from the premises by installing an approved backflow prevention assembly in the service line commensurate with the degree of hazard. This shall include the handling of process waters and waters originating from the water purveyor's system that have been subject to deterioration in quality.
 - (3) In the case of premises having internal cross-connections that can not be permanently corrected or protected against or intricate plumbing and piping arrangements or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impracticable or impossible to ascertain whether or not dangerous cross-connections exists, the public water system shall be protected against backflow from the premises by installing an approved backflow prevention assembly in the service line commensurate with the degree of hazard.
- (b) All new construction plans and specifications, when required by the state building code and the state Department of Environment and Natural Resources, shall be made available to the town's building inspector for review and approval, and to determine the degree of hazard.
 - (c) Ownership, testing, and maintenance of the assembly shall be the responsibility of the consumer. All reduced pressure principle assemblies and double check valve assemblies shall be installed above ground in a protective enclosure. Reduced pressure principle assemblies must be installed in a horizontal position and in a location in which no portion of the assembly can become submerged in any substance under any circumstances. Double check valve assemblies may be installed in a vertical position with prior approval from the department provided the flow of water is in an upward direction. Pit and/or below grade installations are prohibited.
 - (d) The installation of a backflow prevention assembly which is not approved must be replaced with an approved backflow prevention assembly.
 - (e) The installer is responsible to make sure a backflow prevention assembly is working properly upon installation and is required to furnish the following information to the department within 15 days after a reduced pressure principle backflow preventer (double check valve assembly (DCVA), pressure vacuum breaker (PVB), double check detector assembly (DCDA), or reduced pressure principle detector assembly (RPDA) is installed:
 - (1) Service address where assembly is located.
 - (2) Owner and address, if different from service address.
 - (3) Description of assembly's location.
 - (4) Date of installation.
 - (5) Installer, include name, plumbing company represented, plumber's license number, and project permit number.
 - (6) Type of assembly, size of assembly.
 - (7) Manufacturer, model number, serial number.
 - (8) Test results/report.
 - (f) The consumer shall, upon notification, install the appropriate containment assembly not to exceed the following time frame:
 - (1) Health hazard: 60 days.
 - (2) Non-health hazard: 90 days.

- (g) Following installation, all reduced pressure principle backflow preventers (RP), double check valve assemblies (DCVA), pressure vacuum breakers (PVB), double check detector assemblies (DCDA), or reduced pressure principle detector assemblies (RPDA) are required to be tested by a certified backflow prevention assembly tester within ten days.

(Res. of 9-11-2007)

Sec. 58-78. - Testing and repair of assemblies.

- (a) Testing of backflow prevention assemblies shall be made by a certified backflow prevention assembly tester at the customer's expense. The tests are to be conducted upon installation and annually thereafter or at a frequency established by the department's regulations. A record of all testing and repairs is to be retained by the customer. Copies of the records must be provided to the department within ten business days after the completion of any testing and/or repair work.
- (b) Any time that repairs to backflow prevention assemblies are deemed necessary, whether through annual or required testing or routine inspection by the owner or by department, these repairs must be completed within a specified time in accordance with the degree of hazard. In no case shall this time period exceed:
 - (1) Health hazard facilities: 14 days.
 - (2) Non-health hazard facilities: 21 days.
- (c) All backflow prevention assemblies with test cocks are required to be tested annually or at frequency established by the department's regulations. Testing requires a water shutdown usually lasting five to 20 minutes. For facilities that require an uninterrupted supply of water, and when it is not possible to provide water service from two separate meters, provisions shall be made for a parallel installation of backflow prevention assemblies.
- (d) All certified backflow prevention assembly testers must obtain and employ backflow prevention assembly test equipment which has been evaluated and/or approved by Brunswick County. All test equipment shall be registered with the department. All test equipment shall be checked for accuracy annually, at a minimum, calibrated, if necessary, and certified to the department as to such accuracy/calibration, employing a calibration method acceptable to the town's water department.
- (e) It shall be unlawful for any customer or certified tester to submit any record to the department which is false or incomplete in any material respect. It shall be unlawful for any customer or certified tester to fail to submit to the department any record which is required by this subchapter. The violations may result in any of the enforcement actions outlined in sections 58-82 and 58-83.

(Res. of 9-11-2007)

Sec. 58-79. - Facilities requiring protection.

- (a) Approved backflow prevention assemblies shall be installed on the service line to any premises that the Department has identified as having a potential for backflow.
- (b) The following types of facilities or services have been identified by the department as having a potential for backflow of non-potable water into the public water supply system. Therefore, an approved backflow prevention assembly will be required on all such services according to the degree of hazard present. Other types of facilities or services not listed below may also be required to install approved backflow prevention assemblies if determined necessary by the Department. As a minimum requirement, all commercial services will be required to install a double check valve assembly, unless otherwise listed in this subsection.
 - (1) Auxiliary water systems:

- a. Approved public/private water supply: DCVA.
 - b. Unapproved public/private water supply: AG.
 - c. Used water and industrial fluids: RP.
- (2) Buildings, including hotels, apartment houses, public and private buildings, or other structures having unprotected cross-connections.
 - a. Under five stories, no health hazard: DCVA.
 - b. Under five stories, health hazard: RP.
 - c. Over five stories, all: RP.
- (3) Fire systems:
 - a. No health hazard: DCDA or PVB.
 - b. Health hazard (booster pumps, foam, antifreeze solution, and the like): RP.
- (4) Systems two and one-half inches to ten inches or larger:
 - a. No health hazard: DCDA.
 - b. Health hazard (booster pumps, foam, antifreeze solution, and the like): RPDA.
- (5) Lawn irrigation systems (split taps):
 - a. No health hazard: DCVA or PVB.
 - b. Health hazard (booster pumps, chemical systems): RP.
- (6) Restaurants:
 - a. No health hazard: DCVA.
 - b. Health hazard: RP.
- (7) Sewage and storm drain facilities: RP.
- (8) Swimming pools: RP.
- (9) Waterfront facilities and industries: RP.
- (c) All assemblies and installations shall be subject to inspection and approval by the Brunswick County and the department.

(Res. of 9-11-2007)

State Law reference— Penalty, § 58.83.

Sec. 58-80. - Connections with unapproved sources of supply.

- (a) No person shall connect or cause to be connected any supply of water not approved by the state Department of Environment and Natural Resources to the water system supplied by the department. Any connections allowed by the Department must be in conformance with the backflow prevention requirements of this subchapter.
- (b) In the event of contamination or pollution of a public or consumer potable water system, the consumer shall notify the department commission immediately in order that appropriate measures may be taken to overcome and eliminate the contamination or pollution.

(Res. of 9-11-2007)

State Law reference— Penalty, § 58-83.

Sec. 58-81. - Fire protection systems.

- (a) All connections for fire protection systems connected with the town's water system, two inches and smaller, shall be protected with an approved double check valve assembly as a minimum requirement. All fire systems using toxic additives or booster pumps shall be protected by an approved reduced pressure principle assembly at the main service connection.
- (b) All connections for fire protection systems connected with the town's water system greater than two inches shall be protected with an approved double check detector assembly as a minimum requirement. All fire protection systems using toxic or hazardous additives or booster pumps shall be protected by an approved reduced pressure principle detector assembly at the main service connection.
- (c) All existing backflow prevention assemblies two and one-half inches and larger installed on fire protection systems that were initially approved by the town shall be allowed to remain on the premises, as long as they are being properly maintained, tested and repaired as required by this subchapter. If, however, the existing assembly must be replaced once it can no longer be repaired, or in the event of proven water theft through an un-metered source, the consumer shall be required to install an approved double check detector assembly or reduced pressure principle detector assembly as required by section 58-77.

(Res. of 9-11-2007)

State Law reference— Penalty, § 58-83

Sec. 58-82. - Enforcement.

- (a) The owner, manager, supervisor, or person in charge of any installation found not to be in compliance with the provisions of this subchapter shall be notified in writing with regard to the corrective action to be taken. The time for compliance shall be in accordance with section 58-78.
- (b) The owner, manager, supervisor, or person in charge of any installation which remains in noncompliance after the time prescribed in the initial notification, as outlined in section 58-78, shall be considered in violation of this subchapter, and may be issued a civil citation by the water department. The citation shall specify the nature of the violation and the provision of this subchapter violated, and further notify the offender that the civil penalty for the violation is as set forth in section 58-83 of this chapter and is to be paid to the water department at the office of the Water Department, 3 West Third Street, Ocean Isle Beach, North Carolina, within 30 days. If the penalty prescribed in section 58-83 is not paid within the time allowed, the water department may initiate a civil action in the nature of a debt and recover the sums set forth in section 58-83 of this chapter, plus the cost of the action.
- (c) If, in the judgment of the water department, any owner, manager, supervisor, or person in charge of any installation found to be in noncompliance with the provisions of this subchapter neglects his responsibility to correct any violation, the neglect may result in discontinuance of water service until compliance is achieved.
- (d) Failure of a customer or certified tester to submit any record required by this subchapter, or the submission of falsified reports/records may result in a civil penalty of up to \$1,000.00 per violation. If a certified backflow prevention assembly tester submits falsified records to the water department, the utilities director shall take the necessary actions to revoke certification to test backflow prevention assemblies within the potable water system for a time period not to exceed one year. The tester will then be required to complete an approved certification course to acquire a new certification.

Falsification made to records/reports after becoming re-certified shall result in the permanent revocation of backflow testing certification, in addition to a civil penalty as provided for in this chapter.

- (e) Enforcement of this program shall be administered by the code enforcement officer in conjunction with the utilities director of the water department or their authorized representative.
- (f) Requests for extension of time shall be made in writing to the utilities director of the water department or his authorized representative. All other appeals shall be made in accordance with the following procedures:
 - (1) *Adjudicatory hearings.* A customer assessed a civil penalty under this subchapter shall have the right to an adjudicatory hearing before a hearing officer designated by the manager of the public works commission upon making written demand, identifying the specific issues to be contended, to the manager of the utilities director within 30 days following notice of final decision to assess a civil penalty. Unless the demand is made within the time specified in this section, the decision on the civil penalty assessment shall be final and binding.
 - (2) *Appeal hearings.* Any decision of the Department made as a result of an adjudicatory hearing held under this section may be appealed by any party to the board of commissioners upon filing a written demand within ten days of receipt of notice of the decision. Hearings held under this section shall be conducted in accordance with the town's hearing procedures. Failure to make written demand within the time specified in this subsection shall bar further appeal. The board of commissioners shall make a decision on the appeal within 90 days of the date the appeal was filed and shall transmit a written copy of its decision by registered or certified mail.
 - (3) *Official record.* When a final decision is issued under this section, the board of commissioners shall prepare an official record of the case that includes:
 - a. All notices, motions, and other like pleadings;
 - b. A copy of all documentary evidence introduced;
 - c. A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken;
 - d. A copy of the final decision of board of commissioners.
 - (4) *Judicial review.* Any customer against whom a final decision of the board of commissioners is entered, pursuant to the hearing procedure under this section may appeal the order or decision by filing a written petition for judicial review within 30 days after receipt of notice by certified mail of the order or decision to the general court of justice of the county or of the county where the order or decision is effective, along with a copy to the board of commissioners. Within 30 days after receipt of the copy of the petition of judicial review, the board of commissioners shall transmit to the reviewing court the original or a certified copy of the official record, as outlined in this section.

(Res. of 9-11-2007)

Sec. 58-83. - Penalty.

- (a) Whoever violates any provision of this chapter for which another penalty is not specifically provided, shall be fined in accordance with section 1-6, and every day the violation continues shall constitute a separate offense.
- (b) Violation of section 58-80 shall be a misdemeanor as provided by G.S. 14-4, punishable upon conviction by a fine not exceeding \$1,000.00 or by imprisonment not exceeding 30 days, together with restitution to the town for water consumed or services provided. Damages to the town's water system caused by violation of section 58-80 shall be the responsibility of the violator and the costs of repairs or replacement of equipment paid by the violator to the town.

- (c) Any offender who shall continue any violation beyond the time limit provided for in subsection 58-82(a) shall be subject to a civil penalty of up to \$1,000.00 per violation. Each day in which a violation of any provision of sections 58-73 through 58-82 shall occur or continue shall constitute a separate and distinct offense.

(Res. of 9-11-2007)

State Law reference— Enforcement and other civil penalties, see § 58.82

Secs. 58-84—58-94. - Reserved.

Sec. 1-6. - General penalty; enforcement of ordinances; continuing violations.

- (a) Unless otherwise specifically provided, violation of any provision of this Code or any other town ordinance shall subject the offender to the remedies provided in this section; except where the General Statutes of North Carolina provide specific civil remedies for violations of provisions of this Code adopted pursuant to such statutes, such remedies available to the town for enforcement of this Code shall be in addition to the remedies stated in this section; provided, that no criminal penalties shall be applicable unless stated in this section as being applicable to specific chapters or provisions of this Code.
- (b)
 - (1) That civil penalties shall be imposed as set forth hereinafter to address all violations contained within the Code of Ordinances, save and except for those violations contained in section [chapter] 26 denominated Fire Prevention and Protection; section 38-1, Public consumption of alcoholic beverages; section 38-32, Taking of certain wild plants from the land of another; section 38-71, Discharge of fireworks; section 38-111 and 38-112 regarding offenses against public morals; and chapter 54 "Traffic and Vehicles," said violations being criminal violations imposed by North Carolina law for which infractions and citations shall be issued.
 - (2) Each day a provision of the Code or an ordinance is violated is a separate offense. There shall be a civil fine imposed of \$100.00 for each violation, unless the specific chapter sets out a higher fine, which fine will accrue daily, starting on the day the violation first occurs and continuing through the day the violation ceases.
 - (3) Civil fines are due and payable within three business days after service of a civil citation is complete. Each day's fine for a continuing offense shall be due and payable within three business days of the day of the offense without further notice or services. The fines are payable at the town hall during regular business hours.
 - (4) Service of a civil citation is completed on the day it is personally delivered, or three days after it is mailed, to the following: An offender who is an individual or owner of a sole proprietorship, any general partner of a partnership that is the offender, or is the registered agent, or manager or other person in a supervisory capacity at the local place of business of an offender who is a corporation. The three-day period for mailed service shall begin the day it is placed in the United States mail, in a properly stamped and addressed envelope, addressed to the appropriate person named above at the offender's first known address. Personal service may be made by any police officer, town manager or building inspector.
 - (5) Recovery of overdue civil penalties shall be by a civil action against the offender in the nature of debt.
 - (6) Civil citations for all violations of code provisions and ordinances regulating building housing, environmental matters, mobile homes, zoning and subdivisions shall be issued by the building inspector. All other civil citations may be issued by any police officer or town official. That the penalty provisions for all ordinances and regulations contained in the Code of Ordinances for the town shall be modified to comply with the provisions of this resolution, save and except for those violations contained in chapters 130.01 and [130].02, and said violations being criminal violations imposed by North Carolina law.
- (c) In addition to any civil or criminal penalties set out in this section, any provision of this Code or any other town 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.
- (d) In addition to any civil or criminal penalties set out in this section, any provision of this Code or any other town ordinance that makes a condition unlawful existing upon or use made of real property may be enforced by injunction and order of abatement. The general court of justice shall have jurisdiction to issue such orders. 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.

- (e) In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that:
 - (1) Buildings or other structures on the property be closed, demolished or removed;
 - (2) Fixtures, furniture or other movable property be removed from buildings on the property;
 - (3) Grass and weeds be cut;
 - (4) Improvements or repairs be made; or
 - (5) 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.

- (f) The provisions of this Code and any other town ordinances may be enforced by one, all or a combination of the remedies authorized and prescribed by this section; except that any provision the violation of which incurs a civil penalty shall not be enforced by criminal penalties.
- (g) Except as otherwise specifically provided, each day's continuing violation of any provision of this Code or any other town ordinance shall be a separate and distinct offense.
- (h) Any ordinances adopted by the board of commissioners, the violation of which shall incur a penalty, shall specify whether the enforcement shall be pursuant to the civil penalty or criminal penal provisions of this section.
- (i) Upon determination of a violation of any section of this Code, the penalty for which is a civil penalty, the town shall cause a warning citation to be issued to the violator, setting out the nature of the violation, the section violated, the date of the violation, and an order to immediately cease the violation or, if the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, stating a reasonable period of time in which the violation must be abated. The warning citation shall specify that a second citation shall incur a civil penalty.
- (j) Upon failure of the violator to obey the warning citation, a civil citation shall be issued by the appropriate official of the town and either served directly on the violator or his duly designated agent, or registered agent if a corporation, in person or posted in the United States Postal Service by first class mail addressed to the last known address of the violator as contained in the records of the town, or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of such citation. The citation shall direct the violator to appear before the town treasurer, located in the town hall, within 15 days of the date of the citation or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected by the time the citation is paid; otherwise, further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.
- (k) If the violator fails to respond to a citation within 15 days of its issuance and pay the penalty prescribed in the citation, the town may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Justice for the collection of the penalty.

(Code 1983, § 1-4-6; Amend. of 4-12-2005, § 1; Ord. of 7-11-2006(1))

State Law reference— Similar provisions, G.S. 160A-175; penalty for violation of town ordinances, G.S. 14-4.

Sec. 6-7. - Animal control regulations.

(a) *Authority, purpose and general provisions.*

(1) *Authority.* This section is established pursuant to the following grants of statutory authority:

- a. G.S. 153A-121 which delegates to counties the power to regulate by ordinance, acts, omissions, or conditions detrimental to the health, safety or welfare of their citizens and the peace and dignity of the county.
- b. G.S. 153A-123, which authorizes counties to levy fines and penalties for violation of their ordinances and allows counties to secure injunction and abatement orders to further insure compliance with their ordinances.
- c. G.S. 153A-127 which authorizes counties to define and prohibit the abuse of animals.
- d. G.S. 153A-131 which authorizes counties to regulate, restrict or prohibit the possession or harboring of animals which are dangerous to persons or property.
- e. G.S. 153A-422 which authorizes counties to establish, equip, operate and maintain animal shelters.
- f. G.S. 130A-192 which authorizes animal control officers to determine if there are any dogs and cats not wearing valid rabies vaccination tags.
- g. G.S. Ch. 67 which authorizes health directors to declare a dog potentially dangerous.
- h. G.S. 14-4 which makes it a misdemeanor, unless otherwise specified, if any person shall be found guilty of violating an ordinance of the county.

(2) *Purpose and objective.* This section is established for the following purposes and objectives:

- a. *Animal cruelty.* To define and prohibit the abuse of animals;
- b. *Rabies.* To protect citizens and animals of the county from rabies transmitted by unconfined, uncontrolled, or unimmunized dogs or cats;
- c. *Animals at large.* To regulate, restrict or prohibit the running at large of any domestic animals;
- d. *Stray animals.* To regulate, restrict or prohibit the keeping of stray domestic animals;
- e. *Animal nuisance.* To regulate animals that may be nuisance;
- f. *Wild or exotic animals, poisonous reptiles and dangerous animals.* To regulate, restrict or prohibit the harboring or keeping or ownership of, wild or exotic animals, poisonous reptiles and dangerous animals;
- g. *Animal bites.* To establish rules and procedures for dealing with animal bites;
- h. *Impoundment of animals.* To regulate the impoundment and confinement of animals;
- i. *Redemption of impounded animals.* To regulate and establish procedures and fees for redeeming impounded animals in the county's animal shelter; and
- j. *Destruction of animals.* To regulate and establish procedures for destroying diseased, strayed, unwanted or unclaimed animals.

(3) *General provisions.* The following general provisions shall apply to this section:

- a. *Sheriff's animal protective services.* Authority is hereby granted to the county sheriff to enforce this chapter. This chapter shall be enforced by the sheriff, all sheriff's deputies, and all animal protective services officers (as defined in subsection c.), having all rights, powers and immunities granted in subsections a.1.—13. The sheriff, all sheriff's deputies, sheriff's animal protective services officers, and such other employees designated by the sheriff are

hereby granted the following rights, powers, and immunities and said employees, through the sheriff's animal protective services division shall:

1. Have the responsibility, along with law enforcement agencies to enforce all laws of the state and all ordinances of the county pertaining to animals and shall cooperate with all law enforcement officers having jurisdiction within the county in fulfilling this duty;
 2. In conjunction with the county health director, enforce and carry out all laws of the state and all ordinances of the county pertaining to rabies control;
 3. Be responsible for:
 - A. The investigation of all reported animal bites;
 - B. The quarantine of any dog or cat having or suspected of having rabies for a period of not less than ten days; and
 - C. Reporting to the local health director immediately the occurrence of any such animal bite and the condition of any quarantined animal;
 4. Be responsible for the operation of the animal shelter;
 5. Be responsible for the seizure and impoundment, when necessary, of any animal of the county involved in a violation of this chapter or any other county ordinance or state law;
 6. Investigate cruelty or abuse of animals and protect animals from cruelty or abuse;
 7. Be empowered to seize animals pursuant to G.S. 19A-46, or with the consent of an owner or occupant of the property, or as evidence if the animals are in "plain view", or by criminal or administrative search warrant if the animals are being cruelly treated or abused;
 8. Make canvasses of homes and businesses in the county as necessary for the purpose of ascertaining compliance with this chapter or state statute;
 9. Keep, or cause to be kept, accurate and detailed records of seizures, impoundments, and disposition of animals coming into the custody of animal services, bite cases, violations, complaints, investigations, and monies collected;
 10. Be empowered to issue notices of violation and assess civil penalties for violations of this chapter;
 11. Be empowered to go in the yard of animal owners to inspect the condition of animals;
 12. Be empowered to make inspections of buildings or dwellings with the consent of the owner or occupant, or by administrative search warrant, or criminal search warrant when there is reasonable cause to believe that this chapter or state law is being violated; and
 13. Be empowered to go upon private property to seize animals pursuant to the provisions of this chapter or court order.
- b. *Sheriff.* The sheriff shall be the chief animal protective services officer in charge of animal services, and supervise the county animal shelter. The sheriff shall have the authority to delegate to his sheriff's deputies, sheriff's animal protective services officers, and such other employees designated by the sheriff any of the powers granted him by this chapter. All persons designated by the sheriff pursuant to this chapter are considered agents of the sheriff, and as such serve at the will and pleasure of the sheriff. Any act done by the sheriff or the sheriff's designee, that is in compliance with or within the scope of this chapter, shall be considered the official act of the sheriffs. Where the term "sheriff" is used in this chapter, that term is synonymous with the animal services director.

- c. *Animal protective services officer.* The sheriff shall designate employees or agents enforcing this chapter as animal protective services officers. In the performance of their duties, animal protective services officers shall have all rights, powers, and immunities granted under this chapter and by the general laws of this state to enforce the provisions of this chapter and the General Statutes of the state as they relate to animal control and animal welfare. All animal protective services officers are hereby appointed animal control officers as set forth in G.S. Ch. 67 and animal cruelty investigators as set forth in G.S. Ch. 19A. Throughout this chapter where the issuance of a criminal citation is authorized, such process may only be issued by a sworn law enforcement officer. Animal protective services officers who are not sworn law enforcement officers may seek a criminal summons or warrant from a magistrate. Nothing contained in this chapter is intended to limit the authority granted to any sworn law enforcement officer to make arrests, with or without a warrant as provided in G.S. 15A-401.
- d. *Volunteers.* The sheriff is authorized to use such volunteers as the sheriff, in his sole discretion, deems necessary and available to assist with animal shelter operations, animal placement activities and various boards or committees as set forth in this chapter. Volunteers will not conduct enforcement or investigative activities, unless the volunteer is a reserve deputy sheriff designated by the sheriff.
- 5. *Citizen advisory committee.* An advisory committee is created to advise the sheriff with respect to animal control matters. The advisory committee shall be comprised of members selected by the sheriff and shall serve at the pleasure of the sheriff. Members will include, but are not limited to, interested citizens, and persons representing animal care, animal welfare, animal rescue, or similar organizations.
- 6. *Liability.* Except as otherwise provided by statutes, local laws or ordinances, no officer, agent or employee of the county charged with the duty of enforcing the provisions of this chapter or other applicable laws shall be personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of such duties unless such officer, agent or employee acts with actual malice.

(b) *Rabies control.*

- (1) *Definitions.* As used in this subsection the following terms are defined below:

Bite means the act of an animal seizing flesh with its teeth or jaws so as to tear, pierce or injure the flesh.

Cats mean any and all domestic felines.

Confinement means impoundment within the county's animal shelter or other appropriate facility.

Dogs mean any and all domestic canines.

Owner means any person, groups of persons, firm, partnership or corporation owning, keeping, having charge of or taking care of an animal or allowing an animal to remain on its property for more than 72 hours.

Rabies vaccinator means a person appointed and certified to administer rabies vaccine or a licensed veterinarian.

Rabies vaccine means an animal rabies vaccine approved by the United States Department of Agriculture for use in this state.

Restraint means a secure enclosure, chain, leash or other physical device of sufficient strength which allows the owner to maintain direct control of an animal.

Vaccination means the administration of rabies vaccine by a licensed veterinarian or by a certified rabies vaccinator.

(2) *Vaccination for rabies.* Owners of dogs and cats shall comply with the provisions of this section.

- a. *Vaccination.* The owner of every dog or cat shall have the animal vaccinated against rabies at four months of age, again at 16 months of age and then every one or three years as applicable by a licensed veterinarian or by a certified rabies vaccinator with a rabies vaccine approved by the United States Department of Agriculture and approved by the state commission for health services for use in this state.
- b. *Rabies tags.* A licensed veterinarian or a certified rabies vaccinator who administers rabies vaccine to a dog or cat shall issue a rabies vaccination tag to the owner of the animal. The rabies vaccination tag shall show the year issued, a vaccination number, the words North Carolina or the initials "NC" and the words "rabies vaccine." The owner shall make sure that the dog or cat wears the rabies tag at all times.
- c. *Rabies vaccination certificates.* The owner of a dog or cat must be able to produce a current rabies vaccination certificate. This certificate shall be issued by a licensed veterinarian or a certified vaccinator at the time the dog or cat is vaccinated. A copy of the certificate shall also be mailed or delivered to the sheriff by the licensed veterinarian or certified rabies vaccinator within 45 days of the animal being vaccinated. The sheriff may implement another method for collecting vaccination certificates. County residents who have their animals vaccinated outside of the county are responsible for filing the rabies vaccination certificate within animal services within five days of the inoculation or within five days of their return to the local area.
- d. *Nontransferable.* Rabies tags cannot be transferred from animal to animal.
- e. *Lost, destroyed or stolen rabies tags.* If a rabies tag is lost, destroyed or stolen, a duplicate tag must be obtained from the veterinarian at a fee not to exceed the actual cost of the tag, link and rivets, plus transportation cost.

(3) *Bites.* In order that rabies may be controlled and treated, all persons shall comply with the provisions of this section.

- a. *Persons bitten.* Wounds inflicted by any animal known to be a potential carrier of rabies shall be reported immediately to the county health director and the sheriff by the person who has been bitten, or in case of a child, his or her parents or guardian or other responsible party. Any person who has knowledge of a dog or cat inflicting a wound shall immediately report the same to the county health director and the sheriff, and provide the names and addresses of the person(s) bitten and the names and addresses of the owner(s) of any animals involved, if known. Every physician who treats a wound inflicted by any animal known to be a potential carrier of rabies shall report the incident to the county health director and the sheriff and provide the names and addresses of the person(s) bitten and the names and addresses of the owner(s) of any animals involved, if known, within 24 hours of rendering treatment.
- b. *Confinement of biting dogs and cats and confinement of animals suspected of having rabies.* Every dog or cat that bites a human being shall be confined immediately. The animal shall be delivered within eight hours of the incident, by the owner, to the county animal shelter or to a licensed veterinary hospital. The animal shall be confined for observation for not less than ten days. The owner shall be responsible for the cost of confinement at either place. The county health director shall have authority to order confinement of a dog or cat to the county's animal shelter or any other appropriate facility. Sheriff may waive the cost of confining the animal at the shelter if the bite occurred on the owner's premises and the animal was provoked. Final authority as to place of confinement rests with the county health director. After reviewing the circumstances of a particular case, the county health director may permit the animal to be confined on the premises of the

owner, but only after an inspection and recommendation from the sheriff the county health directors recommendation shall be based on whether or not there is a suitable secure enclosure on the premises and other circumstances warrant confinement on the owner's premises.

An owner or possessor of an animal which is suspected of having rabies shall immediately notify the county health director and the sheriff and shall securely confine the animal until further instructed by the county health director.

- c. *Destruction of infected dogs and cats.* If a dog or cat, in or out of confinement, develops rabies, as determined by a licensed veterinarian, it shall be the duty of the owner to have such animal euthanized under the supervision of the county health director. Any dog or cat known to have been bitten by another animal which is known or proved to be rabid shall be euthanized immediately by the owner or by the sheriff unless the dog or cat has been vaccinated against rabies more than three weeks prior to being bitten and is given a booster dose of rabies vaccine within three days of the bite.
- (4) *Sanctions, penalties, fines and remedies.* Violations of this subsection (b) are punishable by prosecution in criminal court as provided by G.S. 14-4, unless a greater penalty is provided elsewhere, or by the imposition of civil penalties, as prescribed in subsection (i), or both. Collection of civil penalties may be by civil action or by the use of a collection agency.
- a. *Failure to keep rabies tags on dogs and cats at all times.* It shall be a violation if a dog or cat is observed by an animal protective services officer not wearing a valid rabies tag, regardless of whether or not the animal is on or off the owner's property and regardless of whether or not the animal has been vaccinated.
 - b. *Failure to produce proof of vaccination and/or failure to have animal vaccinated when the owner is known.* In addition to any civil penalties imposed for violation of paragraph a., the owner of a dog or cat may be assessed another civil penalty, if he or she fails to produce proof of vaccination and/or fails to have the animal vaccinated within 72 hours of the issuance of a written notice of violation and civil penalty. The notice of violation and civil penalty shall specify that the owner has 72 hours to produce proof of vaccination and/or to have the animal vaccinated and failure to do so shall result in the assessment of a civil penalty. If the owner presents proof of vaccination within 72 hours of the issuance of the notice of violation, the civil penalty shall not be assessed. Having the animal vaccinated or showing proof of vaccination shall not discharge the civil penalties assessed for violation of paragraph a.

If the animal is not vaccinated and/or the civil penalty is not paid within 72 hours, animal services shall have the authority to summarily seize the animal. The owner shall have five days from the date of seizure to redeem the animal. The owner may redeem the animal by paying the civil penalty, the redemption fee and all boarding fees. If the owner wishes to request a review of the seizure of the animal, the owner must file a written request with the sheriff within five days of the seizure. If a timely request is filed, the sheriff shall convene a committee of at least three members, comprised of the citizen advisory committee within ten days of the receipt of said request. If the owner disagrees with the committee decision, the owner may seek a review by the superior court within ten days of the issuance of the committee's written decision. If the owner fails to redeem the animal, or fails to timely request a review of the seizure, or fails to timely appeal the committee's written decision, the animal shall become the property of the county and shall be disposed of according to this chapter.

The animal protective services officer may, in addition, issue a criminal summons or warrant, pursuant to the G.S. 130A-25 for the owner's violation of the G.S. 130A-185 or 130A-192. Any owner, if convicted, shall be guilty of a misdemeanor and shall be fined not more than \$500.00 or imprisoned for not more than six months.

- c. *Dogs or cats without valid rabies tags and the owner is unknown.* If a dog or cat is observed not wearing a valid rabies vaccination tag and the owner is unknown and cannot be found, the sheriff may impound the animal. Written notice of impoundment shall be posted at the animal shelter for a minimum of five days. If the animal has not been redeemed by the owner after five days the animal shall become the property of the county to be disposed of according to this chapter. If the owner is found, the animal shall be released upon payment of all redemption fees and a civil penalty for failure to wear a valid rabies vaccination tag. The owner may also be subject to other appropriate penalties described in subsection (j)(3), plus a civil penalty for the animal being at large.
- d. *Failure to provide animal services with rabies vaccination certificates.* Any veterinarian or certified rabies vaccinator who willfully refuses to turn over rabies vaccination certificates to the sheriff pursuant to G.S. 130A-189 shall be subject to the issuance of a criminal citation, criminal summons or warrants and/or the filing of a civil action to obtain the certificates.
- e. *Failure to notify the county health director and/or the sheriff of a biting incident and failure to confine biting dogs and cats.* If the owner of a dog or cat, or the person being bitten, or the parent of a child or other legal guardian or person standing in loco parentis of the person, fails to notify the health director and the sheriff and provide the names and addresses of the person(s) bitten and the names and addresses of the owner(s) of any animals involved in a biting incident; or the owner, who has knowledge of a dog or cat biting incident, fails to confine the animal pursuant to subsection (b)(3), the sheriff may issue a criminal citation, or seek the issuance of a criminal summons or warrant charging the person with a violation of G.S. 130A-196.

(c) *Animal cruelty.*

- (1) *Definitions.* As used in this subsection (c) the following terms are defined below:

Adequate shelter means an enclosure of at least three sides, a roof and a floor. The enclosure shall be ventilated and must have sufficient room for the animal(s) to move around freely and to lie down comfortably. Animals housed under the following conditions shall not constitute adequate shelter:

- a. Underneath outside steps, decks and stoops;
- b. Inside of vehicles;
- c. Underneath vehicles;
- d. Inside metal barrels placed in direct sunlight during the summer; or
- e. Inside cardboard boxes.

Animal means every non-human species, both domestic and wild.

Cruelty and *cruel treatment* means every act, omission, or act of neglect whereby unjustifiable, pain, suffering or death is caused or permitted, or attempted to be caused or permitted, against animals, as well as acts or attempted acts of teasing, molesting, baiting or trapping animals unlawfully. By way of example and not limitation, the following acts or conditions shall constitute prima facie evidence of animal cruelty:

- a. A collar, rope or chain embedded in or causing injury to an animal's neck;
- b. Dogs or cats left out in the rain, snow, extreme heat or cold without shelter;
- c. Animals that have not been fed or watered adequately;
- d. Intentionally allowing animals to engage in a fight;
- e. Allowing animals to live in unsanitary conditions;
- f. Allowing animals to live under crowded conditions; and

- g. Failure or refusal of an owner to obtain medical treatment for an animal when in an animal protective services officer's opinion such treatment is needed.

Owner means any person or group of persons owning, keeping, having charge of or taking care of an animal.

Person means any human being, firm, partnership or corporation including any nonprofit corporation.

- (2) *Exemptions.* This subsection (c) shall not apply to agencies conducting biomedical research or training, lawful activities for sport, the production of livestock or poultry for sale as a consumer product and the lawful destruction of any animal for the purpose of protecting livestock, poultry or humans.

This subsection (c) shall not apply to any law enforcement agency animal that is trained and may be used to assist a law enforcement officer in the performance of the officer's official duties.

- (3) *General care and prohibited acts.* All animals shall be kept and treated under sanitary and humane conditions and failure of the owner or possessor of the animal to abide by the provisions listed below shall subject the owner or possessor to the sanctions described in subsection (c)(5).

- a. *Food, water and shelter.* All animals in the possession of any persons shall be provided proper and adequate food and water. All animals, unless otherwise indicated in this section, shall be given at suitable intervals not to exceed 24 hours, a quantity of wholesome foodstuff suitable for the species and age, sufficient to maintain a healthful level of nutrition. All animals shall have access to a constant supply of clean, fresh water. All animals shall be provided proper and adequate shelter from the weather at all times.
- b. *Clean shelter.* All shelter for animals and the area surrounding said shelter shall be kept clean at all times.
- c. *Medical treatment.* All owners or possessors of animals shall provide proper medical attention for sick, diseased or injured animals. A sick animal shall go no longer than 24 hours without veterinary care.
- d. *Cruelty and cruel treatment.* No person shall beat, torment, overload, overwork, tease, molest or bait an animal or otherwise cruelly treat an animal as defined in subsection (c)(1). No person shall shoot a dog or any other animal, either on or off the owner's property, unless the animal is in the act of attacking a human being, sheep, cattle, hog, goat, or poultry or any domestic animal or as otherwise allowed by the state wildlife resources commission. This shall not apply to animal protective services officers when in the performance of their duties. No person shall trap a dog or cat without the permission of animal services.
- e. *Illegal contest or combat.* No person shall cause, permit or instigate any dogfight, cockfight, bullfight or other illegal contest or combat between animals or animals and humans.
- f. *Poisoning of animals.* No person shall expose any known poisonous substance or mix a poisonous substance with food, so that it will likely be eaten by any animal. This does not include acts or attempts of persons to rid their own property of rats or any other acts permitted by the state wildlife resources commission.
- g. *Confining animals to motor vehicles or transporting animals.* No person shall leave an animal in a closed car, truck or other vehicle for such duration or at temperatures as an animal protective services officer, in his sole discretion, deems harmful or potentially harmful to the animal. No person shall carry or cause to be carried in or upon any vehicle or other conveyance, any animal in a cruel or inhumane manner.

- h. *Abandonment.* No person shall turn loose or discard any domesticated animal or pet with the intent of abandoning such animal or pet.
 - i. *Disposing of dead animals.* All possessors or owners of animals that die, from any cause, shall bury the dead animal to a depth of at least three feet beneath the surface of the ground on his or her leased or owned property. No animal shall be buried within 300 feet of any flowing stream or public body of water. In the alternative, said animal shall be completely burned or otherwise disposed of in a manner approved by the state veterinarian. In any event, all dead animals shall be disposed of within 24 hours after knowledge of the death. No possessor or owner of a dead animal shall remove the carcass of a dead animal from his premises to the premises of another person without written permission of the person having charge of such premises and without burying said carcass as provided above.
 - j. *Reporting injured or killed domestic animals.* All persons who injure or kill a domesticated animal by running over, into, or otherwise coming in contact with such an animal with an automobile, motorcycle, bicycle or other vehicle shall notify the owner of the animal immediately. If the owner is not known, the person who injured or killed the animal shall immediately notify the sheriff. The person who injured or killed the animal shall give his or her name and address to the appropriate authority. An owner or lessee of real property who finds an injured or suffering domesticated animal on his property shall report the same to the sheriff as soon as the animal is discovered on the real property.
 - k. *Animals given away as prizes.* No live animal shall be given away, raffled or offered as a prize, premium or advertising device for, or as an inducement to enter, any contest, game or other competition involving skill or chance.
 - l. *Public exhibits of animals.* The sheriff shall have the authority to inspect public exhibits of animals which are a part of fairs, carnivals, festivals, fund raising events, petting zoos and any other activity or function carried on in the county. The sheriff shall have the authority to close down any exhibit, function or activity if it is determined that animals are being cruelly treated or animals run the risk of causing injury or harm to the public or run the risk of being injured or harmed themselves. This provision creates no special relationships, and neither the sheriff nor the county accept any liability for any injury, damage to property or loss as a result of visiting or monitoring public exhibits of animals.
- (4) *Failure to report animal cruelty.* An owner or lessee of property who knows, or based on facts and circumstances should know, that animals are being or have been cruelly treated on the owner's or lessee's real property, shall report said act or acts of cruelty to the sheriff. The owner or lessee of real property who fails to report acts of animal cruelty shall be subject to the appropriate sanctions described in subsection (c)(5).
- (5) *Sanctions, penalties, fines and remedies.* Violations of this subsection (c) are punishable by prosecution in criminal court as provided by G.S. 14-4, unless a greater penalty is provided elsewhere, or by the imposition of civil penalties, as prescribed in subsection (i), or both. Collection of civil penalties may be by civil action or by the use of a collection agency.
- a. *Failure to adequately provide for animals and cruel treatment of animals.* Whenever it has been determined by an animal protective services officer that an animal is not being adequately provided for or is being cruelly treated, as defined in subsection (c)(1), he may file with the magistrate a sworn complaint requesting an order allowing him to take immediate custody of, and provide suitable care for, the animal. The magistrate, pursuant to G.S. 19A-46 and this chapter shall issue the order only when he finds probable cause to believe that the animal is being cruelly treated and that it is necessary for the animal protective services officer to take immediate custody. Any magistrate's order issued under this section shall be valid for only 24 hours after its issuance. After the animal protective services officer executes the order, he shall return it with a written inventory of the animal(s) seized to the clerk of court.

The animal protective services officer may forcibly enter any premises or vehicle when necessary to execute the order only if the officer reasonably believes that the premises or vehicle is unoccupied by any person and that the animal is on the premises or in the vehicle and only if the animal protective services officer is a sworn law enforcement officer or is accompanied by a law enforcement officer. Prior to making forcible entry into any premises or vehicle, the animal protective services officer must give notice of his/her identity and purpose to anyone who may be present before entering the premises. If the premises is occupied and access to the premises and the animal is denied by the occupant, the animal protective services officer shall obtain a judicial order from a district court judge authorizing forcible entry. Forcible entry shall only be used during the daylight hours.

When the animal protective services officer seizes an animal, the officer must leave with the owner, if known, or affix to the premises or vehicle a copy of the magistrate's order and a written notice of the description of the animal, the place where the animal will be taken, the reason for taking the animal, a list of conditions, if any, which must be met before the owner can redeem the animal and notice that a complaint will be filed in district court requesting custody of the animal if the conditions are not met.

When the animal protective services officer takes custody of such an animal, he shall file a verified complaint asking the district court to determine custody of the animal. The animal protective services officer may also seek injunctive relief and any other relief he deems appropriate. This complaint shall be filed as soon as possible, but in no event longer than 30 days after the taking of the animal. If the owner surrenders the animal, the animal protective services officer is not required to file a complaint seeking custody of the animal.

The animal protective services officer must take any animal seized directly to a safe and secure place and provide suitable care for it. The necessary expenses of caring for a seized animal, including necessary veterinary care, shall be a charge against the animal's owner and a lien on the animal to be enforced as provided by G.S. 44A-4.

- b. *Alternative remedy and sanction.* If it is determined by an animal protective services officer that an animal is not in immediate danger, or the condition or problem which gives rise to inadequate care or cruel treatment can be corrected immediately or within a short period of time, not to exceed 72 hours, the officer may, in lieu of paragraph a., issue a written notice of violation requesting the owner or possessor of the animal to cease and desist or to correct the problem within 72 hours. If the condition or problem is not corrected within 72 hours or the owner or possessor of the animal fails to cease or desist from the cruel treatment or fails to adequately provide for the animal, the animal protective services officer may take action as outlined in paragraph a.
- c. *Violation of subsection (c)(3)b. (clean shelter).* Notwithstanding the other provisions and sanctions of this subsection (c), when it has been determined by an animal protective services officer that animals have been allowed to live in unsanitary conditions, and that said conditions resulted from the owner's unwillingness or inability to clean the area where animals are housed or that the conditions resulted from the number of animals involved, animal services may summarily seize the animals. Before the animals are seized, the sheriff shall issue a declaration of unsanitary conditions and notice of seizure to the owner. If the owner wishes to request a review of the seizure of the animals, the owner must file a written request with the sheriff within five days of the seizure. If a timely request is filed, the sheriff shall convene a committee of at least three members, comprised of the citizen advisory committee, within ten days of the filing of said request. If the owner disagrees with the committee decision, the owner may seek a review by the county superior court within ten days of the issuance of the committee's written decision. If the owner fails to timely request a review of the seizure or fails to timely appeal the committee's written decision, the animal shall become the property of the county.

- d. *Violation of subsections (c)(3)d.—i.* When it has been determined by an animal protective services officer that there has been a violation of one or more of the following subsections: (c)(3)d.—i., he may initiate the issuance of a criminal citation, criminal summons or warrant for violating the following criminal statutes:

G.S. 14-360, Cruelty to animals;

G.S. 14-361.1, Abandonment of animals;

G.S. 14-362 and 14-362.1, Cockfighting and other animal fights;

G.S. 14-363, Transporting animals cruelly;

G.S. 14-401, Animal poisoning;

G.S. 106-403 and 106-405, Disposing of dead animals.

Any person found guilty under any of the above criminal statutes shall be subject to the penalty therein prescribed, or if no penalty is prescribed, then according to G.S. 14-4.

- e. *Violation of subsection (c)(3)j. (reporting injured or killed domestic animals).* When it has been determined by an animal protective services officer that a domesticated animal has been injured or killed, as a result of coming into contact with an automobile, motorcycle, bicycle or other vehicle, and the person operating said conveyance fails to report the same, and the operator can be identified by an eyewitness or physical evidence, the animal protective services officer may issue a written notice of violation and civil penalty to the operator.

Any owner or lessee of real property who fails to report the existence of an injured or suffering domesticated animal on his property as required by subsection (c)(3)j., may be issued a written notice of violation and civil penalty.

- f. *Violation of subsections (c)(3)k. or l. (animals as prizes and public exhibits of animals).* Any person who violates subsection (c)(3)k. shall be subject to the issuance of a criminal warrant, summons or citation and, if convicted, shall be guilty of a class 3 misdemeanor. Any person who fails or refuses to close down an exhibit, function or activity after being instructed to do so by the sheriff shall be subject to the issuance of a criminal warrant, summons, or citation, or immediate arrest and, if convicted, shall be guilty of a class 3 misdemeanor.

(d) *Animals at large and confinement of dogs in estrus.*

- (1) *Exemption.* This subsection (d) shall not apply to cats.

- (2) *Definitions.* As used in this subsection (d), the following terms shall have the meanings set forth below:

Animal means every non-human species, both domestic and wild.

At large means any animal found off of the property of its owner and not under physical restraint of a competent person shall be deemed at large. Any animal, which has been the subject of a previous at large complaint, and which has been deemed at large by the sheriff upon probable cause, shall be deemed at large when found unrestrained on the owner's property.

In estrus means a female dog in what is commonly called "heat."

Nighttime means the time one hour after sunset and one hour before sunrise.

Owner means any person, group of persons, firm, partnership or corporation owning, keeping, having charge or taking care of any animal or allowing any animal to remain on its property for 72 hours.

Owner's property means the owner's property is that area described in a deed of conveyance or the area described in a lease. In a situation involving townhouses or condominiums, animal services will treat the "common areas" as being owned by the homeowner's association. In a situation involving leased apartments, animal services will treat the "common areas," as being owned by the lessor/property owner.

Prior complaints mean, for purposes of this chapter, any prior verbal or written complaint to animal services about a specific animal being at large, or any verbal or written complaint about any animals of an owner being at large, shall constitute a prior complaint.

Restraint means an animal is under restraint if it is:

- a. Controlled by means of a chain, leash or other like device;
- b. Within a vehicle or a secure enclosure;
- c. Under the control of a licensed hunter while said animal is in the act of hunting. A dog which is hunting for game for which its owner must hold a hunting license as required by the state and only during the designated season for the game so hunted; or
- d. Participating in a dog show or field trail.

Voice command is not recognized as adequate restraint.

- (3) *Animals at large.* The owner of an animal shall keep the animal on his property or under restraint at all times. Any animal that has been previously deemed by the sheriff as being at large, based upon probable cause, or has previously caused injury to a person or animal, or has displayed vicious tendency, or has been a public nuisance, must be restrained by leash, chain, fence or enclosure by the owner even when on the owner's property.
- (4) *Female dog in estrus.* An owner shall secure a female dog in estrus within a building or secure enclosure.
- (5) *Sanctions, penalties, fines and remedies.* Violations of this subsection (d) are punishable by prosecution in criminal court as provided by G.S. 14-4, unless a greater penalty is provided elsewhere, or by the imposition of civil penalties as prescribed in subsection (i), or both. Collection of civil penalties may be by civil action or by the use of a collection agency.
 - a. *Animal at large.* If animal services received a "first time" at large complaint and an animal protective services officer does not personally observe the animal at large, the officer shall investigate said complaint. The animal protective services officer shall have authority to go on and about private property to investigate said complaint. Upon a finding of probable cause to believe the animal was at large he may issue a written notice of violation and civil penalty. If an animal protective services officer observes an animal off of the owner's property and not under restraint, he may impound the animal.

The owner of an animal deemed at large may be issued a written notice of violation and assessed a civil penalty for the first violation and additional civil penalties for each subsequent violation. If the animal is impounded, the owner must redeem the animal within five days. If the owner fails to redeem the animal within five days, the animal shall become the property of the county and may be disposed of according to this chapter. To redeem the animal the owner must pay the civil penalty, all boarding fees and the redemption fee. The owner of a dog, which is involved in the unprovoked bite of another person, while the dog is running at large, shall be assessed a civil penalty.

When the same animal has been impounded three times or the owner has been cited three times for his animal(s) being at large, the sheriff shall declare the animal(s) a public nuisance and/or cite the owner for maintaining a public nuisance. The animal(s) shall then be housed or confined according to the instructions of the sheriff. If the animal(s) is/are subsequently found at large or the owner is subsequently cited for his animal(s) being at large, the sheriff may impound the animal(s) and initiate an action in district court for custody of the animal or animals based on the owner's failure to abate the nuisance.

- b. *Dog at large at night.* When the sheriff has probable cause to believe that a dog was or is at large at night, he may initiate the issuance of a criminal citation, criminal summons or warrant charging the owner with a violation of G.S. 67-12. Any person convicted under G.S. 67-12 shall be guilty of a class 3 misdemeanor. The owner of a dog that allows same to run at large at night shall also be liable in damages to any person injured or suffering lost to his property or chattels.
- c. *Failure to confine female dog in estrus.* When the sheriff has probable cause to believe that an owner has failed or refused to confine a female dog in estrus (heat) in a building or secure enclosure, he shall initiate the issuance of a criminal summons or warrant charging the owner with a violation of G.S. 67-2. Any person convicted under G.S. 67-2 shall be guilty of a misdemeanor and shall be fined not more than \$500.00 or imprisoned not more than six months.
- d. *Private remedies.* Nothing in this subsection (d) shall limit a private citizen from pursuing any other civil remedies allowed by law that result from an animal being at large.

(e) *Animal nuisance.*

- (1) *Definitions.* As used in this subsection (e) the following terms shall have the meanings set forth below:

Animal means every non-human species, both domestic and wild.

Animal nuisance. The owner shall be responsible for any animal creating a nuisance. The following qualifying act(s) or conditions described in paragraphs a. through h. shall be deemed prima facie evidence of an animal nuisance:

- a. Is at large off of the premises of its owner and not under restraint of a person;
- b. Chases, snaps at, attacks or otherwise molests pedestrians, bicyclists, motor vehicle passengers or farm stock or domestic animals;
- c. Gets into or turns over garbage pails;
- d. Damages gardens or other foliage or other real or personal property;
- e. Habitually or continuously loiters on school grounds or official county parks or recreation areas or city parks or recreation areas (applicable in the city only if the enforcement of this chapter is adopted by a city in the county by resolution);
- f. Is a dangerous animal as defined in subsection (f)(1);
- g. Is maintained in an unsanitary condition as to be offensive to sight or smell; or
- h. Is diseased and dangerous to the health of the public.

Owner means any person, group of persons, firm, partnership or corporation owning, keeping, harboring, having charge of or taking care of any animal or allowing any animal to remain on its property 72 hours.

- (2) *Exemption.* This subsection (e) shall not apply to cats.

- (3) *Animal creating a nuisance.* The owner shall be responsible for any animal creating a nuisance, and it shall be a violation of this subsection (e) if an animal engages in any of the acts mentioned in subsection (e)(1) or subsection (e)(4).
- (4) *Animal housed or restrained less than 15 feet from public way.* Any animal housed or restrained less than 15 feet from public street, road or sidewalk may be deemed a public nuisance if, in the discretion of animal protective services, the animal poses a threat to the general safety, health and welfare of the general public.
- (5) *Intentionally or willfully causing an animal to violate this subsection (e).* It shall be a violation of this section for a person to intentionally or willfully cause an animal to be a public nuisance.
- (6) *Sanctions, penalties, fines and remedies.* Violations of this subsection (e) are punishable by prosecution in criminal court as provided by G.S. 14-4, unless a greater penalty is provided elsewhere, or by the imposition of civil penalties as prescribed in subsection (i), or both. Collection of civil penalties may be by civil action or by the use of a collection agency.
- a. *Warnings.* When an animal protective services officer determines that a violation of subsection (e)(3) has occurred, he may issue a written warning of violation and notice of public nuisance, which shall be served on the owner. The owner shall be responsible for abating the nuisance within 72 hours by making sure his animal does not engage in any further act or acts which may constitute a nuisance.
- b. *Failure to abate the nuisance.* If the animal engages in any further act(s) or if the owner of the animal fails to abate the condition which constitutes the nuisance within 72 hours, the animal protective services officer may issue a notice of violation and civil penalty for the first offense and additional penalties for any subsequent offense. If the owner fails to abate the nuisance after the second civil penalty, animal protective services may seize and impound the animal. If the animal is seized, the sheriff must post a notice of seizure and impoundment with the owner. The owner may reclaim the animal upon payment of civil fees, redemption fees and boarding. If the animal is not reclaimed within five days, it shall become the property of the county and shall be disposed of according to this chapter.
- c. *Owner unknown.* In situations where the owner of an animal is unknown and the animal is a nuisance, the sheriff shall impound the animal. If the owner does not redeem the animal within five days, the animal shall become the property of the county and can be disposed of according to this chapter.
- d. *Animal housed or restrained less than 15 feet from public way.* Notwithstanding the other sanction mentioned above, when it has been determined by an animal protective services officer that an animal has been housed or restrained within 15 feet of a public street, road or sidewalk, and the animal poses a threat to the public, but the animal is not in the street, road or on the sidewalk, he shall issue a warning to the owner requesting the owner to move the animal. If the owner refuses to move the animal, the animal protective services officer shall issue a notice of violation and civil penalty for the first offense and additional penalties for each subsequent offense. After the second offense the animal protective services officer may impound the animal. He must leave a notice of impoundment with the owner or affix the notice to the premises. The owner shall have five days to redeem the animal. If the animal is redeemed, the owner must pay the redemption fee, the civil penalty and all boarding fees. If the owner fails to redeem the animal within five days the animal shall become the property of the county to be disposed of according to this section.

If an animal is housed or restrained within 15 feet of a public street, road or sidewalk and the animal poses a threat to the public, and it is found in the public street, road or on the sidewalk and the owner is not at home or refuses to remove said animal from the public street, road or sidewalk, the animal protective services officer may impound the animal. He must leave a notice of impoundment with the owner or affix the notice to the premises. The animal protective services officer may issue a notice of violation and civil penalty for a first offense and additional penalties for each subsequent offense. The owner shall have five days to redeem the animal. If the animal is redeemed the owner must pay the redemption

fee, the civil penalty and all boarding fees. If the owner fails to redeem the animal within five days the animal shall become the property of the county to be disposed of according to this chapter.

- e. *Intentionally or willfully causing an animal to violate this subsection (e).* If an animal protective services officer finds that there is probable cause to believe that a person has intentionally or willfully caused or enticed an animal to be in violation of this subsection (e), it may initiate the issuance of a criminal summons or warrant. Any person found guilty of subsection (e)(3) shall be guilty of a misdemeanor and shall be fined not more than \$500.00 or imprisoned for not more than six months.
- f. *Private remedies.* Nothing in this subsection (e) shall limit a private citizen from pursuing any civil claim allowed by law that results from an animal being a nuisance.

(f) *Dangerous dogs.*

- (1) *Definitions.* As used in this subsection (f) the following terms shall have the meanings set forth below:

At large means when any previously determined dangerous dog is off of the property of its owner and not under restraint or when any previously determined dangerous dog is not confined to a secure enclosure while on the property of its owner, it shall be deemed at large.

Complainant means any person or group of persons who has requested an investigation or declaration of a dangerous dog by the sheriff.

Dangerous dog means:

- a. Any dog owned or harbored primarily or in part for the purpose of dog fighting, or any dog trained for dog fighting.
- b. A dog that:
 - 1. Without provocation has killed or inflicted severe injury on a person resulting in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization;
 - 2. Killed or inflicted severe injury upon domestic animal when not on the owner's real property; or
 - 3. Approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent attitude of attack.
- c. A dog that is a law enforcement canine, acting under the direction and authority of its handler, or within the scope of its training, is exempted from the definition herein.

Dangerous dog appellate committee means a maximum of three persons who are not dangerous dog panel members appointed and delegated authority by the sheriff to review and affirm or reverse dangerous dog determinations pursuant to this subsection (f) and G.S. 67-4. The committee may or may not also be members of the citizen advisory committee.

Dangerous dog panel means a maximum of three persons who are not dangerous dog appellate committee members appointed and delegated authority by the sheriff to review dangerous animal investigations and make determinations pursuant to this subsection (e) and G.S. 67-4. The panel may or may not also be members of the citizen advisory committee.

Owner means any person, group of persons, firm, partnership or corporation owning, keeping, harboring, having charge of or taking care of a dangerous dog or allowing a dangerous dog to remain on its property for 72 hours.

Owner's property means any real property owned or leased by the owner of a dangerous dog, not including any public right-of-way or the common areas of a condominium, apartment complex or townhouse development.

Restraint means a dangerous dog is restrained if it is firmly under the control of a competent person by means of a leash, chain, or rope at all times. When the dog is not in a secure enclosure but on the owners property it shall be securely under restraint by a competent person who by means of a least, chain, or rope has the animal firmly under control at all times. When a dangerous dog is off of the property of its owner, restraint shall also include a secure muzzle on the dog. For purposes of this section, tying a dangerous dog to a stake, pipe, tree or any other stationary object shall not constitute restraint. When the dog is not under the control of a competent person, restraint shall mean confinement to a secure enclosure deemed appropriate by the sheriff.

Secure enclosure means an enclosure from which dangerous dog cannot escape unless intentionally freed by an owner. Enclosures shall be of a size appropriate for the dog it will hold, and must have a concrete floor. The enclosure shall be constructed with a minimum of 11½ gauge galvanized chain link fencing securely attached to the frame of said enclosure or equivalent construction and materials as approved the health director. The enclosure shall have a wire top also constructed of minimum 11½ gauge galvanized chain link fencing or equivalent construction and materials as approved by the sheriff. The enclosure's exit/entry gate must be equipped with a pad lock. The health director must approve such facilities. Human dwelling units shall not be approved as enclosures for dangerous dogs.

Severe injury means any physical injury that result in medical treatment exceeding the cost of \$250.00.

- (2) *Exemption.* This subsection (f) shall not apply to a dog being used by a law enforcement officer to carry out the law enforcement officer's official duties, or a dog being used in a lawful hunt, or a dog used as a hunting dog, herding dog, or predator control dog on the property of or under the control of its owner, or a dog where the injury inflicted by the dog was sustained by a person who, at the time of the injury, was committing a willful trespass or tort, was tormenting, abusing, or assaulting the dog, had tormented, abused, or assaulted the dog or was committing or attempting to commit a crime.
- (3) *Determination of dangerousness.*
 - a. If the sheriff receives a complaint that a dog has exhibited or committed any of the acts described in dangerous dog definition above, he shall conduct an investigation. An investigation shall include at a minimum the following:
 1. A completed dangerous dog investigation form prepared by the victims and eyewitnesses. The investigation forms shall be completed and returned within three business days of the initial complaint.
 2. An interview of all known witnesses to the alleged acts.
 3. A site visit to the specific physical location of where the acts allegedly occurred.
 4. Written documentation of the alleged damages and or injuries pursuant to the dangerous dog definition above. This may include, but is not limited to, photographs and or medical and veterinarian records.
 5. Written documentation of any dog harbored primarily or in part for the purpose of dog fighting or any dog trained for dog fighting. This may include but is not limited to photographs and or medical and veterinarian records, and or the possession of dog fighting equipment by the owner.
 - b. Complainant(s) may be charged criminally or charged a civil penalty of \$300.00 for filing a false complaint should the sheriff determine that the complainant(s):
 1. Willfully fails to cooperate after causing a dangerous dog investigation to be initiated, or

2. Willfully fails to provide testimony at any dangerous dog appeal hearings that result from the investigation caused by the complainant(s).
- c. Any dog which has been deemed dangerous and commits a second offense as determined by the county sheriff may be seized and destroyed. The sheriff shall issue an order of seizure with intent to destroy the dog to the owner. The owner may appeal this intended action by filing a written request with the dangerous dog appellate committee within three business days of receiving the written decision. The dangerous dog appellate committee shall schedule a hearing within three business days of receiving the appeal and request for hearing. The dangerous dog appellate committee shall hear the appeal and render a final written decision within three business days after the hearing and serve the same on the owner. The owner may appeal the dangerous dog appellate committee's decision to the superior court by filing notice of appeal and a petition for review within ten business days of the final decision of the dangerous dog appellate committee. If the owner fails to seek a timely review of the sheriff's notice of intent to destroy the dog or if he fails to file a timely appeal of the dangerous dog appellate committee's decision, the sheriff may humanely destroy the dog.
 - d. The sheriff shall appoint a panel of three people who will be responsible for reviewing the investigation conducted by the sheriff when determining a dog is a dangerous dog. When investigating a dangerous dog complaint, the sheriff must notify the owner of the dog in writing of the investigation. Upon completion of the investigation a dangerous dog panel meeting shall be scheduled. At the dangerous dog panel meeting, no one shall be present in an official capacity except the dangerous dog panel and the sheriff or his designee(s). Members of the public may be present, but only to observe. The sheriff will make a presentation of evidence to the dangerous dog panel and the dangerous dog panel shall make a determination as to whether the dog is dangerous and submit a written decision within three business days. The dangerous dog panel will not know the name of the owner(s) or harbinger(s), the victim(s), the addresses of those involved, or the breed of dog(s) involved. The written decision must list the reasons for declaring or not declaring the dog dangerous. If the dangerous dog panel declares the dog dangerous, the sheriff shall provide written notice to the owner that their dog(s) has been legally declared a dangerous dog(s). Dangerous dogs shall be immediately seized by the sheriff and impounded at the county animal shelter or other facility approved by the sheriff. The sheriff shall provide to the owner specific requirements for the dog(s) in accordance with subsection (f)(4) and any other controls as deemed necessary by the dangerous dog panel. The dog shall be impounded until such time as all requirements of subsection (f)(4) have been met by the owner and approved by the sheriff. All fines penalties and fees shall be paid by the owner of the dangerous dog prior to the animal being reclaimed.
 - e. The owner may appeal a dangerous dog determination. The sheriff shall appoint a dangerous dog appellate committee of three people who are not dangerous dog panel members to be responsible for hearing appeals of dangerous dog determination. Notice of appeal is by filing written objections with the dangerous dog appellate committee within three business days after receiving written notice. The dangerous dog appellate committee shall, within three business days of the filing of the appeal, schedule a hearing. The dog shall remain impounded pending the outcome of any appeals. The dangerous dog appellate committee shall render a written decision within three business days after the hearing and serve the same on the owner. Any appeal of the final decision of the dangerous dog appellate committee shall be to superior court by filing notice of appeal and a petition for review within ten business days from the final decision of the dangerous dog appellate committee.
 - f. Appeals from ruling of the dangerous dog appellate committee shall be heard in superior court. The appeal shall be heard de novo in superior court pursuant to G.S. 67-4.1(c). Dangerous dogs shall remain impounded pending the outcome of any appeals.

- (4) *Confinement and restraint of a dangerous dog.* The owner of a dangerous dog shall keep the dog within a secure enclosure, as defined in subsection (f)(1), on his property, or on the property of another with written permission. When the dog is not in a secure enclosure but on the owners property it shall be securely under restraint by a competent person who by means of a leash, chain or rope has the dog firmly under control at all times. When the dog is off of the property of the owner, it shall be securely muzzled and under restraint by a competent person who by means of a leash, chain or rope has the dog firmly under control at all times. The owner shall notify animal protective services immediately of an escape by the dog. All dangerous dogs must be micro chipped for identification by a licensed veterinarian within ten business days at the owner's expense and animal protective services provided with the identification number. All owners of dangerous dogs must purchase a sign from animal protective services that states "DANGEROUS DOG" and post same on the enclosure where said dog is confined.
- (5) *Transfer of ownership of a dangerous dog.* If the owner of a dangerous dog transfers ownership or possession of the do to another person, the owner shall provide written notice to the new owner or person taking possession that the dog is dangerous, as defined in this subsection (f) and the owner shall provide animal protective services with written notice that ownership or possession of the dog prior to the transfer of ownership.
- (6) *Sanctions, penalties, fines and remedies.* Violations of this subsection (f) are punishable by prosecution in criminal court as provided by G.S. 14-4, unless a greater penalty is provided elsewhere, or by the imposition of civil penalties as prescribed in subsection (i), or both. Collection of civil penalties may be by civil action or by the use of a collection agency.
- a. *Dangerous dog found at large.* If a dangerous dog is found at large, it may be tranquilized or humanely destroyed by an animal protective services officer with or without prior notice to the owner, only after unsuccessful attempts to catch it and authorization from the sheriff. If an animal protective services officer does tranquilize or humanely destroy such a dog he shall submit a written report of the incident to the sheriff and health director within 72 hours of the incident and shall make a good faith attempt to notify the owner of the incident.
- If a dangerous dog is determined by an animal protective services officer to pose immediate danger to the health and safety of any person or animal, the dangerous dog may be tranquilized or humanely destroyed at the animal service officer's discretion, with or without prior notification to the owner. In the event the animal protective services officer does tranquilize or humanely destroy such dog, he shall submit a written report of the incident to the sheriff and health director within 72 hours of the incident and shall make a good faith attempt to notify the owner of the incident.
- If the owner of a dangerous dog has failed to adhere to the written dangerous dog instructions provided by the dangerous dog panel, the sheriff may issue an order of seizure with intent destroy the dog to the owner. The owner may appeal this intended action by filing a written request with the dangerous dog appellate committee within three business days of receiving the written decision. The dangerous dog appellate committee shall schedule a hearing within three business days of receiving the appeal and request for hearing. The dangerous dog appellate committee shall hear the appeal and render a final written decision within three business days after the hearing and serve the same on the owner. The owner may appeal the dangerous dog appellate committee's decision to the superior court by filing notice of appeal and a petition for review within ten business days of the final decision of the dangerous dog appellate committee. If the owner fails to seek a timely review of the animal service director's notice of intent to destroy the dog or if he fails to file a timely appeal of the dangerous dog appellate committee's decision, the sheriff may humanely destroy the dog.
- b. *Failure to confine or restrain a dangerous dog and failure to provide notice of transfer.* Any owner who fails to confine or restrain a dangerous dog or any owner who fails to provide the written notices described in subsection (f)(5) or violates any provisions of this subsection (f) shall be subject to the sanctions, fines, penalties and remedies mentioned

above as well as being subject to the issuance of a criminal warrant or summons. If convicted, the owner shall be guilty of a misdemeanor punishable by a fine not to exceed \$500.00 or imprisonment for not more than six months, or both (G.S. 67-4.2(c)).

- (g) *Interference.* It shall be unlawful for any person to interfere with, hinder, or molest the sheriff, deputy sheriff, animal protective services officer, employee, agent, volunteer, veterinarian, or any other person duly authorized by this section while in the performance of duty. It shall also be unlawful for any person to seek release, or attempt to release, or to release any animal in the custody of animal protective services, except as otherwise specifically provided in this section. The sheriff may initiate the issuance of a criminal citation, criminal summons or criminal warrant against any person violating this subsection. Violation of this provision is a class 3 misdemeanor, unless subject to greater punishment by other state law or ordinance.

- (h) *Impoundment of animals.*

- (1) *Definitions.* As used in this subsection (h), the following terms shall have the meanings set forth below:

Animal means every non-human species, both domestic and wild.

Feral cat means a domestic cat which has adapted to survive in the wild, is homeless and ownerless, having descended from stray and possibly generations of abandoned house pets.

Impoundment means possession or seizure of an animal by county animal services for placement in the county's animal shelter or any other appropriate facility.

- (2) *Impoundment.* Not inconsistent with the proceeding subsections of this section, any healthy animal, with the exception of a feral cat, which appears to be lost, strayed or unwanted, or any dog or cat which is found not wearing a current valid rabies vaccination tag, or any wild or exotic animal or poisonous reptile which has escaped or poses the danger of escaping may be confined to the animal shelter or any other appropriate facility in a humane manner for a minimum period of five days, unless otherwise specified by this section, for redemption by the owner. Any animal not redeemed within five days shall become the property of the county and shall be disposed of pursuant to this section. The sheriff is authorized to obtain suitable board, maintenance and care from any available source for any impounded animal for which the animal shelter is not equipped to care. The owner of any animal impounded and cared for under this provision may redeem the animal upon payment of all costs for maintenance, transportation and care plus regular redemption fees provided in subsection (i).
- (3) *Feral cats.* A feral cat shall be held for three working days for redemption by a possible owner. If the feral cat is not redeemed within three working days, it may be euthanized pursuant to this chapter. Before a feral cat is euthanized, a panel of three persons must unanimously declare the cat a feral cat. If the panel cannot agree unanimously, the cat must be held for five days. The panel is to be made up of three animal protective services staff members, each with a minimum of one years' experience with animal services.
- (4) *Notice.* A good faith effort shall be made to notify known owners of impounded animals. If the owner is known, a written notice of impoundment shall be served on the owner or affixed to the owner's premises. The written notice shall describe the animal, state the date, time and place the animal was picked up and inform the owner of the conditions whereby the animal may be redeemed. Instructions on how to determine if an animal has been impounded shall be posted at the animal shelter. The posting of these instructions at the animal shelter shall constitute adequate notice to an unknown owner.
- (5) *Boarding fees.* The sheriff, with the assistance of shelter personnel, shall charge to the owner the following fees, which must be paid before an animal may be redeemed:
- Per-day boarding fee for dogs: \$10.00.
- Per-day boarding fee for cats: \$10.00.

Per-day boarding fee for all other animals kept at the animal shelter: \$10.00.

Per day boarding fee for all other animals not kept at the animal shelter: The actual amount charged by the caretaker or boarder of the animal.

Non-routine charge for transporting the animal: The actual amount charged by the person providing the transportation.

The above fees are in addition to the redemption fees set forth in subsection (j) and are subject to adjustment or change by the board of county commissioners at any time.

- (i) *Civil penalties.* The sheriff is authorized to assess civil penalties for violations of this section. Any assessed civil penalty not paid within 20 days of issuance may be turned over to a collection agency or efforts made to collect in civil court.

Failure to wear rabies tag\50.00

Failure to vaccinate\100.00

Failure to notify, or provide information of a bite\100.00

Manner of keeping and treating animals\100.00

Failure to give notice of injuring animal\50.00

Failure to give notice of injured animal on property\50.00

Unprovoked dog bite while running at large\500.00

Animals running at large:

First time\50.00

Second time\75.00

Third time\100.00

Four or more\150.00

Failure to confine dog/cat in estrus\75.00

Animal public nuisance:

First time\50.00

Two or more\75.00

Harboring stray animals\50.00

Dangerous dog violations\100.00

Violation of exotic animal ordinance (per day)\50.00

Interference with officer\150.00

Interference with trap or cage\100.00

Filing false dangerous dog complaint\300.00

Unspecified violations of this chapter (each)\50.00

Miscellaneous fees: ;b2;Euthanasia by request 50.00

Tranquilize small animal by request\50.00

Tranquilize large animal by request\50.00

Lost darts\10.00

These amounts may be changed by the county board of commissioners at any time.

- (j) *Redemption of animals.* An owner of an animal, which has been impounded by animal services, may resume possession of the animal, except as already provided or in other subsections of this section, upon compliance with the following provisions:

- (1) *Proof and acknowledgement of ownership.* Any person attempting to redeem an impounded animal shall present proof sufficient to satisfy the sheriff of ownership of the animal. Evidence of ownership may include but is not limited to any of the following:

- a. License tag from another county;
- b. Rabies tag for the animal;
- c. Ownership documents, pedigree papers, bill of sale and any other document identifying the person as owner of the animal;
- d. Photographs of the animal with the owner or other family members; or
- e. Affidavit from two people in the community stating that the animal has been seen in the presence or possession of the person attempting to resume possession.

Any person attempting to redeem an animal on behalf of an owner shall present proof sufficient to satisfy shelter personnel that he or she is acting as agent for the owner.

- (2) *Time of redemption.* Any person attempting to redeem an animal must make contact with the animal shelter within five days of the animal being impounded at the animal shelter or some other appropriate facility. After making contact, that person shall be given a reasonable amount of time to prove ownership of the animal not to exceed five additional days.

- (3) *Payment of redemption fees, boarding fees and civil penalties.* The owner of an impounded animal must pay all redemption fees, boarding fees and civil penalties assessed against the animal before it can be released from the shelter. Any person, after presenting sufficient proof of ownership, may redeem the animal after paying the following fees and costs:

First redemption by owner: \$50.00 + boarding fee + civil penalty

Second redemption by owner: \$75.00 + boarding fee + civil penalty

Third redemption by owner: \$100.00 + boarding fee + civil penalty

Forth and subsequent redemption: \$150.00 + boarding fee + civil penalty

If an owner cannot prove a current rabies vaccination, he/she will be charged an additional \$10.00 for a rabies vaccination certificate.

These amounts may be changed by the county board of commissioners at any time. The animal shall become the property of the county if the owner fails to pay all amounts due and if the appropriate holding period has passed, and will then be disposed of as provided by this section.

- (k) *Disposition of impounded animals.* If an animal is not redeemed by its owner within the allowed time for redemption, the animal shall become the property of the county without any further notice to the owner. Once the animal becomes the property of the county, the sheriff is authorized to adopt the animal out or euthanize it. Any sick or diseased animal, which appears to be lost, strayed or

unwanted and is found not wearing a rabies vaccination tag or any other form of identification may be euthanized immediately by order of the sheriff. Any sick or diseased animal, with proof of ownership, confined in the county animal shelter, may be euthanized by order of the sheriff after recommendation of a licensed veterinarian.

- (l) *Adoption fees.* Adoption fees shall be set by the board of county commissioners.

All dogs over six months: \$65.00.

Includes a physical examination, heartworm test, rabies vaccination, and spay or neuter.

All dogs under six months: \$46.00.

Includes a physical examination, rabies vaccination, and spay or neuter.

All female cats and kittens: \$55.00.

Includes a physical examination, feline leukemia/F.I.V. test, rabies vaccination, and spay or neuter.

All male cats: \$35.00.

Includes a physical examination, feline leukemia/F.I.V. test, rabies vaccination, and spay or neuter.

Bonafide rescue groups: \$5.00.

Nonprofit animal rescue groups that provide their own medical services and documentation thereof to animal services are entitled to this reduced rate.

- (m) *Recovery of adopted animal.* The sheriff is authorized to recover, reclaim or repossess an animal and dispose of the animal according to this section if the adopting party violates the adoption agreement.

- (n) *Method of service and return.* Unless otherwise specified in this section, all notices or citations required to be sent or delivered pursuant to this section shall be served and return of service made as follows:

(1) *Civil process.* The sheriff will serve all notices, civil citations, or other civil process related to this chapter according to the North Carolina Rules of Civil Procedure contained in G.S. Ch. 1A.

(2) *Criminal process.* The sheriff will serve all criminal citation, criminal summons, warrants, or other criminal process related to this section according the North Carolina Rules of Criminal Procedure contained in G.S. Ch. 15A.

- (o) *Appeal procedure.* All civil citations may be appealed in writing. The notice of appeal must be addressed to:

Brunswick County Animal Protective Services

Attention: Brunswick County Sheriff

P.O. Box 92, Supply, NC 28462

and postmarked or personally delivered within 20 days of receipt of the citation.

- (p) *Appeal hearing.* Appeals of animal services civil citations shall be heard within 30 days of the notice of appeal, unless a continuance is mutually agreed upon. The appeal hearing shall be presided over by a hearing officer designated by the sheriff with the decision being rendered by a committee of at least three members of the citizen advisory committee. All testimony offered in a hearing held pursuant to this subsection shall be given under oath and recorded by tape recording or any other

reasonable manner. The hearing shall be open to the public. The person requesting the hearing may be represented by an attorney. The sheriff or animal protective services officer shall have the burden of proving that this section has been violated and that the proposed sanction is in accordance with this section. The person requesting the hearing will then be given the opportunity to prove that this section has not been violated and/or that the sanction is not in compliance with this section. The person requesting the hearing may admit the violation and confine his proof to showing that the sanction is not in accordance with this section. The sheriff will then be given the opportunity to address any conflicts or inconsistencies created by the evidence or statements.

The committee will render a decision and a notice of decision will be furnished to all parties concerned (complainant, bite victim, animal owner, etc.) If the sanctions/penalties are upheld, the animal owner will have 20 days to pay any fines or fees before collection efforts are initiated. The animal owner may further appeal the decision of the committee to the superior court within ten days of the service of the notice of decision.

(Res. No. 2014-19, § 1, 9-9-2014)

Sec. 26-9. - False fire alarms.

(a) *Intentional false alarms.*

- (1) No person shall intentionally make a false fire alarm within the town or extraterritorial jurisdiction.
- (2) Violation of this subsection shall constitute a misdemeanor, and the violator shall be subjected to punishment in accordance with section 1-6.
- (3) Persons or parties responsible for causing or making a false fire alarm shall also be in violation of section 503 of the state fire prevention code and subject to enforcement as prescribed in G.S. 160A-175.

(b) *Negligent false alarm.*

- (1) No person shall negligently make a false fire alarm within the town extraterritorial jurisdiction. For the purpose of this section, a person shall be guilty of negligently making a false fire alarm when and if the fire alarm serving his structure sounds and there is not, in fact, a fire to which the fire department should respond, and such person or entity has been given prior notice that the fire alarm system is malfunctioning and fails to remedy the malfunction within 72 hours after such notice. Once notice is given, the owner/operator of the system shall contact the town hall and notify the fire inspector that there has been maintenance and correction of the malfunction. The fire inspector shall proceed to inspect the system. There shall be a charge for the inspection as established by the fee schedule.
- (2) Any person or entity violating the provisions of this subsection shall be subject to a civil fine as follows:
 - a. For the first offense, \$100.00;
 - b. For the second offense occurring within one year from the first offense, \$200.00; and
 - c. For the third and each additional offense occurring within one year of the first offense, \$500.00.

(Ord. of 1-12-1999(1), § 6-5-16; Res. No. 2010-11, § 1, 6-8-2010)

State Law reference— False fire alarms, G.S. 14-286.

Sec. 26-10. - Burning within the town limits.

- (a) The burning of any material on the beach or on a street, road, lane or public ground is prohibited. Subject to provisions of this section, no person shall kindle or maintain any recreational fire, bonfire, or shall knowingly furnish the material for any such fire, or authorize any such fire to be kindled or maintained.
- (b) No person shall operate any type of portable outdoor fireplace/pit, hibachi or charcoal grill or maintain any type of open fire on any outside porch, patio or landing above ground level. Electric and gas grills shall be permitted only if they are permanently attached to the landing and not covered by any type of roof or awning. Gas fueled outdoor fireplaces three (3) feet in diameter or less with a flame height less than two (2) feet, permanently affixed to the ground, and separated from structures and combustible materials by ten (10) feet shall be permitted. Open burning, bonfires, and recreational fires shall be prohibited within town limits unless contained within a device specifically manufactured for such purposes (ex. Fire pits, chimeneas, etc.) which shall be placed no closer than fifteen (15) feet to any structure or natural and/or manmade combustible material. No fire located in a portable outdoor fireplace/pit shall be left unattended.
- (c) All fixed gas fueled outdoor fireplaces shall require a mechanical permit from the town's inspections department prior to installation.
- (d) Anyone violating this section shall be cited by the chief of police or one of his deputies and shall be guilty of an infraction. The offender shall pay a civil penalty of \$35.00 into the office of the town clerk within seventy-two (72) hours following receipt of the citation. If such penalty is not paid, in accordance with G.S. 160A-175, violations of any provision of this section shall be a misdemeanor as provided in G.S. 14-4, punishable upon conviction in accordance with section 1-6.

(Code 1983, § 2-2-7; Res. No. 2010-11, § 1, 6-8-2010; Res. No. 2015-02, § 1, 4-14-2015)

Sec. 30-63. - Corrective procedures.

- (1) *Violations to be corrected.* When the floodplain administrator finds violations of applicable state and local laws; it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- (2) *Actions in event of failure to take corrective action.* If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - (a) That the building or property is in violation of the floodplain management regulations;
 - (b) That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten 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
 - (c) That following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (3) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the flood damage prevention ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than least 180 calendar days. Where the floodplain administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
- (4) *Appeal.* Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the floodplain 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.
- (5) *Failure to comply with order.* If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a Class I misdemeanor pursuant to G.S. 143-215.58 and shall be punished at the discretion of the court.

([Ord. No. 2018-15, 7-10-2018](#))

Sec. 38-38. - Holes on beach strand.

- (a) For the purposes of this section, "beach strand" shall be defined as all land between the low watermark of the Atlantic Ocean and the first line of stable vegetation as defined in the regulations of the North Carolina Coastal Resources Commission.
- (b) It shall be unlawful for any person to dig holes, trenches or other depressions on the beach strand which exceed 16 inches in depth or five feet in width. This prohibition shall not apply to activities sanctioned or approved by the town such as children's sand castle contests.
- (c) Use of shovels, other than those manufactured and intended for use by children for outdoor recreational activities are prohibited on beach strand. For the purposes of this section "shovels" shall be defined as a tool with a broad flat blade and typically upturned sides, used for moving earth or other material.
- (d) All holes, trenches or depressions dug in the beach strand shall be attended at all times (responsible person must be within 20 feet of the hole, trench or depression) and the hole, trench or depression must be filled in prior to leaving the beach but no later than 7:00 p.m.
- (e) Violation of this section shall not constitute an infraction or misdemeanor. Violation of this section shall subject the offender to a civil penalty to be recovered by the town in a civil action in the nature of debt if said civil penalty is not paid within 24 hours after being cited for the violation. The civil penalty shall be \$50.00 for each separate or distinct offense.

([Ord. No. 2018-017, 7-10-2018](#))

Sec. 38-71. - Discharge of fireworks, firearms and other weapons.

- (a) It shall be unlawful for any person to fire or discharge any rifle, gun, pistol, pellet gun, air gun, air pistol, air rifle, fireworks or any type of pyrotechnic device within the town, on or off his premises, in sport or amusement. A violation of this section shall not apply to the sale, use or possession of those devices specified in G.S. 14-414 as permitted by the State of North Carolina as specific exceptions to the state ban on fireworks and explosives. In addition, as a further exception to this provision, a permit may be obtained for a fireworks exhibition or display from the town provided the display is designed and performed by a company that specializes in the performance of firework displays, the display area adheres to or exceeds applicable National Fire Protection Association standards and insurance is provided.
- (b) Any person who shall knowingly and willfully permit his minor child under 18 years of age to discharge, fire, shoot or operate, within the town, any such air rifle, BB gun or pellet gun, or any fireworks or any type of pyrotechnic device, shall be guilty of a misdemeanor.

(Code 1983, § 6-5-4; Res. No. 2014-05, § 1, 3-11-2014)

State Law reference— Authority to regulate and restrict firearms and pellet guns, G.S. 160A-189, 160A-190.

Sec. 46-4. - Containers required.

- (a) All permanent or long-term rental property owners, shall maintain one waste polycart and one recycling polycart of not more than 90-gallon capacity per container for each single-family or comparably sized dwelling as provided by the sanitation firm serving the town. The town will provide one waste polycart and one recycling polycart per dwelling. Procurement of additional polycarts from the town is the sole responsibility of the property owner.
- (b) Rental properties that are rented week-to-week as part of the summer rental season (defined as short-term rental properties), are subject to high numbers of guests, resulting in abnormally large volumes of household waste. In the interest of public health, sanitation and environmental concerns, all short-term rental property owners are required to provide waste and recycling polycarts at each short-term rental property based on the number of bedrooms per location as outlined in exhibit A. For the purpose of this section, a bedroom is any room which provides a facility for sleeping, including, but not limited to, day beds (or other convertibles), sleeper sofas, hide-a-beds, cots, or roll-away beds:

Exhibit A		
Number of Bedrooms	Waste Polycarts Required	Recycling Polycarts Required
1—4	1	1
5—7	2	1
8—9	3	2
10 or more	4	2

- (c) All mobile polycarts shall be placed within seven feet of the paved road no earlier than 6:00 p.m. on the evening before the trash collection. Polycarts shall be moved from the roadway by 7:00 p.m. on the day of service and placed adjacent to the dwelling house or place of business, except in multifamily developments.
- (d) All waste matter must be contained in the polycart receptacle. Placement of loose or bagged waste items outside of the polycart receptacle will not be picked up by waste collection services and will be considered a littering offense as outlined in article II, section 46-41.
- (e) Owners, custodians and tenants of larger condominium units and commercial establishments shall maintain a steel container to adequately hold the garbage and refuse from the unit involved.
- (f) Upon a violation of this section, the offender shall be issued a written warning by the town requiring the offender to comply with the terms set forth herein within seven days from the mailing of said warning. Any further violation of any provision of this section shall be a misdemeanor pursuant to G.S. 14-4, punishable by a maximum fine of not more than \$100.00. In addition, any violation of any provision of this section after written warning shall subject the offender to a civil penalty in the amount of \$100.00 to be paid within 72 hours after having been cited for violation of this section.

(Code 1983, § 2-2-4; [Res. No. 2017-27, § 1, 10-10-2017](#); [Res. No. 2018-1, § 1, 2-13-2018](#))

Sec. 54-85. - Abandoned and junked motor vehicles.

- (1) *Title.* This section shall be known and may be cited as the "Ordinance Regulating Abandoned and Junked Motor Vehicles both within the municipal boundaries of the Town of Ocean Isle Beach and upon its property."
- (2) *Purpose and objectives.* The purpose and objective of this section are as follows:
 - (a) To ensure the public health, safety, and general welfare by providing controls on the removal and disposal of abandoned and junked motor vehicles.
 - (b) To prohibit abandoned or junked motor vehicles from being disposed of by leaving them on public or private property.
 - (c) To eliminate the present accumulation of abandoned and junked motor vehicles.
 - (d) To prevent future accumulation of abandoned and junked motor vehicles.
 - (e) To promote or enhance community, neighborhood or area appearance.
- (3) *Definitions.* For the purposes of this section, certain terms and words are hereby defined; words used in the present tense shall include the future; words in the singular number shall include the plural number; and the plural the singular; the word "shall" is mandatory and the word "may" is permissive.

Abandoned motor vehicles. An "abandoned motor vehicle" is one that:

- a. Has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or
- b. Is left on property owned or operated by the town for longer than 24 hours; or
- c. Is left on private property without the consent of the owner, occupant, or lessee of the property for longer than two hours;
- d. Is left for longer than seven days on any public street or highway.

Board of commissioners. The term "board of commissioners" shall mean the Board of Commissioners of the Town of Ocean Isle Beach, North Carolina.

County. The word "the county" shall mean Brunswick County, North Carolina.

Health hazard. An abandoned or junked motor vehicle shall be declared by the town's building inspector or his/her designee to be a health hazard when its condition is such that the motor vehicle can or does harbor diseases, furnish shelter and breeding places for mosquitoes and other insects, or become a breeding ground and harbor for rats and other pests.

Junked motor vehicles. Motor vehicles which do not display a current license plate or a current registration sticker and which do not display a current inspection sticker issued by or in the same state as the license plate or registration sticker and:

- a. Are partially dismantled or wrecked; or
- b. Cannot be self-propelled or moved in the manner in which originally intended to move; or
- c. Is more than five years old and appears to be worth less than \$500.00;
- d. Does not display a current license plate.

Motor vehicles. Includes any machine designed or intended to travel over land or water by self-propulsion or while attached to a self-propelled vehicle.

Nuisance vehicle. A motor 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:

- a. A breeding ground or harbor for mosquitoes or other insects or a breeding ground or harbor for rats or other pests; or

- b. A point of heavy growth of weeds or other noxious vegetation over eight inches in height; or
- c. A point of collection of pools or ponds of water; or
- d. A point of concentration of combustible items such as gasoline, oil, other flammable or explosive materials including but not limited to boxes, paper, old clothes, rags, refuse, or any other combustible materials or objects of a like nature; or
- e. One which has parts thereof which fall and injure members of the public or one which may have parts which fall or be closed and become an area of confinement which may not be released for opening from the inside; or
- f. One which is so situated and located that there is a danger of the vehicle falling, rolling, turning over, or creating an unsafe movement such as unattended, blocked or jacked vehicles; or
- g. One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind; or
- h. One which has parts thereof which are jagged or contain sharp edges of metal or glass; or
- i. Any other vehicle specifically declared a health and safety hazard and a public nuisance by the board of commissioners.

Officers, employees, etc. Whenever reference is made herein to a particular officer, employee, department or agency, without further qualification, it shall be construed to be followed by the words "of the Town of Ocean Isle Beach," unless otherwise specifically provided. A reference to an officer shall include such officer's designated representative.

Safety hazard. An abandoned or junked motor vehicle shall be declared to be a safety hazard when its condition is such that the motor vehicle's areas of confinement which cannot be opened from the inside, such as trunk compartments and engine compartments and engine or glass, windows, or any exterior or interior fixtures present physical dangers to the safety and well-being of children or other persons.

Town: The word "the town" or "town" shall refer to the Town of Ocean Isle Beach, North Carolina.

- (4) *Jurisdiction.* This section shall govern the removal and disposal of abandoned or junked motor vehicles on public grounds and private property within the town unless specified below. However, this section shall govern the removal and disposal of abandoned or junked motor vehicles on town-owned property wherever located.
- (5) *Complaints.* Prior to an investigation to determine whether a motor vehicle is an abandoned or junked motor vehicle, a complaint must be submitted in writing with the appropriate town officer or employee.
- (6) *Abandoned motor vehicles.*
 - (a) *Abandonment of motor vehicles prohibited.* It shall be unlawful for any person to abandon a motor vehicle on public grounds and private property within the town and on town-owned property wherever located.
 - (b) *Removal of abandoned motor vehicles.* The town may remove to a storage garage or area abandoned motor vehicles that are found to be in violation of this section. An abandoned motor vehicle may not be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the board of commissioners or a duly authorized town official or employee has declared the vehicle to be a health or safety hazard. Appropriate town officers and employees may, upon presentation of proper credentials, enter on any premises within the county ordinance-making jurisdiction at any reasonable hour in order to determine if any vehicles are health or safety hazards. The town may require a person requesting the removal of an abandoned motor vehicle from private property to indemnify the

county against any loss, expense, or liability incurred because of vehicle's removal, storage, or sale.

(c) *Notification and probable cause hearing.*

1. Whenever a vehicle with a valid registration plate or registration is towed, the authorizing person shall immediately notify the last known registered owner of the vehicle of the following:
 - (i) A description of the vehicle;
 - (ii) The place where the vehicle is stored;
 - (iii) The violation with which the owner is charged, if any;
 - (iv) The possible sale or other disposition of the vehicle;
 - (v) The procedure the owner must follow to have the vehicle returned to him/her; and
 - (vi) The procedure the owner must follow to request a probable cause hearing on the towing.

If the vehicle has a North Carolina registration plate or registration, notice shall be given to the owner within 24 hours; if the vehicle is not registered in this state, notice shall be given to the owner within 72 hours. This notice shall, if feasible, be given by telephone. Whether or not the owner is reached by telephone, notice shall be mailed to the owner's last known address unless the owner or the owner's agent waives this notice in writing.

2. Whenever a vehicle with neither a valid registration plate nor registration is towed, the authorizing person shall make reasonable efforts, including checking the vehicle identification number (VIN), to determine the last known registered owner of the vehicle and notify the owner as required by Article VII, Section 3 (a) of this ordinance [subsection (7)3.a. of this section]. Unless the owner has otherwise been given notice, it is presumed that the authorizing person has not made reasonable efforts, as required under this section, unless notice that the vehicle would be towed was posted on the windshield or some other conspicuous place at the least ten days before the towing actually occurred; except, no pre-towing notice need be given if the vehicle impeded the flow of traffic or otherwise jeopardizing the public welfare so that immediate towing was necessary.
3. The owner or any person entitled to claim possession of the vehicle may regain possession of the motor vehicle by paying to the town all reasonable costs incidental to the removal and storage.
4. The owner or any person entitled to claim possession of the vehicle may request in writing a hearing to determine if probable cause existed for the towing. The request shall be filed with the magistrate's office in Brunswick County. The magistrate shall set the hearing within 72 hours of his/her receiving the request. The owner, the person who requested the hearing if someone other than the owner, the tower, and the person who authorized the towing shall be notified of the time and place of the hearing. The rules of the General Statutes apply to any appeal.

(d) *Disposal of abandoned motor vehicles.* After holding an abandoned motor vehicle for 30 days after the date of removal, the town may sell or dispose of the vehicle as follows:

1. If the vehicle appears to be worth less than \$100.00, the town may dispose of the vehicle as a junked motor vehicle as provided by Article VII, Section 4 of this ordinance [subsection (7)4. of this section]. With the consent of the owner, the town may remove and dispose of a motor vehicle as a junked motor vehicle without regard to the value, condition or age of the vehicle and without holding it for a prescribed period of time.
2. If the vehicle appears to be worth \$100.00 or more, the vehicle shall be sold at public auction. The town shall give 20 days' written notice of the sale to the registered owner at his last-known address, to each holder of a lien of record against the vehicle and to the

state division of motor vehicles. Any person having an interest in the vehicle may redeem it at any time before the sale by paying all costs accrued to date. The proceeds of the sale shall be paid to the finance officer of the town, who shall pay to the appropriate officers or persons the cost of removal, storage, investigation, sale and liens in that order. The remainder of the proceeds of sale, if any, shall be paid over to the registered owner, or held by the county for 60 days if the registered owner cannot be located with reasonable diligence. If the owner does not claim the remainder of the proceeds within 60 days after the day of the sale, the funds shall be deposited in the town's general fund and the owner's rights in the vehicle are extinguished.

- (7) *Exceptions.* This article [section] does not apply to any vehicle in an enclosed building, to any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the county.

- (8) *Junked motor vehicles.*

- a. *Abandonment of junked motor vehicles prohibited.* It shall be unlawful for any person to abandon a junked motor vehicle on public grounds and on private property within the town or upon town-owned property wherever located.
- b. *Removal of junked motor vehicles.* Junked motor vehicles found to be in violation of this section may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the board of commissioners or a duly authorized town officer or employee finds in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such 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 comfort, happiness, and emotional stability of area residents.

The town may require any person requesting the removal of junked motor vehicle from private property to indemnify the town against any loss, expense, or liability incurred because of the removal, storage or sale of the junked motor vehicle.

- (c) *Notification and probable cause hearing.*

1. Whenever a vehicle with a valid registration plate or registration is towed, the authorizing person shall immediately notify the last known registered owner of the vehicle of following:
 - (i) A description of the vehicle;
 - (ii) The place where the vehicle is stored;
 - (iii) The violation with which the owner is charged, if any;
 - (iv) The possible sale or other disposition of the vehicle; and
 - (v) The procedure the owner must follow to request a probable cause hearing on the towing.

If the vehicle has a North Carolina registration plate or registration, notice shall be given to the owner within 24 hours; if the vehicle is not registered in this state, notice shall be given to the owner within 72 hours. This notice shall, if feasible, be given by telephone. Whether

or not the owner is reached by telephone, notice shall be mailed to his last known address unless he/she or his/her agent waives the notice in writing.

2. Whenever a vehicle with neither a valid registration plate nor registration is towed, the authorizing person shall make reasonable efforts, including checking the vehicle identification number (VIN), to determine the last known registered owner of the vehicle and to notify him of the information as required by Article VII, Section 3 (a) of this ordinance [subsection (3)3.a. of this section]. Unless the owner has otherwise been given notice, it is presumed that the authorizing person has not made reasonable efforts, as required under this section, unless notice that the vehicle would be towed was posted on the windshield or some other conspicuous place at least ten days before the towing actually occurred; except, no pre-towing notice need be given if the vehicle impeded the flow of traffic or otherwise jeopardized the public welfare so that immediate towing was necessary.
 3. The owner or any other person entitled to claim possession of the vehicle may regain possession of the motor vehicle by paying to the town all reasonable costs incidental to the removal and storage.
 4. The owner or any person entitled to claim possession of the vehicle may request in writing a hearing to determine if probable cause existed for the towing. The request shall be filed with the magistrate's office in Brunswick County. The magistrate shall set the hearing within 72 hours of his/her receiving the request. The owner, the person who requested the hearing if someone other than the owner, the tower, and the person who authorized the towing shall be notified of the time and place of the hearing. Any decision by the magistrate may be appealed by either party to district court.
- (d) *Disposal of junked vehicles.* After holding a junked motor vehicle for 15 days, the town may destroy it or sell it at private sale as junk. Within 15 days after the final disposition of a junked motor vehicle, the town shall notify the state division of motor vehicles that the vehicle has been determined to be a junked motor vehicle and disposed of as such. The notice shall contain as full accurate a description of the vehicle as can be reasonably determined. The full proceeds of the sale of the junked vehicle shall be paid to the finance officer of the town, who shall pay to the appropriate officers or persons the cost of removal, storage, investigation, sale and liens, in that order. The remainder of the proceeds of sale, if any, shall be held by the town for 30 days after the day the vehicle is disposed of, the funds shall be deposited in the town's general fund, and the owner's right in the vehicle are extinguished.
- (e) *Disposal of vehicle without plates or identification numbers.* If a junked motor vehicle does not display a current license plate and the vehicle identification numbers have been removed or defaced so as to be illegible, the county may dispose of a junked motor vehicle under this section rather than article VII, section 4 [subsection (7)(4)]. The town may destroy the vehicle or sell it at private sale, without regard to value, after having held the vehicle for 48 hours. The proceeds shall be placed in the town's general fund.
- (f) *Exceptions.* This articles does not apply to the following:
1. Any motor vehicle in the process of repair or restoration on property under the control of the owner of the vehicle or property under the control of the person repairing or restoring the vehicle. Visible evidence of repair or restoration shall be apparent on a monthly basis.
 2. Any motor vehicle that is used on a regular basis for business or personal transportation purposes.
- (g) *Nuisance vehicle unlawful; removal authorized.*
1. 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.

2. Upon investigation, proper officials may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle as defined in this ordinance, and order the vehicle removed in accordance with the provisions of this section.

(h) *Enforcement remedies authorized; penalties for violation.*

1. The town may secure injunctions, abatement orders and other appropriate equitable remedies to further ensure compliance as provided in G.S. 160A-175.
2. The violation of this section shall be a misdemeanor and in addition to, or lieu of, remedies authorized in subsection (a) above shall be punishable by a fine not to exceed \$500.00, or imprisonment for not more than 30 days.
3. Any act constituting a violation of this section or a failure to comply with any of its requirements shall subject the offender to civil penalty of \$50.00 for each day the violation continues. If the offender fails to pay this penalty within 15 days after being cited for violation, the penalty may be recovered by the county in a civil action in the nature of debt.
4. Any one, all or any combination of the foregoing penalties and remedies may be used to enforce this ordinance.

(Amend. of 4-12-2005, § 5; Res. No. 2010-01, § 1, 1-12-2010)

Sec. 58-43. - Meter tampering or diversion of water.

- (a) Under G.S. 14-151.1, it is a misdemeanor for any person with fraudulent or misleading action to injure or defraud the town by tampering with (to include service connection after disconnection for nonpayment) or bypassing the water meter. The town will investigate all tampering and determine whether prosecution is warranted. It shall be presumed that the owner of the property is the person who tampered with the meter.
- (b) When apparent meter tampering has occurred, the meter shall be padlocked immediately. Before service can be restored, the following fees or charges shall be paid to clear the infraction:
 - (1) The currently required nonrefundable charge;
 - (2) Disconnect and reconnect fee;
 - (3) Cost of meter, if damaged;
 - (4) Billing of any unmetered water; and
 - (5) Meter test fee (if applicable) and any other charges necessary to clear the infraction.
- (c) Unless meter tampering is apparent, the meter shall be replaced with the knowledge of the consumer without charge. The meter shall be sent for immediate testing and consumer notified in writing of the results.
- (d) If the town has undercharged any consumer as a result of meter tampering or bypassing the meter or if it is evidence that the consumer has knowledge of being undercharged without notifying the town hall, the town shall recover the deficient amount as follows:
 - (1) If the period of undercharging can be determined, the town shall collect the deficient amount incurred during this interval, provided the statute of limitations of three years is not exceeded.
 - (2) If the period cannot be determined, the town shall collect the deficient amount incurred during the 12-month period preceding the date the billing error was discovered.
 - (3) If the usage and/or demand cannot be determined, the adjustment shall be based on an appropriate estimated usage and/or demand. The amount of the adjustment is due and payable when the infraction is determined.

(Code 1983, § 2-3-12A)

Sec. 62-2. - Use of gill nets.

- (a) It shall be unlawful for anyone to use and place a gill net within the natural and concrete canals of the town. Placement shall include but is not limited to attachment to a pier or left to float with any type of anchoring device.
- (b) Anyone violating this section shall be cited by the chief of police or one of his deputies. The offender shall pay a civil penalty of \$50.00 into the office of the town clerk within 72 hours following the receipt of the citation. If the penalty is not paid, in accordance with G.S. 160A-175, violation of any provision of this section shall be a misdemeanor as provided in G.S. 14-4, punishable upon a conviction in accordance with section 1-6.

(Code 1983, § 6-5-17)

Sec. 66-403. - Administration.

- (a) The board of adjustment shall adopt rules of procedure and regulations for the conduct of its affairs. These rules of procedure shall be maintained as a matter of public record in the office of the town clerk.
- (b) All meetings of the board shall be open to the public, and the board give notice as required by G.S. 143-318.11 et seq.
- (c) The board shall keep a record of its meetings, including the vote of each member on every question, a complete summary of the evidence submitted to it, documents submitted to it and all official actions. This record shall be delivered to the town clerk who shall record same in the appropriate minute book to be archived as the permanent record of proceedings.
- (d) The board shall give notice of matters coming before it by causing public notation to be placed in a newspaper of general circulation in the county. The notice shall appear once a week for two consecutive weeks, the first insertion to be not less than ten days nor more than 25 days prior to the meeting date. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included. The notice of hearing shall comply with G.S. 160A-388(a2).
- (e) The zoning administrator shall also post on the applicant's affected property a notice of the board meeting at least ten days, but no more than 25 days prior to the date of hearing.
- (f) The chair of the board or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.
- (g) Applications for special use approvals, applications for variances and appeals for review of decisions of the building inspector's interpretations shall be filed with the zoning administrator as agent for the board. Applications and appeals shall be submitted on forms provided by the building inspector.
- (h) It shall be the responsibility of the zoning administrator to notify the parties to the applications or appeal of the disposition which the board made of the matter. This notice shall be made by registered or certified mail within five working days of the board's actions. The zoning administrator shall simultaneously keep on file a copy of the board's action.
- (i) The board shall act on all applications before it within 60 days of receipt of the application.
- (j) It shall be the responsibility of the zoning administrator to issue permits in accordance with the board's action on an appeal or application if a permit is authorized by the board's actions.
- (k) The zoning administrator shall see to the faithful execution of all portions of the board's actions, including the enforcement of all conditions which may have been attached to the granting of a variance or approval of a special use.
- (l) The board of adjustment shall have the authority to continue the scheduled hearing of any matter that comes before it with good cause shown, both on its own motion and on the motion of the petitioner and shall have the discretion to continue the hearing to the next scheduled board of adjustment meeting. If a hearing is continued upon the motion of the petitioner, individuals who attend the initially scheduled hearing to testify in opposition of the petition shall be afforded the opportunity to be placed under oath and provide testimony on that date and the testimony shall be considered when a ruling is made on the petition. The petitioner shall have the opportunity to cross examine those witnesses on the date they appear in response to the published notice and shall have to make arrangements to be present for the testimony. A hearing continued upon the motion of the petitioner shall be continued in open session to a day certain and newspaper publication shall not be required, however certified letters once mailed shall be mailed again and the petitioner shall have the obligation to pay for said mailings.

(Code 1983, § 7-2-1; Ord. of 4-10-2007; Res. of 5-8-2007(4); Res. No. 2013-24, § 1, 10-8-2013)