1-6(b), (c)

- b) Violation of any provision of the following chapters and sections of this Code shall be a misdemeanor and punishable as provided by section 14-4 of the General Statutes:
- (1) Chapters 6, 7 and 9;
- (2) Sections 11-21—11-26;
- (3) Sections 12-2 and 12-5—12-8.
- (c) Violations of the following provisions of this Code shall subject the offender to a civil penalty upon the issuance of a citation for such violation as hereinafter provided. The civil penalty, if not paid to the town within fifteen (15) days of the issuance of a citation, may be recovered by the town in a civil action in the nature of debt. Unless otherwise provided by a specific provision of this Code, such civil penalties shall be in the amount of fifty dollars (\$50.00) for each violation, and each day any single violation continues shall be a separate violation; except, that for violations of parking ordinances of this Code, the civil penalty provisions and procedures therein shall apply. The provisions of this Code which shall subject the offender to a civil penalty are as follows: All provisions of this Code of Ordinances except those enumerated in subsection (b) of this section or any violation of this Code which is declared to be a misdemeanor by the State of North Carolina.

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It shall be unlawful for any officer, employee or agent of the town having charge of any motor driven vehicle to use or permit the use of the same other than in the actual service of the town. The unwarranted use of any vehicle shall be a misdemeanor punishable in accordance with section 1-6.

4-9

- (a) Surfing, body boarding, rafting, boating and other similar water activities are permitted in the Atlantic Ocean waters within the town limits, except in those areas located within three hundred (300) feet on either side of any commercial fishing pier located within the town from March 15 to December 1 of each year.
- (b) Surfing, body boarding, swimming, rafting, boating, and other similar water activities are prohibited in the Atlantic Ocean waters beneath commercial fishing piers at all times.
- (c) All surfers and body boarders shall, while engaged in surfing or body boarding, have their boards attached to them by a leash.
- (d) Violation of this section shall be a misdemeanor punishable under G.S. 14-4 of the North Carolina General Statues. Violation of this section shall also be liable to the town for a civil penalty as follows:
- (1) 1st violation: \$100.00 must leave beach area within three hundred (300) feet of either side of pier for the day.
- (2) 2nd violation: \$200.00 must leave beach area within three hundred (300) feet of either side of pier for the day.

- (3) 3rd violation: \$300.00 must leave beach area within three hundred (300) feet of either side of pier for the day.
- (4) 4th violation: \$300.00 and be banned from surfing in the town for two (2) years

Violator may remain on the beach within the town limits except the beach area within three hundred (300) feet on either side of the pier.

Sec. 4-51.1. Presence of registered sex offender in or about public parks and recreation facilities.

The words and phrases defined below shall have the meaning indicated when used in this section:

Registered sex offender shall mean an individual who is registered by any state or federal agency as a sex offender and whose name is published on any state or federal registered sex offender listing, including, but not limited to the sex offender registry established in G.S. ch. 14, art. 27A.

Public park shall mean any publicly owned or maintained land which is designated by the Town of Surf City as a park or recreational facility.

- (1) It shall constitute a general offense against the regulations of the town for any person or persons registered as a sex offender with the state of North Carolina and or any other state or federal agency to knowingly enter into or on any public park or recreation facility owned, operated, or maintained by the town except when the facility is used as a polling place and recreational activities suspended.
- (2) Anyone who is found in violation of this section shall be subject to a fine of not less than five hundred dollars (\$500.00) per offense and or thirty (30) days in jail. Each and every entry into the park, regardless of the time period involved shall constitute a separate offense under this section.
- (3) The town manager or his designee shall be charged with posting this regulation at the main entrance of each park or recreation facility within thirty (30) days of the passage of this section.
 - (4) This section shall be effective immediately upon its adoption.

(Ord. No. 2008-20, 10-7-08; Ord. No. 2018-07, § I, 9-4-18)

Sec. 4-55. Penalty for violation of chapter.

Any person who shall violate the provisions of this chapter shall be guilty of a misdemeanor, punishable by a fine of not more than fifty dollars (\$50.00), or imprisonment for not more than thirty (30) days in the discretion of the court, as provided by G.S. 14-4.

(Ord. No. 1993-22, § 2, 8-3-93; Ord. No. 2018-07, § 1, 9-4-18)

Sec. 6-21. Territorial applicability.

This article shall not apply outside the corporate limits of the town, or within any area of the county over which the town has jurisdiction to enact general police-power ordinances, unless the municipality, by resolution, consents to its application, in which event it shall apply to such areas as fully and to the same extent as elsewhere in the town.

(Ord. No. 1984-5, § 14, 4-3-84)

Sec. 6-22. State of emergency; restrictions authorized.

- (a) A state of emergency shall be deemed to exist whenever during times of public crisis, disaster, rioting, catastrophe, or similar public emergency, 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 condition 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 thereof, or threatening damage to or destruction of property, the mayor is hereby authorized and empowered under state law to issue a public proclamation declaring to all persons the existence of such a state of emergency, and, in order to more effectively protect the lives and property within the town, to place in effect any or all of the restrictions hereinafter authorized.
- (c) The mayor is hereby 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 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, law enforcement officers, firemen and other public employees, rescue squad members, doctors, nurses, employees of hospitals and other medical facilities; on-duty military personnel whether state or federal; on-duty employees of public utilities, public transportation companies, and newspaper, magazine, radio broadcasting, and television broadcasting corporations operated for profit; and such other classes of persons as may be essential to the preservation of public order and immediately necessary to serve the safety, health and welfare needs of the people within the town.

(Ord. No. 1984-5, § 1, 4-3-84)

Sec. 6-23. Proclamation imposing prohibitions and restrictions; contents.

- (a) The mayor, by proclamation, may impose the prohibitions and restrictions specified in sections <u>6-24</u> through <u>6-28.1</u> in the manner described in those sections. The mayor may impose as many of those specified prohibitions and restrictions as he finds are necessary, because of an emergency, to maintain an acceptable level of public order and services, and to protect lives, safety, and property. The mayor shall recite his findings in the proclamation.
- (b) The proclamation shall be in writing. The mayor shall take reasonable steps to give notice of the terms of the proclamation to those affected by it and shall post a copy of it in the town hall. The mayor shall retain a text of the proclamation and furnish upon request certified copies of it for use as evidence.

(Ord. No. 1984-5, § 2, 4-3-84; Ord. No. 2001-1, § 2, 1-8-01)

Sec. 6-24. Curfew.

(a) The proclamation 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 or areas and the period during each twenty-four-hour day to which the curfew applies. The mayor may exempt from some or all of the curfew restrictions classes of people whose exemption the mayor finds necessary for the preservation of the public health, safety, and

welfare. The proclamation shall state the exempted classes and the restrictions from which each is exempted.

(b) Unless otherwise specified in the proclamation, the curfew shall apply during the specified period each day until the mayor by proclamation removes the curfew.

(Ord. No. 1984-5, § 3, 4-3-84)

Sec. 6-25. Restrictions on possession, consumption or transfer of intoxicating liquor.

The proclamation may prohibit the possession or consumption of any intoxicating liquor, including beer and wine, other than on one's own premises, and may prohibit the transfer, transportation, sale or purchase of any intoxicating liquor within the area of the town described in the proclamation. The prohibition, if imposed, may apply to transfers of intoxicating liquor by employees of alcoholic beverage control stores as well as by anyone else within the geographical area described.

(Ord. No. 1984-5, § 4, 4-3-84)

Sec. 6-26. Restrictions on possession, transportation and transfer of dangerous weapons and substances.

- (a) The proclamation may prohibit the transportation or possession off one's own premises, or the sale or purchase of any dangerous weapon or substance. The mayor may exempt from some or all of the restrictions classes of people whose possession, transfer, or transportation of certain dangerous weapons or substances is necessary to the preservation of the public health, safety, or welfare. The proclamation shall state the exempted classes and the restrictions from which each is exempted.
 - (b) "Dangerous weapon or substance" means:
- (1) Any deadly weapon, ammunition, incendiary device, explosive, 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 destructively used.
 - (3) Any part or ingredient in any instrument or substance included above.
- (c) If imposed, the restrictions shall apply throughout the jurisdiction of the town or such part thereof as designated in the proclamation.

(Ord. No. 1984-5, § 5, 4-3-84)

Sec. 6-27. Restrictions on access to areas.

- (a) The proclamation 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 designated by the chief of police and his subordinates when directed in the proclamation to do so by the mayor. When acting under this

authority, the chief of police and his subordinates may restrict or deny access to any area, street, highway or location within the town if the restriction or denial of access or use is reasonably necessary to promote efforts being made to overcome the emergency or to prevent further aggravation of the emergency.

(Ord. No. 1984-5, § 6, 4-3-84)

Sec. 6-28. Restrictions on operation of businesses, movement of people in public areas, etc.

The proclamation may prohibit or restrict:

- (1) Movements of people in public places;
- (2) The operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate; and
- (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. No. 1984-5, § 7, 4-3-84)

Sec. 6-28.1. Restrictions an price gouging.

- (a) The proclamation may impose regulations relating to the sales price of goods and tile cost of services to prevent "price gouging."
- (b) Price gouging, as it relates to the sales price of goods, means the sale of goods at a price above the pre-emergency level, unless the seller or merchant can document purchase of the goods at an increased cost.
- (c) Price gouging, as it relates to the cost of services, means providing such services at a cost greater than that customarily charged for such services in a non-emergency situation, unless the provider or contractor can document special circumstances or expenses justifying a higher cost.
- (d) Any restrictions imposed under this section shall extend for a period of ninety (90) days following the date of the declaration of a state of emergency, unless sooner terminated or unless extended by subsequent proclamation or resolution.

(Ord. No. 2001-1, § 1, 1-8-01)

Sec. 6-29. Amendments of proclamation.

The mayor may amend or extend the proclamation, from time to time, making such modifications as he would have been authorized to include in the original proclamation. The proclamation shall expire five (5) days after its last imposition unless sooner terminated.

(Ord. No. 1984-5, § 8, 4-3-84)

Sec. 6-30. Removal of prohibitions and restrictions.

The mayor shall by proclamation remove the prohibitions and restrictions as the emergency no longer requires them, or when directed to do so by the council.

(Ord. No. 1984-5, § 9, 4-3-84)

Sec. 6-31. Separate and superseding 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.

(Ord. No. 1984-5, § 10, 4-3-84)

Sec. 6-32. In case of absence or disability of mayor.

In case of the absence or disability of the mayor, the mayor pro-tem of the council, or such other person as may be designated by the council, shall have and exercise all of the powers herein given the mayor.

(Ord. No. 1984-5, § 11, 4-3-84)

Sec. 6-33. 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, upon conviction, in accordance with section 1-6.

Sec. 7-1. Interfering with firefighters.

No person shall obstruct or interfere with any member of the fire department or the work of the fire department at or during a fire or while answering an alarm of fire.

(Code 1977, § 10-1; Ord. No. 2018-06, § I, 9-4-18))

State law reference-Interfering with a firefighter, G.S. 58-82-1.

Sec. 7-2. Obstructing hydrants.

It shall be unlawful for any person to obstruct, with building material or otherwise, any hydrant or fireplug in the town, in such manner as to interfere with or obstruct the easy approach to the same or its convenient use by the fire department.

(Code 1977, § 10-2; Ord. No. 2018-06, § I, 9-4-18)

State law reference— Parking near fire hydrants, G.S. 20-162; blocking firefighting equipment, G.S. 20-157.

Sec. 7-3. False fire alarms; damaging fire alarm boxes.

It shall be unlawful for any person to give a false alarm of fire, or to break or cause to be broken the glass key protector, or to pull down or cause to be pulled down the slide, arm or lever of any station or signal box, or to turn the handle until the bell rings in any fire alarm box, with intent to send a false alarm.

(Code 1977, § 10-3; Ord. No. 2018-06, § I, 9-4-18)

State law reference— False fire alarms, G.S. 14-286.

Sec. 7-4. Installation of underground tanks for storage of flammable liquids.

Any person dealing with gasoline, kerosene or other volatile flammable liquids in the town, who shall desire to place a tank underground for the storing of such liquids, shall make application to the code enforcement officer, in writing, stating the place where he desires to locate the tank. He shall state the kind of tank to be used, its capacity and dimensions, the depth it is to be buried, the connections to be made to the same and complete and detailed drawings and specifications showing in every particular how he proposes to install such tank and its connection. If the code enforcement officer shall approve the location and methods of

installation, he shall grant to the applicant a permit to build and install such tank and connections.

(Code 1977, §10-4; Ord. No. 2018-06, § I, 9-4-18)

Sec. 7-5. Open burning.

It shall be unlawful for any person to burn or cause to be burned any trash, debris, grass, or any other matter whatsoever within the town limits without first securing a permit to do so from the fire chief or his designee. The fire chief or his designee shall issue the burning permit if in his opinion the burning can be done in safety and can require the applicant to take such precautionary steps as he feels necessary to ensure that the burning does not pose a threat to property or lives.

(Ord. No. 1980-2, 4-1-80; Ord. No. 2001-32, § 2,11-8-01; Ord. No. 2018-06, § I, 9-4-18)

Cross reference— Fires on the beach prohibited, § 4-5.

Sec. 7-6. Fire prevention and inspections.

- (a) Standards, provisions, and requirements for avoidance of fire hazards in buildings and structures and on other premises in the town shall be regulated by the North Carolina Fire Prevention Code to include all Appendices and inspection schedule found in section 106 of the code, which is, together with any future revisions and additions thereto, herein adopted and fully incorporated in this chapter by reference as though fully set forth herein. The town will enforce the most current edition of the North Carolina Fire Prevention Code and all Appendices as adopted by the North Carolina Building Code Council.
- (b) Fire prevention code inspections and enforcement shall be carried out by town employees who have obtained valid certification in fire inspections from the North Carolina Code Officials Qualification Board.
- (c) The Fire Marshal for the Town of Surf City shall have the power to modify any of the provisions of the fire prevention code adopted in this article upon application in writing by an owner or lessee, or his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code; provided, that the spirit of the fire prevention code shall be observed, public safety secured and substantial justice done. The particulars of such modification when granted or allowed and the decision of the fire marshal thereon shall be entered upon the records of the department, and a signed copy shall be furnished to the applicant.

(d) Whenever the Fire Marshal for the Town of Surf City disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the fire prevention code adopted in this article do not apply or that the true intent and meaning of such code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the fire marshal or chief of the fire department to the town manager within 30 days from the date of the decision appealed.

(Ord. No. 2001-32, § 1,11-8-01; Ord. No. 2014-01, passed 1-6-15; Ord. No. 2018-06, § I, 9-4-18)

Sec. 7-7. Occupancy limits enforcement.

Enforcement of those provisions of the state building code relating to occupancy limits and to combustible material and inflammable conditions dangerous to the safety of a building or premises shall be carried out by state-certified fire inspectors and/or building inspectors.

(Ord. No. 2001-32, § 1, 11-8-01; Ord. No. 2018- 06, § I, 9-4-18)

Sec. 7-8. Penalties.

Violations of fire prevention codes, violation of other requirements of this chapter, and failures to comply with orders of fire inspectors shall be punishable with a civil penalty of one hundred dollars (\$100.00) for the first violation or failure to comply, two hundred fifty dollars (\$250.00) for the second, and five hundred dollars (\$500.00) for the third and/or as a misdemeanor under the provisions of G.S. 14-68. Each day of violation or failure to comply shall constitute a separate violation.

Sec. 8-1. Statutory authorization, findings of fact, purpose and objectives.

(a) Statutory authorization.

Municipal: 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 Town Council of the Town of Surf City, North Carolina, does ordain as follows.

- (b) Findings of fact.
- (1) The flood-prone areas within the jurisdiction of the town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (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 flood-prone areas of uses vulnerable to floods or other hazards.
- (c) 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 flood-prone 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 flood waters;
- (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 floodwaters or which may increase flood hazards to other lands.
 - (d) *Objectives*. The objectives of this chapter are:
 - (1) To protect human life, safety, and health;
 - (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 - (4) To minimize prolonged business losses and interruptions;
- (5) To 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 flood-prone areas;
- (6) To help maintain a stable tax base by providing for the sound use and development of flood-prone areas; and
- (7) To ensure that potential buyers are aware that property is in a special flood hazard area. (Ord. No. 2007-09, 1-9-07)

Sec. 8-2. 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 its 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.

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

Area of shallow flooding means a designated zone AO on a community's flood insurance rate map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

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

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

Base flood means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) 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."

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

Building. See "structure."

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 Environment and Natural Resources' (NCDENR's) Division of Coastal Management (DCM).

CBRS means coastal barrier resources system.

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 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 8-3(b) of this chapter, as zone VE.

Development means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Disposal means, as defined in NCGS 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 floodplain, which may impede or alter the flow capacity of a floodplain.

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 effective date of the initial 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:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation of 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 Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

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 Federal Emergency Management Agency. The flood insurance study report includes flood insurance rate maps (FIRMs).

Flood-prone area. See "floodplain."

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

Floodplain administrator is the individual appointed by the community in this chapter 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.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

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.

Freeboard means the height added to the base flood elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater that the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The base flood elevation 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 facility means, as defined in NCGS 130, 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:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- (3) Individually listed on a local inventory of historic landmarks in communities with a "certified local government (CLG) program"; or
- (4) 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 state 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.

Lowest adjacent grade (LAG) means the 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 (1) 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.

Mean sea level means, for purposes of this chapter, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base flood elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

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

Non-encroachment area means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the flood insurance study report.

OPA means an otherwise protected area.

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 for the site.

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 for the site.

Primary frontal dune 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 fifty-one (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:

- (1) Built on a single chassis;
- (2) Four hundred (400) square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Reference level is the top of the lowest floor or the bottom of the lowest attendant utility, whichever is lower, for structures within special flood hazard areas designated as zone A1—30, AE, A, A99 or AO. 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 zero (0) feet of freeboard. In "special flood hazard areas" where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

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.

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

Salvage yard means any non-residential 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.

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

Solid waste disposal site means, as defined in NCGS 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 (1) percent or greater chance of being flooded in any given year, as determined in section 8-3(b) 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 one hundred eighty (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 fifty (50) percent of the market value of the structure before the damage occurred. See definition of "substantial improvement." Substantial damage also means flood-related damage sustained by a structure on two (2) 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 twenty-five (25) percent of the market value of the structure before the damage occurred.

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 fifty (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:

- (1) 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
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Variance is 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 sections 6-4 and 6-5 is presumed to be in violation until such time as that documentation is provided.

Water surface elevation (WSE) means the height, in relation to mean sea level 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. 2007-09, 1-9-07)

Sec. 8-3. General provisions.

- (a) Lands to which this chapter applies. This chapter shall apply to all special flood hazard areas within the jurisdiction, including extra-territorial jurisdictions (ETJs) if applicable, of the town and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.
- (b) 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 and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Pender/Onslow dated February 16, 2007 which are adopted by reference and declared to be a part of this chapter.
- (c) 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 8-3(b) of this chapter.
- (d) *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.
- (e) 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.
 - (f) Interpretation. In the interpretation and application of this chapter, all provisions shall be:
 - (1) Considered as minimum requirements;
 - (2) Liberally construed in favor of the governing body; and
 - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.
- (g) 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 man-made 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 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.

(h) 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 misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than fifty dollars (\$50.00) or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. No. 2007-09, 1-9-07)

Sec. 8-4. Administration.

- (a) Designation of floodplain administrator. The building inspector, hereinafter referred to as the "floodplain administrator," is hereby appointed to administer and implement the provisions of this chapter.
 - (b) 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:
- 1. 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;
- 2. The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in section 8-3(b), or a statement that the entire lot is within the special flood hazard area;
- 3. Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in section 8-3(b);
- 4. The boundary of the floodway(s) or non-encroachment area(s) as determined in section 8-3(b);
- 5. The base flood elevation (BFE) where provided as set forth in section 8-3(b), section 8-4(c) or section 8-5(d);
- 6. The old and new location of any watercourse that will be altered or relocated as a result of proposed development;
- 7. The boundary and designation date of the coastal barrier resource system (CBRS) area or otherwise protected areas (OPA), if applicable; and

- 8. The certification of the plot plan by a registered land surveyor.
- b. Proposed elevation, and method thereof, of all development within a special flood hazard area including but not limited to:
- 1. Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
- 2. Elevation in relation to mean sea level to which any non-residential structure in zone AE, A or AO will be flood-proofed; and
- 3. Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
- c. If floodproofing, a floodproofing certificate, (FEMA form 81-65) with supporting data and an operational plan that includes, but is 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:
- 1. 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);
- 2. Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with section <u>8-5(b)(4)c.</u> when solid foundation perimeter walls are used in zones A, AO, AE, and A1—30;
- 3. The following, in Coastal High Hazard Areas, in accordance with the provisions of sections 8-5(b)(4)d. and 8-5(g):
- (i) V-zone certification with accompanying plans and specifications verifying the engineered structure and any breakaway wall designs;
 - (ii) Plans for open wood latticework or insect screening, if applicable; and
- (iii) 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 base flood elevation 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. Copies of all other local, state and federal permits required prior to floodplain development permit issuance (wetlands, endangered species, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.)

- h. Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure that the provisions of section 8-5(b)(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 description of the development to be permitted under the floodplain development permit.
- b. The special flood hazard area determination for the proposed development in accordance with the available data specified in section 8-3(b).
- 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, as applicable.
 - g. The flood openings requirements, if in zones A, AO, AE or A1—30.
- h. Limitations of use, i.e., parking, building access and limited storage only, of the enclosures below the lowest floor (if applicable).
- 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.
 - (3) Certification requirements.
 - a. Elevation certificates:
- 1. An elevation certificate (FEMA form 81-31) 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 mean sea level. 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.
- 2. An elevation certificate (FEMA form 81-31) is required after the reference level is established. Within seven (7) 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 mean sea level. 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.

- 3. A final as-built elevation certificate (FEMA form 81-31) 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.
- b. Floodproofing certificate: If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA form 81-65), with supporting data and an operational plan, 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 floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. 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 and the operational 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.
- c. If a manufactured home is placed within zone A, AO, AE, or A1—30 and the elevation of the chassis is more than thirty-six (36) inches in height above grade, an engineered foundation certification is required in accordance with the provisions of section 8-5(b)(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 zone A, AO, AE or A1—30, are exempt from the elevation/floodproofing certification requirements specified in items a. and b. of this subsection:
 - 1. Recreational vehicles meeting requirements of section 8-5(b)(6)a.;
 - Temporary structures meeting requirements of section 8-5(b)(7); and
- 3. Accessory structures less than one hundred fifty (150) square feet meeting requirements of section <u>8-5(b)(8)</u>.

- 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.
- (c) *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) Advise permittee if additional federal or state permits (wetlands, endangered species, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.) are required, and assure that copies of such permits are provided and maintained on file with the floodplain development permit.
- (3) Notify adjacent communities and the state department of crime control and public safety, division of emergency management, state coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (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 <u>8-5(f)</u> are met.
- (6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with section 8-4(b)(3).
- (7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of section 8-4(b)(3).
- (8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of section 8-4(b)(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 section 8-4(b)(3) and section 8-5(b)(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 base flood elevation (BFE) data has not been provided in accordance with section 8-3(b), obtain, review, and reasonably utilize any base flood elevation (BFE) data available from a federal, state, or other source, including data developed pursuant to section 8-5(d)(2)b., in order to administer the provisions of this chapter.
- (12) When base flood elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with section 8-3(b), 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) 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.
- (14) 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 carried out 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.
- (15) 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.
- (16) 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.
- (17) 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.
 - (18) Follow through with corrective procedures of section 8-4(d).
 - (19) Review, provide input, and make recommendations for variance requests.
- (20) Maintain a current map repository to include, but not limited to, the FIS report, FIRM and other official flood maps and studies adopted in accordance with section 8-3(b) of this chapter, including any

revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.

- (21) Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMR).
 - (d) 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 (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
- 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, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one hundred eighty (180) calendar days. Where the floodplain administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.
- (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 (10) 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 misdemeanor and shall be punished at the discretion of the court.
 - (e) Variance procedures.
- (1) The board of adjustments as established by the town, 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. 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 dependant facilities if determined to meet the definition as stated in section 8-2 of this chapter, provided provisions of section 8-4(e)(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.
 - c. Any other type of development, provided it meets the requirements of this subsection.
- (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 section <u>8-2</u> of this chapter as a functionally dependant 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 base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the base flood elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to twenty-five dollars (\$25.00) per one hundred dollars (\$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 Federal Emergency Management Agency and the state 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:
 - 1. A showing of good and sufficient cause;
 - 2. A determination that failure to grant the variance would result in exceptional hardship; and
- 3. 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 be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met.
 - a. The use serves a critical need in the community.
 - b. No feasible location exists for the use outside the special flood hazard area.
- c. The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
 - d. The use complies with all other applicable federal, state and local laws.

e. The town has notified the secretary of the state department of crime control and public safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

(Ord. No. 2007-09, 1-9-07)

Sec. 8-5. Provisions for flood hazard reduction.

- (a) 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.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the regulatory flood protection elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (washers, dryers, refrigerators, freezers, etc.), hot water heaters, and electric outlets/switches.
- (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) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this chapter, shall meet the requirements of "new construction" as contained in this chapter.
- (9) 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.
- (10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in section 8-4(e)(10). 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 according to the provisions of section 8-4(b)(3) of this chapter.

- (11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (12) 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.
- (13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (14) 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.
- (15) 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.
- (16) 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 base flood elevation shall apply.
- (b) Specific standards. In all special flood hazard areas where base flood elevation (BFE) data has been provided, as set forth in section 8-3(b) or section 8-5(d), the following provisions, in addition to the provisions of section 8-5(a), 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 section 8-2 of this chapter.
- (2) Non-residential construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in section 8-2 of this chapter. Structures located in A, AE, AH, AO, and A1—30 zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO zones, the floodproofing elevation shall be in accordance with section 8-5(h)(3). A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in section 8-4(b)(3), along with the operational and maintenance plans.
 - (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 section $\underline{8}$ -2 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 systems or in accordance with the 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 thirty-six (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 thirty-six (36) inches in height, an engineering certification is required.
- c. All enclosures or skirting below the lowest floor shall meet the requirements of section $\underline{8}$ - $\underline{5}(b)(4)$.
- 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 flood-prone areas. This plan shall be filed with and approved by the floodplain administrator and the local emergency management coordinator.
- (4) *Elevated buildings*. Fully enclosed areas of new construction and substantially improved structures, which are below the lowest floor:
- 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 be constructed entirely of flood resistant materials at least to the regulatory flood protection elevation;
- c. Shall include, in zones A, AO, AE, and A1—30, 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;
- 1. A minimum of two (2) flood openings on different sides of each enclosed area subject to flooding;
- 2. The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
- 3. If a building has more than one (1) enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
- 4. The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;

- 5. 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
- 6. 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.
- d. Shall, in coastal high hazard areas (zones 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:
 - 1. Material shall consist of open wood latticework or insect screening; or
 - 2. Breakaway walls shall meet the following design specifications:
- (i) Design safe loading resistance shall be not less than ten (10) nor more than twenty (20) pounds per square foot; or
- (ii) Breakaway walls that exceed a design safe loading resistance of twenty (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.
 - (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:
- 1. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
- 2. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- b. Additions to post-FIRM structures with no modifications 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:
- 1. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.

- 2. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- d. Except in VE zones, where an addition to a nonresidential structure has an independent load-bearing perimeter wall adjacent to the existing structure with only minimal changes to the existing structure, the addition shall be considered a separate structure and only the addition must comply with the standards for new construction and substantial improvements.
 - (6) Recreational vehicles. Recreational vehicles shall either:
- a. Be on site for fewer than one hundred eighty (180) consecutive days and 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); or
 - b. Meet all the requirements for new construction.
- (7) Temporary non-residential 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 should not exceed three (3) months, renewable up to one (1) 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 seventy-two (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 section $\underline{8}$ - $\underline{5}$ (a)(1);
- f. All service facilities such as electrical shall be installed in accordance with the provisions of section 8-5(a)(4); and
- g. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided in conformance with the provisions of section 8-5(b)(4)c.

An accessory structure with a footprint less than one hundred fifty (150) square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with section $\underline{8}$ - $\underline{4}$ (b)(3).

- (c) Reserved.
- (d) Standards for floodplains without established base flood elevations. Within the special flood hazard areas designated as approximate zone A and established in section 8-3(b), where no base flood elevation (BFE) data is available, the following provisions, in addition to the provisions of sections 8-5(a) and (b), shall apply:
- (1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) The BFE used in determining the regulatory flood protection elevation shall be determined based on one (1) of the following criteria:
- a. When base flood elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this chapter and shall be elevated or floodproofed in accordance with standards in sections <u>8-5(a)</u> and (b).
- b. All subdivision, manufactured home park and other development proposals shall provide base flood elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such base flood elevation (BFE) data shall be adopted by reference in accordance with section 8-3(b) to be utilized in implementing this chapter.
- c. When base flood elevation (BFE) data is not available from a federal, state, or other source as outlined above, the reference level shall be elevated to or above the regulatory flood protection elevation, as defined in section 8-2
- (e) Standards for riverine floodplains with BFE 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 8-5(a) and (b); 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.
- (f) Floodways and non-encroachment areas. Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in section 8-3(b). 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 8-5(a) and (b), 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, 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 upon completion of the proposed encroachment.
- (2) If section <u>8-5(f)(1)</u> is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this chapter.
- (3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
 - a. The anchoring and the elevation standards of section 8-5(b)(3); and
 - b. The no encroachment standard of section 8-5(f)(1).
- (g) Coastal high hazard areas (zones VE). Coastal high hazard areas are special flood hazard areas established in section 8-3(b), 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 section 8-5(a) and (b):
 - (1) All new construction and substantial improvement shall:
 - a. Be located landward of the reach of mean high tide;
 - b. Be located landward of the first line of stable natural vegetation; and
 - c. 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 lowest floor free of obstruction so as not to impede the flow of flood waters, 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 abnormal wave action and in accordance with the provisions of section 8-5(b)(4)d.1. Design plans shall be submitted in accordance with the provisions of section 8-4(b)(1)d.3.(ii); or
- b. Breakaway walls may be permitted provided they meet the criteria set forth in section $\underline{8}$ - $\underline{5}(b)(4)b$. and d. Design plans shall be submitted in accordance with the provisions of section $\underline{8}$ - $\underline{4}(b)(1)d.3.(i)$.
- (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) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions of section 8-4(b), section 8-5(g)(3), section 8-5(g)(4), and section 8-5(g)(6) of this chapter on the current state "National Flood Insurance Program V-zone certification" form.
- (6) Fill shall not be used for structural support. Limited non-compacted and non-stabilized fill may be used outside the perimeter of a building provided it is demonstrated through coastal engineering analysis that the proposed fill would not result in any increase in the base flood elevation and not cause any adverse impacts by wave ramping or deflection to the subject structure or adjacent properties.
 - (7) There shall be no alteration of sand dunes which would increase potential flood damage.
- (8) 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 subsection have been satisfied.
- (9) Recreational vehicles may be permitted in coastal high hazard areas provided that they meet the recreational vehicle criteria of section 8-5(b)(6)a.
- (h) Standards for areas of shallow flooding (zone AO). Located within the special flood hazard areas established in section 8-3(b), are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to

section <u>8-5(a)</u> and (b), all new construction and substantial improvements shall meet the following requirements:

- (1) The reference level shall be elevated at least as high as the depth number specified on the flood insurance rate map (FIRM), in feet, plus a freeboard of zero (0) feet, above the highest adjacent grade; or at least two (2) feet above the highest adjacent grade if no depth number is specified.
- (2) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in section 8-5(h)(1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with section 8-4(b)(3) and section 8-5(b)(2).
- (3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

(Ord. No. 2007-09, 1-9-07)

Sec. 8-6. Legal status provisions.

- (a) 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 September, 29, 1987 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 enacted on September 29, 1987, as amended, which are not reenacted herein are repealed.
- (b) 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 (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this chapter.

Sec. 9-1. Legislative findings; purpose of chapter.

- (a) Pursuant to G.S. 160A-441, it is hereby found and declared that there exist in the town dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents and other calamities, lack of ventilation, light and sanitary facilities and other conditions rendering such dwellings unsafe or unsanitary and dangerous and detrimental to the health, safety and morals and otherwise inimical to the welfare of the residents of the town.
- (b) In order to protect the health, safety and welfare of the residents of the town as authorized by the General Statutes, it is the purpose of this chapter to establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, as expressly authorized by G.S. 160A-444.

Sec. 9-2. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section; provided, that whenever the words "dwelling," "dwelling unit," "rooming house," "rooming unit" or "premises" are used in this chapter, they shall be construed as though they were followed by the words "or any part thereof":

Basement means a portion of a building which is located partly underground, having direct access to light and air from windows located above the level of the adjoining ground.

Cellar means a portion of a building located partly or wholly underground, having an inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.

Deteriorated means unfit for human habitation and capable of being repaired, altered or improved to comply with all of the minimum standards for dwellings established by this chapter, at a cost not in excess of fifty (50) percent of the value of any such deteriorated dwelling, as determined by finding of the code enforcement officer.

Dilapidated means unfit for human habitation and incapable of being repaired, altered or improved to comply with all of the minimum standards for dwellings established by this chapter, at a cost not in excess of fifty (50) percent of the value of any such dilapidated dwelling, as determined by finding of the code enforcement officer.

Dwelling means any building which is wholly or partly used or intended to be used for living or sleeping by human occupants; provided, that temporary housing, as defined in this section, shall not be regarded as a dwelling.

Dwelling unit means any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

Extermination means the control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating or trapping; or by any other recognized and legal pest elimination methods approved by the code enforcement officer.

Garbage means the animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Habitable room means a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, heater rooms, foyers or communicating corridors, closets and storage spaces.

Infestation means the presence, within or around a dwelling, of any insects, rodents or other pests in such number as to constitute a menace to the health, safety or welfare of the occupants or to the public.

Multiple dwelling means any dwelling containing more than two (2) dwelling units.

Occupant means any person over one (1) year of age, living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or rooming unit.

Operator means any person who has charge, care or control of a building, or part thereof, in which dwelling units or rooming units are let.

Owner means any person who, alone or jointly or severally with others:

- (1) Shall have title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or
- (2) Shall have charge, care or control of any dwelling or dwelling unit, as owner or agent of the owner or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this chapter, and of rules and regulations adopted pursuant thereto, to the same extent as if he were the owner.

Plumbing means all of the following supplied facilities and equipment: Gas pipes, gas burning equipment, water pipes, mechanical garbage disposal units (mechanical sink grinder), waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines, catchbasins, drains, vents and any other similar supplied fixtures, together with all connections to water, sewer or gas lines.

Public authority means the town housing authority or any officer who is in charge of any department or branch of the government of the town or of the county or state relating to health, fire, building regulations or other activities concerning dwellings in the town.

Rooming house means any dwelling, or that part of any dwelling containing one (1) or more rooming units, in which space is let by the owner or operator to three (3) or more persons who are not husband and wife, son or daughter, mother or father or sister or brother of the owner or operator.

Rooming unit means any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

Rubbish means combustible and noncombustible waste materials, except garbage and ashes, including paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery and dust.

Supplied means paid for, furnished or provided by, or under the control of, the owner or operator.

Temporary housing means any tent, trailer or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure or to any utilities system on the same premises for more than thirty (30) consecutive days.

Unfit for human habitation means having conditions existing in a dwelling which violate or do not comply with one (1) or more of the minimum standards of fitness or one (1) or more of the requirements established by this chapter.

(Code 1977, § 13-2)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 9-3. Conflicting provisions.

If any provision, standard or requirement of this chapter is found to be in conflict with any provision of this Code or of any other ordinance or code of the town, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the town shall prevail.

Sec. 9-51. Responsibilities of owners and occupants.

- (a) *Public areas*. Every owner of a dwelling containing two (2) or more dwelling units shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the dwelling and premises thereof.
- (b) Cleanliness. Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit and premises thereof which he occupies and controls.
- (c) *Rubbish and garbage*. Every occupant of a dwelling or dwelling unit shall dispose of all his rubbish and garbage in a clean and sanitary manner by placing it in the supplied storage facilities. In all cases the owner shall be responsible for the availability of rubbish and garbage storage facilities.
- (d) Supplied plumbing fixtures. Every occupant of a dwelling unit shall keep all supplied plumbing fixtures therein in a clean and sanitary condition and shall be responsible for the exercise of reasonable care in the proper use and operation of the same.
- (e) Care of facilities, equipment and structure. No occupant shall willfully destroy, deface or impair any of the facilities or equipment or any part of the structure of a dwelling or dwelling unit.

(Code 1977, § 13-11)

Sec. 9-52. Duties of code enforcement officer.

The code enforcement officer is hereby designated as the officer to enforce the provisions of this chapter and to exercise the duties and powers herein prescribed. It shall be the duty of the code enforcement officer:

- (1) To investigate the dwelling conditions, and to inspect dwellings and dwelling units, located in the town, in order to determine which dwellings and dwelling units are unfit for human habitation and for the purpose of carrying out the objectives of this chapter with respect to such dwellings and dwelling units;
- (2) To take such action, together with other appropriate departments and agencies, public and private, as may be necessary to effect rehabilitation of housing which is deteriorated;
- (3) To keep a record of the results of inspections made under this chapter and an inventory of those dwellings that do not meet the minimum standards of fitness herein prescribed; and
 - (4) To perform such other duties as may be herein prescribed.

(Code 1977, § 13-12)

Sec. 9-53. Powers of code enforcement officer.

The code enforcement officer is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

- (1) To investigate the dwelling conditions in the town in order to determine which dwellings therein are unfit for human habitation;
 - (2) To administer oaths and affirmations, examine witnesses and receive evidence;
- (3) To enter upon premises for the purpose of making examinations and inspections; provided, that such entries shall be made in such manner as to cause the least possible inconvenience to the persons in possession; and
- (4) To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of this chapter.

(Code 1977, § 13-13)

Sec. 9-54. Inspections generally; right of entry of code enforcement officer, owner, etc.

For the purpose of making inspections, the code enforcement officer is hereby authorized to enter, examine and survey at all reasonable times all dwellings, dwelling units, rooming units and premises. The owner or occupant of every dwelling, dwelling unit or rooming unit, or the person in charge thereof, shall give the code enforcement officer free access to such dwelling, dwelling unit or rooming unit, and its premises, at all reasonable times for the purposes of such inspection, examination and survey. Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part of such dwelling or dwelling unit, and its premises, at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this chapter or with any lawful order issued pursuant to the provisions of this chapter.

(Code 1977, § 13-14)

Sec. 9-55. Enforcement procedure generally.

(a) Preliminary investigation; notice; hearing. Whenever a petition is filed with the code enforcement officer by a public authority or by at least five (5) residents of the town charging that any dwelling or dwelling unit is unfit for human habitation, or whenever it appears to the code enforcement officer, upon inspection, that any dwelling or dwelling unit is unfit for human habitation, he shall, if his preliminary investigation discloses as a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwelling or dwelling unit a complaint stating the charges and containing a notice that a hearing will be held before the code enforcement officer at a place therein fixed, not less than ten (10) nor more than thirty (30) days after the serving of such 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 such hearing shall also be given to at least one (1) of the persons signing a petition relating to such dwelling. Any person desiring to do so may attend such 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 code enforcement officer.

- (b) Procedure after hearing. After such notice and hearing, the code enforcement officer shall state in writing his determination whether such dwelling or dwelling unit is unfit for human habitation and, if so, whether it is deteriorated or dilapidated. If the code enforcement officer determines that the dwelling or dwelling unit is deteriorated, he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to repair, alter and improve such dwelling or dwelling unit to comply with the minimum standards of fitness established by this chapter within a specified period of time, not to exceed ninety (90) days. Such order may also direct and require the owner to vacate and close such dwelling or dwelling unit until such repairs, alterations and improvements have been made. If the code enforcement officer determines that the dwelling or dwelling unit is dilapidated, he shall state in writing his findings of fact to support such determination and shall issue and cause to be served upon the owner thereof an order directing and requiring the owner to either repair, alter and improve such dwelling or dwelling unit to comply with the minimum standards of fitness established by this chapter, or else vacate and remove or demolish the same within a specified period of time, not to exceed ninety (90) days.
 - (c) Failure to comply with order.
- (1) In personam remedy. If the owner of any deteriorated dwelling or dwelling unit shall fail to comply with an order of the code enforcement officer to repair, alter or improve the same within the time specified therein, or if the owner of a dilapidated dwelling shall fail to comply with an order of the code enforcement officer to vacate and close and remove or demolish the same within the time specified therein, the code enforcement officer shall 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 such owner to comply with the order of the code enforcement officer, as authorized by G.S. 160A-446(g).
- (2) In rem remedy. After failure of an owner of a deteriorated dwelling or dwelling unit or of a dilapidated dwelling to comply with an order of the code enforcement officer within the time specified therein, if injunctive relief has not been sought or has not been granted as provided in paragraph (1) of this subsection, the code enforcement officer shall submit to the board of commissioners an ordinance ordering the code enforcement officer to cause such dwelling or dwelling unit to be repaired, altered, improved or vacated and closed and removed or demolished, as provided in the original order of the code enforcement officer, and pending such removal or demolition, to placard such dwelling as provided by G.S. 160A-443 and section 9-57
- (d) Appeals from orders of code enforcement officer. An appeal from any decision or order of the code enforcement officer may be taken by any person aggrieved thereby. Any appeal from the code enforcement officer shall be taken within ten (10) days from the rendering of the decision or service of the order and shall be taken by filing with the code enforcement officer and with the zoning board of adjustment a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the code enforcement officer shall forthwith transmit to the board all the papers constituting the record upon which the decision appealed from was made. When appeal is from a decision of the code enforcement officer refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the code enforcement officer requiring the person aggrieved to do any act, the appeal shall have the effect

of suspending the requirement until the hearing by the board, unless the code enforcement officer certifies to the board, after the notice of appeal is filed with him, that by reason of the facts stated in the certificate, a copy of which shall be furnished the appellant, a suspension of his requirement would cause imminent peril to life or property, in which case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one (1) day's written notice to the code enforcement officer, by the board or by a court of record upon petition made pursuant to G.S. 160A-446(f) and subsection (e) of this section. The board shall fix a reasonable time for the hearing of all appeals, shall give due notice to all the parties and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from and may make such decision and order as, in its opinion, ought to be made in the matter, and to that end it shall have all the powers of the code enforcement officer, but the concurring vote of four (4) members of the board shall be necessary to reverse or modify any decision or order of the code enforcement officer. The board shall have power also in passing upon appeals, in any case where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter, to adapt the application of this chapter to the necessities of the case to the end that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done. Every decision of the board shall be subject to review by proceedings in the nature of certiorari instituted within fifteen (15) days of the decision of the board, but not otherwise.

(e) Petition to superior court by owner. Any person aggrieved by an order issued by the code enforcement officer or a decision rendered by the board shall have the right, within thirty (30) days after the issuance of the order or rendering of the decision, to petition the superior court for a temporary injunction restraining the code enforcement officer pending a final disposition of the case, as provided by G.S. 160A-446(f).

(Code 1977, § 13-15)

Sec. 9-56. Methods of service of complaints and orders.

Complaints or orders issued by the code enforcement officer shall be served upon persons either personally or by registered or certified mail, but if the whereabouts of such persons are unknown and the same cannot be ascertained by the inspector in the exercise of reasonable diligence, the code enforcement officer shall make an affidavit to that effect, and the serving of such complaint or order upon such person may be made by publishing the same once each week for two (2) successive weeks in a newspaper circulating 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 1977, § 13-16)

Sec. 9-57. In rem action by code enforcement officer; placarding.

After failure of an owner of a dwelling or dwelling unit to comply with an order of the code enforcement officer issued pursuant to the provisions of this chapter, 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 9-55(c), the code enforcement officer shall proceed to cause such dwelling or dwelling unit to be repaired, altered or improved to comply with the minimum standards of fitness

established by this chapter or to be vacated and closed and removed or demolished, as directed by the ordinance of the board of commissioners, and shall cause to be posted on the main entrance of such dwelling or dwelling unit a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a misdemeanor. Each such ordinance shall be recorded in the office of the register of deeds in the county wherein the property is located and shall be indexed in the name of the property owner in the grantor index, as provided by G.S. 160A-443(5).

(Code 1977, § 13-17)

Sec. 9-58. Costs to be lien on premises.

As provided by G.S. 160A-446(6), the amount of the cost of any repairs, alterations or improvements, or vacating and closing, or removal or demolition, caused to be made or done by the code enforcement officer pursuant to section <u>9-57</u> shall be a lien against the real property upon which such cost was incurred. Such lien shall be filed, have the same priority and be enforced and the costs collected as provided by the General Statutes.

(Code 1977, § 13-18)

Sec. 9-59. Alternative remedies.

Neither this chapter nor any of its provisions shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their abatement by summary action or otherwise, or to enforce this chapter by criminal process as authorized by G.S. 14-4 and section 9-4, and the enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy provided herein or in other ordinances or laws.

(Code 1977, § 13-19)

Sec. 9-60. Zoning board of adjustment to hear appeals.

All appeals which may be taken from decisions or orders of the inspector pursuant to section 9-55(d) shall be heard and determined by the zoning board of adjustment. As the appeals body, the board shall have the power to fix the times and places of its meetings and to adopt necessary rules of procedure and any other rules and regulations which may be necessary for the proper discharge of its duties. The board shall perform the duties prescribed by section 9-55(d) and shall keep an accurate journal of all its proceedings.

(Code 1977, § 13-20)

Sec. 10-141. License required; bond.

No person shall do business as a pawnbroker in the town without first having obtained a license therefor. Before a license is granted to carry on such business, every such person shall, in addition to the license tax annually imposed by the provisions of <u>article II</u> of this chapter or other ordinances of the town, be required to enter into the current required bond to the town conditioned for the due observance of all the provisions of this article of other ordinances of the town as are in force or may be passed respecting pawnbrokers at any time during the continuation of such license.

(Code 1977, § 21-1)

Sec. 10-142. Doing business without having obtained license, etc.

Every person who shall engage in the business of a pawnbroker in the town without first having secured a license therefor, as required in section <u>10-141</u>, or after such license shall have been declared forfeited shall be guilty of a misdemeanor. Each week such business shall be so continued shall constitute a separate and distinct offense.

(Code 1977, § 21-2)

Sec. 10-143. License for each place of business.

No license as required in section <u>10-141</u> shall cover more than one (1) place of business, nor shall any such pawnbroker be allowed to have more than one (1) place for transacting such business, without first having obtained a license for every such place of business, nor shall it be lawful for anyone to act as agent for a pawnbroker at any other place within the town than such as is covered by such license.

(Code 1977, § 21-3)

Sec. 10-144. Reports to police of articles taken in pawn.

All pawnbrokers doing business in the town shall furnish, when required, to the desk sergeant or officer on duty at police headquarters a full, detailed and complete list of every article taken in pawn by them or bought by them during the preceding twenty-four (24) hours, or since the last inclusive list furnished as herein required, giving a full description of the same, including the material, maker, marks, number, brand, monogram and letters of every kind on such articles so pawned or bought.

(Code 1977, § 21-4)

Sec. 10-145. Record of purchases, etc.

Pawnbrokers doing business in the town shall keep and preserve a daily record at their several places of business, fairly and legibly written in English, showing from whom all such articles are received and to whom such articles are sold or disposed of, together with such additional information as required by state law. Such records shall, at all times during business hours and all other reasonable times, be open for the examination and inspection by the chief of police, any police officer or any other lawful officer.

(Code 1977, § 21-5)

Sec. 10-146. Arrangement of stock for inspections.

Every pawnbroker doing business in the town shall have his goods so arranged in stock as to enable the chief of police, any police officer or any other lawful officer readily to inspect the same.

(Code 1977, § 21-6)

Sec. 10-147. Purchases and pledges from minors.

No pawnbroker doing business in the town shall, directly or indirectly, knowingly buy or receive in pawn any article from any minor without the written consent of the parent, guardian or employer of

such minor. Such written consent shall be carefully preserved by such pawnbroker as evidence of his right to buy or receive in pawn such article from such minor. Such written consent shall be subject to inspection in like manner by the police or other lawful officers as provided under section 10-146.

(Code 1977, § 21-7)

Sec. 10-148. Loans on parts of articles.

No pawnbroker doing business in the town shall make any loan on the separate or divided part of any article.

(Code 1977, § 21-8)

Sec. 10-149. Violations.

Except as otherwise provided in this article, any licensed pawnbroker or person in control or charge of any pawnshop, violating or neglecting or refusing to comply with any provision of this article shall be guilty of a misdemeanor punished in accordance with section <u>1-6</u> and the license issued therefor may be declared forfeited by the council.

(Code 1977, § 21-9)

Sec. 10-190. License requirements.

It shall be unlawful for any person to engage in the profession of cabaret or exotic dancing within any establishment in Surf City without first obtaining a privilege license.

(Ord. No. 1992-19, § 1, 8-4-92)

Sec. 10-191. License fee.

The privilege license for cabaret and exotic dancers shall be five hundred dollars (\$500.00) per annum.

(Ord. No. 1992-19, § 1, 8-4-92)

Sec. 10-192. Definition.

Cabaret and exotic dancing is defined as dancing to music for pay in terms of tips or wages while clad in attire as commonly known as G-string and/or pasties or which attire fails to cover the pubic area, buttocks, genitals or the areola of female breasts.

(Ord. No. 1992-19, § 1, 8-4-92)

Sec. 10-193. Unlawful activities.

It shall be unlawful for any person or firm as operator of a cabaret to allow the performance of a cabaret or exotic dancer on the premises without said dancer being possessed of a current privilege license and said privilege license shall be posted in a conspicuous place upon the premises.

(Ord. No. 1992-19, § 1, 8-4-92)

Sec. 10-194. Penalty for violation.

Violation of this article shall be a misdemeanor and punishable upon conviction pursuant to G.S. 14-4.

Sec. 11-21. Loud, disturbing noises generally.

It shall be unlawful for any person, firm or corporation to create or assist in creating any unreasonably loud, disturbing sound levels in the town, taking into consideration volume, duration, frequency and other characteristics of the sound.

(Ord. No. 1989-4, § 1, 6-6-89)

Sec. 11-22. Noises declared unreasonably loud and disturbing.

The following activities, among others, are hereby declared to be unreasonably loud, disturbing sound levels, but the enumeration shall not be deemed to be exclusive:

(1) The playing of any musical instrument or electronic sound amplification equipment in such a manner or with such volume, particularly during the hours between 11:00 p.m. and 7:00 a.m., that a reasonably prudent person would conclude that the sound is likely to disturb persons in the vicinity.

The following shall be regarded as prima facie evidence that such sounds are unreasonably loud and/or disturbing:

- a. Complaints are made to the police department by two (2) or more persons, at least one (1) of whom resides on a different, affected property from the other complaining person or persons.
- b. A complaint is made to the police department by one (1) or more persons, combined with the complaint of the investigating police officer.
- c. The noise is plainly audible within any other occupied structure that is not the source of the sound.
- d. The noise is plainly audible at a distance of one hundred (100) feet from the property on which the sound originates.
- (2) The keeping of any animal or bird which makes frequent or long continued sounds, that a reasonably prudent person would recognize as likely to unreasonably disturb persons in the vicinity.
- (3) The use of any automobile, motorcycle, vehicle, boat, go-cart, minibike, all-terrain vehicle or other device powered by an internal combustion engine so out of repair, so loaded, or in such manner as to create unreasonably loud, disturbing sounds.
- (4) The operating of any garage or service station in any residential area so as to cause unreasonably loud, disturbing sounds to be emitted between the hours of 9:00 p.m. and 7:00 a.m. on any day.
- (5) The creation of unreasonably loud, disturbing sound levels adjacent to any school, educational facility, church or court during normal operating hours, or within one hundred fifty (150) feet of any hospital, which a reasonably prudent person would recognize as likely to unreasonably interfere with the working of such institutions, provided conspicuous signs are displayed indicating that such area is a school, educational facility, church, court or hospital area.

- (6) The erection (including excavation), demolition, alteration or repair of any building or structure of any kind in a residential area or business district other than between the hours of 7:00 a.m. and 9:00 p.m. Monday through Saturday for the period April 1 through October 31 and other than between the hours of 7:00 a.m. and 7:00 p.m. Monday through Saturday for the period November 1 through March 31, except in the case of urgent necessity in the interest of public safety, and then only under the direction of an appropriate town official.
- (7) The use of any electronic sound amplification equipment for advertising or solicitation purposes, except with an appropriate permit.
- (8) The playing, from a motor vehicle, of any electronically amplified sound or music that is plainly audible more than fifty (50) feet from the vehicle.

(Ord. No. 1989-4, § 1, 6-6-89; Ord. No. 2001-17, §§ 1, 2, 6-5-01)

Sec. 11-23. Noise permits.

- (a) Persons wishing to engage in activities regulated by article may do so when a specific permit is approved by the manager or his designee on forms supplied by the town. The permit shall not be unreasonably withheld, and may contain appropriate conditions, including maximum decibel levels, designed to minimize the disruptive impact. Permits for such activities significantly for religious or political purposes shall be granted, subject only to reasonable time, place and manner restrictions. Permits issued under this section may specify that the permission granted will continue for a stated period or until revoked after actual notice. Persons shall not be held in violation of this article when acting in conformity with permit conditions, but any permit may be revoked if it is determined that the authorized activity has resulted in the generation of unreasonably loud, disturbing sound levels.
- (b) In case an application is denied, a permit is approved with conditions unacceptable to the applicant, or a permit is revoked, the applicant or permit holder shall be entitled to a prompt, informal hearing with the manager, upon submission of a written request. Any person aggrieved by a matter regulated by this article may submit to the council written comments, including requests for appropriate relief.

(Ord. No. 1989-4, § 1, 6-6-89)

Sec. 11-24. Exceptions.

The following are excepted from the application of this article:

- (1) Construction activity performed by an agency of government provided that all equipment is operated in accordance with manufacturer's specifications and is equipped with all noise-reducing equipment in proper condition;
- (2) Sound or noise of safety signals, warning devices, emergency pressure relief valves and church bells;
- (3) Noises resulting from any authorized emergency vehicle when responding to any emergency call or acting in time of emergency;

- (4) Sound or noise emanating from street fairs, festivals or celebrations conducted by, with or pursuant to a permit issued by the town;
- (5) Sound or noise emanating from properly equipped aircraft operated in accordance with applicable federal rules and regulations;
 - (6) Sound or noise from lawful fireworks;
- (7) Lawn mowers and agricultural equipment operated between the hours of 8:00 a.m. and 9:00 p.m. when operated in accordance with manufacturer's specifications and with all standard noise-reducing equipment in place and proper condition;
 - (8) Musical accompaniment to parades or military ceremonies;
 - (9) Boats, ships, barges and other vessels engaged in interstate commerce; and
- (10) Sounds emanating from regularly scheduled athletic events at town parks or facilities and school athletic facilities.

(Ord. No. 1989-4, § 1, 6-6-89)

Sec. 11-25. Nonresident owner and occupant responsibility.

- (a) A nonresident owner of any premises subject to this article shall be responsible and liable for any actions by the tenants or occupants of the premises that constitute second or subsequent violations of this article; provided that no nonresident owner shall be liable unless notified of first or previous violations of the article; and further provided that the first or previous violations shall have occurred within the previous twenty-four-month period. Notice of first or previous violations shall be effected by mailing a copy of the citation to the nonresident owner by registered or certified mail, return receipt requested. No nonresident owner may be subjected to criminal liability by the application of this section, but shall be subject to civil penalties and equitable relief as provided hereinafter. This section shall in no way relieve any tenant or occupant from responsibility for violations of this article.
- (b) The owner or occupant of any premises shall be responsible and liable for any actions of guests or invitees on the premises that violate this article; provided that the occupant shall have been actually or constructively present at the time of the violation.

(Ord. No. 1989-4, § 1, 6-6-89)

Sec. 11-26. Violations.

Any person violating any provision of this article shall be guilty of a misdemeanor and, upon conviction, may be punished in accordance with section $\underline{1-6}(b)$. In addition, any person who violates any provision of this article may also be subject to a civil penalty as provided in section $\underline{11-6}(c)$ of this Code.

Sec. 12-2. Disorderly conduct.

- (a) Any person who shall do or engage in any of the following shall be guilty of disorderly conduct:
- (1) Any person who shall act in a violent or tumultuous manner toward another, whereby any person is placed in danger of safety of his life, limb or health;

- (2) Any person who shall act in a violent or tumultuous manner toward another, whereby public property or property of any other person is placed in danger of being destroyed or damaged;
- (3) Any person who shall endanger lawful pursuits of another by acts of violence or threats of bodily harm;
- (4) Any person who shall cause, provoke or engage in any fight, brawl or riotous conduct so as to endanger the life, limb, health or property of another or public property;
- (5) Any person who shall assemble or congregate with another or others and cause, provoke or engage in any fight or brawl;
 - (6) Any person who shall collect in bodies or in crowds and engage in unlawful activities;
- (7) Any person who shall assemble or congregate with another or others and engage or attempt to engage in gaming;
- (8) Any person who shall frequent any public place and obtain money from another by an illegal and fraudulent scheme, trick, artifice or device, or attempt to do so;
- (9) Any person who assembles with another or others and engages in any fraudulent scheme, device or trick to obtain any valuable thing in any place or from any person, or attempts to do so;
- (10) Any person who frequents any place where gaming or the illegal sale or possession of alcoholic beverages or narcotics or dangerous drugs is practiced, allowed or tolerated;
- (11) Any person who shall use "fighting words" directed towards any person who becomes outraged and thus creates turmoil;
- (12) Any person who shall assemble or congregate with another or others and do bodily harm to another;
- (13) Any person who shall, by acts of violence, interfere with another's pursuit of a lawful occupation;
- (14) Any person who shall congregate with another or others in or on any public way so as to halt the flow of vehicular or pedestrian traffic and refuse to clear such public way when ordered to do so by a peace officer or other person having authority;
- (15) Any person who damages, befouls or disturbs public property or the property of another so as to create a hazardous, unhealthy or physically offensive condition;
 - (16) Any person who shall urinate or defecate on a public street, public place or beach strand.
- (b) Any person convicted of disorderly conduct, as defined in this section, shall be punished as provided in section $\underline{1-6}$

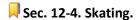
(Code 1977, § 19-2; Ord. No. 1984-4, § 4-3-84)

State law reference— Disorderly conduct, G.S. 14-288.4.

Sec. 12-3. Sand or other material belonging to town; removal from streets or other public places.

No person shall remove any sand or other material from the streets or other public places of the town, or any sand or other material from any lot belonging to the town, without permission from the town engineer or the council.

(Code 1977, § 19-4)



It shall be unlawful for any person to skate upon, over or across any public street or park within the town, except such portion of such streets as may be, from time to time, designated for skating by the chief of police. The chief of police is hereby authorized and empowered to designate, from time to time, certain streets or portions thereof upon which roller skating may be permitted, under such rules and regulations as he may, in his discretion, promulgate.

(Code 1977, § 19-6)

Sec. 12-5. Throwing stones, missiles, etc.

It shall be unlawful for any person to throw stones or other missiles along, across or upon any street of the town.

(Code 1977, § 19-7)

Sec. 12-6. Using sling, slingshot, etc.

It shall be unlawful for any person to use a sling or discharge gravel, marbles, shot or anything out of a slingshot, blow gun or other device or implement of like kind or character along, across or upon any sidewalk or street in the town.

(Code 1977, § 28-3)

Sec. 12-7. Discharging BB guns, etc.

It shall be unlawful for any person to shoot any BB gun, air rifle, air gun, air pistol, gas pistol or gas gun within the town.

(Code 1977, § 28-1)

Sec. 12-8. Discharging firearms generally.

It shall be unlawful for any person to fire a gun, rifle, pistol or other firearm within the town, except in case of self defense or necessity; provided, that this section shall not apply to an officer lawfully discharging his duty; provided, further, that nothing in this section shall be construed to prohibit licensed shooting galleries; provided, further, that nothing in this section shall be construed to prohibit trap shooting at such places and under such conditions as may be approved by the council.

Sec. 15-21. Permit required.

Franchise required: Pursuant to the provision of G.S. 160A-319.

On or after the effective date of this chapter [October 6, 1992], it shall be unlawful for any person, firm, corporation, joint venture or other entity to collect garbage, trash or other refuse in town except as provided in section 15-8.

(Code 1977, § 12-17; Ord. No. 1992-34, 10-6-92; Ord. No. 2009-05, 4-7-09)

Sec. 15-22. Spillage of garbage, etc., generally.

It shall be unlawful for any franchisee or person engaged in the private collection or transportation of garbage or trash to cause or allow spillage of garbage, trash, or other refuse resulting from improper use of containers or from the employment of a vehicle not meeting the requirements of section <u>15-23</u>. Such spillage shall, in addition to any penalty that may be imposed, subject the holder of the permit, as referred to in section <u>15-21</u> to revocation of such permit.

(Code 1977, § 12-18; Ord. No. 1992-34, 10-6-92)

Sec. 15-23. Suitability of vehicles for hauling.

It shall be unlawful for any person holding a permit as required in section $\underline{15\text{-}21}$ to transport garbage or trash over the streets of the town without first securing from the town manager a certificate to the effect that the vehicle designated for this use is suitable for hauling such garbage or trash. Vehicles which allow spillage of garbage or trash will be considered unsuitable for hauling garbage or trash.

(Code 1977, § 12-19; Ord. No. 1992-34, 10-6-92)

Sec. 15-24. Scavenging, etc. by unauthorized persons.

It shall be unlawful for any unauthorized person to scavenge or sort or pick through garbage or trash set out for collection.

(Code 1977, § 12-20; Ord. No. 1992-34, 10-6-92)

Sec. 15-25. Penalties.

Any person, firm, corporation, joint venture or other entity violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction punished pursuant to N.C.G.S. 14-4.

Sec. 16-1. Supervision of street work generally.

Subject to the council, except where otherwise assigned or provided, the charge and supervision of all authorized street work and improvements shall be under the general direction of the council and the specific supervision of the director.

(Code 1977, § 25-1)

Sec. 16-2. Plan controlling street lines.

The boundary lines of streets shall conform to the official map of the town and recorded subdivisions which may, from time to time, be added within the town limits, and the council shall accurately ascertain and run out street lines in accordance therewith.

(Code 1977, § 25-2)

Sec. 16-3. Delineation of street line prerequisite to laying foundation or erecting wall, etc.; removing buildings erected contrary to line.

- (a) No owner or builder of any house or other structure in the town shall dig or lay the foundation thereof immediately abutting on any street, or erect any wall or fence or fixture running as aforesaid, before he shall have applied to the council and the town shall have laid off and marked out the entire front line or boundary of such street.
- (b) If any person shall commence any foundation, building, wall, fence, or part thereof, upon any lot or piece of ground adjoining the line of any street within the town, not having made application to the council in the manner as above directed, or construct the same contrary to the line so laid off and marked out, such person shall be deemed guilty of a misdemeanor.
- (c) Any building, wall, fence, step or fixture, or work done, which shall be put up contrary to the street line given, or which shall be put up without such application, and which shall be found to be contrary to the true street line and to encroach thereon, shall be ordered demolished by the council in a written order to the owner. Any such encroachment or obstruction not removed by the owner within thirty (30) days after written notification by the council shall be removed under the direction of the council at the charge and expense of the person so offending, and the cost of such removal shall become a lien upon the property.

(Code 1977, § 25-3)

Sec. 16-4. Encroachment by buildings, fences, walls, etc.

No building, fence, wall or any other structure or fixture shall encroach upon or use any part of the public streets or other public places within the town.

(Code 1977, § 25-4)

Sec. 16-5. Projections over streets or public places.

- (a) No bay window or other structure shall be placed on any building so as to project over any street or public place.
- (b) It shall be unlawful for any person to erect, maintain or allow to remain any shed over any street or other public place in the town.

(Code 1977, §§ 25-5, 25-6)

Sec. 16-6. Gates.

It shall be unlawful for any person to construct or maintain any gate or door which shall open outwardly on or over any part of any street or other public place in the town.

(Code 1977, § 25-7)

Sec. 16-7. Protection of pedestrians on public rights-of-way by persons constructing buildings.

Any owner or contractor who shall build, or cause to be built, any building abutting on a public right-of-way shall, upon completion of the first story, cause a roofed passageway to be built over any side area of such public right-of-way commonly used by pedestrians, for the protection of such pedestrians.

(Code 1977, § 25-8)

Sec. 16-8. Hauling coal, dirt, sand, etc.

It shall be unlawful for any person to haul coal, dirt, sand, gravel, crushed stone, litter or waste matter of any kind, whether included in this enumeration or not, along and over any street in the town, except in vehicles having bodies or receptacles for holding such material and so constructed and arranged as to prevent the same from washing or dropping upon such street.

(Code 1977, § 25-9)

Sec. 16-9. Throwing glass, nails, etc., on streets, etc.

It shall be unlawful for any person to throw, place or deposit, or cause to be thrown, placed or deposited, upon any street or other public place of the town any glass, glassware, crockery, tin, nails, pieces of iron or metal or refuse or material of any kind, or other substances or articles likely to injure persons, animals or the tires of vehicles using the highways and public places of the town.

(Code 1977, § 25-10)

State law reference— Placing glass or other injurious obstructions in road, G.S. 136-91.

Sec. 16-10. Throwing fruit or slippery substances in streets, etc.

No person shall throw, cast, place or deposit in any street or public place of the town any portion or part of any fruit, vegetable or other substance which, when stepped upon by any person, is liable to cause such person to slip or fall.

(Code 1977, § 25-23)

Sec. 16-11. Debris in gutters and catchbasins.

It shall be unlawful for any person to place leaves or debris of any kind in the street gutters or in such a manner as to be washed or blown from the plaza into a street gutter. It shall also be unlawful to place leaves, trash or debris of any kind in the catchbasins, stormdrain lines, ditches or any part of the stormdrainage system of the town.

(Code 1977, § 25-19)

Sec. 16-12. Drains and gutters to be kept open.

Every owner or occupant of any lot fronting upon any street in the town shall keep the street drains and street gutters abutting such property open and free from obstruction.

(Code 1977, § 25-21)

Sec. 16-13. Playing ball.

No person shall, within the town, play a game of ball or practice at passing or hitting a ball upon any street.

(Code 1977, § 25-11)

Sec. 16-14. Permit and bond for hauling heavy equipment.

Before any person employing heavy equipment shall be allowed the privilege of hauling heavy wagons, equipment and paraphernalia along, through or over any of the streets of the town, such person shall give a cash bond in the sum of five hundred dollars (\$500.00), conditioned that restitution will be made for all streets damaged by such hauling, and such heavy loads shall not be hauled over any street except by permit of the council designating the streets to be used and the date and hour of such use.

(Code 1977, § 25-12)

Sec. 16-15. Fires on streets.

It shall be unlawful for any person to build or maintain a fire upon any street or street right-of-way within the town.

(Code 1977, § 25-13)

Cross reference— Fire prevention and protection, Ch. 7.

Sec. 16-16. Inspection of streets for defects; record, report and repair.

It shall be the duty of the director of public works and the council to inspect, or have inspected, from time to time with reasonable frequency, the condition of the streets within the town, to keep a record of any discovered defects therein and, upon discovery of any defect or need of repair to any public street, to take such action as they deem advisable to effect such repair.

(Code 1977, § 25-14)

Sec. 16-17. Inspection of streets, etc., for encroachments and obstructions.

The director of public works shall, as often as practical, inspect the streets of the town to determine if there exist any encroachments or obstructions upon any of the streets, wharves or public places, or any unauthorized obstructions in the way of foot passengers or vehicles. If, upon such examination, the director finds any such obstructions or encroachments, he shall report the same in writing to the council, stating what and where such obstruction or encroachment is and the name of the person causing such obstruction or encroachment.

(Code 1977, § 25-15)

Sec. 16-18. Removal of obstructions and encroachments; notice; failure of owner to act; removal by town.

(a) The council, upon receipt of a report that there are obstructions or encroachments upon any of the streets, wharves or other public places in the town, shall consider such report and if they find that such obstruction does exist and ought to be removed, shall give written notice to any person causing such obstruction or encroachment to remove the same within thirty (30) days, or to appear before the

council on a certain date to show cause, if any, why such obstruction should not be removed. Upon the owner's failure to appear on the appointed day, the council shall consider the report and determine whether the reported obstruction or encroachment is an obstruction or encroachment and ought to be removed, and if the council shall order such obstruction or encroachment removed, the town clerk shall thereupon, within two (2) days, directly notify the owner in writing or notify the police department of the acts of the council, and the police department shall forthwith notify the owner, or agent of such owner, to conform to the order of the council within ten (10) days from the time such notice is given. If such owner is unknown or a nonresident, such notice shall be published three (3) successive times in some newspaper of general circulation in the town. Any person refusing or failing to remove such obstruction or encroachment within ten (10) days after such notice shall be deemed guilty of a misdemeanor.

- (b) If any owner fails to remove such obstruction or encroachment within the time limit herein provided, it shall be lawful for the town, through the council, to immediately remove such obstruction or encroachment, and the owner of such obstruction or encroachment shall pay to the town the actual cost of the removal of such obstruction or encroachment, in addition to the penalty provided for in section <u>1-6</u>. The cost of such removal, if not paid, shall constitute a lien against the property.
- (c) The requirements of this section and section $\underline{16-17}$ are intended to apply to any obstruction of any nature, kind and description upon any street, wharf or any other public place in the town.

(Code 1977, § 25-16)

State law reference— Obstructing highways and roads, G.S. 136-90, 136-91.

Sec. 16-19. Erecting porches, steps, fences, etc.

It shall be unlawful for any person to build, erect, construct, place or maintain any porch, steps, fence, wall or other obstruction whatsoever in, on or over any of the streets of the town.

(Code 1977, § 25-17)

Sec. 16-20. Obstruction by merchandise, boxes, etc.

It shall be unlawful for any person to obstruct entirely or in part any street in the town by selling or offering for sale at auction or otherwise any goods, wares or merchandise thereon, or to use any street for the placing thereon of any barrel, box, cask, crate, wood or other substance, except where expressly permitted by the provisions of this Code or other ordinance of the town; or to use any street for the display or placing of merchandise or any other goods thereon, or wares or produce, cooked provisions, poultry, fruit or other commodity.

(Code 1977, § 25-18)

Sec. 16-20.1. Overhead obstructions.

It shall be unlawful for any person to obstruct a town street, or a private street along which municipal services are requested and delivered, by allowing or placing any structure, wire, tree growth, or other obstruction in the area from the street surface to a height of eighteen (18) feet. Overhead obstructions

may, if not removed by the property owner upon notice from the town to same, be removed by the town.

(Ord. No. 2001-12, § 1, 4-3-01)

Sec. 16-21. Barbed wire fences.

It shall be unlawful for any person to erect, construct or maintain on any premises along any street of the town any barbed wire or barbed wire fence.

(Code 1977, § 25-20)

Sec. 16-22. Railing around lot below street level.

The owner, or agent of the owner, of every lot, piece or parcel of ground within the town that is more than eighteen (18) inches below any street and bordering thereon shall erect and at all times maintain along the edge of such lot, piece or parcel of land next to such street a secure railing or fence, sufficiently high and strong to keep from falling from the street into such low lot.

(Code 1977, § 25-22)

- Sec. 16-23. Duty of building department with regard to street names.
- (a) It shall be the duty of the building department to maintain by maps or listings the official names of the streets within the town, as they may exist or may be extended or renamed by the building department.
- (b) It shall be the duty of the building department, from time to time, to review the official street names of the town and recommend any changes in names which they feel to be justified in order to permit clarity of street designation.
- (c) Based on the official record of street names, the building department shall review street names submitted for new subdivisions to ensure that new street names are not duplicates of names already used.
- (d) From the official record, the building department, from time to time, shall issue listings of official street names for use by the various departments of the town and other interested persons and agencies.

(Code 1977, § 25-24; Ord. No. 2005-19, 8-2-05)

Cross reference— Street names in subdivisions, App. B, Art. VIII, § 8.5.

Sec. 16-24. Permit to construct driveway required.

No person shall construct or reconstruct any driveway within the town without first obtaining from the building inspector a permit to do so.

(Code 1977, § 25-25; Ord. No. 2000-11, § 1, 5-4-00)

State law reference— Municipal authority to regulate construction of driveways, curb cuts, G.S. 160A-307.

Sec. 16-25. Moving houses.

- (a) *Permit required*. No person shall move or assist in moving any house, shop or other building through any street or over any bridge in the town unless a written permit therefor shall have been issued by the council. The council may refuse to grant a permit when, in their opinion, after having examined the object to be moved, it is of such bulk or is of such weight as to constitute an undue hazard to the street pavements, curbs, signs, street plantings or other items within the public right-of-way.
- (b) Application for permit. Any person desiring a permit as required in subsection (a) shall file an application therefor with the council. Such application shall describe the house, shop or other building intended to be moved, shall set out the route over which the house, shop or other building in question is to be moved and shall contain such other information as may be required by the council.
- (c) *Contents.* A permit for moving a house, shop or other building issued pursuant to an application filed as provided in subsection (b) shall set out the route over which the house, shop or other building in question is to be moved and shall include such other terms and conditions as the council may deem proper.
- (d) *Cutting of wires.* Whenever it becomes necessary to cut wires when any house, shop or other building is being moved along a street pursuant to a permit as required in subsection (a), the permittee must, prior to the beginning of the movement, make satisfactory arrangements covering the cost of cutting and repairing such wires with the owning utility or the town.

(Code 1977, §§ 25-34—25-37)

State law reference— Professional housemoving, G.S. 20-356 et seq.; municipal authority to require a house moving permit, G.S. 160A-417.

Sec. 16-26. Rolling, etc., wheelbarrows, etc., on sidewalks.

It shall be unlawful for any person to drive, roll or push any wheelbarrow, hand truck or cart on any sidewalk within the town; provided, that this section shall not apply to baby carriages, tricycles or invalid chairs.

(Code 1977, § 16-8)

Sec. 16-27. Riding, driving, etc., animals on sidewalks, footways, etc.

It shall be unlawful for any person to ride, lead or drive, or cause to be ridden, led or driven, any horse or other animal, except a dog, upon any curb, sidewalk or footway in the town, except for the purpose of crossing such sidewalk on the entranceway to adjacent lots, and then only for the purpose of going into or out of such lots.

Sec. 16-41. Permit required.

It shall be unlawful for any person to dig any hole, ditch or trench, make any excavation of any kind or make any embankment in or on any street, alley or utility right-of-way in the town without first securing a permit therefor, in writing, from the council. Any person violating this section shall be deemed guilty of a misdemeanor, punishable as provided in section <u>1-6</u>.

(Code 1977, § 25-26)

Sec. 16-42. Application.

Any person desiring a permit as required in section <u>16-41</u> shall file an application therefor with the council. Such application shall describe the hole, ditch, trench or excavation to be dug or the embankment to be made, shall indicate the street, alley or utility right-of-way upon which the work is to be done, and shall contain such other information as may be required by the council. Where the application is made for permission to install utility lines within the street right-of-way, the person applying for such permit shall submit with his application a plan showing the nature, extent, depth and location within the right-of-way of the proposed utility line, the location of existing utilities and other specific information as may be required by the council.

(Code 1977, § 25-27)

Sec. 16-43. Contents of permit.

A permit for the digging of any hole, ditch, trench or excavation of any kind or the making of any embankment in or on any street, street right-of-way, alley or utility right-of-way in the town, issued pursuant to an application filed as provided in section 16-42, shall describe the work that is to be done pursuant to such permit and shall include such other terms and conditions as the council may deem proper.

(Code 1977, § 25-28)

Sec. 16-44. Bond or cash deposit.

The council may require as a prerequisite to the issuance of a permit pursuant to an application filed as provided in section <u>16-41</u> that a satisfactory bond be filed or a cash deposit made to cover the cost of replacing such street in as good condition in all respects as before excavating. Such estimated cost shall be furnished by the council, the amount to be based on the extent of the proposed opening, cut or excavation, character of paving, etc., estimated per square yard.

(Code 1977, § 25-29)

Sec. 16-45. Restoration of earth.

- (a) When any part of any street, street right-of-way, alley, utility right-of-way or other public place in the town shall be disturbed, dug up or taken up, for any purpose, the person doing the same shall immediately upon the completion of such purpose and as fast as practical during the accomplishment thereof, return the earth and ram and water tamp or puddle the same to a firm and solid bearing, in such manner as will entirely prevent settling of such earth, and in every case to the entire satisfaction of the council.
- (b) When the excavation shall have been made in the traveled way of any street or alley which is unpaved, the person making such excavation shall be responsible for stabilizing and restoring the surface so that it may be traversed by vehicles in an efficient and safe manner and to the satisfaction of the council.

(c) Where any person makes an excavation in the plaza of any street he shall be responsible for the restoration of the disturbed areas to the condition which existed prior to his excavation. Where the plaza is not grassed, he shall stabilize it to prevent erosion, under the direction of the council. Where a plaza has sufficient quality and thickness of grass, under the direction of the council, he shall cut and restore the sod after the excavation is completed. Where the grass cover is not sufficient for efficient sodding, under the direction of the council, he shall fill, fertilize and seed, so as to sufficiently produce a grass cover.

(Code 1977, § 25-30)

Sec. 16-46. Replacement of pavement.

Paving torn up, disturbed or removed in any street or public place where openings have been made shall be rebuilt at the expense of the person making or causing such excavation. The council shall, at the time application is made for a permit to make an excavation in a paved surface, make arrangements satisfactory to the town for the person making such cut to pay the cost of repair.

(Code 1977, § 25-31)

Sec. 16-47. Guard rails and signal lights.

It shall be unlawful for any person to make or cause to be made any excavation of any kind in the town in or along or near any street without placing and maintaining proper guardrails and signal lights or other warnings at, in or around the same, sufficient to warn the public of such excavations and to protect all persons using reasonable care from accidents on account of the same.

(Code 1977, § 25-32)

Sec. 16-48. Negligence in excavating when contiguous to street.

No person shall make or cause to be made any excavation on any lot contiguous to any street, so negligently made or maintained that the same, by caving or otherwise, shall in any manner endanger or injure such street.

Sec. 17-31. Obedience to signs, etc., generally.

Any person failing or refusing to comply with the directions indicated on any sign, marker or device for the control or direction of traffic, erected or placed in accordance with the provisions of this chapter, shall be guilty of a misdemeanor. This section shall not be construed to apply when the driver of a vehicle is otherwise directed by a police officer or when an exception is granted to the driver of an authorized emergency vehicle under section <u>17-6</u>.

(Code 1977, § 16-17)

Sec. 17-32. Signs as prerequisite to enforcement.

No provision of this chapter for which signs are required shall be enforced against an alleged violator if, at the time and place of the alleged violation, an official sign is not in proper position and sufficiently legible to an ordinarily observant person. Whenever it is not stated that signs are required with

reference to a particular section, such section shall be effective without signs being placed to give notice thereof.

Sec. 18-1. Definitions.

- (a) As used in this chapter, the following terms shall have the following meanings:
- (1) Owner shall mean the record owner of real property as listed with the Surf City Tax Collector, and shall further include all persons, firms, corporations, joint ventures, partnerships or any other entities having an interest in the property.
 - (2) Director shall mean the director of public works as designated by the town manager.
- (3) *Customer* shall mean that person, and includes firms, corporations, joint ventures, partnerships or any other entity, for whom a utility account for water and/or sewer are opened upon terms, conditions and schedules published by the town, and shall on or after the effective date of this chapter [Ordinance No. 1992-1] include the "owner" of the property.
 - (4) Town council or board shall mean the board of commissioners of the Town of Surf City.
- (5) *Town manager* shall mean the person designated as the town manager pursuant to N.C.G.S. 160A-147 through 160A-150.
- (6) *Premises* are those improvements upon real estate located within the Town of Surf City serviced by water and sewer.
- (7) Residential unit shall mean a home or dwelling together under roof constituting a separate independent housekeeping unit containing two hundred (200) square feet or more of floor space, for owner occupancy, rental or lease, and physically separated from other dwelling units whether within or without other structures, and containing independent cooking, sleeping and toilet facilities. Provided that where separate independent dwelling units exist within a single family occupied residence, and the separate independent dwelling unit is not occupied by any persons upon any consideration for rent or lease basis, said separate living quarters may remain on the main residence meter and not be subject to any minimum charges for water and sewer or solid waste collection fees.
- (8) Commercial unit shall mean any business or space occupied into which the public is invited to do business for goods and/or service, and includes all businesses, avocations, or callings of any kind and specifically excludes all residential units.
- (9) Standard rate shall mean those rates, fees, charges and penalties for water and sewer service and availability of such service adopted from time to time by the town council as section <u>18-195</u> to this chapter and as posted at the town hall.
- (10) Service shall mean the availability of water and/or sewer for connection to improved real estate within the Town of Surf City regardless of whether the owner of the property has connected to the system.
- (11) *System* shall mean and include both water and sewer service of the Town of Surf City, its equipment and appurtenances thereto, above and below grounds, and at all locations.

- (12) Average flow means the total flow of wastewater in gallons during a normal operating calendar day of twenty-four (24) hours, as can be measured over a period of time of not less than six (6) months.
- (13) Use of the masculine gender in this chapter shall also mean the feminine. Use of the singular shall also mean the plural.
- (b) The town manager shall prepare a form for exemption pursuant to section <u>18-1(a)(7)</u> above. The making of any false statement shall be punishable as a misdemeanor pursuant to N.C.G.S. 14-4.

(Ord. No. 1992-1, 1-7-92; Ord. No. 1992-14, § 1, 6-2-92; Ord. No. 1992-26, § 1, 9-1-92; Ord. No. 1992-28, § 1, 9-1-92; Ord. No. 1994-6, § 1, 4-5-94)

Sec. 18-2. Administrative authority.

- (a) The director of the department of public works shall have overall supervision of the entire water and sewer system under the general direction of the town manager. The town manager shall prescribe the duties and responsibilities of the director. The director of public works and the town manager at all times shall have free access to all premises for the purpose of examining hydrants, fixtures and connections on which town water pressure is maintained. The fire department personnel shall have free access to fire hydrants at all times.
- (b) Any person aggrieved by an act or decision of the director of public works may appeal his decision in writing to the town manager. The town manager shall meet and confer with the respective parties. Within ten (10) days of this meeting the town manager shall render his decision in writing to the aggrieved person. Only those matters of complaint or request for action brought to the attention of the town manager as described above shall be considered by the town council for any action.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-3. Refusal of services to persons or premises outside corporate limits.

The council reserves the right to serve any person or premises outside the corporate limits with water sewer service from the system.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-4. Permit for connection required.

- (a) No person shall connect with the water or sewer system of the town until and unless he has applied in writing for permission to do so to the department of public works. The application shall be accompanied by a plan or drawing showing the location of the building and the entire proposed connection from the public water and sewer lines through the building to its termination, including the location of all fixtures, traps, ventilating pipes, etc. The application shall state the number of the place, the name of the street and the name of applicant. A copy of the application and permit shall be retained by the department of public works. All connections shall be inspected before they are covered.
- (b) No owner shall fail to connect to the town's water and sewer system and any disconnection of service shall make the structure and appurtenance both unfit for human habitation and unusable for any commercial purpose whatsoever.

- (c) Capacity impact and tap-on fees shall be determined by the council from time to time. All monies collected under the provisions and terms of this section shall be deposited in a capital reserve fund. All newly created or constructed units, whether residential or commercial, shall be required to pay any and all required water and sewer capacity impact fees upon presentation of written application for permit for connection to the town's water and sewer systems, as described in section 18-4(a), and shall be required to pay any and all tap-on fees before the issuance of building permits; except that a property owner whose structure was destroyed by Hurricane Fran and the lot deemed unbuildable or a lot that remains vacant with ownership remaining unchanged, shall be exempted for a period of eighteen (18) months (from the effective date of this ordinance [March 4, 1997]) from paying the impact fee for a structure, of the same use and with no increase in the number of units created, that is rebuilt on property where the previous structure was destroyed or on other purchased property.
- (d) As quickly as possible, but in no case longer than twelve (12) months after the issuance of the sewer collection system permit and flow allocation thereof, the applicant/owner of the proposed sewer collection system and connection to the town sewer infrastructure must obtain all other permits required or other entitlements necessary for the construction of the improvements on the property for which the sewer permit is sought. Not withstanding the provisions described above, if, upon the expiration of the 12-month period specified therein, the applicant/owner to whom a sewer collection system permit and flow allocation has been issued requires, but has not obtained: (i) a permit or permits authoring connection to the town water system; and (ii) a permit or permits and all other permits required or other entitlements necessary for the construction of the improvements on the property for which the sewer permit is sought; the town, as permittee for said sewer collection system permit shall submit a formal request to the appropriate regulator agency and pursue necessary actions to reduce the flow allocation of said permit to zero (0) gallons per day. After which, applicant/owner shall be subject to any and all enforcement actions available to the town, and all other applicable local, state, and federal agencies, relative to the illegal and unapproved use of said sewer collection system permit. No refund of any and all paid capacity impact fees, permit fees, or application fees shall be made to owner/applicant that fails to demonstrate proof of re-quirements set forth herein.
- (e) Owner/applicant may reapply to town for sewer collection system permit for flow allocation greater than zero (0) gallons per day, as may be available. The town does not warrant or guarantee the availability of such flow allocation to owner/applicant at the time of demonstration of proof of met requirements described in subsection 18-4(d), above.
- (f) The sewer collection permit will be declared void if the holder of said permit does not submit evidence to the district that he has picked up a building permit within fifteen (15) days after the issuance of the sewer connection permit.
- (g) A sewer permit is applicable only to the property for which it is issued and is not transferable to other properties. The permit shall be valid so long as a valid building permit is in force, however, connection to the sewer must occur within one (1) year of the date of issuance of the sewer permit. Sewer connection fees paid for permits which are later declared void for any reasons stated above will not be refunded.

(Ord. No. 1992-1, 1-7-92; Ord. No. 1997-4, § 1, 3-4-97; Ord. No. 2006-26, 6-6-06; Ord. No. 2017-01, § 1, 2-7-17)

Sec. 18-5. Water user fees and sewer user fees.

(a) There shall be a water user fee and a sewer user fee for each dwelling unit and each commercial unit, for which water and sewer service is available, regardless of whether or not the unit is connected to the system (N.C.G.S. 160A-317).

For the purpose of this section, water and sewer user fees are due in the calendar month following the final plumbing inspection by the building inspector who shall promptly notify in writing the director of public works.

- (b) Water user and sewer user fees shall be determined by the council from time to time. The schedule of such rates shall be posted in the town hall and will be on file in the office of the town clerk.
- (c) Impact fees and tap-on fees shall be determined by the council from time to time. All monies collected under the provisions and terms of this section shall be deposited in a capital reserve fund for future capital improvements and expansions. All newly created or constructed units, whether residential or commercial, shall be required to pay any and all required water and sewer impact fees upon presentation of written application for permit for connection to the town's water and sewer systems, as described in subsection 18-4(a), and shall be required to pay any and all tap-on fees before the issuance of building permits.
- (d) For the purpose of this section, if the owner of real property replaces a unit or units on his property, he shall be charged only for the number of units constructed that exceeds the number of units that were on the property on the dates indicated below:

Surf Condos south to Charlotte Avenue — March 10, 1989

Surf Condos to Jones Avenue — July 6, 1989

South Topsail Drive (1002, 1004, 1016 and 1104) — August 16, 1989

Jones Avenue to Broadway Avenue — October 9, 1989

South Topsail Drive from S curve north to Charlotte Avenue — October 11, 1989

Pender/Onslow County line to Third Street on the canals and to Fifth Street on Highway 210 and North Shore Drive — December 4, 1989

Third Street to Ninth Street on the canals and Fifth Street to the town limits on North Shore Drive and Highway 210, excluding Ninth Street canal section — January 25, 1990

Ninth Street canal portion — January 31, 1990

However, a purchaser of real property on which there were units at one (1) time, but which property was clear of units at the time utility services were available, as referenced by the aforementioned dates, shall be charged for all units to be constructed on the property, regardless of the number of units originally on the property.

(Ord. No. 1992-1, 1-7-92; Ord. No. 1992-32, § 1, 9-1-92; Ord. No. 1992-35, § 1, 10-6-92; Ord. No. 2006-26, 6-6-06)

Sec. 18-6. Sprinkler/fire line connection charges.

In order to offset the capital costs incurred in oversizing the water treatment plant and distribution system to meet adequate fire flow requirements upon demand, charges shall be levied for each private fire line connection as set forth in the fee schedule. Connection fees shall be paid upon issuance of the installation permit.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-7. Special rates.

All water received as a special use shall be charged at a rate as set forth in the fee schedule. A meter rental fee and installation/removal fee for the meter shall also be assessed for the special use of water per application as set forth in the fee schedule.

Sec. 18-8. Billing; payment of accounts.

(a) The owner of improved property or customer shall be liable for the payment of all water and sewer services furnished to such premises, and any minimum charges applicable for services not furnished in lieu of connection and furnishing of services. Additionally, the owner of property shall be liable for all water and sewer service to all premises occupied by tenants after tenants have vacated the premises in an amount not less than published minimum rates.

If such charges are not paid, legal action may be taken to collect said charges and services disconnected (N.C.G.S. 160A-314).

On or after the effective date of this chapter, no customer account shall be opened or transferred by any occupant or tenant of the premises. Only the owner of the property may open an account on new or existing service. At the request of the owner of any multi-unit property served by a single meter, bills may be rendered to an occupant or tenant provided the owner executes such direction and waives any notice of delinquency or disconnection to any other address than the billing address, and guarantees payment.

- (b) Other than as contained in paragraph (a) above, all bills for water and sewer service shall be rendered to the owner at the address designated by the owner upon its account. All bills shall state a date upon which service is subject to cut-off for failure to pay by a stated date.
- (c) Upon failure of the owner/customer to pay the amount charged for either water or sewer services within the time set forth on billing, both services may be discontinued without prejudice to the right of the town to recover for services rendered before discontinuance, and services shall not be restored until the account is paid in full. These rates shall generally be determined on the basis of water consumption measured for each customer through a metering device installed, maintained, and read by the town.
- (d) The town council reserves the right to set special rates upon premises, residential and commercial, where in addition to town water service or in the absence of town water service, a private well services and supplies water to the property. These rates will be based on the average monthly usage over a twelve (12) month period for like and similar establishments or residences.

- (e) For the purpose of spreading more evenly the capital costs associated with providing the required amount and quality of water and the collection and treatment of wastewater, systems service charges shall be made according to the size of the water meter for each billing period on both water and sewer. These charges, for customers both inside and outside the town limits, shall be as set forth in the fee schedule.
- (f) Whenever water or sewer service is discontinued for any reason, a fee shall be charged for such discontinuance. Charges for such service work shall be determined from time to time by the council and such charge schedules shall be kept on file in the office of the town clerk.
- (g) Other than as contained in paragraph (a) above, the owner of any multi-unit property served by a single meter shall be billed and liable for the payment of all water, sewer, and sanitation/trash services furnished to such premises.
- (h) The town may reject any application for service when the applicant is delinquent in payment of bills incurred for service previously supplied at any location; provided, that when the owner of the premises has been served water and/or sewer and has not paid for the same, the town shall not be required to render service to anyone at the location where such water was used, until such water bill has been paid.

(Ord. No. 1992-1, 1-7-92; Ord. No. 1993-6, § 1, 2-2-93; Ord. No. 1993-7, §§ 1, 2, 2-2-93; Ord. No. 1993-8, § 1, 3-9-93; Ord. No. 1993-9, §§ 1, 2, 3-9-93; Ord. No. 1993-38, §§ 1—3, 12-7-93; Ord. No. 1995-5, § 1, 4-4-95)

Sec. 18-9. Tampering with or obstructing lines prohibited.

Any person found tampering with or manipulating any valves or lines belonging to the town shall be charged with the criminal offense of malicious mischief. No property owner, tenant or other person other than authorized town personnel shall touch, cut-off, tamper with, or in any way manipulate any water or sewer line, main, valve, cut-off or any appurtenance thereto. Any person found engaging in such action shall be charged a fee of twenty-five dollars (\$25.00) or such fee as the council may from time to time determine. Any person tampering with a town water meter connection cut-off shall be charged the same fee and any damage done to said cut-off or any appurtenances thereto shall be charged a fee of twenty-five dollars (\$25.00) plus the cost of repairing any damage to lines, cut-offs, or meters. Any person charged and convicted of a violation of this section shall be guilty of a misdemeanor and punished pursuant to N.C.C.S. 14-4.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-10. Work on water and sewer system by authorized personnel only.

All work on the water and sewer system and all connections or disconnections thereto shall be performed by the authorized employees of the town, their representatives, or plumbers approved by the town. All work shall be performed in accordance with the plumbing code of the town and the state and amendments thereto.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-11. Procedure for discontinuance of service.

- (a) Except for failure to pay bills directed to the account address, the town shall serve a written notice to any person allegedly violating any provision of this chapter. The notice shall state the specific nature of the violation and provide the person not less than fifteen (15) days to correct the violation or inquire regarding the notice, and, if the person feels he is not in violation, or that compliance requires greater than fifteen (15) days, request a hearing before the town manager. If the person does not respond within the time prescribed in the notice, the town may immediately discontinue service to this person upon the expiration of the prescribed time.
- (b) If the person allegedly in violation of a provision of this chapter, requests a hearing before the town manager, the town manager shall, within five (5) days of such person's claim, establish the time and place for such hearing. If, as a result of the hearing, the town manager determines that the person is in violation of the provision as alleged in the notice, he shall order the person to correct the condition giving rise to the violation, and establish a reasonable time for compliance. If the town manager cannot, at the hearing, determine the existence or extent of the alleged violation, he may allow continued service upon conditions that will allow for further investigation and final determination of the alleged violation, or, he may order the suspension of services.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-12. Suspension of service.

If the customer or owner, its agents or others acting in concert with the customer or owner are suspected of discharging wastewater into a public sanitary sewer which is causing operational problems at the public wastewater treatment facility, pump station, or public sanitary sewer, and the discharge would be in violation of this chapter; and the user has been issued written notice but has denied the alleged violation; then the town may require that the user cease to discharge into a public sanitary sewer, upon a hearing by the town manager, for up to thirty (30) days. The suspension shall be only for the purpose of clearly determining the operational effect of the user's discharge and the suspension shall not be made if it will likely endanger the public health, safety, or welfare or otherwise create a public health or safety nuisance. Depending upon the results of the suspension on the operation of the wastewater treatment facilities the town may take appropriate action to either restore service or discontinue further service.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-13. Discontinuation in protection of health and welfare.

When any public sanitary sewer customer or owner, its agents or others acting in concert with the customer or owner discharges, or threatens to discharge, any wastewater which is prohibited by this chapter and may cause a present or imminent and substantial endangerment to the health and welfare of persons, or is likely to cause the disruption or inhibition of the operation of the town's treatment facilities, the town manager may immediately, upon written notice or verbal notification to the user, discontinue service to said owner/customer. In such event, the town shall serve written notice to the owner/customer after discontinuation of service and shall, where feasible, follow the procedural requirements of this chapter. If, upon fulfillment of such requirements, it is determined that no violation has occurred, service to the owner/customer shall be restored at no cost to the owner/customer.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-14. Recovery of expense, loss or damage to town's system by reason of violation.

Any person violating any provision of this chapter, or any person who shall have broken, damaged, destroyed, uncovered, defaced or tampered with any structure, appurtenance or equipment which is part of the "System" shall be liable to the town for any expense, loss or damage suffered by the town by reason of such violation including, but not limited to, the costs of investigation; expert fees, tests and analyses; and reasonable attorney's fees. If such violation results in the town's making a disconnection of a building sewer from a public sewer pursuant to this chapter, the person shall further be liable to the town for all expenses to the town in making such disconnection.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-15. Disconnects.

The town may disconnect any or all utility services upon failure to pay any account due for any utility service and make a physical disconnect of service, if required, to terminate the service. Upon restoration of any disconnected service where a physical disconnection is accomplished, the customer may be required to pay the actual costs incurred by the town in discontinuing and reestablishing such service. Such costs shall be paid before utility service is restored.

Sec. 18-21. Classification of service.

- (1) Residential includes all service for water and sewer provided to residential units, and includes all single-family dwellings, multiple family dwellings, units in trailer parks, all condominium units, apartment houses and attached townhouses.
- (2) *Commercial* includes all service for water and sewer provided to commercial units, and specifically excludes any residential units.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-22. Application; grounds for rejection; discontinuance of service for violations; reinstallation charge; connection required.

- (a) After the effective date of this chapter [Ordinance No. 1992-1], the owner, and/or his authorized agent, shall make application for service, in person, at the office of the town and at the same time make the deposit guarantee required below.
- (b) The town may reject any application for service not available under a standard rate or which involves excessive service cost, or which may affect the supply of service to other customers, or for other good and sufficient reasons.
- (c) The town may reject any application for service when the applicant is delinquent in payment of bills incurred for service previously supplied at any location within the "System."

If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of delinquent amounts may not be required before providing service at the request of new or different customer or owner, tenant or occupant of the premises but this restriction shall not apply when the premises are occupied by two (2) or more tenants whose services are measured by the same meter.

Rents, rates, fees, charges and penalties for commercial units shall be the legal obligation of the owner of the premises served when: the property or premises is leased or rented to more than one (1) tenant and services rendered to more than one (1) tenant are measured by the same meter.

Provided further, when the owner of the premises has been served water and sewer and has not paid for the same, the town shall not be required to render services to anyone at the location where such water and sewer was used, until such water and sewer bill has been paid. (N.C.G.S. 160A-314)

The town reserves the right to change multi-metered property to single metered property where experience and delinquencies cause a loss to the town.

- (d) For violation of any kind of the provisions of these rules relating to application for service, the town may, at the expiration of ten (10) days after mailing a written notice to the last known address of the owner, remove the meter and discontinue service. Where the meter is thereafter reinstalled, the owner shall first pay to the town the current reinstallation charge.
- (e) All commercial units within the town which cater to the public in any respect shall connect to the "System" within sixty (60) days of the effective date of this chapter [Ordinance No. 1992-1].
- (f) Applications for water taps, and requests to install meters or taps when fees have been prepaid, must be made at least ten (10) working days in advance of the day on which service is desired.

(Ord. No. 1992-1, 1-7-92; Ord. No. 2001-2, § 13, 1-8-01)

Sec. 18-23. Water/sewer guaranteed deposit.

(a) For residential use a cash deposit of seventy dollars (\$70.00)—Onslow County and one hundred dollars (\$100.00)—Pender County shall be required.

For commercial use a cash deposit of one hundred fifty dollars (\$150.00) shall be required.

The council may amend these rates of deposit from time to time.

(b) After the effective date of this chapter [Ordinance No. 1992-1], the owner/customer in whose name the deposit is made shall be responsible for the payment of all bills incurred in connection with the service furnished as provided in section 18-195

After the effective date of this chapter [Ordinance No. 1992-1], those deposits remaining in the names of persons other than the owner shall be applied to any account delinquent more than thirty (30) days, the account closed and service disconnected.

Thereafter the premises may be served pursuant to the provisions of section 18-22.

- (c) A separate deposit is required for each meter installed.
- (d) The receipt for the guaranteed deposit shall not be negotiable and shall be redeemable only at the town's offices.
- (e) Where the town finds that the request for a guaranteed deposit refund is questionable, the town may require the applicant for such refund to produce the deposit receipt, properly endorsed.

(f) For tenant-occupied properties, the deposits-posted by owners may be refunded, at the owner's request, if the tenant has demonstrated a consistent pattern of timely payment for at least twenty-four (24) months For owner-occupied properties, the deposit posted by the owners may be refunded, at their request, if the owner has demonstrated a consistent history of timely payment for at least twenty-four (24) months.

(Ord. No. 1995-2, § 1, 2-7-95; Ord. No. 2001-2, § 5, 1-8-01)

Sec. 18-24. Initial charge; allotment of meters; special option for mobile home and travel trailer parks.

- (a) The initial or minimum charge, as provided in the rate schedule which shall be adopted, from time to time, by the council, shall be made for each meter installed, regardless of location. Each meter shall require a separate meter reading sheet, and each meter reading sheet shall cover a separate account.
- (b) Water and sewer service furnished for a given lot shall be used on that lot only. Each class of service shall be separately metered. Each service must be separately metered at a single delivery and metering point. Each commercial or mobile unit and each storeroom or stall used for business purposes shall have a separate meter. All commercial uses, including storerooms and stalls for business purposes, shall be metered separately from any residential use, and vice versa, whether now in service or to be installed in the future.
- (c) The owner of any mobile home or travel trailer park providing water and sewer services, or condominium unit association providing water and sewer services, shall have the following option. Either, to install meters at each mobile home, travel trailer or condominium unit, or to pay at least the minimum water and sewer fees applicable to dwelling units for each mobile home, travel trailer or condominium unit. Owners of mobile home or travel trailer parks providing water and sewer service, and condominium unit associations providing water and sewer service are deemed to have elected the minimum payment per mobile home, travel trailer and/or condominium unit as applicable to other dwelling units until such time as they notify the town of their intention to install meters within their parks or condominium regimes and pay the required fees for installation.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-25. Responsibilities and liability of town.

- (a) The town shall run service lines from its distribution and collection lines to the property line where the distribution and collection lines exist and run immediately adjacent and parallel to the property to be served, for which a service charge shall be made for each such new service where a five-eighths-inch or three-fourths-inch meter is installed.
- (b) The town may install its meter at the property line or, at the town's option, on the owner's property or in a location mutually agreed upon.
- (c) When two (2) or more meters are to be installed on the same premises for different customers, each meter shall be clearly marked to show to which customer it is designated.
- (d) The owner is responsible for having his piping and apparatus properly permitted and in stalled and for calling for inspections required by the building code.

- (e) The town reserves the right to refuse service unless the owner's lines or piping are installed in such a manner as to prevent crossconnections or backflow.
- (f) The town shall not be liable for damage of any kind resulting from water or the use of water on the premises, unless such damage results directly from negligence on the part of the town. The town shall not be responsible for any damage done by or resulting from any defect in the piping, fixtures or appliances on the owner's premises. The town shall not be responsible for the negligence of third persons or forces beyond the control of the town, which result in any interruption of service.
- (g) Under normal conditions, the owner/customer will be notified of any anticipated interruption of service.
- (h) The town will be responsible for maintaining that portion of the sanitary sewer system that extends from the main to the edge of the public right-of-way.

(Ord. No. 1992-1, 1-7-92; Ord. No. 2001-2, §§ 6, 9, 1-8-01)

Sec. 18-26. Responsibilities and liability of owner.

- (a) Piping on the owner's premises must be arranged so that the connections are conveniently located with respect to the town's lines or mains.
- (b) If the owner's piping on the premises is arranged so that the town is called upon to provide additional meters, each place of metering will be considered as a separate account.
- (c) Where a meter is placed on the premises of an owner, a suitable place shall be provided by the owner for placing such meter, so as to be unobstructed and accessible at all times to the meter reader.
- (d) The owner shall furnish and maintain a private cutoff valve on his side of the meter; the town shall provide a similar valve on the town's side of the meter.
- (e) The owner's piping and apparatus shall be installed and maintained by the owner at the owner's expense, safely and efficiently, in accordance with the town's rules and regulations of the state board of health.
- (f) The owner shall guarantee proper protection for the town's property placed on the premises and shall permit access to it only by authorized representatives of the town.
- (g) In the event that any loss or damage to the property of the town or any accident or injury to persons or property is caused by or results from the negligence or wrongful act of the owner, his agents, employees or tenants, the cost of the necessary repairs or replacements shall be paid by the owner to the town, and any liability otherwise resulting shall be assumed by the owner.
- (h) The amount of such loss or damage or the cost of repairs shall be added to the owner/customer's bill, and if not paid, service may be discontinued by the town.
- (i) The owner shall be responsible for all maintenance of a sanitary sewer service that extends beyond the public right-of-way.

(Ord. No. 1992-1, 1-7-92; Ord. No. 2001-2, § 9, 1-8-01)

Sec. 18-27. Access to premises.

- (a) Duly authorized agents of the town shall have access at all reasonable hours to the premises of the owner/customer for the purposes of installing or removing town property, inspecting piping, reading or testing meters or for any other purposes of installing or removing town property, inspecting piping, reading or testing meters or for any other purpose in connection with the town's service and facilities.
- (b) By acceptance of water and sewer service, each owner is deemed to have granted a license and right-of-way to the town and its employees across and upon the owners property as necessary for the purpose of installing and maintaining the "System."

(Ord. No. 1992-1, 1-7-92)

Sec. 18-28. Notice to town concerning discontinuance of service or change in occupancy.

- (a) Not less than three (3) days' notice must be given in person or in writing at the town office concerning any discontinuation of service or any change in occupancy or ownership. Such notification shall be the responsibility of the owner of the property.
- (b) The outgoing party shall be responsible for all water and sewer service to the date of departure and disconnection, and on and after that date, service shall be provided to the owner only.
 - (c) A charge will be made for each meter for each turn-on or cutoff.

(Ord. No. 1992-1, 1-7-92; Ord. No. 2001-2, § 2, 1-8-01)

Sec. 18-29. Billing.

- (a) Bills shall be rendered monthly, and town meters shall be read at least once each month and upon termination of service, but the town reserves the right to vary the dates or lengths of the periods covered, or to temporarily or permanently change them if necessary or desirable.
- (b) Charge for service commences when the meter is installed and/or connection is made to the "System," whether the service is used or not, specifically, this shall apply to all units, residential or commercial, whether they are occupied or vacant, and all such service shall require no less than the minimum payment for each month.
- (c) Readings from different meters will not be combined for billing, irrespective of the fact that such meters may be for the same or different premises, or for the same or different owner/customer, or for the same or different services.
- (d) Bills are due when rendered and become delinquent if not paid before the next month's bill is issued. A penalty of ten (10) percent per billing period will be added to delinquent amounts due.
- (e) Customers will be advised if their bill is delinquent, through notification on their bill, separate mailing, or telephone notification, and, if the delinquent amount and applicable penalties are not paid within ten (10) days of the issuance of the notice, service may be discontinued.
- (f) Failure to receive bills or notices shall not prevent such bills from becoming delinquent, nor relieve the owner/customer from payment.

- (g) Service for residential and commercial units which are normally rented and for which tenants have made deposits and paid water bills shall, if they become vacant and unoccupied, be the responsibility of the property owner. Billing shall be made to such owner for each full month's vacancy at the minimum meter rate for that service, unless usage dictates otherwise. Failure of an owner to pay such bills shall result in suspension of service until all accounts due are paid in full.
- (h) Charges for water and sewer are stated separately on all bills. All charges for sewer service, regardless of occupancy, tenants or number of meters servicing the premises shall be the legal obligation of the owner. (N.C.G.S. 160A-314(d)(2))
- (i) Pursuant to the provisions of N.C.G.S. 160A-314(b) all payments received upon bills rendered for water, sewer and sanitation/trash upon a monthly basis shall be applied to the customer's account as follows: First to fees for sanitation/trash; second to fees for sewer; and third to fees for water. All unpaid balances shall be collected as provided in this chapter for collection and/or disconnection.

(Ord. No. 1992-1, 1-7-92; Ord. No. 1993-5, § 2, 2-2-93; Ord. No. 2001-2, §§ 1, 3, 1-8-01)

Sec. 18-30. Suspension of service generally.

- (a) When services are discontinued and all bills paid, the deposit will be refunded.
- (b) Upon discontinuance of service for nonpayment of bills, the deposit will be applied by the town toward settlement of the account. Any balance will be refunded to the consumer; but if the deposit is not sufficient to cover the bill, the town may proceed to collect the balance in the usual way provided by law for the collection of debts.
- (c) Service discontinued for nonpayment of bills will be restored only after bills are paid in full for the entire period of discontinuance, redeposit made to the minimum amount specified, and a reconnection fee paid for each meter reconnected.
- (d) The town reserves the right to discontinue its service without notice for the following additional reasons:
 - (1) To prevent fraud or abuse.
 - (2) Owner/customer's willful disregard of the town's rules and regulations.
 - (3) Emergency repairs to municipal property.
 - (4) Insufficiency of water supply due to circumstances beyond the town's control.
 - (5) Legal process.
 - (6) Direction of public authorities having jurisdiction over such matters.
 - (7) Strike, riot, fire, flood, accident or any unavoidable cause.
- (e) Any person tampering with, re-connecting, or by-passing any meter upon premises where service has been discontinued for failure to pay bills shall be guilty of a misdemeanor and punished pursuant to the provisions of N.C.G.S. 14-4.

(f) The town may, in addition to prosecution, permanently refuse service to any owner/customer who tampers, adjusts, or resets, or otherwise interferes with meters or measuring devices.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-31. Complaints; adjustments.

- (a) If the owner/customer believes his bill to be in error, he shall present his claim in person at the town office before the bill becomes delinquent. Such claim, if made after the bill has become delinquent, shall not be effective in preventing discontinuance of service as provided in this section. The owner/customer may pay such bill under protest, and such payment shall not prejudice his claim.
- (b) The town will make special meter readings at the request of the owner/customer for a fee for each meter; provided, that if such special reading discloses that the meter was overread, no charge will be made.
- (c) Meters will be tested at the request of the owner/customer upon payment to the town of the actual cost of making the test; provided, that if the meter is found to overregister beyond five (5) percent of the correct volume, no charge will be made.
- (d) If the seal of a meter is broken by other than the town's representative or if the meter fails to register correctly or is stopped for any cause, the owner/customer shall pay an amount estimated from the record of his previous bills or from other proper data.
- (e) Adjustments of water and/or sewer bills may be approved by the town manager for any of the following reasons:
- (1) Actual evidence of a water leak in which the water did not enter the sewer system; in such instances, the sewer charges may be adjusted based on the estimated volume of water that did not enter the sewer system.
- (2) A determination that an unusual meter reading was caused by or could reasonably have been caused by a meter malfunction.
- (3) A determination that principles of fairness, equity, basic cost recovery, and/or service quality will be best or reasonably served by an adjustment.

In considering adjustment requests, the town manager shall make reasonable efforts to insure the recovery of any costs actually incurred by the town in providing service. Requests for adjustments must normally be made before a bill becomes delinquent.

(Ord. No. 1992-1, 1-7-92; Ord. No. 1992-24, § 1, 8-4-92; Ord. No. 2001-2, § 7, 1-8-01; Ord. No. 2002-8, § 1, 3-7-02)

Sec. 18-32. Supply pipes; service pipes.

Supply pipes, including curb cocks, shall be installed only by the public works department, and service pipes shall be installed only by a licensed plumber. When service pipes are installed, extended, repaired, altered or any connections or attachments are made thereto by a licensed plumber, the work must be inspected and approved by the building inspector. Supply pipes shall be under the exclusive control of

the department, and no person other than authorized employees of the department shall construct, repair or otherwise change or interfere with them in any way.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-33. Special permit.

- (a) When required. Water from the town waterworks system shall not be taken or used for any purpose other than domestic or for the supply of manufacturing, business or other buildings until a special permit shall have been issued therefor by the public works department, except as otherwise expressly permitted by ordinance.
- (b) Application. An application for a special permit to use water from the municipal system in the construction or repair of buildings or for any other construction or repair work shall be made to the director of public works upon such prepared form as may be provided for such purpose by the department. The character of the work for which the water is to be used and the estimated quantities of work shall be scheduled on the form provided, and all the items on the form shall be filled in or answered and certified to by the owner of such premises or the contractor of the work to be done. An estimate of the value of water shall be prepared by the director and a bill rendered for the resultant charge. Upon payment of the bill, a permit will be issued by the department, which permit must be posted and kept in a conspicuous place on the premises or location where the work is being done. Should the permit be lost or destroyed, the department will supply a duplicate, for which a charge will be made. Water must not be turned on or used until the permit shall be posted as above required. In case it shall be discovered that the water has been turned on or used before the posting of the permit, the water will be turned off by the department. Should it appear that the applicant for water to be used in the construction or repair of buildings or other construction or repair of buildings or other construction work has misrepresented the quantity of work to be done, the supply of water to such party shall immediately be shut off and not be turned on again until a true and revised estimate of the quantity of such work is submitted, nor until the charge for the water for the additional work shall be paid to the department.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-34. Division of premises.

Where a single building or premises, fitted with one (1) water service pipe, has been or may be subdivided by sale or otherwise, the separate divisions so made must be connected with the main by separated service pipes within thirty (30) days from the date of notification by the public works department to so connect.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-35. Unusual uses.

Property owners who desire any unusual construction, alterations or attachments with the water supply must submit plans and specifications to the department of public works for inspection and approval or disapproval. The department shall specify the terms and conditions under which the use will be allowed.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-36. Private fire outlets.

Where pipes are provided for fire protection on any premises or where hose connections for fire apparatus are provided on any pipe, each connection or opening of such pipes shall have no less than twenty-five (25) feet of fire hose constantly attached thereto. No water shall be taken from or used through such openings or hose for any purpose other than that of extinguishing fires; except, that for purposes of testing such fire equipment, the department of public works may grant a special permit.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-37. Curb cocks in vacant houses.

In all cases where plumbing repairs are made in unoccupied houses, the licensed plumber must, on completion of his work, leave the curb cock closed. If such plumber shall fail or neglect to do so, he shall be liable for all damages arising therefrom.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-38. Consumers outside town limits.

- (a) Water and sewer services from the system shall be supplied to persons or premises outside the corporate limits only upon proper application to the department of public works, and upon the condition that such users shall comply in all respects with all rules and regulations prescribed or that may be adopted by the council concerning such use. Water from the municipal water system shall be supplied to owner/customers outside the town limits only through meter service, and the minimum charge to any owner/customer shall be double the rate or charge prescribed for meter service inside such corporate limits, unless otherwise provided by the council.
- (b) Connections to the town's water and sewer system by property owners outside the corporate limits may require the installation of a service connection line of a length greater than sixty (60) feet in order to reach the property line of the applicant. In all such cases, the property owner applying for connection shall be responsible for either full payment of all costs incurred by the town to make the connection, or the standard tap fee, whichever is greater.
- (c) Prior to making the connection, the owner shall deposit with the town an amount equal to the total estimated cost of such connection. Upon receipt of such funds, a written contract shall be entered into by and between the town and the property owner in accordance with the requirements of this ordinance. Such contract shall provide that in the event the amount of the total funds deposited exceeds the amount of the total connection cost when completed, that portion in excess of the total cost shall be refunded to the owner without interest. Such contract shall also provide that if the amount deposited is less than the total cost, the owner shall pay such additional amount to the town.

(Ord. No. 1992-1, 1-7-92; Ord. No. 1995-13, § 1, 8-7-95)

Sec. 18-39. Modifications of rules and regulations.

(a) No promise, agreement or representation of any employee of the town shall be binding upon the council except as it shall have been agreed upon and accepted by the council in an official meeting.

(b) No modification of rates or any of the rules and regulations contained in this chapter or any other ordinance shall be made by any employee of the town.

Sec. 18-111. Intent of regulation of sewer use.

- (a) It is intended that the division include provisions for prohibiting the discharge by any wastewater customer into a public sanitary sewer of substances which may endanger the public health and safety; or of unpolluted waters which do not require treatment and therefore reduce the effectiveness of the biological operations of a treatment facility.
- (b) It is further understood that the biological and chemical operations which can be designed for wastewater treatment do, by their scientific nature, limit the types of constituents in wastewater which may be treated by facilities, constructed and maintained within a reasonable cost to the public. Consequently, the treatment facilities are designed for the primary purpose of treating domestic wastewater in sufficient manner to protect public health. Certain industrial wastewater constituents can be treated without interference at the wastewater facilities, but only in a limited quantity or concentration. To ensure that discharges of industrial wastewater into the public sanitary sewer are within such quantity, and concentration limits, reasonable and adequate regulations are provided in this article.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-112. Applicability of sewer use provisions.

All public sanitary sewer users shall comply with all applicable provisions of this article, as amended, and shall further comply with applicable federal, state and local laws, ordinances and regulations, including EPA/DEM pretreatment standards, which are at that time, in effect. In the event of a conflict, the more stringent requirement or higher standard shall apply.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-113. Special agreements.

No statement contained in this article shall be construed as preventing special agreement or special arrangement between the town and any customer or potential customer whereby an industrial waste of strength or character in excess of that defined as standard strength may be accepted by the town for treatment, subject to payment by the customer pursuant to the industrial waste treatment surcharge provisions of this article. However, no special agreement may be established except by authority of the town council, upon recommendation of the town manager, and in no event shall any such agreement be entered into that would be indirect violation of any EPA/DEM pretreatment standard. All special agreements for treatment of wastewater shall be approved by the town manager. Such approval or disapproval shall be accomplished in a timely manner not to exceed thirty (30) days after receipt of the completed application.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-114. Use of public sewers required.

It shall be unlawful for any person to place or discharge or to 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 or animal excrement, solid waste, or other materials which are or may become hazardous, toxic or injurious to public health or safety.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-115. Discharge to natural outlets.

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 requirement of EPA/DEM.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-116. Prohibition of septic tanks, privies, etc.

- (a) From and after February 10, 1987, the construction or use of any facility other than the public sanitary sewer for treatment and/or disposal of wastewater inside the town limits shall be prohibited, except when the facility is constructed and/or used under a condition set forth below:
- (1) The construction and use of a septic tank, or similar facility as determined by the director, may be permitted when it shall have been determined that a premises cannot, at the time said facility is considered, be connected to a public sanitary sewer, and that there is reasonable expectation that a septic tank can function effectively.
- (2) Any septic tank installed prior to and operating on February 10, 1987, may continue in operation until such time as the sanitary facilities on the premises shall be connected to a public sanitary sewer pursuant to this article. No tank shall be allowed once the public sanitary sewer and treatment facility are completely operational.
- (b) It shall be unlawful for any person to construct, repair, reconstruct or rebuild any septic tank or septic privy within the town limits unless such act is permitted under the provisions of this section. Any person convicted of a violation of this section shall be guilty of a misdemeanor and punished pursuant to the provisions of N.C.G.S. 14-4.
- (c) Except for those existing and presently operating septic tanks unable to connect to the sanitary sewer because of location and grade, and as determined by the director of public works, the director of public works is authorized to discontinue water service to any premises using a septic tank. Notice of disconnection shall be given to the owner/customer at the address upon the billing for water service at least ten (10) days prior to disconnection by first class mail and posting at the property. The town manager is authorized to grant a reasonable extension of time for restored water service and connection to the sanitary sewer on a demonstration of hardship and undue burden not to exceed sixty (60) days from the date of the original notice to the owner/customer.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-117. Building sewer required.

- (a) When the owner of a property inside the town limits shall use such property in any manner which results in the generation of wastewater, and pursuant to this article such wastewater shall be discharged into a public sanitary sewer, the owner shall install at his expense a suitable building sewer and any other facilities necessary to connect the building sewer directly to the public sewer at an access point provided by the town.
- (b) Whenever a building sewer connected to the public sanitary sewer becomes clogged, broken, out of order, or detrimental to the use of the public sewer, the owner having charge of any building or premises through which the building sewer collects wastewater, shall, upon notification by the director, reconstruct, alter, clean, or repair the building sewer as the condition of such may require within ten (10) days after receiving notification. Failure to correct the facilities of the building sewer as required shall result in termination of water services to the premises, and any other action deemed necessary to protect public health and safety.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-118. Reserved.

Sec. 18-119. Building sewer connections and fees.

All costs and expenses incident to the installation of facilities to connect the privately owned building sewer to the public sanitary sewer system shall be borne by the owner through a connection/tap fee levied by the town. Such fees shall be paid upon application for connection by the owner. Prior to the required installation of the sewer connection by the town, all connection/tap fees shall be paid at the time of receiving building permits. Sewer services connection fees shall be set forth in the fee schedule.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-120. Separate connections required.

A separate and independent building sewer shall be provided for every building or unit; an exception may be granted where one (1) building stands at the rear of another on an interior lot and it is not economically feasible for the town to construct a public sewer and access point to the rear of the building through an adjoining alley, court, yard, driveway, or other access. In such event, the building sewer may be extended to the rear building and the whole considered as one (1) building sewer. However, if separate water meters service each building or unit, separate wastewater service fees shall be charged to each building or unit.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-121. Method of sewer connection.

- (a) All connections to the town sanitary sewer system shall be made in accordance with provisions and requirements of the plumbing code. All such connections shall be made at access points prescribed and provided by the town; the applicant is responsible for constructing the building sewer in a manner necessary to ensure connection at the access point.
- (b) If, at the time of the adoption of the ordinance from which this article derives, any connection exists between a building sewer and a public sanitary sewer at a point other than the access point

prescribed and provided by the town, the town may serve a notice upon the owner immediately upon discovery. The owner shall be subject to the provisions of this article, and if service is disconnected, the owner may receive access to a public sanitary sewer only by applying for and paying a connection fee.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-122. Elevation of sewer connection.

All building sewers shall be brought to the building at an elevation below the lowest floor level having sanitary facilities. In all buildings in which any building drain is below a point which will permit a minimum average slope of the building, the N.C. State Plumbing Code will apply.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-123. Prohibited connections.

No connections that will allow inflow to enter the town's wastewater collection and treatment system shall be permitted. The prohibited connections shall include, but not be limited to, the connection of roof downspouts, exterior foundation drains, or other sources of storm water or groundwater to a building sewer which is connected directly or indirectly to a public sanitary sewer.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-124. Public hazard.

All excavations for building sewer installation within the public right-of-way shall be performed by public works personnel or under permit issued by the director of public works, and shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, plazas, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the town subject to the terms and conditions of the permit.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-125. Grease removal.

- (a) Customers shall not introduce grease into the sanitary sewer system. A sewer system user who violates this provision shall be responsible for the cost of cleaning the sewer main to remove the grease.
- (b) Grease and oil traps or other interceptors shall be provided at the user's expense, when such user operates an establishment preparing, processing, or serving food and/or food products. In accordance with the town's FOG ordinance [section 18-133], grease interceptors may also be required in other industrial, residential, or commercial establishments when they are necessary for the proper handling of liquid wastes containing oil and/or grease in amounts in excess of seventy-five (75) mg/l, or for any flammable wastes. All such traps, tanks, chambers or other interceptors shall be of a type and capacity approved by the town and shall be readily and easily accessible for cleaning and inspection. All such interceptors shall be serviced and emptied of the waste content as required, but not less often than every thirty (30) days, in order to maintain their minimum design capability to intercept oils and greases from the wastewater discharged to the public sanitary sewer. Wastes removed from grease interceptors shall not be discharged into the public sanitary sewer. The owner shall be responsible for the sanitary disposal of such wastes.

(Ord. No. 1992-1, 1-7-92; Ord. No. 2001-2, § 10, 1-8-01; Ord. No. 2009-03(1), 3-3-09)

Sec. 18-126. Sand and grit removal.

- (a) Sand and grit traps or other interceptors shall be provided at the owner's expense when they are necessary for the proper handling and control of liquid wastes containing sand and grit in excessive amounts. All such interceptors shall be of a type and capacity approved by the director and shall be readily and easily accessible for cleaning and inspection. All such interceptors shall be serviced and emptied of their solid contents as required, but not less often than every thirty (30) days, in order to maintain their minimum design capability to intercept grit and sand prior to the discharge of wastewaters to the public sanitary sewer. Failure to comply may result in the implementation of legal enforcement procedures.
- (b) Wastes removed from sand and grit interceptors shall not be discharged into the public sanitary sewer. The owner shall be responsible for the sanitary disposal of such wastes.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-127. Preliminary treatment devices.

Where preliminary treatment, pretreatment, flow-equalizing facilities, or grease, oil, grit and sand traps or other interceptors are provided for any wastewater, they shall be continuously maintained in satisfactory condition and effective operation by the owner at his expense.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-128. Powers and authority of inspectors.

- (a) The director and other duly authorized agents or employees of the town bearing proper credentials and identification shall be permitted to enter all properties, privately and publicly owned, for the purposes of meter reading, inspection, observation, measurement, gauging, sampling, and testing in accordance with the provisions of this article. The director or his representative shall have no authority to inquire into any processes including those of the metallurgical, chemical, oil refining, ceramic, paper, or other industries beyond that point having a direct bearing on the volume, nature and source of discharges to the town's wastewater collection system and/or storm sewers or other natural outlets.
- (b) While performing the necessary work on private properties referred to above, the director or duly authorized employees and agents of the town shall observe all safety rules applicable to the premises established by the owner.
- (c) The property owner shall not be released from liability to any extent in the event that a town agent or employee is injured while making inspections which are pursuant to this article on privately-owned property as a result of negligence on the part of the private property owner or any of his agents or employees.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-129. Sewer service connection fees.

Sewer service connection fees shall be charged pursuant to the fee schedule to cover the cost of providing an access point to the public sewer for the applicant. Such fees shall be as specified in the fee schedule.

(Ord. No. 1992-1, 1-7-92)



Sanitary sewer service rates shall be as established in the fee schedule.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-131. Extra strength wastewater surcharges.

Standard strength wastewater shall be defined as that wastewater having a maximum BOD₅, COD, and suspended solids concentration as follows:

BOD₅	250 mg/l
COD	750 mg/l
Suspended solids (SS)	200 mg/l

Industrial wastewater surcharges shall be assessed to any industrial users discharging wastewater, including constituents, at a concentration exceeding any of the limits established in this section. Surcharge rates shall be as set forth in the fee schedule and in consultation with the director of public works.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-132. Enforcement.

The town may discontinue wastewater treatment and disposal service to a customer when:

- (1) A government agency having jurisdiction informs the town that the effluent from the publicly-owned wastewater treatment facility is no longer of a quality permitted for discharge to a watercourse, and it is found that the customer is delivering wastewater to the wastewater system that cannot be sufficiently treated or that requires treatment that is not provided by the town.
 - (2) The customer commits any of the following violations:
- a. Discharges industrial wastewater of quality or quantity that is in violation of the waste discharge permit; commits any action prohibited by such permit or provision of this article; or fails to comply with any required provision of such permit or provision of this article.
 - b. Discharges waters or wastes having a deleterious effect upon the wastewater system.
- c. Discharges wastewater at an uncontrolled, variable rate in sufficient quantity to cause an imbalance in the wastewater system and/or the wastewater treatment process.

- d. Fails to pay user charges or other fees for wastewater services when due.
- e. Discharges prohibited wastes to the public sanitary sewer.
- f. Makes a connection of a building sewer to a public sanitary sewer at a point other than the publicly provided access point.
- g. Discharges inflow, or uncontaminated cooling water or process water into the public sanitary sewer.
 - h. Fails to properly clean and dispose of wastes collected in grease or grit interceptors.
- i. Discharges industrial wastewater under provisions of a waste discharge permit issued to a person other than the customer discharging the wastewater.
 - j. Fails to renew expired waste discharge permit.
- k. Fails to meet compliance schedule established upon mutual agreement of the customer and the town.
- I. Otherwise violates the provisions of this article or fails or omits to perform in such a manner as to constitute good cause for disconnection contrary to the purpose and intent of this article.

(Ord. No. 1992-1, 1-7-92)

Sec. 18-133. FOG (fats, oils, and grease).

- (a) *Scope and purpose.* To aid in the prevention of sanitary sewer blockages and obstructions from contribution and accumulation of fats, oils, and greases into such sewer system from industrial or commercial establishments, particularly food preparation and serving facilities.
 - (b) Definitions.
- (1) 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".
- (2) 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 here in as "grease interceptors".
- (3) Cooking establishments. Those establishments primarily engaged in activities of preparing, serving, or otherwise making available for consumption foodstuffs and that use one (1) of 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.

- (4) *Noncooking establishments.* Those establishments primarily engaged in the preparation of precooked foodstuffs that do not include any form of cooking. These include but not limited to cold dairy and frozen foodstuffs preparation and serving establishments.
- (5) 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.
- (6) *User.* Any person(s), individual, firm, company, association, society, corporation, organization, public corporation or group upon whose property the building or structure containing the food service establishment is located. Owner(s) shall also include the owner(s) of a food service establishment who may lease the building, structure, or a portion thereof, containing the food service establishment. This includes anyone located outside of the town's jurisdictional limits that 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.
- (7) *POTW staff*. (POTW staff) public owned treatment works staff shall consist of Town of Surf City employees authorized by the Town of Surf City.
- (8) *Hydraulic load.* At a minimum shall consist of all one, two, three and four compartment wash sinks filled to seventy-five (75) percent capacity and being drained simultaneously, prerinse sink operating at maximum flow, plus any dish or glass washing machine or other drainage fixture unit being operated at maximum rated performance levels.
 - (c) Food service establishment permit requirement.
- (1) *Grease interceptor requirements:* All permitted food service establishments are required to install, operate, and maintain an approved type and adequately sized grease interceptor necessary to maintain compliance with the objectives of this section. All grease interceptors must meet the requirements of the town, Pender County and/or State of North Carolina Plumbing Code.
- (2) *Implementation:* All new food service establishment facilities are subject to grease interceptor requirements. All such facilities must obtain prior approval from the public works director for grease interceptor sizing prior to submitting plans for building permit. All grease interceptors shall be readily and easily accessible for cleaning and inspection. Existing facilities with planned modification in plumbing improvements will be subject to comply with the grease interceptor requirements. These facilities must obtain approval from the public works director for grease interceptor sizing prior to submitting plans for a building permit.

(All existing food service establishments, determined by the public works director to have a reasonable potential to adversely impact the town's sewer system will be notified of their obligation to install a grease interceptor within the specified period set forth in the notification letter.)

(3) Variance from grease interceptor requirements: Grease interceptors required under this section shall be installed unless the public works director authorizes the installation of an indoor grease trap or other alternative pretreatment technology and determines that the installation of a grease interceptor would not be feasible. The food service establishment bears the burden of demonstrating that the installation of a grease interceptor is not feasible. The public works director may authorize the

installation of an indoor grease trap where the installation of a grease interceptor is not feasible due to space constraints or other considerations. If an establishment believes the installation of a grease interceptor is infeasible, because of documented space constraints, the request of an alternate grease removal device shall contain the following information:

- a. Location of sewer main and easement in relation to available exterior space outside building.
- b. Existing plumbing at or in a site that uses common plumbing for all services at that site.

(Alternative pretreatment technology includes, but is not limited to, devices that are used to trap, separate and hold grease from wastewater and prevent it from being discharged into the sanitary sewer collection system. All alternative pretreatment technology must be appropriately sized and approved by the public works director.)

- (4) Installation and operation:
- a. Permit to install must be obtained from the town public works prior to installation of any grease interceptor device. All interceptors must be in compliance with this section.
- b. Permit to operate grease interceptor device will be issued once approval is given by the town public works director and Pender County Health Department.
- (d) *Discharge limitations*. No user shall allow wastewater discharge concentration from subject grease interceptor, grease trap or alternative pretreatment technology to exceed that in accordance with the section <u>18-134(b)(3)</u> and subsection (e), below.
 - (e) Grease interceptor requirements:
 - (1) Grease interceptor sizing and installation shall conform to this section.
- (2) Grease interceptors shall be constructed in accordance with design approved by the public works director and shall have a minimum of two (2) compartments with fittings designed for grease retention.
- (3) Grease interceptor shall be installed at a location where it shall be easily accessible for inspections, cleaning, and removal of intercepted grease. The grease interceptor may not be installed in any part of the building where food is handled. Location of the grease interceptor must meet the approval of the public works director and Pender County Health Department.
- (4) 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. These devices should be inspected at least monthly by user. Users who are required to maintain a grease interceptor shall:
- a. Provide for a minimum hydraulic retention time in accordance with the Uniform Plumbing Code (or other applicable plumbing code used by local agency).
- b. Remove any accumulated grease cap and sludge pocket as required. 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 picket and thereby reduce the effective volume of the device.

- (5) The user shall maintain a written record of inspection and maintenance for three (3) years. All such records will be made available for on-site inspection by representative of the town during all operating hours of user.
- (6) Sanitary wastes are not allowed to be connected to sewer lines intended for grease interceptor service.
- (7) Except as provided herein, for a period of one (1) year following adoption of this section, although installation of grease interceptors will be required to be installed, no enforcement actions will be taken under this section for failure to achieve limits on grease discharges from grease interceptors. If, during this one (1) year period an obstruction of a 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 sewer main(s), the town will take appropriate enforcement actions, as stipulated in the section 18-134(h) and/or 18-133(h), "Enforcement", against the generator or contributor of such grease.
- (8) Access manholes, with a minimum diameter of twenty-four (24) inches, shall be provided over each grease interceptor 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. Manhole covers must be traffic rated if place within any parking areas. Manhole covers are to be of a weight class of less than one hundred (100) pounds.
 - (f) Grease trap requirements.
- (1) Upon approval by the public works director, a grease trap complying with the provisions of this section must be installed in the waste line leading from sinks, drains, and other fixtures or equipment in food service establishments where grease may be introduced into the drainage or sewage system in quantities that can effect line stoppage or hinder sewage treatment or private sewage disposal.
- (2) Grease traps sizing and installation shall conform to the Uniform Plumbing Code or other applicable plumbing code used by local agency.
- (3) No grease trap shall be installed which has a stated rate flow of more than fifty-five (55) gallons per minute, nor less than twenty (20) gallons per minute, except when specifically approved by the public works director.
- (4) Grease traps shall be maintained in efficient operating conditions by periodic removal of the accumulated grease. No such collected grease shall be introduced into any drainage piping, or public or private sewer.
- (5) No food waste disposal unit or dishwasher shall be connected to or discharge into any grease trap.
- (6) Wastewater in excess of one hundred-forty degrees Fahrenheit by sixty degrees Celsius (140°F)/(60°C) shall not be discharged into a grease trap.
- (7) Except as provided herein, for a period of one (1) year following adoption of this section, although installation of grease traps will be required to be installed, no enforcement actions will be

taken under this section for failure to achieve limits on grease discharges from grease interceptors. If, during this one (1) year period an obstruction of a 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 sewer main(s), the town will take appropriate enforcement actions, as stipulated in the section 18-134(h) or as stipulated in 18-133(h), "Enforcement", against the generator or contributor of such grease.

- (g) Grease interceptor maintenance, recordkeeping, and grease removal.
- (1) Users shall install grease interceptors as required by the town. Grease interceptors shall be installed at the user's expense. Grease interceptors may also be required in noncooking or cold dairy and frozen food service establishments and other industrial or commercial establishments when they are deemed necessary by the town public works director for the proper handling of liquid wastes containing grease, no user shall allow wastewater discharge concentration from subject grease interceptor to exceed seventy-five (75) mg/1. All grease interceptors shall be of a type, design, and capacity approved by the town 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 thirty (30) days. Users who are required to pass water through a grease interceptor shall:
 - a. Have a capacity and design in compliance with the following equations:
 - i. Restaurants:

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(S) X (20) x (HR/12) x (LF) = capacity in gallons
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S = number of seats in dining area

HR = number of hours open

LF = loading factor:

1.27 Recreational areas

0.8 Main highways

0.7 Other highways

ii. Hospitals, nursing homes, other types of kitchens with varied seating capacity:

 $M \times (5) \times (LF) = capacity in gallons$

M = meals per day

LF = loading factor

1.0 With dishwasher

0.5 Without dishwasher

Except that no grease trap shall be smaller than seven hundred fifty (750) gallons, no single separator shall be larger than three thousand (3,000) gallons and where requirements exceed three thousand (3,000) gallons multiple units shall be used. In cases of certain fast food restaurants or establishments with potential to discharge large quantities of grease and oil, capacity requirements greater than twenty-five (25) gallons per seat may be required. Prepackaged or manufactured grease traps may be approved by the town with proper engineering and application review.

- b. Remove any accumulated grease cap and sludge pocket as required, but at intervals of not longer than thirty (30) days at the users 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. 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 (g)(1). If a previously established business desires, because of documented space constraints, an alternative to an out-of-building grease interceptor, the request for an alternative location shall contain the following information:
- i. Location of town sewer main and easement in relation to available exterior space outside building.
 - ii. Existing plumbing at or in a site that uses common plumbing for all services at that site.
- d. Understand and agree that: The use of biological additives as a grease degradation agent is not permissible.
- e. 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 Pender 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.
- f. 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 interceptor maintenance for three (3) years. All such records will be available for inspection by the town at all times.
- (3) No nongrease-laden sources are allowed to be connected to sewer lines intended for grease interceptor service.

Provide manholes, with a minimum diameter of twenty-four (24) inches, 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. Manhole covers

must be traffic rated if place within any parking areas. Manhole covers are to be of a weight class of less than one hundred (100) pounds.

- (h) FOG variance.
- (1) The town public works developed a variance study to allow food preparation and service establishments an avenue to provide substantial evidence so as to reduce maintenance of the grease interceptor as required by this section.
- (2) A food preparation/service establishment can apply for a variance to the scheduled service requirements of this section. A food preparation/service establishment that believes the service schedule of once every thirty (30) days is excessive, and feels that the grease interceptor service frequency can be extended, without violating this section can apply. Food preparation/service establishments who wish to use biological or chemical additives for the removal of fats, oils, and grease from a grease separation device or a plumbing system may also apply for a variance to the service schedule.
- a. A copy of the Town of Surf City Grease Interceptor Service Schedule Variance Request Form can be obtained from the town. The request form must be signed by the food preparation/service owner(s).
- b. Read, understand, and agree with the town's grease interceptor service schedule variance (see Appendix A), and the town's grease interceptor service schedule variance request form, (see Appendix B).
 - c. Mail a completed town's grease interceptor service schedule variance request form to:

Town of Surf City

Public Works Department

214 North New River Drive

P.O. Box 2475

Surf City, NC 28445-9821

- d. The Town of Surf City will review all variance request forms and contact the food preparation/service establishment accepting or rejecting the variance request. The food preparation/service establishment once authorized by the Town of Surf City to begin the variance study procedure may contact a grease interceptor service provider to schedule a grease interceptor cleaning.
- e. The food preparation/service establishment must contact the Town of Surf City Public Work Department two (2) working days prior to the grease interceptors schedule cleaning.
- f. Additional monitoring events or pollutants may be required if deemed necessary by the town's public work department. Variance studies shall not exceed a period of ninety (90) days.
- g. After a minimum of three (3) site samples are collected and all sampling results are obtained, the town's public works department will analyze all data. After all data is reviewed by the town, the town will submit in writing the results of the variance study only to the facility requesting said study.

h. Enforcement:

- 1. When an establishment is fifteen (15) days past required cleaning date, the establishment will be in violation. If the establishment cannot provide proof that they have maintained compliance with the fats, oils, and grease ordinance, a three hundred dollar (\$300.00) fine will be added to the establishment water bill.
- 2. If a sanitary sewer overflow (SSO) occurs and can be traced back to an establishment, the establishment will be in violation. If this SSO occurred through neglect of the grease discharge a three hundred dollar (\$300.00) fine will be added to the next billing cycle.
 - 3. Termination of (sewer) service (TOS).

Termination of service (TOS) is the revocation of a food service establishment's privilege to discharge wastewater from food preparation processes into the sanitary sewer system. TOS is used when the discharge from the establishment presents imminent endangerment to the health or welfare of persons, or the environment or threatens to interfere with the operation of the POTW collection system. TOS is also used as an escalating enforcement action when a noncompliant food service establishment fails to respond adequately to previous enforcement actions. TOS may be accomplished by physical severance of the FSE's connection to the sanitary sewer system, which compels the establishment to immediately terminate its discharge, or a court ruling.

4. The Public Works Director reserves the right to assess the maximum penalty for any violation.

(Ord. No. 2009-03(2), 3-3-09; Ord. No. 2018-01, 2-6-2018)

Sec. 18-134. Sewer use.

- (a) General provisions.
- (1) Purpose and policy. This section sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the Town of Surf City hereafter referred to as the town, and enables the town to comply with all applicable state and federal laws, including the Clean Water Act (33 United States Code § 1251 et seq.) and the General Pretreatment Regulations (40 CFR, Part 403).

The objectives of this section are:

- a. To prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
- b. To prevent the introduction of pollutants into the municipal wastewater system which will passthrough the system, inadequately treated, into any waters of the state or otherwise be incompatible with the system;
- c. To promote reuse and recycling of industrial wastewater and sludges from the municipal system;
- d. To protect both municipal personnel who may be affected by sewage, sludge, and effluent in the course of their employment as well as protecting the general public;

- e. To provide for equitable distribution of the cost of operation, maintenance and improvement of the municipal wastewater system; and
- f. To ensure that the municipality complies with its NPDES or nondischarge permit conditions, sludge use and disposal requirements and any other federal or state laws to which the municipal wastewater system is subject.

This section provides for the regulation of direct and indirect contributors to the municipal wastewater system, 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 and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

This section shall apply to all users of the municipal wastewater system, as authorized by G.S. 160A-312 and/or 153A-275. The town shall designate an administrator of the POTW and pretreatment program hereafter referred to as the POTW director. Except as otherwise provided herein, the POTW director shall administer, implement, and enforce the provisions of this section. Any powers granted to or imposed upon the POTW director may be delegated by the POTW director to other town personnel. By discharging wastewater into the municipal wastewater system, industrial users located outside the town limits agree to comply with the terms and conditions established in this section, as well as any permits, enforcement actions, or orders issued hereunder.

- (2) Definitions and abbreviations.
- a. Unless the context specifically indicates otherwise, the following terms and phrases, as used in this section, shall have the meanings hereinafter designated:
- 1. Act or "the Act". The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq.
- 2. Approval authority. The Director of the Division of Water Quality of the North Carolina Department of Environment and Natural Resources or his designee.
 - 3. Authorized representative of the industrial user.
 - i. If the industrial user is a corporation, authorized representative shall mean:
- a. The president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
- b. The manager of one (1) or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000.00), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- ii. If the industrial user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.

- iii. If the industrial user is a federal, state or local government facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
- iv. The individuals described in paragraphs i.—iii. above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company and the written authorization is submitted to the town.
- 4. Biochemical oxygen demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at twenty degrees (20°) centigrade, usually expressed as a concentration (e.g. mg/l).
 - 5. Building sewer. A sewer conveying wastewater from the premises of a user to the POTW.
- 6. Bypass. The intentional diversion of waste streams from any portion of a user's treatment facility.
- 7. Categorical standards. National Categorical Pretreatment Standards or Pretreatment Standard.
- 8. Director. The person designated by the town to supervise the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this section, or his duly authorized representative.
- 9. Environmental Protection Agency, or EPA. 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 said agency.
- 10. Grab sample. A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.
- 11. Holding tank waste. Any waste from holding tanks, including but not limited to such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.
- 12. Indirect discharge or discharge. The discharge or the introduction from any nondomestic source regulated under section 307(b), (c), or (d) of the Act, (33 U.S.C. 1317), into the POTW (including holding tank waste discharged into the system).
 - 13. Industrial user or user. Any person which is a source of indirect discharge.
- 14. Interference. The inhibition, or disruption of the POTW treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the POTW's NPDES or nondischarge permit or prevents sewage sludge use or disposal in compliance with specified applicable state and federal statutes, regulations, or permits. the term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the Act, (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA)(42 U.S.C. § 6901 et seq.), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any

state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

- 15. Local pre-treatment programs: In accordance with 15A NCAC 02H.0990.
- 16. Medical waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.
- 17. National Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. § 1317) which applies to a specific category of industrial users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405-471.
- 18. National Prohibitive Discharge Standard or Prohibitive Discharge Standard. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in subsection (b)(1) of this section and are developed under the authority of 307(b) of the Act and 40 CFR, section 403.5.
 - 19. New source.
- i. Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with section 307(c), provided that:
- a. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
- b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- ii. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsection i.b. or c., above but otherwise alters, replaces, or adds to existing process or production equipment.
- iii. For purposes of this definition, construction of a new source has commenced if the owner or operator has:
 - a. Begun, or caused to begin, as part of a continuous on-site construction program:
 - 1. Any placement, assembly, or installation of facilities or equipment; or

- 2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.
- 20. Noncontact cooling water. Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.
- 21. National Pollution Discharge Elimination System, or NPDES permit. A permit issued pursuant to section 402 of the Act (33 U.S.C. § 1342), or pursuant to G.S. 143-215.1 by the State under delegation from EPA.
- 22. Nondischarge permit. A disposal system permit issued by the State pursuant to G.S. 143-215.1.
- 23. Pass-through. A discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the POTW's NPDES or nondischarge permit, or a downstream water quality standard.
- 24. Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all federal, state, and local government entities.
- 25. pH. A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.
- 26. Pollutant. Any "waste" as defined in G.S. 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).
- 27. POTW director. The town administrator designated with the responsibility for the pretreatment program and enforcement of this section <u>18-134</u>
- 28. POTW treatment plant. That portion of the POTW designed to provide treatment to wastewater.
- 29. Pretreatment or treatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollution into a POTW. The reduction or alteration can be

obtained by physical, chemical or biological processes, or process changes or other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

- 30. Pretreatment program. The program for the control of pollutants introduced into the POTW from nondomestic sources which was developed by the town in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.
- 31. Pretreatment requirements. Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.
- 32. Pretreatment standards. Prohibited discharge standards, categorical standards, and local limits.
- 33. Publicly owned treatment works (POTW) or municipal wastewater system. A treatment works as defined by section 212 of the Act, (33 U.S.C. § 1292) which is owned in this instance by the town. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this section, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the town who are, by contract or agreement with the town, or in any other way, users of the POTW of the town.
- 34. Severe property damage. Substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
 - 35. Significant industrial user. Any industrial user of the wastewater disposal system who:
- i. Has an average daily process wastewater flow of twenty-five thousand (25,000) gallons or more; or
- ii. Contributes more than five (5) percent of any design or treatment capacity (i.e., allowable pollutant load) of the wastewater treatment plant receiving the indirect discharge; or
 - iii. Is required to meet a National Categorical Pretreatment Standard; or
- iv. Is found by the town, the division of water quality or the U.S. Environmental Protection Agency (EPA) to have the potential for impact, either singly or in combination with other contributing industrial users, on the wastewater treatment system, the quality of sludge, the system's effluent quality, or compliance with any pretreatment standards or requirements.
- 36. Significant noncompliance or reportable noncompliance. A status of noncompliance defined as follows:
 - i. Violations of wastewater discharge limits.
- a. Chronic violations. Sixty-six (66) percent or more of the measurements exceed (by any magnitude) the same daily maximum limit or the same average limit in a six (6) month period.

b. Technical review criteria (TRC) violations. Thirty-three (33) percent or more of the measurements equal or exceed the TRC times the limit (maximum or average) in a six (6) month period. There are two (2) groups of TRCs:

For the conventional pollutants: BOD, TSS, fats, oil and grease TRC = 1.4

For all other pollutants TRC = 1.2

- c. Any other violation(s) of an effluent limit (average or daily maximum) that the control authority believes has caused, alone or in combination with other discharges, interference or pass-through; or endangered the health of the sewage treatment plant personnel or the public.
- d. Any discharge of a pollutant that has caused imminent endangerment to human health/welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.
- ii. Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by ninety (90) days or more after the schedule date.
- iii. Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, ninety (90) day compliance reports, and periodic compliance reports within thirty (30) days from the due date.
 - iv. Failure to accurately report noncompliance.
- v. Any other violation or group of violations that the control authority considers to be significant.
- 37. Slug load. Any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in subsection (b)(1), of this section.
- 38. Standard industrial classification (SIC). A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987.
- 39. Stormwater. Any flow occurring during or following any form of natural precipitation and resulting therefrom.
- 40. Suspended solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.
- 41. Upset. An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities lack of preventive maintenance, or careless or improper operation.
- 42. Wastewater. The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together

with any groundwater, surface water, and stormwater that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW.

- 43. Wastewater permit. As set forth in subsection (d)(2) of this section.
- 44. Waters of the state. All streams, lakes, ponds, marshes, watercourse, 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 thereof.
- b. This section is gender neutral and the masculine gender shall include the feminine and viceversa.
 - c. "Shall" is mandatory; "may" is permissive or discretionary.
- d. The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.
 - e. The following abbreviations when used in this section, shall have the designated meanings:
 - 1. BOD—Biochemical Oxygen Demand.
 - 2. CFR—Code of Federal Regulations.
 - 3. COD—Chemical Oxygen Demand.
 - 4. EPA—Environmental Protection Agency.
 - 5. gpd—Gallons per day.
 - 6. I—Liter.
 - 7. mg—Milligrams.
 - 8. mg/l—Milligrams per liter.
 - 9. N.C.G.S.—North Carolina General Statutes.
 - 10. NPDES—National Pollution Discharge Elimination System.
 - 11. O & M—Operation and Maintenance.
 - 12. POTW—Publicly Owned Treatment Works.
 - 13. RCRA—Resource Conservation and Recovery Act.
 - 14. SIC—Standard Industrial Classification.
 - 15. SWDA—Solid Waste Disposal Act.
 - 16. TSS—Total Suspended Solids.
 - 17. TKN—Total Kjeldahl Nitrogen.
 - 18. U.S.C—United States Code.

- (b) General sewer use requirements.
 - (1) Prohibited discharge standards.
- a. General prohibitions. No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass-through. These general prohibitions apply to all users of a POTW whether or not the user is a significant industrial user or subject to any national, state, or local pretreatment standards or requirements.
- b. Specific prohibitions. No user shall contribute or cause to be contributed into the POTW the following pollutants, substances, or wastewater:
- 1. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than one hundred forty degrees Fahrenheit (140°F) (sixty degrees Celsius (60°C)) using the test methods specified in 40 CFR 261.21.
- 2. Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than three (3) inches in any dimension, unless equipped with grinder pump(s).
- 3. Petroleum oil, nonbiodegradable cutting oil unless equipped with grinder pump, or products of mineral oil origin, in amounts that will cause interference or pass-through.
- 4. Any wastewater having a pH less than 5.0 or more than 9.0 or wastewater having any other corrosive property capable of causing damage to the POTW or equipment.
- 5. Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, etc) in sufficient quantity, (flow or concentration) either singly or by interaction with other pollutants, to cause interference with the POTW.
- 6. Any wastewater having a temperature greater than one hundred fifty degrees Fahrenheit (150°F) (sixty-six degrees Celsius (66°C)), or which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed one hundred four degrees Fahrenheit (104°F) (forty degrees Celsius (40°C)).
- 7. Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- 8. Any trucked or hauled pollutants, except at discharge points designated by the POTW director in accordance with section (b)(9), of this section.
- 9. Any noxious or malodorous liquids, gases, or solids or other wastewater 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 maintenance and repair.
- 10. 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. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act;

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.

- 11. Any wastewater which imparts color which cannot be removed by the treatment process, including, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.
- 12. Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the POTW director in compliance with applicable state or federal regulations.
- 13. Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted industrial wastewater, unless specifically authorized by the POTW director.
- 14. Fats, oils, or greases of animal or vegetable origin in concentrations greater than one hundred (100) mg/l.
 - 15. Any sludges, screenings or other residues from the pretreatment of industrial wastes.
- 16. Any medical wastes, except as specifically authorized by the POTW director in a wastewater discharge permit.
- 17. Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.
- 18. Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer, except as may be specifically authorized by the POTW director.
- 19. Any wastewater causing the treatment plant effluent to violate state water quality standards for toxic substances as described in 15A NCAC 2B .0200.
- 20. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
 - 21. Recognizable portions of the human or animal anatomy.
- 22. Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.
- 23. At no time, shall two (2) successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five (5) percent nor any single reading over ten (10) percent of the lower explosive limit (LEL) of the meter.

Pollutants, substances, wastewater, or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the municipal wastewater system. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system.

When the POTW director determines that a user(s) is contributing to the POTW, any of the above enumerated substances in such amounts which may cause or contribute to interference of POTW operation or pass-through, the POTW director shall:

- 1. Advise the user(s) of the potential impact of the contribution on the POTW in accordance with subsection (h)(1); and
- 2. Take appropriate actions in accordance with subsection (d) for such user to protect the POTW from interference or pass-through.
- (2) National Categorical Pretreatment Standards. Users subject to categorical pretreatment standards are required to comply with applicable standards as set out in 40 CFR Chapter 1, Subchapter N, Parts 405-471 and incorporated herein.
- a. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the POTW director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
- b. When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the POTW director shall impose an alternate limit using the combined waste stream formula in 40 CFR 403.6(e).
- c. A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.
- d. A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.
- (3) *Local limits*. An industrial waste survey is required prior to a user discharging wastewater containing in excess of the following average discharge limits:

FOG	100	mg/l	
BOD	250	mg/l	
TSS	250	mg/l	
NH₃	25	mg/l	
Arsenic	0.003	mg/l	
Cadmium	0.003	mg/l	
Chromium	0.05	mg/l(total chromium)	
Copper	0.061	mg/l	

Cyanide	0.015	mg/l	
Lead	0.049	mg/l	
Mercury	0.0003	mg/l	
Nickel	0.021	mg/l	
Silver	0.005	mg/l	
Zinc	0.175	mg/l	

Industrial waste survey information will be used to develop user-specific local limits when necessary to ensure that the POTW's maximum allowable headworks loading are not exceeded for particular pollutants of concern. User-specific local limits for appropriate pollutants of concern shall be included in wastewater permits. The POTW director may impose mass based limits in addition to, or in place of concentration based limits.

- (4) State requirements. State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this section.
- (5) Right of revision. The town reserves the right to establish limitations and requirements which are more stringent than those required by either state or federal regulation if deemed necessary to comply with the objectives presented in subsection (a)(1), of this section or the general and specific prohibitions in subsection (b)(1), of this section, as is allowed by 40 CFR 403.4.
- (6) *Dilution.* No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the National Categorical Pretreatment Standards, unless expressly authorized by an applicable pretreatment standard, or in any other pollutant-specific limitation developed by the town or state.
 - (7) Pretreatment of wastewater.
- a. Pretreatment facilities. Users shall provide wastewater treatment as necessary to comply with this section and wastewater permits issued under section (d)(2) of this section and shall achieve compliance with all National Categorical Pretreatment Standards, local limits, and the prohibitions set out in section (b)(1) of this section within the time limitations as specified by EPA, the state, or the POTW director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the town for review, and shall be approved by the POTW director before construction of the facility. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the town under the provisions of this section. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the POTW director prior to the user's initiation of the changes.
 - b. Additional pretreatment measures.

- 1. Whenever deemed necessary, the POTW director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this section.
- 2. The POTW director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.
- 3. Grease, oil, and sand interceptors shall be provided in accordance with FOG ordinance [section <u>18-133</u>], they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the POTW director and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as directed by FOG ordinance [section <u>18-133</u>], by the user at their expense.
- 4. Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.
- (8) Accidental discharge/slug control plans. At least once every two (2) years, the POTW director shall evaluate whether each significant industrial user needs an accidental discharge/ slug control plan. The POTW director may require any user to develop, submit for approval, and implement such a plan. Alternatively, the POTW director may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:
 - a. Description of discharge practices, including nonroutine batch discharges;
 - b. Description of stored chemicals;
- c. Procedures for immediately notifying the POTW director of any accidental or slug discharge, as required by subsection (e)(6), of this section; and
- d. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(9) Hauled wastewater.

- a. Septic tank waste may not be introduced into the POTW unless permitted by the POTW director, and at such times as are established by the POTW director. Such waste shall not violate subsection (b)(1), of this section or any other requirements established by the town. The POTW director may require septic tank waste haulers to obtain wastewater discharge permits.
- b. The POTW director shall require haulers of industrial waste to obtain wastewater discharge permits. The POTW director may require generators of hauled industrial waste to obtain wastewater

discharge permits. The POTW director also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this section.

- c. The industrial waste hauler must provide a waste analysis of any load prior to discharge.
- d. Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

(c) Fees.

- (1) *Purpose*. It is the purpose of this chapter to provide for the recovery of costs from users of the wastewater disposal system of the town for the implementation of the program established herein. The applicable charges or fees shall be set forth in a schedule of sewer use charges and fees by the POTW director and approved by the town council. A copy of these charges and fees will be made available from the POTW council.
- (2) *User charges.* A user charge shall be levied on all users including, but not limited to, persons, firms, corporations or governmental entities that discharge, cause or permit the discharge of sewage into the POTW.
- a. The user charge shall reflect, at least, the cost of debt service, operation and maintenance (including replacement) of the POTW.
 - b. Each user shall pay its proportionate cost based on volume of flow.
- c. The manager of the town shall review annually the sewage contributions of users, the total costs of debt service, operation and maintenance of the POTW and will make recommendations to the council serving the town for adjustments in the schedule of charges and fees as necessary.
- d. Charges for flow to the POTW not directly attributable to the users shall be distributed among all users of the POTW based upon the volume of flow of the users.
- (3) *Surcharges*. The amount of the surcharges will be based upon the volume of flow and the character and concentration of the constituents of the wastewater:
- a. The volume of flow used in determining the total discharge of wastewater for payment of user charges and surcharges shall be based on the following:
- 1. Metered water consumption as shown in the records of meter readings maintained by the town; or
- 2. If required by the town or at the individual dischargers option, other flow monitoring devices which measure the actual volume of wastewater discharged to the sewer. Such devices shall be accessible and safely located, and the measuring system shall be installed in accordance with plans approved by the town. The metering system shall be installed and maintained at the users expense according to arrangements that may be made with the town.

- 3. Where any user procures all or part of his water supply from sources other than the town, the user shall install and maintain at his own expense a flow measuring device of a type approved by the town.
- b. The character and concentration of the constituents of the wastewater used in determining surcharges shall be determined by samples collected and analyzed by the town. Samples shall be collected in such a manner as to be representative of the actual discharge and shall be analyzed using procedures set forth in 40 CFR Part 136.
- c. The determination of the character and concentration of the constituents of the wastewater discharge by the POTW director or his duly appointed representatives shall be binding as a basis for charges.
- (4) Pretreatment program administration charges. The schedule of charges and fees adopted by the town may include charges and fees for:
 - a. Reimbursement of costs of setting up and operating the pretreatment program;
 - b. Monitoring, inspections and surveillance procedures;
- c Reviewing slug control plans, including accidental and/or slug load discharge procedures and construction plans and specifications;
 - d. Permitting;
- e. Other fees as the town may deem necessary to carry out the requirements of the pretreatment program.
 - (d) Wastewater discharge permit application and issuance.
- (1) Wastewater dischargers. It shall be unlawful for any person to connect or discharge to the POTW without first obtaining the permission of the town. When requested by the POTW director, a user must submit information on the nature and characteristics of its wastewater within thirty (30) days of the request. The POTW director is authorized to prepare a form for this purpose and may periodically require users to update this information.
- (2) Wastewater permits. All significant industrial users shall obtain a significant industrial user permit prior to the commencement of discharge to the POTW. Existing industrial users who are determined by the POTW director to be significant industrial users shall obtain a significant industrial user permit within one hundred eighty (180) days of receiving notification of the POTW director's determination. Industrial users who do not fit the significant industrial user criteria may at the discretion of the POTW director be required to obtain a wastewater discharge permit for nonsignificant industrial users.
- a. Significant industrial user determination. All persons proposing to discharge nondomestic wastewater, or proposing to change the volume or characteristics of an existing discharge of nondomestic wastewater shall request from the POTW director a significant industrial user determination. If the POTW director determines or suspects that the proposed discharge fits the significant industrial user criteria he will require that a significant industrial user permit application be filed.

- b. Significant industrial user permit application. Users required to obtain a significant industrial user permit shall complete and file with the town, an application in the form prescribed by the POTW director, and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant industrial users shall apply for a significant industrial user permit within ninety (90) days after notification of the POTW director's determination in (d)(2)a., above. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:
 - 1. Name, address, and location, (if different from the address);
- 2. Standard industrial classification (SIC) codes for pretreatment, the industry as a whole, and any processes for which categorical pretreatment standards have been promulgated;
- 3. Analytical data on wastewater constituents and characteristics including but not limited to those mentioned in subsection (b), of this section, any of the priority pollutants (section 307(a) of the Act) which the applicant knows or suspects are present in the discharge as determined by a reliable analytical laboratory, and any other pollutant of concern to the POTW; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to section 304(g) of the Act and contained in 40 CFR, Part 136, as amended;
 - 4. Time and duration of the indirect discharge;
- 5. Average daily and thirty (30) minute peak wastewater flow rates, including daily, monthly and seasonal variations if any;
- 6. Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, sewer connections, direction of flow and appurtenances by the size, location and elevation;
- 7. Description of activities, facilities and plant processes on the premises including all materials which are or could be accidentally or intentionally discharged;
- 8. Where known, the nature and concentration of any pollutants in the discharge which are limited by any town, state, or federal pretreatment standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards;
- 9. If additional pretreatment and/or O&M will be required to meet the pretreatment standards; the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
- i. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards. No increment in the schedule shall exceed nine (9) months.
- ii. No later than fourteen (14) days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the POTW director including, at a minimum,

whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the POTW director.

- 10. Each product produced by type, amount, process or processes and rate of production;
- 11. Type and amount of raw materials processed (average and maximum per day);
- 12. Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
- 13. If subject to a categorical standard, a baseline monitoring report in accordance with 40 CFR 403.12(b) and 15A NCAC 2H .0908(a), as outlined in subsection (e)(1), of this section.
- 14. Any other information as may be deemed by the POTW director to be necessary to evaluate the permit application.
- c. Application signatories and certification. All wastewater discharge permit applications and user reports must be signed by an authorized representative of the user and contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- d. Application review and evaluation. The POTW director will evaluate the data furnished by the user and may require additional information.
- 1. The POTW director is authorized to accept applications for the town and shall refer all applications to the POTW staff for review and evaluation.
- 2. Within thirty (30) days of receipt the POTW director shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.
 - e. Tentative determination and draft permit.
- 1. The POTW staff shall conduct a review of the application and an on-site inspection of the significant industrial user, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the significant industrial user permit.
- 2. If the staff's tentative determination in paragraph 1., above is to issue the permit, the following additional determinations shall be made in writing:
 - i. Proposed discharge limitations for those pollutants proposed to be limited;

- ii. A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
- iii. A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
- 3. The staff shall organize the determinations made pursuant to paragraphs 1. and 2., above and the general permit conditions of the town into a significant industrial user permit.
- f. Permit synopsis. A fact sheet providing a brief synopsis of the application shall be prepared by the POTW staff for submission to the applicant and the approval authority and shall be made available to the public upon request. The contents of such fact sheets shall include at least the following information:
- 1. A sketch and detailed description of the industrial facilities and pretreatment facilities including the location of all points of discharge to the POTW and all established compliance monitoring points.
- 2. A quantitative description of the discharge described in the application which includes at least the following:
- i. The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow;
- ii. The actual average daily discharge in pounds per day of any limited pollutant and any pollutant identified in the application as known or suspected present; and,
- iii. The basis for the pretreatment limitations including the documentation of any calculations in applying categorical pretreatment standards.
 - g. Final action on significant industrial user permit applications.
- 1. The POTW director shall take final action on all applications not later than ninety (90) days following receipt of a complete application.
 - 2. The POTW director is authorized to:
- i. Issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this section and G.S. 143-215.1;
- ii. Issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;
- iii. Modify any permit upon not less than sixty (60) days notice and pursuant to subsection (d)(2)a. of this section;
 - iv. Revoke any permit pursuant to subsection (h)(1) of this section;
 - v. Suspend a permit pursuant to subsection (h)(1) of this section;

- vi. Deny a permit application when in the opinion of the POTW director such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of G.S. 143-215.1.
- h. Hearings. The local government may conduct hearings in accordance with its regular hearing procedure.
- 1. Initial adjudicatory hearing. An applicant whose permit is denied, or is granted subject to conditions he deems unacceptable, a permittee/user assessed a civil penalty under subsection (h)(2), or one issued an administrative order under subsection (h)(1) shall have the right to an adjudicatory hearing before a hearing officer designated by the POTW director upon making written demand, identifying the specific issues to be contested, to the POTW director within thirty (30) days following receipt of the significant industrial user permit, civil penalty assessment, or administrative order. Unless such written demand is made within the time specified herein, the action shall be final and binding. The hearing officer shall make a final decision on the contested permit, penalty, or order within forty-five (45) days of the receipt of the written demand for a hearing. The POTW director shall transmit a copy of the hearing officer's decision by registered or certified mail.
- i. New permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
- ii. Renewed permits. Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
- 2. Final appeal hearing. Any decision of a hearing officer made as a result of an adjudicatory hearing held under subsection (d)(2)h.1., above may be appealed, to the council serving the town upon filing a written demand within ten (10) days of receipt of notice of the decision. Hearings held under this subdivision shall be conducted in accordance with local hearing procedures. Local Ordinance #_______ Failure to make written demand within the time specified herein shall bar further appeal. The council serving the town shall make a final decision on the appeal within ninety (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 subsection (d)(2)h.2. above, the council serving the town shall prepare an official record of the case that includes:
 - i. All notices, motions, and other like pleadings;
 - ii. A copy of all documentary evidence introduced;
- iii. 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;
 - iv. A copy of the final decision of the council serving the town.

- 4. Judicial review. Any person against whom a final order or decision of the council or board serving the town is entered, pursuant to the hearing conducted under subsection (d)(2)h.2. above, may seek judicial review of the order or decision by filing a written petition within thirty (30) days after receipt of notice by registered or certified mail of the order or decision, but not thereafter, with the Superior Court of Pender County along with a copy to the town. Within thirty (30) days after receipt of the copy of the petition of judicial review, the council serving the town shall transmit to the reviewing court the original or a certified copy of the official record.
 - i. Permit modification.
- 1. Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as listed below. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
 - i. Changes in the ownership of the discharge when no other change in the permit is indicated.
 - ii. A single modification of any compliance schedule not in excess of four months.
- iii. Modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.
- 2. Within nine (9) months of the promulgation of a National Categorical Pretreatment Standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for a wastewater discharge permit as required by subsection (d)(2)b., the user shall apply for a wastewater discharge permit within one hundred eighty (180) days after the promulgation of the applicable National Categorical Pretreatment Standard.
- 3. A request for a modification by the permittee shall constitute a waiver of the 60-day notice required by G.S. 143-215.1(b) for modifications.
 - j. Permit conditions.
- 1. The POTW director shall have the authority to grant a permit with such conditions attached as believes necessary to achieve the purpose of this section and G.S. 143-215.1. Wastewater permits shall contain, but are not limited to, the following:
 - i. A statement of duration (in no case more than five (5) years);
 - ii. A statement of nontransferability;
 - iii. Applicable effluent limits based on categorical standards or local limits or both;
- iv. Applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state and local law;
 - v. Notification requirements for slug loads; and,

- vi. A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.
 - 2. In addition, permits may contain, but are not limited to, the following:
- i. Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
- ii. Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
- iii. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
- iv. Development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges.
- v. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.
- vi. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
- vii. Requirements for installation and maintenance of inspection and sampling facilities and equipment.
- viii. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
- ix. Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within thirty (30) days where self-monitoring indicates a violation(s).
 - x. Compliance schedules for meeting pretreatment standards and requirements.
 - xi. Requirements for submission of periodic self-monitoring or special notification reports.
- xii. Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in subsection (e)(13) and affording the POTW director, or his representatives, access thereto.
- xiii. Requirements for prior notification and approval by the POTW director of any new introduction of wastewater pollutants or of any change in the volume or character of the wastewater prior to introduction in the system.
- xiv. Requirements for the prior notification and approval by the POTW director of any change in the manufacturing and/or pretreatment process used by the permittee.
- xv. Requirements for immediate notification of excessive, accidental, or slug discharges, or any discharge which could cause any problems to the system.

- xvi. A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the terms of the permit.
- xvii. Other conditions as deemed appropriate by the POTW director to ensure compliance with this section, and state and federal laws, rules, and regulations.
- k. Permit duration. Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period less than a year or may be stated to expire on a specific date.
- I. Permit transfer. Wastewater permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation.
- m. Permit reissuance. A significant industrial user shall apply for permit reissuance by submitting a complete permit application in accordance with subsection (d)(2) a minimum of one hundred eighty (180) days prior to the expiration of the existing permit.
 - (e) Reporting requirements.
 - (1) Baseline monitoring reports.
- a. Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the POTW director a report which contains the information listed in paragraph b., below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the POTW director a report which contains the information listed in paragraph b., below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
 - b. Users described above shall submit the information set forth below.
- 1. Identifying information. The name and address of the facility, including the name of the operator and owner.
 - 2. Environmental permits. A list of any environmental control permits held by or for the facility.
- 3. Description of operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
- 4. Flow measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403,6(e).
 - 5. Measurement of pollutants.

- i. The categorical pretreatment standards applicable to each regulated process.
- ii. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the POTW director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in subsection (e)(10), of this section.
- iii. Sampling must be performed in accordance with procedures set out in subsection (e)(11), of this section.
- 6. Certification. A statement, reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.
- 7. Compliance schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in subsection (e)(2), of this section.
- 8. Signature and certification. All baseline monitoring reports must be signed and certified in accordance with subsection (d)(2)c., of this section.
- (2) Compliance schedule progress reports. The following conditions shall apply to the compliance schedule required by subsection (e)(1)b.7, of this section:
- a. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
 - b. No increment referred to above shall exceed nine (9) months;
- c. The user shall submit a progress report to the POTW director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
- d. In no event shall more than nine (9) months elapse between such progress reports to the POTW director.
- (3) Reports on compliance with categorical pretreatment standard deadline. Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the POTW director a

report containing the information described in section (e)(1)b.4.—6. of this section. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with subsection (d)(2)c., of this section.

- (4) *Periodic compliance reports.* Municipalities may sample and analyze user discharges in lieu of requiring the users to conduct sampling and analysis.
- a. All significant industrial users shall, at a frequency determined by the POTW director but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with subsection (d)(2)c., of this section.
- b. All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.
- c. If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the POTW director, using the procedures prescribed in subsection (e)(10), of this section, the results of this monitoring shall be included in the report.
- (5) Reports of changed conditions. Each user must notify the POTW director as prescribed in subsection (d)(2)j.2.xiii. of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least thirty (30) days before the change.
- a. The POTW director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under subsection (d)(2), of this section.
- b. The POTW director may issue a wastewater discharge permit under subsection (d)(2) of this section or modify an existing wastewater discharge permit under subsection (d)(2), of this section in response to changed conditions or anticipated changed conditions.
 - (6) Reports of potential problems.
- a. In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the POTW director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.
- b. Within five (5) days following such discharge, the user shall, unless waived by the POTW director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of

any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this section.

- c. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph a., above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.
- (7) Reports from unpermitted users. All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the POTW director as the POTW director may require.
- (8) Notice of violation/repeat sampling and reporting. If sampling performed by a user indicates a violation, the user must notify the POTW director within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the POTW director within thirty (30) days after becoming aware of the violation. The user is not required to resample if the POTW director monitors at the user's facility at least once a month, or if the POTW director samples between the user's initial sampling and when the user receives the results of this sampling.
- (9) *Notification of the discharge of hazardous waste.* The town prohibits the discharge of any hazardous wastes without notification and approval of the POTW director.
- a. Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharge during the calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under subsection (e)(5), of this section. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of subsections (e)(1), (3), and (4), of this section.
- b. Dischargers are exempt from the requirements of paragraph a., above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specific in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent

months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

- c. In the case of any new regulation under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW director, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
- d. In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- e. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this section, a permit issued thereunder, or any applicable federal or state law.
- (10) Analytical requirements. All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA.

(11) Sample collection.

- a. Except as indicated in subsection b., below, the user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the POTW director may authorize the use of time proportional sampling or a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with instantaneous discharge limits.
- b. Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.
- (12) *Timing*. Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.
- (13) Recordkeeping. Users subject to the reporting requirements of this section shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this section and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation

concerning the user or the town, or where the user has been specifically notified of a longer retention period by the POTW director.

- (f) Compliance monitoring.
 - (1) Monitoring facilities.
- a. The town requires the user to provide and operate at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the town may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.
- b. There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.
- c. Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the requirements of the town and all applicable local construction standards and specifications. Construction shall be completed within ninety (90) days following written notification by the town.
- (2) Inspection and sampling. The town will inspect the facilities of any user to ascertain whether the purpose of this section is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the town, approval authority and EPA or their representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination and copying or in the performance of any of their duties. The town, approval authority and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the town, approval authority and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the POTW director's approval authority's, or EPA's access to the user's premises shall be a violation of this section.
- (3) Search warrants. If the POTW director, approval authority, or EPA has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this section, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the town designed to verify compliance with this section or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the POTW director, approval authority, or EPA may seek issuance of a search warrant from the court having jurisdiction within the town.
 - (g) Confidential information.

- (1) Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the POTW director that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Any such request must be asserted at the time of submission of the information or data.
- (2) When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this section, the National Pollutant Discharge Elimination System (NPDES) Permit, nondischarge permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the State or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.
- (3) All records relating to compliance with pretreatment standards shall be made available to officials of the approval authority and EPA upon request.
 - (h) Enforcement.
 - (1) Administrative remedies.
- a. Notification of violation. Whenever the POTW director finds that any user has violated or is violating this section, wastewater permit, or any prohibition, limitation or requirements contained therein or any other pretreatment requirement the POTW director may serve upon such a person a written notice stating the nature of the violation. Within thirty (30) days from the date of this notice, an explanation for the violation and a plan for the satisfactory correction thereof shall be submitted to the town by the user. Submission of this plan does not relieve the discharger of liability for any violations occurring before or after receipt of the notice of violation.
- b. Consent orders. The POTW director is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to subsection (h)(1)d., below.
 - c. Show cause hearing.
- 1. The POTW director may order any user who causes or is responsible for an unauthorized discharge, has violated this section or is in noncompliance with a wastewater discharge permit to show cause why a proposed enforcement action should not be taken. In the event the POTW director determines that a show cause order should be issued, a notice shall be served on the user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt

requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.

- 2. The POTW director shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.
- 3. A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under subsection (h)(2) nor is any action or inaction taken by the POTW director under this section subject to an administrative appeal under subsection (d)(2)h.
- d. Administrative orders. When the POTW director finds that user has violated or continues to violate this section, permits or orders issued hereunder, or any other pretreatment requirement the POTW director may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:
 - 1. Immediately comply with all requirements;
 - 2. Comply in accordance with a compliance time schedule set forth in the order;
- 3. Take appropriate remedial or preventive action in the event of a continuing or threatened violation;
- 4. Disconnect unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.
 - e. Emergency suspensions.
- 1. The POTW director may suspend the wastewater treatment service and/or wastewater permit when such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the POTW or causes the POTW to violate any condition of its NPDES or Nondischarge permit.
- 2. Any user notified of a suspension of the wastewater treatment service and/or the wastewater permit shall immediately stop or eliminate the contribution. A hearing will be held within fifteen (15) days of the notice of suspension to determine whether the suspension may be lifted or the user's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the POTW director shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The POTW director shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The industrial user shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the POTW director prior to the date of the above-described hearing.
- f. Termination of permit. Any user, who violates the following conditions of this section, or applicable state and federal regulations, is subject to having its permit terminated:
 - 1. Failure to accurately report the wastewater constituents and characteristics of his discharge;

- 2. Failure to report significant changes in operations, or wastewater constituents and characteristics;
- 3. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or,
 - 4. Violation of conditions of the permit.

Noncompliant users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under subsection (h)(1), of this section why the proposed action should not be taken.

(2) Civil penalties.

- a. Any user who is found to have failed to comply with any provision of this section, or the orders, rules, regulations and permits issued hereunder, may be fined up to twenty-five thousand dollars (\$25,000.00) per day per violation.
- 1. Penalties between ten thousand dollars (\$10,000.00) and twenty-five thousand dollars (\$25,000.00) per day per violation may be assessed against a violator only if:
- a. For any class of violation, only if a civil penalty has been imposed against the violator with in the five (5) years preceding the violation, or
- b. In the case of failure to file, submit, or make available, as the case may be, any documents, data, or reports required by this section, or the orders, rules, regulations and permits issued hereunder, only if the POTW director determines that the violation was intentional and a civil penalty has been imposed against the violator within the five (5) years preceding the violation.
 - b. In determining the amount of the civil penalty, the POTW director shall consider the following:
- i. The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
 - ii. The duration and gravity of the violation;
 - iii. The effect on ground or surface water quantity or quality or on air quality;
 - iv. The cost of rectifying the damage;
 - v. The amount of money saved by noncompliance;
 - vi. Whether the violation was committed willfully or intentionally;
- vii. The prior record of the violator in complying or failing to comply with the pretreatment program;
 - viii. The costs of enforcement to the town.
- c. Appeals of civil penalties assessed in accordance with this section shall be as provided in subsection (d)(2)h.

- (3) Other available remedies. Remedies, in addition to those previously mentioned in this section, are available to the POTW director who may use any single one (1) or combination against a noncompliant user. Additional available remedies include, but are not limited to:
- a. Criminal violations. The district attorney for the applicable judicial district may, at the request of the town, prosecute noncompliant users who violate the provisions of G.S. 143-215.6B. [Note: Under North Carolina law, it is a crime to negligently violate any term, condition, or requirement of a pretreatment permit, or negligently fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(f)), to knowingly and willfully violate any term, condition, or requirement of a pretreatment permit, or knowingly and willfully fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(g)), to knowingly violate any term, condition, or requirement of a pretreatment permit issued by local governments, or knowingly fail to apply for a pretreatment permit, knowing at the time that a person is placed in imminent danger of death or serious bodily injury, (G.S. 143-215.6B(h)), and to falsify information required under G.S. Ch. 143, Art. 21(G.S. 143-215.6B(i)).]
- b. Injunctive relief. Whenever a user is in violation of the provisions of this section or an order or permit issued hereunder, the POTW director, through the town attorney, may petition the Superior Court of Justice for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.
- c. Water supply severance. Whenever a user is in violation of the provisions of this section or an order or permit issued hereunder, water service to the user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated ability to comply.
- d. Public nuisances. Any violation of the prohibitions or effluent limitations of this section or of a permit or order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the POTW director. Any person(s) creating a public nuisance shall be subject to the provisions of the appropriate ordinances of the town governing such nuisances, including reimbursing the POTW for any costs incurred in removing, abating or remedying said nuisance.
- (4) Remedies nonexclusive. The remedies provided for in this section are not exclusive. The POTW director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the town's enforcement response plan. However, the POTW director may take other action against any user when the circumstances warrant. Further, the POTW director is empowered to take more than one (1) enforcement action against any noncompliant user.
- (i) Annual publication of significant noncompliance. At least annually, the POTW director shall publish in the largest daily newspaper circulated in the service area, a list of those users which were found to be in significant noncompliance, also referred to as reportable noncompliance in 15A NCAC 2H .0903(b)(10), with applicable pretreatment standards and requirements, during the previous twelve (12) months.
 - (j) Affirmative defenses to discharge violations.
 - (1) *Upset.*

- a. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subparagraph b., below, are met.
- b. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - 1. An upset occurred and the user can identify the cause(s) of the upset;
- 2. The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
- 3. The user has submitted the following information to the POTW director within twenty-four (24) hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five (5) days]:
 - i. A description of the indirect discharge and cause of noncompliance;
- ii. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
- iii. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- c. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- d. Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- e. Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.
- (2) Prohibited discharge standards defense. A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in subsection (b)(1)a., of this section or the specific prohibitions in subsections (b)(1)b.2., 3., and 5.—7. of this section if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass-through or interference and that either:
- a. A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass-through or interference; or
- b. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when [the town] was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.
 - (3) Bypass.

- a. 1. If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW director, at least ten (10) days before the date of the bypass, if possible.
- 2. A user shall submit oral notice to the POTW director of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of this time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The POTW director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
- b. 1. Bypass is prohibited, and the POTW director may take an enforcement action against a user for a bypass, unless:
 - i. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - iii. The user submitted notices as required under paragraph b. of this section.
- 2. The POTW director may approve an anticipated bypass, after considering its adverse effects, if the POTW director determines that it will meet the three (3) conditions listed in subparagraph b.1., of this section.